P02 / Bad Policy: Identifying the Ignoble (Sides of Governance)

Topic : GOVERNING CRISIS

Chair : Ian Roberge (York University)

Second Chair : Malcolm Campbell-Verduyn (University of Groningen)

Third Chair : Heather McKeen-Edwards (Bishop's University)

GENERAL OBJECTIVES, RESEARCH QUESTIONS AND SCIENTIFIC RELEVANCE

This in-person panel is interested in the study of bad policy. Public policy scholars have long been interested in the study of policy successes and failures, as well as government mistakes, yet they have been reluctant to label policy as either good or bad. References to bad policy, however, abound in everyday parlance, in the popular press and even in other academic disciplines. Policy scholars are called upon at times to pass judgment on policy. There is limited guidance, however, within the discipline on how to do so. What is bad policy? Why should we study it? What theoretical and methodological approaches are best suited to provide a greater understanding of bad policy? What can scholars learn from studying examples of bad policy? As a starting point for the discussion, we define bad policy as a policy that is consciously developed, adopted and/or sustained even though it can be shown to cause harm, is ineffective, or generates serious unwanted or undesirable negative outcomes, as evidenced by extensive research which is available to the policy maker. The objective of this panel is to develop a full-fledged research program of comparative study into bad policy. The panel will flesh out theoretical and methodological approaches as well as opportunities and challenges to address the central normative considerations to studying and acting on bad policy. Papers will conceptualize and operationalize the concept of bad policy; consider how best to study it while recognizing the normative constraints attached to the concept; and develop bad policy case studies. The panel presupposes that bad policy is a scientifically worthwhile topic on which to conduct socially relevant research. Bad policy warrants separate attention distinct from related existing concepts in the field such as failed policy. After all, it is possible for a policy to be successful and meet its objectives, yet still, be undesirable. In an era of declining trust in institutions, including governments, the prominence of bad policy further undermines the state. As such, the study of bad policy is also a requisite for a greater understanding of what constitutes good and desirable policy and better governance.

CALL FOR PAPERS

This panel is interested in the study of bad policy. Public policy scholars have long been interested in the study of policy successes and failures, as well as government mistakes, yet they have been reluctant to label policy as either good or bad. What is bad policy? Why should we study it? What theoretical and methodological approaches are best suited to provide a greater understanding of bad policy? What can we learn from studying examples of bad policy? As a starting point for the discussion, we define bad policy as a policy that is consciously developed, adopted and/or sustained even though it can be shown to cause harm, is ineffective, or generates serious unwanted or undesirable negative outcomes, as evidenced by extensive research which is available to the policy maker. This panel presupposes that bad policy is a desirable and worthwhile topic on which to conduct research and that it warrants attention of its own separate from other concepts in the field such as failed policy; after all, it is possible for a policy to be successful and meet its objectives, yet still, be undesirable. We also suggest that the study of bad policy is a requisite for a greater understanding of what constitutes good and desirable policy and better governance. As such, this panel invites papers that are interested in the development of a theoretical framework for the study of bad policy; papers that focus on methodological approaches to the study of bad policy, with references to opportunities and challenges to normative considerations to research; as well as case studies in bad policy. The topic of bad policy provides for a rich research agenda and case studies can come from diverse policy fields including, among others, economic and financial policies, environmental policies, healthcare policies, and policies relating to emerging technologies. Authors of case studies should consider the drivers of bad policy, their delineated impact – whom they harm, and how – as well as options for redress. Papers may also consider the broader impact of bad policy on practices of governance and/or trust in governments.

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Session 1

Wednesday, June 28th 10:20 to 12:20 (KHE323)

(Virtual) Satoshi Meets the State: Bad Policy in Uncle Sam’s Initial Encounters with Bitcoin and Distributed Ledger Technology

Malcolm Campbell-Verduyn (University of Groningen)

The Bitcoin white paper authored by a still unidentified person(s) using the pseudonym Satoshi Nakamoto sparked on-going experimentation with the 'distributed ledger technology' emanating from the first so-called 'cryptocurrency'. Arising out of the disorder of the 2008 global economic crisis, Bitcoin and subsequent ‘financial innovations’ (finnovations’) sought to present alternatives to a global financial architecture long dominated by the United States. How have federal policies in the USA responded to the advent of Bitcoin between 2009-19? This chapter argues that the first decade of encounters between Uncle Sam and Satoshi-inspired financial technologies (fintechs) were characterised by bad policy. Continuous harms emerged in and across three policy-making (non-)moments. In an initial instance, federal responses to Bitcoin reiterated a longstanding focus on money laundering and terrorism financing risks that had countered earlier digital or ‘e-money’ challenges. The 'anticipatory approach' taken to a set of yet to emerge risks downplayed harms that were in fact taking place in less national security-sensitive areas of scams and ransomware payments. Second, and relatedly, decentralized policy towards distributed ledger technology sparked races to-the-top but mostly races-to-the-bottom between state government welcoming the very set of innovations that were enabling scams, ransomware and frauds afflicting their citizens. Third, despite growing attention to consumer harms, federal policy shied away from either bans of the worst excesses sparked by Bitcoin (as eventually undertaken most prominently in China) or setting detailed standards for generating more productive uses of distributed ledger technology (as occurred in the European Union). The mix of largely laissez-faire, ‘light touch’ and 'wait and see' federal policy not only continually extended harm to consumer, but also encouraged environmental harms as energy intensive ‘mining’ of Bitcoin relocated from countries like China to American states, such as Texas. The specific case detailed in this chapter concludes by pointing to the broader need for re-conceiving technological 'innovation' in the financial services sector in order to avoid ‘bad policy starts’ of the kind that continue to hamper the emergence of more hands-on federal policy as encounters with Bitcoin and ‘cryptocurrency’ shift into their second decade.

Time Taxes and Avoidable Structural Injustice

Gah-Kai Leung (University of Warwick)

Administrative or paperwork burdens impose enormous costs on rank-and-file citizens. In the USA alone, individuals spend almost 9 billion hours per year ensuring their tax returns are IRS-compliant, costing the American economy over $400bn (Hodge 2016). These burdens have been referred to as the ‘time tax’ (Lowrey 2021) and ‘sludge’ (Sunstein 2019).

Time taxes are criticized from several angles. For example, they (i) have regressive welfare effects (Martin, Delaney and Doyle 2022; cf. Lowrey 2021), (ii) shift the burdens of administration away from the administrators themselves and onto service users, who possess no expertise in the relevant policy domains (cf. Bozeman and Youtie 2020), (iii) discriminate against those with lower human capital (Christensen et al. 2020) and (iv) prevent citizens from accessing life-changing goods and services or from enjoying important political rights (Sunstein 2019; cf. Herd and Moynihan 2018: ch. 2).

But what accounts for governments’ imposition of time taxes? I argue that time taxes are a problem of

avoidable structural injustice, drawing on McKeown's (2021) revision of Young's influential theory (e.g. 2011). Avoidable structural injustices occur when powerful agents are *capable* of revising unjust socio-political structures but *fail to do so*, thus perpetuating bad policies (McKeown 2021; cf. McKeown forthcoming). One reason for this failure may be the *incentives* facing powerful actors within the structure.

What kinds of structural incentives result in time taxes? The paper turns to the public choice literature from political economy to answer this. I argue that time taxes arise due to two kinds of incentives: internal and external. *Internal incentives* motivate powerful actors within bureaucracies for their own personal gain. In his seminal work on bureaucracy, Niskanen argued that bureaucrats are self-interested officials who seek to maximize their own budgets in order to consolidate power and status (e.g. 1971). In the context of the time tax problem, bureaucrats are incentivized to devise complex social assistance programmes which require huge amounts of paperwork, in order to justify their ever-expanding budgets. *External incentives* motivate politicians to impose policies that performatively make them look good but can actually impose considerable harm. For example, drug-testing is a routine administrative barrier for welfare recipients in the USA; while it is normatively and financially unjustifiable (Perez-Muñoz 2017; Walker and Franklin 2018), it is deployed anyway for optics reasons (cf. Carey 1998: 283-284).

What do we gain from identifying time taxes as an avoidable structural injustice? Since time taxes are procedural by nature, a popular impression exists that administrative burdens are not truly policy decisions and are therefore not imposing real costs on people. By labelling time taxes as an *injustice*, we make it clear that such 'due diligence' measures - which initially appear innocuous - can turn out to impose genuine and systematic harm, which is often disproportionately felt by marginalized and vulnerable citizens as the empirical literature shows (e.g. Martin, Delaney and Doyle 2022; Christensen et al. 2020)[1]. Furthermore, by labelling time taxes as an *avoidable structural* injustice, we emphasize the incentives within the social structure that result in these harms and therefore illuminate opportunities for change by powerful agents.

This paper contributes to the policy literature on time taxes by: (i) arguing that the existence of time taxes can be interpreted as an avoidable structural injustice; (ii) using public choice theory to elucidate the harmful structural incentives which occasion this avoidable structural injustice; and therefore (iii) revealing obstacles to and opportunities for policy reform.

Keywords: avoidable structural injustice; time taxes; bureaucracy; administrative burdens

References

Bozeman, B. and J. Youtie (2020) 'Robotic Bureaucracy: Administrative Burden and Red Tape in University Research', *Public Administration Review* 80(1), pp. 157-162.

Carey, C. A. (1998) 'Crafting a Challenge to the Practice of Drug Testing Welfare Recipients: Federal Welfare Reform and State Response as the Most Recent Chapter in the War on Drugs', *Buffalo Law Review* 46, pp. 281-345.

Christensen, J., L. Aaroe, M. Baekgaard, P. Herd and D. P Moynihan (2020) 'Human Capital and Administrative Burden: The Role of Cognitive Resources in Citizen-State Interactions', *Public Administration Review* 80(1), pp. 127-136.

Herd, P. and D. P. Moynihan (2018) *Administrative Burden: Policymaking by Other Means*. New York: Russell Sage Foundation.

Hodge, S. A. (2016) *The Compliance Costs of Tax Regulations*. Washington, DC: Tax Foundation.

Lowrey, A. (2021) 'The Time Tax', *The Atlantic*, 27 July.

Martin, L., L. Delaney and O. Doyle (2022) 'Everyday Administrative Burdens and Inequality', working paper, *UCD Geary Institute for Public Policy Discussion Paper Series*. Dublin: University College Dublin.

McKeown, M. (forthcoming) *With Power Comes Responsibility: The Politics of Structural Injustice*.

McKeown, M. (2021) 'Structural injustice', *Philosophy Compass* 16(7), e12757.

Niskanen, W. (1971) *Bureaucracy and Representative Government*. New York: Routledge.

Perez-Muñoz, C. (2017) 'What is Wrong with Testing Welfare Recipients for Drug Use?' *Political Studies* 65(4), pp. 912-929.

Shahab, S. and L. K. Lades (2021) 'Sludge and transaction costs', *Behavioural Public Policy* [early view]. Available at: <cambridge.org/core/journals/behavioural-public-policy/article/sludge-and-transaction-costs/D09206BF9B36C12 Accessed 21 November 2022.

Sunstein, C. (2019) 'Sludge and Ordeals', *Duke Law Journal* 68, pp. 1843-1883.

Walker, M. J. and J. Franklin (2018) 'An Argument Against Drug Testing Welfare Recipients', *Kennedy Institute of Ethics Journal* 28(3), pp. 309-340.

Young, I. M. (2011) *Responsibility for Justice*. Oxford: Oxford University Press.

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[1] I thank Tim O'Shea and Fritz Gillerke for conversations on this point.

"What a Bad Policy Idea!": Exploring Views on Offshore Wind Farms in Italy

Alberto Asquer (School of Oriental and African Studies, University of London)

Research on the policy stream has long recognized that ideas play a pivotal role to advance policy options. Yet, what makes policymakers and stakeholders accept or reject policy ideas has not been fully clarified. Arguments that a policy option is advantageous can be challenged by other views that the policy idea is bad and should be therefore repudiated. Questions arise, then, concerning why a policy idea is considered bad, what are the reasons for arguing that a policy idea is bad, and how this matters for pushing a bad policy idea out of a policy agenda.

This chapter aims to explore the discursive foundation of a bad policy idea. This aim is pursued through the empirical analysis of views on offshore wind farms held among policymakers and stakeholders in Italy. Offshore wind farms are generally regarded as beneficial to diversify energy sources and to attain net zero emission targets. Installation of wind turbines in the ocean, however, also triggers negative views that arise, for example, from their noise and visual pollution, their impact on the maritime ecosystem, and their limited financial benefit for local communities. Through interviews and a Q method analysis, this chapter will identify normative and motivating reasons for considering offshore wind farms an unwelcome policy option. The findings will inform a discussion on the social construction of bad policy ideas, on their reasons and their implications for the making of public policies.

(Virtual) Understanding the adoption of military equipment by local law enforcement agencies in the US

Keith Baker (College at Brockport)

As police agencies possess the ability to use legitimate force, the actions and conduct of their officers has profound implications for public governance and public perceptions of government. Moreover, criminal justice accounts for a large percentage of local budgets. Law enforcement agencies (LEAs) across the United States (US) have become increasingly militarized and this often represents bad policy as unnecessary force is frequently used against the general public. This can delegitimate policing. The militarization of policing has attracted considerable attention, but public policy scholars has largely neglected the topic (Li et al 2021 are an exception). Police militarization has been variously linked to the availability of military equipment through the US Government's 1033 program (Delehanty et al. 2017) and warrior cultures within police agencies (Burkhardt and Baker 2019) that emphasize securing officer safety. The emergence of 'warrior' cultures has been linked to police training (Li et al 2021). As such, it can be argued that the acquisition of military equipment becomes attractive at the organizational level. Many of these training programs are provided by private companies but the Department of Defense also trains and trains with local law enforcement agencies. In addition, isomorphic and personnel pressures may encourage law enforcement agencies to acquire military equipment in response to perceptions of threat at the individual level, a desire to be perceived as possessing prestigious units, or the need to be seen as an appropriately equipped force. This paper uses agent-based modeling – a computational modeling approach that examines how interactions between contextualized agents shape outcomes - to determine how militarized training programs and the characteristics of law enforcement agencies affect the adoption of military equipment. The paper concludes by considering the implications of police militarization for public policy, administration and governance.

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Session 2Sessions 2

Wednesday, June 28th 15:50 to 17:50 (KHE323)

Borrowing money from the fringes: Regulatory efforts for payday loans in Canada and the US

Heather McKeen-Edwards (Bishop's University)

Consumer credit is an increasingly essential part of modern economic life for most individuals. In North America, and elsewhere, this access to credit is currently available through a variety of sources at varying costs and with different levels of regulatory protection. One source of financing available to borrowers is through fringe financial services; a sector populated by private incorporated or limited liability companies, including payday lenders, cheque cashers and rent-to-own providers among others, who offer some basic retail financial services to consumers who are either unbanked or, more likely, underbanked. These lenders offer products that are more expensive in comparison with mainstream forms of credit. They also generally sit outside the governance framework for mainstream financial actors, like banks and credit unions, so the regulatory structure that they are subject to has traditionally been lighter. Yet, over the past 20 years the sector, particularly short-term lending like payday loans, has been growing rapidly across the globe and national markets are increasingly being cornered by large public corporations operating across multiple jurisdictions. This paper examines the evolution of regulatory efforts for payday lending in Canada and the United States. Despite the growing integration of the payday lending markets, regulatory efforts in these countries have been limited to subnational environments, creating multiple distinct approaches to regulation and a patchwork of protection that opens or expands the spaces for harm for individual borrowers in each country. It also situates this analysis in the larger discourses of consumer choice and responsible lending versus predatory financial services.

Policy narratives of moral panic, folk devils, and straw men as drivers of bad policy: The case of Critical Race Theory (CRT)

Nevbahar Ertas (University of Alabama at Birmingham)

Andrew McKnight (University of Alabama at Birmingham)

This study aims to clarify the connection between politically manufactured policy narratives and bad policies. The analysis focuses on the concepts of moral panic, folk devils, and straw men as drivers of fabricated policy narratives and bad policy, using the current case of Critical Race Theory (CRT). The deluge of legislative attempts by several US states to ban teaching of race, gender, and other content deemed divisive and controversial in government trainings and public education — the so-called anti-CRT bills— are examples of bad policies that are intentionally built on bad faith arguments meant to provoke fear of a straw man. In this case, it takes on the guise of anti-white and/or anti-American indoctrination by government employees.

Our approach is both theoretical and empirical. First, we will conceptualize the notion of bad policy by relying on narrative theories of the policy process, critical cultural theory, and the sociological concept of moral panic. This discussion will critically reflect on the implications of such manufactured moral panic narratives on both policies and policy making. The case study of anti-CRT efforts demonstrates how the narrative fabrication is accompanied by larger anti-democratic trends aimed to promote censorship, restrict voting, and the right to protest. After our theoretical inquiry, we will present analysis of nationally representative survey data collected in 2022 as part of the Understanding America Study (UAS) —one of the largest and most comprehensive surveys on the topic—to provide empirical insight into familiarity,

knowledge, ideology, policy beliefs, and policy opinions about CRT in education. Empirical data confirm that the controversy over CRT trainings taking over government and schools is a manufactured policy narrative designed to manipulate public emotion and justify bad policy. Policy opinions regarding reactionary legislation are not based on a real understanding of CRT or even opinions about what school curriculums should teach – rather they seek to preempt the conversation altogether. Furthermore, the effect of knowledge varies by ideological orientation and partisan affiliation. It is critical to recognize and confront bad faith policy aimed to address real or imagined public problems based on fiction or fabrication, rather than demonstrable reality.

Toronto's Failed Smart City: Intellectual Property, Data, and Bad Governance

Natasha Tusikov (York University)

Public debates over smart cities typically focus on questions of surveillance, privacy, and possible socio-economic benefits from data-driven technologies. Often neglected in public discussions are the core issues of how smart-city data will be collected, used, owned, and governed (that is data governance), and the control over intellectual property (IP) rights relating to smart-city technologies. This chapter argues that public officials must have a critical understanding of IP to effectively create and operate smart cities, complemented by a sound knowledge of data governance strategies, including how – of if – data should be commodified. When city officials lack this critical knowledge, the chapter argues, the result is bad policy, specifically badly designed smart cities with unevenly distributed innovation, ineffective public services, and smart-city vendors capturing the lion's share of the revenue stream from smart-city technologies. To make its argument, the chapter examines Sidewalk Labs' plans between 2017 and 2020 for a smart city project on the eastern waterfront of downtown Toronto. A Google company, Sidewalk Labs held two years of public consultation before the plan was cancelled in May 2020, with many of its plans eliciting controversy in terms of risk to privacy and the public private division of benefits from the smart-city technologies. Drawing from critical data studies and the International Political Economy literature, the chapter examines primary documents related to the project, specifically Sidewalk Labs' June 2019 four?volume 1,500?page project plan.

Canada's Covid Alert App: Designed for Privacy, and Not Much Else

Blayne Haggart (Brock University)

From early in the global Covid-19 pandemic, smartphone-based apps were touted as a means to mitigate and even end the pandemic. The Canadian government debuted its contact-notification app, the Covid Alert app, on July 29, 2020. As elsewhere, the app failed to live up to even modest expectations before being quietly retired on June 17, 2022. The Covid Alert app is not an example of bad policy because it failed to mitigate the pandemic: Not every policy innovation works out. It was a bad policy because it embodied two related, increasingly prevalent, ideologies. Technological solutionism causes policymakers to start from the (digital tech) solution, rather than treating it as just one possible policy option. Dataism, meanwhile, reinforces digital tech' allure through its false presumption that social reality can be fully captured by digitally collected data. These two ideologies were on full display in the app's privileging of individual privacy rights – a consequence of depending on surveillance-capitalist companies to deploy the apps – over effective contact tracing, which requires sharing individuals' information with a central authority. So strong were these privacy designs that policymakers initially were unable even to evaluate the app's effectiveness. Other negative aspects baked into its design – including issues related to access to high-cost smartphones by low-income individuals, and a dataist redefinition of a "contact" – were also downplayed. Avoiding technological solutionism and dataism requires treating such tech as policies, not tech, to be evaluated according to the criteria of the issue area in which they are being introduced.