

**The Political Effects of Policy Drift:
Policy Stalemate and American Political Development**

Daniel Galvin

Associate Professor of Political Science
Northwestern University

Jacob Hacker

Stanley B. Resor Professor of Political Science
Yale University

Version: April 2019

DRAFT

Please do not quote or distribute without permission.

ABSTRACT

In recent years, scholars have made major progress in understanding the dynamics of “policy drift”—the transformation of a policy’s outcomes due to the failure to update its rules or structures to reflect changing socioeconomic circumstances. Amid polarization and gridlock, drift has become an increasingly common mode of policy change, and its major causes are now well understood. Yet surprisingly little attention has been paid to the distinctive political consequences of drift—to the ways in which drift, like the adoption of new policies, generates its own “policy feedback” effects. This article is meant to fill this gap. Drawing on prior scholarship, we lay out clear expectations concerning drift’s likely effects on downstream politics—in particular, on the development of institutions and organized groups—and then assess these arguments in the context of four varied cases of drift: labor law, health care, welfare, and disability insurance. Our core argument is that drift generates new incentives, interests, and alliances that simultaneously respond to the disruptive effects it produces and are heavily constrained by those effects. Regardless of whether these dynamics culminate in big reforms, they are one of the principal ways in which American politics and policy “develop” over time.

Over the last half century, scholarship on “policy feedback” has shown that policies are not simply the product of politics; they can also have significant causal effects *on* politics.

Students of policy feedback have demonstrated that policies can influence the development of organized interests, reorient government operations, and shape elite and mass attitudes and behaviors in ways that lend durability to the policy and reconfigure political conflicts.¹ Classic examples of such consequential policies include Social Security, Medicare, and the GI Bill.²

But recent scholarship has also shown that numerous factors must align for policy entrenchment and political reconfiguration to occur.³ Not all policies create self-reinforcing dynamics; some produce negative feedback processes that build opposition to a policy’s continuance and may eventually prompt formal revision.⁴ At the same time, even policies that

¹ Theodore J. Lowi, "American Business, Public Policy, Case-Studies, and Political Theory," *World Politics* 16 (1964): 677-715; Margaret Weir and Theda Skocpol, "State Structures and the Possibilities for 'Keynesian' responses to the Great Depression in Sweden, Britain, and the United States," in *Bringing the State Back In*, eds. Peter B Evans, Dietrich Rueschemeyer and Theda Skocpol (Cambridge University Press, 1985); Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge: Belknap Press of Harvard University Press, 1992); Paul Pierson, "When Effect Becomes Cause: Policy Feedback and Political Change," *World Politics* 45 (1993): 595-628; Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* (Ithaca, NY: Cornell University Press, 1998); Joe Soss, "Lessons of Welfare: Policy Design, Political Learning, and Political Action," *American Political Science Review* 93 (1999): 363-380; Jacob S. Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States* (New York: Cambridge University Press, 2002); Suzanne Mettler and Joe Soss, "The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics," *Perspectives on Politics*, Vol. 2, 1 (March 2004): 55-73.

² Andrea Louise Campbell, *How Policies Make Citizens: Senior Political Activism and the American Welfare State* (Princeton, N.J.: Princeton University Press, 2003); Paul Pierson, *Dismantling the Welfare State?: Reagan, Thatcher, and the Politics of Retrenchment* (New York: Cambridge University Press, 1994); Jonathan Oberlander, *The Political Life of Medicare* (Chicago: University of Chicago Press, 2003); Suzanne Mettler, *Soldiers to Citizens: The G.I. Bill and the Making of the Greatest Generation* (Oxford ; New York: Oxford University Press, 2005); Suzanne Mettler, "Bringing the State Back In to Civic Engagement: Policy Feedback Effects of the G.I. Bill for World War II Veterans," *American Political Science Review*, Vol. 96, No. 2 (June 2002): 351-65.

³ Eric M. Patashnik, *Reforms at Risk* (Princeton N J: Princeton University Press, 2008); Eric M. Patashnik and Julian E. Zelizer, "The Struggle to Remake Politics: Liberal Reform and the Limits of Policy Feedback in the Contemporary American State," *Perspectives on Politics* 11 (2013): 1071-1087.

⁴ Kent Weaver, "Paths and Forks or Chutes and Ladders?: Negative Feedbacks and Policy Regime Change," *Journal of public policy* 30 (2010): 137-162; David Dagan and Steven M. Teles, "The Social Construction of Policy Feedback: Incarceration, Conservatism, and Ideological Change," *Studies in American Political Development* 29 (2015): 127-153

are not revised may change over time through less visible processes, such as the shifting use of administrative discretion by front-line policy agents.⁵

The most pervasive of these “subterranean” processes is almost certainly *policy drift*.⁶ Drift occurs when “policies are deliberately held in place while their context shifts in ways that alter their effects.”⁷ Drift thus describes a change in policy *effects* that takes place without a change in policy *rules*.

What makes drift of particular interest is that it does not require formal action. By “doing nothing”—or, more accurately, by blocking the adaptation of a policy to its changing circumstances—political actors can shift a policy’s effects. The status quo bias of American political institutions makes updating policies far more difficult than holding them in place, and this asymmetry has been magnified by increasing partisan polarization and gridlock. What’s more, drift is an attractive aim for political actors who want to remain out of the spotlight, since it is generally not as visible or traceable to particular groups as authoritative policy revision. Indeed, while the effects of policy drift can be substantial for voters as well as interest groups, existing research suggests that the politics of policy drift is mostly animated by group dynamics—interest organizations, social movements, parties—rather than by campaigns and elections.

⁵ Jacob S. Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States,” *American Political Science Review* 98 (2004); Alan M. Jacobs and R. Kent Weaver, “When Policies Undo Themselves: Self-Undermining Feedback as a Source of Policy Change,” *Governance-an International Journal of Policy Administration and Institutions* 28 (2015): 441-457; Wolfgang Streeck and Kathleen Thelen, *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford: Oxford University Press, 2005).

⁶ “Subterranean” is from Hacker, *Divided Welfare State*, 43; Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States”

⁷ Jacob S. Hacker, Paul Pierson and Kathleen Thelen, “Drift and Conversion: Hidden Faces of Institutional Change,” in *Advances in Comparative-Historical Analysis*, eds. James Mahoney and Kathleen Thelen (New York: Cambridge University Press, 2015); Hacker, “Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States,”; Jacob S. Hacker, “Policy Drift: The Hidden Politics of Us Welfare State Retrenchment,” in *Beyond Continuity: Institutional Change in Advanced Political Economies*, eds. Wolfgang Streeck and Kathleen Thelen (2005), 40-82.

Policy drift has been observed and studied across a wide range of settings: the eroding value of the minimum wage; the declining scope of public risk protections as stable social welfare programs confront changing socioeconomic conditions; the diminished enforcement capacity of the Department of Labor as the size of the workforce outpaces the number of inspectors; and the lack of “policy maintenance” leading to functional deterioration in areas such as infrastructure and education policy.⁸ Political scientists now have a methodological toolkit for detecting the observable implications of drift, as well as a fuller understanding of the conditions under which policy opponents are more likely to pursue certain blocking strategies.⁹

Yet there is a striking gap in this growing body of increasingly sophisticated scholarship. We know more than ever about why and how drift happens, but we know much less about the consequences of drift for *downstream politics*—how, that is, drift “fundamentally alters the contours of political contestation.”¹⁰ This is a surprising oversight. Research on drift was largely inspired by theorizing about policy feedback, and drift, as a distinctive mode of policy change, should have distinctive feedback effects. But despite this intellectual lineage, studies of drift

⁸ Larry Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age*, second ed. (New Haven, CT: Princeton University Press, 2016); Hacker, “Privatizing Risk”; Daniel Beland, Philip Rocco and Alex Waddan, “Reassessing Policy Drift: Social Policy Change in the United States,” *Social Policy & Administration* 50 (2016): 201-218; Daniel J. Galvin, “Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance,” *Perspectives on Politics* 14 (2016): 324-350; Suzanne Mettler, “The Policyscape and the Challenges of Contemporary Politics to Policy Maintenance,” *Perspectives on Politics* 14 (2016): 369-390.

⁹ Philip Rocco and Chloe Thurston, “From Metaphors to Measures: Observable Indicators of Gradual Institutional Change,” *Journal of public policy* 34 (2014): 35-62; Hacker, Pierson and Thelen, “Drift and Conversion: Hidden Faces of Institutional Change,”; Beland, Rocco and Waddan, “Reassessing Policy Drift: Social Policy Change in the United States,”; Mettler, “The Policyscape and the Challenges of Contemporary Politics to Policy Maintenance,”; Philip Rocco, “Informal Caregiving and the Politics of Policy Drift,” *Journal of Aging and Social Policy* (2017); James Mahoney and Kathleen Thelen, “A Theory of Gradual Institutional Change,” in *Explaining Institutional Change: Ambiguity, Agency, and Power in Historical Institutionalism*, eds. James Mahoney and Kathleen Thelen (Cambridge: Cambridge University Press, 2010); Daniel Beland, “Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift,” *Social Science Quarterly* 88 (2007): 20-38; Nolan McCarty, “The Policy Effects of Political Polarization,” in Paul Pierson and Theda Skocpol, eds., *The Transformation of American Politics: Activist Government and the Rise of Conservatism* (Princeton, N.J.: Princeton University Press, 2007), pp. 223-255.

¹⁰ Jacob S. Hacker and Paul Pierson, “After the “Master Theory”: Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis,” *Perspectives on Politics* 12 (2014): 643-662, p.647.

have paid surprisingly little attention to the feedback effects *of* drift—to the ways in which drift, like the adoption of new policies, may alter institutional arrangements, reshape the universe of organized interests, and recast the dynamics of political action.

This article aims to bridge this gap. We first describe the basic features of drift that make it a characteristic kind of policy change. Then, we offer some theoretical expectations regarding how policy drift may alter downstream political developments in identifiable, explicable, and relatively predictable ways. We focus in particular on organized (or potentially organized) actors disadvantaged by drift. Much of the existing work on drift looks at those who are seeking to abet it: the “winners,” so to speak. Yet we will argue that the most profound political effects of drift often reflect how its “losers” respond to the problems and power imbalances it creates.

These distinctive dynamics are rooted in the defining element of drift: It involves fixed policies that create changing social outcomes. In particular, drift presents new problems for those on its losing end. These problems, in turn, create pressures for new groups to form and for old groups to adapt. In this respect, drift is both mobilizing and constraining. It increases demands for new arrangements that can soften its effects. But it also channels those demands in particular directions, encouraging affected groups to adapt their political strategies, organizational forms, and policy demands to the shifting set of problems it engenders.

To illustrate and deepen these arguments, we examine four policy cases: labor law, health care, welfare, and federal disability insurance. We chose these cases to maximize variation along two salient dimensions: whether drift was expansionary (welfare, disability) or contractionary (labor law, health care) and whether it eventually culminated in major legislative revision (health care, welfare) or did not (labor law, disability). Nonetheless, these cases should not be read as

exhausting the possibilities, nor can they provide anything more than a strong plausibility test for our arguments.

Still, by laying out some expectations based on the defining attributes of drift and then interrogating those expectations in the context of four varied cases, we hope to offer researchers a framework for linking the dynamics of policy drift to over-time changes in the institutional and organizational landscape. Moreover, by emphasizing how the reactions to drift may generate wholly new problems and political trajectories—sometimes leading to formal policy revision—we seek to highlight and parse one of the important mechanisms through which American politics and policy “develops.” For APD researchers seeking to explain peculiar substantive outcomes and puzzling political trajectories, as many do, we think the downstream political effects of policy drift warrant greater attention.

Feedback Effects of Policy Drift

Drift describes both an outcome and a cause. The outcome is a transformation in the *effects* of a policy or institution that remains formally stable; the cause is the failure to update that policy or institution to reflect changing contextual circumstances.¹¹ Drift is only a *deliberate* mode of policy change, however, if it involves the conscious choice of policymakers not to make formal revisions that would prevent those functional changes. In general, the cases of drift that are of greatest interest to political scientists are those in which political actors opposed to policy updates use their blocking power to hold the policy in place and obstruct proposed reforms.

We know from existing research that policy drift is most likely to occur in contexts of high political polarization and multiple institutional veto points, increasing the ease with which

¹¹ Hacker, Pierson and Thelen, "Drift and Conversion: Hidden Faces of Institutional Change," 193.

opponents can block policy updating. We also know that drift fundamentally reconfigures power relations, swapping the position of those playing “offense” and “defense” and advantaging organized interests with long time horizons and issue expertise.¹² Beyond that, however, existing studies have relatively little to say about how drift might generate distinctive feedback effects. We start, therefore, by exploring the core properties of drift and theorizing about the kinds of effects that a process with these properties will tend to generate. These core features can be reduced to four: the policy remains authoritative (1) even as its effects change (2), creating new problems (3), and all of these changes are likely to be gradual and relatively hidden (4).¹³

1. *The policy remains fixed in place.* Whether the effect of drift is contraction or expansion, a defining attribute is that the policy remains fixed in place and continues to exert governing authority despite its shifting effects. How would we expect political actors to respond to this key characteristic?

Let us consider cases of contraction, which have received the most attention in existing scholarship. In these cases, the policy’s opponents (now the winners) find that they can achieve their goals by practicing “the fine political art of producing change by doing nothing.”¹⁴ By contrast, the policy’s supporters (the losers) are caught in a bind. They would prefer to update the policy, but to do so, they have to overcome the high hurdles to authoritative action. In the

¹² Ibid.; Hacker and Pierson, "After the “Master Theory”: Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis,"; Hacker, Pierson and Thelen, "Drift and Conversion: Hidden Faces of Institutional Change,"; Hacker and Pierson, "After the “Master Theory”: Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis,"

¹³ Other characteristics include: realistic formal revisions and alternatives are purposefully *not* adopted; the policy’s effects are relatively sensitive to changes in context; the policy does not automatically update to keep pace with changing circumstances; opponents have the wherewithal to impede implementation or block formal revision; empirical implications of change are measurable; and the timeframe of analysis is reasonable Rocco and Thurston, "From Metaphors to Measures: Observable Indicators of Gradual Institutional Change," Beland, Rocco and Waddan, "Reassessing Policy Drift: Social Policy Change in the United States,"; Hacker, "Policy Drift: The Hidden Politics of Us Welfare State Retrenchment,". For the purposes of theory building, core conceptual properties are distinguished from issues that are more methodological in nature.

¹⁴ Hacker and Pierson, "After the “Master Theory”: Downs, Schattschneider, and the Rebirth of Policy-Focused Analysis,"

meantime (which may effectively be forever), the policy's persistent rules, proscriptions, and inducements limit their available options within its scope of authority.

Under these conditions, policy losers have incentives to *work around* extant rules and structures and engage in what Baumgartner and Jones and Pralle call "venue shopping," or what other scholars have conceptualized as "layering" or "displacement."¹⁵ That is, they may attempt to circumvent the drifting policy to address the problem in new ways, building new policies or new institutions in new venues to operate alongside and concurrently with existing policies.

Importantly, however, the drifting policy effectively takes certain policy designs off the table. To layer new policies on top of a drifting policy or displace it with alternative policies, losers have to accommodate themselves to core features of the drifting policy and try to *work with* them even as they seek pathways around them. Thus, at the same time as drift encourages a turn to new policies, it constrains the goals, strategies, and delivery mechanisms embodied in the new forms.

2. *The effects of the policy change.* As a form of policy change, drift has a second key characteristic: it produces outcomes that are distinct from those originally envisioned and supported. As the policy begins to "underperform or otherwise fail to function as intended,"¹⁶ the feedback mechanisms set in motion during earlier stages of policy development are likely disrupted as well.

¹⁵ Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993); Sarah B Pralle, "Venue Shopping, Political Strategy, and Policy Change: The Internationalization of Canadian Forest Advocacy," *Journal of public policy* 23 (2003): 233-260; Mahoney and Thelen, "A Theory of Gradual Institutional Change,"; Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress* (Princeton: Princeton University Press, 2001); Kathleen Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan* (New York: Cambridge University Press, 2004); Beland, "Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift,".

¹⁶ Mettler, "The Policyscape and the Challenges of Contemporary Politics to Policy Maintenance," 371

Going back to the seminal contribution of Pierson (1993), the two main varieties of feedback effects concern resources and incentives, on the one hand, and beliefs and perceptions, on the other.¹⁷ Amid policy drift, resources may dwindle or stop flowing, and incentives may change. At the same time, motivating beliefs or perceptions that once secured the policy may lose their hold. Although the circle of those affected will obviously include individual voters, the response is likely to be most consequential, strategic, and persistent among organized political actors, particularly organizations that formed around prior policy feedbacks. These are the biggest losers. Left in the lurch, they must adapt or perish as influential political actors.

Of course, strategic adaptation is to be expected from any organization, especially those whose fortunes are tied to economic shifts and changing political alignments.¹⁸ But in the specific context of drift, organizational adaptation should be aimed at replenishing the mechanisms of support that have been lost as a result of the policy's failure to function as intended. To do so, disadvantaged groups may seek out new revenue streams and experiment with new methods of attracting and retaining members; they may attempt to forge new links to previously discrete policy areas or establish partnerships with previously unrelated allies in bids to expand their reach; and they may devise policy patches and support hybrid alternatives to demonstrate their continued relevance and fortify their position. These defensive efforts—ranging from acts of desperation to shrewd and skillful adaptations—are likely to alter the political calculations of other actors as well, who may then adapt and respond in turn, setting in motion wholly new political and organizational dynamics.

¹⁷ Pierson, "When Effect Becomes Cause: Policy Feedback and Political Change,"

¹⁸ Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge: Harvard University Press, 1965); James Q. Wilson, *Political Organizations* (New York: Basic Books, 1974).

To be sure, heavily invested groups may fail to adapt, or adapt too slowly. There is nothing automatic about the process. But the imperative is straightforward: “old” groups need to find new sources of organizational nourishment, and their efforts should in turn affect the balance of power among all groups contesting within an affected policy domain.

3. *New problems emerge.* The changing effects of a policy due to drift not only undermine previous feedback mechanisms; they also create new problems. By problems, we mean conditions that are viewed as adverse by a substantial number of politically relevant actors. These may include growing public grievances, heightened risks, reduced access to benefits, or increasing budgetary pressures. What is crucial is that those most adversely affected have mounting incentives to seek redress.

Where might the aggrieved turn for help? Certainly, they can look to organizations already operating in this domain—if they still exist. But old groups may not be capable of adequately addressing emergent problems, or even of maintaining the legitimacy they once enjoyed as defenders of the policy that is now experiencing drift. As a result, there are likely to be powerful incentives for new groups to fill the void. Perhaps the strongest finding in the literature on policy feedback is that policies can “create niches for political entrepreneurs, who may take advantage of these incentives to help ‘latent groups’ overcome collective action problems.”¹⁹ Since drift creates distinctive policy effects, it should also create distinctive niches for new organized actors.

Depending on the policy area and the particular need or problem, the nature of these niches will, of course, vary. But as a general rule, we should expect that new groups will structure themselves around two imperatives: first, the need to find sources of organizational

¹⁹ Pierson, "When Effect Becomes Cause: Policy Feedback and Political Change," 600.

sustenance—both resources and supporters—not already monopolized by old groups; and second, the need to find sources of legitimacy that are centered on those most conspicuously left behind or otherwise harmed by drift.

4. Drift is generally a slow-moving, low-salience process. All these dynamics, finally, should mirror the typically gradual and low-profile process of policy drift. Most instances of drift involve “big, slow-moving processes,” such as population growth, changes in the composition of the workforce, and increases in the cost of living.²⁰ These sorts of steady, gradual, and cumulative changes should only slowly prompt institutional layering, adaptation among old organizations, and the development of new groups.²¹

What is more, given its slow-moving character, drift may only be recognized once it is well advanced, when it may also have created or bolstered beneficiaries who can fight to block updating. By this time, the policy space is likely to be so crowded and organizationally complex that the range of policy options is greatly narrowed. Indeed, because drift relies not on ongoing political mobilization for its continuance but on often-sweeping contextual changes, its feedback effects are likely to be highly constraining. What emerges should reflect “the art of the possible,” with the influence of the drifting policy plainly evident in the new forms pursued and achieved.

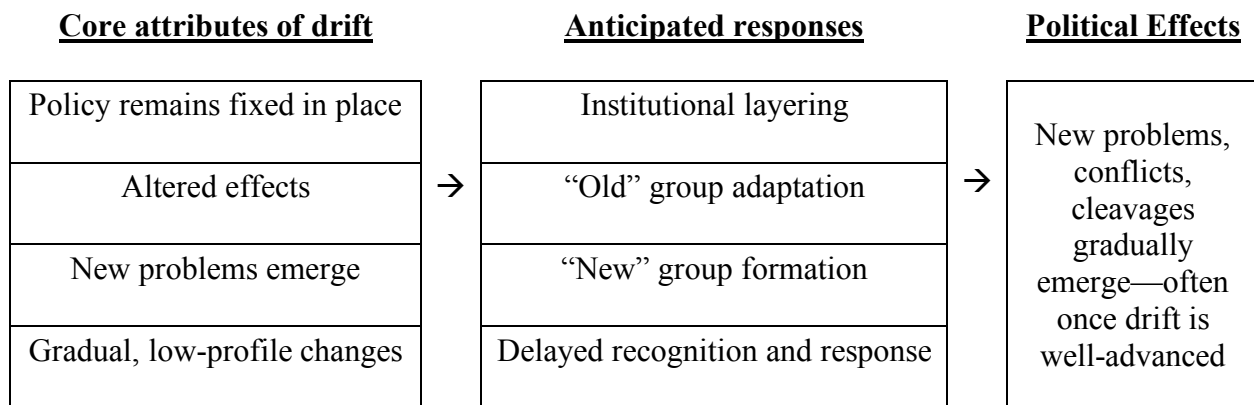
The discussion thus far is summarized in Table 1, which links the core attributes of drift to likely responses from both old and new groups and ultimately to potential political effects. We hasten to add that there is nothing automatic about any of these processes: the need for political entrepreneurship, for example, does not inevitably generate its own supply. But by identifying

²⁰ Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).

²¹ Beland, Rocco and Waddan, "Reassessing Policy Drift: Social Policy Change in the United States,"

the general incentives at play, we hope to make more tractable the process of identifying drift’s feedback effects in particular cases, such as the four we explore in the next section.

Table 1: Theorizing the Feedback Effects of Policy Drift



From Feedback Effects to Political Development

Before moving to these cases, however, we want to briefly place the political effects of drift into a larger developmental perspective. As foundational APD scholarship has shown, even institutional and policy changes with profound effects do not operate in isolation, but often overlap, collide, and impinge upon one another over time. The study of political development is, in significant part, the study of how structures of authority created at one time and in one context shape and constrain alternative structures and competing warrants for action that emerge out of ongoing political, social, and economic change.²²

²² Karen Orren and Stephen Skowronek, "Beyond the Iconography of Order: Notes for a 'New Institutionalism'," in *The Dynamics of American Politics: Approaches and Interpretations*, eds. Lawrence C. Dodd and Calvin Jillson (Boulder, CO: Westview Press, 1994), 311-330; Karen Orren and Stephen Skowronek, *The Search for American Political Development* (New York: Cambridge University Press, 2004); Adam Sheingate, "Institutional Dynamics and American Political Development," *Annual Review of Political Science* 17 (2014): 461-477; Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science* 2 (1999): 369-404; Richard M. Valelly, Suzanne Mettler and Robert C. Lieberman, *The Oxford Handbook of American Political Development* (New York: Oxford University Press, 2016).

This type of interplay is precisely what we expect in consequential cases of policy drift. Our argument, after all, is not just that political actors have incentives to respond to drift. It is that these responses occur on an already densely populated institutional landscape. With the old policy remaining authoritative in its own sphere, subsequent innovations must work around existing rules and structures. This, in turn, is likely to engender contesting policy mandates, contradictory implementation protocols, overlapping constituencies, and conflicting jurisdictions. These clashes may in turn fuel new types of political conflict, negotiation, and mobilization.

The relationship between old and new groups is emblematic. Groups formed around a policy before drift has occurred do not, as a rule, disappear. Often, they remain integral to the new politics that emerges. But as drift reconfigures the political landscape, they may find themselves operating alongside new groups with very different temporal origins and relationships to existing policy. Almost inevitably, these relationships are marked by tension: turf wars, strategic conflicts, even identity crises. These tensions are a fundamental feature of the politics of drift, and whether and how they are resolved matters greatly for whether and how drift is ultimately addressed. In the best case for those seeking to halt or ameliorate drift, new organizations share similar strategic judgments and policy goals; in the worst, they end up diluting their message or diverting pressures for reform.

Similar processes can play out on the other side of the conflict. Those seeking to abet drift may fragment, too, though the costs of such internecine struggles are generally lower, given how much easier it is to stop rather than promote authoritative change. Drift is, of course, less likely to endure when it creates easily recognized and broadly distributed costs for powerful actors.²³ By definition, however, policy stasis alongside social dynamism is only considered a

²³ R. Douglas Arnold, *The Logic of Congressional Action* (New Haven: Yale University Press, 1990)

deliberate mode of policy change when some set of actors recognize and seek to abet it—actors with sufficient power to block updating. There is little reason to think that as the costs of drift mount for others, these actors will change their mind. Those costs are their benefits.

The picture changes, however, when the focus expands to the *political* effects of drift. New political dynamics can fundamentally destabilize drift’s winners. The emergence of new groups with new demands, the agitation or mobilization of constituencies with the ear of influential political actors, the rise of interjurisdictional conflicts and other knotty problems associated with jury-rigged institutional layering—such complications can cause winners to rethink the long-term viability of their continued political stance. Whether or not the *direct benefits* of policy drift change, in other words, the *political effects* very likely will. In such cases, winning groups may split over the desirability of continued drift, or even defect to the other side.

Whether these trends lead to formal revision of a policy is another matter. Major reforms come rarely and their likelihood depends on contingent factors—such as salient crises or other “focusing events”—as well as more typical, well-studied avenues through which the preferences of pivotal lawmakers change (election of a new president, changes in the balance of partisan power in Congress, and the like).²⁴ Precisely *when* policy windows will open is never easy to predict. But when losers’ responses to drift pose an unacceptable degree of political risk for winners—when staying the course threatens to undermine their political influence or cut them out of the policymaking process entirely—the door may open to authoritative reform.

In any case, the defining attributes of drift should factor greatly into this process. Drift fundamentally involves a shifting status quo as fixed policy rules interact with changing circumstances. As the status quo changes, so too should the degree to which contending political

²⁴ John W. Kingdon, *Agendas, Alternatives, and Public Policies* (HarperCollins, 1984)

actors are willing to support the present policy (as opposed to reform). In the language of spatial models of lawmaking, drift is a process that can change the “gridlock interval” defined by the relative position of pivotal lawmakers to the status quo, moving the status quo into a region permissive of change even without shifts in the preference or composition of lawmakers. (In practice, big policy changes usually require those, too.) These are what Alan Jacobs and Kent Weaver refer to as “self-undermining feedbacks”—mechanisms through which policies create negative economic and political effects, increasing the chance of their eventual revision.²⁵

To be clear, our argument is not that policy drift single-handedly causes these reactions or independently generates the new political dynamics that follow. There are undoubtedly many casual factors at play, both deep structural causes and more proximate ones. Our claim is that in the context of drift, political reactions are likely to be delimited and constrained by the distinctive features of drift itself, the new problems that emerge are likely to reflect these dynamics, and whether and in what way authoritative decisionmakers eventually respond are likely to hinge, at least in part, on how these dynamics alter the preferences of and relative balance of power between drift’s organized winners and losers. In this way, drift acts as a powerful background condition that refracts and mediates political development.

Four Contrasting Cases

To illustrate these dynamics, we turn to four cases of drift. All four cover similar time periods (the mid-twentieth century to the present), and broadly concern domestic social and economic policy. They differ, however, along two key dimensions. Drift can take two ideal-typical forms: *contraction* (in which the policies’ affected population or generosity decreases)

²⁵ Jacobs and Weaver, "When Policies Undo Themselves: Self-Undermining Feedback as a Source of Policy Change,"

and *expansion* (in which the affected population or generosity increases). Within any time frame, moreover, there are two archetypal responses: *reform* (in which the policy eventually undergoes formal revision, with or without solving the underlying and emergent problems), and *stalemate* (in which the policy is not revised and drift continues). As Table 1 shows, each of our cases fit into one of the four resulting quadrants: health care (contraction, reform), labor law (contraction, stalemate), welfare (expansion, reform), and federal disability insurance (expansion, stalemate).

Notwithstanding this diversity, all our cases reveal the powerful downstream effects of drift. In health care, labor law, welfare, and disability, policies passed in a particular context came to produce very different outcomes as policy updating failed. Over time, the feedback effects of drift led to policy layering and displacement, the adaptation of existing groups, and the emergence of new groups—in short, to a “new politics” characterized by new problems, conflicts, cleavages, and interest alignments. In turn, these new dynamics heavily conditioned subsequent policy conflicts, as the feedback effects of drift reshaped interests, alliances, and the balance of power in ways that altered different actors’ support for the status quo. In sum, the basic pattern of development we have outlined is strongly evident in all four cases.

Table 2: Four Types of Policy Drift

		<i>Status of policy drift</i>	
		<u>Reform</u>	<u>Stalemate</u>
<i>Effect of policy drift</i>	<u>Contraction</u>	Health Care	Labor Law
	<u>Expansion</u>	Welfare (AFDC)	Disability Insurance

Labor Law: Contraction and Stalemate

The National Labor Relations Act (“Wagner Act”) offers an archetypal case of contractionary policy drift. Enacted in 1935 and formally revised only twice since (most recently in 1959), the Wagner Act remains the primary law governing relations between organized labor and business within the American political economy. Although unions have repeatedly attempted to update the law to reflect transformed conditions, business groups have consistently leveraged institutional veto points to maintain the status quo.²⁶ Although a number of Supreme Court decisions and NLRB rulings over the years incrementally extended the law’s reach and enhanced employers’ prerogatives, none of these common-law changes altered its basic structure.²⁷ Thus, a system of regulation designed with New Deal-era industrial relations in mind governs a twenty-first century global economy, in which job insecurity and “layer after layer of subcontractors and vendors make it exceedingly difficult for workers to organize on their own behalf.”²⁸

The most visible consequence is the collapse of private sector unions, the Wagner Act’s main focus. By 2018, the percentage of unionized workers in the private sector had fallen to 6.4 percent, down from a highpoint of about a third of all workers in the 1940s (Figure 1).²⁹ Union

²⁶ Major revision attempts include the Labor Law Reform Act of 1978 and the Employee Free Choice Act of 2009. A good discussion of the failure of labor law reform in 1978 is in Hacker and Pierson, *Winner-Take-All Politics*, pp. 127-132. In 1992 and 1994, similar reform bills were killed via the Senate filibuster despite achieving majority support in both houses of Congress.

²⁷ Core features include the right to free association, self-organization, collective bargaining, and concerted action; the law’s commitment to firm-level bargaining (the “employer-employee dyad”); its requirement that the union with majority support in a single bargaining unit serves as the “exclusive representative” of all workers in the same unit; its centralized regulatory structure and certification authority; the “mutual obligation” of employers and employees’ representatives to bargain; its negligible penalties for employer interference in union elections; and its non-universal coverage (e.g., exclusion of farmworkers).

²⁸ Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton, New Jersey: Princeton University Press, 2013), p. 264. Also see David David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Cambridge, MA: Harvard University Press, 2014).

²⁹ Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey: Note," *Industrial and Labor Relations Review* 56 (2017): 349-354 (<http://www.unionstats.com>).

decline, in turn, has contributed to wage stagnation and the growing vulnerability of workers to exploitation, discrimination, sexual harassment, and abuse in the workplace, as well as to wage theft, uncompensated injuries, and political pressure on workers to side with employers—with those at the bottom of the income scale and the least bargaining power most at risk.³⁰

The less visible effects are no less profound. Precisely because the Wagner Act has remained fixed in place, it has created a legal black hole that has swallowed potential innovation and experimentation at the state and local levels. The Act has long been interpreted by the Supreme Court as broadly preempting subnational regulation of activities even “arguably” governed by federal law, as well as activities ostensibly left to “the free play of economic forces.”³¹ If subnational governments wish to establish different labor rules, they are permitted to do so only for those workers explicitly excluded from the Wagner Act’s coverage, such as public sector workers (outnumbered by their private sector counterparts 4 to 1), domestic workers, agricultural workers, and independent contractors. To strengthen rights and protections for private sector workers, advocates have not simply had to look past the Wagner Act, in other words; they have needed to make end-runs around national labor law itself.

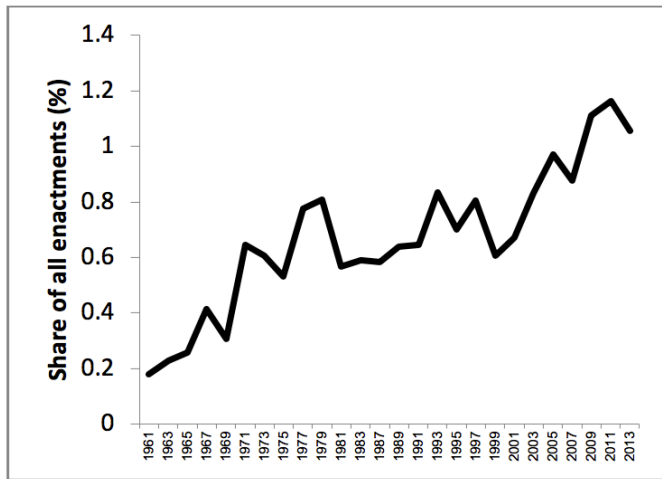
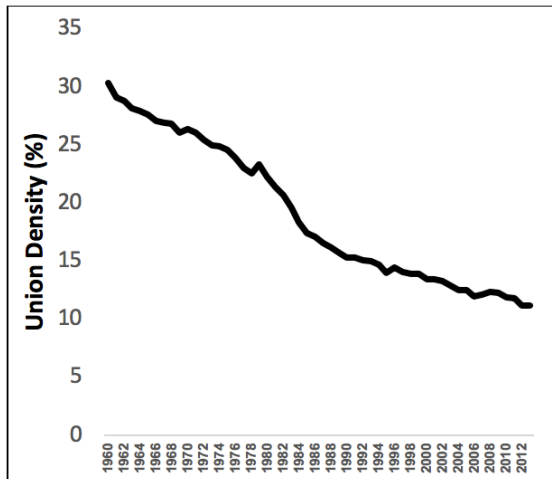
³⁰ Annette D. Bernhardt, et al., *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market* (Champaign, IL: Labor and Employment Relations Association, 2008); Annette Bernhardt, Ruth Milkman and Nik Theodore, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (New York: National Employment Law Project, 2009); Lewis Maltby, *Can They Do That?: Retaking Our Fundamental Rights in the Workplace* (New York: Portfolio, 2009); Michael Grabel and Howard Berkes, "The Demolition of Workers' Comp," *ProPublica*, March 4, 2015; Arne L. Kalleberg, *Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States, 1970s to 2000s* (New York: Russell Sage Foundation, 2011); Galvin, "Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance,"; Kimberley A. Bobo, *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid--and What We Can Do About It* (New York: New Press : Distributed by W.W. Norton & Co., 2009); Alexander Hertel-Fernandez, "How Employers Recruit Their Workers into Politics—and Why Political Scientists Should Care," *Perspectives on Politics* 14 (2016): 410-421; Alexander Hertel-Fernandez, *Politics at Work: How Companies Turn Their Workers into Lobbyists* (New York, NY, United States of America: Oxford University Press, 2018); Alexander Hertel-Fernandez, "American Employers as Political Machines," *The Journal of Politics* 79 (2017): 105-117.

³¹ *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); *Lodge 76, International Ass'n of Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976). See Sachs, *Beyond Preemption*, Andrias, *New Labor Law*, Estlund, *Ossification*.

And they have: increasingly, workers and their advocates have circumvented labor law and developed a range of workaround solutions. The most important are state-level employment laws, which have grown steadily over the last six decades as states have sought to raise minimum workplace standards, establish substantive individual rights, and provide legal and regulatory pathways for workers to vindicate those rights. Indeed, at precisely the same time that *labor law* has withered, *employment law* has flourished, proliferating at the subnational level and expanding into new substantive domains (Figure 2).³² Rather than determine workers' wages, hours, and terms of employment through union representation and collective bargaining (as labor law seeks to do), employment laws mobilize the regulatory instruments of the state to enforce higher standards and provide workers with private rights of action—with varying success.

Figure 1: Union Decline, 1960-2013

Figure 2: State Employment Law Growth, 1960-2013



Labor law's drift has also profoundly affected the strategies of *organized groups*. Private-sector unions long thrived off the Wagner Act's resources, incentives, and cognitive feedback effects.³³ But as the Wagner Act has grown increasingly out of step with workplace realities,

³² Author, forthcoming.

³³ Feedback mechanisms are from Pierson, "When Effect Becomes Cause." See David Plotke, "The Wagner Act, Again: Politics and Labor, 1935–37," *Studies in American Political Development* 3 (1989): 104-156; David Plotke,

unions have started to adapt and experiment with new strategies. In part, this has involved redoubling their commitment to traditional organizing techniques. In part, it has involved embracing advances in communication technology and social media to help coordinate collective action (as in the Marriott Hotel workers' simultaneous multi-city strikes in late 2018). And in part, it has involved the use of more disruptive and confrontational tactics that go well beyond NLRA procedures to achieve traditional unionization goals, such as the application of direct pressure on employers to recognize unions (as in the well-known Justice for Janitors movement and other similar "corporate campaigns").³⁴

Unions have also experimented with new organizational forms and invested in new strategies. Notable here are the AFL-CIO's Working America—a "community affiliate" with over 3 million non-dues-paying members that is tasked with campaigning on behalf of the union's policy and electoral goals—and the Fight for \$15, a massive social movement organized and funded by the SEIU that mobilizes mostly non-union workers.³⁵ Finally, unions have adapted to the new context by leveraging the "purchasing, financial, regulatory, or wage-setting power" of the state to encourage unionization—via regulatory licensing requirements, surety bonds, strategic enforcement agreements, carve-outs, and other related strategies.³⁶

Building a Democratic Political Order: Reshaping American Liberalism in the 1930s and 1940s (Cambridge; New York: Cambridge University Press, 1996); Nelson Lichtenstein, "From Corporatism to Collective Bargaining: Organized Labor and the Eclipse of Social Democracy in the Postwar Era," in *The Rise and Fall of the New Deal Order*, eds. Steve Fraser and Gary Gerstle (Princeton: Princeton University Press, 1989), 140-145.

³⁴ Kim Voss and Rachel Sherman, "Breaking the Iron Law of Oligarchy: Union Revitalization in the American Labor Movement," *American Journal of Sociology* 106 (2000): 303-349; Ruth Milkman, *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement* (New York, N.Y.: R. Sage Foundation, 2006); Michael M Oswald, "Improvisational Unionism," *Calif. L. Rev.* 104 (2016): 597

³⁵ David Rolf, *The Fight for Fifteen: The Right Wage for a Working America* (New York: The New Press, 2016)

³⁶ Benjamin I. Sachs, "Despite Preemption: Making Labor Law in Cities and States," *Harvard law review* (2011): 1153-1224; Harold Meyerson, "Raising Wages from the Bottom Up: Three Ways City and State Governments Can Make the Difference.," in *The American Prospect* (2015); Janice Fine, "Solving the Problem from Hell: Tripartism as a Strategy for Addressing Labour Standards Non-Compliance in the United States," *Osgoode Hall LJ* 50 (2013): 6-36

Despite such creative adaptations, the nonunionized workforce has continued to grow. Especially with the post-1990s influx of millions of new immigrants, organizers recognized an acute need for advocacy on behalf of these growing numbers of vulnerable workers. Into this void stepped nontraditional forms of worker organization, sometimes called “alt-labor.”³⁷ These new groups have targeted workers who are “either by law or practice excluded from the right to organize in the United States”—whether because they are difficult to organize (temp workers, fast food workers, taxi drivers), legally excluded from labor law’s provisions (domestic workers, independent contractors, farm workers, day laborers), or unaware of their rights or fearful of asserting them (non-native English speakers and undocumented immigrants).³⁸

Initially, many of these emergent groups sought to offer aid and support to low-wage workers, not to advance the cause of labor per se. But as the scale of the problems became increasingly apparent, they began to expand their repertoires and develop new tactics and strategies.³⁹ Alt-labor groups are not structured as, nor do they claim to be, employees’ exclusive bargaining representatives (as per national labor law), although many do take advantage of Section 7 of the NLRA protecting “concerted activities” and encourage workers to unionize.⁴⁰ Their approach has tended to be more confrontational, involving street-front protests, boycotts, and the generation of negative publicity for “low-road” employers. Rather than seeking to revise national labor law, alt-labor organizations have focused on state employment laws. In the workplace, they seek to assist and empower individual workers through legal and bureaucratic

³⁷ Josh Eidelson, “Alt-Labor,” *The American Prospect* 24 (2013): 15-18.

³⁸ Janice Fine and Nik Theodore, “Worker Centers 2012: Community Based and Worker Led Organizations,” (Center for Faith-Based and Community Partnerships, U.S. Department of Labor: 2012). Also see Ruth Milkman, “L.A.’s Past, America’s Future? The 2006 Immigrants Rights Protests and Their Antecedents.”

³⁹ Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream* (Ithaca: ILR Press/Cornell University Press, 2006).

⁴⁰ Section 7 of the NLRA covers “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” 29 U.S.C. §§ 151-169.

assistance and to connect them to other workers experiencing similar problems in similar industries or locations.⁴¹ In virtually every way, then, the constraints imposed by labor law's drift are reflected in the structures and operations of both old and new groups.

We can also see these feedback effects in the new problems with which the labor movement must now grapple. The most fundamental arise out of the conflicts between labor law and employment law and the very different political strategies embodied in each. In many cases, for example, union contracts (governed by labor law) mandate that workers with grievances enter into private mediation or arbitration with their employer, thereby depriving them of state-level rights and protections (governed by employment law).⁴² In a similar dynamic, economists have argued that employment laws, by providing for free what workers might otherwise get from unions, diminish the incentive to organize or join unions.⁴³ The conflict may be interpretative as well as material: Nelson Lichtenstein has argued that whereas labor law is designed to foster collective power, employment law is built to redress violations of individual rights—a pathway offering far fewer resources for building solidarity.⁴⁴

Perhaps the biggest problem, however, is that employment law doesn't resolve the problems generated by labor law's drift. It does not afford employees greater voice in the workplace or do much to redress the inequality of bargaining power. Nor can it ensure its own

⁴¹ Héctor R Cordero-Guzmán, Pamela A Izvānariu and Victor Narro, "The Development of Sectoral Worker Center Networks," *The ANNALS of the American Academy of Political and Social Science* 647 (2013): 102-123. Also see Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*.

⁴² Richard Bales, "A New Direction for American Labor Law: Individual Autonomy and the Compulsory Arbitration of Individual Employment Rights," *Hous. L. Rev.* 30 (1993): 1863; Katherine Van Wezel Stone, "The Legacy of Industrial Pluralism: The Tension between Individual Employment Rights and the New Deal Collective Bargaining System," *The University of Chicago Law Review* (1992): 575-644.

⁴³ George R Neumann and Ellen R Rissman, "Where Have All the Union Members Gone?," *Journal of Labor Economics* 2 (1984): 175-192; Richard B Freeman, "Unionism and Protective Labor Legislation," *Industrial Relations Research Association, Proceedings* (1986): 260-267; Christopher K Coombs, "The Decline in American Trade Union Membership and the "Government Substitution" Hypothesis: A Review of the Econometric Literature," *Journal of Labor Research* 29 (2008): 99-113

⁴⁴ Lichtenstein, *State of the Union*, x.

enforcement, or guarantee that workers will have the requisite resources, information, or time to actually vindicate their legal rights. Although it offers new protections and pathways to workers' rights, it compounds other problems created by drift.

Not surprisingly, then, old and new groups find themselves at odds with each other as well as in alliance.⁴⁵ Right-to-work laws and Supreme Court jurisprudence are depriving old-style unions of fair-share "agency fees" from non-unionized workers who benefit from their work. As a result, money to support alt-labor priorities, such as the Fight for \$15, is more scarce, and alt-labor groups are increasingly seen as cannibalizing limited voluntary contributions. For alt-labor groups, these more straitened circumstances make it harder to find stable, independent revenue streams, threatening not just their expansion but the maintenance of their most basic advocacy work. In sum, the contemporary labor movement is built on a precarious foundation, with new organizational forms potentially undercutting traditional labor unions in the near term without a concrete, sustainable plan for building collective worker power over the long term.⁴⁶

Taken together, these institutional and organizational developments have simultaneously invigorated and complicated the labor movement, generating new problems without solving those produced by drift in the first place. Yet in each instance, we can readily observe a "new politics" coming to the fore: contestation has moved increasingly out of the workplace and into the political arena; it centers around employment law rather than labor law and evidences new forms of worker organization; and new problems and tensions have emerged at the intersection of new and old. Because these developments have not yet weakened, or much changed the calculations of, opponents of formal policy revision, labor law seems likely continue its inexorable drift until and unless a more left-leaning Democratic Party gains a substantial national

⁴⁵ Harold Meyerson, "The Seeds of a New Labor Movement."

⁴⁶ Shayna Strom, "Organizing's Business Model Problem," *The Century Foundation*, October 26, 2016.

majority. In the meantime, the politics of workers' rights is likely to depend on the ability of workers' advocates to navigate these overlapping imperatives and constraints.

Health Care: Contraction and Reform

Health care is a more familiar case of contraction: a story of federal policy stalemate with limited state experimentation and growing problems of access, cost, and quality. Between 1965 (when Medicare for the aged and Medicaid for the poor were enacted) and 2010 (when the Affordable Care Act, or “Obamacare,” passed), efforts to substantially expand coverage repeatedly failed. Over this forty-five year interregnum, Medicare expanded to the permanently disabled, and Medicaid, to a larger share of low-income citizens. But transformative reforms of America's employment-based health care system eluded would-be reformers again and again.⁴⁷

As in labor law, the main fallout occurred in the private sector. The very same trends in the job market that eroded pay, security, and bargaining power also decimated private health coverage. By the 2000s, tens of millions of working Americans were uninsured, tens of millions went without coverage at some point every few years, and nearly all workers faced the prospect of losing their coverage if they lost or changed jobs (**Figure 3**).⁴⁸ At the same time, costs spiraled upward—unconstrained, as in other rich countries, by the concentrated bargaining power of public authorities (**Figure 4**). The vicious cycle reached its apotheosis in the late-2000s financial crisis, but its fallout had been apparent for more than two decades, as medical inflation outpaced

⁴⁷ Paul Starr, *Remedy and Reaction: The Peculiar American Struggle over Health Care Reform*, rev. ed. (Princeton, N.J.: Princeton University Press, 2013).

⁴⁸ Jacob S. Hacker, *The Great Risk Shift: The New Economic Insecurity and the Decline of the American Dream*, second ed. (New York: Oxford University Press, 2019), Chapter 6.

every other rich nation's while the U.S. fell from the top ranks of global health statistics toward the bottom of the advanced industrial pack.⁴⁹

Figure 3: Eroding Workplace Insurance

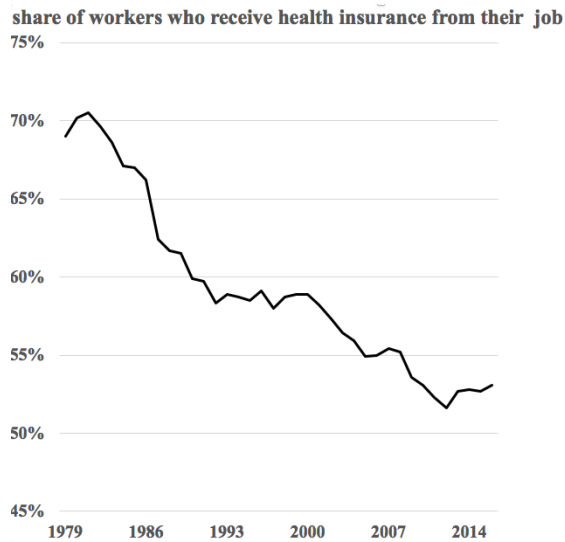
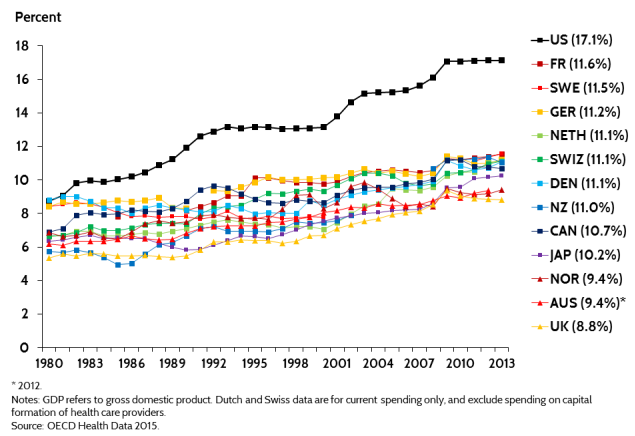


Figure 4: U.S. Costs in Cross-National Perspective

Exhibit 1. Health Care Spending as a Percentage of GDP, 1980–2013



Source: https://www.epi.org/data/#/?subject=healthcov&e=* <https://goo.gl/images/8cNyH2>

The losers from this contractionary drift were many and varied, but the banner for reform was carried by industrial unions and their closest organized allies. For the most part, these “old” groups remained wedded to strategies born out of the unsuccessful struggles for national health insurance after 1965. Their proposed workarounds essentially sought to shore up the existing system while also replenishing the feedback mechanisms that provided them with organizational nourishment. For example, the most powerful elements of organized labor remained generally committed to the employer-based system even as it eroded. Their stance reflected both the

⁴⁹ David Squires and Chloe Anderson, "US Health Care from a Global Perspective: Spending, Use of Services, Prices, and Health in 13 Countries," *The Commonwealth Fund* 15 (2015): 1-16; Institute of Medicine, *U.S. Health in International Perspective: Shorter Lives, Poorer Health* (Washington, D.C.: National Academies Press, 2013).

material benefits they derived from the existing system (better employer-provided health insurance was something they could deliver) and from their historically constructed “worldview that saw a strong coincidence of interests between labor and business:” in traditionally unionized sectors.⁵⁰ Other advocacy organizations that arose in response to existing policies—such as the AARP and groups representing Medicaid beneficiaries—had similarly conditional stances. They were supportive of reforms, but only if they did not threaten to move their favored constituencies into new coverage arrangements or move uninsured Americans into theirs.

As those “old” groups struggled to adapt to drift, “new” groups entered the scene as well. Perhaps the most vocal were supporters of big new proposals for tax-financed universal insurance that would replace the employment-based system. These groups ranged from left-leaning doctors to the national nurses association to new online progressive groups. Ironically, universal government insurance was the goal of Medicare’s architects and advocates back in the 1960s.⁵¹ But the subsequent conservative turn shattered these hopes and reoriented older advocacy organizations toward more moderate goals. Thus, backers of “Medicare for All” were outsiders in the health policy debates of the 1990s and 2000s, seen by traditional reform groups as useful for mobilizing progressives but also impractically ambitious.

Some organizations featured internal conflicts reflecting the division between old and new advocates. The traditional and alt-labor split over labor law was mirrored in the conflict between industrial unions that still prioritized private workplace benefits and those representing service workers, who saw little benefit in a system premised on stable employment and generous negotiated benefits. Similarly, new progressive groups tried to “name and shame” politicians

⁵⁰ Marie Gottschalk, *The Shadow Welfare State: Labor, Business, and the Politics of Health-Care in the United States* (Ithaca: Cornell University Press, 2000)

⁵¹ Theodore R. Marmor, *The Politics of Medicare*, second ed. (New York: Routledge, 2000).

wedded to more modest plans, exacerbating conflicts within the Democratic Party over the best route forward. The “new politics” that emerged in this issue space thus reflected the interest cleavages and altered political commitments that policy drift generated.

How, then, did these groups largely come together after President Obama’s election? The first answer is simply that they shared a common interest in expanding access. Their policy differences were smaller than the conflicts between employment and labor law—they were differences of degree rather than kind. The second answer is that the socioeconomic effects of continued drift made holding onto existing arrangements less and less attractive for old groups while strengthening the commitment and ambition of the new ones. Between 2000 and 2007, in particular, the share of workers receiving health insurance from their employer plummeted by almost ten percentage points.⁵² In this context, even segments of the labor movement firmly committed to private benefits saw less trade-off between public action and private bargaining.

The most profound changes, however, occurred among the erstwhile winners from drift: the private insurance industry, drug manufacturers, and health care providers. For insurers, the employment-based system was a declining source of income and profits. Most small employers had stopped providing coverage. Most large employers had taken advantage of policy drift to “self-insure”—that is, pay their claims directly, which limited the role of commercial insurance (similar to labor law preemption, federal law precluded state regulation of such practices, a boon for multi-state employers).⁵³ At the same time, lucrative new markets were emerging in Medicare and Medicaid, both of which now gave private plans new options to participate and profit by covering program beneficiaries. These privatizing moves had been pursued by

⁵² Kaiser Family Foundation, “2017 Employer Health Benefits Survey,” September 19, 2017, Section 2, available online at <https://www.kff.org/health-costs/report/2017-employer-health-benefits-survey/>.

⁵³ Hacker, *The Divided Welfare State*, Chap. 5.

conservatives to limit government's role and funnel public dollars to the private sector. But they had the ironic effect of softening insurers' opposition to major reforms—so long as those reforms didn't threaten their core activities or their ability to rake in federal and state dollars.

Providers, too, were facing heightened costs due to policy drift. Fewer insured patients meant more unpaid bills, and emergency rooms crowded with patients lacking coverage or regular contact with physicians. The efforts of private insurers to squeeze greater profit out of their declining business model also threatened providers—not just with payment cuts, but also greater efforts by insurers to “manage” care and construct narrow provider networks.

Pharmaceutical manufactures similarly wondered whether insurers would continue to pay for and patients could continue to afford their increasingly costly offerings. None of these groups wanted a national insurance program, but none of them liked the drifting status quo much either.

For drift did not simply create economic challenges; it also gave rise to new political dynamics. As old and new reform groups coalesced, those who had resisted such changes in the past feared hasty or aggressive reforms might actually pass. To the health care industry, calls for “Medicare for All” posed an existential threat. To a lesser extent, so did plans for a “public option” that would compete with private insurance for the business of working-age Americans. As major expansions of government insurance gained prominence, health care stakeholders were thus reminded of the old DC refrain: “If you're not at the table, you're on the menu.”

State-based efforts at fundamental reform were another feedback effect. With national avenues of change blocked, states were pressed by advocates to pursue their own reforms. In Massachusetts, reformers on the left pragmatically embraced an idea first floated by policy experts on the right: the “individual mandate” requiring that *individuals* obtain coverage (rather than employers—an option probably precluded by federal law). Once again, the constraining

effects of drift had led to unexpected reversals of position—and, in a fateful alliance between a Democratic statehouse and Republican governor, to the first state law to achieve near-universal coverage in the continental United States.⁵⁴ Such altered alignments, commitments, and emergent alternatives only further scrambled the political calculus for advocates on both sides.

The story of what happened next is well known.⁵⁵ Note, however, that the content of the 2010 law cannot simply be explained by Democrats' unified control of Washington or the shock of the financial crisis. Instead, it was the diverse political effects of drift that propelled a particular alliance and solution—one that involved both odd bedfellows and the pragmatic embrace of ideas hitherto rejected by progressive reformers. Essentially, the pressure from the left helped propel elements of the health care industry to work with the center-left to achieve a substantial but highly constrained reform over the unified opposition of elected officials on the right.⁵⁶ With its tailored effort to build on employment-based insurance without displacing it, the Affordable Care Act bore the unmistakable imprint of policy drift. Likewise, the “new politics” that have surrounded the ACA since its enactment—in the Trump presidency and likely beyond—reflect its drift-constrained historical construction.⁵⁷

In sum, the case of health care resembles, in broad strokes, that of labor law: feedback from drift recast political realities—only this time in ways that increased the costs of continued

⁵⁴ Starr, *Remedy and Reaction*; Brill, *America's Bitter Pill: Money, Politics, Backroom Deals, and the Fight to Fix Our Broken Health System* (New York: Random House, 2015). Decades earlier, Hawaii had come close with an employer mandate built upon its distinctive labor market, an arrangement given special status under federal law.

⁵⁵ Jacob S Hacker, "The Road to Somewhere: Why Health Reform Happened: Or Why Political Scientists Who Write About Public Policy Shouldn't Assume They Know How to Shape It," *Perspectives on Politics* 8 (2010): 861-876.

⁵⁶ For example, President Obama ceased pushing for the public option, which was stripped from the law in the Senate against the backdrop of a filibuster threat from moderate Democrats (after making it out of the House).

⁵⁷ Jacob S Hacker and Paul Pierson, "The Dog That Almost Barked: What the Aca Repeal Fight Says About the Resilience of the American Welfare State," *Journal of Health Politics, Policy and Law* 43 (2018): 551-577.

blocking by drift's erstwhile winners. When a window of opportunity for change arose, the new dynamics fostered by drift were sufficient to break the stalemate and allow for formal policy revision, but it was a revision that was highly constrained by these prior developments.

Welfare (Expansion/Reform)

Originally a small part of the Social Security Act of 1935, Aid to Dependent Children (ADC, later AFDC) was designed to provide financial subsidies to help single, poor, white nonworking mothers raise their children.⁵⁸ As in the cases of labor law and health care, minor changes to the program's rules and financial structures were periodically made over the years via court decisions and legislative amendments, but the basic structure of the program remained remarkably stable and intact for over six decades.⁵⁹

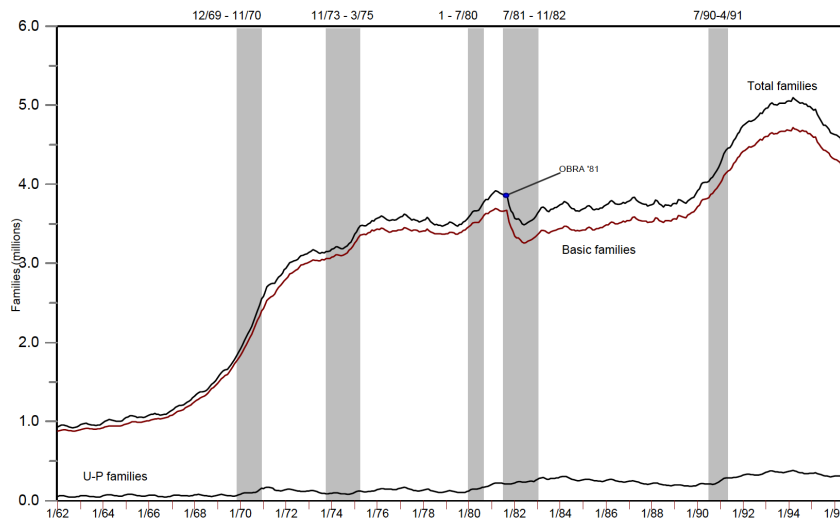
The effects, however, changed dramatically as a confluence of demographic and economic shifts produced a steady increase in the number of families receiving assistance. Between 1962 and 1982, AFDC's caseload more than tripled, and by 1995 the number of families receiving assistance had quintupled (**Figure 5**). Precipitating causes were many, but included the "Great Migration" of southern African Americans to northern cities just as the need for unskilled labor in these cities began to decline; changing patterns of marriage and growing numbers of out-of-wedlock births; and the rise of the welfare rights movement and efforts of social workers to reduce the stigma associated with receiving assistance.

Figure 5: Monthly Numbers of AFDC Families Receiving Assistance

⁵⁸ Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, Mass.: Harvard University Press, 1998); Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy*.

⁵⁹ For example, the Family Support Act of 1988 replaced the Work Incentive program (WIN) with a "welfare-to-work" program called the Job Opportunities and Basic Skills Training program (JOBS).

Monthly Numbers of AFDC Families Receiving Assistance



Notes: Shaded areas are periods of recession. Last data point plotted is August 1996.

Source: <https://aspe.hhs.gov/system/files/pdf/167036/2caseload.pdf> (p. 18)

Meanwhile, three interrelated factors conspired to keep the policy fixed in place. The first was continuous Democratic control of the House of Representatives from 1955 to 1995, which allowed the policy’s primary partisan supporters to prevent major retrenchment.⁶⁰ Second was a set of “policy traps” or dilemmas that made change more difficult—especially what Kent Weaver has called the “dual clientele trap,” in which *popular* penalties for not working necessarily had *unpopular* negative effects on needy children.⁶¹ Third was “elite dissensus,” which Steven Teles defines as the use of extreme, contrasting moral and ethical claims that polarize conflict and perpetuate legislative gridlock despite a public that is more open to compromise.⁶² Other mechanisms of drift operated as well, especially the policy’s “severe

⁶⁰ The House of Representatives did pass Nixon’s Family Assistance Plan in 1970, but it died in the Senate Finance Committee as the number of Senators opposed, including liberals (who thought it didn’t go far enough) and conservatives (who thought it too generous), were sufficient to prevent a floor vote.

⁶¹ R. Kent Weaver, *Ending Welfare as We Know It* (Washington, D.C.: Brookings Institution Press, 2000).

⁶² Steven Michael Teles, *Whose Welfare?: Afdc and Elite Politics* (Lawrence: University Press of Kansas, 1996).

institutionalized parochialism” and racialized administration.⁶³ But the result was the same as in the previous two cases: a mismatch between how the program was conceived and how it operated in an altered social context, leading to the emergence of new problems.

The problems caused by AFDC’s drift were widely recognized: the program’s high phaseout rate deterred many able-bodied poor adults from working; rather than serve as a short-term fix, it could in some cases cause dependency;⁶⁴ and it was viewed by some as discouraging marriage and encouraging out-of-wedlock childbirths (but viewed by others as fostering women’s financial independence and supporting exit from abusive relationships).⁶⁵ AFDC was also said to have “fueled racial stereotypes, bred pathology among the poor, undercut public support for anti-poverty efforts, and put liberals at an ongoing political disadvantage.”⁶⁶ In response, reformers on both sides of the debate began to develop alternatives.

But, as in the previous two cases, with little chance of formal policy revision at the federal level, policy activists venue-shopped their way toward state governments. By design, AFDC had always granted states substantial discretion to interpret rules and administer benefits.⁶⁷ But in the 1980s and 1990s, the Reagan, Bush, and Clinton administrations began to more aggressively issue waivers to allow states to experiment with more ambitious alternatives.⁶⁸ By Clinton’s first term, 43 states had received waivers, some of which “supported modest

⁶³ Lieberman, *Shifting the Color Line: Race and the American Welfare State*, 175.

⁶⁴ Mary Jo Bane and David T Ellwood, "Slipping into and out of Poverty: The Dynamics of Spells," *NBER Working Paper* (1983); Robert Hartley, Carlos Lamarche and James P Ziliak, "Welfare Reform and the Intergenerational Transmission of Dependence," *IZA Discussion Paper No. 10942*; Dylan Matthews, "If the goal was to get rid of poverty, we failed": the legacy of the 1996 welfare reform," *Vox*, June 20, 2016.

⁶⁵ Matthews, "If the goal was to get rid of poverty, we failed."

⁶⁶ Lawrence M. Mead, *The New Politics of Poverty: The Nonworking Poor in America* (New York, N.Y.: BasicBooks, 1992), cited in Joe Soss and Sanford F Schram, "A Public Transformed? Welfare Reform as Policy Feedback," *American Political Science Review* 101 (2007): 111-127.

⁶⁷ For example, in the 1950s, about 20 states disqualified children from receiving benefits if they were born to an unwed mother who was already enrolled.

⁶⁸ Some states developed more generous eligibility standards, higher earned income disregards, and stronger linkages to other social benefits; others implemented more stringent work requirements, increased penalties for failure to work, and shorter time limits.

demonstration projects, limited to a few counties, but many others [of which] instituted dramatic statewide changes in the AFDC program,” according to the Department of Health and Human Services.⁶⁹ The latter category included total overhauls, such as Wisconsin’s replacement of AFDC with “Wisconsin Works W-2,” a welfare-to-work program that emphasized time limits and job placement services while simultaneously making modest new investments in child care, health care, transportation, and training, ostensibly to help ease the transition to work.⁷⁰

These alternative policy designs were clearly shaped by policy drift: to address the same problems as AFDC but through different means, they circumvented the persistent but increasingly problematic federal policy, crafted wholly new policy forms and delivery mechanisms (e.g., job training and placement programs), knitted them together with related but distinct policy issues (such as child care and health care) and linked them all to welfare time limits. These inventive workarounds served as templates for the 1996 PRWORA. They also demonstrated that major reform was both possible and politically feasible, contributing to altered interest alignments surrounding AFDC.

As in labor law and health care, the primary “old” groups that supported the drifting policy made the conspicuous (and characteristic) shift from playing “offense” to playing “defense” as welfare rolls expanded. These groups—welfare rights organizations, women and children’s advocacy groups, and Democratic elites—differed with each other on priorities. But all struggled to defend an increasingly unpopular program with increasingly evident

⁶⁹ US Department of Health and Human Services, "Setting the Baseline: A Report on State Welfare Waivers," *Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation*, June (1997)

⁷⁰ Thompson, Tommy. "W-2, Wisconsin Works." ([Madison, Wis. : Division of Economic Support, 1996]); online facsimile at <http://www.wisconsinhistory.org/turningpoints/search.asp?id=1516>. Also see, e.g., Virginia Ellis, “California’s Welfare-to-Work Program Shows Success,” *Los Angeles Times*, June 15, 1994.

weaknesses. As they did, these old groups scrambled to adapt and experiment with new approaches. Some failed and ultimately perished; others adapted with varying degrees of success.

The once-vigorous National Welfare Rights Organization (NWRO) fell into the former group. Immediately after its founding in 1966, it led large, high-profile protests on behalf of “adequate income, dignity, justice, and democratic participation.” But by the mid-1970s, it was internally divided over goals and strategies and institutionally anemic. Some leaders sought to link welfare rights to women’s rights issues; others hoped to broaden the movement to include white male low-wage workers. The NWRO ultimately went bankrupt and disbanded in 1975.⁷¹

Advocacy groups representing women and children met with more success, broadening their coalitions to include “organizations for which welfare reform was a less central concern” but whose support could help magnify their collective influence—such as civil liberties groups, reproductive rights groups, and even pro-life groups, which opposed family caps on the grounds that they would incentivize abortions.⁷² But even with a broader range of allies, these advocacy groups found themselves in “a largely reactive, defensive, and negative role,” generally seeking to highlight “the dual clientele trap by directing attention to the potential harm to children inherent in conservative approaches to welfare reform.”⁷³

Finally, many Democratic elites explicitly sought to reposition themselves and their party by fusing conservative and liberal ideas into new hybrid policies that contained both stringent work requirements and significant new investments in health care, child care, guaranteed public jobs, and support with job placement. Clinton’s promise in 1992 to “end to welfare as we know

⁷¹ Other advocates, like Frances Fox Piven and Richard Cloward, sought to flood the program with enrollments to force its conversion into a guaranteed basic income. Also see Kazuyo Tsuchiya, “Johnnie Tillmon (1926-1995),” *Black Past*, January 23, 2007 (<https://www.blackpast.org/african-american-history/tillmon-johnnie-1926-1995/>)

⁷² Weaver, *Ending Welfare as We Know It*

⁷³ *Ibid.*, 203-204.

it” was central to his and the Democratic Leadership Council’s “grand strategic game of realigning the image of the Democratic Party on welfare issues”⁷⁴ so as to “shed an electoral liability, free poverty politics from the crippling effects of racial resentment, and create a public opinion environment more favorable to anti-poverty efforts.”⁷⁵

Opponents of AFDC adapted as well. But what stands out most about the response of the ostensible losers from policy drift (soon-to-be winners in 1996) was the politicization and mobilization of latent groups. Specifically, “pro-family” conservative groups sought to give voice to a set of concerns that they felt had been left out of the existing debate. Despite efforts by the Reagan administration to incorporate social conservatives into the broader GOP coalition in the 1980s, many still felt alienated from D.C. politics and believed that their core concerns regarding moral values were only paid lip service by elected politicians.⁷⁶ Their views on welfare were diverse, with some pro-life groups siding with child advocacy groups, as noted. But by the early 1990s, most had coalesced around deterrence-centered proposals emphasizing family caps and time limits (in order to discourage out-of-wedlock births and reduce dependency), and the groups became more engaged politically to advocate for their position.

The politicization of these latent groups did not happen automatically. As anticipated in the theoretical expectations laid out earlier, entrepreneurial activity was essential as well. Robert Rector of the Heritage Foundation is often credited with building ideational cohesion among disparate social conservative groups, linking their concerns (about moral decay) to fiscal

⁷⁴ Weaver, R. Kent. 2002. "Polls, Priming, and the Politics of Welfare Reform." In *Navigating Public Opinion*, ed. J. Manza, F L. Cook, p.116, quoted in Soss and Schram, "A Public Transformed? Welfare Reform as Policy Feedback,"

⁷⁵ *Ibid.*. Also see Daniel J. Galvin and Chloe N. Thurston, “The Democrats’ Misplaced Faith in Policy Feedback,” *The Forum* 15, 2 (2018): 333-344 on the limitations of policy feedback as a party-building tool.

⁷⁶ Weaver, *Ending Welfare as We Know It*; Daniel J. Galvin, *Presidential Party Building: Dwight D. Eisenhower to George W. Bush* (Princeton: Princeton University Press, 2010).

conservatives' concerns (about the costs of welfare), and forging ties between the groups and Republican officeholders.

Rector's success in politicizing latent social conservative groups and bringing their influence to bear on the welfare debate hinged on his ability to subordinate the issue of abortion to other family-values issues, focusing instead on the pernicious effect welfare was said to have on the traditional family unit. Arguing that deterrence was the best way to end the "spiritual poverty" inflicted upon children by AFDC, Rector gave social conservatives the moral high ground and made progress toward "weakening the dual clientele trap" that had long helped to perpetuate policy drift.⁷⁷ The constraints of drift are thus evident in the new issue cleavages promoted by the groups (spiritual vs. material poverty) and the new coalitions (business and social conservatives) that together shifted the debate onto new ground and helped weaken the policy traps that had long made conservative reforms more difficult.

The "new politics" of welfare that emerged in the 1990s thus reflected the institutional and organizational responses to drift and the new problems they created. State-level policy innovations addressed certain problems posed by AFDC's drift (disincentive to work) but traded off core program goals (combating poverty) while giving rise to wholly new problems (e.g., lack of support for child care, the challenges of finding work, and causing women to feel compelled to remain in exploitative "bad" jobs). The new politics of welfare featured fractured alliances (e.g., the split between feminists and workers' rights activists; the division of pro-life groups' support between child advocacy groups and pro-family conservative groups) and new alignments of issue priorities on both sides (e.g., Democrats and the DLC's "third way"; Republicans and "moral values"). As Kent Weaver explains, by 1996, this new configuration of political forces

⁷⁷ Weaver, *Ending Welfare as We Know It*, 211-217.

left the most committed defenders of the status quo unusually weak and lacking access to traditional institutional veto pivots, thereby rendering the policy more vulnerable to repeal:

The most fundamental weakness of the child advocacy organizations was the lack of reliable political allies at one of the political choke points that could block a welfare reform bill. With Republicans in control of both houses of Congress, the child advocacy groups' best hope for success was to sway a Clinton White House that remained committed to 'ending welfare as we know it.' But the administration had a different set of political interests, was listening to a different set of voices, and was committed to a different message: that it was both possible and desirable to end welfare as we knew it.⁷⁸

The proximate cause of the 1996 welfare reform bill, of course, was the GOP's electoral "tsunami" of 1994, which handed emboldened conservatives majority control of both houses of Congress. Coupled with Bill Clinton's "triangulation" in pursuit of reelection, the 1994 election was a precondition for fundamental change. But the final result was also deeply shaped by the new institutional and organizational arrangements that emerged amid AFDC's drift. Those drift-channeled reactions affected the goals and priorities of the 1996 bill; they were insinuated into its final design, and they have been constitutive of the new problems that have emerged in its wake. Without examining the political effects of welfare's long drift, we can grasp neither why reform rose on the agenda nor why it took the form that it did.⁷⁹

Disability Insurance (Expansion/Stalemate)

⁷⁸ Ibid., 205.

⁷⁹ Kathryn J Edin and H Luke Shaefer, *\$2.00 a Day: Living on Almost Nothing in America* (Houghton Mifflin Harcourt, 2015); Karen M Tani, *States of Dependency: Welfare, Rights, and American Governance, 1935–1972* (Cambridge University Press, 2016).

Our final case, disability insurance, differs from the others in that it has involved expansionary dynamics that remain in play. Enacted in 1956, Social Security Disability Insurance (SSDI) was designed to provide financial subsidies for workers who became disabled and were demonstrably unable to work. Intended to be narrow in reach, the program's strict eligibility criteria excluded workers whose ailments could not be clearly defined and verified through objective medical tests. These eligibility rules were subject to minor legislative and judicial amendment over the years, but no major reform has yet generated majority support.⁸⁰ As a result, the “fundamental design” of SSDI “has never been seriously reconsidered,” and its core structures “remain intact, largely untouched by the disability rights movement, the profusion of disability rights statutes, the social model of disability, or attacks on the welfare state.”⁸¹

Despite its structural stability, the effects of SSDI have changed dramatically, making it a clear case of drift. The percentage of the workforce receiving SSDI benefits has grown from 0.18% in 1957 to 4.7% in 2016 (**Table 6**).⁸² In part, this can be attributed to demographic

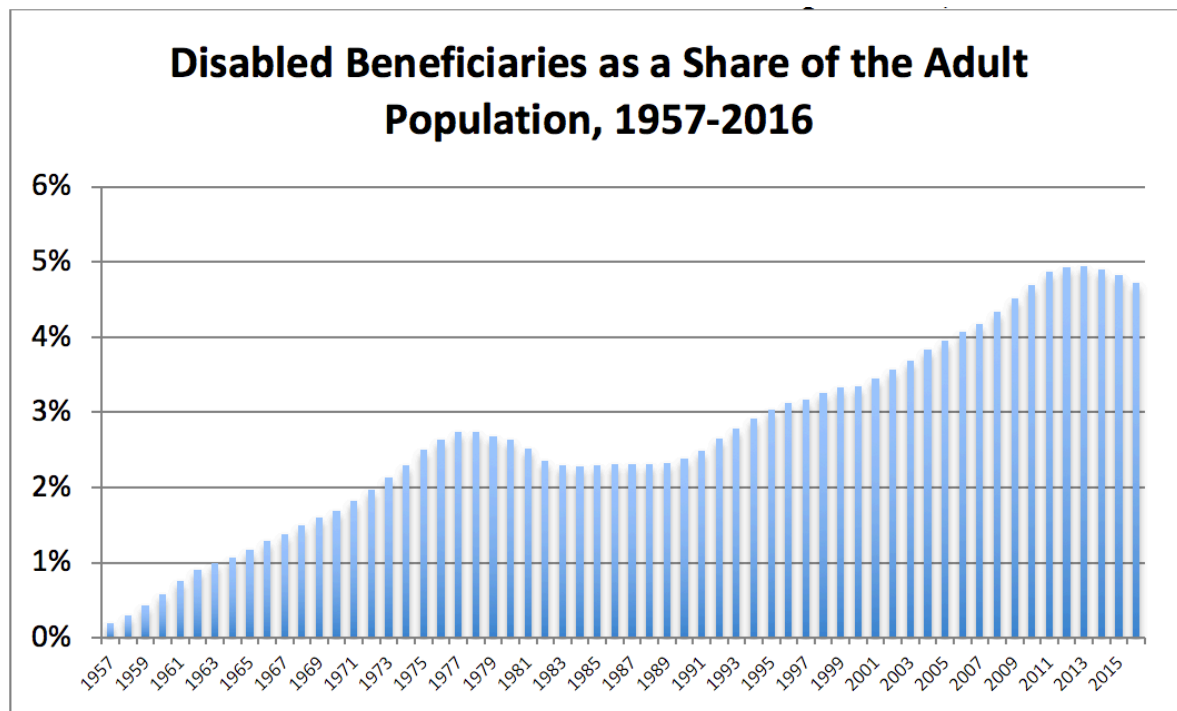
⁸⁰ In addition, Autor writes: “SSA administrators and the U.S. Congress have attempted to slow or reverse the growth of the SSDI program over the past fifty years with three categories of reforms: tightening the program’s screening criteria; aggressively removing beneficiaries deemed work-capable from the rolls; and providing financial incentives for current beneficiaries to return to the work. None of these efforts has had a lasting impact on the program’s growth trajectory, nor have they slowed the steady decline in the labor force participation of adults with disabilities.” David Autor, “The Unsustainable Rise of the Disability Rolls in the United States: Causes, Consequences, and Policy Options,” National Bureau of Economic Research, 2011)

⁸¹ Thomas F. Burke and Jeb Barnes, “Layering, Kludgeocracy and Disability Rights: The Limited Influence of the Social Model in American Disability Policy,” *Social Policy and Society* 17 (2018): 101-116. Even the Ticket to Work and Work Incentives Improvement Act of 1999 was so watered down that only 10% of its initial funding proposal was ultimately authorized, diluting its effects. Also see Jeb E. Barnes and Thomas F. Burke. *How policy shapes politics: Rights, courts, litigation, and the struggle over injury compensation* (Oxford University Press, 2014). Also see Samuel R. Bagenstos, *Law and the Contradictions of the Disability Rights Movement* (New Haven, CT: Yale University Press, 2009) and Jennifer L Erkulwater, *Disability Rights and the American Social Safety Net* (Ithaca: Cornell University Press, 2006).

⁸² The prevalence rate declined slightly between 2014 and 2018 as termination rates and the gross conversion ratio rose as more retirement-age beneficiaries transferred to OASI. (The gross conversion ratio is the number of beneficiaries reaching normal retirement age and transferring to OASI divided by the average number of beneficiaries at all ages in a given year.) The Trustees expect termination rates to continue their steep historical decline largely “because of declining death rates.” In 2018 OASDI Trustees Report, “*The 2018 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*,” *Social Security Administration* (<https://www.ssa.gov/OACT/TR/2018/>). Other factors include “changes in

changes that expanded the pool of potential beneficiaries, including the influx women in the labor force in the 1970s and 1980s, the collapse of the labor market for less educated men in the 1990s, and the aging of the workforce during the 2000s.⁸³⁸⁴ But the policy also expanded “from the inside out” through “subterranean” efforts by “sympathetic bureaucrats at the Social Security Administration” (SSA) to reinterpret eligibility rules more expansively.⁸⁵

Table 6: Disabled Beneficiaries as a Share of the Adult Population, 1957-2016



demographic characteristics of the insured population, changes in employment and compensation, and changes in program rules and implementation.” Congressional Research Service, “Trends in Social Security Disability Insurance Enrollment” November 30, 2018 (<https://fas.org/sgp/crs/misc/R45419.pdf>), p.3.

⁸³ <https://www.bls.gov/opub/mlr/2016/article/pdf/labor-force-participation-what-has-happened-since-the-peak.pdf>

⁸⁴ Kathy Ruffing, “How Much of the Growth in Disability Insurance Stems From Demographic Changes?” *Center on Budget and Policy Priorities*, January 27, 2014.

⁸⁵ Erkulwater, *Disability Rights and the American Social Safety Net*, 21.

Source: Number of beneficiaries from *Social Security Bulletin: Annual Statistical Supplement* (2017). Population estimates from the Current Population Survey (Bureau of Labor Statistics), annual averages, all adults over age 25.

As part of the backlash against Reagan’s draconian cuts to disability rolls in the early 1980s, Congress passed the Disability Benefits Reform Act of 1984. The Act made it more difficult to terminate benefits and required the SSA to develop new evaluative standards.⁸⁶ The agency seized the opportunity to bring about a paradigm shift in the program’s operation: whereas old screening practices relied almost exclusively on objective, measurable indicators of impairment, new administrative rules required examiners to thoroughly assess whether the applicant could realistically work—by scouring their employment history, assessing their “functioning,” and giving weight to factors “that could prevent work even if they were not objectively verifiable.”⁸⁷ This shift toward what Jennifer Erkulwater calls the “functional” model (from the putatively more objective “medical model”) allowed claimants with even “maladaptive and inappropriate behaviors” to qualify for disability benefits.⁸⁸

The consequences were immediately apparent. The share of recipients diagnosed with “mental and musculoskeletal” disabilities spiked and then began a steady climb: by the mid-2000s, the share of beneficiaries in that category was over 50 percent, more than all other

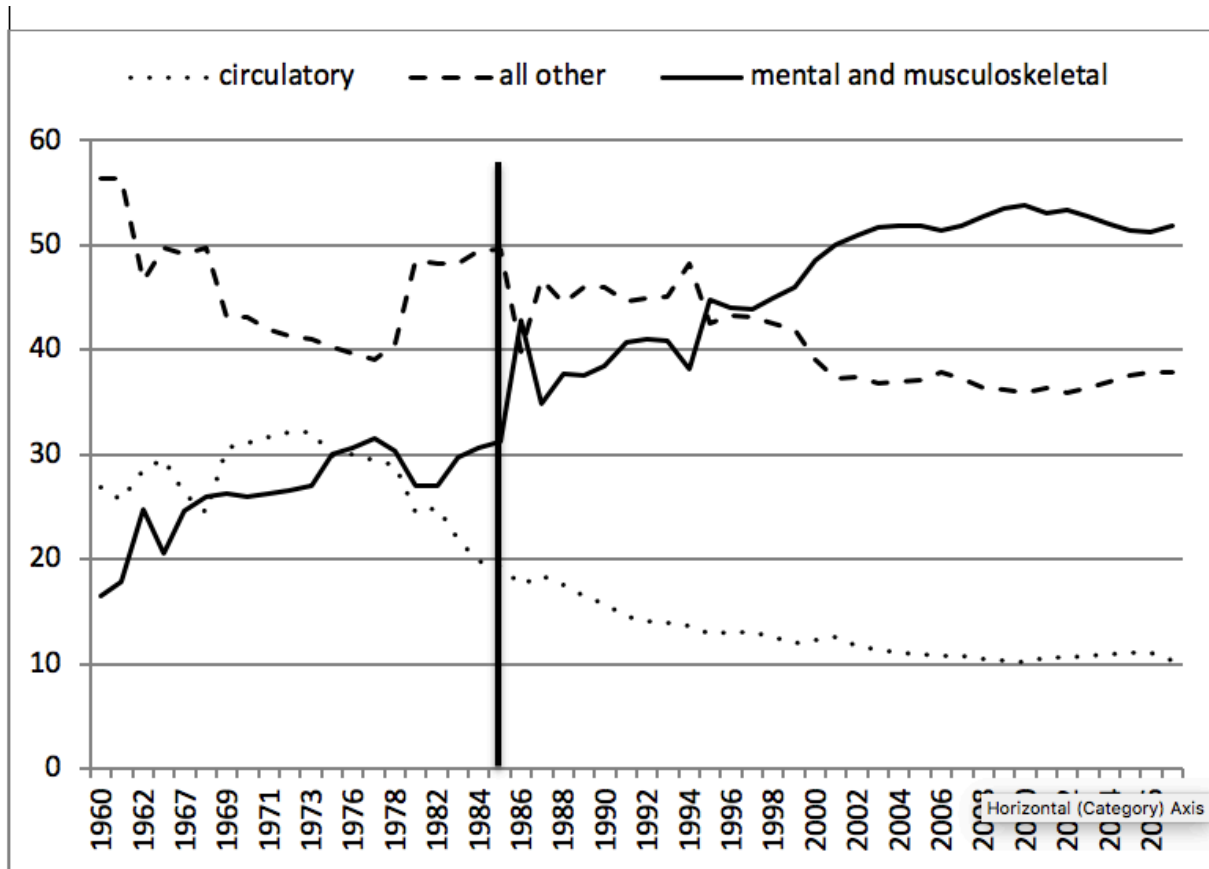
⁸⁶ The Act charged SSA with developing expanded criteria that would include mental disorders, experiences with pain and musculoskeletal disorders, and the combined effects of multiple impairments. Greater weight was also to be given to evidence provided by the applicant’s physician. See Jeffrey B. Liebman, “Understanding the Increase in Disability Insurance Benefit Receipt in the United States,” *Journal of Economic Perspectives* 29 (2015): 123-150.

⁸⁷ Jennifer L. Erkulwater, “Disability Insurance and SSI,” in Daniel Beland, Christopher Howard, and Kimberly Morgan, eds., *The Oxford Handbook of the American Welfare State*, Oxford University Press, 2014.

⁸⁸ The new model operated from the premise that “assessing an impairment could not be done in isolation from assessing the environment in which a person functioned and societal expectations about what constituted “normal” behavior and abilities.” Erkulwater, *Disability Rights and the American Social Safety Net*, 19.

categories combined (**Table 7**).⁸⁹ Because those recipients tended to be younger, they also tended to remain on disability longer, swelling the beneficiary prevalence rate.⁹⁰

Table 7: Share of SSDI Beneficiaries, by Major Category



Source: Annual Statistical Report on the Social Security Disability Insurance Program, 2017

(https://www.ssa.gov/policy/docs/statcomps/di_asr/2017/di_asr17.pdf)

⁸⁹ Autor, "The Unsustainable Rise of the Disability Rolls in the United States: Causes, Consequences, and Policy Options," also see Liebman, "Understanding the Increase in Disability Insurance Benefit Receipt in the United States."

⁹⁰ The prevalence rate is "the ratio of the number of disabled-worker beneficiaries in current-payment status to the number of persons insured for disability benefits." 2018 OASDI Trustees Report, "The 2018 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds,"

As prevalence rates climbed, critiques did too. Conservative Republicans like Senator Rand Paul derided the program as “welfare for people too lazy to work.”⁹¹ Prominent economists, too, have argued that the program has an “ill-defined mission” and is “a fiscal crisis unfolding.”⁹² Critics contend that the program encourages able-bodied workers to remain out of the workforce and fails to encourage employers to make accommodations that might enable disabled workers to continue working. The program is also seen as too expensive, and depending on the assumptions used, its expenditures are projected to continue rising at an unsustainable rate.⁹³ Although some of these critiques have lacked empirical support, the debate has persisted, becoming in recent years increasingly politicized and partisan.

As in the other three cases, as the policy has drifted, considerable shifts have occurred in the constellation of groups supporting the policy. But whereas the “old” supportive groups in the other cases adapted to policy drift by innovating and experimenting with new approaches, in this case, the number of supportive groups *proliferated* as SSDI expanded. In the 1950s, key supporters included liberal Democratic elites and organized labor; by the 1980s, the volume and scope of supportive groups had grown by leaps and bounds, with many coming into existence *because* of the policy’s expanding reach: groups representing specific disabilities, causes, or issues; groups geared toward self-help and peer support; disability lawyers; nonprofit groups

⁹¹ Dylan Matthews, “In defense of Social Security Disability Insurance,” *Vox*, March 8, 2018.

⁹² David H. Autor and Mark G. Duggan, “The Growth in the Disability Insurance Rolls: A Fiscal Crisis Unfolding,” *Journal of Economic Perspectives* 20 (2006): 71-96; Autor, “The Unsustainable Rise of the Disability Rolls in the United States: Causes, Consequences, and Policy Options,”

⁹³ Autor, “The Unsustainable Rise of the Disability Rolls in the United States: Causes, Consequences, and Policy Options,”. By 2018, however, projections had become more sanguine. The Trustees wrote: “Even under the high-cost assumptions, however, the combined OASI and DI Trust Fund reserves on hand plus their estimated future income are sufficient to fully cover their combined cost until 2030. Under the intermediate assumptions, the combined starting fund reserves plus estimated future income are sufficient to fully cover cost until 2034...under the low-cost assumptions, the DI program and the combined OASDI program achieve sustainable solvency.” 2018 OASDI Trustees Report, “*The 2018 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds.*”

offering support for applicants trying to navigate the bureaucratic process; and of course disability rights advocacy groups. In short, drift created a large new niche for organizational entrepreneurs seeking to capitalize on both its resource and interpretive effects.

Groups on the other side mainly consisted of business groups that opposed SSDI from the start. Although these groups did not perish (like the NWRO), they mostly abandoned the cause. Business groups “more or less withdrew from opposing SSDI, even as the program expanded,” Thomas F. Burke and Jeb Barnes write, “and have since played only a minor role in the politics of the program.”⁹⁴ In general, the feedback effects of drift for these groups have been too modest to make investing in program reform a major priority, especially given the growing ranks on the other side. Other groups opposing the expansion of SSDI are dispersed and do not constitute organized groups: for example, the cost of the payroll tax is shouldered by workers, “a diffuse and amorphous group.” Budget deficits and rising debt, too, have a famously diffuse impact. As noted above, opponents also include prominent anti-government ideologues and economists, but as of yet, policy opponents’ ranks are “thin” and have not presented a united front.⁹⁵

More intriguing has been the emergence of *new* groups seeking to combat related problems that were left entirely unaddressed by SSDI. In particular, the issues of discrimination and disability rights captured the attention of both the left and the right by the mid-1980s. Arguably the most important new group to enter this space was the National Council on the Handicapped (NCH).⁹⁶ Ironically, the group began as a project of the Reagan Administration. In 1986, the group issued a high-profile report entitled “Towards Independence” which advocated

⁹⁴ Burke and Barnes, "Layering, Kludgeocracy and Disability Rights: The Limited Influence of the Social Model in American Disability Policy,"

⁹⁵ Thomas F. Burke and Jeb Barnes, “Republicans want to reform disability insurance. Here’s why that’s hard,” *Washington Post Monkey Cage*, February 17, 2015.

⁹⁶ Later called the National Council on Disability (NCD)

for disability rights and urged Congress to do more to help the private sector offer greater “opportunities and independence for individuals with disabilities.”⁹⁷ Proposed reforms to SSDI focused on integrating rehabilitation and job placement programs with the policy to help disabled persons realize their full employment potential.

On the left, emergent groups promoting the “independent living movement” sought to end the “paternalism and pity” associated with SSDI and related helping professions.⁹⁸ These new advocates sought to reform rather than replace SSDI, since it was seen as providing the resources many disabled persons needed to be autonomous and live with dignity.⁹⁹ In combination with independence advocates, this odd-bedfellows coalition shared enough common ground to mobilize collectively for policy change, but not enough to alter the fundamental structure of SSDI. As a result, SSDI was left alone and a wholly new institutional form—the Americans with Disabilities Act of 1990 (ADA)—was layered alongside it.

A descendant of the civil rights era, the ADA prohibits discrimination on the basis of disability and guarantees equal access to public accommodations, employment, transportation, government services, and telecommunications. Similar to the distinction discussed earlier between employment law and labor law, the new law sought to address the same basic set of problems as SSDI but through different means and mechanisms—through litigation and regulation rather than direct cash subsidies (as with SSDI).

But as in the other cases, the development of workaround solutions to address new or resurgent problems generated a whole new set of problems all their own, without resolving the

⁹⁷ National Council on Disability (formerly National Council on the Handicapped), “Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities - With Legislative Recommendations: A Report to the President and to the Congress of the United States,” (February 1986) <https://www.ncd.gov/publications/1986/February1986>.

⁹⁸ Burke and Barnes, “Layering, Kludgeocracy and Disability Rights: The Limited Influence of the Social Model in American Disability Policy,”

⁹⁹ Ibid., and Bagenstos, *Law and the Contradictions of the Disability Rights Movement*

problems associated with drift in the first place. As Burke and Barnes explain, the “tense layering”¹⁰⁰ of SSDI and ADA is due to:

different ideas of disability (medical versus social model), different partisan coalitions (a liberal coalition among Democrats, administrators and beneficiaries as opposed to a bipartisan coalition among disability activists and small government conservatives) and different operational logics (a federal-state agency structure versus a regime that primarily uses private enforcement through litigation).¹⁰¹

Like the other cases, the layering of new ideas, coalitions, and administrative regimes alongside the old did not result in harmonious coexistence but rather an awkward juxtaposition. The friction between two contrasting definitions of disability and two different perspectives on the role of social benefits (provided by SSDI) in promoting independence (embodied in ADA) generated a new institutional politics. The different layers “continue to rub up against each other,” Burke and Barnes write, “forcing policymakers to ‘muddle through’ contradictions.” In addition, attorneys have used SSDI’s narrower definition of disability as a cudgel against ADA’s broader one, arguing for example that employers need not accommodate disabled former employees who have since been accepted into SSDI because they must be unable to work.

Despite its best efforts, the Supreme Court failed to resolve these contradictions with its highly anticipated *Cleveland v. Management Policy Systems* decision in 1999 (526 U.S. 795). Rather than carve out legal space for workers who, after becoming disabled, may simultaneously

¹⁰⁰ Tense layering is from Adrian Kay, “Tense Layering and Synthetic Policy Paradigms: The Politics of Health Insurance in Australia,” *Australian Journal of Political Science* 42 (2007): 579-591 and *Ibid.*

¹⁰¹ *Ibid.*, 108.

seek both reinstatement with accommodation and disability benefits, trial-court judges were left to “make policy on a case-by-case basis,” thereby producing even more incoherence.¹⁰² This uncertainty, paired with a diffuse opposition, has made the prospect of comprehensive reform all the more unlikely. Sensible solutions proposed by policy experts would require disability policies to be administratively linked to multiple additional policy arenas (such as job training, support services, transportation, housing, and health care), thereby layering new political and policy complications atop SSDI’s existing complexities and requiring ambitious new investments. Even the most hopeful advocates acknowledge it would be far more expensive to implement such changes than to simply maintain the current system and watch it grow.¹⁰³

Yet the annual costs of the disability program are expected to exceed its total annual income over the next dozen years, with the trust fund “projected to become depleted in 2032.”¹⁰⁴ Perhaps this impending financing crisis will precipitate reform—something policy opponents appear to be counting on.¹⁰⁵ Until then, however, SSDI is likely to remain stubbornly fixed in place, advancing certain goals while undermining others, generating a new politics around its continued drift.

Conclusion

¹⁰² Ibid.

¹⁰³ Thomas F. Burke and Jeb Barnes, “Republicans want to reform disability insurance. Here’s why that’s hard.” Also see: <https://www.americanprogress.org/issues/poverty/reports/2015/01/28/105520/a-fair-shot-for-workers-with-disabilities/>

¹⁰⁴ Under intermediate assumptions. 2018 OASDI Trustees Report, “*The 2018 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*” (page 5).

¹⁰⁵ Rachel Greszler, “Social Security Trustees: Disability Insurance Program Solvent Until 2028,” *The Heritage Foundation report*, July 26, 2017. <https://www.heritage.org/budget-and-spending/report/social-security-trustees-disability-insurance-program-solvent-until-2028>. However, note that as incidence rates have declined and conversion rates have increased since 2014, the projected date of depletion has been continually pushed back.

Drift is among the most pervasive ways in which policies change in our increasingly polarized system of “separated institutions sharing power.”¹⁰⁶ When the ultimate effects of a policy depends heavily on its external circumstances, advocates and opponents alike know that failing to update it is a powerful way of changing its impact, with potentially profound consequences for those who depend on its benefits or pay its costs.

And yet, we know surprisingly little about how this mode of policy change reshapes politics over time—about, that is, the political effects of policy drift. This is at once unfortunate and avoidable. The feedback effects of drift are not random; they flow naturally from the core characteristics of drift itself. On the one hand, the problems created by drift encourage political actors to develop new institutions, organizations, and strategies to help alleviate drift’s most pernicious effects. On the other, the powerful constraints imposed by drift channel these responses in certain directions rather than others. In particular, drift encourages layering (to circumvent the persistent, still-authoritative drifting policy), the adaptation of old groups (to replenish lost resources and compensate for weakened organizational supports), and the formation of new groups (to fill the void left by old groups and help those bearing the costs of drift address new problems in new ways). All these effects bear the imprint of drift, and they generate new dynamics that—we argue and our four cases suggest—bear key similarities across different policy domains featuring different actors contending with different problems.

Many such differences separate labor law, health care, welfare, and disability. Yet in each domain, the constraints imposed by drift were evident. They appear in the new workaround solutions crafted by reformers—from state-level employment laws to the individual mandate to welfare-to-work programs to the ADA. They appear in the innovative but highly constrained

¹⁰⁶ Richard Neustadt, *Presidential Power* (New York: Wiley, 1960).

adaptations of old groups—from innovations in union organizing to the search for lucrative new insurance markets to the coalition-building of child advocacy groups to the proliferation of disability rights groups. And they appear in the substantive goals and operational strategies of newly emergent organizations—from alt-labor organizations to Medicare-for-all enthusiasts to social conservative groups to independent-living advocates.

In all four cases, too, drift fundamentally changed the political calculus of those on both sides, creating openings for formal policy revision in health care and welfare while further complicating them in labor law and disability insurance. These ongoing political effects are, of course, clearest in the cases of stalemate, in which the mechanisms of drift remain strong, political cleavages remain deep, and reform coalitions remain weak. But even where big reforms finally broke through, the political effects of drift can be seen in both the political coalitions that facilitated them and in the new policy departures they produced.

In short, drift is a source of political development: it triggers reactions that shape downstream politics. We make no claim that the dynamics we have highlighted exhaust the possibilities, nor that these four cases offer definitive evidence. What we do claim is that there is a substantial payoff to examining how key modes of institutional and policy change may themselves fuel significant shifts in the political landscape over time.