



THE POLICY-MAKING PROCESS IN THE CRIMINAL JUSTICE SYSTEM

ADRIAN BARTON AND NICK JOHNS

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The Policy-Making Process in the Criminal Justice System

How the state 'deals with' crime and criminality is a major issue for all students of criminology and criminal justice. This book offers a fresh perspective on the policy-making process in the criminal justice system of England and Wales by presenting a detailed overview of both the theory behind it and how it plays out in practice with contemporary policy examples.

The key features of this text include a detailed analysis of the basic political concepts surrounding the relationship between the citizen and the state as well as an overview of the state departments, organizations and individuals that are instrumental in creating and influencing policy. The book also analyses how criminal justice policy is interpreted and implemented on the street and comprises a range of discussion points and suggested further readings.

By taking a unique criminal justice-focused approach to policy making, this text is perfect for the undergraduate taking modules in criminology, criminal justice, policing, the voluntary sector and social and public policy. It will also be of interest to those who are taking more vocational routes and to practitioners.

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Foreword and acknowledgements

We are undeniably in a state of flux in terms of politics and policy. We have a coalition government for the first time in many decades and it is fair to say that it is working its way through a different and challenging set of working arrangements. In addition, we are seeing a global fiscal crisis manifesting in the United Kingdom as a period of austerity where government spending is being withdrawn or reduced in all areas of public provision. In addition, we are seeing a crisis in the financial stability of the eurozone and an economic slump in the USA, and the latest figures show a slowdown in China's growth. Furthermore, there is the very real prospect of the break-up of the UK with a referendum in Scotland.

Given all this, we feel that it is important that those studying aspects of public policy – of which criminology and criminal justice are undoubtedly a significant part – have a grasp of the key determinants, options, barriers and outcomes of the policy-making process in order that they better understand how and why, and, importantly, why not, certain types of policy are made and implemented. For us, an inability to do this runs the risk of creating a partial understanding of an important aspect of all governments' work.

With this in mind we set about producing this work. It was written with the express intent of giving criminal justice and criminology students a basic and accessible insight into the world of policy making. As a result we have sacrificed depth for breadth. The reasons for this are simple: this is an introductory textbook aimed at a specific group of readers. Our aims were to cover the key areas of policy making in a manner which allowed the reader to come away from the text with an understanding which, at one level, would allow them to comprehend, in a very general way, the complexity inherent in policy making and policy doing; at another level, we hope that some readers become as fascinated by policy making as we are and choose to do further reading in order to obtain a greater depth of knowledge.

Finally, as in all our work, we take full responsibility for what follows. That said, work such as this does not take place without the input of others and we'd like to take this opportunity to thank some of the people who helped us complete this book. First, we'd like to thank three cohorts of criminology and criminal justice students who, unknowingly, fed into the development of this

project; we'd like then to thank the editorial team at Routledge for their help, advice and patience in the writing of this. Finally, we'd like to thank the people who have had to live with us as we completed this volume – never an easy task! Nick would like to thank Heather, Ben and Matthew for their continued support. Adrian would like to thank Quinnie for always being around.

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1 Introduction

Origins of this book

As authors and academics we share a commitment to interdisciplinary working within the social sciences. Since we both started out in the field of social policy, perhaps this should be no surprise. One of the central features of social policy, in terms of both its application and its study, as far as we are concerned is that it is something of a magpie field (Blakemore, 1998), drawing evidence about the things that impact on welfare or well-being from every available source and as a result crossing a number of academic disciplines. Whilst this occasionally eclectic approach can be seen as a weakness at times, we strongly believe that being able to draw from a variety of sources allows a deeper understanding of social problems often in a more holistic way than unitary discipline pathways. It has provided us with the ability to teach and research in a number of areas over the years, including criminology and criminal justice studies. It was essentially as a result of our experience of teaching policy-related issues to criminology and criminal justice students that the idea for this book took shape.

Despite the reality that criminology, but more so criminal justice studies, is arguably a specific branch of social policy, in many areas and many programmes we found that the *process* of policy making is an underdeveloped aspect of the curriculum (and, as an aside, we would suggest it is a neglected aspect in some types of criminal justice and criminological research). The result of this fundamental lack of understanding about how policy is made, for whom, by whom and the constraints that policy makers and policy doers operate under, led otherwise perfectly able students to make unfounded criticisms of current arrangements and put forward unachievable utopian suggestions for policy advances. As Ismaili (2006: 255) points out:

As the criminological subfield of crime policy leads more criminologists to engage in policy analysis, understanding the policy-making environment in all of its complexity becomes more central to criminology. This becomes an important step toward theorizing the policy process. To advance this enterprise, policy-oriented criminologists might look to theoretical and

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conceptual frameworks that have established histories in the political and policy sciences.

It is in this spirit that we have tried to operate, though perhaps emphasising policy making as a process first and then applying criminal justice examples to illustrate its relevance. As governance and policy making has become increasingly driven by a desire for evidence, and this is shaping every area of public sector activity in the UK, understanding how policy is conceived, implemented and evaluated becomes ever more important.

What we have tried to do in this volume is speak across the boundaries of policy studies and analysis and criminal justice and criminology, with the aim of providing a basic introduction for students of criminal justice and criminology to the area of policy. Hopefully it will appeal to people with a general interest also, although as Waterstones – one of the major book retailers in the UK – was amongst the few places that escaped the attention of looters during the 2011 riots in cities across the UK, maybe this is a little too optimistic!

However, having taught criminology and criminal justice to undergraduate students, we are aware that in the main they seek to understand their chosen subject in terms of ‘crime’ and therefore expect the majority of information to be about ‘crime’; if it is not, our experience is that they begin to complain that ‘it’s just not relevant’. To a degree we suppose this is true, but, sadly, it is a narrow conception of what the discipline is about. Nevertheless we have accepted this and, because of the need to be seen to be ‘relevant’, we have written the book with the assumption of little prior knowledge about policy making (or politics for that matter) and a recognition that for the majority of criminology and criminal justice undergraduate students there will be no need to understand the minutiae of the policy-making process; rather, a broad and general overview of the principles and practices will suffice. Thus, what follows is not a detailed policy-making book, and nor is it meant to be. It is a book that is intended to be an accompaniment to other areas of the discipline, one that allows students to appreciate that although they may disagree with any given policy, it has not suddenly appeared but is the product of a complex convergence of a number of factors and will take an equally complex approach to change it. In the final analysis we hope that this gives readers a starting point for developing their own interest and understanding of this vital and compelling aspect of social relations and interaction.

Structure of the book

In chapters 2 and 3 we have attempted to set the scene by focusing on the role of the state in policy making and introducing the reader to the centrality of political ideas. While policy is a universal activity that we all engage in – even deciding to make punctuality a personal guide to our behaviour in relation to others is to employ policy making – the criminal justice system in the UK is predominantly the responsibility of the state. At the time of writing the role of

the private sector is under review, and the West Midlands and Surrey police services have caused consternation in some quarters by announcing that key aspects of their work will be put out to tender – including criminal investigations (<http://www.dailymail.co.uk/debate/article-2110423/West-Midlands-Surrey-Police-privatisation-help-bobbies-beat.html>). Nevertheless, while the balance may constantly shift in a mixed economy of provision, the reality is that the state will retain control of criminal justice for the foreseeable future.

Having made this observation, it begs several questions. What is the state? Is it simply what the central government does or decides? What role does local government play? And taking into account more recent developments, how will we, as citizens or subjects, play a role in our own governance? Whether this is part of a third way or as part of laying the foundations for a Big Society, such questions will become more pressing. The purpose of chapter 2 is to give the reader a brief introduction to policy making as a function of the state.

The third chapter moves away from grounded political realities to an exploration of the place of ideas in the formulation and implementation of policy. While Tony Blair and to an extent Gordon Brown and David Cameron, as successive prime ministers, have all expressed a desire to escape ideological constraints and instead concentrate on ‘what works’, it is our contention that this is not actually achievable and may even be disingenuous to suggest. Ideas are as central to policy making in contemporary society as they have always been and for those studying these issues for the first time it is imperative to understand this. All we can hope to do in this short book is to highlight the principal ideologies that retain their explanatory power and give the reader some stimulus to guide their own ideological adventures. When reviewing policy, and criminal justice policy in particular (Grimshaw, 2004), it is as well to keep in mind the question: in whose interests?

In chapter 4 we begin to think about the nature of social problems and more specifically the process of establishing what count as problems that are worthy of policy attention. This follows on from the ideology discussion very neatly because from our perspective identifying the motives for action is inherently about ideological matters. What is seen as a problem and acted upon and by the same token what is ignored are very much the products of the world views of policy actors. Again this runs counter to the dominant political discourse at present, but that is because in claiming ownership of common sense politicians and others can appear invulnerable to criticism. Who would dare argue against common sense or what is seen to work? As academics, students and citizens/subjects we must not allow that to happen. Without problems to overcome policy would seem to be unnecessary, but to seek to obscure the importance of ideas is itself an ideological sleight of hand. In short, pretending to transcend ideology becomes its own ideological position. Chapter 5 places this into a criminal justice context by introducing the key players and agencies who bear responsibility for different aspects of policy. The information provided here is up-to-date at the time of writing but, just as with everything else involving policy, the personnel and processes change very

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quickly. Once you have the basic structure though, it is then far easier to negotiate this dynamic process.

Having set out the policy environment for criminal justice, we then – in chapter 6 – describe the process by which social problems are translated into meaningful action. Policy making is one thing but actually implementing that policy is another matter altogether, and the reader needs to understand what makes this translation possible and what serves to make this process difficult. The implementation gaps that policy makers are frequently faced with – that is the gap between what policy makers want to happen and what actually does happen – can often lead to policy ‘failing’ or at least not making the intended impact. There are all too often unintended consequences of policy making. Not the least of these numerous barriers are the so-called ‘street level bureaucrats’ (Lipsky, 1980). If we are going to make policy directing the beat priorities of police officers, then we are to some extent limited by the willingness to comply of the targets of our intended outcomes. Some public servants have a great deal of discretion and are powerful enough to frustrate the aims of policy. In reviewing this, we first set out the ideal circumstances for policy making as exemplified by leading commentators, then use this framework to show how the actual rarely conforms to the ideal. In philosophical terms the ‘ought’ of a given situation does not often reflect the ‘is’ ...

An important factor in modern policy making in the UK is the way in which public sector institutions co-operate with each other and with organisations and actors across other sectors. Joint working is therefore the subject of chapter 7. If responding to problems from a unilateral standpoint is difficult enough, then adding in the complexities of working with other agencies and organisations provides an extra dimension. Here we set out the distinctions between multi-agency, interagency and joint working. While this is a huge and expanding area of social scientific writing and research, the chapter walks the reader through the historical origins of joint working and the practical, potential and significant problems of making and delivering policy in such a context.

Chapter 8 rounds up the policy-making process by looking at what happens once a policy is designed and implemented. Without evaluating how a policy has worked (or not) there would be no way of revising and refining it or, if necessary, abandoning it and changing direction. Of course, the latter is rare because of the investment in political credibility, time and resources that are expended in policy making. As we said above, as evidence has taken on more significance, evaluation and audit have also seen more emphasis. Even in academic circles this is having a major impact. Once upon a time conducting research and producing journal papers and books were considered the ultimate goal of academic work; now we are being asked to evidence the ‘impact’ of our work. While this is potentially a positive thing, there is suspicion that it is as tokenistic as the previous priorities. Regardless of this, evidence is imperative, and understanding how it is gathered and interpreted needs to be addressed.

The final substantive chapter takes equal opportunities in the criminal justice context as its subject. What we have tried to do is to bring the material produced in the preceding chapters together – as far as possible – and use equal opportunities in policing as a specific case study. The interest for us lies in the reality that equal opportunities has been an ongoing problem for the police service, with anxieties about the ability to understand and respond to the policing needs of diverse communities. In 1999 the police service was labelled as institutionally racist by the Macpherson Report, and it would be hard to think of a larger problem for any agency to overcome. We discuss the way in which the problem was conceived, the process by which policy advanced and its outcomes as far as they can be judged to date. The magnitude of the change required underlines the importance of ideology but perhaps the gap between stated objectives and real policy intentions. The magnitude of change required is so significant that it may be impossible to achieve without a thorough restructuring of policing. As far as policy goes, this is as difficult as it gets.

A parting shot

Policy is an inescapable part of modern living, and while it may seem tiresome at times, one of the ways to make it more interesting is to engage with it as a living, breathing entity. If you can achieve this, you will begin to understand the complexity of policy making as well as the manner in which policy makers at all levels (supra-national, state level, local and even within your own university) have huge impacts on what becomes possible. The excitement and the possibilities inherent in policy making have been beautifully articulated by Kingdon (1984: 128):

Many people have proposals they would like to see considered seriously, alternatives they would like to see become part of the set from which choices are eventually made. They try out their ideas on others in the policy community. Some proposals are rapidly discarded as somehow kooky; others are taken more seriously and survive, perhaps in some altered form. But in the policy primeval soup, quite a wide range of ideas is possible and is considered to some extent. The range at this stage is considerably more inclusive than the set of alternatives that are actually weighed during a shorter period of final decision-making. Many, many things are possible here.

We hope that you come to find policy as fascinating as we do and that in some small way this book acts as a very small step in your future studies.

2 The role of the state in the policy-making process

Introduction

The starting point for this book is to examine ‘the state’. This is an important launch pad for what comes later as ‘the state’ is often the bedrock for all types of policy-making organisations. It is also important in more practical terms as it provides us with a frame of reference: often in general conversation people will say ‘such and such is an outrage, *they* should do something about it’. For example, during the riots which took place in the United Kingdom (UK) during the late summer of 2011 there were cries from all sections of society for something to be done – the common refrain was ‘*they* need to do something’. More often than not the ‘*they*’ to which people refer is the state or state agencies providing services on behalf of the state; in the example of the riots it was the government directing the major state criminal justice agencies such as the police, courts and prisons to which people were referring. That this has been a long-standing feature of police–community relations can be seen in the commentary of Bittner (1974) who referred to policing matters as involving ‘something which ought not to be happening, but about which someone ought to do something *now!*’ (cited in Newburn and Reiner, 2007: 213). As such, the state has incredible importance in policy making and policy doing, two concepts and practices we will explore in the forthcoming chapters. However, it is important that you understand from the outset what is meant by ‘the state’ as it is a phrase that is often used without explanation but in reality is a complex and changing mixture of concepts and practice.

What you also need to understand is that, generally speaking, policy generated by the state takes precedence over all other forms of policy, and it is very nearly always the case that those who transgress against state policy will suffer some form of sanction, if they are caught. This may seem obvious but have you ever paused to consider how this comes about? Why do we allow the state to punish us if we break the law? Equally, policy made by the state should, in theory at least, be of benefit to all citizens, but is this really the case? If it is not, then in whose interest does the state operate? Remember our central question from the introduction: in whose interests? It is important that you have some understanding of these questions because their answers have a

direct effect on the types of policy which will be made, the sections of society at which policy will be targeted and the manner in which such policy is implemented. This chapter provides some information about the state and the manner in which it operates, including the tools it has at its disposal, and concludes with some thoughts about power and the state.

‘The state’

The best place to begin this section is to define what is meant by ‘the state’. Whilst there are a number of definitions, they all have core elements in describing and defining what the state is. For our purposes, the definition of the state by Abercrombie *et al.* (1984: 241) is a good starting point. They define the state as:

a set of institutions comprising the legislature, executive, central and local administration, judiciary, police and armed forces ... it acts as the institutional system of political domination and has a monopoly of the legitimate use of violence.

Thus, when we talk about ‘the state’ what we mean is an entity that is much more than simply the central ‘government’ in Westminster – it encompasses the bodies which form what is known as the political executive (parliament, local authorities and the political parties); it also includes the institutions which we can see as the machinery of government (departments and official organisations).

The term ‘state’ can also be used at a number of levels: supra-national (as in the case of the European Union), national (as in the case of the United Kingdom, UK) and more recently in the devolved institutions in Scotland, Wales and Northern Ireland, or locally (as in the case of Plymouth City Council). Flint (2006: 105) provides this useful conception of the multi-layered nature of ‘the state’:

A state is the expression of government control over a piece of territory and its people. The geographic scope of governmental control exists in a series of nested scales. For example, the London Borough of Hackney is a scale of government nested within the Greater London Council, the United Kingdom and the European Union.

Power to make and implement policy is diffused within this nested system, with decision making and enforcement capabilities being spread across ‘the nest’ often according to a principle known as ‘subsidiarity’. This is a term we will explore later.

The state also creates, retains and bestows on the government, and the machinery of government, the monopoly of the legitimate right to use violence to enforce its will. Again, this monopoly of violence is an important definitional

and practical point. Put simply, it provides the state and state agents with the right, in certain circumstances, to use force, up to and including lethal force, not only against the external enemies of the state (for example foreign terrorists) but also against its own citizens. Again, it is important to note that the decision and the right to use force are applied on a sliding scale, with the local state having far less power to enforce its will by resort to force than the central state.

For our criminal justice-based policy purposes we need to begin to think about the state as being the government at central and local level, including those organised political parties that take part in the democratic process, as well as the institutions which implement state criminal justice policy, such as the police, prisons, the Crown Prosecution Service, courts and probation, as well as the increasing use of private companies that are contracted by the state to provide aspects of criminal justice policy. But the state moves beyond the organisations themselves: it also *becomes* the functions these organisations perform, because the organisations work on behalf of the state and for the state.

At this stage it may be easier to begin to understand this by looking at the manner in which state institutions working in the criminal justice sector make abstract concepts such as 'justice' manifest, or 'real'. For example, the police are a state institution that 'does' police work on behalf of the state. Depending on the nature of the state, this work ranges from providing a public presence (the bobby on the beat function), to keeping public order, to investigating serious crimes, to using armed force to address offending behaviour. Thus, one aspect of police work is to arrest and question suspects on behalf of the state; police keep the peace in the interests of and on behalf of the state. Equally, the court system is a state institution which turns the abstract concept of justice into a tangible outcome by deciding guilt and innocence, sentencing people and so on. This is important as in theory at least the work of the criminal justice system is done on behalf of the state and not on behalf of the organisations themselves. For example, some police officers may believe that we need to decriminalise cannabis and therefore stop arresting people for possession of that particular drug. However, until the state decriminalises cannabis, police officers, as agents of the state, are duty bound to keep arresting those in possession of cannabis and not allow their own beliefs to influence their actions (though, as we shall see, the role of discretion is hugely important in examining the policy-making and policy-implementing processes) (Lipsky, 2010).

Apart from the obvious elements of the state, some people see the media as part of the state inasmuch as it represents an 'establishment' which promotes and sustains a particular world view (Schlesinger, 1981). This became a very important topic during the invasion of Iraq with the development of 'embedded journalism', the location of journalists in military units theoretically to increase their access to 'live' events. This was interpreted as propaganda by many, rather than an enhancement of war-reporting, and there were even variations between the perceptions of the general populations of different countries (Donsbach *et al.*, 2005). More recent domestic events surrounding the now

defunct *News of the World* have also made an impact on popular perceptions, with the suggestion that many state agents have had very close working relationships with the media; we will return to this in more detail in forthcoming chapters. The important point for you to note at this stage is that the state encompasses more than just 'the government'.

Finally, it might also be worthwhile to pause to consider how 'the state' shapes your identity and how others, especially from other nations, see you. Beyond the practical manifestation of state power, it can also be argued that 'the state', when linked to national identity, is an abstract concept which serves to promote a shared identity and fix normative ideals about what ought to be – consider the scenes at every World Cup or major sporting championship, be it football, rugby or cricket, and the fervour induced by supporting 'England' or 'Wales', 'Scotland' or 'Ireland', or in the case of the Olympics Great Britain. This connection arouses passionate responses; in responding to an article by Jim White (2012) about the value of having a multinational and multi-ethnic British team to contest the Olympics, a regular blogger on the *Telegraph* site said:

Jim White praises the multi-ethnic composition of Britain's Olympic team in today's *Telegraph* (LINK), and this is my response:

What this article reflects is state ideology (not coincidentally, the exact but equally extreme opposite of Nazi racial ideology) which denies, demonises and suppresses as 'racist' the natural ethnic basis of national identity, which the liberal (and not so liberal) Left has succeeded in imposing on all western democracies since the end of WW2. The NATION has been removed from what was supposed to be our 'nation state', leaving us with just a mercenary STATE, for which it is the 'colour of money' rather than the 'colour of someone's skin' (i.e. ethnicity) that counts. Just look at the role that money plays in sports (including the Olympics) nowadays!

I no longer see Britain as my NATION, because it isn't one, and thus won't.
(<http://my.telegraph.co.uk/philosopherkin/tag/national-identity/>)

Just as national events can appear to bring communities together in the perception of shared identities embodied in a state, they can clearly equally illuminate tensions and divisions. Arguably, managing this is a key function of the power of the state.

There are any numbers of ways for 'the state' to operate and to exercise its power. In Britain, we have a particular form of the state which is generally known as a 'Western liberal democracy' (WLD) and is one of about 40 similar liberal democracies in the world (Budge *et al.*, 1998: 4). Broadly speaking, WLDs are states which have regular elections enabling most citizens above a prescribed age to choose which political party (or parties) will form the government (local, national and, in the case of the member states of the EU,

supra-national). All citizens over the prescribed age are able to vote in these elections (with a few exceptions in some cases). Importantly, WLDs guarantee citizens' rights which cannot be taken away without the agreement of the democratically elected government. As we will see below, theoretically, in WLDs power lies in the hands of all the electorate as the people both (s)elect and de-select the government.

Another important feature of WLDs is that the use of state violence enacted on its own citizens to enforce the will of the state is undertaken as a last resort and as such is rare (but not unknown). Note the reluctance of Theresa May, the Home Secretary at the time of the riots in 2011, to use the armed services to regain control of the areas affected. Generally, in WLDs governments make policy which is debated in and through the media. Although these debates can be fierce, they are generally peaceful. In some cases, demonstrations, usually in the form of protest marches, take place. Again, apart from a few cases, these are generally peaceful. Once these have been conducted, policy making and implementation usually continue, occasionally with some adjustments made in response to popular concerns. When WLDs do use violence on their citizens, it is usually undertaken by the police and not the military. However, it is important to note that some would argue that, given the concerns about global terrorism, state violence in WLDs is actually on the increase, and that this has impacted more severely on specific communities, Muslims in particular (Vertigans, 2010).

However, not all states operate in this manner. For example, many single-party states (sometimes referred to by the Western media as 'dictatorships') are not based on democratic principles as we know and understand them. In turn, it is not unusual for the rulers of such states to use oppression and violence in order to establish and maintain power over their citizens and remain in power until the state is changed via revolution, populist resistance or, in the case of Iraq, foreign governments creating regime change. Citizen-led change has been at the forefront of what is being called 'the Arab spring' across North Africa in 2011, where the death of Mohamed Bouazizi, a young man who set himself alight in response to the police seizing his vegetable cart, led to rioting by young Tunisians, which in turn has led to regime change and seemingly irresistible demands for reform in countries such as Egypt (see Blight *et al.*, 2011, for a useful and interesting timeline of events).

Equally, there are some examples of leaders failing to give up power even in the face of the democratic decisions of the people. As we write this chapter, the Ivory Coast is in turmoil because Laurence Gbagbo has refused to cede power and in the process has dissolved the government and the electoral commission in that country and effectively seized power. Alongside this, the winner of the election held late in 2010, Alassane Quattara, has also formed a government. At present the Ivory Coast has two governments, each trying to run the 'state'. This begs the question: which party has legitimacy and to whom do the people turn? Having raised this question, we will now move on to explore the nature of the relationship between people and the state.