

THE
OXFORD
HANDBOOKS
OF
POLITICAL
SCIENCE

GENERAL EDITOR
ROBERT E. GOODIN

EDITED BY
MICHAEL
MORAN
MARTIN
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ROBERT E.
GOODIN

≡ The Oxford Handbook of
PUBLIC POLICY

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CHAPTER 11

AGENDA SETTING

GIANDOMENICO MAJONE

THE essence of decision, President John F. Kennedy once observed, remains impenetrable to the observer, often even to the decider himself. This is probably the reason why positive theories of policy making focus on pre- and post-decision processes rather than on the actual moment of choice. Implementation, policy evaluation, learning, and policy dynamics are among the best-researched areas of post-decision analysis. Problem definition, agenda setting, and feasibility analysis are the main, closely interrelated components of pre-decision analysis. Objective conditions are seldom so compelling or unambiguous that they determine the policy agenda. Hence, knowing how a problem has been defined is essential to understanding the process of agenda formation. The purpose of feasibility analysis is to identify the constraints—economic, technological, political, and institutional—that delimit the space of feasible choices. The student of agenda setting attempts to trace the causal paths along which public issues travel, and to predict which issues may eventually reach the decision agenda. A policy idea that fails to meet the feasibility criterion is unlikely to be considered as a serious contender for a place on the public agenda. Methodological differences should not be overlooked, however. Feasibility analysis has a reasonably clear logical structure, and can rely on the theoretical support of well-developed disciplines like decision theory, microeconomics, and modern political economy. In the case of agenda setting, no generally accepted paradigm exists. Even the best-known models are rather ad hoc, largely descriptive, and cover only some aspects of what one could reasonably assume to be part of agenda setting. Because of this methodological deficit, the present treatment is less concerned with those parts of the process that are fairly well understood—such as the role of interest groups, and of political and policy entrepreneurs, or the importance of issue coalitions—than with aspects which have received insufficient attention, or have been largely ignored by the available literature. The hope is that extending the

scope of agenda-setting analysis may stimulate the development of a more rigorous approach to this crucially important component of policy analysis.

The chapter is organized as follows. Section 1 discusses the possibility that some individual or institution may hold exclusive power over the agenda—a possibility largely overlooked by analysts outside the rational choice framework. Under rather general conditions, a monopoly agenda setter can achieve almost any desired result. That this is more than a theoretical possibility is shown by the control over legislative proposals exercised by committees of the US Congress, and by the monopoly of policy initiation enjoyed by the Commission of the European Union. Section 2 emphasizes the links between the study of agenda setting and democratic theory. It is suggested that the analyst can find in the literature on the democratic process valuable insights into the dynamics of agenda setting. Two examples are the notion of non-decision, and the model of government by discussion. Another topic discussed in this section is the possibility of ensuring effective democratic control of the agenda of regulatory agencies by means of suitable procedures. The next section addresses another issue not sufficiently researched by students of agenda setting: the selection of priorities within the decision agenda. The problem is particularly important in risk regulation, where setting the wrong priorities may entail severe opportunity costs—the number of lives that could have been saved by using the same resources in a different way. The significant risk doctrine, developed by American courts in the 1980s, has played a key role in forcing agencies to prioritize their agenda, and also in favoring the systematic use of risk analysis. The concluding Section 4 emphasizes the growing impact of international factors on the formation of national agendas. There is little empirical evidence that growing economic integration entails a restriction of the agenda of democratic states because of the declining ability of policy makers to produce the public goods people demand. Actually, international pressures may improve the quality of the national agenda. The threat of economic retaliation in cases of serious violations of basic rights, for example, shows that international trade may be used to push the agenda of authoritarian states in a more humanitarian direction.

1. AGENDA CONTROL

One topic which has not received sufficiently attention by policy analysts is the possibility that some individual or institution may hold exclusive power over the agenda. One of the central results of the analysis of political institutions in a rational choice perspective, the McKelvey–Schofield “chaos theorem,” has direct and far-reaching implications for the study of agenda control—a subject which was neither well understood nor frequently studied prior to the publication of this theorem. McKelvey (1976) and Schofield (1976) showed that the absence of a majority-rule

equilibrium implies that virtually any policy outcome is possible. Hence, those who control the agenda can engage in all sorts of manipulations. A monopoly agenda setter can achieve almost any outcome she wishes, provided she can appropriately order the sequencing of paired options considered by the voting group operating under majority rule (Shepsle 1979). These results have been exploited to examine the impact of rules and procedures on policy making; to account for the political power of parliamentary leaders, who control the sequence and order of legislative deliberations; and to explain the power of legislative committees (Bates 1990). As noted above, students of agenda setting have largely neglected agenda control, yet no sharp dividing line can be drawn between manipulating and shaping the agenda. Only by paying attention to both aspects of agenda setting can we hope to understand how policy is made or, perhaps even more important, why certain issues never appear on the public agenda.

The importance of agenda control can be grasped intuitively in a simplified situation. Barry Weingast (1996) presents a one-dimensional (single issue) version of the median voter theorem. He supposes that any alternative may be proposed, and that individuals wishing to offer proposals are recognized randomly. Each proposal is pitted in a majority vote against the status quo. The process continues until no more proposals are offered. Elementary geometrical considerations show that the only stable alternative to result from the voting is the median voter's ideal policy. But suppose that an individual (or organization or committee) called the "setter" has monopoly power over the agenda. The setter chooses a proposal, and then the voters vote for either the proposal or the status quo, *Q*. Now the setter's institutionalized power results in an outcome different from the median voter's ideal policy—unless the setter's ideal policy happens to coincide with that of the median voter. All she has to do is propose the policy that she most prefers from the 'win set' of *Q*—the set of policy alternatives that command a majority against *Q*. The full power of agenda control, however, is best appreciated in more complicated, and more realistic, situations. I will briefly mention two examples: the committees of the US Congress; and the monopoly of legislative initiative enjoyed by the Commission of the European Union.

According to the model of an idealized legislative committee system developed by Weingast and Marshall (1988), each congressional committee has jurisdiction over a specific subset of policy issues. Within their jurisdiction, committees possess the monopoly right to bring alternatives to the status quo up for a vote before the legislature; and committee proposals must command a majority of votes against the status quo to become public policy. The agenda power held by committee members implies that successful coalitions must include the members of the relevant committee. Without these members, the bill will not reach the floor for a vote. Thus committee veto power means that, from among the set of policies that command a majority against the status quo, only those that make the committee better off are possible. The ability to veto the proposals of others is a powerful tool used by committees to influence policy in their jurisdiction. According to Weingast and

Marshall, institutionalizing control over the congressional agenda—over the design and selection of proposals that arise for a vote—provides durability and enforceability of bargains in a legislative setting.

The European Union (EU) offers another striking example of agenda control. The European Commission is usually considered the executive branch of the EU, but in fact it plays a very important role also in the legislative process because of its monopoly of policy initiation. This monopoly has been granted by the founding Treaty and is carefully protected by the European Court of Justice. Hence, no national government can induce the Commission to make a specific proposal changing the status quo, unless that proposal also makes the Commission better off. Such tight control of the policy agenda has no analogue either in parliamentary or in presidential democracies. In parliamentary systems, legislators introduce relatively few bills; most legislative proposals are instead presented by bureaucrats to the cabinet, which then introduces them as draft legislation to the parliament. Once legislators receive such proposals, however, they are free to change or reject them. This is not the case in the EU, where as a rule the main legislative body (the Council of Ministers) may modify Commission proposals only under the stringent requirement of unanimity. In the separation-of-powers system of the United States, not only do legislators have the final word over the form and content of bills, but, further, only legislators can introduce bills. In the course of a typical congressional term, members of Congress will introduce several hundred bills on behalf of the president or of executive-branch agencies. During the same period, however, members of Congress will introduce on their own behalf as many as 15,000 or 20,000 bills (McCubbins and Noble 1995).

It is important to understand clearly what is implied by the Commission's monopoly of agenda setting. First, other European institutions cannot legislate in the absence of a prior proposal from the Commission. It is up to this institution to decide whether the EU should act and, if so, in what legal form, and what content and implementing procedures should be followed. Second, the Commission can amend its proposal at any time while it is under discussion in the Council of Ministers, while, as just mentioned, the Council can amend the proposal only by unanimity. Thus if the Council unanimously wishes to adopt a measure which differs from the Commission's proposal, the latter can deprive the legislative branch (the Council of Ministers and European Parliament) of its power of decision by withdrawing its proposal. Finally, neither the Council nor the Parliament nor a member state can compel the Commission to submit a proposal, except in those few cases where the EU Treaty imposes an obligation to legislate. To understand the rationale of this sweeping delegation of agenda control to a bureaucratic body, one has to keep in the mind that in the constitutional architecture of the EU, the Council of Ministers represents the national interests of the member states, while the Commission is supposed to represent the supranational interests of the Union. If also the Council had the right to initiate legislation, it could turn back the clock of European integration for domestic political reasons. In other words, the Commission's control of the legislative and

policy agenda serves the purpose of enhancing the credibility of the member states' commitment to the cause of European integration (Majone 1996*b*). In this as in other cases, precommitment is achieved by preventing the final decision makers from engaging in "issue creation." Thus in both cases—the US Congress and the European Union—agenda control turns out to be crucial for understanding policy outputs.

2. AGENDA SETTING AND DEMOCRATIC THEORY

Few topics of public policy analysis are more closely linked to the theory and practice of representative democracy than agenda setting and agenda control. Thus, Robert Dahl's normative criterion of a full democratic process is based on the idea of final control of the agenda by the people: "The demos must have the exclusive opportunity to decide how matters are to be placed on the agenda of matters that are to be decided by means of the democratic process" (Dahl 1989, 113). Because of the normative significance of agenda control, one finds valuable insights on our subject in works dealing with the functioning and effects of democratic institutions. A well-known example is the contribution of Bachrach and Baratz (1963) to the problem of non-decisions. The essential insight of the work of these authors was that the power to keep something off the governmental agenda is as important as the power to choose among the few policy options that make the agenda. According to Bachrach and Baratz, economic elites are powerful not because they affect the final choices in government but because they guarantee that these choices are between almost indistinguishable alternatives. It should be noted, however, that also ordinary citizens can keep items off the decision agenda. Thus, legislators often avoid considering specific policy options because they fear retribution by the voters. For example, throughout the 1970s the US Congress refused to consider imposing a high gasoline tax, despite evidence that it would be the least intrusive method for curbing demand for imported oil. Throughout the 1980s, Congress refused to consider any reduction in social security payments for current beneficiaries, despite the massive budget deficit. In these and other cases none of the proposals suggested by the experts made it on to the congressional agenda because legislators believed that the voters would not tolerate the imposition of large and visible costs (Arnold 1990). The same fear of retribution by the voters has induced the German and other European governments to keep necessary welfare reforms off the public agenda for years.

2.1 Government by Discussion

Government by discussion—the liberal model of parliamentary democracy—provides another example of the close link between agenda setting and democratic theory. According to this model, as described by Ernest Barker (1958), policy is made through a continuous process of discussion which begins with expressions of general concerns and ends in concrete decisions. Political parties identify issues and formulate programs; the electorate discusses issues and candidates and, after the grand debate of a general election, expresses a majority in favor of one of the programs; the legislative majority translates programs into laws, in constant debate with the opposition; finally, the discussion is carried forward to the cabinet, where it is translated into specific policies. Two principles guide the process through the four stages of discussion: differentiation of function, and the principle of cooperation and interdependence. According to the first principle, each stage has its own organs, specific function, and method of conducting the discussion and bringing it to a conclusion. In the first stage, alternative programs have been formulated by debate in each party. In the second, representatives of the different programs have been selected after debate by the electorate, and authorized by it to form a parliament for further debate, to be conducted in a particular form and for a particular purpose. The purpose of the third, parliamentary, stage is to translate the program endorsed by a majority of the voters into laws, and to control how the executive government transforms general rules of law into a series of particular and separate Acts, which must however be connected to a general program.

The principle of differentiation also implies that each stage is independent in exercising its particular function, but only within limits, and as a part of the entire process of defining the national agenda. The function of political parties must be distinguished from that of the electorate, the functions of both from that of parliament, and the functions of all three from that of the cabinet. However, this differentiation of functions is only one aspect of the process of government by discussion. The other aspect is provided by the principle of cooperation and interdependence. According to this second principle, the different organs and their functions must be interlocked as well as differentiated. Each has to act as part of a system, that is, it has to act with reference to, and in harmony with, the other parts. The balance between differentiation and cooperation is very delicate, and hence it can be maintained only in a polity that shares some basic values and a common political culture (Barker 1958, 57–8).

This is a stylized, normative model of agenda setting and policy making in a democracy. It overlooks the play of power and influence, the uneven distribution of knowledge and manipulation of information, inter-institutional competition and bureaucratic politics, the low level of active citizen participation, the role of the mass media, and a host of other factors that figure prominently in modern theories of agenda setting and policy making. It is also clear that the model has been designed with one particular system in mind: the British political system with its disciplined two-party system, distinctive Parliament–Cabinet relationship, and paradoxical

emphasis both on the derivative character of political authority and on its independence from popular preferences. And yet the reader of such works as Cobb and Elder's (1972) *Participation in American Politics* or John Kingdon's (1984) *Agendas, Alternatives and Public Policies* cannot fail to notice striking similarities between the model of government by discussion and these more recent works. If political parties play a more crucial role in Barker's model, this only reflects the realities of the British political system, where policy entrepreneurs are mostly to be found in the political parties or, nowadays, in think tanks closely linked to parties. Similarly, if the process of agenda setting appears to be much less random than, say, in Kingdon's discussion of political and policy windows, this is partly due to the normative character of the model, but especially to the inherent capacity for effective action which is a distinctive characteristic of British government—an effectiveness which no government based on the principle of separation of powers can match.

More important than such differences in emphasis, however, is the basic agreement on the central role of elected officials in the agenda-setting process. Like Barker, Kingdon finds that it is difficult to assign responsibility for the emergence of agenda items solely to interest groups. Rather than structuring the public agenda, interest groups often try to introduce their preferred alternatives once the agenda is already set by some other process or participant. Also the media turn out to be less important than anticipated. They seem to report events rather than having an independent effect on governmental agendas; they can help shape and structure an issue, but they cannot create an issue. Academics, researchers, and consultants affect the alternatives more than the agenda, and affect long-term directions rather than short-term outcomes. The president, his political appointees, and Congress turn out to be central to agenda setting and, with the help of their staffs, also to alternative specification. Kingdon's conclusion that "[t]he model of a democratic government controlled by elected officials is not only our normative idea, but also our dominant picture of empirical reality" (Kingdon 1984, 46) would be fully endorsed by the theorists of government by discussion, from John Stuart Mill to Ernest Barker.

2.2 Agenda Setting in the Regulatory State

The modern regulatory state is characterized by an extensive delegation of quasi-legislative powers to independent commissions or agencies. In an increasing number of politically sensitive areas—from telecommunications and public utilities to environmental protection and food safety—policy is made by such non-elected bodies, typically on the basis of a fairly broad legislative mandate. The existing literature on agenda setting has not paid sufficient attention to the implications of delegation of rule-making powers to independent agencies. Kingdon, for example, finds that career civil servants are not particularly important in setting the national agenda, relative to other participants. According to him, "a top-down model of the executive branch

seems to be surprisingly accurate. We discovered that the president can dominate his political appointees, and that the appointees can dominate the career civil servants” (Kingdon 1984, 33). However, the independent regulatory commissions and also many single-headed agencies are not, *de jure* or *de facto*, under the direct control of the president or of his political appointees. Also in Europe, a variety of independent regulatory authorities operate outside the line of ministerial or departmental hierarchy. Whether, or to what extent, legislatures are able to control the agenda of the independent agencies they create is a controversial issue on both sides of the Atlantic. The US Congress, for example, has many means at its disposal to retain influence over agency decisions, but this influence can be offset by presidential opposition, court decisions, or the actions of agency personnel (Bawn 1995).

Until the early 1980s, the thrust of much research on political–bureaucratic relations was that agency bureaucracy has a substantial degree of autonomy in its choice of issues. This autonomy is possible because legislative oversight for purposes of serious policy control is time consuming, costly, and difficult to do well under conditions of uncertainty and cognitive complexity. At any rate, legislators are concerned more with satisfying voters to increase the probability of re-election than with overseeing the bureaucracy they create. As a result, they do not typically invest their scarce resources in general policy control. More recently, however, better theoretical models, largely based on principal–agent theory, and more careful empirical analyses have shown that the variety of control instruments available to political principals is a good deal larger than was previously assumed. This research also threw new light on traditional approaches to the control problem. There are two main forms of control of agency decisions: oversight—monitoring, hearings, investigations, budgetary reviews, sanctions—and procedural constraints. The received view on procedures is that they are primarily a means of assuring fairness and legitimacy in regulatory decision making. This is of course a very important function of procedures, but it has been shown that procedures also serve control purposes.

In an important paper published in 1987, McCubbins, Noll, and Weingast used statutes like the US Administrative Procedure Act (APA) and the Freedom of Information Act (FOIA) as evidence that procedural rules fulfill important control functions, providing cost-effective solutions to problems of non-compliance by agencies. In addition to reducing the informational disadvantage of political executives, stakeholders, and citizens at large, procedures can be designed so as to ensure that the agency’s agenda will be responsive to the constituents that the policy is supposed to favor. The procedural requirements under the APA, FOIA, and related statutes reduce an expert agency’s discretion in a number of ways. First, agencies cannot present the political principals with a *fait accompli*. They must announce their intention to consider an issue well in advance of any decision. Second, the notice and comment provisions assure that the agency learns who are the relevant stakeholders, and takes some notice of the distributive impacts associated with various actions. Third, the entire sequence of agency decision making—notice, comment, collection of evidence, and construction of a record in favor of a chosen action—affords numerous opportunities for political principals to respond when the

agency seeks to move in a direction that the principals do not approve of. Finally, the broad public participation which the statutes facilitate also works as a gauge of political interest and controversy, providing advance warning about the agency's decision agenda and the likely distributive consequences of agency decisions, in the absence of political intervention.

Moreover, by controlling the extent and mode of public participation, legislators can strengthen the position of the intended beneficiaries of the bargain struck by the enacting coalition. This has been called "deck stacking." Deck stacking enables political actors to cause the environment in which an agency operates to mirror the political forces that gave rise to the agency's legislative mandate, long after the enacting coalition has disbanded. The agency may seek to develop a new clientele for its services, but such an activity must be undertaken in full view of the members of the initial coalition, and following procedures that automatically integrate certain interests in agency decision making. In sum, one important function of procedures is to reduce the risk that the agenda-setting process of regulatory agencies may be captured by interests—whether economic, bureaucratic, or ideological—different from those explicitly acknowledged by the enabling statute. These theoretical insights are supported by a good deal of empirical evidence. In particular, a careful statistical study by Wood and Waterman (1991) of the decisions of seven regulatory agencies from the late 1970s through most of the 1980s found that all seven agencies appeared to be responsive to the preferences of their democratically elected principals. The authors conclude that the evidence for active political control is so strong that controversy should end over whether political control of the regulatory bureaucracy is possible. Instead, research should concentrate on a detailed analysis of the various mechanisms of control.

However, democratic control is only one horn of the dilemma of statutory regulation, the other being the need to preserve the necessary degree of agency discretion. The difficulty of achieving a satisfactory balance is demonstrated by the failure of the American "non-delegation doctrine"—the first attempt to resolve the regulatory dilemma. For several decades this judicial doctrine enjoyed such widespread acceptance that it came to be regarded as the traditional model of administrative law. The model conceives of the regulatory agency as a mere transmission belt for implementing legislative directives in particular cases. Hence, when passing statutes Congress should decide all questions of policy and frame its decisions in such specific terms that administrative regulation will not entail the exercise of broad discretion by the regulators (Stewart 1975). The non-delegation doctrine had already found widespread acceptance when the first institutionalization of the American regulatory state, the Interstate Commerce Commission, was established by the 1887 Interstate Commerce Act. The Act, with its detailed grant of authority, seemed to exemplify the transmission-belt model of administrative regulation. However, the subsequent experience of railroad regulation revealed the difficulty of deriving operational guidelines from general standards. By the time the Federal Trade Commission was established in 1914, the agency received essentially a blank check authorizing it to eliminate unfair competition. The New Deal agencies received even

broader grants of power to regulate particular sectors of the economy “in the public interest.” The last time the Supreme Court used the non-delegation doctrine was in 1935, when in *Schechter Poultry* it held the delegation in the National Industrial Recovery Act unconstitutional.

The doctrine against delegation unraveled because the practical case for allowing regulatory discretion is overwhelming. Contrary to Kingdon’s findings concerning the limited role of executive-branch bureaucrats in agenda setting, few students of regulation would deny that agencies, in their area of competence, are important participants in the agenda-setting process. For example, the Federal Communications Commission (FCC) began allowing competition to the American Telephone and Telegraph Company (AT&T) in long-distance communications in the late 1950s, several years before pro-competitive deregulation acquired widespread political support in Washington. Also other regulatory commissions played a leading role in the reversal of traditional regulatory policy in America, such as the Civil Aeronautics Board (CAB), the Interstate Commerce Commission (ICC), and the Securities and Exchange Commission (SEC). The CAB not only succeeded in bringing about an almost complete deregulation of the airline industry: even more significantly, its chairman Alfred E. Kahn persuaded Congress to abolish the agency. The ICC did not ask to be abolished, but its staff dropped from 2,000 in 1976 to 1,300 in 1983. Finally, the SEC was a major shaper of the agenda of financial deregulation, especially in securities markets, in the 1970s. In all these cases the chairmen provided powerful leadership in bringing about policy change. This may seem surprising given the collegial nature of the agencies. In fact, after organizational reforms in the 1950s and 1960s, the chairpersons have emerged as the chief executives and dominant figures. As chief executives they expect, and are expected by others, to have a well-defined agenda, and to measure their success by the amount of the agenda they accomplish (Derthick and Quirk 1985, 65).

Perhaps even more surprising was the fact that the staffs of these regulatory commissions actively supported, or at least did not oppose, the pro-deregulation stance of their superiors, even when the consequences of the new policy for the size of the staff and even for the survival of the organization were apparent. It has been suggested that this open-mindedness may be due to the rise of professional policy analysts and regulators, using widely shared standards of argument and problem-solving styles, and to the growing influence of public interest groups, both of which factors balance the influence of bureaucratic ideologies and traditional patterns of behavior. These examples suggest that when American regulators enjoy the support of the courts, of key committees and subcommittees of Congress, and of academic and public opinion, they can be quite important in setting the national agenda, even against the resistance of the regulated industries and of important elements of the executive branch, including the president—for instance, President Reagan as well as the Departments of Defense and Commerce were opposed to the divestiture of AT&T. According to Derthick and Quirk (1985, 91) the regulatory commissions “served as vehicles for converting the disinterested views of experts into public policy, even if the expert views had originated largely as criticisms of their own conduct.”