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THE PUBLIC INTEREST IN PLANNING: FROM LEGITIMATION TO SUBSTANTIVE PLAN EVALUATION

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Abstract The evolution of the public interest concept is traced from its classic origins to its practical implications today. Variations include aggregative, unitary, deontic and dialogic approaches, with applications ranging from utilitarian evaluation methods to deliberative and dialogic approaches in political, administrative and judicial arenas. The ontological debate on the public interest concludes that the problem defeating any substantive public interest application is complexity, leaving a dialogic public interest as a default legitimator of public planning. To meet the need for normative application of a substantive public interest concept in planning practice, a threshold criterion is proposed for use in appropriate cases of plan evaluation.

Keywords plan evaluation, planning applications, planning legitimation, public interest history, public interest ontology

Introduction

For planners and the planning profession, the public interest has always remained relevant as a legitimating principle and a norm for practice, even

while philosophers and political theorists debated its existence. Now, with renewed discussion of the public interest in the context of planning ethics and practice, the time seems right to review the concept from basic principles, tracing its evolution and pursuing its practical implications.

With the emergence of spatial or land-use planning as a distinct profession and quasi-discipline,[1] the public interest has had three roles related to planning. One is to legitimize planning as a state activity: this has been the thrust of recent discussion (e.g. Campbell and Marshall, 2002; Moroni, forthcoming). Another is as a norm for planning practice: this is how practitioners perceive it and how professional institutions invoke the public interest (Campbell and Marshall, 2000). Applying this norm in reality implies a third role: the public interest as a criterion for evaluating planning and its products: policies, projects and plans (Alexander, 2002). The last role is the ultimate focus of this article.

Opening with a survey of concepts of the public interest, the article focuses on their various applications in practice: how the public interest principle is operationalized in evaluating intended or completed actions, and the limitations of prevailing evaluation methods and deliberative approaches. Next I proceed to review the concept's ontology: whether the public interest exists at all as a valid or usable concept. The issue of utilization leads into the final section: practice, which attempts to apply the public interest principle in substantive plan evaluation.

Many critiques of the public interest raise the problem of its operationalization; applying this principle systematically in valid evaluation is indeed difficult. Often the challenge of complexity is insuperable, and such cases are beyond the capacity of any public interest criterion human ingenuity can devise. However, bounding the scope of the problem enables practical application of a simple substantive evaluation criterion reflecting the public interest. Such a criterion is developed and then presented in the final section.

Concepts of the public interest and their application

The public interest has been identified with the state since the dawn of Roman democracy: *res publica*, Latin for the state and the origin of the word 'republic', means 'the public thing' (affair or interest). Even earlier, perhaps, it may have been associated with other non-autocratic (but non-democratic) forms of government, e.g. in Plato's *Republic*.

We may surmise that the concept survived through the Middle Ages, linked with republican elective government, which took the form of popular revolutionary polities (like the brief Roman commune and the Florentine republic) and longer-lived oligarchic city-states, such as Venice and the

Hanseatic ports. It persisted through the Renaissance too, with republican states such as Cromwell's Commonwealth in England and the *Staaten* of the Netherlands. Here the emphasis of the public interest is on *public*, representing the state as a more-or-less inclusive community, in contrast with polities based on feudalism or the divine right of kings.[2]

The Enlightenment brought a shift in the meaning of the public interest, to focus more on *interest*, in the sense of an entity's 'having something at stake'. This modernist concept of a public interest emerged in the context of political philosophers' attention to the idea of interests in general, especially particular or partisan interests (as discussed by the writers of the US Constitution) and the aggregation of private or individual interests, as advocated by British utilitarians. Though there were differences in its interpretation, there was broad consensus on the concept of a public interest as a normative objective of political action (Campbell and Marshall, 2002: 167–70).

Even today, the public interest is an acknowledged objective of state action; this is not limited to planning. In public administration the public interest is associated with sound government, and action in the public interest is prescribed for state officials (Alexander, 2002: 204). In law, courts invoke the public interest as a decision criterion, for example in private law to void some otherwise valid contracts,[3] and in US anti-trust actions.[4]

The association between planning and the public interest has traditionally taken several forms. One is as a norm legitimating spatial and land use planning and development control as state activities; this is how the public interest has been perceived, for example, in the UK (Campbell and Marshall, 2002: 170–1). Another is as a foundational principle for the profession, in effect providing a normative base for planners' professional judgment and expertise (Alexander, 1992: 129–30; Campbell and Marshall, 2000). Finally, the public interest is widely prescribed and recognized as an ethical norm for practicing planners (Howe, 1992, 1994).

Today we can identify various concepts of the public interest, which differ in several ways.[5] They can be divided between substantive interpretations – concerned with the content of actions and their consequences – and procedural ones, which focus on the quality of the decision-making or planning process. We can also distinguish between aggregative approaches (i.e. utilitarian aggregation of individual preferences) and unitary, deontic, and dialogical ones. Each concept reflects a theory that implies a different interest base and a different practice (see Table 1). The different applications associated with these concepts are the focus of the discussion that follows.

Utilitarianism

Classic utilitarianism aggregates individual values. The utilitarian public interest means maximizing a hedonic value measuring all the affected individuals' 'pleasure' or 'happiness'. Almost immediately, problems were

TABLE 1 *Concepts and applications of the Public Interest*

Focus	*Approach*	*Interest Base*	*Theory*	*Perspective*	*Application*
Substantive	aggregative	individual values/ preferences	*utilitarianism*	objective	social welfare function; benefit-cost analysis
	aggregative	individuals and/or groups	*modified utilitarianism*	subjective	multi-objective evaluation
	unitary	collective community	*communitarianism*	value-based cultural ideological	political/ administrative: compatibility with values, norms
	unitary	polity, state	*étatism, constitution, law*	objective	legal/adjudication compatibility with state interest
	deontic	individual (planning) rights	*liberal-democracy; constitution, law*	objective	administrative/legal review: compatibility with planning rights
Procedural	deontic	individual rights	*liberal individualism*	objective	legal/adjudication compatibility with individual procedural rights
	dialogical	stakeholder groups	*Madisonian liberalism communicative practice*	inter-subjective	political discourse

recognized with this measure: critiques included its reductionism, unitary scale of valuation, oblivion to distributional consequences, and its translation (for practical purposes) into monetary values. Though classic utilitarianism supposedly aggregates individuals' subjective preferences, utilitarians soon recognized that private interests could conflict with an aggregated collective good that maximizes general welfare: the public interest. In determining public choice issues involving state action, which demanded maximization of aggregated individual utilities, the transformation of subjective preferences into objective values was unavoidable.

In practice, utilitarian principles were applied unreflectively. One traditional utilitarian approach to identifying the public interest was the aggregation of individual preferences in a social welfare function (Sager, 1990: 149–52), which repeated attempts proved infeasible. Another was the widespread use of benefit-cost analysis (BCA) to evaluate proposed public projects. But growing awareness of the problems involved in these transformations produced a *modified utilitarianism* that consciously made objective judgments. This form of utilitarianism underlies welfare economics, and some economists and philosophers (e.g. Sen and Singer) advocate its ethical principles.

Evaluating proposals (policies, projects and plans) to decide whether they are in the public interest, in the utilitarian sense, demands identifying and aggregating individual utilities. This became the subject of formal analysis (e.g. in economics), and experts apply systematic evaluation methods to advise decision makers on preferred courses of action. Economic investment analysis methods (including BCA and other utilitarian criteria of socio-economic efficiency) were (and remain) the common application in practice of the utilitarian concept of the public interest.

Recognition of the intrinsic flaws in BCA and similar evaluation approaches paralleled the emergence of modified utilitarianism. New applications that modified traditional benefit-cost analysis in important ways ranged from the planning balance sheet, which embedded BCA in a more comprehensive framework, to the development of a family of evaluation methods known as multi-criteria (or objective) decision analysis. The latter represent an attempt to transcend the utilitarian instrumental rationality of BCA, and incorporate substantive rationality (i.e. prioritizing values) into project and plan evaluation (Alexander, 1998: 365–6). But these too could not rescue 'objective' aggregative evaluation methods from the objections to utilitarian applications of the public interest.

Unitary concepts

Unlike utilitarianism, which aggregates individual values, unitary concepts base the public interest on some collective moral imperative that transcends particular or private interests. Several arguments justify this view of the public interest. One is societal stability and order, which demand a

consensual polity: a state or government. Another is social justice, which calls for authoritative redistribution to redress inequalities. Then there is the possibility that individuals' subjective preferences (due to ignorance, limited information, or mistaken consciousness) may not coincide with their true interests. Finally, some common principles or collective values may exist that override private interests or individual values.

The first argument reflects *étatist* theories, which see a politically–legally constituted polity: a government, or state, as embodying the public interest.[6] Here objective evaluation of proposed actions determines whether they are in the public interest, i.e. whether they are compatible with the collective interests of the state. This is the concept of the public interest that prevails in law, with judges applying legal criteria to determine whether a proposed action (e.g. a partnership agreement that limits a partner's occupational opportunities after termination) is 'in restraint of trade'.

In planning, this concept of the public interest is applied in judicial or quasi-judicial contexts: court adjudication of plans or planning decisions (arising from objections or related litigation) and administrative plan review. One common form of the latter is statutory planning review, i.e. assessing the conformity of development proposals with approved statutory plans, and evaluating their compatibility with applicable local or national policy. Others include design review, when a local panel (Planning Commission subcommittee or Design Review Board) evaluates submitted projects' conformance with design ordinances and explicit community norms, and building permitting: assessing the conformity of construction plans with applicable regulations and approved planning schemes.

The second argument justifies universalist redistributive ethics, such as Rawls' (1971) *Theory of Justice,* providing the basis for another (non-utilitarian) way of measuring the public interest. Here too, however, the unitary concept of the public interest reverts to a deontic form. In this case, rather than a dialogically arrived at societal consensus expressed in approved laws, rules, and plans, the decision criterion is a rule for evaluating social policies and allocative distributions.[7]

The last two arguments give communitarian approaches a base for refuting utilitarianism, to legitimate public policy that is openly value-based, or to evaluate proposed private actions by their conformity with cultural or ideological community norms. A communitarian theory of the public interest is implicit in some legal applications of the concept, for example voiding contracts (e.g. which enable prostitution) that tend to undermine public morals. In the planning context too the public interest can have communitarian connotations, when development proposals are reviewed for their conformity with community aspirations and norms as articulated in statutory plans and regulations such as design controls.

Paradoxically, unitary concepts of the public interest based on communitarian principles can be compatible with diversity. This depends, of course, on the politics and structure of the polities concerned, but with

appropriate institutionalization, a specific (even minority) community can effectuate its ideas of what constitutes its public interest, based on its particular culture, ideology or values.[8]

In any application of unitary concepts of the public interest, what emerges is some recursive combination of dialogic and deontic approaches. Political discourse produces the laws, rules, and decision criteria that articulate what the relevant polity or community defines as in its public interest, which are deontically applied in the course of adjudication or administrative review. At the same time, where the legal-institutional framework leaves room for discretion, duly constituted bodies (e.g. courts in legal appeals, or Planning Commissions in administrative review) develop their interpretations of the public interest dialogically among themselves and with their relevant constituencies and public.

The only objections to such applications of a unitary public interest are to question the authenticity of the societal consensus that is a critical assumption behind this concept, or to attack the legitimacy of the institutional frameworks and processes that result in or apply the adopted rules. Notwithstanding such objections, which have indeed been raised,[9] this form of applying the public interest as a normative principle is universal, and is still its most common manifestation in planning today.[10]

Deontic concepts

Deontic means rule- or norm-based, i.e. judging actions by their ethical content – 'is this action right?' – rather than (as utilitarianism does) by their consequences: 'will it do good?'. Deontic views see the public interest in terms of upholding individuals' and affected groups' rights, based on principles ranging from liberal democracy to ultra-liberal individualism and libertarianism.

In its deontic interpretation the public interest has both substantive and procedural aspects. The first relates to substantive rights of parties affected by plans and their consequences. Substantive planning rights are those positive institutional rights (specific to each context or society) that can be deduced from acknowledged basic principles (such as human dignity, equal treatment, and property rights), which include the public interest (Alexander, 2002). In many cases the last can only be assessed judgmentally, weighing the relevant considerations involved, but sometimes a substantive public interest criterion can be applied, as shown later.

Libertarian individualism is the theory behind another deontic view of the public interest (e.g. Nozick, 1974), which emphasizes the procedural respect for individual rights to the exclusion of almost everything else. In planning (and other forms of policy- and decision-making) these rights are institutionalized to varying degrees in different societies, under the broad headings of fairness or due process, sound administration and transparency, and public or third party participation. From this point of view,

these procedural rights are both necessary and sufficient for the public interest.

Based as they are on the principle of rights, deontic forms of the public interest concept are applied in those arenas where rights are contested. This may either be in the course of administrative review (e.g. in some statutory planning systems) or as appeals to the courts claiming curtailment of affected parties' rights.

Deontic forms of the public interest principle can be questioned on only two grounds, one foundational, the other substantive. The foundational critique maintains that invoking the public interest as a decision rule does no more than obscure the underlying ideological premises on which a particular reading of what is in the public interest is based.[11] The substantive critique does not deny the intrinsic validity of a deontic form of public interest; it only attacks the specific ethical or political principle underlying a particular interpretation of the public interest. Examples of such critiques are the debates on Nozick's libertarian individualism, Rawls' allocational principle, and Habermas' criteria for communicative rationality.

Dialogical concepts

The dialogical approach relates the public interest to an interactive process (from pragmatic political discourse, to utopian open dialogue and consensus) among concerned stakeholders and affected parties. At one pole it includes the Madisonian concept that gives the public interest a substantive content, but one which can only be determined *ex post facto*: the actual result of political conflict, bargaining and compromise between particular sectoral or private interests.

Here a dialogic process in the framework of recognized democratic institutions legitimizes adopted policies as being in the public interest. While unexceptionable on its face, this approach has two drawbacks. One is that, by definition, it invalidates the public interest as a criterion for any a priori evaluation of proposed actions, which is what planners, policy analysts and other advisors are supposed to do. What happens is good: exactly those plans, programs or policies that are the products of the democratic political process are the ones in the public interest. The other is that it assumes unquestioned acceptance of the democratic processes and institutions that frame them. The many critiques (from Marx to Foucault), suggesting that this is not the case, renew the question whether legislated policies are always in the public interest.

At the other pole is (what planning theorists call) communicative practice, based on Habermas' communicative rationality. Unlike the Madisonian view, where democratic process enables (*ex post facto*) definition and legitimation of a public interest with substantive content, communicative practice focuses on the dialogic process itself. Habermas' theory offers ethical norms and evaluative criteria that can be applied to

planning or decision making processes to assess whether they are likely to produce decisions and collective action that are in the public interest. This is a procedurally deontic interpretation of the public interest, and its norms are quite usable in theoretical analysis. But many have questioned its practical realism, and how the criteria prescribed for communicative rationality can be realized in actual decision situations remains unclear (Alexander, 2000: 246–7, 250).

In its dialogic form, the public interest principle cannot be applied except in interactive discourse, ideological, political, or technical,[12] reinforcing doubts about its real existence. Accordingly, a dialogical concept of the public interest may be useful as a kind of default legitimation for planning, but it fails to provide the substantive content planners need if the public interest is to have any value as an evaluative criterion for plans or planners' decisions (Campbell and Marshall, 2002: 183–4).

But these concepts conceal an active debate (which is still going on) on the intrinsic problematic of the public interest itself as a normative principle or decision criterion. Can a public interest exist at all, in the sense of something that can be concretely articulated in the real world, or as a norm that can be applied to actual decision situations? This question is addressed next.

The substantive public interest: ontology

When discussing the ontology of the public interest, we need to distinguish between its procedural and substantive aspects. In its procedural sense the public interest is identified with the political decision-making or planning process. To describe such a process as in the public interest implies universally accepted standards of fairness and democracy (Friedmann, 1973) and rationality (Sager, 1990: 126–7). Procedurally, the public interest criterion has been effectively operationalized through socially adopted and legally enforced norms and rules of due process, sound administration, and reasonable decision-making (Alexander, 2002: 195–7).

In its procedural sense, the public interest is undisputed. The same is not true of the public interest as a principle that has substantive content. This, however, is the aspect that must command our attention, if we are serious about applying the public interest as a norm for ethical practice and as a criterion for assessing the 'goodness' of projects, policies, and plans.

Three kinds of arguments have been made against the existence of a substantive public interest: it does not exist as a fact, it cannot exist as a holistic interpersonal value, and it should not exist as a privileged substantive value. Pluralist political scientists (e.g. Schubert, 1960) made the first argument, contending that no such thing as a public interest exists, as a matter of empirical fact. Their case implies a conflictual view of society, suggesting that today's communities and polities are so diverse and heterogeneous that there is no common area of mutual group interests or shared

values that could be identified as a public interest (Moroni, forthcoming: 2–3).

The 20th century pluralist approach to the public interest is a point on a longer historical continuum, stretching back to the Madisonian view in the 18th century, and reaching forward to contemporary postmodernist views (discussed in this section). In planning in the USA and the UK, from the 1950s to the 1970s, the pluralist attack on the public interest was reflected in critiques of traditional comprehensive planning and the problematic principle behind it (Campbell and Marshall, 2002: 171–3), generating in response the idea and practice of advocacy planning (Alexander, 1992: 103, 129).

But there are ways of suggesting that a public interest can be compatible with a pluralist view of politics and society. One is a dialogical definition of the public interest, implying a substantive public interest that is identified *ex post facto* through the political process. The other is a more categorical refutation of the underlying premises of the pluralist argument.

Yes, societies contain diverse groups with different values and conflicting interests, but the very existence and persistence of communities and polities prove that there is a consensus around some critical commonalities, even if only the mutual interdependence (Alexander, 2001: 319–21) that links all their constituencies and sets necessary limits to their conflict.[13] It is within these limits that we should find the public interest; how and whether that can be done is discussed below.

The second argument denies that a public interest can exist as a holistic inter-subjective value that overrides personal values and preferences. This is essentially an ethical proposition based on an extreme liberal-individualism that makes the individual the only source of legitimate moral claims, and the state or any other community is no more than a means for promoting individual welfare or protecting people from harm. This critique's main impact is to de-legitimate the utilitarian concept of the public interest, which is intrinsically based on impermissible aggregation of individual preferences.

But even a fundamentalist liberal-individualism does not exclude other (non-utilitarian) ways of defining a public interest. Deontic concepts of the public interest range from Nozick's (1974) and Pollock's (1996) libertarian-liberal ideas of a state devoted primarily to upholding individual rights, to egalitarian-liberal approaches that may also be based on rights (e.g. Dworkin, 1977; Holmes, 1989), or premised on a distributive formula like Rawls' (1971), which takes an individual position as its point of departure (Moroni, forthcoming: 3–6).

Market-liberalism (another version of liberal-individualism) flourished, and still does, in the post-industrial West, invading planning in the 1980s under Reagan in the USA and under Thatcher in Britain. It also rejects the concept of the public interest, but for pragmatic, not foundational reasons: changes in the planner's role, from public regulator to policy entrepreneur

and dealmaker, have made it redundant (Campbell and Marshall, 2002: 173–4). The practical implications for planners, however, are quite different from those of fundamentalist individualism. The political philosophy behind market liberalism is ultimately utilitarianism, so traditional benefit-cost analysis to evaluate alternative courses of action is perfectly acceptable.

The third argument claims that the public interest should not exist as a privileged substantive value. This is a meta-ethical conclusion, which, depending on its premises, has different implications. Though denying that any one substantive value is preferable to any other, what Moroni (forthcoming: 6–7) calls 'non-sceptical value pluralism' does not imply radical moral relativism. Rather, it suggests a public interest that is not a 'kind of super-value', but that enables the widest possible range of different values. This approach sees the public interest in the institutionalization of a *modus vivendi* between the diverse communities and diverging interests of a society that has multiple, incompatible, and even incommensurable values (Gray, 2000).

'Sceptical value-pluralism' (Moroni, forthcoming: 7) draws a different normative implication: to abandon the public interest altogether, both as a legitimating value and as a potential ethical norm. The skeptics comprise several different groups. One group (in part overlapping with some of the others) is made up of planning theorists who assert that the intrinsic complexity of planning-related issues – 'wicked problems' (Rittel and Webber, 1973) – invalidates any simple unitary concept such as the public interest, and makes its practical application infeasible.

Other skeptics deny the existence of a public interest on principle. These include postmodernists who reject all universal norms, based on the premise of epistemological relativism, and social philosophers (feminists and multiculturalists) who argue the intrinsic incommensurability of the conflicting values implicit in diverging lifestyles. Based on the consequent impossibility of any rational political discourse, they espouse a 'politics of difference' to supplant the consensual community implied in the public interest (Campbell and Marshall, 2002: 174–5).

There are answers to each of the skeptics' three arguments against the public interest. The first argument claims infeasibility: the impossibility, in the face of complex reality, either to situationally conceptualize or to operationally apply a norm based on a substantive public interest. In many planning situations, this is undeniable. Nevertheless, conceiving of and applying a valid public interest criterion for limited cases may not be impossible; this is elaborated later.

The second (postmodernist) argument denies the validity of any universal norm; in Lyotard's words: 'there is no metanarrative'. The intrinsic paradox of this statement is its own rebuttal,[14] opening every proposed generalization or prescription (contingent or universal) to evaluation on its own merits.

The third argument, claiming value incommensurability to deny the possibility of a consensual polity, is demonstrably contradicted by reality. Not only do such polities exist and persist: they are in fact the very addresses for claims and demands (in themselves often well-founded) made by proponents of 'the politics of difference'.[15] To quote Peter Marris:

> some conception of the public interest is critical to the rationality of democratic politics [in such polities and communities]. Unless there is a general shared interest, more profound and ultimately more important to people than the interests which divide them, it would not make sense to speak of (such polities and communities) at all, because (they) would not represent (entities) with a purpose that could be rationally pursued. (Marris, 2001: 279–80)

Practice: applying the public interest concept in substantive evaluation

As a principle legitimating planning as a state activity, the public interest concept raises the question: what can planners do about it?[16] It is this question that makes upholding the public interest an ethical norm for professional planners, and that raises the problems of practical application, which are behind many of the critiques discussed before. Above, I have reviewed how the public interest principle is applied in practice, and discussed the limitations of utilitarian, unitary, deontic and dialogic concepts of the public interest.

What are the prospects for a substantive public interest criterion for use in reviewing and approving (or rejecting) planning products: policies, programs, projects and plans? The validity of utilitarian-based evaluation methods (practical though they may be) has been widely criticized, and today it is acknowledged that they are a questionable way of assessing whether a proposal is in the public interest (Howe, 1992: 235–6). Modified utilitarianism underlies more sophisticated multi-objective evaluation methods, but these are also flawed if simply used as a quantitative index of project performance, though they can be useful decision supports in an interactive process of comparing complex alternatives (Alexander, 1998: 358–60).

Such interactive processes essentially involve weighing the various relevant decision considerations, which often involve competing interests, conflicting rights, or incompatible values. These are the deliberative approaches to ascertaining a substantive public interest implied in unitary and deontic concepts of the public interest, and they are undertaken in the various appropriate decision-making arenas: administrative, political, and the courts.

But here critics' assertion that the public interest concept lacks any substantive content is irrefutable. Worse, their related contention – that the

value-loaded nature of decision issues and their intrinsic complexity make the a priori identification of any substantive public interest criterion impossible – is undeniable. Nevertheless, how could a substantive public interest criterion be developed that would surmount these obstacles?

One way is to associate the public interest with a clearly defined and universally accepted norm: a rule or set of criteria, which can be applied in evaluating, proposed actions. Rawls proposes a substantive norm, which focuses on the redistributional impact of policies. Habermas offers a set of procedural criteria to evaluate political discourse and decision-making processes. Neither of these has been applied in any real decision situation; the reasons why include limited acceptance and levels of abstraction that make operationalization difficult, if not impossible.

Another way is to develop a threshold criterion that represents a generalizable public interest with which no one can disagree. Benditt's (1973: 300) example of judging a policy by 'whether it will provide enough to eat for anyone who meets its conditions' is such a criterion, though, developed as it was for the purposes of argument, it is of no practical use. Here a similar threshold public interest criterion is proposed for application in substantive plan evaluation.

This criterion follows from the premise that the public interest is associated with enhancing the welfare of all the parties affected by a plan's impacts. This is what all plan evaluations try to assess, and what every good-faith plan tries to achieve. Usually, however, such assessments involve debate about the weight to give to particular interests, and how to balance conflicting decision considerations, and their findings cannot be conclusive. Indeed, this judgment is at the heart of the planning process, and is perhaps the salient issue in planners' professional practice (European Council of Town Planners [ECTP], 1998).

There is a threshold formulation of this principle, however, which avoids such relative weighting deliberation by reframing the issue. To reduce problem complexity the proposed criterion focuses on a plan's consequences for the most directly affected parties: the residents of the designated plan area. This public interest criterion states:

> A plan that does not enhance, or reduces, the welfare of the residents of the designated planning area, is not in the public interest, unless the plan or its accompanying documentation demonstrates compelling public policy considerations in support of its provisions.

In many cases, this criterion is unambiguous: the smaller the plan area is, the more homogeneous it is likely to be, and its residents and their interests are readily identified. The simpler the plan is, the easier this criterion will be to apply, to the point that its conclusions will be self-evident. These are the kinds of plans that this criterion fits best.

In more complex cases (e.g. planning larger, mixed use areas) 'residents'

must be more broadly interpreted to mean all parties with intensive and direct interests in the area: residents (homeowners and tenants) and other users such as property owners, firms, workers, shoppers, etc. If these can be easily prioritized in proportion to their interest in the area and the intensity of their experience of the plan's impacts, applying the criterion may still be feasible.[17] However, as the plan area increases, its population becomes more diverse, and the plan becomes more complex, relative weighting considerations (even of interests within the plan area) will again emerge, and the plan will fall outside this criterion's domain.

A substantive plan evaluation criterion like this one is essentially a deontic application of the public interest principle. As such, this proposal raises several questions that deserve attention: Why is such a criterion necessary? Why are current (deontic and dialogic) applications not sufficient? What need does this criterion fill (if any)? What problems does it solve?

In current practice, dialogic and deontic applications of the public interest principle are recursive and complementary, as described above. Deontic applications (themselves expressing a societal consensus emerging from political discourse) fill the gap left by imperfections in dialogic applications. Bad decisions that are the result of flaws in the planning or political processes ('wrong' values promoted by powerful groups, manipulative communication, power asymmetries or even hegemony) are changed or voided by invoking norms, laws, rules, and decision criteria, which reflect a deontic concept of the public interest.

Planning rights (Alexander, 2002) are one way in which this concept works. But planning rights and their related decision criteria are limited, and there is no substantive plan-evaluation criterion that directly reflects the public interest as a normative principle. One reason for this is the primacy of the dialogic approach to the public interest, and the suggestion (confirmed by experience) that complexity makes any articulation of the public interest in a simple decision criterion invalid or impossible.

However, experience has also shown the limitations and flaws in exclusively dialogic interpretations of the public interest. Consequently, the complementary development of a usable deontic articulation of the public interest principle to supplement other planning rights can be of value. The constraints of complexity limit such a plan evaluation criterion to cases where its unavoidable simplification does not make it invalid.

The fact that they are suitable for a relatively simple evaluation criterion does not make the number of such potential cases insignificant, nor the cases themselves trivial.[18] Any reader familiar with planning practice can undoubtedly recall several (perhaps even many) cases of administrative or judicial plan or project review where applying this criterion would have produced a different, better, decision. In other cases, even if the final disposition (applying other decision criteria and considerations) was correct, early evaluation by this criterion might have avoided unnecessary contention.

As a practical articulation of the public interest principle in planners' professional ethics, this criterion can also serve a useful purpose. It is easy to think of cases (as I can) where, if the responsible planners had invoked this criterion to consider their project, they might have abandoned it, or developed very different proposals. In planners' professional roles, applying this criterion to substantive evaluation of schematic plan alternatives early in the planning process, and to the evaluation of submitted or appealed plans in administrative review, can provide a missing ethical dimension to their decisions.

Summary and conclusion

The history of the public interest, as a norm for guiding state action, goes back to classical times, and it remains potent today in planning, public administration and law. Contemporary concepts of the public interest include utilitarianism, involving aggregation of individual preferences, premised on principled individualism or market liberalism. Unitary concepts are based on *étatist* or communitarian principles, while deontic concepts reflect libertarian or liberal-individualist ethics. Finally, the public interest has always also taken a dialogic form, from Madisonian democracy to the consensual discourse of communicative practice.

In practice, the public interest principle is applied in various arenas: plan and project evaluation in planning and policy analysis, administrative and judicial plan review, and courts' review of contested decisions and actions. There are various ways of giving substantive content to the different concepts of the public interest, each with its strengths and limitations.

Applications based on utilitarianism, including social welfare functions, benefit-cost analysis, and multi-objective evaluation methods, all demand aggregation of individual utilities. Though some are quite practical (and still used), they are generally acknowledged to be flawed in one way or another. Unitary concepts of the public interest are the most widespread (though rarely recognized) and manifest in law, public administration and planning, but their application decomposes into a recursive combination of deontic and dialogic approaches. Discourse (ideological, political and technical) develops and adopts normative systems (norms, laws, rules, policies, plans) that provide the deontic framework for the disposition of planning issues, and the discretionary arena for further (political or technical) dialog.

Critiques of deontic applications of the public interest have two grounds for questioning their validity. The foundational case argues the impossibility of any consensual public interest; the substantive case attacks a particular interpretation of the public interest principle through its specific philosophic or political premises. The legitimacy of dialogic applications of the public interest is also subject to qualifications. The Madisonian view that democratic decisions are necessarily in the public interest can be called a

tautology, and is premised on agreement (often absent) on the legitimacy of the democratic institutions themselves.

Notwithstanding its widespread recognition, the existence of a public interest is still debated. A review of the case against the possibility or desirability of a public interest, and some rebuttals, suggests that the most convincing argument hinges on complexity: complexity makes a simple unitary public interest principle inconceivable, and its substantive application infeasible. A dialogical form of public interest (as implied in communicative practice) has been proposed as a default option to legitimize state planning, but planners' need for a substantive norm remains unfilled.

Utilitarian evaluation methods have demonstrably failed in articulating a substantive public interest. Arriving at a consensual decision, through interactive deliberation in the political, administrative, or judicial arenas, is the conventional way unitary and deontic concepts of the public interest are effectuated; this also conforms to dialogic views of the public interest. The problem with this approach – involving comparative weighting of relevant decision considerations – is that its judgmental conclusions are contestable, making a substantive public interest doubtful.

A universal deontic norm (e.g. Rawls' formula or Habermas' procedural criteria) as a surrogate public interest criterion is one response to the limits of aggregative methods and deliberative approaches. But applying such norms in practice has so far proved infeasible. Another response is to propose a simple, universally acceptable, decision criterion that substantively reflects the public interest. The value-loaded nature and intrinsic complexity of planning problems make this infeasible for many situations that demand deliberative resolution.

But simplifying and reducing the scope of the problem allows development of a usable criterion that gives content to the public interest in appropriate cases, enabling substantive plan evaluation. The proposed criterion evaluates a plan's impacts on residents of the designated planning area: if the plan does not enhance, or reduces their welfare (absent compelling countervailing public policy considerations) it is against the public interest.

Application of this criterion is limited: it is suitable for relatively small, simple plans. Though the number of these is large enough to make this criterion potentially useful, more complex plans or projects that involve diverse interests or conflicting values will still need dialogic processes to effectuate a substantive public interest that may reflect any of the concepts (utilitarian, unitary or deontic) reviewed in this article.

To give meaning to the public interest as a concept legitimizing state planning, it must have some substantive content. For the state and its planner-agents, applying a public interest criterion like the one proposed here in administrative and judicial plan review operationalizes their responsibilities to those affected by plans and their implementation.

If the public interest is to continue as a norm for ethical planning practice, its application in substantive plan evaluation is necessary. In default of such

evaluation, this norm has remained largely hortatory, and the planning profession has been justly rebuked for failing to enforce it (Marcuse, 1976: 270–1). For planners, then, applying the proposed criterion in substantive plan evaluation is a way to give practical meaning to their professional responsibilities.

Appendix: two cases

1. The village of Kari'andra

The Eastern District of Entropia lies in the foothills of the Killigalli Mountains that mark Entropia's eastern border. Its population is a mixture of Entropians in dispersed towns and homesteads and the country's original inhabitants in nomad camps and villages. Kari'andra is such a village, spread out in three lobe-shaped neighborhoods around a steep wooded valley. Two clans of Nogoanywherries, aboriginal natives of the area, occupy the northern and southern 'lobes', while the central (Eastern) neighborhood contains the more solidly-built houses of the Jebaliyya, a nomad tribe which settled here over a century ago.

Like some other such villages, Kari'andra is an informal settlement: it has no municipal status, it has no services (water, sewerage, electricity), and its existence is not recognized in any statutory plans. But unlike most other informal settlements like it, Kari'andra enjoys two important advantages. Its homeowners have legal title to their land, and it obtained recognition in a government resolution a few years ago. However, the responsible public agencies (the government's Department of Municipal Affairs and the statutory planning system) have not exactly been falling over themselves to give this resolution concrete effect.

Last year, the Eastern District Planning Commission (DPC) finally initiated the drawing up of an amendment to the statutory District Structure Plan that would show Kari'andra and indicate its prescribed land uses, which are all shown as open land zoned for agriculture in the current plan. But the approved plan only included the northern and southern 'lobes' of Kari'andra within the boundary of its new designated urban area, leaving the formal status of the central lobe, which contains the Jebaliyya neighborhood, unchanged. The practical effect of this is to perpetuate the status of Jebaliyya's housing as illegal structures, liable to demolition at the authorities' whim, and deprive its residents of any hope of one day enjoying basic services. Consequently, they have appealed the DPC's approval decision to the highest level of the statutory planning system: the Appeals Subcommittee of the National Planning Council.

The approved plan is the product of a planning process that seems to follow all the formal rules, but has an unusual outcome. After completing the usual survey and analysis stages the professional planning team

developed three different outline land use schemes for Kari'andra, and following an evaluation they recommended one of these for adoption and elaboration into the formal statutory plan. The recommended scheme included in Kari'andra's municipal territory all of the village's present built-up areas, i.e. all three 'lobes' that make up Kari'andra today.

A meeting of the Steering Committee was called to review and adopt (or modify) the planners' recommendations. The Steering Committee is an ad hoc statutory body set up for each plan, to monitor the planning process and approve the plan; its members include professional planners (DPC staff) and representatives of interested government ministries, local authorities, and (where appropriate) other involved agencies and organizations. Here the Steering Committee did not include any representatives of Kari'andra (because, formally, it does not exist!) but it included 'Black Boris' (Boris Schwarz), the mayor of Coriandra, an adjoining Entropian village of about 200 households.

Black Boris participated actively in the discussion of the alternative schemes, arguing forcefully for a plan that included only the two 'outer' lobes of Kari'andra. He claimed that this scheme would give Coriandra land reserves for future expansion that the recommended alternative would preclude. In support of their plan, the planners refuted his argument: firstly, Coriandra already had an expansion plan in the pipeline, which would double its future population; secondly, it had ample additional land reserves in the direction opposite to the location of Kari'andra; and finally, the option of expanding Coriandra towards or around Kari'andra, which that village's territorial continuity might conceivably preclude, was infeasible and undesirable from every consideration. The Steering Committee concluded that the recommended scheme was wholly compatible with Coriandra's expansion, and instructed the planners to prepare it for the Local Planning Commission's (LPC) approval.

The LPC reviewed the draft statutory plan that it received, and approved it, though Black Boris again raised Coriandra's objections. Mysteriously, however, the LPC convened another meeting a week later, when they changed their previous decision and instead approved the alternative scheme: the plan that regularized only a truncated Kari'andra, and excluded the Jebaliyya neighborhood from its municipal boundary. One can only speculate on the reasons for the LPC's decision. Nothing, either in the plan documents themselves or in the Steering Committee's and LPC's recorded protocols of the planning process, presents any plausible rationale for refusing the scheme which the professional planners recommended and the Steering Committee adopted, and instead approving a plan both these had, after due deliberation, rejected.

Appeal of the LPC's decision can cite violation of several conventional procedural 'Planning Rights'. These include conflict of interest (overlapping membership of the Steering Committee that initiated and prepared the plan, and of the LPC which approved it), inadequate representation (of

Kari'andra on the Steering Committee) and deprival of statutory participation rights (failure to notify Kari'andra of the LPC's meetings or to hear their objections to the approved plan). The LPC's decision can also be presented as arbitrary and unreasonable, since there is no evidence in the plan or planning process of meeting the minimal procedural standards for rational decision-making, which have been recognized in administrative law.[19]

But the LPC's approved plan also violates substantive 'Planning Rights': it is unacceptable because it is not in the public interest. The predictable consequences of implementing the plan's prescriptions would be a clear reduction in the welfare of the area's residents, without this serving any other countervailing public purpose. The people affected in particular are the appellants, Jebaliyya homeowners to whom the approved plan offers two equally unattractive futures. They can choose between continued occupancy of their parcels and homes, without any services or even the hope of some day getting piped water, electricity, or sewage disposal, and under the constant fear of demolition and forced removal, or they can anticipate that threat, with (implicitly forced) abandonment of their homes and properties, and relocate to other legally zoned parts of the village. In the absence of any contrary public policy considerations, a plan that does not enhance residents' welfare, but actually causes them serious harm, cannot be adjudged to be in the public interest.

2. The Cherry Orchard Development

On the southern periphery of Entropia's capital Villadepaz lies one of its poorest social housing estates: 'Katmandu'. Katmandu was nicknamed after Nepal's capital not for its Himalaya-like views, but for its originally isolated location on a series of steep hilltops. These built-up ridges surround the area's last remaining open space: a small valley containing a roughly 60-hectare cherry orchard (which is even home to a small herd of gazelles) that survived from the city's more bucolic prehistory. Katmandu residents and families from further away frequently visit the cherry orchard for strolls and picnics, and their children play there often in active recreation.

The cherry orchard has been in public ownership for nearly half a century, ever since its original owner abandoned it for non-payment of taxes. The Municipal Land Administration (MLA) conveyed it (on a 99-year lease) to TBY (TheBarnYard), an agricultural cooperative which has been maintaining the land and harvesting its produce ever since. The Villadepaz statutory plan shows the cherry orchard as public open space, but that has been no obstacle so far to a project for rezoning most of it as residential for development consisting of upscale high-rise apartment housing. Initiating the project is Cherry Orchard Development Inc., a partnership between the MLA, TBY, and the Bucks Corporation, a prominent local developer. Recently it submitted a proposed statutory town

planning scheme to the Villadepaz LPC for approval as a detailed amendment to the current zoning plan.

Undoubtedly the development would make a lot of money, some for its public partner, the Villadepaz municipality (which could do with all the funds it can get), but more for its private shareholders, and most for Ivana Bucks. There is little else that is positive that can be said for this proposal. Though Villadepaz (like most of Entropia's cities) is short of affordable housing, this development will not supply any: it is explicitly oriented to the high end of the market. Nor do its proponents even claim to contribute to Katmandu's possible 'revitalization' or renewal by diluting its low socio-economic population with new upper-class residents: there is no pretense of social integration in the detailed layout and insulated design of the proposed housing.

On the other hand, the proposal's negative impacts are apparent: it will deprive Katmandu of the only and last open space resource it has. The victims are not limited to Katmandu residents: there is a shortage of open space in the city as a whole, as numerous planning analyses show. The need to retain and exploit for its recreational potential the little open space left in the city grows increasingly desperate in Villadepaz's south-eastern quadrant, where the ratio of built-up to open space is the highest in the city, and where all the cherry orchard's visitors and users live.

Katmandu has mobilized to save its cherry orchard from development. Some of its activist residents began organizing, even before Sara Alinskaya of the Entropian Black Cats, a veteran social-advocacy organization, offered her support. Recently the newly-formed neighborhood association KatCh (Katmandu for the Cherry Orchard) filed its formal objections to the deposited scheme amending the statutory city plan. These document the plan's expected negative impacts to make the case for rejecting the proposal, and imply that, in the absence of any plausible planning rationale for the proposed development, its approval could only be attributable to collusion between public officials and the developers.[20] If substantive plan evaluation were institutionalized, the brief could also point out that the proposed plan does not comply with the minimal 'Public Interest' criterion. Consequently, any decision approving the plan would be vulnerable to judicial appeal and review.

Notes

1. Planning here does not refer to generic planning, but to socially defined forms of planning in a recognized professional practice related to the 'production of space' (these have different names in different countries: urban planning, *urbanistica*, city and regional planning, Town and Country Planning, *Städtebau*, *planologie*, *aménagement du territoire*, etc.) and associated practices such as urban design, environmental planning, and transport planning.
2. The public interest as *res publica* may not have been exclusively associated

with what we know as republicanism; witness the following phrase from an edict of King Henry II of France (1550) 'We regard favorably . . . our subjects . . . employed in our service *and that of the republic of our kingdom'* (translation cited in Perera, 1997: 118, emphasis added).

3. This applies to contract terms that are contrary to state interests, such as clauses in 'restraint of trade', or undermining public morality. Some legal systems use related (but slightly different) terms for the public interest (in British law it is 'public policy', in Israel it is 'public regulation'), but they all mean the same (Alexander, 2002: 204).
4. For example, it is a criterion in evaluating (under the Tunney Act) court-ordered anti-trust settlements such as the recent decision on the Microsoft case (*The Economist*, 2001: 64).
5. The following section is based on and adds to Campbell and Marshall's (2002: 175–83) very useful review of concepts of the public interest.
6. This is the contemporary version of the original concept of the state as *res publica*.
7. Though Rawls' proposal has been the subject of considerable academic discussion and philosophic debate, I do not know of any attempt to apply it in any practical context, such as a policy analysis or in project or plan evaluation.
8. A striking example is planning for polities that are linguistic minorities such as Quebec and Wales (see, for example, Lo Piccolo and Thomas, 2001).
9. These critiques are discussed in more detail under 'The substantive public interest: ontology' section below.
10. In this light, the absence of any discussion of this form of the public interest in planning theory or other (non-legal) literature is surprising.
11. This view is linked to skeptical value-pluralism, discussed in more detail in 'The substantive public interest: ontology' section.
12. In this context 'technical' discourse means dialogue between experts, in agreeing on decisions within the discretionary space left in a rule-based system, as in court decisions on planning appeals and administrative plan reviews.
13. Many cynics and some respected political philosophers (e.g. Gramsci, Foucault) deny the existence of consensual communities, contending that polities are the result of dominance and coercive or hegemonic power; this may well be true, but if it is, it does not contradict the possible existence of a public interest as a fact, only its legitimacy as a norm – the latter is discussed below in this section.
14. In which it resembles Plato's famous paradox: the Cretan's statement that 'All Cretans are liars', because Lyotard's statement is itself a metanarrative.
15. Its proponents have not articulated very clearly what this means. In its intrinsically problematic implications the incommensurability argument that denies the possibility of a consensual community resembles the pluralist case for advocacy planning, which still demands accepted laws and legal institutions to adjudicate conflicting claims. Like proponents of advocacy planning, oblivious of this inconsistency, promoters of a 'politics of difference' fail to acknowledge that these cannot but be played out in the context of recognized

(even if heterogeneous) communities and polities, unless each 'difference' is institutionalized in a value-homogeneous community of its own.

16. The same applies to any other legitimizing principle; e.g. Pigouvian welfare economics justifying planning as state intervention in the market (see for example Moore, 1978) raises the question: how can or does planning address externalities or market failures in practice? The absence of plausible answers to these questions undermines the legitimizing principle itself, just as the problems of developing and applying a public interest criterion have raised doubts about the very existence of the public interest.
17. This is a gray area; in applying the proposed criterion, it is advisable to err on the side of discretion.
18. See the Appendix for two cases showing how this criterion could be applied in plan review.
19. The court ruling in the real-life version of this case accepted the appellants' contention that the adopted plan was patently unreasonable, but stopped short of reversing the plan's approval as their petition had requested, in deference to other affected parties' legitimate interest in an approved statutory plan and their potential harm from additional delay. Instead, it ordered the LPC to immediately begin drafting an amended plan that would respond to the petitioners' concerns, and set a deadline for its completion and deposit. The court's decision did not address the public interest criterion applied here, as it was not raised in the appellants' brief.
20. In reality, disposition of the case on which this illustration is based proceeded during the course of writing this article. The Zoning Appeals Board hearing the many objections that were filed to the proposed plan denied the requested rezoning and determined that the subject area should remain as public open space in perpetuity. Perhaps it should be surprising in retrospect that such a project could be proposed at all with reasonable expectations of success, and that professional planners (the developers' consultants and the municipal planners who cooperated in advancing the proposal) were actively involved. On the other hand, anyone familiar with real-life planning and development knows of similar projects that were implemented, so why be surprised at the initiation and progress of this one?

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