Chapter Three

The Public Policy Process

Beloved by social scientists, models of how the world works are at their best only approximations. Public policy process models are no better—and no worse. The process described in this chapter appears to be an elegant and linear process, but be forewarned that public policy is in reality a complex, confused, and confusing Rube Goldberg device into which an infinite variety of ingredients are poured, and out of which comes . . . a surprise.

Still, as a heuristic device, a linear description of public policy can be helpful. The four basic types of public policy—distributive, competitive regulatory, protective regulatory, and redistributive—have their own set of policy actors and characteristics. These four types and their relationship to environmental policy are discussed in the first section of this chapter. The remaining sections discuss the mechanics of the public policy process. First, government reactions to the 1969 Santa Barbara oil spill mentioned in chapter 1 provide an overview of the policy process. The second section describes the three stages of the policy process: agenda-setting, policy formulation and legitimation, and policy implementation and evaluation.

Types of Public Policy

Domestic public policy can be divided into four major categories: distributive, competitive regulatory, protective regulatory, and redistributive.1 Many policies have some characteristics of more than one of these policy types; nevertheless, the categorization is useful because it highlights the different policy actors and policy processes associated with each type.

Distributive Policy

Distributive policy supports private activities that are beneficial to society but that would not usually be undertaken by the private sector. For example, certain kinds of medical research are expensive and have little, if any, financial reward for the companies involved; the government may subsidize such research. Farmers need support through the bad times if they are to be able to produce agricultural products on a regular basis; the federal government instituted price supports. In the nineteenth century, settlement of the American West was physically dangerous and economically risky; the government, eager to encourage western expansion, gave away land and leased federally owned lands at below-market prices. This subsidy of western cattle ranchers continues today.

Distributive policies usually have low visibility. The people involved (e.g., the ranchers and Bureau of Land Management [BLM] officials) maintain cordial relations, and unless some unexpected event triggers media interest, the decisions governing this sort of policy are made by subgovernments, also known as iron triangles. A subgovernment is a coalition of three groups of actors: the affected interest group, the relevant agency in the executive branch, and the appropriate congressional committees or subcommittees. They are quiet and stable networks of policy actors with similar interests and goals.

Distributive policy is not often the focus of public controversy, and the subgovernments are king. When controversy does arise, the subgovernments disintegrate, only to re-form when the dust settles. During the first Reagan administration, some western states attempted to obtain control of the federal lands within their state boundaries. This "Sagebrush Rebellion" pitted BLM against their normal allies, the cattlemen. In previous times, the environmentalists and BLM had been bitter enemies; the environmentalists claiming that poor management and overgrazing were ruining the public lands of the West. One BLM official told me that he would never have believed a year before the Sagebrush Rebellion started that he would be leaking advance information to the environmental lobby. However, the environmentalists were, for once, on the same side as BLM as they both fought to keep the federal lands out of the control of what they perceived as rapacious state developers. Once the controversy subsided, the environmentalists and BLM found themselves again on opposite sides of the fence, figuratively if not literally.2

Competitive Regulatory Policy

The control of radio broadcasting by the Federal Communications Commission (FCC) is an example of competitive regulatory policy. Several parties
compete for the right to broadcast on a certain frequency; the successful applicant is then regulated by the agency. Thus, competitive regulatory policy limits the provision of specific goods and services to a few who are chosen from a group of competitors, and the selected companies are then regulated. Other examples are television station licensing and, in the pre-Reagan days of intense industry regulation, airlines and trucking company route assignments. The regulation of trucking companies was so extensive at one time that trucking lines were told specifically which goods could be carried between two points and in what direction. Airlines had to agree to service feeder lines in order to be awarded major, profitable runs.

Since deregulation, the importance of competitive regulatory policy has diminished considerably. These are usually low visibility policies, and decisions are made at the bureau level, or by independent regulatory commissions such as the FCC or the Securities and Exchange Commission, or by the courts. Often the regulated industries have a great deal of input into the regulatory decisions. This leads to the problem of the captured agency, an agency that identifies so closely with the interests of the regulated industry that it forgets its responsibilities to society. For several years after the commercial development of cable television, the FCC was accused of being a captured agency in thrall to the Big Three of broadcasting: ABC, CBS, and NBC. Critics of the agency attribute the slow acceptance of cable television to the networks’ ability to influence FCC decisions.

Protective Regulatory Policy

This form of policy protects the public by regulating private activities. Unlike the other forms of policy, this may be an active policy, not only prohibiting certain actions (such as emitting sulfur dioxide into the atmosphere) but also requiring some activities (building smokestacks or inspecting automobiles or recycling waste). When a banker tells his loan customers the total price of a car (including interest), he does so because of protective regulatory policy, not because he has a big heart.

The main actors in the protective regulatory policy are the committees and subcommittees of the Congress, the full House and Senate, executive agencies, and business interest groups. Many of these policies cannot be relegated to a subgovernment level; for example, an announcement by the surgeon general of the United States about the medical dangers of secondhand smoke is front-page news. Usually, however, these policies have only moderate visibility, and the parties involved work out their decisions through bargaining and compromise.

Most environmental policy falls into the protective regulatory category. Some observers of the environmental scene blame the slow improvement of the nation’s environment on the federal choice of protective regulatory pol-

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icy as a vehicle for compliance, rather than distributive policies. By defining pollution control as punitive, allowing certain amounts of pollutants to be released or generated and stored and then punishing any excess, the federal government provides corporate America with little incentive to develop waste reduction policies or to look for alternate production methods. Critics suggest that more progress would be made by rewarding recycling, material conservation, and waste reduction than by continuing an adversarial, litigious approach.

Redistributive Policy

The most controversial type of public policy is redistributive, which seeks to change the allocation of valued goods or services—money, property, rights—between social classes or racial groups or genders. It is the most controversial because in this policy, unlike the others, there are usually clearly defined winners and losers. Most often the winners are from disadvantaged groups in society; for example, affirmative action is a redistributive policy. Because of the high visibility of this type of policy, the political actors also have high visibility: the president, the congressional leaders, and large interest groups.

Environmental Policy

Most environmental policy fits either the protective regulatory policy category (for example, air and water pollution policies) or distributive policy (for example, national parks). Sometimes a policy may overlap categories. For example, the burros at Grand Canyon National Park were a nuisance and also destroyed habitat needed for native species. Unfortunately for the Park Service, burros are cute; one in particular, Brighty, had been the subject of a very popular children’s book and had a statue erected to him on the South Rim. In order to preserve the canyon ecosystem, the Park Service decided to shoot the wild burros, prompting an avalanche of protest. The Park Service ultimately compromised, allowing animal protection groups to rescue many of the burros before shooting the rest. Clearly the Park Service, usually categorized as a distributive policy agency, was not engaged in distributive policy when it decided to destroy wild burros to protect native species. Another example of crossover is in the federal food stamp program. Federal food stamps are used as a common example of redistributive programs, but they actually originated as a distributive program to buy surplus food during the New Deal.

Sometimes astute politicians can sell a program as one politically acceptable form of policy, knowing all the while that the real impact will be otherwise. Urban renewal is such a program. Advertised as a redistributive pro-
program to help the poor of the inner cities, in fact the poor were pushed out and high-rise offices and expensive condominiums replaced the slums. The poor simply shifted to more crowded and less convenient tenements. Instead of being redistributive, the program was distributive, subsidizing urban real estate speculators.

As might be expected, agencies that cope with overlapping policy types face especially difficult administrative problems. Since each policy type involves different sets of actors, the complexities of political bargaining, budget protection, and client services are multiplied. The troubles of the Environmental Protection Agency are partly caused by such dual responsibilities, since the EPA administers grants and contracts as well as enforces regulatory statutes.

The Mechanics of Public Policy

One of the unfortunate truths about the depth of our political concerns is that we care most about those incidents that are closest to us. When an airplane crashes on an international flight, the media reports the number of Americans dead or injured, and if the plane is filled entirely by foreign nationals, the crash has only the briefest mention on the national media and is then forgotten. Just so do environmental issues come into the national consciousness. For most Americans, the first really big oil spill was the January 1969 Santa Barbara spill. However, on 18 March 1967, the Torrey Canyon, a 970-foot tanker with 117,000 tons of crude oil in its storage tanks, ran aground fifteen miles west of Land’s End in Cornwall, northeast of the Isles of Scilly. Initially, about 40,000 tons of oil were released by the ruptured tanks, but salvage efforts were futile, and all 117,000 tons of oil spilled into the western end of the English Channel. Eventually the oil washed up on the holiday coasts of England and France.

American environmentalists were a small but hardy band in the late sixties, and they watched the Torrey Canyon incident with horror. Oil experts, however, noted the narrowness of the Channel, and the peculiarity of the prevailing winds and currents and assured the American public that such an accident would not happen in American waters. Environmentalists received similar assurances about oil wells off the Pacific coast. The general public was not very worried, but the environmental activists were, and when the Santa Barbara well blew, they were quick to take advantage.

Rapidly an interest group called GOO (Get Oil Out) was formed. The American media were much more concerned with the destruction of forty miles of Southern California beaches than with the holiday sites of France and England. Within three days, GOO had collected more than fifty thousand signatures on petitions asking the president to stop deep-sea coastal oil drilling. Attention focused on the federal Outer Continental Shelf (OCS) oil leasing program administered by the Bureau of Land Management (BLM), although two other federal agencies—the U.S. Geological Survey and the Federal Water Pollution Control Administration—were also involved. The leasing program was temporarily halted by Interior Secretary Walter Hickel.

The incident also drew attention to the growing problem of other forms of marine oil pollution. Twenty percent of oil in the world’s water comes from shipping, including accidents, bilge water dumping, and emptying ballast tanks. Natural oil seepage from the ocean floor contributes 15 percent, while offshore production is responsible for only 5 percent. In the North Sea and North Atlantic alone, scientists estimate that as many as 450,000 marine birds die each year from chronic oil pollution. The public uproar over the Santa Barbara spill led to the passage of the National Environmental Policy Act in December of the same year; it was signed into law on 1 January 1970. It also had long-term repercussions for the federal oil leasing programs. Despite the oil crisis in the early seventies, OCS leasing goals were never met. The coastal states and communities were reluctant to have oil rigs drilling off their coastlines, and the political pressures caused by a constant stream of small spills and a few major disasters like the Exxon Valdez (which poured 11 million gallons of oil into Prince William Sound in Alaska) kept the public interested in the impact of oil development in the marine environment. In 1978 the Outer Continental Shelf Lands Act Amendments incorporated the coastal states into the planning process for OCS development. Since then, although OCS oil production exceeds that of the dry lands, the political influences have prevented massive exploitation of OCS.

Here we have a microcosm of the policy process. A trigger event (the Santa Barbara spill) is used by policy initiators or policy entrepreneurs (environmental lobbyists) to induce policy formation and legitimation (passage of NEPA) to achieve policy goals (de-emphasis on OCS wells and re-emphasis on environmental protection) that are implemented throughout the country (NEPA regulations and state involvement in OCS planning).

The environmental policy process is exceedingly complex. What appears as a relatively straightforward process is actually an iterative process. Evaluation, or predicting impacts and outcomes, begins with the agenda-setting process, and interest groups dissatisfied with the predicted outcomes begin immediately to reforge the agendas. Formulation and legitimation are shaped in a fluid system that reflects the constant activities of interest groups and the bureaucracies, which all the while are conscious of the possibility of judicial intervention. Evaluation strategies are chosen and rejected on the basis of their projected political outcomes.

What is necessary to negotiate the political process successfully? Political experience, flexibility, an acceptance of the validity of political decision making, and, above all, the realization that nothing is ever final. The next
three sections discuss in more detail the various stages in this process, beginning with the setting of the public policy agenda.

Agenda Setting

Why do citizens strive to get their issues on the public agenda? Why not be satisfied with convincing their own circle of friends and colleagues of the correctness of their position? They strive to have their preferences turned into public policy for three reasons. First, public policy is legitimate. Government policies are usually regarded as legal obligations that citizens have a duty to uphold. The big exceptions—speed limits, Prohibition—are notable because they are exceptions. Nongovernmental groups and institutions may generate important policies (for example, corporate investment decisions or church rules on female clergy) that may be regarded as binding on the members of the organizations, but these policies have no authority for people who are not members. Only government policies are legally binding, and only government policies are legitimate almost automatically.

A second characteristic of public policy that encourages citizens to work for their own preferences is the universality of government policies. Membership in other policy-generating groups is voluntary, and these groups make policy only for their own members. But government policy applies—or may apply—to everyone.

Finally, only the government has the power to force compliance with its policy decisions. Government has a monopoly on coercion in society; other organizations can legally exercise only limited sanctions. Only government can imprison (or even execute) individuals for refusing to obey its directives, although we have laws that protect us from the government using coercion arbitrarily; for example, the Fifth Amendment states that no person (not citizen but person) “shall be . . . deprived of life, liberty, or property, without due process of law.”

So, because government actions are legitimate, enact societywide policies, and enforce these policies, people work to have their policy preferences become public policies.

Systemic and Institutional Agendas

In public policy there are two basic forms of agendas: systemic agendas and institutional or decision agendas. The systemic agenda consists of all the issues that a political community agree need to be resolved and that they also agree are within governmental authority. These are the issues that wax and wane in the public attention until finally the issue recurs often enough or becomes sufficiently problematic that it can no longer be ignored. When this occurs, policymakers place the issue on their institutional agenda: the list of issues they plan to consider actively and seriously.

Systemic agendas are fairly abstract and fluid. Issues may appear on the systemic agenda for years before actually reaching the institutional agenda; some issues never do make it. Systemic agendas identify problem areas but rarely propose concrete alternatives and solutions. As a general rule, the more people are interested in and concerned about an issue, the more likely that issue is to reach the systemic agenda and perhaps the decision agenda as well. Rarely, however, does an issue suddenly become a topic of general conversation; dramatic trigger events (see below) such as the Chernobyl reactor disaster are the exception. Usually concern for an issue moves through predictable stages of public concern before reaching the systemic agenda.

The narrowest kind of public is the identification group, people with a detailed awareness of specific issues. Local groups concerned to stop a nuclear reactor in their neighborhood form identification groups. Attention groups focus on the broader implications of the issues concerning identification groups: antinuclear power groups are attention groups. Unlike the identification group, which is interested only in the reactor threatening their community, the attention group opposes nuclear reactors everywhere. The attentive public is the generally informed and educated layer of society. These are the people who, once they are convinced that an issue is important, inform the wider public. They may not have a passionate opposition to nuclear power, but Three Mile Island and Chernobyl have convinced them that nuclear power is a danger. They will write articles, make speeches, join protests, lobby their elected representatives, and discuss the issue at church suppers. The combined effect will be to bring the issue to the attention of the general public. The general or mass public is the last segment of the public to become involved in pacing an issue on the systemic agenda. These people are less active, interested, and informed than any of the other kinds of public. Getting their attention requires highly generalized and symbolic issues, and keeping their attention for any length of time is difficult. However, without their concurrence, reaching the institutional agenda is virtually impossible.

Institutional agendas are specific, concrete, and limited. They identify the problem and its alternative solutions; often institutional agendas work within strict time constraints. Usually an issue must first be placed on the systemic agenda, although sometimes an issue is so critical that it moves immediately to the institutional agenda. It is, however, important to note that some issues are on the institutional agenda without passing through this process each time. The Congress (and indeed, most legislatures) deals with four kinds of problems: chronic problems, such as the federal budget that
recurs annually; sporadic problems such as reauthorizing environmental legislation; crisis problems, such as the savings and loan bailout that plagued the Congress in the early 1990s; and finally discretionary problems. This discretionary agenda is chosen by legislators for many reasons: perhaps they have an ideological commitment to the issue, like Paul Rogers of Florida, who struggled for strong emission standards during the fight over the 1977 Clean Air Act amendments, or there are rewards to be gained in the political fray (paying old debts or creating new ones) or in subsequent elections (Rogers, for example, represented a south Florida constituency desperately concerned with respiratory problems of the elderly).

Reaching the Decision Agenda

Issues reach the decision agenda in a variety of ways. One way is through individuals or coherent groups working deliberately to have their concerns addressed by government; another is less deliberate, seeing policy proposals as ingredients in a “policy primeval soup” where ideas and solutions blend, sink to the bottom, or rise to the top before being skimmed off by government and served up on the decision agenda. Often the agenda is reached by a combination of the two. To extend the metaphor, the individuals may stir the soup, vary the ingredients, or add a few spices to tempt the appetites of the decision makers.

According to the instrumental view, there are four ways to create issues and four corresponding categories of initiators or policy entrepreneurs (people who use situations to place issues on the agenda); these categories may overlap. “Readjustors” may perceive an inequality that affects them; they then strive to have the inequality reduced. For example, rural residents, who do not themselves generate low-level nuclear waste, fight to stop waste disposal sites from being sited in their communities. “Exploitors” manufacture issues for their own gain. For example, when George Bush made an issue of the pollution in Boston Harbor during the 1988 presidential campaign, he was probably acting as an exploiter. “Circumstantial reactors” take advantage of unanticipated events or “trigger events” to create or to magnify issues. For example, the Santa Barbara oil spill was used to halt OCS development; the crash of a fixed-wing aircraft filled with tourists led to regulations prohibiting below-rim sightseeing flights in the Grand Canyon; the terrible forest fires that ravaged Yellowstone National Park in 1988 led to a reevaluation of the controlled burn policies of the federal resource management agencies. Finally, “do-gooders” use events to publicize issues but gain no personal benefit from the issue. They may use inequalities or unanticipated events, but their motivation differs from the readjusters or circumstantial reactors. For example, the Greenpeace activists arrested in 1995 for protesting French nuclear testing in the Pacific are not motivated by private gain or perceived inequalities.

Some issues never reach the mass public and yet manage to be placed on the institutional or decision agenda. This often requires desperate measures by the identification and attention groups. Issues that are confined to an identification group gain the institutional agenda when the group members threaten to disrupt the system; an example of such disruption is monkey-wrenching carried out by radical environmental groups that despair of the traditional political process. Issues that are confined to attention groups are brought to the decision agenda by threatening legislators with legitimate sanctions, such as recalls, and withholding contributions or votes. When an issue can only reach the attentive public, access is easier because the attentive public tends to have political power by virtue of their social and economic status. Here political brokerage techniques or controlling the media will bring an issue to the institutional agenda. The media is, of course, available to and used by the identification and attention groups, but the attentive public often has formal control of the media.

Timing is critical in gaining the attention of the policy decisionmakers. Policy problems may exist for quite a long time before a politically acceptable solution is found, and even then, if the decisionmakers have other priorities, the issue may not make it to the decision agenda. All three of these “process streams” of problems, policies, and politics must meet for an issue to reach the agenda of government. When they do—often because an initiator has taken some critical action—a window of opportunity is opened, and the issue is under active and serious consideration by government officials. The passage of the Endangered Species Act in 1973 is an example of the three streams coming together to open a window of opportunity:

Its passage resulted from a fortunate combination of circumstance: a powerful environmental lobby backed by an aroused public, a legislative urge for association with environmentalism, enormous ignorance about the political consequences of its implementation, growing scientific advocacy of species protection, and (no trivial matter) the threatened extinction of the American bald eagle, the national symbol.

Small wonder that the Endangered Species Act passed almost unanimously.

Policy Formulation and Legitimation

While the entire policy process is political, the formulation and legitimation phases are the most intensely political. Many actors are involved in the for-
mulation stage. The bureaucracy, although most involved in the implementation phase of public policy, has a role in formulation by suggesting policies to the legislature and providing information on the strengths and weaknesses of proposed solutions. The bureaus are given this role because they have, or are perceived to have, technical expertise that the elected officials and their staff lack, although the bureaus often have their own organizational needs to be satisfied by the policy process (budgetary constraints, personnel demands, program protection and expansion). The bureaucracy most often reflects the president's policy position, but the president and the bureaucracy may have separate goals in the policy process. Many times during the first Reagan administration, for example, the staff at EPA were at odds with the goals and initiatives of the political appointees and of the president. In fact, the accusation that the bureaucracy could not be trusted with the conservative agenda was a constant complaint of the administration. It took powerful and clear messages from the mass public to convince the president that the commitment to a protected and healthy environment was now a fixture in American values.

The media are also involved in formulation and legitimation as well. While they may create issues, as they did in the Watergate scandal and often do on television programs such as 60 Minutes, the media are most often used by other actors to influence public or political opinion. Special interest groups watch the process carefully and intervene in those issues that affect their own concerns.

Problem Definition

One of the first difficulties in policy formulation is problem definition: legislators must first agree on the parameters of the problem before they can begin to formulate solutions. An example of the difficulties in problem definition may be found in the issue of tropical rain forest destruction. This destruction occurs in four main stages: road building and lumbering; colonization (made easier by the development of roads and the clearing of timber tracts) and crop planting (since the new settlers cannot live off the forested areas); soil exhaustion (because there is no dormant season); and grass planting and cattle grazing (inefficient, marginally profitable, and a contributing factor for soil erosion). Assuming that the governments having jurisdiction over the rain forests want to halt the destruction, or that the developed countries are convinced that this issue is important enough to justify interference in the activities of a sovereign nation, how might this problem be defined? The problem definition will guide the solutions to be attempted.

As a start, this might be defined as a timber problem. Obviously, one incentive to reduce rain forest destruction would be to reduce the world market for rain forest lumber. In a world where even expensive eyeglass frames are made from mahogany, reducing the demand for fine furniture seems unlikely. A second definition might be as a problem of population pressures. If the developing countries with rain forests could house, feed, and employ their own populations within the urban or already existing rural environments, these people would not need to move into the rain forest areas denuded by the lumber companies. Unfortunately, there seems to be little political will to reduce populations; the developing countries sometimes perceive attempts to require reductions in the birth rate as hidden genocide.

Perhaps the rain forest destruction is a problem of agricultural techniques. The indigenous people of the forest survive very nicely without destroying the trees: the new settlers might be taught the indigenous farming practices. However, unlike the new settlers, the native peoples are unaccustomed to the luxuries of urban life: soft drinks, blue jeans, boom boxes. Their farming methods are labor intensive and generate little cash crop. The food they do produce is neither familiar nor appealing to the settlers' palates. What about replenishing the soil so it does not become exhausted? Fertilizers are expensive and bring their own potentially harmful environmental effects.

Finally, the problem might be defined again as a market problem. By reducing world beef consumption (although hogs or sheep would do equally well—or poorly—on deforested land) or banning beef produced on deforested land (much as the European Economic Community [EEC] banned American beef fed growth hormones), the final stages of deforestation might be avoided.

None of these problem definitions or problem solutions alone seems useful. As the issue of the rain forest becomes expanded to wider publics, policymakers are going to be forced to find some way to address and to define the issue. “Stop the destruction of the rain forest” is an agenda-setting strategy with emotional appeal; how to stop the destruction becomes the formulation problem.

Formulation

Once a problem has been defined, the solution that emerges is the result of bargaining and compromise by various factions within government, each of which believes it has the answer to the problem. One strategy that often emerges from the political negotiation process is the “good science” strategy employed so effectively by the Reagan administration. When a problem appears intractable, the appointment of a study commission is a sure way to delay, and perhaps ultimately to avoid, a decision. Another strategy is to pass resolutions condemning the undesirable activity, while actually doing
nothing. Negotiations may hinge on issues not directly related to the policy problem; Congressional logrolling—trading political favors—frequently governs policy formulations. The process of negotiation and bargaining does not stop with passage of initial legislation; it continues in the formulation of subsequent amendments and reauthorizations of the original legislation. The 1977 amendments to the Clean Air Act are a good example of this continual renegotiation process.

In 1977, Congress considered amendments to the 1970 Clean Air Act. At issue was the auto industry’s attempts to delay by five years their compliance with the auto emission standards imposed by the original act. They had already had three one-year extensions. Democrats led both sides of the battle in the House. Paul Rogers of Florida, chairman of the House Subcommittee on Health and the Environment, pushed for compliance within the extended time limits already agreed upon. John Dingell, representing Detroit with its blue-collar autoworkers and their threatened jobs, was joined by a majority of the Republicans in asking for the extension. Dingell usually was on the side of environmental legislation, but in this case his constituents’ needs were paramount.

Rogers defined the issue in terms of health: respiratory problems in the elderly, developing respiratory problems of children. Dingell defined it as jobs and the protection of an essential American industry. By the time the issue emerged from the subcommittee, the issue had been defined as: “How can we clean up the air at the lowest possible cost?” This was a substantial victory for the auto industry: Rogers really did not care how much it cost, but in order to get the opposing forces to compromise, he accepted their definition of the problem. By the time the final vote came on the floor of the House, Rogers had been forced to give even more ground. President Carter’s energy policy had fueled Dingell’s allies, and the automakers and sellers had exerted great lobbying pressure on all members of the House. Dingell’s forces carried the day, although their victory was somewhat diminished by the subsequent changes made in the conference with the Senate.

By defining the problem and then using negotiation and compromise, the policy was formulated. It was also legitimated by the same process. Although no one member of either the House or the Senate was truly satisfied with the outcome, all accepted it as legitimate because in the American political system, the public generally accepts as legitimate the decisions made by the government.

**Legitimation**

Legitimate policies have the authority of the state (in the American system, the authority of the people) attached. Legitimacy is “a belief on the part of citizens that the current government represents a proper form of govern-
inevitable effect on state environmental programs. Nuclear power issues have occasionally been taken directly to the people, but the use of direct democracy to make a policy decision or to legitimate policy is unusual.

Implementation

Implementation occurs when the policy goals are translated into governmental actions that affect other branches of government or the citizens. Although implementation may be hampered by poor policy design or a lack of commitment by policymakers, once responsibility for the policy passes to the hands of the administrators, other factors come into play. Bureaucratic resources and administrative discretion are two of the most important factors.

Bureaucratic Resources

It is in implementation that bureaucracy shows its greatest influence. The resources available to bureaucracies are considerable. The initial source of their power comes from their legal authority to implement legislation. Congress delegates its legislative authority to agencies, thus providing the legal justification for administrative rules and regulations. Bureaucratic power is also enhanced by the indispensable nature of the bureaucratic activity: modern government would be impossible without the agencies. The agencies are also empowered by their technical expertise and support of their constituencies.

The technical expertise of senior or mid-level agency administrators is especially important in the environmental agencies; usually these administrators are first trained in their substantive fields and then promoted to increasingly important administrative posts. In the Park Service, for example, the interpretation and historic preservation employees are trained in history, journalism, and related fields while the management employees have degrees in forestry, marine biology, environmental science, and similar technical areas. Superfund site administrators must be knowledgeable about chemical, physical, and biological processes. Many of the environmental agency staff have graduate degrees in their professional areas. Although rarely trained in administrative skills, the technical expertise of the bureaucrats and the intimate knowledge of their own policy areas far outweigh the knowledge base of even the most well-informed congressional staff. Despite the information available from the Congressional Research Service and the Office of Technology Assessment, the Congress is almost forced to rely upon information and analyses provided to them by the bureaucracy.

Implementation

There is a negative side to the issue of technical expertise. Because agency personnel rarely have professional administrative experience, they often view the interjection of political ideas or values as a corruption of the decision-making process. This rejection of political influence is not limited to the agencies. Environmentalists deplore the position of lumber companies in the Pacific Northwest that bring political pressure to bear on the Congress and the Forest Service to allow them to clear-cut. Timber companies ridicule the claims of the Native Americans and the environmentalists to protect rare animals with no apparent commercial value. And government specialists, trained in the sciences, are outraged that Superfund sites take years to clean because the state and local governments insist on approving all EPA and responsible party agreements. This is one area in which professional socialization is needed for the administrators. Political factors are a reality, and in a representative democracy, political factors are a legitimate balance to the technical side of the decision process.

The constituencies that each agency develops are a second resource. This is the obverse side of the “captured agency” coin. Any regulatory or management agency works closely with interest groups. These groups become accustomed to the working habits of the agency and learn effective patterns of negotiation and compromise. “Better the devil you know than the devil you don’t” is their operating theory. They are reluctant to upset the stable relationships they have developed, and so a threatened agency may rely on its interest groups for protection in times of budgetary crisis or changing political leadership. These client groups often have prestige and political influence, and they are a powerful factor in consolidating the position of the agencies. While they are not often called upon to defend the agency or to exercise influence on the agency’s behalf, their very existence increases the authority of the agencies.

Administrative Discretion

A third factor that cannot be underestimated is the discretionary power of the agencies. While some commentators would like to limit discretion as much as possible, or even to eliminate it entirely, discretion is essential for an effective administration. Legislatures cannot possibly draft legislation in the detail that is necessary for implementation. They lack the technical expertise that is such a powerful resource for the bureaucracy. And even if they had the necessary staff and expertise, the cumbersome legislative process of negotiation and compromise would bog down the governing process.

Discretion also gives administrators leeway to fit policy decisions to individual cases, to “humanize” the governmental process. It enhances their
flexibility, allowing administrative law to evolve incrementally and to be checked or changed without the fanfare that accompanies legislative activity. Finally—and this is especially true in environmental administration—discretion compensates for changing technology. As scientific data accumulate, or drought endangers national forests, or new species are discovered, the discretionary powers of administrators can accommodate the changes.

This is not to say that governing necessarily continues to improve as discretionary powers increase. Too much discretion, which can lead to corruption, favoritism, or simple confusion, can be as harmful as too little discretion. The advantages of bureaucratic government rest in part on the regularity and predictability of government activity. A good administrator is able to strike a balance.

Administrators make three kinds of discretionary decisions: substantive, procedural, and complex. Substantive discretionary decisions are those in which an administrator makes a decision or promulgates a rule on a policy issue. These substantive decisions are one method for agencies to distribute benefits to their client groups. Agencies exercise this discretion in several ways. They decide, for example, where to locate research stations or unit headquarters that are frequently major sources of employment in small communities. In the late eighties, the Forest Service proposed consolidating the administrative offices of the Prescott and Coconino National Forests in northern Arizona. The impact on the town of Williams, a very small community already endangered by an interstate bypass, was enormous, and the political fallout was great enough that the Forest Service shelved its plans, at least temporarily. A more subtle use of substantive discretionary power is in wording rules and regulations either to create client groups or to shape the benefits for which they are eligible. Sometimes discretion is at the “street level.” In granting wetland permits, for example, state investigators have a wide latitude in interpreting potential soil erosion or habitat destruction.

Procedural discretionary decisions relate to the selection of the processes used to gather information or to make decisions. A procedural discretionary decision might be whether to hire consultants or to use in-house personnel to develop a forest plan. Finally, complex discretionary decisions, like the hybrid rulemaking process discussed in the material on the Administrative Procedure Act in chapter 5, combine the features of both substantive and procedural decisions, for example, will the forest plan be based on timber industry data or agency data or a combination of both? Administrative officials are given a wide latitude in their decisionmaking and actions; this increases their flexibility and improves the efficacy of the administrative state. However, administrative officials can exceed their authority or misuse it. When this occurs, they may be individually liable for tort actions brought against them by citizens. The liability of individual employees to lawsuits is one of the more complex issues in environmental law.

Under the ancient common law doctrine of sovereign immunity, the government and its employees were absolutely immune from prosecution for actions related to their governmental functions. The doctrine has its origins in the ancient divine right of kings: God ordains the king, God can do no wrong, the king can do no wrong. However, even divine kings recognized that their subordinates could make mistakes (or that, for political reasons, the king might want to dissociate himself from some subordinate’s action), and so the custom evolved that the king could give permission for the government to be sued. However, in the twentieth century the immunity of government officials from liability suits has changed. Immunity ranges from absolute immunity (for such activities as legislating) to none (no more immunity than is borne by a private citizen). In the middle range is qualified immunity: an employee is acting in “good faith” who is immune from individual tort actions.

State employees may be held personally liable under state laws and regulations. For example, the liability of state water quality managers discussed next is a complex mix of professional standards, citizen public relations, and state regulations.

Case Study: Water Quality Systems in Arizona

In addition to other environmental rules, the Arizona Department of Environmental Quality (DEQ) was empowered by the legislature through Arizona Revised Statutes 49-253 to develop and to enforce rules governing water systems. The rules provide that plans must be submitted and the construction of water systems must be inspected by a Professional Engineer.

The owner of a water system must protect the water system and keep it in proper operating condition. The owner must also sample for various pollutants. Operation not in accordance with departmental rules may subject the water system owner to an administrative order, an injunction, and, if these fail, to fines for contempt of court.

However, responsibility for the water system rests partially with the engineer as well. If the engineer who designs and inspects the construction of a water system is negligent, the State Board of Technical Registration, which licenses professional engineers, may take disciplinary action, such as the suspension or revocation of the engineer’s license, and may assess administrative penalties not to exceed $2,000.

In addition, if someone were injured because of the improper design, construction, or operation of the water system, the engineer or system owner could become liable in a private action for the tort of negligence. Sometimes,
it may be shown by an injured party's attorney that the engineer or system owner violated a rule of the department. In that case, the law of torts holds that such violation of a governmental rule is evidence of negligence that can be presented to a jury.

The expansion of a water system in Navajo County, Arizona, was designed by a consulting engineer whose professional license was granted not by examination but through action of a grandfather clause. The plans were found to be unworkable by the contractor and DEQ field engineer. It was necessary for the system owner to threaten the consulting engineer with a complaint to the Board of Technical Registration before plans were redesigned. Following the consulting engineer's death, his estate filed a lawsuit for payment in excess of what the system owner anticipated. The owner then alleged that the consulting engineer's original design was improper and the design contract's scope was exceeded. It was important that DEQ's field engineer could demonstrate that the original plans would not work and the rules of the department were violated. The owner's attorney could then use this information in an attempt to show the consulting engineer was negligent in designing the system expansion. The suit was settled out of court.

**Variables Affecting Implementation**

Successful implementation is very difficult, partly because it involves a number of interdependent actions that must be accomplished almost simultaneously. Implementation actions include acquiring resources (such as money, land, personnel, or equipment); interpreting directives, rules, and regulations; planning programs; organizing activities; and extending benefits and applying restrictions.

The implementation process is characterized by many complicating factors. First is the multiplicity of actors. At a minimum, bureaucrats are responsible to two masters: the president or his political appointee, and the Congress, which has authorized the agency's existence and which continues to hold the purse strings. Bureaucrats must also satisfy their client groups or, failing that, be able to defend their actions to the elected officials who receive the client groups' complaints. Some agencies have advisory groups with varying degrees of impact on the agency activities. There is always the possibility of judicial review, which even for the victorious agency is a process that consumes time and resources and perhaps even political goodwill.

Another complicating factor is the federal context of environmental administration mentioned in chapter 1. Each of the fifty states has its own bureaucratic organization to cope with environmental policy. In some states, there are as many as eight state agencies with some environmental responsi-

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**Implementation**

This obviously complicates efforts by the states or the federal government to encourage interstate coordination in environmental administration. In addition, the state bureaucracies, although often given implementation responsibilities for federal programs, must also respond to the political pressures of their own state legislatures.

Because of the numerous agencies and policymaking bodies involved, the goals of any one policy may be diffuse, multiple, and competing. For example, the Forest Service is often frustrated by its multiple-use mandate. Trained as silviculturists, foresters view trees as a crop, to be nurtured and then harvested when mature. The Forest Service was established partially to ensure a steady, affordable, flexibly priced source of timber for the American construction industry. Being forced to allow old stands of timber to decay for habitat protection, when by forestry standards they should have been cut years ago, goes against the grain of responsible foresters. Equally dismayed is the entrepreneur who invests in patents for a new biological form of pest control only to find that, while one federal agency grants him a patent, another refuses to let him sell his product. Or take the case of power plant operators forced to change reactor design long after approved construction has taken place. This "ratcheting" afflicts many industries subject to EPA regulations.

Finally, there are unforeseen circumstances—hurricanes and floods, broken dams, decreasing ozone layers, economic recessions, the fall of the Berlin Wall—which can skew the best designed and best intentioned implementation strategies. Flexibility is key to effective implementation, but too much flexibility allows unacceptable waivers and weak enforcement.

**Implementing Environmental Policy**

The two most common types of environmental policies are distributive policy and protective regulatory policy. Each policy type generates its own set of issues during implementation.

Although generally stable and dominated by subgovernments, distributive policy may erupt into conflict and difficulties for the implementing agencies. One problem arises when new responsibilities are added to existing, well-established policies. From the agenda setters' perspective, new issues may often be resolved by tacking them onto existing remedies. From the implementers' perspective, this shakes the comfortable coalitions, bringing in new client groups and usually necessitating a redistribution of resources. Another problem may occur when the elected officials change priorities. In theory, bureaucrats should be responsive to the political will of the electorate, which is expressed to them by the political appointees. However, responsive changes are difficult to accomplish after years of sunk costs
and interest group expectations.\textsuperscript{21} This becomes especially complicated when the will of the executive differs from the will of the legislature. Finally, changes in society, either through technological advances or resulting from socioeconomic differences, may force bureaucrats to rethink their allocation of distributive benefits.

\textit{Protective Regulatory Policy}

Protective regulatory policy is inherently controversial and highly visible, a real tinderbox for the bureaucrat implementing the policy. As technology and economic conditions change, routines for enforcement must also compensate. Congress remains closely involved in implementing protective regulatory policy because its members hear so frequently from their regulated constituents. The president is also likely to become involved, as President Carter did during the passage of the 1977 Clean Air Act amendments that extended the automakers' deadline to comply with emission standards. Bureaucrats find themselves under pressure from industry and businesses to cut back on enforcement while the environmentalists push for enforcement that often seems punitive.

\textit{Case Study: Coconino County License Revocation}

An example of implementation of a protective regulatory policy is a county government's revocation of a restaurant license. The following discussion shows how the administrative process may be used by environmental managers to achieve policy goals—in this case, continued public health. It also demonstrates the importance of record keeping in effective administration and affirms the necessity of creating a good record during administrative enforcement proceedings.

In October 1987, the Coconino County (Arizona) Health Department held its first administrative hearing; the purpose of the hearing was to revoke the Mandarin Restaurant's health permit. During the first part of October, the restaurant was inspected by two Health Department agents. The facility received a low score (45 out of a possible 100) with numerous critical, weighted violations, including improper food and facility temperatures, tainted ground beef, and damaged canned goods. They were also found to be reserving leftovers such as tea, rice, and fried wontons to re-serve to customers.

The two health inspectors closed the restaurant immediately because of the many serious violations and its overall poor condition, which posed an imminent health hazard to the public. The officers discussed the inspection report with the owners, reviewing all marked violations. During the inspection, food found at improper temperatures was discarded and damaged canned goods were embargoed as evidence. The operator signed the inspection reports, and the restaurant was closed until further notice.

After review and evaluation of the file, the Health Department decided to suspend the Mandarin Restaurant permit, and revocation proceedings were begun. The decision to move for revocation came about in part because the file showed that the restaurant had been closed twice before for imminent health hazards and repeated violations.

To revoke the operator's permit, the department had a choice between a judicial proceeding or an administrative hearing. An administrative hearing was chosen, partly to save money but primarily because it was the fastest and most effective way to protect public health.

Organizing an administrative hearing was a real challenge for the staff since this was the first time that the department had taken steps to revoke a food operator's permit. Everything had to be researched, from the sending of a revocation notice to the hiring of an administrative hearing officer. Each detail had to be carefully considered in order to prevent the case from being thrown out on a technicality.

In preparation for the hearing, department staff painstakingly reviewed the regulations for compliance procedures from the County Food Code and the chapter on administrative procedure from the Arizona Revised Statutes. The County Food Code provided for an administrative hearing, outlining violations and the length of time an operator was given to correct them. The state statutes outlined the parameters for notice and hearing, including the admissibility of evidence, due process, fairness of the hearing, hearing officer, counsel, and witnesses.

The revocation notice was sent, and the hearing date was set for the end of October. The department then had the task of selecting a hearing officer. A judge from the city of Flagstaff was chosen because of his experience with city court cases and because he was not employed by the county nor was he personally or financially involved with the restaurant.

Another important element in the preparation for the hearing was the meetings held with the County Attorney's office. These were crucial in the department's interpretation of the law governing the procedures for holding an administrative hearing. It was equally important to familiarize the attorney's office with the Food Code so the department could be effectively represented at the hearing.

One of the most important aspects of the department's preparation for the hearing was establishing the findings of fact and organizing the evidence to be presented, since the outcome of the hearing would rest on these facts
alone. The department's successful prosecution of this case may in large part be due to their extensive efforts to make the written evidence as clear and concise as possible. This was especially challenging, since eight handwritten inspection reports had to be reviewed for each repeated violation. This experience emphasized the importance of the clear and accurate documentation of violations recorded by the health inspectors.

The representative from the county attorney's office came well prepared for the hearing. He was knowledgeable about the Food Code and had reviewed the findings of fact thoroughly. The department also provided the hearing officer with a copy of the Food Code well in advance of the hearing.

The food operators' testimony was weak and ill prepared; they came to the hearing with an incomplete record of the inspection reports on their restaurant. They had been told they could be represented by an attorney but elected not to have one, and their problems with the English language interfered with their understanding of the proceedings.

The hearing officer ruled in favor of the Health Department.

If the department is ever faced again with a license revocation hearing, it will probably place more emphasis on the collection of evidence, such as photographs of the facility. Additional preparation is likely to include the acquisition of more food samples, damaged food equipment, and even insects or rodents (if present). While all this evidence was not necessary in this revocation hearing, the operators been represented by an attorney, the evidence might have been needed.

Despite the difficulties the department encountered in this case, the experience was of enormous value to the department because it revealed the basic steps required to organize and to hold an administrative hearing. These procedures were documented for future reference. While it is recognized that each situation with a food operation will differ in particulars, the essential steps of collecting evidence, documenting the findings of fact, and presenting the case within the parameters of a hearing remain the same.

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**Evaluation**

Evaluation is not simply the end stage of the policy process during which analysts measure actual outcomes against desired ones; it occurs throughout the policy process. Evaluation is of two types: formative and summative. Formative evaluation takes place while the policy is being formulated and implemented. It allows mid-course corrections if the policy goals are being bypassed or if new and unintended consequences seem imminent. It is flexible and encourages policy outcomes that fit policy intentions. Summative evaluation is used when a policy or program is completed. Analysts isolate the goals of the program and then observe how closely the program achieved the goals.

As complicated as implementation may be, evaluation is even more problematic. It is difficult to isolate the precise, actual goals of many policies. Perhaps the legislation was vague, or the goals were impossible to attain, given existing technology. The action-forcing provisions of NEPA discussed in chapter 2 raise just such problems: how should progress toward goals be evaluated? Policy goals may change between the time the policy reaches the systemic or institutional agendas and the time it is evaluated. Even if achieved, goals may have unintended consequences; did Congress really intend the Endangered Species Act to be used to halt a federal project such as the Tellico Dam? Finally, stated goals may not be the true goals of a policy. For example, in 1984, the state of Maryland declared a moratorium on taking striped bass. One possible explanation for the controversial moratorium was a new state initiative, which had recently been implemented by the governor, to reduce pollution in the Chesapeake Bay. The moratorium would increase striped bass populations, which is an indicator in the public mind of water quality, regardless of the effectiveness of the cleanup program. Thus the state program (and the governor) would appear effective even if the cleanup effort were unsuccessful.

A second set of problems involves measurement of outcomes. Some environmental activities have no direct market value and various techniques of shadow pricing must be used to derive their monetary value. How, for example, does an evaluator put a price on a day at Yellowstone National Park? Most people would agree that there are some values that cannot be measured, such as the utility of a life or the last dusky seaside sparrow, but the demands of regulatory analysis may require that some market value be assigned. Other management programs and directives may have competitive or synergistic effects.

Bureaucrats must also deal with a third set of problems: the dynamic between efficiency and effectiveness. It is often easier to measure efficiency in delivery than effectiveness in achieving goals. A park may increase its visitor-days and claim legislative applause for serving more citizens per dollar spent. However, if the purpose of the park—or even its partial purpose—was to provide a satisfying experience of the natural environment, information simply on the number of citizens served is not adequate.

Coping with the values of individuals and organizations involved in the policy process is the last problem in evaluation and is perhaps the least amenable to solution. Organizations have values (for example, the Park Service traditionally supports preservation values while the Forest Service advocates conservation and use); professions within organizations have values (such as the silvaculturists' desire to cut old timber); and clients and the
general public have values (such as the preservation of wilderness and simultaneous access to the wilderness). Even the evaluator has his own values and expectations.

Suggested Reading

General public policy


Environmental policy


Notes
1. The material that follows is drawn primarily from Randall Ripley and Grace Franklin, Congress, the Bureaucracy, and Public Policy (Homewood, IL: Dorsey Press, 1984), esp. Chapter 1.


12. This material comes from an excellent documentary, An Act of Congress (Learning Corporation of America, 1979).


15. One of the side effects of consumer rights and the incredible expansion of personal injury litigation has been involvement of government agencies into personal lives in ways even our grandparents would find incredible. To force an unwilling store owner to prohibit smoking on his premises, to assign financial penalties for illegitimate children, to pass a leash law for cats—all of these actions are responses to demands that government do something about everything. This is not what the Framers had in mind for limited government. As a result, there are fewer areas in which American citizens will not accept government activity.

16. This is known as the “delegate” theory of representation: that the elected representatives vote their constituents’ wishes. An opposing view is the “trustee” theory of delegation, which assumes that legislators, having access to better information, should vote their own consciences, regardless of the wishes of the folks back home.

17. Congress is, of course, subject to constitutional checks in this process.

18. The discussion which follows on bureaucratic resources and implementation, unless otherwise noted, is drawn from Randall Ripley and Grace Franklin, Policy Implementation and Bureaucracy 2nd ed. (Chicago: Dorsey, 1986), especially Chapters 1 and 2.