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Institutional innovation: how it happens and why it matters

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INTRODUCTION[1]

Institutional innovation was not a central plank of Barack Obama's 2008 and 2012 presidential campaigns, which featured no eye-catching equivalents of Bill Clinton's promise to "reinvent government." Nor has it been the centerpiece of Obama's administration—or, for that matter, of the Republican critique of his administration. And if the recent past is any guide, it will not play a major role in the 2016 campaign either.

It is not hard to see why. Neither institutional innovation nor its fraternal twin, institutional reform, is likely to catch voter fancy. Both sound too much like yawn-inducing "government reorganization." When asked what the next president should do, issue experts and political pundits are far more likely to respond with lists of proposed policies, themes, and narratives.

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Throughout U.S. history, our leaders have found institutional remedies for crises of public policy and public legitimacy. Consider some examples:

- The inadequacies of the Articles of Confederation set the stage for the Philadelphia Convention of 1787 and a new constitution—one of the greatest feats of institutional innovation in human history.

- Recurrent financial panics in the last decade of the 19th century and the first decade of the 20th opened the door to the creation of the Federal Reserve Board.

- The Great Depression produced a flurry of new executive branch and independent agencies to deal with problems that exceeded the capacity of state and local governments.

- The need for greater international economic coordination led to the Bretton Woods conference and a number of new multilateral institutions.

- The onset of the Cold War spawned the Department of Defense, the National Security Council, and the Central Intelligence Agency.

- Demands for more effective protection of the water Americans drink and the air they breathe spurred the creation of the Environmental Protection Agency.

- The growing monopoly of fiscal competence and power in the executive branch led the legislature to counter with the Congressional Budget Office.

- The terrorist attacks of 9/11 sparked a unified Department of Homeland Security and a massive reorganization of the U.S. intelligence apparatus.

- Most recently, the near-collapse of the financial system in 2007-2008 gave rise to the Financial Stability Oversight Council and the Consumer Financial Protection Bureau.

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The moral is clear: in challenging times, political leaders are drawn to institutional reform, not because they want to undertake it, but because they must. Today, public trust in government stands near historic lows; the government is unable to make even routine fiscal decisions; larger issues are mired in gridlock; and our institutions seem less and less able to look beyond the concerns of the day and make provision for the future. In these circumstances, we should refocus our attention on reforming institutions whose performance is falling so woefully short.

WHY INSTITUTIONS?

...[I]nstitutions typically define the locus of responsibility and accountability.

That human beings are social animals has been a philosophical staple for millennia. But it is not as clear why—as is so often the case—our sociality assumes institutional form. There are three distinct standpoints—the economic, political, and managerial—from which contemporary scholars have offered explanations.

According to the Nobel Prize-winning economist Douglass North, institutions are the "humanly devised constraints that structure political, economic and social interaction." We need these constraints, he suggests, to "create order" and "reduce uncertainty."[2] This matters because we need effective cooperation to achieve many of our most important goals. But cooperation is difficult to sustain in large groups whose members are not well known to one another. To counteract the incentives that individuals experience to go their own way, effective institutions raise the benefits of cooperative solutions or the costs of defecting from them. Effective institutions also lower the costs of acquiring information on which sound decisions depend as well as the obstacles to making those decisions.

In North's view, institutions include both informal constraints such as customs and traditions as well as formal rules. In modern legal-constitutional polities, the formal dimension of institutions takes pride of place. Political institutions are structures of rules that shape how decisions are made, implemented, evaluated, and revised within the domains the rules define. Put simply, the rules establish both the scope of public institutions' authority and the manner in which they exercise that authority.

From the political standpoint, as distinct from the economic, institutions perform several key functions. In the first place, they often define leadership in particular issue domains. When it comes to environmental issues, for example, the assumption is that the EPA will be the principal actor. That does not mean that others will not be involved. Often environmental issues affect energy, commerce, agriculture, and even defense, and task forces involving multiple agencies are far from rare. Still, it is usually clear who is chairing the meeting.

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Second, institutions typically define the locus of responsibility and accountability. If there is an intelligence failure, the heads of the major intelligence agencies will be the first to appear before congressional oversight committees. Conversely, these agencies will be central players in efforts to reshape their mission and organizational structure.

Third, for good and ill, institutions provide added stability to politics and policy. They usually support the policies that fall in their domain. Reforming those policies would force internal organizational changes, which all institutions resist, while repealing those policies would tend to shrink their responsibilities—and their budget and workforce as well. Embedding a new policy within new institutions, as President Franklin D. Roosevelt so often did, makes it more likely that those policies will endure, as so many New Deal policies have.

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From a managerial perspective, finally, institutions serve important purposes. They have incentives to gather, organize, and store information pertinent to their missions. Likewise, they have good reason to oversee the implementation of policies within their domain, if only to ward off damaging inquiries from outside if these policies fall short. By providing continuity over time, they become the locus of policy-relevant memory and history, counteracting to some extent the myopia of the quotidian political process.

In addition to these overarching economic, political, and managerial functions, institutions typically are created to promote specific purposes. For example, the Mine Safety and Health Administration (MSHA) is an agency within the federal government's Department of Labor that is charged with protecting the health and safety of the nation's miners. Its effectiveness can be measured in relation to those purposes.

There are many reasons why an institution such as the MSHA might fall short, and sometimes has. It might be deprived of the resources it needs to do its job well—for example, of funding needed for health and safety inspectors to visit every mine at regular intervals. It might be subjected to political pressures that thwart vigorous enforcement of health and safety standards. Or its institutional location might make it harder to preserve the visibility needed to maintain public support for its mission. This can happen when free-standing agencies are merged into larger, multi-purpose institutions. For example, some analysts believe that the post-9/11 decision to fold the Federal Emergency Management Agency (FEMA) into the Department of Homeland Security contributed to FEMA's woeful performance after Hurricane Katrina struck the Gulf Coast.

WHY INSTITUTIONAL REFORM IS DIFFICULT

Sometimes institutions are flawed from the beginning. Usually, however, they are reasonably well-suited for their missions when they are created. But over time, circumstances change while institutions do not, which eventually diminishes their effectiveness.

As a general matter, institutions resist change, even when changes in the environment make it necessary, because established ways of doing things are comfortable and familiar. But other factors also complicate the task of reform.

As a general matter, institutions resist change, even when changes in the environment make it necessary, because established ways of doing things are comfortable and familiar. But other factors also complicate the task of reform. Changes often reallocate power outside the institution. For example, reforms can reduce the jurisdiction of congressional committees, who fiercely resist any diminution of their power. Underlying this resistance is an enduring fact: even in a modern state that gives wide discretion to executive agencies, the law establishes basic parameters that agencies cannot exceed. And our system is designed to make law hard to change.

It is difficult to mobilize public support for institutional innovation as a counterweight to such resistance. The people are most interested in policy outputs that affect their lives, and their support can tip the scales when they get behind policies that they view as directly connected to those outputs. Only rarely do they see a relation between new institutional arrangements and their daily lives. So they are usually content to leave such matters to experts and elected officials.

In these circumstances, the status quo usually wins out—except when there is enough support for change across party lines to overcome the resistance of those who profit from the status quo and will fight to preserve it. This broad support, which is hard to mobilize in the best of times, is even more difficult to achieve when the political system is deeply divided along partisan and ideological lines, as it is today.

As Brookings's scholar Elaine Kamarck points out, moving a problem onto the public agenda by no means guarantees that elected officials will be able to solve it. Policy options may affront core American values; their complexity may defy public comprehension; average citizens may not believe that the policies under consideration will do much to remedy the situation; and there may not be a single proposal that finds enough allies to build an effective majority for change. Divided government often complicates the politics of reform, and groups that represent the interests of potential losers from reform can sometimes block the majority from working its will.[3]

None of this is to say that institutional reform is impossible, or even rare. Throughout our history, leaders have seized opportunities to reform existing institutions and create new ones. Their success has revitalized governance and has contributed to the longevity of our constitutional order. And because we need a new era of reform, it is of more than academic or historical interest to understand how past leaders have managed to overcome the perennial obstacles to institutional change.

As readers may have noticed, we are using the terms "innovation," "reform," and "change" almost interchangeably. The principal focus of this paper, however, is on the kind of change that leads to the creation of new institutions rather to the reform of existing ones. There are intermediate cases that pose special difficulties—for example, the decision to cobble together a large number of existing agencies into the Department of Homeland Security. Still, the distinction between reform and creation is clear enough, even though most sources of resistance to change apply to both categories.

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HOW INSTITUTIONAL INNOVATION HAPPENS

In a book published three decades ago, the late political scientist Nelson Polsby explored the circumstances in which political innovation occurs. Combining analysis with case studies, he created an inventory of enabling conditions for innovation. Although most of his case studies focused on policy change, the typology he created illuminates institutional innovation as well.

Polsby found seven dimensions along which policy innovations vary:

- Timing: did they occur quickly or slowly?
- Specialization: were experts the dominant force in shaping policy, or politicians?
- Point of departure: do the innovations begin with high or low levels of agreement about the need to act?
- Saliency: were policy alternatives publicly visible or not prior to the enactment of reforms?
- Political conflict: were the parties strongly opposed on specific innovations, or not?
- Role of research: were the options carefully researched in advance, or rather improvised?

- Staging: did alternatives exist prior to the process of reaching solutions, or were they invented during that process?[4]

Not surprisingly, these dimensions turned out not to be fully independent of each other. Instead, they tended to cluster into two polar types, with some intermediate cases. At one pole we find what Polsby calls “acute” innovations. These innovations typically occur quickly; they are dominated by individuals who are close to the locus of decisionmaking; the generation of alternatives takes place within the decisionmaking process, not prior to it; and the level of partisan conflict is relatively low.[5] A good example of Polsby’s acute innovation is the creation of the Truman Doctrine to counter the growing Soviet threat after World War Two.

At the other pole we find “incubated” innovations. These take place slowly, frequently over many years. At first, the general public and elected officials may not recognize the existence of the problems to which the reforms are addressed, let alone acknowledge the need to act on them. Plans and alternatives are crafted through a decentralized process, long before the process of decisionmaking begins. They enter the political process through speeches, party platforms, and congressional hearings that often draw on distillations of research (such as op-eds) for non-expert audiences. And because of this long march from private research to public visibility, these innovations tend to get caught up in partisan politics. In Polsby’s account, Medicare is a classic example of an important innovation that was incubated over years—in fact, decades.[6] (The doctrine of military “jointness” eventually articulated in the landmark Goldwater-Nichols bill is another example of an innovation that was long in the making—for four decades, in fact.)

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As Polsby acknowledges, there is a distinction between types of innovation and the different kinds of circumstances that can make possible their enactment. When events create a situation that the political system deems to be a crisis, inaction is not an option, and neither is extended deliberation. In these circumstances, decisionmakers must either draw on previously developed policy alternatives or go with whatever policy emerges from high-pressure emergency meetings. Policy entrepreneurs may seek to exploit such situations to gain acceptance for policies at best distantly related to the actual crisis. (Recall Rahm Emanuel’s famous dictum, “You never want a serious crisis to go to waste . . . it’s an opportunity to do things you think you could not do before.”) But as Polsby observed back in 1984, and the president Emanuel worked for later learned, the strategy of crisis-exploitation has limits that are easy to reach but hard to surmount.

Because crises are action-forcing, would-be reformers often claim that the situation they wish to change is in fact a crisis. But it is hard to convince elected officials and the general public who do not see a crisis that they should. It is especially difficult to convince most people to act now to ward off something that will be a crisis years or decades hence if they fail to act. The challenge of making the future seem urgent in the present has thus far stymied the large steps that advocates say must be taken to slow and eventually halt climate change. To be moved to act, most people need to experience at least a brief foreshadowing of what is to come. Super-storm Sandy changed some minds about the threat climate change poses to low-lying coastal areas, but not enough to break the political logjam.

What creates these windows for innovation? It varies. Sometimes events—often human failures or natural catastrophes—make a persistent problem publicly visible.

For the most part, innovators are trying to change situations that the public and politicians do not regard as crises and may not regard as problems at all. Sometimes events will move long-prevailing conditions into the category of problems, as the shooting of Michael Brown in Ferguson, Missouri did for policing in minority communities.

Kamarck defines a category of "persistent problems" that are well known within specific policy communities but not to the press or the general public. In such cases, policy entrepreneurs must bide their time until a political opportunity arises.[7]

What creates these windows for innovation? It varies. Sometimes events—often human failures or natural catastrophes—make a persistent problem publicly visible. Defeat on the battlefield can spur military reform. Intelligence failures such as 9/11 can lead to institutional innovation. Occasionally a decisive election creates a mandate for change. And sometimes massive changes in public opinion compel elected officials to pay attention, as mounting support for same-sex marriage and the legalization of marijuana has done in recent years. These changes are rarely spontaneous. As our case study of the EPA illustrates, individual policy agitators and committed social movements typically labor for years to build a critical mass of public awareness and support.

CASE STUDIES

Against the backdrop of Polsby's typology, let us turn to case studies of institutional reform in which one or more of his proposed dimensions turns out to be especially significant.

FEDERAL DEPOSIT INSURANCE CORPORATION

Analytical summary

The creation of the Federal Deposit Insurance Corporation (FDIC) is a classic example of institutional innovation undertaken under extreme pressure—the threatened collapse of the nation's entire banking system. It occurred very quickly; there was high early agreement about the need to act; experts were highly influential in designing the program; and the federal program, although improvised, drew on prior experience at the state level. Partisan disagreement was muted, but given the size of the Democrats' congressional majority after 1932, Republican disagreement would not have made much difference.

History

Following the market collapse of 1929, banks throughout the United States closed at alarming rates, spurring swarms of Americans to withdraw their deposits. Large-scale withdrawals forced banks to contract credit and liquidate assets, which reduced the availability of cash to the public and depressed asset prices. Increased cash demands left banks unable to fulfill panicked withdrawal requests, forcing closures and exacerbating public skepticism of financial institutions' solvency. The Federal Reserve alone was ill-equipped to address public distrust of the banking system.[8]

As President Franklin Delano Roosevelt took the oath of office in 1933, the system's failure was accelerating. Roughly 5,000 banks had suspended operations between the crash of 1929 and early 1933; by the end of 1933, approximately 4,000 banks would close.[9] A general climate of uncertainty, coupled with increasingly frequent withdrawals, rumors of dollar devaluation, and speculative holdings of foreign currencies placed tremendous liquidity pressures on American banks. This confluence of factors proved overwhelming by March of 1933 and forced every state to temporarily suspend banking activity in order to avert further bank closures. Less than two days into his presidency, Roosevelt was forced to take similar action at the federal level.[10]

At the root of the banking crisis was a lack of depositor confidence in the stability of deposits. To combat this crisis and forestall impending economic collapse, lawmakers considered implementing a federally backed deposit insurance program. A number of states had experimented with deposit insurance systems to varying degrees of success, but a lack of urgency had made implementation of such a system on the federal level politically untenable. The economic peril and public outcry of the early 1930s provided the opportunity for institutional innovation.[11]

Most financial experts recognized that widespread bank closings would continue unabated without federally-backed deposit insurance. Nonetheless, conservatives in Congress contended that federal deposit insurance would be prohibitively expensive. Other critics recounted failures of state-level deposit insurance systems in previous decades. Still others championed a limited role of government and opposed market intervention as a matter of principle. But the urgency of the crisis swamped these caveats and members of Congress passed the Banking Act of 1933, which established the Federal Deposit Insurance Corporation (FDIC).[12]

The act allocated U.S. Treasury money and Federal Reserve stock to the FDIC, which provided up to $2,500 of insurance per depositor at all member banks. In its effort to encourage deposits and strengthen banks' financial positions, the FDIC was an immediate success. By late 1934, FDIC-insured banks held roughly 98 percent of the total assets held in commercial banks. Throughout 1934, the total number of deposits increased substantially, with roughly half of the dollar amount that had been withdrawn in the previous three years being redeposited in banks. Success muted lingering criticism and secured the FDIC's institutional legitimacy.[13]

In subsequent decades, the FDIC shifted its focus toward creating long-term strategies to avoid future banking crises by imposing new sets of standards on the nation's banks. Much to the dismay of laissez-faire proponents, the federal government assumed an active role in monitoring and guiding financial institutions, reining in the ruinous inter-bank competition that was widely blamed for creating the banking crisis. By providing immediate redress for the banking crisis of the 1930s and security for depositors amidst economic turmoil, the FDIC persuaded the people that effective banking regulation worked to the benefit of average Americans.[14]

THE DEPARTMENT OF HOMELAND SECURITY

Analytical summary

The creation of the Department of Homeland Security (DHS) represents another good example of "acute" institutional innovation undertaken in the shadow of catastrophe. Like the FDIC, the DHS was not invented out of whole cloth. The international terrorist attacks of the late 1990s had impelled American lawmakers to consider homeland security issues and improved border protection measures. The conceptual and structural groundwork for the Department of Homeland Security was initially proposed by the Hart-Rudman Commission in early 2001.[15] In March of that year, Representative Mac Thornberry (R-TX) proposed a bill that would fold a number of national security-related agencies into a single cabinet department.[16] Committee hearings proceeded, but the proposal moved no further. The convergence of expert opinion on the need for reform had not yet converted a persistent policy problem into a demand for action strong enough to overcome the forces of opposition and inertia.

History

The scale and audacity of the September 11 attacks terrorized the public and compelled lawmakers to approach institutional reform with an immediacy that prior attacks such as the bombings of the U.S.S Cole and the 1998 U.S. Embassy bombings in Kenya and Tanzania had failed to inspire. On October 8, 2001, President George W. Bush established the Office of Homeland Security and the Homeland Security Council by executive order.[17] This order garnered democratic legitimacy because the president enjoyed nearly unanimous approval in the weeks after 9/11.[18]

Congress was unable to match the president's pace. One month after the attacks, Senators Joseph Lieberman (D-CT) and Arlen Specter (R-PA) proposed legislation to establish the Department of National Homeland Security, but the bill never emerged from committee hearings.[19]

Confronted with congressional inaction, President Bush spearheaded the establishment of the U.S. Department of Homeland Security, the cabinet-level descendant of his post-9/11 executive orders. In his fiscal year 2003 budget proposal, the president proposed increasing spending from $19.5 billion to $37.7 billion to fund an array of national security enhancements.[20] In keeping with this agenda, Bush submitted a proposal to Congress outlining the creation of the Department of Homeland Security, which aimed to improve national security infrastructure by increasing inter-agency cooperation and streamlining the domestic security command.[21] In light of the pronounced threat of terrorism on U.S. soil, he argued, there was no margin for inefficiency or miscommunication between security-related agencies. This new cabinet-level department aimed to avert this inefficiency by consolidating dozens of domestic security-related organizations into a more collaborative and capable agency. On June 24, Representative Dick Armey (R-TX) brought Bush's recommendations to the House of Representatives.[22]

Democratic dissenters were concerned that the new agency would threaten civil liberties. They also objected to the explicitly anti-union posture of the department, which forbade its workers from participating in organized labor in the name of national security. Pressure from the White House to enhance national security infrastructure, however, compelled a number of moderate Democrats to support the bill. In late July 2002, the House passed the bill with the support of nearly all its Republican members, and just under half of voting Democrats, by a final tally of 295 to 132.[23] Pressure to bring the Department of Homeland Security to fruition intensified, and by November of 2002, demands for security improvements dwarfed all competing concerns: the bill passed the Senate by a margin of 90 to 9.[24] President Bush signed the Homeland Security Act into law on November 25, 2002.

President Bush played an active role in the act's implementation. The day he signed the bill into law, he submitted a reorganization plan to Congress, which set an aggressive timeline under which the Department of Homeland Security was to assume its duties. Given the perceived imminence of terrorist threats, the executive deemed it critical that DHS be established and consolidated expeditiously. This accelerated timeline aimed to bypass the bureaucratic inertia of a lengthy implementation process and set the DHS on its mission as quickly as possible.[25]

This close executive management continued into early 2003, when President Bush modified his original recommendations to delineate the responsibilities of several new units to be incorporated into the DHS's Border and Transportation Security Directorate. These measures greatly broadened the functions of several DHS organizations, constituting a substantial expansion of sub-bureaus' duties as well as a department-wide streamlining effort. DHS's absorption of the Coast Guard, the Federal Emergency Management Agency, the Transportation Security Administration, the Customs Service, and the Secret Service greatly expanded the purview of the new agency and enhanced inter-agency cooperation.[26]

The Department of Homeland Security's swift, perhaps hasty, planning and implementation may have contributed to confusion about its role and accountability. Numerous congressional committees and independent commissions have separately claimed jurisdiction over DHS. According to former Secretary Michael Chertoff, "[t]he [DHS] winds up getting a mixed message...[s]o either the department has no guidance or, more likely, the department ignores both [messages] because they're in conflict. And so the department does what it wants to do."[27] This scattered and often conflicting congressional oversight affords DHS considerable autonomy.

Although allegations of questionable intelligence-gathering practices have raised questions about the agency's compliance with legal and constitutional restraints, Americans have proved willing to grant government agencies considerable leeway to pursue law enforcement and anti-terrorism objectives in the post-9/11 era. Despite ongoing managerial challenges and low employee morale, DHS has become an established institutional feature on the terrain of national security.

THE ENVIRONMENTAL PROTECTION AGENCY

Analytical summary

In many respects, the creation of the Environmental Protection Agency (EPA) represents the polar opposite of the circumstances that produced the FDIC. It took many years to persuade Americans that environmental degradation represented a problem to which the federal government needed to respond. A grassroots social movement took the lead in the process of persuasion, which ultimately yielded support across party lines. Still, many conservatives remained wary about the potential for intrusive federal regulation, and President Richard M. Nixon's eventual embrace of a national environmental policy reflected political calculation at least as much as substantive conviction. Although the EPA has become an enduring institution, its goals and policies remain politically contested in ways that the FDIC is not.

History

Rachel Carson's *Silent Spring*, published in September of 1962, is a carefully researched and artfully written attack on the indiscriminate use of synthetic pesticides in American agribusiness. Carson masterfully conveys a vast body of scientific literature to the layperson, effectively framing pollution as an urgent human health concern rather than an inevitable consequence of industrialization.[28] Her book had a sensational impact on public consciousness, reaching the top of the best-seller list almost immediately. By December 1963, President John F. Kennedy's Science Advisory Commission had issued a report calling for decreased use of toxic chemicals, adding the political weight of the executive branch to a burgeoning national conversation on environmental issues.[29]

Throughout the 1960s, environmental activists worked within and outside of the counter-culture movement to focus public attention on the perils of environmental degradation.[30] By 1969, the environmental movement had gained so much momentum that continued inaction was impossible.[31] Senator Edmund Muskie (D-ME) served as the vanguard of legislative reform, drafting the National Environmental Policy Act (NEPA) to "prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." NEPA passed in the House by vote of 372 to 15 and cleared the Senate by voice vote with no recorded dissent.[32] By the time the legislation arrived on Nixon's desk in December 1969, public opinion was virtually unanimous on the need for a national environmental policy.

As president, Richard Nixon had worked to decentralize government and promote private sector growth by rolling back government regulations.[33] On its face, NEPA appeared to be an affront to his administration's agenda.[34] And he privately regarded the environmental movement as a political fad orchestrated by anti-war radicals.[35]

Nixon's response to the environmentalists' challenge is best understood in the context of his broader political calculus. As the influence of the counter-culture rose, so did his concern about the impact of widespread discontent on the legitimacy of his administration. By signing NEPA, Nixon aligned himself with an issue for which there was broad public support and successfully bolstered his standing with the American public. In addition, supporting NEPA offered him a long-run electoral advantage. Environmental protection was the signature cause of Senator Muskie, who loomed as his greatest obstacle to reelection in 1972.[36] Accordingly, Nixon reordered his administration's priorities to blunt the senator's anticipated advantage.

So it was that on New Year's Day 1970, he transformed reluctance into spectacle and made authorizing environmental protection his "first official act of the decade."[37] Convinced that environmental protection provided both short- and long-term political advantages for his administration, Nixon called for a "strong, independent agency" to implement NEPA's lofty goals. In December of 1970, Nixon created the Environmental Protection Agency (EPA), appointed William D. Ruckelshaus its chief administrator, and charged the new agency with establishing and enforcing environmental protection standards.[38]

By promoting institutional reform, President Nixon effectively extricated the environmental movement from the counter-culture, shifting subsequent debate over the impact of pollution on public health into the realm of institutional governance and reform. This shift changed the nature of environmental activism: by the late 1970s most environmental groups mobilized around public policy that was designed to manage and control sources of pollution.[39] Empowered with statutory leverage, environmentalists used public advocacy lawsuits as a vehicle to impel Administrator Ruckelshaus to ramp up the promulgation and enforcement of environmental regulations.[40]

Ruckelshaus recognized that public support was central to actualizing the new agency's regulatory authority: as long as the electorate supported the EPA's actions, politicians would not stymie its long-term efforts.[41] Although the EPA generally enjoyed broad public support, tensions between individual liberty and environmental protection flared during its formative years, and the scope of its regulatory authority remains hotly contested. Still, even its sternest critics acknowledge an important federal role in environmental protection. A product of grassroots agitation and political calculation, the EPA has become part of the fabric of American government.

THE CONGRESSIONAL BUDGET OFFICE

Analytical summary

Although not as crisis-driven as the creation of the FDIC and DHS, the Congressional Budget Office (CBO) is far closer to Polsby's model of "acute" innovations than to those that are "incubated." At the same time, the bill of which the CBO was an important part represented a response to the long-standing imbalance between the executive branch and Congress over the budgeting process, and the substance of that bill reflected careful policy analysis rather than hasty improvisation. The passage of that bill was driven by a coalition of elected officials and budget experts rather than by pressure from below, and its passage represented the victory of institutional over partisan concerns. Its enactment took place against the backdrop of the Watergate crisis, which had alarmed many Republicans and undermined their support for President Richard M. Nixon.

History

The Congressional Budget Office (CBO) was established by the Congressional Budget and Impoundment Control Act of 1974, a legislative redress to executive overreach on fiscal and budgetary matters.[42] Since the 1920s, the executive had assumed unprecedented responsibility for fiscal policy. Increased executive authority came at the expense of congressional budgetary power, and by the late 1960s, long-standing tensions culminated in a "budget war." [43]

This war became especially acrimonious in 1972, when President Nixon made congressional budgetary mismanagement a centerpiece of his reelection campaign. Winning reelection with 60 percent of the popular vote, President Nixon felt he had a mandate to rein in congressional spending. Meanwhile, Democrats had maintained a healthy majority in the House (239-192) and gained two seats in the Senate (57-43). Recognizing that Democrats could override a veto of appropriations legislation, President Nixon acted unilaterally to rein in federal spending by impounding billions in appropriated funds.[44]

In an effort to improve congressional control of the budget process, Congress established a Joint Study Committee on Budget Control (JSC) in 1972. The JSC made two key recommendations: 1) the formation of House and Senate Committees on the Budget, responsible for generating a budget resolution independent of the president, and 2) the establishment of a joint staff for the new budget committees headed by a “highly trained, professional, and nonpartisan director.”[45] JSC recommendations were introduced as bills in each chamber, passing unanimously in the Senate and 386 to 23 in the House. Confronted with a veto-proof majority, President Nixon signed the Congressional Budget and Impoundment Control Act into law on July 12, 1974.[46]

Well after the implementation of the Budget Act, Congress remained divided on the role of the new Congressional Budget Office. The House of Representatives viewed the agency as merely the extension of the Budget Committees and, as such, beholden to congressional leadership. By contrast, the Senate understood the agency to have a broader mandate and expected it to provide policy prescriptions in addition to economic analysis.[47] As is often the case with institutional reform, statutory ambiguity allowed early leaders to shape institutional mission and norms.

To fulfill its statutory mandate to support the Budget Committees, the CBO was required to complete one report per year: a short-term analysis of the budgetary baseline. Alice Rivlin, the CBO’s inaugural director, simultaneously expanded the office’s purview and established distance from congressional leadership by providing policy analysis to a number of committees. Rivlin further committed the CBO to institutional independence by doggedly protecting the agency’s authority to set its own research agenda. For instance, she decided that the CBO would respond to requests from individual lawmakers only if they had been approved by the chair or ranking member of the affected committee.[48]

Rivlin envisioned an agency that was not only independent, but also capable of producing nonpartisan, objective analysis of fiscal and budgetary matters. Recognizing that the CBO must refrain from making policy recommendations, she effectively removed the agency from the front-lines of partisan debate. By defining the scope of the institution's research, Rivlin wove nonpartisanship into the procedural fabric of the young institution. And she established a culture of nonpartisanship at the CBO by selecting a staff committed to performing academically rigorous research, even if it was politically inconvenient for the majority party.[49]

In 1977, the CBO demonstrated its nonpartisan orientation by conducting an independent analysis of President Jimmy Carter’s energy policy, the centerpiece of the administration’s domestic agenda. To the surprise of many Republicans on Capitol Hill, Rivlin, a Democrat, expressed skepticism about the economic impact of the energy plan, testifying before the Senate Committee on Energy and Natural Resources that “the President may be somewhat optimistic in his energy saving estimates."[50] This was a pivotal moment for the fledgling agency: not only did it solidify the CBO's independence from the Democrat-controlled legislature and executive, but it also demonstrated the organization's capacity to offer a timely, thorough analysis of a major public policy.[51]

In the decades that followed, the CBO solidified its position as one of the most influential and well-regarded agencies in Washington. Its nonpartisan character is attributable in no small measure to the efforts of Rivlin and the directors who succeeded her. Beyond the CBO's deeply entrenched professional norms, institutional self-interest gives the agency strong incentives to withstand pressures from the White House and congressional leadership.[52]

THE FEDERAL RESERVE SYSTEM

Analytical summary

The creation of Federal Reserve System (FRS) is an intermediate case that stands between the rapid, crisis-driven, consensual adoption of the FDIC and the much slower, bottom-up process that preceded the EPA. Recurrent bouts of monetary and financial instability plagued the United States throughout the late 19th and early 20th centuries. Banking panics and recession had destabilized the U.S. economy and opened the door to institutional reform.[53] Still, six years elapsed between the panic of 1907 and the establishment of the FRS, during which numerous experts and private groups formulated competing plans. Despite broad consensus on the importance of establishing a more centralized financial system, policy making became mired in inter- and intra-party controversy, igniting debate over the proper locus and extent of authority over banking and monetary policy. It took the presidential election of 1912 to set the stage for resolving this debate.

History

In 1907, the United States suffered one of the most destructive financial panics in its history: depositor runs, suspension of payments to depositors, spiked interest rates, and recession crippled the United States economy and laid bare the imperative for institutional reform.[54] Recognizing popular and commercial demand for a comprehensive solution to banking reform, lawmakers increasingly understood that a central bank was necessary to stabilize the country's money supply.[55]

The statutory response to financial instability originated at an infamous convening in Jekyll Island, Georgia. Spearheaded by Senator Nelson Aldrich, a Republican from Rhode Island and Chairman of the National Monetary Commission, the coterie of financiers invited to Jekyll Island included Frank Vanderlip of City National Bank of New York, Henry Davison of Morgan Bank, and Paul Warburg of the influential investment firm Kuhn, Loeb & Co. Given public hostility toward Wall Street, extraordinary measures were taken to keep the proceedings of the conference secret. Vanderlip recognized that "if it were to be exposed publically that our particular group had gotten together and written a banking bill, that bill would have no chance of passage by Congress."[56]

Senator Aldrich returned to Washington with a plan calling for a system of centralized monetary authority called the National Reserve Association (NRA). Headquartered in New York with banks spread across the country, the NRA would be governed by a mix of public and private appointments, but commercial bankers were to be disproportionately represented.[57]

Senator Aldrich’s plan aroused strong opposition from Democrats, who feared it would be run by wealthy, well-connected bankers seeking to enhance the power of large banks.[58] Objection to the Aldrich Plan, pegged as “Wall Street’s plan,” became part of the Democratic Party platform in the 1912 election. When Theodore Roosevelt’s “Bull Moose” insurgency divided the Republican electorate, Democrats swept both houses of Congress and the presidency, making it more likely that banking reform would occur on their terms.[59]

The bill to create the Federal Reserve System was introduced in the House of Representatives in the summer of 1913 by of Representative Carter Glass (D-VA), Chairman of the House Committee on Banking and Currency.[60] The Glass Plan provided for the establishment of several commercially owned, relatively autonomous regional reserve banks, coordinated by a Federal Reserve Board. Unlike the bankers that would have directed the National Reserve Association under the Aldrich Plan, the Federal Reserve Board would be a non-profit orchestrated by “altruistic” bureaucrats who had neither a political nor a financial stake in the flow of money.[61] The original Glass Plan did not go far enough to assuage the populist left, however, as it authorized private bankers to determine central bank leadership.[62]

Confronting intra- and inter-party conflict over the nature of banking reform, President Woodrow Wilson masterfully fashioned a compromise between the Glass Plan and the Aldrich Plan while assuaging the populist factions of his party. By insisting upon exclusive government control of the Federal Reserve Board, rather than accepting bankers’ nominees to the Board, President Wilson earned support for reform from the left.[63] Not without enormous political effort and compromise, Wilson coordinated a tenuous union between various pro- and anti-central banking factions and cobbled together the votes requires to establish a broad, at times vague, statutory framework for central banking.

Representative Glass's reform bill passed the House in September 1913 by a vote of 287 to 85. Although a clear victory for President Wilson, the votes revealed intense partisan divide: all but three Democrats supported the bill, while more than half of the Republicans opposed it.[64] The bill continued to the Senate, where it endured lengthy reworking and debate, eventually reemerging as the Owen-Glass bill, or the Federal Reserve Act.[65] Persistent opposition from Republican senators was overshadowed by burgeoning public support for the bill among organized business interests and a small but powerful minority of bankers. The Federal Reserve bill cleared the Senate by a vote of 54 to 34—supported by all Democrats and opposed by all but 6 Republicans. The House and Senate bills proceeded to a conference committee to resolve difference in the legislation, and just two days later, Congress approved a compromise measure.[66] On December 23, 1913 President Wilson signed the bill on and the Federal Reserve System was born.[67]

Despite passing landmark legislation, lawmakers in the House and Senate remained bitterly divided on the nature of the relationship between the Federal Reserve Board and the regional Reserve Banks.[68] Lingering uncertainty about the role and responsibilities of the Federal Reserve was quickly overshadowed by the advent of U.S. involvement in World War I in the spring of 1917, and the details of implementation were left to newly appointed Federal Reserve officials.[69] Responding to national crisis, the Federal Reserve played a principal role in organizing and promoting the sale of Treasury bonds to finance the war effort. The war imperative determined the short-term activity of the Federal Reserve, both affirming its institutional legitimacy and sidestepping the political disputes that had bedeviled lawmakers throughout the legislative process.

THE NATIONAL SECURITY ACT OF 1947

Analytical summary

Like the 1913 legislation establishing the Federal Reserve System, the National Security Act of 1947 responded to persistent problems. As was the case with the FRS, experts had crafted and debated reform options for many years. Also like the FRS, it took an ongoing series of crises to tee up the problems for action; according to Elias Huzar, “legislation for security coordination may have been urgent, but it was not hasty."[70] And in both cases, it took committed presidential leadership to get the job done.

History

The National Security Act (NSA) was the culmination of debate surrounding two key issues: reorganizing the armed services and improving intelligence gathering. The merits of inter-service reorganization had percolated at the periphery of political consciousness since the 1930s, but early iterations of the unification debate were premised on a desire to save taxpayer money by reducing the peace-time defense budget.[71] The bombing of Pearl Harbor in December 1941 shattered isolationist sentiment in Congress and established national security as the standard against which to weigh public policy decisions.[72]

Shortly after the attack on Pearl Harbor, George Marshall and other key military leaders began to argue that a massive overhaul of the defense establishment was necessary to prevent miscommunication and promote cooperation between the service chiefs.[73] As the United States lurched into World War II, it became incumbent upon the federal government to command a burgeoning military apparatus. As World War II gave way to Cold War hostilities, the urgency to “wage peace” provided strong incentives for lawmakers to overhaul the country's national security infrastructure.[74] From 1944 to 1947, a “veritable storm” of special studies, committee investigations, unification bills, and recommendations from senior officers set the parameters of the reorganization debate.[75] The need to bolster the national security state was uncontested, but the unification debate became entangled in inter-agency power struggles.

President Harry S. Truman firmly supported unifying the armed forces. He attributed this conviction to his personal experiences in World War I, to the lessons he learned as a member of the Senate Appropriations and Military Affairs Committee, and above all, to the record of the Pearl Harbor hearings. He saw armed forces unification as a strategy for improving the nation's military preparedness at a time when the United States could no longer assume the luxury of mobilizing and retaliating after another attack like Pearl Harbor.[76] By December 1945, Truman had proposed creating a single department of national defense with "unified direction of the land, sea, and air forces at home as well as in other parts of the world where our armed forces are serving."[77]

Fearful that unification would undermine Navy authority and autonomy, the Navy's patrons in Congress resisted the president's calls for unification.[78] Breaking the impasse and forging a path for legislative compromise fell to members of president Truman's staff, who worked closely with Major General Lauris Norstad, Director of the Army General Staff's Operation Division, and Vice Admiral Forrest P. Sherman, Deputy Chief of Naval Operations.[79] After enduring eight major revisions, the final reorganization legislation provided for unified command overseen by the Secretary of Defense but also empowered the Navy, Army, and newly co-equal Air Force to retain "all powers and duties… not specifically conferred upon the Secretary of Defense."[80]

In addition to integrating the military services, the National Security Act created the National Security Council (NSC), consisting of the president, Secretary of State, Secretary of Defense, and the Director of the Office of Defense Mobilization. The Central Intelligence Agency (CIA) was established to support the NSC by coordinating the nation's foreign intelligence.[81] Although Truman had initially opposed a unified intelligence agency on the grounds that a peace-time intelligence gathering operation would risk creating an "American gestapo," he ultimately favored the founding of the CIA to centralize and coordinate a host of otherwise independent intelligence gathering activities.[82]

Although the particulars of inter-agency power struggles inflamed passions, the unprecedented expansion of the United States national security apparatus encountered only modest congressional opposition. This bears witness to the temper of the times, as victory over the Axis powers gave way to the realization that the Soviet threat would likely last for decades. Despite the careful enumeration of inter-service powers in the original statute, over time the multi-faceted Soviet challenge led to a greater role for the Secretary of Defense.[83] After the launch of Sputnik in 1958, Congress amended the act such that the three military departments were no longer to be "separately administered" but instead "separately organized" under the central authority of the Secretary. Although the parameters of agency control had been a point of bitter contention among lawmakers in 1947, the distribution of power among inter-service agencies was quickly reorganized to reflect immediate political considerations and address burgeoning national security concerns.

Each new agency established by the NSA endeavored to expand its sphere of operation. This, paradoxically, contributed to the extensive duplication of agency activity in national security affairs: for example, by 1951 there were 24 different government agencies and departments producing economic intelligence.[84] Although duplication complicated President Truman's objective of achieving unified command, the NSA nonetheless set in motion a process that has led to far more coordination across agency and service lines than ever before. In this respect, the Goldwater-Nichols Defense

Reorganization Act of 1986 and the creation of the DHS in 2002 represent steps down the trail that Truman blazed.

LESSONS FROM SUCCESSFUL INNOVATIONS

We should measure efforts to create or reform institutions along two dimensions: Did the proponents of change get their way? And did their institutional creations work?

As our case studies suggest, there is no single road to success on dimension one. Some reforms respond to acute problems at moments of crisis, while others seize windows of opportunity to address persistent problems. Some reflect the pressure of public opinion, while others are driven by consortia of insider experts and elected officials. And while every reform requires leadership, the locus of that leadership varies widely, from social movements and the private sector to the executive branch and Congress.

...[O]ne fact remains immutable: the default setting of every form of government—and especially a constitutional republic with divided powers—is the status quo. Overcoming resistance and simple inertia is hard, all the more so because what exists is real and familiar while the proposed change is imagined and novel, unfamiliar and therefore threatening. Although the details vary, it always takes energy and sustained commitment to move the status quo.

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There is variation along the second dimension as well. Some new institutions—such as the CBO and the EPA—function well because their founding leaders defined their mission and mode of operations in ways that make sense internally while building trust externally. Some succeed because their relatively narrow original mission persists unchanged for decades, as was the case with the FDIC. Other successful innovations begin with broader, vaguer missions but are flexible enough to shift with changes of leadership and circumstances. In its early decades, for example, the NSC reflected the differing operating styles of successive presidents as well as varying levels of presidential trust in the departments of State and Defense and in the intelligence agencies.

Although new institutions in two of our cases—the EPA and DHS—were cobbled together from pre-existing entities, the former was much quicker to function as a unified whole than was the latter. To this day, in fact, management and morale problems in DHS reflect the department's multi-faceted origin. *E pluribus unum* is easier said than done, especially when the institutions being brought together have enjoyed substantial power and autonomy over a long period of time. When it comes to institutional innovation, it is not always possible to paint on a blank canvas. We suspect that new institutions are more likely to succeed when they are created *de novo*—if they are fortunate enough to enjoy early leaders who are capable and widely respected.

Although some new institutions end political disputes and enjoy sustained support across partisan and ideological lines, others remain (or become) a focus of public debate. Institutions (like the FDIC) with clear missions that persist largely unchanged are more likely to retain public trust and confidence.

Although some new institutions end political disputes and enjoy sustained support across partisan and ideological lines, others remain (or become) a focus of public debate. Institutions (like the FDIC) with clear missions that persist largely unchanged are more likely to retain public trust and confidence. The EPA was founded with such a mission, but over time the scope of its concerns widened. During the 1970s, few Americans doubted that government efforts to clean up smoggy air, polluted rivers, and toxic waste dumps were long overdue. But as new laws and regulations expanded EPA's authority, its mission became more controversial, and this process has continued up to the present day. Rivers are one thing, many Americans believe, small wetlands on private property quite another. Regulating hydrocarbons makes sense to most people; regulating carbon dioxide is more divisive. As a result, the EPA finds itself mired in constant litigation and controversy.

The Federal Reserve offers an intermediate case. As a self-financed institution staffed by experts and insulated from day-to-day political accountability, it is always potentially vulnerable to populist attack. Nonetheless, it goes through extended periods in which the people barely take note of its activities. At moments of economic crisis, however, its activities become more visible and controversial. To rein in galloping inflation end the end of the Carter administration, for example, Federal Reserve Chairman Paul Volcker raised interest rates to a record high and induced a deep recession that raised unemployment to nearly 11 percent. In response to the Great Recession of 2007-2009, the Federal Reserve assumed novel powers, first to prevent what could have been a global financial meltdown and then to pump enough money into the U.S. economy to restart economic growth and bring unemployment down. Although the Federal Reserve's aggressive policies were controversial in both cases, they enjoyed unswerving presidential support and achieved their intended results.

These examples suggest that while ending political controversy represents one kind of successful institutional reform, it is not the only one. Episodic or even ongoing controversy over a new institution's performance may be the unavoidable price of effective administrative action, and it is often a price worth paying.

CONCLUSION

Institutional reform is often necessary but always difficult. Officials typically regard it as secondary or diversionary. Presidents wonder whether they should expend scarce political capital on institutional issues and worry about the opportunity costs of reform. Bureaucrats resist changes that reduce their autonomy and budgets; legislators undermine changes that reduce their power to control institutions through appropriations and oversight. Of all the reforms proposed by the nonpartisan 9/11 commission, there is only one where no progress has occurred: radically reducing the number of overlapping committees and subcommittees to whom intelligence and national security officials must report.

Current circumstances heighten the challenge of reform. Partisan polarization has all but paralyzed the Congress, making it hard to complete even routine business. The process of good-faith compromise has broken down. Institutional innovation is rarely at the front of the queue, and with so many important substantive issues stalled for years, the end of the line is far back indeed.

Exacerbating these problems, the habit of thinking institutionally has weakened. James Madison assumed that legislators would be eager to defend the prerogatives of their branch. If not, his project of setting ambition against ambition would be ineffective. But in this era of hyper-polarization, members of Congress usually cheer when presidents of their own party expand executive authority—whatever the institutional consequences—as long as they agree with the ends the chief executive pursues.

In these circumstances, it may well take crises or rare periods of unified government to break through inertia and surmount the obstacles to reform. Without 9/11, DHS would never have been created. Without the near implosion of the financial system, the Dodd-Frank bill would not have passed, and the new institutions it created—the Financial Stability Oversight Board and the Consumer Financial Protection Bureau, among others—would not have come into existence.

Institutional reform is often necessary but always difficult. Officials typically regard it as secondary or diversionary.

As these examples show, governing by crisis is expensive. Our inability to preempt failures of intelligence and financial oversight imposed costs measured in trillions of dollars for which we and future generations will pay. Looking forward, if we cannot figure out how to finance the maintenance and modernization of our infrastructure, efficiency and productivity will slow, and bridge and dam collapses will become increasingly regular.

All governments tend toward myopia, an ill that has intensified in advanced democracies in recent decades. Well-designed institutions lean against myopia, not least by becoming sources of reliable information about the future consequences of today's actions—and failures to act. That's why the Congressional Budget Office is so important, and likewise the Trustees of Social Security and Medicare. That's why abolishing the Office of Technology Assessment two decades ago in a spasm of poorly targeted budget cutting was such a mistake. If not reversed, our inability to give adequate weight to the future will leave us poorer, weaker, and less able to maintain our global leadership.

Seen in this light, the stakes of the innovations we need to modernize our governance for the 21st century could not be higher. But there is no chance that a divided and paralyzed Congress left to its own devices will be up to the task. A necessary condition is a president who takes the lead in persuading the people that the policy changes they want require a government that works—and who has the inclination and skill to bring Congress along.

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ENDNOTES

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