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In and across bureaucracy: structural and administrative issues for the tobacco endgame

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Received 8 October 2012

Revised 18 January 2013

Accepted 23 January 2013

ABSTRACT

This article assesses the structural choices for the proposed tobacco endgame strategies. I focus on the issues associated with particular structural choices for the location of the implementation. Specifically, I discuss issues related to implementation of the endgame within a specific single agency, and issues related to a more widespread, broad implementation involving several agencies. Where appropriate, I provide examples of how the dynamics discussed would apply to particular endgame strategies. Issues related to design, administration, authority and finances are raised.

Location from where a policy or regulation emanates matters. It matters for a myriad of reasons including agency reputation and legitimacy, funding and authority. Organisation scholars from across disciplines have studied and commented on the issues of structural choice (where to locate an agency in a bureaucracy or a policy in an agency) for about 50 years (c.f. 1 2–5) and the study of the implementation of policy across agencies for about 30 years (c.f. 6 7–9). Thus we can bring this knowledge to bear on the current set of policy ideas put forth as part of the discussion of tobacco endgame strategies.

In this article I will focus on the two main classes of structural choice available to the endgame proposals: single agency responsibility (in bureaucracy) or cross-agency responsibility (across bureaucracy). These are fundamental choices that must be made with any policyⁱ implementation. Both options have benefits and weaknesses.¹⁰ However, before moving into a discussion of structure, the issue of context must be addressed.

CONTEXT

Context matters because it colours all other decisions in a policy arena. The first aspect of context that matters is the prior relationships among actors (advocacy groups, agencies and stakeholders) in a policy arena. What is the tenor and frequency of the relationships? Where have these interactions taken place (though the courts; in the media; in specific legislative or agency committees; etc.)? Thoughtful analysis is necessary to determine whether or not existing dynamics impede or enhance policy implementation for initiatives where actors have entrenched positions

(philosophically and with regard to power).ⁱⁱ If the assessment is a negative one, then it makes sense to try to move implementation to a more neutral location. While the same relationships will exist among the existing core actors, every new venue brings a new set of stakeholders and culture that could create new opportunities for all involved.^{10–12}

For example, in many ways the new Center for Tobacco Products in the USA could be a friendly home for endgame policies because it is a *tabula rasa*. It has relatively few prior interactions with involved stakeholders and no institutional precedents to worry about. This benefit is further enhanced with the Center for Tobacco Products' location within the Food and Drug Administration since the Food and Drug Administration has only recently acquired authorisation to regulate tobacco products.

The second aspect of context that matters is the formal oversight mechanism that is put into place to monitor implementation.ⁱⁱⁱ With regard to oversight, the entity that provides oversight for either the specific policy or the organisation is important.⁵ The first type of oversight is agency oversight. This means that the policy or organisation is embedded in an already existing agency and must comport with the rules, culture, and operations of that agency. Here, implementers can count on a fair amount of permanency for their efforts, with only marginal political turbulence.¹³ On the other hand, entrepreneurial administrators may find the inertia of established bureaucracies constraining.^{1 14 15}

The other main type of oversight is political oversight. This means that the enacting legislative body directly monitors the policy implementation or organisation. On the positive side, this elevates the importance of the initiative that usually translates into swift action and relatively generous resource allocation. On the negative side, this type of oversight can yield vulnerability due to turnover in the legislature and political priorities, interference from elected officials, and 'hot' and 'cold' periods where the political body oscillates between periods of intense scrutiny (hot periods) and practically ignoring the policy/organisation, leaving it to 'whither on the vine' (cold periods).^{2–4 16}

With issues of context in mind, we now turn to a discussion of the two classes of structural choice

ⁱThroughout this article I use the word "policy" to connote legislative action (or, Public Policy) and rulemaking (through regulatory means). When I mean something more specific, I will make that explicit in the text.

ⁱⁱObviously, the assessment of "impede" or "enhance" will differ depending on objectives and political worldviews.

ⁱⁱⁱI acknowledge the important role that informal oversight by the media and watchdog groups play in many policy contexts. However, this is not a malleable or designable element of institutional choice. Thus, it is not discussed here in this article.

available for endgame strategy proponents. These are implementation in bureaucracy and implementation across bureaucracy.

IMPLEMENTATION IN BUREAUCRACY

There is great comfort in the institutional choice of bureaucracy. We know how it works and what to expect from it.¹⁷ Further, savvy administrators can deftly manipulate it to achieve their means. The main benefit of bureaucracy, and one that ought not be understated, is that there is a designated organisation to spearhead the implementation. With that designation there are clear lines of authority and accountability and insurance that there is someone who will see the policy as their responsibility.¹⁸ However on the downside of bureaucracy, a policy initiative can (and usually does) become siloed under this institutional arrangement, eliciting little aid in implementation from other agencies that may have a stake in the policy outcome. Thus, the designated organisation may have to limit the scope of implementation to match its resources and capabilities.¹⁹

Administratively, the designee would have the authority to implement, fund and enforce its rules within the extent of the authorisation. Therefore it can allocate its resources as it sees fit with regard to relative merit and emphasis among its purposes. As an example, the Regulated Market Model²⁰ or the non-profit intermediary model²¹ would benefit most from a single agency implementation. For these strategies, an organisation focused on market and trade regulations would be most effective. This type of agency could easily provide the monopsonistic mechanism necessary to capture supply and control inputs to the tobacco products and marketing of the products prioritising and sequencing competing goals. Another example, the Tobacco Free Generation proposal²² as well as the licensing²³ strategy would heavily focus on enforcement issues, and thereby embedding these implementations singly within enforcement agencies could be appropriate.

One important caveat to a single agency model is that insulated offices and agencies are prone to 'capture' by its constituents. Capture is a concept that describes when an agency is so closely linked with the industry it oversees, that in actuality the constituency has undue influence in the agency's rulemaking and enforcement and effectively subverts the oversight duties the policy or agency was created to implement. Capture occurs, essentially, because other institutional actors will rely on interested actors to monitor the agency,^{24 25} rather than do it themselves.

While capture is thought of as a nefarious phenomenon, that does not necessarily need to be the case. It is certainly plausible that capture could occur by those constituencies trying to promote altruistic rather than self-interested goals (we might call this 'positive capture'). An example of positive capture for the tobacco endgame might be that the new agency becomes closely aligned with the public health and smoking cessation communities to the detriment of the tobacco industry. Whether or not that is an ethical dilemma is the subject of another discussion. But it is a dilemma for how democratic institutions are supposed to work.¹³

IMPLEMENTATION ACROSS BUREAUCRACY

Implementing an initiative through a collaborative effort among agencies can mitigate some of the deficiencies of the 'in bureaucracy' option. Improvements such as: a coalition can be put together that provides a deep array of organisational capabilities to address the multiple and complex goals of a particular policy; a coalition, especially a broad one, is much less prone to capture; and coalitions reduce the amount of shirking of monitoring responsibilities in a policy system because the pool has been

broadened to include more direct stakeholders. Indeed, with the complexity of most policy issues today, collaborative implementation and oversight structures are becoming the norm.^{9 26}

In illustration, a well-structured tobacco endgame coalition would have partners that could span the issues that an endgame solution would pose. Health risks could be represented by the health and disease focused agencies. Agricultural product and workforce interests could be represented by interior, labour and agricultural agencies. There also would need to be some representation from enforcement agencies such as criminal justice, the courts and trade regulators. And obviously any agency specifically tasked with focusing on tobacco products would be included. With each of these perspectives the array of political, economic and operational issues for the endgame strategies could be addressed. For example, the Sinking Lid²⁷ and Nicotine Reduction²⁸ strategies would benefit from such a wide coalition approach to ensure that the continuum of production through sales was compliant with the quotas and restrictions put forth. Additionally, both of these strategies would likely require heavy monitoring and compliance mechanisms to address the technical aspects of the policies.

Despite its benefits in mitigating problems associated with 'in bureaucracy', 'across bureaucracy' has ailments all its own. Most central of these ailments is the dispersal of authority, accountability and responsibility.^{18 29} With a collaborative structure, there is no *one* entity that bears the burden for failures or the celebration of successes. Thus, there is little incentive to take ownership of the implementation or to provide financial support to the collaborative. Many times these structures become little more than a waste of time resources⁶—with regard to meeting time and coordination costs. At its worst, 'across bureaucracy' solutions can evolve to mimic an 'in bureaucracy' solution when there is a powerful and dominant agency that has effectively quashed true collaboration. In this case, all of the liabilities of both types of institutional choices are incurred.

CONCLUSION

Regardless of which endgame strategy is chosen, its effective implementation will hinge on the institutional choice made for who implements it, how and with what oversight. These are not easy issues to deal with in practice. Key organisational questions to reflect upon when thinking about the choices and feasibility of those choices are outlined in this article. Whatever the choice(s) will be, the endgames proposed in this volume all represent bold solutions to a prominent public health problem. The institutional choice made to implement it ought to be reflective of that audacity and creativity.

Contributors All authors listed meet the criteria set forth by *BMJ* for inclusion for authorship.

Competing interests None.

Provenance and peer review Not commissioned; externally peer reviewed.

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