

Building Legitimacy for Difficult Policy Choices and Trade-Offs through Open, Transparent and Inclusive Government

Ole F. Norheim¹

Introduction

Policy choices often involve difficult trade-offs between competing goals. In the current context of multiple crises, strengthening progress on the Sustainable Development Goals (SDGs) requires leveraging synergies and managing trade-offs. Trade-offs vary across countries and across population groups. A trade-off can be seen as a compromise between two or more desirable but competing policy considerations. It thus involves a sacrifice made in one dimension to obtain benefits or ensure respect for rights in other dimensions. Such trade-offs are often inevitable. One way to secure legitimacy and acceptance for the outcomes of difficult trade-offs is through open, transparent, and inclusive decision-making. The full use of public reasoning is hard to achieve and requires political will, institutional reform and a renewed investment in people, time, and resources.²

Recent history has taught the world the painful lesson that protecting a population against a deadly pandemic requires the imposition of substantial burdens on citizens. The trade-offs between the goals of saving lives (SDG 3) and protecting livelihoods (SDGs 1, 2 and 8) generated a distribution of benefits and burdens that was controversial and, in some places and phases of the pandemic, both inefficient and unfair.³ Another relevant trade-off concerns the transition to renewable energy, where, for some countries, protecting employment and income from coal- and fossil-fuel-dependent industries (SDG 8) competes with the goal of net-zero carbon emissions (SDG 13). A third example involves health-care priority-setting. In most countries, demographic change towards a larger proportion of elderly citizens, increasing expectations, and the surging availability of new and often costly technologies (including advanced cancer drugs and treatment approaches) force countries to limit public payments for health services to protect other sectors such as education and infrastructure (SDG 3 versus, for example, SDGs 4 and 9). Health authorities must decide what kind of services they can afford and sometimes proceed to rank them, often based on data on treatment effectiveness and costs and their distribution. These are hard priorities often involving medical, ethical and political disagreement.⁴

Managing trade-offs is based on objective scientific knowledge, but it is also a value-based exercise. It requires building legitimacy and consensus around policy choices and a shared understanding of problems. This requires open, deliberative

and inclusive processes. Strong arguments have been made about the importance of making decision-making processes open and inclusive, considering not only science and expert knowledge but also other sources of knowledge, including individual citizens, local communities, Indigenous populations, youth, and the elderly.

Reasons for open, transparent, and inclusive decision-making

Since hard policy choices of this kind are called for on a regular basis, it is important to firmly institutionalize open, transparent, and inclusive decision-making. The renewed importance of managing difficult trade-offs to boost progress on the SDGs in the post-pandemic period highlights the need for institutional and democratic reform.

The most important reasons for open and inclusive decision-making are that they build on democratic principles and political and human rights, they can improve the quality of decisions, and they may enhance trust, legitimacy and policy adherence.⁵ Inclusive decision-making rests on the democratic ideal that all people should have a fair opportunity to participate in decisions that affect them.⁶ It ensures that Governments act in accordance with the rights of political participation enshrined in national and international law, particularly human rights law and the principles of accountable government. Open and inclusive decision-making may lessen social disagreement because, even in the face of polarized opinions about what to do, it may be possible to achieve agreement on fair procedures for arriving at policy decisions. Policies resulting from fair procedures may be accepted even by those who disagree with them on substantive grounds.

Key principles

The principles of open, transparent, and inclusive decision-making are defined, justified and discussed in an extensive body of literature across different disciplines. While terminology varies and there are differences in the emphasis placed on certain criteria, similar concepts with common philosophical foundations emerge from this literature. A recent report from the health sector identifies three core guiding principles for fair and legitimate processes and seven implementable criteria.⁷

The core principles include equality, impartiality, and consistency. Equality builds on the idea of political equality, mutual respect, and people having equal opportunity to access information and articulate their views during a decision-making process, regardless of social or power status, gender, ethnicity or religion. Impartiality requires decision makers to produce an unbiased assessment. Their decisions should not be driven by self-interest or unduly influenced by stakeholders with vested interests in the outcome. Consistency over time requires procedures for decision-making to be stable and predictable in order to foster acceptance, sustainability and trust. Changes to decision-making procedures should be explained and justified.

The report identifies seven criteria for fair processes that are widely applicable: transparency, accuracy (in information), public reason, public participation, inclusiveness, revisability (in the light of new evidence), and enforcement. If these principles are followed, the process of making hard policy choices can clearly be improved, contributing to enhanced trust, legitimacy, and policy adherence.⁸

Policy decisions are better targeted and more effective if they are informed by accurate descriptions of the circumstances and evidence of what works. Communicating clear rationales and uncertainty and making evidence publicly accessible prevents disinformation. Open and truly inclusive decision-making can build trust and legitimacy. This improves adherence to policies, making them more effective. Greater effectiveness engenders greater trust in policymakers. Open decision-making can therefore contribute to a virtuous cycle of increasing trust, adherence, and policy effectiveness. In other cases, a fair process may at least prevent the erosion of trust.

Barriers to open and inclusive processes

The pandemic also revealed examples of relative neglect or a lack of open and inclusive processes. For example, a report on the COVID-19 response in Mexico, commissioned by the World Health Organization (WHO) Independent Panel for Pandemic Preparedness and Response, identified several shortcomings and linked them to the Government's concentration of power, extensive use of discretionary decision-making, and lack of deliberation.⁹ Another report commissioned by the WHO Independent Panel, on the United States response to COVID-19, identified the "trust deficit" as a risk factor that could lead to a poor pandemic response.¹⁰ Even in the Nordic countries, with well-established open and inclusive deliberative bodies, hearings, and public participation mechanisms, reliance on experts became the norm in the first phases of the pandemic. After a few months, though, public health authorities and Governments (in Denmark, Sweden and Norway, for example) became increasingly transparent, providing regular information,

updating evidence, and making reasons for policy changes publicly available (through dedicated websites of all reports and recommendations made to the Government). According to the Independent Panel, these mechanisms were identified as enhancing trust.¹¹

There are several well-known barriers to the implementation of deliberative processes. In addition to the obvious fact that more democratic processes will lead to the decentralization of power, they might be time-consuming and costly and might require public entities to coordinate their actions when issues are urgent and complex. Another barrier is the lack of capacity in public institutions. Often, public officials are not really equipped to conduct elaborate deliberative processes. Enhancing their capacity adds to the cost of these processes.

There can be a trade-off between efficiency in decision-making and inclusive governance that takes time and can be costly. A thorough process may involve thousands of participants and may require covering transport costs or providing compensation to enable equal participation and non-discrimination. However, the use of online channels for deliberations may reduce costs and improve impact and voice. All barriers or costs linked to democratic processes must be considered and weighed against the potential gains of improved legitimacy, trust, quality, and adherence.

The role of science

For policy choices involving a high degree of risk and uncertainty (as in the early phases of the pandemic), inclusive decision-making may be perceived as inappropriate and reliance on experts more relevant. Yet, to justify how scientists deal with these uncertainties, they must often appeal to ethical or political values concerning which risks are worth taking more seriously than others.¹² This is a question of risk management. Managing risks involves both individual and collective responsibility among all stakeholders and the public. This is an argument against relying only on experts when risks are higher. Drawing the line between facts and values and finding the appropriate role of experts and citizens in risk management is thus not always straightforward. Interaction between scientists and the public is therefore imperative.

That said, the involvement of experts in decision-making does not run counter to the ideas of deliberative processes. The scientific community not only provides objective data and evidence but also helps build a common understanding of the policy problems based on values and beliefs, as emphasized in recent literature on the science-policy interface.¹³ The neglect or even dismissal of scientific evidence is not in accordance with key principles of deliberative democracy.

Mechanisms

If there is political will, the prospects for open and inclusive processes are positive. There are essentially three mechanisms for institutionalizing and encouraging open, transparent, and inclusive government: inclusive deliberative bodies, systematic hearings, and self-selective public participation mechanisms.¹⁴

Inclusive deliberative bodies are set up to provide space and support for the sharing of relevant expertise, experiences, voices, and interests and to produce well-considered advice. Examples include ad hoc citizens' assemblies, permanent citizens' panels, biotechnology advisory boards, and advisory councils.¹⁵

Systematic hearings are set up in many countries to gather relevant insights from experts and stakeholders on draft legislation and policy. Hearing processes are often closely linked to formal decision-making and can act as a common arena or bridge between civil society, experts and the Government. They have the potential to inform and stimulate public debate and to generate legitimacy for decisions with interested stakeholders. They can expand the points of view and interests considered and improve the quality and acceptance of decisions. Examples are hearings mandated by law or optional hearings.¹⁶

Self-selective public participation mechanisms need not be but often are designed outside government and can enable everyone, in principle, to make their voice heard. Open, self-selective public participation mechanisms include town halls, (face-to-face or online) village meetings, radio and television call-in programmes, petitions, and crowdsourcing.

Various systems and mechanisms set up to facilitate public reasoning are flourishing throughout the world. One notable example highlighted by Dryzek and others is the Irish Constitutional Convention and Citizens' Assembly, whose open and inclusive processes have genuinely engaged people and transformed public discussions and decisions on same-sex marriage and abortion rights.¹⁷ Another example is the Citizens Council in the United Kingdom, where ideas and advice are shared on difficult priority-setting decisions.¹⁸ When the Citizens Council was established, the justification was directly related to ideas of deliberative democracy and the dominant framework called accountability for reasonableness (A4R). A4R is fully or partly embraced in countries such as Norway, the Netherlands, Sweden and the United Kingdom.¹⁹ Since health-care rationing so obviously creates winners and losers, and there can be legitimate disagreement about which choices are right, these countries have adopted principles from deliberative democracy and institutionalized health technology assessment and implemented open and transparent decision-making. A4R requires rationing decisions to be open and publicly made, with relevant reasons provided (for example, that a service is not cost-effective), with a mechanism for complaints and revisions.

The process itself should be institutionalized. If satisfied, these conditions can connect decisions about health-care rationing to broader democratic processes. These conditions seem to be increasingly accepted, though they are also criticized.²⁰ The institutions in Ireland and the United Kingdom are two examples of inclusive deliberative bodies.

A good practical example of regular hearing processes incorporated into a participatory governance platform is the National Health Assembly (NHA) in Thailand. By bringing in laypeople to hear and assess evidence and voice their own needs, experiences and concerns, the NHA has become a platform for building civil society capacity to engage with the policymaking process and for bringing lived experiences more strongly into policy discussions.²¹

Finally, a good example of self-selective public participation mechanisms is Participedia,²² a global network and crowdsourcing platform for researchers, educators, practitioners, policymakers, activists, and others interested in public participation and democratic innovations.

Building trust and legitimacy is possible

Open, transparent, and inclusive decision-making can improve the quality of decisions and enhance trust, legitimacy and policy adherence. There are barriers, but they can be overcome. Inclusive deliberative bodies appointed by the relevant authorities have been tried and tested successfully in Ireland, the United Kingdom, and many of the Nordic countries. Hearings have been practised in many countries and constitute a feasible, less costly, and transparent way to facilitate the use of public reasoning by all key stakeholders. The key here is to ensure that decision makers are responsive to the views and arguments presented through the hearing process. Self-selective public participation mechanisms provide novel ways to involve people outside government agencies; they often build on strong social activism and advocacy; and they have the potential to be more engaging and effective than government bodies.

The principles and examples presented here offer some key messages:

- One important way to secure legitimacy and acceptance for the outcomes of difficult policy trade-offs is through open, transparent, and inclusive decision-making.
- The most important reasons for open, transparent, and inclusive decision-making are that they respect political rights and can improve the quality of decisions and enhance trust and legitimacy.

- Implementable criteria for legitimate processes include transparency, accuracy, public reason-giving, public participation, inclusiveness, revisability and enforcement.
- Open, transparent and inclusive decision-making must be institutionalized. Governments can establish inclusive deliberative bodies (such as citizens' juries, permanent citizens' panels, biotechnology advisory boards and advisory councils) and systematic hearings with key stakeholders. Outside government, self-selective public participation mechanisms should be encouraged.
- There are costs to implementing deliberative processes. These must be considered and weighed against the benefits.

Endnotes

- 1 Ole F. Norheim is with the Bergen Centre for Ethics and Priority Setting, Department of Global Public Health and Primary Care, University of Bergen (Norway).
- 2 John Rawls, “The idea of public reason revisited”, *The University of Chicago Law Review*, vol. 64, No. 3 (summer 1997), pp. 765-807, available at <https://doi.org/10.2307/1600311>.
- 3 Ole F. Norheim and others, “Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making”, *Nature Medicine*, vol. 27, No. 1 (2021), pp. 10-13, available at <https://www.nature.com/articles/s41591-020-01204-6>.
- 4 Ole F. Norheim, “Ethical priority setting for universal health coverage: challenges in deciding upon fair distribution of health services”, *BMC Medicine*, vol. 14, article No. 75 (2016), available at <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-016-0624-4>.
- 5 Claudia Chwalisz, “Introduction: deliberation and new forms of government”, in *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave* (Paris, OECD Publishing, 2020), pp. 19-32, available at <https://doi.org/10.1787/339306da-en>; John S. Dryzek and others, “The crisis of democracy and the science of deliberation”, *Science*, vol. 363, No. 6432 (2019), pp. 1,144-1,146.
- 6 Ole F. Norheim and others, “Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making”, *Nature Medicine*, vol. 27, No. 1 (2021), pp. 10-13, available at <https://www.nature.com/articles/s41591-020-01204-6>; John Rawls, *Political Liberalism*, expanded edition (New York, Columbia University Press, 2005); Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton, New Jersey, Princeton University Press, 2004).
- 7 Unni Gopinathan and others, “Open and inclusive: fair processes for financing universal health coverage” (Oslo, Norwegian Institute of Public Health, Bergen Centre for Ethics and Priority Setting, and World Bank, forthcoming).
- 8 World Bank, *Open and Inclusive: Fair Processes for Financing Universal Health Coverage* (Washington, D.C., World Bank, 2023), available at <https://openknowledge.worldbank.org/entities/publication/5c0182db-d385-4d6f-a1c0-da48b887454e>.
- 9 Mariano Sánchez-Talanquer and others, *Mexico’s Response to COVID-19: A Case Study* (San Francisco, University of California, San Francisco, Insitute for Global Health Sciences, 12 April 2021), available at <https://globalhealthsciences.ucsf.edu/sites/globalhealthsciences.ucsf.edu/files/mexico-covid-19-case-study-english.pdf>.
- 10 Neelam Sekhri Feachem, Kelly Sanders and Forrest Barker, *The United States’ Response to COVID-19: A Case Study of the First Year* (San Francisco, University of California, San Francisco, 2021), available at <https://globalhealthsciences.ucsf.edu/sites/globalhealthsciences.ucsf.edu/files/covid-us-case-study.pdf>.
- 11 Ellen Johnson Sirleaf and Helen Clark, “Report of the Independent Panel for Pandemic Preparedness and Response: making COVID-19 the last pandemic”, *Lancet*, vol. 398, No. 10295 (2021), pp. 101-103, available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01095-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01095-3/fulltext).
- 12 Norheim and others, “Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making”.
- 13 Peter D. Gluckman, Anne Bardsley and Matthias Kaiser, “Brokerage at the science-policy interface: from conceptual framework to practical guidance”, *Humanities and Social Sciences Communications*, vol. 8, article No. 84 (2021), available at <https://doi.org/10.1057/s41599-021-00756-3>.
- 14 Norheim and others, “Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making”.
- 15 Participedia is a global network and crowdsourcing platform for researchers, educators, practitioners, policymakers, activists, and anyone interested in public participation and democratic innovations; for more information, see <https://participedia.net> (accessed November 2020). For further information on relevant deliberative bodies, see Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge, United Kingdom, Cambridge University Press, 2009), available at <https://doi.org/10.1017/CBO9780511609848>; Jackie Street and others, “The use of citizens’ juries in health policy decision-making: a systematic review”, *Social Science and Medicine*, vol. 109 (May 2014), pp. 1-9, available at [doi:10.1016/j.socscimed.2014.03.005](https://doi.org/10.1016/j.socscimed.2014.03.005); Nicole Moretto and others, “Yes, the government should tax soft drinks: findings from a citizens’ jury in Australia”, *International Journal of Environmental Research and Public Health*, vol. 11, No. 3 (March 2014), pp. 2,456-2,471, available at <https://doi.org/10.3390/ijerph110302456>.
- 16 France, Le Sénat, “Commission d’enquête pour l’évaluation des politiques publiques face aux grandes pandémies à la lumière de la crise sanitaire de la COVID-19 et de sa gestion”, available at <https://www.senat.fr/travaux-parlementaires/structures-temporaires/commissions-denquete/commissions-denquete/commission-denquete-pour-levaluation-des-politiques-publiques-face-aux-grandes-pandemies-a-la-lumiere-de-la-crise-sanitaire-de-la-covid-19-et-de-sa-gestion.html> (accessed on 14 November 2020); Kanang Kantamaturapoj and others, “Performance of Thailand’s universal health coverage scheme: evaluating the effectiveness of annual public hearings”, *Health Expectations*, vol. 23, No. 6 (2020), pp. 1,594-1,602, available at <https://doi.org/10.1111/hex.13142>.
- 17 Dryzek and others, “The crisis of democracy and the science of deliberation”.
- 18 Street and others, “The use of citizens’ juries in health policy decision-making: a systematic review”.
- 19 Norman Daniels and James E. Sabin, *Setting Limits Fairly: Can we Learn to Share Medical Resources?* Second ed. (Oxford, United Kingdom, Oxford University Press, 2008).
- 20 Sigurd Lauridsen and Kasper Lippert-Rasmussen, “Legitimate allocation of public healthcare: beyond accountability for reasonableness”, *Public Health Ethics*, vol. 2, No. 1 (April 2009), pp. 1-11.
- 21 Kantamaturapoj and others, “Performance of Thailand’s universal health coverage scheme: evaluating the effectiveness of annual public hearings”.
- 22 For more information, see <https://participedia.net>.