

# ADVANCING POLICY ADVOCACY: A POLICY PROCESS APPROACH

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## I. INTRODUCTION: THE IMPORTANCE OF POLICY ADVOCACY

Why propose a policy advocacy model for attorneys?<sup>1</sup> Simply put, the legal academy does not train future attorneys for the art and science of policy advocacy.<sup>2</sup> To be sure, all Juris Doctor students complete some work related to the theory and practice of public policy.<sup>3</sup> Trial advocacy, appellate advocacy, legal writing, and substantive courses in specific policy areas help students develop foundations for effective policy advocacy.<sup>4</sup> Some experiential courses may touch on some tools of policy advocacy.<sup>5</sup> But policy advocacy is not a “lesser included skill” to trial advocacy, and public policy is not a “lesser included degree” to a Juris Doctor.<sup>6</sup> Policy work requires skills and perspective not granted by a Juris Doctor alone.<sup>7</sup> Attorneys who approach the public policy space assuming otherwise set themselves, their clients, and their policy issues up for failure.<sup>8</sup>

Howlett et al. define “public policy” as “applied problem-solving” in which “constrained actors attempt[] to match policy goals with policy means . .

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1. See Brian K. McNamara & John C. Morris, *Crossing the Bar to Cross the Streams: Kingdon’s “Policy Streams” Applied to Vessel Status in Admiralty*, 19 LOY. MAR. L.J. 1, 3, 4 (2020).

2. *Id.* at 3.

3. See discussion *infra* Section II.A.

4. See, e.g., Deena Jo Schneider, *The Complete Appellate Advocate: Beyond Brief Writing*, A.B.A. (Summer 2019), [http://www.americanbar.org/groups/judicial/publications/appellate\\_issues/2019/summer/the-complete-appellate-advocate-beyond-brief-writing/](http://www.americanbar.org/groups/judicial/publications/appellate_issues/2019/summer/the-complete-appellate-advocate-beyond-brief-writing/).

5. See, e.g., *Federal Legislation and Legislative Drafting*, TULANE UNIV. L. SCH., <http://law.tulane.edu/courses/federal-legislation-and-legislative-drafting> (last visited Apr. 28, 2023); *Legal Practicum - Regulatory Comments*, GEO. MASON UNIV. ANTONIN SCALIA L. SCH., <http://www.law.gmu.edu/academics/courses/law300> (last visited Apr. 28, 2023).

6. See *United States v. Jones*, 68 M.J. 465, 469 (2010). The author makes this point by analogy to “lesser included offenses” in criminal law, in which a charge of a greater offense generally puts an accused on notice to defend against “lesser included charges” encapsulated wholly within the elements of the greater charge. See *id.* (discussing lesser included offenses in the military justice context). The point is that a public policy degree is not necessarily included within a Juris Doctor, and a full understanding of policy advocacy requires skills not included within most Juris Doctor programs. See McNamara & Morris, *supra* note 1, at 3.

7. See discussion *infra* Section II.A.

8. See discussion *infra* Section II.A.

.” under imperfect conditions.<sup>9</sup> In Part II, this article adopts this definition.<sup>10</sup> Based on this definition of public policy, this article then defines “policy advocacy” as all work within a policy arena<sup>11</sup> with the goal of achieving an ultimate public policy output.<sup>12</sup> This article intentionally defines “policy advocacy” broadly to capture properly the nuance and complexity of this work and to demonstrate how policy advocacy is neither a subset of trial advocacy nor simply trial advocacy in a different context.<sup>13</sup>

Several non-exclusive examples illustrate that attorneys engage in public policy work and policy advocacy on a regular basis, even if they may not label their actions as policy advocacy.<sup>14</sup> Attorneys act as policy advocates when they comment on proposed federal agency rules on behalf of clients or industry groups.<sup>15</sup> They also engage in policy advocacy as public sector in-house counsel when they provide advice and counsel to decisionmakers on policy alternatives.<sup>16</sup> Furthermore, attorneys engage in policy advocacy when they decide at which level of government to communicate on behalf of a client and for what end.<sup>17</sup>

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9. MICHAEL HOWLETT ET AL., *STUDYING PUBLIC POLICY: POLICY CYCLES & POLICY SUBSYSTEMS* 4 (3d ed. 2009).

10. See discussion *infra* Section II.A.

11. See discussion *infra* Section II.B. A “policy arena” is a broad group of entities and individuals involved in a common policy issue. See Henri Bergeron & Constance A. Nathanson, *Construction of a Policy Arena: The Case of Public Health in France*, 37 J. HEALTH POLS., POL’Y & L. 5, 5–6 (2012) (describing an example of how the term “policy arena” is used in the policy literature). Scholars use slightly different terms to reach the same general meaning. See JOHN W. KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES* 117 (2d ed. 2014). Kingdon defines “policy communities” to include various specialists for any given policy issue both inside and outside of government. *Id.* Howlett et al. use the term “policy subsystem.” HOWLETT ET AL., *supra* note 9, at 81. Deborah Stone frames the issue as a political struggle including values and ideas. See DEBORAH STONE, *POLICY PARADOX: THE ART OF POLITICAL DECISION MAKING* 7 (rev. ed. 2002).

12. See discussion *infra* Section II.B.

13. See discussion *infra* Section II.B.

14. See McNamara & Morris, *supra* note 1, at 16. Policy advocacy is probably why you attended law school.\*

15. See *id.*; 5 U.S.C. § 553(c) (2021); George M. Cohen, *The Laws of Agency Lawyering*, 84 *FORDHAM L. REV.* 1963, 1963 (2016); Thomas O. McGarity, *The Role of Government Attorneys in Regulatory Agency Rulemaking*, *LAW & CONTEMP. PROBS.*, Winter 1998, at 19, 28.

16. See McNamara & Morris, *supra* note 1, at 30; McGarity, *supra* note 15, at 28; *Join Our Team: Senior Policy Counsel, Justice Division, ACLU*, <http://www.aclu.org/careers/apply/?job=6633639002&type=national> (last visited Apr. 28, 2023).

17. See McNamara & Morris, *supra* note 1, at 6.

Sometimes, policy work even includes advocating for non-binding policy documents in lieu of formal statutes and regulations.<sup>18</sup>

To be effective policy advocates, attorneys must understand that policy advocacy is distinct from trial advocacy in three major and related ways.<sup>19</sup> First, attorneys do not hold exclusive license to operate as policy advocates.<sup>20</sup> For example, although only a licensed attorney may file a civil action in court, any member of the public may comment on a proposed federal agency regulation.<sup>21</sup> Attorneys must understand how to interact with and negotiate with non-attorney stakeholders to best advocate for their clients' interests throughout the policy process. Second, although the policy process framework with its sequential steps dominates the field of public policy, policy advocacy in practice can be non-linear.<sup>22</sup> Courtroom advocacy follows predictable patterns designed to move the trial process continually forward, but policy advocacy work can be characterized by rapid progress followed by significant effort just to hold your gains or mitigate losses.<sup>23</sup> Third, policy advocacy work is *exposed to the elements*.<sup>24</sup> Trial attorneys operate in the sheltered harbor of courtrooms and procedural rules, with strict decision rules on who may enter the discussion and when.<sup>25</sup> By contrast, external elements constantly buffer policy advocates for any given issue.<sup>26</sup> Budget demands, routine election cycles, and emergent events place continuous strain on policy advocacy resources and the advocates themselves.<sup>27</sup>

This article proposes a policy advocacy model to help attorneys conceptualize their policy advocacy work.<sup>28</sup> Part II defines "public policy" based on the extant literature and provides examples of public policies to which the policy advocacy model will apply.<sup>29</sup> It then contrasts the policy literature's

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18. See Christopher J. Walker, *Administrative Law Without Courts*, 65 UCLA L. REV. 1620, 1625 (2018) (discussing how non-binding agency guidance has the power to compel industry compliance).

19. See discussion *infra* Section II.B.

20. See discussion *infra* Section II.B.

21. See McNamara & Morris, *supra* note 1, at 27.

22. See discussion *infra* Section II.B; McNamara & Morris, *supra* note 1, at 5 n.14.

Although policy advocacy in practice, the policy advocacy model and its foundational models provide helpful lenses through which to understand policymaking. See discussion *infra* Section II.B.

23. See discussion *infra* Section II.B.

24. See McNamara & Morris, *supra* note 1, at 10.

25. See discussion *infra* Section II.B.

26. See discussion *infra* Section II.B.

27. See KINGDON, *supra* note 11, at 62, 186, 189 (discussing how external events impact "policy windows").

28. See discussion *infra* Part V.

29. See discussion *infra* Section II.A.

definition of “public policy” with legal treatment of the same.<sup>30</sup> A cursory review of the term in legal education shows law uses an unhelpfully narrow definition of “public policy” that stunts attorneys’ understanding of the concept.<sup>31</sup> Part II continues by defining “policy advocacy” and distinguishing policy advocacy from other legal advocacy.<sup>32</sup>

Part III then explains the three major public policy frameworks foundational to the Policy Advocacy Model.<sup>33</sup> Based on the author’s research, teaching, and practical experience, these three frameworks are the policy process model, Kingdon’s policy streams model, and Deborah Stone’s *polis model* of public policy. The author argues that attorneys may analogize the policy process model and Kingdon’s policy streams model to an appellate court majority opinion and concurrence, respectively.<sup>34</sup> In other words, the policy process model predominates the field.<sup>35</sup> The policy streams model supplements and provides nuance to the predominant model.<sup>36</sup> Deborah Stone’s *polis model* of public policy operates as a sharp critique to the dominant policy process model.<sup>37</sup> In the same way that an appellate dissent provides a more complete understanding of a majority opinion, Stone’s work helps policy advocates understand the weaknesses of the other models and how to counter those weaknesses in practice.<sup>38</sup>

Part IV reviews additional concepts in the public policy and public administration literature that help attorneys operating in policy advocacy roles.<sup>39</sup> Key terms such as social equity, collaboration, and policy scanning are defined and explained by reference to policy advocacy practice.<sup>40</sup> Taken together, these concepts help attorneys understand and manage the external environment of policy advocacy.<sup>41</sup> Part V draws upon the prior parts to propose a visual policy advocacy model for attorneys.<sup>42</sup> This model accounts for the three major policy models and the environmental factors discussed in Part IV.<sup>43</sup> The model offers a lens through which attorneys can place their own work in a broader policy arena

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30. See discussion *infra* Section II.A.

31. See discussion *infra* Section II.A.

32. See discussion *infra* Section II.B.

33. See discussion *infra* Part III.

34. See discussion *infra* Section III.C.

35. See STONE, *supra* note 11, at 10, 19, 197.

36. See *id.* at 10–11, 261.

37. See discussion *infra* Part III; STONE, *supra* note 11, at xi.

38. See discussion *infra* Part III; STONE, *supra* note 11, at Parts III–IV.

39. See discussion *infra* Part IV.

40. See discussion *infra* Section IV.A–B, D.

41. See discussion *infra* Part IV; KINGDON, *supra* note 11, at 224.

42. See discussion *infra* Parts IV–V.

43. See discussion *infra* Part V.

or plan strategy regarding a new policy issue within their work portfolio.<sup>44</sup> Part VI briefly discusses courts in the policy process, and Part VII, the conclusion, offers recommendations for further research.<sup>45</sup>

This article benefits practitioners and scholars in several ways. First, the policy advocacy model draws upon both theory and practice to offer attorneys a framework through which to understand their policy advocacy work.<sup>46</sup> This tool helps practitioners understand that, unlike trial advocacy, there is no clear and discrete end to public policy work.<sup>47</sup> How one defines a policy problem drives the range of acceptable policy alternatives and, in turn, the acceptable policy alternatives drive the level and scope of decision-makers with whom the attorney must engage.<sup>48</sup> And policy outcomes interact with the external environment and ideological trends to create new policy problems that feed back into any given policy system.<sup>49</sup>

Second, this article helps attorneys better understand the perspective of others involved in public policy work. In this author's experience, the norms and customs of the legal profession incentivize counsel to focus their limited resources of time and energy to build connections within the legal community. Success as a policy advocate, however, demands greater attention on building relationships with clients and the broader community within a given policy arena. Attorneys who understand a law degree is not necessary for legitimacy within a policy arena are best able to marshal their unique legal skills on behalf of policy success because they understand how to draw upon the skills and perspectives of non-attorneys.<sup>50</sup>

Third, this article helps attorneys view how policy advocacy may be nested in various ways within their legal practices.<sup>51</sup> One major assumption of this article is almost all attorneys already engage in policy advocacy work although they may not describe their work in this way.<sup>52</sup> Even complex civil litigators, for example, represent entities in highly regulated industries.<sup>53</sup> This Policy Advocacy Model helps attorneys understand how to identify trends of

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44. See discussion *infra* Part VII. Attorneys may use Appendix A, Policy Advocacy Worksheet – Positioning Your Role, for guidance on how to position themselves within a policy arena. See *infra* Appendix A. Attorneys may also use Appendix B, Policy Advocacy Worksheet – Positioning Your Specific Issue, to help them prepare their advocacy for specific issues. See *infra* Appendix B.

45. See discussion *infra* Parts VI, VII.

46. See discussion *infra* Parts II, V–VII.

47. See discussion *infra* Part V.

48. See discussion *infra* Section II.A; STONE, *supra* note 11, at 133, 261.

49. See discussion *infra* Section III.B.3; STONE, *supra* note 11, at 261.

50. See discussion *infra* Section II.A–B, Part VII.

51. See discussion *infra* Sections II.B, IV.A.

52. See McNamara & Morris, *supra* note 1, at 2.

53. See discussion *infra* Sections II.B, IV.A.

public policy activity within what otherwise might seem to be a series of discrete private actions.<sup>54</sup>

Finally, this model benefits the legal academy by suggesting linkages between the fields of public policy and law.<sup>55</sup> Legal scholars may wish to test this model's utility through empirical observation, perhaps through interdisciplinary research with public policy scholars. This type of research would help the legal academy and the field of public policy develop common definitions for terms and promote mutual understanding of key concepts in the literatures.

## II. DEFINING THE POLICY ADVOCACY SPACE

The first step in developing the Policy Advocacy Model is to define key terms. This Part explains and adopts clear definitions for the foundational terms supporting the Policy Advocacy Model.<sup>56</sup> This Part begins by discussing and defining the concept of "public policy."<sup>57</sup> Although precise definitions vary, policy scholars generally adopt a broad concept of the term "public policy."<sup>58</sup> An examination of the legal academy, by contrast, illustrates a narrow understanding of the concept that may hold attorneys back in their own advocacy work.<sup>59</sup>

Next, this Part discusses and defines "policy advocacy."<sup>60</sup> This definition has several implications for attorneys involved in policy advocacy work. One helpful way to consider policy advocacy work for attorneys is to visualize policy advocacy work along a continuum, with one end of the continuum looking more like traditional trial advocacy and the other end of the continuum appearing more like community organizing.<sup>61</sup> Working along this continuum has implications for concepts of zealous advocacy and attorney-client relationships. In addition, this continuum illustrates how policy advocacy can be intertwined with more traditional legal advocacy.<sup>62</sup> Ultimately, this Part demonstrates that attorneys have much to offer in the field of policy advocacy.<sup>63</sup> Legal education and training, however, stunt the full development of attorneys

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54. See discussion *infra* Section IV.D.

55. See discussion *infra* Section IV.D.

56. See discussion *infra* Section II.A–B.

57. See discussion *infra* Section II.A.

58. See discussion *infra* Section II.A; THOMAS R. DYE, UNDERSTANDING PUBLIC POLICY 1 (13th ed. 2011).

59. See discussion *infra* Section II.A; McNamara & Morris, *supra* note 1, at 3 n.8.

60. See discussion *infra* Section II.B.

61. See discussion *infra* Section II.B.

62. See discussion *infra* Section II.B.

63. See discussion *infra* Section II.B.

as policy advocates.<sup>64</sup> By recognizing and acknowledging their own limitations, and by understanding that many players claim legitimacy to operate as policy advocates, attorneys can unlock their full potential and their unique skills to effect social change as policy advocates.

#### A. Defining “Public Policy”

Dye broadly defines “public policy” as “whatever governments choose to do or not to do.”<sup>65</sup> The broader public policy literature, however, eschews such a simplistic definition of public policy.<sup>66</sup> Howlett et al. considers Dye’s formulation as instructive but oversimplified.<sup>67</sup> The authors define public policy as “applied problem-solving” in which “constrained actors attempt[] to match policy goals with policy means” under imperfect conditions.<sup>68</sup> Anderson explicitly rejects Dye’s definition as inadequate to support ordered inquiry and instead defines public policy as “a purposive course of action or inaction followed by an actor or [a] set of actors in dealing with a problem or matter of concern.”<sup>69</sup>

This article adopts the definition of Howlett et al. for two reasons. First, their definition accounts for the impact of external environmental factors on the policymaking process.<sup>70</sup> Second, their definition acknowledges the imperfect nature of public policy—policy actors always aspire to “match” their solutions to problems, but the match between policy output and policy problem is never a perfect fit.<sup>71</sup> Although exact definitions vary, scholars generally agree that public policy refers to government action rather than private sector action.<sup>72</sup> Interestingly, court opinions would count as public policy under all definitions known to the author. In fact, the field of public policy appears to view the law as a subset of public policy.<sup>73</sup> Much remains to be learned about how policy

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64. See Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203, 206 (1943).

65. DYE, *supra* note 58, at 1; HOWLETT ET AL., *supra* note 9, at 4.

66. DYE, *supra* note 58, at 1; HOWLETT ET AL., *supra* note 9, at 4.

67. See HOWLETT ET AL., *supra* note 9, at 4, 5–6.

68. *Id.* at 4.

69. JAMES E. ANDERSON, *PUBLIC POLICYMAKING: AN INTRODUCTION* 7 (8th ed. 2015).

70. See HOWLETT ET AL., *supra* note 9, at 4.

71. *Id.*

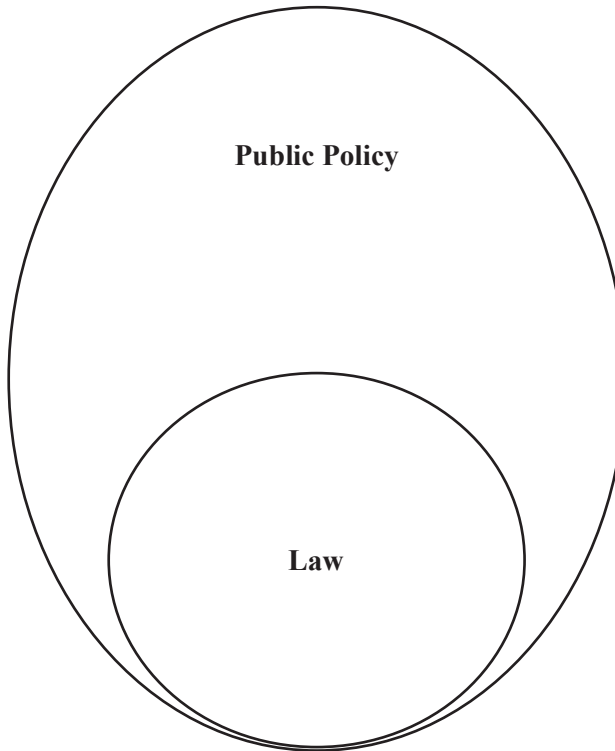
72. *Id.*; see also DYE, *supra* note 58, at 1; MICHAEL E. KRAFT & SCOTT R. FURLONG, *PUBLIC POLICY: POLITICS, ANALYSIS, AND ALTERNATIVES* 37 (6th ed. 2018) (emphasis added). Kraft & Furlong take a broader view of public policy to include citizen action, but even in their definition, the citizen action must be to address a “public problem.” KRAFT & FURLONG, *supra*, at 37.

73. See *infra* Figure 1.



models can capture court opinions as part of the policy process.<sup>74</sup> This author excludes courts and their opinions from the discussion of policy advocacy for now, although the article returns to this subject briefly prior to the conclusion.

### Figure 1. How Public Policy Views Law



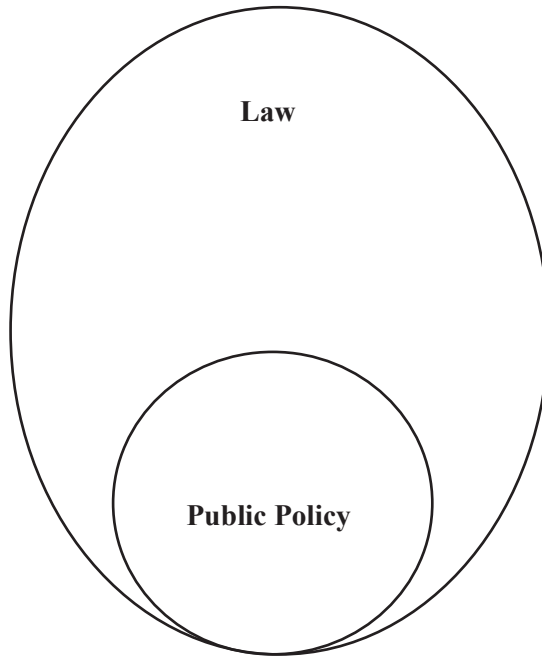
The field of law takes the opposite view regarding public policy.<sup>75</sup> Indeed, the author's main claim for this article is law treats public policy too narrowly. In the author's opinion, the modern legal academy incorrectly treats public policy as a subset of law.<sup>76</sup>

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74. See McNamara & Morris, *supra* note 1, at 3 (examining the lack of academic scholarship on the role of courts in the policy process).

75. Theodore J. Lowi, *Law vs. Public Policy: A Critical Exploration*, 12 CORNELL J.L. & PUB. POL'Y 493, 494 (2003).

76. See McNamara & Morris, *supra* note 1, at 3 n.8. See *infra* Figure 2.

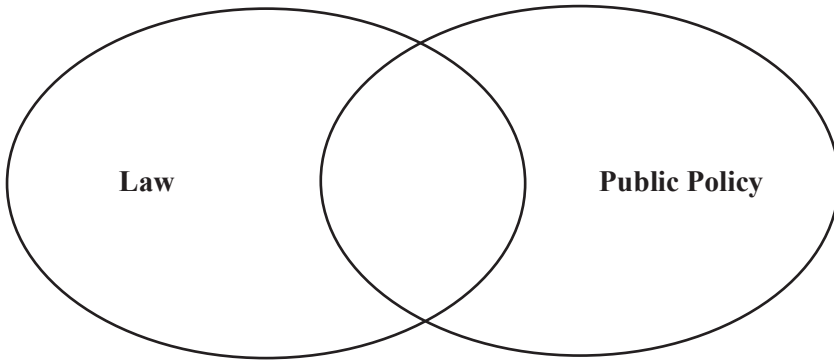
**Figure 2. How Law Views Public Policy**

To be sure, there was a time when the study of law and the study of public policy were practically synonymous.<sup>77</sup> A full review of how public policy diverged and grew apart from law is beyond the scope of this article, but it is clear that by the 1960s public policy was its own academic field with a bias for building knowledge through empirical observation and a preference for quantitative analysis.<sup>78</sup> This author offers Figure 3 as the most accurate depiction of the relationship between the fields of law and public policy.

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77. See Lowi, *supra* note 75, at 496, 498 (describing how the study of law and the study of public policy were synonymous in the late 19th century). Law as a field of university study pre-dated the conscious, intentional, and distinct growth of public policy as an academic discipline. Lawrence M. Mead, *Teaching Public Policy: Linking Policy and Politics*, 19 J. PUB. AFFS. EDUC. 389, 389 (2013); Lasswell & McDougal, *supra* note 64, at 206 (stating “legal education . . . must be [a] conscious, efficient, and systematic *training for policy-making*.”).

78. See Mead, *supra* note 77, at 390.

**Figure 3. How the Author Views Law and Public Policy**

Based on this author's experience, law schools do not treat public policy as an independent field, and therefore give insufficient attention to the broader tools and context of policy advocacy. To be sure, the main purpose of legal education is to develop law students in a university setting to be both competent practitioners and effective citizens.<sup>79</sup> But a cursory review of law school courses shows that the legal academy still views public policy in an outdated sense.<sup>80</sup> First-year students likely only read about "public policy" in the context of judges voiding contracts based on a vague notion of "public policy."<sup>81</sup> Upper-level experiential courses appear to provide a better perspective on public policy, but even these courses tend to focus on a specific individual tool or type of public policy while avoiding a more comprehensive treatment of the field.<sup>82</sup>

Why does this matter for attorneys? First, Juris Doctor holders might have a false sense of proficiency in the policy advocacy space.<sup>83</sup> There may be an incorrect tendency for attorneys to view non-attorney policy practitioners as people who know a little bit about law but who did not want to be or who were

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79. See *Today's Citizen Lawyer: Leading Toward Justice for All*, WM. & MARY L. SCH., <http://law.wm.edu/about/wmcitizenlawyer/index.php> (last visited Apr. 28, 2023).

80. See *Federal Legislation and Legislative Drafting*, *supra* note 5; *Legal Practicum - Regulatory Comments*, *supra* note 5; *Legislation and Regulation*, COLUM. L. SCH., <http://www.law.columbia.edu/academics/courses/28546> (last visited Apr. 28, 2023).

81. See David Adam Friedman, *Bringing Order to Contracts Against Public Policy*, 39 FLA. ST. U. L. REV. 563, 565 (2012) (examining the defense in 2009 opinions).

82. Mead, *supra* note 77, at 398; see also Lasswell & McDougal, *supra* note 64, at 225, 247.

83. See Mead, *supra* note 77, at 398; Lasswell & McDougal, *supra* note 64, at 207.

not able to be licensed attorneys.<sup>84</sup> This elitist perspective may contribute to ongoing systemic inequities by disclaiming the legitimacy of non-attorneys to participate in the policy advocacy space.<sup>85</sup>

Second, Juris Doctor holders likely do not appreciate the empirical methods and community focus of public policy scholars and non-attorney policy practitioners.<sup>86</sup> Law schools implicitly train graduates to seek top-down legal-rational solutions to social problems.<sup>87</sup> However, social issues require solutions with a mix of top-down authority and bottom-up legitimacy based on buy-in and input from affected communities.<sup>88</sup>

To be sure, law schools do provide a solid foundation for attorneys in important policy advocacy skills.<sup>89</sup> The legal academy provides exceptional training for students in written and oral advocacy and general problem-solving.<sup>90</sup> These skills, along with the ability to *think like a lawyer*, are invaluable in policy advocacy settings.<sup>91</sup> The author argues, however, that attorneys must understand their law school training is not sufficient if they wish to unlock their full potential as policy advocates. At best, law school provides training in a small number of policy advocacy skills. At worst, law school training provides attorneys with an unhealthy and overinflated perception of their skills as policy advocates.

#### B. Defining “Policy Advocacy”

Based on the public policy definition discussed above, the author offers the following definition of policy advocacy. Policy advocacy is *any activity intended to influence the substance of a public policy output or its implementation*. This definition intentionally encompasses a broad range of direct and indirect activities. Direct policy advocacy includes, but is not limited to, formal testimony before legislative bodies or informal meetings with

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84. See McNamara & Morris, *supra* note 1, at 3.

85. See *id.*; Lasswell & McDougal, *supra* note 64, at 207. I make this hypothesis based on my teaching and practical experience, but ultimately this is an empirical question. I would encourage scholars with research agendas in legal education, policy education, or both to explore two related research questions: 1) How do attorneys define the term “public policy?” and 2) How do attorneys perceive the legitimacy of non-attorney policy advocates?

86. See McNamara & Morris, *supra* note 1, at 3 n.8.

87. See Lasswell & McDougal, *supra* note 64, at 207.

88. See *id.* at 216, 264.

89. *Id.* at 206 n.10.

90. See *Legal Practicum - Regulatory Comments*, *supra* note 5; *Today’s Citizen Lawyer: Leading Toward Justice for All*, *supra* note 79.

91. See *Legal Practicum - Regulatory Comments*, *supra* note 5; *Today’s Citizen Lawyer: Leading Toward Justice for All*, *supra* note 79.

regulatory agencies.<sup>92</sup> Indirect policy advocacy includes drafting op-eds or “letters to the editor” or either marshaling community engagement or interest in a current or potential public policy.<sup>93</sup>

The author offers that policy advocacy is distinct from other forms of advocacy, such as trial advocacy, in four major ways. First, attorneys do not hold exclusive license to operate in a policy arena and engage in policy advocacy.<sup>94</sup> Other actors hold valid and competing claims to legitimacy, based not on governmental licensing authority but on expert knowledge or community support. These individuals may include nonprofit advocacy leaders, public sector bureaucrats, or even religious leaders acting on behalf of impacted communities.

Second, although this article argues that attorneys should use the policy process approach to anchor their advocacy, in practice, policy advocacy can be non-linear and messy compared to other forms of advocacy.<sup>95</sup> Policy advocacy gains are based less on formal procedural decision rules and more on established connections and relationships.<sup>96</sup> Decision-makers have limited time and resources to devote to learning about policy solutions and competing policy issues may knock others off a decision-maker’s agenda on short notice.<sup>97</sup>

Third, and related to the reason in the preceding paragraph, policy advocacy is *exposed to the elements*.<sup>98</sup> Kingdon’s policy streams model, described *infra*, accounts for the constant buffering a policy issue receives from the external environment.<sup>99</sup> Routine events such as budget or election cycles and emergent events such as natural disasters, sudden armed conflicts, or stories receiving sudden and saturated coverage from national news media may impact the attention other policy issues will receive.<sup>100</sup> Most legal advocacy, by contrast, follows clear decision rules that preserve an issue in a decision-maker’s queue no matter the external circumstances.<sup>101</sup>

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92. See discussion *supra* Section II.A; STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID app. D-1 (AM. BAR ASS’N 2021).

93. See GOVERNMENTAL AFF. OFFICE, AM. BAR ASS’N, ALL POLITICS IS LOCAL: A PRACTICAL GUIDE TO EFFECTIVE ADVOCACY FOR STATE AND LOCAL BARS 1, 21, 69 (Denise Cardman ed., 2016).

94. See McNamara & Morris, *supra* note 1, at 27.

95. See *id.* at 5 n.14.

96. See GOVERNMENTAL AFF. OFFICE, *supra* note 93, at 21.

97. See *id.* at 28; McNamara & Morris, *supra* note 1, at 8.

98. See McNamara & Morris, *supra* note 1, at 10.

99. See *id.*; KINGDON, *supra* note 11, at 87, 88.

100. See McNamara & Morris, *supra* note 1, at 10; GOVERNMENTAL AFF. OFFICE, *supra* note 93, at 29.

101. See KINGDON, *supra* note 11, at 162, 198.

Finally, policy advocacy differs from other legal advocacy because policy advocacy affects every stage of the policy process.<sup>102</sup> When attorneys engage in other forms of legal advocacy, they generally focus their efforts on a decision-maker who holds authority over their clients' rights.<sup>103</sup> Policy advocacy can focus on a decision-maker, but it is so much more.<sup>104</sup> As described *infra*, the policy process includes all activity from getting an issue placed on the public agenda, to policy implementation and evaluation.<sup>105</sup>

Although the author distinguishes policy advocacy from more traditional legal advocacy, in practice, attorneys might engage in both types of advocacy on a regular basis depending on the nature and purpose of their work.<sup>106</sup> Based on the academic literature and practical experience, the author therefore offers the following narrative continuum of policy advocacy roles for attorneys.<sup>107</sup> The author offers five policy advocacy roles along this continuum in increasing order of policy advocacy effort. The author evaluates each role based on the following factors:

**Policy Advocacy Effort:** The percentage of work product or work effort focused on “policy advocacy.”

**Client:** Is there an attorney-client relationship? If not, what serves as the “client?”

**Jurisdictional Breadth:** What political jurisdiction limitations, if any, exist on the attorney’s policy advocacy impact?

**Funding Source:** How does the attorney make money?

**Key Relationships:** Other than the clients, who are the important external stakeholders for the attorney?

### 1. Level One — Ancillary

Ancillary policy advocacy occurs as a byproduct of private civil litigation.<sup>108</sup> For example, a civil action may turn on whether a party breached a

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102. See McNamara & Morris, *supra* note 1, at 5.

103. See *id.* at 16.

104. See *id.* at 5.

105. See *id.*

106. See *id.* at 4, 7, 11–12.

107. See discussion *infra* Section II.B.1–5.

108. See Lasswell & Myres, *supra* note 64, at 250.

duty of care, and whether a breach occurred may depend on regulatory compliance.<sup>109</sup> An attorney involved in such a case may seek a policy determination from the cognizant public sector agency that certain regulations do not apply to their client's activities.<sup>110</sup> Although this effort may be related to ongoing trial advocacy, the attorney in effect seeks to influence policy implementation by removing their client from the universe of regulated entities.<sup>111</sup>

**Policy Advocacy Effort:** Low. Policy advocacy work arises from and is tangential to other legal work.

**Client:** Person, including a business entity.

**Jurisdictional Breadth:** Limited to the geographical jurisdiction of the courts in which the attorney practices.

**Funding Source:** Clients.

**Key Relationships:** Limited set of public sector agencies.

## 2. Level Two — Purposeful Private Sector

In purposeful private sector policy advocacy, attorneys work for umbrella organizations.<sup>112</sup> These organizations seek to advance public policy not for the inherent value of the public policies, but for the corporate benefit of other private actors.<sup>113</sup> In the maritime policy arena, examples of these groups include American Waterways Operators<sup>114</sup> and the Greater New Orleans Barge Fleeting Association.<sup>115</sup> Public policy may be the main purpose of the umbrella

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109. See McNamara & Morris, *supra* note 1, at 14.

110. See *id.*

111. See Lasswell & McDougal, *supra* note 64, at 235.

112. See Lisa Blomgren Amsler, *Collaborative Governance: Integrating Management, Politics, and Law*, 76 PUB. ADMIN. REV. 700, 700 (2016).

113. See *Engaging in Public Policy for Umbrella Organizations*, OUR STATE OF GENEROSITY, [http://ourstateofgenerosity.org/how\\_to/engaging-in-public-policy-for-umbrella-organizations](http://ourstateofgenerosity.org/how_to/engaging-in-public-policy-for-umbrella-organizations) (last visited Apr. 28, 2023).

114. AM. WATERWAYS OPERATORS, <http://www.americanwaterways.com> (last visited Apr. 28, 2023).

115. GREATER NEW ORLEANS BARGE FLEETING ASS'N, <http://gnobfa.com/home.htm> (last visited Apr. 28, 2023).

organization, but the umbrella organization may serve other beneficial purposes for its members beyond policy advocacy.<sup>116</sup>

**Policy Advocacy Effort:** Moderate to Significant.

**Client:** Attorney-client relationship likely exists with umbrella organization. The broad organization serves other private sector actors.

**Jurisdictional Breadth:** Broad. The organization may seek to influence public policy at the international, domestic, state, or local level.

**Funding Source:** Constituent private sector actors.

**Key Relationships:** Constituent private sector actors, relevant public sector decision-making agencies.

### 3. Level Three — Purposeful Public Sector

In purposeful public sector policy advocacy, the attorney works for a public sector organization. The main purpose of the attorney is to advise decision-makers on ranking policy proposals, choosing a public policy, and implementing public policy. The attorney likely develops deep expertise within their lane of responsibility but may lack the technical knowledge or the resources to comprehend how their lane of expertise connects to the broader policy arena. In the maritime policy arena, counsel for agencies such as the U.S. Coast Guard,<sup>117</sup> the Federal Maritime Commission,<sup>118</sup> or state transportation agencies,<sup>119</sup> fall into this category.

**Policy Advocacy Effort:** Significant. Much of the attorney's work focuses on their policy issue, although they may need to expend some effort on administrative or organizational legal issues.

**Client:** The government as an organizational client.

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116. See *Engaging in Public Policy for Umbrella Organizations*, *supra* note 113.

117. *United States Coast Guard*, U.S. COAST GUARD, <http://www.uscg.mil/about> (last visited Apr. 28, 2023).

118. *About the Federal Maritime Commission*, FED. MAR. COMM'N, <http://www.fmc.gov/> (last visited Apr. 28, 2023).

119. See *General Counsel*, FLA. DEP'T OF TRANSP., <http://www.fdot.gov/legal> (last visited Apr. 28, 2023).



**Jurisdictional Breadth:** Limited to the jurisdictional breadth of their organizational client's operational law.

**Funding Source:** Public budgets.

**Key Relationships:** Staff bureaucrats within own agency, counsel in other agencies with complementary or overlapping operational law.

#### 4. Level Four — Public Interest Firm

Attorneys in this category work for public interest law firms or nonprofit civil society organizations.<sup>120</sup> The main purpose of the attorneys' work is policy advocacy, although it might occur on a case by case and issue by issue basis.<sup>121</sup> Funding comes either from clients or through philanthropic donations, where allowed.<sup>122</sup>

**Policy Advocacy Effort:** High.

**Client:** Person, including business entity, for public interest law firms. For civil society organizations, the attorney may work for the organization rather than an individual client.

**Jurisdictional Breadth:** Limited to the scope allowed by the attorney's law license.

**Funding Source:** Funding comes either from clients or through philanthropic donations where allowed.

**Key Relationships:** Decisionmakers in executive and legislative branches or councils at the federal, state, or local levels.

#### 5. Level Five — "Pure Policy"

Attorneys in this category usually work for advocacy organizations, and the attorneys engage in policy advocacy for the inherent value of the policy

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120. *Public Interest*, YALE L. SCH., <http://law.yale.edu/student-life/career-development/alumni/career-pathways/public-interest> (last visited Apr. 28, 2023).

121. *See id.*

122. *See id.*

issues.<sup>123</sup> In fact, the attorneys may not be licensed attorneys at all.<sup>124</sup> They may be J.D. holders who transitioned into J.D.-preferred policy positions or they may lead organizations focused on policy advocacy.<sup>125</sup> Examples of such organizations in the maritime arena include Ocean Conservancy,<sup>126</sup> Natural Resources Defense Council,<sup>127</sup> Opportunity Green,<sup>128</sup> and various community groups.<sup>129</sup>

**Policy Advocacy Effort:** High.

**Client:** No attorney-client relationship. The policy advocate works on behalf of the preferred policy issue, although the policy advocate must meet expectations of external advisory boards.

**Jurisdictional Breadth:** Broad. The policy advocate may influence policy at the international, domestic, state, or local levels.

**Funding Source:** Philanthropic donations.

**Key Relationships:** Broad and deep relationships across the entire policy arena.

### C. *Analysis: Positioning Attorneys as Policy Advocates*

In summary, public policy as a concept, and by extension policy advocacy, requires perspective and skill not traditionally taught in a modern law school education. The existing legal education model, which continues to claim public policy as a subset of law, does students a disservice by implicitly discounting the legitimacy of non-attorney actors and failing to train students on

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123. See Eoin Young & Lisa Quinn, *Open Soc’y Founds., Making Research Evidence Matter: A Guide to Policy Advocacy in Transition Countries* 29 (2012) (ebook).

124. See Alisa Benedict O’Brien & Alecia Bencze, *Univ. Akron Sch. of L., Alternative Careers Handbook: 2019–2020*, at 2 (2020) (ebook).

125. See *id.* at 2, 5.

126. See John Paul “J.P.” Brooker, *Ocean Conservancy*, <http://oceanconservancy.org/people/jp-brooker/> (last visited Apr. 28, 2023).

127. See Valerie Baron, *Nat’l Rsch. Def. Council*, <http://www.nrdc.org/experts/valerie-baron> (last visited Apr. 28, 2023).

128. *Who Are We: Carly Hicks*, *Opportunity Green*, <http://www.opportunitygreen.org> (last visited Apr. 28, 2023).

129. *Our Team: Misha Mitchell*, *Atchafalaya Basinkeeper*, <http://www.basinkeeper.org/our-team> (last visited Apr. 28, 2023). One example is Atchafalaya Basinkeeper, a nonprofit organization focused on preserving the Atchafalaya River and adjacent wetlands. See *id.*

the broader environmental factors impacting public policy.<sup>130</sup> Attorneys who enter policy advocacy work without broadening their perspective and skill do so at great risk to themselves, their clients, and their policy ideas.

The good news is attorneys do hold special skills to engage in policy advocacy when they can place those skills in a broader context.<sup>131</sup> And as the policy advocacy continuum above shows, many attorneys already work in a policy advocacy capacity to some extent.<sup>132</sup> Attorneys do not need to re-invent themselves wholesale to improve their chances for success in policy advocacy. A basic overview of key policy models will help existing attorneys re-conceptualize their role and their power as policy advocates.<sup>133</sup>

### III. PRACTICAL AND POWERFUL POLICY MODELS

This Part explains the three main public policy models all attorneys should understand to engage effectively in policy advocacy.<sup>134</sup> This Part first discusses the relevance of theories, frameworks, and models for attorneys engaged in policy advocacy.<sup>135</sup> The dominant policy process model is examined for its contributions to the field, its simplicity, and its organizing function.<sup>136</sup> Kingdon's policy streams model is then examined as a contribution to the agenda setting literature.<sup>137</sup> Finally, Deborah Stone's *polis model* is reviewed as a powerful critique to the predominant assumptions in the field.<sup>138</sup>

This Part demonstrates the power of the policy process model to the study and practice of policy advocacy.<sup>139</sup> Although no model will predict public policymaking with absolute precision, the policy process model is a helpful lens for attorneys because it helps attorneys to view public policy in three dimensions. This model helps attorneys understand that public policy should not be viewed as a mere snapshot in time at a decision-making stage, but rather as a dynamic process constantly impacted by environmental factors.

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130. See discussion *supra* Section II.A.

131. See *Legal Practicum - Regulatory Comments*, *supra* note 5; *Legislation and Regulation*, *supra* note 80; *Today's Citizen Lawyer: Leading Toward Justice for All*, *supra* note 79.

132. See John Paul "J.P." Brooker, *supra* note 126; Valerie Baron, *supra* note 127; *Our Team: Misha Mitchell*, *supra* note 129. One example is Atchafalaya Basinkeeper, a nonprofit organization focused on preserving the Atchafalaya River and adjacent wetlands. *Our Team: Misha Mitchell*, *supra* note 129.

133. See discussion *infra* Part III.

134. See discussion *infra* Part III.

135. See discussion *infra* Section III.A.

136. See discussion *infra* Section III.B.2.

137. See discussion *infra* Section III.B.2.

138. See discussion *infra* Section III.B.3.

139. See discussion *infra* Part III.

A. *The Relevance and Utility of Public Policy Models*

Why are models relevant to policy advocacy?<sup>140</sup> In the social sciences, scholars generally build knowledge through a constant process of hypothesis formulation and testing.<sup>141</sup> Scholars examine previous studies and make educated guesses about how things would behave if they changed circumstances slightly.<sup>142</sup> In public policy scholarship, perhaps this means taking a study originally completed on state-level policy making and replicating the study at the federal level to see if the results are the same or different.<sup>143</sup> By observing behavior and collecting data either quantitatively, qualitatively, or through mixed methods,<sup>144</sup> those who study social sciences, including public policy, hope to gradually build on previous knowledge to gain a better understanding of the world.<sup>145</sup> Sometimes, someone makes such a big discovery that it causes a “paradigm shift”<sup>146</sup> in a discipline, but usually, knowledge builds slowly and steadily without much disruption.<sup>147</sup> Scholars sometimes bicker over their own assumptions about how the world works, but they generally agree that empirical observation is one of the ways to build knowledge.<sup>148</sup> Models, then, serve as the manifestation of accumulated knowledge on a given subject. Good models “describe” how things work. Great models “explain” how things work. The best models “predict” how things work.<sup>149</sup>

Although this author considers law a social science, the careful reader will note this general model of knowledge building does not describe how legal academia works. With some important exceptions, legal scholarship does not

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140. See DANIEL C. MCCOOL, PUBLIC POLICY THEORIES, MODELS, AND CONCEPTS: AN ANTHOLOGY xi–xiii (1st ed. 1995).

141. WILLIAM LITTLE & RON MCGIVERN, INTRODUCTION TO SOCIOLOGY - 1ST CANADIAN EDITION 50 (2014) (ebook).

142. *Id.* at 53.

143. *But see* Stuart M. Butler & David B. Muhlhausen, *Can Government Replicate Success?*, NAT’L AFFS., Spring 2014, at 25, 25–26.

144. JOHN W. CRESWELL & J. DAVID CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES 232 (6th ed. 2023). See *id.*, for a discussion of social science research approaches.

145. See *id.*; LITTLE & MCGIVERN, *supra* note 141, at 51.

146. THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 85 (3d ed. 2009). Thomas S. Kuhn explains how academic fields build knowledge until a major underlying assumption of the field collapses, ushering in a new era of inquiry in a discipline. See *id.* at 86. This re-centering constitutes a “paradigm shift” for a field. *Id.* at 89.

147. See *id.* at 86.

148. See LITTLE & MCGIVERN, *supra* note 141, at 24, 51.

149. See H. GEORGE FREDERICKSON ET AL., THE PUBLIC ADMINISTRATION THEORY PRIMER 8, 12 (2d ed. 2012).

test previous legal theories through empirical observation.<sup>150</sup> Rather, legal scholarship is “doctrinal” in nature.<sup>151</sup> So, even though law as a field of study relates to public policy and public administration,<sup>152</sup> little cross-connection exists in the scholarship between law and these fields.<sup>153</sup>

If attorneys are not trained in social science scholarship, what is the best way for attorneys to understand the role of social science models? In this author’s experience, the best analogy is McCool’s reference to a model car.<sup>154</sup> A small metal toy car is a model of the real thing.<sup>155</sup> It is an approximation.<sup>156</sup> One may make educated guesses about the real thing based on the model, but one cannot draw every possible conclusion about the real thing from the small model.<sup>157</sup> In the same way, the three public policy models in this Part represent the accumulation of knowledge based on empirical observation.<sup>158</sup> The policy process model, the policy streams model, and the *polis model* were not developed out of thin air. They were not conceived by a law clerk for an appellate judge based on an isolated idea of good public policy. Rather, these models represent their authors’ best representations of how the real thing works based on repeated empirical observations of the real thing operating in different contexts.

These three models do not represent a comprehensive collection of public policy models in the field. A full review of existing public policy models could fill an entire law review volume. Rather, based on this author’s academic and practical experience, these are the three most powerful and comprehensive models that, together, provide accessible lenses to help attorneys conceptualize policy advocacy.

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150. *But see* Shari Seidman Diamond, Concluding Essay, *Empirical Legal Scholarship: Observations on Moving Forward*, 113 NW. U. L. REV. 1229, 1229, 1230 (2019).

151. *Id.* at 1229.

152. McGarity, *supra* note 15, at 22. See discussion *supra* Section II.A for the relationship of law and public policy. The field of public administration considers law to be one of its three foundational disciplines, along with management and politics. Ronald C. Moe & Robert S. Gilmour, *Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law*, 55 PUB. ADMIN. REV. 135, 143 (1995).

153. Andrew Osorio et al., *Systematically Reviewing American Law and Public Administration: A Call for Dialogue and Theory Building*, 4 PERSPS. ON PUB. MGMT. & GOVERNANCE 100, 115 (2021).

154. See MCCOOL, *supra* note 140, at xi–xiii; *Why Are Scientific Models Necessary?*, TEX. GATEWAY, <http://www.texasgateway.org/resource/scientific-models> (last visited Apr. 28, 2023).

155. MCCOOL, *supra* note 140, at xi–xiii.

156. *Why Are Scientific Models Necessary?*, *supra* note 154.

157. *See id.*

158. See discussion *infra* Section III.B.1–3.

## B. *The Major Public Policy Models*

### 1. Policy Process

Policy theory is not defined by a single research tradition or a single approach.<sup>159</sup> Rather, policy theory is as multi-faceted and dynamic as the political system itself.<sup>160</sup> To the extent that policy scholars work from a common foundation today, that foundation appears to be the policy process model or the policy stages model.<sup>161</sup> Scholars vary in the level of weight they give this model.<sup>162</sup> One calls it a “framework” and a “heuristic” “in search of a theory,”<sup>163</sup> and one even calls it a “paradigm.”<sup>164</sup> This policy process model was first proposed in the 1950s to “simplify” the study of public policy.<sup>165</sup> Scholars have expounded on this model over the years, and the key feature of this model is the assumption that the policy process is “sequential, differentiated by function, and cumulative.”<sup>166</sup>

In this author’s opinion, Howlett et al. provide the most comprehensive overview of the policy process model, which they conceptualize as “the policy cycle.” **Agenda Setting**, the first stage, “is concerned with the way problems emerge, or not, as candidates for government’s attention.”<sup>167</sup> Research on agenda setting focuses on a variety of relevant topics, such as whether problems objectively exist or are created through a process of social construction, how industry and government identify problems for government to address, and whether the type and structure of a nation-state’s government correlates to the policy issues the nation-state places on its policy agenda.<sup>168</sup> Howlett et al. observe that a multitude of actors participate in the agenda setting phase; public and private sector entities all engage in agenda setting discourse.<sup>169</sup>

In this author’s experience, the maritime policy arena provides several examples of agenda setting activity. For example, maritime industry groups,

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159. See HOWLETT ET AL., *supra* note 9, at 4.

160. *See id.*

161. *Id.*

162. See Peter deLeon, *The Stages Approach to the Policy Process: What Has It Done? Where Is It Going?*, in THEORIES OF THE POL’Y PROCESS 19, 25, 29 (Paul A. Sabatier ed., 1999); Robert T. Nakamura, *The Textbook Policy Process and Implementation Research*, 7 POL’Y STUD. REV. 142, 144 (1987).

163. deLeon, *supra* note 162, at 23, 25.

164. Nakamura, *supra* note 162, at 144.

165. HOWLETT ET AL., *supra* note 9, at 10.

166. Nakamura, *supra* note 162, at 142 (emphasis omitted).

167. HOWLETT ET AL., *supra* note 9, at 92.

168. *Id.* at 93.

169. *See id.* at 92.

such as American Waterways Operators,<sup>170</sup> often petition the U.S. Coast Guard, either in person or in writing, for the agency to act on their preferred policy issues.<sup>171</sup> At the international level, nation-states submit formal policy proposals for committees of the International Maritime Organization to place on the agendas of its various committees.<sup>172</sup>

The next stage of the policy process is **Policy Formulation**.<sup>173</sup> This stage “involves identifying and assessing possible solutions to policy problems or, to put in another way, exploring the various options or alternative courses of action available for addressing a problem.”<sup>174</sup> Scholars focusing on policy formulation examine how policy options incorporate scientific and technical knowledge, the “tools” of public policies, and how those “tools” match policy problems.<sup>175</sup> Actors from multiple sectors still participate in the policy formulation stage.<sup>176</sup>

This author offers two examples of policy formulation activities from the maritime policy arena.<sup>177</sup> One example is the agency “Advance Notice of Proposed Rulemaking” (“ANPRM”)<sup>178</sup> under the Federal Administrative Procedure Act.<sup>179</sup> When the U.S. Coast Guard, for example, wants to regulate a certain activity, but needs more information about technical issues or wants industry input into the contours of the regulation, the U.S. Coast Guard will issue an ANPRM.<sup>180</sup> This opens the door for industry and other members of the affected public to participate in policy formulation by offering their ideas of how the agency should regulate.<sup>181</sup> This is not an agenda setting activity; the specific issue is already on the agency’s agenda.<sup>182</sup> Rather, this is a de facto call for policy proposals.<sup>183</sup>

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170. AM. WATERWAYS OPERATORS, *supra* note 114.

171. *See id.*

172. *See* INT’L MAR. ORG., <http://www.imo.org/> (last visited Apr. 28, 2023).

173. HOWLETT ET AL., *supra* note 9, at 110.

174. *Id.*

175. *Id.* at 114.

176. *See id.* at 141.

177. *See* 33 C.F.R. § 1.05–30 (2023); National Offshore Safety Advisory Committee, U.S. COAST GUARD, <http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-Environmental-Standards/vfos/NOSAC/> (last visited Apr. 28, 2023).

178. *See* 33 C.F.R. § 1.05–30.

179. *Id.*

180. *See id.*

181. *See id.*

182. *Id.*

183. *See* 33 C.F.R. § 1.05–30.

Second, the U.S. Coast Guard manages several federal advisory committees.<sup>184</sup> The National Offshore Safety Advisory Committee, for example, consists of industry members who provide consensus advice to the agency on matters related to oil & gas industry safety oversight.<sup>185</sup> This group helps to augment the agency's bureaucratic expertise by advising on issues related to emergent technology and new industry practices.<sup>186</sup>

**Decision-Making** is the third stage of the policy process.<sup>187</sup> "It involves choosing from among a relatively small number of alternative policy options identified in the process of policy formulation in order to resolve a [policy] problem."<sup>188</sup> Scholars examining decision-making often focus on how much information a decision-maker can incorporate into their decision-making process and how prior constraints on choices of action will impact the decision-making process.<sup>189</sup> Notably, this appears to be the only stage of the policy process for which government generally holds sole authority to act.<sup>190</sup>

**Policy Implementation** is the fourth stage of the policy process.<sup>191</sup> This stage is about "put[ting] [a] decision into practice."<sup>192</sup> "Bureaucrats" feature heavily in the implementation stage, as do agency policies and procedures that affect how agencies interact with citizens in the course of service delivery.<sup>193</sup> Multiple sectors may participate in policy implementation,<sup>194</sup> particularly when the government "collaborates" with the private sector.<sup>195</sup> Research for this stage often focuses on discretion held by "street-level bureaucrats"<sup>196</sup> and whether their exercise of discretion causes a divergence between the policy output from the decision-making stage and the policy as applied during implementation.<sup>197</sup>

184. See *National Offshore Safety Advisory Committee*, U.S. COAST GUARD, <http://www.dco.uscg.mil/OCSNCOE/NOSAC/> (last visited Apr. 28, 2023).

185. *Id.*

186. *Id.*

187. HOWLETT ET AL., *supra* note 9, at 13.

188. *Id.* at 139.

189. *Id.* at 141–42; Bryan D. Jones, *Bounded Rationality and Public Policy: Herbert A. Simon and the Decisional Foundation of Collective Choice*, 35 POL'Y SCIS. 269, 280 (2002).

190. HOWLETT ET AL., *supra* note 9, at 140.

191. *Id.* at 13.

192. *Id.* at 160.

193. See *id.*

194. *Id.* at 163.

195. HOWLETT ET AL., *supra* note 9, at 163. See discussion *infra* Section IV.B for a discussion of collaboration.

196. MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* 13 (1980).

197. See *id.*; HOWLETT ET AL., *supra* note 9, at 163.



**Policy Evaluation** is the final stage of the policy process, and actors from multiple sectors may participate in this stage.<sup>198</sup> Policy evaluation provides feedback on whether policy achieves its goals or has the desired impact.<sup>199</sup> This feedback may impact any of the prior stages of the policy process.<sup>200</sup> The policy implementation may be redesigned, for example, or “the problem and [the] solutions it involves may be completely reconceptualized . . . .”<sup>201</sup> Research on policy evaluation may focus on the different entities conducting evaluations, the role of “evidence”<sup>202</sup> in policy evaluation, and how evaluators determine “success or failure.”<sup>203</sup>

## 2. The Policy Streams Model

If the policy process model is the field’s “majority opinion,” then Kingdon’s policy streams model<sup>204</sup> is its influential concurrence.<sup>205</sup> Originally viewed as a model of agenda setting,<sup>206</sup> the policy streams model supplements the policy process model while also standing on its own as a powerful framework for conceptualizing public policy.<sup>207</sup> This model is noteworthy as it accounts for the role of unplanned and emergent events in the policy process, as described more fully below.<sup>208</sup>

The key conceptual components of the policy streams model are the three streams: problems, policy, and politics.<sup>209</sup> The problem stream consists of various policy problems that “capture the attention of people in and around government.”<sup>210</sup> The policy stream consists of various “specialists” in specific policy areas who have “pet ideas or axes to grind[ ]. . . .”<sup>211</sup> The politics stream “is composed of things like swings of national mood, vagaries of public opinion, election results, changes of administration, shifts in partisan or ideological distributions in Congress, and interest group pressure campaigns.”<sup>212</sup>

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198. HOWLETT ET AL., *supra* note 9, at 13, 181.

199. *Id.* at 178.

200. *See id.*

201. *Id.*

202. *Id.* at 181.

203. HOWLETT ET AL., *supra* note 9, at 182.

204. *See* KINGDON, *supra* note 11, at 200; McNamara & Morris, *supra* note 1, at 3.

205. *See* McNamara & Morris, *supra* note 1, at 3.

206. *See id.* at 3, 8.

207. *See id.* at 4.

208. *See id.* at 10.

209. McNamara & Morris, *supra* note 1, at 9–10.

210. KINGDON, *supra* note 11, at 87.

211. *Id.*

212. *Id.*

Kingdon's main thesis is that these three streams exist and operate independently.<sup>213</sup> "Policy windows" open and policy issues get placed on the policy agenda only when the streams cross, which can occur in one of three ways: 1) a recurrent event, such as an election cycle, will cause regular and predictable policy windows to open, 2) an emergent and unplanned event, such as a fatal oil drilling explosion and a major oil spill, can cross the streams and open a policy window,<sup>214</sup> or 3) a "policy entrepreneur" can deliberately work to connect the streams.<sup>215</sup>

What lessons does the policy streams model offer for attorneys engaged in policy advocacy?<sup>216</sup> First, policy entrepreneurs play a significant role in policy enactment by connecting the three streams.<sup>217</sup> Attorneys are well-suited to serve as policy entrepreneurs.<sup>218</sup> As attorneys develop their own career niche, they will encounter many specialists operating in different environments within a policy arena.<sup>219</sup> In this author's experience, many admiralty attorneys develop roles as policy entrepreneurs as they build connections between maritime industry clients, legislative oversight committees, and federal agency regulators.

Although attorneys may consciously develop roles as policy entrepreneurs, one of Kingdon's main points is policy entrepreneurs may grow in a variety of policy environments and positions.<sup>220</sup> Another lesson from this model is that attorneys should constantly seek out who may have potential to be the policy entrepreneur within a policy arena.<sup>221</sup> In some policy arenas, an expert agency bureaucrat may be the policy entrepreneur; in another, it may be an elected official with a passion for an issue.<sup>222</sup> Attorneys should identify who, in their cluster of contacts, appears to have developed the most legitimacy or influence for a policy issue.<sup>223</sup> This individual may serve as a policy entrepreneur when a policy window opens.<sup>224</sup>

Third, Kingdon's policy streams model teaches us that relationships matter, both for their quantity and their quality.<sup>225</sup> One underlying assumption

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213. *Id.* at 88.

214. *Id.* at 203; NAT'L COMM'N ON THE BP DEEPWATER HORIZON OIL SPILL & OFFSHORE DRILLING, DEEP WATER: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING 29 (2011).

215. KINGDON, *supra* note 11, at 179; McNamara & Morris, *supra* note 1, at 12.

216. *See* McNamara & Morris, *supra* note 1, at 30.

217. *Id.* at 12.

218. *Id.* at 30.

219. *See id.* at 27.

220. KINGDON, *supra* note 11, at 179–80.

221. *See id.*

222. *Id.* at 16, 179–80.

223. *See id.* at 179–80.

224. *See id.*

225. KINGDON, *supra* note 11, at 76.

of the policy streams model is that no individual or group has perfect information.<sup>226</sup> Rather, policies, problems, and solutions float around unconnected in the “policy primeval soup” until the streams cross.<sup>227</sup> Relationships serve to preserve access to policy knowledge until the streams cross and that policy knowledge is used.<sup>228</sup> And the more relationships you have as a policy advocate, the more potential knowledge you can access about a policy issue.<sup>229</sup> In addition, relationships can serve as capital to advance policy issues when the streams cross.<sup>230</sup>

Fourth, the policy streams model teaches policy advocates that policy windows must open for a policy to be successful, and those windows might open for only a short time.<sup>231</sup> Attorneys should understand how to use their limited resources of time, energy, and relationships to make efficient use of regularly occurring policy windows such as election cycles, advisory committee meetings, or annual rulemaking renewals.<sup>232</sup> Attorneys should also be ready to advise their clients on how to harness emergent situations to advance policy agendas.<sup>233</sup> When an emergency occurs, policy advocates must be ready to take advantage of an open window to advance a preferred policy solution; an emergent window is not the time to begin developing relationships and ideas.<sup>234</sup>

### 3. Stone’s *Polis Model*

The policy process and policy streams models appear to share one major assumption.<sup>235</sup> Specifically, they advance the idea that policy making can be characterized by natural and predictable, if yet undiscovered, patterns.<sup>236</sup> These patterns of policy making behavior exist independent of values and the purpose of policy scholarship is to distill these patterns over time through neutral and detached empirical observations.<sup>237</sup> As discussed, *supra*, the policy process and policy streams models operate as strong unifying influences in the field of public

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226. *See id.*

227. *Id.* at 19.

228. *See id.*

229. *See id.* at 200.

230. *See* KINGDON, *supra* note 11, at 200.

231. *Id.* at 88.

232. *See id.* at 165.

233. *See id.* at 165, 182.

234. *See id.* at 141, 182.

235. *See* KINGDON, *supra* note 11, at 224.

236. *See id.* This is a *naturalist* philosophy of research. JONATHON W. MOSES & TORBJØRN L. KNUTSEN, *WAYS OF KNOWING: COMPETING METHODOLOGIES IN SOCIAL AND POLITICAL RESEARCH* 28, 30 (2d ed. 2012).

237. *See* KINGDON, *supra* note 11, at 224; MOSES & KNUTSEN, *supra* note 236, at 28.

policy, in large part because they lend themselves to easy categorization and linkages for scholarly inquiry.<sup>238</sup>

Stone's *polis model* operates as a sharp critique to this predominant view of public policy making as a value-free "rational" exercise.<sup>239</sup> In her foundational work, *Policy Paradox*, Stone makes three major observations.<sup>240</sup> First, she decries what she labels as the "rationality project", or the very idea that one can distill pure value-free scientific principles of public policy completely detached from values.<sup>241</sup> According to Stone, political science, public administration, law, and economics have had "a common mission of rescuing public policy from the irrationalities and indignities of politics. . . ." <sup>242</sup> They aspire "to make policy instead with rational, analytical, and scientific methods."<sup>243</sup> From Stone's perspective, the study and practice of public policy cannot be divorced from the underlying struggles of politics.<sup>244</sup> In other words, one should not view politics as a hindrance to the discovery of public policy principles.<sup>245</sup> Rather, politics and its attendant struggles imbue public policy with meaning.<sup>246</sup>

Second, Stone makes a strong case that "winning" in the world of public policy does not always guarantee long-term success for public policy.<sup>247</sup> According to Stone, one paradox of public policy is: *winning is losing and losing is winning*.<sup>248</sup> As an example, she cites Republican electoral gains in the 2010 federal mid-term elections as directly flowing from former President Obama's major liberal public policy achievements during his first two years in office.<sup>249</sup> One can discern a more recent example regarding abortion policy, in which a major conservative policy victory in *Dobbs v. Jackson Women's Health Org.*<sup>250</sup> was followed in short order by Democrats outperforming expectations in the 2022 federal mid-term elections, apparently in response, at least in part, to the conservative Supreme Court abortion ruling.<sup>251</sup>

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238. See discussion *supra* Section III.B.1–2.

239. See STONE, *supra* note 11, at 19.

240. See *id.* at 7–8.

241. *Id.* at 7.

242. *Id.*

243. *Id.*

244. See STONE, *supra* note 11, at 7.

245. See *id.* at 7–8.

246. See *id.*

247. See *id.* at 2.

248. See *id.* (quoting Jill Zuckman, *No Voting, More Anger on Budget*, BOS. GLOBE, Mar. 2, 1995, at 1).

249. See STONE, *supra* note 11, at 2–3.

250. 142 Sup. Ct. 2228 (2022).

251. Craig Palosky, *Analysis Reveals How Abortion Boosted Democratic Candidates in Tuesday's Midterm Election*, KFF (Nov. 11, 2022), <http://www.kff.org/other/press->

Third, Stone criticizes the dominant market-based model of public policy.<sup>252</sup> The market model assumes a collection of individual actors making choices that maximize their own benefit, with policy outcomes as the result of this collective “rational choice.”<sup>253</sup> As Stone argues, however, a more accurate representation of the world is her model of community where individuals live in a dense web of relationships, dependencies, and loyalties; where they care deeply about some people other than themselves; where they influence each other’s desires and goals; and where they envision and fight for a public interest as well as their individual interests.<sup>254</sup> Ultimately, Stone views the world (and therefore public policymaking) through her *polis model*, which she defines by contrast to the market model.<sup>255</sup> Under the *polis model*, “cooperation” exists alongside “competition” and alliances, groups, and loyalty matter.<sup>256</sup> Information is imperfect and incomplete, and public policy is a battle over ideas with a premium placed on persuasion.<sup>257</sup>

What lessons does the *polis model* offer for attorneys engaging in policy advocacy? First, this author offers that Stone is best understood by analogy to a dissent in a major appellate court opinion. A reader can neither understand nor fully interpret a dissenting opinion without the benefit of having read the majority opinion.<sup>258</sup> And an attorney risks misunderstanding a case by reading only the majority opinion and ignoring the dissent.<sup>259</sup> In the same way, Stone’s *polis model* operates to give much needed context and nuance to the predominant policy process and policy streams models.<sup>260</sup> Stone teaches us that although the policy process and policy streams models are the dominant heuristics and helpful in many ways, we must understand their limitations and acknowledge that policy is not a rational exercise.<sup>261</sup>

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release/analysis-reveals-how-abortion-boosted-democratic-candidates-in-tuesdays-midterm-election/.

252. See STONE, *supra* note 11, at xi.

253. See *id.*

254. *Id.*

255. See *id.* at 10, 17–18.

256. See *id.* at 24–25, 219.

257. See STONE, *supra* note 11, at 23, 34.

258. See Iman Zekri, *Respectfully Dissenting: How Dissenting Opinions Shape the Law and Impact Collegiality Among Judges*, FLA. BAR J., Sept.–Oct. 2020, at 8, 9; *Opinion*, CORNELL L. SCH. LEGAL INFO. INST., <http://www.law.cornell.edu/wex/opinion> (last visited Apr. 28, 2023); *How to Read a U.S. Supreme Court Opinion*, A.B.A. (May 4, 2022), [http://www.americanbar.org/groups/public\\_education/publications/teaching-legal-docs/how-to-read-a-u-s-supreme-court-opinion/?login](http://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/how-to-read-a-u-s-supreme-court-opinion/?login).

259. See Zekri, *supra* note 258, at 9; *How to Read a U.S. Supreme Court Opinion*, *supra* note 258.

260. See STONE, *supra* note 11, at 34.

261. See *id.* at 12, 34; McNamara & Morris, *supra* note 1, at 3, 7.

Second, Stone's model should resonate with attorneys for its focus on ideas and persuasion.<sup>262</sup> One of the strongest skills an attorney brings to policy advocacy is the power of persuasion.<sup>263</sup> Whether through the spoken or the written word, attorneys are well-suited to marshal support for broad ideas or collective action.<sup>264</sup> Stone's *polis model* invites us to acknowledge policy advocacy as a contact sport in which winning and losing can rest on the communications skills of the most impassioned advocates.<sup>265</sup>

At the same time, the *polis model* cautions that policy gains and policy losses are never permanent, and the very act of winning may pre-ordain a loss.<sup>266</sup> Under the policy process model, policy outputs are implemented and evaluated, with orderly feedback, into a policy system without much disruption to the status quo.<sup>267</sup> The policy streams model suggests, absent an emergent event, that policy gains are at risk only during predictable policy windows such as election cycles.<sup>268</sup> The *polis model*, however, warns that policy victories are illusory without constant vigilance to ward off policy backlash from competing factions.<sup>269</sup>

### C. *Analysis: The Power of the Policy Process Model*

The policy process, policy streams, and *polis models* are three major frameworks for understanding policymaking.<sup>270</sup> Attorneys may wish to consider these models by analogy to a major appellate opinion with the policy process model as the opinion of the court, the policy streams model as a clarifying concurrence, and the *polis model* as a sharp dissenting opinion. Like an appellate opinion, the majority opinion controls the case, but one cannot understand the context of a case by reading the opinion of the court alone.<sup>271</sup> In the same way, the policy process model is the dominant model with the policy streams model augmenting the broader policy process model.<sup>272</sup> Stone's *polis model* operates

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262. See STONE, *supra* note 11, at 23.

263. Kate Rattray, *The Top 7 Skills for Lawyers*, CLIO, <http://www.clio.com/blog/skills-for-a-lawyer/> (last visited Apr. 28, 2023).

264. See STONE, *supra* note 11, at 11.

265. See *id.* at 8–9.

266. See *id.* at 2.

267. See *id.* at 12.

268. KINGDON, *supra* note 11, at 88, 165–68.

269. See STONE, *supra* note 11, at 9.

270. Daniel Béland & Michael Howlett, *The Role and Impact of the Multiple-Streams Approach in Comparative Policy Analysis*, 18 J. COMPAR. POL'Y ANALYSIS 221, 222, (2016); see also STONE, *supra* note 11, at 17.

271. See McNamara & Morris, *supra* note 1, at 15.

272. See *id.* at 3; discussion *supra* Section III.A–B; discussion *infra* Parts IV–V; Nakamura, *supra* note 162, at 142.

like a dissenting opinion, providing a sharp critique of the dominant model's assumptions while offering a contrary view of the world.<sup>273</sup>

The author also offers these three models to give a parsimonious perspective of the policy process for attorneys.<sup>274</sup> To be sure, they are not the only models of public policy.<sup>275</sup> However, these three models together complement each other to provide a broad conceptual lens through which attorneys may view their policy work.<sup>276</sup>

The foundational model, however, remains the policy process model.<sup>277</sup> The strength of this model lies in its organizing function for the field.<sup>278</sup> The breakdown of the policy process into discrete stages provides structure upon which scholars can build research agendas, professors can organize syllabi for courses, and students can approach their study.<sup>279</sup> Even scholars who eschew rationalism, such as Stone, structure their scholarly arguments to a certain degree by this model.<sup>280</sup> The model also benefits practitioners in two ways. First, it provides some justification for the division of labor within bureaucratic organizations charged with implementing policy.<sup>281</sup> Second, the rationalist approach to the model supports democratic norms, since the model suggests that the outputs of the policy process can be traced back to policy makers whom the public can hold accountable for policy decision.<sup>282</sup>

There are multiple weaknesses, however, in the policy process approach.<sup>283</sup> First, policy rarely follows the conveyor belt of the policy process model from conception to implementation.<sup>284</sup> Several theories seek to explain how policy springs forth in what might be considered an intermediate stage of the heuristic process.<sup>285</sup> Kingdon's "policy streams" model helps address this weakness of the policy process mold to propose that actors don't necessarily work in consecutive stages, but work in parallel "streams" until some institutional or irregular external factor causes the streams to align.<sup>286</sup> Second,

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273. See STONE, *supra* note 11, at 21, 23.

274. See *id.* at 195.

275. See, e.g., *id.*; Alan J. Hahn, *Policy Making Models and Their Role in Policy Education*, in INCREASING UNDERSTANDING OF PUBLIC PROBLEMS – 1987, at 222, 222–24 (1987).

276. See STONE, *supra* note 11, at 197.

277. Nakamura, *supra* note 162, at 142.

278. See *id.*

279. See *id.*; Mead, *supra* note 77, at 391.

280. See STONE, *supra* note 11, at 9.

281. See *id.*

282. See *id.* at 8–9.

283. See Pragati Rawat & John Charles Morris, *Kingdon's "Streams" Model at Thirty: Still Relevant in the 21st Century?*, 44 POLS. & POL'Y 608, 620–21 (2016).

284. See Nakamura, *supra* note 162, at 149.

285. Rawat & Morris, *supra* note 283, at 609, 620.

286. See *id.* at 610, 620.

while the policy process provides clear buckets in which to place certain actors, institutions, or behaviors, in practice there can be great spillover between the stages.<sup>287</sup> The very complexity of the political process, with numerous inputs and outputs, presents a challenge to any scholar seeking to develop and test causal factors.<sup>288</sup> In other words, any one causal factor may influence the behavior of actors in more than one stage within the policy process model, and any one input can be subject to multiple and interrelated causal factors.<sup>289</sup>

Despite the weaknesses of the predominant heuristic, policy theory has made progress on multiple fronts.<sup>290</sup> There appears to be a growing acceptance of the value of multiple “epistemic traditions” and the contributions they make to the field.<sup>291</sup> While the policy process model remains the predominant heuristic, scholars such as Stone have called for more questioning of the underlying assumptions of the rationalistic approach, or “the rationality project.”<sup>292</sup> This process should inform research that viewing political behavior through multiple lenses will build a greater understanding of the relationship between values and policy.<sup>293</sup>

#### IV. THE BROADER POLICY ENVIRONMENT: LESSONS FROM THE PUBLIC ADMINISTRATION AND PUBLIC POLICY LITERATURE

Previous Parts define and explain key terms and major public policy frameworks. This Part provides additional dimension and nuance for attorneys engaged in policy advocacy. Specifically, this Part reviews the literature to explain several concepts related to public policy and policy advocacy.<sup>294</sup> These terms, on their own, likely do not feature in any law school curriculum, but taken together they provide essential contours for the practice of policy advocacy.

First, policy scanning teaches us that attorneys should establish a process to maintain constant situational awareness of the policy arena in which they work.<sup>295</sup> Second, the concept of cross-sector collaboration is foundational to the study of public policy.<sup>296</sup> Although primarily studied in the context of policy

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287. See Nakamura, *supra* note 162, at 142, 150.

288. See *id.* at 142, 146.

289. See *id.* at 146; Amitai Etzioni, *Mixed-Scanning: A “Third” Approach to Decision-Making*, 27 PUB. ADMIN. REV. 385, 386 (1967).

290. See NORMA M. RICCUCCI, PUBLIC ADMINISTRATION: TRADITIONS OF INQUIRY AND PHILOSOPHIES OF KNOWLEDGE 116 (2010).

291. See *id.*

292. McNamara & Morris, *supra* note 1, at 3; see also STONE, *supra* note 11, at 7.

293. See McNamara & Morris, *supra* note 1, at 3–5.

294. See discussion *infra* Section IV.A.

295. See discussion *infra* Section IV.A.

296. See discussion *infra* Section IV.B.



implementation, much remains to be learned how collaboration may impact the entire policy process.<sup>297</sup> Third, social capital is that “something special” that attorneys can develop or harness to maximize “collective impact” of policy work groups.<sup>298</sup> Fourth, the concept of social equity provides a lens through which to examine how disparate impact of public policy in the short-term amongst affected groups can compound into major inequities over time.<sup>299</sup>

At first blush, these topics may seem isolated and disjointed.<sup>300</sup> As this Part shows, however, these issues taken together provide shape and contour to the practice of policy advocacy.<sup>301</sup> Attorneys enhance their potential impact as policy advocates when they understand how these various issues shape the practice of policy advocacy.

#### A. *Policy Scanning*

How do attorneys maintain situational awareness of developments in their policy arena? This author proposes a policy scanning approach.<sup>302</sup> Adapted from and drawing upon Etzioni’s “mixed-scanning” model<sup>303</sup> of decision-making, deliberate and intentional policy scanning provides attorneys with a way to maximize their knowledge and information within their policy arena while conserving finite resources, such as time and energy, that attorneys must devote to other endeavors.<sup>304</sup> Although the literature forming the basis of policy-scanning relates to the decision-making phase of the policy process,<sup>305</sup> this author offers that its principles offer powerful and practical lessons for attorneys to employ at the individual level. This proposed policy scanning approach is explicitly “normative”; it is not an attempt to describe how all attorneys *actually* monitor their policy arenas, but a proposal for how attorneys *should* monitor their policy arenas to maximize their effectiveness.<sup>306</sup> This author suspects the most impactful policy advocates already follow this approach intuitively, but the

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297. Madeleine W. McNamara & John C. Morris, *Expanding the Utility of Cross-Sectoral Collaboration in Policy Studies: Present and Future*, 12 POL’Y STUD. Y.B. (ANNUAL REVIEW) 53, 53, 55 (2021).

298. See discussion *infra* Section IV.C.

299. See discussion *infra* Section IV.D.

300. See discussion *infra* Section IV.A–D.

301. See discussion *infra* Part IV.

302. See discussion *infra* Part V.

303. See Etzioni, *supra* note 289, at 385.

304. See *id.* at 386, 389.

305. See *id.* at 385.

306. See *id.* at 388–89. By contrast, Etzioni notes the mixed-scanning model is meant to be both “positive” and “normative” in that it both suggests how decision makers do act and how they should act. Amitai Etzioni, *Mixed Scanning Revisited*, 46 PUB. ADMIN. REV. 8, 10 (1986).

extent to which attorneys actually use this process today is ultimately an empirical question.

The policy scanning approach adapts Etzioni's "mixed-scanning" model of decision making.<sup>307</sup> Etzioni proposed mixed-scanning in response to two major models of decision making at the time: rational decision making and incrementalism.<sup>308</sup> Rational decision making assumes that decision makers have perfect information about their policy alternatives.<sup>309</sup> Etzioni unsurprisingly discounts this approach as unrealistic as it requires too many resources.<sup>310</sup> Incrementalism, on the other hand, assumes that decision makers in a policy arena will make only incremental changes to existing policies.<sup>311</sup> Etzioni notes that incrementalism is not a comprehensive strategy as it fails to account for occasional broad policy changes.<sup>312</sup>

Etzioni proposes that decision makers incorporate both broad and detailed policy scanning practices to counter the weaknesses of the rational and incremental models.<sup>313</sup> The most significant aspect of mixed-scanning, however, is its focus on the monitoring of "unfamiliar" and "unexpected" areas.<sup>314</sup> As Etzioni states,

a broad-angle camera . . . would cover all parts of the sky but not in great detail, and a second one . . . would zero in on those areas revealed by the first camera to require a more in-depth examination. While mixed-scanning might miss areas in which only a detailed camera could reveal trouble, it is less likely than incrementalism to miss obvious trouble spots in unfamiliar areas.<sup>315</sup>

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307. Etzioni, *supra* note 289, at 385.

308. *Id.*

309. *Id.* at 386.

310. Etzioni, *supra* note 306, at 10; Etzioni, *supra* note 289, at 385–86. Note the parallels between Etzioni's critique of rational decision making and Stone's critique of "the rationality project." Etzioni, *supra* note 306, at 10; Etzioni, *supra* note 289, at 386; STONE, *supra* note 11, at 7. Etzioni and Stone both appear to critique full rationality as not reflecting reality. Etzioni, *supra* note 289, at 385–86; STONE, *supra* note 11, at 7. They appear to differ, however, in their approaches. Etzioni, *supra* note 289, at 385; STONE, *supra* note 11, at 7. Etzioni's mixed-scanning model offers practitioners a practical shortcut to achieving the best possible efficiency of knowledge acquisition while acknowledging finite resources. Etzioni, *supra* note 289, at 385. Stone, on the other hand, appears to imply that even infinite resources cannot imbue decision makers with perfect information, because public policy must be viewed through the lens of the *polis* rather than the *market*. See STONE, *supra* note 11, at 10.

311. See Charles E. Lindblom, *Still Muddling, Not yet Through*, 39 PUB. ADMIN. REV. 517, 517, 520–21 (1979) (describing and defending certain aspects of incrementalism).

312. See Etzioni, *supra* note 289, at 387, 389.

313. See *id.* at 389.

314. See *id.*

315. *Id.*

Two main assumptions underly this policy scanning approach. The first assumption, related to Etzioni's critique of rational decision making,<sup>316</sup> is that attorneys have limited time and resources to gather information about their policy arena.<sup>317</sup> Herbert Simon notes, in the context of public administration, that bureaucrats and decision makers necessarily make decisions based on imperfect information.<sup>318</sup> According to Simon, decision makers "satisfice,"<sup>319</sup> which is they make satisfactory decisions while sacrificing the opportunity to obtain perfect information.<sup>320</sup> Under this approach, a series of satisfactory decisions with enough, but not perfect, information, is better than a single perfect decision based on perfect information because of the required costs in time and resources to gather perfect information to make the perfect decision.<sup>321</sup>

The second assumption, based on the literature reviewed in Parts II and III, is that policy scanning must be broader than monitoring updates in case law because policy arenas consist of more than just attorneys as policy actors.<sup>322</sup> In addition, attorneys who focus solely on legal updates risk missing "obvious trouble spots in unfamiliar areas."<sup>323</sup> An attorney's policy scanning approach should capture case law and legal updates, to be sure, but should also include ways to stay up to date on scientific and industry updates in their field.<sup>324</sup> A policy scanning process that incorporates both legal and non-legal developments will help attorneys anticipate how they can best shape emergent issues in their policy arenas.

So, what does policy scanning look like? As an example, the author established the following process by the end of their U.S. Coast Guard career in the maritime policy arena:

- Daily Federal Register updates from specific federal agencies (for notices of proposed rulemaking and final rules);
- Regularly scheduled International Maritime Organization web documents review;

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316. See *id.* at 386.

317. See Etzioni, *supra* note 289, at 386.

318. See Herbert A. Simon, *Rational Choice and the Structure of the Environment*, 63 PSYCH. REV. 129, 129 (1956); Jones, *supra* note 189, at 274.

319. Simon, *supra* note 318, at 129; Jones, *supra* note 189, at 274.

320. See Simon, *supra* note 318, at 129; Jones, *supra* note 189, at 274.

321. See Jones, *supra* note 189, at 273, 274.

322. See discussion *supra* Parts II–III; Etzioni, *supra* note 289, at 388–89.

323. See Etzioni, *supra* note 289, at 389.

324. See Emily Fenton, *Practical Ways to Keep Up with Regulatory Change in Your Practice Area*, ATT'Y AT WORK (Jan. 5, 2023), <http://www.attorneyatwork.com/three-ways-to-keep-up-with-regulatory-changes/>.

- Daily subscription updates from a maritime consultant’s website;
- Regular monitoring of agency administrative law judge websites;
- Regular attendance at specific recurring maritime law conferences;
- Regular attendance at industry conferences in the New Orleans area; and
- Regular monitoring of federal Congressional oversight committee websites.

By following this plan, the author was able to maintain situational awareness of routine and frequent incremental policy changes and anticipate forthcoming major policy shifts. Regular attendance at recurring conferences, both legal and non-legal, helped the author develop and maintain relationships within their policy arena while staying abreast of advances in technology and industry practice which could impact the author’s legal practice. Overall, this process helped the author take more of a proactive role in the maritime policy arena.

In summary, a deliberate and intentional policy scanning plan will connect the dots between theory and practice for attorneys engaged in policy advocacy.<sup>325</sup> To be sure, attorneys already engage in continuing legal education programs and those serve an important role in knowledge acquisition and retention.<sup>326</sup> But a broad, thoughtful, intentional, and strategic policy scanning plan covering legal and industry issues will yield compounding benefits for policy advocates throughout their career.<sup>327</sup>

## B. *Collaboration*

According to Thomson & Perry, “[c]ollaboration is a process in which autonomous actors interact through formal and informal negotiation, jointly creating rules and structures governing their relationships and ways to act or decide on the issues that brought them together; it is a process involving shared norms and mutually beneficial interactions.”<sup>328</sup> Organizations may collaborate across public sector and private sector lanes for several reasons.<sup>329</sup> “Wicked

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325. See McNamara & Morris, *supra* note 297, at 59–60.

326. See Lasswell & McDougal, *supra* note 64, at 211, 245–246.

327. See McNamara & Morris, *supra* note 297, at 65; Etzioni, *supra* note 306, at 13.

328. Ann Marie Thomson & James L. Perry, *Collaboration Processes: Inside the Black Box*, 66 PUB. ADMIN. REV. (SPECIAL ISSUE) 20, 23 (2006).

329. See Michael McGuire et al., *The “New Emergency Management”*: Applying the Lessons of Collaborative Governance to Twenty-First-Century Emergency Planning, in THE FUTURE OF PUBLIC ADMINISTRATION AROUND THE WORLD: THE MINNOWBROOK PERSPECTIVE 117, 117 (Rosemary O’Leary et al. eds., 2010).

problems<sup>330</sup> facing society, such as climate change<sup>331</sup> and emergency response<sup>332</sup> may force organizations to work across boundaries due to the sheer scope of the policy issues involved.<sup>333</sup> Organizations may also collaborate regardless of a policy problem's scope if one agency or entity does not possess the full authority or proficiency to address an issue on its own.<sup>334</sup> Actors and organizations might even collaborate just because they like working together.<sup>335</sup> Sometimes collaboration is voluntary, but legislatures or agencies may "mandate" collaboration.<sup>336</sup>

Collaboration can be viewed both as a process and a structure.<sup>337</sup> Most academic research on collaboration focuses on collaboration in policy implementation, such as when an agency implements a statute by partnering with a private sector entity to deliver public services.<sup>338</sup> However, collaboration can occur earlier in the policy process, such as when federal advisory committees help to place items on the policy agenda.<sup>339</sup> Scholars note that much remains to be learned about collaboration in earlier stages of the policy process.<sup>340</sup>

One major challenge with collaboration is the *accountability-flexibility* dilemma.<sup>341</sup> In exchange for the *flexibility* of horizontal service delivery, home

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330. Brian W. Head & James Alford, *Wicked Problems: Implications for Public Policy and Management*, 47 ADMIN. & SOC'Y 711, 715 (2015).

331. Kirk Emerson & Peter Murchie, *Collaborative Governance and Climate Change: Opportunities for Public Administration*, in THE FUTURE OF PUBLIC ADMINISTRATION AROUND THE WORLD: THE MINNOWBROOK PERSPECTIVE 141, 146 (Rosemary O'Leary et al. eds., 2010).

332. McGuire et al., *supra* note 329, at 126.

333. Head & Alford, *supra* note 330, at 722; *see also, e.g.*, Emerson & Murchie, *supra* note 331, at 148; McGuire et al., *supra* note 329, at 122.

334. *See* Katrina Miller-Stevens et al., *A New Model of Collaborative Federalism from a Governance Perspective*, in ADVANCING COLLABORATION THEORY: MODELS, TYPOLOGIES, AND EVIDENCE 148, 159 (John C. Morris & Katrina Miller-Stevens eds., 2016).

335. Katrina Miller-Stevens & John C. Morris, *Future Trends in Collaboration*, in ADVANCING COLLABORATION THEORY: MODELS, TYPOLOGIES, AND EVIDENCE 276, 284 (John C. Morris & Katrina Miller-Stevens eds., 2016).

336. Madeleine W. McNamara, *Unraveling the Characteristics of Mandated Collaboration*, in ADVANCING COLLABORATION THEORY: MODELS, TYPOLOGIES, AND EVIDENCE 65, 66 (John C. Morris & Katrina Miller-Stevens eds., 2016).

337. Miller-Stevens & Morris, *supra* note 335, at 276.

338. Brian Martinez, *Exploring Interagency Collaboration in the National Security Domain: A Distinct Form of Collaboration?*, in ADVANCING COLLABORATION THEORY: MODELS, TYPOLOGIES, AND EVIDENCE 255, 262, 263 (John C. Morris & Katrina Miller-Stevens eds., 2016).

339. *See id.* at 262; Deniz Leuenberger & Christine Reed, *Social Capital, Collective Action, and Collaboration*, in ADVANCING COLLABORATION THEORY: MODELS, TYPOLOGIES, AND EVIDENCE 238, 250 (John C. Morris & Katrina Miller-Stevens eds., 2016).

340. McNamara & Morris, *supra* note 297, at 55.

341. Robert Agranoff & Michael McGuire, *Big Questions in Public Network Management Research*, 11 J. PUB. ADMIN. RSCH. & THEORY 295, 308 (2001).

organizations lose some traditional top-down accountability control over collaboration participants.<sup>342</sup> The literature suggests that managers can mitigate this dilemma, at least to some degree, by structuring strong accountability controls for results and putting performance measures in place that correlate to the goals of the partnership.<sup>343</sup>

What does this mean for attorneys? The bottom line is: “collaboration is here to stay.”<sup>344</sup> In this author’s practical experience, attorneys<sup>345</sup> tend to shudder at the mention of collaboration outside an agency or across sector boundaries. Attorneys have a well-intentioned desire to eliminate agency or organizational risk for their client entities.<sup>346</sup> However, this tendency can hinder organizational effectiveness and stunt the policy process.<sup>347</sup> Attorneys should view collaboration as an opportunity to manage risk, rather than eliminate it, for their clients.<sup>348</sup> Attorneys are well-suited to help their clients build decision rules and accountability structures into their client’s collaborations that will help their clients achieve their goals while minimizing some of the risk posed by the *accountability-flexibility* dilemma.<sup>349</sup>

### C. *Social Capital*

Social capital consists of “connections among individuals—[the] social networks and the norms of reciprocity and trustworthiness that arise from them.”<sup>350</sup> It is an intangible “resource” impacting the success or failure of individuals within communities<sup>351</sup> or of groups acting in partnership.<sup>352</sup> It is an

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342. See *id.* at 309; McNamara & Morris, *supra* note 297, at 59–60; Camilla Stivers, *The Listening Bureaucrat: Responsiveness in Public Administration*, 54 PUB. ADMIN. REV. 364, 365 (1994).

343. See Agranoff & McGuire, *supra* note 341, at 310–11.

344. Amsler, *supra* note 112, at 702.

345. See Nadia Farmakopoulou, *What Lies Underneath? An Inter-organizational Analysis of Collaboration Between Education and Social Work*, 32 BRIT. J. SOC. WORK 1051, 1051–52 (2002). Including a younger version of the author.

346. See *id.*

347. See Amsler, *supra* note 112, at 705.

348. See *id.* at 709.

349. See *id.* at 705; Agranoff & McGuire, *supra* note 341, at 310–11.

350. JOHN CHARLES MORRIS ET AL., *THE CASE FOR GRASSROOTS COLLABORATION: SOCIAL CAPITAL AND ECOSYSTEM RESTORATION AT THE LOCAL LEVEL* 7 (2013).

351. See *id.*; James S. Coleman, *The Creation and Destruction of Social Capital: Implications for the Law*, 3 NOTRE DAME J.L. ETHICS & PUB. POL’Y 375, 382 (1988).

352. See MORRIS ET AL., *supra* note 350, at 3.

interdisciplinary concept—scholars from several fields research the relationship of social capital to group or community success.<sup>353</sup>

Although there is no unified definition, several characteristics emerge from the literature.<sup>354</sup> First, it is a positive byproduct of group dynamics for successful teams or for successful collaborations.<sup>355</sup> Second, although social capital is a byproduct of group success, evidence suggests that social capital also promotes the success of those same groups in a type of reinforcing feedback loop.<sup>356</sup> Third, social capital appears to be closely related to trust and norms of reciprocity.<sup>357</sup> Fourth, although social capital features prominently in research on group behavior, scholars appear to acknowledge intra-community benefits of social capital.<sup>358</sup> Finally, it is difficult to determine the precise impact of social capital on group success, because social capital is impacted by (and may be impacting) many other variables related to group success in any given context.<sup>359</sup>

What does this mean for policy advocates? Most importantly, social capital suggests relationships matter at both the individual and collective levels.<sup>360</sup> At the individual level, policy advocates should devote resources to building and maintaining mutually beneficial relationships with other policy actors before, during, and after partnering for policy projects.<sup>361</sup> At the collective level, social capital acts as a type of fuel that can spark success amongst compatible organizations.<sup>362</sup> The most important takeaway is policy advocates

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353. See Daniel P. Hawes, *Social Capital, Racial Context, and Incarcerations in the American States*, 17 ST. POL. & POL'Y Q. 393, 393 (2017) (examining social capital and incarceration rates); Michael W. Foley & Bob Edwards, *Is It Time to Disinvest in Social Capital?*, 19 J. PUB. POL'Y 141, 141 (1999) (reviewing the different ways researchers use social capital as a variable in academic scholarship).

354. See Hawes, *supra* note 353, at 393; Foley & Edwards, *supra* note 353, at 141.

355. See MORRIS ET AL., *supra* note 350, at 7, 13; Amsler, *supra* note 112, at 705.

356. See Andrew Williams, *The Development of Collaboration Theory*, in ADVANCING COLLABORATION THEORY: MODELS, TYPOLOGIES, AND EVIDENCE 14, 19 (John C. Morris & Katrina Miller-Stevens eds., 2016).

357. See Humnath Bhandari & Kumi Yasunobu, *What Is Social Capital? A Comprehensive Review of the Concept*, 37 ASIAN J. SOC. SCI. 480, 484 (2009) (reviewing and critiquing social capital as a concept in an economic development context); Hawes, *supra* note 353, at 394.

358. See Bhandari & Yasunobu, *supra* note 357, at 486; John D. Montgomery, *Social Capital as a Policy Resource*, 33 POL'Y SCIS. 227, 232 (2000) ("Social capital affects external relations as well as internal affairs, and both are important to the survival and prosperity of an organization.").

359. See Foley & Edwards, *supra* note 353, at 146 (reviewing the different ways researchers use social context as a variable in academic scholarship).

360. See *id.* at 148.

361. See Thomson & Perry, *supra* note 328, at 28.

362. See *id.* at 27.

should seek opportunities to nurture trust and reciprocity at all stages of a policy project.<sup>363</sup>

#### D. *Social Equity*

At its core, “[s]ocial equity refers to the promotion of equality in a society with deep social and economic disparities.”<sup>364</sup> To be sure, attorneys are well-trained to combat legal disparities in the courtroom.<sup>365</sup> But social equity calls for policy advocates to unmoor themselves from the facts of specific cases to examine long-term societal trends and underlying structural inequities.<sup>366</sup> For any policy issue, who are today’s winners? Who are today’s losers? Why? When were today’s effective policies enacted, and who had a voice in their enactment? How have inequities compounded over time and how can society remedy these inequities?

The author offers the following maritime analogy to explain social equity. As a deck watch officer on a Coast Guard cutter, the author was responsible for keeping their vessel on a prescribed course during night watches while most of the crew slept. A minor error in vessel steering, perhaps by just one degree off course, would make minimal difference in the short term and could be easily corrected.<sup>367</sup> But steering one degree off course for an entire evening’s voyage would put the vessel miles off its intended track, with considerable time and resources needed to regain the proper track-line.<sup>368</sup>

Similarly, policies intentionally or negligently creating disparate treatment between similarly situated groups may not cause much immediate concern.<sup>369</sup> To the untrained eye, differences may be so small as to be unnoticeable.<sup>370</sup> Even trial lawyers focused on individual cases might not spot equity concerns from case to case.

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363. See Hawes, *supra* note 353, at 394; Bhandari & Yasunobu, *supra* note 357, at 491.

364. Norman J. Johnson & James H. Svara, *Social Equity in American Society and Public Administration*, in JUSTICE FOR ALL: PROMOTING SOCIAL EQUITY IN PUBLIC ADMINISTRATION 3, 3 (Norman J. Johnson & James H. Svara eds., 2011).

365. See McNamara & Morris, *supra* note 1, at 2.

366. See *id.* at 30.

367. See Randall Turner, *The Difference 1 Degree of Change Makes*, LINKEDIN (Mar. 2, 2018), <http://www.linkedin.com/pulse/difference-1-degree-change-makes-randell-turner-ph-d/>.

368. See *id.*

369. See Paul Ingram, *The Forgotten Dimension of Diversity*, HARV. BUS. REV., Jan.–Feb. 2021, at 59, 60, 61.

370. See *id.* at 61.



But over time, inequities compound.<sup>371</sup> The most striking example, of course, is housing policy's long-term generational wealth inequities by race.<sup>372</sup> Government entities embarked on a campaign of de jure racial housing discrimination in the early to mid-twentieth century.<sup>373</sup> As a result, the United States has significant racial disparities in net worth by race.<sup>374</sup>

The above questions strike at the heart of social equity concerns.<sup>375</sup> Trial advocacy is one tool to advance social equity, but policy advocates must develop an entire toolbox of skills to address social equity issues in the policy process.<sup>376</sup> As Sallyanne Payton states in reviewing structural racial disparities in the United States, “[p]erhaps we should look at how to modify regulatory policy, which is articulate, published policy[,] and not a myth or a random speculation, rather than treat every disadvantage as though it were disconnected from all the rest and is something that just happened to happen.”<sup>377</sup>

#### E. Analysis

An understanding of policy scanning, collaboration, social capital, and social equity will add depth and dimension to any attorney's policy advocacy practice. If Parts II and III provide the conceptual foundations for policy advocacy, this Part's concepts provide the glue connecting the conceptual frameworks to everyday practice.<sup>378</sup> Attorneys who embrace these concepts will increase their capacity to effect meaningful societal change.<sup>379</sup>

### V. A POLICY ADVOCACY MODEL FOR ATTORNEYS

The previous parts of this article examined public policy, policy advocacy, and other concepts impacting attorneys' work in policy arenas. This

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371. See Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America*, NPR (May 3, 2017, 12:47 PM), <http://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>; RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 154 (2018).

372. Gross, *supra* note 371; ROTHSTEIN, *supra* note 371, at 153.

373. Gross, *supra* note 371; ROTHSTEIN, *supra* note 371, at 153, 154.

374. Gross, *supra* note 371; ROTHSTEIN, *supra* note 371, at 154 (examining how racist housing policies perpetuated segregation).

375. See Gross, *supra* note 371.

376. See Sallyanne Payton, *Two Governments: Commentary*, in *JUSTICE FOR ALL: PROMOTING SOCIAL EQUITY IN PUBLIC ADMINISTRATION* 26, 53 (Norman J. Johnson & James H. Svara eds., 2011).

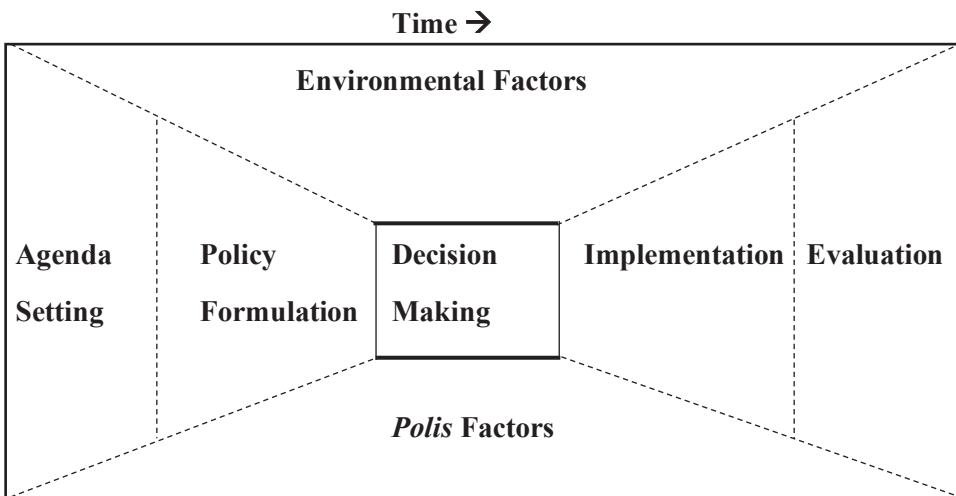
377. *Id.* at 34.

378. See discussion *supra* Parts II–IV.

379. See MODEL RULES OF PRO. CONDUCT pmb1. 13 (AM. BAR ASS'N 2020).

article establishes that attorneys would benefit from a model that expands their understanding of public policy, helps attorneys position themselves broadly within a policy arena, and helps attorneys position a specific policy issue within a broader arena. Such a model would help attorneys unlock their potential by helping them build on their existing policy advocacy skills while recognizing and developing skills to overcome structural deficiencies in how legal education trains attorneys to think about public policy. The author, therefore, offers the following Policy Advocacy Model:

**Figure 4. The Policy Advocacy Model**



As discussed previously, attorneys traditionally operate close to the “decision-making” phase of the Policy Process Model.<sup>380</sup> This Policy Advocacy Model expands attorneys’ perspectives, relying heavily on the policy process model while drawing from both the policy streams and *polis models* to add nuance for more effective policy advocacy.<sup>381</sup> This model incorporates the five stages of the policy process model along with the assumption of sequential stages to the policy process.<sup>382</sup> Policy development generally, but not always, moves from left to right within the model.<sup>383</sup> The dashed lines represent the free flow of ideas and impacts between most policy stages and both the environmental and polis factors.<sup>384</sup>

380. See discussion *supra* Part III.

381. See MOSES & KNUTSEN, *supra* note 236, at 28–30. See *supra* Figure 4.

382. See HOWLETT ET AL., *supra* note 9, at 13. See *supra* Figure 4.

383. See *supra* Figure 4.

384. See *supra* Figure 4.

This model also borrows from the Policy-Cycle Hourglass concept of Howlett et al.<sup>385</sup> As those authors explain, more actors influence public policy at the earlier and latter stages of the policy process, while a limited set of government actors participate in the decision-making stage.<sup>386</sup> The reader will note two aspects of the Policy-Cycle Hourglass within the Policy Advocacy Model.<sup>387</sup> First, the model depicts an hourglass shape on its side for the various stages of the policy process.<sup>388</sup> Second, the Policy Advocacy Model depicts solid lines surrounding the decision-making portion of the model.<sup>389</sup> The bold solid lines both above and below decision-making indicate that, in this author's perspective, environmental and polis factors do not influence the decision-making process to a large degree.<sup>390</sup> The solid lines to the left and right of the decision-making portion of the model indicate that the policy formulation stage impacts the decision-making stage and the decision-making stage influences the policy implementation stage.<sup>391</sup> The two interactions described in the previous sentence do not, however, approach the quantity found in the free flow of interactions across dashed boundaries in the model.<sup>392</sup>

The "Environmental Factors" field captures concepts from Kingdon's policy streams model as well as the environmental factors discussed in Part IV.<sup>393</sup> Routine and emergent events, broader social equity and racial equity concerns, and the behavior of actors tangential to the policy arena fall within the environmental factors portion of the model.<sup>394</sup> Environmental factors are neither normatively positive nor normatively negative.<sup>395</sup> Attorneys can harness environmental factors to advance policy issues through positive relationships or by harnessing emergent events to open policy windows.<sup>396</sup> However, attorneys who do not develop systems and relationships to engage the external environment lack the ability to mitigate the negative impact of external environmental factors on their policy issue.<sup>397</sup>

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385. HOWLETT ET AL., *supra* note 9, at 13.

386. *Id.* at 140.

387. *Id.* at 13. *See supra* Figure 4.

388. HOWLETT ET AL., *supra* note 9, at 13.

389. *Id.* *See supra* Figure 4.

390. *See supra* Figure 4.

391. *See supra* Figure 4.

392. *See supra* Figure 4.

393. *See* KINGDON, *supra* note 11, at 150; discussion *supra* Part IV.

394. KINGDON, *supra* note 11, at 127.

395. *Id.* at 65.

396. *See id.* at 30; *Engaging in Public Policy for Umbrella Organizations*, *supra* note 113.

397. *See* KINGDON, *supra* note 11, at 163; *Engaging in Public Policy for Umbrella Organizations*, *supra* note 113.

The *Polis* factors field represents how this author would position Stone's ideas within a policy process-based model.<sup>398</sup> Polis factors represent issues such as ideological divides, how policy actors define groups and include or exclude citizens from those groups, and recent policy gains or losses that may impact citizen positions on the policy issue under consideration in the policy arena.<sup>399</sup> The author positions the Polis factors as influencing all stages of the policy process.<sup>400</sup> The author does exercise some caution in placing Stone's concepts within a policy process-based model; after all, Stone's main argument is that public policy is neither sequential nor rational.<sup>401</sup> After much consideration, however, the author places the "*Polis* factors" as underlying and impacting all stages of the policy process (except for the decision-making stage) because attorneys should consider Stone's ideas through the entire life cycle of any policy project.<sup>402</sup>

## VI. A NOTE ON COURTS AND THE POLICY PROCESS

Thus far, this article has intentionally excluded trial advocacy and courts from the discussion of public policy and policy advocacy to highlight the breadth of policy advocacy and how it requires skills apart from those imparted by modern legal education. Indeed, one of the main thrusts of this article is that attorneys are not special when it comes to policy advocacy and must be willing to learn what they do not know. However, attorneys *are* special in one important respect—they are the only policy actors authorized to bend an issue into courts for immediate decision and policy output.

Why is this important? Despite the lack of attention paid to the role of courts in the policy process, court decisions and court opinions are policy outputs.<sup>403</sup> Courts themselves can be viewed as decision-making bodies in the policy process.<sup>404</sup> Generally, attorneys engaged in policy advocacy should hone their policy advocacy skills by expanding their perspective and perhaps viewing the world through a non-legal lens. However, when it serves the best interests of their clients, attorneys should consider civil actions to advance their clients' policy preferences.

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398. See *supra* Figure 4; STONE, *supra* note 11, at 7–8.

399. See *supra* Figure 4; STONE, *supra* note 11, at 9.

400. See *supra* Figure 4.

401. STONE, *supra* note 11, at 7, 10.

402. See *supra* Figure 4; STONE, *supra* note 11, at 7.

403. See KINGDON, *supra* note 11, at 2–3; McNamara & Morris, *supra* note 1, at 4.

404. See McNamara & Morris, *supra* note 1, at 14.

## VII. CONCLUSION, RECOMMENDATIONS, AND LIMITATIONS

In conclusion, policy advocacy practice requires attorneys to broaden their understanding of “public policy.”<sup>405</sup> The legal academy and legal profession advance a narrow understanding of the term “public policy,” which can inhibit attorneys’ development as policy advocates.<sup>406</sup> To be sure, attorneys possess unique, specialized, and relevant policy advocacy skills, including deep training in oral and written advocacy.<sup>407</sup> But attorneys maximize their effectiveness as policy advocates and unlock the true power of their specialized legal training when they understand they do not have the sole claim to legitimacy within policy arenas.<sup>408</sup> The legal profession trains attorneys to be insular within the legal profession, but true policy advocacy power comes from acknowledging that players from other backgrounds and perspectives have the legitimacy and skill to operate in the arena alongside attorneys.

This author offers several recommendations for legal practitioners and scholars. For practitioners, the most important takeaway is that relationships matter.<sup>409</sup> Concepts such as social capital and collaboration, although not taught in law school curricula, teach us that trust and reciprocity are both antecedents and outputs of policy advocacy success.<sup>410</sup> Legal practitioners should designate resources of time and energy to develop, nurture, and maintain relationships with both attorneys and non-attorneys within their policy arenas.<sup>411</sup> Attorneys should view these relationships not as distractions from billable hours, but as investments in long-term success for themselves and for their policy causes.<sup>412</sup>

Second, practitioners can use the Policy Advocacy Model both to position themselves within a policy arena and to position a specific policy project within the policy process.<sup>413</sup> The Policy Advocacy Model can help an attorney plan a long-term strategy for which relationships to build and which information streams to monitor to maximize their effectiveness.<sup>414</sup> *Appendix A: Policy Advocacy Worksheet- Positioning Your Role*, provides questions for new

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405. See discussion *supra* Section II.C.

406. See discussion *supra* Section II.A.

407. Lasswell & McDougal, *supra* note 64, at 206; see also *Legal Practicum - Regulatory Comments*, *supra* note 5; *Citizen Lawyer: Leading Toward Justice for All*, *supra* note 79.

408. See discussion *supra* Part IV.

409. See *Engaging in Public Policy for Umbrella Organizations*, *supra* note 113.

410. MORRIS ET AL., *supra* note 350, at 7.

411. See *Engaging in Public Policy for Umbrella Organizations*, *supra* note 113.

412. See, e.g., *id.*

413. See discussion *supra* Part V. See *supra* Figure 4.

414. See discussion *supra* Part V. See *supra* Figure 4.

attorneys to help them understand their policy arena or for experienced attorneys making a career change into a new policy arena.<sup>415</sup> Additionally, attorneys can use the Policy Advocacy Model to orient themselves within a policy issue if their work requires them to address a policy issue already moving through the policy process.<sup>416</sup> *Appendix B: Policy Advocacy Worksheet-Positioning Your Specific Issue*, can aid attorneys taking on a new policy issue.<sup>417</sup>

Most importantly, the author recommends attorneys “think in three dimensions” when it comes to policy advocacy work. Think beyond advocacy in a tribunal before a decision-maker. Think beyond individual cases as isolated incidents that “just happened to happen.”<sup>418</sup> Trial advocates understand how to place individual cases within a broader context of appellate precedent.<sup>419</sup> For policy advocacy, take this thinking a few steps farther. What are the broader societal impacts of a policy position?<sup>420</sup> Which community voices are included in a policy discussion and which communities are excluded?<sup>421</sup>

This article also has significant implications for legal scholarship and education. As discussed above, although law and public policy relate to similar theoretical and practical concepts, the two fields are stove-piped with little cross-connection in scholarship.<sup>422</sup> One reason for this disconnect may be the legal academy’s focus on doctrinal rather than empirical scholarship.<sup>423</sup> The legal academy should work more closely with public policy and public administration researchers to develop interdisciplinary empirical research at the intersection of the fields.<sup>424</sup> This interdisciplinary research will have two major benefits.<sup>425</sup> First, it can help develop common terminology and research objectives, promoting mutual intelligibility between the fields.<sup>426</sup> Second, interdisciplinary research can harness the deep doctrinal thinking of the legal academy with the bias for empirical observation of the other social sciences.<sup>427</sup> Additionally, law schools should expand the prevailing, but unnecessarily limited, view of “public

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415. See *infra* Appendix A.

416. See *supra* Figure 4.

417. See *infra* Appendix B.

418. See Payton, *supra* note 376, at 34.

419. See McNamara & Morris, *supra* note 1, at 16.

420. See KINGDON, *supra* note 11, at 117.

421. See *id.*

422. Osorio et al., *supra* note 153, at 102. See *supra* Figure 3.

423. See Osorio et al., *supra* note 153, at 111, 113–14; Diamond, *supra* note 150, at 1229.

424. Diamond, *supra* note 150, at 1240; see also Osorio et al., *supra* note 153, at 100, 102.

425. See Diamond, *supra* note 150, at 1231, 1240.

426. See *id.* at 1232; Osorio et al., *supra* note 153, at 108.

427. See Diamond, *supra* note 150, at 1232; Osorio et al., *supra* note 153, at 114.

policy” in the law school curriculum.<sup>428</sup> Because the study of law remains closely related to the study of public policy, it should not take much effort to augment the existing curriculum.<sup>429</sup> A single elective on the field of public policy would help.<sup>430</sup> For experiential courses, law schools could offer a policy advocacy clinic that trains students on the basics of the study of public policy, gives students an advocacy issue, and then allows students to select advocacy tools to advance their issue in a forum of their choosing.<sup>431</sup>

This article, as with all scholarly pieces, has limitations. First, despite this article’s implicit endorsement of empirical research, the claims in this article, as well as the specific model presented, do not rest themselves on novel empirical research.<sup>432</sup> The author encourages public policy, public administration, and legal scholars to test the Policy Advocacy Model empirically and adjust it based on observable behavior.<sup>433</sup>

Second, the author holds a bias towards the policy process approach based on practical experience in the maritime policy arena dealing with international and federal maritime law and policy. The author has experience with state and local policies in the context of preemption analyses, but the author does not have experience with state or local agenda setting. It may be that international and federal policymaking more closely resemble sequential processes than agenda setting at the state or local level.<sup>434</sup> For example, policymaking at the International Maritime Organization is highly scripted and sequential by design,<sup>435</sup> perhaps to reduce confusion and ensure mutual intelligibility of proposals across languages and cultural norms. This type of scripting might not be necessary at the state and local level, where policymakers

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428. See Osorio et al., *supra* note 153, at 115.

429. See *id.* at 111. As a start, why not assign this article as a reading?

430. See Jones, *supra* note 189, at 269.

431. See discussion *supra* Part II. The author did identify a few law courses that appear to train students under a broad understanding of public policy. See discussion *supra* Part I. Loyola New Orleans College of Law offers an Environmental Policy Lab that trains students to advance policies at all stages of the policy process. See Marianna Cufone, *Environmental Policy Lab*, LOY. UNIV. NEW ORLEANS, <http://law.loyno.edu/centers/center-environmental-law/environmental-policy-lab> (last visited Apr. 28, 2023). Tulane University also offers two intriguing courses that train students on broad policy advocacy skills: *University Catalog 2022-2023: Law Upperclass Electives (3) (3LAW)*, TULANE UNIV., <http://catalog.tulane.edu/courses/3law/> (last visited Apr. 28, 2023), and *University Catalog 2022-2023: Law Upperclass Electives (4) (4LAW)*, TULANE UNIV., <http://catalog.tulane.edu/courses/4law/> (last visited Apr. 28, 2023).

432. See Diamond, *supra* note 150, at 1229. See *supra* Figure 4.

433. See Diamond, *supra* note 150, at 1238–39; Osorio et al., *supra* note 153, at 101. See *supra* Figure 4.

434. See *supra* Figure 4.

435. See INT’L MAR. ORG., *supra* note 172.

are closer to the impacted communities and presumably those impacted communities have less transactional costs in making their voices heard.<sup>436</sup> Although ultimately an empirical question, practitioners in policy arenas at the state and local government level might find a policy model centered on Stone's ideas resonate more closely with them.<sup>437</sup>

Despite these potential limitations, the author offers the Policy Advocacy Model as a tool for attorneys to use in positioning themselves and their policy issues within their policy arena.<sup>438</sup> An expanded view of "public policy" based on the policy literature provides attorneys with the ability to move beyond their own limited perspective of the term. A more robust view of public policy allows attorneys to recognize the legitimacy of non-attorneys to act in the policy advocacy space and to select policy advocacy strategies and tools beyond those typically used before a decision-making tribunal. This recognition helps attorneys to build on their inherent strengths, marshal the skills of others, and enhance their own ability to effect positive change in society.

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436. See *State and Local Government*, THE WHITE HOUSE, <http://www.whitehouse.gov/about-the-white-house/our-government/state-local-government/> (last visited Apr. 28, 2023).

437. STONE, *supra* note 11, at 8–11.

438. See *supra* Figure 4.



## APPENDIX A: POLICY ADVOCACY WORKSHEET- POSITIONING YOUR ROLE

1. Your policy issue is \_\_\_\_\_.
2. Which role best describes your policy advocacy?
  - a. Ancillary
  - b. Purposive Private Sector
  - c. Purposive Public Sector
  - d. Public Interest Firm
  - e. Pure Public Policy
3. For each level of government, list the decision-makers who have authority over your policy issue.
  - a. International
  - b. Domestic
  - c. State
  - d. Local
  - e. Tribal
4. Which level of government has the most authority over your policy issue? Why?
5. What disputes, if any, exist between levels of government for your policy issue? Why do these disputes exist?
6. What private sector entities engage in policy advocacy for your policy issue? At which level of government do they engage?
7. What regularly occurring meetings bring policy actors together for your policy issue?
8. What are the open and unsettled aspects of your policy issue? Who has influence or decision-making authority over these aspects?
9. What communities or voices predominate the policy discussion? What communities or voices have been excluded from the policy discussion?

10. What historical events, if any, have caused major policy changes for your policy issue? Why?
11. What cross-sector collaborations exercise influence for your policy issue?
12. Whom do you perceive to have the most policy influence in your policy arena? Why?
13. What relationships should you develop to increase your influence for your policy issue?
14. What “policy scanning steps” can you implement to keep up to date on your policy issue?

## APPENDIX B: POLICY ADVOCACY WORKSHEET- POSITIONING YOUR SPECIFIC ISSUE

1. Your specific public policy issue is: \_\_\_\_\_.
2. Your policy issue is at the following stage of the policy process (select one):
  - a. Agenda Setting
  - b. Policy Formulation
  - c. Decision-making
  - d. Implementation
  - e. Evaluation
3. What regularly occurring events open policy windows for your issue?
4. What emergent events may open policy windows for your issue?
5. Who holds technical expertise related to your issue? Are technical experts connected to others within the policy arena?
6. What level or levels of government hold authority for your issue? What preemption disputes, if any, exist for your issue?
7. What private sector entities influence public policy for your issue?
8. Which individual or individuals lead the public discourse related to your issue?
9. Who appears to be a policy entrepreneur for your issue?