Focusing events, risk, and regulation

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Focusing Events in the Agenda Setting Process

In recent years, several major disasters, crises, and catastrophes have occurred in the United States and around the world. The September 11 attacks are the most consequential event of the 21st century thus far, and changed the course of national and international history and policy in a way unseen since the outset of the Second World War. The September 11 attacks spurred a series of statutory, regulatory, and political changes, the effects of which continue to be discussed and debated to this day. But we need not look only to September 11 to see crises that spurred greater attention to problems and greater pressure for policy change. Events like the global financial crisis of 2008, and Hurricane Katrina in 2005, received intensive public interest in policies intended to regulate financial transactions and policies intended to mitigate, respond to, and recover from so-called natural disasters.

These sudden crises are called “focusing events.” Focusing events are an element of the agenda-setting process, in which some issues gain and others lose attention among policy makers and the public. Agenda setting is interesting for political scientists because “the definition of the alternatives is the supreme instrument of power” (Schattschneider 1975, 66), where alternatives can mean issues, events, problems, and solutions. Groups—or advocacy coalitions (Sabatier, Jenkins-Smith, and Lawlor 1996; Sabatier and Jenkins-Smith 1999) engage in rhetorical battles, in different venues, to gain access to the agenda while attempting to deny agenda access to other actors (Cobb and Ross 1997; Hilgartner and Bosk 1988). Group competition is fierce because the agenda space is limited by individual and organizational constraints on information processing, so that no system can accommodate all issues and ideas (Walker 1977; Baumgartner and Jones 1993; Cobb and Elder 1983).

This competition is over both which problems are most important, and over what causes and solutions surround any one problem (Hilgartner and Bosk 1988; Lawrence and Birkland 2004; Birkland and Lawrence 2009). The agenda setting process is therefore a system of sifting issues, problems and ideas and implicitly assigning priorities to these issues. John Kingdon (2003) argues that agenda change is
driven by two broad phenomena: changes in indicators of underlying problems, which lead to debates over whether and to what extent a problem exists and is worthy of action; and focusing events, or sudden shocks to policy systems that lead to attention and potential policy change.

In Kingdon’s “streams metaphor” of the policy process, there are three conceptual streams in the policy process: a problem stream, which contains ideas about various problems in society to which public policy might be applied; the politics stream, containing the ebb and flow of electoral politics, public opinion, and the like; and the policy stream, which contains a set of ideas about how problems could be addressed. In all three streams, problems and solutions, and the means by which to implement solutions to solve problems, are not self-evident, but are subject to considerable debate and conflict. A window of opportunity opens when two or more streams come together at a moment in time where problems are matched with solutions, and where politics aligns in such a way to make this matching more likely. Often, the opening of these windows is driven and promoted by the efforts of policy entrepreneurs to join favorable politics with problem definitions and ideas for solutions. A focusing event, therefore, opens these windows because they provide an urgent, symbol-rich example of what many would argue is obvious policy failure, the result of which is what pro-change forces would argue is the necessity for rapid policy change to prevent the recurrence of the recent disaster. Of course, other interests may argue that an event is atypical, that existing systems can and will bring the acute problems under control, and that sweeping change is not necessary. Regardless of the ultimate outcome, we can argue that pressure for policy change does increase in most focusing events, and that debate over ideas increases, both among policy makers and in the attentive public, to the extent that an attentive public exists. Focusing events may trigger greater attention to problems and solutions because they increase the likelihood of more influential and powerful actors entering the conflict on the side of policy change (Schattschneider 1975, Baumgartner and Jones 1993), by way of greater claims of policy failure and a more active search for solutions, leading to a greater likelihood of policy change (Birkland 2006).

John Kingdon used the term “focusing event” within a general discussion of “Focusing Events, Crises, and Symbols” (94-100). Kingdon calls focusing events a “little push” “like a crisis or disaster that
comes along to call attention to the problem, a powerful symbol that catches on, or the personal experience of a policy maker.” Kingdon argues that focusing events gain their agenda-setting power by aggregating their harms in one place and time: one plane crash that kills 200 people will get more attention than 200 single fatal accidents; one big terrorist attack in one place will get more attention than several hundred smaller events, particularly if they are far away. Traditionally, sudden events were thought to “simply bowl over everything standing in the way of prominence on the agenda” (Kingdon 2003, 96), and, as we will see, Birkland’s earlier work on this shared similar assumptions.

Kingdon portrays focusing events as being more varied and subtle, and includes in his definition personal experiences of policy makers with matters of personal interest, such as diseases that affect them or their families. Kingdon also argues that “the emergence and diffusion of a powerful symbol” is a focusing event that “acts…as reinforcement for something already taking place” (97). When symbols of events propagate—an elderly woman in New Orleans sheltering herself from the rain with an American flag, the raising of the flag at Ground Zero in a manner reminiscent of the raising of the flag at Iwo Jima, or the images of oil-soaked wildlife after oil spills—these symbols would not have their power if it weren’t for the event itself. In other words, the symbols alone may have some powerful, but their shared interpretation is deeply shaped by the event itself and the discourses that surround it. The propagation of the symbol amplifies the focusing power of the event, particularly if the symbol is particularly evocative (Birkland and Lawrence 2002).

The term “focusing event” has often been uncritically adopted in the literature, often as a term of art that is never precisely defined. This may be because Kingdon defined and described focusing events in a way that is too broad to guide focused empirical research. He conflates sudden crises and shocks with individual experience and symbol propagation that are often reflective of what Peter May (1992) calls political learning about more effective policy arguments. For example, Kingdon’s inclusion of political events as focusing events, such as the 1963 March on Washington for Jobs and Freedom, conflates the role of political mobilization in the “politics” stream with the revelation and depiction of problems in the “problem” stream. “Shocking” and sudden focusing events are not purposefully caused, and can be
viewed as exogenous to a policy community or domain, even if the policies and practices adopted by key members of that community make such events more likely.

Third, Kingdon’s definition of a focusing event is retrodictive and is insufficient to develop a testable model of focusing event politics. Birkland (1997; 1998) defines a potential focusing event as an event that is

sudden, relatively rare, can be reasonably defined as harmful or revealing the possibility of potentially greater future harms, inflicts harms or suggests potential harms that are or could be concentrated on a definable geographical area or community of interest, and that is known to policy makers and the public virtually simultaneously (1997, 22).

The term potential means that we may “know” intuitively that an event will gain a lot of attention; it is difficult to know in advance how focal that event will be. Will the event make a more significant and discernible difference on the agenda than competing events and issues? Will that event have any discernible influence on policy changes? We cannot know the answers ab initio, but we can certainly understand the history of similar event to make preliminary guesses.

A focusing event, by definition, increases attention to a public issue or problem. Baumgartner and Jones (1993) note that increased attention to a policy problem is usually negative attention, and negative attention often yields further political debate, thereby moving issues closer to potential policy changes. However, political elites do not always resist change, even if policy monopolies are reorganized. Focusing events, particularly in policy domains characterized as “policies without publics,” (May 1990) yield “internal mobilization” efforts to promote the change that policy elites or experts prefer (Cobb and Elder 1983). Indeed, Best (2010) cites Molotch and Lester’s (1975) claim that “actor-promoted events” (APEs, in her term) are more likely to generate attention when the actors are elites with which news media already have steady contacts, and whose actions are considered important by definition. The
messages these actors seek to convey are generally pro-status quo, or at least pro-elite, to the extent that elites sometimes desire policy change, particularly in “policies without publics” (May 1990).

As Kingdon notes, focusing events create powerful symbols that promote policy change. To understand focusing event politics, one must consider the use of rhetoric, language, stories, metaphors, and symbols in conjunction with the event. In this “social constructionist” thread of research, students of the media explain how issues gain the attention of journalists, how journalists and their sources use symbols and stories to explain complex issues, and how news consumers respond to these issues and symbols (Edelman 1967; Edelman 1988; Stone 1989; Stone 2002; Majone 1989; Schneider and Ingram 1991). Related to this is research on problem framing in government and the mass media (Entman 1993; Burnier 1994; Lawrence 2000), which has been profitably applied to studies of focusing events (Glascock 2004; Gunter 2005; Liu, Xinsheng, Lindquist, and Vedlitz 2011). Framing theory argues that the participants in policy debate frame stories about problems to fulfill news gathering routines designed to make story both efficient and compelling (Bennett 2003), and to motivate action by its supporters, inaction by its opponents, or both. These symbols are promoted by a policy entrepreneur, who is an individual who is active in the policy community because of their technical expertise in their field, political expertise, and ability to broker deals that lead to new programs and policies (Kingdon 2003; Mintrom 1997; Mintrom and Vergari 1998).

As we’ve hinted at throughout this narrative, the politics of focusing events is firmly based in studies of group coalescence and mobilization. Groups coalesce to form advocacy coalitions based on mutual interests and values. Sabatier predicts that two to four advocacy coalitions will form in most policy domains. However, some domains prone to sudden disasters may be characterized as “policies without publics” (May 1990), in which policy making is often the domain of technical experts, with little public mobilization around particular policy changes. These domains are characterized by one advocacy coalition, which may be quite weak (see, for example, Birkland 1998). In many policy domains characterized by focusing events, the events drive an “internal mobilization” effort among existing group members to resolve a problem about which the public is broadly concerned, but is generally unable or
unmotivated to organize around. In other words, focusing events are not always triggers for mass mobilization or sustained public attention. Birkland’s 1997 study found that the earthquake and hurricane policy domains were very much characterized by an internal mobilization model of agenda setting and policy change, while in the oil spill and nuclear power policy domains, there were discernible advocacy coalitions that were engaged in direct competition.

One must not make too much of event-triggered group mobilization as a source of policy innovation. Kingdon notes that we cannot trace the discovery or the propagation of a policy idea to its first instance, lest we engage in “infinite regress”. In a similar manner, in some events we have to ask: Which came first, the problem, or the event? Among the public there is widespread belief that the Three Mile Island (TMI) nuclear power plant accident in 1979 was the event that stalled the movement toward more nuclear power plants for generating electricity. Baumgartner and Jones (1993) found that public support for, and regulatory scrutiny of, nuclear power predated the TMI accident, and Birkland found that, by 1979, the nuclear power policy domain was highly polarized and the policy community was already fiercely debating the meaning of TMI. All the participants in the debate could use the accident for their own rhetorical ends: as evidence either for the “defense in depth” notion of nuclear safety, or for the idea that nuclear power contained unknown risks, that other incidents were equally or more serious than TMI, and that heretofore poorly understood systems accidents could yield catastrophic disasters (Perrow 1999).

Apart from group efforts to expand issues, major events often reach the agenda without group promotion through media propagation of news and symbols of the event. This coverage of a sudden and shocking event makes the public aware of these events with our without efforts on the part of group leaders to induce attention. This media propagation of symbols gives less powerful groups another advantage in policy debates. Pro-change groups are relieved of the obligation to create and interpret powerful images and symbols of the problem. Rather, groups only need repeat the already existing symbols that the media have seized upon as the most important in the current crisis. These obvious symbols are likely to carry more emotional weight than industry or governmental assurances that policy usually works well. Carpenter and Sin (2007) found that the images of fragile children who had been
poisoned by Sulfanilamide were influential in triggering a strong outcry that lead to more stringent regulation and licensing for medications in the Food and Drug Act of 1938. Thus, media-generated symbols of health, environmental, or other crises or catastrophes are often used by groups as an important recruiting tool – thereby expanding the issue – and as a form of evidence of the need for policy change.

To conclude, all these theoretical strands assume that agenda setting is not a neutral, objective or rational process. Rather, it is the result of a society, acting through its political and social institutions, building a consensus on the meanings of problems and the range of acceptable solutions. There are many possible constructions that compete with each other to tell the story of why a problem is a problem, who is benefited or harmed by the problem, whose fault it is, and how it can be solved.

**A Historical Institutional Perspective of Focusing Events**

Political institutions play an important role in both providing opportunities and constraints for policy change following a focusing event as they create the prospects for change to occur (Hacker 1998). A historical institutional perspective helps explain this phenomenon since it is “grounded in the assumption that political institutions and previously enacted public policies structure the political behavior of bureaucrats, elected officials and interest groups during the policy-making process (Beland 2005, 3). Hacker (1998) argues that path dependency and policy feedback lead to a “historical sequence” of political decisions and this “historical sequence” structures the options available in the policy debate. Beland and Hacker (2004) further argue, “a central reality of politics is often it is the sequence and timing of an event or decision that is most crucial determinant to policy outcomes” (46).

Birkland (2006) argues that events can have an immediate influence on policy, or may not have a detectable influence on policy, but may contribute to experience about the problems revealed by events. Indeed, it is often the case that event-driven policy change is not always likely to happen and, indeed, may well be rare. This is because, as Jones argues, “organizations are not smoothly adaptive to changing circumstances” (2001, 4) and this can lead to path dependency, and mimicking behaviors, in which incremental change based on pre-existing ideological or epistemological commitments is most common.
Also, actors can engage in “lesson drawing” from nearby or similar jurisdictions so as to avoid the steep information costs inherent in innovation—in other words, settling for “satisficing.” Furthermore, the types of problems that governments typically address are the “hard” complex problems that lack consensus, easy solutions and are comprised of many underlying attributes. These “hard” problems also lead to path dependency as “each step in the process adds constraints, so that the history of attempts to solve the problem affect current opportunities to solve it” (Jones, 2001, 76). Events are unlikely to overcome these forces unless they are sufficiently severe to overcome these constraints.

Furthermore, individuals and groups have limited information processing capacity, and therefore no system can pay attention to all issues and ideas that are prevalent in society (Baumgartner and Jones 1993; Cobb and Elder 1983; Walker 1977). This agenda setting process then represents a process of identifying the most prevalent problems and selecting appropriate solutions (Birkland and Lawrence 2009; Hilgartner and Bosk 1988; Lawrence and Birkland 2004). It is essentially a triage process. This process of triage is constant, and the “half-life” of many issues is likely to be quite short, as other pressing matters also intrude on the agenda and compete for elite and public attention. But while the half-life of issues may be short, and yield long-term inattention, Jones (2001) also argues that, in the short term, policy actors can become over-attentive to new information out of proportion to its broader meaning about a class of social phenomena.

These factors demonstrate the principles of the historic institutional perspective which Beland and Hacker cited. Therefore, we argue that the effective study of event-driven policy change must not focus solely on events in isolation, but should consider events within the context of a policy domain or, perhaps, a policy regime (May, Jochim, and Sapotichne 2011). As Sabatier (1993) noted, the effective study of policy change can only occur over a period of a decade or more, an assumption implicitly adopted by Kingdon (1984) and by Baumgartner and Jones (1993). The longitudinal study of any policy domain is therefore standard in policy process studies, because as Heclo (1974) states, the process of policymaking is one in which “policy invariably builds on policy either moving forward with what has been inherited, or amending it or repudiating it” (305, 314).
The research question that one must address, then, in studying event influence on the agenda, is not whether a particular event had an influence on policy change (although such a question is interesting, in context). Rather, the more fruitful question is whether one or more events in a domain, considered over time, had an influence on policy change, and if so, when. Conversely, when a series of events does not lead to policy change, it should raise the question of “why” and a consideration of the relevant factors.

**Some empirical applications of focusing event theory**

Within a policy domain, it is important to consider focusing events within a “flow of time.” In order to fully make sense of the event, it is necessary to put it into context by relating it to other events. Essentially, to comprehend policy change, research cannot analyze a single event at the event level, but instead it is necessary to look at the domain level and consider multiple events.

A reason for this is to understand the prior ideas that are considered after an event, even if they are not implemented into policy change. For example, Cobb and Primo (2003) state “many policy changes in aviation security were unprecedented in their scope and in the speed at which they were enacted [following 9/11], but none of the issues was new to the political agenda” (2003, 121). Birkland (2004) agrees with this assessment when he demonstrates that aviation security cases such as Pan Am 103 and TWA Flight 800 made it easier for the quickly adaptation of policy following the 9/11 attacks. Essentially, these prior events allowed for comprehensive debate of the ideas so that when the 9/11 attacks occurred many of these ideas were already “on the shelf” (Birkland, 2004). Birkland (2004) found that although 9/11 did provide the opportunity for sweeping change in terms of aviation policy, the prior events served in a sense as “dress rehearsals” in terms of raising ideas to the agenda (Birkland, 2004, 356). This demonstrates what Jones (2001) found that organizations are not easily adaptive and events can lead to mimicking and path dependency in terms of policy change.

Another facet of policy change is having the “solution” to the problem. By defining the “problem” the policymaker is automatically assigning a solution or a set of solutions in the process of framing the problem. Jones states, “any decision-maker will harbor many prepackaged solutions to the
multiple tasks facing him or her” as part of the deliberation-preparation trade-off (2001, 66). This refers once again to the concept that it is important to consider events at the domain level since prior proposed solutions are used as the “prepackaged solutions” for future events.

Kingdon (2003), Cohen, March, and Olsen (1972), Jones (2001) and others recognize that the way a problem is defined and framed will ultimately determine which problems garner consideration and which do not. A consideration of these events within a “flow of time” at the domain level allows for a better understanding of how policymakers respond to problem framing, since past events help to provide framing for future events. The initial framing of any such event, of course, like the attempts to identify proper solutions to the issues that policy elites highlight, typically reflects political conflict and divergent understandings of causation. As Deborah Stone has argued:

In politics, causal theories are neither right nor wrong, nor are they mutually exclusive. They are ideas about causation, and policy politics involves strategically portraying issues so that they fit one casual idea or another. The different sides in an issue act as if they are trying to find the “true” cause, but they are always struggling to influence which idea is selected to guide policy. Political conflicts over causal stories are therefore more than empirical claims about sequence of events. They are fights about the possibility of control and the assignment of responsibility (2002, 197)

The framing of previous events primarily drives policymakers’ definitions of current events. Also, similar events will have similar frames, since policymakers will adopt “prepackaged solutions.” In addition to the framing of an event, causal stories also assign blame, identify victims, legitimize certain actors as “fixers” and creates new political alliances (Stone 2002, 209).

Furthermore, “a causal story is more likely to be successful if its proponents have visibility, access to the media, and prominent positions and if it accords with widespread deeply held cultural values” (Stone 2002, 203). Causal narratives about disasters or crisis events have an emotional valence, something that savvy policy elites take into account. Kingdon notes that symbols can be used to shape the story because they act “as reinforcement for something already taking place and as something that rather powerfully focuses attention” (2003, 97). Symbols can help frame complex technical issues into simpler...
terms for people to understand. They also catch on quite rapidly and can capture the “national mood” and in essence promote the framing of the causal story.

Finally, the theory of bounded rationality is another reason why it is important to consider focusing events within a “flow of time” on the domain level. Decisions maker cannot know every outcome of every policy choice, and determine the “optimal path” for policy. Instead, policymakers engage in “satisficing” (Simon 1957) in systems characterized by incremental decision making (Lindblom 1959, 1979) or path dependency. We propose that boundedly rational decisions about events and responses should be studied at the domain level, rather than relating solely to individual events, so as to capture the full range of information gathering and decision making. As previously stated, we are interested in studying event-driven policy change at the domain level over a period of a decade or more. The theoretical justification for this being, Kingdon’s streams metaphor implies that this process takes place over time, and Paul Sabatier’s call to study policy making and change over a decade or more. A consideration of the aviation safety and security domain, which raised a range of interrelated but not entirely congruent security and safety issues in the 1980s through the 2000s is one policy domain in which we are interested in further study. These events are summarized in the Appendix.

While there are many events in this list, they can be categorized, for analytic purposes, into four overlapping stories

1. Aviation safety, with the cause of the safety problem being an underappreciated hazard inherent to the aircraft that had not been properly mitigated (TWA 800; United 585 and US Airways 427, American 587).

2. Aviation safety, in which pilot or organizational error created the conditions under which the incident could occur (ValuJet 592, American 587).

3. Aviation security, in which criminals or terrorists interfered with the normal operations of (Pam Am 103, September 11)

4. Events that looked like terrorism, but that turned out to be category 1 events (TWA 800)
After all these incidents, with the exception of the rudder deflection incidents, UA 585 and US 427, gained considerable attention in aviation safety and security circles, and led to considerable attention to particular problems in enacted legislation in the United States, as shown in Table 1.

The legislation in this table corresponds with the major aviation security events of from 1988 to 2001, starting with Pan Am 103. It suggests that policy makers were responsive to the key issues that were important after Pan Am 103, such as baggage matching with passengers. The 1996 legislation was similar, in reaction to TWA 800, although some of the legislation in that act spoke to broader aviation safety, without sound knowledge of the cause of the ValuJet crash. But most interesting from the perspective of this essay is the degree to which the September 11 attacks brought together all these disparate ideas for legislation into one much more sweeping bill that not only changed the law with respect to the proximate cause of the September 11 hijackings--hijackings and cockpit intrusions--but also changed the law with respect to the already-known modes for attacking commercial airplanes. One can argue, then, that the prior events were “rehearsals” for September 11 in the sense that the proponents of these disparate ideas were able to hone their ideas and then were able to use the September 11 attacks as reasons why their ideas should be legislated. The September 11 attacks thoroughly opened up the whole range of issues for review. As Cobb and Primo noted,

There was [after September 11] a marked effect on the aviation industry. Security procedures in the airports and on planes came into question. All aspects of the security process were reexamined, severely affecting airline travel (2003, 120).

The complaints of some interest groups notwithstanding (the National Rifle Association’s objection to using school shootings as a rationale for changes in gun policy is an example), the “exploitation” of an event for political reasons is functional and is to be expected in a nominally democratic system in which shocking events serve as a prima facie rationale for change, absent later information that may temper the nature and pace of that change.
Table 1: Key Issues Addressed in Aviation Security Legislation

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(Source: Birkland 2004)
The broader point these data raise is this: Kingdon notes that attempts to find the ultimate source of a policy idea is doomed to become a process of “infinite regress,” in which one believes one has found the first instance of an idea, only to learn later that that idea had, itself, a precursor. In the streams metaphor, the ultimate origin of an idea is relatively unimportant, because the metaphor assumes a policy process consisting of time, the movement of ideas and participants in and out of streams. What a focusing event provides is an opportunity for policy entrepreneurs to engage in the “selling” of their ideas in the “marketplace of ideas” for solutions to the problems revealed by a focusing event. The immediacy of the event makes broader engagement more likely.

In sum, research on focusing events has evolved from the simple idea that focusing events “bowl over” other issues, to the more sophisticated idea of focusing events, one which includes a historical institutional perspective. We have illustrated that a focusing event is shaped by prior events; therefore the best way to fully understand the event, the role of institutions, the actors in the policy communities, the nature of the policy debate, and the content of the policy ideas is to consider these events at the domain level within a flow of time.

A risk based explanation for focusing event politics

Birkland’s definition of a “focusing event” includes the critical notion of “harm.” If the event was not harmful or did not raise the specter of potential harms in the future, it would be unlikely to significantly influence agenda setting. The idea of harm relates directly to the literature on risk perception. Paul Slovic identifies two factors that characterize risk perception. First, “dread risk” is a person’s “perceived lack of control, dread, catastrophic potential, fatal consequences, and the inequitable distribution of risks and benefits.” “Unknown risk” are the “hazards judged to be unobservable, unknown, new, and delayed in their manifestation of harm” (Slovic 1987, 283).

Dread risk has the greatest potential to lead to increased attention. Indeed, Slovic argues that events that relate to dread risks place considerable pressure on regulators to more strictly regulate the processes involved in the recent event; in short, people press regulators to “fix the problem.” More dread risks will
yield greater pressure for regulation. The concept of “dread risk” can help to explain why some types of disasters issues get more attention than others.

The matrix arranges risk into the dread and unknown risk dimensions. Based on psychometric research, Slovic and his collaborators have shown that many activities that carry some risk are considered less dread and better known, and therefore are not considered “risky,” such as driving cars or riding...
bicycles. Some risks that are well known are considered somewhat dread risks, such as crime and warfare, while other risks, like food irradiation, are unknown in terms of risk but not particularly “scary.”

Figure 1 demonstrates that the act of terrorism increases the dread risk of an action or a hazard. Therefore, the dread risk of commercial aviation increases more following an act of terrorism than it does following an aviation safety incident. Since greater dread risk equates to greater attention to an event and a call for regulatory action, the implications of this can be seen in terms of the regulatory change following acts of terrorism. Evidence of this can be seen in Table 1 and how the September 11 attacks were a stronger catalyst for policy change then previous aviation safety events.

Bringing together all the concepts we’ve discussed this far, we argue

- That a focusing event can lead either to a narrowing of the range of immediately acceptable solutions to a problem, or a sudden expansion of the types of ideas being discussed.
- This degree of consensus/dissensus is a function of the risk perceptions that surround the problem. The greater the “dread” risk, the more likely there will be greater attention to an event and call for regulatory action. Indeed, as Slovic notes, risks that rank higher on the "dread" dimension are usually accompanied by more intensive demands for the regulation of those risks.

The meaning of focusing events for regulation

Birkland (2006) outlined a theory of event driven policy change and learning, in which he argues that focusing events reveal policy failures—which are the fodder for interest group debate, because these failures reveal the problems that policy entrepreneurs join to “solutions” in the post-event window of opportunity. But, as we have discussed, any event is a potential focusing event that has the potential to open a window, and, even if the window opens, the potential to yield policy change. Birkland’s model allows, therefore, for an accumulation of knowledge driven by events, until, at some point, an event brings together all other event-driven knowledge at a point where it is possible for the policy system to show evidence of “learning” from the accumulation of events. This formulation is attractive, because it
ties to the literature on ideas and learning from the policy process and from organizational theory. However, these bodies of literature are not fully reconciled in a way that would support policy change. But recent research shows that the theoretical construction is promising and can be accommodated in broader theoretical frameworks, such as the ACF (Albright 2011).

For this paper, we wish to focus on what focusing events mean for regulatory politics. Our consideration of the regulatory politics of disasters and other focusing events rests on a few assumptions. The first, and most important, is that “regulation” is any intervention into the social or economic system by government to achieve a particular public policy goal, such as safety or market competition. Thus, regulation can derive from any institution of government.

Regulation is not, we assume, simply the province of regulatory agencies, such as the FAA or the FDA. However, we acknowledge that Birkland’s research has focused on regulatory change in the legislative branch, and has not focused much on regulatory change in the executive branch. One reason for this is that Birkland’s research has focused on a particular domain—natural disasters—in which there is relatively little national level regulation, particularly at the Federal Emergency Management Agency (FEMA), which is not a regulatory agency.

Of course, many other agencies do issue regulations relating to the prevention and management of disaster, but, as a matter of policy and professional doctrine, most of this regulatory activity is focused in the states. We are now beginning a project to understand whether this notion of “dread risks” can help explain the considerable regulatory and political differences between the regulation of commercial aviation safety and commercial aviation security. These areas do, of course overlap considerably. But they are also quite different classes of events. A terrorist incident is intentional; an aviation accident is, by definition, unintentional. The “causes” of the demise of an airplane due to technical faults or human error are often well understood, either before or after the investigation of the disaster. By contrast, the “root causes” of terrorist attacks on aviation are often not well understood, and such events are not presented in the same manner as are “normal” aviation accidents. But it is of considerable interest that, before the September 11 terrorist attacks, the regulation of civil aviation security and safety was largely entrusted to
the Federal Aviation Administration (FAA), a federal regulatory agency charged with, over its history, the regulation aviation safety and the promotion of aviation as an important transport industry sector. Our parliamentary research thus far reflects the idea that civil aviation safety is, like policies intended to address natural disasters, an area of “policies without publics,” because of the highly technical nature of aviation safety.

This research has raised some important theoretical considerations. One of these rests on the assumption of how a focusing event works to change policies across the broad range of policy types. Public policy does not merely consist of laws and regulations. Policies also need to be implemented, and ultimately, are implemented by people. Table 2 shows the various levels at which public policy is codified, implemented, or both.

<table>
<thead>
<tr>
<th>Level of Policy</th>
<th>Where codified</th>
<th>Accessibility of codification</th>
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<tbody>
<tr>
<td>Constitutional</td>
<td>In the federal or state constitutions</td>
<td>Highly visible at the federal level: the Constitution has been edited very few times. Some state constitutions are more easily amended for minor changes.</td>
</tr>
<tr>
<td>Statutory</td>
<td>United States Code, <em>Statutes at Large</em></td>
<td>Highly visible through codification in statute law, publication in <em>Statutes at Large</em>.</td>
</tr>
<tr>
<td>Formal record of standard operating procedures</td>
<td>Operating Procedures Manuals</td>
<td>Low visibility because S.O.P.s are often only internally published.</td>
</tr>
<tr>
<td>Patterned behavior by “street level bureaucrats”</td>
<td>Not formally codified; evidence of a “policy” may be found in some agency records</td>
<td>Low visibility because these are behavioral changes with variations among actors</td>
</tr>
<tr>
<td>Subtle changes in cognition, in emphasis on problems, etc.</td>
<td>Not formally codified. Often revealed by the behavior of street level bureaucrats themselves.</td>
<td>Very low visibility. Not codified, and changes in perceptions and emphases may be sublet.</td>
</tr>
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Source: (Birkland 2011), table 7.1, page 204
Policy change can be detected at levels ranging from constitutional change, which is clearly very visible to most members of a political system, all the way to subtle changes in the behavior of “street-level bureaucrats” (Lipsky 1980), whose vigilance or other behaviors may be hiding by the most recent event. A good example of this is the behavior of airport screeners in the days immediately after the September 11 attacks. These screeners became much more thorough and careful in their searches for dangers or prohibited items in passenger luggage.

This description is rather different than the assumptions that Birkland and other focusing event scholars have made about how focusing events influence the agenda. Birkland’s primary assumption is that focusing events have a profound influence on the legislative branch, which then enacts policy change to remedy the problems were revealed by the most recent focusing event. The regulatory agencies, in turn develop regulations to implement the will of Congress. Such a model assumes a very static bureaucracy, and assumes that the bureaucracy simply waits for direction from Congress, with little or no capacity of its own to detect, diagnose, and seek to fix problems. A more realistic model of the influence of a focusing event on policy change, regulatory change, and other behavior of regulators themselves would account for the fact that policymakers, at whatever level of government or responsibility, do not sit and wait passively for direction from superordinate levels of government. Indeed, regulators may have a strong incentive to be seen as being proactive problem solvers, who can address the immediate problem and persuade Congress that no statutory change is required. Regulators may wish to avoid statutory change, because the industries with which they negotiate regulations are likely to oppose more stringent statutory changes, and because senior regulators may fear that their influence and power would be diluted or even stripped from their agency in any statutory change. Of course, higher-level administrators in the executive branch may well make changes in the organization to regulators even before Congress acts.

This is most clearly demonstrated in the case of the former minerals management service (MMS), which, after the Deepwater Horizon oil spill, was abolished, and its duties were encompassed in a new agency called the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), which itself was split into the Bureau of Ocean Energy Management (BOEM) (boem.gov) and the Bureau
of Safety and Environmental Enforcement (BSEE); the former which was tasked with the old MMS’s role in managing offshore oil lease sales, and the latter of which was tasked with, according to its website, the “safety and environmental oversight of offshore oil and gas explorations” (bsee.gov). Given MMS’s poor reputation that went well beyond its failures in the Deepwater Horizon oil spill, had the Obama administration not undertaken these changes, it is very likely Congress would have forced these changes through legislation.

Figure 2 depicts two models of the influence of focusing events on various levels of policymaking. The first model is the classic assumption, in which the primary influence of focusing events is transmitted through Congress to regulators. The second model is what we believe is a more realistic model of the influence of focusing events, which tend to alter the perceptions and behaviors of participants across the policy spectrum ranging from the most highly placed decision makers to the street-level bureaucrats whose job it is to ensure that congressional and regulatory intent to protect the health and safety the public is implemented. Furthermore, we assume that most street-level bureaucrats will react with greater vigilance and attempts to improve performance because most such bureaucrats take some pride in their work and take seriously their role in public service.
Figure 2: Two models of the influence of focus events on policy actors and levels
The assumptions that drive the second more realistic model are more likely to guide future research on the influence of focusing events and regulatory politics. In our nascent work on aviation security and safety, we are developing ways to empirically study the relationship between a focusing event and the policy changes that may occur in the wake of such an event. This is a particularly fruitful avenue for research of the regular preprocess and of agenda setting and policy change, and we look forward to future to advancing research in this area.

Appendix


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<tr>
<th>Event</th>
<th>Desired policy change</th>
<th>Actual change</th>
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<tbody>
<tr>
<td></td>
<td>Explosion resistant baggage containers in cargo hold</td>
<td></td>
</tr>
<tr>
<td>ValuJet 592--Miami, Fla., 1996. Fire in class D cargo hold (hold without smoke detection and fire suppression), caused by</td>
<td>Require class D cargo holds to have smoke detection and fire suppression capabilities similar to those in other cargo compartments (in essence,</td>
<td>Conversion of class D to class C or E holds by March 18, 2001, per <a href="http://www.boeing.com/commercial/aeromagazine/aero_06/t">http://www.boeing.com/commercial/aeromagazine/aero_06/t</a></td>
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References


