

Introduction

States as Stakeholders

After the November 2016 elections gave the Republican Party unified control over the presidency and both chambers of Congress, its longstanding goal of “repealing and replacing” the Patient Protection and Affordable Care Act (ACA) seemed to be well within its reach. The House of Representatives voted to eradicate the central domestic policy accomplishment of the Obama administration in early May 2017, at which point all eyes turned to the Senate. Since Senate Republicans were using the reconciliation process to circumvent the possibility of a Democratic filibuster and held only a 52–48 majority in the chamber, media attention focused on the handful of GOP senators viewed as capable of bucking the party line.

Senator Dean Heller of Nevada, generally described as the most electorally vulnerable Republican up for reelection in 2018, was watched especially closely. As one version of “repeal and replace” made its way through the upper chamber, Heller held a dramatic press conference in June 2017 at which he argued that the Senate bill was “simply not the answer.” He explained that the proposed measure would lead to major losses of insurance coverage and would do nothing to lower the cost of insurance premiums. The senator made clear, however, that he was particularly troubled by the bill’s treatment of the so-called “Medicaid expansion” through which millions of Americans, including 200,000 Nevadans, had acquired health insurance. He stated, “This is all about the Medicaid expansion ... You have to protect Medicaid expansion states. That’s what I want.” Heller wanted any rollback of national government financial support for the expansion to be accompanied by a boost in payment rates for states like Nevada, and his position put him at odds with many of his Republican colleagues (Haberborn and Pradhan 2017; Sullivan 2017).

Brian Sandoval, the very popular Republican governor of Nevada, stood next to Heller at the press conference. The senator made clear that his stance on

any health care measure would be influenced strongly, if not necessarily determined, by the views of his state's chief executive. "If you want my support [on repealing Obamacare]," Heller explained, "you better make sure that the Republican governors that have expanded Medicaid sign off on it . . . I've been saying that for months . . . Where is Governor Sandoval? What does he think?" (Cohn 2017). The governor had defied party orthodoxy to expand Medicaid and set up a state-run Obamacare exchange through which small companies and individuals without health insurance gained access to a government-regulated marketplace with different levels of coverage. These changes had lowered the state's uninsured rate considerably, and the governor made it very clear that he opposed rolling back the state's policy shifts: "Until I am satisfied and convinced that it's going to protect those 300,000 plus people, I won't be signed on to it" (Snyder 2017). Moreover, Sandoval had been one of seven governors to sign on to a letter that urged Congress to prioritize stabilizing the individual market rather than making major changes to Medicaid (Messerly 2017).¹ The press conference and the seemingly tight relationship between Heller and Sandoval led a journalist to characterize the governor as "the most important person in the Senate health care debate" (Scott 2017).

The initial Senate effort to repeal and replace the ACA failed later that summer,² but in early September another proposal gained unexpected momentum. Sponsored by Bill Cassidy (R-LA), Lindsey Graham (R-SC), Heller, and Ron Johnson (R-WI), the bill called for a combination of changes that would have affected the states dramatically. It proposed giving the states control over billions of dollars in health spending while imposing deep Medicaid cuts and preventing the states from taxing health care providers in order to fund Medicaid. This time a bipartisan group of ten governors "dealt a major blow" to the proposal by coming out against it. Alaska governor Bill Walker, an independent, was a member of the group, and one journalistic account described his opposition as "particularly notable" because he "holds some sway over" Lisa Murkowski, the Alaska Republican who was undecided on the measure (Sullivan, Snell, and Eilperin 2017). The Senate effort to enact health care legislation stalled yet again, and gubernatorial opposition was one of several reasons why it failed.

¹ The other governors who signed the letter were John Kasich (R-OH), Charles Baker (R-MA), John Hickenlooper (D-CO), Steve Bullock (D-MT), Tom Wolf (D-PA), and John Bel Edwards (D-LA).

² Ironically, Heller defied the wishes of the governor and voted for the "skinny repeal" proposal that came within a vote of clearing the Senate. The three Republican senators who opposed it were Susan Collins of Maine, John McCain of Arizona, and Lisa Murkowski of Alaska. The Nevada senator ultimately lost his bid for reelection, and his defeat by Democrat Jacky Rosen was interpreted by political observers as "a message about Heller's health care vote and sudden embrace of President Donald Trump" (Nilsen 2018).

Introduction

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In an era of intense partisan polarization where a “defining feature of American politics [is] a vast and growing gap between liberals and conservatives, Republicans and Democrats,”³ intraparty disputes between Republican governors and their fellow partisans in Congress might seem surprising. Yet the summer of 2017 was not the first time that the governors had mobilized to defend Medicaid; such spirited defenses have been a prominent feature of the program’s history nearly since its creation in 1965 (Rose 2013; Thompson 2012).⁴ Moreover, intergovernmental tensions of the sort that helped derail the Senate attempt to “repeal and replace” the ACA seem to be a defining feature of the contemporary era. In recent years, disputes between the national government and the states have cut across an astonishingly wide array of issues that include education, immigration, gun control, climate change, marijuana legalization, and many others. Their ubiquity leads some observers to characterize the current state of affairs as “fragmented federalism” (Bowling and Pickerill 2013). The willingness of state leaders to challenge the national government is part and parcel of what has also been labeled “a fend for yourself and activist form of bottom-up federalism” (Gamkhar and Pickerill 2012).

The framers of the US Constitution might not have predicted the specific policy content of these disputes, yet they would not be surprised by their existence. As the fledgling country considered whether to adopt the new governmental framework during the ratification campaign of the late 1780s, the appropriate balance of power between the national government and the states was one of the primary lines of division between those who endorsed the Constitution and those who did not. Anti-Federalists claimed that the proposed document put the civil liberties of states and citizens at risk due to its excessive centralization of power. James Madison responded that the possible mobilization of state governments rendered such concerns irrelevant or at least overwrought:

But ambitious encroachments of the federal government on the authority of the State governments would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. (Rossiter 1961, 266)

The dynamic Madison described in his essay, invoking the possibility of a “trial of force,” is no doubt more melodramatic than a bipartisan group of governors sending a letter to Congress in opposition to a proposed policy change. However, its relevance lies in its recognition that state officials track and react

³ Pew Research Center, “Political Polarization,” accessed March 9, 2018 (www.pewresearch.org/packages/political-polarization).

⁴ Chapter 4 of this book examines state officials’ impact on the political resilience and unexpected expansion of Medicaid in more detail.

to national government activities and that these officials are capable of engaging in collective action to defend what they view as their prerogatives.

National leaders have enacted policies with profound intergovernmental implications for over a century (Johnson 2007; Clemens 2006), and their efforts in recent decades include several prominent initiatives. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) fundamentally reformulated American income support policy by ending the individual entitlement to welfare benefits, imposing strict and escalating work requirements, and granting considerable administrative and fiscal discretion to the states. The No Child Left Behind Act of 2002 (NCLB), the subject of Chapter 7 of this book, relied heavily on the states to implement an accountability-based approach to education reform (Manna 2011). Some of the most significant national initiatives of recent years – such as PRWORA, NCLB, and the ACA – implicate the states in critical ways. National lawmakers have been drawn to intergovernmental initiatives for several reasons. In a political system where representation is based on geography, this approach appeals to members of Congress who want to please the constituents and elected officials they serve. It also can allow subnational officials to customize policy templates to the needs and preferences of their specific jurisdictions. Moreover, implicating state governments in the implementation of national policies holds special appeal in a political environment, like that of recent decades, characterized by intense resistance to increased national taxation.

State officials have greeted these intergovernmental initiatives with responses that range from enthusiasm to indifference to hostility, and this contemporary variation resonates with the historical record. State leaders have responded enthusiastically to some programs, making far-reaching policy changes in line with national government objectives. President Barack Obama’s “Race to the Top” initiative, for example, stimulated major state-level education policy reforms through a competitive grant program (Howell and Magazinnik 2017). Similarly, sometimes state officials have mobilized to defend national policies. When the Federal Communications Commission (FCC) moved to roll back net neutrality rules in 2017, nearly two dozen state attorneys general signed on to a lawsuit challenging the policy change, five governors signed executive orders to preserve the rules, and legislators in about thirty states introduced proposals to get around the repeal (Lecher 2018). In other cases, such as the Sheppard-Towner Act that this book examines in more detail in Chapter 3, state officials have barely reacted at all to national policies with intergovernmental implications. Finally, in other cases state leaders have greeted national programs with the antagonism that might be expected in an era of fragmented federalism. When President Donald Trump issued an executive order in January 2017 that restricted travel and suspended the admission of refugees from seven majority-Muslim countries, the state of Washington (later joined by Minnesota) filed suit and seventeen other states filed an amicus brief outlining the undesirable effects of the order (Goelzhauser

and Rose 2017, 294). Moreover, sometimes state officials' reactions over the medium and long term do not match the original position they took while a statute was debated, shifting from enthusiasm to indifference or from opposition to support. What explains this varied reception? That question motivates the rest of this book, and it is particularly significant at a historical moment when numerous key issues in American domestic policy invoke long-standing concerns about the appropriate distribution of authority between the national government and the states.

STATES AS STAKEHOLDERS

In outlining the factors that help explain whether and how state officials react to national initiatives, this book builds on the intellectual foundation provided by three lines of study that lie at the intersection of political science and history. The first relevant scholarly literature is the study of American political development (APD). A central feature of APD scholarship is its combination of ambitious scope and historical depth; research in this tradition utilizes a “wide-angle lens” to exploit the possibilities of a regime-level and longitudinal treatment of American politics (Mettler and Valelly 2016, 2–3). This developmental approach has had a profound impact on the study of public policy, where it requires both careful attention to social processes that play out over considerable periods of time and systematic thinking about exactly how those processes unfold (Pierson 2005, 34).⁵ In contrast to analytical approaches that focus on individual behavior, whether those individuals are members of Congress or of the American electorate, scholarship in the APD tradition offers a macro-level perspective which prioritizes the emergence and relative durability of existing arrangements. The present study, with its focus on the many different ways in which intergovernmental policy initiatives distribute governing authority and the long-term implications of this variation, applies the insights and methods of developmental scholars to the relationship between the national government and the states. Other scholars have documented the impact of federalism on American political development, yet their insights generally have not been applied to contemporary work on intergovernmental relations (Robertson 2016, 345).

The multifaceted scholarly literature on American federalism is the second line of study on which the book builds. One prominent strand of this literature seeks to characterize the nature of intergovernmental relations in the United States, paying especially close attention to how this relationship has changed over time. Most observers agree that massive shifts occurred in the mid-

⁵ In the words of Karen Orren and Stephen Skowronek (2004, 9, emphasis in original), “APD research indicates movement *through* time rather than a polity bounded in time and highlights connections *between* politics in the past and politics in the present rather than the separateness and foreignness of past politics.”

twentieth century as various forces transformed the federal relationship from “dual federalism” to “cooperative federalism.” Under dual federalism, state and national officials operated largely independently of one another, each sovereign in their own issue domains. The transition to cooperative federalism, however, turned state governments into friendly servants charged with carrying out national policy initiatives (Corwin 1950; Elazar 1962; Grodzins 1966). The nature of the federal relationship changed again in the late twentieth century, occasionally fostering heightened intergovernmental tensions. National laws imposed increasingly restrictive administrative constraints on the autonomy of state governments, occasionally even preempting their authority to take action (Zimmerman 2005, 2007). John Kincaid (1990) famously described this change as the shift from cooperative to “coercive” federalism. It fostered a perception among state officials that the national government viewed the states as its administrative outposts. Some legal scholars therefore characterize the contemporary era as one of “uncooperative federalism,” portraying a relationship in which the national government seeks cooperation from the states but state leaders increasingly resist and challenge the authority of the national government (Bulman-Pozen and Gerken 2009).

Understanding the changing nature of the relationship between the states and the national government is a valuable scholarly enterprise, yet its ability to account for state officials’ diverse responses to national laws is rather limited. The shift from dual to cooperative to uncooperative federalism cannot explain why similar policies adopted at different times, or different policies enacted around the same time, have divergent developmental trajectories. Consider Medicaid and general revenue sharing, two programs that later chapters will examine in greater detail. Enacted in 1965 and 1972, respectively, they sparked opposing reactions among state officials. Although state leaders expressed mild opposition to Medicaid as it navigated the legislative process, they quickly emerged as some of the program’s staunchest defenders. These self-reinforcing feedback effects helped prevent members of Congress from retrenching the program during its early years. In contrast, state officials enthusiastically lobbied for the passage of general revenue sharing but did surprisingly little to forestall its elimination only a few years later. The striking difference in the politics of two federalism-related policies adopted during the same time period suggests that it is essential to be attentive to policy content. Specific features of federalism-related initiatives shape their fiscal and administrative implications. Those implications shape how state officials react to the policy in question, determining whether intergovernmental relations are best characterized as autonomous, cooperative, coercive, or uncooperative. A more nuanced view of state officials and how they respond to national laws can bridge and move beyond the well-known generalizations about broad historical eras.

Another branch of the scholarly literature on federalism provides the foundation on which such an account can be built. It focuses on the political mobilization of state and local officials as an interest group, seeking to trace the

origins of this “intergovernmental lobby” and to isolate the conditions under which it successfully influences national policy (Cammisa 1995; Haider 1974; Herian 2011; Marbach and Leckrone 2002). The activities of broad professional associations like the National Governors Association (NGA), the Council of State Governments (CSG), and the National Conference of State Legislatures (NCSL) are the modern manifestation of the collective action to which James Madison referred. Similarly, more specialized groups like the National Association of Medicaid Directors (NAMD) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) bring together state officials who share a professional focus and a common set of policy concerns. The organizations that make up the intergovernmental lobby are a vital force in national politics, testifying at congressional hearings and lobbying the executive branch in their efforts to shape national policy.⁶

When investigating whether and how state leaders react to national policy initiatives with federalism-related implications, the activities – or inactivity – of the intergovernmental lobby can serve as a critical source of evidence. How involved were these groups in crafting national laws? What role, if any, did they play as these policies were implemented and revisited? Most scholarly analyses of the intergovernmental lobby engage primarily, often even exclusively, with the first of these questions. They focus on the dramatic moment of policy adoption and the occasionally heated battles that lead up to it. Understanding why programs are established, and the respective roles of various political actors in their creation, is an important endeavor. Yet it presents an incomplete view of the policy process. Some reforms succeed after they become law, whereas others unravel (Patashnik 2008). Moreover, as the earlier comparison of Medicaid and general revenue sharing suggests, constituencies might modify their positions as a program changes from an idea into a reality. Existing research on the intergovernmental lobby, by and large, pays little attention to what happens after major policy changes occur. As a result, scholars working in this tradition fail to recognize that the lobbying activities of state and local officials are both an input into the policy process and a reaction to the specific provisions of national policies. In addition, state and local officials do not work in isolation from the other stakeholders in a particular policy arena. They build coalitions in support of their goals, and the specific nature of those goals and their capacity to achieve them depends on the economic, political, and administrative context in which they operate.

Questions of policy durability and sustainability require thinking about state officials as stakeholders in specific programs rather than as a lobby or an interest group. Reframing the issue in this way blends the insights produced by the study of state officials’ collective activities with a third body of research, namely, the

⁶ In addition to attempting to influence national politics, the organizations that comprise the intergovernmental lobby also disseminate information about emerging policy trends across the country (Clark and Little 2002; Karch 2007).

growing literature on policy feedback. This concept suggests that public policies are not only the products of political processes; they also serve as determinants of subsequent political dynamics (Pierson 1993; Jenkins and Patashnik 2012). As E. E. Schattschneider (1935) observed, there are many ways in which “new policies create a new politics.” Public policies can generate feedback effects by changing the payoffs associated with alternative strategies, thereby altering political actors’ incentives. They can also confer resources on particular individuals or groups, creating privileged positions from which beneficiaries can work to perpetuate those policies. Finally, public policies can have interpretive effects, changing political actors’ perceptions of what their interests are or who their allies might be. The adoption of a public policy therefore has the potential to reconfigure political dynamics in profound ways.

With its emphasis on the mechanisms through which the mere existence of a program can reconfigure the political dynamics surrounding a particular issue, research on policy feedback can help scholars understand why national policies with intergovernmental consequences spark such a wide range of reactions from subnational officials. If the state officials affected by a national policy become its staunch defenders, energetically applying it in their own jurisdictions or lobbying at the national level for its preservation or expansion, then the policy has generated self-reinforcing feedback effects. Alternatively, if state officials’ response is to drag their heels during the implementation process or they converge on the nation’s capital to try to undercut or eliminate the policy initiative, then the policy has generated self-undermining feedback effects. Finally, if the affected state officials make minimal programmatic changes or engage in few lobbying activities related to a national policy, then that policy has generated negligible feedback effects. Thus the policy decisions that state leaders make at home and the lobbying efforts they undertake in Washington, DC serve as empirical indicators of policy feedback.

In addition to providing a conceptual lens through which the varied responses generated by intergovernmental policy initiatives can be viewed, the policy feedback framework offers the critical insight that policies’ internal features can reconfigure the political dynamics surrounding their post-enactment trajectories. It is primarily an endogenous account of political change. As a result, a feedback-based approach makes it possible to understand why not all programs enacted at the same historical moment proceed along similar developmental paths. Some will thrive and others will unravel. To be sure, the precise nature of the political and economic context in which a policy is adopted is relevant. However, its relevance lies mainly in the interaction between that environment and key features of the intergovernmental initiative itself. Building on the insights produced by recent research on policy feedback, the central argument of this book is that a combination of policy design, timing, and their interaction helps explain why national laws with intergovernmental implications generate self-reinforcing, self-undermining, or negligible feedback effects. The next section

Policy Design, Timing, and Feedback Effects

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outlines the specific policy design features and contextual factors that influence state officials' reactions, and Chapter 1 develops this analytical framework in more detail.

While the analytical framework that guides the remainder of the book owes a large intellectual debt to existing policy feedback research, it also represents an attempt to reorient and expand this body of work in order to address two limitations. The first limitation of existing research pertains to the range of policies studied. Many accounts offer persuasive illustrations of self-reinforcing feedback effects, highlighting how specific features of a policy contributed to its expansion over the long term. Instances where policy feedback did not materialize tend to receive little attention, and the identification of self-undermining feedback effects has occurred only recently (Oberlander and Weaver 2015; Jacobs and Weaver 2015; Weaver 2010). Moreover, these insightful studies generally examine a single policy or policy sector. Their depth and attention to detail is one of the features that makes them so compelling. However, it also limits scholars' ability to isolate the factors that are conducive to feedback effects. Only by studying a range of outcomes will we be able to better understand when policy feedback effects are most – and least – likely to occur (Patashnik and Zelizer 2013; Campbell 2012; Patashnik 2008). This book therefore investigates seven national laws with intergovernmental implications. The laws provoked a wide range of responses from state officials, thus providing the variation necessary to assess the analytical framework described in the next section.

The second limitation of existing research pertains to the political actors studied. By delegating authority to certain public officials, policies can spur those actors to mobilize to preserve or expand their prerogatives. Although government elites played a central role in early feedback-related studies (Heclo 1974; Skocpol 1992), they have largely been supplanted by a focus on mass publics and, to a lesser extent, interest groups (Mettler and Soss 2004; Campbell 2012; Goss 2013; Anzia and Moe 2016; Hertel-Fernandez and Skocpol 2015). Returning to elite feedback therefore promises to offer a more balanced view of how policies remake politics while simultaneously providing an opportunity to extend the insights of existing research.

POLICY DESIGN, TIMING, AND FEEDBACK EFFECTS

When the US Constitution was ratified, it did not settle the key question of how policymaking prerogatives should be distributed between the national government and the states. Some of its provisions seem to imply a centralization of authority at the national level, whereas others seem to grant discretion to the states. The policy boundaries of American federalism are therefore fluid and contestable, subject to seemingly continuous debate and renegotiation. In the early twenty-first century, the tensions implicit in this arrangement are alive and well, leading to pitched intergovernmental battles

over diverse issues like gun control, so-called sanctuary cities, and net neutrality. Understanding why state officials react in divergent ways to various national initiatives is therefore a topic of considerable importance. Specific features of a program can lead state officials to view themselves as having a vested interest in its preservation or expansion or as being placed in an untenable situation, while features of the environment in which the program is established can also influence their reactions.

Policy design profoundly influences how state officials respond to national initiatives. It is sometimes said that state leaders simply want money from their national counterparts, but the history of intergovernmental relations in the United States is littered with grant programs that received a tepid response from state officials. The precise terms on which funds are distributed, including their generosity, the conditions on their use, and the authority they bestow, affect their attractiveness. Grants that match state government spending on generous terms or that represent an open-ended commitment from the national government tend to generate a different response than less generous or capped grants. Similarly, state officials will react differently to policies that grant them considerable fiscal and administrative discretion and programs that impose numerous inflexible requirements. The level of administrative control can affect the extent to which state officials see themselves as having turf to defend, leading them to be more or less invested in the continuation of a policy. Another influential feature of a program is whether its authorization is temporary or permanent. In addition to shaping the reaction of state officials, the extent to which a program is subject to periodic review can make it vulnerable to contextual changes (Lieberman 1998). Finally, programs with intergovernmental implications can impact constituencies beyond state officials, enhancing or decreasing their coalition potential. Policies that provide resources or financial incentives for private-sector actors and government elites alike can create new alliances that did not exist prior to their adoption.

The timing of policy adoption affects the economic, political, and administrative context in which national and state lawmakers operate. It therefore also shapes how state officials react to national policies. The ups and downs of the economic cycle have a profound effect on state government finances, influencing the states' ability to respond to the financial incentives that are embedded in intergovernmental initiatives. Broader economic trends, such as the transition in the United States from an expansionist fiscal regime to a regime of austerity in the 1970s (Pierson 2001), are also key features of the economic context. Patterns of partisan control at the national and state levels, as well as shifts in public opinion, affect the political appeal of specific policies. Institutional changes, such as the dramatic increase in state governments' administrative capacity during the twentieth century, can augment state leaders' expertise and professionalism, thereby leaving them better suited for policy development.