Review

Implementing health care reform in the United States: Intergovernmental politics and the dilemmas of institutional design

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A B S T R A C T

The Affordable Care Act (ACA) was enacted, and continues to operate, under conditions of political polarization. In this article, we argue that the law's intergovernmental structure has amplified political conflict over its implementation by distributing governing authority to political actors at both levels of the American federal system. We review the ways in which the law's demands for institutional coordination between federal and state governments (and especially the role it preserves for governors and state legislatures) have created difficulties for rolling out health-insurance exchanges and expanding the Medicaid program. By way of contrast, we show how the institutional design of the ACA's regulatory reforms of the insurance market, which diminish the reform's political salience, has allowed for considerably less friction during the implementation process. This article thus highlights the implications of multi-level institutional designs for the post-enactment politics of major reforms.

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1. Introduction

Enacted in March 2010, the Patient Protection and Affordable Care Act (ACA) aims to both control spiraling costs associated with health care provision in the US and gradually reduce the number of people who are uninsured, which stood above 50 million that year. The ACA attempts to accomplish these goals by regulating the private insurance sector—scrutinizing prices, creating health-insurance exchanges to help individuals and small businesses purchase insurance, and making provisions for a large expansion of Medicaid, the state-run health

insurance program for the poor.[1] The legislative process through 2009 and early 2010 had been protracted but there was much celebration amongst reform advocates at the law's signing ceremony. Democratic Senator Max Baucus urged Republicans to accept a new reality: "Now it is a fact. Now it is law. Now it is history." (quoted in [1]).

Yet, opponents were not so accommodating and they quickly mobilized across the institutional terrain of American government—in the courts, at notice-and-comment sessions in federal agencies, in state capitols, and in the public sphere—to stop the reform before it could take root. Hence, after the ACA's enactment in March 2010, the law's

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proponents faced an institutional obstacle course, with opponents around every turn. The importance of this opposition and its ability to obstruct the implementation of reform became apparent in the fall of 2013 when the obstacles put in place contributed in part to a problematic rollout of key aspects of the law. But if opponents' fervor and high levels of resources have placed the reform at risk, their capacity to partially thwart the legislation has, we argue in this article, relied in large part on the *institutional design* of the ACA.

It is important to remember that, though Republicans played no part in the ACA's final legislative coalition, many of the bill's major provisions were initially crafted with their help.[2] To ensure that the bill would be perceived as a moderate reform, radical alternatives favored by the left of the Democratic Party, such as a single-payer system, were never seriously contemplated and even more expansive versions of provisions that were on the table, such as a single federally run health-insurance exchange, were excised from the final form of the legislation [4]. Instead, ACA dispersed governing authority to a patchwork of state governors, legislatures, and regulatory agencies, with which the Department of Health and Human Services (HHS) had to collaborate [4,7,8]. Thus the law did not centralize health care arrangements in the manner championed by the most radical advocates of reform, yet from the perspective of the state actors, who were tasked with implementing the changes contained in the ACA, the law posed significant challenges. Implementing and sustaining the reform for the future, therefore, will generally depend upon building political support across these institutional boundaries, especially in areas where opposition is most vocal.

In this article, we consider the challenges of intergovernmental policy design for three facets of the ACA: health-insurance exchanges, the Medicaid expansion, and regulatory reforms in the market for health insurance. Although the implementation of ACA is an ongoing business and it is too early to draw definite conclusions about outcomes, our analysis clearly points to the existence of clear institutional and partisan patterns that will likely shape that process in powerful ways. Our main argument is that, in the context of American federalism, by granting power to state-level opponents of ACA, the law's fragmented institutional design created opportunities for persistent political contestation of the law, complicating its implementation.

2. Why institutional design matters

Debates over public policy are rarely debates about substance alone. Rather, these battles frequently involve disputes over the institutional design of public policy [9,21]. Instead of asking what benefits health plans should be required to offer, legislators debate about which level of government (or which combination of institutions) should be given the authority to make this decision. In part, this is the result of the buildup of the administrative state, where specialists have the expertise to make these kinds of decisions [10]. More importantly, politicians care about design because different institutions create dramatically different preferences and capacities to implement policy. This is especially so in a country with a strong federal tradition like the U.S., where states can vary significantly in terms of partisan control, administrative capacity and fiscal resources [11]. Though opponents of policy change may wish simply to shut down the reform process they still have real incentives to stay at the bargaining table. Especially when the enactment of reform is inevitable, bargaining over the design of policy allows opponents leverage to craft administrative structures that permit them to extend conflict over the law and dampen public support for it in the longer-term. In particular, opponents want to design laws with performance standards that make institutional failures more apparent to the public. They also want institutional veto points, which prevent well-insulated bureaucratic agents from enacting their preferences [9,12,13]. Ideally, opponents may even be able to structure policies in a manner that leads to their future demise [14].

In the case of the Affordable Care Act, political conflict (and initially, compromise) "ushered the fox into the chicken coop" by producing a statute that allowed for significant levels of state control over public policy. Though Republicans ultimately dropped out of the ACA's legislative coalition, their preferred version of the policy (the Senate's complex and intergovernmental approach to reform) became enshrined in the final version of the legislation. And though the law's Medicaid reform gave the federal government more power to coerce states to expand eligibility, the Supreme Court's ruling in *NFIB v. Sebelius* undermined the original intent of the law [15].

As explained below, the complex federal-state design of the law has had two effects. First, this design has permitted opponents more time to challenge the legitimacy of the law at its early stages (sometimes on the basis of, ironically, slow implementation) and to build support for a reversal of reform [14]. For conservatives opposing the ACA, the inclusion of the states in the law's design has provided a set of platforms for just this sort of challenge. As Republican Governor Phil Bryant from Mississippi put it, "If enough states exercise their clear and completely legal options to resist its implementation—including declining to establish exchanges and rejecting the Medicaid expansion—Congress will be forced to reopen the law, and a Republican-controlled House will be in a stronger position than when the law was first rammed through" [16].

Second, and more directly, the federal-state structure has reduced the probability of effective enforcement. This is true because institutional systems with many veto points are simply less likely to make decisions with any kind of regularity [17]. In states where opposition to the law is particularly salient, policy implementation has been greatly slowed down as elected state officials have refused to dedicate sufficient state resources to fulfilling the project, with some governors even using their powers to halt the flow

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[2] For example, Senate Finance Committee chair, Max Baucus, formed the so-called "Gang of Six", including three Republican Senators, to work out a possible bill. This gang finally broke up with some acrimony, but many of the ideas discussed in their meetings did permeate the reform effort [6: pp. 71–72].