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WHY IS LAW CENTRAL TO PUBLIC POLICY PROCESS IN GLOBAL SOUTH?

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Why is Law Central to Public Policy Process in Global South?[1]

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Abstract

This paper is arguing the case of centrality of law in policy processes in Global South. In the Global North, where Public Policy as a discipline originated and flourished, relied upon political competition (through democracy) and market forces (through capitalism) to bring order to the public sphere. When these arrangements normalise the infringements on the lives, the citizens are provided with justiciable Constitutional framework. Though, both law and policy have the mandate of the Constitution, neither of them is monolithic. Distinct schools within the disciplines of law and policy have different approaches when they take the Constitutional mandate to deal with public problems. Yet, their approaches as well as reasoning for decision-making, when public problems are addressed, are contrastingly different. While these generic principles are true both in Global North and Global South, when the interface of law and policy are examined, specific contextual concerns make law central in the Global South. These are: post-colonial state-formation (which places the Constitution-making as the epochal moment of social contract); imperfect institutions (which leads citizens to look up to court as the finality for service delivery); flawed political competition yielding democratic process less effective to respond to public problems; power distance between executive and citizens (requiring accountability tools to have legal backing). Having recognised these reasons

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that make law inseparable form policy, we undertake an institutional mapping where the synergy between these two domains could be strengthened.

Introduction

Public policy discourses as well as education has mimicked many Western text books. Global consultancy firms that reproduce policy practices are reinforcing the mimics. This approach is without an iota of respect for context, which founding fathers of Public Policy emphasised. The context of the global south presents a very different set of challenges centered around the interface of law with policy practices. In this paper, we argue that due to the particular history emerging from colonial rule, law is central to public policy processes in Global South.

A review of academic journals dealing with the question of law and policy (Kreis and Christensen 2013) fails to find a common ground between these two disciplines. Yet, independently, both these disciplines invoke each other's support for their own effectiveness. Policy clarity is considered as precursor for a good law. In the similar vein, without translating policies into legal texts and authorities, there is very little force for policy. What exactly is the common ground between these two disciplines? How much of a boundary drawing is possible between the two? In this paper we are attempting to answer these questions while arguing the case of law as central to policy process.

The paper has two sections. In the first section of the paper we have conceptually attempted to find the intrinsic link between law and public policy. In this section we argue how the Constitution as fountainhead of law

and policy gets rooted within the socio-economic context of a nation-state. The new Constitutions in the global south provide more space for policy-specific actions compared to traditional liberal constitutions. In the second section of the paper, we undertake an institutional mapping of legal and policy domain to identify where policy and law interfaces in practice. In the conclusion we argue that in the context of multiple institutional crises that the world is facing, changes required are neither within law, nor within policy. An interaction between them is not an option, but a necessity to deal with problems comprehensively to remain the disciplines relevant in the contemporary world.

Section 1

What is Law?

There are different understandings and theoretical approaches as to what is law. We review some of the most important positions on law to inform its connection with policy.

An early influential figure in conceptualizing law was John Austin (Austin, 1995)[2] who conceptualized law as the command of the sovereign. This notion has at least three characteristics:

1) Law as a command
2) Such a command is issued by a political superior to a political inferior
3) A political superior is one who is obeyed "by and large"

The limitations of this understanding of the law, is that in effect it's a 'gangster' theory of the law, with obedience being based upon fear of the one issuing the command. Understanding the power of law to stem wholly from fear, may be totally inadequate for understanding the real power of law.

[2] We are not neglecting the contributions from earlier philosophers such as Montesquieu (18th century). Our focus here is to trace the foundations for legitimacy of systematic account of law in public decision making.

An important theorist who critiqued the narrowness of the 'gangster' vision of law was H.L.A. Hart who in his classic work, *The Concept of Law* (1961/2012), understood, law as deriving its legitimacy and distinctiveness not merely from the fear that disobedience would lead to punishment, but really from a deeper acceptance of the legitimacy of law. Within Hart's understanding, law is a system of rules that impose obligations which members of society accept and are in the habit of obeying.

Hart sees 'law as a union of primary and secondary rules'. Primary rules are rules directed to all individuals in a social group telling them how they ought to act in certain circumstances. Secondary rules in the framework of Hart are the rules of recognition, rules of change and the rules of adjudication. A rule of recognition allows one to identify or recognize the actual rules of one's society. Rules of change will establish authoritative mechanisms (e.g. legislatures) for enactment and repeal of rules and will overcome the static character of a system of primary rules. Rules of adjudication will establish mechanisms (e.g. courts) to overcome the problem of efficiency present when controversy over primary rules exists (Murphy and Coleman 1990).

The importance of Hart's framework is that system of rules are those, which the members of society accept, and are in the habit of obeying. We move beyond the 'gangster' notion of law to make an argument for the legitimacy of law. Legitimacy of law depends upon the established system through which rules are established as well as what Hart called, 'the internal point of view', which is the fact that people accept its legitimacy and are in the habit of obeying the rules.

However even within Hart's system, the legitimacy of the law, lies primarily in the procedure through which it is created. The procedure for the creation of law can well create the rules of Nazi Germany as there is no external reference point for what the law should be. In fact, Hart's positivism is founded on a separation of law from morality. Thus while Hart's concept of

law, focuses on the procedure through which law comes into being, it has very little to say about the content of law.

It is Ronald Dworkin (1986), in *Law's Empire*, who sheds light on the content aspect of law.[3] Dworkin elucidates this important aspect of law through four cases. One of the cases Dworkin discusses pertains to whether Elmer who murdered his grandfather, knowing fully well that he was entitled to inherit the bulk of his estate was entitled to inherit the estate? The minority opinion held that yes he was entitled to inherit the estate as the statute did not have any exception saying murderers of the testator cannot benefit from the testament. The majority opinion held that while there was no express statutory bar on murderers benefiting by way of testament from their actions, 'statutes should be constructed from texts not in historical isolation but against background of what he called general principles of law: he meant that judges should construct a statute so as to make it conform as closely as possible to principles of justice assumed elsewhere in the law' (Dworkin 1986: 19).

The decision of the majority in Elmer's case leads Dworkin to conceptualize 'law as integrity'. It is not possible to see law as a series of discrete decisions but rather law should be seen as part of a coherent phenomenon which is animated by certain background principles. The idea that no person can benefit from his wrong is a part of the coherent whole of law and will have to be read into all other laws. Similarly the idea of equality before the law is a principle which should animate all laws (Teitel 2013; Estrada-Tanck 2016).

If one is to apply this idea of law as having integrity of its own in a Constitutional democracy what would it mean? Law within the context of a constitutional democracy can never be the command of the sovereign,

[3] Dworkin is leaning towards Hegelian school of thought about law. Hegel opposed Immanuel Kant's conceptualisation of law as a Categorical Imperative that emerges from rational certainty. Kantian position says "these universal principles obligate us without exception; indeed they reduce the substance of law to the unitary form of logical consistency: treating the persons and situations the same way" (Ingram 2006: 35). Hegel challenges this and demands for integration of morality and legality. Refer Waldron (1988) for comparison of Hegel and Kant.

neither can it be a system of primacy and secondary rules divorced from background principles. The background principles, within which law must be made are encoded in the Constitution.[4]

Thus all law preceding the coming into force of the Constitution and all law which is enacted post the coming into force of the Constitution will have to conform to the constitutional commandment if it is to be considered law at all. This then is the essence of a Dworkinian vision of law wherein law is not merely any enacted piece, but has to be judged in the context of certain background principles. At the broad level, Constitutionalism provides protection for the individual and civil liberties, by checking the political power as well as authority of the state.

This overview on the different theoretical schools on law enables us to depart from a unitary understanding on law. Different schools (formalist, often referred or 'black letter law', stands on one extreme while legal realists on one other extreme) view the role and function of law very differently. Legal realists advocate the use of social science knowledge and public opinion in order to apply the laws effectively. On the other hand, formalists consider superimposition of legal rationality in top-down manner as the method. This formalist idea of law externalises power, and approaches legal decisions as technically reached. Legal realism comes close to public policy, where the role of politics is acknowledged in public problem solving. Yet,

[4] For instance, Indian Constitution makes it explicit through Article 13. Law to be considered valid law will have to conform to the mandate of the Constitution. Article 13 of the Constitution states: 13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

they all converge on the centrality of Constitution. As we have seen the inseparability of law from the principle of Constitutionalism, we now move to examine public policy's inherent connection to Constitutionalism.

Constitutional Mandate of Public Policy

The nature of the formation of the State is critical to the role and function of public policy for those contexts. The process of the State formation is hugely different in Global North and Global South. Enlightenment and subjugation of feudal forces to democratic and capitalist process explain the origin of the modern state in most of the Global North (Moore 1966). In most of the Global South, where colonialism was critical to the State formation, what brought the society together is through two processes: a) mobilisation against colonial forces, and b) process of the making of the Constitution.[5] The second aspect is what makes Law inseparable from Public Policy question in the countries of Global South.

Western Liberal Democratic Traditions (where the discipline of Public Policy originated) gave shape to traditional Liberal Constitutions, which emphasized negative rights (Nussbaum 2006). Within this framework, typically the judiciary is engaged in an adjudication process involving private interests.

On the other hand, new Constitutions in the Global South gave space for positive action from the state. It is important to quote Nussbaum who makes this distinction:

> "Often fundamental entitlements have been understood as prohibitions against interfering state action, and if the state keeps its hands off, those rights are taken to have been secured; the state has no further affirmative task. Indeed, the U.S. Constitution demonstrates this conception directly in that negative phrasing concerning state action predominates, as in the First Amendment:

[5] Note that in some of the countries in the Global North, where colonial rule for sustained period took place, similar situation occurred (e.g. United States of America).

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances."
>
> Similarly, the Fourteenth Amendment's all-important guarantees are also stated in terms of what the state may not do: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This phraseology, deriving from the Enlightenment tradition of negative liberty, leaves things notoriously indeterminate as to whether impediments supplied by the market, or private actors, are to be considered violations of fundamental rights of citizens. The Indian Constitution, by contrast, typically specifies rights affirmatively. Thus for example: "All citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; . . . [etc.]" (Art. 19). These locutions have usually been understood to imply that impediments supplied by non-state actors may also be deemed violative of constitutional rights. Such an approach seems very important for the state needs to take action if traditionally marginalized groups are to achieve full equality. Whether a nation has a written constitution or not, it should understand fundamental entitlements in this way" (Nussbaum 2006: 54).

This departure from traditional constitutions in the Global South is what is termed as Transformative Constitutionalism (Vilhena, Baxi and Viljoen 2013). Close examination of the judgements of Supreme Courts in Global South shows how 'public interest' is deliberately built into legalism in those constitutions. Interestingly, in Global South where impunity is high, largest numbers of court cases are against the State. Therefore, how

Constitutionalism protects individual liberties against the authority of the state becomes more important in Global South.

This approach had significant influence on public policy. In most of the Global South, since the state had little legitimacy and reach over societal forces, the Constitutional provision gave a handle for the civil society groups[6] to approach judiciary to gain justiciable action from the State to meet public policy objectives. Thus, in many public policy questions, judiciary directed and thereby compelled the State to take requisite action. The questions have been in the arenas of providing safe drinking water, providing health care, providing food security etc. Indian Supreme Court expanded the judicial framework through a path breaking conceptualization that locus standi of the litigant does not matter to approach the Court for legal action. Thus, Public Interest Litigation (PIL) in which a civil society member or organisation, who may not be directly aggrieved, could approach the Court for forcing the State to take action (Bhagwati and Dias 2012). Alongside, developments took place to expand the 'right to life' clause in the Constitution to include several socio-economic guarantees[7]. Similar developments took place in South African Constitutional Courts (Khosla 2010).

In the South African case of *The Curators v. University of Kwa-Zulu Natal*[8] the court, held – in language reminiscent of German Constitutional doctrine – that "public policy 'is now rooted in our Constitution and the fundamental values it enshrines, thus establishing an objective normative value system.'"[9] In other words, a Constitution or Bill of Rights not only lists out a

[6] Several civil society movements approach the Constitution as a moral guiding principle, rather than a document to rely for arguments in the Court. Such movements infuse life into policy domain, taking inspiration from the Constitution. Some of the grassroots organisations have been able to translate these moral musings into radical legal alternatives. For example, the slogan of *hamara paise, hamara hisab* (our money, our account) of Mazdoor Kisan Shakti Sangatan was used while demanding the legislation for the Right to Information through a citizen campaign in India.

[7] Article 21 of Indian Constitution reads: "Protection of life and personal liberty –No person shall be deprived of his life or personal liberty except according to procedure established by law"

[8] The key contention was whether freedom to dispose of one's property was a right which had to function with the limits of the constitutional protection of equality of all persons. The court held in the affirmative. Refer to Curators v. The University of Kwa-Zulu Natal, 2011 (1) BCLR 40 (SCA).

[9] Ibid., at para 38.

set of rights and corresponding State obligations, but also expresses an *objective order of values* (e.g., of dignity, equality etc.) that may be invoked not only against State action, but also have a "radiating effect", serving as background interpretive principles for adjudicating private law disputes.[10]

The South African Constitutional Court directly linked public policy with the objective order of values embodied within the Constitution, observing that "in considering questions of public policy… the Court must find guidance in "the founding constitutional values of human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism".[11] These public policy concerns, grounded in constitutional values, overrode the freedom of testation, and did not unjustifiably deprive the individual of his property. It has become established norm that Courts go to Constitutional Assembly debates and Preamble to identify these values while public policy questions are settled in the Court.[12] In other words, public policy decisions could not be arrived technocratically through an economic rationality. The economic logic should be subjected to the Constitutional values (Pellissery and Mathew 2018).

Most of the Constitutions across the world profess some broad values[13] in their preamble, namely, equality, liberty, fraternity, justice, welfare, and security. When legislations are interpreted by judges in the light of these broad principles, advancement of public interest takes place. It is not co-incidental to observe that stated goals of public policy are exactly these values (Stone 2012). Thus, for law and policy, the Constitution remains as the moral core and guiding principle.

Law and Decisions for Public Good

[10] See Ralf Brinktine (2001), "The horizontal effect of human rights in German constitutional law", (2001) *European Human Rights Law Review* 421. See the famous *Luth* case: BVerfGE 7, 198.
[11] Curators, supra, para 38.
[12] If one expects solutions for newer problem from a Constitution, are we not looking backward for solutions? Where do Constitutional assembly get legitimacy? These are classical questions debated by scholars (ref. Arendt 1973; Ackerman 1991; Derrida 1986; Habermas, 1996; 2001; Hegel 1991;Michaelman 1998).
[13] Primarily inspired by European enlightenment and French revolution.

At the core of the public policy is the question of 'public interest', and the question of 'what is the right thing to do' while dealing with a public problem. There is a tendency to view that law and services that court provides as primarily to settle disputes between grieving parties. Landes and Posner (1979) by distinguishing private arbitrations and adjudication refute this idea by showing how precedents created through litigation process shape the behaviour of others.[14] As shown by Elster (1995) the very aim of a legal framework for a country is to bring about stability through established norms and expectations in a society.[15] But, the question that emerges is about the route to achieve public good. Is law an appropriate route?

Deborah Stone (2012), while defining 'public', makes a distinction of market and polis. While market is the arena of self-interested individuals competing with each other, in polis an arena of shared interest, which seeks for arriving public interest goals through approaches of cooperation and collective decision-making prevails. Kantian school, which views law as the highest expression of reason, and thus the primacy of self interest, would find little relevance in the polis model. It is in this sense law may not be the route to arrive solutions keeping public interest as the goal. In an adjudicative approach law tends hovers around a sector – scuttling the public interest concern in that case. An example is useful to demonstrate this. In the court of law a case against an industrialist employing children will navigate around labour law, and may never examine the inefficiencies of schools around the industry (forcing parents to pull out children from school in favour of industry). On the other hand, policy interventions are excellent domains where the inter-sectoral linkages are possible. Similar

[14] Refer also McAdams (2005) and Wire (2013).

[15] Accountability, stability, predictability, protection against time inconsistency, protection against short-term passions and prevention of economic suicide are the impacts of constitutionalism that Elster alludes. Even when legal processes lead to punishment or individual and firms, it has a clear aim of public good. Different reasons for punishment such as deterrence, rehabilitation, societal protection through incapacitation, retribution, restoration and educational all shows how public good is clearly attempted.

debates[16] exist as to whether economic efficiency logic is a better approach, compared to deliberative approach of politics, to achieve public interest.

Dworkin (1986) tends to think that Constitutional interpretation suffices the criteria for deliberative decisions since rights-based philosophy is at the core of Constitutional jurisprudence. However, Habermas (1996) evaluating the position of Dworkin rejects this possibility. He argues that decision making processes, both within legal domain and economic domain, is 'monological' – lacking the corrective ability for misconceptions held by different members in the society.[17] This is possible only through political deliberations. As Ingram (2006:188) argues the primacy of politics, while making decisions on public good, emerges from the limitation of legal and economic rationality since "money-driven economic systems and law-driven administrative systems relieve us of responsibility for coordinating *all* our interactions through *ad hoc* face-to-face bargaining" (emphasis in the original).[18]

Dworkin's (1977) view regarding whether Constitutional courts should engage with the question of public goods is negative. To be true to the founding legitimacy of the Constitution, the interpretative role of courts should be limited to check whether public policies violate the rights of citizens. Courts may not engage with the cost-benefit analysis of what

[16] Miller and Hammond (1994) shows politics is more fundamental than economics when decisions of public good are taken. Literature on welfare maximization through economic efficiency approach is also critiqued by several scholars. Among this literature, Sen (1982) identifies the weaknesses of both consequentialist and de-ontological approaches when decisions of public good are taken. In subsequent writings, Sen has advocated human rights approach. None of these approaches alone, in itself, including human rights approach, meets the sufficiency condition as a method of decision making for public good.

[17] On this idea of 'consent for the Constitution', there is no agreement among scholars. Wicksell (1896) considered Constitution passes the universal consent test. But, Tullock and Buchanan (1962) were convinced that some coercion is required if Constitutional morality has to be operationalised. Unanimous consent was nearly impossible due to Rawlsian veil of ignorance. Yet, since citizens are unlikely to foresee their future interest, they would prefer rules that did not favour any particular interest (Rawls 1971).

[18] Critics of Habermas do not agree that democratic deliberation is the best way to arrive at decisions. They point out the inefficiencies of democracy, particularly in divisive societies. When public issues are deeply divisive, no political party is ready to bring such issues into the agenda for deliberation. Such delay tactics deepen the problem to an extent of finding a solution. A good example is how both liberals and right-wing political parties agreed on contentious issues of citizenship registry question (conflict between migrants and settlers in North-East India), temple construction (conflict between Hindus and Muslims) to be decided by the Supreme Court, rather than politically settling them.

policies should produce social goods.[19] An examination of the court judgements on public policy questions confirms this view. There are two conditions which triggers law to the domain of public policy. First is the inaction of the executive to take positive action to generate public good.[20] A second condition is legally wrongful action from the part of the executive. Typically, court sets aside such actions as ultra vires. These could be through new legislations, administrative action which is not consistent with the Constitutional values.

These two conditions need to direct us to conclude that court and law is the conscience keeper of the society. Often, when legal institutions have been weak when legislations pertaining to distributive justice came to picture. Several public policy initiatives of the legislature were overturned by judiciary through narrowly interpreting the cases through liberal traditions. 'Social' reasons of legislature were considered irrelevant for the Courts. An oft-quoted example for this from India is the policy decision for land reforms. The large-size landlords succeeded to convince the Supreme Court that a liberal interpretation of private property was more important than the social aim of parliamentary decision for land reform. The liberal interests of land owners and social interests for the labourers and landless populations collided[21]. Constitutional amendments in the form of suspension of fundamental rights to property were necessary to integrate 'social citizenship' concerns (Davy and Pellissery, 2013; Davy 2012).

[19] Validating example is when South African court aimed to settle the question of how much water should be provided to citizens by municipal authorities to enable citizens to lead a decent life. Where consensus could achieve was to ensure Municipality takes adequate measures to provide water. There was no consensus achieved through legal process as to how much water should be provided. On the other hand, public policy frameworks do take up these questions. In India, while providing permissions for new housing areas, Delhi Development Authority follows the guidelines to check the capacity to provide water by the municipality.

[20] This was articulated by former Chief Justice of India as follows: "Extent of judicial interference in governmental issues depends on how effectively and efficiently the government does its job. Which court would want to intervene if the government works efficiently and sincerely? The courts only fulfil their constitutional duty and need would not arise if the governments do their job"(Justice T. S. Thakur reported in *Indian Express* dated 7 June 2016).

[21] This history is sufficiently studied in the literature, particularly that of land policies. Refer Allen (2007), Pellissery (2012) and Mitra (2017) for an overview.

Section II

In this section, our aim is to find similarities and dissimilarities between the legal and policy domains. Using this frame, towards the end of the paper, we will make an institutional mapping where law and policy could interface in practice realms. Literature acknowledges five areas where law is essential for public policy practice. We briefly provide an account of these domains. Particularly, last two sub-domains are undergoing tremendous transformation in the light of increasing privatization of public good in recent times.

Five sub-domains of law and policy interface

a) Rights: Citizens as right holders is widely celebrated in the literature of public policy (for instance, Stone 2012: Chapter 15; Uhr 2006). In the earlier part of the paper we have shown how the limitations of economic efficiency arguments lead to further emphasise the importance of rights. This literature makes a distinction of *rights-attentive* bureaucracy which responsibly implements policies to advance welfare of the citizens and *rights-responsive* model which takes note of changing citizenship requirements. This domain gets a boost through operationalisation of human rights through global bodies[22]. While the legal compliance is primarily focused on protecting and respecting legal entitlements, the policy arena pushes the boundaries to ensure the creation of environment of promoting the realisation of rights[23].

b) Role of legislature: Law making, as a responsibility vested with elected representatives is widely acknowledged in the policy literature. Different

[22] For instance, special rapporteurs of UN who visit countries to prepare status report on several sectors in which countries have signed UN Conventions interact with a range of stakeholders, citizens and civil society groups.
[23] For instance refer to the literature on property rights as human rights (Pellissery, Davy and Jacobs 2017).

processes of influencing law makers (advocacy[24], public choice approach of direct accountability through voting mechanisms in democracy[25], various strategies in bill readings in parliamentary processes, different types of committees which makes interventions in the bill introduction process) are widely studied through cases.[26] The legal dimension of how the passage of a Bill must occur, and its different steps are often adhered to scrupulously. However, when policy has to be implemented, executive decisions are challenged leading to a stand-still for the policies. Delegated legislation, which empowers the bureaucrats, is more contested in contexts where social heterogeneity is high.

c) Administrative Law: In fact, the domain of administrative law predates public policy in the sense that public administration as a discipline precedes public policy. While the governmental activity translates legislated policies, there are chances of the abuse of governmental power. In this sense, administrative law is "the practical enforcement of the rule of law, meaning that the government must have legal warrant for what it does and that if it acts unlawfully the citizen has an effective remedy" (Wade 1971: 1). Some of the institutions or processes that translate administrative law into policy practices are Statutory Inquiries, Delegated Legislation, Special Tribunals, judicial control of ministerial and administrative powers, application of principles of natural justice, and rule of law.

d) Regulatory agency functions: In the old regulatory approaches (Schwartz and Wade, 1972) government appointed agencies (e.g. electricity board) shaped the economic behaviour of individuals and businesses. While this principle of market correction remains the primary objective of regulation even today, there is tremendous churning that is happening in the domain of regulation. After the acceptance of Washington Consensus as

[24] There are some countries (for instance USA) where lobbying in a policy domain is legitimated. In contexts, where lobbying is not legitimated, the art of influencing is opaque (Sabatier, 1988).
[25] Representation of public policy demands are primarily through elected politicians. Beginning with Tiebout (1956) the scholarship on how public choice approach influence policy decision making is presented as paradigmatic opponent to rational choice approach, where policy options are transitively ranked to facilitate decision making.
[26] See Lowi's (1972) seminal study which summarises different case studies of bill introduction processes.

economic policy, an increased reliance on market mechanisms for delivery of public services became the order of the day. Thus, the objective of regulation expanded to market allocation, protecting human rights and even to further social solidarity (Prosser 2006; Baldwin et al, 2013). Regulatory functions through pricing, licensing, standard setting, preventing anti-competition, protecting clients by enforcing responsibility on producers and service-providers, regulating profits have played a role in reducing the negative impact of market inefficiencies on citizens. The emerging jurisprudence shows that these regulatory powers are subjected to the Supreme Court of the land. Bringing both economic analysis and legal analysis into a single frame of regulation, it is one of the subdomains where law and policy interfaces in the true inter-disciplinary sense.

e) Planning Laws: One arena, where probably the majority of legal battles against the state take place, is while restricting the freedom of individual. This primarily happens when the state uses its planning control over private property in land[27]. Planning laws are extremely complicated, since the public goals come in direct conflict with the private commercial interests. Infrastructural improvement for the state requires planning, which in turn boosts the economy. However, windfalls benefits for private actors through planning activities are difficult to calculate (Alterman 2014). These planning decisions are primarily policy directives, and the Act[28] provides legitimacy and authority for planning. Increasing urbanisation across the world, and pressure on municipal authorities to provide better services have brought planning laws to central focus of policy arena in current times.

This approach of some legal domains having special significance is an instrumental use of law by public policy. It fails to identify the linchpin, which connects both of them. In fact, the closer connection between law and policy is through the nature of complexity of public problems – primarily through a process of globalisation.

[27] The principle of eminent domain – State has sovereign control over the territory – allows the private property to be acquired for public purposes.
[28] Typically Town and Country Planning Act.

Globalisation, Law and Policy

Perhaps there is no better field to interrogate the respective roles of law and policy than the current process of globalization. Globalization is the 'intensification of economic, political, social and cultural relations across borders' (Drahos and Braithwaite 2000: 9). In the area of business regulation it has meant giving primacy to the role of the self-regulating market which has translated into support for deregulation, privatization and disinvestment. This form of globalization always implies a form of war on both human and natural substance of society. As Polanyi (1944) presciently observed:

> Our thesis is that the idea of a self-adjusting market implied a stark Utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a wilderness (p. 43).

This war of the 'self-adjusting market' on people was always resisted by the people. The resistance took the form of public protests and also resort to the law. The law included both statutory law which embodied the promise of the Constitution as well as the Constitution. For the movement of a self-adjusting market, there was a counter movement from society. As Polanyi (1944) put it:

> Inevitably, society took measures to protect itself, but whatever measures it took impaired the self-regulation of the market, disorganized industrial life, and thus endangered society in yet an other way. It was this dilemma which forced the development of the market system into a definite groove and finally disrupted the social organization based upon it (p. 43).

The point to be made about both law and policy in this context is that globalization advances its agenda primarily by policy and it is left to social movements to counter the policy changes introduced by globalization using the law. As Upendra Baxi puts it, the human rights regime inaugurated by the Universal Declaration of Human Rights is being supplanted by a framework of trade related market friendly human rights (Baxi 2012, xliv).

The legal framework which we have identified as the source of the normative values of both law and public policy is slowly being supplanted. Perhaps in a slight modification of the Baxi thesis, the constitutional framework is being supplanted not by any one law but by a policy framework with its roots in adherence to the Washington Consensus in country after country.

In India this new model of a progressive divestment of state responsibility was announced through the 'New Economic Policy' inaugurated by Manmohan Singh in 1991 taking its guidance from the Washington consensus. In the Indian context it is this significant declaration of policy intent which has moulded the direction that the Indian state has taken since 1992, drifting away from its moorings in the Constitution (Pellissery and Mathew 2018). In this case policy serves as the handmaiden of globalization and constitutional law serves as the heroic bulwark against these changes. Of course it should be noted that in many cases policy seems to have won over constitutional law.

This policy change is really a global process. Braithwaite and Drahos argue that the world is witnessing an intensification of the globalization of rules and standards. This naturally means that global standards will regulate increasing areas of human life , right from what we eat, to the condition of the environment to the treatment of labour (Drahos and Braithwaite 2000).

The point to be made of course is that these global standards which can often originate in needs of a few corporations (as Drahos and Braithwaite demonstrate) become the law for many millions of people completely supplanting the constitutional framework.

Thus a study of globalization and its impacts on law and policy can only lead us to conclude that the constitution as source of values and as the embodiment of a certain policy consensus is very much under threat today in most regions of the global south. While activists have sought to defend the vision of the Constitution through movements such as the Movement to Save the Constitution in India, there might very well be a need for a policy articulation at a wider level that the defence of the values of the Constitution alone.

In this context one can note the emergence of new policy frameworks which have arisen out of the struggles of the global movement for climate justice. This has found policy recognition through a Resolution moved in the US House of Representatives by newly elected member, Alexandria Ocasio Cortez and others popularly referred to as the 'Green New Deal'. The name itself invokes both the New Deal of FDR as a model of state intervention as well as crisis of the environment. The Green New Deal acknowledges the impacts of globalization on jobs, environment, health etc and rather than seeking to mitigate its worst effects through the use of the legal framework, seeks to articulate a new policy framework.

The policy document acknowledges the environmental, social and economic ill effects of climate change, notes the problem of persistent inequality by stating that, 'the top 1 percent of earners accruing 91 percent of gains in the first few years of economic recovery after the Great Recession' and calls for new socio-economic program which can deal with the severe crisis in which the country finds itself.

As the authors note:

Whereas the House of Representatives recognizes that a new national, social, industrial, and economic mobilization on a scale not seen since World War II and the New Deal era is a historic opportunity—

(1) to create millions of good, high-wage jobs in the United States;
(2) to provide unprecedented levels of prosperity and economic security for all people of the United States; and
(3) to counteract systemic injustices:[29]

The Green New Deal is still a policy proposal moved in the House of Representatives and not yet anywhere close to being accepted. The articulation itself emerges from an older articulation by the global activism around climate justice which has repeatedly stressed that the way forward in these times of environmental crisis is to see the crisis as a moment of opportunity to transform existing socio-political structures and respond to issues of continuing injustice be it attacks on workers rights, environmental rights or refugee rights.[30]

In this conundrum of the link between law and policy, the most significant global shifts have emerged from the policy consensus referred to as the Washington consensus. The efforts to constrain the negative efforts of the Washington consensus has led to a stress on the frameworks of the Constitution in the global south. However the question to be asked is that is the time right for a global articulation of a counter policy which can displace the Washington consensus and began a shift towards a policy rooted in climate, social and economic justice?

[29]H.Res 119, https://www.congress.gov/116/bills/hres109/BILLS-116hres109ih.pdf
[30] Klein (2015) argues that one cannot think of the climate crisis outside the framework of social and economic justice and any solution to climate justice must encompass fundamental changes in both social and political structures.

Law and Policy: Practice models of reasoning

Beyond the worldview, practice elements bring us close to the ground. Both in positivist law as well as positivist policy making 'causal' models operating in respective disciplines determines the 'reasoning' they put forward for solving a case or a public problem.[31] But, how decisions are in practice really arrived at, for future course of action, backed by a creative logic of human mind[32] is in conflict with deterministic models. We find divergences in policy and law when we move out of formalist and positivist models of decision making. For instance, theory of evidence and theory of precedent (along with theories of subsidiarity) play crucial roles in the decision making in the legal domain.[33] Through these limitations discretionary role is limited, to ensure predictability (Kreis and Christensen 2013) and stability of the system that law intends to uphold. In contrast, public policy allows the discretionary social and political choices given a wide range of evidence. Though positivist model counts statistics and numbers as evidence, in post-positivist models, what counts as evidence is often influenced by the ideas and values that prevail in a given society and time, than governed by a clear theory of evidence. It is for this reason, the practice in the policy often slips into art (Wildavsky 1979) to deal with the recurrent changes without a pattern.

The practice model of law, where discretion is limited, raises a question of how effective judiciary and legal domain could be to engage with public problems. It is here, judiciary's co-existence with other institutions in the polity becomes relevant. There are two models while responding to this issue: American model of *separation of powers* and European model (practiced in Germany, Italy, Japan, Canada, India and South Africa) of *mediation of powers* (see Lijphart 1999 for an account from the perspective of political science and see Ingram 2006 for legal account). These two models are debating a knotty problem of whether legislature or judiciary has

[31] Refer chapter 1 of Bromley (2006) for the distinction of reason and cause.
[32] Read Arendt (1958) for the distinction of action and behaviour in public space.
[33] However, a judge decides to break this precedent in some landmark cases (eg. Brown vs the Board of Education of Topeka, 1954).

an upper hand in deciding the rules that affect us all. Classical philosophers such as Rousseau, Hegel and Kant viewed that legitimacy of law, in terms of obligation by an individual to obey the law, came when s/he has freely consented to the same. This is possible when elected representatives discuss and debate laws first, *mediated* by the other branches of executive and judiciary. This mediational approach is rejecting the American model of checks and balances between three separate institutions of executive, legislature and judiciary. The American model has been under strain after the famous Bush vs Gore election judgement[34] (see also Ackerman 2000).

A procedurally perfect democracy and constitutional institutions, alone, does not legitimize public policy. Lasswell's (1951: 4) articulation of "policy sciences of democracy…directed towards knowledge to improve the practice of democracy" refers to substantive democracy. The supremacy given to the elected representatives assumes a well-functioning democracy. This is one aspect where the democracies in Global South are contrasted with Global North. The incentive structure (arising from a variety of asymmetries of power and information between citizens and politicians) of political economy of public problems evinced least interest by the elected government to solve them (Keefer and Khemani 2005). Further, in several sectors, crony capitalist arrangements served public interest decisions to favour private interests. It is for this reason, the State is the defendant in more than one third of the cases in most of the courts in Global South. In such a scenario, citizen fights against the State in the court, on a range of policy issues such as access to health care and drugs, access to school education, access to food grains etc. Several scholars have argued that a court-led judgement cannot replace the public policy approach, due to monological decision-making as noted in the previous section.

[34] On the question of re-counting of the votes in the state of Florida, where Bush had marginal victory being challenged by Al Gore on the reason of uncounted votes, while the state secretary and Supreme Court of Florida ordered for re-counting, Supreme Court of America intervened and cancelled re-counting on a narrow 5-4 decision.

Yet, democratic institutions in Global South allow very limited space for reasoned deliberations[35] (Sen 2009) since the traditional institutions of religion, society and feudal political structures still overshadow the State. In the West too, the origins of law and policy were precisely for these institutions. However, a historical break[36] happened in the Western societies through the formation of citizenship and state (Marshall 1949; Turner 1990). Democracy as a form of governance and its interface with capitalist forms of accumulation, mediated through markets (facilitated by the state), required "merging of State and Society as common expressions of a set of shared values" (Clapham 1985: 12). Most of the nation-states in Global South did not have this historical break. State formation occurred through post-colonial processes. Huge social and economic inequality that existed in Global South reinforced the absence of a historical break. Thus, 'public' space was predominantly occupied by society, religion and elite political voices in Global South.

Two suggestions are made to respond to this apathy. The first suggestion is to improve the deliberations in the policy making process. This is to improve the pre-legislative processes through wider participation of the public. Very often, this is limited to elite sections of society. A participative pre-legislative process, backed up with statutory requirements could mandate politicians to adopt certain standard operating procedures before legislations are introduced in the parliament. A second suggestion is to introduce Legislative Impact Assessments (LIA). In some countries in the Global North this is a pre-requisite for the introduction of legislations. LIA undertakes prospective assessments about the costs that a particular legislation would incur. Once the feasibility assessment is conducted, the argument of impracticality is reduced to a great extent.

[35] In the sense of 'government by discussion' through a public exchange of reasons and 'open impartiality' (Sen 2009: 321–54). Public opinion and different frames of valuation that public hold influence the quality of deliberations. It is in this sense, ideas and ideational approach in public policy framework (for different ideational frameworks in public policy refer Campbell 1998) becomes the equivalent to the Constitutional values within the legal approach.

[36] On state formation refer Tilly (1975) Skocpol (1979). On democracy see Moore (1966), Hutington (1968).

Who asks, when, how and what

While defining politics, Public Policy founding scholar Harold Laswell (1936) opined as "Politics is who gets what when and how". To capture the difference and similarities between law and policy in terms of demands for the same, we found nothing better than paraphrasing the same expression. Both the legal and policy scholars are in agreement for the reasons for demanding new legislation, constitutional amendments and new policies. When norms change in society then 'felt-needs' are changed. The driving force behind such change is through re-composition of social class, when existing frameworks that govern the society is found to be outdated. A friction between different sections of society on values typically happen in such a context, leading to either collective agreement on status-quo or to demand changes.[37] While this broad agreement between law and policy is a matter of common sense, how interests are represented is contrasting.

At the core of professional practice of law, different lawyers representing the interest of their clients in the court of law become central. A range of trained legal actors (judges, prosecutors, attorney generals, notaries, registrars etc) shape the outcome of particular cases. The hiring capacity of a litigant (firm or individual) for experienced and expert lawyers plays a key role in the litigation process. Compared to this adversarial process, when conflict between two legal entities arise (typically termed as private law[38]), in the matter of public law the demand is for new norms and rules, which government needs to be adhered (rather than making citizens to comply to rules and laws). Judges in Global South have taken cognizance of the insufficiency of private incentives to litigate in the matters of public good.

[37] Giving credence to the definition of "Policy is what government choose to do not to do" (Dye 1992).

[38] The distinction and theorisation of private law and public law is classical (refer Jolowicz and Nicholas 1967). Private law referred to 'natural' rights, which could be arrived through reason in an apolitical manner. Compared to this, public law was concerned with public good, which essentially involved consultation and participation of people. However, this distinction lost its credibility since the early decades of 20th century, when formalist interpretations of law were shown to be favouring the business interests. Yet, some die-hard formalists prefer to maintain this distinction. Some scholars have introduced the concept of 'social law' to transcend this distinction (refer Gurvitch 1941). Also see how private law affecting Constitutionalism in Indian context is argued by Balganesh (2016).

These factors are execution delays, inadequacy of representation, absence of market driven fee-sharing etc. Therefore, within the framework of transformative constitution (discussed in the previous section) several judges have assumed a role of 'norm entrepreneurs'. This has led to judges setting norms and raising policy makers up to those norms. One of the very well cited example for this is how Delhi High Court forced the state government to take actions to improve the air quality in Delhi by bringing regulations on the vehicles.[39]

Adversarial nature of judicial system is often misused by private interests who could afford litigation to scuttle the public interest. Very often, decisions to advance public interest are challenged on procedural grounds of decision, rather than substantive matter. Executive action being challenged through the parameters of judicial lens falters. When the court sets aside a project for public good citing non-compliance of 'due process' principle, frustration occurs in the citizen groups, who have limited resources to follow up the litigation.

Another judicial remedy at the disposal of powerful private interests to deal with executives is through 'contempt of court' litigations. This provision is considered as the 'nightmare of an executive'. Through this process, an executive is forced to carry out an action. At the outset, this remedy may look a powerful tool to discharge the statutory duties. However, as a matter of fact, the private interests use this remedy to dread the bureaucrats to achieve the profiteering aims than public goods. It is in this context, the accountability tools advocated by civil society groups for achieving public goods become important.

An emerging area of interface of law and policy is through the demands of accountability that is increasing in Global South. This aspect is not very

[39] Chapter 4 of Mathur (2013) is an excellent case study on this. He summarises the lessons from this case as: "Political leadership may agree to the enactment of laws but block their implementation. When activist environmentalist groups do not see enough action in the enactment of laws, they search for ways that can force the government into implementing laws. Realising that it is futile to work through political leadership that has already demonstrated its resistance, they began to search for state institutions outside the electoral arena that enforce implementation" (p. 118).

pronounced in the Global North, where the shared expectations between citizens and the state are largely complementary through institutional arrangements. In the global south several service protests have disturbed the public space, and rampant corruption has demoralised the legitimacy of the state (Pellissery and Bopiah 2019). It is in this context, demand for accountability has risen. Right to Information (to share relevant information with citizens instead of office holders wielding more power through information asymmetry), Right to Service (if services are not provided in timely manner the officers are fined), or social audit (beyond the financial audit, the accountability to citizens ensured by checking if the objectives of the spending was met) are recent expressions of how law is used to realise policy objectives promised by the state.

Implementability of Decisions

Luhmann (1993) points out the self-reproductive capacity of law, by way of simple classification of everything into legal and illegal through a process of judgement. Law achieves its penultimate fruition through this self-reproduction of norms and laws. Compared to this, policy's fruition is through its implementability, not decisive judgement. Policy cannot be subjected to 'right or wrong' test on the ground of its decision alone.[40] It is in this sense of inseparability of implementation from policy decision, the famous dictum of 'policy is what it does' emerge (Schaffer 1984: Harriss-White 2003). Policy has to be deliberated with different stakeholders, through which an implementable solution is generated. Similar consultative responsibility does not lay with judges. If implementability is a consideration of judgements, they are often accused of public opinion biases.[41]

[40] There are several policies which are bad at the decision making stage. See for instance, Scott (1998). What we are refuting is the pessimistic argument of good policy as unimplementable (Mosse 2004).

[41] Yet, several judgements are shelved by executives because they are impractical. As we have seen earlier in the paper, this is a classical tension of formalism and realism. Habermas (1996: 201) acknowledges that the value considerations politicians are engaged with – not merely facts of the case – enters into legal domain: "One can no longer clearly distinguish between law and politics… because judges, like future-oriented politicians,

Though this key difference between law and policy may be found to be contrastingly stark, at the structure of decision making they are guided by pragmatism. Weber (1922) attributes this distinct development of legalism is justified, since politics (as well as religion) has different way of reasoning. In other words, universal principles may be sacrificed for particular cases when power decides. This is the bedrock of pragmatic philosophy. Charles Pierce and John Dewey, who spearheaded this movement in late 19th century and early 20th century, spoke of the limitations of deductivist and inductivist logic while solving practical problems. They proposed abduction as the method to arrive context specific solutions (for an overview see Bromley 2006). Legal traditions, which acknowledges the presence of politics, have similarly found abduction (though not sufficient) as a method not to scuttle justice purely adopting logic of the law. How do we evaluate decisions and claims (both in law and policy) with pragmatic orientation?

Sunstein (1995) finds an answer in what he terms as incompletely theorised agreements in legal decisions. In other words, different judges agree on the decision, but not the reasons for the decision. Similarly, orientation of Public Policy postponing 'hard decisions' is termed as "the science of the muddling through" (Lindblom 1959). Public policy decisions, inspired by purist theoretical orientations are often unrealistic. The decisions often arise from compromises reached by different parties. Yet, for a policy maker, the solace is in the incremental approach of the decision making. In other words, a series of decisions in different systems could be managed to produce a positive outcome. This comfort may not be possible for a judge while deciding legal cases. In other words, a litigant stands to lose or win through a judgement, rather than hoping to achieve public good incrementally through his/her case.

It is widely agreed that implementation of court judgements and policy decisions have a life of their own through executive actions. As two separate arms of government, coherence is theoretically expected. This is a matter of

make their decisions on the basis of value orientations they consider reasonable…[or] justified on utilitarian or welfare-economic grounds".

legitimacy of the state. In less legitimate states, norms of local justice prevails (Mathew and Pellissery 2009). In the global south on several occasions, executives facing stiff opposition or non-cooperation from politicians, claim the 'non-implementability'. In contexts where society is much stronger than the state forces (Myrdal 1968; Riggs 1964; Migdal 2001), this is matter of fact. On rare occasions, a court-supervised implementation through *continuous mandamus* is carried out.[42]

Institutional mapping to find the intersectionality of law and policy

Having seen the foundational assumptions within both law and public policy, we could ask the question as to 'what is possible within law' and 'what is possible within policy' in order to address public problems. While approaching a public problem, *possibility of law* is defined through eight conditions of legal processes (Raz 1979): a) prospective, b) relatively stable, c) made in conformity with clear secondary rules, d) applied by an independent judiciary, e) applied in open and fair hearings, f) susceptible to judicial review by higher courts, g) applied in a timely manner, without excessive court delays, costs etc., and h) free from arbitrary discretion of crime prevention agencies. Compared to this, *possibility of politics* opens up the problem for a diagnosis both for short-term solutions as well as long-term solutions. Thus, creative possibility places policy clarity as a pre-requisite before legal framework could be brought in.

These comparative strengths of each discipline enable us to map the institutions and functions where both these domain converge and diverge. We classify the functions and institutions broadly into three: Judicial, Constitutional and Statutory. We notice the policy spaces increase progressively in these institutions. We also have arranged institutions from least policy space to high policy space. This arrangement is with a specific

[42] Refer Sturm (1991) for a range of remedies when public law is decided in the courts. In 2002 Supreme Court of India appointed two commissioners for the purpose of monitoring the implementation of all orders relating to the right to food (PUCL vs Union of India and others, Writ Petition 196 of 2001). In the context of persistent hunger in the states of Orissa and Jharkhand, this court intervention had tremendous impact in localities where particular dominant societal forces colluded with the state forces for siphoning the public provisions.

aim. We like to show institutional spaces available if a public problem is approach purely legally (more on left side of the table) and approached in policy-centric manner (more on the right side of the table).

Table 1: Policy-centric and Law-centric Institutional Spaces to deal with Public Problems

	Function	Less policy space space		More policy
Judicial	Economic /social conflict resolutions	Civil courts	Competition commission	Regulatory agencies Planning laws
	Law administering towards protection of Body and Property	Criminal courts	Institutions with promotive functions (e.g. Legal services; legal literacy and education)	High courts/Supreme courts Constitutional benches
	Law enforcing	Police	Inquiry agencies Customs	Anti-corruption wing Mediation
Constitutional	Law making	Law department scrutinising and clearing or changing all the bills to be presented in legislature	Writ orders to government Declaring a legislation as *ultra vires*. Law commission / commissions of inquiry	Constitutional amendments and introduction of new legislations through floor activities in the Legislature Pre-legislative processes including LIA Statutory Committees
	Critical law	Law commissions	Civil society responses	People's tribunals
	Transformative role	Vulnerable sections of society seeking legal protection; Deviating sections of society from normative frames	Dealing with diversity and inequality; Prevention of crime and promotion of healthy society	Translating the goals of progress and economic growth for the country; Distributive justice through budgetary instruments and allocative roles of government;

Statutory	Executive functions	Administrative law and delegated legislation	Civil service appointments and transfers	Improving governance indicators
	Electoral	Legislations pertaining to procedures of People's representation (elections)	Election commission	Base unit where citizens interact and bargain with elected representatives for realisation of substantive democracy
	Counter-veiling institutions	Vigilance commission	Comptroller and Auditor General	Social audit institutions Public Accounts Committee
	International legal regimes and statutory responsibility of country	International court Human Rights commissions (within country)	Shadow reports to UN bodies	Bi-lateral and multi-lateral agreements; Foreign policy and trade agreements

Source: Generated by authors primarily considering the law and policy institutions in Global South. Typically, this excludes civil law tradition.

To elucidate the table for the reader, let us take the first row where the approach towards resolving economic/social conflicts in law and policy are explained. A civil suit between two citizens or citizens and the state may take place in a civil court when conflicting issues arise. Resolving the issue at that level sets some predictable ground rules for other citizens and the state functionaries (see the discussion in earlier part of this section). This public good generated through legal processes is subjected through limited deliberation. The occurrence of conflict may be minimised by way of rules of competition explicated. This rule-making process provides increased chances of deliberation. Further, economic rationality of the citizens could be taken into consideration through the regulatory agencies.

The table proves the complementarity between two domains and a continuum that is possible to achieve the greater public good through synergy of law and policy.

Conclusion

In this paper, we have reviewed the dimensions where law and policy converges and diverges. The review has shown how different traditions of conceptualising public interest exist in both law and policy. This unpacking of disciplines enables us to find arenas where interdisciplinarity could be fostered both in theory and practice. The striking point is how Constitutional principles provide guidance (both legal and policy) when conflicting value frameworks emerge on public problems. When policy alone (or law alone) is viewed as vantage point, the space where they overlap becomes less fertile for intervention. Rather than seeing these two disciplines as 'policy vs law' we have shown shared arenas of practice through examples where they often interface.

Is the interdisciplinarity a desirable objective between law and policy? Our review has shown that left to themselves, these disciplines become counter-productive to public interest. Therefore, interdisciplinarity is not a choice. Within the frameworks of democracy and capitalism, both law and public policy plays a complimentary role while advancing public interest.

The institutional crisis that is looming large over across nation-states point out that mono-rationalities of disciplines may aggravate the problem rather than solving it. Existing frameworks of disciplines are not sufficient to advance public interest. They have, rather, contributed to the making of crises. The crisis of corporate funded democratic processes, limitations of capitalism, search for responsive bureaucracy are all indicating that society moves ahead faster than the institutions which are designed for the well-being of society. This institutional crisis compels us to the search for novel ways to make law and public policy relevant for society. The traditional approach of policy as a vision to solve the public problems, and legal

approach as compliance mechanism to generate stability within this vision is no longer tenable. This redefined prophetic role has the potential to humanise the profession of problem solving itself beyond a managerial approach to public problems.

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