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A Pragmatist Constructivism Framework (PCF) to understand the undetermined policy process

Three policy solutions for shale gas problem

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In March 2010, the French government granted licenses for shale gas exploration in southeastern France to the American company Schuepbach and the French company Total. Eight months later, considerable social mobilization began in the targeted area, placing a new public issue on the media agenda¹. As a result, the French government put this issue on its own agenda in quest of a solution. In late January 2011, it first defended the existing policy and asserted that shale gas was not an environmental problem. It argued that France was not the United States in terms of regulatory standards and that suspending the granted license was legally impossible. Four days later, the Minister of Ecology changed her position and announced that she had halted the three targeted permits. She mandated a committee of four experts to assess the risks and opportunities of shale gas. Two months later, before the four experts published their report which was favorable to shale gas exploration, the government decided to support a bill prohibiting its exploration, making France the first country to make this decision (Zittoun and Chailleux 2021).

While this decision-making process initially appeared to follow a classic policy studies pattern where a problem emerges, enters the media agenda, moves to the governmental agenda, and incites a policy change (Cobb and Elder 1971; Zahariadis 2016b), these three successive and contradictory decisions were quite an enigma. Most policy approaches such as the MSF, the PEF or the ACF make it easy to identify the different aspects that lead to policy change over long periods of time. These may include the role played by agenda-setting and the problem stream, external or internal shocks, policy narratives, policy-makers beliefs, policy learning, etc. (Weible and Jenkins-Smith 2016; Zahariadis 2016a; Eissler, Russell, and Jones 2016; Heikkila, Weible, and Pierce 2014). However, these approaches are not quite able to explain this specific successive policy change nor to shed light on how the same initial conditions generated three different policy changes in such a short period of time. In this specific case, and throughout this period of time, internal and external shocks were stable as were all the deterministic elements such as beliefs and interests, but the same government and several high-ranking civil servants and policymakers changed their positions several times. The framework we develop here emphasizes the need to study the micro conditions of policy change and to focus on policy failure to better understand policy decisions. It enables us to understand how policymakers change their positions, build solutions and coalitions, and sometimes abandon them in relatively short periods of time.

Rather than viewing this peculiar French case as an exception that most models fail to explain or as a Popperian falsification that invalidates them (Passeron 2006; Mahoney 2001), we would like to grasp this enigmatic phenomenon of governmental shifts and unstable positions as an opportunity to question an important and underestimated aspect: the uncertainty of the policy process. As Dewey (1960; 1927) mentioned, the uncertainty of human practical action is one of the most difficult

¹ See figure 1

dimensions to consider, especially in the production of theories that tend not to take into account Heisenberg's uncertainty principle, whose knowledge always interacts with what we want to know. To understand this enigmatic phenomenon, we turn back to the empirical micro-observation of the trajectories that problems and solutions supported by their "owners" follow, through the multiple spaces of debate in which they are shaped, discussed, criticized, supported or abandoned. Drawing on the Pragmatist Constructivism Framework (PCF), our goal is to grasp a world of public policies that is much more complex and diverse than the one usually described by the different policy approaches. More complex than one single policy subsystem in the ACF or the three streams defining policy change in the MSF (Zahariadis 2003; Kingdon 1984), this empirical world of policymaking reveals multiple empirical spaces of debates with diverse configurations, modes of regulation and argumentative regimes (Stone 2001; Schmidt 2008; Blum 2018). More diverse than the distinction between a systemic or media agenda and a governmental agenda (Cobb and Elder 1971), these spaces are composed of actors who domesticate problems, formulate and couple them with their own policy proposal and engage certain actors while fighting against others. The spaces of debate we refer to as *atriums* have low conflict levels and are dominated by a policy community and its specific and stable argumentative regime. However, these spaces are surrounded by other spaces, which we refer to as *discrete arenas* and *public forums*, where the mode of regulation is much more conflictual and the argumentative regime and power relations more unstable and therefore more open (Zittoun, Fischer, and Zahariadis 2021; Fouilleux and Jobert 2017). This uncertain world relies on the trials encountered by actors and on the singular trajectory of each policy statement: the success or failure of a policy statement depends not only on its initial characteristics or on the configuration of the actors defending it, but also on how the proposals are adjusted along the way to better overcome criticism, how coalitions are transformed to strengthen themselves, and how the proposal/coalition combination circulates between the different spaces of debate to impose itself as the only policy solution. Using the PCF, we show the definition work that actors must undertake to domesticate a problem and legitimate the role of policymakers. We then show the mandatory path that a policy statement must take in multiple spaces of debate forcing its spokespersons to adapt it to new constraints. Lastly, we argue that the existence of multiple spaces allows actors to develop various decontainment strategies to bypass the domination over policy formulation in the most hermetic spaces. More globally, we underscore the importance of analyzing more enigmatic cases in order to highlight the blind spots of existing mainstream frameworks.

To understand how setting the shale gas problem on the agenda led the French government to implement three different solutions, we will reconstruct the trajectories of each solution, from its emergence to its transformation into governmental decision, and then to the abandonment of the first two solutions. Specifically, we will focus on the challenges that allowed these solutions to emerge or to disappear. From a theoretical perspective, the PCF helps show the importance of the definitional struggles, in multiple spaces of debates, which a solution's owner goes through before imposing his or her solution as the governmental solution. Each policy solution follows a very specific trajectory. Policymakers first investigate and collect information to formulate a policy proposal which becomes their "own" solution. They then define specific policy instruments and present this solution as "relevant problem solving" in order to enroll other actors and to build coalitions or to defend it against criticism and establish it in the different spaces of debates. The career of a solution depends on how well the owner succeeds in the meaning test, which is also a power game. Regarding the spaces of debate in which they emerge, policy solutions are based on various regimes of feasibility (technical, economic, budgetary, legal, etc.). Political feasibility is one of the most important regimes of feasibility and it determines the ability of a proposal to restore both political order and a government's authority, which may both be weakened by the definition of a public problem. We argue that the PCF makes it

easier to grasp potential changes in policy decisions because it brings together dimensions that other approaches often address separately, i.e., organizational dynamics, the circulation of knowledge, parties' politics, social mobilization and the sociology of media.

From a methodological perspective, the PCF is based on the triangulation of various data and insists on the need for more qualitative studies on public policies. To understand these three successive choices, we conducted a qualitative study by analyzing all the documents, reports, legal texts and minutes published during this period. We also evaluated all the State-produced notes and confidential documents that we were authorized to consult in the national archives and conducted 52 qualitative interviews with the principal protagonists. We focused on the content of the public and confidential documents, on the definitions and arguments used, and on the different versions of the actor statements. The qualitative interviews were based on both the ethnographic interview and the oral recollection methods commonly used by historians (Zittoun 2021), i.e., interviews that make it possible to bring to life a major social scene in the process studied. In the case that interests us, the priority was to identify the discursive interactions that take place within meetings or encounters. Rather than obtain an exhaustive account, we sought to identify the key turning points, those where agreements, disagreements, persuasions, changes of position and negotiations were constructed.

Using the PCF to study policy processes

The PCF merges two classical traditions. The first is pragmatism, developed by James, Dewey and Pierce, which has largely influenced the Chicago School of political science (Almond 2004; Dunn 2019; Simon 1987; Lasswell 1951; Ansell 2011). The second has largely influenced constructivist policy studies, specifically the literature about public problems, agenda-setting and the importance of definitional dimensions (Rocheftort and Cobb 1994; Rocheftort 2016), and critical policy approaches (Durnova, Fischer, and Zittoun 2016; Fischer 2003).

In their well-known book on the social construction of reality published in 1966, Berger and Luckman (1991) developed a sociology of knowledge approach to reconcile Durkheim's tradition, which considers a social phenomenon as a "fact", with the Weberian tradition, which pays attention to the subjective perception of all social phenomena by focusing on the objectivation process generated through interaction (Durkheim 2017; Weber 2003). Inspired by the Chicago School of interactionism and influenced by phenomenology, pragmatism and the linguistic turn, these authors suggest that the ontological opposition between object and subject, and between human beings and society, must be rejected (Becker 2008; Goffman 1970). This, they say, will make it easier to understand how subjects develop the knowledge they use to grasp the object and the society. They assert that knowledge is objectified through intersubjectivity and stabilized through the socialization process. Drawing on interactionist approaches, they clearly oppose positivist approaches which propose to reproduce the methods developed in physical or biological sciences by identifying some "independent" variables which may allow researchers to build a model of understanding. The constructivist perspective considers the interaction between the society and human behaviors. It asserts the combined role of external constraints coming from the society and the interests, values and rationalities of actors.

The constructivist approach has been developed in multiple ways, including in opposite directions that have led to confusion. This confusion has made it difficult to use the term "constructivist" because it is understood in quite different ways. To better grasp the differences and better situate our own perspective, we will present three main traditions. The first is structuralist constructivism, a term coined by Bourdieu (Bourdieu 2016) and, in a different way, by Foucault (2009). In this tradition, it is essential to consider that social structure and discursive regimes of truth are always constructed by specific people during a given period and within a specific context, and it is then objectified through its propagation into the society and integrated as an "objective constraint" through socialization. The second is the relativist constructivism tradition developed by authors such as Baudrillard (1985) and Chomsky (2007). While the subjective process of building and shaping reality is also central here, the

objectivation process does not produce an autonomous structure as is the case in the first tradition. Here, reality never exists by itself but is always built by both subjectivity and intersubjectivity.

The third is the pragmatist² constructivism tradition. Here, reality is perceived subjectively but special attention is paid to the role of experience which helps provide a framework for this reality. This tradition primarily seeks to go beyond the distinction between objective and subjective reality by focusing on the objectivation process, human beings and society, as well as on the interactions between them. Berger and Luckman (1991) have paid specific attention to how facts are built. For example, they have attempted to determine how subjective meaning is transformed into an objective "fact". It thus appears essential to observe human interaction "in action". Boltanski (2012) suggests that we need to distinguish between what he referred to as the "reality" which is constructed and ordered through subjective meaning, and the elusive and disordering "real world" which exists outside human perception. He proposes to consider the importance of human experiment as the way "reality" is tested and where the elusive world invites itself to human perception through unexpected effects.

This pragmatist constructivism tradition has largely inspired policy studies on how to understand problem agenda setting. As Rochefort and Cobb suggested (1992), it allows us to consider the role of the definitional activity in constructing a public problem, in its propagation among other actors, and in other arenas. Paradoxically, pragmatist constructivism has hardly inspired the formulation of public policy itself, from the formulation of the solution to the definition of public policy. The PCF aims specifically to study the production and imposition of policy solutions. Rather than desperately seek an essentialist definition of public policy, the challenge lies in observing how individuals use the concept, define it and propagate it. A public policy thus becomes a discourse that individuals use to give meaning and coherence to an incoherent set of existent heterogeneous measures, either to advocate for them or to change them by recommending new proposals. Defining public policy is a task that involves defining the society on which the government wants to act, the problems it wants to solve, the society it wants to shape, and the legitimate power capable of carrying out actions with the desired effects.

Taking into consideration the unpredictability of human collective activities and their unexpected effects, the PCF takes into consideration not only past chronological events, considered by positivist approaches as where potential "causes" of policy selection reside, but also the process itself, i.e., the multiples discursive interactions where policymakers define their solutions, analyze their relevance, argue, struggle and criticize other alternatives. It also considers the specific sequential order in which these debates take place and how they impact the definition of the solution as well as the composition of its owners' coalition. The PCF suggests that each proposal is the result of a specific discursive process and preserves the traces of these different phases. To understand how a proposal becomes a governmental solution, it is essential to comprehensively trace its careers to understand where it was built, how the first owners established a coalition around it and how this ownership coalition succeeded in imposing itself in the multiple discrete and public spaces of debate.

Based on this tradition, the PCF associates four key dimensions to understand the policy process. First, public problems and solutions are social constructions based on verbal definition. A public problem and a public policy must be considered not as a concept defined by the researcher but rather, one that is defined by policymakers and stakeholders collectively and analyzed by researchers as a political activity. This is a classic in policy literature where authors investigate the construction of public problems. As Schattschneider (1960) points out, problem definition allows the generalization and expansion of an issue and the involvement of new participants who then help attract media and government attention. Rochefort and Cobb (1994) argue that researchers must understand problem

² Pragmatist constructivism should not be confounded with the pragmatic constructivism that builds on Wittgenstein's work and develops normative frames to produce well-functioning results.

definition as a political activity encompassing the construction of a tragic statement which identifies a public of victims, villains and a dramatic future, and also calls upon the government as the one primarily responsible for solving the problem (Shanahan, Jones, and McBeth 2011; Gusfield 1981; Zittoun 2014; Kingdon 1984; Metze 2018; 2017; Metze and Dodge 2016; Dodge and Metze 2017; Dodge and Lee 2017; Lis and Stankiewicz 2017). While most of the cited studies have focused on problem construction, less has been said about the definition of solution proposals. In this article, we emphasize the political activities that may help define policy alternative statements. Easton suggests that a public policy depends on who considers “decision rules adopted by authorities as a guide of behavior (...) In this sense, policy was just a term for a kind of authoritative verbal output” (Easton 1965, 358). Schattschneider also argues that “the definition of the alternatives is the supreme instrument of power” (Schattschneider 1960, 68). Defining a policy alternative statement also allows actors to identify a public of beneficiaries, condemn guilty stakeholders, promote a joyful future and perceive the government as a decision-maker (Zittoun 2014).

The second dimension targets the formation of coalitions based on the production of agreements between individuals around the collective definition of an alternative. While many studies consider coalitions as configurations of actors linked together by values or interests and whose existence precedes or explains the collective proposition, the PCF proposes to open the black box of the formation of these coalitions to better understand how a proposal is built and initially promoted by several actors through processes of argumentation, persuasion, discussion and redefinition to gradually become the cement connecting actors of the same coalition together. This implies analyzing the co-construction of the coalition and the common definition of the proposal shared by its members (Stone 1989). The concept of ownership, which was originally developed by Gusfield (1981) – and Rocherfort and Cobb (1994) who focused on problem definition and on how a group of people become owners of a problem –, helps explain this co-construction. As Gusfield suggests, owning a problem is “to possess the authority to name that condition a problem and to suggest what might be done” (1981: 7). Far from being a natural or simple phenomenon, the formation of a coalition depends on the links that the actors have been able to maintain between them in previous commitments, the values or interests they share and the roles or identities they have in common. It also depends on the ever uncertain success of this process of “interestment” (Callon 1986; Akrich, Callon, and Latour 2006) and enlistment that, bearing their alternative policy proposal, they use to encourage other individuals to adopt this alternative. The uncertainty relates not only to the ability of the actors to agree on the validity of a propositional statement but also to the definition of their identities and roles that influences their commitment to defending the proposal. Coalitions must be continuously reinstated through argumentative struggles to convince their members that they share a common definition of the solution they promote.

The third dimension concerns the significance of the conflicts and struggles which punctuate the policy processes that these coalitions go through to impose their alternative policy and the uncertain results of their struggles. Setting a proposal on the governmental agenda does not only depend on the commitment of a coalition but also on its ability to impose its ownership of the definition of the problem and its solution in both the public and governmental agendas. As Cobb and Rochefort suggest, the struggle for problem ownership is the “domination of the way that a social concern is thought and acted upon in a public arena, that is, by serving as the recognized authority on the essential question of causes, consequences and solutions” (Rochefort & Cobb, 1994: 14). While these authors primarily focus on the public arena, the PCF suggests enlarging the struggle for ownership to all the spaces where debate takes place during the policy process. Rather than considering one single public arena and one or two policy subsystems, the PCF considers a large variety of spaces from ministries to administrative departments and services, as well as spaces outside the administration in different organizations such as NGOs and the media.

The fourth dimension concerns the need to understand the more or less asymmetric configuration, the mode of regulation and the regime of argumentation of each empirical space of debate where these definitional, enrolling and struggling activities take place. Far from one subsystem or three streams, the main idea is to consider that each space of debate corresponds to an empirical situation where discussions take place based on its own rules and participants. To account for the diversity of these spaces, three forms can be distinguished: public forums, closed atriums, and discreet public policy arenas. As Jobert (1994) suggests, public spaces of debate can be considered as public forums where debates are organized based on a succession of unilateral speeches directed toward a wide audience. The media forum, the main space in which problems and alternatives are publicized, is the most important public forum (Boussaguet and Muller 2005). In this forum, the publicization of problems and alternatives depends both on the complex rules restricting access to the media guarded by journalists, and the strategies of coalitions which define a problem and its solution and choose the temporality of publicization in an attempt to master the process. There are two different types of discreet spaces of debate. The first one is the closed policy atrium which refers to particularly confined debate spaces and is based on asymmetric configurations of actors dominated by owners, usually experts, and by a specific regime of debate that the owners of the space enforce using, for instance, "feasibility" arguments" (Majone 1992). The second discreet spaces of debate are referred to as conflicted policy arenas. In these spaces, there are neither dominant actors nor a specific system of debate, nor legitimate and institutionalized forms of regulation. These arenas are spaces where ownership conflicts are permanent, the outcome of which is never determined in advance, and it is around them that relationships of power are established and constantly tested.

Building on these four dimensions, the pragmatist constructivism framework applied to public policy proposes to understand differently the trajectories of these discursive coalitions and their alternative statements. Using the case of shale gas in France, we would like to show that the success of new policy proposals depends on the capacity of its owners to enroll enough policymakers and to impose their arguments about their proposal's feasibility and how it can domesticate wicked/wild problems in multiple spaces of debate, including in both the public space and bureaucratic arenas. The different trajectories of policy proposals shed light on how the stability of public policy depends on the capacity of a configuration of actors to contain and lock down the debate about the policy in question. These trajectories also reveal how a policy's instability depends on the capacity of a new configuration of actors to bypass it by mobilizing complex bureaucratic and non-bureaucratic spaces.

The impossible domestication of the problem: the failure of the first governmental statement

The trajectory of the first governmental statement shows an attempt to domesticate the problem but a failure to legitimate the role of the government as a decision-maker. It also demonstrates the inability of the owners to propagate the proposal and to adapt it to different configurations of actors. The problematization of shale gas and the mobilization behind it have been described as lightning fast. Indeed, in only a few weeks, a subject known to only a handful of experts became a “public problem” on the governmental agenda from three perspectives: environmental, territorial and democratic. The sudden appearance of a tragic statement, which mobilized an entire audience of potential victims around a future described as apocalyptic – notably after the broadcasting of the American documentary “Gasland” (Fox, 2010) – forced the government to take a position on a topic to which it had not previously paid attention.

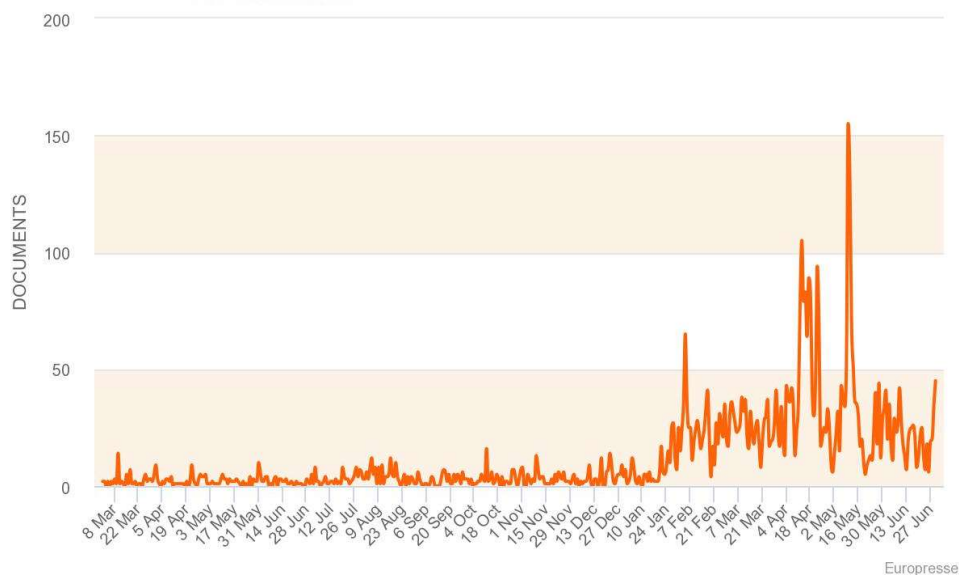


Figure 1 - Number of articles published each day about shale gas in the French press from March 2010 to June 2011 (source: Europresse)

Shale gas became more present in the media in January 2011 (Fig.1), and the Minister of Ecology³ gave the first government statement on January 27th. Responding to a member of parliament⁴, who asked for a moratorium on the three permits and raised questions about the environmental risks and the lack of consultation of elected officials⁵, she responded that there was no environmental problem in France with regard to French standards, unlike in the United States with their “laissez-faire” attitude, and that any proposal of a moratorium or suspension was legally impossible under the French mining code. As we mentioned earlier, this government statement resisted only four days before the same government announced that it had halted the license. To understand how the government developed then abandoned this statement after only four days, we must analyze where and by whom it was initially shaped as well as its trajectory, from its adoption to its abandonment.

When we interviewed the bureaucrats who had dealt with the issue, we observed a common origin of the alert that had drawn their attention to the subject. Indeed, the deputy director of the cabinet of

³ Nathalie Kosciusko-Morizet, Question 2912, Official journal of the French Republic, January 27 2011, p.526: <https://questions.assemblee-nationale.fr/q13/13-2912QG.htm>

⁴ Pascal Terrasse, Question 2912, Official journal of the French Republic, January 27 2011, p.526: <https://questions.assemblee-nationale.fr/q13/13-2912QG.htm>

⁵ Ibid.

the Minister of Ecology, a top level engineer and high-ranking civil servant, was the first to alert the Director of the Department of Energy.

“The alert arrived on Christmas day 2010 relayed by emails that we received but especially by the Deputy Director of the cabinet of Nathalie Kosciusko-Morizet who questioned us on the subject” Interview with the director of Energy.

He himself had been alerted by reading the press but also through emails complaining about the situation, which the Ministry began to receive from early January, and through meetings with members of parliament. The deputy director of the cabinet of the Minister of Ecology then asked the Director of the Department of Energy to draft a memo on the subject⁶.

The process of circulation of the dramaturgic statement followed the bureaucratic chain of tasks division. This involved the formation of some form of map of competences representing the division of the ownership of topics, with each subject having their office and experts of reference. In the case of shale gas, the Deputy Director of the cabinet contacted the Director of Energy especially because, despite his training, he had neither specialized skills on the subject nor his own department. The Director of the Energy Department was no more a specialist than his counterpart in the cabinet. The absence of expertise on the subject, which can be explained by the growing disinterest of the administration in subjects related to mining in France (Chailleux, Merlin, and Gunzburger 2018), but also by the fact that this subject has never been on the government’s agenda, led to the dependence of the administrative hierarchy on the monopoly of expertise owned by the members of one administrative specialized office⁷.

The dramaturgic statement was thrown into the space of debate of the Bureau of the Exploration-Production of Hydrocarbons (BEPH) of the Energy Department of the Ministry of Ecology. This space is structured around a few specialists who have the following in common: they are petroleum geologists with similar training; they do not belong to any major administrative “corps”⁸; they are particularly isolated; they have held their position for many years without any internal promotion; and they master an expert argumentative regime that few people, at least within the Ministry, can challenge. Their space of debate forms some form of isolated citadel. Isolation is both their strength, by consolidating their hegemony on the subjects related to the exploration and exploitation of hydrocarbons, and their weakness, by making them invisible to their hierarchy.

“I always said we worked for the Secret Service because as long as it was going well, nobody cared.” Interview with BEPH member

⁶ Interview with the Director of the Energy Department

⁷ Interview with the Director of the Energy Department

⁸ The French Administration is structured according to various “corps” of engineers, representing historical expertise of “mines”, “bridges, water and forests” and “agriculture”. See Kessler 1986; Stoffaës 2012; Restier-Melleray 1990. In our case study, the expertise from the “Corps des mines” - historically composed of mining engineers who today primarily focus on the nuclear sector, is in competition with the expertise from the “Corps des Ponts, Eau et Forêts” – historically composed of land planners and foresters. The “corps des mines” controls the Ministry of the Industry and Economy, while, the “corps des pont, eau et forêts” controls the Ministry of Ecology.

These owners of oil and gas topics intended to modify the dramaturgic statement, not by denying the problem but by redefining it to better domesticate it by producing arguments (Zittoun 2016). First, they wrote administrative memos and participated in meetings where they had a triple task⁹. This redefinition involved setting up a new causal attribution which associated the initial environmental problem with one main cause: the absence of significant standards in the United States to control corporate greed, drilling operations and pollution. This causal attribution acted as a substitution process in which the main problem was replaced by its cause, transforming it into a separate problem. The main difference between the first and the second problem was that they were not associated with the same government. In other words, this displacement allowed the actors to place the problem outside the French territory and to distance it from the concerns of the French government. Second, they contested the democratic problem put forward during the protest. The actors mobilized several arguments to criticize the very existence of the problem, based on evidence such as the respect of the official procedure, making shale gas permits more visible through the official journal and some newspaper articles. Lastly, they mobilized their text of reference, the mining code, to disqualify their opponents' proposal to halt the permits, arguing that it was legally unfeasible to halt a permit already granted¹⁰.

The Minister's speech at Parliament clearly shows that she was restating the three dimensions developed by BEPH. This is proof that her statement came straight from the bureaucratic atrium, passed through the various hierarchical levels composed of the deputy director, the director of the Energy Directorate and the Director of the cabinet, without too much hindrance, to land in the speech written by her collaborators. While the content of the statement did not change, this displacement produced two important changes: a new owner, the Minister, and a new space of debate, the public forum where she stated it.

However, it is precisely this double change that contributed to the failure of the statement. Indeed, the very next day, criticism rained down on the media forum, starting with José Bové¹¹'s response, relayed in several newspapers, around two major arguments. The first questioned the confinement of the problem to the United States as two of the three permits were attributed to a Texan company and the patents on fracking all are American. The second argued that the legal infeasibility claim was nothing more than political incompetence. While these arguments would certainly have been defeated within the atrium where the experts dominated and did not find them "serious", they were taken very seriously by the Minister and her cabinet who considered that the statement did not work in the public forum,¹² putting the image of the new owner in trouble. It must be said that the rules of criticism do not work the same way in a discreet space of debate between experts based on a specific regime of arguments, and in a public forum where access is more open and where opponents can publicize their comments without any control from the experts.

In the bureaucratic atrium, the problem was domesticated and the proposed solution statement was solid. However, it did not withstand the test of public criticism when it was displaced to the public forum, pushing its new owner, the Minister, accompanied by her cabinet and her central administration directors, to go in search of a new statement.

Out of the bureaucratic atrium: a second solution from a bureaucratic arena

⁹ Interview with different members of the BEPH Office

¹⁰ Interview with a member of the BEPH Office

¹¹ The media heralded José Bové, a well-known activist and European deputy, as the leader of the social mobilization.

¹² Interview with member of cabinet of the Minister of Ecology

The second solution shows how new owners emerged with an alternative proposal legitimizing the role of the policy-maker and trying to adapt to various configuration of actors but finally failed to enlist allies. While the inability of the first statement to resist the criticism leveled against it in the public forum explains its abandonment, it does not allow us to understand the formulation and the choice of a second statement that was radically opposed to the first one. Formulated publicly on February 1, 2011, on the occasion of a parliamentary session during which the government could be questioned, the statement made included the suspension of six shale gas and oil exploration permits, initially considered impossible, and launched an experts' inquiry on "the environmental stakes of shale gas exploitation", previously presented as not dangerous. Using the word "suspension" instead of "halt", the Minister explained that "no work authorization on shale gas will be given or even investigated before the findings of this mission" and affirmed that "[her] objective is clear: to prevent any work until the environmental conditions are clarified"¹³.

While the first statement was marked by the seal of the expert atrium of the BEPH, the new one emerged in a completely different space of debate, an arena located at the heart of the hierarchy of the bureaucratic apparatus. The actors who composed it were eager to stop depending on the BEPH and to come up with a statement that could be publicly defended this time, i.e., one capable of withstanding the criticisms in the public forum. Inspired by the opponents' "halt" proposal, the suspension statement was not only reformulated to allow the government to claim ownership, but it was also split into a publicizable version and a discreet version to overcome the tests of the different spaces of debate.

After the BEPH experts' proposal proved unable to withstand criticism, the Director of Energy, his Deputy Director, and the Deputy Chief of Staff met on several occasions to develop an alternative proposal¹⁴. Not being experts on the issue, they developed a proposal that allowed them to escape the dual grip of the atrium exerted by the presence of the BEPH's experts and their hegemonic arguments. To bypass these experts and invite new technically legitimate actors, they first chose a "classic" solution within the administration by requesting an expertise mission led by the general councils of the major State "corps". Composed essentially of senior civil servants at the end of their careers, these general councils are regularly called upon to draft reports on a wide range of subjects.

"However, unlike nuclear power, there is no structure to entrust and, above all, the subject is poorly defined...What is shale gas? What is the problem? The very definition of the subject is a puzzle. (...) There was no expert to rely on. I asked an expert from the IFP¹⁵, but it didn't seem very stable. So, the first classic idea that came to us was to call on a CGEDD/CGIET¹⁶ inspection commission." Interview with the Director of Energy.

¹³ Nathalie Kosciusko-Morizet, Question 2932, Official journal of the French Republic, February 3, 2011, p.708: <http://questions.assemblee-nationale.fr/q13/13-2932QG.htm>, viewed 06/02/18

¹⁴ Interview with the Director of Energy and the member of the Prime Minister's Cabinet

¹⁵ IFP: *Institut Français du Pétrole*, French School of Petroleum, a research center and training school for petroleum engineers.

¹⁶ CGEDD : Conseil général de l'environnement et du développement durable, General Council for the Environment and Sustainable development ; CGIET : Conseil général de l'industrie, de l'énergie et des technologies, Général Council for Industry, Energy and Technologies. Both are composed of different State "corps" representing competing environmental expertise for the former and industrial expertise for the latter.

This expert mission was accompanied by a proposal for a “suspension” whose interest lay not only in the change of label but also in how the concept made it possible to circumvent the insurmountable barriers of legal infeasibility. While the “halt” presupposed a legal procedure, which the members of the BEPH qualified as unfeasible, the “suspension” simply presupposed the consent of the industrial actors who had obtained the exploration permits, consent the Energy director ensured with a few phone calls¹⁷. The staging of this agreement took place on February 10, during a meeting between both the Ministers of Industry and Ecology and the industrialists who agreed to postpone exploration works. The transformation of the statement characterized by the change of vocabulary thus allowed them to circumvent the barriers put up by the BEPH which they considered as “too legalistic”¹⁸.

Supported by the administration’s hierarchy, the statement was proposed to the Minister of Ecology who agreed to make it her own and to deploy it into the public forum, even if it meant contradicting her statement from four days earlier. Her attachment to the initial statement was all the weaker since she had taken it over only a short period of time, and while it positioned her as a defender of her administration and its procedures, it did not position her as the solver of environmental problems. On the contrary, the new propositional statement incorporated two concrete proposals, the suspension and the expert mission, and also portrayed a minister capable of listening and deciding. To understand this dimension, it is important to remember that, in the spaces of debate, statements are inseparable from the actors who support them and include both the definition of a proposal intended to solve the problems and a definition of the identity of its spokesperson. While legal arguments make the actors who formulate them “legalists”, the announcement of a decision makes the actors who broadcast them “decision-makers”.

The incremental agony of the second solution in the bureaucratic arena

The solution of a suspension and the launch of an expert mission lasted approximately two months until the Prime Minister decided to opt out of the proposal of the prohibition bill. Several factors weakened the legitimacy of the suspension solution as it neared its first deadline of April 15, the day on which the expert mission was to submit the first part of its report. Unlike the previous solution, this one did not elicit such a critical and blunt reaction from the public forum. The weakening of this position may be explained by the debates and struggles in the discreet interministerial arenas during these two months, resulting in the weakening of the legitimacy of the four experts and of their ability to produce an expert opinion likely to solve the problems.

The first difficulty lay in the level of conflict and the fault lines opposing the four experts, two engineers from the Ministry of Industry and two from the Ministry of Ecology, which weakened the legitimacy of this new debate arena¹⁹. Indeed, far from getting along, these experts constantly challenged each other on many subjects, emphasizing their exclusive competences²⁰. This fierce opposition was even reflected in the report, with their lack of consensus mentioned repeatedly in the report (Chailleux 2020). Although they originally graduated from the same university, the *École Polytechnique*, these engineers had a sense of collective belonging that was primarily structured by their “corps” and the ministry they worked in. There was therefore little room for collaboration as both “corps” sought to have full control over specific administrative directions and did not appreciate the emergence of a common space where they would be in competition.²¹ The interviews revealed that their opposition

¹⁷ Interview with the Director of Energy and the member of Prime Minister Cabinet

¹⁸ Idem

¹⁹ Interview with the cabinet of the Prime Minister

²⁰ Interview with each of the four experts

²¹ See footnote number 7

was particularly violent, with accusations of not knowing how to write a report, only “copying and pasting” from the Internet or of being “under somebody’s influence”.

Second, the lasting conflict between the Ministry of Ecology and the Ministry of Industry made it not only impossible to regulate conflicts between experts but also amplified them. Far from being the result of any “rational logic”, the decision to put two engineers from two different general councils was itself the result of a conflict situation and an interministerial arbitration between the two ministers in question²². While the Minister of Industry and his Ministry demanded that the mission be exclusively carried out by members of the CGIET, the arbitration was favorable to the Minister of Ecology who multiplied her efforts to allow two experts from her Ministry to integrate the mission²³.

“The two engineers (out of the four) that I will appoint to this mission are a hydrogeologist and a specialist in air quality and the fight against climate change, echoing the two local and global issues of this subject. I have asked that the mission deliver an interim report in April and a final report in June.” Interview of the Minister of Ecology, La Tribune 04/02/2011

It must be said that at the time, these two ministers were fighting over the definition of their respective territories²⁴. To understand the extent of this interministerial conflict, we must go back to 2007 when the President Nicolas Sarkozy decided to create a large Ministry of Ecology, Energy, Sustainable Development and Land Use Planning. This meant that the Energy Department, which until then had been under the supervision of the Minister of Industry, had to move to the Ministry of Ecology, leading to reorganizations and conflicts, especially because the two ministries did not depend on the same State “corps” for their management. This tension was reflected in the constant pressure exerted by the “Corps des Mines” to reunite the Energy department within the Ministry of Industry. It was achieved in late 2010 when Jean-Louis Borloo, the Minister of Ecology, left and Eric Besson was appointed “Minister Delegate in charge of Industry, Energy and the Digital Economy” on November 14, 2010 - even if the administrative services of the department remained under the control of the Minister of Ecology.

The third difficulty lay in the ownership conflicts between the ministers. Although the Minister of Ecology, Nathalie Kosciusko-Morizet, had lost her competence over energy topics, she wanted to claim ownership of shale gas as an environmental issue. When the government was questioned at the National Assembly, it was she, and not Eric Besson, who imposed herself as spokesperson by claiming the environmental dimension of the problem. Although the two ministers were present in the meetings with the industrialists held in early February, Kosciusko-Morizet imposed herself as the meetings’ leader and announced the suspension of the exploration work.

²² Interview with a member of cabinet of Prime Minister

²³ Interview with the cabinet of the Prime Minister

²⁴ Memo from Nathalie Kosciusko-Morizet to the Prime Minister cabinet, 30/01/2011; Memo from the Ministry of the Industry to the Prime Minister, 12/03/2011

“The Ministry of Industry, Eric Besson was very discreet, the meeting was led by the Minister of Ecology, NKM.” Interview with a director of an oil company, participant of the meeting.

One must understand that the legitimacy of her presence is inseparable from the environmental drama of shale gas. Had shale gas been an energy issue rather than an environmental one, Besson rather than Kosciusko-Morizet would have been the legitimate leader. This association between the Minister and the dramatic statement was verified in a confidential memo²⁵ she sent to the Prime Minister in which she began by evoking the necessary “environmental coherence of the government”²⁶, a subtle reminder that her ministry could not be kept away from a subject such as shale gas. However, the Minister of Industry tried to defend himself by appealing to the Prime Minister, but he was unable to cope with the double success of shale gas as an environmental problem, and the Minister of Ecology as the one who would resolve it.

The last difficulty was the inability of the suspension statement to maintain itself in the media forum. Indeed, the tragic statement and its spokespersons gained traction and rather than demand a “halt”, they pushed for the cancellation of permits with the slogan “no to shale gas, not today not ever, not here nor elsewhere”; the suspension statement could not resolve this (Fig.2). This definitional shift allowed the spokespersons to prevent the domestication of their problem by the government and to legitimize, maintain and even amplify mobilization. It was thus some form of headlong rush in which the government always seemed to be “one step behind”²⁷ the protest movement. The media forum reveals an increase in the articles published and a tone that increasingly echoes the arguments and actions of the opponents.

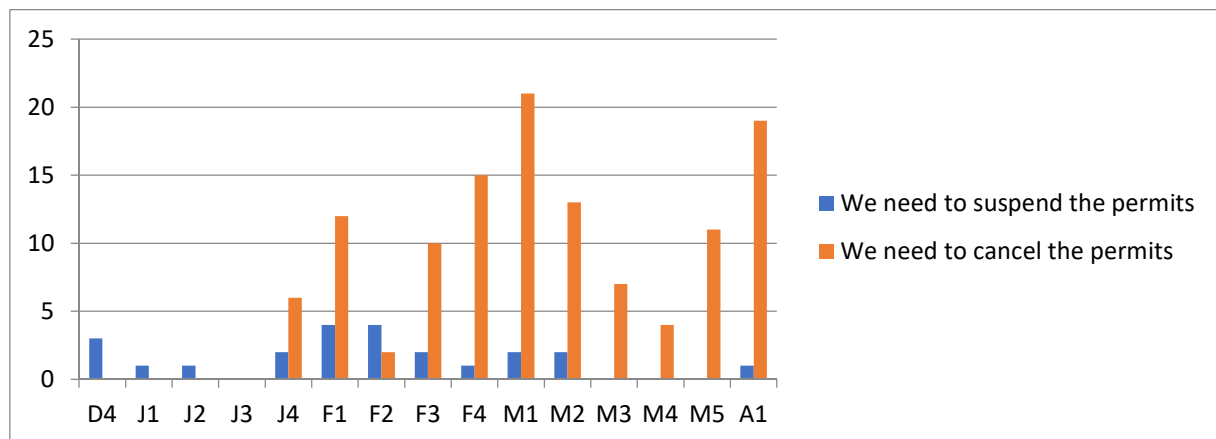


Figure 2 - Demands from opponents as they appeared in the corpus of press articles (Last week of December 2010 to first week of April 2011) (Source: authors)

The difficulty of the “suspension” statement was confirmed in March by the mobilization of Prime Minister François Fillon’s cabinet²⁸, which considered action was needed. It advised the Prime Minister to modify the initial statement by announcing the extension of the suspension period from April 15 to June. In her confidential memorandum to the Prime Minister, the head of the cabinet explained how the statement should be amended. She insisted on the importance of mobilization and the problem’s

²⁵ Memo from the Minister of Ecology to the Prime Minister, 30/01/2011

²⁶ Ibid.

²⁷ Interview with the member of cabinet of Prime Minister

²⁸ Memo of cabinet of the Prime Minister

visibility and asserted the need to act by showing that certain events could challenge the Prime Minister’s words. Above all, the memorandum showed how the extension of the suspension period by a few months was adapted to the difficulties. Based on this memorandum, François Fillon publicly announced that the decision would be postponed to after the results of the two commissions, the experts’ commission and the parliamentary mission that had been launched.

The rapid emergence of the prohibition statement in the parliamentary forum and the partisan arena

The last solution shows the necessary features of a proposal to become a standing governmental solution naming the ability to domesticate the problem, legitimate the role of the policy-makers, and adapt to various spaces of debate. While the adaptation of the suspension statement allowed it to withstand criticism for a while, the respite was short-lived as the government announced on April 9, before the publication of the first experts’ report expected on April 15 and well before the date of the end of June, its support for a new proposal. This proposal to ban shale gas experienced a meteoric rise in record time, from its emergence at the end of March to its enactment into law in early July. Like its predecessor, this government statement was inspired by the opponents’ statement but it was transformed, replacing “no to shale gas” with a “shale gas ban” before becoming a “hydraulic fracturing ban”. The overwhelming victory of this new statement may be explained by how it imposed itself, after a few changes, as the only one capable of withstanding all the tensions in the different spaces of debate. Within the public forum, where opponents imposed their meaning of shale gas, it was the only one able to resist the activists’ criticisms.

To understand the trajectory and the success of this statement, we must first return to its emergence. This proposal emerged during a parliamentary discussion²⁹ between two Socialist deputies, Jean-Paul Chanteguet, head of the Assembly’s Sustainable Development Committee, and François Brottes, a skilled connoisseur of the workings of the National Assembly and head of the Socialist Party’s Economic Committee. While the two had not really been involved in the subject until then, they clearly understood the extent to which shale gas was becoming a major political issue. Observing the divisions within the right-wing party³⁰, and in particular the complex positioning of the president of the UMP group, Christian Jacob, who had taken a timid position against shale gas despite the fact that his electoral ward was affected by Toreador’s shale oil permit and that mobilizations were taking place there, they used a new provision, introduced by the institutional reform led by the President Sarkozy in 2008, enabling the opposition to place bills on the parliamentary agenda once a month.

“It is a meeting in the corridors of the Assembly. François Brottes, (...) that I meet, I tell him that there is this subject on shale gas and he tells me, at the time he had the responsibility of the commissioners of the Commission of Economic Affairs but we were in the minority, he tells me you should file a bill, that's how things happened. (...) I thought that something was happening when I saw Jacob”
Interview with Jean-Paul Chanteguet.

²⁹ Interview with a member of parliament

³⁰ Ibid

This strategy resulted in the tabling of a bill on March 24 in the Senate. On March 30, a second, almost identical, bill was tabled in the National Assembly. Observing the maneuver, Jacob decided to file a similar proposal the following day to avoid losing ownership of the subject.

Beyond these internal strategies, the most interesting aspect was the change in the Prime Minister's position between March 30, the day the proposals were tabled, and April 9, the day Jacob's proposal was registered under the emergency procedure. It must be said that bills introduced by MPs generally have little chance of succeeding, as the government ultimately has the upper hand in one way or another. Four factors contributed to this shift.

First, the weakening of the suspension statement in the media forum favored the hegemony of the tragic statement, leading to a major environmental and political problem. The dangers of shale gas exploration were being shaped and imposed primarily in the print media. While shale gas was mainly defined under an economic and energy angle in 2010, from January 2011, the protest became the main subject of press articles. However, it was especially from February that the media forum sided with opponents with the hegemony of the environmental problem in press articles. While most of the articles in January presented the shale gas problem based on the position of opponents that they were quoting, a shift occurred in March when journalists began reporting directly on its risks or problems without providing quotes. They thus participated in the objectification of the shale gas issue and contributed to a victory in the meaning war that was unfolding in the public forum (fig.3).

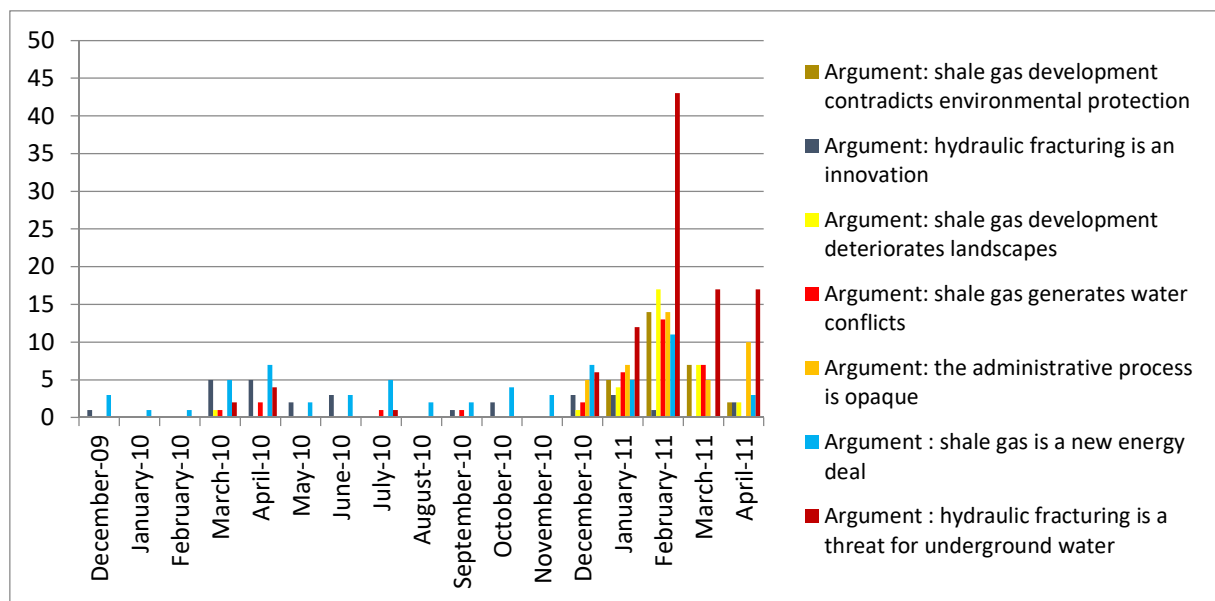


Figure 3 - Main articles in the corpus of press articles (source: authors)

Second, the fact that Prime Minister Fillon was in trouble in the political arena made it urgent to act³¹. March 27, 2011 was marked by the second round of cantonal elections. Viewed as a defeat for the UMP, this was a particularly worrying signal for the presidential majority at a time when preparations for the 2012 presidential election were beginning. It is during this period that the number of statements attributing responsibility for failure to the Prime Minister increased. In this climate of criticism, Jacob played an important role since, as president of the MPs group, he publicly highlighted the frustration of deputies who had not been sufficiently heard by the government. The second element of the schedule concerned the April 15 delivery of the interim experts' report. Although the

³¹ Memo to the cabinet of the Prime Minister, April 4th, 2011

government had given itself more time, the announcement of the first results created a complex situation and an urgency to act.

The third element was the new role that Christian Jacob was taking on by becoming the spokesperson of the government's internal critics. As he tabled his bill on shale gas, he showed that the UMP's MPs were no longer willing to be the recording chamber of the Fillon government³². In other words, the bill appeared not only as a response to the initiative of the socialist group, but also as a way to materialize this quest for autonomy by the majority group. The statement of prohibition in the form of a bill thus took on a new meaning and was transformed into a critical argument of a government that was unable to prevent mobilizations, and into the destabilization of the cantonal election campaign.

Jacob: "The worst thing would be to put a lid on the debate", Le Figaro, 29/03/2011

During this short period, the prohibition statement thus also become an internal weapon of criticism of the government that constrained it. Registering Jacob's proposal as an emergency was the choice that the Prime Minister ultimately favored on April 8. By positioning himself as the spokesperson for the ban, Fillon took shale gas out of the hands of the government critics. It was no longer possible for his opponents to use it to delegitimize the government. It could no longer be turned into a weapon in the wrestling match in which MPs could have demonstrated their autonomy. From now on, voting for the bill meant supporting the government.

Conclusion

Promoting the micro observation of policy formulation, our empirical case allows us to see how, with the same configurations and events, any political process can lead to opposed solutions. The instability of the positions of the political decision-makers such as the President, the Prime Minister, the Minister of Ecology, the Director of the Department of Energy and the members of the cabinet, who regularly changed their positions even if they did not necessarily change the core of their political beliefs, makes it difficult to understand the rationale behind those beliefs. The coalition and alliance configuration also changed regularly, making it impossible to capture a stable perspective.

To understand the uncertain trajectories of alternative statements, the PCF considered all the uncertain struggles of ownership and meaning that took place in the multiple micro-spaces of debate where their respective owners and rules transformed the statement. The PCF also assessed the flow between these different spaces and its impact on the definition of alternative statements and on their owners. This allows for a better understanding of the complexity of bureaucracy and of the link between politics, administration, interest groups, mobilized groups and the media. Examining the uncertain dimension of the political process also helps us to better understand how every political process is also a power struggle where policy makers play out their position. Supported by a considerable study, the PCF relies first on the meticulous empirical reconstitution of interactions and scenes of action to understand the complex and unexpected sequence of events that lead to a particular solution, and to propose a specific analysis attentive to the complex relationship between power and knowledge, meaning and ownership struggles.

³² Interview with a member of Parliament

As the policy process is always uncertain, the ambition of the PCF is not only to limit its perspective to a few specific cases but to enlarge it to study all policy processes. Just as pragmatism influenced the emergence of policy studies (Dunn 2009), we seek to propose a new approach that draws on and further develops pragmatism, thus allowing us to better understand the complexity, non-linearity and unpredictability of all policy processes. While abrupt changes in governmental decisions are not necessarily a common occurrence, we suggest that the struggles between different policy solutions and their ownership are always present even if they are often less visible, and one must trace their career to understand their definitional and powerful dimension. While we used a confirming case to develop the PCF in this article, more work is needed to strengthen this pragmatist approach in order to analyze the various strategies used to bypass the containment of policy decisions within a hermetic space and to examine the process of the adaptation of policy statements in various spaces of debate. We also hope that the PCF will help scholars to develop more in-depth studies to facilitate the understanding of the complexity and uncertainty of the policy process.

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