
Causes of Creative Legislation in the U.S. in the 1900's

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The purpose of this article is to pick a top dozen regarding federal legislation in the 1900s, then ask what they tend to have in common, which might explain these public policy innovations. By a dozen, we mean congressional legislation that most historians would consider reasonably momentous in American political history. Momentous refers to congressional debate, impact, and relevant literature.

I. THE TOP DOZEN CONGRESSIONAL STATUTES

A. ECONOMIC POLICY

- (1) Unemployment and inflation. Establishment of the Federal Reserve System.
- (2) Consumer policy in creating anti-trust and FTC. In the economic field, the Sherman and Clayton Anti-Trust Act, Federal Trade Commission, and the Pure Food and Drug Act.
- (3) Labor policy including NLRA. The Wagner Act or National Labor Relation Act, along with the Taft-Hartley amendments and fair labor standards.

B. SOCIAL POLICY

- (4) Poverty including social security in the 1930s, but key court decisions in the 1960s. That recognizes that policy can come from the President like Keynesian policy, and from the courts, like poverty policy. Social Security, which covers a lot of subprograms regarding children, the blind, the disabled, and the aged.
- (5) Civil rights. The Civil Rights Statutes, especially 1964 on Fair Employment, also 1965 on Voting Rights, 1968 on Housing, and 1957 and 1963 on Education. We could divide merit treatment into

two, the legislation referred to above is civil rights legislation that relates to ethnic and gender discrimination. We could have a category that deals with other kinds of discrimination. Then, we would talk about the ADA which is the disability legislation. We would also talk about the anti-age discrimination. We could talk about hate crimes, but that is a state legislation.

C. TECHNOLOGY POLICY

- (6) Environment. The legislation of the early 1970s under Nixon regarding air and water, and solid waste under Reagan.
- (7) Health policy, which includes Medicaid and Medicare. One could include the Clinton HMO program, but it did not pass. Before Medicaid and Medicare, we had money under the Hill-Burton Act money for hospitals provided that they serve the poor.
- (8) Energy. The 1996 legislation that provides for deregulation of the sale of electricity and communications was a monumental piece of legislation. We could talk about the deregulation and competition-promoting legislation in general. That would include deregulation for the airlines and deregulation of interstate commerce. Some of that deregulation occurred under Reagan with regard to transportation. The deregulation with regard to electricity and communications had been under Clinton.

D. POLITICAL POLICY

- (9) Free speech and civil liberties. That is the Supreme Court, not Congress or the President. However, the Internet of 2001 is a great free speech facilitator. Congress deserves no credit for that, they tried to interrupt with censorship legislation.
- (10) Motor voter registration.

E. INTERNATIONAL POLICY

- (11) World peace. The Marshall Plan, the Peace Corps, and AIDS programs. Much of what has come out of the federal government with regard to world peace from 1945 to about 1995 has been Cold

War activities which have resulted in numerous wars throughout the world, not peace, including Vietnam, Korea, Central America, Central Africa, and Central Asia. It is disproportionately the central part of developing regions that are most impoverished and isolated, most subject to manipulation, and also where Americans have the least respect for human life. This is well illustrated with Guatemala, Nicaragua, and El Salvador in Latin America. It is well illustrated with the Congo, South Africa, Ethiopia, and Yuganda in Africa. And also so well illustrated with Mosambeek, Angloia, Rwanda, and Burawandi. These are the American killing fields, far worse than anything in Cambodia. For Asia, it is Cambodia, Laos, Vietnam, Afghanistan, Iraq, and Iran. Not much can honestly be said for American peace policy in the 20th century, or at least the second half of it. Government reform is partly a Supreme Court area with regard to the redistricting of state legislatures.

(12) International trade. NAFTA, GATT, China trade, and tariff reduction for Africa and poor countries. The Clinton Free Trade Statutes like NAFTA, GATT, and maybe the new legislation dropping tariffs involving imports from poor countries in Africa and elsewhere.

II. TYPES OF POLICY INNOVATION

Did these occur during a Democratic or Republican administration? I can predict that under the Democrats, the innovation probably favors the minorities. If under Republicans, the innovation probably favors business and well-to-do people.

Did the innovation occur during a time of war, depression, or prosperity? If during a time of war, I would predict that there would be no innovations. If in a time of depression, the innovations would be some anti-depressing activity. That does not give much predictability. We have only had one depression in the 20th century. We may never have another one. Prosperity is good for innovation, which actually runs contrary to some common sense. One would think that in bad times people would welcome change, but the opposite may be true. In bad times, people are filled with anxiety. They certainly cannot tolerate change very well if it means increased rights for women, minorities, or labor. Maybe they can tolerate change for consumers because everyone is a consumer.

Prosperity is also important because many of these programs cost money, and it helps to have more revenue coming in to the federal government than expense. That may not be true. Under traditional recession-fighting economies, the government is supposed to do its big spending when times are bad, in order to pump money into the economy. Most of these programs do not cost big money anyhow. There is no big money involved in prohibiting discrimination on the basis of race or gender.

These innovations can definitely be classified by substance, which will help think of what the innovations might be. Substance includes economic, technology, social, political, international, and legal.

III. CAUSES OF CREATIVE LEGISLATION

Possible explanations for why these legislative innovations occurred when they did might include the following:

1. Political parties
2. Personalities
3. Crisis situations
4. Social forces, movements, and interest groups
5. Political and social science

Partisan factors are observable. Nearly all the examples occurred during Democratic administrations. The Democrats are more in favor of change and innovation. Environmental protection is more of a middle class activity than the others. Likewise, deregulation tends to be a pro-business activity for businesses that want to enter into the market to buy products.

Not all Democrats as Presidents are equally innovative. The key Presidents were Wilson, Roosevelt, Kennedy, Johnson, and Clinton. There is nothing very innovative about the other Democratic Presidents, although there have not been very many others in the 20th century. The others include just two: Truman and Carter. We cannot do much generalizing from that small of a sample. We could say that presidents that serve two terms have more of an opportunity to do good legislation. The causal direction may be the opposite, meaning that doing good legislation gets them re-elected.

One can argue that crisis situations provoke the legislation and who happens to be President is irrelevant. That seems to be untrue if the biggest crisis we have had in the 20th century have been wars. World War I, World War II, the Korean War, the Vietnam War, and the Cold War stimulated no creativity. They stifled creativity. The depression may have stimulated some creativity with regard to labor legislation and social security, but that is only two of the ten.

One can think in terms of social forces as part of a kind of historical dialectic, going into the start of the 20th century or going back to the start of the 19th century. The landed aristocrats controlled the U.S. and Western Europe. The new merchant class rose up partly through factory technology and trading technology with regard to transportation. They overthrew the landed aristocrats in the French Revolution, and the American Revolution, but that does not mean legislation. It means the U.S. Constitution, the Bill of Rights, and the French Constitution. Nothing much happened, though, until the end of the 1900s, especially the beginning of the 20th century in the U.S. when labor rose up against factory managers and owners and established labor legislation in the 1930s. Before that, consumers rose up and established pro-consumer legislation under Woodrow Wilson. Then in the 1960s, minorities and women rose up and established civil rights legislation. In the 1970s, there was an environmental movement. In the 1980s, a deregulation movement. In the 1990s, a free trade movement. What all these movements have in common is the need for a large influential block of people to object to existing conditions and to push or demand for remedial legislation.

Since our audience is academics, disproportionately, we should say something about the role of academics:

Woodrow Wilson had a Ph.D. in political science and was a professor of public administration at Princeton. Then he was president of Princeton.

FDR had a brain trust that included especially Charles Merriam from the political science department at the University of Chicago, who is considered one of the founders of modern political science.

We then move up to the Kennedy-Johnson period. Especially Kennedy, but also Johnson. The leading description of the Kennedy administration is a book by Halberstam entitled *The Best and the Brightest*. It emphasizes all the academic types. As for political scientists, the closest name that stands out is Arthur Slusinger, a historian. One should note that FDR had lots of law professors like Felix Frankfurter before he was appointed to the Supreme Court.

IV. SOME REFERENCES

An interesting book on creative legislation is Nelson Polsby, *Political Innovation in America: The Politics of Policy Initiation* (Yale, 1984). This book deals with eight legislative case studies on which information could be readily obtained, rather than eight or a dozen examples of highly important or creative legislation. To some extent, the Polsby book illustrates social science research that focuses on less important units of analysis where the light is good, rather than on key units where information is not so readily available.

Polsby finds that the underlying causes of political innovation are having an innovation-prone culture and having needs. The U.S. may be an innovative culture on technology matters, but it has not been so innovative on public policy. Almost all 12 of the above examples of creative legislation were adopted in earlier years by countries in Western Europe. The U.S. may lag behind on egalitarian policies because immigration tends to push people up without requiring public policy to do so. Saying that the second most important factor is need is like the cliché that necessity is the mother of invention. What we are concerned with is not so much why public policies have been adopted, but why they get adopted when they do. Since the need may long precede the adoption, and the adoption stays after the need is past.

Other relevant books include the literature that deals with agenda setting and policy formulation. That literature does talk about what causes or triggers the process of creative legislation. The literature includes:

1. James Anderson (1997). Public Policy Making: An Introduction. Boston: Houghton Mifflin.
2. Christopher Basso (1994). "The Practice and Study of Policy Formation" in S. Nagel (ed.), Encyclopedia of Policy Studies. New York: Marcel Dekker.
3. Garry Brewer and Peter DeLeon (1983). The Foundations of Policy Analysis. Homewood: Dorsey Press.
4. Robert Eyestone (ed.) (1984). Public Policy Formation. Stamford: JAI Press.
5. Larry Gertson (1997). Public Policy Making: Process and Principles. Armonk: M.E. Sharpe.
6. Charles Jones (1984). An Introduction to the Study of Public Policy. Pacific Grove: Brooks/Cole.
7. John Kingdon (1984). Agendas, Alternatives, and Public Policies. Boston: Little, Brown.