

## **On the Role of Preferences and Values in Public Decisions**

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### **Abstract**

According to its proponents, cost-benefit analysis (CBA) is a tool well suited for evaluating public policy proposals, especially those concerning regulations and public investment projects. However, a number of critics have argued against CBA on the grounds that it inappropriately treats people just as consumers. Voting, they claim, is superior as a decision mechanism because it engages people in their role as citizens. A related charge is that CBA is flawed because it bases public policy decisions on mere individual preferences rather than on social values. I argue that though there are genuine problems with CBA, distinctions between consumers and citizens and between individual preferences and social values do not help us properly identify these problems. Further, I maintain that while important differences between CBA and voting exist, they are fewer than some of CBA's critics suggest. Opponents of CBA must take a different tack in order successfully to impugn either the role that CBA gives to individual preferences or its commitment to expressing these preferences in monetary terms.

# On the Role of Preferences and Values in Public Decisions\*

## I. Introduction

Should the government allow drilling for oil in the Alaskan wilderness? How much arsenic should be permitted in municipal drinking water? What level of pollution-abatement technology should factories be required to utilize? How much money, if any, should the state invest in a new vaccine program? How robust should floodwalls in low-lying coastal cities be? These are difficult, vexing questions. Cost-benefit analysis (CBA) is a policy tool that – according to its proponents at least – is suited to answering these questions and the untold others like them. It is intended and frequently employed to evaluate public policy proposals, especially those concerning regulations and investment projects. However, CBA's many critics charge that it is undemocratic and morally bankrupt. Whether these charges are well founded is a pressing question. It thus seems that cost-benefit analysis is itself in need of further analysis.

Advocates of CBA maintain that a policy proposal should be endorsed when it would result in more benefits than costs to the affected individuals, with the gainers being able to compensate the losers such that the losers would be no worse off, and the gainers still better off, than each was originally. This principle, known as the Kaldor-Hicks Criterion, leaves open the question of what *counts* as a cost and what *counts* as a benefit.<sup>1</sup> CBA's supporters hold that whether a change counts as a benefit or a cost to an affected individual depends on the individual's assessment of the change. More specifically, if the change satisfies a person's preference, then it counts as a benefit for that person; and if the change frustrates the individual's preference, it counts as a cost for the individual.

In order to apply the Kaldor-Hicks Criterion, and more generally to weigh costs and benefits against one another rationally, it is said that all benefits and costs must be expressed in a common unit, ideally a monetary one. This means that each individual's *preferences* must be expressed in monetary terms. To monetize preferences, cost-benefit analysts gauge what amount of money each affected individual would be willing to pay or accept in order to get or prevent the change in question. The analyst would, for example, try to find out how much people are willing to pay for water with (say) 25 fewer part-per-billion of arsenic in order to determine if the capital investment required to make this reduction would be worthwhile. There are two basic methods for doing so. The revealed-preference method attempts to read off an individual's preferences from her buying and selling behavior in the market; while the stated-preference method (often referred to as contingent valuation) involves analysts asking affected individuals, typically through carefully worded surveys, to state how much each would sincerely be "willing to pay for successive additional quantities of a collective market good."<sup>2</sup>

The general question to be addressed in this paper is: What role ought individual preferences to play in public policy decisions? More specifically: Is there good reason for following CBA in identifying benefits with the satisfaction of individual preferences and costs with the frustration of such preferences? And relatedly: What is the problem – if there is one – with the requirement that individual preferences be expressed in terms of each individual's willingness to pay (WTP)? Numerous critics of CBA have maintained that when soliciting input on public decisions from affected individuals, it is imperative that these individuals be engaged as citizens, since it is in this role that values are elicited. CBA, with its insistence on the use of WTP, is said to fail on this count because it engages people as consumers and registers mere preferences. Those who criticize the role given by CBA to individual preferences are generally

much more supportive of making public decisions through voting. Indeed, they tend to count voting as a fundamental right.<sup>3</sup> Thus, part of this paper will involve looking carefully at what, in the minds of the critics and in reality, the differences are between voting and CBA with respect to the role given to individual preferences. I believe that while important differences exist, there are not as many of these as critics of CBA would have us believe. More generally, though there are genuine problems with CBA and thus appropriate grounds for criticism of it, I will argue that the critics' distinctions between citizens and consumers and between individual preferences and social values do not help us identify these grounds. Ultimately I aim to support the idea that CBA's fundamental commitment to promoting the satisfaction of individual preferences is part of what is right, not what is wrong, with this policy tool.<sup>4</sup>

## II. Citizens Versus Consumers

Mark Sagoff, one of CBA's most outspoken detractors, has devoted considerable critical attention to the view standardly endorsed by economists and other proponents of CBA regarding the role that individual preferences should play in policy analysis. He writes:

The question arises... whether what we want for ourselves individually as consumers is consistent with the goals we would set for ourselves collectively as citizens. Would I vote for the sort of things I shop for? Are my preferences as a consumer consistent with my judgments as a citizen?

They are not. I am schizophrenic... I speed on the highway; yet I want the police to enforce laws against speeding. I used to buy mixers in returnable bottles—but who can bother to return them? I buy only disposable now, but, to soothe my conscience, I urge my state senator to outlaw one-way containers. I love my car; I hate the bus. Yet I vote for candidates who promise to tax gasoline to pay for public transportation. I send my dues to the Sierra Club to protect areas in Alaska I shall never visit... And of course, I applaud the Endangered Species Act, although I have no earthly use for the Colorado Squawfish or the Indiana bat. I support almost any political cause that I think will defeat my consumer interests. This is because I have contempt for – although I act upon – those interests. I have an “Ecology Now” sticker on a car that drips oil everywhere it's parked.<sup>5</sup>

Despite some shifty wording – Sagoff sometimes distinguishes between two types of preferences, namely consumer preferences and citizen preferences, while at other times the distinction appears to be between consumer preferences and citizen *values*, or even between consumer preferences and citizen *judgments* – the general point is sufficiently clear. CBA is purported to capture something fundamentally different from that on which public decisions ought to be based and from what is registered via the vote. Thus, proponents of CBA are confused in simply recommending individual preferences as the proper basis for public policy decisions. The charge is that through its use of WTP, CBA generates policy decisions from each individual’s allocation of her income as a consumer, which is to say, her actions “as a private individual determined by self-interest and... personal wants.”<sup>6</sup> However, “the individual voter dealing with political issues has a frame of reference quite distinct” from this; she acts as a citizen, which is to say, “as a political being guided by [her] image of a good society.”<sup>7</sup> For support, Sagoff cites Stephen Marglin, who speculates that the preferences that underpin one’s actions in the market are different from those that underpin one’s actions or commitments in the political realm because “the Economic Man and the Citizen are for all intents and purposes two different individuals.”<sup>8</sup> Each of these two “individuals” has his/her own preference map and these maps – the market and political preference maps – are inconsistent. Sagoff says that for this reason, “social choices optimal under one set of preferences will not be optimal under another,”<sup>9</sup> and therefore the economists’ notion of optimality, which is essential to CBA, is effectively undermined.

In their recent work of substantial influence, Frank Ackerman and Lisa Heinzerling also embrace the consumer/citizen distinction. They believe that CBA fails “to take into account the difference between citizens and consumers” and “omits the possibility that people will have

different preferences when they take on a different role.”<sup>10</sup> They write that CBA is an approach through which “valuation of environmental benefits is based on individuals’ private preferences as consumers or workers, not on their public values as citizens.”<sup>11</sup> They cite as the “classic example of this distinction” none other than Sagoff, when he “found that his students, in their role as citizens, opposed commercial ski development in a nearby wilderness area, but, in their role as consumers, would plan to go skiing there if the development were built.”<sup>12</sup> Ackerman and Heinzerling say that “there is no contradiction between these two views: as individual consumers, the students would have no way to express their collective preference for wilderness preservation. Their individual willingness to pay for skiing would send a misleading signal about their views as citizens.”<sup>13</sup>

Elizabeth Anderson makes essentially the same argument. Focusing specifically on decisions that have environmental implications, she says:

Because market prices and willingness-to-pay statistics generally reflect individuals’ valuations of things only as satisfying their private wants and interests, they do not capture all the ways people value environmental goods. The preferences people express in their roles as consumers therefore do not capture all the concerns they have. So people in their roles as citizens debating public policy do not and should not take the preferences they express in their market choices as normative for public purposes.<sup>14</sup>

In the text, Anderson too gives an explicit nod to Sagoff.

This same language has shown up even in a *New York Times* Op-Ed piece by Robert Reich, who writes, “You and I aren’t just consumers. We’re also workers and citizens... The problem is, the choices we make in the market don’t fully reflect our values as workers or as citizens.”<sup>15</sup> As an example, he confesses to having shopped online for book bargains rather than at a local bookstore whose presence in the community he appreciated (and that, he notes, ended up going out of business, no doubt due in large part to customers patronizing online vendors). Similarly, he confesses to disapproving of the layoffs and wage freezes plaguing airline workers

but at the very same time to searching diligently for the lowest airfare he can get. He adds that “the only way for the workers or citizens in us to trump the consumers in us is through laws and regulations that make our purchases a social choice as well as a personal one.” A requirement, for example, that companies with more than 50 employees offer their workers affordable health insurance would probably slightly increase the price of their goods or services, and while his “inner consumer won’t like that very much,” the citizen in him thinks it is fair.

I cite so extensively in order to emphasize that the distinction between consumer preferences and citizen preferences/values is an influential one. This same basic view, articulated by each of these different authors, is certainly provocative. It is, I believe, also confused. The aforementioned arguments and distinctions do not help us clearly identify CBA’s shortcomings. There is no question that the cases – the ostensibly surprising pairings of behaviors or commitments – mentioned by Sagoff and the other authors need explaining. I believe, however, that distinctions between consumers and citizens or between preferences and values will not be part of the *best* explanation. In fact, if the arguments given by Sagoff and the others are to succeed, the aforementioned distinctions must not only explain, but also excuse, the ostensibly inconsistent behaviors/commitments. After all, if the apparent confliction in the various cases were not excusable, i.e., if being conflicted in such ways could not be justified or portrayed sympathetically, then the charge that CBA fails to pick up on the relevant preferences/values would seem patently unfair. Insofar as I believe these distinctions will not be part of the best explanation of the cases, I also believe that these distinctions do little excusatory work. My reasons for believing as I do are articulated in the following two sections.

### III. The Explanatory Power of the Prisoners' Dilemma

The first thing to note is that many of the cases are plausibly understood as instances of a Prisoners' Dilemma, or at least of some closely related collective-action problem.<sup>16</sup> This is true of Sagoff's driving the oil-dripping car that displays the "Ecology Now" bumper sticker, his buying disposable rather than returnable bottles but encouraging his state senator to outlaw the former, his students' opposition to the ski development that they confess they would patronize, Reich's willingness to shop for books online rather than at the local store whose existence that online vendor threatens, and many others that the authors did not mention but might have. Seeing them in this light gives us an explanation of (many of) the cases that does not appeal to distinctions between consumers and citizens or preferences and values and, I will argue, is more compelling than those that do.

It is, I believe, most illuminating to begin with a case that was not mentioned but could have been. Imagine a person (call her *P*) who drives a gas-guzzling sport-utility vehicle (SUV) but who wants a clean environment and yet encourages her elected representatives to tax gasoline and SUVs heavily. One diagnosis is simply that *P* contradicts herself. Another is the one the aforementioned authors would seemingly give, namely that *P* simply prefers one thing as an individual consumer but prefers or values something different in her role as a citizen; her consumer preference quite naturally pulls apart from her citizen values or citizen preferences. However, the Prisoners' Dilemma, or something like it, provides us with an alternative explanation that is both much clearer and does not require us (as the accounts mentioned in Section 2 ultimately do) to see each person as fundamentally psychologically divided against herself.

Consider first an explanation that is put just in terms of *P*'s preferences and that does not turn in any way on a distinction between consumer and citizen preferences. There is no denying that many people simply like the look and feel of driving an SUV; they are not particularly bothered that these produce more polluting emissions than compact cars. But not everyone is like this; *P*, for one, is not. Still, it seems plain that she and others like her are ensnared in a collective-action problem that can push them into SUVs. *P* knows, let us imagine, that SUVs pollute more than compact cars do, and pollution is not something she prefers. But she also has a strong preference for keeping herself and her family safe. She knows that the presence of so many big vehicles on the road makes driving dangerous and she believes that being in a smaller, more fuel efficient car when so many others are in big vehicles puts her and her passengers in jeopardy.<sup>17</sup> Since she cannot compel others to drive smaller vehicles, she reasons that being in an SUV keeps her safest, and safer by a wide enough margin to outweigh the higher gasoline costs she incurs in an SUV. The most preferred outcome for *P* may be one where she drives an SUV but everyone else is in a small car; here she is spending more on gas but she and her passengers seem to be maximally safe on the road. (As will be explained shortly, relaxing this assumption does not modify the upshot.) A scenario in which she and all others are in small, fuel-efficient cars is clearly preferable for her to one in which she and all others drive big, gas-guzzling SUVs. But – importantly – the worst case for her is where she is in a small car and everyone else is in an SUV. Other drivers reason in exactly the same way as *P* does. Many of them therefore drive SUVs, and *P* does too. As a result, *P* and the others like her miss out on an available outcome (namely, everyone in compact cars) that they would have preferred to the one they get (namely, many SUVs).

The only difference between this case and the standard formulation of the Prisoners' Dilemma is that the standard version involves only two people while *P*'s situation involves many, many people. We can even introduce an important change to the account and still end up with an outcome in which *P* and many others like her are in SUVs. Imagine that because of *P*'s strong preference for a clean environment, the most preferred scenario for her is one in which everyone (*P* included) drives compact cars. In this case, there is not a Prisoners' Dilemma, strictly speaking, but there still exists a collective-action problem that could compel *P* to drive an SUV. *P* and others like her reason – not implausibly or irrationally – as follows: “There are many, many SUVs on the road. The fact is, my driving a more fuel-efficient car is not going to make any real difference to the state of the environment (the problem of global warming, etc.) unless I am joined by many others. Alas, I cannot compel others to drive smaller cars. The worst-case scenario for me is to be in a small car surrounded by all these SUVs, since here my passengers and I are terribly unsafe on the road and the environmental harms that I am driving a smaller vehicle in order to prevent will all come about anyway. So, the sensible thing to do is drive the SUV rather than the compact car.” Given these conditions, *P* cannot, through her driving behavior, evince her preference for a clean and healthy environment; her preference for keeping herself and her loved ones safe is the one that is manifested.

The above telling of the story captures *P*'s predicament, and does so in a way that not only avoids invoking a distinction between consumer and citizen preferences, but also avoids explicit use of ‘value.’ If, instead of talking just in terms of preferences, one insisted on talking about *P*'s *values* – trying, as Ackerman and Heinzerling do, for example, to establish a distinction between (consumer) preferences and (citizen) values – I would say simply that *P* *values* a healthy environment but also *values* keeping herself and her family safe. Given the

collective-action problem plaguing *P*, it is precisely these *values* that lead her to support the taxes but actually drive the SUV. Any claim that she sees no value in driving the SUV or that what pushes her to drive such a vehicle has nothing whatsoever to do with her values (and instead only her preferences, consumer wants, or whatever) is disingenuous or confused. This reasonable telling of the story does not depend on a distinction between preferences and values and does not turn on different senses of ‘value.’ We do not need to talk both about *P*’s preferences and her values in order for the story to be intelligible and plausible. Moreover, nothing is gained here by talking only in terms of *P*’s values rather than only in terms of her preferences.<sup>18</sup>

There is, I believe, no problem in widely generalizing this example. The same basic approach works easily to explain the behavior of, say, the (would-be) skiers Ackerman and Heinzerling mention. Each of these people – again, not *qua* citizen, but rather merely as a person – is disappointed when a beautiful natural area (of which we have relatively few) is turned into a commercial ski area (of which we have relatively many). Each prefers that this new ski development not be built, and when it is built each would prefer to see the facility shut down. Each knows, however, that her boycotting the facility on her own is not going to cause any appreciable financial harm to the facility and thus not going to push it any closer to closing down; if the facility is going to lose enough patronage to go out of business, many people must boycott it. However, no one can compel others to refrain from going there to ski. And each prefers not to deprive herself of an opportunity to ski if even *with* her boycotting the facility is going to flourish. Everyone reasons this way and in turn this particular skiing facility flourishes (and the market perhaps even signals demand for another facility). Or consider Reich. It seems reasonable to say that he prefers – not *qua* citizen, or anything like that; simply put, *he* prefers –

for the local bookstore to stay in business. It is likely that many other people prefer this as well. Reich knows, however, that his patronizing the store on his own is not going to suffice to keep the store in business; if the store is going to stay in business, many people must buy books there. However, no one can compel others to buy from this store rather than a cheaper online vendor. And Reich prefers not to waste his money supporting the store if even *with* this support the store is going to go out of business. He and all the others reason in this way, they all buy from the online vendor, and the local bookstore goes out of business. It should at this point be clear how the logic applies to Sagoff's sticker-bearing but oil-dripping car, to his speeding while wanting the speed limited enforced, and so on.

What continues to be clearly true, however, is that the preferences the subject in each of the aforementioned cases reveals in the market are different from those she or he would – to borrow Anderson's phrase – endorse “as normative for public purposes.” If one tries, for example, to gauge *P*'s preference regarding the taxation of gasoline and SUVs by observing her behavior in the market – e.g., what vehicle she actually drives, how much gasoline she actually buys, how hard she looks for the lowest gasoline price in town, etc. – one will likely infer that *P* opposes the taxes; but this would be the wrong inference. Does this show that people are “schizophrenically” split into consumers and citizens? Does it show that there is something fundamentally different from a preference on which public policies should be based? Does it suffice to show that there is a problem with using WTP as a proxy for her preferences? The answer to each question is no. Looking at *P*'s behavior in the market indicates what she – not just some *part* of her, or just what she *qua* some *type* of individual, or just in some particular *role* – prefers, i.e., what she values, but only within a certain context of constraints. Were these constraints different, *P* would express different preferences.

One lesson is that analysts whose task it is to gauge individual preferences need to be careful to avoid doing so in contexts – and ordinary market conditions are frequently such a context – where the preferences are inappropriately constrained by collective-action problems. This is something it *is* possible to avoid, even when the analyst is capturing preferences in terms of WTP. I think most proponents of CBA are sensitive to this issue. In any case, the important point for my purposes is that such sensitivity does not require a fundamental abandonment of CBA. Recall that analysts are not limited to using the revealed-preference method, i.e., to making inferences from people’s actual behavior in the market. They also have the stated-preference method available. This provides opportunities for analysts to formulate survey questions, including WTP questions, in ways that avoid the aforementioned kinds of collective-action problems. This point seems to have been missed by Ackerman and Heinzerling, who ask:

What could it mean [for a contingent valuation survey] to ask how much you are personally willing to pay to clean up a major oil spill? If no one else contributes, the clean-up will not happen regardless of your decision. As the Nobel Prize-winning economist Amartya Sen has pointed out, if your willingness to pay for a large-scale public initiative is independent of what others are paying, then you probably have not understood the nature of the problem. Instead, a collective decision about collective resources is required.<sup>19</sup>

In fact, CBA need not stumble here. Rather than asking simply what an individual would be willing to pay (e.g., for the oil cleanup) without reference to what others are paying, each respondent could be asked what amount she would be willing to pay if she had an assurance that everyone else would pay that amount as well. This way of putting it is still too rough, as it is not attentive enough to the reasonable contention that those who have more should pay more, and other such distributional matters. Still, the basic point is clear: the WTP question could be about what one would be willing to pay in the form of a tax, where everyone else would have to pay the tax as well.<sup>20</sup> This gives us precisely what Ackerman and Heinzerling say we need, namely

“a collective decision about collective resources,” and we get it precisely by soliciting individual preferences.

To summarize: The cases mentioned involve collective-action problems – whether or not they are precisely Prisoners’ Dilemmas – and recognizing this explains the *appearance* of a conflict between consumer preferences and citizen preferences/values without actually appealing to the strange idea that Sagoff, Reich, the skier, or whoever, are each somehow split into two individuals (one guided by self-interest and personal wants and the other guided by her image of a good society), or that a person is somehow possessed of two categorically different and indeed opposing types of preferences, or that each person’s individual preferences are distinct from and in opposition to her values. Appreciating the cases as involving collective-action problems shows that all these distinctions are explanatorily unnecessary. Because the distinctions are so vexed – because it is so difficult to conceive of each person as so deeply divided against herself – we should eschew the initial kind of explanation as ultimately unhelpful and implausible and embrace an alternative explanation of the phenomena (like mine) that does not require those distinctions.

#### **IV. Consumer Choices As Moral Choices**

I suspect that even when collective-action problems are avoided by appropriately worded contingent valuation surveys, Sagoff and the others will persist in their belief that these surveys are inappropriate for generating public policy decisions. Even in these cases, the claim goes, one’s WTP reflects only one’s consumer preferences and not one’s preferences (values, judgments, etc.) as citizens. I will argue, however, that even cases in which an individual is *not*

faced with a collective-action problem but still spends her money in ways for which she feels the kind of contempt Sagoff mentions would not force me to countenance the distinction(s) that Sagoff, Heinzerling and Ackerman, Anderson, and Reich are urging and do not suffice to show a problem with CBA's appeal to preferences or its use of WTP. In other words, the use of these distinctions is a mistake, and thus the authors' arguments are flawed, for reasons that go beyond a failure to recognize the substantial explanatory power of the Prisoners' Dilemma.

Why, even in cases where there is no collective-action problem the likes of which was discussed in the previous section, would these authors think that how one spends one's money and what one would endorse politically will, and may permissibly, pull apart? Why would they think that a person's WTP, even when it is expressed in response to appropriately worded survey questions, is not relevant to public policy decisions? We gain insight into Sagoff's view when he calls policy questions regarding segregation, abortion, the war in Vietnam, and capital punishment ones that it would be inappropriate to settle, or even consider, through "a market or quasi-market approach," which is (I take it) to say through appeal to consumer preferences. He says:

What separates these questions from those for which markets [read: consumer preferences] are appropriate is this. They involve matters of knowledge, wisdom, morality, and taste that admit of better or worse, right or wrong, true or false—and these concepts differ from that of economic optimality. Surely environmental questions—the protection of wilderness, habitats, water, land, and air as well as policy toward environmental safety and health—involve moral and aesthetic principles and not just economic ones.<sup>21</sup>

Sagoff is absolutely right that those questions involve matters of knowledge, wisdom, morality, and taste that admit of better or worse, right or wrong, true or false. But why does he refrain from saying – why does he actually seem committed to denying – that how one spends one's money will also regularly involve such matters? Economists may or may not be

committed to denying this; but the important points are: (1) that even if they do, *Sagoff* need not join them in doing so, and (2) not joining them here is not the same as rejecting CBA. If, as I believe, how one spends one's money does regularly involve such matters, then the mere fact that CBA solicits preferences in a monetary form through WTP does not make it unsuitable as a mechanism for generating decisions regarding those policy issues that involve such matters. Recall that Sagoff himself has admitted to paying dues to the Sierra Club in support of the Alaskan wilderness despite the fact that he will not visit there. Surely it is implausible to maintain that the fact that he (and any others) are willing to give money towards this cause is altogether irrelevant to public policy decisions regarding the cause. I do not know whether or not to count paying dues as a kind of *market* activity. In any case, Sagoff is here at least tacitly admitting all I really need him to, namely that what he does with his money has at least something to do with what *he* considers to be his "citizen preferences," with what *he* considers to be matters of knowledge, wisdom, morality, and taste that admit of better or worse, right or wrong, true or false. If that is true of our decisions regarding whether and where to *donate* our money, it must also be true of our decisions regarding whether and where to *spend* our money. It must, in other words, also be true of our decisions regarding WTP.

That tacit admission also shows that we plainly face what Sagoff terms "environmental questions," which are among those that involve "moral and aesthetic principles," when making decisions regarding the donating of money. Again, if that is true, it is surely also true when making decisions regarding the spending of it, i.e., regarding WTP. The question of whether to buy 10 pens for \$2.00 or 20 otherwise identical pens for \$3.00 is an example of one involving only economic principles. But most decisions one makes regarding what to do with one's money are not like this. Most involve not just economic principles but moral ones too. The questions of

whether to repair one's oil-leaking car, to return returnable bottles, to "fix" parking tickets, to shop online rather than at a locally owned bookstore, and to ski at a resort that has decimated a sensitive ecosystem, are among those that also involve moral principles. So too, for example, are the questions of whether to buy clothes made by overseas sweatshop laborers, to shop at a massive retail chain that refuses to give many of its employees health insurance, to purchase meat coming from factory farms raising animals in cruel conditions, and even to drive that gas-guzzling SUV. In each of these cases, and many others like them, nothing absolutely prevents Sagoff (or anyone) from bringing moral considerations to bear in deciding how to spend money. This is not to deny, of course, that in each case there may be moral considerations pulling in different directions. The fundamental point is simply that contrary to what Sagoff seems to maintain, what one pays or is willing to pay need not fail to reflect moral principles and so need not be irrelevant to policy questions that have a moral component.

Indeed, it is precisely because of this that Sagoff's labeling himself as schizophrenic – a condition that is, after all, typically taken to be pathological! – seems apt and that his apparent comfort with the label, as well as the readiness of the other authors cited to follow suit, is so surprising. Clearly in situations where he is not involved in collective-action problems the likes of which were discussed in the previous section, Sagoff should work to eliminate his so-called schizophrenia by spending his money in ways that are consistent with the things he supports in his so-called role as a "citizen." If he does not do so, it is he, not CBA, that merits criticism. Indeed, up to a point he should do so even in cases where he *is* constrained by a collective-action problems. I say "up to a point" because it seems reasonable to say that there is no moral obligation to "go it alone" in cases where doing so is not going to make even a dent in some large problem and where it becomes undeniable that few others are going to join in. At the same

time, however, it is plausible to posit non-consequentialist reasons for action, such that one may, for example, have compelling reasons to avoid buying the SUV, the clothes made in a sweatshop, etc., even where most others will not avoid doing so. Refraining from spending one's money on certain things and in certain places can have an "expressive function."<sup>22</sup> Relatedly, one's spending decisions can make a morally important "symbolic protest."<sup>23</sup> Thus, the same environmentalism that compels Sagoff to display that "Ecology Now" bumper sticker gives him reasons for fixing the oil-leaking car on which it is displayed. He should urge his senator to outlaw one-way containers, but he should admit that this does not altogether excuse him from *also* buying and returning returnable bottles. I do not want to push those claims any further. The power of non-consequentialist reasons is obviously an issue on which there is considerable substantive debate, which I cannot address more fully here. Again, though, the issue is actually essentially skirted when CBA uses the stated-preference method to gauge how much an individual would be willing to pay in the form of a tax paid by all.

The preceding discussion, I believe, undermines Sagoff's explanation of why segregation, abortion, war, capital punishment, and the environment ("the protection of wilderness, habitats, water, land, and air as well as policy toward environmental safety and health") cannot be made simply on the basis of WTP or, more generally, individual preferences (simpliciter). It has the effect of showing the problem with identifying consumer preferences with those preferences regarding how one allocates one's money: Sagoff says that consumer preferences are not germane to public policy decisions but how one spends one's money patently frequently *is* so germane. The preceding discussion also shows why consumer preferences cannot be identified with those preferences that are responsive to economic but not moral principles, or that guide one where no moral principles are in play: Sagoff seems to see

expressions of WTP as reflections or instantiations of consumer preferences, but such expressions surely can and should be sensitive to moral principles. But if the concepts of consumer preference and citizen preference/value are to do the work Sagoff and the other authors try to get them to do, these concepts must certainly be identified with *something*. It is not yet clear what that something is.

Perhaps the idea is simply that consumer preferences are self-interested preferences and citizen preferences are selfless or other-regarding preferences. There is textual support for this: as mentioned earlier, Sagoff says that the consumer is motivated by “self-interest and personal wants” whereas the citizen is “guided by [her] image of a good society.” The distinction between self-interested and selfless preferences is obviously reasonable enough; but proponents of CBA will rightly ask how this distinction tells against CBA. At least offhand, it does not seem to be the case that CBA can only take account of self-interested preferences, nor is it even necessarily the case that it tends only to do so. Nothing would seem to *require* that self-interested preferences rather than other-regarding preferences dictate one’s actual spending behavior or one’s stated WTP. In situations involving actual market behavior and no collective-action problems, or collective-action problems but appropriately worded WTP survey questions, someone whose WTP regularly fails to reflect her selfless preferences will sound awfully disingenuous when she claims that her selfless preferences must be taken into account and that CBA is flawed for failing to do so. Whatever specific language he uses to express them, Sagoff’s complaints against CBA sound just as disingenuous.

At this point, the critics may note that the distinction between self-interested and other-regarding preferences looks a lot like Ronald Dworkin’s important distinction between personal preferences and external preferences, and that the correspondence between these distinctions

ultimately means, contrary to what I have argued, that CBA can in fact only take account of self-regarding preferences. Dworkin's distinction arises in a discussion of preference utilitarianism, but is relevant to CBA insofar as the latter, like the former, "asks officials to attempt to satisfy people's preferences so far as this is possible."<sup>24</sup> According to Dworkin:

The preferences of an individual for the consequences of a particular policy may be seen to reflect, on further analysis, either a *personal* preference for his own enjoyment of some goods or opportunities, or an *external* preference for the assignment of goods and opportunities to others, or both. A white law school candidate might have a personal preference for the consequences of segregation, for example, because the policy improves his own chances of success, or an external preference for those consequences because he has contempt for blacks and disapproves of social situations in which the races mix.<sup>25</sup>

It should be noted that external preferences could just as well be based in affection for others (as opposed to contempt, as is the case in Dworkin's example). And it should be reasonably clear that personal preferences seem to be essentially what I have called self-interested preferences, while the external preferences seem quite similar to what I have called other-regarding preferences.

Dworkin then introduces (at least one version of) the "double-counting" objection. He has us imagine that a community could build a swimming pool or a theater, but not both. Furthermore, "Many citizens, who themselves do not swim, prefer the pool to the theater because they approve of sports and admire athletes, or because they think that the theater is immoral and ought to be repressed."<sup>26</sup> The effect will be that "each swimmer will have the benefit not only of his own preference, but also of the preference of someone else who takes pleasure in his success," and "actors and audiences will suffer because their preferences are held in lower respect by citizens whose personal preferences are not themselves engaged."<sup>27</sup> Counting other-regarding preferences, the argument (in effect) goes, is inconsistent with treating all people as equals, and this is particularly problematic, according to Dworkin, because utilitarianism (and

CBA too, he would presumably say) “owes much of its popularity to the assumption that it embodies the right of citizens to be treated as equals.”<sup>28</sup> This kind of worry is surely partly what underpins a view that creeps up in the economics literature that, in order for CBA to work properly, the individual preferences it takes account of should “reflect only [each individual’s] own personal economic motives and not altruistic motives, or sense of duty, or moral obligation.”<sup>29</sup>

There are some complicated issues involved here, but in the end this objection seems to fail for exactly the reasons that H. L. A. Hart gives. Hart does not deny that there is a distinction between personal and external preferences; he does not deny that double counting can occur, or that it is bad where it does. A political system that permits each woman two votes and each man only one vote would be guilty of double counting, and this would be wrong. Hart’s response, though, is that the cases Dworkin describes and calls problematic are not ones where anyone’s preferences are counted twice. Regarding the swimming pool example, Hart rightly notes:

It is only the case that the proposal for the allocation of some good to the swimmer is supported by the preferences both of the swimmer and (say) his disinterested non-swimmer neighbour. Each of the two preferences is counted only as one; and surely *not* to count the neighbour’s disinterested preference on this issue would be to fail to treat the two as equals. It would be “undercounting” and presumably as bad as double counting.<sup>30</sup>

A full treatment of this issue would require more space than I can allocate here, but numerous economists effectively join Hart in rejecting the exclusion of preferences that are not purely self-regarding. As Michael Hanemann says, “When estimating demand functions for fish prior to Vatican II, no economist ever proposed removing Catholics because they were eating fish out of a sense of duty. Nor, when estimating collective choice models, do we exclude childless couples who vote for school bonds because they lack a personal economic motive.”<sup>31</sup>

## V. A Comparison of CBA and Voting

I have sought thus far to challenge the employment of the citizen/consumer distinction in criticisms of CBA. However “consumer preference” is in the end understood, it is not the case that CBA improperly registers these alone. Behavior that appears to evince a schizophrenic split within individuals can frequently be understood simply as behavior by reasonable individuals trapped inside a collective-action problem. CBA’s stated-preference method can be used to circumvent such problems; and when it is, it is unconvincing to say that specifications of WTP are not responsive to moral principles, or are necessarily self-interested, and thus should not be treated as normative for public policy purposes. If any of the cases that Sagoff and the others mention and that are purported to make trouble for CBA are not the product of a collective-action problem that CBA actually has the resources for circumventing, then they are the product of problems for which particular individuals, not CBA, should be faulted. Interestingly, Sagoff is not nearly as critical of voting as he is of CBA. The reason, we know, is that he believes voting but not CBA to be a decision mechanism that registers citizen preferences/values. In this section I aim to show that because the consumer/citizen distinction is so muddled, his argument for the superiority of voting over CBA as a public-decision mechanism fails. This is not to deny that voting is superior in certain very important respects; but it is to say that voting and CBA are, with respect to the role given to individual preferences, not as entirely different as some would have us believe.

First, it is a mistake to think that voting is, while CBA is not, suited to dealing with public decisions that have a moral dimension, for – as I have argued – while CBA is interested in each individual’s WTP, how one spends one’s money is often a moral issue. Moreover, it is also wrong to say (as Sagoff seems to) that we spend money only with our own narrow self-interests

in mind while we vote with the well-being of the community in mind. I have claimed that one need not, and in fact should not, spend one's money in all selfish ways. Relatedly, people who vote need not, and perhaps should not, always do so in entirely *selfless* ways. Often times a voter is not motivated by the well-being of her community, but rather by what is best for her individually (perhaps including her family and other loved ones). It is not necessarily inappropriate to vote in one way and not another based partly on private financial considerations. Suppose a referendum or candidate promises to institute a program the funding of which would require *P* to pay more in taxes but will not benefit her or her family, even indirectly. This gives *P* a reason – though not obviously an overriding one – to vote against that referendum or candidate. If one's vote may express selfless preferences, then one's WTP can too; and if CBA is guilty of double-counting when it permits individuals to register selfless preferences, then voting is guilty of the same when it does so.

It has been noted that individuals in the market are subject to a collective-action problem that presents problems especially for CBA's use of the revealed-preference method. One reason why those who give special praise to voting as a decision mechanism should tread cautiously in criticizing CBA is that voting is subject to a serious collective-action problem of its own. Its collective-action problem looks like this: *P* does not know how many people will vote, but reasons that if many people vote, *her* vote will not make a difference to the outcome of the election. After all, how many referendums or elections are decided by one vote? This diminishes *P*'s incentive to vote. But many other people reason like *P*, and thus the number of people who actually do vote is much smaller than is ideal. I have indicated how CBA can get around the collective-action problem it faces; frankly, the one that plagues voting is considerably more difficult to resolve.

It may be objected here that this comparison of CBA's collective-active problem to the one plaguing voting is ill judged. Voting's collective-action problem, the objection goes, has to do with each individual's *incentive to participate*. CBA's putative collective-action problem, on the other hand, is quite different; it is purported to have a distorting effect on the *outcome* of CBA (especially when the revealed-preference method is employed).<sup>32</sup> The objection is correct, but only up to a point. The problem concerning voting does, while the one concerning CBA does not, have to do with incentive to participate and thus affect whose preferences are registered. Nonetheless, voting's problem, no less than CBA's, bears adversely on the *outcome*, i.e., on which decision it is at which the public decision mechanism will arrive. My point is not that the collective-action problems are identical in the two cases, nor does the point require them to be. Rather, the point simply is that in both cases the collective-action problem affects which preferences ultimately get captured by the respective decision mechanisms and in turn has a distorting effect on which decisions these mechanisms ultimately supply or recommend.

While I have rejected certain arguments given by proponents of CBA that purport to explain why voting is superior to CBA, I have not intended to insist that voting has no advantages over CBA. Anyone who wants public policy decisions to be based on the preferences of the individuals affected should want those preferences to be as well informed and well considered as possible. Voting may do a better job than CBA typically does of registering informed and considered preferences. Voting seasons are constructed in order to create an electorate that is at least decently educated about the issues. Prior to voting, citizens typically have ample opportunity to gather information about issues and candidates. Newspaper articles and editorials, televised debates between candidates or at least between partisan pundits, commercials, door-to-door campaigns, public rallies, and so on, all provide this opportunity. It is

not just that a set of facts is put out there, but rather that the perceived merits and demerits of each position and candidate are publicly discussed and debated at length, from a wide variety of perspectives, and in a range of forums. Moreover, each individual is encouraged to reflect on the preferences she is preparing to express via her particular vote. One cannot just rush out and vote the instant she has a strong sense of how she wants to vote (unless, of course, election day itself is the first time she has this strong sense); instead, one has to continue reflecting until the day of voting rolls around.<sup>33</sup>

This is all worth noting, but the point should not be overstated. After all, no one is categorically *required* to be well-informed before she votes. It is not as though officials check in with each voter before she votes to ensure she is filled in on the issues and the candidates, ready to supply information in the event she is not. Ill-informed people have the same right to vote that well-informed people do, and it is undoubtedly the case that plenty of people go to the poll without being well-informed. Moreover, in practice of late, it sometimes seems as though the purpose of campaigns has been to spread *misinformation*, and that is disheartening. Of course when this happens those on the other side of this issue have the chance to counter with the truth, but alas they typically promulgate some misinformation of their own.

Now, how does this compare to CBA? If the analyst is using the revealed-preference method, there is no assurance that the market behavior from which the analyst attempts to infer individual preferences actually reflects anything other than people's rash spending decisions. Not everyone is a rash spender, but that the concept of rash spending exists while the concept of rash voting does not is telling. Then again, if a person is going to spend a considerable sum of money, she will often take time to research her decision. On many occasions, though certainly not all, people have time leading up to a purchase in which they can educate themselves; and

thus when they make a purchase, they register a well-informed preference that squares with their other preferences. This is akin to the time and opportunity one has to learn about the issues and candidates leading up to a vote. Even where a spender is being deliberate, however, one difference is that typically when one makes a purchase – even a big one – the pros and cons of the issue, viz., the good- and bad-making features of the thing one is thinking of purchasing, whether one really needs it, what other uses one could put the money to, etc., are not discussed, or at least not in the same way, to the same extent, or with the same vigor, as are candidates or issues leading up to a vote. This is a significant difference. To approach a remedy, the state can work to ensure that people have easy access to relevant information before they make their purchasing decisions. How successful such an effort could be is unclear. This all serves to underscore the point made in the earlier discussion of collective-action problems, namely that cost-benefit analysts should be very careful about using the revealed-preference method.

In fact, these limitations exist not just when the revealed-preference method is used, but also when the stated-preference method is employed. Surveys – even well-constructed ones – have the potential to register snap decisions. A question that is put to a respondent may be one she has never considered before, and she will typically not have long to consider it before an answer is expected (or at least perceived to be expected). Preferences articulated in such a context are apt to be uninformed and/or inconsistent with one's other preferences. Surveys can be much more liable to this than voting is. Moreover, as surveys tend to be employed, there will be no opportunity for public debate before each respondent's preference is solicited. CBA is used precisely as a way to get policy recommendations without there needing to be “messy,” drawn-out public debates. The tendency here is understandable, but the effect is to make contingent valuation less similar to voting, and indeed more liable to reasonable criticism.

Public debate is important not just before people register their preferences in a traditional vote, but also before they register their preferences in response to contingent valuation surveys.

Fortunately for proponents of CBA, contingent valuation is not altogether incompatible with public debate. Those issues regarding which people's preferences are sought could be subject to public debate in any or all of its manifestations, and then if a vote is too time consuming or energy intensive, the stated-preference method could be used to capture people's preferences. Moreover, the provision of information by the analyst herself (in order to help ensure that informed preferences are registered) is not incompatible with the stated-preference method. If contingent valuation surveys are constructed, and those administering them are trained, so that policy-relevant information is shared with a respondent who is given time for and assistance in organizing and processing this information, then CBA does not lag so far behind voting with respect to registering appropriately informed preferences. If proponents of CBA do not advocate this, then critics of CBA are right to disparage it while praising voting as a public-decision mechanism.

There are other differences between CBA and voting worth noticing. At least some of these are connected to CBA's use of WTP as the measure of how strong individual preferences are. Voting typically utilizes a dichotomous nominal variable: one votes either "yea" or "nay." WTP, on the other hand, is a numerical measure that is more or less continuous. While voting aims to capture only the direction of a preference (i.e., for or against), CBA aims to capture both the direction *and* the strength of a preference. This difference more than occasionally makes a difference. The archetypal democracy is one in which each citizen gets one and only one vote. No citizen's vote counts more or less than another's vote, regardless of the strength of the preference underlying the vote. For example, regardless of whether a person *really, really* wants

the school levy on the ballot to pass, or only mildly wants it to pass, this person gets only one vote. So far as I know, no one recommends letting those who care more about an issue vote multiple times, counting their vote as more important, or anything of this nature. Why then should CBA work to measure not only the *direction* but also the *strength* of preferences?

In fact, it is not entirely unreasonable to see it as a shortcoming of voting (at least as it is commonly practiced) that it registers only the direction of a preference. Voting is in this respect a rather blunt tool. If a group of friends were going to vote on where to go for lunch, it would certainly seem odd to ignore how strongly each feels about the place she favors. I would not want to push too hard here, for I recognize that allowing policy decisions to be made on the basis not just of preferences' direction but also their strength has the effect of putting the outcome of policy decisions too far into the hands of zealots, and thus even encouraging zealotry. But the basic point stands: it is not necessarily a knock on CBA that it aims to measure the strength of preferences. It is surely not always inappropriate to do so.

Even if it is appropriate to measure *both* the direction and the strength of a preference, there is obvious concern about a policy tool that gives more say in public decisions to those people with more money, which is precisely what CBA's use of WTP does. The fact that CBA does, while voting does not, require that preferences be monetized means that the preferences one is able to register via a vote are less encumbered by one's financial situation than are the preferences one registers via CBA. Can anything be said in defense of CBA on this issue? First, it can be noted that while the preferences one is able to register via a vote are *less* encumbered by one's financial situation than those one registers via one's WTP, it would be naïve to say that the former are altogether independent of one's financial situation. I do not have in mind here anything quite as insidious as the buying of votes, but clearly those with more money are (up to a

point) legally able to make influence-garnering campaign donations. Additionally, there is again the fact that WTP is used so that policy decisions can be made on the model of the market in cases where market failure has led to an outcome that differs from the one a perfect market would have delivered. Those who favor voting over CBA on the grounds that the latter gives undue influence to the wealthy will thus need to explain why decisions like those specified at the very outset of this paper should *not* be made on the market model. The aforementioned arguments distinguishing consumers from citizens were seemingly attempting to give precisely this kind of explanation; but I hope to have shown that they fail.

Ultimately, this defense can be pushed only so far, since reasonable criticisms of CBA's use of WTP in the making of public decisions exist. I will mention just two<sup>34</sup> of these:

(1) Towards a contradiction, assume (as proponents of CBA maintain) that an individual's WTP (for good *X*, say) is a measure of or proxy for her preference (for *X*). WTP is said to be constrained by ability to pay, so someone who has no ability to pay can have no WTP. This entails that the person who has no ability to pay has no preferences. But the person who has no ability to pay clearly *does* have preferences, including in all likelihood the preference for having the ability to pay (for at least certain things)! In fact, it seems reasonable to say that it is precisely this person's preference for not being penniless that motivates her to go out and try to earn money. This gives us the contradiction: this person both has preferences and does not. In turn, we have to reject the assumption that generated the contradiction, namely that WTP is (at least in theory) a good measure of a person's preference(s).

(2) Suppose Abe and Bob each sincerely specify a willingness to pay \$100 for a good (service, outcome, etc.) but Abe has only \$10,000 to his name while Bob is a multimillionaire. Here, it seems plain that Abe has expressed a stronger preference than Bob; this good is more

important to Abe than to Bob. But as CBA is typically taught, understood, and practiced, Abe and Bob have an equally strong preference for the object so long as they are both willing to pay the same raw amount (or so long as the two are willing to accept the same amount). Proponents of CBA generally encourage the implausible supposition that an extra dollar means the same to each individual. This ignores a critically important observation made by one of the pioneers of the concept of economic value, Alfred Marshall. Marshall emphasized the *ceteris paribus* proviso, including constant tastes and income, and he readily conceded that calculating consumer surplus from an aggregate demand function neglects the fact that “a pound’s worth of satisfaction to an ordinary poor man is a much greater thing than a pound’s worth of satisfaction to an ordinary rich man.”<sup>35</sup>

These criticisms show that WTP does not tell us everything there is to know about a person’s preferences. However, they do not show that a person’s WTP has *nothing* to do with her policy-relevant preferences. Moreover, they do not – and the general differences I have acknowledged between CBA and voting do not – show that the distinction between consumer preferences and citizen values is a useful one. CBA is deeply flawed for its use of WTP as a *measure of or proxy for* people’s preferences. But CBA is right for at least aspiring to generate public policies on the basis of the individual preferences of those affected by the policy. Liberal democracies ensure the right to vote in part because they take so seriously the importance of registering individuals’ preferences, which is the very same thing that CBA aims to do.

## **VI. Preferences, Willingness-to-Pay, and Social Values**

One final distinction must be considered. In certain places, Sagoff gets away from the notion of citizen preferences and even of citizen values and instead favors the concept of “social

values,” which he contrasts with private preferences. “Social value” sounds like merely another way of saying “citizen preference” or “citizen value,” but I believe that Sagoff actually has something different in mind for that first notion. I argue in this section that Sagoff’s argument that CBA missteps by aiming to satisfy individuals’ preferences rather than to promote (respect, honor, etc.) what he calls “social values” is ultimately unsuccessful.

According to Sagoff, “policy analysis that is rooted in welfare economics makes little room for social values.”<sup>36</sup> He says that “policy analysis, at least according to standard accounts, seeks to satisfy private preferences, whatever they are, whether or not they are consistent with the principled social values or commitments of society.”<sup>37</sup> What are social values? They are, he says, “those values ascribed directly to society as a whole, whether or not a majority of Americans at any moment agrees with them.”<sup>38</sup> But there is ample cause for wondering what it means for a value to be ascribed to a “society as a whole” when the majority of that society’s members do not embrace the value. Sagoff tries to clarify by saying that “social values, which are the moral goals to which we commit ourselves as a community, are by no means derived mathematically or mechanically from private desires, wants, prejudices, fears, and so on. Rather, they are determined through a complex and deliberative cultural, legal, and political process.”<sup>39</sup> He maintains that when the Supreme Court found racial segregation of public facilities to be unconstitutional, the goal of racial integration “officially” became a social value, and did so despite the fact that such integration may not have appealed to the majority of citizens. Another “clear example of a social value,” he writes, “would be the separation of church and state, that is, the principle that Congress shall make no law to establish a religion. Cost-benefit analysis—or the comparison of relative willingness to pay for different outcomes—is not even remotely relevant to the principle of church-state separation.”<sup>40</sup> Finally, he says that:

Occasionally, public opinion surveys find that by large majorities, Americans would disapprove of one or another of the Bill of Rights—for example, the Fifth Amendment guarantee against self-incrimination. A determination of the amounts that individuals are willing to pay, for example, to enforce religious uniformity or limit freedom of the press hardly seems relevant to the legitimacy of our legal rights, democratic values, and social commitments—freedom of conscience, equality before the law, habeas corpus, trial by jury, universal suffrage, and so on.<sup>41</sup>

Sagoff is right that WTP hardly seems relevant in these cases. The reason is precisely that these are issues that are to be settled, ultimately, on constitutional grounds. Martha Nussbaum writes that “economists and others who defend preference-based views rarely make a clear distinction between their uses in social choice generally and their use in selecting basic principles that can be embodied in constitutional guarantees. Instead, they tend to make general pronouncements about social choice.”<sup>42</sup> She is right that there is a distinction, and that it is too infrequently noted. It turns out that it is not just defenders of preference-based views, but also opponents of such views, who fail to make it clear. Surely most of those who endorse CBA deny neither that the Constitution lays out certain basic restrictions on what is and is not legal, nor that legislative acts and even particular public policy decisions cannot be upheld if they are not consistent with these restrictions. Proponents of CBA would, for example, certainly not claim that some particular accused criminal should be denied the ability to refrain from giving self-incriminating testimony in any case where the overall WTP for her to be required to incriminate herself exceeds the overall WTP for her not to be so required. The mere fact that, in some particular case, preferences for ignoring or overriding some constitutional guarantee exceed those for respecting and observing this guarantee does not make ignoring or overriding the guarantee justifiable.

While the role that individual preferences play in public policy is limited in the aforementioned respect, preferences can nonetheless play an important role even in the cases that

Sagoff cites. If, among a sufficiently large majority of the voting population, there develops a strong preference for overturning (say) the constitutionally granted right to abstention from self-incriminating testimony via an amendment to the Constitution, then there is a powerful reason for so amending it. The justification is simply that this is preferred, and so strongly. The justification would not be that such an amendment has become a social value, unless something becomes a social value just when it is strongly and widely preferred (which is clearly not Sagoff's view of social values). The same thing can be said about the separation of church and state: if there are enough people with an individual preference for a *connection* between church and state, and these people express these preferences by voting for candidates who favor a connection between church and state, and a sufficient number of such candidates, when elected, vote in favor of amending the Constitution to reflect such preferences, and the amendment is ratified by a vote in the requisite number of states, then the Constitution will be amended. So, while a determination of the amounts that individuals are willing to pay for a connection between church and state hardly seems relevant, individual preferences regarding the separation or connection clearly are relevant.

Individual preferences may even influence how the Constitution is interpreted; and I do not mean by this just the preferences of individual Justices. The Supreme Court case *Trop v. Dulles*, for example, established that the Eighth Amendment standard of what counts as "cruel and unusual punishment" is not fixed but must reflect current judgment among the populous regarding what counts as cruel, and what as fitting, punishment. This hermeneutic principle was upheld in the more recent case of *Roper v. Simmons*, which invalidated the execution of juveniles who were 16 or 17 at the time they committed their crimes. In this more recent case, one significant point of contention was how to measure the current judgment of the populous. I

believe it is not a misnomer to say that what is being sought is a measure of people's *preferences* regarding how and to what extent various criminals should be punished.

Sagoff says that “policy analysis—insofar as it pursues preference satisfaction, utility, and economic efficiency—appears to have little to contribute to the abortion question or to the discussion of any other principled social value or decision.”<sup>43</sup> Abortion is indeed not an issue properly addressed using CBA; and there are plenty of other issues of which this is true. Again, these are issues that are to be decided by interpretation of the Constitution (where individual preferences are germane in the ways I have explained in this section). Importantly, however, not every issue is such an issue. Contrary to what Sagoff asserts, there are plenty of other decisions – “principled” ones, even – regarding which policy analysis (by which I mean analysis that aims to record individual preferences by some means other than a vote) *can* make contributions. The five questions with which this paper opened all seem to point to decisions of this kind. Now, among the difficulties involved in constitutional interpretation can be simply ascertaining what particular issues the Constitution even addresses. If it became clear, for example, that how much arsenic it is permissible to leave in drinking water is an issue addressed (even implicitly) in the Constitution, and it could further be determined that  $X$  parts-per-billion is what is constitutionally required, then it would not be appropriate to initiate a CBA in order to measure people's preferences and see whether the state is in fact justified in providing water with (say)  $X+25$  parts-per-billion of arsenic. But if these are not decisions to be addressed on constitutional grounds, then proponents of CBA are right to urge that they should be decided by people's preferences, at least their well-informed and sufficiently-deliberated-over ones. In these cases, WTP is not wholly irrelevant, for (as was argued in Sections III and IV) it surely can, if solicited properly, tell us *something* about these preferences; though because (as I suggested in Section V) WTP is

not a great measure of people's preferences, it is certainly not *all* that is relevant. This constitutes one of what is surely many legitimate causes for concern with the frequent use of CBA in public decisions regarding investments and regulations presents. Let us continue exploring and working to diagnose CBA's deficiencies. But let us set aside worries that it treats people as consumers rather than citizens, registers "mere preferences," and ignores or flouts social values.

## NOTES:

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<sup>1</sup> The Kaldor-Hicks Criterion is also known as the Potential Compensation Criterion and the Potential Pareto Criterion. By whatever name it goes, it is the mere potential for compensation that is claimed to justify a policy; actual compensation from the gainers to the losers is not required.

<sup>2</sup> S. V. Ciriacy-Wantrup, "Capital Returns from Soil-Conservation Practices," *Journal of Farm Economics* 29 (1947), pp. 1181-96. It is this article in which the method of contingent valuation was originally proposed.

<sup>3</sup> In fact, I recently heard even a well-known economist – an active practitioner and defender of CBA – say that the ancient Greek city-state with its direct participatory democracy was the ideal mechanism for public decision making. It is, the economist suggested, just for logistical reasons that we turn so often to CBA. He was not quite disparaging CBA, but to my surprise was also not exactly ardently denying that it is a second-class decision making tool. After all, while logistical reasons need not be trivial ones, they somehow feel cheaper than good theoretical reasons.

<sup>4</sup> Though space does not permit full elaboration of this point, my view is actually that it is not with respect to "any old" individual preference, but rather to *well-informed, well-considered* and *rational* individual preferences, that policy analysts should be assessing benefits and costs. (By 'rational preference,' I mean here simply those preferences that are consistent with one's other preferences.) I do not believe that responding to the critiques from opponents of CBA that I consider in this paper requires such an elaboration. These opponents argue that the preferences that cost-benefit analysts seek out – *whether or not* these preferences are well-informed and rational – are not the proper basis for public policy. I, on the other hand, aim to defend a place for individual preferences in policy analysis; but sight should not be lost of the fact that, on my view, the preferences that really matter are those that each affected individual would have if she or he were well informed and rational. For more, see Raterman, *Preferences, Well-Being, and Value: A Critique of the Normative Foundations of the Economic Approach to Valuing Non-Market Goods*, Diss., University of North Carolina at Chapel Hill (Ann Arbor: UMI, 2006; 3219449).

<sup>5</sup> Sagoff, “At the Shrine of Our Lady of Fatima, or Why Political Questions Are Not All Economic,” *Arizona Law Review* 23 (1981), pp. 1283-98 (p. 1286). These same basic views are articulated by Sagoff in other pieces. See, for example, “Free Market Versus Libertarian Environmentalism,” *Critical Review* 6 (1993), pp. 211-30. Though the contrast here is worded as one between consumer *preferences* and citizen *judgments*, this is not a wording to which Sagoff adheres, as other passages cited will show. The distinction between preferences and judgments is an interesting and important one, and indeed one I explore elsewhere. See, again, Raterman, *Preferences, Well-Being, and Value: A Critique of the Normative Foundations of the Economic Approach to Valuing Non-Market Goods*.

<sup>6</sup> This quote appears in Sagoff (1981), but Sagoff is quoting R. A. Musgrave, who is himself reporting a conversation with Gerhard Colm. See Musgrave, *The Theory of Public Finance*, (New York: McGraw-Hill, 1959), pp. 87-88.

<sup>7</sup> Sagoff, “At the Shrine of Our Lady of Fatima,” p. 1286.

<sup>8</sup> Marglin, “The Social Rate of Discount and the Optimal Rate of Investment,” *Quarterly Journal of Economics* 77 (1963), pp. 95-111 (p. 98).

<sup>9</sup> Sagoff, “At the Shrine of Our Lady of Fatima,” p. 1287.

<sup>10</sup> Ackerman and Heinzerling, “Pricing the Priceless: Cost-Benefit Analysis of Environmental Protection,” *University of Pennsylvania Law Review* 150 (2002), pp. 1553-1584 (p. 1573). See also *Priceless: On Knowing the Price of Everything and the Value of Nothing*, (New York: The New Press, 2004).

<sup>11</sup> *Ibid*, p. 1566.

<sup>12</sup> *Ibid*, pp. 1566-67.

<sup>13</sup> *Ibid*, p. 1567.

<sup>14</sup> Anderson, *Value in Ethics and Economics* (Cambridge, MA: Harvard University Press, 1993), pp. 209-10.

<sup>15</sup> Reich, “Don’t Blame Wal-Mart,” *The New York Times*, Feb. 28, 2005. All references to Reich in my paper are references to this Op-Ed piece.

<sup>16</sup> For those who are not familiar, or who need a refresher, I will briefly summarize the Prisoners’ Dilemma. In its standard formulation, two individuals are arrested and accused of committing a serious crime together. As it turns out, the police have sufficient evidence to convict both prisoners on a minor charge, but insufficient evidence to convict either on the more serious charge. Lacking more substantial evidence, the police try to get each prisoner to testify against the other. If either one testifies against the other and that other remains silent, the silent accomplice receives a long sentence (10 years, say) and the one who has testified goes free. If both prisoners stay silent, both will receive only short sentences (six months, say) for the minor charge. If both testify against each other, they each receive the same medium-length sentence (two years, say). The outcome for each depends on the choice she makes as well as the choice of the accomplice. However, neither prisoner knows the choice of her accomplice; and even if they were able to talk to each other, neither could be sure she could trust the other. Each prisoner reasons as follows: if my accomplice testifies against me, I do best for myself by testifying against her; and if my accomplice stays silent, I do best for myself by testifying against her. Each is thus compelled (by what is called “dominance reasoning”) to testify against her accomplice, and thus each receives the two-year sentence rather than each receiving the mere six-month sentence.

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<sup>17</sup> Whether or not what *P* believes is true is not especially germane to the point I am after.

<sup>18</sup> This is doubly true when the preferences we are talking about are an individual's well-informed, well-considered, and rational preferences. See endnote 4.

<sup>19</sup> Ackerman and Heinzerling, "Pricing the Priceless," p. 1573.

<sup>20</sup> This should not be taken as an outright endorsement of WTP. I articulate some of my serious concerns about the use of WTP later in this paper; and I say even more by way of criticism of WTP elsewhere. Again, see Raterman, *Preferences, Well-Being, and Value: A Critique of the Normative Foundations of the Economic Approach to Valuing Non-Market Goods*.

<sup>21</sup> Sagoff, "At the Shrine of Our Lady of Fatima," p. 1296. The bracketed words are my addition.

<sup>22</sup> For a classic discussion of the idea of an "expressive function," see Joel Feinberg, "The Expressive Function of Punishment," *The Monist* 49 (1965), pp. 397-423. It is an appeal to an expressive function that does a great deal to explain why a person should vote even in light of the collective-action problem plaguing voting that will be noted in the next section of this paper.

<sup>23</sup> For more, see, e.g., Thomas E. Hill, Jr., "Symbolic Protest and Calculated Silence," *Philosophy & Public Affairs* 9 (1979), pp. 83-102.

<sup>24</sup> Dworkin, *Taking Rights Seriously*, (Cambridge, MA: Harvard University Press, 1978), p. 234.

<sup>25</sup> *Ibid*, pp. 234-235.

<sup>26</sup> *Ibid*, p. 235.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*.

<sup>29</sup> Paul Milgrom, "Is Sympathy an Economic Value? Philosophy, Economics, and the Contingent Valuation Method" in *Contingent Valuation: A Critical Assessment*, J. A. Hausman (ed.), (New York: North Holland, 1993), pp. 417-41 (p. 431).

<sup>30</sup> H. L. A. Hart, "Between Utility and Rights," *Columbia Law Review* 79 (1979), pp. 828-846 (p. 832).

<sup>31</sup> Michael Hanemann, "Valuing the Environment Through Contingent Valuation," *The Journal of Economic Perspectives* 8 (1994), pp. 19-43 (p. 33). For support of his (and my) view, Hanemann quotes Kenneth Arrow as saying, "It need not be assumed... that an individual's attitude toward different social states is determined exclusively by the commodity bundles which accrue to his lot under each. The individual may order all social states by whatever standards he deems relevant." Similarly, Gary Becker is quoted as saying that "individuals maximize welfare as they conceive it, whether they be selfish, altruistic, loyal, spiteful, or masochistic."

<sup>32</sup> Thanks to an anonymous referee for encouraging further thought on this point.

<sup>33</sup> This is changing somewhat as more and more places make early voting available. Still, this is typically at most a few weeks earlier than it would otherwise have been that one can go and vote.

<sup>34</sup> I have present other criticisms – including more novel criticisms – elsewhere. Once more, see Raterman, *Preferences, Well-Being, and Value: A Critique of the Normative Foundations of the Economic Approach to Valuing Non-Market Goods*.

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<sup>35</sup> Marshall, *Principles of Economics* (1890), Book III, Chapter VI, Section 13. Credit is due to Michael Hanemann who made this point at a conference in which I participated.

<sup>36</sup> Sagoff, "Policy Analysis and Social Values," in *Democracy, Social Values, and Public Policy*, Carrow, Churchill, and Cordes (eds.), (Westport, CT: Praeger Publishers, 1998), pp. 91-106 (p. 91).

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid, p. 93.

<sup>41</sup> Ibid.

<sup>42</sup> Nussbaum, *Women and Human Development: The Capabilities Approach*, (Cambridge, UK: Cambridge University Press, 2000), p. 116.

<sup>43</sup> Sagoff, "Policy Analysis and Social Values," p. 95.