PUBLIC ADMINISTRATION AND PUBLIC POLICY

CONSEQUENCES OF PUBLIC POLICIES ON PUBLIC MANAGEMENT: THE

CASE OF THE ZERO-TOLERANCE POLICY FOR CRIMINAL ILLEGAL ENTRY

UPON THE OFFICE OF REFUGEE RESETTLEMENT

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Abstract

Consequences of Public Policies on Public Management: The Case of the Zero-Tolerance

Policy for Criminal Illegal Entry Upon the Office of Refugee Resettlement

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Policy failures are related to the way in which policies are designed, the procedures in which they are implemented through public management and the public value expected to be produced. The purpose of the present case study research is to examine the policy failure of the Zero-Tolerance Policy for Criminal Illegal Entry. The literature reviewed encompass general perspectives on policy studies and public management, focusing on the ethical aspect to select the intended target population in the policy design and explaining the different approaches in policy implementation to create public value through public management.

The qualitative approach demonstrates that public value is generated in public policies when they have a sound ethical reasoning in their policy design and an appropriate operational capacity that produces political support from the stakeholders.

INTRODUCTION

On April 2017, the Attorney General of the United States, Jefferson Sessions head of the Department of Justice –DOJ- issued a memorandum for federal prosecutors designed to adopt an immediate "Zero-Tolerance Policy for Criminal Illegal Entry" (Sessions, 2018) for any improper enter or attempt to enter the United States by any person who is not a citizen or national, clearly defining the target population. Under the Zero-tolerance policy, the DOJ would prosecute anyone detained by U.S. Customs and Border Protection –CBP-while crossing or attempting to cross the border illegally.

Since children or unaccompanied minors cannot be detained in federal criminal detention facilities, they are transferred to the Office of Refugee Resettlement –ORR- part of the Department of Health and Human Services –HHS- once they parents are criminally prosecuted (Chishti & Bolter, 2018). The family separation provoked a humanitarian crisis at the southern border. Nearly two thousand children were separated from their parents during a six-week period from April to May 2018. Another effect of the Zero-tolerance policy is the challenge in operational capacity, faced by the ORR. The Washington Post (2018) published that the ORR lack of adequate resources, capacity, training and the orientation needed to provide appropriate child care, consequently igniting a "political firestorm" in reactions to the detention conditions.

Members of the Republican party in the Senate declared a moral condemnation to the way in which the Zero-Tolerance policy was implemented and its consequences were in conflict to the American values and human decency (Burr, 2018).

In conclusion, once briefly reviewing the conception of the Zero-tolerance policy, how it turned into action through the ORR, and the subsequent effects and responses that ensued,

this case study research focuses on exploring, how the <mark>zero-tolerance policy relates to policy studies and the theory of public value in public management.</mark>

The intended benefit of this research is to encourage policymakers and practitioners to address the complex challenges in the public sector from an ethical perspective by formulating legitimate, doable and valuable policies to prevent public policy failures.

LITERATURE REVIEW

The scientific pertinence of the "Zero-Tolerance Policy for Criminal Illegal Entry" requires a comprehensive and thorough review of the body of knowledge of policy studies and public sector management in the United States.

The first section of the literature review addresses the general perspectives on policy studies, policy design and policy implementation. Then the second part of the literature review continues with the empirical aspect of the policy process by explaining the general perspectives on public management and expands in the current challenges that organizations face nowadays in carrying out public policies. Lastly, this project addresses the discovered gap in the literature review that led to formulating a new path of inquiry approaching the Zero-Tolerance Policy for Criminal Illegal Entry.

General Perspectives on Policy Studies

Some of the most significant contributions of the United States' public administration internationally are the researches about policy studies and public management, arising new concepts like governance, new public management, public value and policymaking process (Podger, 2017). The scope of public administration is multidisciplinary, encompassing other disciplines such as political science, organizational studies, economics, law, sociology and policy studies with an aim in the process of delivering public services (p. 151).

Policy studies have used several models and frameworks, even though the policy process model has constituted to be a keystone for policy analysis.

The policymaking process model.

The policymaking process model is the "longest-standing conceptual framework, constituted by sequential, cyclical, phases or stages of governmental problem-solving" (Howlett, 2017, p. 65). The policy process is also referred as the policy cycle approach which consists in five general stages of policy-making, the agenda-setting stage, the policy formulation -decision-making-, policy implementation and policy evaluation (Howlett, 2017, p. 67). The term of policy cycle indicates that stages of the policy process do not outline a beginning nor an end, rather, they are "ongoing and recurring" (Howlett, Mcconnell, & Perl, 2014, p. 2).

Established theories of the policy process can be combined with others, allowing theoretical and methodological improvement (Petridou, 2014), and advancing policy thinking arguing that "each model can bring complementary and cumulative insights into how policies are made, yielding further appreciation of the policy process as a whole" (Howlett, 2017, p. 67).

One of these theories is the narrative policy framework where policy beliefs –or perceptions- play an essential role by stimulating and influencing policy outcomes through the way that policy information is disseminated to create public opinion (Petridou, 2014, p. 24). This framework provides insight into subjective elements existing in the policymaking process including value judgments or perceptions either positive or negative that can vary over time and depending on the political power that the targeted population have, as explained in the Schneider & Ingram's (1993) theory of social constructions of target populations (Petridou, 2014), which will is explained in depth hereinafter.

Policy design.

The policy design "has been linked to studies of policy instruments and implementation, and those of policy ideas and policy formulation…policy design is simultaneously noun and verb, outcome and process" (May, 2003; Linder & Peters, 1990a, 1990b, as cited in Howlett & Lejano, 2012, p. 359). This section subdivides into two parts pertinent to the normative sphere of the policy design; one explaining the selection of target populations through the theory of social constructions and policy design; and the other exploring the public policies' founding values, symbols and ethics.

The stage of policy formulation and policy goals "requires synthesis of complex information about the nature of public problems, possible remedies, and expected and unanticipated outcomes" (Demir, Reddick, & Nank, 2015, p. 92). Policy design is understood as the development and adoption of courses of action containing alternatives and procedures to resolve a problem (Howlett & Lejano, 2012) that can be divided in two existing trends regarding the relationship between output and process.

One trend considers policy decision as opportunistic, and not reasonable, contrasting with the second position in which policy design is regarded as "ideal and reasonable configurations of sets of policy elements expected to deliver specific outcomes" (Howlett & Lejano, 2012, p. 360). In other words, one existing trend considers that policies have an unbiased design and another that considers that are subject to bias.

The challenge for new studies on policy design is to generate unambiguous and elaborated literature (Howlett & Lejano, 2012).

Social constructions and policy design.

The seminal work of Schneider and Ingram (1993) of the social construction of target populations portrays with clarity the normative aspect of policymaking (Petridou, 2014). In this theory "policymakers manipulate, respond to, and perpetuate social construction of target groups; that is, portions of the population receiving benefits or being burdened by costs, partially because it reinforces the policy-makers' gains of political capital" (Ingram, Schneider & De Leon, 2007, as cited in Petridou, 2014, p. 17).

The importance to public policy design studies of the Schneider and Ingram's theory of social constructions of target populations relies in the normative aspect of assigning values and politics in the policy process (Wagner & Morris, 2018), social constructions of target populations and political power are intertwined to influence the policy design, and to categorize those who receive benefits and those receiving punishment. This theory helps to explain why some policies are chosen over the rest and in the way, that they are designed. The influence of either a positive or negative stereotypes about a group depends on the gains of political power (Schneider & Ingram, 2005, as cited in Wagner & Morris, 2018).

Sometimes public officials subdivide a group by distinguising "who are deserving and those who are not […] immigration policy, for example, distinguishes among illegal aliens, refugees, migrant workers, asylum seekers and highly skilled workers who receive waivers" (Schneider & Ingram, 1993, p. 336). In contrast, the Zero-tolerance policy burdens and punishes with prosecution and incarceration to all of the adults apprehended at the border, including those with minors and asylum seekers (Isacson, Meyer, & Hite, 2018).

The relationship between social constructions and political power produce four significant groups of target populations:

Advantaged: positively constructed and politically powerful

Contenders: Negatively constructed, but politically powerful

Dependents: Positively constructed, but little or no political power

Deviants: Negatively constructed and no political power. (Schneider & Ingram, 1993, as cited in Wagner & Morris, 2018)

In the Zero-tolerance policy illegal immigrants are portrayed as criminals, improper unlawfull group, gang members and as a dangerous group to the common-interest of public safety (Sessions, 2017, 2018). Nevertheless, the criminal prosecution over adults carrying minors infringes a burden and the punishment of family separation on children, which are a positively constructed group and is justified "as an efficient mechanisim to protect the individual –children- from harm or to achieve public purposes –public safety-" (Schneider & Ingram, 1993, p. 338).

The DHS clarified in a statement that the family separation was not a deterrent, but they had an obligation to protect the children' best interest from "human smugglings, drug traffickers, or nefarious actors who knowingly break our immigration laws and put minor children at risk" (Sacchetti, 2018), in reference to the negative stereotype of their parents as illegal immigrants. This statement demonstrates that the way in which public policies are designed can reinforce any group's prejudices or social constructions –worsen or reinforcing advantage or burden perception- and their political power (Schneider & Ingram, 2005, as cited in Wagner & Morris, 2018).

Lieberman (1995), one of the detractors of the work of Schneider and Ingram, states that the theory of social constructions of target population in policy design, lacks of clarity when defining the concept of social construction. Nevertheless, in the Schneider and Ingram's theory (1995) "public policies are a type of institution that provides not only incentives and disincentives but also distributes symbols and values" (p. 443). In sum, the theory of social constructions of target populations and policy design highlights a clear relationship between policy studies and values, morality, ethics and symbols.

Policy studies can provide some insights into how values and moral dilemmas shape policymaking to understand the normative frameworks of public policy processes (Sowa & Lu, 2017). The normative statement in the social construction of the target population implicitly reflects a value judgment that has a direct effect on the policy design. The following section contains the different forms in which ethics is related to policy design.

Ethics in policy design and decision-making.

The "Zero-Tolerance Policy for Criminal Illegal Entry" is a policy about illegal immigration in which a plethora body of literature already exists in databases that perform an ethical analysis of the issue. Notwithstanding, policies regarding border protection and immigration are related to applied ethics (Zapata-Barrero, 2010), entailing four ethical implications,

Initially, the decision -of admitting or denying the entrance to a country- affects third persons; then, policymaking requires to take a decision from different courses of action;

thirdly, immigration itself sometimes is done in conflict with an individual's own free will; lastly, is a situation discussed from different perspectives, orientations and ethical approaches. (p. 333)

Ethics can be approached in the realm of public administration and policy studies in three lines; the first one is administrative ethics, the second one is the public value in management and the last one is their theory of public value perspective which is basically, a summary of approaches (Jorgensen & Rutgers, 2015). An ethical approach to policy and decision-making theory should be considered as "issues inherently normative, as processes guided or restricted by public values and as public value creating -or annihilating- processes" (p. 4).

Public service values improve the ability to synthesize "complex information about the nature of public problems, possible remedies and expected and unanticipated outcomes" (Demir, Reddick, & Nank, 2015, p. 92), demonstrating that having ethical reasoning in the public sector increases the ability to solve problems effectively through the policy process.

The James Svara's (2007) ethical problem-solving model is an essential tool of analysis that can be applied to the Zero-Tolerance Policy for Criminal Illegal Entry. Svara's problem-solving model is also known as an "ethical triangle" used to "specify what duty, principle, character, and promoting the common good require" (Jacobs, 2017, p. 295). This theory is grounded in the Kohlberg's approach to moral development (1981, as cited in Jacobs, 2017) to justify the ethical reasoning required "at the post-conventional level of ethical decision-making" (p. 298).

The applicability of the Svara's model in cases of decision-making process is convenient to analyze different courses of action to be taken to solve public problems rooted in "the three major theories of Western normative ethics, namely: deontology (principle-or duty-based ethics), consequentialism (utilitarianism) and virtue ethics" (Urbano, 2014, p. 7). Any decision based in the virtue-based approach "must possess the strength of character and must display such virtues as honesty, benevolence, respect, responsibility and prudence" (Urbano, 2014, p. 11). In the deontological principle-based approach ethical or political principles as lawfulness, democracy, truth-telling, the sanctity of life must be upheld, and lastly, the importance of foresight the results of any course of action are considered in the consequence-based approach (p. 12).

The ethical reasoning of the Zero-tolerance policy lies in its founding value of lawfulness (Sessions, 2017), which derives onto the principle of upholding legality in the immigration system by complying with the duty of enforcing the immigration laws in the United States (Sessions, 2018), to reach the desired outcomes of public safety, national security and the rule of law through border security (Office of Public Affairs, 2018) –the greatest good for all-.

Failing to weigh appropriately any of these approaches might have a negative impact such as being "overconfident and self-righteous" if basing only in a virtue-based approach; confusion and mistakes if relying solely in a principle-duty-based approach or missing the consequence-based approach to "maximize beneficial consequences to the public and equal consideration of interests of the stakeholders" (Urbano, 2014, p. 11).

Since the Zero-tolerance policy is shaped in a deontological approach, disadvantages addressing the consequences and values were the target of criticism. The

moral condemnation stated by members of the Republican party revolved around the ethical commitment of protecting the children's best interest and thus opposing the separation of families (Burr, 2018). Along in the same vein, the reaction by several Attorney Generals categorized the consequences of the Zero-tolerance policy as an inhumane practice that lack of caring, respect, and dignity in which the rights of children were violated (Balderas, 2018).

Any decision-making process, specifically while formulating public policy, "must perform their duty to promote the public welfare by seeking a balance of virtue, principle and good consequences" (Urbano, 2014, p. 11). Overall, any decision in the public sector should be based on the assumption of "How can the public interest be best advanced in this situation?" (Svara, 2007, p.109, as cited in Urbano, 2014, p. 11).

Having reviewed the literature pertaining the social construction of target populations and the ethical considerations involved in the policy design that shapes the carrying of a policy decision, the subsequent part of this project will address literature about the practical aspect of the policymaking process of the Zero-Tolerance policy, the policy implementation.

Policy implementation.

The empirical aspect of the policy process is when policies are put into action in the stage of policy implementation which is shaped to a great extent by how the policy is formulated or designed "with all its politics and competing values" (Sowa & Lu, 2017, p. 78). Different forms of governance, partnerships, networks, cross-sector collaborations, market-oriented managerial practices have been the most common contemporary means to

effectively carry out a public policy superseding the traditional bureaucratic policy implementation paradigm (Krogh, 2017).

Failures in policy implementation are related to situations of a high level of uncertainty and resource allocations that can be anticipated by "deploying and appropriate implementation design and management strategies" (Krogh, 2017, p. 81). Sometimes the policies' outcomes and results are not the expected that were contemplated during the policy design (Dahill-Brown & Lavery, 2012). The following section will contain some orientations to anticipate problems in policy implementation from different approaches that can be applied to the analysis of the Zero-Tolerance Policy for Criminal Illegal Entry.

Top-down and bottom-up approaches to implementation analysis.

Policy implementation studies have evolved over the years. The first generation of studies focused on planning and hierarchical control to achieving policy goals in the top-down model; the second generation of scholars discovered the bottom-up model, taking into account the street-level bureaucracy and the stakeholders' perspectives to adapt to variations in policy delivery; and finally, some theorists advocate to reconcile both models and state that are complementary to each other (Dahill-Brown & Lavery, 2012, p. 561). Forward mapping planning is used to identify vital aspects and moments of the policy implementation (Elmore, 1982, as cited in Krogh, 2017, p. 72). Forward mapping parts from the assumption that outcomes guide implementation processes and "reinforces the myth that implementation is controlled from the top" (Elmore, 1979, p. 603).

Bottom-up perspective highlights the role of the target population and the staff in the frontline implementing public policy (Dahill-Brown & Lavery, 2012, p. 561). In this sense, the backward mapping strategy focuses on the decisions and capacity of front-line

workers to change the behavior according to the target of the policy (Vandeyar, 2015, p. 349). The logic of the backward mapping model is that analysis begins at the end, at the bottom level of implementation describing the operational actions required to achieve the expected behavior, the needed resources, knowledge and problem-solving capacity of the units at the frontline level responding to questions such as "what is the ability of this unit to affect the behavior that is the target of the policy and what resources does this unit require to do so?" (Elmore, 1979, p. 604).

The formulation and implementation of the Zero-tolerance policy were always controlled from the top, "the prime movers behind the Zero-tolerance policy were members of a group of anti-immigration policy at the White House, the DHS and the DOJ" (Blitzer, 2018). The implementation process of the Zero-tolerance policy was oriented by the expected outcome of "ending the illegality in our immigration system" (Sessions, 2018), in which parents would be deported, and children would go to the ORR, without public attention whatsoever (Blitzer, 2018). The ORR is responsible for finding migrant children in homes within the U.S. but under the current administration and with rigid screening policies for sponsor allocation, children remain longer in shelters overwhelming the ORR's capacity, by may they had already filled the 91% of their shelters (Chishti & Bolter, 2018)

Public officials were not satisfied about the failure of the policy "there was frustration with the incompetence of how the policy got implemented and how badly the policy failed" (Blitzer, 2018), only in the aftermath of the Zero-tolerance policy, the U.S. government is considering to use a backward mapping strategy for a new policy that separates parents and children at the southern border (Miroff, Dawsey, & Sacchetti, 2018),

nonetheless they are taking into account neither experts, advocacy groups nor any other stakeholder.

Instruments of policy implementation.

Public policy instruments are the tools used by the government with a clear and defined purpose: to induce, ensure or avoid social change in certain way to attain some determined goals (Borras & Edquist, 2013, p. 1515). They are also conceived as "a set of techniques by which governmental authorities wield their power in attempting to ensure support and effect –or prevent- social change" (Vedung, 1998, as cited in Borras & Edquist, 2013, p. 1515).

Three general categories of instruments are known in public policy the regulatory, the economic-financial and the soft instruments (Borras & Edquist, 2013). These tools distinguish from each other are as follows:

(1) Regulatory instruments use legal tools for the regulation of social and market interactions. Naturally, there are many different types but common for them all is that these regulatory instruments (laws, rules, mandates, directives, etc.) are obligatory in nature, meaning that actors are obliged to act within some clearly defined boundaries of what is allowed and what is not allowed.

(2) Economic and financial instruments provide specific pecuniary incentives (or disincentives) and support specific social and economic activities such as subsidies, taxes, tariffs, etc.

(3) Soft instruments are characterized by being voluntary and non-coercive. They provide recommendations, make normative appeals or offer voluntary or contractual agreements such as campaigns, codes of conduct, recommendations,

voluntary agreements and contractual relations, public-private partnerships, etc. (p. 1516)

This section reviews different approaches to policy implementation analysis, that can be applied to the Zero-tolerance policy, which was turned into action through a memorandum from the Attorney General; this mandate clearly defined the boundaries of policy implementation (Sessions, 2018), then an executive order signed by President Trump reversed the policy (Parks, Detrow, & Snell, 2018).

Considering that "policies are not self-executing" (Elmore, 1979, p. 605), and adding that policy instruments alone cannot turn policies into practice, the following section introduces the public management in the realm of policy implementation.

Current trends on Public Management

Public management explores the stage after policy ideas are handed to agencies or institutions to perform the policy implementation and turn them into expected outcomes and explains the process in which the allocation and use of resources in government seek to create public value and is directed to accomplish the policy goals defined in the policy design (Sowa & Lu, 2017).

Approaches on public management have changed over time, thus the challenges that are to be faced that affect the empirical aspect of turning policies like the Zero-Tolerance Policy for Criminal Illegal Entry into action in the public sector.

A new approach to public management is emerging in opposition to the paradigims of the traditional public administration and the new public management (Bryson, Crosby, & Bloomberg, 2014; Newland, 2003). This new paradigm seeks to establish public-service values rooted in citizen engagement, public interest, and accountability in a constitutional

democracy (Newland, 2003). Under this emerging paradigm, government acts as a collaborator; the key objective is to create public value with efficiency and effectiveness and according to other democratic and constitutional values achieving policy objectives through cross-sector collaboration and civic engagement (Bryson, Crosby, & Bloomberg, 2014, p. 446).

The following segment expands the new challenges in public management involved in creating public value such as the operational capacity and the political support needed to achieve policy outcomes (Dahill-Brown & Lavery, 2012; Moore, 1995).

Operational capacity.

Organizational capacity comprises the financial resources and technical knowledge that governments, departments, agencies or actors possess and need to manage to overcome the implementation challenges entailed in carrying-out any public policy into practice (Dahill-Brown & Lavery, 2012, p. 564). Organizations and institutions are effective devices for executing public policies (Elmore, 1979), nevertheless, success in policy implementation not only depends on the type of policy instrument selected but also on the "organizational capacity of the public administration managing and enforcing them" (Vedung, 1998, as cited in Borras & Edquist, 2013, p. 1520).

Hill & Lynn (2009, as cited in Sowa & Lu, 2017) developed two different dimension related to operational capacity, the structure and craft dimensions. Structure focuses on the governance, the organizational design, the capacity, tools and resources of organizations needed to attain policy objectives and whether it facilitates or hinders the policy implementation (Sowa & Lu, 2017, p. 79). When minors were transferred to the ORR, the agency faced new challenges on structure and organizational capacity,

specifically in housing more than 2,300 children that were separated since the policy was implemented in "chain-link holding pens and tent cities that also were costly to HHS, around $ 775 per person per day" (Luthra & Taylor, 2018).

The craft dimension, covers the implementation of strategic planning, program evaluation or total quality management to enhance public management skills in attaining goals with efficiency and effectiveness. (Osborne & Gaeber, 1992, Peters & Waterman, 1982, as cited in Sowa & Lu, 2017, p. 83). This dimension focuses on public managers and their behavior to transform human, social and motivational capital into the achievement of public policy outcomes (Sowa & Lu, 2017).

According to a report by the US Government Accountability Office, neither the HHS nor the ORR developed a "plan for the potential increase in the number of children separated from their parents as a result of the Zero-tolerance policy" (Vazquez, 2018). The chief of the ORR, E. Scott Lloyd decided to personally review the requests to release migrant children from the agency, provoking a "bureaucratic bottleneck that dramatically increased the amount of time kids spend locked up" (Planas, 2018). Scott Lloyd also instructed officials not to plan for a continued increase in the number of children separated from their parents since the DHS stated that there was no policy of family separation, evidencing a poor communication between the ORR and DHS (Vazquez, 2018).

The capacity of the human resources in public management is related to the effectiveness of public policy, especially with the managers or the front-line workers also known as "street-level bureaucrats" (Tummers & Bekkers, 2014) in agencies delivering public services. The knowledge and capacity of street-level bureaucrats have a positive effect on policy effectiveness, it reduces resistance, and the more meaningful they perceive

their work is, the more willingness they will have in implementing their assigned task (p. 18).

The capacity, training and fundamental understanding of the needs of children are not the orientations that ORR possess, staff in charge of the welfare of minors were inexperienced in handling very young children that require more personal attention and knowledge in early childhood development and care (Luthra & Taylor, 2018).

All of these elements affected the effectiveness of the Zero-tolerance policy, and hence generating condemnations from different sectors influencing in two aspects of public management, legitimacy and support of a policy.

Legitimacy and support.

The political aspect of organizations and agencies lies in the fact that they are in part means of political bodies to implementing public policies, which sometimes can affect either positively or negatively their perception to the general public (Waeraas & Byrkjeflot, 2012).

Another challenge of public management is having an awareness of the different dimensions of public management that are necessary to address thoroughly the different scenarios that public agencies must confront while implementing public policies. Public management has a vertical dimension, compounded by the alignment of front-line workers during the policy implementation, also it has a horizontal dimension, the strategic inclusion of stakeholders in the administration of government policies and goals, and lastly, a systematic dimension in which both dimensions are intertwined as resources and strategies to achieve policy goals (Sowa & Lu, 2017, p. 79).

As stated above, reactions in oppose to the Zero-tolerance came from different groups including congressmen from both parties, and experts, labeling the practice of separating children from their parents as a practice of "zero humanity infringing an irreparable harm" (Thompson, 2018). Also, Attorney Generals from twenty-one States, expressed their strong opposition to the Zero-tolerance policy (Balderas, 2018), alongside with thirteen senators of the Republican party, the current party in government (Burr, 2018). Furthermore, the lack of political support was evident toward the ORR, that was perceived as a "deeply troubling" agency (Planas, 2018).

The lack of support and legitimacy in public management hinders the perception of public trust that the government generates.

Creating public value.

Public administration and public management are linked "in how the government seeks to create public value through problem-solving" (Sowa & Lu, 2017, p. 75). Not having a well-reasoned ethical perspective on a policy design can impact to an organization's credibility or it can create crises in public management that could affect public trust (Bowen, 2016, p. 565).

The new paradigm of public value governance sets that public management is in charged of creating public value by strengthening constitutional and democratic values as responsiveness and pursuing the best public interest. (Bryson, Crosby, & Bloomberg, 2014). The prevailing view of rationality and model of human behavior goes beyond the "administrative man" –traditional public administration-, and the "economic man" –new public management- promoting other pragmatic rationalities from the political, legal and ethical perspectives (Bryson, Crosby, & Bloomberg, 2014) believing in "public

spiritedness beyond narrow self-interest, and reasonable persons open to influence through dialogue and deliberation" (p. 446).

Public managers and policymakers should use a strategic perspective based on a triangle in which any course of action or public policy should be "aimed at achieving something that is substantively valuable, legitimate and politically sustainable and operationally and administratively feasible" (Moore, 1995, p. 22-23, as cited in Bryson, Crosby, & Bloomberg, 2014, p. 449).

Moore (2013) proposes a balance scorecard to guide public managers to align the three different perspectives of the strategic triangle to create public value:

- Public value perspective: depends on information gathered to fill out the values represented in the public value account;

- Legitimacy and support perspective: would monitor performance in maintaining relationships and mobilizing support from citizens, taxpayers, elected representatives and others in the political authorizing environment;

- Operational capacity perspective: focus attention on the public sector production processes that turn inputos of public money and authority into changes in the world that public values. (p. 109)

Hill & Lynn (2009, as cited in Sowa & Lu, 2017), exposed that the cultural dimension of public management is shaped by different rules, structures, forces, environments, dimensions and values. This concept examines how culture influences the outcomes of public management and explores which are the appropriate values to pursue, and the normative frameworks that encompass public policy and governance processes (Sowa & Lu, 2017).

According to the literature pertinent to creating public value in current democratic governance context, the most important values by which an organization should be driven by, are effectiveness, efficiency, accountability, justness and fairness (Bryson, Crosby, & Bloomberg, 2014, p. 449). Creating public value is a constant process of rebalancing hierarchically the trade-offs between "self, public and procedural interests" (Talbot, 2006, p. 30).

The Zero-tolerance policy aspired to achieve the value of lawfulness in the immigration system and expected to produce the outcomes of the rule of law and public safety enforcing a policy that once turned into reality, incurred against the children best interest by separating them from their parents. Therefore, the policy did not gather enough political support, worsening even more the operational capacity of the policy, specifically in the ORR which had administrative problems lacking effectiveness and accountability in delivering the public service of procuring for the welfare of the children. Overall, the deontological-based approach of the Zero-tolerance policy, aspire to create public value to the current government's self-interest.

Section Summary

As a summary of the literature reviewed, the Zero-Tolerance Policy for Criminal Illegal Entry can be analyzed from different approaches of policy studies such as the policymaking process and precisely the way in which the policy was designed to pursue its desired policy outcomes, including the ethical reasoning on its normative framework to define the intended target population. Subsequently, the policy design also outlines the practical aspect of turning the Zero-Tolerance Policy into reality through the models and instruments of policy implementation. According to the literature reviewed is in this point

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when public policy and public management studies converge to explain the challenges that governments face through agencies in transforming policy ideas into the desired policy outcomes. The paramount challenge is creating public value by the executory agencies in pursuing the best public interest.

Recent studies have highlighted that "the most striking feature is the relative absence of empirical investigation of either the normative proposition of public value or its efficacy as a framework for understanding public management" (Williams & Sharer, 2011, 1373, as cited in Bryson, Crosby, & Bloomberg, 2014, p. 449). Likewise, qualitative studies in public administration "represent a very small percentage of the published journal articles […] public administration research should increase the use of qualitative traditions" (Ospina, Esteve, & Lee, 2017, p. 593). Consequently, a lack of research exists in the literature review about qualitative studies concerning public value produced in public management.

Aim

The present paper intends to answer the following question: Is the Zero-Tolerance Policy for Criminal Illegal Entry designed to generate public value through the Office of Refugee Resettlement –ORR- during its formulation and implementation? The purpose of the research is to examine the policy formulation, implementation, and failure of the Zero-Tolerance Policy for Criminal Illegal Entry.

In this research, the ethical analysis will not focus on the immigration but in policy design and implementation.

RESEARCH DESIGN

Approach

The approach that is appropriate to the aim and purpose of the present research is a qualitative research. Qualitative studies in public administration improve the understanding of issues in public administration and their relations with other theoretical frameworks of the field (Ospina, Esteve, & Lee, 2017, p. 601). Qualitative methods generate different perspectives to interpret and understand better the social context, and its phenomena, "it carries the mission to study the social body" (Alasuutari, 2010, p. 147).

The qualitative design will help to understand, and assess the meaning and concept of public value, in policymaking and public management. Consequently, the epistemological positioning is grounded in interpretivist research "aiming for a holistic picture of historically unique situations and embracing complexity" (Ospina, Esteve, & Lee, 2017, p. 594).The research design is a single exploratory case study which is beneficial to obtain details about behaviors, actions, "larger details, descriptions and it provides a holistic interpretation about a particular activity" (Suryani, 2008, p. 120). Case studies examine, describe, explain or explore in depth details about policies, decisions or programs that are unique (O'Sullivan, Rassel, Berner, & Taliaferro, 2017; Eller, Gerber, & Robinson, 2018).

The exploratory case study presents a research question to understand the behavior of the unit of analysis (Eller, Gerber, & Robinson, 2018), the Office of Refugee Resettlement –ORR-.

DISCUSSION AND CONCLUSION

In conclusion, the Zero-Tolerance Policy for Criminal Illegal Entry possess a deontological-based approach, that in the trade-off of public values, lets aside consequences and values such as human decency, respect, transparency. The lack of consideration of consequences such as infringing damage onto children, is an example of a poor ethical analysis in problem-solving.

The policy does not respond to a general public interest, in contrast upholds the Trump's administration self-interested. Since it lacks of operational capacity, legitimacy and support and effectiveness in achieving the desired policy outcome of ending illegal immigration, the Zero-tolerance

One different angle that the present project could have taken is to analyze the public value created by the agency of the DHS, US Customs and Border Protection –CBP- since the DHS was directly involved with the DOJ in formulating the implementation of the Zero-tolerance policy and moreover, the family separation was done by CBP agents in the Southern Border before sending the children to the ORR. In this angle, the CBP also can be analyzed from organizational theory of structure, human resources, political, symbolic and leadership frames (Bolman & Deal, 2013).

Since Street-level bureaucrats are a potential unit of analysis that has received much attention from neither of policy studies nor public management scholars (Sowa & Lu, 2017), the behavior of the CBP agents or the ORR staff might be considered for future researches.

Promotion and realization of public values fall within the realm of public management and public policy-making (Jorgensen & Rutgers, 2015). Any rational

decision-making process must be framed in an ethical "degree of flexibility" (Radhika, 2012, p. 31) while addressing complex challenges such as illegal immigration.

In the traditional perspective of public administration at the very beginning of the twentieth century government agencies were vulnerable to failure due to the high involvement in politics –elected officials were in charge of determining the policy objectives- and the centralized and hierarchical model of policy implementation driven by efficiency (Bryson, Crosby, & Bloomberg, 2014). The Zero-tolerance policy has a top-down model of implementation, it was controlled from the top, the stakeholders were ignored since the beginning, and the policy responded to the government's interest, not to the general public interest. To conclude, the Zero-tolerance policy had an inadequate design to generate a policy success.

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APPENDIX A

APRIL 6, 2018

MEMORANDUM FOR FEDERAL PROSECUTORS ALONG THE SOUTHWEST BORDER

FROM: THE ATTORNEY GENERAL

SUBJECT: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)

   On April 11, 2017, I issued a memorandum to all federal prosecutors entitled "Renewed Commitment to Criminal Immigration Enforcement," in which I directed the prioritization of the prosecution of certain criminal immigration offenses. I further directed each United States Attorney's Office along the Southwest Border to work with the Department of Homeland Security to develop guidelines for prosecuting offenses under 8 U.S.C. § 1325(a).

   Those seeking to further an illegal goal constantly alter their tactics to take advantage of weak points. That means we must effectively respond with smart changes also. The recent increase in aliens illegally crossing our Southwest Border requires an updated approach. Past prosecution initiatives in certain districts—such as Operation Streamline—led to a decrease in illegal activities in those districts. We must continue to execute effective policies to meet new challenges.

   Accordingly, I direct each United States Attorney's Office along the Southwest Border— to the extent practicable, and in consultation with DHS— to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a). This zero-tolerance policy shall supersede any existing policies. If adopting such a policy requires additional resources, each office shall identify and request such additional resources.

   You are on the front lines of this battle. I respect you and your team. Your dedication and insight into border reality is invaluable. Keep us informed, and don't hesitate to give us suggestions for improvement. Remember, our goal is not simply more cases. It is to end the illegality in our immigration system.

   This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Office of the Attorney General
Washington, D. C. 20530

April 11, 2017

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM: THE ATTORNEY GENERAL

SUBJECT: Renewed Commitment to Criminal Immigration Enforcement

Charging Practices

It is a high priority of the Department of Justice to establish lawfulness in our immigration system. While dramatic progress has been made at the border in recent months, much remains to be done. It is critical that our work focus on criminal cases that will further reduce illegality. Consistent and vigorous enforcement of key laws will disrupt organizations and deter unlawful conduct. I ask that you increase your efforts in this area making the following immigration offenses higher priorities. Further guidance and support of executing this priority—including an updated memorandum on charging for all criminal cases—will be forthcoming.

8 U.S.C. §1324 ("[b]ringing in and harboring certain aliens") and related offenses: Each District shall consider for prosecution any case involving the unlawful transportation or harboring of aliens, or any other conduct proscribed pursuant to 8 U.S.C. § 1324. If a determination must be made regarding use of finite resources, a priority should be given to those who are bringing in three or more aliens into the United States and those who are transporting or harboring three or more aliens, as well as offenses where there are aggravating circumstances, such as those involving serious bodily injury, physical or sexual assault, or the death of any person. Priority should also be given to prosecuting any offenses under section1327 ("aiding or assisting criminal aliens to enter") and section 1328 ("importation of aliens for immoral purposes").

8 U.S.C. § 1325 ("[i]mproper entry by alien"): Each District shall consider for felony prosecution under 8 U.S.C. § 1325 any case where a defendant has two or more prior misdemeanor improper entry convictions or one or more prior misdemeanor improper entry convictions with aggravating circumstances, such as a felony criminal history, gang membership or affiliation, multiple prior voluntary returns, prior removal, deportation or exclusion, or other aggravating circumstances. Each District shall also consider for felony prosecution under 8 U.S.C. § 1325 any case where a defendant knowingly enters into a marriage for the purpose of evading any provision of the immigration laws.

Regarding misdemeanor violations of 8 U.S.C. § 1325, I ask that each U.S. Attorney's Office on the Southwest Border (i.e., District of Arizona, District of New Mexico, Southern

District of California, Southern District of Texas, and Western District of Texas) work with the U.S. Department of Homeland Security and any other appropriate agency to develop a set of guidelines for prosecuting such violations. These guidelines should aim to accomplish the goal of deterring first-time improper entrants. Each District should submit its guidelines to the Office of the Deputy Attorney General by April 24, 2017.

8 U.S.C. § 1326 ("[r]eentry of removed aliens"): Each District shall consider prosecution of 8 U.S.C. § 1326 for each illegal reentrant. Priority, however, must be given to defendants who have been convicted of an aggravated felony, have any prior criminal history indicating the defendant poses a danger to public safety, have one or more administrative or criminal immigration violations, gang membership or affiliation, or where other aggravating circumstances are present.

18 U.S.C. § 1028A ("[a]ggravated identity theft") & 18 U.S.C. § 1546 ("[f]raud and misuse of visas, permits, and other documents"): Each District shall consider, to the extent practicable, prosecution of both aggravated identity theft under Section 1028A and document fraud under Section 1546 in relation to the immigration offenses listed above.

18 U.S.C. § 111 ("[a]ssaulting, resisting, or impeding" officers): Each District shall consider, to the extent practicable, prosecution of assault, resisting, or impeding officers under Section 111, while they are engaging in the performance of their official duties in the administrative and criminal immigration context. More information on this will follow.

Sentencing Practices

At the sentencing phase of each federal case, prosecutors should seek, to the extent practicable, judicial orders of removal and a term of supervised release that is consistent with the factors set forth in 18 U.S.C. § 3553(a). I know many of you are already seeking these measures from District Courts, and I ask that you continue this effort to achieve the results consistent with this guidance.

Border Security Coordinators

In furtherance of these objectives, I also direct every District to designate a Border Security Coordinator ("Coordinator") by close of business on April 18, 2017. These Coordinators will be responsible for:

- overseeing the investigation and prosecution of the offenses listed above;
- attending training programs with other Coordinators regarding these offenses;
- providing legal advice and training to AUSAs regarding these offenses; and
- maintaining and routinely reporting prosecution statistics related to these offenses.

Each Coordinator will be responsible for convening meetings with representatives from the Department of Homeland Security—including Immigration and Customs Enforcement, Homeland Security Investigations, U.S. Customs and Border Protection, and United States

Citizenship and Immigration Services as well as other law enforcement partners deemed necessary to accomplish this criminal immigration enforcement effort. The Coordinator will work with this group to (1) coordinate specific immigration enforcement initiatives, emphasizing those initiatives that will have the greatest impact on public safety; (2) initiate training programs; and (3) facilitate information sharing.