Preface

Policy Forces and Policymaking

Public policy is a curious thing, yet one might be excused for thinking otherwise since the policy process seems to be—and often is described as—the simple result of a straightforward transformation of public interest to government activity. Constituents—members of the community served by government—raise issues and express preferences through elections and interest-group activity. In response, these constituents get policy: a strategic and rational attempt to advance the public interest through government action. Nothing could be simpler. And nothing could be further from the truth about how public policy develops, especially when it comes to making policy in the right-to-die area.

We can understand right-to-die policy better if we think about the "policy forces" of restraint, activism, and mediation: pressures and stresses that push, pull, and shape policy into one form or another. Using this approach, one can understand the outcome of right-to-die policy at any given time, in any given place, as a product of a struggle—a mediated resultant that emerges when the forces of activism overwhelm the forces of restraint, forcing mediators to act.

Restraint

Consider first the policy forces of restraint. The fact that some issues are never raised as a matter of policy consideration is one of the big stories in any policy analysis, and the right to die is no exception. The forces of restraint often keep issues from percolating up to the attention of policymakers. And, just as importantly, once that percolation starts, these same forces of restraint can limit the scope and slow the speed of policy developments.

Policy change comes slowly in the United States, when it comes at all, because the forces of restraint are generally both inherent and formidable. Systemic forces of restraint have increasingly become sources of irritation for Americans. The separation of powers, bicameralism, single-member legislative districts, weak political parties, and federalism—all potential forces of restraint—are often at the
root of complaints about bureaucratic inefficiency, gridlock, the “do-nothing Congress,” and presidents who cannot seem to keep their promises. Additionally, a ruggedly individualistic political culture that tends to cast government in a skeptical light combines with an abiding faith in the hidden hand of free-market capitalism in adding to the policy inertia already built into the U.S. system.

In right-to-die cases, political culture and the constitutional system, though still important, serve only a supporting role as forces of restraint, and social and psychological predispositions in modern American society—predispositions that are manifest as a denial of mortality—take center stage. Restraint has begun to loosen its grip in recent years, however, as the forces of policy activism enable—and in some cases, force—policy-making mediators to overcome “do-nothing” inertia. Activism empowers policymakers to do more than muddle along with the status quo. It gives public servants the tools, the nerve, and the mandate to make changes in policy. The forces of activism, when they exist, work to overcome policy inertia so that at least something—though nothing in particular—gets done.

Activism

War, economic crises of all kinds, advancing technology, the machinations of policy entrepreneurs, traditional interest-group pressures, electoral mandates, and the magnifying (some might say distorting) effect the media have are just some of the primary factors that can serve as forces of policy activism. These forces—alone or in various combinations—stimulate the policy process by creating a climate that is friendly toward mediation. These activism forces are important not so much for shaping policy outcomes but for raising issues in the first place, in spite of the forces of restraint.

Dramatic advances in medical technology have combined with the emergence of the “rights culture” in America to create a climate that is conducive to right-to-die policymaking, despite the considerable forces of restraint that exist. To be sure, the forces of restraint have not gone away; they are simply being overwhelmed by the inexorable forces of right-to-die activism that have welled up in the past two decades or so.

Mediation

Ultimately, when restraint can no longer check the forces of activism entirely, a third sort of policy pressure enters the picture: the force of mediation. Mediation pressures shape the energy of activism, tempered by the forces of restraint, into a tangible policy response. Legislators make policy, so they are important mediation players. Presidents, governors, and mayors make policy as well; they, too, are potentially important actors in the mediation process. Judges also make policy, as do government bureaucrats and private-sector professionals. Academics and
technical experts are part of the mediation process as well, although they play more of a supportive role.

Not all of these actors are equally important in mediating policy responses for every issue on the governmental agenda. The balance among them shifts with policy and with time. In the case of the right to die, the state courts have played a leading role in policy development, as has the professionalized health-care community, while state legislators have reluctantly followed along. Regardless of which set of actors pulls the strings, however—with the right to die or elsewhere in the policy milieu—it is in this world of mediation that public policy ultimately is shaped.

In the end, none of these policy forces dominate in the policy process. The forces of activism that are responsible for bringing issues to light typically lose some of their momentum once an issue gets before the mediators; just as activism overwhelms restraint to put issues on the agenda, mediation overwhelms activism in formulating policy responses. To complete the circle, the mediators hardly have carte blanche, for the mediation process is held in check by the forces of restraint. Thus, no one should be surprised if very little—if anything at all—gets done in the long run, even when the forces of activism are formidable. For the forces of restraint, the game is not lost when activism overwhelms them, for there is plenty still at stake—indeed, almost everything is still at stake—in the mediation phase of the political power game we know as the policy process.

A Case Study Application

In this book, we present the "right to die" in terms of policy forces in an effort to provide a more realistic and comprehensive analysis of this emerging issue. We do not pretend to offer the definitive and last word on the right to die in specific areas of the policy terrain we cover. In some respects, each of our chapters is worthy of a book-length treatment. Indeed, aspects of some chapters have already been covered in separate volumes elsewhere in the scholarly and popular literature. What we do here is pull together a comprehensive survey of the forces that bear directly on the right-to-die debate. We find that each set of forces we identify—activism, restraint, and mediation—represents an important dimension of the right-to-die landscape as it has existed in the recent past, as it exists today, and as it might possibly exist in the not-too-distant future.

Deathright: Whose Death, Whose Right?

The right to die is all about death but not about all kinds of death. For purposes of our analysis, we conceive of the right to die as an issue that involves primarily those individuals who are seriously ill and have little, if any, hope of recovering to
the point where they could enjoy active, meaningful interactions with their surroundings. In effect, we are dealing with individuals for whom medical interventions have reached their limit of efficacy and can only now prolong the dying process. These are the types of cases we will refer to as “right-to-die scenarios” and “right-to-die situations.”

Approximately 5,000 people die every day in the United States. For many, death is the result of some catastrophic event. These individuals die quickly: in automobile accidents, on mean streets, while they sleep, on operating tables, and, sometimes, over cornflakes at breakfast. For them, the right to die is hardly an issue: Death just happens. But for an increasing number of Americans, death has become a much slower and more anguishing experience. In such cases, a critical illness or injury has robbed—or is in the process of robbing—an individual of meaningful life. In these cases, the best efforts of health-care providers can only serve to forestall death in the short run and, sometimes, indefinitely. The plight of this group is the subject of our policy analysis.

Simply put, this is a book about an individual’s right to choose to die. At present, caregivers often intervene to preserve dying individuals even when there is very little, if any, medically grounded hope for the patient’s recovery and return to a productive life (however one measures that). We analyze these kinds of cases, in which individuals at the end of their lives wonder whether they have—or even want—the right to manage their own deaths or have them managed by someone else. Do individuals at the end of meaningful life have a deathright—the right to take the management of death into their own hands? This book is about that question.

Chapter Overview

As the chapters unfold, we attempt to lay on the table the primary forces that mold right-to-die policy across the fifty states. The first and second chapters of the book deal with the forces of restraint in this policy area. Chapter 1 addresses the denial of death that is so central to contemporary American culture. In Chapter 2 we put the American response into a cross-cultural context before trying to explain why Americans are so loath to accept mortality as a natural, expected, and accepted part of life.

Chapters 3, 4, 5, and 6 sketch the forces of activism. In Chapter 3, we discuss the important impact of medical technology in creating right-to-die scenarios. Chapter 4 reviews the erosion of trust that has characterized the doctor-patient relationship in recent decades. Chapter 5 traces the emergence of the rights culture in the United States, a development that has had major implications in many areas of civil rights in the last thirty years. In Chapter 6, we discuss what some have called the “happy-death movement”: a loose collection of academic, interest-
group, and professional activities designed to advance the concept of a “happy
death”—a felicitous end to life for those who find themselves on death’s doorstep.

Chapter 7 is the first of two chapters to lay out the forces of policy mediation. We discuss the leading role state-court judges have played in resolving right-to-die questions that have arisen as activism overwhelms restraint. Chapter 8 deals with the response of state legislatures. We find that legislators have been more sensitive than judges to the still formidable forces of restraint: Largely as a result of such restraint, legislators have tended to drag their collective feet on the issue. Chapter 9 then provides a summary analysis of the right to die. We revisit the discussion of the activism-restraint-mediation framework and make some final conclusions.

We have tried to write a book about life and death: policy life and human death. The right to die is currently an issue full of life but far from maturity. It is an issue whose time has come but one for which enduring policy decisions will only evolve with time. We hope our investigation will shed light on the policy process—a process in which policy forces associated with political culture, religious rites, government programs, economic considerations, political will, ethical claims, professionalism, legal analyses, and the legislative process blend together.

The more we understand about the pressures of activism, restraint, and mediation that push, pull, and shape the right-to-die debate, the easier it will be to explain and anticipate the policy process in more general terms. Just as importantly, the more we understand about how policy processes apply to the right to die, the more likely it is that we will be able to affect this and other important policy issues as the years unfold before us.

James M. Hoefler
Carlisle, Penn.