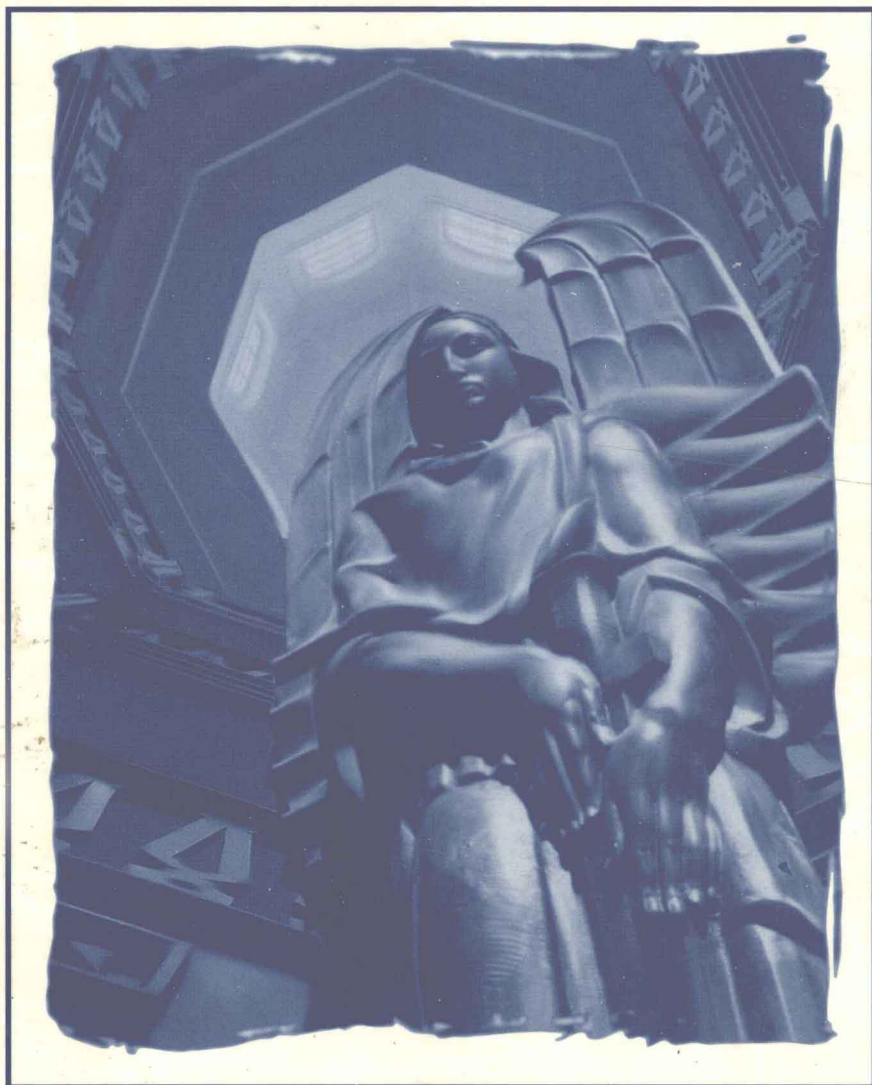


# PUBLIC POLICY, CRIME, AND CRIMINAL JUSTICE

Second Edition



BARRY W. HANCOCK • PAUL M. SHARP

# *Public Policy, Crime, and Criminal Justice*

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## Preface

In this second edition of *Public Policy, Crime, and Criminal Justice*, we have attempted to maintain the basic structure, outline, and content of the preceding edition. An anthological work requires careful selection, editing, and a fastidious blending of pedagogical materials and original works into a congruent whole. This synergistic approach helped us achieve our major goals as we produced *Public Policy, Crime, and Criminal Justice*. Certainly, our most important goal was to create, through original sources, a solid foundation of knowledge about public policy and crime in an up-to-date manner. Consequently, we selected articles that represent some of the best ideas, thinkers, and genres within the crime and criminal justice policy arena. We are especially proud of the cohesive style achieved by the selection of not only superb articles but an organizational format that groups these readings into traditionally recognized categories.

A second goal was to fill a void that we feel has existed for far too long: the creation of a text that addresses, with original works, the policy dimensions of crime and criminal justice specifically rather than supplementally. The articles in this text allow students to broaden their understanding of a particular area not through another's interpretation of materials, but by reading the author's original writing. We have noticed some movement away from traditional textbook approaches in criminal justice courses, and there is little doubt that policy concerns have been anything but primary concerns in these formats. Our hope, through this anthology, is to be a part of the effort to broaden students' knowledge and experience in courses dealing with public policy and crime. Of course, this is not to imply that there is no need for textbooks for many courses, but rather to suggest a trend toward more in-depth understanding of the policy processes that help shape the system of justice in the United States.

Our final goal, the addition of pedagogical materials, was achieved by the development of questions placed at the end of each reading in the anthology. These "Questions for Discussion" integrate the reading materials into major points and weave readings one to another. This provides added consistency and flow to the total work and allows *Public*

*Policy, Crime, and Criminal Justice* to be adopted for use as a primary or supplemental text. This learning tool is intended to integrate the reading into your thinking through either open class discussion, exercises, or individual assignments. Each reading serves as a beginning point for further enhanced learning or as an overview of a particular policy issue.

## ORGANIZATION OF THE WORK

*Public Policy, Crime, and Criminal Justice* is organized into three major parts. Part I, “Public Policy and Crime,” consists of seven articles that lay the foundation on which the anthology is built. Beginning with the public policy process and covering topics such as family, drugs, race, and science, Part I is essential to understanding historical and political realities as these processes shape and often determine policy regarding crime. This grouping of articles illuminates the often dark background of events and processes that have created and even recreated the system in which justice now presides.

Part II, Public Policy and Criminal Justice, is a large selection consisting of seventeen readings, which we’ve divided into five subsections for purposes of organizational and topical clarity. Specifying the elements of the system first, we further divide readings into the categories of law enforcement, courts, corrections, and juvenile justice. By organizing in this fashion, we are able to cover the traditional components of the criminal justice system as each relates to policy within that particular component and the system as a whole.

In Part III, Trends in Public Policy, Crime, and Criminal Justice, we present the final five readings in the anthology, which represents some leading ideas regarding future crime policy. As a collective, these readings are the most provocative and thought provoking since they poignantly argue past mistakes, current circumstances, and future directions in public policy regarding crime and criminal justice.



# Acknowledgments

We wish to express our gratitude to those who contributed to the planning, design, publication, and many other tasks involved in the production of this anthology. This second edition of *Public Policy, Crime, and Criminal Justice* was accepted openly by Neil Marquardt, senior editor at Prentice Hall, and we appreciate the care and attention he has given to this work. The production team members have dealt easily with the many details of such a work and we thank you for the patience and care with which each person went about his or her task with such professional style.

We extend thanks and appreciation to the following reviewers for their many helpful critiques of the manuscript: Dr. Ellen G. Cohn, Florida International University; Dr. Wayne Wolf, South Suburban College; and Dr. William E. Kelly, Auburn University.

Finally, we would like to challenge students at all levels who encounter this work to glean all that they can here and then move on to other information. As we enter the twenty-first century, it is imperative that that we provide leadership and positive change in our attempts to ameliorate the social problems related to crime and criminal justice. Understanding the many facets of crime policy is no small undertaking; however, without first understanding these problems, there can be no leadership in the direction of amelioration.

*Barry W. Hancock*  
*Paul M. Sharp*

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## **Public Policy and Crime**

A policy is a plan of action. Public policy regarding crime is really no more than a plan of action targeting the various crime phenomena of a society. Crime policy has taken on perhaps more importance in the twilight of the twentieth century than at any other point in our nation's history. More than any of the other factors regarding crime policy, the contradictory outcomes of these policies have produced the crisis of public faith in the criminal justice system that we are now witnessing. As most Americans are painfully aware, the United States has two shameful distinctions: (1) an incarceration level that is the highest in the industrial world, now exceeding 1 million persons in prisons or jails and approaching 5 million persons under some form of criminal justice custody; and (2) a homicide rate that is also a worldwide record, and expectations are that it will increase over the next decade. Just imagine our horror if an external enemy were to invade the United States and kill 25,000 or more people each year. The homicide rates for teenaged males, children under age 14, and even more tragic, preschoolers up to age 4, have reached record levels. It is as if we are experiencing a nightmare from which we cannot awaken.

Our nation has shifted policies from reform to punishment and waffled on consistent crime policy to the detriment of the citizenry. The fear of crime and the lack of personal safety are now top concerns, leading such issues as economics, education, and health. In many ways, we are witnessing a crime control system that cannot, or perhaps will not, respond to the outcry for effectiveness. Although we continue to spend tremendous sums of time, money, and energy on the crime problem, we are not achieving the major goal of increasing public safety. Perhaps the problems are larger than we have been led to believe or that the system cannot solve all problems faced by citizens.

As a nation, the United States has often formulated crime policies that emphasize one or more of the following five major goals: (1) retribution, (2) incapacitation, (3) deterrence, (4) rehabilitation, and (5) restitution. It is our contention that the crises of public faith in the system of justice have come about because of a lack of congruity of the various components that make up the system. This, of course, should startle no one and may be stating the obvious. Although this may be common knowledge, the question is: Why hasn't the system been changed? The structural imbalances among the various parts of the

system are especially problematic and likely not to change without major paradigmatic shifts in the ways in which we envision our system of justice.

A poorly operating system of criminal justice, brought on by goal incongruence and imbalance, leads to diminished credibility in which justice is undermined. Agenda setting in criminal justice has often been based on reactive approaches to street-level crime while virtually ignoring white-collar, governmental, and organized crimes. The basic fairness of the system is undermined when these agendas are followed. Street crime became a focus in the 1960s with the civil rights movement and police responses to control what was seen as public disorder. The fear of crime rose at a much faster rate than the actual level of crime. Politicians, especially, often exploited this fear so as to build up the criminal justice system, and resources, both human and financial, were diverted away from various programs and into the new “war on crime.”

Of course, many groups help shape public policy, and crime is one of the most popular for legislative, executive, and judicial manipulation and debate. During the 1980s, for example, crime policies shifted away from reform and rehabilitation toward retribution and incapacitation. These policies were not, however, followed with any consistency by all components of the system. Criminal justice policies are often changed and influenced during implementation. The autonomy of various agencies produces goal conflicts that may cause the total system to function ineffectively.

Beyond the conflicting group and lack of consistent achievement, the four basic elements of the implementation process—(1) law enforcement, (2) prosecution, (3) adjudication, and (4) correction—often do not work harmoniously. The effectiveness of any set of goals cannot be realized without a synergy of the elements of implementation. Some of the greatest crises in the system are due to this uneven grinding of the wheels of justice.

Although the implementation of policies is more often than not affected by every component in a long line to finality, several important factors are worth considering as we begin our readings in public policy and crime. Resources must be available before any crime-related policy has a chance at implementation. The political environment must be balanced in favor of certain types of policies, or nothing will or can happen. In most respects, the social and economic conditions must be ready for new policies and the methods by which policies are implemented must be evaluated carefully. As a student of policy as it relates to crime and criminal justice, it is wise to remember that policy is often difficult to define and even more difficult to explain because of the processual nature of policy. In other words, policy is often what people claim it to be rather than a narrowly defined set of plans. Policy is always in motion and moves from side to side depending on the many political, social, and economic influences.

With these ideas in mind, we chose “The Public Policy Process in the United States,” by William P. Hojnacki, to serve as your introduction to the various factors that define and shape public policy. How public policy is defined; in what context policy is formulated, adopted, and implemented; and the competing interests that affect policy decisions are crucial to understanding the complex dynamics of policy creation and its far-reaching and long-term effects.

The historical relationship between criminological research and public policy is the focus of our second selection. In “Public Policy and Criminology: An Historical and

Philosophical Reassessment,” James F. Gilsinan recommends that we begin to view the interrelations between criminology, science, and social policy. The contradictory demands of science and of public policy have created a quandary for many criminologists that has led to an ineffective, if not denuded linkage between science and policy. Gilsinan points out that criminology historically has never been confined to the ivory tower but instead, has always been linked to policy concerns. Without doubt, criminological research has affected policy both directly and indirectly. Many contradictions and anomalies of the discipline of criminology, and its linkage to public policy, must be understood and appreciated if the knowledge-generating processes of our science are to be seriously linked to policy. Gilsinan argues that criminology and public policy are related hermeneutically. Understanding this linkage will, Gilsinan argues, narrow the gap between policy and the practice of social science.

Two seasoned criminologists, Michael Gottfredson and Travis Hirschi, in “Science, Public Policy, and the Career Paradigm,” argue that scientific criminology and sound public policy should reject the “career approach” to crime. This approach might best be replaced by the “theories of crime approach” because the career paradigm has failed to organize the facts about crime in a meaningful way. The implications of this kind of suggestion are immense and extensive. The system of criminal justice has been moving in the direction of controlling habitual, career criminals for some time now, and policy, especially sentencing policy, has been most influenced by this movement.

In “Crime, Justice, and the Social Environment,” Elliott Currie claims that violent crime is an epidemic in the United States. Currie creates a superb foundation for students to better understand the crime problem and policy reactions to these and other social problems. The punishment ethic that replaced rehabilitative ideology has, in Currie’s words, “failed, massively and tragically.” This conservative revolution in U.S. criminal justice did not fail for a lack of application, because of foundational principles that were wrong. If we are to revitalize the nation toward true justice, we must begin to see crime as a social problem inextricably intertwined with child poverty, infant mortality, inadequate public services, and extremes of economic inequality.

George B. Palermo and Douglas Simpson eloquently point out in “At the Roots of Violence: The Progressive Decline and Dissolution of the Family” that the present-day family often does not pass on to its members those traditional high moral values of honesty and responsibility. Moral values and honesty, they argue, are at the core of good citizenship and high self-esteem. When this breakdown in primary socialization combines with an epidemic of drug addiction and serious unemployment, we have the keys for understanding the upsurge in violence in the United States. The roots of violence are to be found in what happens to children in the earliest years of their lives, not in the symptomology of reactive solutions to social problems. The solutions to our massive problems of violence and crime are to be found in socializing children with unselfish citizenship. Reintegration of the family is the key to stabilizing our nation’s fall from greatness.

Our sixth selection, “Racial Disparities in the Criminal Justice System: A Summary,” by Joan Petersilia, concludes that the sentencing stage produces a greater differential treatment of minorities than any of the other stages in the criminal justice system. Petersilia points

out that in certain states, judges typically impose heavier sentences on Hispanics and blacks than on whites and that these minorities typically spend more time incarcerated. Disparities such as these undermine justice and lead to dilemmas that are not easily solved. Any policy reformation or change in sentencing structure must invariably address the issues involved in assuring equal treatment if the system of justice expects to create and maintain public confidence.

The question of the relationship between drug use and criminal behavior has been a policy concern for years. In a fine piece of research, "The Intersection of Drug Use and Criminal Behavior: Results from the National Household Survey on Drug Abuse," Lana Harrison and Joseph Gfroerer share some very valuable information with us. Research findings suggest such things as drug use and criminal behavior, especially property crime, are much more common among teens and young adults than they are among other age groups. No doubt, the highest crime rates are consistently found among the heaviest drug users, whereas the lowest rates are found among those who use neither alcohol nor illicit drugs.

# **The Public Policy Process in the United States**

*William P. Hojnacki*

The public policy process in the United States is one of the more confusing aspects of American government and politics. There is little agreement, even among respected political scientists, on what the salient parts of this process are. At least a half dozen theories try to explain how it is supposed to work.<sup>1</sup> The confusion is exacerbated by the difficulty that exists in even defining the term. Again, different political scientists have offered multiple definitions. There are, however, some common threads that run through these different definitions.

The goal here is not to resolve all the theoretical disagreements that political scientists may have, but to identify those aspects of this process that are meaningful to lay observers of it and those who participate in it. The objective here is to put the public policy process into a context that practitioners and ordinary citizens can understand.

## **PUBLIC POLICY DEFINED**

From all those offered, the definition of *public policy* I like best is the somewhat simplified statement that “public policy is whatever the government chooses to do or not to do.”<sup>2</sup> Although, as the author of this definition, political scientist Thomas Dye suggests, it may not accommodate everything that everyone would consider public policy. However, it comes close and captures what most people, especially political practitioners, think about when they consider public policy.

Even this simplified definition, however, needs further elaboration. It implies some conditions about what is or is not public policy that are not obvious. There are at least four

important characteristics that government activity (or lack of activity) must have before it can be considered public policy.

The first and perhaps most obvious characteristic is that only governments and those individuals who can legitimately act in the name of government can make and implement public policy. For any action or activity to be public policy, it must have the authority of government at some level behind it.

The second characteristic, drawn from the word *chooses* in Dye's definition, is that public policies are not random acts by either government agencies or elected or appointed government officials. They are deliberate courses of action (or inaction) designed to achieve some predetermined goals and objectives.

Third, public policies are indeed "to do's": they are not what is merely stated to be public policy, or what is planned, but what is actually being done. Often, there is a gap between what is said to be public policy and what the reality of that policy may be. This gap may contribute to the confusion about what is or is not public policy.<sup>3</sup>

The fourth characteristic is that government, and those who act in the name of government, must be consistent over time; it is not something that happens only occasionally or arbitrarily. A zealous policy officer who chooses on his own accord to enforce a stated speed limit strictly does not automatically alter a more generally accepted policy of a higher level of tolerance, even if strict enforcement of the speed limit has the authority of government behind it. True public policies are not subject to arbitrary interpretation of individuals regardless of their official capacity.

With these four characteristics in mind, it is appropriate to look at the negative side of public policy: when a unit of government chooses not to do something. The point is that choosing not to do something is a legitimate public policy choice only if the choice is in the realm of possibility. Most cities, for instance, do not have policies regarding foreign espionage. The absence of such policies does not mean that cities condone spying. It simply means that foreign espionage is beyond what is a legitimate area of policy concern. On the other hand, for a city to choose not to undertake a solid waste recycling program is a legitimate negative policy decision. Such recycling programs are normally within a city's jurisdiction. The same characteristics apply to negative policy decisions as to positive ones.<sup>4</sup>

## PUBLIC POLICY CONTEXT

Public policy is the product of the political system. The way that public policy in the United States is formulated, adopted, and implemented is somewhat different from how it is done in almost every other country in the world because the American political system is different. Many of these differences can be traced to the uniqueness of the Constitution of the United States. At least three important sets of provisions in the U.S. Constitution profoundly affect the way the public policy works in the United States.<sup>5</sup>

The first, and arguably the most important, set of constitutional provisions in terms of the public policy process are those that outline the system of separation of powers

among the three main branches of government: the executive, the legislative, and the judicial. The importance of these provisions stems from the interdependence among the three branches that the Constitution mandates. The powers of each branch are indeed separate, but no branch can exercise its powers without the cooperation of the other two. It truly is a system of checks and balances that in reality requires a considerable amount of political skill to get anything done. The framers of the Constitution wanted a strong central government but did not want it dominated by a small number of “interests.” They succeeded.

Each branch tends to serve different constituencies. Senators represent states, while members of the House of Representatives serve small, generally more homogeneous, districts. The president and vice president are the only people elected by the country as a whole. The judiciary is appointed by the president (for life) but only “with the advice and consent of the Senate.” Further, each branch is given a different set of responsibilities, and within the legislative branch, different responsibilities are divided between the House and the Senate. Hence, no one group or even a coalition of groups (or “interests”) can dominate the policy process.<sup>6</sup>

The importance of the separation of powers provisions of the U.S. Constitution is multiplied because each of the fifty states has tried, with varying degrees of success, to copy this doctrine in its own state constitution. And even local units of government often try to follow a similar organizational pattern, although it is often difficult for local government to achieve the same type of checks and balances that exists in the federal government.<sup>7</sup>

The second set of factors that emanate from the Constitution is the federal system itself. The Constitution divides major governmental responsibilities between the federal government and the states. The relationship between the federal government and the states constantly changes, but the essential fact is that despite what, on occasion, appears to be an overwhelming federal dominance of the public policy process, most of what affects citizens on a day-to-day basis takes place as a result of state and local political activity, not as a result of what the federal government does. It is the states, not the federal government, that have the generalized “police power” function of protecting the health, safety, and morals of the population. For instance, there is no federal law *per se* against murder.

It is state laws and local ordinances adjudicated through state court systems that affect most citizens most of the time. It is state and local governments that have primary responsibility for such things as education, streets and highways, and public recreation. Although the federal government does provide funding for a large number of programs, it is the states and their local units of government that have primary responsibility for implementing them.

The importance of the federal system to this discussion of the public policy process is that the federal government is responsible for only part of it. In fact, there are more than 80,000 units of government of various forms in the United States. Each is a public policy process unto itself, and at the same time, each is part of the larger policy process that encompasses the entire country.<sup>8</sup>

The third set of factors that come from the Constitution and affect the public policy process is the emphasis the Constitution puts on individual rights and responsibilities. The Constitution limits what government at all levels can do. Neither the states nor the federal

courts have been reluctant to strike down inappropriate government policies and programs. Simply put, government at all levels can do some things and not others. This idea is carried forward at the state level. Most states attempt to regulate in very precise ways what it is that local units of government can and cannot do. These restrictions have a profound effect on the public policy process and contribute to the confusion about it.<sup>9</sup>

## POLICY TYPES

Another way to look at public policy is in terms of types or categories of public policy. They can, for instance, be viewed in terms of who is affected by them. From this perspective, policy can be seen as falling into one of two broad categories. The first category, or type, encompasses policy that affects certain segments of a political jurisdiction's population. Policies in this category include municipal zoning ordinances, state laws dealing with specific public works projects, and federal policies on price supports for certain agricultural commodities. The second category is what some political scientists call *areal*. These are policies that, more or less, have an impact on the entire political jurisdiction equally. Included here are support for the police and fire departments at the local level, state-level policies dealing with environmental issues, and the foreign policy of the federal government. Taxation issues are areal policies that cut across all levels of government.<sup>10</sup>

Another way to look at public policies is to see them in terms of the degree to which they are substantive or procedural. As James E. Anderson states: "Substantive policies involve what government is going to do, such as the construction of highways or the payment of welfare benefits. Procedural policies, in contrast, involve who is going to take action or how it is going to be done."<sup>11</sup> Procedural policies also involve governmental organizational matters such as how a state legislature or a city council functions.

A third and perhaps more useful way to classify policy is in terms of how it affects society. In this regard, policy can be seen as falling into one of four categories: distributive, redistributive, regulatory, or self-regulatory. *Distributive policies* involve the delivery of public goods and services, such as water from the waterworks, the creation of public access sites on rivers and streams, and U.S. mail delivery. Distributive policies may be geared either to specific segments of the population or the population at large. All levels of government adopt distributive policies of one form or another.

*Redistributive policies* are designed to redistribute various forms of wealth among different segments of the population. The most obvious forms of redistributive policies are the federal-sponsored "entitlement" programs, such as veterans' benefits, the Medicare and Medicaid health care programs, and the food stamp program. Although all levels of government can adopt redistributive policies, it is primarily the federal government that takes responsibility for redistributing the nation's wealth. State and local governments, however, are usually the ones that carry out these programs.

*Regulatory policies* are designed to control the behavior of individuals, groups, and organizations, including corporations. These policies range from the criminal codes that all levels of government adopt, to specific regulations such as zoning ordinances at the