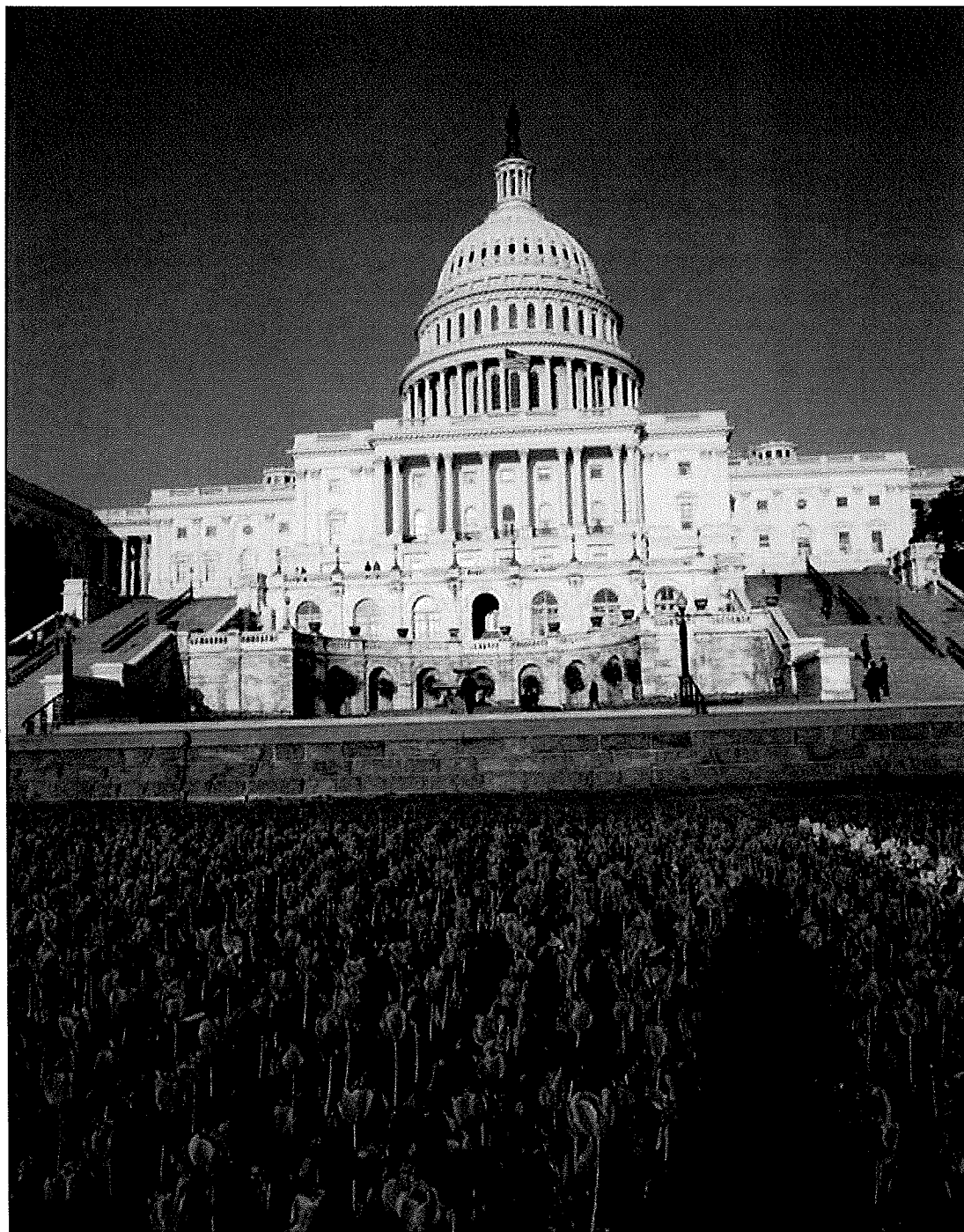


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3 The Criminal Justice Policy Process



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INTRODUCTION

The criminal justice public policy process consists of the various steps by which an issue related to crime becomes a policy that governs the criminal justice system. There are a number of public policy participants in this process, including not only government, such as the executive and legislative branches, but interest groups, voters, and the media as well. How these various participants come together to shape and form public policy for crime and criminal justice is often varied, and many scholars have attempted to create models of how these various actors come together. Once a crime or criminal justice problem does rise to the level of being an issue, many of these actors begin to call for action or the reform of existing policies; hence, the criminal justice policy process begins. The specific steps consist of problem identification, agenda setting, policy formulation, policy implementation, and finally policy evaluation. After

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the evaluation process, old methods may need to be reformed or new initiatives may be taken, starting the policy process all over again. As part of the policy formulation process, there are four different types of policies, and these contain distributive, redistributive, regulatory, and morality policy. Which type of policy is employed will determine specifically how the issue is addressed. Moreover, policies can also be substantive, meaning that they actually do something, or “symbolic,” meaning that they invoke the threat of doing something through rhetoric but don’t actually “do” anything. In the area of crime policy, it is recognized that a policy dilemma exists where the public wants something done about crime and continually calls for more programs; however, most of these programs are inefficient and ineffective.

POLICY PARTICIPANTS

Elected political actors on the federal, state, and local levels, including the executive branches, the legislative branches, and the judicial branches, impact criminal justice in their own ways. Nonelected officials, such as the bureaucracies, the media, and public opinion and interest groups, also impact criminal justice.¹ Finally, it should be noted that the criminal justice system, which includes police, courts, and corrections, are all participants in the policy process, both as instruments to carry out policy and to shape its future. While each of these participants will be expanded on later in [part 2 \(Chapters 4–9\)](#) and [part 3 \(Chapters 10–13\)](#), they are introduced here to assist in understanding policy models and the public policy process.

Executive Branch

The executive branch at the federal level is the president, at the state level it is the fifty governors, and at the local level it is the thousands of mayors who serve in towns and cities across America. All these executives play an important role in the formation of crime control policy, for they are often seen as the representative of government who can address such problems as crime. Therefore, pressure is often placed on them to place the issue of crime on their agenda, essentially a list of things that the executive is actively engaged in addressing. It has been called the “to-do” list of our government’s executives.² By focusing their attention on the issue of crime, they can advocate for certain policies and try to persuade, through the support of public opinion, the legislature to pass their particular crime policies.

Taken further, all three executives are also authorized the power of the veto—to nullify a bill that is sent to them from the legislature if they disagree with the legislation proposed. For example, in June of 2010, Governor Jodi Rell of Connecticut vetoed a bill passed by the State Legislature that would have created a new Sentencing Commission to review the state’s sentencing statutes and practices. The Governor’s explanation for vetoing the bill, a bill that received a near unanimous vote, was that it would have cost the state \$130,000, money not available in a recession. On the federal level, President George W. Bush vetoed House Resolution 810 in May of 2005, a bill that would have allowed for additional federal funding to go to embryonic stem-cell research. Bush vetoed the bill for ideological reasoning, arguing that the use of embryos is immoral and that additional federal funding would encourage the destruction of more embryos. Congress tried to override the bill, but fell short of the necessary votes. Congress again passed a bill in 2007, and once again the President vetoed the bill.

Executives are also given the authority to appoint certain criminal justice personnel that can influence the criminal justice system. Presidents have the power to appoint such individuals as Supreme Court justices, such as President Obama’s recent appointment of Supreme Court Justice Sotomayor, as well as the attorney general (Eric Holder) and the solicitor general (Elena Kagan). The power of presidential appointment is, however, checked, for presidents require Senate approval in order for the appointment to take effect. Likewise, state governors have the power to appoint such individuals as the head of the various state divisions (departments) of criminal justice services or the divisions (departments) of corrections, those individuals who are responsible for the criminal justice administration in their respective states. At the local level, mayors are often given the power to appoint those individuals who will serve as police chiefs and wardens of the local jail, thus giving them significant powers over the local criminal justice system (see [Chapter 4](#) for more detail).

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Legislative Branch

Legislative branches of government, according to Marion, are arguably the most important players in the criminal justice realm.³ The legislative branches are the U.S. Congress on the federal level, the various general assemblies on the state level, and the town councils or township trustees on the local level. The reason the legislative branch is so powerful is that they create the policies and, through their legislation, put them into place. They pass the laws that the criminal justice system will enforce. They can create new policy procedures or modify old procedures that will influence how the criminal justice system functions. And they can either increase or decrease the budget allocation to the criminal justice system to influence how the system will perform in addressing the problems of crime. Finally, it should be noted that legislatures can also plan an investigatory role into possible corruption and brutality within the criminal justice system, thus acting as a check on the powers given to the system.

On the federal level, Congress has become very active in its role of creating criminal justice policy. The first major anticrime legislation was made with the passage of the Omnibus Crime Control and Safe Streets Act of 1968. This was enacted in response to the high crime rates the country saw during the 1960s. It was followed in 1986 and 1988 by major federal legislation that focused on illicit drug use and violent crime. Another major piece of legislation, passed in 1994, was the Violent Crime Control and Law Enforcement Act, which put into motion the "100,000 Cops" program under President Clinton for implementing community policing across the nation's police departments (see [Chapter 14](#)). More recently, on October 28, 2009, President Obama signed into law the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, a bill that expanded the 1969 United States federal hate-crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability.

On the state level, legislatures have always been active in the area of crime legislation, and this activeness appears to have increased substantially since the latter half of the twentieth century. State legislatures have recently become active in legislating policy regarding the death penalty, and prior to the U.S. Supreme Court ruling that the execution of the mentally retarded is unconstitutional, states such as Connecticut and North Carolina had already passed legislation banning such executions. Another controversial issue that has surfaced over the past several years is whether an assault on a pregnant female, resulting in the death of her baby, is recognized as a murder. A number of state legislatures, including those of Idaho, Michigan, and Ohio, have passed laws stating that the criminal law of those states does recognize the crime as either murder or manslaughter. This crime and the associated legislation have become more highly visible in recent years with the case of Laci Peterson, who was eight-months pregnant and whose husband was convicted of murdering her and their unborn baby, Connor.

Finally, on the local level, it should be noted that city and town councils, as well as county commissions, are given the authority to determine the local ordinances that are considered violations of the law. While local police generally enforce state law, they are also given tools, such as noise ordinances, zoning laws, and parking policies, to ensure order in a community. These ordinances, laws, and policies are passed by the local body that serves the legislative function within cities, towns, and counties in the United States (see [Chapter 5](#) for more detail).

Judicial Branch

The judicial branch of government also plays an important role in the formation of crime policy in the United States. The judicial branch, which established our court system in America, authorizes the Supreme Court, a circuit court, and district courts at the federal level. These courts handle either federal criminal cases or appeals from the lower courts, and in the case of the Supreme Court, they rule on issues of constitutionality. The judicial branch at the state level plays a similar role in that they are the courts in which state criminal violations are heard, and intermediate (appellate) courts allow for appeals with the supreme courts being the final arbiter of state cases (unless an issue of constitutionality arises, in which case it may enter the federal courts). The judicial branch at the local level consists of those courts that enforce minor offenses, such as low-level misdemeanors, local ordinances, and traffic violations.

While it would appear at the outset that the judicial branch merely handles cases based on violations of the law and provides a forum for determining if one is guilty or not guilty, the judicial branch does become a political actor in the policy process when decisions are handed down by the higher courts. Whether it is through procedural or substantive

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law, when the court issues a decision, it establishes not only policy for the court system underneath it but also policies by which other members of the criminal justice system must abide. Arguably, the most obvious of these cases are the Supreme Court decisions that affect police, courts, and corrections throughout the land (see [Chapter 6](#) for more detail).

Bureaucracies

Bureaucracies are the agencies found on the federal, state, and local levels that carry out or implement the laws and policies passed by the legislatures.⁴ There are dozens of bureaucracies at the federal level, hundreds at the state level, and thousands at the local level when they are all added up. For example, at the federal level, there are several bureaucracies that deal with the issue of crime, such as the Department of Justice, the Department of the Treasury, and the Department of Homeland Security. At the state level, there are the divisions of criminal justice services, departments of corrections, and state police agencies. At the local level, there are over 15,000 police departments, 3,000 sheriff's departments, and thousands of local and regional jails. Bureaucracies are pervasive in American society, but they are how policies get implemented.

When Congress passes a law, the language that it uses is usually intentionally ambiguous and vague because the legislative branch sets the policy, but the bureaucracies (administrations) must determine the specifics of carrying out the intended policies. For example, when Congress passed the Brady Bill requiring background checks on all handgun purchases in the United States, it was the bureaucracies that had to determine who would be responsible for these background checks and how the system would work.

The bureaucracies often must also determine the specifics in the case of judicial decisions, as the courts are often establishing policy but not the specifics as to how it is to be enforced. For example, when the Supreme Court issued its decision in the case of *Atkins v. Virginia* (2002), it ruled that executions of mentally retarded criminals are "cruel and unusual punishment" under the Eighth Amendment to the U.S. Constitution. The problem here was defining what was meant by "mentally retarded."

Still further, presidents can issue executive orders that require the bureaucracies to begin enforcing (or not enforcing) a particular policy of the executive branch. It is then up to the bureaucracy to determine specifically how they will enforce it. For example, President Ronald Reagan issued Executive Order 12564, which required mandatory drug testing of federal employees. The problem was defining who should be tested. All government workers? Contract workers? What about the president of the United States himself?

The bureaucracies at all levels of government, those responsible for the implementation of policy, have their greatest power in defining the specific terms under which a policy is to be implemented. They are given vast amounts of discretion to interpret the vague laws that are passed, judicial decisions made, and executive orders issued, and thus they are given an enormous amount of power in determining how these policies are to be carried out, if at all (see [Chapter 7](#) for more detail).

Media

"Media" refers to all means of mass communications, including daily and weekly newspapers, television, radio, movies, newsmagazines, and so on.⁵ It is largely through the media that most citizens become aware of events in their community, in their state, or across the world. Since most people are unable to spend much time in Washington, D.C., or in their state capital gathering information about what bills are being considered, they must rely on the media to provide that information. The media help inform citizens what the government is doing. In this sense, the media act as a linkage institution between the people and the government, helping to link the people with their representatives and other elected officials.⁶

It is essential that the information that is provided to citizens by the media be unbiased so that people can make accurate judgments about the people and policies involved. If citizens do not get unbiased news coverage, the opinions they form may not be accurate. This becomes especially critical in a democracy, where citizens are able to take an active role in the government process. Especially in a system where policies are meant to reflect the will of the people,

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the media must provide accurate information about events. Regardless of whether the media provide fair coverage, suffice it to say the media greatly influence our understanding of public policies and hence are a powerful factor in shaping criminal justice policy⁷ (see [Chapter 8](#) for more detail).

Public Opinion

Public opinion is an important part of the democratic process because of the theoretical link between public opinion and policy.⁸ Government is intended to reflect the will of the people and is beholden to the people because it is comprised of elected officials. If elected officials are to retain their position in government, they must listen to their constituents and advocate policies based on their constituents' desires. If they fail to do so, they face the possibility of not being reelected. Holding politicians to this relationship reinforces the concept of democracy in American institutions. Today, however, because society has grown so large and diverse, it is generally an accepted fact that the "will of the people" is known primarily through public opinion polls. These surveys of Americans' thoughts, beliefs, and attitudes are what then often guide politicians in terms of the policies that they propose and attempt to legislate. In the case of crime policy, politicians listen to their constituents' attitudes on crime and what they think are the best solutions to resolving the problem and will attempt to create legislation that reflect these desires. It is often argued that these policies do not necessarily make for good crime policy in America but that they do reflect the will of the people. Others argue that they make poor policy and reflect only the attention paid to a particular crime issue by the media or the politicians in the first place. Regardless of which viewpoint is correct, it should be clear that public opinion influences the public policy process at all levels of government (see [Chapter 8](#) for more detail).

Interest Groups

An interest group is a group of citizens who attempt to influence decisions made with the public policymaking system.⁹ They "lobby," or act to alter the behavior of other actors. They play an important role in the system. They do this through providing money (campaign contributions), resources, campaign volunteers, or information to help a member of Congress. In addition, they provide information to like-minded people, those who have a similar interest in changing the laws to advance their cause. There are many interest groups that work to influence criminal justice policy in many realms. Some of the more well known are the National Rifle Association; Handgun Control, Inc.; and the American Civil Liberties Union. Often called pressure groups, they work toward influencing legislation so that it reflects their policy goals. Interest groups can be either specific, narrow groups or those with broad interests. Some groups are around all the time, while others come and go as issues arise and policy is changed (see [Chapter 9](#) for more detail).

Criminal Justice System

The criminal justice system, comprised of the police, courts, and correctional agencies at the federal, state, and local levels, can also have a significant impact on the public policy process. While most see the criminal justice system as enforcing the laws made by the legislature, adhering to the decisions made by the courts, and following the directions of the executive branch, this does not mean they always agree or believe that a particular policy, as it exists, is the best course of action. Rather, the criminal justice system (essentially a bureaucracy) can influence the system by advocating for specific policies and demonstrating from their viewpoint of practical experience how changes in the law or policies would allow them to deal with crime more effectively and efficiently. Hence, criminal justice practitioners, whether police officers and correctional guards or police chiefs and wardens, can play a role in the public policy process (see [Chapters 10–13](#) for more detail).

Intergovernmental Relations

When two levels of government have any relationship, it is called intergovernmental relations.¹⁰ With funding programs, the federal and state governments work together to fight crime. The two basic types of funding mechanisms are "formula," or "block," grants versus "discretionary" grants. Formula grants are distributed based on a formula that may include factors such as population or crime rates. With discretionary grants, the funding agencies have more

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ability to choose who gets what funding amounts. Many programs in the 1960s and 1970s utilized the formula method, such as the grants dispersed by the Law Enforcement Assistance Administration, which was an agency responsible for dispersing grant money under the Omnibus Crime Control and Safe Streets Act of 1968. In the 1980s and 1990s, discretionary grants became more popular, but they usually consisted of a combination of formula and discretionary grants. The Byrne grants instituted by the Anti-Drug Abuse Act of 1988 and the Office of Community Oriented Policing Services, created by the Violent Crime Control and Law Enforcement Act of 1994, consisted of both formula and discretionary grants.

When it comes to intergovernmental relations in the United States, there is always the question about who has the power when it comes to the relationships between federal, state, and local governments. A federal government means that both national and state governments share power, but that isn't always the case. Three different models have been used to explain the relationship: coordinate, overlapping, and inclusive models.¹¹ The coordinate model states that the federal and state governments have complete autonomy, power, and control over themselves and therefore must coordinate between themselves when it comes to intergovernmental relations. The overlapping model argues that many areas, including crime, impact all three levels of government and therefore that each is interdependent of the other. They must bargain with each other when it comes to intergovernmental relations. Finally, the last model, the inclusive model, argues that the national government has usurped much of the power in the United States and has therefore established a hierarchy placing itself in charge of the states with the states being in charge of the local governments. While many people believe that the inclusive model is reality and nearly everyone believes that the coordinate model is obsolete, the reality is more likely that the overlapping model is the most widely used method for intergovernmental relations in the United States. What is more important to note here, however, is that intergovernmental relations can play a serious role in the development of crime policy in the United States.

POLICY MODELS

To understand how the relationships of these participants lead to the formation of public policy, many researchers have tried to create "policy models" (sometimes called "policy subsystems") to help explain how policies are created. These are generally ways of thinking about how the policy process works, and they can assist us in simplifying what can be a very complex and often distasteful process. There is some truth to the old saying that if you like politics and sausage, you should never see how either is made. But to understand how we arrive at the criminal justice policies we have, we must come to understand those factors that contribute to the formation of crime policies in America, and this is the intent behind the policy models.

Garbage Can Model

In the early 1970s, several researchers attempted to present what they saw as being the model for how policy is made and they provided what is perhaps one of the most image-filled names for a policy model—the "garbage can model." What Cohen, March, and Olsen were trying to explain with this imagery is that like a garbage can, a lot of stuff goes into the policy process and what comes out is often just as messy, if not messier, than what goes into the garbage can.¹² In addition, they wanted to relay the fact that nearly anything and everything goes into a garbage can and that the analogy works well with the development of policy. Many of the policy participants put in requests based on their beliefs and their ideologies. What gets passed by the legislatures is often difficult to understand, and this is why bureaucracies must act to define what the legislatures meant by the bills they passed.

There was, however, some method to their silliness, namely, that they tried to explain that policymaking is really a process of "organized anarchies." This comes as a result of three different factors: problematic preferences, unclear technology, and fluid participation. The first, problematic preferences, is derived from the fact that people often fail to be very clear in their desires, and this translates into muddled policy. The second issue they addressed was unclear technology, meaning that those who make the policy often don't understand how things really work and thus make policy that is not as workable as it should be. Finally, fluid participation meant that the various participants described previously come and go from the process without much consistency.

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The garbage can model is perhaps best exemplified by the passage of the USA PATRIOT Act of 2001, passed in the aftermath of the attacks on New York City and the Pentagon on September 11, 2001. The USA PATRIOT Act, which actually stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism," was the result of some very rapid hearings, proposals, and bills being put forth on homeland security. After the September 11 attacks, Congress was trying to pass laws that would ensure that America was safe from future attacks, but it was an organized anarchy because despite the urgency of the situation, Congress still went through the machinations to pass a bill. Yet the outcome of the bill shows that there were many different thoughts about how best to protect America (problematic preferences), the makers of the policy did not consider exactly how these policies would be implemented (unclear technologies), and while many of the participants remained active throughout the bill's creation, many came and went from the process (fluid participation). The result was a very large bill that targeted many diverse security issues, ranging from money laundering by terrorists to increasing the investigatory powers of the government in terrorism-related crimes. What complicated the bill's passage was the fact that a variety of agencies could utilize the laws, but the one agency that would take the lead, the Department of Homeland Security, didn't even exist yet. It would seem that the garbage can model is a good policy model description for how much of our crime policy is created.

Iron Triangles

One of the complaints with the garbage can model is the fact that it is not very specific as to how policy is really created. It assumes that we simply get a whole bunch of people together, and they'll create something. This also makes the assumption that all these people carry equal weight, but we know that is not true. That is why the concept of "iron triangles" might make more sense as a description of the policy process. Iron triangles have often been called by a variety of names, including policy whirlpools, cozy little triangles, triple alliances, and power triads. Regardless of the name, the basics of this policy model are the same, that there are three key players in the policy process who wield the most weight and that this never changes. This is where the "iron" comes in, to denote never changing or never bending.

The three key players in the iron triangles are executive bureaus, congressional committees, and interest groups.¹³ These do not appear to be the most obvious policy participants, as public opinion as a whole, the media, and the president tend to be excluded. Generally, when we think of the most visible participants, it is these three we think of, not the bureaucracies, congressional committees, or interest groups. But what the iron triangles model argues is that the reality behind policymaking is that these three wield the most influence and that they are the policy participants who create most policy.

The executive bureaucracies are the agencies that deal with the issue on a daily basis; hence, they are in the best position to create new policy that has a chance of actually working. In the case of crime, it is argued, the Department of Justice and the Federal Bureau of Investigation making crime policy makes more sense than going with the public will or what several news reporters might advocate. The congressional committees are those that actually control what bills are considered by the entire Congress, and they are the committees that actually draft the legislation. Despite the wide variety of input they may receive, their negotiations between the bureaucracies and the interest groups are really what shape the policies they create. Finally, the interest groups have influence because of time, money, and power. Since the average American does not have the time or the money to influence members of Congress, they do not have a lot of power. But when they band together under an interest group that can work full time to lobby congressional committee members to propose, draft, and push a specific policy in their committees, these interest groups come to wield a lot of power. As a result, crime policy is derived from the machinations of these three entities.

One criminal justice example of the iron triangles in action in the creation of crime policy comes in a Virginia law of 1995 that was aimed at making it easier to obtain a concealed-handgun permit in that state.¹⁴ In early 1995, a confluence of the Virginia Department of Criminal Justice Services, under the direction of then Governor George Allen, began to look at changing state law related to the carrying of concealed weapons. At the time, judges had an enormous amount of discretion to determine who should be allowed to carry concealed, and the Allen administration wanted to make it less arbitrary and more systematic. The National Rifle Association and the Law Enforcement Alliance of America agreed with the proposed changes and worked with the legislative committees to draft a new policy. The law was passed on April 6, 1995; signed into law by Governor Allen on May 5, 1995; and went into effect

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on July 1, 1995. The iron triangle that formed around Virginia's concealed-handgun policy changed the law that minimized the judges' role in issuing permits, making it more open while at the same time disqualifying felons and those convicted of such crimes as driving under the influence or assault and battery as well as illegal immigrants and anyone under age twenty-one.

Issue Networks

While the iron triangles might be more specific than the garbage can policy model, many have argued that it conveys too much of a backdoor and underhanded method of creating policy and ignores the other policy participants in the process. At a minimum, the critics argue, there is a great amount of influence placed on these "three sides of the triangle" that cannot be ignored. From a larger perspective, however, these other actors do play a significant role that is just as important as the three sides of the triangle. This is why Hugh Heclo argued that the iron triangle concept is incomplete and that a more accurate model should be the "issue networks model".¹⁵

Issue networks simply makes the argument that when policy is being formulated, networks begin to form around the policy issue. A network is essentially a systems approach to something that consists of a number of interrelated parts. In the example of the USA PATRIOT Act cited previously, it is clear that the public was mobilized because of September 11 and demanded something be done to fight terrorism. The media were mobilized and continually reported on the issue. Congress gathered as many ideas from interest groups and the bureaucracies as possible to create the very extensive act, and there is no doubt that President Bush was energized to sign into law something that would demonstrate that the U.S. government was taking action. According to Heclo, however, these networks form around a particular issue, meaning that the networks will not be the same from issue to issue. Crime policy will tend to consist of the same congressional committees, the same interest groups, and so on, whereas another policy, such as environmental policy, will have a different network of policy actors participating in that policy network.

Issue-Attention Cycles

During approximately the same time frame that the policy model issue networks was being advocated by Hugh Heclo, another key scholar in the field of public policy, Anthony Downs, was advocating that an "issue-attention cycle" exists, explaining how issues become part of the public policy process.¹⁶ He argued there were five stages that an issue tended to progress through. The first was the "preproblem stage." Here an issue exists, and some interest groups, experts, or both may be very alarmed by the problem, but it has not gained widespread attention among the American people. A good example is terrorism in the 1990s. Americans were not overly concerned about terrorism, but they knew of the concept. However, scholars and experts in the criminal justice and security fields were alarmed about the prospect of increased terrorism. Therefore, while the scholars and experts were concerned, the American people were not.

The second stage is then "alarmed discovery and euphoric enthusiasm." In this stage, a dramatic event or series of events brings the attention to the forefront of all the people, and they demand that something be done. In the case of terrorism, September 11 was clearly a dramatic event that galvanized the American people to demand that something be done to fight terrorism and prevent future attacks. Downs does note that while people demand that the problem be solved, they also demand that it be solved "without a fundamental reordering of society itself."¹⁷ In other words, people do not want to change their lifestyles, nor do they want to give up any rights, but they do want terrorism stopped.

The third stage is "realizing the cost of significant progress." This stage is the point at which the euphoria over the issue is gone. It is also the point at which people realize that the various policy solutions proposed or implemented are going to cost an enormous amount of money, time, and resources and that the costs of these measures may not be realistic. In the case of the post-September 11 era, America is gradually coming to terms with the costs of fighting terrorism, and the cost in taxpayer dollars, American lives, and resources may be more than most Americans are willing to bear.

The fourth stage is the "gradual decline of intense public interest." It is here that, in absence of any additional dramatic events, people become complacent and no longer demand change. People become bored with the issue and lose interest, and therefore it is no longer at the forefront of their concerns. In addition, it is most likely that another issue

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has diverted their attention and that the people have entered the second stage with respect to that other problem. Although it may be too soon to argue that America has lost interest in the “war on terrorism,” many have voiced this concern, stating that most Americans have become complacent as a result of no new attacks on American soil.

Finally, the fifth stage, according to Downs, is “the postproblem stage.” Here the problem is reduced to something that no longer is on the public mind and is not actively being addressed. In some cases, the problem is considered no longer a problem, or there is a belief that it has been solved. In other cases, it no longer bears any relevance to most American people and therefore is no longer a problem. If it is considered a problem by the experts or interest groups, then it could be said to exist in the first stage, where it would cycle back to the preproblem stage, and if given another dramatic event, the policy would once again move through the issue-attention cycle. One thing to note, however, is that Downs did not specify a time frame on each stage. As a result, some issues may move through the issue-attention cycle very rapidly, say, over a summer, while others may move through the cycle over a generation or two.

Advocacy Coalitions

Although the policy model of issue-attention cycles tells how things become issues and the policy model of issue networks takes all the various policy participants into consideration in its model, they are not without their drawbacks. The issue-attention cycles tell us not how issues get addressed but only how they become issues. The issue networks convey the belief that the issue networks remain fixed within an issue area. In other words, the players may change from issue to issue, but the players within a specific issue remain fairly constant. Sabatier attempted to address both these issues (and more) by expanding on the issue network concept and detailing that not all issues are composed of the same participants.¹⁸ For example, all crime policy does not always include the National Rifle Association or the Judiciary Committee. Rather, a policy on lowering the blood alcohol level at which point someone is legally intoxicated from .10 to .08 may actually consist of the interest group Mother’s Against Drunk Drivers (MADD) and the Transportation Committee, which can use its power to regulate transportation in the United States and its highway funding to achieve this policy as was actually done in 2001. Therefore, the policy model that Sabatier advocates is known as the “advocacy coalition.” The idea here is that each time a policy issue arises, like-minded policy actors (or policy entrepreneurs as they are often called) will come together to form a coalition to advocate change.

As Sabatier and Jenkins-Smith explain, the concept of advocacy coalitions takes a broader stance by synthesizing much of the past literature as represented in the previous models.¹⁹ They articulate three key factors to consider when discussing advocacy coalitions: (1) there are competing advocacy coalitions, and these actors come from both public and private institutions as well as all levels of government and share a basic belief about how the world should be ordered; (2) there are changes that occur over time that lie outside the policy issue, specifically, social, political, and economic factors, that can redefine the issues; and (3) that there are some facets of the policy process that remain constant, specifically, the process by which issues are addressed, otherwise known as the public policy process (described later in this chapter).

A criminal justice example that may serve well is in the policy area of domestic violence. Police response to domestic violence prior to the 1970s was generally very limited, and any abuse within a marriage was often treated as a “family matter” and not a “police matter.” A mixture of the civil rights and women’s movements of the 1960s and 1970s brought this issue to the forefront of American social issues and moved it into the political realm, where a variety of advocates began demanding policy change. The changes in this particular area were outside the policy process, but it was ultimately the policy process that would begin creating new laws in the area of domestic violence. By the early 1980s, most states had domestic violence laws on the books, and by the mid-1990s, all states had passed the proarrest policy where police officers may arrest when there are visible signs of abuse and file charges on behalf of the state. This alleviated the necessity of having the abused victim file the charges, which usually ended up being dropped at a later date.

Policy Streams

If the biggest criticism of the advocacy coalition model was that it was too difficult to apply to the real world, the biggest criticism of the next policy model is that it was too simplistic. Yet in a way, this is also its appeal. John

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Kingdon, in his award-winning book *Agendas, Alternatives, and Public Policies*, laid out his policy model, which consists of policy streams and policy windows.²⁰ Kingdon uses the imagery of streams flowing through the land, setting their own course, and traveling at their own pace. Eventually, streams converge and travel together for a while before eventually splitting off on their own again. According to Kingdon, it is when the three streams come together that a window of opportunity opens for policy change, and this is how policies move through the public policy process.

The three streams that Kingdon refers to are the problem stream, the political stream, and the policy stream. Kingdon argues that there are often problems that exist, but unless various political actors can mobilize the general public to get behind the problem or unless there is a major galvanizing event, the problem will remain an issue for only a select few and not become a public policy issue. In the second stream, the political stream, Kingdon explains that there are a number of political actors that are constantly addressing a variety of issues both inside and outside government. Inside the government, he argues that the key player is the president, along with his staff and political appointees. In addition, there are the bureaucrats who are tasked with addressing specific policy areas. Moreover, there is Congress, specifically Congress members, their staffs, and the committees. Outside government, he argues that there are the interest groups, academics, researchers, consultants, the media, political parties, and public opinion, all with various stakes in particular issues. Finally, the policy stream consists of the ideas that can actually become bona fide policy solutions and that, given the opportunity, can be passed by Congress and signed into law by the president.

The success of a specific issue becoming bona fide policy is the window of opportunity. Kingdon argues that when these three streams converge (the problem, political, and policy streams), there is a window of opportunity in which policy can be passed and made law. If one of these streams is missing, there is no window of opportunity. If the policy stream has a solution to terrorism and the political stream is behind it but there is no September 11, there is little chance the policy will become legislation. If, however, there is a September 11 (the problem stream), the various political actors are galvanized for action (the political stream), and there exists some solutions to the problem (the policy stream), the window of opportunity has opened up, and legislation can be passed, as we witnessed with the USA PATRIOT Act, which passed within a month of the attacks on American soil.

Punctuated Equilibrium

One last public policy model is that of punctuated equilibrium as articulated by Baumgartner and Jones in their book *Agendas and Instability in American Politics*.²¹ Their concept isn't so much a new public policy model as a clarification of other models that details how items move into the public policy process. Nearly all the policy models tend to argue that issues develop over the long term and that these issues are constantly being addressed as a matter of routine. Perhaps the only one who had previously advocated something different was Downs in his issue-attention cycle, but Downs tended to suggest that policy issues surfaced through dramatic events only. Baumgartner and Jones combined the two concepts into what they called punctuated equilibrium.

The way policy change is derived, according to Baumgartner and Jones, is through the long-term process where an issue is continually addressed by a fairly constant process often consisting of the same actors. However, it is often the case that something can come along and disrupt this constant or, according to Baumgartner and Jones, punctuate the equilibrium. This can be either a serious event, as Downs described, or a redefining of the policy issue. An example of the latter type is the use of tobacco in America. From the early 1900s to the 1950s, American attitudes toward tobacco were fairly positive, and the only issue surrounding it was taxation. In the 1950s, when it was perceived as a health hazard, the positive attitudes toward tobacco rapidly declined, negative attitudes rapidly increased, and tobacco shifted from a taxation issue to a health issue. More recently, in the 1990s, it has shifted more toward a criminal justice issue, as the enforcement of tobacco bans, underage smoking, and illegal selling of tobacco has once again shifted the way in which tobacco policy is addressed. Baumgartner and Jones also cite the criminal justice issues of drug, alcohol, and child abuse as being issues that rapidly surfaced and would be redefined. Drug abuse rapidly shifted from a health issue to a law enforcement issue in the late 1960s, alcohol abuse saw a similar shift in the 1970s, and child abuse came to the forefront as a criminal issue in the 1980s. Although all these had been previously addressed, how they were addressed appeared to change almost overnight.

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PUBLIC POLICY PROCESS

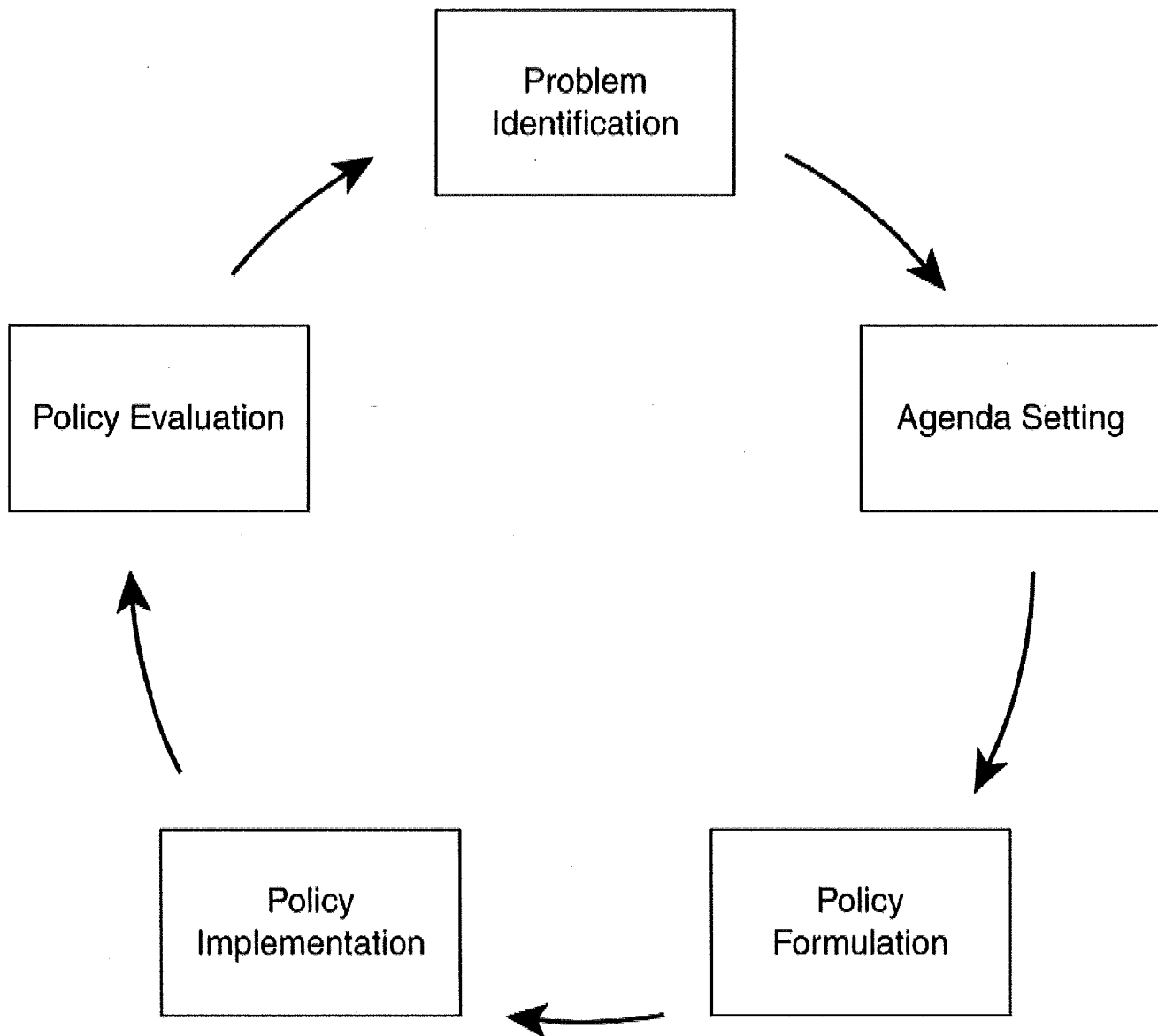
The previously mentioned policy models assist us in understanding how the public policy process works, but they do not tell us how things become identified as problems, become issues to be addressed, and then how they eventually become public policy or law. The public policy process, as detailed in a very complex five-step process, is what provides us with this information. The five steps, in order, are (1) problem identification, (2) agenda setting, (3) policy formulation, (4) policy implementation, and (5) policy evaluation (See [Figure 3.1](#)). It is to these five steps of the public policy process that we now turn.

Problem Identification

In the first step of the public policy process, the problem at hand must be identified and then must move from being perceived as a private issue affecting only a small group of people to a recognized public problem.²² Prior to an issue becoming identified as a problem, it exists as a condition. It is something that is simply part of life, and when something happens as a result, we simply accept it and move on. For example, during the 1950s and 1960s, accidents caused by drunk drivers were simply that: accidents. There was no perception that this was a larger issue that needed to be addressed. When accidents, injuries, and even deaths occurred from drunk drivers, the incidents were dealt with by those involved but were not considered issues that needed addressing by the government.

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Figure 3.1 The Public Policy Process.



Once a condition is identified by someone or a small group of individuals as a problem, there then exists, at a minimum, the perception of a problem. For example, if enough people perceive the issue of drunk driving as an issue, then it begins to move from a condition to a problem. Cobb and Elder talk about the “expanding public” when they detail how a problem may capture the attention of one individual who voices their perception of the problem.²³ Other like-minded individuals agree and unite to strengthen that voice. Eventually, this may have a citywide, regional, statewide, and finally nationwide impact. This is often referred to in the media as a “grassroots” issue, one that surfaces from the ground up. As the public expands and the problem moves to the level of being an issue, much in the way that Downs spoke of the issue-attention cycle, then it becomes an issue for all the people, and specifically the government, to address.²⁴

It has also been said that a problem becomes an issue when public disagreement exists over the best solution to the problem.²⁵ This is because an issue is often a “conflict between two or more identifiable groups over procedural or substantive matters relating to the distribution of positions or resources.”²⁶ Before problems are acted on, they must be

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recognized by legislators as issues of concern to the voters. In other words, the problem must capture the attention of major decision makers and be recognized as a viable and significant issue. For example, the previously mentioned issue of drunk driving moved from a condition to a problem when one girl, Candy Lightner's thirteen-year-old daughter Cari, was killed by a drunk driver near her home in Fair Oaks, California.²⁷ On May 3, 1980, Cari was walking to a school carnival when a drunk driver struck her from behind. The driver had three prior drunk driving convictions and was out on bail from a hit-and-run arrest two days earlier. Candy Lightner, after banding together with other mothers who had similar experiences, created a local California chapter of MADD. Later that year, another chapter was created in Maryland. MADD received the attention of the Reagan administration in 1982 and began to find its place on the government agenda. By 1983, the issue of drunk driving had become a major public policy issue and one that was actively being addressed by a majority of states as well as the federal government. Drunk driving had moved from a condition, was recognized as a problem, and became an issue as lawmakers debated on how best to address the problem. This issue had thus proceeded from condition to problem to issue and was now on the "agenda"—the second stage of the public policy process.

Agenda Setting

In agenda setting, decision makers must select issues that will be given priority and that will be ignored. At any given point in time, there are thousands of issues that are constantly vying for consideration by government, but only some of them will find a place on the government's agenda.²⁸ Certain problems are recognized as needing action, while others are postponed and some simply ignored. Crime, although always on the political agenda of both federal and state officials, does have periods of greater or lesser visibility.²⁹ Many political actors contribute to creating the agenda: The president, members of Congress, interest group representatives, the media, and members of the general public can all help influence the final agenda.³⁰ However, it has been noted that many of these groups compete with one another in the agenda-setting process by competing to attract the attention of various government actors. In addition, competition can also occur within these groups because the debate may center on the specific definition of the problem, and this can then lead to "competition over which groups and views to mobilize and how to do it."³¹ One example is gun control policy.³² Many groups compete for government attention to their specific policies related to gun control (or no gun control) in the hopes that government will pass (or ignore) legislation based on their views. In addition, debate can also occur within these groups about how best to deal with the problem of shootings, whether it is public education, gun locks, or gun bans.

Cobb and Elder distinguish between two types of agendas: the systemic agenda and the institutional (or government) agenda. The former "consists of all issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority."³³ For an issue to be placed on the systemic agenda, it must have widespread attention, a shared concern that some type of action is required, and a recognition that the matter is appropriate for the jurisdiction of a government unit. This agenda is vague and does little more than identify possible problems of concern; no alternatives or possible solutions are suggested.

Typically, gun control is on the systemic agendas of all presidential administrations. Possible problems relating to gun ownership concern most elected officials, and few officials will argue that gun control legislation is an area of concern inappropriate for federal government activity. But quite often, administrations will go no further than simply recognizing the issue as a viable one. This is the pattern that followed in the Reagan administration prior to the attempted assassination of President Reagan.

The issue of gun control moved onto the formal (or institutional) agenda after the assassination attempt of President Reagan. The formal agenda is the second type of agenda described by Cobb and Elder and refers to "that set of items explicitly up for the active and serious consideration of authoritative decision-makers."³⁴ In this step, an issue must be identified as a problem requiring action or as an issue involving policy alternatives. The formal agenda is more specific than the systemic agenda, as it identifies the specific aspects of the problem or alternative solutions to a problem. The formal agenda is often more significant because it is a commitment for action.

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It has been noted that the formal (or institutional) agenda may have a variety of issues undergoing various levels of attention. These have been referred to as specific types of institutional agendas and may consist of (1) the problem definition agenda (those items that are receiving active and serious attention to be defined), (2) the proposal agenda (those items that have reached the proposal stage where the problem has been defined but a solution is sought after), (3) the bargaining agenda (where proposals have been defined and a specific solution selected, but how this will be developed is debated), and finally (4) the continuing agenda (consisting of those items that come up for regular review).³⁵

In moving from the systemic to the formal (institutional) agenda after the attempt on Reagan's life, the issue of gun control received more serious attention from elected legislators. It was at this point that a policy alternative was suggested as a means to address (or solve) the problem of the excessive ease of availability of handguns in the United States. Here one can see that the problem is being addressed more specifically with alternative solutions suggested.

Kingdon argues that issues move from the systemic agenda to the institutional agenda as the result of two situations: the means by which officials learn about conditions and the ways in which conditions become defined as problems. In the first instance, the means, Kingdon includes indicators, focusing events, and feedback. For example, indicators can be used to assess the extent of the problem, or focusing events such as disaster can point to a problem that needs attention. Or, officials may discover problems through the feedback from an existing program. Second, according to Kingdon, conditions must become problems. He writes that we "put up with" conditions every day, but they must rise to the status of problems before they are placed on an agenda. Another way of saying this is that the first step in the public policy process largely dictates the second step.

Another way of understanding how items make it on the government's agenda is offered by Cobb, Ross, and Ross in their discussion regarding three models of the agenda-building process.³⁶ These three models consist of the outside initiative, the mobilization model, and the inside initiative model. The outside initiative model "accounts for the process through which issues arise in nongovernmental groups and are then expanded sufficiently to reach, first, the public agenda, and finally, the formal agenda."³⁷ The passage of the Prison Rape Elimination Act of 2003, interestingly, fits this particular model. In 2001, the Human Rights Watch, an interest group, released a white paper titled, "No Escape: Male Rape in U.S. Prisons."³⁸ From that document, numerous interest groups began to lobby Congress, including such diverse groups as the Just Detention International, Amnesty International, Focus on the Family, the NAACP, the Salvation Army, and Human Rights Watch. They were able to convince two Republicans, Senator Jeff Sessions (R-AL) and Representative Frank Wolf (R-VA) to introduce the Prison Rape Elimination Act, a zero-tolerance bill aimed at preventing and detecting incidents of sexual violence in prison and creating a National Prison Rape Reduction Commission. The bills garnered considerable bipartisan support and passed with unanimous consent in both the House and Senate. The bill was signed into law by President George W. Bush on September 4, 2003.

The mobilization model "considers issues which are initiated inside government and consequently achieve institutional agenda status almost automatically."³⁹ This model is almost the reverse of the outside initiative model in that, rather than something arising onto the public's agenda and then moving to the government's agenda, this will move from the government's agenda to the public's agenda. Government may generate a solution to a problem, but the bill will need the support of the people for it to pass. Clinton's "100,000 Cops" initiative in 1994 was a government-proposed policy that was intended to support police departments across the country in the implementation of community policing and to help fight crime. It was a government-created program that attempted to generate public support for its passage, which it succeeded in earning, and was subsequently passed as the Violent Crime Control and Law Enforcement Act of 1994.

The third model is the inside initiative model. This model "describes issues which arise within the governmental sphere and whose supporters do not try to expand them to the mass public."⁴⁰ A good example of this was the creation of the United States Sentencing Commission when President Reagan signed the Comprehensive Crime Control Bill into law on October 12, 1984. This comprehensive bill included the Sentencing Reform Act of 1984, which mandated that the commission create a set of sentencing guidelines to which every federal court judge would be bound. The reason for the determinate sentencing guidelines was to ensure that defendants who committed similar offenses would be treated alike and that judges would no longer be too lenient or too harsh. This was a policy created within the White House that was not intended to be moved from the government's agenda to the public's agenda for the very fact that the

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administration did not want interest groups to have a say in how the reforms would be made. Although it did come to the attention of many groups and there were vocal critics against the administration's proposals, the administration did not actively seek public support for its proposal, which was made into a law that took effect on November 1, 1987.

Policy Formulation

The third step in the policymaking process is policy formulation.⁴¹ This refers to the process by which formal policies are suggested and created. There are a number of factors that go into determining exactly how a solution will be formulated into a policy. One issue is to what extent the policy will be addressed. Will it consist of a major overhaul of the existing system, such as the sweeping changes in the federal sentencing guidelines in the late 1980s or the abolishment of parole in Virginia in the early 1990s? Or will it consist of small, incremental changes, such as increasing the sentence for drug offenders from a maximum of twenty-five to thirty years in a federal penitentiary? Another factor that is often the basis for the scope of the policy is the budget. Often economic constraints will cause the solution to a policy to shift from the allocation of money to simply the reallocation of existing resources. In severe economic constraints, it may limit the bill to simply a symbolic stand on the issue, such as congressional approval of the "Just Say No to Drugs" campaign. In the worst-case scenario, budget woes may force Congress to simply do nothing, and hence policy formulation is to formulate no policy.

In addition to these constraints, Congress must also determine specifically how the policy will be formulated, what it intends, and who will be responsible for the next stage, that is, implementation. There are generally four types of policies—distributive, redistributive, regulatory, and morality (see the following discussion for more detail)—and the type of policy often dictates specifically how a policy will be implemented. A part of this is what the policy intends to do in order to alleviate or solve the problem as well as how specific Congress intends to be in determining what will be done. Often Congress is very generic in the use of its language, allowing the president and the administrative bureaucracy to determine the specifics of policy implementation. And which bureaucracy is given the responsibility for the problem often plays into how the problem will be solved. After September 11, 2001, when Congress decided to take over control of the baggage screeners in airports, it debated placing them under the Department of Justice or the Department of Transportation. Ultimately, they decided on the latter, but had they chosen the former, baggage screening would be vastly different today.

A formal process does exist for a legislative proposal to become a law in our system of government. The process is very technical and involved and has been created by Congress over its long history. It begins with the introduction of a proposed bill into either the House of Representatives or the Senate. Eventually, both chambers of Congress must agree to the proposed bill for it to become a law. After introduction into one of the two chambers, the bill is assigned to the most relevant committee, which then assigns it to a subcommittee. Here the subcommittee members go through "markup," which means that they rewrite portions of the proposal to make the bill more accurate or more politically feasible. For the members to do this, the subcommittee can hold hearings and listen to testimony from a variety of different sources in an attempt to gather information on the proposed legislation. After markup, the subcommittee members are required to vote on the proposed bill; if a majority votes in favor of the legislation, it then moves to the entire committee.

The full committee can also hold hearings and markup sessions, or it can choose not to. In either event, the members of the entire committee must then also vote on the proposal. Again, if a majority votes in favor of the legislation, then for further action the bill moves to the floor of the chamber in which it originated.

The same process must be accomplished in the opposite congressional chamber. For example, if a proposal for a federal death penalty has followed the previously described path in the House of Representatives, the same journey must be taken in the Senate. Frequently, the two versions of the bills passed by the House and Senate are not identical. In other words, as a result of the markup sessions, the House and Senate may have passed different versions of the same proposed legislation. In that case, a conference committee meets to resolve differences. This committee is composed of representatives from both the House and the Senate who attempt to iron out differences in the separate bills. It is necessary to do this because only one version of the bill can be sent to the president for approval.

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After the conference committee version is agreed to by the committee members, the proposed bill (referred to as a conference bill or report) must then return to the entire floor of both the House and the Senate for another vote. If the bill is approved, the legislation is sent to the president for action. The president, at this point, has a few options. The president will either sign the bill into law or prevent its enactment by vetoing it.

The Brady Bill, after being placed on the formal government agenda and as part of a larger piece of proposed legislation, began its journey through the policy formulation process set up by Congress. The first step was a formal introduction into both houses of Congress, followed by assignments to the respective judiciary committees. A series of hearings were held in which various interested parties attempted to influence the final outcome of the proposed bill. Eventually, both the House and the Senate passed individual versions of the bill, at which point a conference committee met to resolve differences. The Brady Bill moved no further than the conference committee before Congress adjourned for the session and thus did not become law. It would take several more introductions and vetting through the process before the bill would be approved by the entire Congress and signed into law under President Bill Clinton.

Policy Implementation

The fourth step in the policy process, implementation, has often been described as “what happens after a bill becomes a law.”⁴² It essentially refers to “doing something” to carry out the mandate provided by Congress. Implementation consists of those activities that occur when agencies respond to the policy mandates of legislators. The agency personnel must gather necessary resources and develop a plan of action for carrying out that policy initiative in order for it to be effective.⁴³

As legislators cannot foresee all the questions that might arise in implementing a program and because they often lack the expertise for creating specific programs, most of the legislation passed by Congress is vague. Thus, the legislators delegate a great deal of discretion to the various executive agencies to interpret vague policy statements produced in legislative enactments. As the agencies must fill in the gaps in the legislation, they are, in effect, making policy. This is why many have argued that policy should be clearly stated and consistent with other policy objectives and that those who are going to implement the policy should be involved in the formulation of that policy.

As a result, one can see why implementation has been described as a process, an output, or an outcome.⁴⁴ As a process, it is a combination of government decisions and actions that are directed toward putting the congressional mandate into effect. As an output, it is the way in which program goals are pursued, such as the amount of funds to be allocated to the enforcement of the Brady Bill. Finally, as an outcome, it is the impact that the policy implementation has on the problem itself: did it help reduce crime?

Policy Evaluation

The final step in the policy process is a review of the programs after they are implemented. Policy evaluations are concerned with the actual impacts of legislation or the extent to which the policy actually achieves its intended results.⁴⁵ Policy evaluation can be done by the courts, Congress, or personnel either inside or outside the agency. The purpose of program evaluation is to determine if the program is doing what it said it would do and if it is reaching the goals identified by policymakers. Another concern is whether the program is being accomplished in a cost-efficient manner.

There are two types of evaluations: process and impact. Process evaluations, often known as output evaluations, are those evaluations that look to see if an agency is meeting the mandate set forth by Congress. One example is the mandate under the Violent Crime Control and Law Enforcement Act of 1994, which mandated that the Department of Justice, through the Office of Community Oriented Policing Services (COPS), deliver grants to state and local police agencies to hire police officers under the concept of community policing. A process evaluation conducted on the COPS office found that they were in fact quite successful in moving the grants to the police agencies in a timely manner.

The second type of evaluations is known as impact evaluations and is often referred to as outcome evaluations. These consist of studies conducted on the effect that congressional policies have actually had on a specific problem. In the

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case of the COPS grants, they were intended to assist agencies with the hiring of additional police officers to implement community policing, which was aimed at reducing crime and improving the quality of life in the city or town receiving the grant. The outcome of the COPS grants has received mixed reviews. While some have argued that it did assist in the reduction of crime, official crime rates have been falling throughout the United States since before the implementation of the program; therefore, it is difficult to discern whether the COPS grants truly had any impact. In addition, many agencies secured the grants but then failed to implement a community policing program, or they started one up but it was limited to the officers they hired. Other agencies used the grants to start up or expand existing community policing programs that have developed far beyond the hiring of a few additional officers. Therefore, evaluating the impact of the COPS program has been more mixed.⁴⁶

More recently, there has been a growing awareness that modifications of existing policy are possible at this step (by legislators or bureaucrats), as is identification of other problems and goals. In this sense, then, the policy process can begin again at the first step, making the development of public policy a cyclical process. What is truly at work here is policy change. If the policy is being implemented as intended, in a cost-efficient manner, and it is achieving its goals and solving problems, there is no reason to change the policy. However, this is generally the exception and not the rule. Problems associated with the policy may not have been adequately addressed or new problems arise so that policies must be changed.

The most likely scenario is change, and there are four types of policy change: linear, consolidation, splitting, and nonlinear.⁴⁷ Linear change consists of the direct replacement of a program or policy by a new program or policy. An example could be the replacement of the Drug Abuse Resistance Education (DARE) with an entirely new program to reduce drug abuse by teenagers. Consolidation is when several programs are collapsed into one program. This is essentially what President Nixon did when he collapsed the Bureau of Narcotics and Dangerous Drugs, the Office of Drug Abuse Law Enforcement, and the Special Action Office for Drug Abuse Prevention into the Drug Enforcement Agency (DEA).⁴⁸ Perhaps the best example of this is the creation of the Office of Homeland Security, which has absorbed over a dozen existing agencies or agency functions under one administrative department. Splitting a program consists of taking a preexisting agency and splitting its duties into two separate agencies. There has often been talk of splitting the two functions of the United States Secret Service, which consists of counterfeiting and presidential protection, into two agencies, but tradition and politics have prevented this from happening.⁴⁹ Finally, nonlinear change consists of a complex organizational change that doesn't follow any of the other methods intended to improve a specific program. Perhaps a good example of nonlinear change is the Bush administration's movement to keep the office of Community Oriented Policing Services, while at the same time drastically cutting its budget.

Finally, there is always the possibility that a specific policy will be terminated. In some cases, this is simply to end an old program or policy and to replace it with a new one (consolidation, as described previously). In other cases, it is to end outdated or inadequate policies that have failed to work or to continue producing results. In still more cases, Congress places a "sunset" clause into a specific bill, meaning that after a certain amount of time, the agency will be shut down. Policy termination can also mean "functional termination of a policy area, organizational termination, policy termination, and program termination."⁵⁰ Respectively, a specific policy such as drugs may be terminated through legalization of drugs, an agency such as the DEA might be terminated, a specific policy such as drug treatment may be terminated, or a specific program such as methadone treatment may be terminated. Although sometimes policies will be terminated with a dramatic suddenness, most tend to dissolve slowly over time.

PUBLIC POLICY TYPES

One more aspect of understanding public policies and how they are implemented is understanding the type of policy that is being used to resolve a problem. The type of policy employed to resolve a problem can vastly change the way in which government deals with the problem. The four types of public policies are termed distributive, redistributive, regulatory, and morality.⁵¹ The first two are generally about how money is to be distributed within their respective policies, while the latter two are aimed at distributing values.

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Distributive Policies

Distributive policies are those aimed at providing benefits to everyone. There are no qualifications on who receives the benefits, and if there are, they tend to be more administrative than anything. Distributive policies are often referred to in the media as “pork-barrel projects” because these are often add-ons to bills that bring money into a representative’s or senator’s state, usually through a quid pro quo—you vote for my pork project, and I will vote for yours. While generally given a negative treatment, as many pork-barrel projects are seen as wasteful spending, distributive policies can be a very powerful policy type because everyone wins. For example, with the passage of the Violent Crime Control and Law Enforcement Act of 1994 and the grants provided to state and local law enforcement agencies under the “100,000 Cops” initiative, everyone won with this program since it was nothing more than a pork-barrel project writ large. Any police agency (or city or town that wanted to start a police agency) could simply apply to the Office of Community Oriented Policing Services with a one-page form via fax, and they would be awarded a grant to hire a new police officer receiving 75 percent of that officer’s pay and benefits for three years. The main reason for rejection was that the form was filled out improperly. Other than that, there were few impediments to receiving the grants. As a result, the police departments benefited, but so too did the local politicians, such as the mayor and city council members. Members of Congress could claim credit for bringing the grant into their state, and the president could claim credit for helping make America’s streets safer. This credit claiming is one of the greatest benefits to distributive policies, while the biggest detractor is the cost.

Redistributive Policies

The second public policy type consists of redistributive policies. These types of policies are different from distributive policies in that they will shift benefits to specific groups by taking benefits away from other groups. Rather than everyone being a winner, as in distributive policies, here some people are winners and some losers. This type of policy is often referred to as “robin hood” politics, as it often “takes from the rich to give to the poor.” For example, in the area of drug policy, when Congress allocates funds for enhancing drug treatment through behavioral modification programs and methadone treatment for convicted drug offenders, it may take away funds that could be used for other programs for nonconvicted offenders, for drug addicts, or for drug prevention in the schools. In addition, it is taking money from taxpayers who are not addicted to drugs and will not receive this benefit in order to give it to someone who is addicted. The benefits to redistributive policies are that they draw on a large amount of resources and bring them to bear on a specific problem. The drawback to redistributive policies is that they do not benefit everyone, only a select few.

Regulatory Policies

The third public policy type is regulatory policy. In regulatory policies, there is often not a tangible benefit that is distributed; rather, a policy is created to ensure that people do things in a certain way. Regulatory policies are designed to protect the public at large by establishing the conditions under which various activities can or cannot take place. What they regulate is behavior. In the criminal justice field, nearly all the policies passed are regulatory by nature. For example, dictating the blood alcohol level at which someone is legally considered intoxicated and impaired is a regulatory policy aimed at regulating behavior. Determining the amount of crack cocaine a person must have in his or her possession to be charged with the intent to distribute and the corresponding penalty associated with a conviction is also an example of a regulatory policy. Another example (discussed previously) can center on how best to regulate the selling of firearms and ammunition in America. The benefit of regulatory policies is that they are established to ensure greater order in society by attempting to control people’s behavior. The drawbacks to regulatory policies are that they can become overbearing on the system, become too complex to enforce, or simply be ignored.

Morality Policies

The last public policy type is morality policy. While regulatory policies can often be complex because they are based on a variety of issues, morality policies tend to be much simpler in that they deal with what is known as “first

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principles.”⁵² These principles are based on individual morality, which determines what is right and what is wrong. Because these types of policies are rooted in people’s understanding of what is right and wrong, there is usually little in terms of compromise that can be achieved; hence, they tend to become very divisive issues. And as a result of people’s first principles and their highly divisive nature, the public tends to be more heavily involved in these public policy issues than most others. In criminal justice, many of the issues that we deal with are, by their very nature, morality policy issues. Examples include pornography, abortion, death penalty, drugs, homosexuality, gambling, euthanasia, gun control, and suicide. Based on their morality, people tend to have an understanding that these issues are “right” or that these issues are “wrong.” As a result, we have people who favor pornography and those who do not. We have those who are in favor of abortion and those who are against it. Because such issues are based on morality and because they are two-sided issues, morality policy is often the most difficult for government to deal with. Therefore, any understanding of benefits and drawbacks are also based on individual ideology, so what may be a benefit for one group, say, legal abortion, may be a drawback for another group.

Perhaps the most important point about the four public policy types is that, however, Congress structures a specific policy will largely dictate how that policy is implemented. For example, if Congress wants to control crime, it could create a distributive policy to give every police department in the nation a certain amount of dollars to fight crime. Everyone wins. However, not every police department faces the same level of crime, and if each is given an equal share, the impact it will have on a small police department will be great, while the impact on a large metropolitan agency will be almost nonexistent. Therefore, Congress could make it a redistributive policy that uses money from all over and then redirects it only to cities that have a significantly high crime rate. A few crime-ridden cities will benefit for sure, but the majority of agencies will not. Thus, rather than formulating the policy as a redistributive policy, they could make it a regulatory policy aimed at reducing crime. For example, Congress could pass a regulatory policy aimed at reducing gun-related violence by mandating that all states increase the penalty for felonies committed with firearms to life in prison without parole or otherwise lose all Department of Justice funding. While this regulation may force states to change their laws, it may be too burdensome for states and local jurisdictions to implement. Therefore, to reduce crime, Congress could use a morality policy, perhaps still under the concept of gun control (clearly a morality policy issue), by passing a law that bans all firearms from private ownership unless the individual is in the military, police service, or security work. Certainly this last policy would be divisive, and there would be many who would support such a ban, but there would be many who would come out to protest over such a sweeping ban. All these policies are aimed at reducing crime, but the type of policy employed will determine how exactly the policy will be implemented.

SUBSTANTIVE VERSUS SYMBOLIC POLICY

One last method of looking at policy is discerning whether it is a substantive policy or symbolic policy.

Substantive Policies

Substantive policies are the types of policies that deal with a tangible and substantial problem and the policies that are formulated are created to directly deal with them in a concrete way. Substantive policy is often known as “material” policy because it provides concrete resources or very real powers to those who benefit from the policy, or they can impose a real disadvantage on those who are adversely affected by the policy.⁵³ Perhaps a more simplistic way of looking at these policies is that they are the ones that actually *do* something. For example, criminal justice policies that actually allocate funds to build new prisons at the federal level or funds given to police departments to purchase new crime scene collection equipment are examples of substantive and material policies. Another substantive policy that may not necessarily be tangible but is nonetheless concrete in that it gives law enforcement real power is the ability of law enforcement to conduct wiretaps on suspected terrorists in the United States via the USA PATRIOT Act of 2001.

Symbolic Policies

The other types of policies are those that are considered symbolic policies. Symbolic policies are those policies that are used to appeal to people’s desires and values rather than to any form of tangible benefit.⁵⁴ Politicians will often use

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symbolic language in their speeches because it is language that evokes a particular response from the public but doesn't have to provide a tangible award. In other words, symbolic policies do not deliver what they appear to deliver; rather, they appeal to the cherished values of people, such as peace. For example, in criminal justice policy, politicians will often weigh-in on their desire to "fight crime" and "get tough on crime" without having to ever say what it is they will do regarding crime. Hence, their policies may be advocated not for really tangible benefits but rather to appease the public to demonstrate that they are doing something about the crime problem. A good example of a criminal justice symbolic policy resulted in the increase in carjackings during the early 1990s. Various members of Congress and the president supported getting tough on carjackings, and relevant legislation was proposed, passed, and signed into law at the federal level. Despite the very real law being passed, the law was mostly for appearances because federal law already had robbery as a violation of the law, and carjackings are nothing more than a robbery. In addition, when the law passed, there were no reported carjackings on federal property, such as federal parks, where the laws applied, and there have been few applications of the law since. The passage of the law was inherently a symbolic policy.

CRIME AND THE POLICY DILEMMA

The public policy process is an integral part of how crime is addressed in America at the federal, state, and local levels. Yet there are some problems with the outcomes of these policies that two authors, Feeley and Sarat, call the "policy dilemma."⁵⁵ The authors examined the rise of crime in the 1960s, which created a rise in public concern that resulted in the passage of the Omnibus Crime Control and Safe Streets Act of 1968. The bill, passed by Congress, created the Law Enforcement Assistance Administration (LEAA) under the Department of Justice in order to deliver grants to state planning agencies that would then disburse grants to state and local agencies in order to address the problem of crime. The authors followed the policy from its problem identification stage all the way through the implementation stage and then conducted an evaluation on both process and impact. The emphasis was more heavily on process than impact since they were analyzing only the first five years of the program. Despite this limitation to the study, their conceptualization of the policy dilemma is important, especially in the area of crime policy.

Feeley and Sarat argued that over the twentieth century, especially after the passage of the New Deal under the Roosevelt administration, people have become more demanding of government services. In the 1960s, the demand for government, especially the federal government, to do something about crime reached a critical juncture. Prior to the 1960s, most people, when it came to the issue of crime, looked to their local governments or, at most, their state governments. Yet the outcry over rising crime rates in the 1960s invoked the public policy at the federal level to become more involved in crime control policy and hence the creation of the LEAA and its grant-funding process. In addition to this increased demand, the other thing that Feeley and Sarat argued was that with the expansion comes increased inefficiency and ineffectiveness in the delivery of government goods. These two factors—high level of demand for government services and the problem of efficiency and effectiveness—"exist independently, although they are clearly interrelated."⁵⁶ The policy dilemma that results from these two factors refers "to the combined inability of government to enact and implement programs that work and to the political pressure for still more government programs."⁵⁷

The roots of this dilemma are said to come from the way people think about public policy and what they want government to do. People want government to act and deal with the problems of crime, but at the same time people do not want the actions of government to threaten or harm their interests. A perfect example of this is with the passage of the USA PATRIOT Act in 2001. People demanded that government do something about terrorists in the immediate aftermath of September 11, 2001. However, people were also quick to demand that none of these actions should interfere with our civil liberties. Many scholars have argued that we simply cannot have it both ways, thus creating the policy dilemma. We want something done to address the problems of crime, but we do not want our liberties violated, so we propagate programs that are often ineffective and not very efficient. We then complain about these programs being inefficient and ineffective but still demand more programs. This is exactly what we continue to do with the DARE program. We want it, but we complain that it does not keep kids from doing drugs or that it is inefficient in its delivery. However, this does not lead people to fix the existing programs or reconsider their efficacy; rather, we simply demand new and improved programs.

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Conclusion

The criminal justice policy process consists of a number of policy participants, ranging from the executive and legislature to criminal justice experts and practitioners in the criminal justice system. To explain how these participants contribute to the formation of crime policy in America, a number of policy models have explored this interaction. Some have explained that little sense can be made from one policy to the next (garbage can model), others have explained it in terms of relatively few participants (iron triangles), while still others point toward a confluence of factors (policy streams). All these models contribute to our understanding of how a crime problem becomes crime policy in the United States. Specifically, by looking at the public policy process, we can see how a crime problem is recognized (problem identification), gains the attention of government (agenda setting), is created (policy formulation), and then is carried out by those in the criminal justice field (policy implementation). In addition, we also can understand why it is important to assess the success of the policy (policy evaluation) in order to determine if the policy should remain unchanged, modified, or terminated. It should also be noted that the public policy type (distributive, redistributive, regulatory, and morality) and whether it is substantive or symbolic policy will play an important role in the type of response to crime policy the public receives. And since the public continues to demand more government services, especially in the area of crime and criminal justice, it is even more imperative that we make good policy in order to avoid the pitfalls of the policy dilemma.

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