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Designing policy resilience: lessons from the Affordable Care Act

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Abstract

Public policies are the products of political conflict, constituted by mixes of diverse tools and instruments intended to achieve multiple goals that may change over time and not always be internally consistent or coherent. Recent studies dealing with policy robustness and resilience have theorized about the temporal development of mixes of policy instruments and the need to ensure consistency and coherence over time, yet they have generally failed to develop these insights into lessons for policymakers and practitioners. Drawing on

evidence from the implementation of the Patient Protection and Affordable Care Act (ACA) in the USA, this paper examines the relationship between policy mixes and policy resilience or the ability of a policy to withstand challenges to its elements and to remain effective over time, even when deliberate efforts are made to alter, adapt, or repeal all or part of its original content or intention. Although the ACA is at an early stage in its history, it provides many lessons about how, and how not, to design complex policy mixes that can survive determined political opposition.

Keywords:

Policy design, Policy feedback, Policy resilience, Policy instruments, Health care, Affordable Care Act, USA

Introduction: understanding policy resilience

Contemporary studies of policy design have increasingly focused on better understanding "policy mixes"; that is, bundles of tools and instruments commonly assembled into policy programs to attain some government aim (Howlett [46]; Rogge and Reichardt [93]). [1] Recent research has begun to examine the way in which such mixes have been constructed and how they have evolved over time. Work has also appeared on the sequencing of instruments in such mixes (Justen et al. [71]; Taeihagh et al. [103]) and the role well-known processes such as layering, drift, conversion, and replacement play in their evolution (Béland [6]; Hacker [39]; Thelen [106]).

This work has begun to grapple with the issue of policy feedback, which is discussed in this special issue. The conditions that lead to policy lock-in, when inertia works against subsequent activities in a policy trajectory, for example, has been a subject of investigation (Jacobs and Weaver [65]; Weaver [112]). Although both positive and negative feedback processes have been a subject of interest in policy studies for some time (Baumgartner and Jones [4]; Pierson [89], [90]; Weaver [112]), the exact way in which lock-in does or does not occur is not well understood.

The presence of mixes raises several design issues to the fore. First, mixes come in many different types with some featuring combinations of one or two tools, while others feature much more complex portfolios of tools and goals, often spread across multiple levels of government (Howlett and del Rio [50]). *Ceteris paribus*, ensuring the integration of complex multi-dimensional mixes is more difficult than with simple combinations. Most research on mixes to date, however, has examined only the latter bundles (Schmidt and Sewerin [97]). An outstanding question in the field, then, is whether conclusions drawn in the latter case apply in the former.

A second subject of some interest is policy *resilience* or the ability of a policy to continue to deliver on its goals and aspirations despite changing circumstances. How a policy can be consciously designed to avoid policy churn and remain "sticky" or resilient over the medium to long term is an issue that has been broached only very recently (Jordan and Matt [69]; Jordan and Moore [70]; Schmidt et al. [98]). This is also an important research agenda, because the ability of a mix to retain coherence in its original character, or, in its amended form, is a key indicator of its resilience or adaptability. While recent studies have looked in more detail at related subjects such as *robustness*, or how policy mixes can be designed to remain effective over a range of circumstances at a single point in time (Capano and Woo [16]; Capano et al. [15]), they have generally failed to examine the dynamic ability of a policy to withstand challenges to its elements and persist in effectiveness *over time*.

This is an especially germane consideration in studies of policy feedback since many policies face deliberate efforts to alter, adapt, or repeal all or part of an original design in the effort to undermine or destroy it (Comfort [18]; Davoudi [22]; Duit [26]; Folke [31]; Holling [41]; Wilts and O'Brien [113]). The experience of governments with various kinds of tax reforms, for example, is replete with examples of this phenomenon of rolling back policy alterations, although the reasons and processes through which alterations are retained in the face of such challenges are less well known than when they are amended or dropped (Patashnik [88]).

This paper addresses this gap in the literature around policy feedback and the resilience of policy mixes through a detailed case study of the evolution of the elements of the Patient Protection and Affordable Care Act (ACA) in the USA since its passage in 2010. The ACA, of course, provides an excellent example of this most complex variety of a policy mix as its various elements arose from a range of policy initiatives proposed by many different actors and put into place over a substantial period in multiple rounds of reform (Teisman [104]). The act created new institutions, imposed new regulatory requirements, and put in place new incentives for healthcare providers in the US healthcare system, hence bringing challenges to attaining the coherence and logic of mix arrangements. Moreover, again, the ACA remains a modern archetype involving efforts to "repeal and replace" a policy arrangement. Although the ACA remains at a very early stage in its history, it provides many lessons about how, and how not, to design complex policy mixes that can survive partisan opposition from vested interests and electoral antagonists.

As this discussion shows, overall, the law has resisted significant efforts at displacement but has been susceptible to processes of gradual institutional change. On the one hand, the ACA displays a policy process and design that incorporated elements into the healthcare mix expected to enhance its resilience and ability to quickly garner public support and head-off opposition challenges. The inclusion of several key instruments within the ACA's policy mix—especially those with early benefit phase-in built on existing policy legacies—helped to provide immediate positive feedback and ensure the schemes overall level of resilience to such negative feedback forces as emergent political attacks and technical problems. On the other hand, other elements in the ACA such as the inclusion of instruments designed with long phase-in periods and reliance on novel federal-state policy architectures were expected to generate positive feedback but proved ultimately less resilient to negative attacks. The ACA's fragmentation of authority and its failure to frontload policy benefits created opportunities for negative feedback to overwhelm support for these measures and for the law's political opponents to strike at it, injuring the implementation of the reform (Béland et al. [9]). The lessons these processes have for the linkage between feedback and resilience are set out in the Conclusion.

Before we move on to discuss how policy makers do, or do not, attempt to build robustness and resilience into new or rearranged policy structures, it is worth briefly recapping the main features of the ACA, which will explain why it is such a useful case for analyzing these critical questions. The ACA's primary goals were to remedy, or at least ameliorate, the damaging contradiction at the heart of the US healthcare system in 2008. At that point, the country was an outlier in the industrialized world in terms of its high level of healthcare-related spending while leaving a significant part of its population without health insurance coverage. Tackling these problems simultaneously was always likely to prove problematic for policymakers since it meant that the problem of uninsurance could not be simply resolved through increased spending. Hence, policy makers designed a complex series of arrangements.

While the law was certainly explosive for subsequent American political development, it was not what might be thought of as a "Big Bang" policy reform that created major new institutions, however out of nothing. The law did anticipate the creation of some new institutions. One means of making private insurance more affordable to low-income, but not poor, households was through the creation of so-called health insurance exchanges. The intent was that these exchanges would be crafted by state governments and would facilitate the purchase of private insurance through publicly funded subsidies. The law also imposed new requirements, most notably the "individual mandate" that meant that people had to purchase insurance if they could afford to do so. Elsewhere the law built on or adapted existing policy instruments. It proposed an expansion of the existing Medicaid program to cover everyone in households up to 138% of the poverty line and revised regulatory frameworks to squeeze the private insurance industry into more cost-effective behaviors (Béland et al. [8]). Elsewhere incentives for healthcare providers such as hospitals were adapted to sanction ineffective treatments. What is evident even from this brief summary of the ACA is the complexity of the law's mix of policy initiatives. In turn,

this put in play a multifaceted strengths, weaknesses, opportunities, and threats (SWOT) analysis as the law's advocates and opponents battled over its relative strengths and weaknesses and sought either to maximize the opportunities or exploit the threats to its effective implementation.

The need for robustness and resilience: designing policy mixes over space and time

Policymaking involves creating and implementing mixes of policy tools needed to attain desired policy goals (Howlett [45]). Each tool has its own particular character and exists as a bundle of mechanisms and attributes utilizing one or more governing resource to affect policy target behavior (Capano and Howlett [14]; Hood [42]; Salamon [94]). Understanding this character is an important aspect of designing programs and packages; past studies have focused on identifying the nature, advantages, and strengths and weaknesses of the varied techniques used by government to implement their wishes (Salamon [94]). But choosing and designing policy tools is more difficult when there are multiple goals and multiple sectors are involved in a program and a policy involves the design and application of a "portfolio" or "mix" of tools (Doremus [23]; Jordan et al. [68]; Howlett et al. [55]). In such situations, instrument choices are not restricted to a single tool, but rather to a mix or bundle of policy instruments. In constructing such bundles, balancing the character of different types of tools within a mix is a challenge but also a key criterion for policy success.

Importantly, this process also has a strong temporal component. Policies that were originally thought to be "robust" can become less so over time due to, for example, demographic changes that increase the number of elderly pension earners beyond original targets, or due to circumstances such as climate change inspired insect infestations undermining projections of agricultural and forest yields. Declines in robustness can occur because of policy drift or because of the actions of beleaguered policymakers trying to improve efficiencies in times of austerity when it is hard to secure planned resource disbursements (Van de Walle [107]). Many sustainability strategies have also suffered from unanticipated and poorly conceived layering. But other examples of layering show how this process, if done properly, can correct failures and improve a mix, as when cigarette labeling laws were added to taxes and sales point controls in anti-tobacco strategies, or when mandatory seatbelt laws were added to auto-safety regimes (Isaksson et al. [60]).

Importantly, efforts to integrate mixes in complex areas such as social welfare provision or the economy also face significant feedback effects as policy efforts can be and often are contested; that is, challenged by opponents of various kinds. Many resource management regimes in areas such as sustainable forestry and fisheries, for example, have failed when powerful interests were able to maintain favorable goals, instruments, and settings, such as unsustainable fishing or timber cutting quotas that support an industry, or, to limit the impact of new policy initiatives that could have produced more sustainable harvesting (Howlett and Rayner [57]; Rayner et al. [91]).

Studies of policy uncertainty, crisis management, policy learning, and policy capacity have thus emphasized the need to design some modicum of robustness into most policies, such that they are not only "robust" or capable of maintaining the same performance in a number of circumstances, but also are "resilient", that is able to bounce back in the face of internal and external perturbations and challenges (Capano and Woo [16]; Howlett et al. [56]; Dunlop [27]; Howlett and Ramesh [54]; Moynihan [84]). Like a bridge or building, many policies need to be somewhat "overdesigned" or "over-engineered" to allow for a greater range of effectiveness or "robustness" across both static contexts and time. Overdesigning policies can be effective and even efficient in the long term, for example, in the case of the inclusion of "automatic stabilizers" such as inflation adjustment to welfare payments or extended unemployment insurance payments in the event of an economic downturn. These policies maintain some level of spending and saving despite a general economic contraction and also remove

some funds from investment availability during boom times (Salamon [94]; Sterner [102]). Further, indexing such "stabilizers" to cost of living increases helps protect their value against policy drift.

While robust designs are common, however, policy studies have only recently recognized the need to also design positive feedback mechanisms which promote agility, improvisation, and flexibility—or resilience—into policies in order for them to also be able to adapt and deal with the uncertainty of serious challenges in the medium to long term (Capano and Woo [16]; Kwakkel et al. [78]; Nair and Howlett [85]; OECD [86]; Walker et al. [111], [110]). This can mean, for example, adding measures to existing policy mixes that provide strategic sensitivity or the early awareness of incipient trends as they develop and evolve such as stakeholder advisory mechanisms or strategic foresight analysis units and procedures. The European Environment Agency's ([28]) report on long-term policies, for instance, repeatedly emphasizes the importance of building various processes into policies that recognize early warnings of changes in policy environments, especially as new knowledge emerges, but also in terms of addressing shifts in the economy and society that exceed or upset initial expectations and leave a policy open to challenge.

These require strategic resources, funds, people, and competencies to be put into place that can be mobilized and (re)deployed quickly to sustain a policy in the face of negative feedback to change or, more to the point, to design policies in such a way that challenges might be defused before they begin, by raising the costs of altering a policy well beyond the trivial by, for example, locking in benefits or distributing difficult to alter property rights (Doz and Kosonen [25]; Luthar and Cicchetti [80]).

Understanding the character of these tools for policy resilience and how they interact with each other is thus a critical aspect of designing programs and policy packages (Doremus [23]; Howlett et al. [55]; Jordan et al. [68]), but one which has received little treatment in the literature to date. In recent years, the literature has advanced toward a better understanding of many of these aspects of the nature of policy mixes and the dimensions and trade-offs that can be made between tools in a superior design. A set of basic design principles has been articulated, such as the need to promote coherence, consistency, and congruence between policy elements (Howlett and Rayner [58]; Kern et al. [75]; Rogge and Reichardt [93]; Rogge et al. [92]). In most circumstances, however, balancing the character of different types of tools in a policy mix is a challenge. Questions about robustness such as how to achieve "complementarity" and possibly useful "redundancy" while avoiding excessive duplication and counter-productive mixes (Grabosky [36]; Hou and Brewer [43]; Justen et al. [71]) have been the subject of most design thinking and theorizing (Howlett [48]; Moynihan [84]) rather than concerns around resilience.

Better knowledge about how complex designs can remain resilient in the face of political and policy challenges, however, is critical. The question of how best to deal with environmental changes, opposition, and conflicts that may affect post-enactment over the medium to long term remains understudied and under-appreciated (Walker et al. [111]; Kwakkel et al. [78]; Capano and Woo [16]). Both robustness and resilience are necessary for a policy mix to be able to deal with surprises and avoid possible policy failure caused by unexpected or unknown occurrences and changing contexts that upset initial design specifications and assumptions (Howlett et al. [56]). And both criteria highlight the need to investigate seriously the way in which mixes evolve over time and how their various parts are or have been sequenced.

Scholars have now begun to turn their attention to the empirics of resilience and how it is precisely that policy mixes actually evolve post-enactment and how the timing of events affects the adoption, replacement or elimination of key components within a policy mix, often affecting its original goals or intent in a negative fashion (Howlett et al. [55]; Jordan et al. [68] Justen et al. [71]). Studies of policy dynamics and reform (Patashnik [88]; Jordan and Matt [69]), for example, have urged the creation of "sticky" or resilient designs in

long-term policy areas such as climate change or pensions capable of withstanding major political challenges and performing well under changing circumstances (Jacobs [61], [62]).

This work has studied temporality in terms of the *intentional* sequencing of tools as part of an initial mix design, either in terms of controlling spillovers or ratcheting up (or down) specific tool effects like stringency of implementation (Givoni [34]; Taeihagh et al. [103]). And it has also begun to grapple with the important issue of the unintentional sequencing of tools as part of a mix design (Taeihagh et al. [103]) and the procedures through which a policy can be adapted to such changing, but unknown, future contexts (Howlett [49]; Bellehumeur [10]).

These studies suggest that achieving higher level of resilience typically means duplicating some resources and adding procedural policy tools that allow alterations to some elements of a policy package to be made in order to deal with the possibility of unforeseen events and opposition (Howlett [44]). This usually means including in a policy mix mechanisms or procedures for monitoring and revising policies in a planned fashion in order to deal with future issues and spillovers from existing policy efforts (Lang [79]). However, how exactly this can be done and with what effect remain unanswered questions which this present study sets out to uncover.

Change processes in policy mixes: the links of replacement, layering, drift, and conversion processes to policy success and failure

Policymaking, as we argue in this section, is an inherently temporal process and one for which a large literature exists on the subject of policy change (Daugbjerg [21]; Howlett and Goetz [51]; Mahoney [81]; Jordan and Matt [69]). As this literature notes, policymakers are rarely able to overhaul or *replace* public programs completely. Rather, they are typically faced with a situation in which an already existing policy mix is in place and cannot be easily discarded, meaning that design takes place through gradual temporal processes (Thelen [106]; Capano and Howlett [14]; Béland [6]; van der Heijden [108]; Feindt and Flynn [30]; Hacker [37]; Kay [73]; Stead and Meijers [101]). Among other things, this may involve issuing "patches" to correct flaws in existing mixes and allow them to adapt to changing circumstances (Howlett [47]; Howlett and Rayner [59]; Howlett et al. [53]).

The precise mechanism through which this happens varies. They may occur, for example, through *layering*, a process whereby new elements are added to an existing regime without abandoning previous ones (Kay [73]). Layering often occurs as a result of feedback effects, either adding or withdrawing features of policy mixes in order to offset or deal with, especially, negative feedback. This can either lead to incoherence or correct problems with older policies depending on how carefully it is done.

Another important process by which policy mixes can be reconstructed in the face of opposition and demands for change is *drift*, which occurs when the elements of a policy mix are deliberately maintained, while the policy environment changes (Hacker [37]). Drift is a common situation in welfare state mixes, where, for example, policy goal shifts from family to individual support (and vice versa) have occurred without necessarily altering the instruments in place to implement the earlier policy goal (Hacker [37]). Such shifts can be a source of policy failure.

A third process of gradual change in policy mixes is *conversion*, which involves holding elements of the policy mix constant while redeploying the mix to serve new goals (van der Heijden [108]). While consistency may remain largely intact, conversion poses significant risks of incongruence between old instrument elements and any new goals that have been introduced. Conversion has characterized some major health policy reform efforts, which has created problems when, for instance, old tools such as casualty emergency wards came to serve as bases for chronic care of the homeless and un- or under-insured (Falkenmark [29]; Hacker [38]).

Research on processes of layering, drift, and conversion suggests that a lack of a sustained and focused effort on the part of designers to offset policy feedback can easily lead to misaligned changes in goals or instruments and

result in either significant policy rollbacks or sub-optimal or disappointing results (Bode [11]; Howlett and Rayner [59]; Howlett and Mukherjee [52]). Advancing our understanding of how feedback processes and tool deployment affect individual elements of policy mixes, however, requires more fine-grained studies that examine stability and change *within* a single policy case.

Policy feedback and the design of policy mixes: the case of the ACA

It is important to acknowledge that policy design does not occur in a vacuum. Indeed, policy designers' freedom is confined in ways that may inhibit the production of robust and resilient policy mixes. Designing for robustness and resilience is obviously not politically neutral. Feedback from existing constellations of interest groups and intense policy demands shape the range of politically viable mixes (Howlett and Rayner [57]; Orren and Skowronek [87]; Rayner et al. [91]), and policy opponents may prefer the adoption of policy mixes that make robustness and resilience hard to achieve. As Béland et al. ([7]) note, the mobilization of "instrument constituencies"—who mobilize to support the selection of specific elements in a policy mix—may constrain the range of available options. Policymakers must be able to anticipate these barriers to designs and designing for robustness and resilience.

The passage and implementation of the ACA affords a unique opportunity to examine how a policy was crafted that proved resilient in some parts, but less so in others, in the face of significant political challenge. In this paper, using the ACA case, we concentrate on identifying what factors within policy mixes confer resilience through a politically challenging implementation process and what factors undermine that process once the policy mix has been settled. We do not focus exclusively on the politics that shape the policy mix package, but that is not to neglect the unwanted political and legislative compromises that policy designers are often forced to make in order to get any sort of package enacted and the consequences this may have for its future resilience.

As Gerring ([32]) notes, when the link between variables is undertheorized—as in the case of policy design elements and resilience—a single case study is an ideal tool for empirical exploration. We derive lessons from this case about feedback effects and policy tools that can inform for other similar efforts at major policy change. To be sure, the ACA is an "outlier" case in several ways. Not only is it the most significant health reform in the USA in half a century, it is arguably the most politically polarizing (Jones et al. [67]). Yet, the ACA's outlier status is precisely what provides analytical leverage in major ways. First, the intensity of political activity related to the ACA's implementation allows us to examine how processes of gradual institutional change affected the stability of the policy mix. Second, the scope and complexity of the ACA allow us to evaluate how individual components of the ACA's policy mix responded to feedback effects such as efforts to dismantle the program through gradual institutional change. Furthermore, the high level of polarization and interest-group mobilization surrounding the passage of the reform illustrates how politics can shape and constrain design considerations related to robustness and resilience.

Hence, although the ACA is still at an early stage in its evolution, it provides many lessons about how to—and how not to—design complex policy mixes that can withstand challenges and survive determined opposition. The case study draws attention to the political–strategic content of policy design and links to other studies that also highlight the need to (1) anticipate problems and diagnose future policy environments correctly and (2) secure redundancy and autonomy in policy designs in order to ensure their dynamic resilience (Giezen et al. [33]).

Lessons for resilient policy design from the Affordable Care Act experience

When analyzing the ACA, it is important to consider that the law is not a coherent whole passed in a "replacement" process but rather a mix of a diverse number of policy instruments designed to expand coverage

to both public and private health insurance and layered on top of an existing regime featuring elements of conversion and drift dynamics.

As Béland et al. ([8]) noted, the passage of the ACA did little to quiet its critics or settle ongoing political disputes over health reform in the USA but rather engendered further negative feedback effects. Further, as an analysis of panel survey data by Jacobs and Mettler ([63]) noted, these disputes created a ceiling for positive policy feedback in the case of the ACA. Yet, while the implementation of the law was subject to technical and political challenges on all sides, the elements of the ACA's policy mix varied in their resilience. Table 1 details the main titles of the law associated with coverage expansion, their effects on coverage, their phase-in dates, as well as their post-enactment trajectory.

Table 1. Post-enactment trajectory of major ACA coverage expansion provisions

Coverage expansion provisions	Phase-in	Millions insured as a result of title as of 2018	Post-enactment trajectory
Title II: Medicaid expansion	2014	12	Litigation (NFIB v. Sebelius) allows states to opt out; significant challenges to implementation in Republican-controlled states
Title I: private coverage expansion	2010–2015	9.7	Varies—see below
Early regulatory reforms: lifetime/annual dollars limits; dependent coverage up to age 26; recessions; preventive services w/o cost sharing; preexisting conditions for children under age 19; access to emergency services; choice of primary care providers/pediatricians; access to OBGYN care	2010	n/a	Successful implementation
Guaranteed issue	2014	n/a	Successful implementation
Individual mandate	2014	n/a	Litigation (NFIB v. Sebelius, 2012); repealed, 2017
Small business tax credits	2010	n/a	Successful implementation
Guaranteed issue (Title I)	2014	n/a	Successful implementation
Individual mandate (Title I)	2014	n/a	Litigation (NFIB v. Sebelius, 2012); repealed, 2017
Premium and cost-sharing subsidies	2014	n/a	Litigation (King v. Burwell; US House of Representatives v. Burwell); successful implementation
Insurance exchanges	2014	n/a	State-level obstruction
Market stabilization (risk adjustment; reinsurance; risk corridors)	2014	n/a	Reinsurance and risk corridors sunset in 2016, not reauthorized
Employer mandate	2015	n/a	Congress delayed for 2 years; significant challenges in enforcement
Title VIII: Community Living Services and Supports Act	2011	0	Repealed, 2013

Coverage estimates were identified in CBO ([19])

Analyses of the ACA's tools reveal that there is a high degree of variation in the resilience of individual elements of the ACA's policy mix and how this has affected the overall level of resilience of the package as a whole. Some policy instruments deployed were particularly prone to instability and vulnerable to negative feedback effects, especially those that failed to rely on preexisting policy legacies and required extensive intergovernmental cooperation for their enactment or effect. One example is the system of health insurance exchanges adopted to placate opponents of the bill's passage. The exchanges allow individuals and small businesses to purchase pre-approved, comparatively affordable health insurance coverage. This was made possible by a system of tax subsidies for individuals making up to 400% of the federal poverty level and a temporary stabilizer for the individual insurance market (risk adjustment, reinsurance, and risk corridors)[2] as the new system took effect.

Designers expected that the use of the exchange mechanism, rather than a public organization, would avoid some conflict with established interests in the health insurance industry, while the extension of a large subsidy to the states would head off potential intergovernmental resistance, that is, offsetting negative feedback and promoting positive lock-in. However, somewhat unexpectedly many Republican-controlled states simply refused to act, dramatically increasing the burden on the federal government, which was forced it to establish more exchanges on its own than had been originally envisioned, "patching" the original design due to unexpected negative feedback. The transaction costs of creating such insurance exchanges were also accentuated as few states—and indeed few individuals in the federal government—had experience with operating such systems.[3] Had the initial law simply created a national exchange, federal officials could have been better prepared to make necessary resource commitments. Alternatively, had the law contained consent procedures for state governments that did not require legislative approval of exchanges, attempts at obstruction would have faced stronger challenges.

This proved especially problematic after Republicans gained control of many statehouses in the 2010 mid-term elections (Hansen [40]), meaning that many states were, again unexpectedly, in Republican hands precisely when planning for the health insurance exchanges was underway. Indeed, 9 years after the passage of the ACA, only a dozen or so states operate insurance exchanges. As such, the federal government was forced to create "fallback" exchanges, which created their own challenges for consumers and, as opponents wished, created public sentiments antipathetic to the new program and skeptical of its benefits while all too aware of its costs (Béland et al. [8]). The states' refusal to participate in the ACA marketplaces thus created confusion and uncertainty both for the federal officials overseeing implementation and for insurers considering entering into the individual marketplace. Insurers who did enter the marketplace also faced the reality that older, sicker patients were on average more likely to select into coverage than younger, healthier patients (Dorn [24]). This adverse selection problem contributed to premium increases across the country, again creating negative feedback problems for the new regime.

Unlike the partisan defeat suffered by the government in the 2010 elections, however, this latter move had been anticipated accurately, and the ACA included a market-stabilization program intended to help defray the impact of such selection effects, providing a level of redundancy, which enhanced overall ACA resilience. However, the expected level of resilience did not materialize as two key components of the program—reinsurance and risk corridors—sunset automatically in 2016 (see Table 1), because, in the midst of drafting legislation to repeal the ACA, Republicans in Congress did not reauthorize the programs. Again, this level of partisanship and opposition to the bill, and the unexpected Republican victory of Donald Trump in the 2016 election over ACA supporter Hillary Clinton, challenged the effectiveness, indeed the very existence, of the healthcare legislation. The net result was that premiums in the individual market continued to rise, especially in areas with health insurance monopolies (van Parys [109]), again undermining popular support for the Act. Hence, while policy risk assessment was accurate, political risk assessment was again faulty and the manner in

which political opposition would affect the policy mix was miscalculated and no "hedges" put in place to offset these possible electoral outcomes.

This experience and effort with the legacy of insurance exchanges can be contrasted with that of the ACA's suite of regulatory reforms, which were much more successful, immediately engendered positive support for the bill, and proved very difficult for even a determined opposition to destroy. Provisions such as consumer protections like the requirement that insurers cover individuals regardless of preexisting conditions, or that dependents up to the age of 26 can be on their parents' insurance, were very popular and were designed to take effect immediately, ensuring high levels of support. Although the states also played an important part in implementing these regulations, they have proved much more resilient to emergent political and technical challenges. This is because these kinds of health insurance regulation were designed to take place primarily at a bureaucratic level, leaving fewer opportunities for partisan ACA opponents to politicize the issue and use it for electoral, partisan, or self-interested purposes (Béland et al. [8]).

A third element of the policy mix—the Medicaid expansion—experienced an even more turbulent trajectory. The ACA included strong fiscal inducements for states that wanted to join the expansion with generous federal funding for newly eligible individuals, and even stronger incentives against non-participation through the threat that all existing federal Medicaid funding would be withdrawn from states that failed to participate. In terms of simple policy design, this did not seem to leave the states with much choice. Yet, whereas consumer protections phased in soon after the ACA passed, the Medicaid expansion did not phase in until well after both the 2010 and 2012 elections. That millions of newly eligible Medicaid beneficiaries thus experienced significant delays in receiving benefits left the policy open to political attack.

Further challenging the policy's resilience were legal challenges to Medicaid expansion around its constitutional soundness and impact. Some of these challenges were anticipated but others which were unforeseen by the law's designers or contemporary legal commentators. In these legal contests, the Supreme Court ruled that the proposed sanction against states for refusing to expand their Medicaid program constituted federal overreach. Yet, the court's redesign of this central part of the ACA made it possible for states to continue with their existing arrangements. Hence, the court effectively redesigned the ACA, introducing an extra aspect of discretionary delegated governance rather than one imposed by the federal government. Thus, even though the enticement of new federal monies remained in place, nineteen states had still refused to join the expansion when Obama left office in 2016 (KFF [72]).

Nevertheless, the earlier moves made to utilize exchanges and frontload benefits proved decisive when the threat to undo the ACA became real and immediate in 2017. At that time, as the Trump administration was to find out, it became clear that the law had already engendered a stronger base of support among the business and affected communities than many opponents had anticipated. While there was not an overwhelming surge of popular support for the ACA, polls suggested that despite a relentless barrage of anti-ACA claims in the popular and social media the law still had at least a plurality of approval (KFF [76]). Further, when Republicans started to unveil their plans to repeal the law in its entirety, a number of powerful interests in the healthcare industry voiced their opposition to a repeal. These included large and well-entrenched groups such as the American Hospital Association ([1]), the American Medical Association ([2]), the American Nursing Association ([3]), and the American Association of Retired Persons (Kelly [74]).

This fit designer expectations as, as early as 2010, political scientists Larry Jacobs and Theda Skocpol had offered a scenario under which the "winners" from the ACA's changes (i.e., "younger, minority men and women, and the less affluent of all backgrounds") would come together to "defend" the provisions of the law in "future elections and public debates" (Jacobs and Skocpol [64], 178). At least through Obama's presidency, this coalition did not materialize. However, this can be attributed to the delay in the implementation of much of the law, and the fact

that people who benefitted from one aspect of the law did not necessarily identify with those benefitting from another part of it. For example, while providing subsidies to help people get insurance through the exchanges and expanding Medicaid shared the underpinning strategic goal of reducing the number of uninsured low-income households, they were two distinct policy tactics that did not immediately unite the two sets of beneficiaries (i.e., the middle classes on the one hand, and the poor and the elderly on the other).

In response, the current administration engaged in *conversion* and *drift* in order to undermine the Act, re-interpreting key provisions of the ACA and other statutes to undermine health reform while leaving planned changes un-adopted. For example, the Trump administration argued it was illegal to make the cost-sharing reduction payments to insurers that had helped lower costs for lower-income households purchasing insurance through the exchanges. This created additional uncertainty for insurers when deciding whether to enter exchange marketplaces and how to set their premiums (Scott [99]). Additionally, responding to demands from Republican governors, the administration re-interpreted Section 1115 of the Social Security Act to permit states to impose work requirements to be eligible for Medicaid. By 2018, thirteen states had submitted proposals for Medicaid work requirements for review by the Trump administration.

Furthermore, the Trump administration *layered* on additional reforms that appear on the surface to offer new benefits but that are likely to re-segment the individual insurance marketplace and undermine some parts of the ACA. For example, a 2018 regulation made it easier for people to buy cheaper insurance packages that did not conform to the ACA's regulations and lacked coverage for essential health benefits (Scott [100]). Such packages were likely to prove attractive to healthier Americans who would then leave the exchange marketplace, thus diminishing the socialization of risk. Combined with the zeroing-out of the individual mandate, this reform may well contribute to higher premiums for individuals who remain in health plans subject to ACA regulations. It will also allow for the sale of cheap but sub-standard plans similar to those sold prior to the ACA's passage. Further, in the face of persistent challenges in the individual marketplace, the ACA has been subject to policy drift. Congressional Republicans have refused to reauthorize key components of the ACA's market-stabilization programs and the Trump administration itself has failed to allocate sufficient budgets for advertising and consumer navigation.

Discussion

As the previous section suggested, the resilience of the elements of the ACA varied across key elements of the law and problems with some elements affecting overall resilience, while strengths in some areas enhanced parts of the Act if not ACA resilience as a whole. Formally speaking, the law proved to be quite resilient, withstanding serious court and political challenges mounted by opponents in government, industry and the states. Yet, it still suffered from some design flaws linked to poor political and judicial risk assessment that made it less capable than it should have been in offsetting negative feedback with positive. The complexity of the law was also an issue, making for fragmented implementation with benefits sometimes unclear even to those enjoying them. This undermined resilience by fracturing support among the public and interest groups but, ironically, also formed part of the reason why it survived a full frontal assault in the summer of 2017. That is, opponents found that picking the ACA apart was easier said than done, because many of the ACA's various components were in fact designed as interlinked cogs rather than separate policy interventions.

The ACA's resilience should not be exaggerated, however. While the Trump administration has been largely unsuccessful in pushing for full displacement, it has had a greater degree of success in more gradual approaches to retrenchment (see Table 2). First, despite initial legislative failure, congressional Republicans successfully zeroed out the penalty for the ACA's individual coverage mandate—arguably the law's most unpopular provision—in the Tax Cuts and Jobs Act of 2017. After this measure was passed, President Trump went as far as to declare, "We have essentially repealed Obamacare" (quoted in Wolf [114]). Like many of Trump's other

presidential pronouncements, however, this was manifestly untrue and early evidence suggests that enrollment to the exchanges through the federally run marketplace remains relatively steady for 2018 (Bryan [12]). However, unexpected court challenges on this issue continue to threaten the Act (Goodnough [35]).

Table 2. Attempts to retrench Affordable Care Act, 2017–2018

Type	Results
Displacement	American Health Care Act—passed in house (217–213)
	Better Care Reconciliation Act—failed in Senate (57–43)
	Obamacare Repeal Reconciliation Act ("repeal and delay")—failed in Senate (45–55)
	Cassidy–Graham–Heller–Johnson amendment—never introduced in Senate
Partial displacement (individual mandate repeal)	Healthcare Freedom Act ("skinny repeal")—failed in Senate (49–51)
	Tax Cuts and Jobs Act—enacted
Conversion	Re-interpretation of Social Security Act Section 1115, allowing states to introduce Medicaid work requirements
	Re-interpretation of cost-sharing reduction payments as "illegal"
Layering	Regulation allowing sale of "short-term" health insurance products that do not include essential health benefits
Drift	Failure to reauthorize reinsurance and risk corridor programs
	Failure to allocate budgets for advertising and consumer navigation

Thus, the ACA's formal stability and resilience in the face of legislative and judicial challenge masks a slow degrading of the law's core purpose—the expansion of insurance coverage. While the ACA contributed to historic declines in uninsured rates from 2013 to 2016, that rate began to creep up again under the Trump administration from 12.7% in 2016 to 15.5% in 2018—the highest national rate of uninsured since the ACA's coverage provisions were phased in (see Table 3). Efforts to obstruct and undermine the ACA have a particularly significant effect on the insurance status of individuals living with an income below the equivalent of 250% of the federal poverty rate. By 2018, the uninsured rate among adults was ten points higher in states that did not expand Medicaid compared to states that did. It was also three points higher in states that defaulted to the federal marketplace rather than creating their own. Additionally, there appears to be a small partisan shift in health insurance for 2018, the first year in which individual-mandate penalties were not in place. Finally, as Sances and Clinton ([96]) note, self-identified Democrats were significantly more likely to enroll in private insurance plans through the ACA than self-identified Republicans. In sum, while the ACA remains the law of the land, its fragmented design, combined with intense polarization around the law, has weakened the policy's implementation and political acceptance.

Table 3. Percent of adults 19–64 without health insurance, 2013–2018. *Source:* Collins et al. ([17])

	2013	2014	2015	2016	2017	2018
All	19.92%	14.82%	13.3%	12.7%	14%	15.5%
Medicaid expansion status						
State did not expand Medicaid	22.6	19.27	18.3	16.1	19.34	21.89
State expanded Medicaid	17.88	11.75	9.84	10.37	10.72	11.43
State marketplace status						
State created marketplace	18.72	10.23	11.02	10.49	10.88	13.14

State defaulted to federal marketplace	20.42	17.43	14.64	13.8	15.37	16.46
Party affiliation						
Democrat	18	13	10	10	10	9
Republican	11	11	8	8	10	14
Poverty status						
Below 250% poverty	33.59	23.35	21.2	20.91	22.36	25.7
250% poverty or more	7.15	5.69	4.14	4.4	6.22	5.76

Conclusion: lessons from the ACA case

In an increasingly turbulent political economy, designing policies to be resilient in the face of a number of risks and future challenges is an essential task. Political scientists have long recognized this fact and the role that negative feedback and positive feedback play in such policy dynamics and processes. Numerous scholars have considered the role of bureaucratic structure, benefit characteristics and program financing on political feedback and durability. Others have focused greater attention on how characteristics of the policy environment affect gradual institutional change (e.g., Mahoney and Thelen [82]). Yet, political science research has heretofore offered little clear guidance for policymakers on how to structure policy mixes to ensure policy resilience in the long term (cf. Kelly [74]). Our starting point is that, all other things being equal, a policy that is easily repealed by opponents is not as good as one that can withstand predictable and purely political challenges.

This paper leverages evidence on the implementation of the ACA to generate insights about the politics of designing and implementing policies to enhance resilience and robustness. The ACA is without question the most significant change in US social policy in half a century, as well as one of the most polarizing reforms in recent years. While these make the ACA an "outlier," it nevertheless offers several objective lessons about the challenges of designing policy mixes that will endure over time.

The ACA's fragmented, heterogeneous mix of policy instruments, for example, left it vulnerable to both internal self-undermining dynamics and external political attacks. It took 4 years from the ACA's enactment for many of its core benefits to be phased in. Even then, the law's fragmented, delegated structure made it difficult to ensure that those benefits were adequate and salient. This prevented the benefits of the bill from being easily recognized and publicized to recipients, missing an opportunity to promote positive feedback in anticipation of negative opposition.

Beyond that, the ACA's policy mix also posed barriers to the delivery of benefits that also engendered difficult to counteract negative feedback. In contrast to Medicaid expansion, the implementation of insurance markets and a complex system of subsidies was a new endeavor for state and federal officials alike. While policymakers correctly anticipated that problems would arise in the creation of the new marketplaces, the ACA's policy instruments were not up to the challenges placed before it. Not only was the ACA's individual mandate politically unpopular, its penalties were not stiff enough to induce younger, healthier consumers to enter the individual marketplace. Nor were its inducements to the states high enough to assuage their concerns.

As well, two of the ACA's automatic stabilizing mechanisms for coping with this problem—risk corridors and reinsurance—were designed to sunset by 2016. Thus, by 2017, the ACA lacked any shock absorbers that could assist in stabilizing the individual marketplace making it susceptible to policy drift. Finally, while the popularity of the ACA's core features has created barriers to legislative retrenchment, its inadequate investments in bureaucratic structure left it open to retrenchment via conversion and layering. The Trump administration has taken advantage of statutory ambiguity in this way to convert core provisions of the ACA, blocking cost-sharing

reduction payments to insurers and allowing for the introduction of work requirements in Medicaid and the sale of short-term insurance plans that undermine the ACA's individual market reforms.

Taken together, the ACA offers policymakers five important lessons about how policy mixes can be designed to enable (or fail to enable) resilience. First, generating resilience requires front-loading benefits and back loading as many costs as possible in order to ensure the creation of strong policy constituencies during the early years of policy development. Were the ACA to have delivered a larger number of salient benefits during the early years of implementation, Republicans may have found it more difficult (though likely not impossible) to reframe the law in purely partisan and racialized terms (Tesler [105]).

Second, the fragmentation of policy authority in a federal state like the USA and many others creates many opportunities for obstruction, and these risks must be well understood and efforts to offset them built into a policy. While ACA designers correctly assessed that creating a national insurance exchange would pose great problems, relying on state governments to participate willingly in the program despite clear incentives for partisan obstruction and low levels of technical capacity, contributed to confusion and delay in the roll out of ACA benefits when opposition governments stubbornly refused to take part in the new federal scheme. Such activities must either be avoided or when unavoidable accompanied by large enough incentives to overcome state-level resistance.

Third, the ACA case also shows that building on preexisting policy legacies and bureaucratizing technical issues and discussions reduces the potential for partisan maneuvering and reduces political risks. While state governments were the primary site of implementation for the ACA's market regulations, a strong institutional legacy enabled state insurance commissioners to do work on regulatory affairs without excessive interference from governors or state legislators.

Fourth, programmatic innovation requires critical redundant components and "shock absorbers," which may increase costs in the short-term but can prove well worth the expenditure in the long term by helping promote positive feedback and offsetting or avoiding negative. Implementing novel policy instruments is inherently uncertain. Moreover "learning by doing" is costly, especially when reforms are contested politically. While unpleasant surprises are never wholly avoidable, policies that contain redundant critical components may be able to cushion their impact. The quick sunset of the ACA's reinsurance and risk corridor programs had an adverse impact on market stability, as did the weakness of its individual mandate, both of which the federal government had only weak or partial backup plans available. When incorporating markets into social programs, policymakers should take care to ensure that market-stabilizing instruments have an adequate lifespan and can be adjusted, if necessary, by program administrators.

In addition, our analysis of how a policy mix might, or might not, generate resilience after enactment needs to be understood in the context of how politics fundamentally structures policy design and implementation. The foregoing lessons suggest how policymakers might (with all else being equal) restructure policy to ensure resilience. Yet, policymakers do not design programs in a vacuum. Interest-group politics fundamentally constrained the crafting of the ACA, keeping some policy alternatives off the table especially where cost control was concerned (Beaussier [5]; Burgin [13]). Moreover, the ACA was designed in an institutional and ideational regime that reinforced fiscal austerity. Policymakers were keen on assuring budget scorekeepers, congressional deficit hawks, and journalists alike that the ACA would reduce the federal deficit. Not only did this inhibit policymakers' ability to make choices that enhanced policy resilience—like the emplacement of redundant elements—it also led some to adopt policies that were clearly infeasible but appeared to produce short-term cost savings (Saldin [95]). In this context Burgin ([13]) notes: "Congressional actors immersed in the policy making trenches were short-sighted about the possibility (and hence consequences) of venomous post-enactment partisanship, problems that delegated governance might generate, and the importance of cultivating

supportive constituencies." Our examination of policy resilience suggests that policy makers, at least to the extent possible in the cauldron of a high stakes political fight, still need to take into account what the post-enactment phase of policy implementation will look like and how to make a policy mix have public appeal and a legal status that can deflect political and judicial attack (Mettler and Soss [83]).

Making predictions about post-enactment politics in the course of passing a law is, of course, a risky proposition. Democrats operating in the context of the 111th Congress could hardly have anticipated the swift post-enactment counter mobilization that conservatives would coordinate across multiple levels of government. Even if such forecasts were possible, Democrats would have been weighing them against other salient political obstacles, such as the demands of mobilized interest-group opponents in the health and insurance sectors. Nevertheless, developing the capacity to make these sorts of analyses may help to inform the design of future policies.

While the ACA is an instructive case, it has unique features that limit our ability to generalize. Among these unique features are the significant institutional and political constraints on policy design and the enduring and extreme partisan polarization that has pervaded efforts at reform. Future scholarship might consider how design can affect policy resilience in national contexts with fewer veto points, weaker pressure for deficit reduction, and lower levels of partisan conflict.

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