

## When New Policies Fail to Create a New Politics

The plan to reform California's electricity sector began in the mid-1990s and took years. The aim was to move away from the nearly 100-year-old regulated system toward a market-based approach to electricity. Like many major reforms, it was a complicated task. Experts weighed in. Politicians pored over the details in draft bills—and so did interest groups. The private electric utilities the law would transform went to great lengths to influence the process. By the time the Electric Utility Industry Restructuring Act (AB 1890) passed in 1996, it was 67 pages long.

After implementation in 1998, electricity in California was no longer a monopoly business. Companies other than utilities were now allowed to sell electricity. In this way, the law created new interest groups—independent power producers and electricity brokers. This is exactly the kind of transformative reform we would expect to create a positive feedback cycle, locking itself in over time. The law even created an institution—the Independent System Operator—to oversee the new market.

But the history of California's electricity restructuring is not one of path dependence and lock-in. The market was active for less than 3 years. Rolling blackouts and electricity shortages were rampant throughout 2001, leading to a political crisis. By the end of 2003, Governor Gray Davis faced a recall election, which he lost. The policy was rolled back, reverting to nearly the same regulatory structure that monopoly utilities had faced for the past century. Rather than a positive feedback cycle, the law's implementation led to a rapid reversal. This was negative feedback, not path dependence.

Why did the policy fail to lock-in? Reformers could not predict the policy's consequences when they undertook the reform. And no wonder: complex policies enter a world full of uncertainty, with independent decision makers responsible for interpreting and implementing laws, all while interest groups weigh in. Policymakers were working through a thick fog: dealing with a novel

policy, undertaking a major reform, and working in a technical domain. In this and many other cases, policies' consequences are very hard to predict.

This chapter provides the theoretical foundation for the empirical cases that follow. It also contains original empirical evidence from surveys of state legislators and their staff that reinforce the book's theoretical arguments. I argue that novel policies with the potential to create positive feedback are often passed with considerable uncertainty or as part of major reform packages. As a result, opponent interest groups and politicians struggle to predict policies' consequences during the legislative drafting process. I call this dynamic the "fog of enactment." It is only during implementation that policies' consequences become clearer—as resources, incentives, and information change. When policy opponents realize that new policies do not serve their interests or when a shift in political power provides them with an opportunity, they may try to weaken policies.

Understanding whether or not policies will reinforce themselves through path dependence requires centering interest groups. Interest group conflict over policy is not limited to policy enactment—it often intensifies during and after implementation. Even in cases where policy feedback has occurred, interest groups are still engaged in a continual process of organized combat over policy. One group may be weakened from the policies' implementation, but if it still exists, it will fight to shift the law.

To weaken policies during and after implementation, opponents must first gain greater political influence relative to advocates. They can then try to re-trench policies through both *direct* and *indirect* pathways. If political opponents are sufficiently empowered relative to advocates, they can work to directly revise a policy by lobbying a legislature. They can also work directly with bureaucrats to shift a policy's interpretation, for example, by capturing the regulator or implementing body.

But this is not the only route forward. If opponents do not have sufficient political influence to weaken policies directly, they can engage in three indirect strategies. First, they can use the party system to drive polarization. Interest groups can support candidates in primary elections to threaten incumbent politicians. This tactic changes who is making the decisions and the incentives for other politicians. Second, opponents can attempt to shape politicians' perceptions of public opinion. This can be done in two ways: via interest groups mobilizing the public, what Ken Kollman (1998) calls "outside lobbying"; or via fake public campaigns, often called "astroturfing" (Walker 2014). Third, opponents can challenge laws and their implementation through the courts.

Throughout this process, interest groups build and maintain networks that allow them to work across state borders. No state is an island: interest groups regularly move across jurisdictions to influence policy elsewhere. If a policy creates

new advocates in one place, these advocates can work to drive policy changes in other places. In this way, policy feedback spillovers can occur. Cross-state networks play three important roles: they help interest groups learn to anticipate policies' consequences; they help interest groups disseminate effective political strategies; and they facilitate collective action. Hence, opponents use networks to reduce the fog of enactment and increase their effectiveness in blocking and weakening their targeted policies. Using all these tactics, opponents can cause policy feedback to stall. In these cases, policies can fail to reshape politics over the long term.

Clean energy targets are an ideal policy to study the diverse ways that path dependence can fail. These laws set specific goals, allowing scholars to benchmark progress. In fact, these policies were designed with policy feedback in mind. Their goal was to kick-start new industries, empower advocates, and reduce technology costs over time (Schmidt & Sewerin 2017). Yet many of these policies are failing to create such a virtuous cycle. And worse, they are failing to move the electricity system away from fossil fuels fast enough to avoid climate catastrophe.

## Defining Policy Feedback

Policy change can be spurred by external shocks (Baumgartner & Jones 2009; Sabatier 1993). Natural disasters, terrorist attacks, foreign interventions in elections, globalization, innovation in technologies, and economic crises are all examples of exogenous forces that can create opportunities for policy change. But policy change can also come from shifts inside the political system, from interest group behavior and public opinion. Theories of path dependence and policy feedback are concerned with these internal modes of policy change. "Policy feedback" is the idea that public policies can reshape the political landscape, changing both the content of policy and the likelihood of its passage. These studies reverse the traditional arrow in political science, which typically points from politics to policy. Instead, they seek to explain how, according to E. E. Schattschneider, "new policies create a new politics" (1935, 288).

Over the twentieth century, numerous scholars have pointed to the importance of policy feedback in policy change. Theodore Lowi described feedback as how "policies determine politics" (1972, 299). And Hugh Heclo wrote that the "content of a policy can itself be a crucial independent factor in producing effects on the policymaking process. . . . Even the most innovative creations are decisively shaped by the content of previous policy" (1974, 5). Theda Skocpol's *Protecting Soldiers and Mothers* (1992) was a landmark empirical book that fleshed out how feedback unfolded in practice, examining the welfare state's

development in the United States. As Skocpol (1992, 58) put it, “policies, once enacted, restructure subsequent political processes.”

When Paul Pierson gave his now classic description of policy feedback in 1993, he argued that policy feedback could not be denied when “public policies were not only outputs of but important inputs into the political process, often dramatically re-shaping social, economic, and political conditions” (1993, 595). As he has subsequently pointed out, studying these developments requires a longitudinal approach toward institutions (Pierson 2004). Numerous applied studies of policy feedback followed (Baumgartner & Jones 2002; Campbell 2003; Mettler 2005). Thus, for several decades now, policy feedback theories have offered a valuable contribution to the study of public policy, historical institutionalism, and comparative political economy.<sup>1</sup> The topic has grown to the point where the term yielded almost 17,000 results in an April 2019 search on Google Scholar.

Despite this impressive theoretical flourishing, policy feedback has often proven a confusing concept to define. First, we must understand what the term “feedback” means: it describes a change in a variable, *X*, that initiates a causal sequence that eventually leads to further change in *X*. The important thing to note is that feedback involves causal loops. Feedback comes in two forms. “Positive” feedbacks are amplifying causal chains, where a change in *X* eventually leads to further change in *X* in the *same* direction as the initial change. “Negative” feedbacks involve dampening causal chains, where a change in *X* eventually leads *X* to change in the *reverse* direction of the initial change. Within political science, other terms are often used to describe these dynamics, such as “self-reinforcing” and “self-undermining” (Jacobs & Weaver 2015; Pierson 1993).

A few practical examples can help explain the difference between positive and negative feedback. Feedback loops are important in climate science. Scientists are concerned about the role of positive feedbacks in amplifying global warming. Increases in temperature can lead to more water vapor in the atmosphere, which further increases global temperatures because water vapor is a greenhouse gas. Similarly, increases in global temperature reduce arctic ice cover, which decreases the reflective capacity of the planet (the albedo), which further increases global temperatures. In both of these examples, warming leads to further warming through a complex causal chain. Hence, these are clear examples of positive feedback. Negative feedbacks are also present in the climate system. For example, some clouds will change as global temperatures rise, allowing them to reflect sunlight back into space. Here, an increase in warming leads to a decrease in warming. Hence, this is an example of negative feedback. Unfortunately, there are more positive than negative feedbacks in the climate system—which is bad news for global warming.

Now that we understand the idea of feedback broadly, we can unpack its meaning when applied to public policy. Importantly, feedback does not unfold in a deterministic way in social systems, as it can in natural systems. In a political setting, actors must interpret policies, and those interpretations vary depending on the actor. In addition, power relationships are involved—some groups have more ability to shape policy change than others. Because opponents and advocates engage in organized combat over the content and implementation of policy, we cannot assume that new policies will necessarily stick. Powerful actors may anticipate the potential for policy feedback and block policy change. Thus, feedback in social systems operates with greater contingency.

As Figure 2.1 shows, existing theory argues that policy feedback can occur either through the mass public or through elites, most notably interest groups. In political science, there are numerous cases of positive feedback in mass politics ranging from welfare reform to the GI Bill to social security to healthcare policy (Campbell 2003, 2012; Mettler 2005; Schneider & Ingram 1993; Soss & Schram 2007). For example, Andrea Campbell (2003) describes how growth in social security led to greater resources for seniors to engage politically. The program also strengthened seniors' public policy preferences and their identity as a collective group. Together these factors amplified seniors' participation in politics, which fueled congressional attention to social security, eventually leading to further growth in social security. She demonstrates that social policies can change political behavior by giving citizens new resources, altering their self-efficacy, and changing their political interests (Campbell 2003). Similarly, as Suzanne Mettler

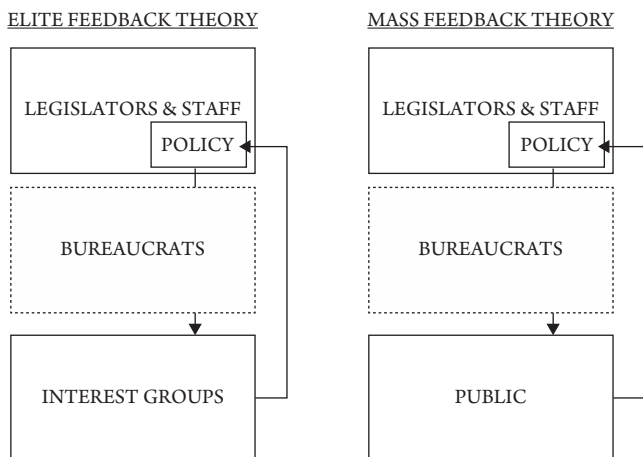


Figure 2.1 Policy Feedback: Existing Theories

This figure shows the actors involved in existing policy feedback theories. Most research examines either elite feedbacks or mass feedbacks independently. The implementation phase where bureaucrats play a role may or may not be emphasized.

and Joe Soss write, policies can shape mass politics by “defining membership; forging political cohesion and group divisions; building or undermining civic capacities; framing policy agendas, problems, and evaluations; and structuring, stimulating, and stalling political participation” (2004, 55). Overall, a large part of the political science literature on feedback examines the public.

There is also significant research showing the way that policy can reshape interest groups and elites (Anzia & Moe 2016; Goss 2010; Hacker 2002; Hertel-Fernandez 2019; Skocpol 1992). In her classic book, Theda Skocpol (1992) shows that women’s groups engaged with early government policies were able to successfully propel larger social reforms over time. More recently, Sarah Anzia and Terry Moe (2016) have demonstrated how public-sector collective bargaining laws fueled growth in public-sector unions. Overall, work on elite feedbacks shows that policies can expand existing groups, create entirely new interest groups, modify group identities, and reshape groups’ preferences (Campbell 2003, 2012; Hacker 2002; Mettler 2002; Patashnik 2003, 2008; Pierson 1993; Skocpol 1992).

In this project, I build on research at both the elite and mass levels, proposing a meso-level approach that integrates both of these processes and looks at positive and negative feedback simultaneously. There are strands of this approach in the literature. For example, Kristin Goss (2010) builds a multilevel model of policy feedback where organized civil society structures individuals’ actions. Both elite and mass politics are involved in her feedback theory. Other scholars have also treated mass and elite effects simultaneously, including examining retrenchment. For example, Kent Weaver (2010) shows that pension system design can undermine these programs, eventually leading to policy retrenchment. If programs do not provide adequate benefits, operate equitably, or have an acceptable correlation between contributions and benefits, both mass and elite support for these programs may drop. This loss in program support can eventually drive decision makers to cut the program (Fernández & Jaime-Castillo 2013). In this way, a policy can undermine itself over time. These approaches are quite similar to my own. Thus, while my model is new, it builds on earlier work.

Much of the policy feedback literature also emphasizes how policy design can affect politics. The distribution of costs and benefits is usually highlighted as an important design element. As both R. Douglas Arnold (1992) and James Q. Wilson (1980) argue, policies with concentrated benefits for interest groups are more likely to arise and survive than policies with diffuse benefits for the public. Similarly, as Campbell (2012) shows in her review essay on mass feedback, a number of policy design elements matter: the size of a policy’s benefits; its visibility, traceability, and duration; the way beneficiaries are distributed geographically; and a policy’s mode of administration. Although enactment and policy design were the focus in early policy feedback research, more recent work

emphasizes implementation (Moynihan & Soss 2014). Implementation is a crucial step between enactment and later policy changes for two reasons: first, it is during the implementation process that resources are redistributed among various political actors; second, implementation provides another opportunity to change policies through interpretation. Similarly to this more recent work, I emphasize implementation as a crucial step in feedback. After laws are implemented, actors obtain new information about the policy's effects and may come to support or oppose the policy in the future.<sup>2</sup>

## Retrenchment and the Limits of Positive Feedback

Early work on policy feedback assumed that path dependence in policy was likely to occur. As Pierson put it, "self-reinforcing [positive feedback] processes make reversals very difficult" (2004, 10). And to date, research has largely supported this view, with numerous studies showing how policies lock in through path dependence. Scholars have identified successful policy feedback leading to path dependence in social security (Campbell 2003), the GI Bill (Mettler 2005), and the Head Start program (Bruch et al. 2010). Most of the policy feedback literature emphasizes positive feedback and lock-in.

However, sustained positive feedback may not be as common as the literature suggests. As Andrea Campbell (2012) has pointed out, research in this area has tended to select on the dependent variable for cases where feedback worked. As social scientists, we can be prone to studying successful cases of policy change. There is much less work on the conditions under which feedback can fail (Patashnik & Zelizer 2013; Pierson 2006; Weaver 2010).

Some scholars have begun to push back against a deterministic of path dependence (Béland 2010; Pierson 2004; Thelen 1999). In their working paper on the limits of policy feedback, Eric Patashnik and Julian Zelizer (2009) identify three causes that commonly undermine feedback: weak policy design, inadequate or conflicting institutional supports, and poor timing. As they put it, "policies sometimes fail to remake politics." This work builds on Eric Patashnik's earlier research on what happens after large policy reforms (2003, 2008). Overall, he does not find that path dependence or positive policy feedback is the norm. As he concludes, "The long-term durability of general-interest reforms simply cannot be taken for granted. . . . Sustaining broad-based reforms against the threats of corruption and reversal may be, if anything, an even more politically challenging task than winning the passage of those measures in the first place" (Patashnik, 2003, 226).

Other scholars have uncovered additional factors that limit feedback. In her review article on policy feedback, Andrea Campbell argues that new policy



may not always create powerful advocates. As she puts it, “The constituency that emerges may be too weak to take on entrenched business interests or other clienteles” (Campbell, 2012, 346).<sup>3</sup> Alan Jacobs and Kent Weaver similarly argue that policy feedback can be undermined when powerful incumbents realize that the costs of the new policy are greater than they anticipated: “Public policies will sometimes work out badly for actors with substantial political resources, and thus a capacity to apply effective pressure for policy change” (2015, 446). Other studies have applied these ideas to specific empirical cases, finding negative feedback in practice (Lockwood 2013). Across the board, these theoretical and empirical research projects have shown that feedback is a contingent and contested process.

The consequence of negative feedback is retrenchment. What do I mean by “retrenchment”? Building on Paul Pierson’s (1994) definition, retrenchment is policy change that: 1) repeals or weakens policy targets or funding; 2) restructures policies in a way that reduces their efficacy at addressing the problem; or 3) alters the policy’s context in a way that increases the potential for retrenchment. Retrenchment and other forms of policy revision are quite common. For the first 10 years of a federal policy, a program has around a 5% chance of being modified or repealed each year—meaning that about 40% of the time federal policies change in their first decade (Berry et al. 2010). Hence, retrenchment is common, and it does not just occur when laws are repealed outright.

As Kathleen Thelen, James Mahoney, and Jacob Hacker argue, policies can be modified in complex and subtle ways, through displacement, layering, drift, and conversion (Hacker 2004, 2005; Mahoney & Thelen 2009; Thelen 2004). “Displacement” involves laws or regulations being rewritten directly. Legislation can also be subject to “layering,” when new rules are added onto an existing policy regime, in some cases undermining the policy. This can also involve building parallel institutions that serve competing interests (Schickler 2001). Policies can suffer from “drift”: if the policy regime stays stable while the world outside changes, the policy is unlikely to be able to address growing or new problems (Hacker 2005). In this case, if a modest goal is surpassed but a problem continues to grow, then policy drift occurs. Finally, “conversion” is the use of old rules for new ends through reinterpretation, for example, by actors exploiting ambiguities.

In this book, I build on this research, arguing that organized interest groups engaged in conflict over policy are a particularly important pathway for retrenchment. In four of the five cases in this book, retrenchment has occurred. In the case of Texas’s solar law, the retrenchment came during implementation, when the law was never put into practice. In fact, this is an example of conversion: the words on paper stayed the same, but the way actors interpreted them changed.



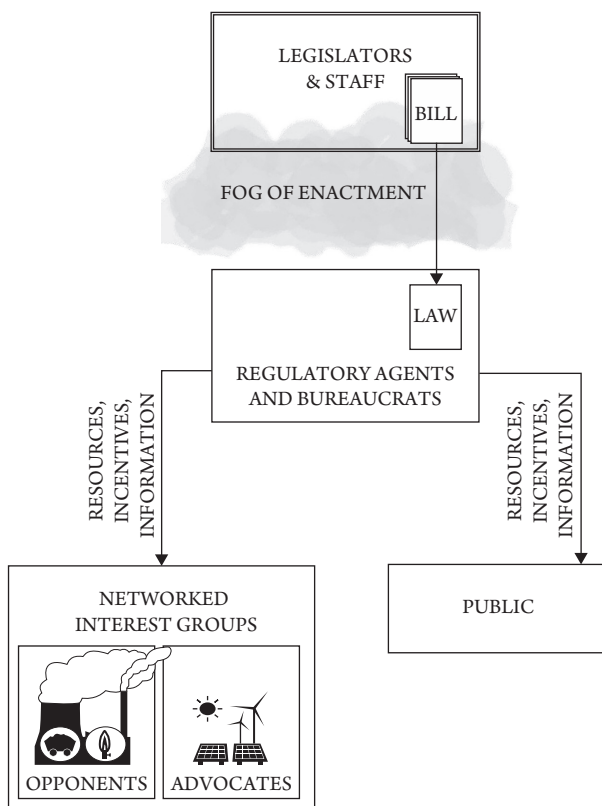
In the cases of Kansas, Arizona, and Ohio, retrenchment involved repealing or weakening the policy directly, through displacement, as well as layering on new rules that made it harder to build clean energy. In many other states, drift has occurred: clean energy targets have been passed, but the state has failed to raise the target after it was met. Hence, across the board, we are seeing retrenchment in clean energy in the American states.

## An Integrated Approach to Studying Policy Feedback

While significant research has examined successful policy feedback at either the elite or mass level independently, less work has tried to understand both simultaneously. In this project, I look at interest groups, the public, and the interactions between the two, proposing a more complex, meso-level theory of policy feedback (Figures 2.2 and 2.3). The goal is to identify generalizable conditions under which we might expect policy feedback to fail. In psychology, there is a long tradition of studying disease to understand how a healthy process works. I adopt that approach here: if we learn from the cases where policy feedback fails, we can use this knowledge to understand the conditions that are necessary for it to succeed. In this way, although I emphasize cases where we do not see successful policy feedback, I am still contributing to building a theory of policy feedback more broadly.

My theory of policy feedback emphasizes two key elements. First, I argue that policy changes are often adopted under a fog of enactment (Figure 2.2). This fog is thicker for novel policies, major reforms, in technical policy areas, and in cases where policies cross jurisdictional boundaries. Second, I show that implementation is a key stage in determining the success or failure of policy feedback—it is then that resources, incentives, and information are redistributed. After implementation, both interest groups and the public respond, helping to shape further policy changes and leading to policy expansion or retrenchment.

The feedback cycle initiates when legislators, working with their staff, write a bill. The bill-writing process is inherently complex, with significant ambiguity and uncertainty. There is a fog surrounding enactment, with politicians, interest groups, and the public struggling to predict proposals' likely consequences. The fog of enactment is particularly notable under a number of conditions. First, in early-acting states that pioneer policies, the uncertainty surrounding a bill's consequences is large. This is because interest groups have not yet experienced the policy first-hand and passed that information through their networks to states that act later. Networks allow information to be pulled in from elsewhere,



*Figure 2.2* Enactment and Implementation After Policy Change  
 Bills can often be difficult to understand because of the fog of enactment. After implementation, these laws can begin the feedback cycle by redistributing resources, shifting incentives, and providing new information.

reducing ambiguity in states that enact policies later. Second, uncertainty is greater for major reforms that involve long and complex language, which is difficult for all actors to process. Such reforms may also involve trade-offs, forcing groups to compromise. Given the ambiguity in the policy's likely consequences, with hindsight these compromises may not prove to be the right decision for some groups. Third, technical policy areas are particularly prone to uncertainty, in part because of innovation. Fourth, uncertainty is pronounced in policy domains that interact across jurisdictions, with federal, state, and local rules being overlaid on one another. When these factors are present, a given policy's effects can be highly ambiguous.

After a bill becomes a law, bureaucrats and regulators take over as the primary decision makers. This is a crucial stage for feedback. During implementation, laws are interpreted and rules and regulations are issued. Depending on the

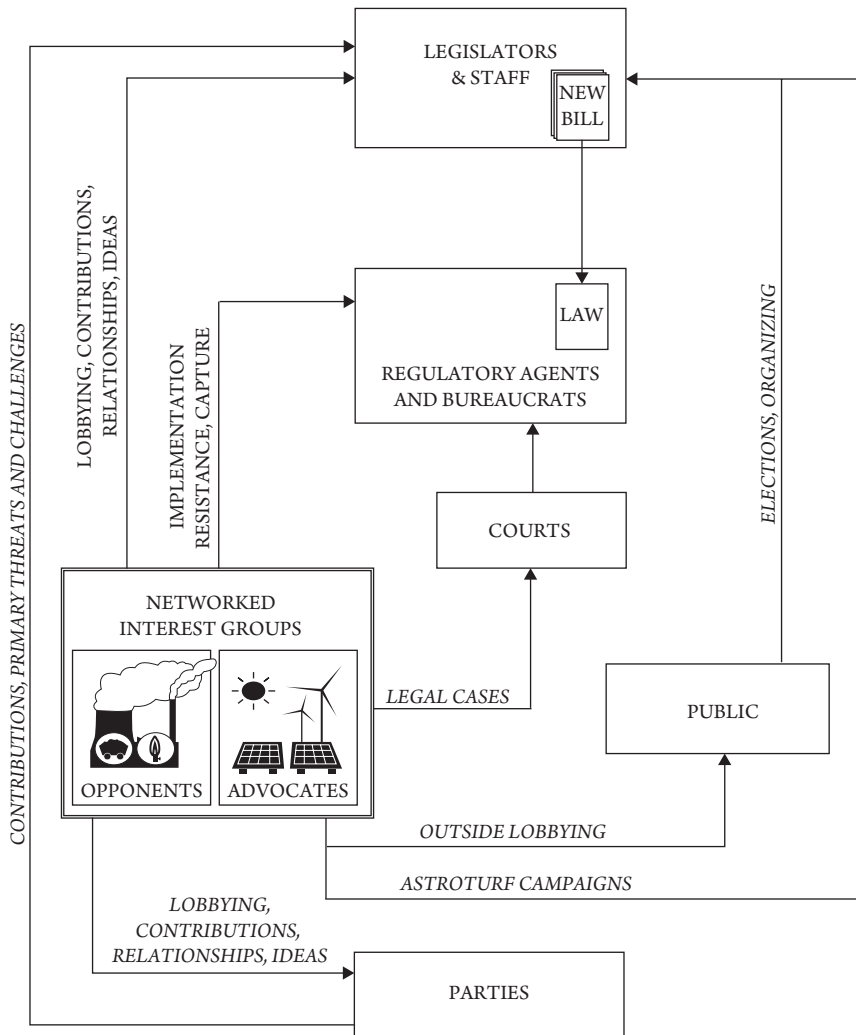


Figure 2.3 Organized Combat Post-Implementation: Retrenchment Pathways

After implementation, networked interest groups can try to undermine policies that have a potential for feedback. Direct pathways of interest group influence are shown in normal font; indirect pathways of interest group influence are shown in italic font.

specific policy, interest groups or the public may be affected as laws change resources, incentives, and information. Laws can provide new resources to specific groups or incentives for individuals to invest in a technology. Through implementation, they can provide new information, for example, on how the policy will affect outcomes.

After these changes in resources, incentives, and information, political actors react (Figure 2.3). Interest groups and the public may update their beliefs,

preferences, and even group identities after implementation, in a kind of political learning process. With this new information, actors decide whether to advocate for a policy's expansion, stability, or repeal. Feedback is thus contingent on interest groups' strategic reactions to policy (Patashnik & Zelizer 2013).

After implementation, interest group advocates may have grown in political power relative to opponents because of the resources the policy provided them. But incumbent opponents may still remain more influential in absolute terms. If after implementation opponents have updated their beliefs and preferences and are now against a policy, they will seek to undermine it. Opponents may be particularly successful at driving retrenchment if a change in government has opened up a policy window that increases their access to legislators and regulators. This is a form of exogenous policy change. But policy feedback theories remind us to also look for endogenous changes. Under existing feedback theory, opponents drive policy changes directly through lobbying, contributions, relationships, and ideas. Opponents are able to undercut policy feedback when they are relatively empowered compared to advocates, with sufficient influence with legislators. Opponents can also directly challenge policies by capturing the regulatory system or engaging in what I call "implementation resistance."

I demonstrate that when opponents are less powerful, they can still try to weaken policy *indirectly*—using parties, the courts, and the public. By supporting primary challengers against incumbent politicians who are not on their side, opponents may try to shift the politics and cut off feedback (Bawn et al. 2012). Over time, this can drive partisan polarization in a policy domain and make path dependence less likely. Opponents can also use the public to try to shift policy. They can construct public opinion both by working with the public and by creating fake public campaigns through astroturfing. Interest groups can also use the courts to challenge and undermine policy.

In this model, organized opponents who operate through networks are more likely to drive retrenchment than the public. Compared to the public, interest groups have greater resources and information and suffer less from a collective action problem (Olson 1965). That said, if policies primarily shift resources for the masses and the public successfully organizes, it can also respond to policy change. In these cases, the public may demand the government keep or shift a policy. If politicians are convinced public concern is large enough to warrant a risk for re-election, they may respond. We see this, for example, when carbon taxes are rolled back after raising energy prices.

Overall, if opponent interest groups are successful at gaining influence compared to policy advocates, policy feedback can fail, resulting in retrenchment or policy drift. The rest of this chapter unpacks each of these stages in greater detail, fleshing out this meso-level theory. In particular, the feedback process is contingent on whether: 1) interest groups are successful at driving

partisan polarization through primary challengers winning campaigns or scaring incumbents into falling in line; 2) interest groups are able to organize the public such that it now appears to politicians that the public has shifted toward opposition; and 3) judges rule in favor of the opponent interest group. Advocates and opponents engage in organized combat in each of these areas, trying to move politicians, regulators, parties, the public, and the courts in the process. Hence, this book emphasizes power and resources, rather than framing, to understand when policy changes are likely to occur.

### Starting the Feedback Cycle: A Theory of the Fog of Enactment

In 2010, when the Affordable Care Act (ACA) was wending its way through Congress, Nancy Pelosi infamously said, “We have to pass the bill, so that you can find out what’s in it, away from the fog of the controversy.” Republicans used this quote, out of context, to pillory Pelosi for years. But she was speaking to a deeper truth in American politics: there is ambiguity surrounding policy enactment. I call this dynamic the “fog of enactment.” In this section, I examine when and why it occurs. Ambiguity is a fundamental part of policymaking for at least three reasons: the negotiation process, the intentional use of ambiguity by some actors, and the future’s fundamental unknowability. I also identify four specific factors that enhance the fog of enactment: policies that have not been implemented widely elsewhere, major reforms that involve complex rules, technical policy domains, and policy areas that have overlapping jurisdictions.

In policy domains with strong incumbent opponents, enactment represents a puzzle for theories of path dependence. How do policies that might engender positive feedback become law in the first place if powerful opponents are present to block the proposal? We know that interest group policy monopolies exist in many domains and that they resist changes that do not benefit their interests (Baumgartner & Jones 2009). As a result, policy tends toward stasis rather than change. Why would these dominant interest groups, which maintain a monopoly over policymaking, allow a policy to pass that could spur feedback and undermine their position?

The reason is the fog of enactment: interest groups and politicians do not always understand a policy’s likely consequences, creating a gap between actors’ expectations and the policy’s actual outcome after implementation. Ambiguity, uncertainty, and unintended consequences all play a role in policymaking (Bergquist 2018). Ambiguity occurs when rules are left open to multiple interpretations. This creates space for cooperation and compromise, facilitating negotiation during enactment (Arnold 1992). As Deborah Stone argues,

ambiguity is often intentional. It allows individuals to project different visions onto the same policy, making a policy “two things at once” (Stone 2002, 161). As she put it, “A type of policy analysis that does not make room for the centrality of ambiguity in politics can be of little use” (Stone 2002, 157). Similarly, John Kingdon’s work on the policy process placed ambiguity at the center, particularly with respect to coalition-building (Kingdon 2011; Zahariadis 2007).

Uncertainty also plays a role. In policymaking, there is always unknown or imperfect information. In this way, the fog of enactment is similar to “bounded rationality”—the idea that decisions do not unfold with perfect information (Cohen et al. 1972; March & Olsen 1976; March & Simon 1993). The idea is also related to unintended consequences—outcomes that are not foreseen or intended when an actor takes a purposive action (Merton 1936). As Lindblom (1959) put it, “A wise policy-maker consequently expects that his policies will achieve only part of what he hopes and at the same time will produce unanticipated consequences he would have preferred to avoid.” These are commonly seen in environmental problems—indeed, climate change is an unintended consequence of fossil fuel combustion. All of these factors—ambiguity, uncertainty, and unintended consequences—play a role in the fog of enactment.

My argument here thus centers interpretation—a factor that was highlighted in early research on policy feedback: “The process through which individuals choose a course of action does not involve a simple calculation of easily discernible costs and benefits” (Pierson, 1993, 611). However, this argument was not central to later research on feedback. In this project, I flesh out this interpretivist view in greater detail. It is not just material effects that can affect actors’ preferences—their *beliefs* about future material effects are crucial.

How do ambiguity, uncertainty, and unintended consequences lead to a fog during enactment? First, the negotiation process within legislatures plays a key role. As Alan Jacobs and Kent Weaver put it, “Policy choice [in democracies] is typically a collective activity. . . . Policymaking procedures thus frequently contain substantial complexity and incoherence rather than a single policy logic” (Jacobs & Weaver 2015, 445). As bills are negotiated, they move from chamber to chamber, bouncing back and forth, and a variety of actors weigh in. The bargaining environment is not clear because advocates and opponents do not always sit down at the same table together (Susskind & Cruikshank 1987). When a given interest group negotiates over specific provisions, it may not know what it is trading off against, making the counterfactual condition unclear. Different groups also have varying ability to access the negotiating table. While public committee hearings are open to everyone, backroom negotiations where politicians act as brokers are very common—and not everyone is invited to this table.

Second, interest groups can strategically use the fog of enactment to gain an advantage. As Douglas Arnold (1992) argues, some politicians will leave bills ambiguous to provide themselves cover. Power asymmetries are important here. Not all political actors have the same resources to reduce ambiguity and uncertainty or anticipate consequences (Curry 2015). We can think of actors' ability to understand the potential consequences of laws as akin to Philip Tetlock's (2005) distinction between foxes and hedgehogs. Some political actors bring considerable expertise that allows them to forecast the future like a fox. As Lee Drutman (2015) shows, corporate lobbyists act like foxes, holding more information than legislative staffers or public interest groups. Other political actors are hedgehogs—stuck within a given paradigm that does not allow them to evaluate potential outcomes well.

Still, the fog of enactment is most surprising for politicians, their staff, and highly professionalized interest groups operating in a specific policy area. These actors pay the most attention to policy in the United States. For some interest groups, such as regulated electric utilities, understanding government policy is at the core of their business. Yet, even these actors can fail to anticipate policy outcomes. Dominant interest groups may become staid institutions, fixed in their ways and unable to nimbly forecast the future. As the next chapter will show, electric utilities are one example of a hedgehog-like interest group. But we can think of other examples, like banks. Before deregulation, many other industries that maintained monopolies, from telecommunications to airlines, would have also fit this description (Patashnik 2008).

Hence, the fog of enactment can be asymmetric—certain actors can predict policy implementation and feedback better than others. The challenge of understanding legislation is not equally distributed. Politically influential parties can see more of the negotiating landscape because they have closer ties to politicians and are therefore better placed to extract information. This is similar to James Curry's (2015) argument that party leaders in Congress have more knowledge than rank-and-file members. Indeed, leadership may deliberately leave members in the dark to ensure that they support bills. If knowledge is power, some actors may choose to keep information to themselves. A better-informed party can use the fog of enactment as a weapon against its opponents.

These factors are only exacerbated for the public, which almost always acts like a hedgehog. People hear about policies filtered through politicians, interest groups, and the media. Understanding bills typically requires legal training, making it difficult for the public to directly participate in policy debates. This also makes it easy for interest groups to manipulate public perceptions of legislation to their advantage. Hence Pelosi's point—the public can be left in the dark during bill negotiations, presented with ideological or interest-based representations more than facts. In the case of the ACA, that included arguments that the bill



would create “death panels” that would adjudicate healthcare decisions. When it comes to policy, the public is usually wandering blind, led by interest groups with a stake in the outcome.

Third, the fog of enactment is a result of the future’s fundamental unknowability. When policies are passed, politicians and interest groups make guesses about the future. They do not know what will happen. We know that individuals can suffer from myopia, assuming the future will be like the present (Levitt 1960; Quoidbach et al. 2013). When politicians think about the future, they are more likely to focus on short-term rather than longer-term consequences (Jacobs & Weaver 2015). Similarly, the Congressional Budget Office forecast the effects of legislation assuming no future policy change; given potential interactions between policies, this is likely a poor—if necessary—assumption. For some policy areas the future may turn out to be quite different from forecasts, particularly when uncertainty is high. According to Pierson (1993), we should expect forecasting to be a function of policy complexity. New industries that are rapidly expanding are particularly hard to predict. Overall, uncertainty is high when policies are enacted, leading to unintended consequences.

There are thus good theoretical reasons to assume that a fog of enactment looms over policymaking. But is this true in practice? Survey data can speak directly to this question. In 2017, I fielded a survey of politicians and their staffers in state legislatures across the country. Overall, the resulting sample was fairly representative, and around 400 respondents answered each question. I asked politicians and staffers to identify two policy domains from a list: the one they knew the *most* about and the one they knew the *least* about. The list included, healthcare, education, environmental, energy, criminal justice, immigration, and economic policy. After selecting two policy areas, state politicians and staff were asked a series of questions to test whether there is evidence for the fog of enactment.

Politicians and their staff were asked to recall specific bills that passed their chamber in the two policy areas they chose. Did the policies do what the respondent expected them to do when they were passed? For those areas state politicians and staffers said they knew the *most* about, more than half of respondents said the policies did not do what they expected, or only partially did what they expected (Figure 2.4). These results suggest that even for the laws that policymakers and their staff pay the most attention to, there is still considerable ambiguity and uncertainty. The results are even more dramatic for policy domains that politicians and staff are less familiar with: about 90% were at least partially surprised by policies’ impacts in areas they knew the least about.

State politicians and their staff were also asked how well they believed they were able to predict policy impacts. Did they believe they could see the future during policymaking? Here again, politicians and their staff displayed

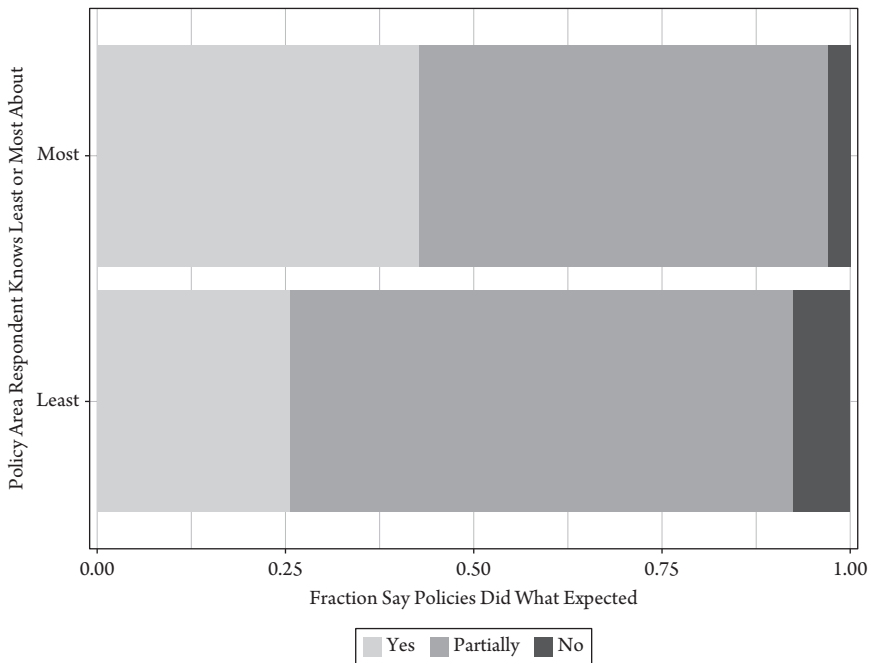


Figure 2.4 State Politicians and Staffers on Whether Policy Performed as Expected

considerable uncertainty. As Figure 2.5 shows, only 20% of respondents believed they could be very certain of a bill's impacts in the policy domain they knew the most about. This fell to only 3% for the policy domain respondents said they knew the least about. Clearly, there is a lot of ambiguity and uncertainty in policymaking. The fog of enactment is common.

### The Fog Thickens: Novel Policies, Major Reforms, Technical Domains, and Multiple Jurisdictions

While it is arguable that all policies experience some amount of fog during enactment, certain factors make the fog particularly thick—increasing political actors' difficulty in anticipating a policy's consequences. I identify four factors that amplify the fog of enactment: when policies are novel, during major reforms, in technical policy domains, and when policies interact across scales of government.

First, when a policy is novel, there is greater uncertainty about its likely effect post-implementation (Volden et al. 2008). When policies are enacted, there are many unknowns: the nature of the problem, whether the solution will fix the problem, how the solution will interact with other policies, whether forecasts are correct, and so on. These unknowns decline over time as more jurisdictions

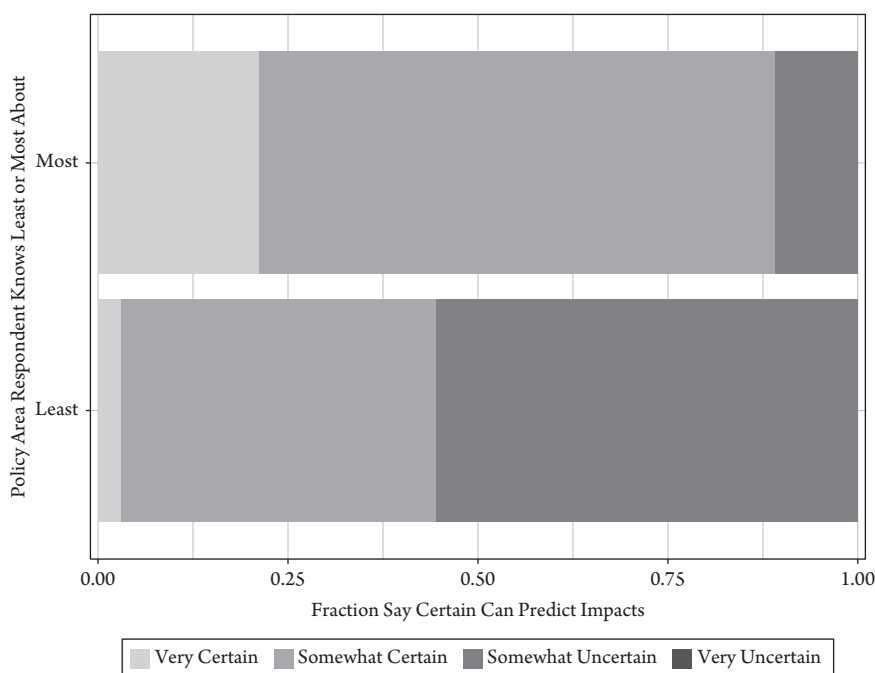


Figure 2.5 State Politicians' and Staffers' Reported Ability to Predict Policy Impacts

implement a given policy (Pawson et al. 2011). For example, in the case of clean energy, before any state had adopted and implemented a renewable portfolio standard (RPS), it was very difficult to predict how the policy would impact revenue streams for both clean energy and fossil fuel sources. Once 12 states had passed an RPS law, there was a considerable wealth of precedent available. This type of learning can happen between the states, from the federal level, and even across national borders. As a result, the fog of enactment decreases as lag-gard states follow leaders. Who is doing the learning? Unlike previous accounts (Volden et al. 2008), I view cross-state networks of interest groups as key to this process. Both advocates and opponents learn about the policy from early-acting jurisdictions. In states that have never acted to pass the policy, opponents who have learned from elsewhere may block the policy from ever passing. In this way, learning spills across state lines, as interest groups gather new information and share it through their networks.

Second, major reforms increase uncertainty and ambiguity. When bills are long and complex, it is more likely that legislators, their staff, the public, and even expert interest groups will struggle to understand all the provisions and their interactions. Yet bills in Congress are getting longer. According to data from the *Federal Register* compiled by the Brookings Institution, bills are now an average

of around 20 pages.<sup>4</sup> This is a 10-fold increase since the late 1950s. Important and technical bills stretch into the hundreds of pages—the Energy Policy Acts of 1992 and 2005 were 357 and 551 pages, respectively. In 2009, Representative John Conyers commented, “What good is reading the bill if it’s 1000 pages and you don’t have two days and two lawyers to find out what it means after you read the bill?” Like Pelosi, he too was pilloried for this statement. But it was honest. With 97,000 pages published in the *Federal Register* in 2016, it is fantasy to believe that all members and senators are reading everything they vote on. Although compiled data are not available at the state level, similar trends in bill length are likely occurring there, at least in professionalized legislatures.

At both the federal and state levels, complex bills may be rushed because some interest groups have a strategic interest in maintaining ambiguity. For example, President George W. Bush’s final prescription drug plan was over 1,000 pages long. Legislators were given less than 24 hours to review the bill before voting on it.<sup>5</sup> Pharmaceutical manufacturers likely believed that pushing the plan through quickly would benefit their bottom line (Oliver et al. 2004).

Major reforms also divide actors’ attention. With a complex bill, politicians, interest groups, and the public are unlikely to have time to digest, anticipate, and lobby on all the different parts of the legislation. Political actors must prioritize issues, particularly with limited negotiating capital (Binder & Lee 2015; Jones & Baumgartner 2005). If actors are rational, they should pay attention to the issues that they believe matter the most to their interests. It may simply turn out that they are wrong about which provisions will prove the most important. To add to the complexity, each chamber’s bill can have different clauses. At any given time, it is unclear what the final rules will be, meaning that actors do not necessarily know which provisions to focus on. When the bill is reconciled, its exact meaning may be unclear because of interactions between different parts of the law from the different chambers or because of last-minute additions.

Third, technical policy areas may be particularly susceptible to the fog of enactment because of uncertainty and unintended consequences. As Jennifer Pahlka, the founder of Code for America, put it, “All technical decisions are unintended.”<sup>6</sup> This is because technology changes quickly, making it difficult for politicians or interest groups to forecast. In a brilliant illustration of this dynamic, Hanna Breetz (2013) shows how congressional targets for biofuels were wildly optimistic with hindsight. Clearly, the lawmakers failed to understand how their plans on paper would run into technological limits. This is a common issue in technical policy areas, where innovation is occurring—or failing to occur—alongside policy changes.

Fourth, and finally, policies’ impacts can be difficult to predict because of how institutional changes interact across levels of government. Typically, scholarship focuses on one level of government, whether federal, state, or local. This is

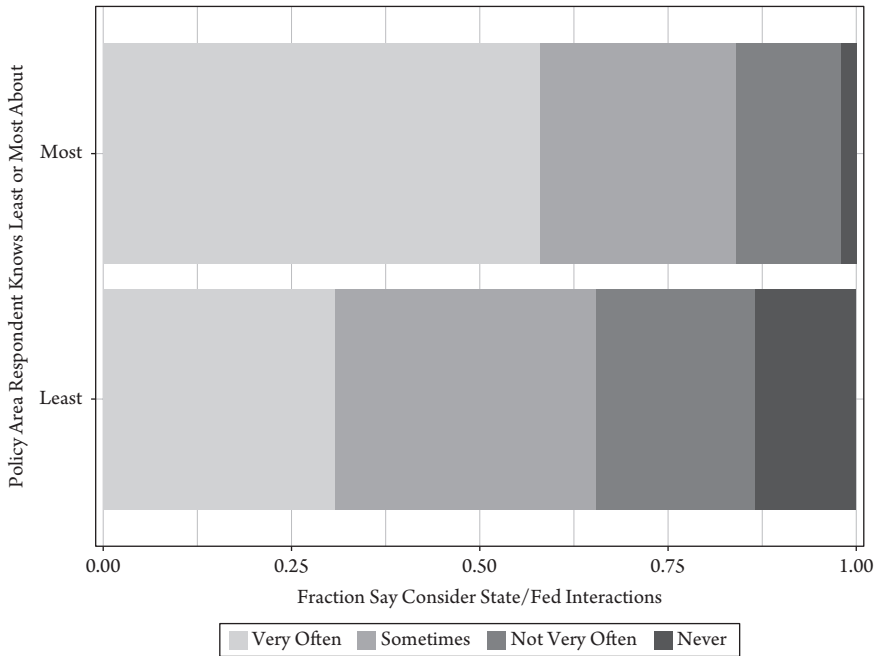


Figure 2.6 State Politicians and Staffers on Whether They Consider Potential State–Federal Interactions During Policymaking

understandable given the challenge of understanding policy in any given jurisdiction. However, many policies interact across jurisdictions. Uncertainty can arise during enactment because of how a new law will relate to existing institutions and policies, particularly at other levels of government. When actors agree to a policy in a given jurisdiction, they do not know what other governments are going to do or even how previous policies elsewhere could interact with this new policy. This phenomenon is particularly salient in federalist systems where different levels of government share authority over a policy domain.

For example, changes to economic policy at the state level, such as altering taxes or the minimum wage, can shift wage markets and politics across state borders. Healthcare similarly has strong federal–state policy interactions. If the federal government changes payments to insurers, it dramatically alters the viability of states’ health exchanges. In this case, the federal government has devolved implementation to the states, further increasing uncertainty (Jacobs & Callaghan 2013; Jacobs & Skocpol 2015). In practice, politicians and their staff report paying considerable attention to state and federal policy interactions. As Figures 2.6 and 2.7 show, this holds across policy domains they know the most and the least about. It is particularly pronounced for energy and healthcare policy—areas where there is considerable overlap in jurisdiction.

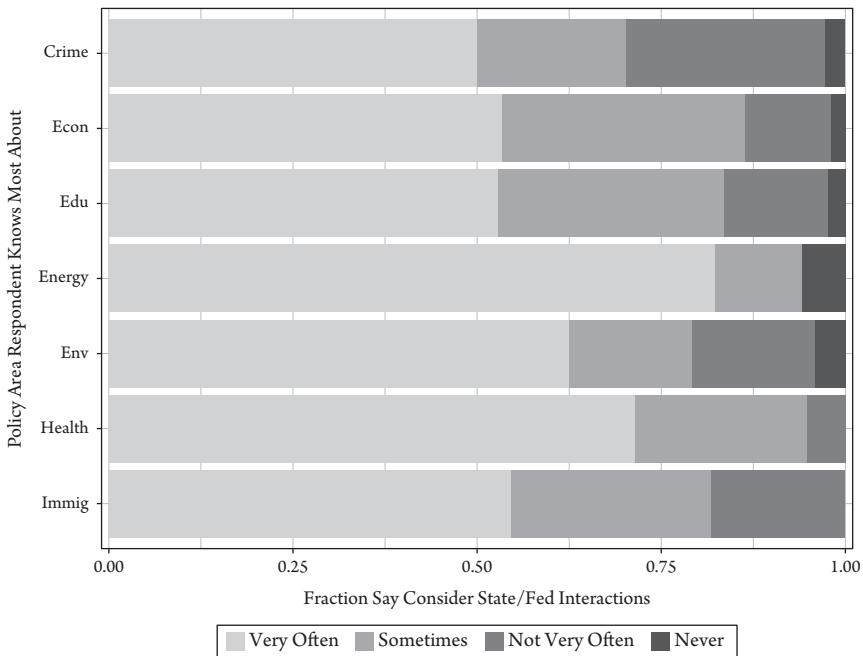


Figure 2.7 State Politicians and Staffers on Whether They Consider State–Federal Interactions in Policymaking: Most Knowledgeable Policy Domain

Applying the fog of enactment to the cases in this book can help illuminate its usefulness. As the next chapter will show, utility companies were ill equipped to understand how transformative renewable energy technologies could be to the electricity regulatory consensus. In the early days of RPS and net energy metering (NEM) policies, some opponents—including many incumbent utilities—did not understand renewable energy policies’ potential effects. These were novel laws, in a technical area, with overlapping state and federal jurisdiction. Initially they were also put in major reforms to the electricity system. If utilities could have forecast the future accurately, they would never have agreed to RPS or NEM policies in the first place. However, utilities, like many actors, are poor at predicting policy impacts. As one advocate put it, “The utilities were victims of their own beliefs. They thought that renewables were some tiny market that would never grow.”<sup>77</sup> This inability to see past enactment into implementation, or to forecast technology change, meant that utilities often agreed to more ambitious policies than they would have with hindsight.

This dynamic is not limited to the policies I studied at the state level. At the federal level, advocates are often caught in a similar fog, with prominent examples including the Clean Air Act and the Clean Water Act. When these policies were passed in the 1960 and 1970s, their long-term consequences were obscure to

both advocates and opponents (Layzer 2012). These laws involved technical policy domains and represented novel approaches to attacking big problems. Implementing these policies also required the federal government to interact with state and local authorities. Similarly, the consequences of Title IX—the law that prohibits discrimination on the basis of sex in federally funded education programs—were very hard to predict at the time it was passed.<sup>8</sup> As those who worked on that law have said, it opened up opportunities for policy changes that were not foreseen at the time of enactment. While actors pushing Title IX were initially encouraged that the changes they sought could be accomplished in a few short years, they updated their beliefs that change would take more than a lifetime. Hence, with Title IX, both the uses of this law and its ability to solve the problem were very difficult to predict in advance.

More recently, the 2017 federal tax reform provides a particularly vivid example of the fog of enactment. First, the bill's authors used intentional ambiguity by pushing a vote less than 24 hours after the final language was written down.<sup>9</sup> Politicians shared pictures on social media showing that the final Senate version included handwritten changes added to the margins. As a result, lawmakers had no idea what they were agreeing to. Numerous media reports described how interest groups scrambled to get information about the bill to evaluate how the proposed changes might affect them. The negotiations—happening across both chambers and with the executive branch—were extremely complex. The pace of the voting and the bill's length—more than 1000 pages—meant no one inside or outside of Congress knew exactly what was going on. For example, the bill was written in such a way that it failed to clearly establish the lowest corporate tax bracket, forcing politicians to return to their chambers to pass another version of the bill.

Once implementation of the tax reform began, it became clear that the law's consequences were more ambiguous than politicians on the Hill had assumed. State and local governments began to allow citizens to pay their tax bills earlier and to creatively get around the changes in deductions. And media reported on a billion-and-a-half-dollar provision that had gone mostly unnoticed during enactment—economic opportunity recovery zones. One advocate involved with that provision stated, “if it's successful, we'll look back 10 years from now and say this was one of the most important parts of the tax bill, and one we didn't talk nearly enough about.”<sup>10</sup> The ramifications of the tax bill are only beginning to become clear. According to the 2019 Institute on Taxation and Economic Policy's *Corporate Tax Report*, 60 of the biggest Fortune 500 companies avoided all federal income taxes in 2018.<sup>11</sup> Electric utilities, such as American Electric Power, benefited enormously from the tax bill, receiving a \$32 million federal tax rebate.<sup>12</sup> Overall, because tax loopholes remained in place yet the statutory rate decreased, corporate tax revenues fell by 31%.<sup>13</sup>



Of course, policymaking is not always caught in a thick fog. In some cases, opponent interest groups may not like all the provisions in the law and understand that the reform will prove problematic to them in the future. Yet, they do not have enough influence with decision makers to block the policy. During implementation, they may seek to resist provisions they were unable to block during enactment. It is to this issue we now turn.

### Implementation and Political Learning: Restructuring Politics Through Changing Resources, Incentives, and Information

If enactment creates the seed for changes in politics, then implementation is where this seed may germinate. The critical word here is “may.” Simply because a law is passed does not mean it will be implemented in line with actors’ expectations during enactment. Implementation’s importance for policy change can be seen in cases where the rules are never enforced, and therefore the politics do not shift. Governments routinely violate their own laws, miss their own targets, or fail to implement provisions. Rules can be structured during enactment so that they are easier to break. If laws are never implemented, this directly undermines any potential feedback, making them easier to retrench. It also provides justification for retrenchment: opponents can argue that the rules were never implemented *because* they were untenable.

Implementation is a stage where the executive branch has considerable discretion and can block feedback. We see this dynamic unfolding clearly at the federal level under the Trump administration, which is not enforcing numerous regulations, most prominently those at the Environmental Protection Agency (EPA). Similarly, the mercury rule under the Clean Air Act was not implemented for several decades. When environmental rules are not implemented, industry’s behavior and the politics of the issue remain the same as before enactment.<sup>14</sup> Focusing on implementation reminds us to think about the difference between the rules on paper and the rules in use.

If government policy is poorly implemented—whether intentionally or unintentionally—then feedback is less likely to take hold. The case of how the nonprofit Code for America improved food stamps’ usage in California illustrates this fact well. This nonprofit works to improve government implementation and aimed to make food stamps easier to access. Like other states, it is very difficult for individuals to apply to receive food stamps in California. After Code for America rewrote the application, it helped reach more than 140,000 people in 2017 and 200,000 in 2018.<sup>15</sup> Improving a program’s implementation helps to

make policy stickier—these people are a potential constituency who can be organized and mobilized by interest groups if the policy is attacked.

In cases where laws are put into practice, implementation still does not automatically create policy feedback. Rather, it causes new resources, incentives, and information to be distributed to interest groups and the public. Through implementation, specific decisions are made that affect the scale of resources given to or taken away from different groups or individuals. Implementation can create entirely new interest groups. It can also reshape identities. For example, Suzanne Mettler (2005) illustrates how implementing government policy—in her case the GI Bill—can shift politics. As she puts it, “Program implementation conveyed to [veterans] powerful messages not only about the value of one particular program but also, more broadly, about government’s responsiveness to people like them. . . . This suggests that the way in which government implements social programs can have a direct effect on the kind of citizens it produces” (Mettler 2005, 59). She documents how citizens receive messages during implementation that reshape their identities, beliefs, policy preferences, and ultimately political behavior.

Information also shifts during implementation allowing political actors to learn. The term “learning” is often associated with bureaucrats eager to improve laws (Heclo 1974). But it is not just neutral learning about policy effectiveness that is occurring. Implementation is also the site of political learning (May 1992; Sabatier 1988; Soss 1999). What these interest groups learn is not neutral information about how the policy could be improved. Instead, they learn about how the policy affects their interests, and they update their preferences accordingly. Implementation is when the ambiguities in laws and interest groups’ positions are resolved.

Is there evidence that implementation is an important stage for learning? Looking back at the survey data can help to illuminate this question. When state politicians and their staff were asked to recall specific bills in the policy domains they knew the most about, *not a single respondent* said that she or he did not pay attention to what happened to policy during implementation (Figure 2.8). Instead, 60% said that they were fully aware of what happened to a law after implementation. Even for policy domains that politicians and their staff knew the least about, 100% of the survey respondents said they were at least partially aware of what happened to the laws during implementation. Clearly, implementation is an important stage that politicians, staffers, and interest groups pay attention to. It is a key stage when interests and preferences change as more information is revealed.

Learning also occurs more quickly in jurisdictions that follow policy leaders. Interest groups are not isolated within a single jurisdiction; rather, they interact across state borders. Networked and federated interest groups are increasingly

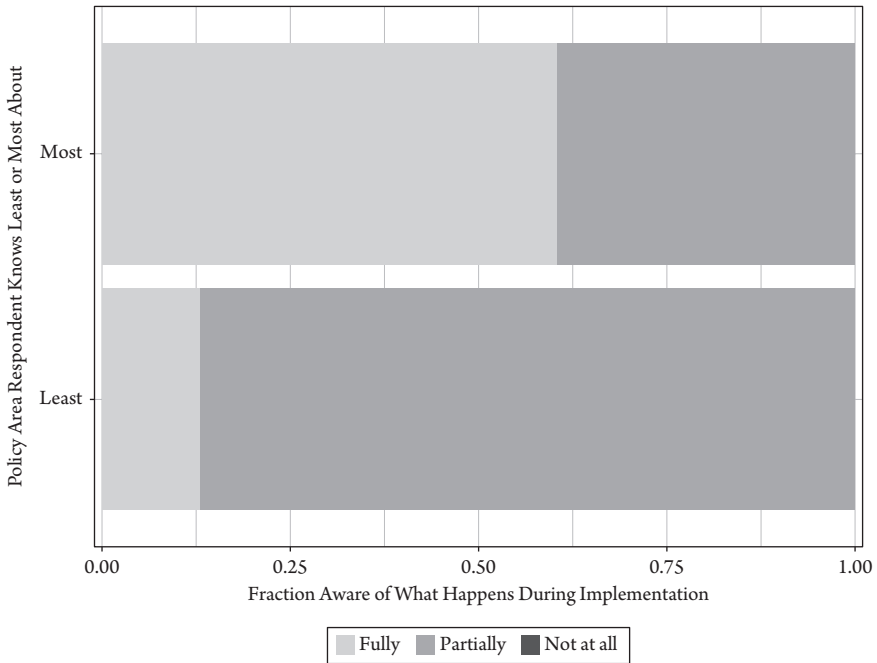


Figure 2.8 State Politicians and Staffers on Whether They Pay Attention to Policies During Implementation

important to state politics, in part because these groups are organized at the level that matters to influence politics (Skocpol et al. 2000). Prominent networks that try to influence legislators by providing an ideological view on laws and their effects include right-wing groups like the American Legislative Exchange Council (ALEC) and the State Policy Network, and left-wing groups like the State Innovation Exchange and the State Priorities Partnership. The nonpartisan National Conference of State Legislatures (NCSL) also tries to disseminate information about the effects of legislation that is relevant across the ideological spectrum. As actors in one state learn about the policy through implementation, they communicate with others. In this way, the fog of enactment can diminish in jurisdictions that are slower to enact policies, leading to policy changes being blocked during enactment, resisted during implementation, or outright retrenched. Later versions of the same policy passed in a different jurisdiction can face faster retrenchment.

Opponents are particularly effective when they deploy their attacks through networked, federated interest groups that cross state lines. Working through networks, interest groups can change politicians' incentives. In the case of renewable energy laws, cross-state interest groups pressured GOP legislators, putting RPS and NEM repeal on the agenda in many states. ALEC is particularly

successful at providing legislators with an agenda that is certified as business-friendly for conservative leaders that lack ideas (Hertel-Fernandez 2014). Across most of the cases I study in this book, there are fingerprints of cross-state actors pushing for repeal, such as Americans for Prosperity (AFP) in Kansas and ALEC in Ohio. These groups communicated that opposing renewables was part of what it meant to be a Republican state legislator. In this way, they polarized a previously bipartisan issue.

## How Feedback Can Fail: Retrenchment Pathways

After implementation, we might expect policies to lock in, as they create or reinforce constituencies. When a law has politically strengthened advocates, opponents will have a harder time undermining it. This is the central lesson of policy feedback research. However, this is not the only potential outcome. As Kathy Thelen puts it, “Institutions do not just generate positive feedback, they also ‘generate grievance’” (2004, 295). The United States may have institutions that are particularly supportive of political losers’ repeated efforts to dismantle policies. In Daniel Carpenter’s (2010) words, “institutional strangulation” can occur as laws are slowly chipped away at. Or, as William Riker argues, losers continue to search for opportunities to change the status quo (see Shepsle 2003). Merely establishing a law in the United States does not guarantee its longevity (Berry et al. 2010).

Once opponents realize a policy undermines their interests, they may attack it. As Figure 2.3 shows, there are both direct and indirect pathways to drive policy change post-implementation. If opponents want to undermine existing legislation, they must first gain influence with decision makers. This power is relative: opponents can either undermine policy advocates’ influence or increase their own. In this way, my framework builds on earlier research about the balance of power across different interest groups (Dahl 1961; Gaventa 1980). Interest groups compete in political combat to try to change policy in their desired direction. When they are empowered, opponents will work directly with legislators and regulators to rollback policy. When they do not have sufficient power, opponents can work indirectly through the political parties, the public, or the courts to try to short circuit policy. Through either direct or indirect means, interest group opponents may ultimately undermine policy, even after feedback has taken hold. Still, contestation is a hopeful sign. It means there are advocates available to defend the policy. The alternative is quiet politics or non-decision-making—which both point to the dominance of opponents (Crenson 1971; Culpepper 2010; Fairfield 2015; Gaventa 1980). Policy conflict means

that the balance of power is shifting. In the rest of this section, I unpack both the retrenchment pathways in greater detail. Examining when policy feedback fails helps us to understand both American politics broadly and inaction on climate change specifically.

### Retrenchment via Direct Means

Opponents are often incumbents who are well established prior to a new policy's enactment. In these cases, direct policy retrenchment may be easier because advocates remain insufficiently empowered. This can happen when a policy is poorly implemented and, as a result, advocates do not notably increase in numbers or resources. Under these conditions, opponents retain sufficient dominance in the legislative and regulatory process to push retrenchment. Thus, even if a policy has increased advocates' absolute levels of power or influence, these gains may be paltry compared to incumbent opponents' power. Who has the edge in organized combat is not just a function of the last marginal redistribution of resources, incentives, or information, but also the historical distribution of power.

We typically think of interest groups influencing legislators and regulators directly, through lobbying, relationships, contributions, and ideas. Lobbying has grown dramatically in the United States over the past several decades—in terms of both the number of corporate lobbyists and the amount of money they spend (Drutman 2015). Over time, lobbyists build strong relationships with legislators and their staff, providing them with information (Hansen 1991). As Lee Drutman (2015) shows, lobbyists sometimes become *de facto* additional staff members for legislators. Given that organized interest groups' agendas are distinct from the public interest, lobbying may undermine democratic representation (Baumgartner et al. 2009). To increase their political influence, opponents can strengthen their relationships with legislators, leaving them well positioned if and when an opportunity for policy retrenchment arises.

If opponent interest groups cannot convince legislators to directly undermine policies, they may instead lobby for other policies that undermine a law's efficacy. For example, in Vesla Weaver's (2007) work on resistance to civil rights legislation, she describes how opponents can change their tactics after they lose in enactment. Unable to defeat civil rights legislation from passing in the first place, opponents created a powerful countermovement that reinforced racial discrimination in the penal system. After civil rights activists ushered in reforms, opponents worked to undermine these gains by passing discriminatory laws, including mandatory minimum sentencing. Hence, policies can be undermined when opponents successfully lobby for parallel institutions.

Campaign contributions can also help interest groups influence politicians and their staff. As Lynda Powell (2012) shows, there is a relationship between state legislators' receipt of contributions and specific bills and votes. Campaign contributions' effects increase when there are no term limits and when issues have lower salience with the public. As she puts it, "the influence of contributions is in the details of legislation. Even a few words in a bill may be of great importance to a donor" (Powell 2012, 202). This is what Jeffrey Lax and Justin Phillips (2012) have called the "democratic deficit" in the states. After the *Citizens United v. Federal Election Campaign* decision that political spending is a form of protected speech that corporations have a right to use, state-level campaign contributions increased. As Douglas Spencer and Abby Wood (2014) have shown, this increased funding has been funneled through organizations and political committees that allow for greater anonymity. These dynamics are explored in this book in the Arizona case. But more generally there is significant evidence that campaign contributions are changing public policy in the states.

With a longer-term strategy, opponents can also use the power of ideas to create the conditions for retrenchment (Layzer 2012). Ideas may come in the form of a compelling report that resonates with a politician's ideology. Opponents may also target the public with narratives that challenge a policy's legitimacy. This dynamic is at play in the case of gun control policy, where gun rights advocates used ideas to change the interpretation of the Second Amendment over several decades (Goss 2008). Ideas need not only be constructive. Interest groups may also aim to discredit advocates' ideas, for example, by critiquing their reports. We see this clearly in the case of climate denial.

Interest groups do not just target politicians for direct policy revision, however. They also target the bureaucracy. Policy opponents have a variety of tools they can use in the regulatory process to engage in what I call "implementation resistance." Actors can try to have laws reinterpreted for new ends, by working to influence regulators and agencies. As Lowi (1979) argued, interest groups are more likely to dominate in regulatory bodies because these venues are less visible to the public. Terry Moe (1989) has similarly shown that interest groups try to structure bureaucracy to meet their goals. As Jacob Hacker (2004) argues, existing public policies can be reinterpreted in a process he calls "conversion." As he points out, "In general, the conversion of a policy should be easier when it delegates administration or lacks clear overarching rules or aims" (Hacker 2004, 247). One way actors can do this is by moving a policy from the legislature to an executive agency (Baumgartner & Jones 2009). Actors can also try to shift the venue to the courts to seek a reinterpretation of existing rules. The US federalist system supports this search for new venues to oppose policy, through its shared governance across levels of government. This can change the interpretation of existing policy and alter actors participating in the process or their

relative influence, particularly if policy opponents have managed to capture a regulator (Stigler 1971). Given that interest groups are more organized than the public, particularly for low-salience issues, regulatory capture is often possible (Kalt & Zupan 1984). Regulatory capture can unfold in a variety of ways, including through bribes, rent-seeking, threats of legal challenge, social capture, and a revolving door between the regulated and the regulator (Carpenter & Moss 2014). Overall, interest groups wield significant influence during implementation (Yackee & Yackee 2006).

### Retrenchment via Indirect Means

When opponents are not sufficiently empowered over advocates to directly retrench policy, they may instead try indirect strategies. Retrenchment can occur even after policy feedback has increased advocates' influence or the public's support for the policy. Indirect tactics involve targeting the parties, the public, and the courts to undermine policy. Some approaches are lower-profile (Hacker 2004; Layzer 2012). Others are about expanding the scope of conflict, to make the fight bigger and more visible (Schattschneider 1960).

The first indirect strategy opponent interest groups use is working through political parties. As the UCLA School of Political Parties argues, interest groups are intense policy demanders, central to crafting party agendas (Bawn et al. 2012; Cohen et al. 2009). In the empirical chapters, I show how interest groups can try to influence party agendas through elections, lobbying, contributions, relationships, and ideas. Interest groups can make certain policies litmus tests for partisans. If they are successful, politicians will fear retribution from activists, party elites, and primary voters if they stray from a particular position. They can also try to influence party platforms through constructing and disseminating ideas. The result is increasing partisan polarization, as the parties move further apart on issues. When policies are already in place that they oppose, opponents' goal in intervening in the electoral process is to elect sympathetic politicians, open to retrenching policy. Given current law, interest groups can participate in elections with considerable anonymity. They can even encourage their employees to support their preferred candidate (Hertel-Fernandez 2018). When interest groups succeed in changing which party is elected to state legislatures or governorships, the effect on policy liberalism is large—and even larger than it was in the past (Caughey et al. 2017).

We can see how interest groups use the parties to shape policy through primaries—a place where elections, lobbying, contributions, relationships, and ideas all come together. When they hold sway over a policy domain in a party, opponents can threaten incumbents who are off side. Threats can be the loss



of interest group funding or party funding, or support for primary challengers. The potential for a strong primary challenger from their own party can create incentives for incumbents to fall in line. There is evidence that even the threat of a primary alters congressional representatives' behavior (Kamarck & Wallner 2018). When primary challenges are successful, they result in incumbents losing their seats, shifting *which* politicians are making policy decisions (Hacker & Pierson 2006). In this way, interest groups can use the party structure to change who is in office into someone who shares their policy positions (Bawn et al. 2012). Partisan swings in who governs can be particularly important for undermining policy because it gives different interest groups access to decision makers (Berry et al. 2010).

Does this happen regularly? There is evidence that interest groups are now vetting candidates for primary challenges to an even greater extent than parties do (Rauch & La Raja 2017). And interest groups are investing in primaries with larger and larger contributions. In 2016, outside groups contributed \$38 million to competitive primaries, compared to \$5 million in 2008 (Rauch & La Raja 2017). These donors are on the extremes in their positions—and individuals associated with interest groups are particularly influential in primary nominations (Grumbach 2018b).

Interest groups' ability to shape the parties through primaries is pronounced at the subnational level. Nominations and general elections in the states are low-information. As a result, the public has trouble following the intricacies of policy debates, making it a particularly favorable terrain for interest group influence. At the state level, interest groups face less competition to propose or vet primary candidates. We can see this clearly in Arizona, where one utility was able to capture its regulators by playing a dominant role in primaries and general elections. Similarly, in Kansas, only a few actors—the Chamber of Commerce and Koch Industries—were investing in primary challengers. Hence, there was little competition from other groups to influence the process. Interest groups' role in shaping nominations in higher-profile, more information-rich nominations, such as the presidency, is likely lower (McCarty & Schickler 2018). Overall, given extreme polarization driven in part by a dense interest group environment and skyrocketing spending in primaries, policy feedback is unlikely to be as strong a force today in state politics.

Interest groups also use the public in their battles over policy. In the US, as in other democratic systems, the public exerts an important influence over politicians and their staff. The public is crucial to how politicians think about policy decisions (Fenno 1978; Hertel-Fernandez et al. 2019). Through elections, public opinion polls, contact with elected officials' offices, and other means, legislators become aware of the public's preferences. These preferences matter for politicians' re-election prospects, and consequently, politicians and

their staff pay significant attention to the public (Fenno 1978; Hertel-Fernandez et al. 2019). The public can directly support policy change through elections. Yet, as Gabriel Lenz (2012) argues, the public struggles to understand policy independently from elites. Hence, groups are key brokers for the public. Interest groups explain policy to the public and construct versions of public opinion for politicians. If regulators are elected, interest group construction of the public extends to agencies.

There is evidence that interest groups are driving a wedge between public opinion and politicians' perceptions of public preferences (Broockman & Skovron 2018; Hertel-Fernandez et al. 2019). In research with Alexander Hertel-Fernandez and Matto Mildemberger (2019), I show that senior congressional political staffers systematically mis-estimate public opinion. This gap between what the public wants and what staffers and legislators think the public wants is partially explained by interest group contact and contributions. David Broockman and Christopher Skovron (2018) similarly show that in statehouses politicians often misperceive their citizens' policy views. Their paper demonstrates a "conservative bias"—politicians believe their constituents are *more* conservative than they are. They argue that this is because Republican citizens are far more likely to contact state politicians. Although they do not explicitly point to interest groups organizing right-wing citizens to contact politicians, their argument is consistent with this hypothesis. It is quite likely that interest groups are mobilizing certain citizens whose views are more extreme than those of the median voter. In the age of big data and the Internet, public communication with politicians is rarely spontaneous. Interest groups are getting better at targeting citizens to contact their representatives.

Interest groups are not trying to objectively measure and communicate public preferences—they aim to construct a particular view in line with their interests (Jacobs & Shapiro 2000). Outside lobbying, wherein interest groups mobilize citizens to contact or pressure decision makers, is one important strategy that interest groups use to construct versions of the public (Kollman 1998). But, in contrast to Ken Kollman's argument, I conceive of public opinion as less of a *constraint* on interest group influence and more as a *tool* interest groups use to influence legislators. Interest groups selectively mobilize specific groups in policy campaigns and elections and even ask leading questions on surveys (so-called push polls). They can construct opinion so that it appears that the public does not support the status quo policy. This can involve raising the policy's salience with the public—for example, by highlighting costs—to increase the likelihood of retrenchment.

In even more extreme cases, interest groups can go around the public but still shape legislators' and their staffs' perceptions. As Edward Walker (2014) shows, public affairs professionals organize participation in contemporary American

politics. In its most nefarious form, interest groups circumvent the public entirely, creating fake campaigns—called “astroturfing.” In these campaigns, interest groups suggest there is grassroots mobilization supporting or opposing a policy proposal. In truth, the public is not rising up—vested interests are just lying. In these cases, it’s up to journalists to investigate and tell the truth about these campaigns’ origins. Otherwise, interest groups’ fake public campaigns may prove effective with politicians. In addition to astroturfing, interest groups may run false political ads (Walker 2014). Fossil fuel companies regularly rely on this technique. Apart from the cases described in this book, coal companies in West Virginia have developed front groups that purport to represent the public but are actually run by the industry (Bell & York 2010). In one extreme case, a utility in New Orleans—Entergy—hired actors to attend a public hearing, pretending they were concerned citizens. These actors were told to speak out against clean energy and in favor of a natural gas plant.<sup>16</sup>

This is not to say that the public can never independently exert influence over policy. In some cases, the public has an effect on policy change or stability, particularly when policies have created mass feedback effects through new resources. Hahrie Han (2014) demonstrates throughout her research that the public’s voice can be heard through organizing and activism. Still, in contemporary American policymaking, interest groups’ voices are usually much louder than the public’s. Increasingly, the public is used as a tool by interest groups in their battles over policy.

The third indirect way that interest groups try to shift policy is through the legal system. Opponents can use the courts to contest policy they were not able to block during enactment or weaken during implementation. Steven Teles (2012) shows that conservatives have attempted to undermine liberal dominance in the courts. The result is that the same polarization trend that is affecting legislatures is also shaping the judicial branch (Binder 2008). This matters because judges have significant discretion over policy interpretation. As Judy Layzer (2012) shows, conservatives have used the judicial branch to make low-profile changes to policy, driving retrenchment over time.

Opponent interest groups can simultaneously deploy all of these direct and indirect strategies. When better-resourced opponents continually attack a policy, policy retrenchment can occur by a thousand cuts. After sustained attacks over many years, advocates may change their preferences and become willing to lose a policy because the alternative is an ongoing expansion of conflict. This is shown clearly in the case of Kansas’s renewable energy laws. As resources are cut off from advocates, advocates’ coalitions fracture. With scarcity, coalitions can break apart as advocates fight for their narrow survival, rather than allying for the broader common cause.

## Conclusion: Examining Feedback Failures to Understand Politics

This chapter has argued that policy feedback often begins from a place of considerable ambiguity and uncertainty—from a fog of enactment. This dynamic lessens over time, with each round of policy revision, as the relationship between the words on paper and their implementation in practice becomes clearer. Hence early-acting states, complex reforms, technical policy domains, and cases with overlapping jurisdiction all involve greater ambiguity and uncertainty than late-acting states, simple reforms, nontechnical domains, and issues without federal interactions.

Implementation represents a key moment when political actors can learn. After implementation, policy changes how resources, incentives, and information are distributed across interest groups and the public. In response, these actors may change their beliefs, preferences, and even identities. Consequently, when policies are revised or retrenched, there is more information available about a given policy's consequences in the relevant jurisdiction or from similar policies passed in other jurisdictions. In some cases, opponents may seek to retrench policy. To do so, they can use both direct and indirect channels to gain political influence over advocates. Overall, policy feedback is less common in today's era of growing partisan polarization. Federated and networked interest groups play a particularly important role in spreading policy agendas from state to state, fueling retrenchment (Hertel-Fernandez 2019).

While this theory focuses on cases where path dependence fails, it does not just teach us about politics when feedback is disrupted. More generally, it provides a deeper understanding of how policymaking and implementation operate. Using detailed, longitudinal histories, we can unpack interest groups' relationship to policy over time (Pierson 2004). These histories need to describe what happened to get a policy on the agenda, passed by the legislature, implemented, and either expanded or retrenched. These cases also need to cover significant time in order to show how the political dynamics evolved. The same approach can be used to understand organized combat between interest groups and policy feedback in other policy domains, such as social policy, tax policy, or healthcare policy. In the rest of this book, I present detailed cases of interest group battles over clean energy policy. To enable the reader to follow these stories of organized combat over climate policy, we must begin with the longer history of electricity politics and climate inaction. It is to this issue we now turn.