

# **Obamacare: A Lasting Legacy or Hanging by a Thread**

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On my honor as a University Student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments

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## **Introduction**

What is the truth? What does it take for someone to convince you that the information they are presenting is a fact? The world is filled with false and manipulated information that is frequently much easier to find than facts. This notion is present now more than ever as technological innovation has allowed for both the gathering and distribution of information, true or false, to be performed at rates previously unimaginable. Sometimes these falsehoods are easy to spot or come with massive “fake news” warnings, but what happens when a trusted “credible” source presents misleading information? Moreover, what happens when two trusted sources are providing conflicting information? Unfortunately, today this situation is not only a part of our everyday lives but is present at the epicenter of policymaking in the United States. One example that has been a fierce debate for years centers around the Patient Protection and Affordable Care Act (ACA or Obamacare).

The ACA was signed by President Barack Obama in 2010. It was the most significant federal intervention in the US healthcare system since Medicare and Medicaid were enacted in 1965. The roughly 2000-page piece of legislation had a variety of elements. Among the most significant were an individual mandate for citizens to have health insurance or pay a tax, subsidized plans for those below a certain poverty level, an expansion of Medicaid, and forbidding insurance companies from excluding patients for factors such as preexisting conditions. Reports of numbers vary but as of 2017 most estimate that roughly 20 million Americans gained healthcare insurance due to the ACA, however opposition remains strong (Gordon et. al., 2017). Polls have consistently shown that less than 50% of Americans support the ACA primarily due to a distrust of government, and specifically to a government role in healthcare (Dalen et. al., 2015).

Controversy over the law aligns heavily with political parties and has been used to further agendas in unrelated areas including being a key component of President Trump's election in 2016 (Oberlander, 2016). The debate has led to multiple laws being enacted that strengthen or subtract from the original ACA painting a picture of policy creation that seems extremely complex and inefficient. This paper will examine various cases of debate over the ACA to analyze the strategies used by government bodies, private companies, and other interest groups to further their agendas. Using components of co-production as a guiding framework I will investigate how participants thrive in the era of "post-truth" by wielding tools such as expertise and lobbying to sway both public opinion and deciding votes. Furthermore, I will focus on how the misuse of these tools has led to less successful discourse and the inefficient path legislature surrounding the ACA has taken.

### **Literature Review**

Sergio Sismondo (2017) discussed the concept of society's entrance into a post-truth era and the implications this had on US politics. Sismondo claimed politicians have typically kept to bending the truth and giving complex explanations when caught in a lie. However, President Trump's successful campaign which some argued was fueled as much by facts as by falsehoods may have catapulted politics beyond doubt of whether the post-truth era has begun. Sismondo's distinction of a "modern fact" as that which has surfaced out of configurations of practices, discourses, epistemic politics, and institutions will be an important concept in this paper as these configurations are analyzed.

Sismondo briefly mentioned differences between expert accounts considered as institutionally constituted parts of larger regimes. This idea was a component of co-production, a framework thoroughly explored by Sheila Jasanoff (Jasanoff, 2004). Co-production proposed the

way in which we know and represent the world are inseparable from the way in which we live in it. Knowledge was considered a product of social work and constitutive forms of social life eliminating the separation of ideas such as objectivity, reason, and policy from subjectivity, emotion, and politics. Jasanoff explained that co-production was not meant to be a fully formed theory with lawlike consistency but as a means to analyze complex phenomena without omissions which arise from this separation. Perhaps the most fundamental idea to this paper was the formation of larger regimes during times of scientific or political controversy. The debate over the ACA prompted the emergence of such regimes, comprised of groups sharing similar viewpoints, and the subsequent collective action and shaping of new identities. The use of lobbying to not only construct these regimes, but to increase one's legitimacy will be a key focus. Another significant concept proposed by Jasanoff was the need for increased transparency regarding decision making based off expertise (Jasanoff, 2016). This will be relevant to the discussion of conflicting expertise and how transparency could help reconcile these differences.

## **Evidence and Analysis**

### **Background Information**

The heated debate over the viability of the ACA led to an immediate review of its effect on US healthcare. The first open enrollment period following the enactment of the ACA was analyzed by the *New England Journal of Medicine* (NEJM) to determine if the ACA stimulated the marketplace or if opponents had fuel for arguments to repeal the law (Blumenthal and Collins, 2014). The study revealed enrollment exceeded projections. The number of uninsured people fell, and the sustainability of coverage expansion was promising if overall cost of care could be controlled. Medicaid expansion was a key focus as researchers claimed that states that

did not expand Medicaid would benefit far less. However, reversing Medicaid expansion was a proposed change by opponents of the ACA following its approval.

A review of Medicaid expansion stated critics argued the program does not provide value to its beneficiaries, and that some states cannot afford to fund it (Mazurenko et. al., 2018). According to the 77 studies analyzed in the review, Medicaid expansion improved access to and quality of care, Medicaid spending, and cost of care. Additionally, only a few studies found Medicaid expansion to be linked to any negative consequences. The debate over the expansion of Medicaid is one example of unsuccessful discourse brought out by the ACA. Two groups made contradictory statements to argue over minor aspects of each side's proposal that resulted in no evident correct option. The benefit of Medicaid expansion became impossible to analyze when multiple expert sources claiming opposite arguments are used. Perhaps more controversial, information to be deemed factual became a product of whichever regime had the resources to build the appearance of due diligence.

The first major attempt to repeal the ACA occurred in 2012 led by one of the business world's lobbying powerhouses: The National Federation of Independent Business (NFIB). NFIB, backed by 20 US states, brought a case against the ACA to the Supreme Court in 2012 claiming the law was unconstitutional (Brown, 2010). The suit filed claimed that the federal government exhibited an abuse of power by mandating all citizens have healthcare coverage or pay a tax, and that requiring state expansion of Medicaid encroached on state governments' rights. In a 5-4 decision the Supreme Court ruled that the ACA was constitutional, however forcing states to expand Medicaid was deemed to be an abuse of power by Congress (Steinbrook, 2012). This led to further political and legal battles for the ACA regarding both specific aspects of the legislature and the overall notion of the government's role in healthcare. Involvement from groups such as

NFIB shed light on another interesting tool used by participants in the debate. As one review of the policy behind the ACA points out, the NFIB can be depicted as a voice of small businesses representing similar interests for small business owners, or simply an extension of the Republican party comprised of members from among small businesses (Greer). Lobbying efforts and such examples of promoting a group mentality further complicates deciding which arguments to believe as the interests of individual entities are reshaped to fit the goals of the constructed regime.

Another major wave of movement against the ACA came in 2017. The American Health Care Act (AHCA) was proposed in 2017 by Republicans to repeal and replace many aspects of the ACA (Wilensky, 2017). The bill passed the House of Representatives but eventually failed in the Senate. The time surrounding the contemplation of the AHCA was filled with attempts by stakeholders on both sides to build support for the ACA or AHCA. One such attempt made by Republicans was calling Edmund Haislmaier, a Heritage Foundation expert in healthcare and public policy, to testify to Congress on the failures of Obamacare. This was one use of an expert opinion as a political tool that will be further explored. Once again it becomes difficult to determine what information to allow to sway one's opinion as a so-called expert contradicts data that was originally used to display the success of the ACA. Discourse suffered due to stakeholders prioritizing their agendas over confirming the correct information was being used in the debate. The following analysis will dive deeper into the scenarios so far presented to further explore the disruption caused by current tactics used in policy making.

### **Experts vs. Experts**

The use of one expert individual/source to blatantly contradict information provided by another has been detrimental to discourse regarding the ACA. This was especially prevalent

during the 2017 push for the AHCA by opponents of the ACA. In a 2017 briefing on Republicans' health care legislation plans, House Republican leaders Kevin Brady and Greg Walden blamed the ACA for collapsing insurance markets, rising premiums and deductibles, and fewer patient options (Desjardins, 2017). Additionally, as previously mentioned, Edmund Haislmaier, a Heritage Foundation expert in health care and public policy, testified to Congress on the failures of the ACA at the request of Republicans. Haislmaier condemned the ACA for pursuing enrollment at any cost. He alleged the ACA's effect on healthcare enrollment was exaggerated by previous report estimates derived from government and private surveys. Haislmaier concluded by accrediting enrollment increases to the expansion of Medicaid eligibility, not the ACA's effect on private sector coverage options (Heritage Foundation, 2017).

Taking a better look at the arguments presented in support of the AHCA one can see they are in direct opposition to what was presented as fact by sources such as the *New England Journal of Medicine*. These highly contradicting views on the viability of the ACA create the need to trace back where this information came from. More importantly, how are such sources to be valued when used to make a case on such a grand stage? NEJM was widely regarded as one of most credible sources in medicine today by academia and government organizations such as the CDC (Wei and Lei, CDC). Additionally, NEJM was not found to have institution bias and boasts an impact factor (a metric that reflects the yearly average number of citations that articles published in the last two years in a given journal received) of 70.670, the highest among medical journals ("Clarivate Analytics", n.d.). The authors of the NEJM ACA progress report in question also disclosed no payment from third parties for their research and claimed affiliation with the Commonwealth Fund, New York. The Commonwealth Fund was regarded as providing high factual reporting, albeit with a left-center leaning political bias ("Media Bias/Fact Check", n.d.).

On the other hand, Edmund Haislmaier presented his analysis on the ACA's impact on healthcare coverage to Congress claiming previous reports used by the Obama administration were flawed (Hatch and Senger, 2016). The NEJM article was not specifically referenced, however Haislmaier contested numbers supporting the viability of the ACA gathered by the Department of Health and Human Services (HHS) that mirrored those in the journal article. In his testimony Haislmaier pointed out that many of the analyses previously used rely on survey data to produce estimates and projections as opposed to administrative data of enrollment figures reported by public programs and private insurers as his research was predicated on (Heritage Foundation, 2017). More specifically, Haislmaier's data was derived from Mark Farrah Associates, a subscription-based publisher of business information and analytics for the US healthcare industry which compiles data from a variety of sources including: the National Association of Insurance Commissioners (NAIC), Centers for Medicare & Medicaid Services (CMS), U.S. Census Bureau, and the Bureau of Labor Statistics (Haislmaier, 2014, "Mark Farrah Associates", n.d.).

Haislmaier began his testimony by stating the presented views were his own and not a reflection of the Heritage Foundation, however his research was conducted as part of the organization and both entities were components of the same regime comprised of those against the ACA. The Heritage Foundation, a "conservative think tank", was funded by various right-wing powerhouses such as The Bradley Foundation (Bice et. al.). Understandably, the Heritage Foundation was listed as possessing a strong right leaning bias with mixed factual reporting ("Media Bias/Fact Check", n.d.). Here, the coordinated actions of a regime became apparent. Republican politicians backed by conservative conglomerates recruited and used expertise which supported their cause to nullify previously reported information being used by their opponents.



Hopefully at this point one can see the problem with this scenario...who's right? On one side, data provided by government agencies (namely HHS) responsible for the consolidation of the information under review which aligned with a highly regarded impartial academic journal. On the other, contradicting expertise recruited and presented by an established bias source but, that appeared to have a well-supported claim to superior methodology. Did Haislmaier debunk faulty data that had been used as fact, or did the conservative minded regime capitalize on the era of post-truth by presenting conflicting data that could not be easily disproved? This uncertainty is a primary contributor to the disruption of productive discourse. Not only does the discussion become a mess of arguments over which facts are real, but countless resources are wasted in pursuit of the destruction of opposing arguments instead of being used for an actual discussion on how to optimize the inherently flawed policy.

### **Lobbying**

While expertise was a key tool used by regimes in the debate, lobbying was a primary mechanism for forming and strengthening these regimes. Perhaps an oversimplification of the problem, lobbying appeared to be method a regime was able to use to control the value of presented information with money. This control of what was considered factual, as well as direct influence on the decisions of policymakers, disrupted discourse through the manipulation of information and how it was valued. However, of more relevance to this paper was how lobbying and the formation of regimes contorted the ideology of various entities as a regime's shared interest reshaped or muted the views of individual entities. Furthermore, as individuals in a regime resisted the path of the bulk, discourse suffered even between allies. An article which analyzed the expansion of Medicaid claimed pressure from interest groups and lobbyists was a potential significant influence on the policy (Callaghan and Jacobs, 2016). The analysis touched

on two ideas regarding lobbying related to disruption caused by regimes. First, the monetary advantage businesses and professional organizations had over advocacy groups for the poor and vulnerable created a disproportionate influence on policy. However, a large financial backing on one side of a debate can also just provoke the recruitment of more resources by the opposition. In this case neither side gains a true advantage due to the larger number of private interests that detract from the regime's common goal. Therefore, resource advantage cannot be explicitly synonymous with influence. As various debates concerned with the ACA have occurred, influence of the formed regimes on individual players and discourse as a whole became more apparent.

The threat of unaffordable treatment costs was one example of a significant debate molded by regimes. As lawmakers took aim at rising drug prices the pharmaceutical industry, largely represented by the Pharmaceutical Research and Manufacturers of America (PhRMA), shifted its stance on the ACA. Stephen Ubl, president and CEO of the trade association, stated in 2017 that the group was not taking a position on the issue, however analysis of the organization's spending told a different story (Hancock, 2018). In 2009 the group spent a record-breaking amount lobbying for and publicly supporting the ACA prior to its passage with the organization's leader at the time Billy Tauzin deciding the industry would be better off making a deal and delaying more radical healthcare transformation (Norman and Karlin-Smith, 2016). Eventually, this stance was no longer advantageous. In 2018 PhRMA exceeded its previous record and spent a total of \$27.5 million lobbying against the ACA including contributing to a \$10 million ad campaign by the American Action Network (AAN) designed to build voter support for the law's elimination. PhRMA's conduct demonstrated how regimes were used to manipulate discourse. In this case PhRMA, which already combined the interest of an entire

industry, selectively joined the regime of either side when suitable for their mission. This restructuring of ideology from pro-ACA, to “neutral”, to anti-ACA was possible due to the constructed regime’s readiness to incorporate any entity with even partially shared goals. Both the mission of PhRMA and the whole regime benefitted from the alliance. However, discourse which was already manipulated was primed for further turmoil due to likely counteracting behavior by members of a regime with only partially aligned goals.

This phenomenon was present even when groups were not as deliberate as PhRMA with their selective alliancing. The National Multiple Sclerosis Society was one of 26 patient advocacy groups to issue a joint statement in support of the Protecting Pre-Existing Conditions and Making Health Care More Affordable Act of 2019, a bill designed to strengthen the ACA. Signatories of the statement claimed the ACA “represented major progress toward ensuring all people with pre-existing conditions have access to affordable health care” (NMSS, 2019). The American Association of Retired Persons (AARP) also supports the ACA for easing coverage of those with preexisting conditions and asserts that the ACA strengthened Medicare and improved affordability and access for plans of those ages 50- to 64-years old (Skopec et. al., 2016). In a letter to Congress opposing the American Health Care Act, AARP stated that the ACA extended the Medicare Part A Trust Fund’s solvency by 11 years (AARP, 2017). Willingly or not, such groups with similar goals are molded into the pro-ACA regime. While possibly a fruitful alliance, this scenario more likely prompts downstream disagreement within the regime, for instance what happens when opponents of the ACA attempt to peel away portions of the law concerning preexisting conditions and Medicare funding simultaneously? How do components of a regime decide whose goals are the most important? Another troublesome possible outcome of

this alliance is further recruitment by the opposing regime adding to the pool of pushed ideologies.

### **Discussion**

Regardless of which side of the debate one is on, most people familiar with the ACA will acknowledge the law is not perfect. Legislature is bound to be accompanied by flaws however, the explored mechanisms are detrimental to political discourse and present a hurdle for modern policymaking to overcome these flaws. Obviously, political alliances and the use of expertise is all but required to enact proper legislation. This analysis aimed at highlighting how politicians and other interested parties have taken these ideas beyond the realm of productive contribution. Reviewing how the modern fact is shaped by those in power using expertise to manipulate relevant information showed a clear problem with the data used in political discourse. Furthermore, the use of lobbying and other alliances to form regimes which attempt to control the value of modern facts causes further manipulation. Not only are the facts which support arguments contorted, but the ideologies of individuals also become blurred as the bulk of the regime shapes the goals of its constituents.

In his review of healthcare reform just prior to leaving office, former President Barack Obama touched on some of these ideas in his advice to future policymakers (Obama, 2016). Obama cited hyperpartisanship as a crucial problem and claimed Republicans reversed course on their own ideas they had previously supported once they appeared in the ACA. Among these ideas was the individual mandate which Obama claimed Republicans supported in Massachusetts in 2007 but, as discussed earlier, was attacked as unconstitutional during the 2012 Supreme Court case. Obama went on to describe other ways implementation of the ACA was undermined by Republicans however, due to the clear bias of this source it is important to emphasize the

ideas discussed in this paper are used by both sides of the debate. There is not one side who is performing fairly and responsibly and another sabotaging discourse. Instead, the shared methodology of policymakers in general is flawed.

### **Conclusion**

At the time of writing this analysis the topic of the constitutionality of the ACA is poised to once again enter the chambers of the Supreme Court. As debate continues it is important to offer possible solutions that can help improve political discourse in the future. One concept is the need for additional consideration when political regimes are formed. Massive groups aligning due to few shared interests primes discourse for distracting arguments. If priorities are not shared as well as the underlying ideas, this alliance could be counterproductive. Jasanoff also suggests improvements could be made with added transparency in expertise decision making as well as increased humility of the experts themselves. As seen with the case of Edmund Haislmaier and the HHS, increased transparency on where information is being gathered could be extremely beneficial for deciding which data is the most relevant. Moreover, the ability to concede that one's information is not correct instead of dishing out complex justifications for why it might be could prompt drastic improvements (although modifying innate human nature is admittedly an unlikely solution).

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