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SC1: Public Policy

Module 4

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Contents

Module 4

The Policy-Making Process

Introduction

This module gives a more direct analysis of the particular roles each of the main players involved in making policy take. We shall cover the way different entities (people and institutions) work together to make policy.

We begin by examining the meaning of roles, values and power, since these constitute the basic concepts for understanding how differences in opinion occur and are reconciled.

Each player (or actor) has different values and uses power in differing ways to influence policy outcome.

The rest of this module focuses directly on the roles of key government components:

- The political executive.
- The permanent executive.
- The legislature.
- The judiciary.
- Other governmental bodies.

In this module we are still anchored in Nordlinger's state-centred focus (1981, as cited in Ham & Hill, 1984, p. 25).

As you work through this module, find the answers to the following questions:

- Who is given responsibility for making policy and how do they go about doing so?

- Do all the institutions involved act in a uniform and consistent manner in any one policy area?

- What factors impact the way they undertake their policy roles?

- Do these institutions have conflicting roles and purposes that might undermine their ability to achieve optimal policy outcomes?

Outcomes

Upon completion of this module you will be able to:

- *distinguish* between roles, power and values as inputs to the policy-making process

- *explain* the role and limitations of the political executive

- *explain* the role and limitations of the permanent executive

- *explain* the role and limitations of the legislature

- *identify* the ways the judiciary and intergovernmental relations (within and beyond national borders) might impact public policy

- *discuss* the advantages and disadvantages that each part plays in the policy-making process.

Formal power distribution in policy making

It is assumed that power is at the centre of policy-making in all societies. We need to understand power in order to understand how it is contextualised through different opinions and various players.

Values are also an important concept in seeking to understand how and why people have different viewpoints about a policy and how that impacts policy-making.

Bridgman and Davis (2000) explain policy as being delivered through the following broad instruments:

- **Through advocacy**

  Arguing a case rather than forcing a result; for example, anti-smoking.

- **Through money**

  Influencing the economy, ensuring sufficient revenue for the government, through transfer of funds for other organisations and carrying out desired activities such as industry development and community health.

- **Through government action**

  Carrying out direct activities undertaken by the public sector; for example, providing hospitals, building roads and providing water.

- **Through law**

  Imposing prohibitions, restrictions, obligations and duties upon citizens and organisations.

While revisiting the notion of policy instruments (covered in Module 2) in a slightly different way, these categories help us appreciate the different policy activities that the legislature, executive, judiciary and society might play in policy-making.

Roles and actors

In this module we will explore the explicit roles of various institutions and their members. Many people, groups and organisations are involved in making policy. Some have explicitly defined roles, others wield influence informally. It is important to keep these people in mind, their values and their relative power. Also consider whether their role is formal or informal and how it is played out. It is helpful to remember that stated roles do not always match enacted roles.

While a model of government can establish equal distribution of political power among all its citizens, there is no reason to assume that this happens in reality (Mulgan, 1989, p. 38).

In an organisational context, a **role** can be defined as:

> ..."a set of expectations for the behaviour of a person holding a particular office or position"

> (Wood, Wallace & Zeffane, 2001, p. 303).

We can extrapolate this definition to institutions and the roles of people within governmental institutions.

While each unit of governance in a country may hold a formally stated role, in practice this role may vary slightly and extend beyond its formal limits in a number of unstated, but usually expected, ways.

We need to consider who is involved at each stage of the policy-making process. The various official and unofficial participants are not necessarily specific to a particular stage of the cyclical model.

Interest groups may take part in evaluating policy, often through criticism or applying pressure for change. Public servants contribute to parliamentary and cabinet submissions and also interpret policy as it is implemented.

Complexities occur in the unarticulated aspects of roles.

Role ambiguity is

> **...**"the uncertainty of a person about what other group members expect of them"

> (Wood et al., 2001, p. 303).

Role conflict occurs

> ..."when a person is unable to respond to the expectations of one or more group members"

> (Wood et al., 2001, p. 303).

These definitions are made in the context of individuals within groups, but they give us some idea about how roles themselves become problematic and not clearly defined or easily adhered to.

Another related term is:

Role overload occurs when

> **...**"there are simply too many role expectations being communicated to a person at a given point in time"

(Wood et al., 2001, p. 509).

Any member of a parliament (or government) may readily admit it is hard to please everyone all the time and decisions are often made to satisfy some of the people.

How, for instance, can an elected representative of parliament satisfy the expectations of all their electors?

As a final concept concerning roles, we can define:

Role negotiation as

> **...**"a process through which individuals negotiate with one another to clarify expectations about what each should be giving and receiving as a group member"

(Wood et al., 2001, p. 625).

This might be important in establishing the terms of reference for a participatory process or the implementation of a policy.

Each stage of the policy-making process might be affected by institutions. While policy analysis and decision-making most clearly fall into the area of cabinet and government, all stages have institutionalised connections or connotations.

Public service or government agencies are clearly implied and involved in all policy stages, particularly implementation.

The term:

Institution can be used to explain

> **...**"standardised behaviours which are regularly represented throughout the political or policy system".

(Considine,1994, p. 71).

Without these behaviours, society would have to keep rediscovering ways to organise itself. Such institutions are practical devices to solve routine problems, for setting priorities and fixing values (Considine, 1994, p. 72).

Thus elections, Cabinet rules and public service norms emerge through value problems being settled through the adoption of some routine practice (Considine, 1994, p. 72).

Institutions typify **formal** aspects of policy development.

Figure 4.1 represents the political system as a black box.

Within it, various interested parties and processes respond to policy demands and supports. From these inputs (as well as from feedback from previous policy outcomes) new or changed policies emerge as outputs from the system.

Figure 4.1: A model of the political system
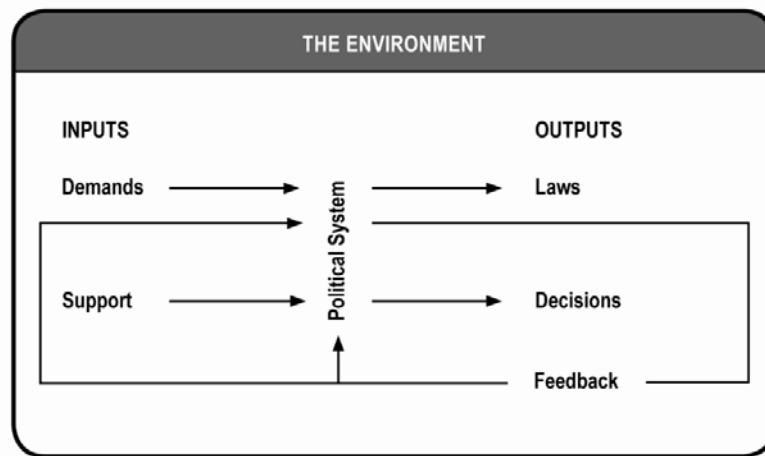
Source: Anderson (1990) p. 26.

The actors (official and unofficial) involved in the political system might include:

- politicians and political parties (including the opposition and backbenchers)
- parliament and cabinet
- government agencies (courts, statutory authorities)
- public servants
- government institutions and departments
- pressure and interest groups
- research organisations
- private sector businesses (multinational or national companies)
- the media
- other countries
- other tiers of government
- other individuals.

Anderson (1990, pp. 50–68) classifies the actors involved as official policy-makers and unofficial participants. While this relates to the United States system it can be equally applied to other situations.

Case studies

Case study

Case study comments

Case 2: Some of the key players are listed on page 106. Also note that the Australian Tax Office had a clear view of its role that it did not want to move from it. However, as it turned out, it had already done it in the past (pp. 48–50).

Case 9: Among the key players in this case are the World Bank, the International Monetary Fund (IMF) and non-governmental organisations (NGOs), not to mention the governments within Bangladesh.

Case 11: In this case the actors broaden out to include the community itself (or members of it). They take on roles of identifying and explaining problems to the decision-makers. The expert role supposed to be played by the municipal employees was deficient with regard to understanding the number of toilets required and the importance of waste disposal in maintaining toilets.

Case 12: One particular comment on roles in this case (though it relates to government itself, rather than any individuals or groups in the policy process), is that of the government being provider of funds and legislator of regulations. On page 171 the dependence that housing groups had on government was said to be an inhibitor of autonomy. This dependence on political patronage is said to have made such groups subject to manipulation. An accountable secondary agency was suggested as a better solution.

Activity 4.1

Activity

Consider a policy issue being discussed in the media in your country.

1. What policy issue is it?

2. Compile a list of participants involved in commenting on, or seeking to influence, the policy's development.

3. State which participants from your list have a formal and informal role.

Power

Consider a policy issue being discussed in the media and compile a list of interested participants involved in commenting on the policy or seeking to influence its development. Plot a list or a diagram of those who might have a formal role (in the legislature, executive, or judiciary) and those who might have an informal role.

Power is most consistently defined in the following way:

> *A has power over B to the extent he can get B to do
> something that B would not otherwise do.*
>
> <div align="right">(Dahl 1957, p.203).</div>

Using this definition, power is a capacity or potential to influence, which may or may not be utilised. Crenson (1971, cited in McGrew & Wilson 1982, p. 325) indicates that pluralists 'contend that power exists only when it is being exercised'. This alternative perspective highlights the need to be constantly aware of how authors define their terms and also to be aware of any assumptions they may make.

Extending from the first definition, power, in a policy context, is the capacity to influence the emerging policy of the policy-making process. Lynn (1980) defines it as:

> *...[T]he ability to bring about, or measurably increase the
> likelihood of, beneficial occurrences via government action.*
> (p. 10)

Obviously the word 'beneficial' can define occurrences, which are beneficial to individuals rather than society as a whole.

Power is used in the policy process in overt and covert ways. Bachrach and Baratz (1962, pp. 947–952) called these the 'two faces of power'. One face is overtly used; people use whatever capacities they have to openly influence others in the policy process. The other is non-decision-making, where covert forces are used to exclude some issues from being considered at all. Lukes, who introduced 'the third dimension of power', extended the debate about the issue of power and non-decision-making. He suggested power had three dimensions:

1. power that is overtly displayed in conflicts over key issues

2. power that is displayed in overt or covert conflicts over issues or potential issues

3. power as a dimension which shapes people's preferences so that neither overt nor covert conflicts exist – it makes conflict latent.

<div align="right">(Ham & Hill 1984, pp. 66–67).</div>

The viewpoint adopted about decision-making or non-decision-making can be important in shaping the discussion of any policy issue. For instance, when taking into account whether all options have been considered in a rational policy process it would be necessary to assess whether some options had been suppressed by the use of overt power. As well, some options may not have been considered because social preferences had been so shaped beforehand that some possibly suitable alternative solutions did not emerge at all. Indeed, in the business world increasing interest in creative decision-making and innovation recognises our failure to see the many possibilities that might provide our answers.

The power plays (or relative levels of power) of all participants will be significant at all stages of the policy-making process and may have a significant influence on resultant policy. In all of the following modules you should reconsider these issues: Whose values are predominant? How is power utilised? The issue of non-decision-making is relevant at all stages, but very often applied to the policy initiation or agenda-setting stage. The issue of power is also very strongly linked to the section on theories of the state. (For convenience this is included in Module 5.)

Self-assessment activity 4.2

Assessment

1. When considering current policy developments such as those discussed in the media, what could you deduce about the way power is utilised, and whose values may be predominating?

2. If you can, construct a diagram or concept map that explains how power is used in a particular case.

3. Present your own arguments for or against the validity of non-decision-making as a theoretical approach.

Case studies

Case study

Case study comments – Cases are to be found in your Case Studies Booklet

Case 2: Note the relative power that a single individual managed to wield to have his viewpoint considered. Allen Mawer took an opportunity to suggest an idea to the Minister. Even an individual (albeit one in the Minister's office) can influence policy (p. 35).

Case 9: This case provides insight into an example of women's empowerment and how it has helped to change societal conditions, especially in relation to reproductive rights (p. 148).

Case 11: Empowerment of community members is an important part of this case as well. It enables them to learn and improve their capacity to influence decision-makers (and community outcomes) in this and other community problem areas.

Case 4: There appears to be competition for licences from the FCC. A very clear political statement is given to argue against this on page 75. What is telling about this comment, from a power perspective, is that a government agency that is there to carefully assign the benefits of government distribution (allocations of bands of the electromagnetic spectrum) is subject to pressure through the vast array of requests and applications it receives. While it might not be overtly political, there is every chance that power is used covertly and that having the money to invest in pushing forward an application and producing the best documentation might win the day in terms of political outcomes. The case argues for a straight auction which still has financial power but at least removes other complexities from the process.

Case 7: This case suggests policies sometimes fail because of covert political agendas. It could be inferred that the way power is used may influence policy outcomes to ends that are not even clearly on the agenda (p. 136).

Case 8: Dams are apparently seen as important in the case by the policy-makers, while the author and, presumably, the protesters value the welfare of the people being displaced. Clearly, the author is interpreting what she thinks are the policy-makers' values or lack of them. She says the court judgement 'suggested – in breach of democratic principle – that it was a good thing for tribal peoples to be uprooted' (p. 142). She also asserts that much of the 'good' coming from the dam construction will end up 'in the pockets of politicians, bureaucrats and contractors' (p. 142). In doing this, she is not only suggesting corruption, but also drawing attention to what she sees as their misplaced valuing of wealth.

Case 12: Power is dispersed and changing in this case with many housing organisations, government, municipal authorities, banks, and other agencies involved. Over time, the balance and distribution of this power has probably waxed and waned. Certainly, in the 1930s, the case asserts that the new Liberal government was able to crystallise the demands of the new industrialists (p. 163) while on page 164 we are told that it is the rich who make the laws (presumably through their influence on government, or because government is comprised of 'rich' politicians). As the housing groups amalgamated and applied pressure they too were manifesting influence in the policy arena. The government itself clearly has legitimate power to make laws, rules and regulations and to spend public funds according to its own priorities. The allocation of funds allows it to wield influence in the areas it is most interested in. It might still be important to ask what power the very poor have had throughout the history of housing and how much others have spoken on their behalf.

Values

Many actors are involved in the policy process. Because of this we need to be aware of the different values these individuals and groups may have. If they are involved in determining policy (at any stage of the policy process) their values are important.

Instead of assuming people approach policy-making in a value-free way we need to identify their diverse values and try to understand how these impact the resultant policy.

The word "values" describes what individuals find important or unimportant, good or bad. Some place high importance on boosting the economy and therefore find economic solutions the most viable. Others are more concerned with the lives of individuals in affected areas or environmental damage. The relative weight they are given (or gain) through the use of power have an impact on the final policy. Power can influence which values predominate in policy-making.

We often accept that policy problems lead to answers (or policies) that reflect society's values. The electoral process is expected to produce representatives who, through a democratic process, arrive at solutions which will satisfy the majority and, thereby, reflect predominant values.

Figure 4.2 illustrates this viewpoint.

Figure 4.2: Values as a reference point for policy choice
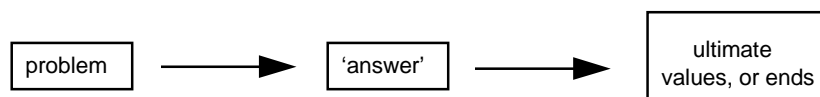
Source: Dvorin & Simmons (1972, p. 3).

The values of society provide a reference point for the answers or alternatives proposed. An answer is chosen which achieves the values and ends. The ends determine the means.

The important point to remember is that the 'answer' is just that, one choice among many. Not an absolute and correct solution.

A comprehensive, rational approach would suggest that all alternatives are considered and that the process is value-free. A less rigid interpretation of this suggests that while many possible solutions are considered, the alternative chosen reflects the reference point values. This then suggests that values play a part in policy choice. Figure 4.3 illustrates this.

Figure 4.3: Values as a determinant in policy choice among various policy options
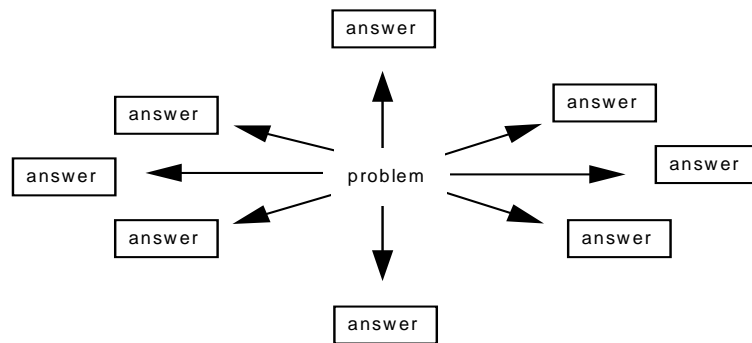
With the recognition, however, of certain values as being of transcendent importance, the nature of appropriate answers becomes more apparent.
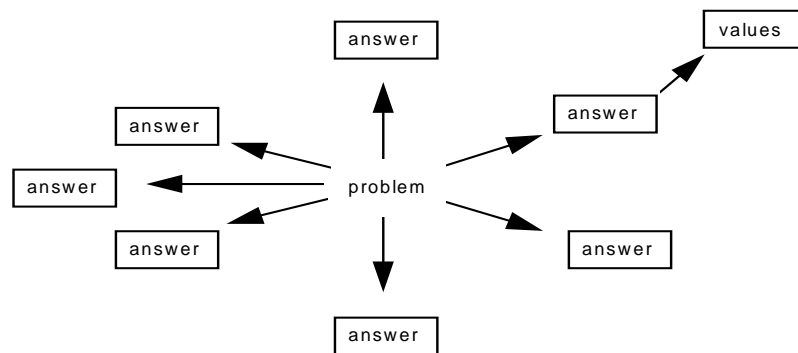
Source: Dvorin & Simmons (1972, p.3).

All of this is open to question. We need to go beyond this simplistic suggestion and consider whether values themselves influence the alternatives put forward.

This may be related to Lukes' third dimension of power. Different values will influence what one sees as an option.

Figure 4.4 illustrates this.

Figure 4.4: Values as a limiting factor in determining policy options

```
┌─────────┐        ┌─────────┐        ┌─────────┐
│ problem │  ───▶  │ values  │  ───▶  │ answer  │
└─────────┘        └─────────┘        └─────────┘
```
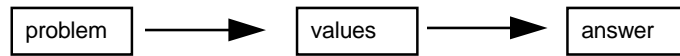
Source: Dvorin & Simmons (1972, p. 4).

It is essential to consider who has an influence in proposing the options considered when a policy is being formulated. It is also important to give consideration to who has influence over the options or actions at other stages of the cyclical model. For instance, public servants' discretionary interpretation of policy and the subsequent choices they make, may depend upon their particular values.

Figure 4.5 gives some indication of the complexities which may emerge in a policy-making process.

Figure 4.5: Public policy flow model
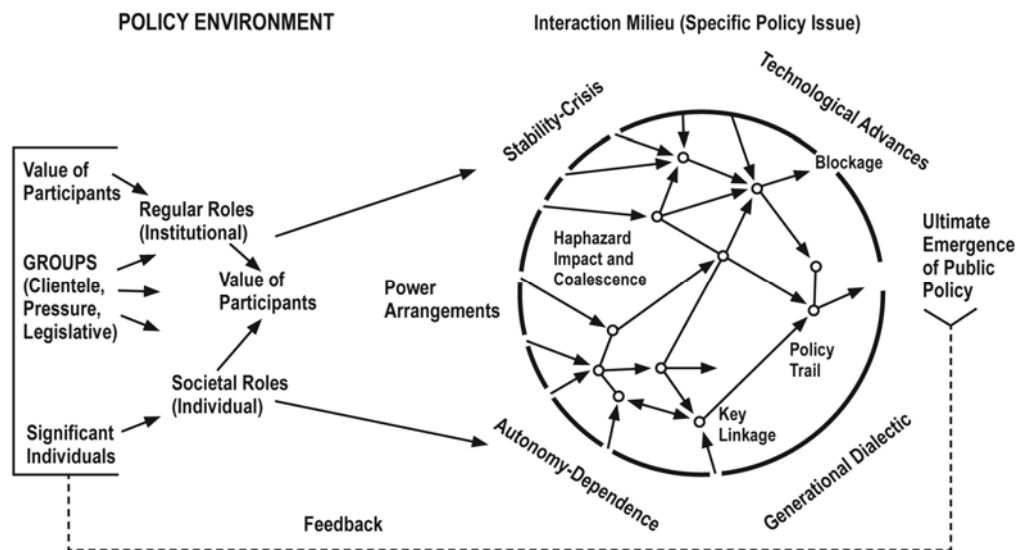
Source: Simmons, Davis, Chapman & Sager, (1974, p. 467).

The values and power of participants, their interactions, power plays and other factors determine the ultimate policy outcome. It is not necessary to understand the illustration fully. Its purpose here is to demonstrate its complexity.

Activity 4.2

1. Think of areas where policy options may be suppressed or the range of options limited by the way societal values are shaped?

2. What areas are they?

3. Make copies of Figures 4.2, 4.3 and 4.4 and label them to identify how the power is suppressed.

Values will determine how each contributes to the policy made. Clearly, power will allow some values to prevail over others. Who is seen as being most powerful will influence what you see as the source of predominant values (although in some cases you may not be able to recognise the source).

Values can be influential at all stages of policy-making. The issue of values is important when we consider the contemporary context of policy, as key contemporary issues emerge from predominant values of the time.

In the sections below we address roles, power, values and the part they play in shaping policy. It is necessary to understand that no person (or group of persons) comes free of values and that in one way or other, power is always at play.

Case studies

Case study

Case study comments

Case 4: Values are revealed on page 72 with the statement that "competition can lower prices and increase the diversity of available services". It is clear from this statement that lower prices and diversity are seen as important and good. Protection of consumers is also a value articulated in the heading on page 72. Having such values firmly residing in the minds of policy-makers could mean (as the diagrams in this section suggest) that they fail to see other solutions and options. Note also the comments about the Federal Communications Commission's (FCC) discretion in setting the terms of use for the electromagnetic spectrum, therefore, setting priorities. The FCC "is not well-suited to judge whether, for example, paging systems have a higher social value than taxi dispatching" (p. 75). Indeed, despite its role in setting these terms, the FCC itself recognises that it is not well suited to assess the relative values of the options.

Case 9: The conditions placed upon more recent loans from the IMF (for structural adjustment of the local economy) clearly reveal that "rolling back the state" is valued (p. 146) while earlier loans were often motivated by rewarding and reinforcing "allies in the fight against global communism" (p. 146) – another expression of values embedded in the policy of aiding certain

countries.

Case 10: Different players have different values. In this case the values of the judges of the Supreme Court are revealed by their comments as being biased (p. 155).

Case 11: There are some very interesting expressions of values in the early part of the case. It is clear that different people were seeing the problem in very different ways; from the perspective of what tourists see, and from the perspective of discouraging further migration to the city. These reveal some underlying values, such as "tourism is good" and "slum dwellers are unimportant" and impacts upon the capacity to see solutions (p. 159).

Case 12: The values in this case are not explicitly stated. To analyse this case, you need to ask who is saying what. Throughout the case, we could say that housing is valued as good or necessary by all parties involved, but there could be a diversity of opinion about what level of housing is sufficient to provide that "good" outcome. Those in black market land sales definitely value profit more than providing housing for the poor, for whom the housing is intended. Politicians might value the support of the industrialists and so be swayed accordingly. Underpinning the whole case is an appreciation of community competencies and values, which (according to the writer) emerge from the culture of native communalism (p. 163). The new government in 1986 articulated a value of this sort in its slogan "creating popular power" (p. 170).

The role of the political executive

Module 3 presented an outline of how a Westminster system of government works, and how other forms of government operate or operated.

In that module, the various entities in such a system were discussed and the political executive was typically presented as the cabinet. According to Bridgman and Davis (2000), cabinet's decision "is the pivot of the public policy cycle, the point on which all previous and subsequent work turns" (p. 90).

Remembering that cabinet comprises the appointed ministers of government (or the most senior of them), we are going to cover how their collective decision-making in cabinet spills over into parliament in the sense that ministers must support cabinet proposals and defend them when questioned.

Ministers also lead or head their portfolios or departments (and the programmes within them) on a day-to-day basis. Ministers are the linchpin between cabinet and their individual departments. They seek guidance and advice from their departmental staff and expect cabinet

decisions to be executed within the departments. Departmental staff assist in proposing, deciding, implementing and evaluating policy.

Figure 4.6: Individuals and groups involved in the three key coordinating tasks
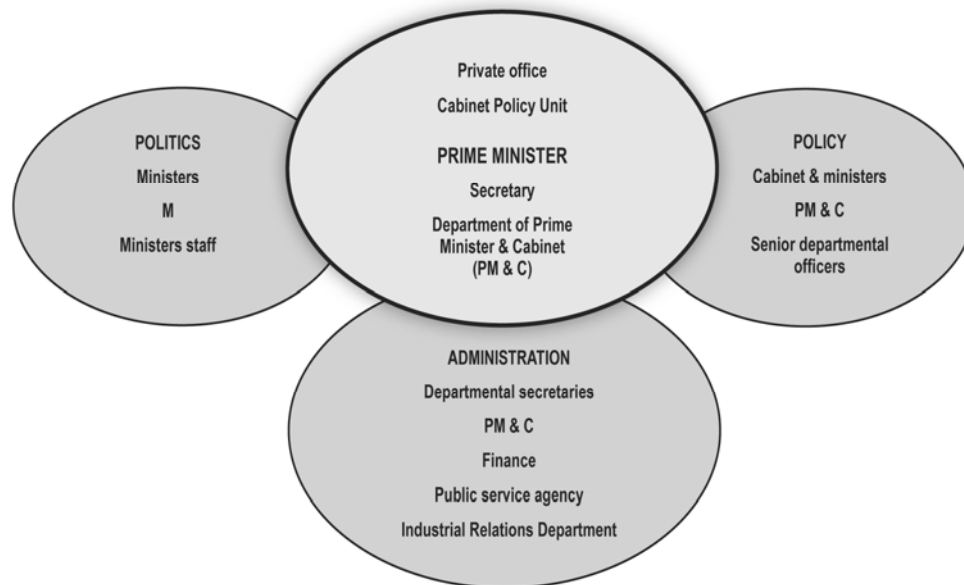
Source: Bridgman, P., & Davis, G., (2000) , p. 17.

Figure 4.6 illustrates the institutions and individuals that are involved in the Australian Federal Government.

Therefore, it is the role of cabinet in policy-making that is of most concern in this section. We need to accept that while ministers collectively make decisions, they are also influenced by:

- public opinion
- the advice of the permanent executive
- party policy
- and parliament.

Cabinet does not operate in a closed system. In typical Westminster system governments, the prime minister must depend directly upon their party colleagues' support. In the United States, the president still relies on parliamentary support even though the cabinet operates outside the boundaries of parliament or Congress.

Bridgman and Davis (2000, p. 12) outline three key policy coordination areas that are managed by the cabinet, with some overlap:

- politics (especially party unity)

- policy
- administration.

Ministers have a place in all three of these areas, having political, policy roles and management of the administration. Roles can be defined in terms of these three areas as well as by institutional membership.

Who are the ministers and how are they qualified to make decisions for the nation?

Given that they are elected representatives (as members of parliament) and appointed by the ruling party, there is no reason to expect them to be experts in their portfolio area.

Certainly, we know that ministerial positions have a hierarchy, and reshuffling of portfolios occurs when a minister resigns, loses favour or a government changes. Aucoin (1986, p. 90 cited in Bridgman and Davis, 2000, p. 15) has "tracked in detail how successive prime ministers in Ottawa [Canada] restructured central agencies to match their personal philosophies of leadership, management styles and political objectives".

Ministers are charged with managing (and being accountable for) their departments. However, they do not typically have expertise in their departmental areas. Non-expert ministers are typical and perhaps preferred by departmental staff since the expert work is left to them.

This has the following consequences for policy in a departmental context:

- Non-expert ministers are less likely to take a narrow view of their areas of specialty and less likely to dominate colleagues and advisers.

- Intelligent 'outsiders' are more likely to see the proposals from the community viewpoint.

- A non-expert minister might be able to evaluate the diverse and conflicting views of several experts rather than failing to see the difference in their views.

- The minister will manage the department effectively rather than try to be an expert in policy.

(Singleton, Aitken, Jinks & Warhurst, 2000, pp. 140–141)

On the other hand, it is argued that:

- not all ministers are disinterested and knowledgeable, so party demands might distract a minister from the above tasks

- non-expert ministers might be easily influenced by their expert and professional departmental staff.

(Singleton et al., 2000, pp. 141)

Cabinet involves a huge flow of paper, with submissions and decisions coming and going on a constant basis. Often a central policy agency is put in place to manage and coordinate this flow.

Lengthy submissions are summarised in briefing notes for the members of cabinet (giving a key role to the public servants who may have authority and responsibility to do this).

Depending on arrangements, senior officials may be asked to sit in on cabinet meetings and take notes to provide backup information. Alternatively, in some governments, they may be completely excluded from cabinet (Bridgman & Davis, 2000, p. 14).

To streamline processes, there are strict methods, rules and timelines for submissions and key roles for auditing and filtering material (providing more opportunities for some sway of power and values). These are usually codified in a cabinet handbook.

Cabinet meetings are usually held regularly so parliament, the bureaucracy and others can schedule their work around them. Regular submissions are required, such as regular performance indicators, budget submissions, annual strategic plans and reports (Bridgman & Davis, 2000, p. 91).

Perhaps the most important thing to consider is that submissions have undergone a long journey before they arrive at cabinet. A department may have been working on it with input from the minister's office, then it might have been circulated to key agencies or interested parties for comment and feedback (a consultation process in action) for the minister to approve final amendments before it was presented to cabinet (Bridgman & Davis, 2000, p. 91).

The fact that cabinet is usually closed to outsiders obscures a good amount of the input into policy. In order to support the apparent unanimity of cabinet, collective responsibility and ministerial responsibility is required.

Collective responsibility

Ministers must publicly support all decisions taken in cabinet.

Ministerial responsibility

Ministers must take responsibility for the output from their departments even though they are not the only contributors to them (Bridgman & Davis, 2000, p. 93).

In broad terms the types of issue that go to cabinet include:

- New policy proposals (or significant variations to existing ones).
- Proposals likely to have a significant effect on employment, the public or private sectors.
- Expenditure proposals (especially for major capital works).
- Proposals requiring legislation (except minor ones).
- Proposals likely to have a significant impact on other levels of government (inside or outside the nation).
- Proposed responses to recommendations made in parliamentary committee reports.
- Government negotiation of, or agreement to, international treaties.

(Bridgman & Davis, 2000, p. 94).

It would seem then that despite their authority in the department, ministers are usually subject to the strong advice, expertise and influence of their departmental staff.

This leads us to ask whether such people should exert influence over the public policy that emerges from their offices. As non-elected personnel who are often permanent employees (though they can be contracted or politically appointed in some systems) how can they be held accountable for influencing policy that should be democratically decided?

Case studies

Case study

> **Case study comments**
>
> **Case 2:** The minister (Dawkins) was pivotal in introducing and driving this policy item. Even so, he could not achieve it on his own, either in terms of his own capacity or in terms of the need to get political support from the permanent executive and his political party. He was not involved on a day-to-day basis, but did appear to have someone keeping him informed (David Phillips) (p. 31).
>
> **Case 8:** Taking the decision about the Sardar Sarovar Dam to the Supreme Court of India, according to the writer, challenged the executive arm of government (p. 141).
>
> **Case 10:** The municipal workers and the police (as public servants) were executing the policy of the municipality. They were enforcing a decision made in the court case about their 1986 eviction (p. 155).
>
> **Case 12:** There is little detail in this case study about how policies were formulated by the legislature and/or implemented by bureaucrats. The process is relatively invisible and could involve appraisals, evaluations and discussion papers, or be more random than that. Political parties do have some impact on government, as demonstrated by shifts in policy with changes of government.

The role of the permanent executive

The conventions of the Westminster system assume that:

> ...Public servants should serve their ministers and the government loyally and impartially, and provide frank, honest and comprehensive advice regardless of which party is in government.

<div align="right">(Singleton et al., 2000, p. 187)</div>

In other systems, and now more frequently in the Westminster system, many senior public servants are politically appointed (or engaged on a short-term contract) based on performance. However, many traditional features remain active in the political system and are discussed below.

It is traditionally assumed that public servants are neutral and life-long employees of the state (though as indicated, both these points are under considerable review in current literature). Implicit in all this is the assumption that the elected representatives of the people (members of parliament and/or ministers) make policy while employed government workers (public servants) execute that policy (a dichotomy between political activity and administrative activity).

However, much of the evidence suggests that public servants play a significant role in policy-making. If it can be established that elected representatives are not the only individuals who make public policy, then the administrative/political dichotomy may be defective as providing an adequate description of policy-making.

The other matter vital to this debate is the validity of the cyclical model. If, as some implementation theory suggests, policy formulation and policy implementation are not discrete stages of policy-making, then it is difficult to support the notion that elected representatives make the policy and public servants implement it.

It is difficult to argue that different actors are clearly linked to a particular policy-making stage. The most typical commentary on this states the involvement of the public servant at all stages of the policy-making process. Lipsky's (1980) concept of the street-level bureaucrat helps us understand how public servants must make policy decisions (to some degree) at the point where it is applied to people (that is, at street-level).

Public servants are important actors in policy-making. They are considered separately here because of the specific roles they are perceived to have (in terms of the administrative/political dichotomy) and because of their discretion and professionalism. It is usually accepted that those at higher levels of the public or civil service have more influence and power than those at the bottom. This is likely but should not be accepted without question. It is also important not to neglect the impact lower-level employees have on public policy.

We frequently encounter the term, "bureaucrat". Try not to interpret it simply to mean a government employee. There are many readings available on the influence of bureaucrats on policy-making. They cover

such issues as delegation of decision-making, bureaucratic discretion and the values and interests of bureaucrats.

Discretion is an important area. Because bureaucratic discretion exists, the bureaucrats' values and interests are allowed to intervene in the policy-making process.

Discretion can be defined (in general) as:

> ...The scope an officer has to make a choice between different courses of action or inaction.

Discretion takes on significance because it suggests bureaucrats can prevent (or interfere) with the execution of policy as formulated by elected representatives.

Bureaucrats may not implement policy as stated in policy statements, but there is no reason to assume that use of discretion by bureaucrats is deliberate or intended to be negative. It is simply inevitable in the light of complex policy situations.

In practice, the directives of politicians leave room for bureaucratic discretion. Bureaucrats must cope with complex tasks, interpret written directives and also use their delegated power to deal with the situations presented.

Rules and codes of conduct are sometimes devised to contain bureaucratic discretion to some degree and will be covered later in the course.

A simple illustration by Moore and Pratt (Figure 4.7) shows the different perspectives (both rational and non-rational) of elected representatives and bureaucrats. It indicates that a politician may be more interested in political survival while a bureaucrat may be more concerned with the image of their department.

This shows that it is not just the values and power of politicians that are involved, public servants' values and power are also considerable, especially considering the discretion they have at each stage of the policy-making process.

Figure 4.7: Political
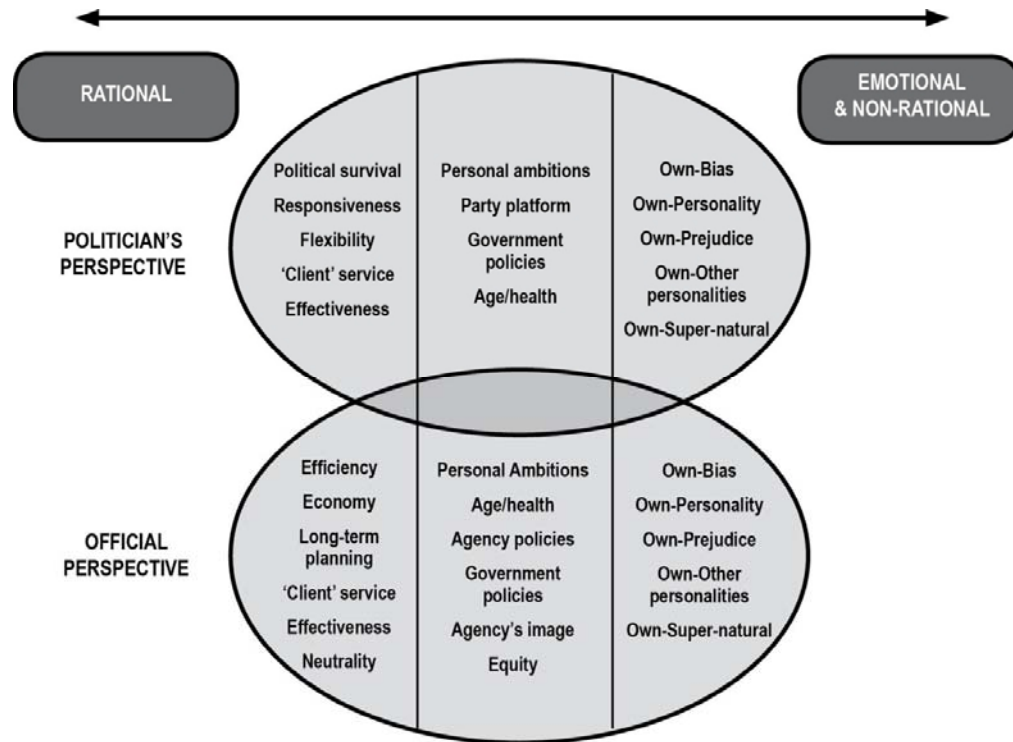
Source: Moore & Pratt (1981 p. 107).

Activity 4.3

Activity

In view of the different stages of policy-making previously covered:

1. What roles do you think public servants and politicians (particularly ministers) play?

2. List and explain the different roles they play in a policy area you are familiar with.

Turner and Hulme (1997) provide a table of environmental factors that affect public sector managers involved with administration and policy-making.

Table 4.1: Environmental factors for public sector managers

ECONOMIC	CULTURAL
Gross national product	Ethnicity
Structure of production	Family and kinship
Labour	Values and norms
Domestic capital	Gender
Foreign exchange	History
Foreign aid and debt	
Infrastructure	
Technology	
Poverty and inequality	
Informal sector	
DEMOGRAPHIC	POLITICAL
Population growth	State-society relations
Age structure	Legitimacy
Urbanisation and migration	Regime type
Health	Ideology
	Elites and classes
	International links
	Institutions

Source: Derived from Turner & Hulme (1997, p. 26).

You will recognise many of these issues throughout this course. They point to matters public sector managers are concerned with, but also to the broader policy environment. The chart illustrates (once again) that policy is complex, value-laden and interrelated with many other factors.

Case studies

Case study

Case study comments

Case 1: The case highlights the difference the structure of various levels of government (Britain – highly centralised, and United States – decentralised and dispersed) can make in a single policy area (health). Consider the implications of these differences (responsibility, accountability, effectiveness and diversity of provision).

Case 2: Senior bureaucrats were selected to be involved in policy formulation (but only those unlikely to support existing education policies). The minister opted for senior bureaucrats who understood the labour market and the need for linking education and employment (p. 29). Additional expertise was recruited from academics. There was a concern that the bureaucracy would not support the policy, so efforts were made to keep them involved sufficiently through a secretariat to achieve consensus (pp. 30–31). The senior bureaucrats in the Australian Tax Office (ATO) were resistant to the policy, because they had not been bound by their cited principle in a previous case. This is an interesting example of how a determined group can resist the direction of policy development (pp. 48–50).

Case 3: Government organisations (such as the national electricity suppliers in several European countries) resisted deregulation due to their vested interests in their own futures as organisations (p. 67).

Case 5: The Environmental Protection Agency (EPA) set about examining what authority it already had to prevent (or respond) to such disasters. It set up an internal information network so that people in the agency knew how to react. It also conducted a study into other chemical companies to assess relative dangers. Such activity falls within the scope of managing government departments and the policies administered by them.

Case 7: An interesting point in this case is the difficulty with poorly skilled staff in the national bureaucracy. It is inevitable (according to the writers), that the most talented people go to non-governmental or private voluntary organisations. Thus, many of the roles typically filled by this permanent executive are being carried out by people in other organisations (p. 134). Also of interest is the apparent discretion that the NRC has in being able to define its own role, regardless of the jurisdiction of line ministries. A personal relationship between the commissioner and the president is implied as the reason for this (p.133). This is an example of how singular circumstances may change how a policy is implemented.

Case 9: Foreign aid and debt listed in Table 4.1 as environmental factors for public sector managers. The writers (Turner & Hulme, 1997) suggest that in many countries public sector managers are preoccupied with debt from foreign aid. Some of the corruption that is referred to in this case may be on the part of such managers, but also occurs in other parts of the political structure.

Case 11: The bureaucrats or permanent executive staff members in this case are probably engineers and other technical officers. While they might have understood the technical aspects of sanitation, it appears they ignored the scale of the problem and failed to see its social aspects. When a solution was introduced, the result was too few toilets (or too few that worked effectively) and more problems resulted. While the individuals' limitations in understanding the problems can be deduced, the reasons why, are not apparent.

The role of the legislature

Power in the Westminster system originally resided in the monarch. As the system developed through history, that power was transferred to ministers within parliament even though they acted on behalf of the Crown. In its original role, parliament has always had the power to discuss executive actions, and in doing so it was increasingly permitted to question, criticise, scrutinise and (if necessary) condemn them (Singleton et al., 2000, pp. 102–103).

Throughout the history of Britain (home of the Westminster system), the balance of power between the legislature (parliament) and the executive has been dynamic (Englefield, 1985).

That balance of power manifests itself differently in the various political systems we have discussed (and there may also be relevant balances to be considered in relation to the permanent executive, the judiciary, the military and other levels of government). While traditionally, parliament makes legislation, we have seen that other parts of the system usually play a large role in developing bills before they reach parliament.

The functions of parliament or the legislature are:

- to consider, amend and pass legislation
- to supply money for the governance of the nation
- to question, publicise and investigate the actions of government (its own actions and those of other government institutions) and the needs of the community.

(Singleton et al., 2000, p. 101)

Except for debating, amending, approving legislation and the supply of funds, the role of the opposition in parliament is largely reactive, critical and certainly adversarial. Bipartisan cooperation is not common.

There are complex procedures for introducing bills into parliament and rules about the number of readings, debates and the making of amendments.

In reality, politicians do not sit through all these readings and debates. They make decisions on legislation through their own research and that of their political and party advisers. Certainly, party solidarity dictates many decisions.

Members of the permanent executive may have some influence, either through their roles of drafting legislation or circulating information about it. Personal political advisers have some input as well.

A key point to consider is where legislation can be initiated.

We have suggested that much of it comes from cabinet, but there are other sources. A private member's bill, or the wealth of intentional policy statements made at election time, can lead to bills being proposed. Even if a bill does not come from cabinet it will certainly need to gain the support of cabinet to be passed as legislation because of collective responsibility and party politics.

A legislative procedure might resemble the following:

1. The relevant minister usually initiates a bill and a **first reading** occurs without debate.

2. At the **second reading** the bill is debated, major objections or amendments made.

3. If successfully passed at the second reading, the bill goes on to **committee stage** where its details are debated clause by clause (either by a smaller committee or a **whole house committee**).

4. It is then sent back to parliament for a final, **third reading** where there may be further debate and amendments. If there is an **upper house** of the parliament, the whole procedure might need to be repeated, although more and more streamlining occurs to minimise the workload for all involved

(Chisholm and Nettheim, 1984, pp. 40–41).

Assuming the bill is passed by parliament (both houses, where relevant) and assuming the country is a monarchy, **royal assent** is then given.

The actual amount of policy development done in parliament is minimal. It is the contributors along the way, lobbyists (organisations favoured by the government and involved in policy advice), public servants and individual ministers who wield the most power in shaping the final document.

Case studies

Case study comments

Case 5: Pieces of relevant legislation in this case reveal the role of the legislature in developing written laws and regulations. Bills were also introduced to amend existing legislation (p. 93).

The role of the judiciary

The role of the judiciary (the system of courts and judges) is often understated in policy analyses. It is assumed that the policy of government (laws and other decisions) is made and implemented without question. However, after an Act of parliament is made (and accepted as being constitutional), the courts "have the duty of deciding whether the particular legislation, or a particular legislative provision, is valid or not" (Henningham, 1995, p. 74).

It is commonly understood that judges may condemn or fine lawbreakers, but it is less well-known that they may also question and interpret legislation.

This interpretation is a fundamental aspect of policy-making, since the way the law is stated is likely to lack the detail to define every situation. It may be ambiguous or it may contradict other legislation.

The role of the courts is (in individual cases or disputes) to work out what parliament intended when it passed the law. If parliament's intention is not clearly conveyed in the words of the legislation, the onus is on the judges to interpret and rule upon it. This process of interpretation allows judges' values the power to shape policy (Chisholm &Nettheim, 1984, p. 56).

Based on this, the courts have an extensive role in further refining (through interpretation and decisions on cases), what the law actually means.

These processes apply not just to statute law (the Acts of parliament), but also to delegated legislation (also known as subordinate legislation).

Delegated legislation "consists of laws passed not by parliament but under the authority conferred by some statute", though such law "must remain within the authority conferred by that statute" otherwise it may be made null and void, or invalid, by the courts (Henningham, 1995, p. 77).

There is often a huge amount of such legislation in any country applying to local authorities, bylaws for railways, town planning approval laws,and so on. (Henningham, 1995, p. 77).

The presence of courts and their extensive activity in determining cases (especially in legislated matters rather than in common law) provides evidence that this is an active part of setting precedents in policy interpretation.

Even when there is no stated legislation, as in received common law, there is a history of established state or public precedent, so the administration and application of all law may be examined in the light of public policy.

Bodies of administrative law also provide tribunals, ombudsmen and hearings for matters of redress against such things as maladministration or injustice. The active operation of this type of law is dynamic and influential in shaping policy as it is applied and also in providing feedback on the application of the policy.

While courts may have extreme power in interpreting and shaping policy (in accord with their judgement of the law and justice), they are not directly accountable to the people (Bridgman & Davis, 2000, p. 11).

It would take significant injustice (or a scandal) to dislodge a judge from their post.

Case studies

Case study

Case study comments

Case 4: The writer of this case establishes that courts are important players in the telecommunications policy area in the United States (p. 71) with reference to some legal cases that have influenced policy.

Case 5: There is much that can be linked to the judiciary in this case. Of most interest is the fact that it was not even clear where jurisdiction lay and that the outcomes would vary depending upon which nation's courts heard the case. Some of these likely outcomes had potential economic implications, an inevitable indictment of inequality between the nations of the world. Courts, too, are subject to intergovernmental relations and rules to determine which court is superior.

Case 10: One Supreme Court decision affected the policy in this case. That is, the municipality had the right to evict people who were obstructing footpaths or other public land (p. 155). The writers of the case stated that this decision revealed the social bias of the judges.

Activity 4.4

Consider the definitions of public policy covered earlier in this course and consider how they relate to the law applied by the judiciary.

Activity

1. State which definitions embrace this activity and which do not?

2. Explain your findings.

3. Think of an example of a court decision in your country that led to a significant change (or interpretation) of a policy?

4. What was the change?

5. How did it affect existing policy?

Intergovernmental relations

This section will address where the borders between different levels of governmental power lie, how intergovernmental arrangements should be managed and especially what impact those arrangements have on policy and policy development.

These issues relate not only to local, state (or provincial), national (or federal governments), but also to higher forms of international agreements, regional groupings such as the European Community, and international collaborations for trading blocs, defence and other collective activities.

The presence of multiple levels of government certainly makes a difference to what policy is made and by whom, both at central and other levels.

Compare unitary systems (such as those of New Zealand and Britain) with more **fragmented** federal systems (such as those of Australia, Germany and the United States).

In New Zealand money allocation is centralised, and:

> …[E]nables some coherence in dividing responsibilities and so reduces the possibility of redundant overlaps. The power of the purse becomes the instrument of co-ordination.

> (Davis, Wanna, Warhurst & Weller, 1988, p. 47)

In a federal system (such as Australia), it is more difficult to reach agreement about who will take responsibility for what (even though some of this is constituted) and how taxes will be levied across the different levels of government (Davis et al., 1988, p.47).

Accepting that there is a need for intergovernmental relations, the various parties need to agree (or try to agree) about how they will work together.

O'Faircheallaigh, Wanna and Weller (1999, pp. 101–106) provides two broad strategies:

Facilitating cooperation and interaction in policy development.

This includes activities for constructive problem-solving, generating cooperative policy responses or providing for greater empowerment of participating institutions. The links are about resolving problems, meeting collective objectives and typically preserving governmental discretion. Agreements are usually jointly proposed and voluntarily agreed to. "Such links tend to encourage developmental approaches to policy based on regional or local discretion" (Corbett,citing Peterson et al., 1986). Sometimes complex webs of committees and councils add to these arrangements (Corbett, 1996, p. 10).

Seeking to limit the exercise of power and discretion at another level.

This can be done via decisions and non-decisions. Particular methods include restriction, compulsion, regulation and non-cooperation, all of which impede discretionary policy determination at other levels. The limiting tendencies tend to involve reluctant acceptance of regulatory arrangements, though these are often offset by quid pro quo undertakings. In other words, there is degree of compromise and trade-off in the arrangements.

It is also worth considering how difficult cooperation might be between levels of government, seeing as the two levels might have different sets of attitudes towards reform and policy.

The central government has added difficulty in a federal system, finding and adopting a uniform response to several parallel subordinate governments, especially if they are of varying political persuasions. If a particular party had executive control in central government in a federal system and more than half of the provincial or state governments were controlled by the main opposing party, those governments might pursue an agenda that diverged (both in terms of policy and politics) from the other parallel and central government. This could hamper the central government's efforts.

Bear in mind how local authorities might fare using the same two strategies of facilitation, and by limiting the exercise of power through their relevant higher government and/or the federal government.

While control for a particular area of responsibility might be predominantly at the state or provincial level, the federal government might have influence through the use of tied grants. If the government allocates money for specific purposes, the state (or province) is usually inclined to take advantage of that source of funding. There can also be collaborative alliances of local, state or provincial governments, especially when trying to influence a higher government.

Finally, although we will not go into it here, there is a growing need to consider international agreements (such as those of the International Labour Organisation, economic and defence agreements) when trying to understand how governments are constrained or directed.

While much of the discussion, in this regard, seems to be about relations between governments (as opposed to their administrative organisations), the implications of these strategies, agreements and behaviours clearly filters down to (and affects) the ways public sector managers and employees must operate.

Case studies

Case study comments

Case 3: This entire case is about intergovernmental relations in the European Community (EU) and efforts to develop common policies for the EU, yet some national issues remained sovereign.

Case 4: Looking closely at the amount of coordination needed in telecommunications. It reveals a complex web of responsibility and control between the federal, state and local governments (see p. 72 for a preliminary breakdown).

Case 5: It could be suggested that there was a shortage of coordination between different levels of government in India, or at least a failure to liaise over important developments in a dangerous manufacturing activity. Rather than exercise caution, the local authority attracted industry including Union Carbide with local economic development incentives and the blessing of the national government (p. 85). It seemed (according to the article) that the mayor of Bhopal "had no idea of the potential dangers posed by the Union Carbide plant" (p. 85) and that the state government was poorly staffed with inspectors (some 15 for 8000 plants in the state of Madhya Pradesh) (pp. 85–86).

Case 8: While the details are not made clear, there are three state governments involved in the building of the dam; Madhya Pradesh, Gujarat and Maharashtra (p. 141). One might assume that there is reasonable cooperation between these governments even given the considerable public protest.

Case 9: Bilateral agreements (p. 146) are a key part of foreign aid; the recipient country is often bound to undertake programmes according to the dictates of the donor country or agency. The decreasing amount of overseas aid means that governments have to compete for the 'shrinking pot' and may have to follow the wishes of an overseas power for their own public policy. In this case the focus is on agreements between different national governments, but such impositions might also flow down to state and local governments.

Case 12: In this case the national government occasionally imposes a requirement upon the municipal authority to take action to achieve a desired housing outcome, such as the 1928 requirement to "invest two per cent of their yearly budget on

workers' housing" (p. 164) or when they were to be encouraged to make land and services available for housing projects (p. 170). There is also a reference to a weakness in the policy activity of local government authorities (p. 171). It is stated that housing organisations "represent a sort of advanced informal sector, or, seen from another perspective, an attempt to create 'local-state' welfare organisations to provide for social needs (in the absence of local authority machinery) to fulfil this function". Policy does operate between levels of government and either coordination or the exercise of power occurs. It appears that the exercise of power has been the most prominent device utilised in this case.

Activity 4.5

Activity

Identify any international decision that impacted policy in your own country.

1. What decision was it?

2. How did it impact your country's policy?

3. Alternatively, consider the impact that federal (or higher-level government) might have had on the policy of lower level governments.

4. What impact would it have?

5. What effect would it have on the policy of the lower level governments?

Module summary

Summary

The roles of the various institutions of government are (seen from one angle) explicit and (from another angle) overlapping and blurred.

In this module we developed an appreciation for the key roles undertaken by each institution. Be alert to the more ambiguous roles, the subtleties of interactions between individuals and organisations and the ways that power and values affect the part each plays. Also note that the political system of a particular nation (province or state) imposes different responsibilities on the role of each institution.

Assignment

Due date:

Value: XXXX

Format: Essay (3000-3500 words)

Modules covered: Modules 2–4 (Module 1 may also be utilised)

Assignment

Assignment question

The political and social contexts in which policy is made will determine who has power to influence the emergent policy.

Discuss this statement in relation to the structure of your own national government and the social systems that enable or impede wider public involvement in policy-making.

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Further reading

Further reading

The following readings will offer insights into the power, participants and values in policy-making, as well as focusing on particular institutions. Where the suggested reading relates to one particular element of this module, this is indicated. Note that some of these books have earlier or later editions which will usually fulfil the same purpose, though the chapter numbers may be different.

This is only an indication of possible readings, not a comprehensive list. You may find many other relevant sources for further reading.

Anderson, J. E. (1990). *Public policymaking: An introduction*. Boston: Houghton Mifflin.

Chapter 2 examines the various institutions and people involved in policy-making with an American focus.

Bachrach, P. & Baratz, S. (1962). The two faces of power. *American Political Science Review*, 56(4): 947–952.

This reading will enhance your understanding of power.

Bridgman, P. & Davis, G. (2000). *Australian policy handbook* (2nd ed). Sydney: Allen & Unwin.

Chapter 2 covers institutions in broad terms, while chapter 8 deals with coordination among different government departments and chapter 9 deals with the role of cabinet.

Davis, G., Wanna, J., Warhurst, J. & Weller, P. (1993). *Public policy in Australia* (2nd ed). Sydney: Allen & Unwin.

Chapter 4 focuses on the executive role in policy-making.

Fischer, F. & Forester, J. (Eds). (1987). *Confronting values in policy analysis*. Newbury Park: Sage.

A useful source of analysis about values in policy processes.

Ham, C. & Hill, M. (1984). *The policy process in the modern capitalist state*. Brighton: Wheatsheaf.

Chapter 8 looks at the role of the bureaucracy in a more day-to-day manner.

Hill, M. (1993). *The policy process: A reader*. Hemel Hempstead: Harvester Wheatsheaf.

Readings in Part VIII explore street-level bureaucracy. One is by Michael

Lipsky, the man responsible for making the term so well-known.

Lipsky, M. (1980). *Street-level bureaucracy*. New York: Russell Sage.

An analysis of how civil servants at the lowest levels also have a role to play in administering and implementing public policy as part of the permanent executive.

Lukes, S. (1976). *Power: A radical view*. London: Macmillan.

or

Lukes, S. (2004). *Power: A radical view* (2nd ed). New York: Palgrave Macmillan.

This provides a deep analysis of power that may be successfully utilised in policy analysis.

Peters, B. G. (1989). *The politics of bureaucracy* (3rd ed). New York: Longman.

or

Peters, B. G. (2010). *The politics of bureaucracy* (6th ed). New York: Routledge.

This book draws attention to the bureaucracy or permanent executive.