

## Entrenchment and Health Equity: Lessons for Advocates, Policymakers, and Researchers

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In his book *Entrenchment*, Paul Starr writes, “A society’s entrenched features—the foundational features that are hardest to change—shape what kind of society it is. They establish its moral and political character and influence its economic performance. They have often arisen through great struggles and may again become the subject of high-stakes conflict. Whether we want to preserve those entrenched realities, or entrench new ones, we need to understand entrenchment itself” (2019, xii). Examining the implications of entrenchment for health equity and policy is the focus of this *JHPPL* special issue.

Though the six articles presented here range widely in their substantive foci, they circle around a number of core questions. Why should advocates, policymakers, and scholars care about entrenchment? How is entrenchment politics shaping the prospects for robust government action to promote population health and better outcomes for marginalized communities? What reforms must be successfully embedded if government is to possess the capacity to meet the challenges of the 21st century? Finally, what strategies can advocates and policymakers use to reduce the burdens of pathological forms of entrenchment on society? In this brief concluding essay, I draw out five key lessons of the articles.

*Lesson #1: Advocates, policymakers, and scholars need to understand the causes and consequences of entrenched inequities*

Entrenchment is a matter of degree, not kind (Starr 2019, 3).. But the focus of this special issue are those laws, policies, or norms that are both significant and very difficult to alter. These

constitutive features of society have profound effects on the distribution of public goods, such as access to health care services, public education, and clean air.

As Jessica Trounstine and Sidra Goldman-Meller argue in their essay, among the most important entrenched features of American social and political life are patterns of residential segregation. For over a century, white Americans have used a variety of formal and informal mechanisms to create and maintain segregated neighborhoods. Even after courts ruled racially explicit zoning to be unconstitutional, racial neutral policies like growth controls, restrictions on multi-family housing, and mortgage lending patterns have perpetuated inherited patterns of segregation. An extensive body of research shows that residential segregation is linked to negative outcomes for marginalized communities, including poor health outcomes and a lack of access to public services. Trounstine and Goldman-Meller focus on the relationship between segregation and racial disparities in COVID-19 outcomes. They show empirically that COVID-19 infection rates were higher in counties where racial minorities live in more isolated neighborhoods, and that the spread of COVID was even worse in segregated areas with high proportions of front-line workers. Their findings suggest that the “devastating outcomes of the coronavirus pandemic were linked to a long history of racial marginalization and entrenched discrimination produced by structural inequalities embedded in our geographies.” While further research is needed to determine whether these results are causal, their findings have important implications for policymakers, advocates, and researchers who seek to understand and mitigate inequities in the health care system.

*Lesson #2: Partisan polarization is strengthening incentives for actors to entrench their preferences in laws and institutional rules, potentially reducing the scope for grassroots democracy*

When a group can find common ground with its rivals, it is likely to accept that conflicts will be settled by ordinary politics. When ideological disagreement grows, however, groups gain an incentive to make their policies as irreversible as possible through entrenchment, especially when groups believe their power may decline in the future (Starr 2019, 187). One area where polarized battles over entrenchment are playing out today is state preemption of local housing policies. Some legislatures are removing the authority of more liberal or progressive cities to enact local policies intended to address housing inequities, such as rent control and inclusionary zoning. Based on participation observation and in-depth interviews with tenant organizations, Jamila Michener shows that state preemption of housing policy often has a detrimental impact on grassroots democracy. Preemption can narrow the menu of policy options, make it more difficult for advocacy organizations to build power, and limit the ability of marginalized communities to shape the outcomes that directly affect their lives.

As Michener acknowledges, there is nothing intrinsic in state preemption that requires it to amplify inequities. States can also use preemption to constrain the power of special interests and narrow the authority of localities to enact discriminatory or inegalitarian policies. For example, the California Housing Crisis Act of 2019 curtails the ability of local governments to delay new housing approvals or enact moratoriums on new housing construction. The key issue is whether preemption-based entrenchment is used to make policy more responsive to the public and marginalized groups—or more responsive to elites and powerful interests. As Michener writes, “Whether entrenchment via preemption offers democratic promise or peril is contingent.

That is why scholars must assess preemption in relation to specific policy domains, contexts, and institutions.”

*Lesson #3: Markets cannot function efficiently without rules, but the rules governing markets have the potential to entrench economic and political inequalities*

While markets are often thought to arise spontaneously, the reality is that markets are institutions. Property rights, the rules governing what products are allowed to be bought and sold, and many other aspects of market exchange are structured by public policy (Vogel 2018). Regulations are often necessary to make markets function efficiently, especially when markets are subject to imperfect information and high uncertainty, as is true with respect to the provision and financing of medical care (Arrow 1963). Yet the regulations that govern contemporary markets are shaped by the decisions of legislators, bureaucrats, and judges, and thus arise from power struggles. As a result, market regulations may not always advance the public interest or respond to the needs of vulnerable constituencies. Whether market rules promote consumer welfare, innovation, and other desirable goals, or simply entrench the power of privileged interests, requires close scrutiny.

Amy Kapczynski argues that the pharmaceutical industry uses its entrenched power to sustain large profits in the United States, despite concerns that drugs are unaffordable for many patients and too often fail to produce medical benefits commensurate with their costs. One of the key mechanisms of entrenchment she identifies is “property power,” including the right to exercise exclusive control over various types of information through intellectual property and trade secrecy protections. While the Food and Drug Administration (FDA) remains one of the most powerful regulatory agencies in the world, its gatekeeping power to determine what

products drug companies can market has diminished over time. The FDA is increasingly approving drugs on the basis of surrogate endpoints and less rigorous trial designs, in response to pressure from the industry, industry-supported patient groups, and conservative think tanks.

To be sure, the pharmaceutical industry's power is not unlimited. It suffered a historic defeat in the Inflation Reduction Act of 2022. For the first time, Congress gave Medicare the authority to negotiate drug prices—a step the industry fiercely opposed. But the price negotiation authority in the final bill is much narrower “than earlier versions, which would have extended negotiations to more drugs and included private insurance plans. The bill would enable only Medicare to negotiate prices beginning in 2026, initially for just 10 drugs” (Allen 2022). As Kapczynski notes, the pharmaceutical industry has not accepted that this defeat is a permanent one, and is threatening to use litigation and other tactics to block the law's implementation. It remains to be seen whether the relatively modest Medicare reform will endure and build momentum for the passage of stronger drug price control measures in future years—or instead serve as a symbol of Congress's inability to break through the industry's entrenched power.

Market rules also govern who is permitted to provide health care services. It is common for governments to bar people with criminal records from entering professions that require an occupational license, including not only medicine but also allied health professions. While such restrictions are an understandable way to protect the interests of patients, they can have a disparate impact on workers from minority groups, who are more likely to have had contact with the criminal justice system. In their article, Jing Liu and David A. Hyman examine how twelve states handle applicants with criminal records for five health-related jobs; dental hygienist, occupational therapy assistant, physical therapy assistant, radiologic technologist, and respiratory therapist. They find that most states treat criminal convictions as a basis for

disqualification. Of greater concern, some states frame licensing restrictions in “ambiguous and expansive terms, such as limiting entry to those of ‘good moral character.’” Liu and Hyman argue that the lack of clarity about who is eligible for a license generates uncertainty, and likely deters people with criminal records from pursuing career opportunities for which they may be suited, reinforcing racial inequities in the labor market. The implication is not that all occupational licensing rules should be eliminated, but rather that such regulations can have both positive and negative consequences, which policymakers should weigh carefully.

*Lesson #4: The capacity to exercise ideational power and shape beliefs is a subtle yet powerful entrenchment mechanism*

There are several distinct mechanisms of entrenchment. The most familiar involve designing institutions to channel subsequent change, creating facts on the ground, and generating increasing returns and political lock-in (Starr 2019). But entrenchment can also involve the embedding of collective beliefs. As Starr argues, “A test for the entrenchment of a belief system is whether it continues to prevail despite contradictory evidence, dissonant experience, and social pressure for revision” (2019, 4). Several of the authors in the special issue explore how embedded beliefs anchor social practices and impose barriers to fundamental change. For example, Kapczynski argues that the pharmaceutical industry’s clout in Washington reflects not only its material power but also a longstanding belief that the pharmaceutical industry will reduce drug innovation if government seeks to lower drug prices. Whether this argument remains persuasive to policymakers and the public will be tested in the coming years as the pharmaceutical industry seeks to reverse the Medicare drug pricing reform before the government’s new negotiation authority is consolidated.

At times, the embedded beliefs that channel policy change take the form of “institutional narratives.” As Carolyn Tuohy argues, institutional narratives “constitute the core discourse through which the understanding of purpose within institutions is developed, conveyed, and internalized by members of the institution over time.” Using legislative debates, interviews, and other sources to trace the narratives associated with the British National Health Service (NHS) and the Medicare and Medicaid programs in the United States from the founding of each institution, Tuohy demonstrates that the ideas and values embedded in narratives help account for the persistence of the single-payer structure of the NHS as well as for the divergent trajectories of Medicare and Medicaid. The broader lesson is that policymakers and advocates who seek to build durable programs should focus not only on the harnessing of material interests but also on the cultivation of ideas to give programs cultural integrity and meaning.

*Lesson #5: Policymakers and advocates should familiarize themselves with the major generic strategies for overcoming pathological forms of policy entrenchment—and use them as appropriate based on changing circumstances*

A pathological form of entrenchment arises when the policy status quo is widely recognized as being dysfunctional, yet is nonetheless very resistant to change. In his essay, Paul Starr analyzes the causes and remedies of such “policy traps.” Starr argues that policies can generate massive costs for society, and be inferior to technically feasible alternatives, yet still generate sufficient political support to endure over the long run. While the persistence of policy traps might appear puzzling, Starr argues that the normal operation of democratic politics does not guarantee that needed reforms will be adopted. Institutional veto points can block large-scale change. In addition, concentrated interests hold advantages over diffuse publics, the electoral system

contains biases that may give more weight to some constituencies than others, and citizens may resist change for ideological or other reasons, even when they believe the status quo is broken.

But the situation is far from hopeless. Starr argues that reformers can use four generic strategies for overcoming policy traps: *Schumpeterian innovation* (leveraging new technology or organizational forms to bring about institutional change); *globally oriented innovation* (importing other nations' policies or using international negotiations to effect change); *institutional conversion* (repurposing or scaling up existing structures) and *social creativity* (introducing new institutions in government or civil society). Starr explains how each of these generic strategies works, and applies his insights to three policy traps: our dependence on fossil fuels (a major contributor to global warming), the internet economy (which has generated online monopoly power and threatens democratic values), and the U.S. health care system (which has high costs and inferior performance).

Starr's penetrating analysis offers several broad lessons for reformers. First, reformers need to have a viable theory of social and political change. It is not sufficient to identify a policy trap or even to articulate a reform goal. Reformers need to understand how to get from where they are to where they want to go. Second, reformers need to be flexible, pragmatic, and problem-focused. Rather than organizing around a specific solution, which may prove inadequate as conditions change, it is better to keep the focus on the underlying social pathologies. Starr's analysis shows that there are multiple strategies for breaking through policy traps. Under some circumstances, economic incentives may do the heavy lifting, but in other cases we will need to rely on technological shifts or cross-national learning or the recasting of existing institutions. Rather than privileging one strategy from the outset, it will often be more productive to maintain an open mind about where breakthrough solutions will come from.

Third, reformers should aim not only to build a positive coalition for change, but also to weaken and fragment defenders of the status quo. The recent adoption a fee of on fugitive methane emissions (contained in the Inflation Reduction Act) illustrates this idea. Oil and gas producers vary enormously in the amount of methane emissions they generate (Gordon 2021). While some of the largest industry players oppose the methane tax, others companies have signaled they can live with the proposal, in part because they have already taken steps to reduce their emissions (Ferek and Morenne 2022). In sum, the methane tax is making it harder for defenders of the fossil fuel status quo to maintain a unified position. The more policymakers can split apart fossil fuel interests, the less likely there will be an industry-wide backlash against efforts to mitigate climate change.

Finally, reformers need long time horizons. We will be dealing with policy traps in the areas of health care, climate change, and the Internet for the foreseeable future. Reformers need to be in the fight for the long haul, especially because concentrated interests that are defeated in one round of policymaking can return to fight again in the next (Patashnik 2008).

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