

Tom Fehsenfeld

Enacting Forward-Looking Policy in a Democracy

seven lessons from the United States Congress

Abstract

The purpose of this exploratory study was to develop ideas about the conditions under which the United States Congress can enact forward-looking legislation to address critical issues. The framework for the study is the multiple streams paradigm developed by John Kingdon and modified with insights of subsequent scholars. Conclusions are based on four case studies of significant enactment efforts. Seven propositions about conditions for enactment of forward-looking policies were developed from the cases. Further research is planned to validate the propositions with a larger number of cases.

Keywords multiple streams, policymaking, forward-looking policy, Congress, climate change

Three decades ago, the United Nations' Brundtland Commission challenged the nations of the world to embrace development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. As citizens and policymakers of democratic states, we struggle to meet the challenge. There is a daunting list of long-term issues unaddressed by many democracies that includes climate change, the rapid extinction of species, racial and economic disparities, the viability of pension systems, the growth of government debt, and technology-driven unemployment.

With short election cycles, news media that focus on the dramatic and urgent, and interest groups lobbying hard for near-term benefits, it is difficult for policymakers to think long-term, but the situation is not hopeless. Jonathan Boston documents 27 major laws with long-term implications passed in his native New Zealand since 1989 (Boston, 2017, pp.34–5). Jacobs (2011) examined ten cases of four nations making decisions about pension programme reforms and found many in which governments showed foresight,

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designing programmes that imposed near-term costs on voters and to ensure the long-term stability of benefits. If forward-looking policies are occasionally enacted under democratic governments despite the obstacles, how does it happen?

In 2019–20 I conducted four case studies (Table 1) to investigate how the United States Congress enacted – or failed to enact – forward-looking policies on significant issues (Fehsenfeld, 2020). Because this was an exploratory study to develop ideas that could later be developed into hypotheses for validation, the criteria for case selection was fairly open. The only criteria were that they involve an effort to enact a forward-looking policy to address a significant issue, and that both the internal efforts of lawmakers and the external efforts of policy advocates be well documented. A forward-looking policy was defined as one that addresses a significant problem with a solution flexible enough to meet a range of possible future developments, and a policy outcome that relies on long-term goals or future scenarios (Pot et al., 2018).

While conclusions must be tentative when based on a limited number of case studies, a clear pattern emerged. Efforts to enact forward-looking policies were most successful when an informal partnership emerged between political entrepreneurs who worked inside Congress to gain party leadership support and assemble multi-party majorities, outside policy entrepreneurs who could fashion and promote creative policy packages, and problem brokers who could mobilise public pressure. When politically important segments of the public were not mobilised, efforts to enact forward-looking policies either failed, or only incremental steps were possible.

This article explains the paradigm that was used to study the cases and the factors that were found in successful enactment efforts. Consider it a report on work in progress and an invitation for suggestions and questions about its future direction.

The multiple streams paradigm

The framework for my study came from John Kingdon’s multiple streams paradigm, which was developed in the 1970s (Kingdon, 2011) and has since been modified by other

Table 1: Forward-looking policy cases from the US Congress

Case	Year	Subject	Result
Clean Air Act	1970	Created national air quality standards and set industry requirements for emission reductions with strict timelines.	It passed with near unanimous support of both major parties. Its basic structure has lasted for 50 years, with subsequent bipartisan amendments. Air quality has improved significantly on all measures.
Bipartisan Policy Center	2010–18	This NGO created and lobbied for proposals to significantly increase energy research and development expenditures by the US government as a way to improve the sustainability of the US energy mix.	Congress increased annual energy research and development budgets by 1.5% at a time when the Trump administration had recommended they be eliminated.
Dodd-Frank financial reform	2009–10	Implemented many reforms to make financial institutions more resilient and to protect consumers from predatory practices.	The Obama administration engaged with the effort early and often. It passed with only three votes from Republican senators. The Trump administration weakened many of its provisions through regulatory actions and the appointment of hostile administrators.
Cap and trade enactment effort	2009–10	This proposal would have created a regulatory structure to implement a declining cap on greenhouse gas emissions. Firms were to have the option to trade emission permits.	Many concessions were made to industry in drafting the bill. It passed with narrow majority support in the House of Representatives. The Obama administration failed to engage in the effort. A major grassroots environmental coalition withdrew its support. Party leaders declined to bring it to a vote in the Senate.

Source: Fehsenfeld, 2020

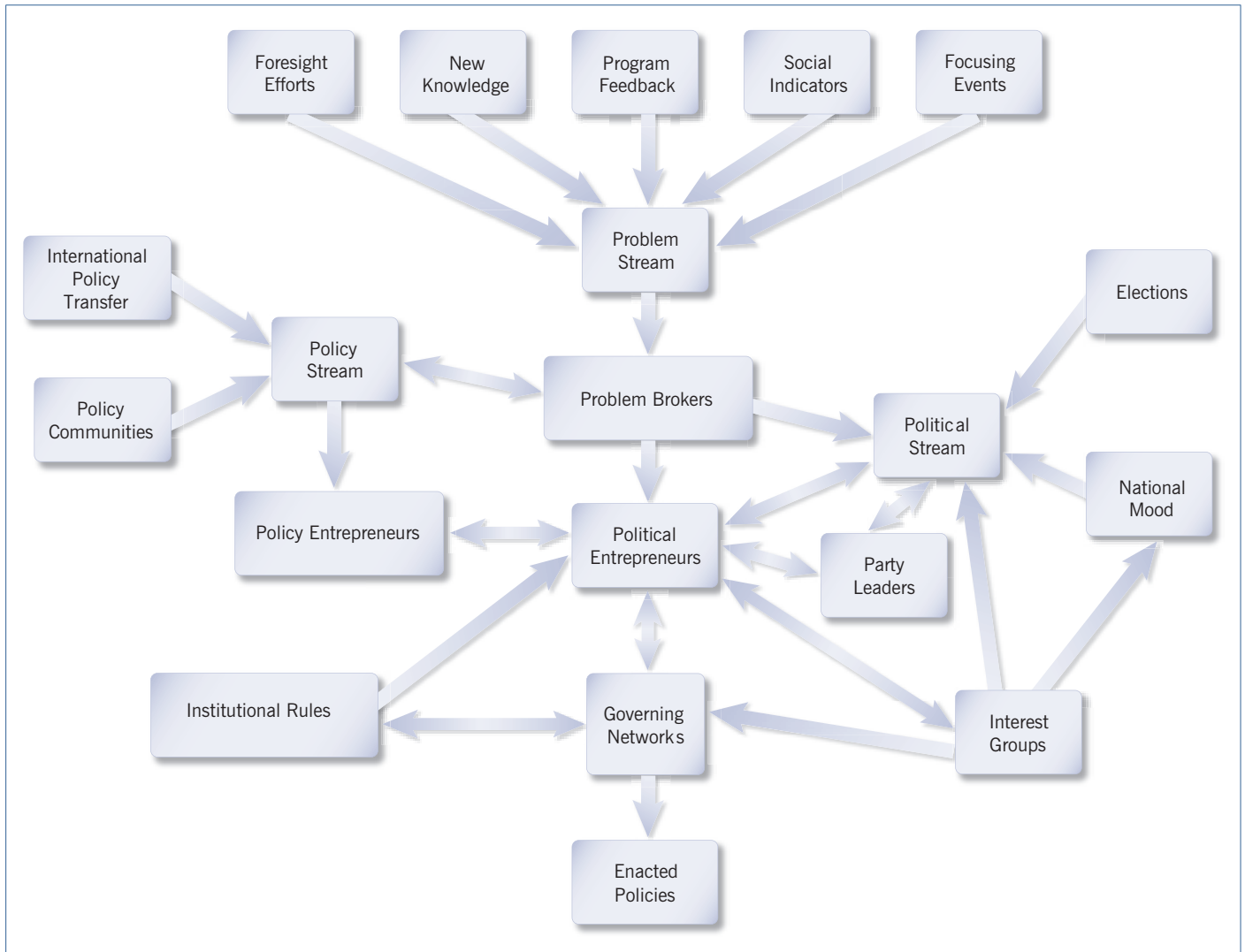
scholars. The paradigm is well-known and utilised by policy researchers, now having over 25,000 citations on Google Scholar. Kingdon envisioned the policy world as one in which political and policy actors respond proactively to three streams of information, which deal with problems, policies and politics.

Kingdon’s problem stream contains information about social conditions that have been framed as public problems. Information about problems is plentiful, but ambiguous, with many competing frames and interpretations being offered. The policy stream consists of ideas that circulate in communities made up of academics, think tanks, civil servants, legislative aides and issue stakeholders. Individuals in these communities originate, critique and modify each other’s policy

proposals in a process Kingdon calls ‘softening up’. Finally, the political stream describes the political factors lawmakers must navigate when enacting policy. These include elections, partisan interests, the national mood and interest group pressures. National mood captures the idea of how politicians and their staffs evaluate public opinion. In large measure, it is policymakers’ perception of what attentive members of the public want Congress to do or not do, and how.

While these streams often affect each other, in Kingdon’s framework they are largely independent. He could find no evidence that acceptable policy ideas will necessarily be ready when social conditions are framed as important problems that need government intervention. Nor will political conditions necessarily be favourable when

Figure 1: Modified multiple streams paradigm



a well-framed problem and a well-designed policy become available. At times, the development of the three streams seemed so random that he characterised the policy world as a ‘garbage can’, in which policy ideas, problem framings and political conditions are mixed together and sometimes randomly connect.

The process becomes less random when policy entrepreneurs intervene in these streams to move proposals forward. In Kingdon’s telling, these are individuals and groups who are monitoring the three streams to discover policy windows when a well-understood problem can be matched with developed policy ideas, and with favourable political conditions for enactment.

Since Kingdon published the framework, other scholars have added refinements. Knaggård (2015) suggested adding the role of problem brokers to the framework to emphasise the role of

outsiders in defining social conditions as problems and mobilising public pressure to address them. To obtain enactment of a policy, Herweg, Huß and Zohlnhöfer (2015) recommended adding the concept of political entrepreneurs. Political entrepreneurs are advocates with formal policymaking authority who can assemble majorities for passage by offering concessions or package deals, or by using manipulation. The goal of their efforts is to enact policy while insulating allied lawmakers from short-term political pressures, which is one of the key factors Boston (2017) cites to enable forward-looking policymaking.

Because the American system has many veto points and weak party discipline, Grossmann (2014) found that political entrepreneurs must deal with a subset of political actors who have long trusting relationships. These subsets of congressional and executive branch actors, which he labels

‘governing networks’, are needed to reach compromises and assemble policy packages that will attract a majority of votes for passage. A few prominent interest groups may assist in assembling the coalitions.

Lovell (2016) has drawn attention to the transnational diffusion of policy ideas and precedents, which plays an increasing role among advanced democracies. These influence the policy communities through exchange of ideas about issues. International policy examples are especially important in demonstrating technical feasibility because they have often been proven in other contexts.

Boston (2017) catalogues a number of ways that individuals and organisations can bring concerns about emerging issues into the problem stream. These include risk assessments, horizon scanning and scenario analysis, among others. These activities, which I labelled ‘foresight efforts’, can be added as a fifth source of the problem

stream. They often focus on the risks and uncertainties of future conditions. Foresight efforts enable governments to understand long-term problems by providing clear signals of future harms before they become crises. (2011, pp. 90-115)

Zohlnhöfer, Huß and Zohlnhöfer (2016) made the sensible observation that institutional rules should be added to the framework because they influence how policy is developed and enacted. There are certainly variations in the sources and procedures of policy change between presidential and parliamentary systems of democracy, as well as many variations between national systems within these broad categories.

Finally, my research (Fehsenfeld, 2020) showed the importance of party leaders in moving forward-looking policy through legislative bodies. In the American system, the party leader who mattered most was the president. The major enactments found in my research had not only rhetorical support from presidents, but their administrations also provided help in drafting legislation, direct involvement in making concessions and compromises, and help in building majorities for passage by soliciting votes. The centrality of presidential leadership does not come from formal legislative power, which is relatively weak in the US constitution (Shugart and Carey, 1992), but from the presidents' leadership on public opinion and the resources of the executive branch. With these additions, the multiple streams paradigm can be seen in Figure 1.

Lessons for forward-looking policy enactment

Based on this modified multiple streams framework and observations from the case studies, a clear pattern emerged about the necessary conditions for enactment of forward-looking policy in the US Congress. Enactment was more likely when these seven conditions were met.

Problem brokers have mobilised enough public pressure to increase the risk of a change in party control if a major issue is not addressed

In the Clean Air Act case, problem brokers, both in and outside Congress, published best-selling books and held meetings

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throughout the country to highlight the problem of air pollution. Problem brokers also used a number of serious air pollution incidents in the years before the legislation to focus the public's attention on the issue. This resulted in a groundswell of public demand such that Republicans and Democrats vied for political advantage by offering duelling policy proposals to address the problem. The resulting Clean Air Act was passed with near unanimous votes in Congress.

In the cap and trade case, problem brokers were not successful in mobilising effective public pressure. Surveys in 2009 showed that substantial majorities of US voters supported action to address climate change, but it was ranked near the bottom of the list of issues they were concerned about. This lack of voter intensity and mobilisation provided neither fear of losing control of government for the majority if the issue was not addressed, nor hope for the minority party that addressing it would lead to gaining control.

Problem brokers have created effective public pressure on all of the potentially controlling political parties

The Dodd-Frank case, when Democrats held both the presidency and the two

chambers of Congress, demonstrated that major legislation can be passed without significant support from the minority party in the US, but such victories can be hollow in the long run. Given the many veto points in the American system, outright repeal when there is a change in government control is less likely than in a parliamentary system, but measures without multi-party support can be undermined through regulatory changes, reduced budgets, court rulings, and the appointment of hostile administrators. The Trump administration used all of these strategies to limit the influence of Dodd-Frank.

The Clean Air Act, which was enacted with strong bipartisan support, and the bipartisan defence of energy research budgets in the face of Trump administration hostility, demonstrate the importance of multi-party support in defending the longevity of policies. This implies that problem brokers would be well-advised to mobilise significant support from representatives of all major parties. Enactments of forward-looking policies that are reversed at the first change of government are often wasted efforts.

Policy entrepreneurs are ready with proposals that can be enacted quickly when broad-based voter pressure develops that affects both majority and minority parties

The cases demonstrated the importance of policy entrepreneurs having 'just in time' proposals ready to deliver when a policy window opens. Taking advantage of fleeting opportunities for multi-party support is more important than elegant policy designs for forward-looking legislation. Because public pressure for the Clean Air Act was strong enough, policymakers were willing to bet on a policy that expressed values the public demanded, despite its admitted flaws. Alternatively, when there was not enough public pressure to enact cap and trade, studies indicating solid technical feasibility were not enough to save it.

Enacting policies without strong evidence of technical feasibility may not seem like the best way to enact good policy; however, the opportunity to enact forward-looking policies in Congress is so rare that a rational strategy might be called 'enact it

first when a window opens for a bipartisan agreement, and fix it later.' This has actually played out with the Clean Air Act, which has been amended several times with bipartisan support over a 50-year span.

Political entrepreneurs evaluate whether political conditions are favourable for enactment of a comprehensive policy or an incremental policy, or not favourable for any policy enactment

Kingdon popularised the idea that policy enactments happen when a policy window opens. Experienced political entrepreneurs understand that, when dealing with forward-looking policy, they need to judge the levels of 'openness'. As an example, the conditions in 2009 were not ripe for cap and trade to radically alter the American energy system, but they were ripe for the Bipartisan Policy Center's incremental proposal to increase federal support for energy research.

Judging the favourability of political conditions is a critical function of political entrepreneurs. In the Clean Air Act case, both the Republican president and the Democratic congressional leadership surveyed political conditions and made judgements that the time was ripe to propose a major initiative on air pollution. In the cap and trade case, Democratic leaders misjudged what could be accomplished by not understanding the fragility of Republican support.

Political entrepreneurs gain and maintain the support of party leaders for major forward-looking policies

On near-term issues, interest groups and congressional allies can often spark legislative efforts and maintain elite pressure on lawmakers to cobble together and pass a bill. Presidents, prime ministers and congressional leaders may not lead, but tolerate these efforts as the cost of maintaining political support. This pattern also holds for incremental forward-looking policies, as shown by the Bipartisan Policy Center case.

When major forward-looking policies are proposed to address difficult issues in the US, only presidents have the platform to rally public support, provide cover for their partisans if there are costs to be paid, and provide Congress with material

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support from the executive branch to see the effort through.

Political entrepreneurs offer concessions or alternative benefits to overcome the resistance of influential organised interests that bear the near-term costs of the policy

Overcoming the resistance of organised interests through bargaining and concessions is an important responsibility of a forward-looking political entrepreneur. There are times when public pressure is so mobilised that concessions are not necessary, as was the case with the Clean Air Act. In the Dodd-Frank case, a series of strategic concessions were necessary for the sponsors to eke out a victory.

A danger of this strategy was apparent in the cap and trade case: the sponsors made so many concessions to industry that they lost significant support among environmental constituencies and the bill was never brought to a vote in the Senate. In the absence of public mobilisation, it seems impossible for a political entrepreneur to compromise their way to a major enactment in the US.

Political entrepreneurs gather enough multi-party support to prevent the policy from being overturned at the next change of government

The durability of the Clean Air Act over 50 years supports the importance of gaining

bipartisan support. In contrast, Dodd-Frank, passed with minimum Republican support, was significantly weakened under the Trump administration just eight years after it was passed (Werner, 2018).

The lesson of cap and trade, however, is that the potential for bipartisan support may be extremely difficult for political entrepreneurs to find after a bill has been introduced. The prior work of problem brokers in building public pressure seems critical to enable multi-party agreements for major enactments. Unless there is broad-based public support, as there was for the Clean Air Act, the opportunity for bipartisan enactment rests in the hands of policy entrepreneurs like the Bipartisan Policy Center, to design incremental policies that fit in the often small convergence of interests of the political parties.

Conclusion

Four implications for researchers and practitioners flow from this investigation. The first is the importance of problem brokers. If they are able to frame expected future conditions as serious and urgent public problems, they have a chance to mobilise enough public pressure to create electoral incentives for legislators to act. The effects of mobilisation were clear in the different outcomes of the Clean Air Act and the cap and trade cases. One of the key problem brokers in the cap and trade effort, former vice president Al Gore, commented to friends that his advocacy work had failed to create enough intensity of feeling (Pooley, 2010).

Second, if public mobilisation is high and multi-party support is available, the technical aspects of a policy are not as critical as moving quickly to enactment. Public mobilisation can evaporate, so it is critical for problem brokers, policy entrepreneurs and political entrepreneurs to seize the moment and enact a law. Minor flaws can often be handled through regulatory actions. If the major parties are committed to the law, it can be re-opened and major corrections can be made later.

A third implication is the importance of evaluating political conditions to determine whether there is an opportunity for a major initiative, or if launching an incremental initiative would be a better

strategy. There are often dozens of ways that government policies can address a serious problem with a forward-looking solution. Only a few of these policy designs may be effective both in addressing the problem and in gaining multi-party support. In majoritarian parliamentary systems, and in the US when one party controls both chambers of Congress and the presidency, major initiatives can be passed along exclusive or nearly exclusive partisan lines, as was the case with Dodd-Frank, but their longevity will be in doubt. Unless there are commitment mechanisms that can lock in future governments, it is more effective to take a smaller, incremental

approach, as the Bipartisan Policy Center did with its energy initiative, and then prepare for the next opportunity. A series of incremental steps can result in a major change.

Finally, for major forward-looking initiatives, a key factor is the commitment of executive presidents and prime ministers. To be effective, their commitment must go beyond rhetorical support and lead to tangible support in the form of advocacy by a Cabinet member or agency head, drafting help and lobbying assistance. Tight coordination between the party leaders and the political entrepreneurs is also critical, as was shown by a positive experience with

Dodd-Frank and missteps with cap and trade.

As mentioned in the introduction, this is a report on work in progress. Next steps include establishing a firm theoretical foundation for the findings based on a bounded rationality model of the actors and their incentives, restating the findings as testable hypotheses, and performing a large-scale quantitative study of forward-looking enactments in the US Congress. If that goes well, future projects could extend the study to other legislative bodies, and delve into theory and research about how problem brokers create public mobilisation.

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