

**THE UNSUSTAINABLE AMERICAN STATE**

edited by  
**LAWRENCE JACOBS &  
DESMOND KING**



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EDITED BY

Lawrence Jacobs

and

Desmond King

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To Robert Dahl and Charles Lindblom for their  
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# **Part I**

## **THE STRAINS OF GOVERNANCE**



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# The Political Crisis of the American State

## The Unsustainable State in a Time of Unraveling

*Lawrence R. Jacobs and Desmond King*

The American economic and financial system is experiencing upheaval on a scale last seen in the Great Depression of the 1930s. A number of the largest and most established banks and investment firms have declared bankruptcy (including Bear Stearns and Lehman Brothers) or have been taken over at fire-sale rates (as was the case, for example, with Merrill Lynch). In the fall of 2008, Congress and the U.S. Treasury along with the Federal Reserve Bank committed more than \$8 trillion in payments, loans, and guarantees of various sorts to prop up financial institutions (including the semi-government mortgage entities, Fannie Mae and Freddie Mac) as well as the country's largest insurer, American International Group (AIG). The speed, number, and scope of these interventions lack historical precedent.

The immediate cause was the collapse of a new and largely unregulated “shadow” financial system consisting of over-the-counter derivatives including collateralized debt obligations, credit default swaps, and a little recognized (and underregulated) sector of the housing mortgage market—loans to so-called sub-prime borrowers who failed standard credit worthiness tests based on stable income or employment. The devastating impact of defaults in this financial system was magnified by the loosening of capital requirements for investments. (Government agencies acquiesced in the drive by financial firms to heavily leverage their assets until they accumulated \$33 of debt for every dollar in equity.) By the end of January 2009, even before passage of the new Obama stimulus package, the U.S. government had assumed a potential maximum commitment of \$8.5 trillion in rescue funds, of which it had deployed \$3.2 trillion.

Despite the overwhelming focus on the mistakes made by Wall Street and key industries, **the economic and financial unraveling is fundamentally a political crisis of the American state.** The collapse of private markets both reflects and propels an unsustainable constellation of government administrative practices and claims to legitimacy.

The systematic failure of government agencies such as the Securities and Exchange Commission (SEC) and members of Congress to identify the risks of the new financial system or to regulate them are manifestations of the American state's comparatively weak administrative capacity and easy penetration by the financial sector and other related societal interests. Although the George W. Bush administration has been the principal target of criticism, the truth is that the failure to monitor and constrain subprime loans, credit swaps, derivatives, and over-leveraged investments represents a philosophical deference to private markets and a pattern of administrative practices that crosses party lines. Indeed, the roots of the policies pursued by the Bush administration extend to previous administrations of both parties, including the Clinton administration, which terminated the Glass-Steagall Banking Act that had been enacted in the 1930s to stabilize the banking system. Put simply, the immediate media focus on assigning blame to a party and to a small circle of individuals misses the institutional and administrative sources of the economic turmoil, which themselves have resulted from uniquely American political developments.

The meltdown of the American economy not only reflects comparatively porous and underdeveloped administrative capacities but unsettles the legitimacy of the American state as a representative democracy. The massive direct and explicit government "rescues" of private businesses have starkly revealed chummy personal relations among government officials and business and the dependence of government on private markets. It is telling that the harshest initial criticism of the Bush administration's first proposal for a \$700 billion infusion of money into the financial sector was for its poor "messaging"; its use of the language of "bailout" rather than "rescue" stripped bare the purpose of government.

More than creating opportunities for personal favoritism, the American state's policies themselves (including loans to automotive companies that required further reductions in wage and non-wage benefits for workers) worsened the circumstances of some American families while failing to directly respond to those of others (including those who experienced home foreclosures by banks that the government propped up). Government "help" to business turned out to "hurt" or fail to do much for everyday families. The resulting backlash has taken aim at the government's focus on "Wall Street" rather than "Main Street." Implicit in these attacks are challenges to the government's creedal foundation—popular sovereignty and the idea of government by and for the people.

The economic and financial crisis that culminated in the fall of 2008 was a political crisis. It both reveals the unsustainability of the current American state and poses warnings for the Obama administration, which is pursuing new policies but will face daunting obstacles in stabilizing the U.S. economy

and democracy. The essays in *The Unsustainable American State* critically examine the sustainability of the American state and the nature and degree of the crises it faces. This volume explores the analytic territory between, on the one hand, the complacent assumption of durability and sustainability that has characterized many studies of American politics and, on the other hand, the claim of imminent collapse.

This chapter introduces the principal strains besieging the American state. These strains, we argue, predate the Obama administration and point to deep-rooted dysfunctionality in the operation of the American state's administrative institutions and the regeneration of its legitimacy.

## THE NATURE OF UNSUSTAINABILITY

The nature of the crisis facing the American state has been obscured and clouded by a preoccupation with the missteps of individual government officials, such as President George W. Bush or President Barack Obama, or individual government entities, whether Congress or particular agencies such as the U.S. Department of the Treasury. Identifying the fundamental sources of the current economic and political breakdown requires a broader analysis of the tensions and contradictions embedded in the American state. The broader organizational principles of the American state's administrative capacity and legitimacy help to explain the breakdown of the financial system and the zigzagging character of how it has been handled.

Our approach to understanding the current financial and economic turmoil rests on a notion of the state as an interconnected set of institutions that monopolizes force within its territory, rely on administrative capacity to conduct basic economic and political functions, and maintain its legitimacy by inducing the consent of its citizens (Weber 1978; Skocpol 1979 and 1985; Shils 1965 and 1958; for related relevant discussions of the state in general and in the US see Aronowitz and Bratsis 2002; Block 1977, 1987; Brownlee 1996; Evans et al. 1985; Gold et al. 1975; Krasner 1978; Lieberman 2003; and Lindblom 1982).

### Administration: How the American State Is Increasingly an Instrument of Special Interests

The current economic and financial crises are portrayed as "causing" the breakup of the Republican hold on government and the general disruption of established philosophical commitments and interests. In truth, the financial breakdown and ensuing economic downturn were as much consequence as cause. In particular, it resulted from severe and deeply

embedded administrative pathologies. Chapters in this volume reveal that the national administrative capacity necessary for economic and financial operation in a global age was hobbled by historical developments that created conflicted and overlapping lines of national authority and the federated operational control to the states. Gary Gerstle's chapter uses new historical research to uncover a complex tapestry of federated state building characterized both by the dispersion of national authority and the formation of islands of police power. Kimberly Johnson picks up on this theme of capacity building by state and city governments; state capacity expanded during the "First New Federalism" but it left operational control out of the hands of the national government. In addition, the chapter by Desmond King and Marc Stears uses the work of Louis Hartz to explore the implications of this complex evolution of extensive state development and weak national administrative capacity. They find that Hartz's argument for a "liberal tradition" of limited government both acknowledged the weak national state and encouraged a robust civil society to resist conformitarianism that might permit encroachments, including those from state governments. Finally, the chapter by Desmond Kind and Robert Lieberman provides a cogent synthesis of the complex mix of state capacity and incapacity that both empowered the U.S. government and left it hapless to fend off rapacious bankers and financiers.

The long-standing weakness of the American state's administrative capacity loaded the dice in ways that amplified both the mistakes of a string of administrations in managing the financial sector and the anti-government disposition of the Bush administration, which in turn increased the probability that banks and investment firms would over-leverage, embrace excessive risks, and engage in fraud.

Stephen Skowronek (1982) aptly describes the American state as a "hapless giant" to capture its distinct amalgam of enormous (and growing) size and institutional incoherence. Decades of research confirm this characterization of American institutions as consistently lacking (though with notable exceptions) the administrative capacity of their western European counterparts (Skocpol 1985). This provides an important element of the historical context in which the financial and economic unraveling occurred.

In particular, *two* administrative pathologies stand out. First, the American bureaucracy and agencies are hobbled by multiple and crosscutting lines of authority that trammel efforts to establish an organizational chain of command to implement policies (Lowi 1979) and by personnel who lack the appropriate skill and training and who lag behind the preparation of their European counterparts (Aberbach 2003; Aberbach and Rockman 2000; Moe 1985), deficiencies including but not confined to the operation of key regulatory agencies. Second, the internal deliberations and independent decisions

of civil servants and authoritative policy makers are persistently compromised by the interference of outside interests (Jacobs and Page 2005).

### The Administrative Liability of Underqualified Staff and Internal Disagreements: Missing the Early Warning Alarm

In hindsight, the inept response of the Bush administration to the devastation and destruction wrought by Hurricane Katrina in New Orleans was a warning siren about the broader threat posed by the administrative turmoil of the national American state. The president's public praise of his FEMA director Michael Brown—"Brownie, you're doing a heck of a job"—jarred with media images of a devastated city that featured near rioting among displaced city dwellers combined with the shocking hardship for refugees forced to flee the city.

The broader implications and foreboding threat suggested by FEMA's incompetence were lost in the onslaught of criticisms of President Bush and his administration. What was missed was the larger risks of persistently failing to recruit and retain civil servants who graduated from the premier colleges and universities (as is the case in Europe) and instead to rely on political cronies (a problem identified as long ago as 1988 by the National Commission on the Public Service, chaired by Paul Volcker, and restated in a 2004 Brookings study that Volcker also helped chair). The blinking alarm that was missed after Katrina should have read: "the danger of relying on political loyalty instead of competence." Indeed, the message coming out of political science was the rationality of political loyalty over competence (Moe 1985).

### The Bipartisan Embrace of State Weakness as Smart Policy

The weak capacity of the American state to identify risk, combined with a bipartisan philosophy that embraced an uncritical commitment to markets, invited and produced a series of regulatory decisions over the past three decades that opened the door for the financial and economic meltdown in 2008 (Brown and Jacobs 2008).

The most recent iteration of this pattern of bipartisan policy making were the decisions of the Clinton and Bush administrations to reduce the limits on speculative and heavily leveraged risk taking; the incentives to pursue those risks grew as regulatory controls eased. The implosion of "subprime" loans to home purchasers who lacked the financial capacity reliably to repay their mortgages was the match that ignited the "house of cards." But the house itself was built on an administratively unsound foundation, which permitted and, indeed, invited the packaging of debt as securities that were sold to investors around the world, who purchased them on the assumption of competent oversight by the American state. In a sense, the 2008 financial

meltdown illustrates the globalization of administrative incompetence, or at least the global consequences of American ineptitude.

The financial implosion of 2008 resulted from decided policy choices during the Clinton administration to repeal the Glass-Steagall Banking Act (in 1999) as well as the Bush administration's *laissez-faire* approach to oversight. The conditions that fueled passage of Glass-Steagall in 1933 were alarmingly similar to the circumstances leading to the present financial crisis. In the first third of the twentieth century, hundreds of mainly small retail banks throughout the United States set up investment operations that highly leveraged deposits to float bonds and underwrite corporate securities. These investment strategies generated enormous profits until the sharp drop in the stock market in 1929 prompted bank depositors to request withdrawal of funds that had been invested and lost. By the winter of 1933, over 4,000 banks declared bankruptcy. President Franklin Roosevelt recast the financial system with short-term steps (such as closing banks temporarily and soothing Americans into returning their savings to banks) and by a major new legislation landmark—the Glass-Steagall Banking Act in June 1933. (Congress concurrently enacted federal insurance of bank deposits, creating the still existing Federal Deposit Insurance Corporation.)

Glass-Steagall erected a fire wall between commercial retail banking, which was geared toward protecting the savings of depositors, and investment wholesale banking, which was permitted greater leeway for risk taking. As intended, Glass-Steagall restricted banks and investment firms from leveraging the enormous capital held in bank depositors to finance buy-out deals, mergers, equity investments, and other activities that would entail risk but would also hold out the promise of significant profit. Large banks and investment firms chafed at these restrictions. Instead, such restrictions were pilloried as excessive government interference stifling market innovation and growth. But corporate lobbying efforts to repeal Glass-Steagall from the 1960s to the late 1990s proved abortive. Memory of the financial implosion of the 1930s remained a steady bulwark against eleven initiatives introduced to Congress between 1980 and 1998 to end Glass-Steagall.

Even though Glass-Steagall's fire wall between risky investment and protection of deposits remained into the late 1990s, restrictions on the financial institutions were loosened. In 1979, President Carter approved the U.S. Department of Labor's recommendation to permit pension funds to invest their assets in less-established firms and corporations than the traditional blue-chip stock assets to which they had been restricted. This modification helped spur the explosion in venture capital between 1980 and 2002. In 1994 a Democratic president and Congress overturned the 1927 ban on retail banks opening new branches across state lines, a reform that encouraged takeovers and the development of super-sized consolidated banks.

Although these reforms were relatively incremental, the Clinton administration at the urging of then Treasury Secretary Lawrence Summers promoted and signed into law legislation that made two dramatic changes. First, the Gramm-Leach-Bliley Act of 1999 dismantled Glass-Steagall. Second, the new law divided government regulatory authority over commercial banking: responsibility for the investment firms' securities and brokerage operations was transferred from the Federal Reserve System to the SEC while the holding companies of these firms continued to be regulated by the Federal Reserve System. The 1999 legislation not only breached the fire wall between commercial and investment banking, but the two operations came under separate regulatory authorities, which did not necessarily communicate regularly or systematically about their respective spheres, nor did they have the capacity or sense of mission to exercise similar levels of attentive oversight.

With the Gramm-Leach-Bliley Act of 1999 opening the flood gates for increasingly unconstrained financial activity, President Clinton signed legislation in 2000 that removed another brick from the regulatory infrastructure by granting more leeway for derivatives and credit swap deals. Specifically, the new law removed these financial instruments from the purview of the Commodity Exchange Act, which propelled their expansion.

As the financial industry achieved the permissive latitude that they had sought for decades, investment banking expanded rapidly into a "shadow banking system" in a number of countries led by the United States. The seven large investment banks dominating the sector (Goldman Sachs, Morgan Stanley, Bear Stearns, Merrill Lynch, Lehman Brothers, JP Morgan, and Citigroup) pressed the U.S. government to further dilute the SEC's regulatory regime.

Further demonstrating the weak and porously exposed American state, the SEC agreed in 2004 to replace its enforcement of the remaining regulatory responsibility over investment firms with industry self-policing based on a new voluntary code for the large investment banks, entitled the Consolidated Supervised Entity (CSE) program. This scheme resulted in periodic audits of the affected institutions in place of having regulators on site; the SEC assigned only seven members of its staff to oversee the investment banks despite the size of their collective securities market, which had reached the trillions by 2007. It was voluntary and enabled investment banks to opt in or out of the scheme. The SEC also created a process to exempt firms from government rules on leveraging; crucially, the application by broker dealers to become part of the CSE program entitled them to exemptions from the SEC's standard net capital to debt rule.

In short, industry lobbying, combined with weak administrative capacity for sophisticated risk assessment and a presumption in favor of "free" markets, created a flawed process of oversight and protection against investments



that would deliver enormous profits in the short run but expose the financial system in the United States and other countries. The SEC's Office of Inspector General concluded its report in September 2008 that the CSE regulatory regime was "fundamentally flawed" and that the SEC had not effectively regulated the investment firms.<sup>1</sup>

### The American State Trips into the TARP Trap

Americans and U.S. businesses, as well as governments and markets around the globe, were unnerved by the Bush administration's stumbling search for a "solution." Press reports have tended to blame the personal failings of key policy makers—the short-sightedness and other flaws of President Bush, Treasury Secretary Henry M. Paulson, and congressional officials. Although some blame may lie with these figures, a more probing explanation for the zigzagging and uneven quality of the U.S. response would acknowledge the changing contours of the financial markets as the subprime meltdown broadened out to threaten financial institutions and the freezing of the credit market (effected by permitting Lehman Brothers to collapse suddenly without assessing the likely consequences).

The Bush administration's most substantial initiative to deal with the financial crisis—the Troubled Asset Relief Program (TARP)—offers a case study of the changing and, to some, incoherent U.S. government response. TARP was initially designed to buy up bad debt but then, in an extraordinary admission of its incoherent initial mission, flipped into a plan to recapitalize banks in exchange for granting the government equity.

The explanation that focuses on personality misses two critical and revealing features of the financial crisis. First, it assumes that there is a "solution" that an all-knowing "smart state" could design and impose to restore financial health. The truth is that policy responses by economically developed representative states face fundamental contradictions within the global economy that have prevented any from developing a full-fix solution. The rapid adoption of new phases of policy by central bankers—such as zero interest rates and credit or quantitative easing—illustrates this conundrum.

Second, and of particular interest to us, the cross-national variations in the response to the financial crisis and the distinction of the United States in originating the financial meltdown result to an important extent from the American state's comparatively uneven administrative capacity related to the skill and sophistication of its financial analysis and its crosscutting and divided lines of authority. The American state's weak administrative capacity not only opened the door to financial crisis, but it also trammels the efficacy of its attempts to rescue and to reconstitute the financial sector moving into the future.

Two underlying factors help account for TARP's incoherent approach and ineffectiveness. First, the personnel in the Treasury Department, SEC, and other front-line administrative bodies were uneven and, in key respects, inadequate to the challenge of monitoring the financial sector and then managing the ensuing crisis. (This incompetence is perhaps most dramatically conveyed in the ill-thought-out decision to permit Lehman Brothers to collapse suddenly, a decision that severely undermined confidence in the financial system around the globe.) The breakdown in oversight at the SEC resulted from too few and insufficiently trained personnel (Labaton 2008). In a revealing acknowledgment of its weak staff, the Treasury Department scrambled to hire new personnel to run TARP and ended up outsourcing critical tasks to professional asset managers. But even this new staff evaded the core problem presented by the logic of TARP—the assumption that asset prices could be assigned to securities with no or unclear value.

Second, the response by the U.S. government was confounded by divided lines of authority, not only between the legislative and executive branches but also within the administration's plethora of multiple and competing entities—the Treasury Department, Federal Reserve Bank, Federal Deposit Insurance Corporation (FDIC), SEC, and others. For instance, the Treasury Department's approach of bolstering large financial institutions was challenged by FDIC Chairman Sheila Bair. Bair openly campaigned, against the Bush administration line, for using federal funds to modify troubled mortgages that would help home owners. Uneven staffing and internal conflict contributed to the Bush administration's lack of preparation for a rescue plan. Although the financial crisis had been building for months, the collapse of major financial institutions in the early fall of 2008 caught the U.S. Treasury Department utterly unprepared. The initial three-page proposal, which asked for \$700 billion and wide discretion for its disbursement, was developed in a matter of days and without congressional consultation. The result was bipartisan outrage, which contributed to an initial rejection by Congress.

The administration's first approach (buying up toxic bad debt assets) was poorly conceived. Indeed, the rescue plan rested on a false or overstated set of expectations. For instance, the critical question of how best to measure the "real value" of the toxic assets was not spelled out in the legislation and remained elusive, forcing the Treasury Department to later shift strategies. This problem led to the eventual redesignation of TARP into a recapitalization program, a unilateral reformulation of such a large legislative initiative.

Thus, a major hurdle in implementing TARP was how to measure accurately the balance sheets of banks without "mark to market" inventory (i.e., the process of setting value based on the demand for financial instruments in market trades). With banks and other investors too worried to purchase

assets, there is little or no trading in the underlying mortgage-backed assets and therefore there is no or incomplete information about whether such securitized assets have any value. In the absence of robust market activity, it is difficult to set a value. In contrast, for instance, the Savings and Loan clean-up was simpler because the government's rescue body (the Resolution Trust Corporation) was able to engage in some reasonable mark to market accounting (as did Swedish banks in that country's early 1990s banking crisis) (Allen and Gale 2007; White 1991).

The Treasury Department's poor preparation and hurried assumption about a process to set value revealed a failure to understand that banks are too worried about the weakness of their balance sheets to engage in trading, thereby creating an impasse (only deepened by the sudden collapse of Lehman Brothers). The original idea of conducting "reverse auctions" turned out to be more daunting than first appreciated and was abandoned.

The immense scale of the TARP task was underestimated in part because the Bush administration was blinkered by an unwavering devotion to the notion of "free" markets but also because it lacked the sophistication to fully understand what it was proposing to accomplish. The result of poor design was a shifting set of approaches that careened from the planned objective of acquiring bad debt to providing capital to banks in exchange for granting the government equity when the initial effort failed. Less than two weeks after TARP was enacted, the Treasury decided to invest much of the \$700 billion in banks; \$115 billion was invested in eight of the largest financial institutions, including Bank of America, Citigroup, and JPMorgan Chase, with another \$155 billion distributed to 77 smaller banks. The Treasury approach to recapitalization lacked targeted conditions to spur investment and has produced disappointing results, according to the Government Accounting Office and an oversight body created by Congress. Indeed, senior Bush officials initially rejected Britain's approach as "nationalization [and a] . . . punitive approach"; it was the failure of its administration's policies that compelled policy change, though ideology and weak analytic capacity continued to hinder its diagnosis of the problem and development of an appropriate remedy, the continued failure of alternative policies under Bush may prompt the Obama administration to adopt a more full blown nationalization strategy.<sup>2</sup>

### Government as Instrument

The government's response to the financial meltdown deepened the crisis by its double action of first expanding the reach of the state and then ceding this new authority back to the groups and individuals with ties to the banks, investment firms, and manufacturers that became the beneficiaries of the new programs. In the first move, Republican leaders, including President

Bush, joined with Democrats to discard their earlier principles of anti-statism to rally behind authorizing \$700 billion and over \$7 trillion more in loan guarantees for what was presented as serving the common good of the nation.

The second move relinquished back to certain financial and manufacturing firms substantial influence over the government's newly expanded authority and resources. This double move—expanded government and wider sectional influence—compromised internal government deliberations and decision making. The ostensible aim of advancing the national interest became a tool to serve and privilege particular industries.

Particularistic interests have penetrated government decisions through three avenues. First and most obviously, industry moles have permeated government. Senior officials from the financial industry and other sectors have held senior positions charged with doling out money and authority. In one of the clearest cases, Treasury Secretary Paulson was a former head of Goldman Sachs, a firm receiving new status as a holding bank, making it eligible for Federal Reserve funds and guarantees. The giant insurance firm, AIG, was rescued in a huge bailout (initially \$85 billion, then supplemented with \$38 billion and perhaps additional investments<sup>3</sup>); Goldman Sachs was a large AIG trading partner and stood to lose \$20 billion if it collapsed.<sup>4</sup> Paulson multiplied the presence of industry personnel by hiring a number of present and former Goldman Sachs employees to administer TARP.<sup>5</sup>

Having former industry heads deciding how to dole out government funds not only helped certain firms, it also hurt others. Goldman Sachs's rival, Lehman Brothers, was denied support in a decision that has been widely criticized as undercutting confidence in the credit market and accelerating the fall 2008 credit crunch (globally as well as in the U.S.).<sup>6</sup> In addition to omitting certain firms, the Bush administration chose not to offer direct support for another group without a strong proponent sitting at the table of decision makers—namely, home owners struggling to avoid foreclosure.

A second, more shadowy avenue to shape the government's financial rescue policy has been lobbying. Such lobbying has occurred throughout the 1990s and 2000s, with mortgage banks and brokers contributing \$847,000 to the Bush reelection campaign in 2004.<sup>7</sup> The lax regulation and oversight by the SEC and the huge performance-based expansion in Fannie Mae and Freddie Mae were responses to intense and prolonged lobbying by the finance industry.

The third avenue for molding government policy is the most difficult to discern. There is a form of structural constraint that operates through the anticipated fear among government officials of the loss of jobs and tax revenues that would result if massive holders of U.S. debt (such as the Saudis or Chinese) decided to withdraw their investment or to stop using the dollar as a reserve currency (Lindblom 1977). In October 2008, the U.S. Treasury

securities amounted to \$3,041.7 billion, of which \$652.7 billion was held by China, \$585.5 billion by Japan, and \$187.7 billion by a group of oil exporting countries dominated by Saudi Arabia. Since then the amounts have grown considerably as the Federal Reserve has issued Treasury notes, bonds, and securities to fund bail outs and other measures. These states, together with other sovereign wealth funds, exert a complex influence on American policy makers: given the scale of their investment, they harbor a strong interest in maintaining the U.S. public debt as a viable resource that can be repaid over the long run. Yet this very global integration makes U.S. debt funding vulnerable to sudden collapse.

This structural constraint extends the influence of sectional interests beyond the direct connections between personnel on Wall Street and key government institutions. Bush officials concluded that their top priority was to restore financial markets rather than to directly reinvigorate the manufacturing or service industries. The same fear of financial instability drove the New York Federal Reserve Board's coordinated rescue of the Long Term Capital Management hedge fund in 1998 (a decision that looks unjustifiable in retrospect since it sent a positive signal to high risk leveraged based speculation); it also explains why the Bush Treasury Department provided almost limitless capital to the AIG insurance company. Maintaining the confidence of American and foreign investors is imperative for sustaining the U.S. debt load and preventing flight to other investments.

The degree of this dependence is revealed in the myopic and poorly conceived response in fall 2008 by the Treasury and the Federal Reserve to the deepening and diffusing crisis. There was no intellectually defensible framework that guided the decisions about which firms to rescue, when, and how to operationalize such key decisions as the federal guarantee of Freddie Mac and Fannie Mae or the implementation of TARP. The perceived threat of a systemic financial meltdown that would prompt a massive flight of capital appeared literally to spook senior financial policy makers; Federal Reserve Chair Ben Bernanke warned members of Congress of collapse and the need for desperate measures. The resulting haphazard and rushed policy was, in this sense, a response to perceived imperatives of global finance as much as a catering to individual lobbyists or former employees at major financial firms.

Barack Obama openly acknowledges the broader constraint of capital markets even as he cracks down on direct lobbying. Referring to swings on Wall Street, he explained that "I've got to pay some attention to market psychology [given the]...the loss of trust both in the marketplace and in government." Even without high-priced Wall Street lobbyists, President Obama openly acknowledged the reality that "restoring that trust [on Wall Street]...is going to be very important."<sup>8</sup>

Lee Ann Banaszak's chapter reports a long and more diverse lineage of sectional penetration of the American state. In particular, she provides

a deeply researched account of how women activists succeeded in placing themselves in federal government structures to advance feminist aims.

### Legitimacy Deficit

Generations of policy makers and social thinkers have treated the legitimacy and durability of the political and social systems as inherently unstable and subject to disruption under situations of economic crisis and significant or rising economic inequality. Karl Marx and his progeny argued that economic and social relations were fundamentally conflictual and subject to instability. Changing economic conditions, they suggested, would require increasing government intervention to ensure private sector profitability, which in turn would erode claims of popular sovereignty and generate conflict between the classes. Non-Marxists like Karl Polanyi (1944) similarly found the concurrent and causally interrelated development of state intervention and market expansion: state power was a necessary element in changing society to accept market processes and competitive capitalism through the punitive or incentivized means of government public policy.

The British sociologist T. H. Marshall (1964) acknowledged that the private enterprise system and representative democracy were in conflict but insisted that the conflict was reconcilable through the democratic means of “politics against markets” (Stephens 1979; Esping-Andersen 1985). In particular, Marshall argued that the development of status equality among citizens, the universalizing of political rights to participate in the representative process, and social rights that lifted the floor of material subsistence “provided the foundation of inequality on which the structure of [capitalist] inequality could be built” (1964, 34).

The legitimacy of the American state as representative and as devoted to the national interest conflicts in important respects with the intense interests and beliefs of a plethora of groups and individuals. John Ferejohn’s chapter presents a probing examination of multiple and at times competing conceptions of legitimacy and the challenges in analyzing legitimacy.

We now turn to three factors that may strain the American state’s legitimacy: significant and rising economic inequality; the targeting of public money to business at a time of significant and growing economic pain for American families; and the contradictory nature of government policies.

### Legitimacy amid Economic Collapse

Sustaining the consent of Americans in an era of exceptional economic dislocation is made particularly daunting because of extraordinary economic inequality. Despite important steps toward greater racial, ethnic,

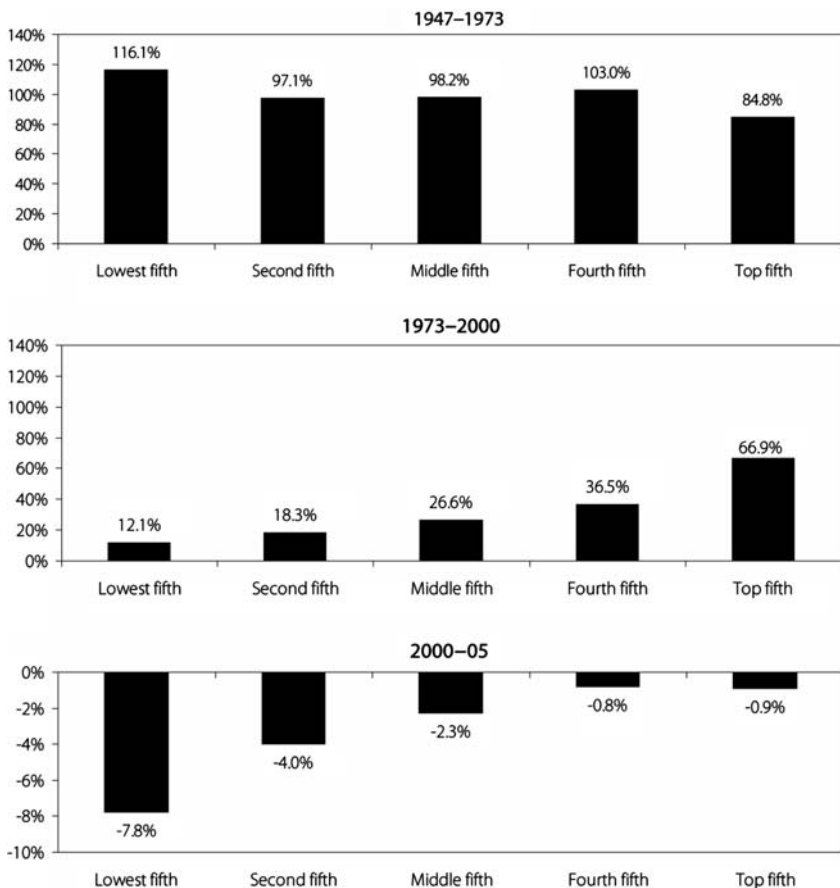
and gender equality, as epitomized by Barack Obama's election as president, the distribution of income and wealth across American society has become increasingly concentrated among its most affluent citizens, and this increased density has happened at a level and rate that are rare among affluent democracies.<sup>9</sup>

Independent and well-respected studies based on authoritative government and non-government data demonstrate that gaps of income and wealth have grown since the 1970s, not just between the poor and the rest of society, but also between privileged professionals, managers, and business owners on the one hand, and the middle strata of white-collar and blue-collar middle class on the other hand. In terms of income distribution across quintiles, perfect income equality would mean that each fifth of the population would receive 20 percent of the country's income.<sup>10</sup> In 2005, however, the most affluent fifth received 48.1 percent of family income; the middle class (the third and fourth fifths) earned 15.3 percent and 22.9 percent, respectively, and the bottom 2 quintiles each received less than 10 percent. Put simply, the richest 20 percent enjoyed nearly half of the country's income—and fully 21 percent of family income went to the top 5 percent of Americans.

The rich, of course, have always enjoyed a disproportionate hold over income. The top quintile has cornered more than 40 percent of the country's income since at least 1947. But patterns of income growth across segments of the American population have shifted significantly over time. For twenty years after World War II, the hold of the top fifth on the country's income was slightly weakened as income at the top grew less rapidly than income in the middle and at the bottom. After 1973, though, the trend toward income equalization reversed. Figure 1.1 displays the sharply different distribution of income growth that prevailed in 1947 to 1973 versus the period after 1973. Between 1973 and 2000, income growth was much more rapid for those in the top fifth than for all other Americans, and growth was especially anemic toward the bottom: the top fifth experienced about double or more the rate of increase for 1973–2000 compared to the other quintiles, including middle income earners. It also experienced far smaller declines than the bottom three quintiles during 2000–2005.

One of the most striking patterns of recent economic distribution is that inequality increases as you move up the ladder. Even within the top fifth of income earners, rates of gain were faster for the richest 5 percent and, especially, the top 1 percent. Figure 1.2 shows that the concentration of income in the top 1 percent since the early 1990s is unparalleled since the 1920s and early 1930s.

As the distribution of income has tilted sharply toward the top, the most affluent have amassed an even larger slice of the country's wealth (including stock holdings, mutual funds, retirement savings, ownership of property, and

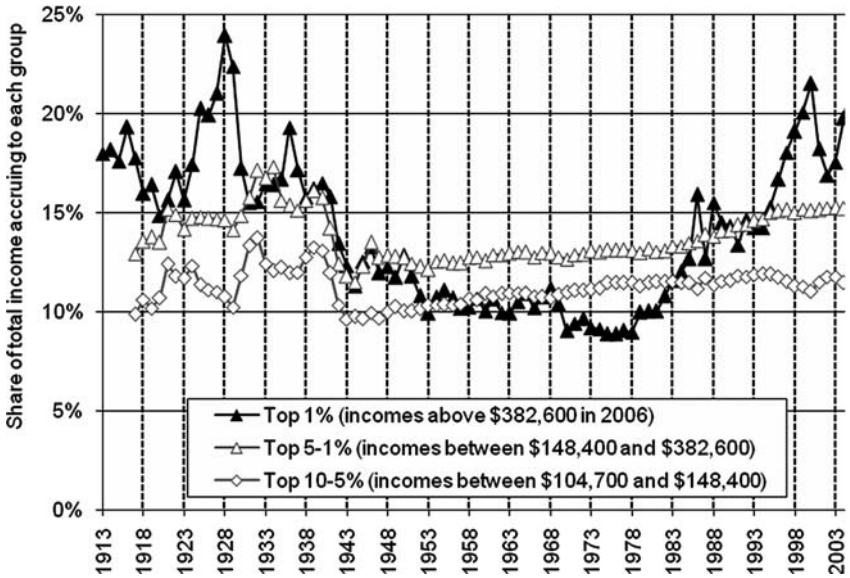


**Figure 1.1.** Real Family Income Growth by Quintile, 1947–2004. Source: Figure 1L from: Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2006/2007*. An Economic Policy Institute Book. Ithaca, NY: ILR Press, an imprint of Cornell University Press, 2007.

other assets). Table 1.1 is based on a survey of consumer finances conducted by the Federal Reserve Board in 2004 as part of its Survey of Consumer Finances; it shows the distribution of household income and net worth (i.e., total family assets minus its liabilities such as mortgages and other forms of debt). The top 1 percent of households drew 16.9 percent of all income but wielded control over more than double this proportion of the country's wealth (34.3 percent). By contrast, the supermajority of the country—the “bottom” 90 percent of households—earned the majority of household income (57.5 percent) but controlled only 28.7 percent of the country's wealth.

Inequalities in wealth and income in the United States are much greater and have risen faster than in comparable advanced industrial democracies





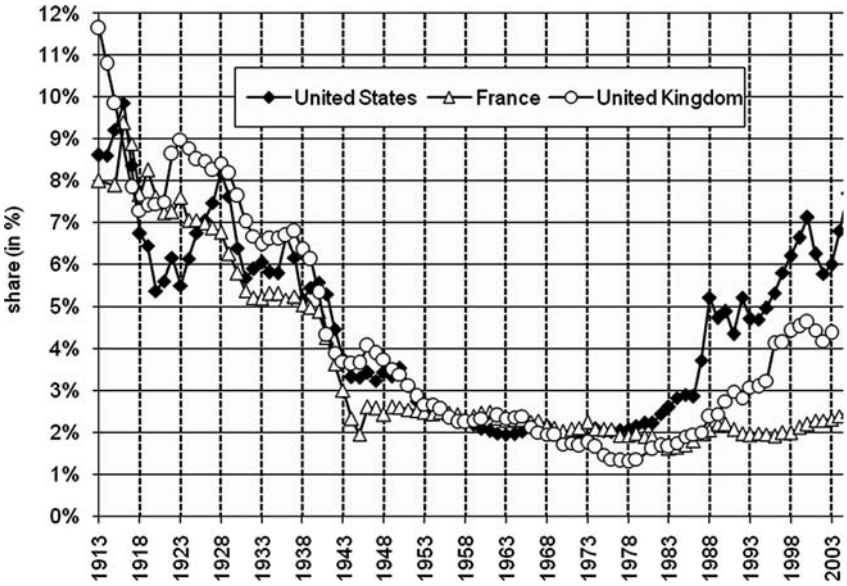
**Figure 1.2.** Concentration of Income in Top 1 Percent, 1913–2006. Source: Piketty and Saez (2003), series updated to 2006. Income is defined as market income including capital gains. Top 1% denotes the top percentile (families with annual income above \$382,600 in 2006). Top 5–1% denotes the next 4% (families with annual income between \$148,400 and \$382,600 in 2006). Top 10–5% denotes the next 5% (bottom half of the top decile, families with annual income between \$104,700 and \$148,400 in 2006).

**Table 1.1.** Distribution of Income and Wealth, 2004

	Distribution of:		
	Household income	Net worth	Net financial assets
All	100.0%	100.0%	100.0%
Top 1%	16.9	34.3	42.2
Next 9%	25.6	36.9	38.7
Bottom 90%	57.5	28.7	19.1

Source: Table 5.1 from: Lawrence, Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2006/2007*. An Economic Policy Institute Book. Ithaca, NY: ILR Press, an imprint of Cornell University Press, 2007.

in Europe, Canada, and other similar countries. Figure 1.3 presents information about income trends for American families compared with families in Britain and France. The proportion of income accruing to the top one-tenth of one percent of families ran along parallel tracks for much of the twentieth century. All three countries decreased inequality from the end of World



**Figure 1.3.** Top 0.1% Income Shares in the U.S., France, and the U.K., 1913–2006. Sources: United States: Table A1, column P99.9–100. France: Computations based on income tax returns by Piketty (2001b), Table A1, col. P99.9–100, and Landais (2007). United Kingdom: Computations based on income tax returns by Atkinson (2001), col. Top 0.1% in Tables 1 and 4. and Brewer, Saez, and Shepard (2008). In all three countries, income is defined before individual taxes and excludes capital gains. The unit is the family as in the current U.S. tax law.

War I through World War II and until the 1960s. But from the mid-1970s on, the United States rapidly diverged from its two allies and became far more unequal. By 1998, the share of income held by the very rich was up to three times higher in the United States than in Britain and France.

Although evidence of economic inequality is relatively clear, there are significant debates over its causes. A range of demographic, technological, and political factors have been identified as key drivers (see the discussions in Burtless 1999; and Mishel, Bernstein, and Boushey 2003, 56–82). Disputes generally focus on the relative impact of these factors.

There are several basic distinctions in the analysis of economic inequality. As suggested above, economic equality focuses on distribution—how much of income and wealth is controlled by distinct segments of society, which are often defined in terms of quintiles, decentiles, and the top 1 percent of the population or households. A common measure of inequality used by government agencies and a range of analysts is the “gini coefficient,” which ranges from zero (each individual has exactly the same income) to one (one person controls all income). An average is obviously a different kind of measure.

Average income levels in the United States are comparatively high (\$39,728 compared to an OECD average of \$28,761 [excluding the U.S.]) (Mishel et al. 2003: 325, Table 8.1), and the nation as a whole has become wealthier as well. The distinction between the average and the distribution of income and wealth is a common area of confusion.

Another important distinction is between levels and rates of change in inequality. Compared to the Nordic countries of Sweden and Finland, the level of inequality—as measured by the gini coefficient and other measures of income distribution—is considerably higher in the United States. By contrast, the rate of increased inequality has been surprisingly steep in Sweden and Finland (exceeding that of the U.S. for certain periods). Even with changes in Nordic countries, however, the levels of economic disparities are higher in the United Kingdom and even higher still in the United States.

How state policy impacts taxation and income or in-kind transfers has significant impacts on inequality. Inequality measured pre-tax and pre-transfer reflects market distributions as well as important institutional features including unionization and labor-management relations. By contrast, post-tax and post-transfer measures reveal the redistributive effects of government policy. Although inequality increased sharply in Nordic countries during recent decades, government policy substantially offset market-generated inequalities. Tax and transfer policy helps to explain why Finland and Sweden experience less income inequality than the United Kingdom and, especially, the United States.<sup>11</sup>

Economic disparities across race offer a telling illustration of these important distinctions. Following the civil rights legislation and activism, the absolute levels of income and wealth enjoyed by African Americans and Latinos rose, but they remain far behind white America in distributional terms. In the late 1980s, the median white household earned 62 percent more income and possessed twelvefold more wealth than the median black household. Nearly two-thirds of black households (61 percent) and half of Hispanic households lack any net worth, as compared with only a quarter of their white counterparts.<sup>12</sup> Even young, married black couples in which both adults work—a family structure and work history that are singled out as an engine for reducing economic inequality—still earn 20 percent less income than their white counterparts and possess 80 percent less net worth. More recent analyses continue to show a similar pattern of improvement in absolute terms but continuing racial disparities in distributional terms. According to an analysis of the Federal Reserve Board's Survey of Consumer Finances, the median net worth of African Americans rose nearly fourfold, from \$5,300 in 1989 to \$19,000 in 2001. Nonetheless, the median net worth of whites in 2001 was more than tenfold greater (\$121,000) than for African Americans (\$19,000). Broadening the analyses to Latinos in 2004, the

median white non-Latino family enjoyed double the income of non-white and Hispanic families (49,400 versus \$29,800) and over fivefold more net worth (\$140,700 versus \$24,800). The bottom line is that African Americans have increased their income and wealth but continued to have much less income and net worth than whites into the twenty-first century (Bucks et al. 2006; Kennickell 2003, 2006).

Economic inequality is a broad environmental condition that may strain an American ethos of opportunity, even one that has shied away from promises about outcome. The critical issue is how economic inequality interacts with the perceptions and trust of citizens as well as the coherence of the state's organizing principles among governing elites. Economic inequality, public trust, and coherent policy have cast a cloud over the sustainability of the American state's legitimacy.

### Uncertain Stability of Public Trust

The general public's sustained belief in the American state has been the subject of significant research, especially in the wake of the Vietnam War and protests, the Watergate crisis, and inflation during the 1970s. Researchers distinguish between "diffuse" support for the political system as a whole and "specific" evaluations of incumbent officeholders (Easton 1975, 445). Scholars find dramatically different results: stable majorities of everyday Americans during the 1960s and 1970s continued to support the political system and to express pride in the country's political arrangements even though specific government officials (notably, Presidents Lyndon Johnson and Richard Nixon) received strong negative approval ratings (Nie, Verba, and Petrocik 1976, 35-36; Miller, 1974a, 1974b, and 1979; Citrin 1974; Citrin and Green 1986; Weatherford 1987).

The initial concern, then, that the widespread sense of powerlessness and cynicism would threaten the established political and social order failed to materialize during the 1970s and 1980s; even individuals with quite strong negative attitudes about the political system were unable to identify specific changes in the system of government that they favored (e.g., Sniderman 1981, 130ff).

Past research poses two helpful lessons for analyzing the legitimacy of the current political system among everyday Americans. First, strong disapproval of a president can and does coincide with support for the overall political system. It is a mistake, for instance, to conclude that the legitimacy and stability of the existing political order threatened to unravel owing to President George W. Bush's historically low popularity as measured in approval ratings. Indeed, the election of Barack Obama on the promise of change could well reinforce the legitimacy of the political system by demonstrating its responsiveness.

A second lesson is that regime legitimacy is contingent on context. The events of the 1960s and 1970s demonstrably resulted from the discrete policies and actions of specific presidents—President Johnson’s highly visible (though misleading) set of decisions to expand troop levels in Vietnam and refusal to withdraw them in the face of military setbacks and domestic protest, as well as President Nixon’s abuses of power, which generated constitutional crises. By contrast, the circumstances of the 2008 financial breakdown may pose quite different dynamics that extend beyond the policies of individual administrations to raise questions about the general operations of the economic and political systems. Rather than assuming that the political order is safely stable based on earlier research, it is critical to track and closely study system legitimacy in the wake of disruptions in the financial and economic system that are unprecedented in the period since World War II.

The uncertain and fraught nature of sustaining legitimacy in today’s state are explored adroitly in Cathy Cohen’s chapter on the alienation and hostility of black youth toward the political system, regardless of class. In addition, the chapters by Larry Bartels and by Benjamin Page and Lawrence Jacobs introduce another critical strain on the American state’s legitimacy—its weak responsiveness to the preferences of the mass public. Page and Jacobs reveal a surprising broad cross section of Americans (including Republicans and high income earners) aware of and opposed to the current scale of income inequality and in favor of government programs (and the necessary taxes) to support them in order to expand opportunity and security. Jobs paying good wages should be available to everybody. Policy makers mostly fail to respond to this broad consensus. Larry Bartels goes further, demonstrating the disproportionate influence of the rich on U.S. senators compared to middle and lower income earners.

### Contradictory Policy: Helping Business and Hurting Citizens

It is important to widen the analytic lens from a closely cropped study of public attitudes in order to consider the coherence of basic government policy. We would argue that the legitimacy of the American state faces a growing future deficit as it simultaneously funnels trillions of dollars to businesses to restructure them and seeks to sustain the trust of everyday citizens who bear the consequences of that restructuring. This deficit may receive some short term relief from the new president but will not dissipate quickly. Indeed, the Congressional Budget Office and others are predicting that measures to revive the economy, subsidize financial markets, and cover the costs of the Iraq and Afghan wars will produce colossal annual budget shortfalls in excess of a trillion dollars and 10 percent of the gross domestic product, the highest levels since World War II (Stiglitz and Bilmers 2008).

The “messaging” of government officials and allies that helping business helps American families is shrewd but it runs into two problems. First, there is widespread suspicion of favoritism for particular industries (e.g., banking over automotive) or firms (Goldman Sachs over Lehman Brothers) at a time of perceived neglect of the everyday citizen who has yet to receive comparable support. The populist backlash against what is portrayed as venal deal making among well-placed insiders has been fueled by the government’s failure—according to the Government Accounting Office and the press—to ensure that the tens of billions of dollars funneled to banks have been tracked; they may even have been committed to paying bonuses to executives.

The second and more profound hurdle is the cycle of reinforcing contradictions in government policy. The recession damaged two golden birds with one fell swing—it rapidly reduced tax revenues for state and national government at the same time that it rapidly eliminated many jobs and thereby increased the costs for a host of safety-net provisions for unemployment, food stamps, and other essentials. Government efforts to stabilize the financial system and revive a crumbling economy were imperative, earning extraordinary bipartisan support. And, yet, the intended remedy—rescue packages to help sustain businesses as they struggled to reconstitute themselves—accepted or actually encouraged these firms to take the necessary steps to survive, namely laying off employees and taking other steps that diminished the living circumstances of everyday Americans. Loans to the automotive industry, for instance, are tied to reducing the wages and benefits of union members. The hundreds of billions of dollars given to financial investment firms are designed to keep them afloat as they “write off” “toxic” loans, which means in practice evicting families from their homes. Even proposals to streamline health care record keeping, which are geared to reducing “unnecessary” costs, will require firing thousands of workers who currently process the paperwork.

In short, there is a fundamental incoherence in government policy: government policies that ostensibly “help” everyday families in practice hurt many. The state’s legitimacy as the incarnation of the popular will is undercut by the perception of favoritism and by the reality that government funds and requirements diminish the living conditions of certain families by pushing up unemployment in some areas, cutting wages in others, and generally accepting the decline in the credit and home ownership of many families.

The contradiction of “help that hurts” registers in a ballooning fiscal deficit, which is on track to top one trillion. The tendency to portray the federal government’s budget deficit as the work of undisciplined and corrupt politicians larding legislation with “pork” misses a more fundamental dynamic. Government help to business to sustain its operation end up

undermining the economic circumstances of everyday families, which the government then seeks to partially offset through spending on unemployment checks, subsidies for food, health care services, and other cash and in-kind benefits.

The legitimacy problem is that the state's imperative to sustain core industries like finance and automotive collides with its requirement to maintain its standing as a government for and by "the people." This collision of opposing necessities may eventually show up in surveys of public trust in the political system; it also manifests itself in the incoherence of government policy and the confusion of government officials in the Bush and Obama administrations who find themselves both advocating for policies to sustain business while also approving policies to respond to the natural consequences.

Suzanne Mettler's chapter reveals a similar dynamic of contradictory initiatives by government. In the past, state loans for college education widened access to tertiary level institutions as a necessary element in advancing the American creed of equal opportunity. But mounting costs and pressure from the better organized sectors led national policy makers since the 1980s to scale back support for the less advantaged while continuing to serve the already advantaged. The implication is that steps to control ballooning budget deficits collide with policies to foster shared opportunity.

## CHANGE AND CONTINUITY

The current economic maelstrom has given rise to breathless media reports of the utter destruction of American business. Phrases like "collapse" and "free fall" are rampant. Analyses of American political development and economic history make clear, though, that even unusual economic turmoil spurs not only significant and salient changes, including the bankruptcy of long-standing businesses and enormous government interventions in the private sector, but also the continuation of already established norms and patterns of behavior and practice. The administrative incompetence that set the trap for the current financial breakdown and the looming legitimacy deficit that may precipitate increased alienation and declining support for the political system were structured into American political development and are likely to be reconstituted in the new business and government institutions that emerge. The exceptional expectations of President Obama to deliver the transformative change he promised during the 2008 presidential campaign will be complicated by a mix of significant change along with substantial compromises necessitated by existing institutional reality.

Unfortunately, few scholarly models of political systems are well-positioned to analyze this duality of change and continuity in current political

economic developments. The general orientation of many models is toward studying stability and the formation and long-standing maintenance of equilibrium. For instance, the varieties of capitalism approach to political economy is essentially about stability and equilibrium, with a focus on identifying the self-reinforcing logic of economic and political development (Hall and Soskice 2001; and see King and Rueda 2008 on the rise of cheap labor regardless of the form of capitalism). Analysis of “path dependence” similarly emphasizes the positive feedbacks that load the dice toward the reproduction of established institutional dynamics arising from the political equivalent of economic investment in fixed costs (Pierson 2000). Path dependent arguments imply incremental, not dramatic, change in policy trajectories and offer little for the task of understanding the duality of substantial but embedded change.

Students of economic and political institutions have similarly tended to focus on equilibrium, with debate focused on its institutional conditions (Shepsle 1979). Long-standing analyses of “incrementalism” (Lindblom 1959) and, for instance, the development of budgets (Wildavsky 1964) and social welfare programs (Derthick 1979) point to gradual adjustments in institutional and policy frameworks that stand out for their remarkable stability and stasis.

While analyses of institutions and policy regimes focus on durability and stability, the study of political change (especially when precipitated by severe economic demands or downturns) tends to focus on the propensity for crisis and collapse. The long-standing “crisis school” warned of the real or imminent collapse of market-based democracies owing to citizens “overloading” government with their demands for more and more (Huntington 1975), declining profitability (Mandel 1975), growing demands to prop up markets and reassure citizens (O’Connor 1973), and other factors. The common theme is that the state faces a persistent threat of collapse due to exogenous shocks that trigger systemic breakdowns, political regime reordering, or collapse.

In short, existing scholarly analyses are not well-positioned to analyze a political economic regime that is undergoing significant change (as illustrated by the recent financial market turmoil) but avoiding collapse. **Enduring political systems experience stress and significant change without collapse.** We need to understand this process.

Although critical aspects of America’s twenty-first-century system of political and economic operations, norms, and relationships remain entrenched, the generation of mutual (if not proportionate) benefits and legitimacy to citizens and the business world is unsustainable in the future for several reasons. First, the current political and economic systems are not satisfying the expectations of Americans for a high standard of living and business



for strong profitability. Even prominent business leaders and conservative economists question whether today's political and economic systems can continue as they have.

Second, the commitment of trillions of dollars to resuscitating businesses and the financial sector significantly limits the public and private sector's future capacity. It burdens government (and therefore citizens) with massive debt and saps the government of its legitimacy as the embodiment of the popular will. The twin concerns are that the current interventions are not renewable and inflict future generations with deep and damaging consequences.

Models of punctuated equilibrium do helpfully account for long periods of stability that are on occasion broken by significant electoral shifts that bring to power a new party, changes in public opinion, or "changes in society" (Baumgartner and Jones 1993; Givel 2006; Gersick 1991). The unsustainability of the American state, however, stems from a more fundamental break in the interconnection of the economy and political system as well as a more thoroughgoing interconnection of society and politics.

The strains in sustaining the American state are also conditioned, as King and Lieberman argue in their chapter, by its distinctive origins, modalities, and economic dynamics, which are much better understood now after three decades of significant scholarship moving beyond pluralism and Weberian analyses. A once-dominant approach to studying American politics rested on a pluralist framework with several sorts of analytic consequences. First, the horizontal separation of powers and vertical federalism diminished the centralization of governing and institutional resources that are necessary for strong national administrative state capacity. Second, the American polity was deliberately designed to play interests—social, political, economic, institutional, and so forth—against each other, constraining majoritarianism and rendering public policy outcomes the product of conflicts and resolutions among these interests. Pluralism precluded unified elitism.

This complacent view of the comparatively weak American state was exploded by at least two intellectual developments, themselves grounded in empirical changes in American politics. First, the national government promoted and maintained a particular racial order that divided the country and structured American political development from the beginning (Cohen 1999; Frymer 2004; Gerstle 2001; Katznelson 2005; King 2007; King and Smith 2005; Lieberman 1998; Mills 1997; Roediger 2005; Skowronek 2006; Skrentny 2006). Over the past half century or so, the federal government partially dismantled segregated race relations. This is hardly the ineffectual and deferential American state that the "weak state" view assumed. Second, a series of major scholarly works, encouraged by Theodore Lowi's *The End of Liberalism* (1979) and commencing in seriousness with Stephen Skowronek's classic study *Building a New American State* (1982), moved

beyond dichotomous choices between weak or strong states that typically dismissed the U.S. case as “exceptional” and instead analyzed the particular institutional and other features of the U.S. case (Carpenter 2000; Johnson 2007; Mettler 2002). Among other achievements, Skowronek’s work shifted discussion from the negative question (why no American state?) to the more positive question—what kind of state does exist in the United States (Orren and Skowronek 2004)? How can the institutional changes and developments that have evolved historically be described and explained (Pierson 2007)?

### SITUATED FUNCTIONALISM

The Obama administration came to office committed to enhancing the state’s administrative capacity to restore the functioning of private markets. In a long-established but often misunderstood paradox, state capacity creates and sustains private markets (Brown and Jacobs 2008; Polanyi 1944). Obama’s efforts to restore regulation over financial markets are geared toward reestablishing confidence in the economic system and propping up critical industries—like finance and automobile—to allow them to restructure by, in part, reducing their workforces; and to provide expanded help for the growing ranks of unemployed American workers. His administration has also taken aim at reversing the kind of shoddy or incomplete oversight by the SEC and other regulators that permitted Bernard Madoff’s \$50 billion Ponzi scheme and a Wild West financial sector. Questions are also being raised about overseeing or taking over the job of so-called independent ratings agencies whose dependence on earning fees from the firms whose securities they rated compromised their judgment.<sup>13</sup> Increased regulation will likely (as earlier critics warned) introduce restrictions and impede future growth, though also reduce the probability of industry-wide crisis.

The Obama administration is also committed to using the state’s administrative capacity to expand collective social welfare provisions. Taking steps to improve the living circumstances of everyday Americans hurt by the economic downturn may strengthen state legitimacy. Taking steps to halt or slow down the massive wave of home foreclosures and extend health coverage to more Americans may counterbalance the government’s persistent responsiveness to the affluent and powerful as exemplified by the Wall Street bailouts (Bartels 2008; Hacker and Pierson 2005; Piketty and Saez 2007).

Whether Obama succeeds in restoring private markets and renewing the state’s legitimacy are open questions. America’s emerging fiscal crisis of successive trillion dollar deficits expresses the contradictions of the American

state and complicates its sustainability. Tens of billions have been and will continue to be pumped into the financial, automotive, insurance, and other industries to keep them afloat and, yet, these lifesaving measures also erode the credible notion of a “private” sector. The more government intervention, the greater the public review and influence on management prerogatives. Further demonstrating that government intervention is redefining rather than merely providing an uncomplicated “rescue” is the impact on credit markets: gargantuan government expenditures to rescue businesses necessitate a corresponding ballooning of public debt, which in turn will eventually drive up interest rates and constrain business efforts to secure loans on attractive terms. An additional contradiction exists: businesses benefiting from government largesse are basing their revival on cutting employees, benefits, and pay, which in turn diminishes the living circumstances of everyday Americans—producing the very outcome that the Obama administration sought to avoid and even reverse.

The concluding chapters in this volume offer telling accounts about the Obama administration’s prospects. Liz Cohen warns against losing historical perspective, insisting that contemporary concern about an unsustainable American state be situated in longer term evolution of state development and the contours of equality and inequality in America. Stephen Skowronek shows how the American state transformed into a “discretionary policy state” after the resolution of fundamental questions about democratization and inclusion in the 1960s; yet he finds that the absence of a “coherent whole” in respect to the American state and the lack of “seamless transitions” between key periods of governance helps understand why a sustainability crisis arises.

Understanding the nature and contradictions of the Obama administration and the course of economic and political developments during this period requires, in our view, analyses of both micro-institutional dynamics as well as larger systemic developments. A reconstructed form of functionalism may help to complement fine grained institutional analyses.

Reconsidering functionalism and political systems must be based on a candid and careful assessment of its limitations. Functionalism fell out of favor after the 1970s largely because functional theorists’ preoccupation with the mechanistic performance of predetermined imperatives precluded due attention to political conflict, empirical attention to causality, and the potential for system-level strain that might arise from policies that were detrimental to the political and economic order. Despite its limitations, the crisis of our times may justify a reconsideration of functionalism that incorporates conflict and empirically grounded analyses of institutional and societal situations. The “critical functionalist” tradition of the 1970s (e.g., Gans 1972; Piven and Cloward 1971 [1993]) included some of

the mechanistic limitations of functionalism more generally, but it offers an important platform for combining functionalist analysis of broader system dynamics with the grounded analyses of institutions and political conflict.

Situated functionalism is valuable in studying state sustainability. State operations that sustain private markets and the legitimacy of the existing political and social systems are fundamental anchors for the sustainability of society and government. Whether and how the state maintains market operations and legitimacy are open questions that require close and critical inspection. After the fall of 2008, the American state's sustainability requires extensive and enduring analysis.

## NOTES

1. U.S. Securities and Exchange Commission, Office of Inspector General Office of Audits, *SEC's Oversight of Bear Stearns and Related Entities: The Consolidated Supervised Entity Program*, September 25, 2008, Report No. 446-A.

2. In the Stamp Lecture at the London School of Economics on January 13, 2009, Federal Reserve chairman Ben Bernanke revived the idea of the Treasury using TARP money to buy up banks' so-called "toxic assets" but did not detail how values for those assets would be reached. And see "Nationalization Gets a New, Serious Look," *New York Times*, January 26, 2009.

3. "A.I.G. May Get More in Bailout," *New York Times*, November 10, 2008.

4. "Behind Insurer's Crisis, Blind Eye to a Web of Risk," *New York Times*, September 28, 2008. The head of Goldman Sachs participated in the group gathered urgently in the Federal Reserve Bank of New York who organized the federal bailout; he was the only Wall Street chief executive present.

5. "The Guys from 'Government Sachs,'" *New York Times*, October 19, 2008.

6. For Treasury Secretary Paulson's response to criticisms about the Lehman Brother decision see the interview with him in *Financial Times*, December 31, 2008.

7. Quoted in "White House Philosophy Stoked Mortgage Bonfire," *New York Times*, December 21, 2008.

8. Barack Obama interview with CNBC on January 7, 2009.

9. Data on economic inequality has been collected from a number of authoritative sources including the U.S. government (e.g., U.S. Bureau of the Census, U.S. Bureau of Labor Statistics, U.S. Bureau of Economic Analysis, and U.S. Internal Revenue Service) and the Luxembourg Income Study. Information on the distribution of income and other economic rewards in the United States can be found in Mishel, Bernstein, and Boushey (2003). Evidence that compares income and wealth distributions in the United States and other advanced-industrial democracies can be found in the Luxembourg Income Study (<http://www.lisproject.org>).

10. Unless otherwise noted, the next three paragraphs are based on Mishel et al. (2007), Table 1.9, Figure 1L, and Table 5.1.

11. A number of studies document income inequality cross-nationally. A nice synthesis can be found in Kenworthy (2008, chapter 3). The Luxembourg Income Study Web site posts a number of studies of cross-national inequality.

12. This analysis is based on Oliver and Shapiro (1997, 86–90, 96–103), a survey of income and wealth among African Americans from 1987 to 1989 (unfortunately, a more recent comparable survey does not exist). The survey shows that the median income for white households during that period was \$25,384 as compared with \$15,630 for their black counterparts; the net financial assets of whites was \$43,800 compared with \$3,700 for blacks.
13. “Debt Watchdogs: Tamed or Caught Napping?” *New York Times*, December 7, 2008.

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## 2

# Is Inequality a Threat to Democracy?

*John Ferejohn*

### INTRODUCTION

This volume was provoked by concerns about the rapid increase in income inequality in a number of the advanced democracies in the past few decades.<sup>1</sup> This increase is most pronounced in the Anglo Saxon democracies, though it is not confined to them, and dates from the mid-1970s. And it may have accelerated after 2001. It is characterized by stagnant or slow income growth throughout most of the income distribution, and very high rates of income growth at the very top. Explanations for the increasing income share going to those at the top are diverse; some focus on changes in technology, some on deregulation, while others focus on changes in the tax systems.<sup>2</sup>

There is much controversy over which aspects of these changes are most important from a normative viewpoint: Are people worried that those at the bottom are falling behind?<sup>3</sup> Or are they more concerned that there are more people in this situation (if there are)? Or, is the worry that those in the upper parts of the income distribution are now earning much more even than those in the upper middle class?<sup>4</sup> Ought we to be most concerned over relatively long-run changes (dating from the mid-1970s), or are recent developments more troubling? And how widespread is the phenomenon? Is it an American phenomenon or one restricted to the English-speaking democracies, perhaps traceable to “neoliberal” public policies adopted in those countries? Or is rising income disparity a general feature of modern, technologically advanced economies?<sup>5</sup>

Traditionally, worries about wealth inequality have focused mostly on the first possibility: most people feel sympathy for people struggling in hopeless poverty.<sup>6</sup> But sympathy for the poor is not necessarily related to a direct concern about inequality: people would continue to empathize with the poor even if overall inequality decreased (if, for example, the rich were to become less rich than they are).<sup>7</sup> One may also want to reduce poverty for other reasons. Those at the bottom of the distribution could become alienated and

either disobey the laws or work actively to overthrow the regime. The rise of social insurance programs in the late nineteenth century seems partly a response to this kind of concern, at least insofar as that rise was in response to concerns among officials and the middle classes rather than a concession to demands from those in poverty.

The second concern—with what is happening at the top—seems more cogent recently, especially in light of the recent evolution of income distributions. Economic data from the advanced democracies indicate that in many cases income inequalities have increased greatly in the last few decades and that much of this increase has been concentrated in the top 1 percent of the income distribution. This trend is in sharp contrast to the period from World War II to the mid-1970s, which witnessed general reduction in inequalities in most advanced democracies. At that point, things began to reverse direction. And it is not as if economic productivity stopped increasing; but the share of that increase going to the lower parts of the income distribution has greatly diminished. Increasingly, growth has been very narrowly concentrated on those at the very top of the income distribution, with some studies suggesting that the big increases are largely going to those in the top .1 or even .01 percent of the distribution. The striking thing is that people who are well off—those in the top 10 percent but who are not in the top 1 percent of the distribution—have generally not seen much income growth in recent years, according to these studies.

Part of the reason for these trends seems to be related to how people at or near the top earn their incomes. Those at the top tend to get most of their income from investments rather than wages and salaries, and such sources tend to be highly volatile and sensitive to how the economy is doing. Those just below the top tier but still in the top 10 percent tend to get most of their income in salaries, as do most people in the middle and working classes, and these sources are somewhat less sensitive to macroeconomic fluctuations. While some countries have managed to redistribute some of these gains through taxing and spending, the United States has mostly resisted such a course and has generally been lowering and flattening the tax structure. Thus, because top-end pre-tax inequalities in the United States have grown as they have elsewhere, they have not been as heavily taxed, and the result has been much more post-tax inequality.

No doubt there are many causes of emerging patterns of inequality—some of it may be due to the kinds and quantities of jobs that are being created in the economy; deregulation, especially in the financial sector; the decline of private sector unions; changing patterns of executive compensation; rapid economic growth in some sectors and in the emerging economies; and some demographic changes in the workforce. Many of these phenomena are rooted in explicit governmental policies. Tax policies, regulatory and anti-trust

policies, labor market policies, policies favoring or disfavoring union organization, and policies favoring globalization may work to skew income growth to those at the top. Indeed, part of the explanation for policy shifts is self-reinforcing, traceable to changes in economic and political power that have generally favored business organizations relative to labor unions. And this is reflected as well in the rise of neoliberal ideology, especially in the English-speaking countries, which has offered ready justifications for policies permitting widening income inequalities. Even governments not so enamored of such ideas may be pushed by globalizing pressures into emulating these policies.

Advocates of republican political thought have long argued that extreme inequality could undermine popular rule; Rousseau, for example, thought that no one should be so rich that he could buy another; and no one so poor that he could be bought. This is a very old worry in America too, articulated traditionally in hostility to aristocracy and to governmentally conferred charters and monopolies.<sup>8</sup> Concern with how much the very rich are getting might of course merely reflect envy—a sense that one is made worse off to the extent that others become better off. For example, the Australians are sometimes said to embrace policies of “cutting down the tall poppies.” But envy, if it is strong enough, might actually increase social and civic solidarity. It could motivate people to struggle harder to improve their chances and those of their children, producing income and class mobility and making it more likely that people see themselves as sharing similar fortunes. Recent data suggest however that income mobility has actually been falling as income inequality rises, suggesting that this effect is not likely.<sup>9</sup>

It is obvious that the very rich can avail themselves of options not available to others. They can, if they choose, segregate themselves into isolated communities and neighborhoods, use private planes and helicopters to get around, marry and associate only among themselves, raise and educate their children separately from others, and generally develop their own culture and values, paying little attention to others or to the community at large. There are abundant historical examples of all these things and they seem to undercut the sense, vital to a republic, that citizens are tied together in some way. No doubt, increasing income inequality eventually leads to increasing wealth concentration, unless it is effectively taxed away. And wealth inequalities are worrying insofar as they are ossified into permanent differences in status and social power, perpetuated across generations, even where governments adopt policies to prevent this.<sup>10</sup> For this reason, writers have often thought that republics ought to prevent extreme concentrations of wealth.

But even if wealth was not in fact very concentrated (it might have been confiscated through inheritance taxes, frittered away by progeny, given to charity, or dissipated by state inheritance policies), it seems possible

that increasing income inequality might itself generate long-lasting status inequalities. High-income people generally seek to provide educational advantages to their children and have ample opportunities to do so. And the overall effect of this might be to ossify temporary income differences into more rigid social barriers. It is not yet clear how substantial this effect is, as it may be partly offset by other forces that tend to reduce status inequalities. The last century has seen the continuing reduction of caste barriers to occupational choice related to race, sex, religion, and sexual preferences, despite increasing income gaps.<sup>11</sup> Even so, it is possible that the effect of income inequality in producing new kinds of status inequalities could outweigh these trends, and, as the data on declining income mobility suggests, these new inequalities might be fairly stable. Whether or not the class system has changed in the ways suggested above, the question I will concentrate on here is whether income inequality has corrosive political consequences for democratic government. Specifically, I want to ask what growing inequality might mean for the legitimacy of a democratic political regime.

There are two conceptions of legitimacy, one “objectivist” (or normative), the other “subjectivist.” The objectivist asks if a regime is legitimate in fact; the subjectivist asks if its subjects actually regard it as legitimate. Philosophers often discuss the first concept, and political scientists and sociologists tend to look at the second. For the most part I shall focus on the objectivist or normative conception because I am interested in whether or not a regime has a basis for claiming the support of its people. This is a normative question and, in my view, has an answer, whether or not any of the people in the regime actually reach that answer themselves.

But I think people tend to notice when their political system has no plausible claim to their allegiance, and so the objectivist and subjectivist legitimacy are probably highly correlated.<sup>12</sup> If that is approximately true, the challenge of growing income inequality for democracy arises insofar as it undermines regime legitimacy in ways for which the regime has no adequate response. As will be seen below, my conception of legitimacy suggests two quite distinct pathways for reform for a democratic regime with high levels of income inequality, and I am not sure which if either is more likely to be chosen.

I will do the following things in the next sections. First I will ask what kind of equality we are or ought to be concerned with. Second, I sketch a normative theory of legitimacy which roots regime legitimacy in the satisfaction of an “interest tracking” condition, and I argue that there are two natural variants applicable to liberal democracies—democratic and liberal. Each provides a distinct way of evaluating government and each suggests a different assessment of the impact of increasing income inequality and might recommend a different path for reform. Then I sketch some (positive) political theory that

suggests how income inequality might weaken or even undercut democratic rule. In the conclusion I will evaluate some prospects for change.

## INTERESTS IN EQUALITY

Everyone wants to live a good life from a material viewpoint, and to live in a peaceful society with a vibrant and interesting culture, in which each person and those she cares about are treated well. We also want our government to protect us from dangers that we cannot manage ourselves, and also to listen to our grievances and not interfere too much with our lives. But a person's interests cannot be reduced to her economic wealth or even to her personal well-being and probably include living in a society where everyone has a reasonable chance to prosper and no one is consigned to a life of poverty. A concern with poverty might require us to pursue policies that permit people to earn incomes above a level adequate to assure a chance at having a decent life. The desire to alleviate or reduce poverty, however, does not necessarily justify policies that reduce overall levels of inequality. Indeed, Scanlon argues that a concern with the poor is quite different from a demand for equality.<sup>13</sup> Poverty may be reduced to an acceptable level by providing safety nets or social insurance, and such things may well be financed without needing to tax high-income people heavily.

I believe that we do have a more general interest that people treat each other fairly, as political and social equals. And, as we cannot know when any of us will need aid, all of us expect our government to listen and respond to each of us on equal terms. Thus, while our wants may be narrowly focused, our interests are more encompassing and have a more egalitarian aspect. If this is right, we have an interest in the overall distribution of goods—of wealth or income—as well as in the goods themselves. But this leaves open the hard question of what kind of equality is justified.

### Equal Opportunity or Equal Treatment?

We can distinguish among several kinds of equality to which, arguably, people might be entitled. The strongest is, of course, entitlement to equal outcomes. Even philosophers, like Rawls, whose theory had strong egalitarian features, thought that considerations of productivity pointed away from this as a plausible normative requirement. Still, as Nozick argued, Rawls's theory does reject some distributions as unjust solely on the ground that they fail a kind of "pattern" test of this kind.

Second, people often speak of equality of opportunity, where that is meant as a requirement that people be made equal at some "starting line"

and then be left free to make their own choices.<sup>14</sup> The trouble with this view (aside from the fact that, as far as I can see, few people actually take it seriously, other than as a kind of pious expression) is that it is not clear who or what entity has the responsibility (or the power) to assure equal starting places. Again, Rawls worried this through quite a bit with respect to genetic endowments, and it is pretty clear that it would be a very difficult normative demand to meet or even approximate.

Older notions of legal equality or equality before the law are less politically controversial. Indeed, the idea is thought of as almost empty, as reflected in Anatole France's famous observation that the rich as well as the poor were equally forbidden from sleeping under the bridges of Paris. But I think more can be said for the principle once it is recognized that government is (increasingly) responsible for producing positive rights or entitlements.<sup>15</sup> Legal equality in U.S. law requires that if government provides a service to anyone, it must make the same service be available to everyone. Government does not have to provide health care services, but if it does, those services ought to be available on the same terms to everyone. By itself this notion does not quite escape the force of Anatole France's objection—after all the copayments could be forbiddingly high. Still legal equality seems to capture the idea that government provision of benefits is subject to special normative demands of a kind that would not necessarily be imposed on private individuals and perhaps not on most private businesses either.<sup>16</sup>

### Income Inequality

In modern society, income is produced by a complex combination of private and public actions, and inequalities are to some extent unintended consequences of billions of separate actions. Of course, it is true that the government can intentionally choose policies that affect that distribution—though not necessarily in obvious ways. Economic policies are not usually advocated with the aim of increasing inequality but for other reasons, even if increasing inequality is a foreseeable result. Views about lowering taxes or flattening tax rates are usually justified by appealing to their putative effects in generating wealth for everyone, despite their likely effects on how income is distributed. But since such policies do have foreseeable effects on the income distribution, it seems natural that some would oppose them because of their distributional consequences. These distributional consequences are in tension with democratic norms in various ways, either by creating power disparities that conflict with civic equality, or by provoking envy and resentment among those who are disadvantaged. Moreover, income inequality could be bad for democracy in another way. If incomes depend on public policies, people earning high incomes have incentives to preserve their advantage relative

to others. And they may have the opportunity to do exactly that. Insofar as high earners succeed in exerting influence disproportionate to their numbers, income disparity may undermine democratic rule.

## LEGITIMACY AND CONSENT

From the time of Hobbes and Locke, some have tried to understand legitimacy (or some related notion, such as a duty to support or not oppose the government) as a consent notion: a government is legitimate if the people have “consented” to it. Traditional consent theories seem best understood as aimed at justifying the legitimacy of a regime rather than a specific government—a distinction that was fuzzy when absolute monarchs ruled (Hobbes and Locke were both familiar with ministers being fired or executed in their contemporary England and might not have identified a ministry with a government in the way that we do nowadays). No one, not even Hobbes or Locke, imagined that the people, at some historical moment, actually gave their explicit consent to the governmental regime under which lived.<sup>17</sup> And if they did not consent, that would not generally count as a justification for refusing to obey it. Hobbes’s argument is roughly that the case (the benefit-cost ratio) for a sovereign is (always) so overwhelmingly strong that any rational person would have consented to being governed by one. Lockeans have sometimes argued for virtual or tacit consent, instead arguing that by continuing to live under a regime and accept its benefits, one has effectively “consented” to its rule.<sup>18</sup> This amounts to claiming that, for those people who actually live under the regime, the expected benefits of government almost always exceed its costs and so they are rationally obliged to keep their part of the bargain. Still, if things were to get sufficiently out of line, Locke thought it might be permissible for the people to rebel, or appeal to “heaven,” rather than simply bending under its yoke.

The weaknesses of consent ideas as a general basis for regime legitimacy (or as a justification for obeying laws) are widely accepted. It is hard to see that literal versions are apt for assessing how people should assess changing policies or political outcomes. If you consented, whether explicitly or tacitly, you ought to obey the law, regardless of how governmental policies turn out. And, I do not see that rational or hypothetical consent theories improve at all on the more basic idea that a governmental regime must serve the people’s interests in some long-term sense (relative to plausible alternatives) in order for it to be legitimate. If some other interests are tracked instead—say, those of the governors or of the wealthy elite—this test will not be met. It seems therefore that any attractive notion of “consent” has to be interpreted in such a manner that it amounts to something like the claim that the regime

generates outcomes that generally track common interests (leaving aside for the moment whose and what kinds of interests those are).

This notion of regime legitimacy is distinct from popular beliefs about whether a regime is legitimate. To identify legitimacy with such beliefs, it seems to me, is simply to revert to the authorial view wherein what people prefer (i.e., what they think is in their interest) ought to shape policies. And from this point of view, it is pretty hard to see that any modern democracy could be democratic in this (authorial) sense. This is not to deny that popular perceptions have a vital role to play in modern democracy as, presumptively, the best practical indicator of what it is that is in people's interests. But this is only a presumption, and we do not insist on it being the basis of government. Rather, every so often (at rare election times) the people get to make a decisive choice and the governors are obliged to obey. At all other times the government rules.

One could doubt that interest tracking is a sufficient condition for a regime to be considered legitimate. Surely we also ask that certain kinds of "procedural" requirements are satisfied: that all citizens have the capacity to complain and lobby their government and have equal voting rights.<sup>19</sup> We demand that everyone be eligible to stand for office, that elections are frequent, and that opposition is not suppressed and has a reasonable chance to compete for office. We also ask that policies made in our name be attributable to elected officials (at least through a transitive chain of permissible delegations) so that our exercise of the franchise is not merely a pointless ritual but might have some causal effect. But these procedural notions seem best understood as instrumental to interest tracking rather than as of direct value (at least once one recognizes that the authorial conceptions of democracy are unavailable). The rights of citizens to vote and exert power over officials is a means by which they can encourage these officials to serve (at least some of their) interests. The recognition that this right ought to be available to everyone is an acknowledgment that a regime should track everyone's interests and not just some.

We expect and hope (though in more muted tones) that these procedural rights are somehow real and not merely formal. Unless they are real, they will not serve to motivate officials, and so even if officials act to pursue common interests they will not have done so because of the popular role, but out of a kind of charity or condescension. In the short run the equality of formal procedural rights do not seem under much pressure from growing income and wealth disparities, so I shall ignore them here. But it seems obvious that, insofar as the exercise of formal procedural rights is costly, inequalities in wealth and income can lead to real disparities in the exercise of these rights and therefore in political influence. If this is right, then even procedural aspects of legitimacy seem to trace back to distributional questions, and so to turn on the question of whether most people's interests are actually served by the regime.



## Interest Tracking

I envision two general modes of justification that might work as a foundation for a claim that a regime adequately tracks the interests of the people in general. One is more or less “democratic” in character in that it would emphasize the ways in which, despite problems of agency and heterogeneity, governments produced under the regime do an adequate job of tracking citizens’ interests. The other is more or less “liberal” in the sense of claiming that in modern conditions, as things have evolved, a great deal of interest-relevant action is taken by people acting as individuals (or voluntary groups) and more or less separated from or even protected from governmental interventions. For the liberal, democratic rule actually is self-rule, not rule through government but, more or less, despite it. An interest-tracking defense of a liberal regime would therefore have to claim that people are able to pursue their interests effectively, without too much governmental interference.

Increasing levels of income inequality cuts into these two evaluative “models” in very different, and indeed more or less opposite, ways. From a democratic perspective, increasing inequality of wealth or income or status diminishes the homogeneity of the citizenry and thereby increases problems of agency and accountability. Indeed, increasing heterogeneity diminishes the sense that the policy can be seen as what the Greeks would have called a *demos*—something that actually had shared or common interests. There is a diminished sense that “we are all in this together.” The result of this erosion of community could be a diminished sense that state policies are fully legitimate in even the tepid sense available to modern democracies. But it may also lead to a shrinkage of the state in one sense or another. This may or may not matter for the stability of democratic rule—as there may be no more attractive governmental system. Or, even if there is, the transition to any attractive alternative may be impossibly difficult.

From a liberal viewpoint, however, increasing inequality and therefore heterogeneity diminishes the willingness of people to delegate coercive powers to government at all, which implies that more welfare-relevant action takes place privately or domestically.<sup>20</sup> This withdrawal of delegation may be fostered by many familiar modern trends that go under the names of “globalization” and “liberalization.” Of course, one still needs to worry about collisions among people and groups, and there will be shared interests in regulating these interactions to some extent. But much of this regulation takes place outside democratic governmental processes: perhaps through social norms or through private law. Most importantly, one needs to worry about those who are left far behind—those at the bottom of the wealth distribution who may have no real opportunity to pursue their interests effectively. And a shrunken government will not be of much help in alleviating

their condition. But as I said, concern with the poor is a more direct worry based on empathy or duties of benevolence and seems separate from worries about inequality.

But that a regime fosters interest-tracking policies is not really enough if significant segments of the population do not benefit. For example, the recent growth in income inequality since 2001 suggests that the interests that are tracked are concentrated among high-income people. I doubt that this represents a problem for the legitimacy of the democratic regime. Probably much of this inequality is traceable to Republican Party policies, and people are free to eject Republicans from office. And it seems likely that any Democratic administration would work to counter the effects of many of these laws.

The longer-term trends toward increasing income inequality, dating to the mid-1970s, may be more worrying. For one thing, some of these trends seem to cut across national borders and, to some extent, transcend political party. This is not to say that Democrats and Republicans are very similar in the labor, trade, and tax policies they would pursue, but that to some extent neither party is free to choose those policies without constraint. It seems to me that the long-term trends in the nature of jobs that the economy is producing, the strength of unions, public provision of education and other services, growing health care costs, and many other trends may work generally to make each new generation of people face worse economic prospects. If that is true, it seems possible that many people may come to think that their regime does not really satisfy an interest tracking constraint.

### The Democratic Argument

The democratic argument rests on three assumptions: the first is that many people believe that government bears a great deal of responsibility for how wealth and income are generated and distributed. This is so in both the positive and negative sense: positively, governmental policies of various kinds are inputs to income production and thereby have effects on how income is distributed. Negatively, there are policies that government could follow that would change the ways that income and wealth are distributed. For these reasons, government is implicated in any distributional outcomes: if inequality has increased, the government shares in the responsibility for it. And if people attach direct value how income is distributed—whether by envying the rich or feeling that they are treated unfairly—government will get blamed.

Second, different political parties are not free to alter income distributions as they choose but face constraints of various kinds. Capital, especially financial capital, is mobile: jobs can move offshore or not be created at all. Moreover, politicians need money to get and hold office, so we expect real political influence to be correlated with income—especially income that is

sensitive to government policies. So both parties may well permit growing income disparities.

The third observation is drawn from positive theory: that increasing inequality will increase problems of collective choice by making preferences more diverse. From our standpoint the most important effect of this is to exacerbate problems of political agency. The vote remains as blunt an instrument as ever to control political officials, but with increasing inequality officials have more opportunities to play some voters off against others. It also seems likely that people with high incomes will be better able to monitor political officials and thereby increase incentive for politicians to pay attention to their interests at the expense of others.

From the standpoint of those in government, or of important actors in the economy, electoral expressions of popular will can be enormously consequential. The people may be ignorant and may lack tools to influence outcomes they care about, but they can still cause a lot of trouble by throwing out current rulers in favor of others, or producing shifts in wealth. In that sense, even though agency problems abound, political, economic, and social power, in modern democracies, is insecurely held. This fact gives power holders reasons to placate at least some of the people and presumably to find ways to increase their welfare. Of course, in many cases incumbent elites have alternatives to implementing welfare-enhancing policies. They might successfully intimidate or coopt all potential electoral opponents, or somehow confuse or mislead citizens as to where their interests lie. Again, these are manifestations of agency problems that worsen when the income distribution grows more unequal. We know too little, systematically, about when or where these (hopefully) pathological options are likely to arise and persist. But one could think, plausibly, that increasing levels of inequality of some kind might conduce to perversions of democratic rule.

The democratic argument resembles the classical and republican worries about the corrupting effects of wealth inequalities. Agency problems will make politicians more likely to pay attention to the well-informed, and that probably means to the wealthy (especially in a world where collective solutions to political monitoring problems, such as labor unions, have declined). It seems likely that over time, those whose interests are ignored will figure this out and, if our first observation is correct, they will increasingly attribute these effects to the democratic regime itself and not merely to the government of the day, even if no specific governmental policies can be seen as responsible for producing rising inequality.

### The Liberal Argument

I am using “liberal” here in the way that European writers do—emphasizing the role of individual actions in markets as the generators of welfare.

A regime is liberal insofar as plenty of space is preserved for the pursuit of private interest. A liberal would regard increasing income inequality as an unintended side effect of policies that are valuable on liberal grounds, such as the reduction of trade barriers and the removal of other impediments to the pursuit of private interests. She may or may not regard the inequality itself as a good thing but would probably criticize most attempts to correct it as impairing the good or liberalizing transformations that are underway.

And a liberal's response to increasing problems of political agency would be to urge that governmental role in regulating income generation be reduced so that people are able to pursue such activities without such restraints. Nowadays, in postwar Europe, she might think that the best way to achieve this reduction is by the imposition of constitutional protections for the private sphere.<sup>21</sup> She might also think that if such protections were adopted, people would be less likely to hold the regime responsible for whatever happens to incomes. So, for a liberal, growing inequality need not undercut support for the regime—at least not for a regime where the governments of the day concur in a kind of deregulatory policy.

Anyone familiar with American political and legal history will recognize that the liberal argument sounds like a call for a return to the *Lochner* era, when the Supreme Court construed the Constitution to protect the individual's freedom to enter into contracts with others unrestrained by governmental regulations. Indeed, some conservative writers have urged precisely this.<sup>22</sup> Others, however, will insist that a regime of unrestrained free contracting can morph into a system in which a great deal of exploitation and subordination can occur, especially in labor markets. The *Lochner* era is known to us nowadays under more pejorative descriptions: the Gilded Age, or the age of the robber barons.

Still, from an empirical viewpoint, it seems an open question whether the potential abuses of a reduced governmental role outweigh the sense that people ought generally to be relatively free to make their own choices. So, from the standpoint of regime legitimacy, it is an open question whether the relatively less regulated liberal world would undermine democracy any more than a more regulated, and arguably more democratic, alternative.

## INEQUALITY AND DEMOCRACY

There are two separate ways that inequality might undermine the legitimacy of a regime: inequality could itself directly produce (or even constitute) injustice, and therefore indict a regime that permits or fosters it. It seems to me that inequality arising from policies fostering the existence of extreme but corrigible poverty would be grounds for condemning a regime even if its

policies were chosen democratically.<sup>23</sup> In a world where the poor constituted a majority—which Aristotle thought was true of Athens, for example, and which many thought true of republican Rome as well—poverty might mark a general failure of interest tracking sufficient to undermine regime legitimacy. But in the advanced democracies today, I cannot see how the recent increases in the share of incomes going to the top earners would constitute a legitimacy problem of this kind.

If income inequality undermines regime legitimacy nowadays, I think it must be by exacerbating problems of political agency. The kind of mechanism that I have in mind can be illustrated in a simple model of democratic policy making. The usual effect of increasing income inequality is to widen the income gap between the median and mean voter<sup>24</sup> and, because the median voter's preference tends to drive policy in a simple democracy, this will tend to produce a political demand for redistribution.<sup>25</sup> Those with high incomes will of course want to resist this if they can, and they may well succeed at this by converting some of their wealth into political influence in order to prevent or minimize the realization of redistributive objectives.<sup>26</sup> They could try to prevent redistribution in two ways: either they could attempt to persuade the median voter that she will be better off if she restrains her demand for income transfers. Or the rich could try to short-circuit the democratic process and persuade elected or appointed officials to ignore democratic demands for redistribution. If the wealthy could regularly frustrate persistent popular demands in the latter manner, we would say that system is not really operating as a democracy at all, at least not concerning matters of distribution.

It is not implausible, of course, that the middle classes could be convinced that their interests are best served by resisting the urge to transfer wealth from the rich. History is full of examples, and the arguments against redistribution are many. Extensive income redistribution through high tax rates would reduce incentives to work and invest and in that way inhibit investment and growth. And, a flatter income distribution might dampen the hopes that many low-income people have to attain to fabulous lifestyles. Indeed, radically democratic Athens agreed under Solon to take redistribution off the political agenda, presumably in the interest of maintaining a kind of social peace in which people with different levels of wealth could live together without arguing about money. The important point is that the median voter, or the middle classes if one prefers, needs to be convinced to accept or tolerate income disparities. Unless the median voter is actually persuaded to tolerate income inequality, the failure of officials to implement legal democratic commands exposes a democratic regime to charges of hypocrisy or corruption. And I would call that a problem of legitimacy.

The Meltzer-Richard majoritarian model of democracy outlined above does not really take account of the fundamental feature of modern representative

democracy: the fact that policies are not determined by the people (or the median voter) but by elected officials. In their model, the median voter is sufficiently powerful to make her demands politically effective. But in modern democracies that is rarely the case. Throughout this chapter, therefore, I will use a less formal conception of democracy that is rich enough to encompass modern representative regimes. The basic requirement for a modern state to be democratic is that political leaders are chosen from (more or less) all the adult population in frequent and competitive elections under favorable informational conditions (i.e., something like a free press and speech). Such conditions are supposed to encourage elected officials to be rationally responsive to the interests and wants of the electorate and therefore to allow voters to hold elected officials to account for the conduct of government. Of course, this connection between the people and their representatives is weak and vulnerable to many external influences and there are serious problems of collective action on both sides.<sup>27</sup> But to the extent that such distortions can be managed, it still makes some intuitive sense to say that, collectively, the people are likely to have some degree of influence over the policies that are chosen, even if they do not choose those policies themselves. If this is roughly correct, then the problem of inequality exhibited in the Meltzer-Richard model persists in this broader conception. Indeed, it is even clearer in a modern representative democracy that the most likely way for the rich to frustrate attempts to redistribute wealth is to take advantage of the loose connection between the people and their officials.

Increasing income inequality tends to increase the heterogeneity of interests, making it harder for even the most virtuous and clever political leaders to devise policies that most people could endorse.<sup>28</sup> One way to describe this is as a decline in what could be called “objective” solidarity within the population (which is a decline in interest commonality or homogeneity). Another way to put it is that in a more heterogeneous population people have fewer interests in common—the collective good is “thinner”—so that even well-motivated politicians will be less able to produce broadly satisfactory policies.<sup>29</sup> We cannot assume, however, that politicians—who are political agents of the electorate—will always be well-motivated. Indeed, we think our leaders are at least partly driven by desires to hold office or to pursue favored policies rather than being austere dedicated to pursue only common interests.

Increasing heterogeneity of interests exacerbates problems of common agency, making it likely that election-seeking officials will not be uniformly responsive to all or even most of the electorate. While the lack of common interests is a ubiquitous problem for popular regimes (both ancient and modern), the problem of common agency is a characteristic of modern representative democracies. In any majoritarian system, officials would rationally choose to respond to the interests and wants of a part of the electorate.

And if agency problems are sufficiently severe, they can simply choose to act in their own interests.<sup>30</sup> Which course they take is up to them, unless voters (or political parties) can find ways to counter the adverse effects of heterogeneity.

This model allows us to see that there are two distinct mechanisms by which inequality might undermine democratic rule. First, it could directly produce a kind of corruption whereby the powerful and influential upper classes induce political leaders to serve their interests rather than those of the people more generally, effectively short circuiting the median voter model. Alternatively, even if little explicit corruption was to occur—perhaps it is well restrained by laws or politics—it may be the case that problems of political (or collective) agency—which are intrinsic to modern democracy—will produce outcomes that are unresponsive to the interests of most citizens. Let us call these two issues problems of active and passive corruption.

### Active Corruption

The idea of (active) corruption was a concern shared by both classical republicans like Cicero, Cato, and Brutus and their modern successors, Machiavelli, Harrington, and Rousseau, and their followers. These writers thought that the “city” was inevitably made up of the rich and the poor with separate factional interests and thought that these two interests would each fight to control government. As deeply opposed as their interests were, the rich and poor nevertheless may have some common interests, and a well-constructed government is one that pursued common rather than factional interests. A corrupted government is a system where private or factional interests are served rather than common or public purposes, and it can come about in two ways.<sup>31</sup> Either the polity is too heterogeneous to have common or public interests that can be pursued or, even though such common interests exist, political institutions may respond to private interests—the interests of the upper class—rather than the common interest.

Classical worries about inequality and democracy seem mostly focused on active corruption. Active corruption, as I use the term, is not meant to imply any necessary illegality. Whether illegality is involved depends on what the laws are, and a corrupt regime may well have laws that tolerate certain kinds of corruption. Republican writers differed, of course, on the kind of regime they favored, but for our purposes it is worth emphasizing that authors as diverse as Aristotle and the republicans cited in the previous paragraphs defended regimes that had significant democratic components.<sup>32</sup> Aristotle famously thought that a pure democracy—one in which the people played a regular role in day-to-day government, as in Athens—would be a government of the poor, because they would control the magistracies as well

as the assemblies where policies were made. His preferred regime, which he called a *politeia*, mixed democratic policy making with electoral control of high magistracies as a way of balancing the interests of the poor with those of the wealthy.<sup>33</sup>

For my purposes, such a regime counts as democratic—it seems as democratic as any modern democratic regime—and it would be corrupted if either the rich or the poor got control of government. Aristotle recognized that threats to the quality of the regime can come from either the rich or the poor, who he thought embraced opposing conceptions of who should rule. Good regimes are therefore more likely to be found where there is a large middle class that can resist the centrifugal forces of corruption coming from either side. Like Aristotle, the republican writers preferred regimes that divided powers among the rich and poor, and they offered similar analyses of class-based corruption. While most of these writers probably thought of the rich as the more regular source of corruption day-to-day, most of them have believed that the deeper and more dangerous kind of corruption was that which would come from the corruption of the citizens (who would be, in republican political ontology, the poor). Republicans, after all, tended to think of citizens as exercising a public function and thus that they can be corrupted just as other “officials” can. And for many of these writers the corruption of the citizens was the critical step in the degeneration of a republic.<sup>34</sup>

### Passive Corruption

A government is passively corrupt if its policies fail to track common interests because of failures of political agency. I imagine a world in which political leaders, who may be well motivated, simply have no reason to respond to public interests. Democracy is traditionally defended as a kind of self-government. Two versions have been historically important: in one, sometimes attributed to Rousseau, the people actually rule themselves—the sense of making the laws by which they live—in a way that each person sees herself as a coauthor of the laws that bind her. The second, described by Aristotle, envisions people taking turns, ruling and being ruled. Schumpeter argued long ago that there are reasons to doubt that either form of government is either possible or desirable nowadays. In any case, as Bernard Manin observed, modern peoples have largely abandoned both versions of direct democracy in favor of representative government by, or under the guidance of, elected officials.<sup>35</sup> Rousseau and Aristotle, had they agreed on little else, thought that such a government would be necessarily undemocratic and essentially oligarchic.<sup>36</sup>

The claim that a modern democratic government is legitimate, therefore, cannot rest on any sense that the people themselves have made their own



policies and are therefore obliged to put up with their consequences. Rather, legitimacy must rest on some claim that the policies and outcomes produced by our representatives tend to bear a systematic and “sufficiently” close relationship to our interests that they ought to be acceptable to all of us, despite the ubiquitous problems of agency and information that plague the government we actually have. Legitimacy of modern government cannot really rest on any sense of shared “authorship” but needs to be based on a claim that outcomes or policy track our interests fairly well, compared at least to plausible alternatives.

Modern democracy cannot be seen as a form of self-rule in either of the senses given in the previous paragraph: the people do not govern themselves and they do not take turns doing so. They delegate governmental offices to representatives who are accountable to them in elections. If such governments are to qualify as democratic, their officials must have strong reasons to pursue the interests of voters, and these reasons must somehow be supplied mostly by the fact that the politicians stand for election. But, as I have been emphasizing, electoral accountability is plagued by problems of information and agency. Voters know very little of what happens in government and have little incentive to learn more. Elections are infrequent; competitive elections are pretty unusual as well, at least in the United States; and the vote is a very blunt instrument. For these reasons, it is hard to see that elected officials have a strong motivation to pursue the interests of voters, when that pursuit is costly to them.<sup>37</sup> Moreover, elected representatives themselves face severe problems of information and agency when it comes to controlling agencies charged with actually implementing their policies.<sup>38</sup> And, finally, the outcomes people care about are only partly controlled by governmental policies—they arise in large part from aggregated actions and inactions of multitudes of people outside government, many of whom (increasingly) live abroad.

On this account, problems of political agency can lead a government to become illegitimate because its policies fail to respond to the interests of its citizens, even in the absence of active corruption. And insofar as income inequalities undermine the conditions for resolving common agency problems, they can undermine the legitimacy of a democratic regime without bribes or special favors.

## DISCUSSION

I have left open the issue of whether people actually evaluate the regime by using the normative interest-tracking condition and, if they do, which version of it: liberal (private regarding) versus democratic (collectivist). Possibly people are not even consistent over time but shift from one to the

other. The difference between the two views matters, however, because each points to different answers to the question of whether inequality threatens democratic rule. On the democratic view, sufficiently large and persistent inequalities would undermine interest tracking and could lead to popular disaffection and disloyalty. But for the liberal, the regime would likely adjust to high levels of inequality in ways that would permit it to remain legitimate: mostly by shrinking or privatizing the public sector. But, whether the liberal adjustment succeeds depends on the popular judgment that the abuses that attend a liberalized system are tolerable for most people.

In both cases, sufficiently high levels of inequality increase pressures for regime change or reform. The regime could try to change either in a democratic or liberal direction. It could seek to reduce the levels of inequality, as many radical democrats have proposed. Or it could try to manage the adverse effect of inequality on collective agency by making it possible for the electorate to coordinate the way it holds officials responsible for their conduct in office. I have argued elsewhere that well-organized and disciplined political parties can play an important role in accomplishing this.<sup>39</sup> Or the regime could follow the liberal policy and reduce the scope or extent of its activities to issues about which even members of a highly heterogeneous polity could agree. Trends in this direction have been evident for the last few decades.

It is not at all certain that the regime, threatened by illegitimacy, will be able to respond in either of these ways. Possibly it will simply try to muddle along, permitting inequality to grow and problems of common agency to fester. Or it could get lucky. Years ago Simon Kuznets showed that as an economy gets richer, inequality increases and then decreases. The “Kuznets curve” suggests that a regime might be well advised simply to wait out increases in inequality and the associated demands for redistribution, hoping that eventually incomes will become less unequal. Indeed, until the recent upturn in income inequality after the early 1970s, it appeared that luck may have been on the side of the modern democracies.

In a vivid and rapid time scale, the collapse of the Soviet system may provide a kind of laboratory to examine this question over a relatively short time scale. The rapid sell-off and theft of state assets led to immense increases in inequality, a general neglect of common interests, and a great deal of suffering as traditional public services and support eroded. Citizens eventually responded (democratically) by electing a government that clawed back some bits of those assets and reimposed a kind of (sometimes brutal) order on the unregulated system of the 1990s. I am not saying that the resulting system was better than the early reign of oligarchs. But its faults seem different. It all seems pretty wrenching to someone watching from the outside.

Citizens of the advanced democracies may not need to make so stark a choice. Perhaps they can still make minor empirically driven adjustments as

they have, in effect done for so long. It seems clear enough, as Larry Bartels has argued, that the major parties differ in their distributive policies and that voters really do have a choice of how much liberalization they want to have.<sup>40</sup> They can choose to tolerate large income disparities if they want. But as Bartels also tells us, there is reason to think that ordinary voters may not be very clearheaded about which course of action would be in their own interests. They may well choose policies that make the regime less legitimate. Ironically, then, the people can choose to evaluate regime legitimacy in the liberal way, but their choice to do so must remain essentially democratic.

## NOTES

Any errors and misconceptions in this chapter are my fault, but it has been greatly improved by comments from Larry Jacobs, Ingrid Creppell, Ben Page, Debra Satz, and David Soskice, and by my friends in the “Monday Group.”

1. I draw on a number of sources for recent information on changes in income equality. Among the most useful is the volume by Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America, 2006–2007*, Economic Policy Institute (Ithaca, NY: Cornell University Press, 2007), which summarizes a wide range of information on this complex topic. See also Lane Kenworthy and Jonas Pontusson, “Rising Inequality and the Politics of Redistribution in Affluent Countries” Working paper 400, Luxembourg Income Study.

2. For a survey of the literature on top incomes and of the various methodological issues associated with studying the evolution of incomes in the top 1 percent (and smaller fractiles) of the income distribution, see Andrew Leigh, “Top Incomes,” in *The Oxford Handbook of Economic Inequality*, eds. W. Salverda, B. Nolan, and T. Smeeding (2009). The data for such studies come from tax filings and as a result are very fine grained (which permits the examination of very small fractiles of the population) but are associated with various potential problems such as incentives for misreporting. These problems seem especially difficult when there is significant non-wage income. This paper starts from the groundbreaking work of Thomas Piketty in a series of papers on changing top income shares in France and the United States. See Thomas Piketty and Emanuel Saez, “Income inequality in the United States, 1913–1998,” *Quarterly Journal of Economics* 118 (2003): 1–39. And Thomas Piketty, “Income Inequality in France, 1900–1998,” *Journal of Political Economy* 111 (2003): 1004–1042.

3. An exploration of how changes in inequality in the United States and the United Kingdom are connected to changes in the upper and lower tails of the distribution is reported in Francois Nielsen, Arthur Alderson, Jason Beckfield, “Exactly How Has Income Inequality Changed? Patterns of Distributional Change in Core Societies,” Working paper 422 (May 2005), Luxembourg Income Study. The authors find that inequality reductions, when they happen, come from transfers from the lower tail to the middle, whereas increases tend to come from transfers to the upper tail from the middle of the distribution. This is not to say that the recent increases in inequality in the United States (2001–2005) have not resulted in an increase in number of people in the lower income groups.

4. There is some disagreement as to which part of the right tail of the income distributions is of most concern. I think most scholars agree that the upper 5 percent of the income distribution has experienced great income growth. But others say that this growth is concentrated in the upper 1 percent (or .01 percent). There are, in addition, differences in data sets that provide looks at the different parts of the distribution. The tax filings used by Piketty and Saez permit the finest grained comparisons, but some object that income tax reporting can be misleading and so those data do not give an accurate picture. Still, it seems to me that studies based on very different data sets agree that there has been a lot of growth in the top parts of the distribution, so that it is hard to believe that all of it is somehow a mirage.

5. While the phenomenon of increasing income growth in the top 1 percent of the distribution is most marked in the Anglo Saxon countries, there have been similar developments in some of the Scandinavian countries. Writing in a volume published in 2005, one of the leading researchers in the area said “Since 1980... top income shares have increased substantially in English-speaking countries, but not at all in the countries of continental Europe.” Emmanuel Saez, “Income and Wealth Concentration in a Historical and International Perspective,” *Public Policy and the Income Distribution*, eds. Alan Auerbach, David Card, and John Quigley (New York: Russell Sage Foundation, 2005), p. 221. More recent research suggests that things might have changed. Recent work by Camille Landais in France, employing the same kind of data that Piketty and Saez employed, suggests that “De ce point de vue, la France rompt avec 25 ans de grande stabilité de la hiérarchie des salaires, et semble converger vers les modèles de rémunération des hauts salaires anglo-saxons. Plus généralement, tout en restant un pays bien plus égalitaire que les pays anglo-saxons en termes de distribution des revenus primaires, la tendance actuelle n’exclut pas que la France puisse converger vers les modèles anglo-saxons.” Camille Landais, “Les hauts revenus en France (1998–2006): Une explosion des inégalités?” (“From this point of view, France has broken its twenty-five-year pattern of stable income inequality, and top income shares seem to be converging to the Anglo Saxon pattern. More generally, while remaining more egalitarian than the Anglo Saxon countries in terms of income shares, current trends don’t exclude the possibility that France is converging to the Anglo Saxon model.” [my translation]) Working paper, Paris School of Economics, June 2007.

6. There is some evidence that many Americans hold beliefs of this kind. See Tammy Draut, “Public Opinion on Poverty, Income Inequality and Public Policy: 1996–2002,” *Demos* 2002. The data in the paper are drawn from a survey conducted by the Kaiser Family Foundation/NPR/Harvard University, 2001, and compared with data from earlier years.

7. I do not want to deny that poverty may be evaluated as a comparative rather than an absolute concept. Some may want to claim that as the rich get richer we ought to (and perhaps actually do) redefine the “poverty line.” I agree with this but I doubt that any widely accepted definition of poverty would be driven by what is happening to the incomes of those in the top .1 percent of the income distribution, especially if the incomes of the upper 95 percent are not increasing at all. It seems more likely that poverty is thought of relative to what most people get.

8. Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge, MA: Harvard University Press, 1992). Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967).

9. Not only has intergenerational income mobility declined in the United States but "...international comparisons reveal less mobility in America than in other countries with comparably advanced economies, such as Germany, Canada, and Scandinavian countries." Mishel, Bernstein, and Allegretto, *The State of Working America*, 94.

10. See chapter two in Mishel, Bernstein, and Allegretto, *The State of Working America*.

11. The big exception to this trend seems to be the increasing disenfranchisement of African American men under the dual pressures of drug arrests and felon disenfranchisement statutes.

12. I do not deny that perceived legitimacy is important. But the literature on that topic is vast and I cannot take the time to examine it here.

13. T. M. Scanlon, "The Diversity of Objections to Inequality," in *The Difficulty of Tolerance: Essays in Political Philosophy*, ed. T. M. Scanlon (Cambridge, MA: Harvard University Press, 2003).

14. This is what Rawls called fair equality of opportunity in *Theory of Justice*. It is sometimes distinguished from an apparently weaker nondiscrimination norm: that when people are to be selected for some job, the choice ought not to be made on irrelevant characteristics. I do not doubt that most people would endorse nondiscrimination in this sense, at least abstractly, but they would probably also support the stronger norm too.

15. It is often said that a liberal government ought only to provide negative freedoms in order that citizens may freely pursue their interests free from governmental restrictions. This does not describe the practice of any modern democracy. Liberal government has always been in the business of providing positive rights. The most familiar examples are rights to procedure, such as a right to a jury trial, which demands that the state act affirmatively to provide a procedure, or due process rights in general. It is costly and bothersome for a state to do this as it requires the creation of courts and judges and placing restraints on governmental officials. Evidently, most people think that process rights of this kind ought to be provided in any good political/legal system and provided equally to everyone. Other positive rights have similar justifications and are widely accepted in the practices of modern democratic states.

16. This distinction is obviously too sharp if taken literally. Since 1964 Americans have imposed similar duties on employers and providers of "public" accommodation. Still, as far as I can see, individuals can choose to donate to people or causes as they want.

17. That Hobbes did not think that actual consent was relevant to one's duty to obey is evident from his consideration of states formed by conquest. One has no less duty to obey a sovereign who arrives this way than one who was agreed to through a covenant. "The attaining to this sovereign power is by two ways. One, by natural force: as when a man maketh his children to submit themselves, and their children, to his government, as being able to destroy them if they refuse; or by war subdueth his enemies to his will, giving them their lives on that condition. The other, is when men agree amongst themselves to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others. This latter may be called a political Commonwealth, or Commonwealth by Institution; and the former, a Commonwealth by acquisition. And first, I shall speak of a Commonwealth by institution." Thomas Hobbes, *Leviathan*, chapter 27.

18. "There is a common distinction of an express and a tacit consent, which will concern our present case. Nobody doubts but an express consent of any man,

entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds—i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent . . .” (II.119). John Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1988). See also A. John Simmons, *On The Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton, NJ: Princeton University Press, 1993).

19. For a version of a procedural theory of democracy see John Hart Ely, *Democracy and Distrust* (Cambridge, MA: Harvard University Press, 1980). This view has been widely criticized by legal scholars because of Ely’s use of it in arguing for a fairly limited role for judicial review. And it is certainly possible to doubt that proceduralism is actually sufficient to fully justify a policy. To see this, it is only necessary to recall that the Nazi regime was famously fastidious in following procedural rules in making laws and orders. Still, proceduralism is an important part of legitimation. I do not think that a benevolent dictatorship would be a legitimate regime even if it was more reliable in interest tracking than any other regime.

20. It must be emphasized that private actions can lead to bad consequences for everyone as in the problem of the commons. But this does not vitiate the analytical point that welfare-relevant actions are being taken privately and not collectively.

21. A vivid illustration of this is provided by the French election of a socialist government in 1981. The attempt by that government to nationalize large parts of the economy were restrained by rulings of the Conseil Constitutionnel, which had, by then, evolved into a kind of constitutional court.

22. Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard University Press, 1985).

23. See Tim Scanlon’s “The Diversity of Objections to Inequality,” in *The Difficulty of Tolerance: Essays in Political Philosophy*, ed. T. M. Scanlon (Cambridge, MA: Harvard University Press, 2003), for an exploration of the distinction between caring about inequality itself versus caring about it out of concern for the poor.

24. This is not a logical consequence. In principle, inequality could increase while leaving the mean and median fixed. One example would be to increase the variance in a normal distribution in which the mean and median are equal. But one expects that income distributions will be highly skewed with a long right tail, and in that setting, increasing inequality will drive the median and mean apart.

25. Alan Meltzer and Scott Richard, “A Rational Theory of the Size of Government,” *Journal of Political Economy* 89 (1981): 914–27.

26. Thomas Franks has recently popularized the idea that the rich can find ways to subvert democratic deliberation by fostering false consciousness. See his *What’s the Matter with Kansas* (New York: Macmillan, 2005). But earlier writers have argued that the wealthy can sometimes limit the capacity of the poor to organize or pursue their joint interests. One famous example is C. Vann Woodward’s classical description of the post-Reconstruction South in which a crucial element was the use of racist appeals to undermine unions and political parties to defeat class politics. C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1971).

27. My view is that political parties are the principal device by which common agency problems are regulated. Political parties can work on both sides of the agency problem—organizing voters and issues to make electoral choice clearer, and at the same time operating as reputation-bearing entities that can motivate politicians to internalize the effects of their actions. To accomplish these objectives they need to be fairly disciplined both within the electorate and among candidates and officials.

28. There is a technical issue here that should be noted, as problems of collective agency arise only when the set of issues is multidimensional. In a genuinely one-dimensional democracy (i.e., as in the Meltzer-Richard model) the median income voter determines policy and can, for the same reason, exert as much control over her agents as any single principal could. Only with multiple dimensions do we get the kind of conflicting interests among voters that makes agent control ineffective. An increase in income inequality is sometimes described in one-dimensional terms: the share of income going to those with higher income people increases, so the only variable needed to describe the change is income that is measured on a single dimension. But distribution is inherently highly multidimensional in the sense that each person is a separate recipient who can gain or lose independently of others. And any actual policy with consequences for income distribution has multidimensional consequences.

29. See especially the classic study by Morris P. Fiorina, *Representatives, Roll Calls, and Constituencies* (Lexington, MA: D. C. Heath, 1974). Also see Michael Bailey and David Brady, "Heterogeneity and Representation: The Senate and Free Trade," *American Journal of Political Science* 42 (1998): 524-44; and Jon R. Bond, "The Influence of Constituency Diversity on Electoral Competition in Voting for Congress, 1974-1978," *Legislative Studies Quarterly* 8 (1983): 201-17.

30. The argument is that since a candidate only needs a majority to win office, she is motivated to seek to construct a majority of those who are easiest for her to satisfy. This means that voters who are too demanding are likely to be ignored and gives them reasons to lower their expectations, in effect permitting candidates to play voters off against each other. The result is that in a heterogeneous electorate, candidates will not have much motivation to respond to the interests or wants of voters. John Ferejohn, "Incumbent Performance and Electoral Control," *Public Choice* 30 (Fall 1986): 5-25.

31. The question of whether there is ever a common interest has obviously vexed modern political science at least since Arthur Bentley's writings. And some have found support for this view in social choice theory as well. I think Bentley and those modern writers who follow him are too categorical and, insofar as some draw on social choice theory, are taking too broad a lesson from it. Arrow's theory does imply that in a suitably heterogeneous polity (one where people may have literally any preference independently of the preferences that others may hold) there is no "reductionist" conception of a common purpose, where "reductionist" is cashed out in his axiom system. I read that as permitting any number of alternative conceptions: nonreductionism (where the common interests do not depend only on the preferences people happen to hold), weak reductionism (where one or more axioms are violated), and indefinitely many kinds of domain restrictions. What seems true to me, intuitively, is that a polity could be sufficiently heterogeneous in the interests of its members (not merely their preferences) that they have nothing in common or very little. But actual polities may, for the most part, have enough in common that there is something that

all ought rationally to want government to do. Of course, particular individuals may not see that they have interests in common with others.

32. Laws in the classical republics were usually made in popular assemblies, as was true in Rome and Sparta as well as Athens.

33. Rousseau's view is similar to Aristotle's in most respects, except that he insists that the people should monopolize the lawmaking powers. Aristotle does not say this; he insists that the people (the poor) have a share in governing, adequate to ensuring that government recognize and pursue a mix of their interests along with that of the rich. In fact, contemporary Athenian practice actually removed lawmaking from the popular assembly to a special judicial procedure. This procedure was popular in the sense of being drawn from the eligible people by a kind of double lottery (first selecting the jury pool by lottery; then selecting the actual lawmaking jury by lottery from the jury pool). I don't know if Aristotle would have required that the people (the poor) control lawmaking in the assembly or in courts. I imagine that he thought that there were many ways that the appropriate mixture could be achieved institutionally.

34. This seems to be why Cicero was so much more desperate in his opposition to populist leaders like Cataline and Caesar, who pandered to the poor, than to the more venal patricians like Crassus or Verres. In the case of the populists he was more than willing to step outside the norms of the Republic to fight them, while he was happy to fight the venal rich in courts or in elections. It is here that republicanism and democracy come apart. For a democrat, citizens are free to vote however they want and need offer no justification for what they do. Officials are in a completely different position and, as at Athens, they can be chastised for pursuing anything other than public interests. But the ordinary citizen can vote her pocketbook if she wants, or in favor of any kind of hateful policy. Aristotle's seems a bit closer to the democratic view as he thought the rich and poor would vote their interests and the problem for an institutional designer was to balance their interests in government. If either group could be made to act in public-interested ways, there would be no point to his constitutional schemes. Indeed, such self-sacrifice might undermine a well-designed polity.

35. Bernard Manin, *Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

36. Rousseau described the English people as being free on election days and enslaved the rest of the time. For Aristotle the modern use of elections to select lawmakers as well as magistrates makes such governments oligarchies rather than mixed governments or *politiea*.

37. This issue is explored in John Ferejohn, "Incumbent Performance and Electoral Control," *Public Choice* 50 (1986): 5-25.

38. See David Epstein and Sharon O'Halloran, *Delegating Powers* (Cambridge: Cambridge University Press, 1999); and Craig Volden. "A Formal Model of the Politics of Delegation in a Separation of Powers System," *American Journal of Political Science* 46 (2002): 111-33.

39. Ferejohn, *op cit.*, suggests one way that problems of political agency might be managed, Namely by making it possible for voters to evaluate their officials in a coordinated manner.

40. Larry Bartels, *Unequal Democracy* (Princeton, NJ: Princeton University Press, 2008).



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## **Part II**

**FROM NINETEENTH-CENTURY LEGACIES  
TO TWENTIETH-CENTURY ORTHODOXY**

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# The Resilient Power of the States across the Long Nineteenth Century

## An Inquiry into a Pattern of American Governance

*Gary Gerstle*

The classic interpretation of the American state treats the nineteenth century as an era of a weak, or *laissez-faire*, government and charts the transition, in the twentieth century, to an era of strong, interventionist public rule. Within academic discourse, this transition is usually treated in positive terms, as it is thought to have shifted power in American society away from elite private interests and toward the poor, the disadvantaged, and the public more generally.<sup>1</sup> It is a good bet that a majority of scholars who teach the second half of the American history survey course use this weak-to-strong, private-to-public-interest, interpretation of state behavior as one of their key narrative and analytic themes. I know I do. A version of this interpretation is also popular beyond the academy. Liberals, of course, celebrate the establishment of a large regulatory state in the 1930s and 1940s while conservatives condemn it; but few in either camp seem to doubt that this portentous transformation occurred. Well-regarded scholars are still elaborating new versions of this argument, as Bruce Ackerman has done in *We the People: Transformations*, where he calls the New Deal a “revolution” in public governance, in much the same way that Carl Degler did forty years ago.<sup>2</sup>

Numerous political and social historians in the last twenty years, however, have challenged the accuracy of this classic interpretation. Some, such as Barry D. Karl and Anthony J. Badger, have claimed that the New Deal state, for example, was far slower to implement collective forms of business regulation and much more solicitous of private interests than we had previously thought.<sup>3</sup> Linda Gordon, Alan Dawley, and Alice Kessler-Harris, among others, have argued that the American welfare state, even at its apogee, was weaker and more regarding of liberty and individualism than virtually any other state in the industrialized West, always reluctant to aid the able-bodied,

childless, and non-white poor.<sup>4</sup> And Steve Fraser and Howell Harris have shown how difficult it was for labor to penetrate the citadels of state power and how fleeting were the moments of genuine working-class influence on state policy.<sup>5</sup>

The classic narrative of state transformation, from a weak to a strong institution, has also come under attack from nineteenth-century scholars, especially among those asking important questions about how weak and laissez-faire the nineteenth-century state really was. Stephen Skowronek, for example, discards the notion that the nineteenth century state was weak (or nonexistent), delineating the existence of a state of “courts and parties” that proved remarkably effective in executing the federal government’s business.<sup>6</sup> William Novak, meanwhile, has shown how expansive and interventionist state and local governments were prior to the Civil War.<sup>7</sup> Skowronek, Novak, and others have shifted attention away from the legislative and executive branches of the federal state to other governing institutions: the judicial wing of the federal state, political parties, and state and local governments. They have asked us to dispense with the European notion of the state as a unitary institution (and as a centralized and bureaucratic one) without embracing the conclusion that the variety of institutions that we now recognize as comprising the American state caused chronic political fragmentation and weakness.

While the deconstruction of the old narrative of a weak-to-strong state is well advanced, the construction of a new narrative for understanding the American state across two centuries has proceeded more slowly. The more aware we have become about the complexity of the American state, the more difficult it is both to generalize about its institutional and functional character and to chart the course of its change over time. The larger goal of my work on the American state is to write such a history, one that is comprehensive both in its conception of what the American state has been (and how it has exercised power) and in its history of how that state has remained the same and/or changed over time. My technique in writing this history is not to try to encompass everything about this state in a single essay but to write discrete essays on key features of that state across what I call the long nineteenth century—from the 1790s through the 1930s. This chapter concerns the enduring importance of federalism in constituting the American state.

I argue that the powers possessed by state governments throughout the nineteenth and early twentieth centuries were more capacious, influential, and durable than we customarily recognize them to have been. Indeed, until and even into the New Deal, the persistence of the power of the states was an outstanding feature of American governance. This essay first considers the important role played by state governments in nineteenth-century economic development and regulation. It then extends the inquiry beyond the economy to include a consideration of the role of state governments in the

regulation of race, sexuality, and morality. With some notable exceptions, social scientists have generally done less work on these latter subjects than they have on economic regulation, labor relations, and social welfare—the hoary topics of American political development. Historians, meanwhile, have done more work on the cultural and social policies of the state but have been slow to assess the implications of this scholarship for an understanding of state power. One of the aims of this essay is to insert public efforts to regulate private life into the history of state building, in the belief that such an insertion will enrich our understanding of American governance.

The durability of the states as a force in economic, social, and cultural affairs can only be understood by reference to an expansive and constitutionally sanctioned doctrine of police power. Police power endowed state governments (but not the federal government) with broad authority over civil society for at least the first 150 years of the nation's existence. The Civil War had posed a sharp challenge to this doctrine and, for a time, it seemed as though Reconstruction would inter it. But in the late nineteenth century, state legislatures, backed by the federal courts, rehabilitated this doctrine to attack and, in many cases, to reverse, the centralization of power in the federal government that the Civil War had seemingly done so much to advance. Federalism finally did weaken in the 1930s and 1940s, but not until the 1960s and 1970s can we say that the central government had superseded the states as the premier center of political authority in America.

We have long known, even if we have had trouble remembering, that state governments played a pivotal role in nineteenth-century economic development, especially in the years prior to the Civil War. More than fifty years ago, the Social Science Research Council appointed a Committee on Research in Economic History to investigate the history of state government involvement in economic affairs. This work had a political purpose: namely, to demonstrate, at a time when the reforms of the New Deal had yet to be consolidated, that New Deal liberalism, with its emphasis on state intervention in economic affairs, had a distinguished pedigree. This Economic History Committee commissioned some of the most talented young scholars of the rising 1940s generation, including Oscar and Mary Handlin and Louis Hartz, to write histories of “politico-economic thought and action” in various states from the Revolution to the Civil War.<sup>8</sup> The works that the Handlins and Hartz produced on Massachusetts and Pennsylvania, respectively, provided rich evidence of the impressive scope of state government action in economic affairs in those years and inspired others, including Carter Goodrich, Lee Benson, and Harry Scheiber, to test and amplify their findings. The result, by the mid-1960s, was an impressive body of work on the activities of state governments prior to the Civil War.<sup>9</sup>

This literature's chief accomplishment was to show that state governments' involvement in economic affairs exceeded that of the federal government, both in terms of total funds expended and the variety of projects undertaken. Antebellum state governments, for example, spent far more on internal improvements, \$300 million, than did local governments (\$125 million) or the federal government (\$7 million).<sup>10</sup> They were more directly involved than was the federal government in the organization and direction of internal improvement projects. The outstanding example of this tendency, of course, was the Erie Canal, built in New York. While Pennsylvania had no one project of comparable size and importance, it did expend, from the 1820s through the 1840s, more than \$100 million on a comprehensive internal improvement program of railroads, canals, and roads.<sup>11</sup> More common than these examples of public enterprise were mixed enterprises, in which the state partnered itself with a private bank, transportation company, or manufacturing enterprise, with both partners sitting on a project's board of directors, equally responsible for investing money, hiring workers, and managing the project. By the early 1840s, Pennsylvania had invested over \$6 million in more than 150 such enterprises.<sup>12</sup>

Until the right of incorporation became generally available in the 1840s and 1850s, state governments also used their chartering rights to direct and control private investment. Entrepreneurs had to petition state governments for the privilege of incorporating themselves, and state governments often attached conditions to the charters they granted: through which cities, for example, a transportation company had to build its railroad; to what private ventures a bank was required to lend or grant its money; what standards manufacturers had to meet in producing their goods.<sup>13</sup> Finally, some state governments passed laws limiting the liabilities and punishment of debtors and regulating the conditions of workers by curtailing child labor and limiting the hours of adult labor. From his comprehensive study of Pennsylvania, Louis Hartz concluded that state government had "assumed the job of shaping decisively the contours of economic life."<sup>14</sup>

This body of work's chief limitation was that it *underestimated* the true scope of state activity. Because Hartz, Benson, Goodrich, Scheiber, and others were so focused, in the best New Deal tradition, on the economy, they failed to perceive the power that states exercised in non-economic areas such as public health and safety, moral behavior, marriage, and immigration. In truth, state governments possessed a staggering freedom of action when compared to the carefully circumscribed orbit of federal government power. This freedom rested on a doctrine of "police power" that was rooted in both Anglo-American common law and continental European jurisprudence and was reinforced by the Constitution.

The doctrine of police power is so familiar to legal scholars that most simply assume its existence and its role in governance. To non-legal scholars, which includes the vast majority of historians of the United States, the doctrine is virtually unknown. In the words of nineteenth-century Massachusetts Supreme Court Chief Justice Lemuel Shaw, police power was the “power vested in the [state] legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, . . . not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth.”<sup>15</sup> The crucial phrase in Shaw’s definition is the last, “for the good and welfare of the Commonwealth,” which reveals a breadth of definition to police power that exceeds our modern, commonsense notion of what it is that police do. The “good and welfare of the Commonwealth” certainly entailed the customary tasks that we associate with policing: the protection of life, property, and public order. But, in nineteenth-century legal terms, it also included such tasks as: the direction of internal transportation improvements; controls on capital and labor; the building of schools, libraries, and other educational facilities; identification and regulation of proper moral behavior; town planning; and public health. As long as an activity could be associated with the public welfare and did not violate the Constitution, a state legislature could pursue it through social policy.

This view of governance, in the words of William Novak, “championed public good over private interest.” It called for a polity well-regulated by government in which “no individual right, written or unwritten, natural or absolute” could be permitted to “trump the people’s safety” or welfare.<sup>16</sup> It closely resembled what other scholars have called the ideology of “civic republicanism,” and, like republicanism, it put faith in the ability of responsible, virtuous citizens to determine and agree on the public interest and *salus populi*, the people’s welfare. From this perspective, the enjoyment of personal freedom and individual rights depended on the carefully regulated society that government would construct.<sup>17</sup>

Legal historians do not agree about the origins of this expansive police power doctrine or on its period of greatest influence. Novak locates its origins in traditions of Anglo-American common law and argues that it was influential throughout the period from 1789 to the Civil War.<sup>18</sup> Christopher Tomlins, on the other hand, asserts that its origins lie in eighteenth-century continental European philosophy, and that it held sway for only a brief moment, the 1770s and 1780s, when the various states established radically democratic governments with wide-ranging powers. Tomlins argues that James Madison, Alexander Hamilton, and other Federalist framers of the Constitution overturned this expansive notion of police power and, in the process, defined the common good in classically liberal terms—as inhering in the rights of individuals rather than in the welfare of the community as a whole.<sup>19</sup>



While Tomlins may be right to argue that the Constitution made classical liberalism the chief doctrine shaping the exercise of *federal* power, he seems to be on weaker ground in asserting that this liberalism determined the exercise of state government power as well. The Constitution used a deliberate language of enumeration and definition to limit the powers it granted to the federal government.

The powers it granted to the states, on the other hand, were vague and virtually unlimited. As the critical Tenth Amendment declared, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people.”<sup>20</sup>

Through this Amendment, state governments acquired the power of general government or, as legal scholars would later call it, “the residual power of government.” The very refusal to name the powers of state governments meant that the potential power to be exercised by these institutions was vast. State governments could undertake any activity not specifically reserved for the federal government or proscribed by the Constitution. As James Madison himself wrote in the forty-fifth *Federalist*: “The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”<sup>21</sup> Another *Federalist*, Tench Coxe, laid out in 1788 far more specifically what state governments, under the Constitution, would be able to do:

create corporations civil and religious; prohibit or impose duties on the importation of slaves into their own ports; establish seminaries of learning; erect boroughs, cities, and counties; promote and establish manufactures; open roads; clear rivers; cut canals; regulate descents and marriages; license taverns; alter the criminal law; constitute new courts and offices; establish ferries; erect public buildings; sell, lease, and appropriate the proceeds and rents of their lands, and of every other species of state property; establish poor houses, hospitals, and houses of employment; regulate police; and many other things of the utmost importance to the happiness of their respective citizens.<sup>22</sup>

Thus did the Constitution buttress the wide-ranging doctrine of police power rooted in Anglo-American common law, republican ideology, and the heady experience of forming powerful and democratically controlled state governments in the 1780s. It would be a power that both the state and federal courts, for most of the nineteenth century, would honor as fundamental to the American system of governance.

This capacious police power permitted state governments to promote the extensive internal economic improvements that Hartz, the Handlins, Goodrich, and others described. But, as Coxe had already anticipated in the late eighteenth century, the power of state governments could extend far beyond economic matters to include education, social welfare, marriage,

family life, and morality. In one simple but telling list, Novak enumerates the thirty-eight powers that the new city of Chicago, with the approval of the Illinois legislature, arrogated to itself in 1837 for the purpose of achieving a well-regulated society. They included the right to regulate “the place and manner of selling and weighing” commodities traded in the city; the power to compel merchants, manufacturers, and owners of any “unwholesome, nauseous house or place” to clean their workplaces and homes and to dispose of “any unwholesome substance”; the power to “direct the location and management of all slaughterhouses, markets, and houses for storing power”; the right to keep all public ways—streets, rivers, wharves, ports, town squares—free of encumbrances, ranging from boxes, carts, and carriages to loose herds of “cattle, horses, swine, sheep, goats, and geese” and large dogs; the right to regulate or prohibit all games of chance and practices of prostitution in the city; the right to ban any show, circus, or theatrical performance, or even innocent games of “playing at ball, or flying of kites” deemed repugnant to the general welfare; the regulation of the buying and selling of liquor through licensing; the right to “abate and remove nuisances” and “to restrain and punish vagrants, mendicants, street beggars, common prostitutes”; the power to establish and regulate the city’s water supply; the power to operate a police force, survey the city’s boundaries, license ferries, provide lighting for the city, and “regulate the burial of the dead.”<sup>23</sup>

Impressive about this list, and the analyses that Novak develops from it, is what it reveals about the extent of governance.<sup>24</sup> State and local governments did not just take upon themselves the power to regulate commerce, manufacturing, and labor relations and, in the process, to establish the kind of “public economy” or “commonwealth” that Hartz and the Handlins had discerned in their studies of Pennsylvania and Massachusetts. They also made private (and non-economic) behavior—drinking, gambling, theatergoing, prostitution, vagrancy, the flying of kites—matters of public welfare and regulation.<sup>25</sup> Much of the justification for this moral regulation rested on an old common law “nuisance” doctrine that allowed public authorities to act against anybody who was thought to offend public order or comity. In the early nineteenth century, the concept of nuisance expanded from addressing those problems that virtually anyone would agree presented a hazard to the community—a cow carcass rotting in the street, a ship full of diseased sailors—to acts that depended more on one’s interpretation of proper moral behavior: drinking, gambling, theatergoing, prostitution, vagrancy.<sup>26</sup>

Given the role of community opinion in shaping public welfare, it is not surprising that those most frequently targeted for surveillance, punishment, and reform were members of suspect groups—single women who lived outside patriarchal families, the poor, blacks, and immigrants.<sup>27</sup> More surprising, perhaps, is that the scale of surveillance and punishment increased as

the nineteenth century advanced, a development that belies any interpretation that seeks to root this social and moral regulation simply in a dark but receding Puritan past. From the vantage point of the 1840s, the notion of a well-regulated society was modern, not ancient. Oscar and Mary Handlin, the only ones among the “commonwealth” school to grasp how far state government power extended beyond economic issues, introduced the phrase “humanitarian police state” to describe the moral surveillance undertaken by Massachusetts local and state authorities in the 1840s and 1850s. The Handlins did not explain why they chose this seemingly anachronistic phrase to describe the scope of state rule, but perhaps they were trying to stress the state’s modern character.<sup>28</sup>

Novak documents this dark side of government power in antebellum America and shows, in good dialectical fashion, how its very force gave rise to an opposition—a campaign, popular and legal, for a recognition of fundamental rights to liberty and property that no commonwealth or government could take away. But Novak is also a republican and communitarian at heart who admires much of what the proponents of the well-regulated society aimed to do, especially in the area of political economy. And, thus, he is sometimes slow to perceive the ways in which individuals could evade this system of community control (by moving from town to town or from state to state) and how large economic interests were sometimes able to cloak their particular aims in the “public interest” and bend commonwealth power to their private ends.<sup>29</sup> Most seriously, he does not reckon sufficiently with slavery as an expression of a well-regulated society.

The Constitution permitted slavery, but the decision about the legitimacy of the institution was left for each state to decide for itself. The Southern states were convinced that a well-regulated society and one that served the “people’s” welfare had to be one grounded in the enslavement of their resident African populations. Because they had stripped Africans of their humanity, white Southerners had little difficulty excluding them from the ranks of the “people” and the “people’s welfare.” In their hands, the extraordinary power vested by common law and the Constitution in the hands of state governments became “states’ rights”: a doctrine that they were willing to—and did—defend with their lives. Despite its limited focus on the issue of slavery, Novak’s book actually helps us to understand the power of states’ rights, for it was not just a thin rationalization for the practice of slavery (as many historians believe) but a version of the deeply rooted and much cherished tradition of state governance that, as Novak has shown, was powerful throughout the North as well in the antebellum years. This tradition could produce positive consequences, in the sense of upholding the public interest over private claims; and it could yield pernicious results, in the sense of suppressing dissent and freedom. But its power seems undeniable and

helps us to understand why abolishing slavery posed such a serious challenge to prevailing modes of American governance and to popular notions of public vs. private right. The Civil War, the emancipation of the slaves, and Reconstruction posed these challenges in acute form.

The Civil War is often thought to mark a transition in the history of the American state, with the victory of the North ensuring both the triumph of federal over state authority and the transformation in conceptions of the scope and uses of federal power. The Thirteenth and Fourteenth Amendments directly challenged prevailing conceptions of states' rights: the former did so through the emancipation of the slaves, which stripped tens of thousands of white southerners of human property hitherto protected by the laws of their states; the latter did so by transferring the power to grant citizenship and enforce its rights from the states to the federal government. Moreover, the exigencies of war impelled the Union to take on tasks that it had previously considered to be beyond the scope of the national government's power: employing millions in its army, centralizing banking functions, and directing manufacturers and merchants to serve the government's need for food, ammunition, uniforms, artillery, guns, and munitions. One can also discern this centralization and expansion of federal power in the wartime introduction of national systems of taxation and paper currency, expenditures on scientific research and public universities, and the massive distribution of federal lands to ordinary agricultural settlers through the Homestead Act of 1862. This growth in federal government power carried over into Reconstruction, nowhere more so than in the Freedmen's Bureau, a major federal initiative to integrate emancipated slaves into the South's economic, social, and political life on terms of equality with whites. Also, Congress in the 1860s put into place a generous pension system for disabled veterans and the widows of dead soldiers that, by 1875, was paying benefits to more than 100,000 claimants, a number that, by 1900, would increase sevenfold. This was indeed, as Theda Skocpol claims, the first mass welfare system in the industrializing world.<sup>30</sup> The Freedmen's Bureau and the veterans' "welfare state" set precedents for the kind of work that a powerful federal government could do.<sup>31</sup>

Yet the end of Reconstruction in 1877, the dismantling of the Freedmen's Bureau, and the withdrawal of the federal government from efforts to ensure racial equality should caution us against drawing too straight a line of influence from 1863-1877 to the federal-state centralizing tendencies of the Progressive Era and New Deal, as some historians and social scientists have been inclined to do. Indeed, in what legal scholars regard as one of the key constitutional developments of the late nineteenth century, and what we may want to regard as an American Thermidor, the Supreme Court, in the 1870s and 1880s, *restored* to the states expansive notions of police power that

Reconstruction, and the Thirteenth and Fourteenth Amendments in particular, had taken away. Even those Supreme Court justices, such as Stephen Field and Rufus Peckham, thought to be the architects of a *laissez-faire* constitutionalism built on the Fourteenth Amendment's guarantees of due process and equal protection, wrote opinions in the 1880s that protected the police powers of the states in remarkably generous terms. As Field argued in 1885: "Neither the [fourteenth] amendment, broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of a State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."<sup>32</sup> Field and his fellow justices only declared a state regulation illegal, in Fourteenth Amendment terms, when they deemed it to be "class" legislation—a law that improperly singled out a particular group (or "class") of people for preferential treatment.<sup>33</sup>

This orientation on the part of the Supreme Court legitimated a late-nineteenth-century surge in the scope and vigor of state governance. The legal definition of police power was as broad, even broader, than it had been in the antebellum years. State legislatures passed thousands of laws during this time to regulate all kinds of economic and social activities, from conditions at the workplaces and in tenement houses to drinking, gambling, and other "vices." They established a wide variety of public institutions, ranging from labor bureaus, fish commissions, and liquor licensing agencies to public universities, public charities, and public health boards, few of which had existed prior to the Civil War. This institutional expansion also triggered rises in state employment and the professionalization of skilled occupations, such as statisticians, inspectors, and pharmacists, on which state governance had come to depend.<sup>34</sup> The laws passed by the states were not always effectively enforced, and the quality of the work done by the new agencies varied from state to state. But this expansion in the reach of federalism easily passed constitutional muster.

The determination of the federal courts to protect the rights of states to exercise broad police powers helps us to understand what we have long known and yet have had difficulty assimilating to our analysis of "state" power—the explosion during the post-Reconstruction years of state legislation regulating morality, race, and sexuality in a society supposedly consecrated to *laissez-faire* and individual freedom. From the late nineteenth century through the first quarter of the twentieth—the supposed high point of America's *laissez-faire* regime—many states exercised what in other societies would be regarded as sweeping forms of control over individual behavior: prohibition of the sale and consumption of alcohol; forced separation of the colored and white populations; and the banning of interracial marriage,

polygamy, prostitution, and contraception.<sup>35</sup> The federal government participated and encouraged this repression, outlawing polygamy in 1862, banning birth control materials from the U.S. mail in 1873, and prohibiting the transport of women across state lines for sexual purposes in 1911. But even as the federal government expanded its morals' regulation during this time, the power to legislate moral life remained largely within the province of the states, part of the authority they derived from their police powers. And the Supreme Court repeatedly upheld the states in their rights to exercise their police powers in this way.<sup>36</sup>

Segregation offers one of the most interesting examples of the Supreme Court's decision to uphold an expansive conception of police power. Virtually every student of American history regards *Plessy v. Ferguson* (1896) as a landmark constitutional decision, one that legitimated a system of racial apartheid in the Southern states for more than fifty years.<sup>37</sup> What remains unclear about this case is how the Supreme Court justified its decision to circumscribe the movement of African Americans and their ability to interact with whites at a time when the Court was supposedly enshrining *laissez-faire* as the key principle of economic affairs. This court was substantially the same one, after all, that less than ten years after *Plessy* issued the *Lochner* decision declaring that New York State had no right to pass a law limiting the number of hours that employees in bakeries could work per day. No state, the court insisted, possessed the right to interfere with the freedom of workers to enter into employment contracts of their own choosing.<sup>38</sup> If this "freedom of contract" philosophy was so important to the court, how could it have denied this very freedom to African Americans living in conditions of segregation? Was not one of the principles of *Plessy* that state governments possessed the right to deny African Americans freedom of assembly, movement, and contract?

The explanation for this apparent contradiction is that the principle of *laissez-faire* was not the all-powerful constitutional principle we have often assumed it to have been.<sup>39</sup> When *laissez-faire* conflicted with the doctrine of police power in the late nineteenth century, the Court was sometimes willing to set *laissez-faire* aside. In a series of civil rights cases culminating in *Plessy*, the Court not only ruled that states could deny African Americans freedom of movement, but also that states could deny corporations the freedom to do business as they pleased. The segregationist transportation laws passed by states such as Louisiana in the 1880s and 1890s were directed as much at regulating corporate behavior as at separating the races. These laws not only stipulated that the black and white races had to be separated on all railroad passenger cars, they also required railroad corporations to provide separate carriages on every train running through the states in question.

Prior to the 1890s, railroad corporations determined for themselves whether or not to offer separate railroad coaches for blacks and whites. The

Interstate Commerce Commission (ICC) had begun ruling in the 1880s that if railroads chose to segregate black and white passengers, they had to provide the former with car accommodations that were substantially equal to those they were offering whites. But the ICC did not require railroads to segregate passengers by car. The racial riding policies adopted by railroads varied depending on the train route, the numbers of white and black travelers using a particular train, and other business considerations. On routes traveled by few black passengers, for example, railroads did not provide separate cars, preferring to accommodate an African American individual here and there through informal segregationist arrangements within single cars. State segregationist ordinances in Louisiana and elsewhere in the 1890s deprived railroad corporations of this flexibility in regard to racial seating schemes. The freedom of corporations to make decisions that were in their own profit-maximizing interests had succumbed to what Barbara Young Welke has called the “expanded police power of the state to legislate on behalf of the health, safety, and welfare of its citizens.” This impulse to put the “people’s welfare” ahead of corporate privilege was the same one, Welke argues, that would soon animate progressivism. Significantly, the states were the original architects of this regulatory regime, not the federal government, and they drew their justification from a reinvigorated conception of the states’ police power.<sup>40</sup>

The persistence of the states’ police power can be discerned equally well in matters pertaining to interracial marriage. The regulation of marriage had always been regarded as lying within the authority of the states. In the early to mid-nineteenth century, movements arose to enhance the freedom of individuals to choose their marriage partners, which meant treating marriage as a contract freely undertaken by two individuals and not as a civic act in which government, on behalf of the people of that state, took an interest. This tendency marked the increasing sway of *laissez-faire* in personal life. But a reaction against this liberal approach gathered force in the last third of the nineteenth century amidst growing fears that emancipation, urbanization, and immigration were creating general social disorder and too many worrisome sexual and marital unions.<sup>41</sup> Nowhere was this reaction more apparent than in the strengthening of state laws outlawing miscegenation. These laws were not new in the second half of the nineteenth century, as colonial and state governments had attempted to regulate interracial unions almost from the time that African slaves had been brought to colonial shores. Emancipation and Reconstruction created a more favorable climate for legalizing interracial romance and marriage, but, by 1882, the U.S. Supreme Court declared that “the higher interests of society and government” permitted a state to exercise its police power to regulate both sexuality and marriage as it saw fit.<sup>42</sup>

With this sanction from on high, twenty states and territories, between the 1880s and the 1920s, strengthened their bans on interracial sex and marriage or added new ones, culminating in a 1924 Virginia statute that Peggy Pascoe has called “the most draconian miscegenation law in American history.” These laws appeared not only in Southern states but in Northern and Western ones as well, confirming Desmond King’s argument that the segregationist order should be seen as national, not simply sectional. Many states extended the prohibition on intermarriage from whites and blacks to whites and Asians and whites and Native Americans.<sup>43</sup> As the repressive Virginia law was being debated and passed in the 1920s, the Supreme Court, in a series of cases having to do with coercive public school laws, was actually signaling its dissatisfaction with excessive interference by state governments in education and other aspects of family life. Every individual had the right, the Court declared in 1923, “to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, [and] to worship God according to the dictates of his own conscience.” But, despite this effort to carve out a sphere of private life that no government could touch, and to include in that sphere the right to marry a person of one’s own choosing, the Supreme Court refused, for another forty-four years, to declare that people from different races had the right to marry each other. Until 1967, the right to ban racial intermarriage was deemed to lie well within the police power of state governments to regulate society in the people’s interest. Until that almost exact same moment as well, this police power was interpreted by the courts to mean, too, that state governments possessed the right to ban contraception and a variety of “unnatural” sexual acts.<sup>44</sup>

As the arc of these decisions suggests, the federal courts eventually did carve out a sphere of individual rights that no government, state or federal, could abrogate. The elaboration of these protections was part of a long “incorporation” process through which the federal government compelled the states to recognize the primacy of individual rights set forth in the Constitution, the Bill of Rights, and subsequent Amendments. In the process, the federal government diminished the police powers of the states. But what impresses one about this story is how long it took to create that sphere and how resistant state governments and the federal courts were to its claims. As the last section of this essay will show, only the Civil Rights Revolution of the 1960s dislodged the police power doctrine from its exalted perch.

This resistance to recognizing individual rights as primary occurred in a society that has always thought of itself as granting individuals inalienable rights to life, liberty, happiness, and property. Possessing inalienable rights was supposed to mean that no government could take those rights away. But under the police power doctrine, it turns out, state governments could



regulate, even obliterate, many of these rights, and did so for almost two hundred years, from the beginning of the republic until the eve of its bicentennial. They did so even in moments, such as the New Deal era, that we regard as laying the groundwork for the mid-twentieth-century “rights revolution.” Thus, during the New Deal, no state government had to worry that its right to sustain Jim Crow or antimiscegenation laws was imperiled. And, as George Chauncey has provocatively argued, the repeal of Prohibition in 1933 actually triggered a strengthening of the police powers of the states in regards to “sexual deviants,” whom state agencies began sweeping from city streets, bars, and other public places.<sup>45</sup>

These state regimes of moral regulation did not always work as well in fact as they were designed to on paper, for the simple reason that it was difficult to achieve the kind of uniformity across states that successful enforcement required. From the perspective of the effective enforcement of police power, Hendrik Hartog has observed that state governments often suffered from a key weakness: they could not control the movement of people in and out of their territory. Only the federal government could control movement across borders, and it patrolled the national borders, not those separating New York from New Jersey or Ohio from Kentucky. Because states were often in competition with each other for laborers, industry, investment, immigrants, and settlers, some were always seeking to attract the desired people and commodities by instituting what they understood to be attractive, and liberal, laws. New Jersey and Delaware long sought to draw industry by making public incorporation easier in their states than in any others. A number of states, beginning with Connecticut in the nineteenth century and reaching Nevada in the twentieth, always made it much easier than in most other states for unhappy couples to secure a divorce. Western states hoped to draw women by giving them the vote earlier than they gained it elsewhere and also by being among the pioneers in increasing the rights of women within marriage. Those suffering from their state’s prohibition laws could choose to live close to another state that allowed them to quench legally their alcoholic thirst. Few states sought to attract black migrants fleeing Jim Crow or marrying whites, but many states offered an environment free of official segregation and antimiscegenation law. Today, some homosexual couples wanting to marry think about moving to Vermont, Massachusetts, and other states that have legalized same-sex civil unions and/or marriage. Many other examples could be added to this list. The point should be clear: sometimes Americans could escape the police-power regulatory regimes of their states by pulling up stakes.<sup>46</sup> Indeed, it may be that the very patchwork nature of this system of state rule encouraged the high levels of geographical mobility for which Americans have always been famous. It may be, too, that the very toleration by Americans of powerful

and intrusive state governments rested on their conviction that one could always find a way to escape their clutches.

And yet, for all their mobility, tens of millions of Americans have always attached themselves to places they called home and have lived long stretches of their lives in single states and under particular regulatory regimes. For these Americans, the laws passed by their state legislatures to govern economic, social, and private life mattered a great deal. The interracial couple, Richard and Mildred Loving, whose claim against the state of Virginia eventually brought the whole edifice of antimiscegenation law crashing to the ground in 1967, first brought suit against Virginia because they were not content to live in Washington, D.C., where they had been forced to marry and reside. They loved Virginia, the state of their birth and of their families, and wanted to go home.<sup>47</sup>

The durability of robust conceptions of police power in state governments should caution us against making sweeping statements about the transformative effect of any particular moment of federal state innovation, whether that be the Civil War and Reconstruction, World War I, or even the New Deal. To make such a statement is not to deny that moments of important change in federal power did occur. The passage of the Fourteenth Amendment in 1867 did pose a direct challenge to the police powers of the states and to their ability to control economic or moral and cultural life; but it would take more than fifty years in the economic realm and one hundred years in the moral and cultural realm for the full effects of this Amendment to be felt. The New Deal, in turn, through its innovations in agricultural, labor, and social welfare policy, created a new federal state, arguably the first peacetime standing state in American history and one that was ready, even eager, to interfere with the rights of capital and property to achieve its ends. In the process, it secured, through the commerce clause, a surrogate police power that finally allowed it to assume powers to protect the people's welfare that had hitherto been reserved to the states. That Franklin Roosevelt had to threaten a coup, more commonly (and palatably) known to us as his 1937 Court-packing initiative—to ensure that the Supreme Court would declare critical powers of the New Deal state constitutional—testifies to the far-reaching nature of the changes in federal governance that he and his supporters had introduced.

And yet, the New Deal, too, had to adapt to traditional patterns of governance. New Dealers proved solicitous of state governments. In distributing relief and welfare, for example, New Dealers found themselves partnering with the states. The Federal Emergency Relief Administration (FERA), under Harry Hopkins, turned to state agencies to distribute direct grants and established a system of matching grants that required states to put up three dollars for every one dollar of federal relief largesse. This system meant that both the size of federal expenditures in a state and the allocation

of those expenditures would be determined by state government officials. A similar system prevailed in the Social Security Administration. While old age insurance was a purely federal program, unemployment insurance and other so-called “categorical” forms of assistance—subsidies for the needy, aged, blind, and dependent children—were not. States were expected to fund their own unemployment insurance programs in return for federal tax relief. For a method to determine the levels of categorical assistance, the federal government turned, as it had in FERA, to matching grants: one federal dollar for every two state dollars spent on the needy, aged, or blind; another federal dollar for every two state dollars spent on aid to dependent children. This system gave individual states the autonomy to choose the scale and beneficiaries of welfare expenditures in their polities and produced, not surprisingly, many little, disparate welfare states rather than one big, uniform one.

The surprising resilience of state governments during the New Deal can be explained by several factors: the lack of bureaucratic and administrative capacity at the federal level and the impossibility, given the imperative of responding quickly to the economic crisis, of waiting patiently for it to develop; the New Dealers’ need to win, in Congress, the support of those who feared establishing too centralized and bureaucratic a federal state, including a power bloc of Southern Democrats who believed that too strong a federal state would eviscerate states’ rights and the racial regimes that states’ rights were meant to protect; and the desire to write legislation that would stand a good chance of passing constitutional muster.

The national welfare and relief legislation enacted by New Dealers in the 1930s, then, diminished but did not extinguish the power of state governments; the tradition of state governance was simply too old, too honored, and too strong. As Stephen Skowronek concluded in *Building the New American State*, a new governing system could not be built from scratch, at least not in a polity averse to revolution and committed to progressing through deliberation and negotiation. Rather, a new system had to be built on the structure of the old, which often led to patterns so apparent in the New Deal and beyond: political compromises and governing arrangements that sometimes tied the federal government up in knots and made efficacious social policy difficult to deliver.<sup>48</sup>

A comprehensive analysis of the structure and history of the American state across the long nineteenth century needs to extend well beyond a consideration of federalism. But no analysis can afford to ignore federalism or the expansive doctrine of police power that federalism gave to the states, a power that stands at such odds with the still durable conception of nineteenth-century America as a society that maximized individual freedom and minimized the ability of the government to constrain individual choice.

The federal government acquired new constitutional powers as a result of the Civil War and the defeat of the South, but the meaning and strength of those powers would come to depend on Court interpretations of them in the thirty-year period after the war had ended. In many areas of governance, those interpretations limited the power of the new federal leviathan. Just as the late-nineteenth-century Supreme Court interpreted the Civil Rights Amendments in ways that permitted white supremacy to thrive, so, too, did it interpret these Amendments in a manner that allowed a reinvigorated conception of states' police power to flourish. The motivations of the Supreme Court justices and of the federal courts in general for infusing the police power doctrine with new life deserve more consideration than they have received in this essay. But there can be little doubt that federalism as a doctrine and practice gained new strength in the late nineteenth century, and entered the twentieth with considerable wind in its sails.

Only in the 1960s did political protest and central government pressure enduringly break this formidable pattern—and the concept of states' police powers that lay at its core. The civil rights movement triggered this change. The association between white supremacy and federalism, or “states' rights,” ran so deep that a frontal assault on one was bound to generate an assault on the other. This is what happened in the 1960s when the combination of insurgent social movements and liberalism, suddenly aghast at its complicity in white supremacy, mounted a campaign to challenge the racial foundations of the Republic unlike anything that had been seen in the United States since the era of Emancipation and Reconstruction. It quickly became clear that dismantling Jim Crow in the South was going to require the central government to assert its power over that of the states. Specifically, this meant that the central government had to insist on its constitutional obligation to ensure that every American be able to exercise his or her inalienable rights, even if that meant nullifying the police powers long exercised by the various states.

Thus, in the 1960s the federal government crossed lines in its relations with the states that it had refused to traverse in any other era of liberal reform. Title VI of the 1964 Civil Rights Act made that act the first federal law specifically to prohibit the use by states of racially discriminatory criteria in distributing federal grants-in-aid monies. The 1965 Voting Rights Act gave the federal government authority to reform electoral rules that had long been regarded as the exclusive domain of state and local governments. The 1965 Medicaid program expanded the power of the federal government by requiring individual states to provide certain kinds of medical assistance to the poor; unlike the welfare programs of the 1930s, Medicaid's provisions prohibited states from deciding on their own whether or not they wanted to participate in this federal program. By the late 1960s, too, the federal

government was determining eligibility requirements for Aid to Families with Dependent Children (AFDC) to an unprecedented degree. In undertaking these actions, the federal government was curtailing the autonomy of the states to determine the kind of public welfare that would exist within the latter's boundaries.<sup>49</sup>

The federal courts participated in this assault on federalism, not only by upholding the constitutionality of legislation discussed above but through "judicial legislation" that they fashioned out of lawsuits that individual Americans were bringing before the federal bench. *Baker v. Carr* (1962) asserted the federal government's power to oversee electoral redistricting, a process always regarded as belonging to the states alone. *Miranda v. Arizona* (1965), which insisted that individuals being arrested possessed rights that law enforcement had to respect, placed local police under the strictest federal scrutiny they had ever known. *Loving v. Virginia*, as we have seen, inserted the Constitution into another area of law—marriage—long regarded as the province of the states.<sup>50</sup>

The willingness of the Supreme Court to go to such lengths in revising relations between the central government and the states was informed by the justices' conviction that federalism had made possible an unjust racial order that they could no longer defend or even tolerate. Reflecting on the "fundamental shift" in "federal-state" relations that the Warren Court oversaw in the 1960s, Associate Justice John Marshall Harlan noted in 1969 that the federal judiciary had come to "distrust in the capabilities of the federal system to meet the needs of American society in these fast-moving times," and to believe that it had to "spearhead reform" even if that meant sacrificing "circumspect regard for the constitutional limitations upon the manner of its accomplishment." Harlan, himself, was ambivalent about this judicially mediated change. "To those who see our free society as dependent primarily upon a broadening of the constitutional protections afforded to the individual," he observed, "these developments are no doubt considered to be healthy. To those who regard the federal system as one of the mainsprings of our political liberties, this increasing erosion of state authority cannot but be viewed with apprehension."<sup>51</sup>

The comprehensive shift in power from the states to the federal government occasioned by the assault on Jim Crow made possible the greatest advances in racial equality in a century. It also triggered a "rights revolution," as individuals of all kinds now came forward to insist on fundamental constitutional rights that no government in America could touch. These included the right to marry a person of one's own choosing; the right to privacy; the right to an abortion; and the right to equal opportunity irrespective of one's gender, sexuality, religion, or race. The weakening of federalism made possible this egalitarian advance.

Of course, states did not disappear. They never will. The American polity continues to be comprised of tens of thousands of distinct jurisdictional units—more than 89,000 in 2008—including not just the states themselves but all the counties, towns, special districts, and schools that fall under state control.<sup>52</sup> Employment in state and local government grew enormously in the Great Society years and beyond. For the federal government to impose its will on this densely populated government landscape was not an easy thing to do; the possibility for federal policy failure or co-optation due to jurisdictional fragmentation, incompetence, or self-interestedness was ever present; it still is. The persistent size and sprawl of local and state governments into the 1960s and beyond have led some commentators to suggest that federalism remained intact during this time, and that the changes of the 1960s were but one more set of adjustments that federal-state relations have periodically undergone without changing the federalist system's fundamentals.<sup>53</sup> But this interpretation underestimates the degree to which the changes of the 1960s eviscerated the foundation on which states had built and accumulated their authority: the police power doctrine.

That the 1960s period of change was different from earlier periods comes into sharper relief if we compare it to the shift in federal-state relations that occurred during the Civil War and Reconstruction. Both periods witnessed basic shifts of power from the states to the central government. Both periods were followed by concerted efforts to restore to the states the powers that had been taken away. Already in the Nixon administration, Republican conservatives rolled out a "New Federalism" to restore states' rights. This became a central ambition of Supreme Court Justice William Rehnquist and the conservatives who sat on his court from 1986 to 2005. Rehnquist achieved some notable successes in restoring rights to the states, especially during cases decided in the late 1990s.<sup>54</sup> But, overall, the achievements of this conservative federalist resurgence have been rather modest in comparison to what the Supreme Court of the 1880s and 1890s accomplished. Rehnquist long believed that the Supreme Court's decision in *Brown v. Board* was wrong and that the Court should have used the opportunity presented by *Brown* to reaffirm its 1896 *Plessy v. Ferguson* ruling (to allow states to decide whether or not to enact segregationist policies).<sup>55</sup> But Rehnquist never dared, in his long tenure as Chief Justice, to associate his name with a case of *Plessy*-like content and magnitude that would have done for our *fin de siècle* what *Plessy* did for states' rights a century ago. The 1960s shift in power from the states to the federal government turns out to have been far deeper and more enduring than the 1860s shift had been.

The weakening of federalism went hand in hand with the central government's determination to make itself the guarantor of the individual rights of all Americans—black and white, minority and majority, female and male,

homosexual and heterosexual. In this respect, federalism's decline made possible egalitarianism's advance. The relationship of federalism's attenuation to the pursuit of economic or class equality in America is a more complex matter to analyze. We can find many cases in American history of state and local elites using federalist structures to enrich and empower themselves, impoverishing and immobilizing poorer Americans in the process. One of the best studies of this phenomenon is Grant McConnell's 1966 work, *Private Power and American Democracy*, which shows how private elites operating within states or regions appropriated government power that formally belonged to the central New Deal state to advance their own interests.<sup>56</sup> This appropriation, McConnell argued, was facilitated by federalist structures and the fragmentation of public power that inevitably flowed from them. Even in cases in which Congress established a national agency to regulate an economic sector, McConnell claimed, federalist imperatives compelled policy makers to decentralize that agency's power, in effect handing over large chunks of it to state and local governments. It was precisely these municipal and state governments that were most susceptible to the influence of local elites and local oligarchies; this is where the private conquest of public power, according to McConnell, had advanced the furthest and had done the most damage. In such ways did central government programs meant to advance the common good strengthen the power of local and regional elites.

McConnell's account is empirically sound and politically sobering. But he is wrong to single out state and local governments as the only portals through which private power influenced American democracy—and to expect, as McConnell did, writing at the moment when the hopes for the Great Society were at their most expansive, that the mere strengthening of the central government would have sufficed to inject egalitarian principles into our economic life. Anyone who has looked carefully at economic-government relations in the last quarter of the twentieth century cannot help but notice that private interests are capable of penetrating central governing institutions as thoroughly as they have done this work at the state and local levels. The susceptibility of public institutions to private influence is a subject I take up elsewhere.

McConnell's account also ignores the long and rich history of efforts made by state governments to use their police powers to corral private economic power for the public good. This they attempted to do through a variety of means. In the antebellum years, state governments often inserted public obligations into the charters that they granted private corporations. In the Gilded Age, states passed a blizzard of laws to regulate corporate behavior in the public interest. In the Progressive era, the states were the "laboratories of reform," positioning themselves at the cutting edge of efforts to assert the priority of the "people" over the "interests." They passed laws to regulate workplaces, to provide welfare for citizens unable to care for themselves, to

limit the influence of corrupt private interests on politics, and to increase the direct influence of people on politics by embracing the initiative, referendum, and recall.

Post-Progressive Era scholars have often criticized these efforts as doomed to failure, for the simple reason that the power of corporations had grown too great for any one state to control. From this perspective, only the central government was thought to possess the necessary muscle to subdue corporate power. This criticism is fair, but not complete (and the argument about scale has gotten more complicated in light of the fact that corporations are now global and have extended their reach beyond the point where central governments can enforce their sovereign power). State-level efforts failed as well because the federal courts increasingly exempted corporations from the control of state legislatures. One of the strangest stories of American history is how nineteenth-century courts began to identify corporations as “individuals” whose constitutional rights no government could touch. (The strangeness of this story lies both in the willingness of the courts to transmute corporate bodies into individuals and in the fact that the courts extended these rights to virtually no other group of individuals until the 1960s.) Treating corporations in this way allowed the federal courts to protect incorporated institutions from the police power of the states in which they did business. As we have seen in *Plessy*, the strength of the police power doctrine was such that it took time for the courts to establish the inviolability of this corporate immunity doctrine; but the Supreme Court’s 1905 ruling in the *Lochner* case reveals that it was gaining traction. By the time of the New Deal, it was axiomatic in reform circles that the states could not regulate corporations and that only a dramatic expansion in the power of the national government could accomplish this task.

Liberals and the courts at this time acted on this axiom—and responded to the crisis caused by the collapse of American capitalism—by elevating the Constitution’s commerce clause into a surrogate policy power doctrine that empowered the federal government to regulate the private economy in the public interest and thus to enable it to succeed where the states had failed. A dramatic growth in the size and effectiveness of the central regulatory state ensued across the next forty years. But in addressing the legacy of New Deal, we have to ask whether the egalitarian gains of the centralized regulatory state and of substituting a national police power doctrine for that of the states’ were truly enduring. It is remarkable that the Second Gilded Age of the late twentieth century (1970s–1990s) generated so little collective protest about economic inequality, especially when compared to the scale and intensity of these sorts of protest that erupted during the First Gilded Age of the late nineteenth century. Is it possible that the weakening of federalism that began in the 1930s and that was dramatically accelerated by the rights



revolution of the 1960s stripped Americans of one of their most important languages for asserting, as Theodore Roosevelt did in 1910, that “every man holds his property subject to the general right of the community to regulate its use to whatever degree the public welfare may require it”<sup>57</sup> What if the concept of police power as deployed at the federal level cannot be (except at moments of grave emergency, such as economic cataclysm and war) a robust vehicle for asserting the priority of the commonwealth over private interests? What if the rights revolution of the 1960s has so prioritized individual equality that collective equality has become much harder to attain?

If the Obama administration is successful in reviving the spirit and substance of the New Deal, we may soon be answering each of these questions in the negative. But if the answers to any of them turn out to be yes, then we may come to regard the decline of federalism as a mixed blessing for politics and government in twenty-first-century America.

## NOTES

1. A classic work is Sidney Fine, *Laissez-Faire and the General-Welfare State: A Study of Conflict in American Thought, 1865-1901* (Ann Arbor, MI: University of Michigan Press, 1956).

2. Bruce Ackerman, *We the People: Transformations* (Cambridge, MA: Harvard University Press, 1998), 343; Carl Degler, “The Third American Revolution,” in Degler, *Out of Our Past: The Forces That Shaped Modern America* (1970; New York: Harper and Row, 1959), 379–413.

3. Barry D. Karl, *The Uneasy State: The United States from 1915 to 1945* (Chicago: University of Chicago Press, 1983); Anthony J. Badger, *The New Deal: The Depression Years, 1933-1940* (New York: Hill and Wang, 1989).

4. Alan Dawley, *Struggles for Justice: Social Responsibility and the Liberal State* (Cambridge, MA: Harvard University Press, 1991); Linda Gordon, *Pitied but Not Entitled: Single Mothers and the History of Welfare, 1890-1935* (Cambridge, MA: Harvard University Press, 1994); Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* (New York: Oxford University Press, 2001).

5. Steve Fraser, *Labor Will Rule: Sidney Hillman and the Rise of American Labor* (New York: Free Press, 1991); Howell John Harris, *The Right to Manage: Industrial Relations Policies of American Business in the 1940s* (Madison: University of Wisconsin Press, 1982).

6. Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (New York: Cambridge University Press, 1982).

7. William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996).

8. Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1900* (Cambridge, MA: Harvard University Press, 1948), xii; Oscar Handlin and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861* (New York: New York University Press, 1947); Arthur H.

Cole, "The Committee on Research in Economic History: An Historical Sketch," *Journal of Economic History* 30 (1970): 723–41; Harry N. Scheiber, "Government and Economy: Studies of the 'Commonwealth' Policy in Nineteenth-Century America," *Journal of Interdisciplinary History* 3 (Summer 1972): 135–51.

9. In addition to the works by Hartz and the Handlins, see, for example, Milton Heath, *Constructive Liberalism: The Role of the State in the Economic Development of Georgia to 1860* (Cambridge, MA: Harvard University Press, 1954); James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956); Carter Goodrich, *Government Promotion of American Canals and Railroads, 1800-1890* (New York: Columbia University Press, 1960); Harry N. Scheiber, *Ohio Canal Era: A Case Study of Government and Economy, 1820-1861* (Athens, OH: Ohio University Press, 1969); Lee Benson, *Merchants, Farmers, and Railroads: Railroad Regulation and New York Politics, 1850-1887* (Cambridge, MA: Harvard University Press, 1955).

10. Goodrich, *Government Promotion of American Canals and Railroads*, 268. The \$7 million figure somewhat underestimates federal contributions, for it does not count federal land or federal budget surpluses distributed to the states. But even if these transfers are included, the total federal government contribution would still not approximate the cumulative expenditures of the states.

11. Hartz, *Economic Policy and Democratic Thought*, 149.

12. *Ibid.*, 89, 290.

13. *Ibid.*, 46–7, 291; Handlin and Handlin, *Commonwealth*, 53–193. In Massachusetts, according to the Handlins, the move away from charters as privileges to charters as a basic right available to all applicants had begun somewhat earlier than it did in Pennsylvania, in the 1820s.

14. Hartz, *Economic Policy and Democratic Thought*, 292, 289.

15. *Commonwealth v. Alger*, 7 Cush. 53 (Mass., 1851), 85.

16. Novak, *The People's Welfare*, 46, 80.

17. On republicanism, see Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984).

18. Novak, *The People's Welfare*, passim. So does Harry N. Scheiber. See Scheiber, "Economic Liberty and the Modern State," in *The State and Freedom of Contract*, ed. Scheiber (Palo Alto, CA: Stanford University Press, 1998), 134.

19. Christopher Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993), esp. 41–3. On the continental roots of this doctrine, see also Michel Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 90. Tomlins's interest in labor relations may incline him to locate the decline of the expansive definition of police powers from an early date, for, in the nineteenth century, the interests of labor were treated with considerably less sympathy than were those of other groups making claims on the commonweal.

20. *The Constitution of the United States of America*, Amendment X.

21. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Mentor, 1961), 292–3.

22. Quoted in Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Knopf, 1996), 192.

23. Novak, *The People's Welfare*, 3–6.

24. In many instances it was local governments that passed these kinds of laws. But, legally, local governments (as the example of Chicago demonstrates) received their power to regulate the people's welfare from the state governments, which were authorized to charter and oversee them.

25. Robert C. Allen, *Horrible Prettiness: Burlesque and American Culture* (Chapel Hill: University of North Carolina Press, 1991), and Paul Johnson, *A Shopkeeper's Millenium: Society and Revivals in Rochester, New York, 1815-1837* (New York: Hill and Wang, 1978).

26. And the power of communities was felt not just in the regulation of these activities but in the manner in which offenders were punished. In 1853, the overseers of the poor in Portland, Maine, placed two single women, a mother and a daughter, in a workhouse because they were alleged paupers "living a dissolute, vagrant life" whose house was "reputed to be a house of ill-fame." The accused women received no opportunity to defend themselves; they had no lawyer and were given no trial. They were simply arrested and committed indefinitely. Novak, *The People's Welfare*, 168.

27. Kunal M. Parker, "Citizenship and Immigration Law, 1800-1924: Resolutions of Membership and Territory," in *The Cambridge History of Law in America*, Volume 2, ed. Michael Grossberg and Christopher Tomlins (New York: Cambridge University Press, 2008), 168-203.

28. Handlin and Handlin, *Commonwealth*, 218.

29. Novak's discussion of the battles over rights to waterways offers one example of how he underestimates how private interests sometimes advanced their own ends through the cloak of public interest. See Novak, *The People's Welfare*, 135-6; in these instances, Morton Horwitz's work offers important insights. See Horwitz, *The Transformation of American Law 1780-1860*, (Cambridge, MA: Harvard University Press, 1977), passim.

30. Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1992), 105-15.

31. On the changes in federal governance stimulated by the Civil War, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988); Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge University Press, 1990); Ackerman, *We the People: Transformations*, 99-252; Ira Berlin et al., *Slaves No More: Three Essays on Emancipation and the Civil War* (New York: Cambridge University Press, 1992).

32. Opinion written for *Barbier v. Connolly*, 113 U.S. 27 (1885). On efforts of courts to roll back federal power in these years, see Charles Lane, *The Day Freedom Died: The Colfax Massacre, The Supreme Court, and the Betrayal of Reconstruction* (New York: Henry Holt, 2008); and Jack Beatty, *Age of Betrayal: The Triumph of Money in America, 1865-1900* (New York: Knopf, 2007).

33. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, MA: Harvard University Press, 1988), 148-96. Charles McCurdy encourages us to see this "class" loophole as a political device to strip states of the ability to protect certain groups, such as labor, from market inequities. Charles McCurdy, "The 'Liberty of Contract' Regime in American Law," in *The State and Freedom of Contract*, ed. Scheiber, 161-97. For a contrary point of view, see William R. Brock, *Investigation*

and Responsibility: Public Responsibility in the United States, 1865–1900 (New York: Cambridge University Press, 1984). McCurdy's point of view needs to be carefully considered, given the anti-labor bias of the courts, a topic that will be taken up in another essay of mine on the American state.

34. Brock, *Investigation and Responsibility*. Another acute English observer, James Bryce, had noted the scope and vitality of late-nineteenth-century state governments almost 100 years earlier. See Bryce, *The American Commonwealth*, 3rd ed. (New York: Macmillan, 1908), Vol. II, 535–48.

35. Nancy Cott, *Public Vows: History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000); Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985); Laura Edwards, "Status Without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth Century U.S. South," *American Historical Review*, (April 2007): 365–93. Rachel Moran, *Interracial Intimacy: The Regulation of Race and Romance* (Chicago: University of Chicago Press, 2001); Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven, CT: Yale University Press, 1997); Paul S. Boyer, *Urban Masses and Moral Order in America, 1820–1920* (Cambridge, MA: Harvard University Press, 1978).

36. Jill Elaine Hasday argues otherwise in her "Federalism and the Family Reconstructed" essay, *UCLA Law Review* 45 (1997–1998): 1297–400. But the evidence in her article can be read to mean that after a surge in federal control during Reconstruction, the states reasserted their predominant control in the nineteenth century.

37. *Plessy v. Ferguson*, 163 U.S. 537. For a history of the case in the context of judicial interpretations, see Owen M. Fiss, *Troubled Beginnings of the Modern State, 1888–1910* (New York: Macmillan, 1993). See, also, Brook Thomas, "Introduction: The Legal Background," in Thomas, ed., *Plessy v. Ferguson: A Brief History with Documents* (Boston: Bedford Books, 1997), 1–38.

38. *Lochner v. New York*, 198 U.S. 45.

39. For a trenchant analysis of the contradictoriness of liberal thought in America and the resulting entanglement of liberal and illiberal principles (and policies), see Desmond King, *In the Name of Liberalism: Illiberal Social Policy in the United States and Britain* (New York: Oxford University Press, 1999).

40. Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865–1920* (New York: Cambridge University Press, 2001); quote is from p. 351.

Another solution to the puzzle of how the same Supreme Court could have issued both the *Plessy* and *Lochner* rulings has come from the libertarian "law and economics" group led by Richard Epstein at the University of Chicago. Convinced that the true jurisprudence of the Supreme Court since the days of Marshall has been a laissez-faire one, the law and economics scholars view *Plessy* as a "tragic misstep" that *Lochner* and other subsequent rulings fortunately began to remedy. They blame this misstep on the Court's infatuation with "sociological jurisprudence," a new approach to legal interpretation associated with Progressivism's rise, that relied not on felicity to constitutional principles but on the need to adapt law to public opinion and desires, or what the 1896 Supreme Court *Plessy* majority called the "established usages, customs, and traditions of the people." Because, as David E. Bernstein has argued, the court had "assimilated the contemporary social science notion that

blacks and whites, as members of distinct races, were instinctively hostile to each other," it ruled that a state government endeavoring to keep the two races apart was acting well within the boundaries of its police power.

Many who read Bernstein, along with Epstein and other members of the law and economics group, will be rightfully skeptical of their claim that Progressivism is to blame for *Plessy* and that the problems of racial inequality would have been substantially solved had the Court only adhered to the superior constitutional regime of property, contracts, and personal liberty. Moreover, a careful reading of their writings on the place of *Plessy* in the history of constitutional law reveals that Bernstein and Epstein themselves understand how much *Plessy* rested not on a new doctrine of sociological jurisprudence but on the Court's respect for the old doctrine of police power that inhered in state governments; indeed, their writings, unwittingly perhaps, draw our attention to the vitality of the police power doctrine in the late nineteenth century, and to how decisions such as *Plessy* ensured its centrality to conceptions of American governance for much of the twentieth century as well. See David E. Bernstein, "Philip Sober Controlling Philip Drunk: *Buchanan v. Warley* in Historical Perspective," *Vanderbilt Law Review* 51 (1997-1998): 797-879; and Richard J. Epstein, "Lest We Forget: *Buchanan v. Warley* and the Constitutional Jurisprudence of the 'Progressive Era,'" *Ibid.*, 787-96.

41. Grossberg, *Governing the Hearth*, 75-152; Cott, *Public Vows*; Edwards, "Status Without Rights."

42. Quoted in Rachel Moran, *Interracial Intimacy: The Regulation of Race and Romance*, 79; see, also, Grossberg, *Governing the Hearth*, 136-40.

43. Moran, *Interracial Intimacy*, 79-81; Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *Journal of American History* 83 (June 1996): 49, 59; King, *In the Name of Liberalism*.

44. The 1923 ruling was *Meyer v. Nebraska*, 262 U.S. 390; quote is from 399. See, also, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Farrington v. Tokushige*, 273 U.S. 284 (1927). The decision overturning bans on miscegenation was *Loving v. Virginia*, 388 U.S. 1 (1967); the one overturning bans on contraception was *Griswold v. Connecticut*, 381 U.S. 479 (1965).

45. George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 331-54.

46. Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000), especially chapter 1.

47. Moran, *Interracial Intimacy*, 95-9.

48. Skowronek, *Building a New American State*. Other important works that help us to understand the way in which the New Deal state had to be built on existing governing structures include: James T. Patterson, *The New Deal and the States: Federalism in Transition* (Princeton, NJ: Princeton University Press, 1969); James T. Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (Lexington: University of Kentucky Press, 1967); Kimberly S. Johnson, *Governing the American State: Congress and the New Federalism, 1877-1929* (Princeton, NJ: Princeton University Press, 2007); Alan Brinkley, *The End of Reform: New Deal Liberalism in Depression and War* (New York: Knopf, 1995); Barry Karl, *The Uneasy State*; Theda Skocpol and Kenneth Feingold, "State Capacity and Economic Intervention in the Early New Deal," *Political Science Quarterly* 97 (1982): 255-79;

Theda Skocpol and John Ikenberry, "Expanding Social Benefits: The Role of Social Security," *Political Science Quarterly* 102 (1987): 389–416; John A. Braeman, Robert H. Bremner, and David Brody, eds., *The New Deal, Volume II: The State and Local Levels* (Columbus, OH: Ohio State University Press, 1975); Gordon, *Pitied but Not Entitled*; Kessler-Harris, *In Pursuit of Equity*; Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* (Ithaca, NY: Cornell University Press, 1998); King, *In the Name of Liberalism*; Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: W. W. Norton, 2005); Martha Derthick, "Roosevelt as Madison: Social Security and American Federalism," in Derthick, *Keeping the Compound Republic: Essays on American Federalism* (Washington, DC: Brookings Institution Press, 2001), 123–37.

49. Martha Derthick, "Crossing the Thresholds: Federalism in the 1960s," in Derthick, *Keeping the Compound Republic*, 138–52.

50. *Baker v. Carr*, 369 U.S. 186 (1962); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Loving v. Virginia*, 388 U.S. 1 (1967).

51. Charles S. Desmond et al., *Mr. Justice Jackson: Four Lectures in His Honor* (New York: Columbia University Press, 1969), 60.

52. William J. Novak, "The Myth of the 'Weak' American State," *American Historical Review* 113 (June 2008): 766.

53. See Daniel J. Elazar, *American Federalism: A View from the States* (New York: Crowell, 1972), 2nd ed.; and Morton Grodzins, *The American System: A New View of Government in the United States*, ed. Daniel J. Elazar (Chicago: Rand McNally, 1966). One of the ways in which federalism does persist is through the Electoral College, whose structure ensures that states rather than individuals ultimately determine the outcome of presidential elections.

54. See, for example, *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

55. Bernard Schwartz, "Chief Justice Rehnquist, Justice Jackson, and the 'Brown' Case," *Supreme Court Review* (1988): 245–67. Senate Hearings 99–1067, *Hearings Before the Senate Committee on the Judiciary on the Nomination of Justice William Hubbs Rehnquist to be Chief Justice of the United States* (July 29, 30, 31, and August 1, 1986). See, also, Jeffrey Rosen, "Rehnquist the Great?" *Atlantic Monthly* (April 2005), 79–90.

56. Grant McConnell, *Private Power and American Democracy* (New York: Knopf, 1966).

57. Theodore Roosevelt, "The New Nationalism," in Roosevelt, *The New Nationalism* (New York: The Outlook Company, 1910), 23–4.

## The First New Federalism and the Development of the Modern American State

Patchwork, Reconstitution, or Transition?

*Kimberley S. Johnson*

“[N]ational efficiency...is equally concerned with institutions. The States must be made efficient for the work which concerns only the people of the States; and the nation for that which concerns all the people.... I do not ask for overcentralization; but I do ask that we work in a spirit of broad and far-reaching nationalism when we work for what concerns our people as a whole.”

—Theodore Roosevelt<sup>1</sup>

In 1877, few people could imagine the immense political, institutional, and social changes that would occur in the next fifty, let alone one hundred, years. The rudimentary structures of a stronger national state had been dismantled in the aftermath of the Civil War, and any further expansion in the size or scope of the national government seemed to be a fantastical notion.<sup>2</sup> Indeed, in 1877, a strong case for the existence of a dual federalism of limited governments could be made. During the late nineteenth century, to paraphrase Lord Bryce, it was not uncommon that the average American would have little or no contact with the national government save “when he votes at presidential and congressional elections, lodges a complaint against the post office, and opens his trunks for a customs-house officer on the pier at New York when he returns from a tour in Europe.” On the other hand, Bryce notes that “[t]he police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools—all these derive their legal powers from his state alone.”<sup>3</sup>

The upheavals of industrialization and urbanization during the late nineteenth century produced a host of new economic and political issues.

Functional and economic interests battled over who would benefit or be harmed by rapid industrialization, new forms of transportation and communication, and the emergence of national markets. Many social and political reformers fretted over the material and moral conditions of new urban residents and those left behind in the rural hinterlands. Reformers also worried about the real as well as imagined corruption at national, state, and local levels produced by an immigration-fueled expansion in the electorate, the rise of the urban political machines, and the emergence of the “interests.”<sup>74</sup>

The development of the modern American state during this period of upheaval has been described by Stephen Skowronek as the result of a process of “patchwork” and “reconstitution” as reformers attempted to replace the no longer viable nineteenth-century American state of “courts and parties.”<sup>75</sup> This chapter adds another layer of complexity to this state-building story by focusing on an often neglected aspect of American institutions, namely federalism. I argue that from the end of the late nineteenth century to the early decades of the twentieth century, federalism played a critical and underrecognized role in the development of the modern American state. The political and institutional order that was developed as result of the influence of federalism I term the “First New Federalism.”<sup>76</sup>

The chapter traces the development of the First New Federalism by exploring how new ideas, new interest group coalitions, and new institutional forms all came together to shape the modern American state. The chapter is divided into two sections. The first section defines the ways in which federalism both shaped and was shaped by the transformation of the American state. The section examines the ways in which the ideas, interests, and institutions that form the building blocks of the American federal state were created or transformed as the nineteenth century ended and the twentieth century began. The end result of this reconstitution and transformation was the First New Federalism. The second section turns to a more concrete exploration of the First New Federalism through an analysis of three policy archetypes. The First New Federalism created a policy regime characterized by administrative and political coherence within narrow policy arenas, but policy incoherence and fragmentation across the American state. While this would lead to the creation of narrow and isolated “islands of state capacity,” it also led to the creation of new kinds of social and economic inequalities; or the strengthening of pre-existing inequalities in the guise of new administrative structures.

## THE RISE OF THE FIRST NEW FEDERALISM

In order to understand the “why” and “how” of the First New Federalism’s emergence, a better understanding is needed of the ideas, interests, and



institutions that went into shaping the context of its development. The First New Federalism was the result of new thinking about the role of the state, especially the size and scope of the national government. The new thinking also reflected the range of reformers' beliefs in the ability of individuals to effect political, social, and moral change. The second part of this section explores the role of the new "organizational society" in the First New Federalism. The new organizational society was made up of experts and reformers, elites and ordinary citizens, as well as a new class of state and local and national bureaucrats, who engaged in new forms of collective action namely as federalist policy reform movements, which centered on reshaping the American state to fit their professional interests as well as ideological goals. The third part of this section argues that the new federal state that emerged during this period was the result of institutions such as Congress in conjunction with a nascent bureaucracy that responded to, as well as shaped, the political and institutional context in which they were embedded. I begin with a brief theoretical model that explains how *federalism* is used in this essay.

### Federalism and a New Model of American State Development

The dual federalism described by Bryce and supported by a variety of interests, as well as contemporary ideology, was also buttressed by the positive force of the American federal structure and by the weakness of the national institutions that could challenge this structure. At the same time new trends, new voices, and new developments would challenge this dualist structure. Thus the First New Federalism emerged in and was shaped by a time of constraints and possibilities.

During the era of the First New Federalism, federalism not only acted *on* political institutions and actors, but was also acted *upon* by political institutions and actors. That is, we can think of federalism functioning as a contextual variable in terms of structuring the incentives and constraints of actors and institutions. Federalism was also a *dependent* variable, one that could be altered by these very same actors and institutions.

Thus, as a *contextual* variable, the New Federalism was the embodiment of a distinctive period in the development of the American *federal* state. It was an era characterized by a set of institutional arrangements, political structures, and opportunities that were distinctively shaped by a particular constitutional and popular interpretation of federalism.

This new era commenced in 1877, the first year after the official end of Reconstruction and the political reincorporation of the South, and the start of an era of normal politics. Secondly, 1877 also marked the beginning of what Robert Wiebe and others would call the "search for order," a period

in which the social, economic, and political challenges engendered by the United States' rapid industrialization and urbanization was responded to and mediated by an emergent "organizational society."<sup>7</sup> In short, it was an era that had moved beyond the strict dualism (whether real or imagined) of Bryce, but had not embraced, or even imagined, the centralized state of the future. In this sense, then, the New Federalism gives structure and meaning to a period that has at best been called an era of "transitional federalism."<sup>8</sup>

As a *dependent* variable, the New Federalism also meant intergovernmental policy, a set of policy innovations and administrative arrangements that evolved in response to a particular set of institutional and political arrangements. These institutional, political, and organizational arrangements included a new role for Congress in governing the slowly modernizing American state. Intergovernmental policy offered a way for Congress to balance the competing demands and conflicts that faced it, as well as the tensions produced by its own internal development. Although the enactment and development of intergovernmental policy instruments would vary across policy areas and across time, these instruments all helped to bridge the dual political and administrative federalism of the nineteenth century with the centralization of the twentieth.

Conceptualizing federalism as both an explanatory and as a dependent variable allows us to do a number of things. First, rather than seeing federalism as a dusty and somewhat irrelevant constitutional issue, we may perceive federalism as an active dynamic force shaping the preferences and institutions that surround political actors. At the same time, the federal structure is not written in stone. While the judiciary (as well as reigning political beliefs) during the Gilded Age and Progressive Era often endorsed a narrow dual federal system, actors and interests looked for ways to skirt and subvert these judicial limitations.

### The Constraints of Federalism and the Past

The capacity of the American states during the late nineteenth century provided little relief to some reformers. While states were often the provider of many public services, the administrative as well as the political capacity of the states that provided these services was as varied as the number of states.<sup>9</sup> There was a growing criticism of the condition and quality of America's state and local governments. According to this critique, advances in communication and transportation had made existing state boundaries (and possibly states) less than satisfactory arrangements for addressing the challenges of the modern era, which required expertise and complexity.<sup>10</sup> Indeed, it was argued that the weaknesses of states, due to both administrative failings and the pressure of interstate competition, hindered

effective local government and therefore had the unintended consequence of increasing public impatience and dissatisfaction, thus strengthening the trend toward centralization.<sup>11</sup>

One such response to this unevenness in political will and administrative capacity was the emergence of federalist policy reform movements, such as the uniform state law movement, which focused on legal as well as institutional reforms, and reform movements constructed around specific policies such as food and drug regulation. The goal of these policy reform movements was to disseminate policy innovations that advocates believed would generally benefit society, such as child labor restrictions or workmen's compensation laws, to other states (as well as eventually to the national level). These policy reform movements were *federalist* because the organizational structure of these movements was based on the development and deployment of local, state, and national networks—and because their strategy rested upon the near simultaneous adoption of laws by all the states.<sup>12</sup>

The federalist reform strategy of near simultaneous enactment was favored by reformers because it helped them address the fears of potential allies that their state would lose competitive position to other states arising from the higher costs of regulations or social welfare expenditures. The federalist policy reform movement was also popular because it suited to some extent the pragmatic, limited goals of associations of state officials and other national groups of administrators and policy activists. These groups were focused on limited goals because of their perception that the Supreme Court was unwilling to endorse a greater role for national action, and that the Court was resistant to any action on the part of the national government to impede *intra*-state commerce. Finally, the spreading of “policy innovations” from one state to the next reflected the emerging Progressive ideology of states as “laboratories of democracy.”<sup>13</sup>

As a means of creating a strong, active role for government, the federalist policy reform movement was weakened by the pressure of interstate competition, the time-consuming and costly mechanics of passing the same law in every state, and varying conceptions about what the proper role of government ought to be. More importantly, the American system of what Henry Scheiber calls “rivalistic state mercantilism,” or the competition between states for economic and political resources, had as many, if not more, supporters than a new system based on a strong, centralized national state.<sup>14</sup> Supporters of state competition derived important and powerful benefits, such as the protection of local markets or the advantages from weak state regulatory and tax structures. To protect these benefits, supporters had access to a number of government institutions, the most important of these being the courts.

The successes as well as the failures of these federalist policy reform movements played an important role in helping to connect state-based

reform to national politics. For example, the adoption of a policy innovation encouraged policy reformers and interests to encourage more activity in other states. The relative successes or failures in enacting policy innovations in subsequent states persuaded some policy activists to turn their attention to the national level, and especially to Congress as a means of sidestepping the constraints that courts were increasingly placing on the exertion of state and national government.

### Judicial Constraints on Government Power

The courts, especially the Supreme Court, provided little consistent guidance to those interested in expanding the scope of government, whether at the state or national level. The Court issued a series of conflicting judicial decisions about the power of state governments to regulate. As Melvin Urofsky argues, the Supreme Court did not block states from asserting a range of limited regulatory powers.<sup>15</sup> One such precedent was set in *Munn v. United States* (1877) in which the Court upheld a state's right to regulate intrastate commerce. However, in later decisions the Court seemed to limit any state role in areas perceived as economic regulation.<sup>16</sup> An example of this was *Lochner v. New York*, which invalidated New York State law that set maximum working hours for bakery workers. In the late nineteenth century, the point at which the regulation by the states of *intra*-state commerce ended, and the regulation of *inter*-state commerce began, was unclear. Nonetheless, the *Lochner* decision seemed to cast a long and distinctly conservative shadow over the possibilities of state and national action.<sup>17</sup>

The Court was less ambiguous about the powers of the national government; it was hostile toward policies that expanded these powers. A number of Court decisions seemed to limit any role, especially at the national level, in areas perceived as economic regulation.<sup>18</sup> Yet this judicial hostility was not quite so absolute, especially in the case of intergovernmental policy. While the Supreme Court did overturn a small number of intergovernmental regulations on the ground that these regulations overstepped the limits of national power, the vast majority of intergovernmental regulations went unchallenged.<sup>19</sup> The Court did not actually rule on the constitutionality of grants-in-aid until decades after the first grant-in-aid made its appearance in the case *Massachusetts v. Mellon* (1923).

Thus, given the constraints of preexisting beliefs and institutions, forces in favor of a greater centralization and expansion of government faced a significant challenge in establishing their vision as a competitive, and eminently viable, option for structuring American politics and policy. At the beginning of the Gilded Age, government—especially the national government—was seen as the “weakened spring” unable to wrest itself out of a morass of corruption and

parochialism.<sup>20</sup> Yet the impact of the Civil War and Reconstruction offered a glimpse of another political reality: centralization. As Richard Bense and others argue, the national government's mobilization and later conduct of the Civil War demonstrated a remarkable degree of capacity given the secure grip of Jacksonian-style politics and administration.<sup>21</sup>

A case could, and ultimately would, be made that the national government could be the solution to the issues that faced late-nineteenth-century America. Making this state-building case would require new thinking about the role of government willing to link a new public philosophy to an expression of political will.

### Centralization: A New Philosophy?

The development of a modern federal state entailed the articulation of a new "public philosophy" about the roles that governments (national and state), interests, and individuals should play in the changing political, economic, and social order of the Gilded Age and Progressive Era.<sup>22</sup> The philosophical origin of the First New Federalism was the result of a broad awareness among Progressive thinkers, politicians, and reformers that the American state faced a time of change.<sup>23</sup> Although the question of *who* would control the nation's response to modernization was settled in the political realignment of 1896 (e.g., agrarian Populism versus industrial Republicanism), the question of *how* to manage modernization was not adequately resolved.

How society and government would grapple with these changes and challenges was the focus of politicians from Theodore Roosevelt to Woodrow Wilson and influential Progressive intellectuals such as Herbert Croly. According to William Graebner, these voices acted as the "intellectual trigger for an intensive decade-long debate on the federal system."<sup>24</sup> There was growing agreement among some elites—such as Roosevelt and Croly—that federalism, as a constitutional form and as an ideology, was a barrier to making national policy.

For example, Theodore Roosevelt not only spoke about the "New Nationalism" but also the "New Federalism," in which there existed both "a strong central government and strong States, so geared together that there would be no hazy areas or governmental no man's land."<sup>25</sup> Roosevelt's support for a "new nationalism" picked up on the challenges that federalist policy reformers were encountering: the difficulties of enacting policy on a state-by-state basis, and the dangers to democracy that could arise from a lack of national standards. For Roosevelt, the result of a new centralization would be "no neutral ground for lawbreakers and especially for lawbreakers of great wealth." Roosevelt also acknowledged the impact that the courts were playing in shaping the development of the American state, suggesting

that a lack of national activity had led to the “purely negative activity of the judiciary in forbidding the States to exercise power in the premises.”<sup>26</sup>

Echoing Roosevelt were other influential voices such as Herbert Croly, an advocate of centralization in the name of efficiency.<sup>27</sup> In his classic statement of Progressivism, *The Promise of American Life* (1912), Croly’s support for centralization was based on his belief (shared by others) that state governments, no matter how well run, could not adequately or efficiently carry out duties that were clearly beyond their technical scope:

The best friends of local government in this country are those who seek to have its activity confined to the limits of possible efficiency, because only in case its activity is so confined can the States continue to remain an essential part of a really efficient and well coordinated national organization.<sup>28</sup>

Although at times Croly seemed to be calling for a strong national state, he like many of his contemporaries still maintained a healthy respect for retaining the role and power of the states: “Progressive Democracy will need and will value the state governments; but they will be needed and valued... as parts of an essentially national system.”<sup>29</sup> Indeed, he argues that the “nationalization of American democracy does not mean the abandonment of the federal principle, and the substitution for it of a lifeless centralization. Nationalization is not equivalent to centralization. It has frequently required administrative and legislative decentralization.”<sup>30</sup>

Although ensuring direct national action was difficult, even at elite policy-making levels, there seemed to be a slow, growing consensus that discerning the national interest was both important and possible. There was a realization on the part of some Progressives that the process itself, the “national adjustment” as it had been occurring, was not a smooth one.<sup>31</sup> Other elites, such as Woodrow Wilson were not eager to give in to what John Burgess called, “creeping centralization.”<sup>32</sup> Throughout his career and especially during his “New Freedom” program, Wilson attempted to straddle the cross-cutting pressures of greater nationalization and greater protection of state independence.<sup>33</sup> Despite these political adaptations, his background, both personally and philosophically, was reflected in his commitment to states’ rights. Wilson’s 1908 book, *Constitutional Government in the United States*, summed up his philosophy:

The principle of the division of powers between state and federal governments is a very simple one when stated in its most general terms. It is that legislatures of the states ought to have... free choice with regard to all matters of local regulation and development, and that Congress shall have control only of such matters as concern the peace and the commerce of the country as a whole. (175)

Indeed, Wilson argued that, “it would be fatal to our political vitality really to strip the States of their powers and transfer them to the Federal

government.”<sup>34</sup> Wilson, despite his Progressive rhetoric, was initially cool to the various interest groups “seeking to use federal authority to accomplish economic goals or social purposes.”<sup>35</sup> In short, even a growing openness toward national power was still tinged with an acceptance of some kind of role for the states.

### Reformers, Experts, Interests, and the Growth of the American State

Coupled with these changes in the public philosophy was the emerging role of reformers, experts, and interest groups. The dislocations and challenges of the Gilded Age produced a new wave of reformers. These new groups of reformers were animated by a variety of beliefs, ranging from notions of a “social gospel” and a belief in the perfectability of man, to the “gospel of efficiency” in both business and government.<sup>36</sup> Reformers turned their attention to any number of society’s problems. For example, in the area of public health, reformers scored early successes with tenement and sanitation laws. Still other groups of reformers, grappling with the effects of modernization on individuals’ ability to compete in the new industrial order, focused on issues such as educational reform, both general and vocational. Women’s groups comprised another important segment of reform groups concerned with the deleterious effects of modern life. According to Theda Skocpol, these groups “aimed to extend the domestic morality of the nineteenth century’s ‘separate sphere’ for women into the nation’s public life.”<sup>37</sup> The activities of these women’s groups ranged from settlement houses to temperance laws to suffrage.

The Progressive Era, as Samuel Hays argues, was also the time of an emerging “organizational society” in which “[i]ndustrialism had shifted the context of economic decisions from personal relationships among individuals to competition among well-organized groups.”<sup>38</sup> In addition to groups organized for purposes of societal or political reform, other groups were formed on the basis of professional, business, or functional interests. What united these somewhat disparate groups was the growing realization that the government and society during the early 1900s was being transformed by a number of forces both exogenous and internal. For the new functional and trade organizations, shaping government activity was not only for strategic self-interest but also for defensive reasons.<sup>39</sup> According to one prominent businessman of the day, “business would rather ‘help shape the right kind of regulation’ than have ‘the wrong kind forced upon him.’”<sup>40</sup>

In addition to reformers and economic interests, professional groups made up another source of group activity. The latter group was constituted around both the creation and defense of new forms of professional identity and status.<sup>41</sup> Indeed, it was during the Progressive Era that the cult of

the expert and the hope of providing expert, technocratic solutions to society's problems first appeared. The "gospel of efficiency" and the cult of the "efficiency" expert were first asserted in business, and then spread to other areas, most notably the new field of public administration.<sup>42</sup> The discovery and celebration of "scientific research and management" extended to areas not previously thought of as needing scientific techniques of control.<sup>43</sup> In the field of education, the movement helped shaped the reorganization of public schools and led to the establishment of vocational education.<sup>44</sup> Scientific management played a key role in the shaping of the conservation movement; in the establishing of educational programs for farmers and for mothers; and in the development of "good roads" and the national highway system.<sup>45</sup>

For the constellation of groups that made up the new organizational society, there was considerable debate in determining the means and the extent of American state intervention into society and the economy. In some cases, reformers looked to civil society or to the individual, in order to achieve their goals. The means to attain their goals ranged from changes in social organization, such as settlement houses or a renewed commitment to agrarian life, to changes in individual behavior, such as temperance or Americanization. In other cases, reformers pressed for political responses to their causes. The tools ranged from legislation (sometimes linked to administrative enforcement mechanisms for pure milk or an eight-hour workday) to the reform of political institutions and/or processes such as the direct election of senators to the establishment of a civil service.<sup>46</sup>

Nevertheless, despite their avowals of technocratic, nonpartisan ethics, the reformers and the experts all engaged in a remarkably similar pattern of behavior despite the issue area, which involved:

organiz[ing] a voluntary association, investigat[ing] a problem, gather[ing] mounds of relevant social data, and analyz[ing] it according to the precepts of one of the newer social sciences. From such an analysis, a proposed solution would emerge, be popularized through campaigns of education and moral suasion, and—as often as not, if it seemed to work,—be taken over by some level of government as a permanent public function. Usually the details of the law were worked out through bargaining among the competing groups interested in the measure.<sup>47</sup>

Business groups, reformers, and experts were all organized in many of the same ways to battle against and with each other in order to claim the mantle of expressing the national interest. Many of these groups increasingly agitated for a greater governmental role in support of their policy objectives. Thus, to create change on a broader level (or in some cases to block change), reformers—and the groups that they were a part of—developed organizational strategies to overcome or adapt to the federal system.



## The Rise of the Intergovernmental Bureaucracy

Given the federal structure, the need to balance a stronger national state with a continued respect for the states led Herbert Croly to become of the earliest endorsers of the idea of national grants-in-aid.<sup>48</sup> According to Croly, “by the use of the . . . device of grants-in-aid . . . Federal financial assistance will be offered to the states under conditions which tend to level local services up to a desirable national standard.” Presumably with the use of grants, a corps of “disinterested [national] administrators” who presumably have the national interests at heart could influence and direct the policies of the states.

During the First New Federalism, a Croly-like corps of administrators would indeed emerge to bridge the concerns and needs of the reformers and the economic interests, and to strengthen the role of the professional and the expert. Intergovernmental policy both gave birth to and stimulated the rise of an intergovernmental bureaucracy. Networks of bureaucrats at the national, state, and local level worked together to create the New Federalism state. But, disappointing Croly’s hopes, these were not disinterested administrators. They too were interested in achieving their policy and professional goals.

At the state level, the spread of what reformers and later the field of public administration would recognize as “administrative capacity” was sporadic and uneven. For example, the adoption of merit systems, one measure of administrative capacity, was extremely slow to spread among the states. New York and Massachusetts were the only states to adopt a merit system immediately following the national government’s enactment of such a reform in the Pendleton Act of 1883. By 1900, sixty-five cities, including the city of Chicago, had also adopted merit systems; and, by 1925 only nine more states and 154 cities had adopted a merit system.<sup>49</sup> The spread of these new types of administrative reforms also had distinct regional characteristics. Amy Bridges finds that the newer states of the Southwest and West were the places in which administrative reform was more likely to be adopted.<sup>50</sup>

Nonetheless, whether or not they adopted the new criteria of administrative reform, the new public servants of the nation’s local, state and even national government were growing increasingly visible and, in some cases, successful. As both William Brock and William Novak persuasively argue, these new bureaucrats would increasingly stretch the boundaries of state and national governance.<sup>51</sup>

Along with experts and reformers (with whom they often overlapped), these new public servants were also starting to become organized themselves. Between 1901 and 1931, over forty-six new associations of public officials would be created. They ranged from the Association of Official Agricultural Chemists (established in 1884) to the Governors’ Conference (established in 1908) to the American Public Welfare Association (established in 1931).

Table 4.1 is a selected list of the national associations that were established during the Gilded Age and the Progressive Era.

Many of these new groups that represented the public interest as well as their bureaucratic interests increasingly recognized that they were part of a much larger and complex state that involved both the states as well as the national government. For example, the objective of the Association of Dairy, Food and Drug Officials of the United States (established in 1897) was to advocate the “enactment and enforcement of uniform legislation for the protection of public health,” while cooperating with, among other organizations, the Food and Drug Administration.<sup>52</sup>

In their quest to build a stronger national state, political reformers and bureaucratic officials encountered a number of problems directly related to America’s status as a federal polity. While cognizant of the possibilities of the executive branch, reformers were still subject to the will of Congress, in whose hands firmly lay the authority to concentrate and centralize national power. Congress, however, did not necessarily share the same national state-building goals of these reformers. Rather, Congress, by constitutional design and legislative practice, saw itself as a reflection of a host of local interests rather than the embodiment of national concerns.

### Congress and the Logic of Intergovernmental Policy

Congress was the unlikely fulcrum upon which rested the development of the First New Federalism. Congress of the 1880s and 1890s was characterized

**Table 4.1.** Establishment of National Public Officials/Interest Associations

Time Period	Number of Organizations	Examples
Prior to 1900	14	1884: Association of Official Agricultural Chemists 1886: Association of Land Grant Colleges & Universities
1901-1910	13	1902: Conference of State & Territorial Health Officers 1908: Governor’s Conference
1911-1920	21	1914: American Association of State Highway Officials 1920: Association of State Foresters
1921-1931	12	1924: American Municipal Association 1931: American Public Welfare Assoc.

Source: Leonard D. White, *Trends in Public Administration* (New York: McGraw-Hill Book Company, Inc., 1933), 290, 298.

by razor-thin margins held by parties in the House and the Senate, coupled with persistent sectional divisions between North and South, East, Midwest and West. By the Progressive Era, the realignment of 1896 had more or less divided the country into an industrial, Republican core and an agrarian Democratic periphery.<sup>53</sup> By modern definitions, Congress and, by extension, the national government lacked the clear markers of possessing institutional capacity. Congress was populated by amateur lawmakers, had few permanent staff, no budgeting ability, and no clearly articulated interest in expanding the American state.<sup>54</sup>

In addition to its organizational and institutional limitations, Congress was constrained by its place within American federal structure. Localism was embedded into the nature of representation. Members of Congress represented communities first, states or regions next, and parties last. This localism was reflected in congressional organization as well. The congressional committee system primarily reflected its members' localistic, and then particularistic concerns. Although uttered by a modern politician, former House Speaker Tip O'Neil's aphorism, "All politics is local," was as true during the 1880s as it is today.<sup>55</sup>

Overcoming the constraints of party, institution, and federalism would require (though not absolutely) a legislature that was nationalist in its representation, statist in its collective policy preferences, and administratively capable in terms of policy implementation. Given these hurdles, the development and growth of intergovernmental policy (as a *dependent* variable) was a logical—although not necessarily the most efficient—way for Congress to enact policy in a federal structure. First, Congress, unlike the executive, possessed—albeit not always effectively—clear constitutional power derived from Article I.<sup>56</sup> As Elizabeth Sanders argues, during the nineteenth century, Congress was "far from an executive tool [it] produced a quite explicit statute law that mattered, both substantively and as a constraint on executive discretion."<sup>57</sup> Second, within Congress, in the face of strong inter- and intra-party divisions, intergovernmental policy offered elected members a way to put together enacting coalitions in order to pass legislation, to facilitate the building of national electoral coalitions, or to address the problems of enacting legislation in a separation of powers system.

Intergovernmental policy created the possibility that Congress could overcome the structural hurdles on policy making imposed by the federal structure. For example, intergovernmental policy allowed states and the national government legislators and party officials to reach strategic accommodations with each other that did not (in a majority of cases) challenge the ideological or judicial boundaries of the day. For national legislators, intergovernmental policy instruments offered a way for individual representatives to satisfy local policy preferences. These intergovernmental policies

ranged in significance, from noteworthy pieces of legislation such as the Uniform Bankruptcy Act (1898) and the Insecticide Act of 1910, to much smaller pieces of legislation such as an 1879 grant to aid states in the printing of books for the blind, to the Standard Barrel Act of 1912, defining standards for the interstate shipping of apples.

National legislators—aided by entrepreneurial bureaucrats, mobilized interest groups, and organized reformers, labored over the structure of intergovernmental policy. This was not an empty or meaningless process for all involved in the legislative process. How intergovernmental policy was structured reflected what interests won and lost. Moreover, choices over the administrative structure of intergovernmental policy reflected the institutional and partisan constraints of Congress. The assertion of national power by Congress was not the result of a sudden or dramatic “big bang” moment; rather, it was the slow accretion of administrative ties and the building up of organizational structures, all overseen by an emergent legislature that eventually brought about a new American state.

The U.S. Congress played a key role in facilitating the development of policy instruments that not only asserted a national role, but were also responsive to local interests. These *dependent* effects, for example, policy instruments such as intergovernmental regulations or grants-in-aid, permitted the development of national administrative capacity while still responding to a constitutional, political, and ideological framework that privileged state interests, and favored state control over policy outcomes.

The intergovernmental policies enacted by Congress during the era of the First New Federalism were acquiesced to (with varying degrees of enthusiasm) by the states, and were largely unchallenged by the Supreme Court. These policies increasingly laid out the framework for a stronger, more centralized national state. These laws knit together the goals of national elites—the creation of a more effective national government, with the hard-edged reality of federalism. In short, the reformers’ dreams of greater national administrative capacities came at a price. That price was the establishment of an administrative state that privileged state interests and state control over national policy. While policy making could occur under the eyes of reformers, professionals, and experts, the effect of Congressional organization, as well as the influence of state interests, ensured that the administration of *national* policy was carried out at the *state* level.

## THE FIRST NEW FEDERALISM IN ACTION

The Pure Food and Drug Act of 1906, the Federal Highway Act of 1916, the Sheppard-Towner Act of 1921—each of these legislative enactments was

seemingly the product of a unique constellation of political actors operating within a given institutional context. Yet what these three policies shared in common was quite powerful: they were each an attempt to extend the reach of the national government within a disjointed, weak, and fragmented political system. New types of administrative arrangements and procedures developed to extend this national reach. These new administrative arrangements and procedures would have to pass muster with a judiciary reluctant to assent to an overt expansion of governmental power (whether at the national or state level). These new administrative structures would also have to fit the structure and logic of the congressional institutions that created them. Thus, these new administrative structures would reflect Congress's localist orientation, its limited capacity for oversight, and the national bureaucracy's limited (if not absent) ability to implement policy on its own. Table 4.2 shows some of the similarities and differences between these three New Federalism policies.

Each of these policies had varying degrees of national control over policy outcomes and each was evocative of the particular way that intergovernmental policy was structured within a particular type of policy area.

The Pure Food and Drug Act was a classic case of regulatory policy in that it impacted only a few sectors, and implementation of the policy was made "by application of a general rule . . . [and] within the broader standards of law."<sup>58</sup> The Pure Food and Drug Act created a national regulatory system in which the states, initially at the forefront of food and drug regulation as result of the land-grant universities, took a secondary role. However, like most intergovernmental regulation of the time, it was limited in the sense that the legislative language included an exemption that allowed, or rather ceded, continued state control over some aspects of regulation. Despite this ceding of control, research, standard setting, and rule making generally took place under the aegis of national bureaucrats. Appeals by affected individuals were directed to the U.S. Secretary of Agriculture.

The Federal Highway Act was undoubtedly a distributive policy, characterized as Theodore Lowi argues, "by the ease with which they can be disaggregated and dispensed unit by small unit."<sup>59</sup> Because of the United States' federal structure and its limited administrative capacity—yet recognizing the immense scope that a *national* highway system would entail—the unit of allocation would be the states. Overturning the nearly century-long precedent set by President Andrew Jackson's veto of the Maysville Turnpike, highway legislation in 1916 (as well as today) was enacted by a large bipartisan majority, even though some members of Congress would denounce the initial legislation (and subsequent reauthorizations) as nothing but pork barrel spending. To paraphrase political scientist David Mayhew, for members of Congress during the First New Federalism, grants such as the highway system, which

Table 4.2. The First New Federalism: Three Policies

	Pure Food and Drug Act (1906)	Federal Highway Act (1916)	Sheppard-Towner Act (1921)
Policy Type	Regulatory	Distributive	Redistributive
Centralization	High/national-led	Medium/cooperative	Low/state-led
Interest Group Mobilization	High	High	High
Organizational support	Cross sector National elites	Cross Sector National elites and state groups	Single Sector National elites and state groups
Bureaucracy			
National entrepreneur?	Yes	Yes	Yes
Creation of recognizable and widely acknowledged expertise?	Yes	Yes	No
Prior activity at state level?	Yes	Yes	No
Administrative Structure			
Legislation require establishment of state bureaucracy?	No	Yes	Yes
Matching Grant? Ratio?	No	Yes/fifty-fifty	Yes/1:1, plus lump sum
Oversight of national agencies?	Fragmented Agriculture, Treasury, Commerce, Labor	Unified Agriculture Congress	Fragmented Federal Board of Maternity and Infant Hygiene

supplied “goods in small manipulable packets” would become just as important as classic pork barrel legislation such as rivers and harbor, or the tariff.<sup>60</sup> Administratively, the Federal Highway Act created a cooperative system, in which the highway bureaucrats at both the state and national level worked closely together on everything but the actual placement of roads.

Finally, the Sheppard-Towner Act is almost an archetype of redistributive policy, albeit with a federalist twist. Under the Sheppard-Towner Act, local administrators—not the national-level bureaucracy—were instrumental in determining, first, whether citizens would gain access to a program, and then deciding which citizens to grant access to services. Second, from the beginning, funding for the Sheppard-Towner program was significantly less than for other types of policies. For example, average per capita spending on

highways was over \$1.50, while the average per capita spending for maternal child health was about three cents. The Children's Bureau was given only \$50,000 for administrative expenses, while the Office of Public Roads had no statutorily defined ceiling on administrative expenses. Finally, with the creation of a national oversight board, the Federal Board of Maternity and Infant Hygiene, individual states were able to limit the power of the national bureaucrats with an ability to appeal the activities or decisions made by the national bureaucrats.

Despite their differences in policy outcomes and administrative arrangements, a number of interesting commonalities can be seen between these three policies. For all of them, the process of policy development was fascinatingly similar: entrepreneurial bureaucrats were important in creating and defining the need for policy intervention in all of the areas; while interest groups were critical in the creation of public awareness, educating legislators on the policy, and linking public awareness to the political agenda. Of course, not all entrepreneurial bureaucrats were successful. Some bureaucrats and their agencies, like the Bureau of Chemistry (the precursor to the Federal Drug Administration) and the Bureau of Public Roads were successful in carving out and developing what Theda Skocpol and Kenneth Finegold called "islands of state capacity."<sup>61</sup> Others bureaucracies, like the Children's Bureau, had their professionalism and autonomy repeatedly challenged by those within and outside the national government.

The success of interest groups, and the social movements that intersected them, also varied. Advocates for a publicly financed road policy under the aegis of the "Good Roads" movement were able to link two very different sectors of the American public: the concerns of urban automobile enthusiasts with those concerned about the decline of rural America, with the increased desire of members of Congress to bring distributive benefits to their districts. The women's groups that advocated the enactment of Sheppard-Towner were able to successfully link legislators' concerns about the size and influence of the potential women's votes to the enactment of the policy; that success, however, proved short-lived with the non-appearance of the "women's vote." Nonetheless, the creation of the program embedded these women activists within the still small social welfare bureaucracy of the national, state, and local governments, enabling them to reemerge and play an active role in drafting New Deal social welfare policy.

Finally, at the state level, intergovernmental policies such as food and drug regulation or highway building were readily embraced in some states (and indeed, in some cases, predated national activity), while in other cases, even the lure of national funding could not sway concerns over the importance of maintaining local control. Even when states embraced a policy, the ability of states to implement policy varied. In the case of highways, national-

level bureaucrats were successful in training a cadre of engineers who would share the same professional ethos. However, sharing the same ethos did not always insulate these state bureaucratic partners from the particularities of their own state's political and administrative context. Thus, for every state like New York, which adopted a policy early (and successfully in terms of implementation), there was another state such as Alabama that adopted a policy late or not at all, and with limited administrative capacity.<sup>62</sup>

While interest group activity and entrepreneurial bureaucrats would all play a role in the development of these policies, these policies were distinctively shaped by the institutional and partisan arrangements within Congress. Far from being "unwieldy" or "messy," as some critics have argued, both federalism and its instrument, intergovernmental policy, reflect basic and sometimes conflicting institutional forces rooted within the American political economy. There was a logic to the enactment and structure of the First New Federalism and the intergovernmental policy instruments created during its emergence that was rooted within the U.S. Constitution and, by extension, within the institutional structures that shape congressional policy making, and within the changing preferences and incentives of actors during the state building of the Gilded Age and the Progressive Era.

National legislators carefully developed a working relationship between the national government and the states through the design of administrative structures such as the creation of national oversight boards like the Federal Board of Maternity and Infant Hygiene, or the state highway departments, and via the selection of administrative procedures such as lodging rule-making ability in the hands of the Secretary of Agriculture. In the case of the Pure Food and Drug Act, regulation-setting power was fragmented between three agencies in order to reduce the power of the pro-farmer U.S. Department of Agriculture (USDA). At the same time, the regulatory powers of the states were limited due to concerns that states would develop standards that would prove impossible or very expensive for manufacturers to meet.

For example, congressional debate over the passage of the Pure Food bill reflected an attempt to fragment power and control state regulatory activity. The House bill authorized the Secretary of Agriculture to "determine standards and wholesomeness of food products;" and to call on the standards committees of the Association of Agricultural Chemists (the state chemist group) and the Association of State Dairy and Food Departments, "and other such experts as [the secretary] deemed necessary."<sup>63</sup> The first provision was dropped in conference committee at the insistence of the Senate, which got a provision that essentially left the setting of standards up to the courts thus increasing the burden of proof for state or national regulators.<sup>64</sup>

In each of these cases, decisions about agency structure, scope, and process determined who won and who lost, in the present and in the future.<sup>65</sup> For



national legislators, determining wins and losses of administrative structure and procedures was critical to strengthening their representation, whether of their districts, their party, or other interests. More importantly, the choice of administrative structure and procedure could spell the difference between the development of an enacting coalition, or the demise of legislation.

The outlines of the First New Federalism can be seen in the struggle over the passage and structure of each of these pieces of legislation. These instruments were chosen in order to balance conflicting interests and demands within a governmental structure whose capacity lagged behind its growing commitments. Yet this picture of national-state-local struggle over procedures and rules, between politicians, reformers, and bureaucrats should not hide another aspect of the First New Federalism: the reproduction, or in some cases, the creation of inequalities based on race, ethnicity, gender or class.

### Inequality and the First New Federalism

Intergovernmental policy instruments intersected with social and economic inequality in a number of ways. One of the most pertinent of these intersections was the domination of local control in policy implementation, one of the central features of the New Federalism. Thus, for the two of the policy areas that have been previously discussed—maternal-child health care and highway policy—state and/or local control reproduced, and in some instances even strengthened, local systems of racial control or ethnic domination. The second important intersection between the New Federalism and inequality was that the new administrative organizations and powers created by the First New Federalism, such as the state-level regulatory networks established at public universities, created new forms of institutional inequality based on race.

As Deborah Ward recounts in her work, the *White Welfare State*, hierarchies of race, ethnicity, and class were constitutive elements of mothers' pensions and its policy contemporary, the Sheppard-Towner program. These programs, Ward asserts, were thoroughly localized, with the impact of administrative decision ultimately flowing upward to shape subsequent national welfare policy. The result of this local control over federalist policy was that "[t]he principles embodied in mothers' pension legislation and administration, such as decentralized administration and the imposition of 'suitable home' and 'fitness criteria' carried over to ADC [Aid to families with Dependent Children], resulting in the disproportionate and deliberate exclusion of African Americans and other non-whites from this benefit stream for almost fifty years."<sup>66</sup>

While the female administrators of mothers' pensions and the maternal-child health program reflected and imposed racial, ethnic, or class inequalities

on their clients, the administrators themselves and the “female dominion” they constructed were continually subject to gender discrimination.<sup>67</sup> Numerous researchers have documented the ways in which, during the pre-New Deal era, women administrators, especially from the Children’s Bureau, had continually to struggle to retain their autonomy as well as control over their programs from male-dominated bureaucracies such as the U.S. Public Health Service. While the First New Federalism allowed for women’s movements to enter into the new federal state, the ways in which women entered the state placed them at a disadvantage vis-à-vis the male dominated bureaucracies. The power of these women administrators would be limited: women reformers did not hold regulatory power, like the male chemists associated with the USDA. The determinedly localist administrative structure forced on these women policy activists and bureaucrats by Congress, as well as the political weakness of their clients, ensured that these women could not bring supportive political pressure from state and local interests to bear in their interbureaucratic struggles.

On the face of it, highway policy would seem to be racially neutral. Yet as the “Good Roads” movement emerged, it reflected distinct regional characteristics. In the South, the Good Roads movement carried a particular resonance. Progressive reformers saw publicly financed and built roads as a means to modernize the South by connecting isolated farmers with urban marketplaces and civic services such as schools. Good roads would end what many reformers believed was their exploitation of the economy from unfair railroad rates and other practices. Finally, good roads would also give white Southerners another means to control black labor and black lives. Indeed, for Progressive highway reformers, the use of black convict labor was seen as performing an important double function: not only did it help to modernize the South, resulting in the “upbuilding of the public roads,” and the “upbuilding of the state,” it also resulted in the “upbuilding of the convict.” Indeed, white Southern advocates of Good Roads argued that the use of black convict labor to build federally financed highways was good for Southern blacks since the “negro of criminal tendency is compelled by the chain-gang to live a regular and helpful life,” and that “fear of punishment produces a...willingness to do more work than money would induce him to perform.”<sup>68</sup>

It would not be a stretch of the imagination to argue that the thousands of African Americans who were effectively press-ganged into an unwilling labor force for the Southern states did not see the merits of this new policy. Indeed, black convicts and their few supporters would repeatedly attempt to publicize the wretchedness of the conditions of these convicts arguing that the system “savors too much of slavery times.”<sup>69</sup> These pleas fell on largely deaf ears; the First New Federalism simply offered the local racial states of

the South an irresistible incentive, as well as justification for the exploitation and oppression of Southern blacks.

The regulatory system put into place by the 1906 Pure Food and Drug Act would also seem to be racially neutral, yet again racial inequality was also present. One of the building blocks of the state-level regulatory system was the land grant universities, which were themselves an early form of federalist policy, for example, the Morrill Act of 1862.<sup>70</sup> Under the Morrill Act, the national government provided funding (in the form of scrip for land) to establish public institutions under the direction and control of state governments. The purpose of these universities would be to provide members of the working classes a “practical education” in agriculture as well as mechanical arts. By the late nineteenth century, when calls for strengthening these institutions finally made it onto the congressional agenda, America’s segregated state was its formation.<sup>71</sup>

When the Morrill Act of 1890 was enacted, it gave more funding, as well as state-making responsibilities, to state universities, such as the food and drug laboratories established by university chemists. Although the 1890 Morrill Act prohibited universities from discriminating on the basis of race, the legislation did allow states to establish a separate system of publicly funded universities if a state operated “dual systems.” Dual system of course was a euphemism for statutory segregation and was largely confined to the states of the Confederate South as well as border states such as Kentucky and Missouri. Given the South’s commitment to white supremacy, the sixteen newly established state universities for blacks did not get any funding beyond the bare minimum allotted to them, and in many cases, not even that. As critics of the dual system would argue, this lack of funding, as well as the inability of black universities to take part in activities that boosted the scientific as well as technological capacity of these institutions, produced a black population that critically lagged behind whites.<sup>72</sup> This gap in education and institutional capacity between whites and blacks, plus the clear message that the administering of the state was for whites only, conveyed the message that the modernization of the American state would be by and for white Americans.

## CONCLUSION

Reexamining and understanding the First New Federalism helps to lay bare one of the most important and yet least appreciated peculiarities of American political development. The intergovernmental policy innovations developed during this era allowed for the development of a more centralized and strengthened government (at the national and state levels) within

a political and constitutional framework described by Stephen Skowronek as a state of “courts and parties.” At the state level, where reformers and bureaucrats could, the ability to tap into the fiscal and regulatory authority of the national government helped to strengthen and legitimize emerging state activities. At the level of the national government, intergovernmental policy allowed the national government to amplify and extend its limited administrative capacity into control over policy outcomes at the state and local level. Although this control was restricted to a limited number of policy arenas, it laid the groundwork for shaping future policy decisions.

That is, once these policy innovations were written into administrative structures and procedures, they became the impetus in the creation of interlocking groups of bureaucrats (at the national and state level). At the same time, they facilitated the growth in networks of interest groups and the rise of new professions and associations that bridged the divide between bureaucrats and interest groups. Finally, the new system underscored the central role that Congress would play in shaping the new American state. In the end, the First New Federalism would play an important role in framing the future policy choices made by legislators, bureaucrats, and interest groups.

The rise of the First New Federalism, however, was not administratively or politically neutral. As seen in the case studies presented in this chapter, inequalities based on race, ethnicity, class, and gender were selectively incorporated into the shaping of the modern American state. While some of this incorporation reflected the layering of previously constructed inequalities based on society as well as the state, the inequalities encoded into the First New Federalism reflected a new, more overt role for the national government in creating and sustaining a modernized but unequal state.

## NOTES

1. Theodore Roosevelt, *The New Nationalism* (New York: Outlook Publishers, 1910), 26–7.

2. Richard F. Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859–1877* (New York: Cambridge University Press, 1990); and Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: Harvard University Press, 1977).

3. James Bryce, *The American Commonwealth*, 2nd ed. (London, 1891), 411–12.

4. See, for example, Richard L. McCormick, *The Party Period and Public Policy: American Politics from the Age of Jackson to the Progressive Era* (New York: Oxford University Press, 1986).

5. See Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (New York: Cambridge University Press, 1982).

6. The term “First New Federalism” is used to distinguish this era from the later “New Federalisms” of President Nixon, in the early 1970s, and that of President Reagan

in the 1980s. For further discussion of the First New Federalism, see Kimberley Johnson, *Governing the American State: Congress and the First New Federalism, 1877-1929* (Princeton: Princeton University Press, 2007).

7. In addition to Keller, *Affairs of State*, see also Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967), as well as Samuel Hays, *Conservation and the Gospel of Efficiency: The Progressive Era Conservation Movement, 1890-1920* (Cambridge, MA: Harvard University Press, 1959).

8. See Henry Scheiber, "Federalism and Legal Process: Historical and Contemporary Analysis of the American System," *Law and Society Review* (Spring 1980): 663-722.

9. In addition to interstate differences due to varying beliefs about the role of government was the question of administrative and financial capacity. During the 1870s, a number of states had enacted debt limitations, some of them constitutional. These limitations, as well as a number of state repudiations of debt, limited the ability of state and local governments to engage in capital projects. See Benjamin U. Ratchford, *American State Debts* (Durham, NC: Duke University Press, 1941). On the transformation of the states, see William R. Brock, *Investigation and Responsibility: Public Responsibility in the United States, 1865-1900* (New York: Cambridge University Press, 1984); William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996); and Jon C. Teaford, *Rise of the States: Evolution of American State Government* (Baltimore, MD: Johns Hopkins University Press, 2002).

10. Elihu Root, Roosevelt's conservative Secretary of State, gave a notable speech in 1907 in which he argued that national sentiment was rising due to the increasing common ties between the people due to the "workings of free trade among the states" and "the development of travel and communication." See Elihu Root, *How to Preserve the Local Self-Government of the States: A Brief Study of National Tendencies*. Authorized and correct edition (New York: Brentano's, 1907).

11. See, for example, John Burgess, "The American Commonwealth," *Political Science Quarterly* (March 1886): 9-35; and, Simon N. Patton, "Decay of State and Local Government," *Annals* (July 1890): 26-42.

12. See Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916* (New York: Free Press of Glencoe, 1963); and William Graebner, "Federalism in the Progressive Era: A Structural Interpretation of Reform," *Journal of American History* 64 (1977): 331-57.

13. See Jack L. Walker, "The Diffusion of Innovations Among the American States," *American Political Science Review* 63 (1969): 880-99. The notion of states as "laboratories of democracy," would be more fully articulated by Louis Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932).

14. See Harry N. Sheiber, "American Federalism and the Diffusion of Power: Historical and Contemporary Perspectives," *The University of Toledo Law Review* 9 (1978): 640-3.

15. See Melvyn Urofsky, "State Courts and Protective Legislation during the Progressive Era: A Reevaluation," *Journal of American History* 72 (1985): 63-91.

16. On this point see David L. Shapiro, *Federalism: A Dialogue* (Evanston, IL: Northwestern University Press, 1995), 29.

17. *Lochner v. New York*, 198 U.S. 45 (1905). *Lochner* invalidated a New York State law that set maximum working hours for bakery workers. For a discussion of the

“myth” of the *Lochner* decision and its impact on the shaping of the modern state, see William J. Novak, “The Myth of the ‘Weak’ American State,” *American Historical Review* (June 2008): 752–72.

18. See *Pollock v. Farmer’s Loan & Trust Co.*, 157 U.S. 429 (1895) invalidating the national income tax; and *United States v. E. C. Knight*, 156 U.S. 1 (1895), which ruled that mining or manufacturing, even when the product would move in interstate commerce, was not covered under the commerce clause. Other key decisions during the era of the New Federalism included *United States v. Delaware and Hudson Co.*, 213 US 366, 408 (1909), which overturned the Federal Employers Liability Act of 1906; *Adair v. United States*, 208 U.S. 161 (1908), and *Coppage v. Kansas*, 236 U.S. (1915), invalidating the prohibition of contracts which made non-membership in a trade union a condition of employment. See Shapiro, *Federalism* (29–30), for more extensive discussion of these issues.

19. Two exceptions were *United States v. Shower* (1914), which overturned the Migratory Bird Treaty Act of 1913, and *Hammer v. Dagenheart*, 247 U.S. 251, 276 (1918), which invalidated the Interstate Child Labor Act (1916).

20. For “weakened spring” see Wallace D. Farnham, “The Weakened Spring of Government: A Study in Nineteenth-Century American History,” *American Historical Review* 68 (1963): 662–80; as well as Margaret Susan Thompson, *The “Spider Web”: Congress and Lobbying in the Age of Grant* (Ithaca, NY: Cornell University Press, 1985).

21. See Bensel, *Yankee Leviathan*, 10–7.

22. Samuel Beer defines “public philosophy” as “an outlook on public affairs which is accepted within a nation by a wide coalition and which serves to give definition to problems and direction to government policies dealing with them” (Samuel Beer, “In Search of a New Public Philosophy” in *The New American Political System*, ed. Anthony King [Washington, DC: AEI Press, 1977], 5, note 1).

23. The literature on the Progressive Era is vast. This chapter draws from the following works: On Progressivism, see Peter G. Filene, “An Obituary for ‘The Progressive Movement’” *American Quarterly* 22 (1970.): 20–34; Lewis Gould, ed. *The Progressive Era* (Syracuse: Syracuse University Press, 1974); David Thelen, *The New Citizenship: Origins of Progressivism in Wisconsin, 1885–1900* (Columbia: University of Missouri Press, 1972); see also Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Belknap Press of Harvard University Press, 1998).

24. See Graebner, “Federalism in the Progressive Era,” 347.

25. Roosevelt quotation from W. Brooke Graves, *American Intergovernmental Relations: Origins, Historical Development and Current Status* (New York: Charles Scribner’s Sons, 1964), 799. See also Herbert Croly, *Progressive Democracy* (New York, Macmillan, 1915).

26. Quotations are from Theodore Roosevelt, *The New Nationalism* (New York: Outlook Publishers, 1910), 26–7.

27. There has been some disagreement over the influence of Croly on Theodore Roosevelt. Historian Eric Goldman emphasizes the influence of Croly’s *Promise* on Roosevelt, while Edward Stettner, on the other hand, argues that the influence of Croly was much less significant; and that there were important differences between the two. See Eric Goldman, *Rendezvous with Destiny* (New York; Knopf, 1952) and Edward A. Stettner, *Shaping Modern Liberalism: Herbert Croly and Progressive Thought* (Lawrence: University Press of Kansas, 1993).

28. Herbert Croly, *The Promise of American Life* (New York: Macmillan, 1912), pp. 274–5.

29. It is not clear whether this stance was based on ideology or based on beliefs about the limitations on national power posed by the Supreme Court; see Croly, *Progressive Democracy*, 240.

30. For this quotation, see Croly, *Progressive Democracy*, 241. Croly also described what he called the “‘great American drift,’ the tendency for Americans to believe that the nation’s problems would automatically solve themselves.” He argued that this lethargy would lead to a struggle among powerful groups for their private gain and leave the public interest unguarded, thus it was a plea for a “strong assertion of the national will to overcome the disruptive tendencies in America” (*Progressive Democracy*, 115).

31. In fact, Walter Weyl, Croly’s colleague at the *New Republic*, notes that, “this movement, because of the heterogeneous character of those who further it, is tentative, conciliatory, compromising, evolutionary, and legal, proceeding with a minimum of friction through a series of partial victories; that the movement is influenced and colored by American conditions and traditions, proceeding with but few violent breaks, out of our previous industrial, political, and intellectual development and out of our material and moral accumulations, and utilizing, even while reforming and reconstituting, our economic and legal machinery.” See William Weyl, *The New Democracy: An Essay on Certain Political and Economic Tendencies in the United States* (New York: Macmillan, 1912), 348.

32. See Burgess, “The American Commonwealth,” on this point.

33. For instance, in his early state government career, Wilson made a strategic “conversion” to Progressivism. As governor of New Jersey, he oversaw the enactment of legislation dealing with “direct primary, corrupt practices, utility regulation and workmen’s compensation laws”; see Lewis L. Gould, *Reform and Regulation: American Politics from Roosevelt to Wilson* (New York: Alfred A. Knopf, 1986), 161. See also David Sarasohn, *The Party of Reform: Democrats in the Progressive Era* (Jackson: University Press of Mississippi, 1989) and Arthur S. Link, *Woodrow Wilson and the Progressive Era: 1910–1917* (New York: Harper and Row, 1963).

34. See Gould, *Reform and Regulation*, 160.

35. See Gould, *Reform and Regulation*, 83.

36. For discussion of this term, see Hays, *Conservation and the Gospel of Efficiency*.

37. See Theda Skocpol, *Protecting Soldiers and Mothers*: (Cambridge, MA: Belknap Press of Harvard University Press, 1992), 3.

38. See Samuel Hays, “The Social Analysis of American Political History, 1880–1920,” in *American Political History as Social Analysis* (Knoxville: University of Tennessee Press, 1980), 70.

39. That businesses organized to extract favorable protection from the government was not new in American politics. The railroads are one such example; rivers and harbors legislation was another example of pork barrel interests. See John Ferejohn, *Pork Barrel Politics: Rivers and Harbors Legislation, 1947–1968* (Stanford, CA: Stanford University Press, 1974). What was new in this instance was the emergence of groups that represented these economic interests against the demands of other groups. In effect, the new functional and trade organizations arose not only for strategic self-interest but also for defensive reasons. Whether this activity was a “triumph

of conservatism” which effectively determined the form and content of Progressive legislation, as Gabriel Kolko has argued, or, whether the response to government activity was much less organized, as Robert Wiebe argues, is still debated. What is interesting about this organizational thrust is that government was seen as the playing field upon which business would have to play, willing or not.

40. On government growth see Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987); and see Louis Galambos, *Competition and Cooperation: The Emergence of a National Trade Association* (Baltimore, MD: Johns Hopkins Press, 1966).

41. See Wiebe, *The Search for Order*, 111-32.

42. The rise of the experts was partly due to the increasing complexity of business. For example, railroads and national manufacturing firms faced a number of problems due to the scale of their markets (which were *national* in scope) and the complexity of the technology they used. It was during this period that Frederick Taylor emerged as one of the pioneers of the new “scientific research” and of the techniques of scientific management to solve production and labor problems. See Samuel P. Hays, *The Response to Industrialism, 1885-1914*, 2nd ed. (Chicago: University of Chicago Press, 1994); see also Robert H. Wiebe, *Businessmen and Reform: A Study of the Progressive Movement* (Cambridge, MA: Harvard University Press, 1962). Scientific management became part of the ethos of public administration resulting in the establishment of municipal research bureaus and aiding in the growth of municipal reform initiatives such as the city manager. See Dwight Waldo, *The Administrative State: A Study of the Political Theory of American Public Administration* (New York: Ronald Press, 1948).

43. For example, many of the leading experts and reformers considered themselves to also be social scientists. Indeed, the goal of the American Social Science Association was to “apply science, organization and expertise to reform” (Keller, *Affairs of State*, 123). The results from such an approach were particularly notable in the field of public health where impressive results were achieved. In this area “material achievements . . . provided concrete evidence of the almost unlimited possibilities of change” (Burnham et al. *Progressivism*, 19).

44. On education see Ira Katznelson and Margaret Weir, *Schooling for All: Class, Race, and the Decline of the Democratic Ideal* (New York: Basic Books, 1985); and Arthur F. McClure, James Chrisman, and Perry Mock, *Education for Work: The Historical Evolution of Vocational and Distributive Education in America* (Cranbury, NJ: Associated University Presses, 1985).

45. On conservation see Hays, *Conservation and the Gospel of Efficiency*; for the county agent system see Gladys Baker, *The County Agent* (Chicago: University of Chicago Press, 1939); on educational programs for mothers see Skocpol, *Protecting Soldiers and Mothers*, and Molly Ladd-Taylor, *Mother-work: Women, Child Welfare, and the State, 1890-1930* (Urbana: University of Illinois Press, 1994). For highways see Bruce Seely, *Building the American Highway System: Engineers as Policy Makers* (Philadelphia: Temple University Press, 1987).

46. For the latter group, the complexity of the problems they were presuming to address needed the authority and the resources of the national (or state) government in order to be effective. This attitude was not by any means characteristic of all reformers; some reformers did not automatically seek a government solution since politics was often part of the problem. Their organizations, and technocratic



solutions, were intended to be a counterforce to the party and the spoils system. See Bunker's essay in *Progressivism* (1977).

47. See McCormick, *The Party Period and Public Policy*, 283–4.

48. See also Sidney Webb, a British reformer, who also endorsed the concept of intergovernmental grants. Webb and his wife Beatrice were important influences on American Progressive reformers. See Sidney Webb, *Grants in Aid: A Criticism and a Proposal* (London and New York: Longmans, Green, 1911). For the influence of the Webbs, see Rodgers, *Atlantic Crossings*.

49. White, *Trends in Public Administration*, 246.

50. On regional variation see Amy Bridges, *Morning Glories: Municipal Reform in the Southwest* (Princeton, NJ: Princeton University Press, 1997).

51. On the rise of the “new bureaucracy” see Brock, *Investigation and Responsibility*, 219–22. More generally see Daniel Carpenter, *The Forging of Bureaucratic Autonomy* (Princeton: Princeton University Press, 2001); and Leonard White, *The Republican Era: A Study in Administrative History* (New York: Free Press, 1958).

52. Organization description from *Public Administration Organizations: A Directory, 1938–1939* (Chicago: Public Administration Clearing House, 1939), 51.

53. See Richard F. Bensel, *Sectionalism and American Political Development* (Madison: University of Wisconsin Press, 1984) as well as Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877–1917* (Chicago: University of Chicago Press, 1999).

54. On the institutionalization of Congress, see Nelson Polsby, “The Institutionalization of the U.S. House of Representatives,” *American Political Science Review* 62 (1971): 144–68.

55. Thomas P. O'Neill, Jr., and William Novak, *Man of the House: The Life and Political Memories of Speaker Tip O'Neill* (New York: St. Martin's Press, 1987).

56. See Samuel Kernell, “Rural Free Delivery as a Critical Test of Alternative Models of American Political Development: A Comment,” *Studies in American Political Development* 15 (Spring 2001): 104.

57. See Sanders, *Roots of Reform*, 2.

58. Theodore Lowi, “American Business, Public Policy, Case Studies and Political Theory,” *World Politics* 16 (1964): 691.

59. See Lowi, “American Business,” 690.

60. David Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 129.

61. See Theda Skocpol and Kenneth Finegold, “State Capacity and Economic Intervention in the Early New Deal,” *Political Science Quarterly* 97, no. 2 (1982): 255–78.

62. Jane Perry Clark was one of the first analysts to examine the First New Federalism and note the potential drawbacks of this variation in state capacity. See Jane Perry Clark, *The Rise of a New Federalism: Federal-State Cooperation in the United States* (New York: Columbia University Press, 1938).

63. Oscar Anderson, “The Pure-Food Issue: A Republican Dilemma, 1906–1912.” *American Historical Review* 61, no. 3 (1956): 569–70.

64. James H. Young, *Pure Food: Securing the Federal Food and Drugs Act of 1906* (Princeton, NJ: Princeton University Press, 1989), 161.

65. Terry M. Moe, “The New Economics of Organization.” *American Political Science Review* 20, no. 4 (1984): 734–49. 1987; see also Moe, “Interests, Institutions, and

Positive Theory: The Politics of the NLRB,” *Studies in American Political Development* 3: 236–99.

66. See Deborah E. Ward, *the White Welfare State*: (Ann Arbor: University of Michigan Press, 2005), 8.

67. On the “female dominion” and following, see Robyn Muncy, *Creating a Female Dominion in American Reform, 1890–1935* (New York: Oxford University Press, 1994)

68. For quotation and further see Alex Lichtenstein, “Good Roads and Chain Gangs in the Progressive South: ‘The Negro Convict is a Slave,’” *Journal of Southern History* 59 (1993): 103, 106. On race and Southern progressivism see Jack Temple Kirby, *Darkness at the Dawning: Race and Reform in the Progressive South* (New York: J.B. Lippincott, 1972).

69. Lichtenstein, “Good Roads and Chain Gangs,” 92.

70. The Morrill Act was at roughly the same time as two other federalist policies, the Homestead Act and the Pacific Railway Acts; all three addressed the disposition of the nation’s public lands. One reason for the enactment of these policies was the absence of Southern legislators from Congress, who had previously opposed earlier legislation. John Y. Simon, “The Politics of the Morrill Act,” *Agricultural History* 37 (1963): 103–11.

71. On the segregated state, see Desmond King, *Separate and Unequal: African Americans and the U.S. Federal Government*, 2nd ed. (Oxford: Oxford University Press, 2007).

72. On the inequalities built into black land-grant universities, for recent works in this area see Lee A. Craig, “Constrained Resource Allocation and the Investment in the Education of Black Americans: The 1890 Land-Grant Colleges,” *Agricultural History* 65 (1991): 73–84; and Frederick S. Humphries, “1890 Land-Grant Institutions: Their Struggle for Survival and Equality,” *Agricultural History* 65 (1991): 3–11.

## The Missing State in Postwar American Political Thought

*Desmond King and Marc Stears*

### INTRODUCTION

In the first few decades following World War II, American political theorists had almost no engagement with the American state. Although the end of the fight with Fascism and the onset of the Cold War with Communism led to an outpouring of studies on the character of the American political order, these works were almost universally insistent that American politics were not fundamentally shaped by the nation's formal political institutions, by its practices of governance, or by any patterned distribution of political power. Instead, American politics was said to be characterized (and constrained) by a set of near-universally held political values, a set which Louis Hartz famously called "the American liberal tradition." Having truck with the legacies of neither Marx nor Weber, then, Hartz and his contemporaries insisted that the course of American politics was primarily determined by popular beliefs, and especially by American citizens' widespread commitment to individualist ethics, by their pervasive scepticism toward social elites, and by their intense sense of the importance of social equality. This account of the determinants of American political life was accepted for an extraordinarily long time by a wide and diverse set of scholars. Historians, literary critics, psychologists, and social scientists all joined with political theorists in shifting attention from the state and toward the cultural attitudes of the United States. In a short time, the "liberal tradition thesis" had become accepted as a commonplace, structuring thought about the United States both within and beyond its own borders.<sup>1</sup>

More recent years have witnessed two powerful assaults on the thesis. The first assault, led by, among others, Eric Foner, Gary Gerstle, Carol Horton, and Stephen Skowronek, argues that the view of "liberalism" required by the orthodox "liberal tradition thesis" is too static and too restrictive. American

liberalism has always been much more malleable than the advocates of the thesis appreciated, these critics insist. Liberal ideals have not always been individualistic, anti-statist, or egalitarian. They have been employed to justify policy proposals from both the Left and Right; they have sometimes being used to defend the status quo and at other times presage dramatic political change.<sup>2</sup> The second assault, shaped initially by Rogers Smith, is more scathing still. It turns away from liberalism entirely, insisting that the claim that the political life of the United States has been shaped by a single liberal dominance is simply inaccurate. American politics, on this account, has actually been characterized by continual ideological conflict, from the moment of the founding. The United States possessed “multiple traditions,” with liberalism pitted against ferocious ideological alternatives, including democratic republicanism and ascriptive racist inequality.<sup>3</sup>

Crucial though both of these intellectual correctives are to the liberal tradition orthodoxy neither directly addresses the question of how and why the “liberal tradition thesis” rose to such prominence in the first place, nor attempts to explain how critical analysis of the nature of the American state was able to remain absent from American political theory for so long.

These questions provide the focus for this chapter. We aim to explain which fundamental characteristics of postwar American political theory enabled scholars to overlook the central agency of political life—the state—for so long. We do so first by critically examining two initially plausible suggestions: one which emphasizes the role that capitalism has always played in American political explanation and another which stresses the anti-authoritarian tendencies of Cold War political thinking in the United States. We then argue, however, that neither of these accounts is fully adequate and outline instead an alternative explanation of our own. This explanation concentrates on a now much-overlooked feature of American political theory: its obsession with the exclusive, oppressive, even tyrannical character of *popular opinion* and *conventional wisdom* in the United States. American political theorists of the Cold War age were convinced that the greatest threats to the liberties and well-being of the American people came not from the American state but from that people’s own excessively anxious and narrowly restricted state of mind. It was for that reason, rather than any other, that a generation of political theorists removed the state from their sights and placed the “liberal tradition” there instead.

## THE DISAPPEARING STATE

World War II and its immediate aftermath prompted a dramatic flourishing of works about America in general and American politics in particular.

Many of these works became almost instant classics. They were books to be read deep into the twentieth century, including Geoffrey Gorer's *The American People*, Louis Hartz's *The Liberal Tradition in America*, Gunnar Myrdal's *An American Dilemma*, Arthur Schlesinger's *The Vital Center*, and Lionel Trilling's *The Liberal Imagination*.<sup>4</sup> But perhaps the most striking thing about all of these works is the almost total absence of any serious discussion of the American state. The state does not seriously appear in any of their discussions of economic regulation, of social policy, or of international affairs. They possess no serious discussion of federalism, of the problems and advantages of centralized political power, of the role of the bureaucracy in a modern political order, or of the ease or otherwise of accessing governmental positions, and this despite the fact that arguments about all of these issues had dominated political debates in the two decades before the war. The pre-war generation's classic political texts, including Stuart Chase's *A New Deal* and George Soule's *The Coming American Revolution*, placed the state and its problems and advantages at the very heart of their analysis.<sup>5</sup> But the postwar accounts wrote it out of the story altogether.

The silence on the question of the state was, though, deeply disconcerting. That silence was resounded most on segregated America. It is truly remarkable that the vast majority of books published in political theory from 1945 until relatively recently could be so innocent in its subject matter about the state's role in enforcing America's racial orders, at the very moment when the civil rights of African Americans were beginning to capture political attention.<sup>6</sup> Louis Hartz's *Liberal Tradition in America* is the paradigmatic example here, as in so many other places. Hartz's work gives absolutely no indication of the pending implosion in civil rights demands about to confront the American state and already visible to the politically alert. Even more worryingly, this work and others, including those like Myrdal's *American Dilemma*, which ostensibly claimed to deal with racial justice, showed no sign at all of recognizing that the American state had been for long periods of its existence a segregated state.<sup>7</sup> The American state had, that is, been neither a mere reflection of society nor an impartial arbiter. It was an active segregator, and it was so even at the time when postwar American theorists were writing the state out of the story of American politics.

In his well-titled book *When Affirmative Action Was White*, Ira Katznelson provides an overview of this phenomenon at the very moment when the postwar generation of political theorists came of age.<sup>8</sup> Focusing his attention on the New Deal social security legislation, emergency relief measures and extending through the Fair Deal, Katznelson builds an account of how a coalition of Southern Democrats and Northern Republicans structured Federal programs disproportionately to advantage white over black Americans. During these decades, from the 1930s to the 1950s, the American

state's education and economic policies constituted a program "of affirmative action granting white Americans privileged access to state-sponsored economic mobility." By designing New Deal social policies to exclude those occupations in which African Americans predominated, agreeing to the delegation of administrative powers to the states and avoiding anti-discrimination powers, President Franklin Roosevelt and the Democratic Congress rendered these programs into "a massive transfer of quite specific privileges to white Americans."<sup>9</sup>

Katznelson and others also show how the Federal government's segregated programs fed dramatically into the postwar years, as eligibility for the GI Bill was shaped by wartime service. This restriction severely limited the ability of African Americans to access this route into education and social mobility.<sup>10</sup> Not only did wartime segregation limit African Americans' opportunities for equal military service, but the "postwar benefits created an affirmative action for white soldiers that contributed to a growing economic chasm between white and black veterans."<sup>11</sup> The segregated state did not simply make the economic and citizenship chasm deeper and firmer: it made the white supremacist racial order into a national standard and the legacies of this era endure in contemporary American politics.

The absence of the state from the dominant literature in American political theory at this moment is, therefore, both surprising and shocking. By choosing not to discuss the state, a generation and more of American political thinkers both eviscerated their understanding of the American political processes and blinded themselves to the mechanisms by which grave injustices were perpetuated on segments of American society. It remains for us to establish what led them to turn their attention from the issue and why they were able to do so for so long.

## CAPITALISM AND THE ABSENT STATE

This question has been asked remarkably rarely until recently. But the most popular of the answers that are available begins with three assumptions: *first* that Cold War American political thinkers tended to prioritize analysis of economic affairs over those of any other issue domain; *second*, that they believed that Americans were, and had always been, capitalists at heart—a kind of instinctive capitalist breed; and *third*, that capitalism was incompatible with a bureaucratic state machine. The state was missing from their account, on this view, simply because it was believed to be incompatible with capitalism, and capitalism was thought to be essentially, even necessarily, American. It is necessary, therefore, for us to start our search for an answer to why the state was missing with these three assumptions.

Originating with the mildly obsessive literature posing the question of “why there was no socialism in the United States,” the view of the incompatibility of capitalism and state apparatus has remained central long after that debate has dropped away from scholarly attention.<sup>12</sup> According to such a perspective, the widespread belief that the vast majority of Americans were committed to the ideals of a capitalist economic order explains any reluctance to examine the state’s role in American life. For if American thinkers believed that the American citizenry has always been comprised of capitalists, the argument continues, they surely must also have believed that these self-same citizens were committed to economic *laissez-faire*, striving always to weaken and delimit rather than strengthen the American state in order to protect the operation of free markets and prevent the growth of regulatory power.

There are undeniably elements of the theories of postwar America that lend credence to this account. Americans, Arthur Schlesinger insisted in *The Vital Center*, had always been suspicious of any ideology that suggested that “economic decisions” should be made by anyone other than individuals, entrepreneurs, and firms themselves.<sup>13</sup> Louis Hartz appeared even more insistent. Americans of all social strata had since the founding been committed to the economic ideology of capitalism, he appeared to suggest in *The Liberal Tradition in America*, and especially to the belief that citizens should pursue self-improvement through participation in independent economic activity. Unlike Europe, Hartz relentlessly extolled, the United States was never a feudal society, both in the sense that it lacked an established and entrenched aristocracy and that all of its social groups were committed to the idea that economic life should be shaped by anything other than the operation of the free market. In the United States, “virtually everyone, including the nascent industrial worker, has the mentality of an independent entrepreneur.”<sup>14</sup> In such an environment, the argument went, capitalism did not have to be foisted upon an unwilling American people, as the Marxist and Progressive historians of the interwar years had claimed. Rather, it had always been the default option. It was favoured by almost everyone, opposed only by politically insignificant philosophers and social critics.<sup>15</sup> Faith in capitalism was crucial to the “unity of American life,” leaving Americans as “indifferent to the challenge of socialism” as they were “unfamiliar with the heritage of feudalism.”<sup>16</sup>

Despite such scholarly support, this explanation of the absence of the state from the postwar vision of America is wrong. The mistake is to conclude that these thinkers saw capitalism and state intervention in economic and social life as mutually incompatible. They did not. Faith in capitalism and in its attendant concepts of private property, free markets, and reward through economic effort were central to the postwar story, but these

theorists did *not* believe that such a faith was necessarily inimical to the growth of an administrative state nor to the exercise of significant legislative and executive power. Instead, it was frequently argued throughout his career that it was perfectly possible for a capitalism to coexist with extensive public administration and a significant degree of state intervention in economic activity.<sup>17</sup>

This argument was clear in the historical work of the time. Popular economic histories written in the immediate postwar period thus insisted that, far from always being committed to a small state, capitalist interests in the United States had often benefited from significant state intervention. This was particularly apparent in accounts of antebellum America. At that time, it was argued, emerging manufacturing interests believed that growth of their industrial concerns was dependent on significant support from the rapidly expanding, if still underdeveloped, administrative machine, especially that located in the state capitals.

In *Economic Policy and Democratic Thought*, published in 1948, Louis Hartz himself presented the clearest version of this argument. Hartz insisted that early capitalism in the United States had been dependent on state action for four reasons. First, it fell to public authorities in these states to create the transport and communication infrastructures necessary for the operation of free markets. Second, state governments also occasionally provided crucial venture capital, offering loans and other forms of investment for nascent industrial concerns in a way that America's various and underdeveloped banks were unable to do. Third, the same authorities also crafted an early, if modest, regulatory environment in order to initiate fair competition between private industries and also sought to guarantee that at least the most brutal of the social costs associated with rapid industrialization were offset. Fourth, and most crucially, several of the states moved beyond the regulation of private concerns and into a position of direct influence with some. States thus employed the mechanism of "chartering" in order to force mergers between firms, even creating state-sanctioned monopolies when they believed that industries would benefit substantially either from protection from competition or from economies of scale. When combined, these four factors entailed that early industrial development in the United States was dependent on the closely coordinated joint activity of public authorities and private corporations.<sup>18</sup> Within the most industrially advanced states in antebellum America "government assumed the job of decisively shaping the contours of economic life."<sup>19</sup>

Some of the postwar interpreters did argue that this relationship of mutual self-service between state and market ceased after Reconstruction. "One can trace [a] process of spiritual conversion and dramatic flip-flop with a brilliant clarity," Hartz argued in *The Liberal Tradition*, as the economic



“interests who had originally demanded many public investments, especially in banking and transportation” suddenly decided they could live better without them.<sup>20</sup> But far from everyone took the view that there had been such a capitalistic change of heart. Everyone, of course, accepted that there had been a substantial transformation in American capitalism in the second half of the nineteenth century: the emergence of large-scale corporations confirmed that. It was also clear that these new cross-state concerns did become insistent on the need to guarantee free markets across the Union and thus grew resistant to the policy of local chartering, which had previously enabled states to drive mergers and create monopolies within their own bounds. But several scholars nevertheless also noted that this transformation did not, in fact, involve the disappearance of public authorities from the economic lives of American citizens. Far from it. It simply involved a switch from state to federal authorities.

As Robert Lively and others explained in the early 1950s, the changes desired by the corporations that emerged in the late nineteenth century required the extensive use of federal power. It took a whole range of initiatives to abolish localized regulation of commercial movement, to protect heavy industry by means of an industrial tariff, and to ensure financial stability by means of adherence to the gold standard.<sup>21</sup> All of these endeavors also provoked extensive political contests, as most postwar theorists knew very well and openly accepted. Hostility to efforts to forge a national “free” market was deep and widespread across the United States, especially among groups of organized workers and smaller business concerns whose interests were ill-served by nationwide competition. It was precisely for this reason that emergent *laissez-faire* jurisprudence of the late-nineteenth-century Supreme Court was both so crucial to the country’s economic development and so widely remarked upon.<sup>22</sup> Moreover, the Court’s new jurisprudence did not equate with the *withdrawal* of the American state from the lives of individuals. Rather it signaled a host of new regulations on different actors, of which particularly dramatic were the new restrictions on organized labor. Between 1880 and 1931 close to two thousand injunctions were issued prohibiting industrial action.<sup>23</sup> The American state shaped the economic lives of American citizens in the late nineteenth century even more dramatically than it did before the Civil War.

We remain, then, with our quandary. In their historical mode, the postwar theorists were more than willing to recognize that capitalism and an expansive American state could coexist, even flourish together. But they remained unwilling to discuss the state or to pay it its due in their discussions of contemporary American politics. This tension deeply troubled those who specialized in historical research. In 1955, the historian Richard Lively contended that, when seen from the perspective of an economic historian, the “absence

of the Federal government” from postwar discussions of American political economy seemed all but “inexplicable.”<sup>24</sup> He was right. But the search for an explanation must continue nonetheless.

#### ANTI-AUTHORITARIANISM AND THE ABSENT STATE

Of the remarkably few recent studies to investigate the absence of the American state in postwar American political thought, the most influential and well-received is David Ciepley’s *Liberalism in the Shadow of Totalitarianism*.<sup>25</sup> There, Ciepley intimately connects the disappearance of the state from *intellectual investigations* with the collapse of the state-centered *political ideology* associated with the American Left in the Progressive and New Deal eras. “To ask why the state dropped out” of academic inquiry in postwar America, Ciepley insists, “is really to ask, what happened to the progressive crusade to build a new American state and reconstruct state-society relations.” The answer to that second question, he continues, is straightforward. The crusade collapsed as a result of American interactions with totalitarian regimes in Europe during World War II and on into the Cold War. This “encounter with totalitarianism,” the argument goes, discredited state-centric political ideologies, as Americans realized the terrible consequences of an over-extended state machine. As a result, the “progressive program of state-building” was ideologically discarded and political theoretic analysis of the American state was simultaneously “suppressed.”<sup>26</sup>

This is an elegant argument, well-made in Ciepley’s book, and for which there is substantial support. The immediate postwar and early Cold War United States was indeed characterized by widespread anxieties about totalitarianism, even on the Far Left of American politics. A whole host of pre-war radicals thus turned their back on their more ambitious state-centered plans at this time, with Daniel Bell, Stuart Chase, Ralph Ellison, Irving Howe, Hans Morgenthau, Reinhold Niebuhr, and Arthur Schlesinger chief among them.<sup>27</sup> This move was strong enough to appear as a precondition of political theorizing in the America of the postwar years; theorists would routinely begin with a stated “belief in free society and an absolute repudiation of totalitarianism.”<sup>28</sup> Observations of Fascist and Communist societies had undeniably alerted political ideologists of all stripes to the deep dangers posed by radicals and reformers who become “intoxicated by power,” and who are unable or unwilling to brook any opposition to their ambitions and transformative political programs.<sup>29</sup> Commenting on the state of American political theory in 1955, the English philosopher Stuart Hampshire observed that the ideal of individual freedom had been newly established in a position

of absolute prominence. For Americans of this era, Hampshire explained, “the right of each man to choose for himself his own manner of life” had become “the sole criterion in political decision.”<sup>30</sup>

Despite such extensive evidence of anti-totalitarianism in American political thinking, though, it is far from clear that Ciepley’s argument is entirely persuasive. For although it is clear that exposure to totalitarianism had engendered deep anxiety among American political theorists, it is far from clear as to why that should stop such theorists from writing about the state. Indeed, the interaction with totalitarianism might well have been expected to have *encouraged* political thinkers to reflect critically on the nature of state power rather than to drop the subject, just as the anti-statist turn in American politics after World War I had done.<sup>31</sup> It would be entirely reasonable to presume, after all, that anxieties about the potentialities of state power would lead to a closer inspection of the actually existing state, to ensure that it did not overstep its bounds, rather than a removal of the state from all serious academic consideration. This might particularly have been thought to be the case in the face of important real-life extensions of state activity in the Cold War era, especially in the domain of national security and anti-Communism.

It is this very issue that has perplexed the historical sociologists Andrew Abbott and James Sparrow. They rightly note that of all the multitude of anti-totalitarian works to capture the attention of a large American public in the early Cold War era only one, Franz Neumann’s *Behemoth*, spends any significant amount of time discussing the state.<sup>32</sup> All of the enormous number of others—including social anthropological studies such as Margaret Mead’s *And Keep Your Powder Dry*, political theoretic works like Niebuhr’s *The Children of Light and the Children of Darkness*, psycho-analytic investigations such as Adorno’s *Authoritarian Personality*, and works of fiction led by Ralph Ellison’s *Invisible Man*—place the emphasis somewhere else. The state, either as a formal set of institutions or as an informal practice of governance, features in each of these not at all.<sup>33</sup> It is missing.

Some of these works did not just not mention the state, they were more striking still in their insistence that a thoroughgoing anti-authoritarianism does not require a clear focus on the mechanisms of state power. That is because, they explained, there is no reason to think that the American state should be associated with totalitarian tendencies in any way. Instead, anyone concerned with avoiding an authoritarian turn in American politics needed to place their urgent attention *elsewhere*: to popular attitudes, social forms and practices, and psychological states. Seen in this way, the fear of totalitarianism might well have motivated the abandonment of discussions of the state, just as Ciepley suggests, but not because the American state was feared but rather because it was considered safe. An anxious anti-authoritarianism

deflected attention toward those factors that were believed to be the most dangerous elements of American life, and that, rightly or wrongly, was not thought to be the state but something else entirely. It is this set of contentions that provides the basis for our new explanation of the absent state in postwar American thought.

### CONVENTIONAL WISDOM, AUTHORITARIANISM, AND THE ABSENT STATE

American postwar political theorists were convinced that it would be necessary to struggle relentlessly to preserve American freedoms in the Cold War era: Americans were at risk from the onset of a “tyrannical compulsion,” they insisted. But these same theorists largely argued that root causes of that compulsion would not come from the state but rather from a “deep and unwritten” set of social assumptions, cultural values, and practices of daily living that shaped the lives of American citizens. A focus on the state was thought to be deeply misleading. It could potentially “blind” Americans to the “real” dangers that faced them.<sup>34</sup> It is this central idea—the notion that the serious threats to Americans’ rights and liberties came from elsewhere than its governing power—that explains the widespread desire to write the state out of political theory in the postwar years. While the average American citizen might be concerned with the might of the state, professional political scholars believed that they were mistaken. Indeed, they thought it was their job to direct attention elsewhere. This they did by writing the state out of American history entirely.

For most of these postwar theorists, the real cause of authoritarian anxiety lay in the potential psychological failings of the American people themselves. Theodor W. Adorno, Else Frenkel-Brunswick, Daniel Levinson, and R. Nevitt Sanford provided the most widely cited version of this argument in *The Authoritarian Personality*, which aimed to “develop and promote an understanding of the social-psychological factors which have made it possible for an authoritarian type of men to threaten to replace the individualistic and democratic type.”<sup>35</sup> Theirs was far from the only study: Harold Metz and Charles Thompson’s *Authoritarianism and the Individual* pursued a strikingly similar agenda, also in 1950, and Franz Alexander’s *Our Age of Unreason* offered an even more pessimistic take on the same theme a year later.<sup>36</sup> The arguments of these texts were strikingly consistent. Each concerned the dangers of authoritarianism emerging from a disturbing pursuit of spiritual “certainty” and communal “uniformity” among the citizen body. American citizens, these psychologists argued, had understandably despaired in the depression and the War, as they either lost everything themselves or

were terrified by the horrific barbarism that surrounded them. Such citizens became deeply confused as to the possibilities of the future and thus naturally developed a tendency to embrace anything that offered clear and definite political answers, however flawed those answers necessarily were. Postwar citizens' feelings of alienation, loss, and confusion, the argument went, made them easy prey to those selling false certainties in politics, religion, or any other aspects of social life. Yet that spirit of certainty stood in essential contrast to the maintenance and protection of American freedom across time.<sup>37</sup>

Probably the most entertaining iteration of this argument was a cartoon film produced in 1948 by Harding College entitled "Make Mine Freedom," in which an evil salesman named Dr. Utopia tries to sell poisonous potions (called "isms") to the gullible, depressed, and alienated sections of American society that he comes across on his travels.<sup>38</sup> The most profound statement of the argument, however, was from a different genre and possessed a different ideological hue. That came in Louis Hartz's (frequently terribly misread) *The Liberal Tradition in America*.<sup>39</sup>

In *The Liberal Tradition*, Hartz sought not to celebrate the liberal tradition, as so often claimed, but rather to explain how any serious threat of political "servitude" in the United States actually derived from the unthinking devotion that American citizens had traditionally lent to that tradition. Lockian liberalism, Hartz outlined, had at its heart an undiluted European concern with the need to protect the rights of the individual from the potential threats of the mob, a concern that had survived in the United States despite the very different social and cultural circumstances of its founding. The tradition's valorization of individual achievement and its emphasis on the profound importance of social equality posed, Hartz insisted, two grave, if paradoxical, dangers to American liberties.

The first danger resulted from blindness to existing social and economic inequalities. The "liberal tradition," Hartz believed, had led Americans to become extraordinarily self-congratulatory and thus incapable of detecting the vast injustices, inequalities, and erosions of individual freedoms that were observable all around them (though, it should be noted, he rarely included racial injustice in this pantheon of ills). In particular, although Americans were fiercely alert to any formalized political constraints—to the misdemeanors of "Parliaments, ministers, and Stampmasters"—they were almost entirely unable to see the difficulties facing Americans on the "social side" of life.<sup>40</sup> White Americans, he insisted, almost universally behave as if the "atomistic social freedom" of Lockian theory were a "reality" in the United States, which of course it was not. This, he claimed, was the "master assumption" of American thought, and by making such an assumption, Americans refused to recognize the desperate obstacles to the realization of liberal ideals faced

by most Americans most of the time, toppling them further into a state of confusion, dislocation, and potential alienation as a result.<sup>41</sup>

Nowhere was this conviction rendered more clearly present than in Hartz's extensive discussions of the social theory of the confederacy, a subject which made up a significant part of *The Liberal Tradition* and to which Hartz continually returned in other work.<sup>42</sup> Hartz's interest in this otherwise neglected topic was motivated by his belief that thinkers such as George Fitzhugh, George Holmes, and Henry Hughes were the "only one major group of American thinkers who had to challenge" the American sense that the full benefits of freedom were already enjoyed by the formally free citizens in the United States. Only these thinkers, he argued, "began to go behind the action of legislatures to the nature of society itself, to the drive within it for hierarchy and subordination," a move which was "bound to provide a set of new and fruitful insights."<sup>43</sup> Sadly, he continued, such "insights were injected into an atmosphere that was still unprepared to appreciate them," and, of course, they were also tied up with the most appalling justifications of slavery. For Fitzhugh and colleagues, the absence of a "real" freedom for the "formally free" meant that the "formally unfree" were not entitled to complain about their lot. Such a terrible misuse of the argument, Hartz conceded, enabled most Americans to ignore their efforts and left them without a story capable of making sense of the complexities of their own unequal lives.<sup>44</sup>

The second danger in the liberal tradition was more frightening still. This was what Hartz called the tradition's tendency to become in itself a form of "American absolutism": a "deep and unwritten tyrannical compulsion" that closed down political debate and disallowed contentious ideological dispute.<sup>45</sup> In cleaving to the "liberal tradition," Hartz insisted, American citizens not only blinded themselves to the social inequalities and injustices perpetuated in American social life; they also rendered themselves unable to cope with any sense of disagreement or conflict within their own ranks. Since the founding, Hartz argued, the majority of Americans have acted as if in the "sober faith that their norms were self-evident," rather than controversial moral and political claims about the meanings and possibilities of collective life.<sup>46</sup> This, in turn, entailed that a deeply distasteful and potentially deeply troubling "conformitism" occupied the center of American ideological life.<sup>47</sup>

This situation, he held, was deeply divergent from that of the rest of the world. European countries, he contended, had never known such a singular ideological force. The social developments there, and especially the contest over feudalism, had ensured that Europeans had grown comfortable with the idea of ideological dispute; politics, for them, was a continuing battle for control led by groups willing expressly to disagree with one another. But in America, there was no such history to provide safety. Instead, all major political groups made constant declarations of unswerving loyalty to the "liberal

tradition” and were quickly and severely censured if they failed to do so.<sup>48</sup> And it was this paradoxical commitment to “liberal conformity,” he believed, that posed the greatest threat to the American citizen.

The reason that such conformism was potentially authoritarian was straightforward enough. It rested in the observation that, although American citizens did not know how to cope with difference, they would nonetheless constantly be confronted with it, especially in an increasingly internationally connected world. The only way the liberal tradition could maintain itself undiminished over time was thus by some form of social repression. When an adherent to the “liberal tradition” was faced with dissent, however that dissent was motivated, he would respond by “binding the individual down more and more,” until individuals were eventually unwilling to challenge the established norms.<sup>49</sup> Such repression could, Hartz conceded, sometimes take the form of state action—as in A. Mitchell Palmer and Senator McCarthy’s “Red scares” or in early-twentieth-century “Americanist” restrictions on immigration—but its root cause lay not in the nature of state power but in the “hysterical” opposition to any political view that challenged the liberal orthodoxy. The real danger thus lay essentially in the everyday conversations of the “bourgeois gossip” who looked down on the “eccentric” and the oppositionist; in the widespread sense that only a particular kind of social and political conversation was “decent” or permissible; and in the vast array of informal social sanctions, stretching from discouragement to effective ostracism, which were employed against anyone who dared disagree.<sup>50</sup>

It was in this way that Hartz believed that the real core of “liberalism” as a political philosophy was in practice becoming “a stranger in the land of its greatest realization and fulfillment” in the early postwar years. For although Americans celebrated the reality of their own liberal freedoms, in fact, the “compulsive power” of liberal expectations was becoming “so great” in the United States that it actually “posed a threat to liberty itself.”<sup>51</sup> Americans did not need to worry about the state. They should instead worry about their own intellectual limitations and conformities.

## CONCLUSION

It is here that an answer emerges to our question of why the American state failed to feature in postwar American political thought. For too long, these thinkers believed, Americans had sought to protect themselves from *political* power when the primary source of repressions, inequalities, and exclusions in the United States was essentially *not* political but social. The dangers that Americans actually faced were grounded in the expectations,

values, and beliefs of American citizens and not in the behavior and practices of its governing institutions or elites. For Hartz and his colleagues, indeed, the most deleterious impact of the liberal tradition on American life was that it encouraged the average American citizen to “trace the origin” of inequalities, injustices, and repressions that they inevitably faced “to the action of the state”: an idea that he insisted “put the cart before the horse.”<sup>52</sup> The “real nature” of oppression in the United States, these thinkers argued, was social and not political, and their job was to reveal that fact. In their own mind, therefore, this postwar generation of political thinkers needed paradoxically to take the state out of the story of American political development, therefore, precisely because they thought that American citizens had been too eager for too long to place it at the center of their understandings.

This conclusion casts the curious neglect of the American state in a more meaningful context. It does not, however, reduce its consequences. For whatever its initial justification, this tendency to direct attention away from the state contributed significantly to a widespread trend in American political thought away from anxiety toward actual support and encouragement. As the 1950s gave way to the 1960s, then, even those American political theorists who called themselves “liberal” began to contend that it was the job of the state to overcome the inequalities, injustices, and exclusions that they detected in American society at large. By the 1970s, the argument went one step further still. Within the work of John Rawls and his many followers, the state became a “neutral agent” for social justice, capable of righting the wrongs of American history, and overcoming the limitations implicit in the behaviour and attitudes of American citizens themselves.<sup>53</sup> The “missing state” of the generation of Louis Hartz, had become the “safe state” for a new generation of American political thinkers. So much so that the term *liberal* itself ceased popularly to imply “anti-statist” and began instead to be instinctively associated with “big-government” reform.<sup>54</sup>

Some of the more social-democratic inclined of the postwar generation might have been satisfied with this transformation. But the implications of the change were far from uniformly positive. Although it is, no doubt, right that American political theorists need to be sensitive to the dangers inherent in the ideas and attitudes of the citizenry itself, the postwar theorists achieved this only by writing the American state out of the story of American political development entirely. This view is deeply unfortunate because liberal Americans turning to the possibilities of state action after years of neglect failed in particular to recognize the racialized character of American state policy in the existing expression. As such, they failed to grasp the ways in which the existing state was repressive itself, especially in respect to race inequality, and thus exhibited no understanding of dangers that are



always inherent in the actions of the central state. By choosing not to investigate the state at all, American liberal political theorists became immune to its worst characteristics.

## NOTES

We would like to thank Bonnie Honig, Gary Gerstle, Robert Lieberman, and all the participants at the American State conference for helpful comments on earlier drafts of this paper.

1. See Louis Hartz, *The Liberal Tradition in America* (San Diego and New York: Harcourt Brace, 1991 [1952]). See also Geoffrey Gorer, *The American People* (New York: W. W. Norton, 1948); Richard Hofstadter, *The Age of Reform: From Bryan to FDR* (New York: Knopf, 1955); Gerald Johnson, *This American People* (New York: Harper and Row, 1951); Gunnar Myrdal with the assistance of Richard Sterner and Arnold Rose, *An American Dilemma: The Negro Problems and Modern Democracy* (New York: Harper and Brothers, 1944); Arthur M. Schlesinger, Jr., *The Vital Center: The Politics of Freedom* (Boston: Houghton Muffin, 1949); Lionel Trilling, *The Liberal Imagination* (New York: Viking, 1950).

2. See Eric Foner, *The Story of American Freedom* (New York: W. W. Norton, 1998); Gary Gerstle, "The Protean Character of American Liberalism," *American Historical Review* 99 (1994): 1043-73; Carol Horton, *Race and the Making of American Liberalism* (New York: Oxford University Press, 2005); Desmond King, *In the Name of Liberalism: Illiberal Social Policy in the USA and Britain* (Oxford: Oxford University Press, 1999); Stephen Skowronek, "The Reassociation of Ideas and Purposes: Racism, Liberalism and the American Political Tradition," *American Political Science Review* 100 (2006): 385-401.

3. See Rogers Smith, "Beyond Tocqueville, Myrdal, and Hartz: the Multiple Traditions in America," *American Political Science Review* 87 (1993): 549-66; and *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997). See too James Morone, *The Democratic Wish: Popular Participation and the Limits of American Government* (New Haven, CT: Yale University Press, 1991); Carol Nackenoff, "Locke, Alger, and Atomistic Individualism: Revisiting Louis Hartz's *Liberal Tradition in America*," *Studies in American Political Development* 19 (2005): 206-15; Barry Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton, NJ: Princeton University Press, 1994).

4. See note 2 above.

5. See Stuart Chase, *A New Deal* (New York: Macmillan, 1932); and George Soule, *The Coming American Revolution* (London: George Routledge and Sons, 1934).

6. Hartz's idealized American citizens were also uniformly white, as explained in Charles W. Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997).

7. Desmond S. King and Rogers M. Smith "Racial Orders in American Political Development," *American Political Science Review* 99 (2005); and Douglas S. Massey, *Categorically Unequal: The American Stratification System* (New York: Russell Sage Foundation, 2007).

8. Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: Norton, 2005).

9. Katznelson, *When Affirmative Action was White*, 21, 23. And see Robert Lieberman, *Shifting the Color Line* (Cambridge, MA: Harvard University Press, 1998).

10. Katznelson takes a dimmer view of the success of the GI Bill for African Americans than does Suzanne Mettler in her study *Soldiers to Citizens* (Cambridge, MA: Harvard University Press, 2005).

11. Katznelson, *When Affirmative Action Was White*, 112.

12. See Nackenoff, "Locke, Alger and Atomistic Individualism."

13. Schlesinger, *Vital Center*, 182.

14. Hartz, *Liberal Tradition*, 89.

15. Hartz, *Liberal Tradition*, 130.

16. Hartz, *Liberal Tradition*, 6.

17. See the discussion in O. H. Taylor, "The Economics of a Free Society: Four Essays," *Quarterly Journal of Economics* 62 (1948): 641-70.

18. See the excellent summary in Robert Lively, "The American System," *Business History Review* 29/1 (1995): 81-96.

19. Louis Hartz, *Economic Policy and Democratic Thought* (Cambridge, MA: Harvard University Press, 1948), 289.

20. Hartz, *Liberal Tradition*, 216.

21. See Lively, "American System," 93.

22. See Richard F. Bense, *The Political Economy of American Industrialization, 1877-1900* (Cambridge: Cambridge University Press, 2000); Gretchen Ritter, *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America* (New York: Cambridge University Press, 1997); Elizabeth Sanders, *Roots of Reform: Farmers, Workers and the American State* (Chicago: Chicago University Press, 1999).

23. See Leon Fink, "Labor, Liberty, and the Law: Trade Unionism and the Problem of American Constitutional Order," *Journal of American History* 74/3 (1987): 904-25; William Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review* 102/6 (1989): 1109-256; David Montgomery, "Labor and the Republic in Industrial America, 1860-1920," *Le Mouvement Social* 111 (1980): 201-15.

24. See Lively, "American System."

25. David Ciepley, *Liberalism in the Shadow of Totalitarianism* (Cambridge, MA: Harvard University Press, 2006).

26. Ciepley, *Liberalism in the Shadow of Totalitarianism*, 39, 77.

27. See Daniel Bell, *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties* (Glencoe, IL: Free Press, 1960); Irving Howe, *A Margin of Hope: An Intellectual Autobiography* (San Diego, CA: Harcourt Brace, 1993); Hans Morgenthau, *Scientific Man versus Power Politics* (Chicago: University of Chicago Press, 1946); Schlesinger, *Vital Center*. For excellent commentary, see Judith Shklar, *After Utopia: The Decline of Political Faith* (Princeton, NJ: Princeton University Press, 1957).

28. Schlesinger, *Vital Center*, 146.

29. Schlesinger, *Vital Center*, 142.

30. Stuart Hampshire, "In Defence of Radicalism," *Encounter* 5 (1955): 37. For other examples in an extensive literature, see Arthur M. Schlesinger Jr., "The One Against the Many," in Arthur M. Schlesinger Jr. and Morton White (eds.), *Paths of American Thought* (Boston: Houghton Muffin, 1963).

31. On anti-statism and World War I, see Stears, *Progressive, Pluralists and the Problems of the State*, chapter four.

32. James Sparrow and Andrew Abbott, "Hot War, Cold War: The Structures of Sociological Action, 1940-1955," in *Sociology in America*, ed. Craig Calhoun (Chicago: Chicago University Press, 2007), 308.

33. For discussion, see Marc Stears, *Demanding Democracy: American Radicals in Search of a New Politics* (Princeton, NJ: Princeton University Press, forthcoming.)

34. Hartz, *Liberal Tradition*, 12.

35. Theodore W. Adorno, Else Frenkel-Brunswik, Daniel J. Levinson, and R. Nevitt Sanford, *The Authoritarian Personality* (New York: Harper Row, 1950), x.

36. Harold Metz and Charles Thompson, *Authoritarianism and the Individual* (Washington DC: Brookings Institution, 1950); and Franz Alexander, *Our Age of Unreason: A Study of Irrational Forces in Social Life* (Philadelphia: Lippincott, 1951).

37. For excellent discussion, see James Nuechterlein, "Arthur M. Schlesinger Jr. and the Discontents of Postwar American Liberalism," *Review of Politics* 39 (1977): 3-40; and Jesse Wolfe, "Ambivalent Man: Ellison's Rejection of Communism," *African American Review* 34 (2000): 621-37.

38. "Make Mine Freedom," see <http://uk.youtube.com/watch?v=mVh75ylAUXY>

39. This section draws on our more thorough discussion in: Desmond King and Marc Stears, "The Missing State in Hartz's America," in *America's Liberal Tradition Reconsidered*, ed. Mark Hulliung (Lawrence: Kansas University Press, 2009).

40. Hartz, "American Political Thought," 324.

41. Hartz, "American Political Thought," 339.

42. See Louis Hartz, "The Reactionary Enlightenment: Southern Political Thought before the Civil War," *Western Political Quarterly* 5 (1952: 31-50; and Hartz, "American Political Thought," 338-40. Hartz was not alone in this interest. For other uses of confederate political thought in mid-twentieth-century America see Skowronek, "Re-association of Ideas and Purposes," esp. 386-7.

43. Hartz, *Liberal Tradition*, 184.

44. Hartz, *Liberal Tradition*, 170-2.

45. Hartz, *Liberal Tradition*, 12.

46. Hartz, "American Political Thought," 336.

47. See Hartz, *Liberal Tradition*, 11-3. This argument provided the basis for Murray Levin's once highly controversial but now sadly overlooked *Political Hysteria in America: The Democratic Capacity for Repression* (New York: Basic Books, 1971).

48. See Hartz, "American Political Thought," 335.

49. Hartz, *Liberal Tradition*, 185.

50. Hartz, *Liberal Tradition*, 12.

51. Hartz, *Liberal Tradition*, 11.

52. Hartz, *Liberal Tradition*, 184.

53. See John Rawls, *A Theory of Justice* (New York: Oxford University Press, 1971). For commentary on this trend and its critics, see Marc Stears, "Liberalism and the Politics of Compulsion," *British Journal of Political Science* 37 (2007): 505-31.

54. For discussion of this transformation, see Marc Stears, "The Liberal Tradition and the Politics of Exclusion," *Annual Review of Political Science* 10 (2007): 85-101; and for historical context see Alan Brinkley *Liberalism and its Discontents* (Cambridge, MA: Harvard University Press, 1998).

# **Part III**

## **THE MODERN AMERICAN STATE**

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## 6

### No Class War

#### Economic Inequality and the American Public

*Benjamin I. Page and Lawrence R. Jacobs*

It is no secret that the United States combines comparatively stingy social welfare policies with generally muted class conflict. Aspects of this American exceptionalism have been noted by observers from Tocqueville to Louis Hartz, Seymour Martin Lipset, and contemporary analysts of the “varieties of capitalism.” America’s pinched welfare state and the relative peace among Americans of different social classes have been attributed to a variety of causes, including an ideology of “Lockean liberalism”; abundant natural resources, economic prosperity, and opportunities for individual advancement; historical absence of a feudal system to rebel against; weakness of organized labor; ethnic, religious, and racial divisions among the U.S. working class; and the sluggishness of U.S. political institutions.<sup>1</sup>

Today, even as the inequality of incomes and wealth in the United States soars to new heights, it is widely believed that Americans (including an acquiescent working class) mostly ignore, tolerate, or even embrace a high level of economic inequality; that most Americans oppose egalitarian government programs; and that most are averse to taxes of any sort, especially progressive taxes aimed at the wealthy. As Nathan Glazer put it, “Americans...do not seem to care much about inequality.”<sup>2</sup> Some survey research seems to support this picture.

Based on a comprehensive new opinion survey and a thorough review of past surveys, however, we have found a great deal of evidence to refute this conventional wisdom. We offer a new twist on the old story of American exceptionalism.

It turns out that majorities of Americans are *not* in fact ignorant of, or unconcerned about, rising economic inequality. Most are well aware of it and quite concerned. Most Americans are *not* opposed to egalitarian government programs; majorities support a wide range of measures that would dramatically reduce inequality. And most Americans are *not* single-minded

tax cutters; they are willing to pay taxes to fund these programs. Moreover, majorities favor progressive taxes and heavy taxation of the rich. Most Americans can be characterized as “pragmatic egalitarians.”

Strikingly, there is a great deal of *agreement* rather than discord about these matters across lines of class, income, and party affiliation. On most major points, majorities of Republicans and higher-income Americans actually agree with majorities of Democrats and lower-income people in showing awareness of inequalities, concern about them, support for egalitarian government programs, and willingness to pay taxes. At the level of mass public opinion, then, the absence of “class war” about economic inequality is less reflective of a quiescent working class than of a pragmatic egalitarianism that is shared across nearly all segments of society.

### AWARENESS OF AND CONCERN ABOUT ECONOMIC INEQUALITY

The present authors have made an exhaustive search of past polls and surveys related to economic inequality. We also designed an original national survey, repeating many old questions with identical wording in order to update trends, while designing new items to explore these matters in greater depth. Our Inequality Survey was fielded during the summer of 2007 by the Center for Survey Research and Analysis at the University of Connecticut.<sup>3</sup>

The impression that Americans do not care about economic inequality has roots in Louis Hartz’s analysis of our “Lockean liberal” individualism.<sup>4</sup> It also reflects awareness of the power of the “American dream.” Most Americans are said to believe in individual self-reliance, to approve of private enterprise, to favor material incentives, and to want opportunities for themselves and their children to acquire unlimited wealth.

Jennifer Hochschild’s important book, *What’s Fair?* (based on in-depth interviews in a midsized American city), appeared to confirm this view. Her respondents—even those who were poor and struggling—accepted the principle of “economic differentiation.” They accepted a high degree of inequality in wages and salaries for the sake of economic growth and opportunity.<sup>5</sup>

Systematic survey research by McClosky and Zaller and others, including many survey results collected in a very useful compendium by Ladd and Bowman, also provide substantial evidence for this view of the public. Americans definitely do not want to “level” all incomes. They do not seem to particularly envy or resent the rich, and they oppose putting limits on how much people can earn.<sup>6</sup> (As we will see, there is much more receptiveness to putting a *floor* under the lowest incomes.)

Our own Inequality Survey confirms many of these points. Most Americans still believe deeply in the American dream, in material incentives, and in

unlimited opportunity. A majority (58%) of our interviewees said that large inequalities in pay are at least “probably necessary” in order to get people to work hard (though fewer than a third of those said “absolutely necessary.”) Majorities of Democrats and low-income Americans agreed. At the same time, Americans are aware that the magnitude of economic inequality has become extremely great, greater than most Americans want.

### Awareness of Unequal Incomes

The average American is well aware of large discrepancies between the incomes earned by people who work at different kinds of occupations, for example. We asked our survey interviewees to give their best guesses, in exact dollar amounts (they could name any figure they chose), of how much money people in various different jobs actually earn each year before taxes: the chairman of a large national corporation, a doctor in general practice, a heart surgeon, a skilled worker in a factory, a sales clerk in a department store, an unskilled worker in a factory, the owner of a small shop.<sup>7</sup>

Our interviewees had no difficulty offering estimates in round numbers of dollars. Their guesses varied widely, of course, but what is most striking is that the *average* (median<sup>8</sup>) estimates of earnings made clear distinctions among types of occupations. They came reasonably close to what compensation studies say U.S. workers in different occupations actually earn. This was especially true for the lower-income occupations, which are familiar to most Americans.

Americans' average estimates of the annual earnings of sales clerks and unskilled factory workers, for example—both at \$22,000 per year—were not far from the \$16,000 typically earned by production workers, the \$20,000 earned by machine operators, or the \$26,000 earned by sales clerks. The \$40,000 estimate of the earnings of skilled factory workers and the \$50,000 for shopkeepers were also fairly close to the mark.<sup>9</sup>

Most Americans understand that doctors and corporate executives earn a lot more than ordinary workers do. The average survey interviewee estimated the annual earnings of a doctor in general practice to be \$130,000; the earnings of a heart surgeon to be \$250,000; and the earnings of a chairman of a large national corporation to be \$500,000. Compared with the estimated earnings of a sales clerk or an unskilled worker, these amounts are 5.9 times, 11.4 times, and 22.7 times as great, respectively, reflecting very unequal incomes. As we will see, most Americans think this is too much inequality.

Compensation studies indicate that our interviewees tended to underestimate earnings at the top of the income scale, for heart surgeons and especially for corporate CEOs. The correct figure for heart surgeons is actually over \$400,000 per year. For CEOs of S&P 500 companies it is over \$14,000,000,



contrasting sharply with the public's estimate of \$500,000. Forbes.com in 2007 listed eight CEOs with total compensation of more than \$100 million each (it also found little connection between pay and performance).<sup>10</sup>

Thus there is actually much more income inequality in the United States than most Americans realize. The typical CEO of a large corporation, for example, earns roughly 300 to 400 times as much as a typical factory worker, not just 20 or 25 times as much.<sup>11</sup> (Top hedge fund managers do far better still—in 2007, five of them took home more than \$1 billion each.<sup>12</sup>) If the full extent of income inequality were widely understood, Americans might be even more concerned about it than they currently are. Yet the fact remains that most are aware of substantial inequality, and most think the extent of income inequality is too great.

### Awareness of Unequal Wealth

Most Americans also know that *wealth* in the United States is very highly concentrated. We asked interviewees to estimate what percentage of all the wealth in the country is owned by the top 1 percent of richest people. (“Thinking about people’s wealth, including the value of their homes, money in the bank, stocks and bonds and the like, roughly how much of the total wealth in the United States would you say is owned by the top 1% of richest people?”) Again, responses varied widely, but the median estimate was that an enormous 50 percent of all the wealth is owned by the top 1 percent of wealth holders. The correct figure may be a bit lower, perhaps under 40 percent, but it comes closer to 50 percent if net equity in homes is excluded and we focus on “financial wealth.”<sup>13</sup>

An overwhelming 81 percent of Americans believe that the gap in wealth between wealthy Americans and middle-class Americans has gotten larger in the past twenty-five years.<sup>14</sup> There is some evidence that this is correct—that there was a marked rise in wealth inequality during the 1980s—though some economists argue that the concentration of wealth may have stayed fairly steady since the 1950s, reaching its current very high levels shortly after rebounding from its Depression- and World War II-era low points.<sup>15</sup>

In any case, *income* inequality has increased sharply since the early 1970s. Over time, more unequal incomes are likely to cumulate into more unequal wealth. A 2007 Pew survey found 63 percent of Americans saying that the country is “losing ground” on the gap between rich and poor.<sup>16</sup>

### Concern about Inequality

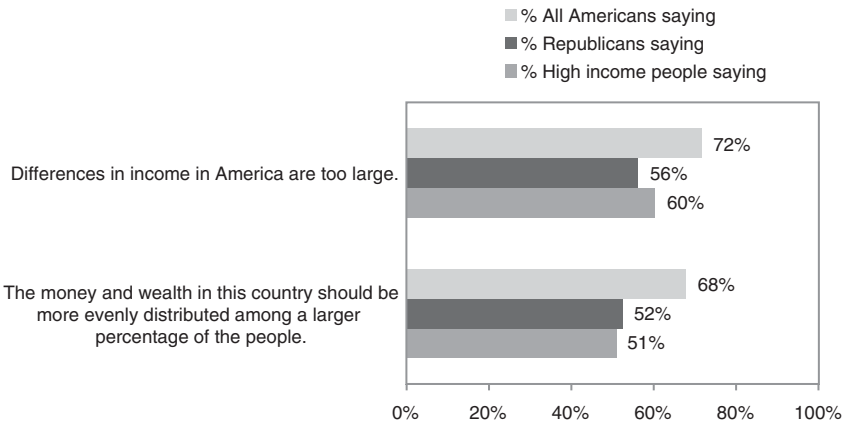
Contrary to the complacency that is often attributed to them, most Americans do not like the high levels of inequality that they perceive in the country today.

In general terms, 72 percent of our interviewees strongly agreed or somewhat agreed that “differences in income in America are too large.” Majorities of Republicans and of high-income Americans agreed with Democrats and low-income Americans on this point.<sup>17</sup> A solid majority of Americans—59 percent to 40 percent (though Republicans disagreed)—rejected the proposition that large differences in income are “necessary for America’s prosperity.” And a large majority of Americans, 68 percent to 26 percent, rejected the idea that the current distribution of money and wealth is “fair.” They said that “the money and wealth in this country should be more evenly distributed among a larger percentage of the people.” Again, majorities of Republicans and of high-income Americans agreed with Democrats, Independents, and low- and middle-income Americans (see Figure 6.1.)<sup>18</sup>

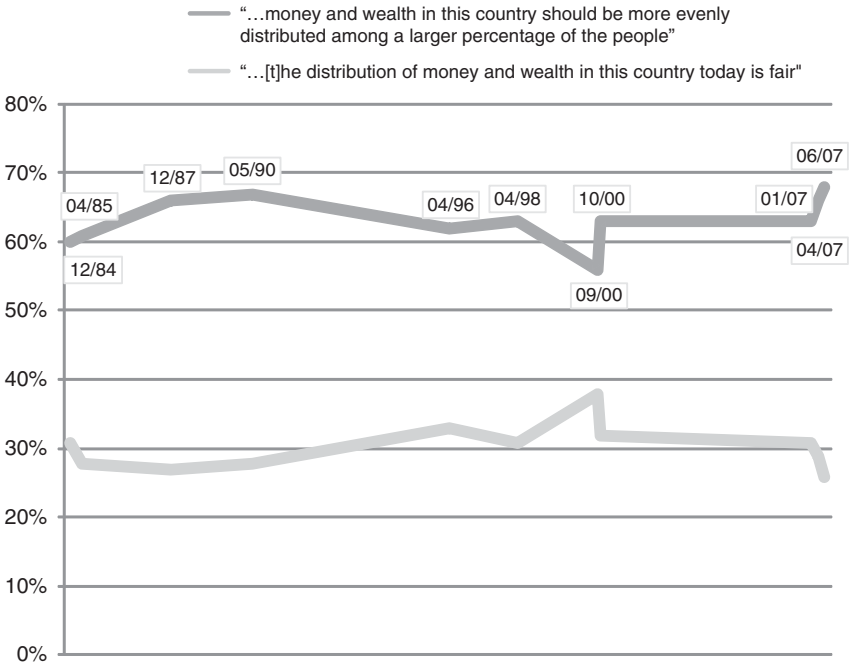
These are not just fleeting results from a one-shot survey. Majorities of Americans have been saying the same thing for many years. As Figure 6.2 indicates, eleven surveys between 1984 and 2007 all found many more Americans saying that money and wealth should be “more evenly distributed” than saying that the distribution of money and wealth is “fair.” Usually about twice as many. More than 60 percent generally said that money and wealth should be more evenly distributed, while only about 30 percent said the distribution is fair. After a dip during the booming 1990s, the proportion favoring a more equal distribution appears to have edged up to a twenty-year high point.

### Less Unequal Pay for Different Jobs

It became clear just how much more income equality Americans want when we asked, in concrete dollar terms, how much they thought people in various



**Figure 6.1.** Americans, including Republicans and high-income earners, want to reduce economic inequality. Source: Inequality Survey.



**Figure 6.2.** Americans favor a more even distribution of money and wealth. Sources: Gallup; *LA Times* (4/85); *Washington Post* (10/00, omitting “today”); 2007 Inequality Survey (6/07).

occupations “should” be paid. The average (median) judgments certainly did not suggest that everyone should be paid the same amount. They indicated that CEOs, heart surgeons, doctors in general practice, and owners of small shops (decreasingly in that order) should earn substantially more than skilled factory workers and much more than unskilled factory workers or sales clerks. But most Americans favor a significantly less unequal income distribution than we have now. They want lower-income occupations to be paid more than they are now, and they want the highest-income occupations to be paid less.

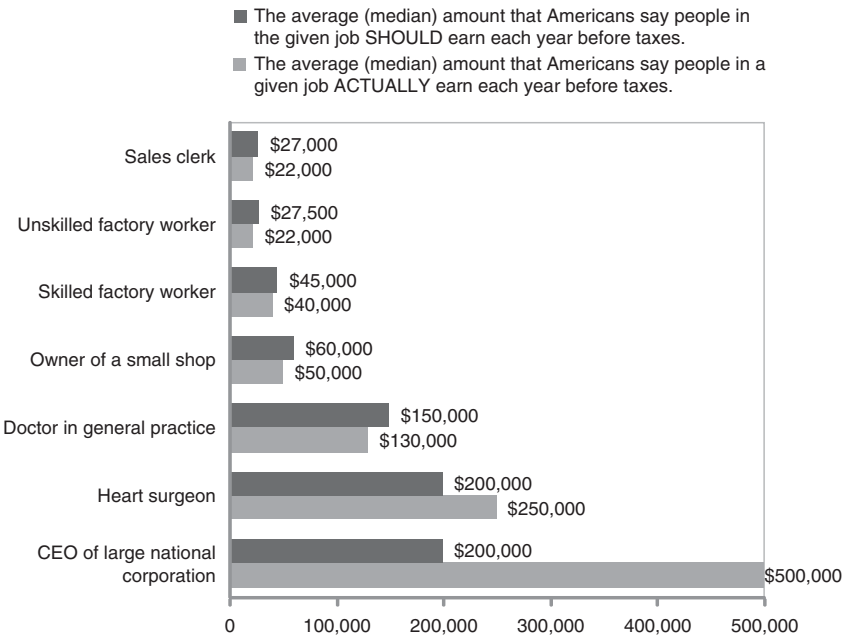
In every case, the average (median) preferred level of earnings for lower income occupations, and even for shopkeepers and for doctors in general practice, was *higher* than what people perceive as the actual levels. But preferred incomes for the highest-income occupations, heart surgeons and corporate CEOs, were *lower* than what people believe they are getting now. In the case of CEOs, much lower—less than half. The average American believes that CEOs should be paid \$200,000 per year, quite a contrast with the \$500,000 they think CEOs are paid—let alone the real-world figure of about

\$14 million (see Figure 6.3.) While Americans do not want to level incomes, they want the distribution to be compressed significantly.

**LOOKING TO GOVERNMENT FOR HELP**

But do Americans want the government to do anything about economic inequality? What about their individualism, their skepticism of government, and their faith in opportunity and economic mobility?

In the abstract, at least, Americans think that there is already a great deal of economic opportunity for individuals. Three quarters (76%) told us it is “still possible” to “start out poor in this country, work hard, and become rich.” Opinions have been similar at least since 1996, with a particular burst of optimism at the end of the prosperous 1990s.<sup>19</sup> (“Possible,” of course, is not the same as “likely.” Econometric studies indicate that economic mobility in the United States has in fact declined to a rather low point. According to one estimate, a child born to parents among the bottom tenth of income earners now has less than a 2% chance of making it into the top tenth.<sup>20</sup>) Still, Americans’ belief in economic mobility remains strong. Large majorities of



**Figure 6.3.** Americans favor paying low-wage workers more and CEOs less. Source: Inequality Survey.

Democrats and low-income Americans agree with Republicans and more affluent people that it is still possible to start out poor, work hard, and become rich.

Moreover, nearly three-quarters (72%) of Americans agree that “our freedom depends on the free enterprise system.” Nearly two-thirds (64%) say that the government “must always protect private property”; it should not even take private property when it needs it badly for (e.g.) an interstate highway or a post office.<sup>21</sup> Most Americans in our survey (75%) said that people in the government “waste a lot of money we pay in taxes.” Past surveys indicate that this opinion rose around the beginning of the 1970s and has stayed fairly high ever since, jumping even higher as the war in Iraq became costly and protracted.<sup>22</sup> On all three of these matters—free enterprise, protection of private property, and government waste—large majorities of Democrats and low-income earners agreed with Republicans and high-income earners.<sup>23</sup>

Expressing a view that might seem flatly opposed to egalitarian government programs, most Americans (63%) in our survey disagreed with the abstract statement that “it is the responsibility of government to reduce the differences in income between people with high incomes and those with low incomes.” Only about one-third said that this is the government’s responsibility. Again, majorities of Democrats and low-income Americans agreed. A similar survey question elicited similar responses three times between 1987 and 2000.<sup>24</sup> Yet this may only reflect opposition to direct governmental wage controls or limits on market earnings. We will see that large majorities of Americans do in fact favor a wide range of egalitarian government taxing and spending programs.

In general, most Americans appear to be *philosophical conservatives*, individualists who believe in free enterprise and individual responsibility and are skeptical about government in the abstract. But at the same time they are operational liberals, or *pragmatic egalitarians*. They favor specific social programs designed to help people with opportunity and economic security, and specific tax policies designed to share the burden fairly.<sup>25</sup>

Most Americans (53% to 43%)—though not Republicans—disagree with the sentiment that “most things would run pretty well by themselves if the government just didn’t interfere.” (Disagreement was even stronger in the 1950s.<sup>26</sup>) A large majority (70%) of Americans, including Republicans and high-income earners, say they would *not* like to live in a society “where the government does nothing except provide national defense and police protection, so that people would be left alone to earn whatever they could.”<sup>27</sup> Indeed, about two-thirds (68%), including large majorities of Republicans and the affluent, say they believe that “government must see that no one is without food, clothing, or shelter”—a governmental function certainly not

envisioned by most libertarians. This is an opinion long held by large majorities of Americans, judging by similar questions asked in 1964 and 1997.<sup>28</sup>

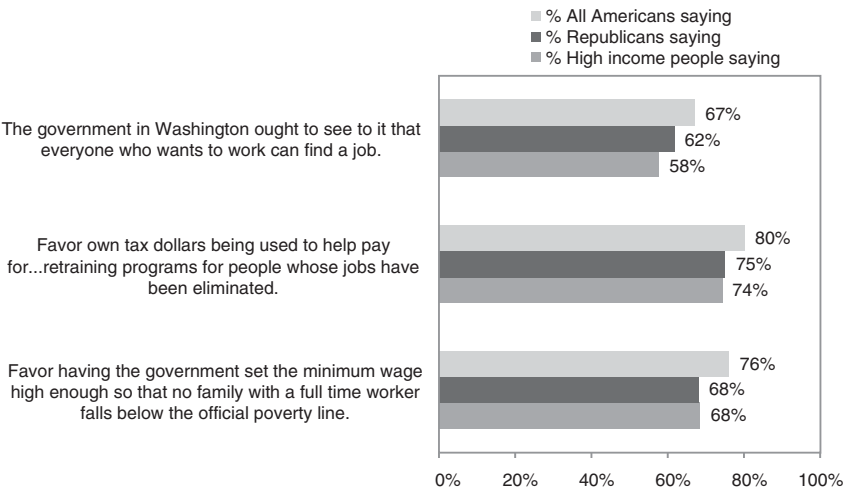
### Jobs and Wages

In this era of downsizing, outsourcing, mass layoffs, and stagnant wages, many Americans are afraid they may lose their jobs and not find new ones. As prices keep rising, many fear that their pay will fall behind and they will not be able to provide for their families. They look to government for help.

Most Americans view the opportunity to have a decent job as a *right* that the government should enforce. A large majority (67%) say that the government in Washington should “see to it” that everyone who wants to work can find a job. Solid majorities of Republicans and high-income earners agree (see Figure 6.4.) This opinion is not new, though it may have reached a new high point. Substantial majorities said the same thing in 1956, 1958, and 1960.<sup>29</sup>

Most Americans believe that the able-bodied *should* work. There is little support for a “guaranteed income” without work. Similarly, the preferred policy when people lose their jobs is not generous unemployment insurance. Only about half of Americans (49% to 48%) say that the government should “provide a decent standard of living” for the unemployed. Opinion about this has been evenly divided in the past as well.<sup>30</sup>

Instead, large majorities of Americans favor using retraining programs to help deal with involuntary job losses. A solid majority (54% to 40%)



**Figure 6.4.** Widespread support for government help with jobs and wages. Source: Inequality Survey.

say the federal government should “invest more in worker retraining and education to help workers adapt to changes in the economy,” even when offered the off-putting alternative view that “such efforts just create big government programs that do not work very well.” Majorities chose this same “invest more” option in three surveys between 1999 and 2005.<sup>31</sup> An overwhelming 80 percent of Americans, including large majorities of Republicans and the affluent, say they favor their tax dollars being used “to help pay for retraining programs for people whose jobs have been eliminated” (see Figure 6.4.)

Most important is the heavy public sentiment that the government in Washington should “see to it” that everyone can find a job. Remarkably, a bare majority of Americans (51% to 46%—though not Republicans or the affluent) even say that the federal government should “*provide jobs*” [emphasis added] for “everyone able and willing to work but who cannot get a job in private employment.” This implies direct government action to provide public service jobs, an option not much discussed in Washington.

Most Americans also want help from government in getting decent wages. A large majority (76% to 21%)—including Republicans and high-income Americans—favor having the government “set the minimum wage high enough so that no family with a full time worker falls below the official poverty line.” The minimum wage was allowed to lag far behind inflation for many years, leaving many full-time workers in poverty. The increase enacted in May 2007, together with the Earned Income Tax Credit, should by 2009 enable a full-time worker with a family of three to earn \$19,796 per year, just above the official poverty line—though still well below the \$23,000 to \$46,000 (depending on location) that “family budget” measures of poverty say such a family needs.<sup>32</sup>

When we described the Earned Income Tax Credit (EITC) to our interviewees (“a program that helps working families who have low wages by reducing their income taxes or giving them refunds”), opinion tilted strongly toward increasing such help: 48 percent said it should be increased, only 5 percent say decreased, and 45 percent said it should be kept about the same. A large majority of Americans (68% to 28%), including large majorities of Republicans and high-income earners, favor expanding the EITC to cover workers who are single as well as those with families. Expansion of EITC coverage and/or benefit levels would have a big effect on income inequality.

### Minimum Standards for the Poor

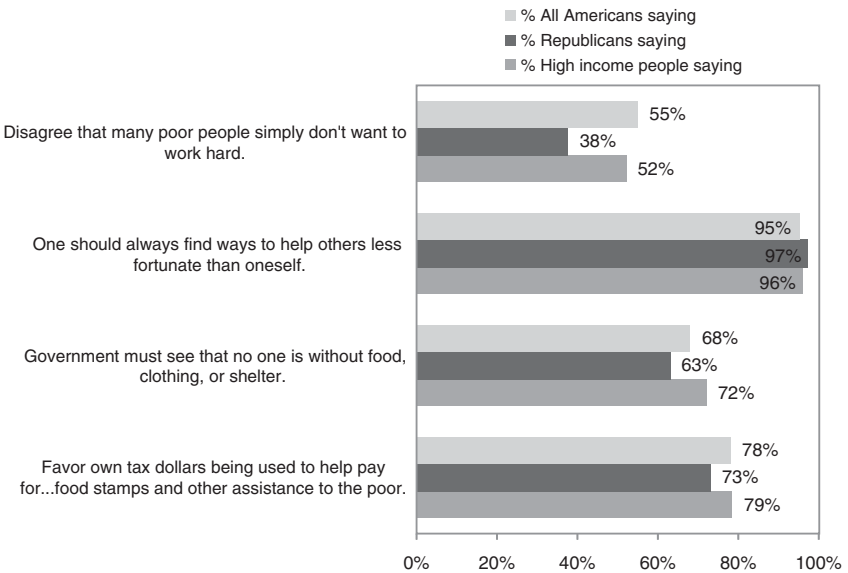
Some 36 million Americans—12 percent of the population, including 17 percent of children—now live below the official poverty line.<sup>33</sup> Hardly anyone in Washington seems to talk much about poverty these days, but most

Americans have considerable sympathy for the poor and unfortunate. They want to help.

Although most Americans (57% to 41%) disagree with the idea that “the poor are poor because the American way of life doesn’t give all people an equal chance,” most (though not Republicans) also disagree with the stereotype that “many poor people simply don’t want to work hard” (see Figure 6.5.) An overwhelming 95 percent say that “one should always find ways to help others less fortunate than oneself.” And a very large majority (79% to 18%) reject the notion that “it is best not to get involved in taking care of other people’s needs.”

More concretely, most Americans want government to provide basic necessities to the poor. As we noted, a large majority, 68 percent to 30 percent, say they believe that “[g]overnment must see that no one is without food, clothing, or shelter.” An even larger majority, 78 percent to 20 percent, say they favor their tax dollars being used to help pay for “Food Stamps and other assistance to the poor.” In both cases, large majorities of Republicans and the affluent agree (see Figure 6.5.)

There is particularly strong support for helping poor children. Remarkably, given the bitter opposition to “welfare” during the 1980s and 1990s and the widespread aversion to youthful or out-of-wedlock pregnancies, a large majority of Americans (66% to 31%) even say they favor their tax dollars



**Figure 6.5.** Cross-class and cross-party support for government aid to the poor.  
Source: Inequality Survey.



being used “to help pay for welfare benefits for the children of single teenage mothers.” Still more remarkably, this view is shared by large majorities of Republicans and of the affluent.

Other surveys have made clear that most Americans oppose any sort of guaranteed income without work, except for the “truly needy” who are elderly, disabled, or otherwise incapable of employment.<sup>34</sup> Most Americans also dislike the idea of childbearing by single mothers, especially teenagers. Yet there is considerable sympathy for the children themselves.

### Education and Equal Opportunity

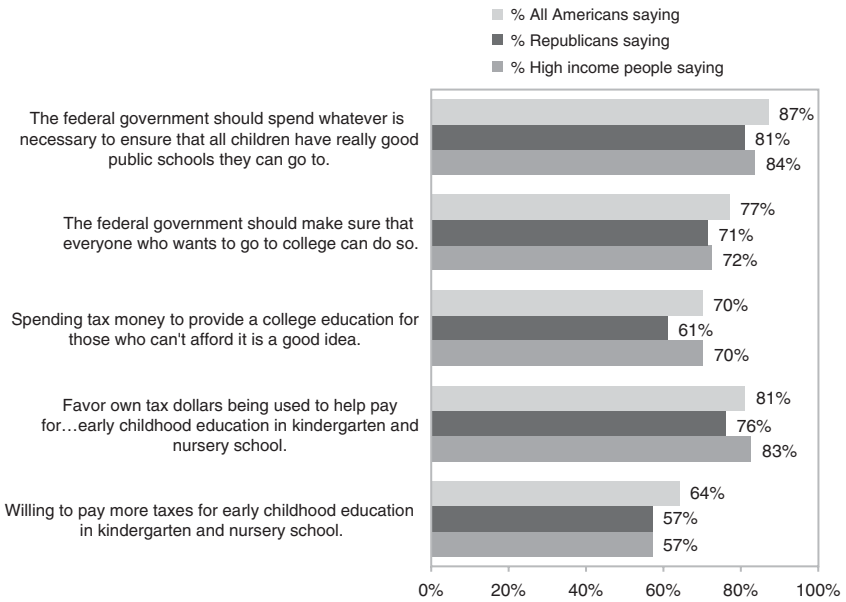
A core value shared by nearly all Americans is equal opportunity. In our survey, fully 97 percent agreed that “everyone in America should have equal opportunities to get ahead.” Support for equal opportunity is so nearly unanimous that pollsters seldom bother to ask about it, but when they have done so (in 1957, for example) they have found the same thing.<sup>35</sup>

But what, exactly, does “equal opportunity” mean? Most Americans do not actually want to take such drastic measures as forbidding the inheritance of wealth, eliminating inequalities in family resources, or overcoming the differences among children’s schools, peers, and neighborhoods that have such great impacts on economic attainment. Very few want to equalize economic results for adults, as truly equal opportunity for their children would probably require.

Yet most Americans do favor government actions that would greatly increase equality of opportunity. Most see education as crucial. And most Americans consider a strong, government-funded public school system to be a key foundation for equal opportunity. An overwhelming majority (87%, with just 13% opposed) said in our survey that the federal government should “spend whatever is necessary to ensure that all children have really good public schools they can go to” (see Figure 6.6.)

Americans, including large majorities of Republicans and the affluent, regularly put a higher priority on education programs than on most other kinds of government activity. In the Inequality Survey, about three-quarters of Americans (74%) said aid to education should be “expanded”; 20 percent said it should be kept about the same; and a bare 5 percent said it should be cut back. Periodic proposals in Washington to cut back education spending or to abolish the Department of Education are badly out of tune with the public. The weakly funded “No Child Left Behind” initiative appears to fall well short of what most Americans want.

Year after year, surveys have shown that large majorities of Americans want to expand education spending. In every one of five surveys conducted regularly since 1990, for example, about three-quarters of Americans have



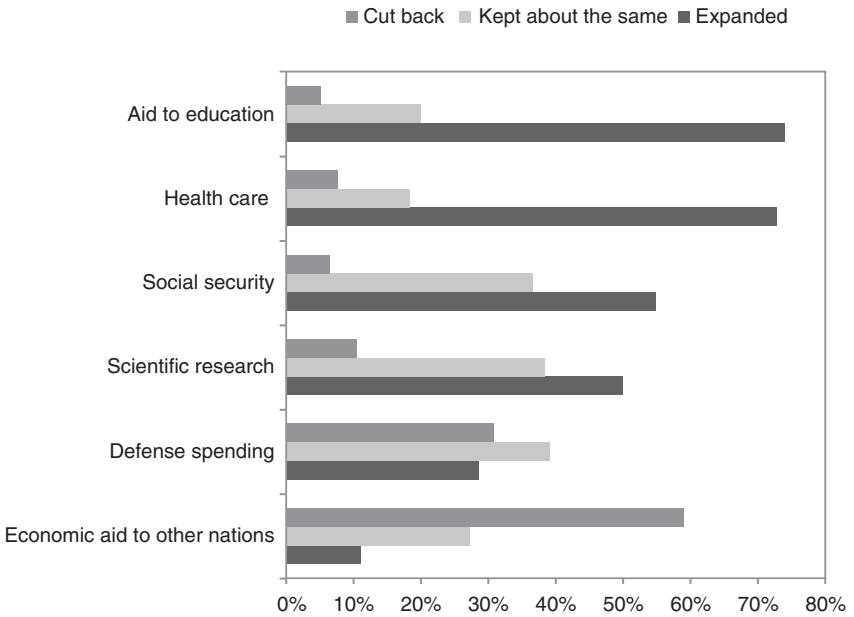
**Figure 6.6.** Broad agreement on supporting education. Source: Inequality Survey.

said that aid to education should be expanded. No more than 5 percent ever said “cut back.”<sup>36</sup>

This is not just some sort of “spend more on everything” sentiment, heedless of taxes or trade-offs. It represents a real judgment about priorities. Education, health care, and Social Security regularly get strong support for expansion, while the dominant opinion is that other programs like foreign aid and (often) defense spending should be cut back. At present, the 74 percent majority in favor of expanding aid to education is matched only by the 73 percent favoring expansion of health care (see Figure 6.7)

Support for education programs goes well beyond the elementary and secondary school level. A very large majority of Americans (77% to 22%) agree that the federal government should “make sure that everyone who wants to go to college can do so” (recall Figure 6.6). And a large majority say that “spending tax money to provide a college education for those who can’t afford it” is a “good idea” rather than a “bad idea.” Support for this view has risen since the same question was asked in 1977.<sup>37</sup> Indeed, there has been a general increase in popular support for spending on all levels of education since the 1980s. Yet, over the past decade, federal spending to help people go to college with Pell grants or other aid has fallen behind inflation and population growth.

Preschooling also wins strong support from the American public. An overwhelming 81 percent say they favor their tax dollars being used “to help



**Figure 6.7.** Egalitarian spending programs have high priority. Source: Inequality Survey.

pay for early childhood education in kindergarten and nursery school.” In fact a large majority (64%, with just 33% disagreeing) say they would be willing to pay “*more taxes [emphasis added]* for early childhood education in Kindergarten and nursery school.” Majorities of Republicans and of high-income Americans agree.<sup>38</sup> Stop the presses! Rank-and-file Republicans favor more taxes to pay for early childhood education! Who, exactly, are Republican members of Congress representing when they slash funds for Head Start?

### Health Care

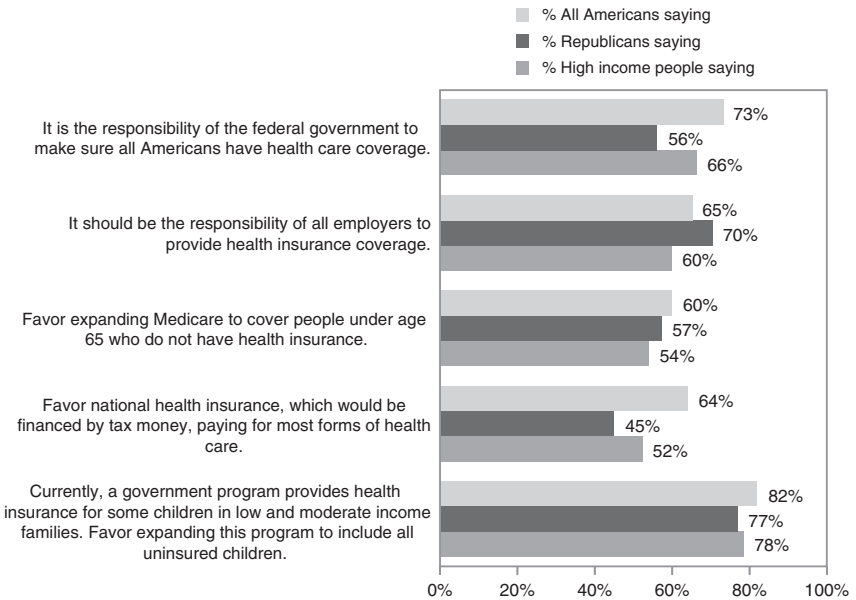
Tens of millions of Americans, roughly 47 million women, men, and children (16% of the population), have no health insurance. Millions more live in fear of losing medical coverage if they change jobs or get laid off, or if their employers cut benefits. This problem is unique in the advanced industrial world. Nearly all other advanced countries have universal health care, spend less per person, and end up with as good or better health results and life expectancies.<sup>39</sup>

Here, too, large majorities of Americans look to government for help. There is a very high level of support for government action to provide universal health insurance, which would have a big impact on economic inequality.

Majorities of Americans would accept several different routes to universal coverage: mandates on employers; expansion of Medicare to include younger people; a tax-financed set of insurance alternatives; even a single, tax-funded government health plan. Republicans and high-income Americans disagree about some of the means (particularly those involving higher taxes or a single government plan), but they agree on the goal: government action to ensure universal health care.

As we saw, about three quarters (73%) of Americans say that federal government health care programs should be “expanded”; only a tiny 8 percent say “cut back.” Much the same thing was true in four surveys conducted at regular intervals between 1994 and 2002.<sup>40</sup> About three-quarters (73%) of Americans—including majorities of Republicans and the affluent—say they think it is “the responsibility of the federal government to make sure all Americans have health care coverage”; only 25 percent say that is not the responsibility of the federal government (see Figure 6.8.) According to six surveys asking this same question between 2000 and 2006, solid majorities have always said yes, it is the responsibility of the federal government, but the size of the majority has risen markedly.<sup>41</sup>

Only a little under half of Americans say they favor “the present system in which most people’s health care coverage depends on their employer.” But



**Figure 6.8.** Broad support for government help with health insurance. Source: Inequality Survey.

nearly two thirds (65%), say it *“should [emphasis added] be the responsibility of all employers to provide health insurance coverage.”* Again, Republicans and the affluent agree (see Figure 6.8). This suggests support for government requirements or mandates of universal employer-based coverage.

Enthusiasm is also widespread for direct government involvement. A substantial majority (60%) of the public as a whole, including majorities of Republicans and high-income Americans, favor “expanding Medicare to cover people under age 65 who do not have health insurance.” Similar majorities said the same thing in 1999 and 2000.<sup>42</sup>

Still more Americans, by a margin of 64 percent to 32 percent (though less than a majority of Republicans) favor “national health insurance, which would be financed by tax money, paying for most forms of health care.” With all the noise we hear about the evils of “socialized medicine,” perhaps some politicians do not believe this. But the same question was repeated eleven times between 1980 and 2000. Every time, more Americans favored national health insurance financed by tax money than opposed it. And the size of the majority in favor has risen significantly since 2000.<sup>43</sup>

Remarkably—given the decisive rejection of “single-payer” health plans in Washington debates—a majority of Americans (54% to 43%) now even favor “a national health plan, financed by the taxpayers, in which all Americans would get their insurance from a single government plan.” The majority in favor of a “single government plan” is new. (Previous surveys up to late 2004 found that most Americans opposed it, sometimes by large margins.<sup>44</sup>) But majorities of Republicans and the affluent are not yet convinced.

Our findings indicate that most Americans would be happy to give policy makers some flexibility about the precise way in which health insurance is provided. But large majorities, including majorities of Republicans and the affluent, strongly and unmistakably want universal coverage. That will take government action of one sort or another—whether mandates, subsidies, or direct government insurance.

Contrary to the conventional wisdom that Americans hate all taxes, most are willing to pay for government-funded health care. A very large majority (70% to 29%), including majorities of Republicans and high-income Americans, favor their tax dollars being used “to help pay for providing health coverage for everyone.” In fact, a solid majority (58% to 40%) of Americans say they are willing to pay *“more taxes” [emphasis added] “in order to provide health coverage for everyone.”*

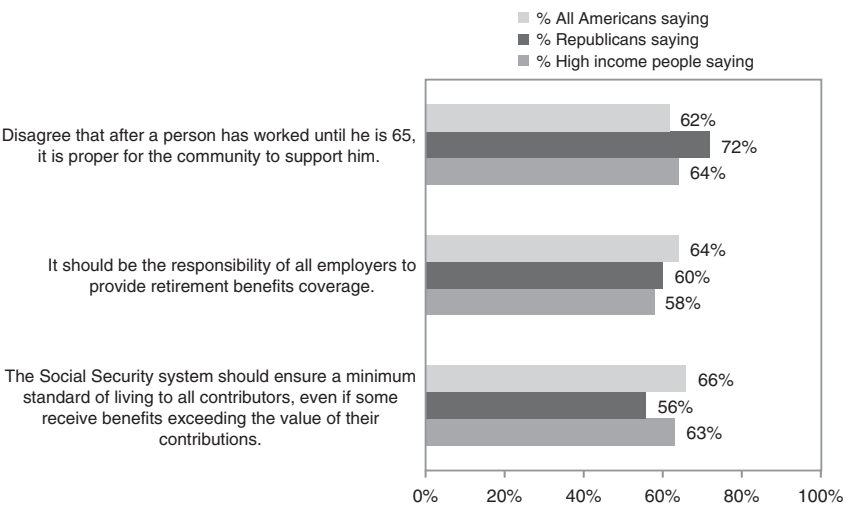
And a huge majority of Americans want health coverage for all children. An overwhelming 82 percent, including big majorities of Republicans and high-income Americans, say they favor expanding the Children’s Health Insurance Program (“a government program [that] provides health insurance for some children in low and moderate income families”) “to include

all uninsured children.” A modest expansion of that program was vetoed by President Bush in October 2007.<sup>45</sup>

### Social Security and Retirement Pensions

Americans expect seniors, after a lifetime of work, to be able to retire with dignity and economic security. Well into the 1900s, most people worked until physical decline made it impossible, and then they relied on family, friends, neighbors, or local charity. But the idea that “the community” should support seniors is now rejected by six out of ten Americans, as it already was back in 1958<sup>46</sup> (see Figure 6.9). Backing for a more organized system to support seniors in retirement stems from admiration for their lifetimes of work as well as from self-preservation: families struggling to provide for themselves cannot afford the cost of supporting their parents.<sup>47</sup>

As in the case of health insurance, Americans are open to more than one approach to providing decent incomes to retirees. Employer-based pensions are one. As Figure 6.9 indicates, a large majority of Americans (64%) believe that it should be the responsibility of all employers to provide retirement benefits coverage. Although in theory employer-based programs could do this job, only about 40 percent of Americans are now actually offered such benefits. Even well-established programs have vanished in bankruptcies and downsizing. Half of all seniors and millions of those with disabilities would fall into poverty if left to rely solely on what employers now offer or on their

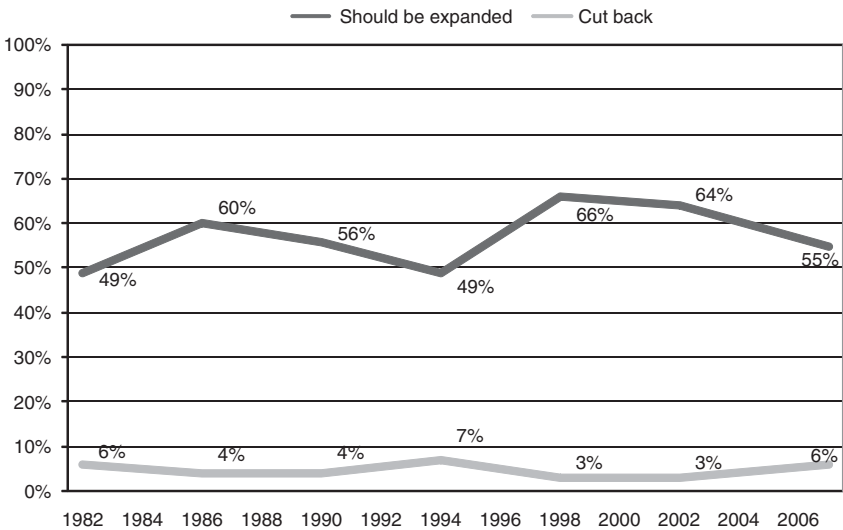


**Figure 6.9.** Support for government provision of minimum income in retirement. Source: Inequality Survey.

own savings.<sup>48</sup> Ensuring pension provision by *all* employers would require a government mandate that they do so.

Another approach supported by large majorities of Americans involves direct government provision of retirement pensions. Confronted with the stark prospect of poverty in old age, most Americans count on Social Security for a minimal level of support. They favor Social Security even if it means shifting some income from the better off. About two-thirds of Americans (66%)—including majorities of Republicans and the affluent—want Social Security to “ensure a minimum standard of living to all contributors, even if some receive benefits exceeding the value of their contributions” (as is often the case among lower-income workers). Majorities of Americans have felt this way at least since 1998.<sup>49</sup>

As we have seen, more than half of all Americans favor expanding Social Security; the rest mostly want to keep it the same. Hardly anyone wants to cut it back. Decades of polling have shown similar majorities in favor of expanding Social Security (see Figure 6.10), as well as large and persistent opposition to reducing benefits by cutting cost-of-living adjustments, raising the retirement age, or taxing payments more heavily. Nor is there a wave of support for privatizing the program, especially when people are alerted to the consequent reduction in guaranteed benefits and increase in risks.<sup>50</sup> In our survey, only a minority of respondents (46%) favored a fairly attractive-sounding proposal for partial privatization, though majorities of Republicans and high-income Americans did go for it.<sup>51</sup>



**Figure 6.10.** Sustained high support for expanding Social Security. Sources: CCFR/CCGA surveys.

Despite overblown talk of a Social Security “crisis” and imminent bankruptcy, modest adjustments in the program would ensure solid financing well into the future. Majorities of Americans are open to such adjustments. One possibility would be to allow benefits to grow more slowly for middle- and high-income people while allowing the benefits to grow as scheduled for low-income people, which a plurality (49%) of Americans found “acceptable.”

A more popular step, which experts say would greatly strengthen the finances of the program while also making payroll taxes less regressive, would be to raise or eliminate the “cap” on income subject to the payroll tax. (Currently, taxes are paid only on the first \$97,500 of earned wages, shielding the rich from being taxed on most of their salaries and totally excluding income from the stock market or other investments.) Our survey described the cap and then asked, “Do you think this amount should be raised, so that high income people pay more in payroll taxes, should it be lowered, so that payroll taxes are only paid on lower incomes, or should it be kept about the same?” A solid majority of Americans (58%) said the cap should be raised. Only 6 percent said it should be lowered, and 33 percent said it should be kept about the same.

Perhaps surprisingly, raising the payroll tax cap is supported by a majority of Republicans, whose Washington representatives have adamantly opposed any such thing. And it is supported by an even larger majority (61%) of high-income earners, most of whom would have to pay higher taxes as a result. Narrow self-interest is not a universal predictor of human behavior.

## PAYING THE BILL

We have seen that majorities of Americans favor many expensive government programs that would reduce economic inequality. But are they willing to pay for them? It turns out that majorities of Americans *are* willing to pay. And they favor a progressive tax system that redistributes income from higher- to lower-income people. Remarkably, Republicans and the affluent mostly agree.

It has become an article of faith among many pundits and politicians that Americans hate all taxes, that tax cuts are always popular. Some evidence does seem to point in that direction. When Americans are asked whether *their own* income taxes are too high, too low, or about right, for example, most say “too high.” This has been true in many surveys over the years, with only moderate ups and downs.<sup>52</sup> But of course that does not necessarily tell us anything about how Americans feel about *general tax rates*. Instead, it may reflect a judgment that other people (especially the rich) are not paying their fair share.



It is also true that many Americans think that a lot of their tax money is wasted. Substantial majorities have said the government wastes “a lot” (as vs. “some” or “not very much”) of the money we pay in taxes, in every one of thirty-seven surveys—including our own—between 1968 and 2007. No more than 5 percent have ever said that “not very much” is wasted.<sup>53</sup> The hundreds of billions of dollars spent on the Iraq war have undoubtedly accentuated worries about waste. But few of those who complain about government waste seem to have in mind the popular egalitarian social programs we have been discussing.

Finally, it is true that many Americans are confused about taxes. Few realize, for example, that U.S. taxes are quite low compared with taxes in other advanced countries. The proportion of economic output that goes to all federal, state, and local taxes is now only about 27 percent of GDP in the United States, compared with 34 percent in Canada, 37 percent in Britain, 41 percent in Italy, 44 percent in France, and 51 percent in Sweden. In fact the United States ranks near the bottom of twenty-five Organisation for Economic Co-operation and Development (OECD) countries.<sup>54</sup>

Yet in our survey only about one-third (38%) of the respondents were aware that, compared to the citizens of western Europe, Americans “pay a lower percentage of their income in taxes.” Twenty percent admitted they did not know; 14 percent said there is not much difference; and 28 percent mistakenly thought that Americans pay a *higher* percentage. A 2003 survey asking the same question found much the same thing, and surveys back in 2001 and 1989 (asking, less precisely, about who pays “more” in taxes) found a similar degree of confusion.<sup>55</sup> We will see that many people are confused about other aspects of taxes as well, and this has consequences for policy preferences.

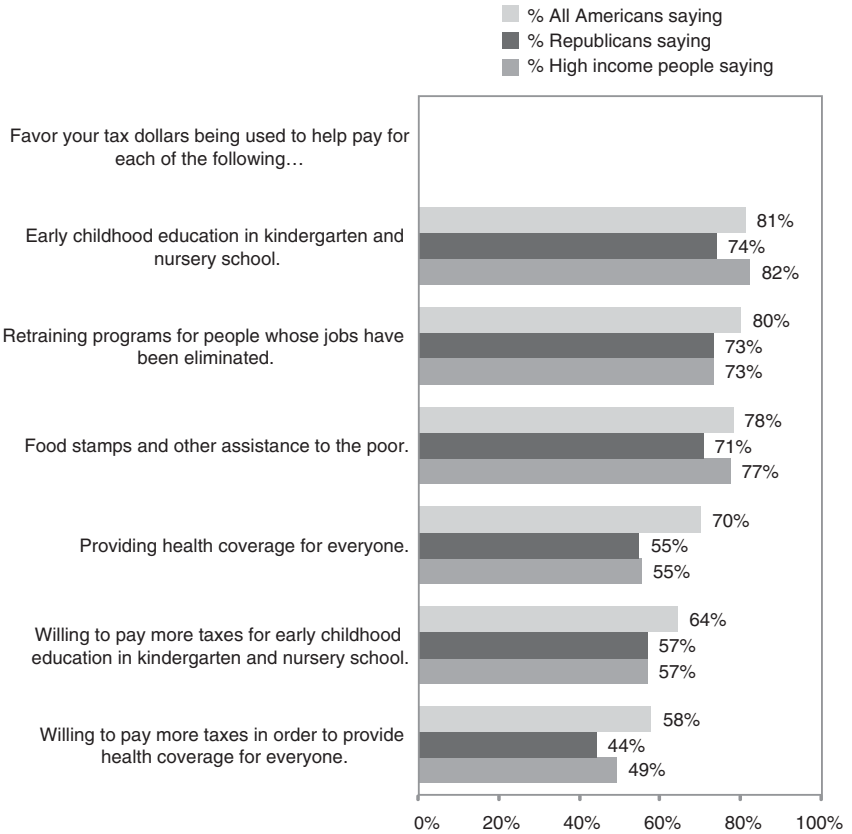
Still, the remarkable truth is that most Americans are quite willing to pay taxes to fund the programs they favor, particularly when the connections between taxes and spending are made explicit. Moreover, most Americans favor using the tax system to redistribute income through progressive taxes. Opinions differ more by class and party on taxes than most other types of policy. Despite the tax wars in Washington, however, there is a surprisingly high level of agreement in the mass public.

### Taxes Connected to Spending Programs

In our Inequality Survey we did not find a great deal of eagerness to cut taxes, even in very general terms. Asked whether they think taxes should be increased, decreased, or kept about the same, only 30 percent said “decreased.” This is far from the fervent, broadly based tax revolt that so many politicians and pundits conjure up. A solid majority (55%) said that

taxes should be kept about the same, and 14 percent actually said they should be increased. Republicans and the affluent expressed about the same views as Democrats and low-income people.<sup>56</sup>

When specific, popular programs are mentioned, Americans display willingness to fund them.<sup>57</sup> In our survey, large majorities of Americans said they favor their tax dollars being used for various egalitarian government programs (see Figure 6.11). An overwhelming 81 percent favor their tax dollars being used for early childhood education in Kindergarten and nursery school. A nearly identical 80 percent favor using taxes to help pay for retraining programs for people whose jobs have been eliminated. Seventy-eight percent favor using their tax dollars to help pay for food stamps and other assistance to the poor. Sixty-six percent even favor the use of their tax dollars to help pay for welfare benefits for the children of single teenage mothers.



**Figure 6.11.** Americans, including Republicans and high-income earners, favor using their taxes to fund egalitarian programs.

Public support for food stamps and welfare benefits has risen markedly since the stingy, Gingrich-Congress years of the mid-1990s.<sup>58</sup>

In nearly every case—except for the highly partisan terrain of taxes for universal health care—majorities of Republicans and majorities of high-income people agree with Democrats, Independents, and low- and middle-income Americans in favoring the use of their tax money for these programs.

This does not merely mean that, once they have to pay taxes, Americans grudgingly go along with spending the money on just about anything that is mentioned. People make distinctions. A hefty 77 percent of the public said they favored their tax dollars being used to help pay for defense and military programs, for example (clearly, to many of them “defense” did not mean the Iraq war). But only a minority (46%) favored using tax money for public broadcasting and the arts. And only 31 percent favored using their tax money for “economic aid to other countries”; 66 percent were opposed. Willingness to pay for egalitarian domestic programs is much higher.

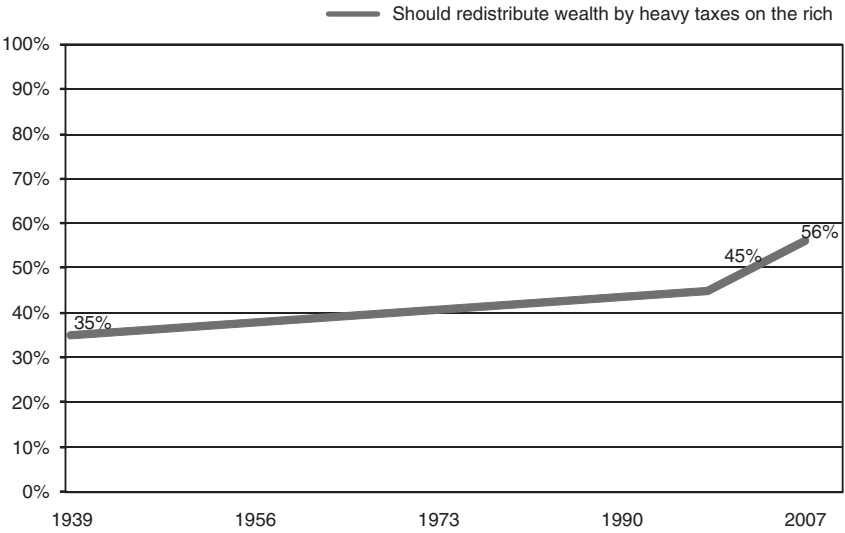
In two cases we asked whether respondents would be willing to pay “more” taxes for egalitarian programs. Substantial majorities expressed willingness to pay more. Fifty-eight percent said they were willing to pay more taxes in order to provide health coverage for everyone (just 40% were unwilling), and 64 percent were willing to pay more taxes for early childhood education in kindergarten and nursery school.

### Progressive Taxes and Income Redistribution

What about the redistributive effects of taxes? Do Americans want to use taxes to take from the rich and give to the poor, working people, and the middle class? Or do they, like so many right-wing pundits and politicians, abhor this idea as “class warfare”?

It turns out that—contrary to a good deal of conventional wisdom—most Americans do in fact favor using the tax system to redistribute income from higher- to lower-income people. In our survey, a solid majority (56% to 40%) said that the government should “redistribute wealth by heavy taxes on the rich.” Support for heavy taxes on the rich has risen markedly, by 11 percentage points, since Gallup asked the same question in 1998. And it is even higher than it was in class-conscious 1939, during the Great Depression (see Figure 6.12).<sup>59</sup>

The finding of majority support for this sort of progressive taxation is particularly striking because the drastic-sounding phrase “heavy taxes” might be expected to put people off. Moreover, the question was prefaced with a slow-down-and-think warning: “People feel differently about how far a government should go. Here is a phrase which some people believe in and some don’t. Do you think our government should or should not . . .” Public support for high taxes on the rich appears to be real.



**Figure 6.12.** Support for redistributing wealth by heavy taxes on the rich. Question wording: “People feel differently about how far a government should go. Here is a phrase which some people believe in and some don’t. Do you think our government should or should not redistribute wealth by heavy taxes on the rich?” Sources: Gallup for Fortune 3/39; Gallup for GM 4–5/98; Gallup 4/07; Inequality Survey 6/07.

Moreover, a majority of high-income Americans (though not of Republicans) actually favor redistributing wealth by heavy taxes on the rich. This suggests that values of justice, community, equality and the like sometimes overcome narrow self-interest. A majority of Americans (54%) also say that people with high incomes should pay “a larger share” of their income in taxes than those with low incomes. Forty-one percent say high-income people should pay the same share as those with low incomes (that is, taxes should be proportional), and just a minuscule 4 percent say a smaller share, endorsing regressive taxation. Several times in recent years the General Social Survey has found much the same thing.<sup>60</sup> About half of Republicans and high-income earners agree that people with high incomes should pay a larger share. Americans do not want total equality of incomes, but they do want a tax system that would require wealthy people to shoulder a greater part of the burden in funding programs that benefit us all. Such a tax system would make after-tax incomes less unequal than they are now.

As we have seen, most Americans want to raise the payroll tax “cap” on income that is taxed, which would make payroll taxes less regressive. Another concrete example: there is very little support for abolishing the estate tax, which is the most progressive tax in the U.S. system. The estate tax now applies only to very large estates left by the wealthiest one-third of

one percent of Americans: estates valued at more than \$2,000,000 (rising to \$3,500,000 in 2009.) As Bill Gates Sr. points out, the estate tax has been an important source of revenue, producing roughly \$1 trillion (\$1,000 billion) in a decade—money that would otherwise have to come from working people to fund important programs. Gates argues that the estate tax is a fair tax: “you earned it” really means “you earned it with the indispensable help of your government” with education, infrastructure, and research. Billionaires, he adds, should have an attitude of “gratitude and recognition of our obligation to pass on similar opportunities.”<sup>61</sup>

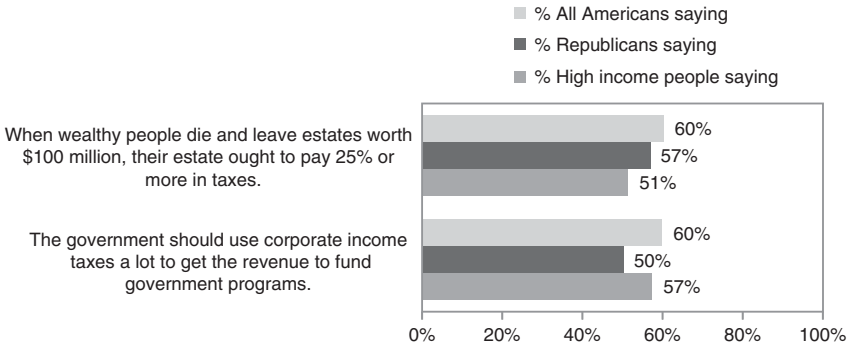
In our survey we asked, “When wealthy people die and leave estates worth \$100 million, how much in taxes do you think their estates *actually* pay? No taxes at all? About 10 percent of the estate; about 25 percent (one quarter) of the estate; about 50 percent (half) of the estate; about 75 percent; or 100 percent, the entire value of the estate?” Most responses clustered around the fairly-close-to-correct “about 25 percent” alternative,<sup>62</sup> which 32 percent of respondents chose; 79 percent of responses fell in the 10 percent to 50 percent range.

We then asked, “Next, how much in taxes do you think estates worth \$100 million *ought* to pay? Do you think they should pay no taxes at all; about 10 percent of the estate; about 25 percent (one quarter) of the estate; about 50 percent (one half) of the estate; about 75 percent; or 100 percent, the entire value of the estate?” Only 14 percent said “no taxes at all”! That is, only 14 percent of Americans endorsed the noisy movement to abolish the estate tax altogether. The median response was “about 25 percent”: certainly not a confiscatory rate, but far from total repeal of the tax. Majorities of Republicans and of high-income Americans agree that \$100 million estates should be taxed at a 25 percent rate or higher (see Figure 6.13).

The results of past surveys have generally been the same, even when they used the tendentious label “death tax.” Americans do not want estate taxes to apply to small businesses, family farms, or people like themselves, and many greatly overestimate the reach of the tax. (A 2003 survey found that about half the respondents thought that “most” families had to pay it.) Hence there has been strong support for reforms to reduce the number of estates subject to the tax. But not for repeal. Penn, Schoen surveys found only 29 percent for repeal in 2005, and just 23 percent in 2006. Even anti-tax crusader Frank Luntz found in a 2005 survey that complete elimination of the estate tax was favored by only 35 percent of Americans.<sup>63</sup>

### Relying on Progressive Taxes

In addition to the estate tax, most Americans want to rely for revenue mainly on other taxes that they see as progressive. Asked in our survey whether



**Figure 6.13.** Even Republicans and high-income Americans favor the estate tax and corporate income tax. Source: Inequality Survey.

higher-income people or lower-income people “pay a greater percentage of what they earn” for various different types of taxes, pluralities said, correctly, that corporate income taxes and property taxes are paid at higher effective rates by high-income people than by low-income people. A plurality correctly perceived that—on the contrary—*lower-income* people pay a higher percentage of what they earn on “payroll taxes such as [those for] Social Security and Medicare.”

Respondents were then asked which taxes government should rely on most for revenue. (“Thinking about the different kinds of taxes that governments collect, which sorts of taxes do you think are best to use for getting the revenue to fund government programs. Should the government use the following a lot, some, a little, or not at all?”) The tax that was singled out by far more Americans (fully 60%) than any other to be used a lot was the corporate income tax. This is the same tax that the most people see as progressive. No other tax came close. Payroll taxes—the most regressive taxes—are particularly unpopular, with only 15 percent of Americans saying government should use them a lot.

What the U.S. government has actually been doing is quite different. It certainly does not rely “a lot” on the corporation income tax. In 2007, even with soaring corporate profits, that tax produced only 14.7 percent of all federal government revenue—well below the 30 percent to 40 percent figures of the mid-twentieth century.<sup>64</sup> By contrast, the government now relies very heavily on regressive payroll taxes. Sixty years ago payroll taxes used to produce only 8 percent to 10 percent of federal government revenue. They now provide 35 percent to 40 percent of it.<sup>65</sup>

The political impact of the public’s desire for progressive taxation is blunted, however, by widespread confusion over the distributive effects (the “incidence”) of different taxes. Tax policy is complex and technical. It

is easily mischaracterized in political rhetoric. If voters do not understand what is being done to them, they cannot punish politicians at the polls.<sup>66</sup>

There is especially great confusion about sales taxes, which are very regressive. (Lower-income people have to spend more of their incomes on food, clothing, and other necessities, so that flat-rate sales taxes on those goods take away a higher proportion of their incomes.) But few Americans realize this. In our survey, only 21 percent correctly perceived that lower-income people pay a greater percentage of what they earn on sales taxes than higher income people do. Nearly as many (17%) thought, quite wrongly, that *higher*-income people pay a greater percentage of what they earn, and most incorrectly said “about the same.” This confusion may help account for why sales taxes are ordinary Americans’ second most popular source for government revenue, after corporate income taxes.

Similarly, there is great confusion about the incidence of the personal income tax, which (even after the Bush administration’s rate cuts) remains quite progressive. Americans as a whole are evenly divided over whether higher- or lower-income people pay a greater percentage of what they earn in personal income taxes. Lower-income people are especially often mistaken. Over half (55%) of high-income people realize that the income tax hits high-income people harder. But only one-third (33%) of low-income people realize this; 44 percent mistakenly believe that low-income people pay a greater percentage of what they earn in personal income taxes. This class asymmetry in information probably helps make the personal income tax unpopular and politically vulnerable.

Research experiments indicate that providing individuals with more information about who benefits from various tax provisions has an impact on their policy preferences. Explaining that the tax deduction for home mortgages most benefits households with annual earnings of \$100,000 or more, for example, tended to reduce support for this deduction among the less affluent.<sup>67</sup> Such findings suggest that citizens’ opinions that conflict with their economic interests may stem from a lack of accessible and accurate information—which in turn may reflect the obscurity and technical complexity of the U.S. tax code, as well as misleading or deceptive rhetoric from politicians and others—rather than from cognitive limitations of individuals.<sup>68</sup>

Still, most Americans are somehow able to penetrate the fog of confusion and arrive at fairly sensible opinions that mostly fit their values. Most Americans support progressive taxation in principle and favor relying on the taxes that they see as most progressive. Moreover, large majorities are willing to pay taxes to fund the social spending programs they favor. They express willingness to pay *more* taxes for such programs.

## CONCLUSION: PRAGMATIC EGALITARIANS AND AMERICAN EXCEPTIONALISM

The evidence is clear. Ordinary Americans are *not* ignorant of the extreme inequality of income and wealth in the United States. They are not indifferent to the enormous, widening gaps between the super-rich and everyone else. They do not reject government action to deal with those gaps. They are not tax-haters, unwilling to pay the bill for egalitarian programs.

Instead, abundant evidence from our own and others' surveys shows that most Americans are well aware of great inequalities in income and wealth in the United States—though they do tend to underestimate the incomes of those at the top. Most Americans are not happy about this situation. They do not want to “level” everyone's economic position, but they do want income and wealth to be more evenly distributed.

Despite their enthusiasm for private enterprise and skepticism about government, large majorities of Americans favor a wide range of government programs that would greatly reduce economic inequality. They favor programs to ensure that everyone can get a high-quality education from preschool through college; that everyone who is able to work can find a job and be paid decent wages; that everyone is covered by health insurance, so that their chances to pursue the American dream are not devastated by catastrophic illness; that seniors, after a lifetime of work, can retire with respectable pensions; and that those who are left behind through no fault of their own are provided with food, clothing, and shelter.

Majorities of Americans are willing to pay for these programs. They are willing, if necessary, to pay *more* in taxes for such purposes. And they want the government to rely for its revenue on progressive rather than regressive taxes. They favor using the tax system to redistribute income and wealth from the rich to the middle and lower classes.

All in all, most Americans can be called *pragmatic egalitarians*. They generally combine philosophical conservatism—respectful of markets and individual responsibility, skeptical of government—with operational liberalism, asking the government, when necessary, to help provide genuine opportunity and basic economic security.<sup>69</sup> If the U.S. government acted accordingly, it would it greatly reduce economic inequality in the United States.

We have seen that these attitudes cut across income classes and party affiliations. On most of these matters, majorities of Republicans and majorities of the top one quarter of American income earners agree with majorities of Democrats, Independents, and low- and middle-income earners. (We will have more to say in future reports about how variations in individuals' values, beliefs, attitudes, and personal characteristics affect their views of economic inequality.)



There is, of course, no “class war” in America, and no serious threat of one. But our findings suggest a new wrinkle on the old story of American exceptionalism. The cross-class agreement we find is not one of an acquiescent working class, ignoring or accepting extreme inequalities and spurning government help. Instead, there is cross-class and cross-party agreement in the American public favoring a wide range of government actions that would in fact greatly reduce economic inequality.

As “small-d” democrats, we believe that governments should generally respond to the policy preferences of their citizens.<sup>70</sup> Obviously, however, on many of these matters the U.S. government has not in fact responded to the wishes of the citizenry. Particularly blatant is the gulf between the actions of some Republican officials and the preferences of rank-and-file Republicans, let alone Independents and Democrats.

This non-responsiveness raises questions about the nature of representation and the quality of democracy in the United States. It also suggests that a substantial part of the responsibility for the pinched U.S. welfare state rests with public officials and the political system, not with ordinary citizens. American exceptionalism may be more an elite than a mass phenomenon.

## NOTES

For comments and suggestions on various parts of this project we are grateful to Leslie McCall, Dan Galvin, Ed Greenberg, Andrea Campbell, Lane Kenworthy, Tom Ferguson, Ben R. Page, and Suzanne Mettler.

1. See, for example, Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt Brace Jovanovich, 1955); Alex de Tocqueville, *Democracy in America* (New York: Anchor Books, 1969); David Brody, *Workers in Industrial America: Essays on the Twentieth-Century Struggle*, 2nd ed. (New York: Oxford University Press, 1993); Ira Katznelson, *City Trenches: Urban Politics and the Patterning of Class in the United States* (New York: Pantheon Books, 1982); Seymour Martin Lipset, *Continental Divide: The Values and Institutions of the United States and Canada* (New York: Routledge, 1989); Peter Hall and David Soskice, eds., *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (New York: Oxford University Press, 2001).

2. Nathan Glazer, “On Americans and Inequality,” *Daedalus* (Summer 2003): 111.

3. The Inequality Survey was fielded by the Center for Survey Research and Analysis at the University of Connecticut. We thank Samuel Best, Chris Melchiorre, and Chase H. Harrison for conducting the survey, and Melanie Burns for data analysis and tireless research assistance. Interviews (n=608) were conducted by telephone (RDD sample) between June 18 and July 8, 2007. All data reported here are weighted to ensure representativeness by region, sex, age, level of educational attainment, Hispanic ethnicity, and race. Estimates of population percentages are accurate to within about 4 percentage points at the  $p < .05$  level.

4. Hartz, *The Liberal Tradition in America*.

5. Jennifer Hochschild, *What's Fair?: American Beliefs about Distributive Justice* (Cambridge, MA: Harvard University Press, 1981).

6. Herbert McClosky and John Zaller, *The American Ethos: Public Attitudes toward Capitalism and Democracy* (Cambridge, MA: Harvard University Press, 1984); Everett Carl Ladd and Karlyn H. Bowman, *Attitudes toward Economic Inequality* (Washington, DC: The AEI Press, 1998).

7. For our questions about how much people in various occupations “actually” earn and “should” earn, the order of occupations was randomly varied to avoid question-order effects. Respondents had little difficulty offering dollar estimates; none of our seven questions got more than 5.7 percent “don’t know” or no opinion answers. Similar questions on the 1987 and 2000 General Social Surveys got only 11–14 percent “don’t know” responses.

8. Medians, unlike means, are not distorted by a few extremely high or extremely low guesses. We use median perceptions and preferences throughout this paper.

9. Earnings of production workers (\$16,000) and machine operators (\$20,000) from simplyhired.com, accessed 11/8/07. Of sales clerks (\$26,000), indeed.com, accessed 11/8/07. Of skilled factory workers (\$44,000) and shop owners (\$60,000), simplyhired.com, accessed 11/8/07 and 1/9/08.

10. Earnings of practitioners of family medicine (\$185,740) and of cardiac and thoracic surgeons (\$460,000), 2007 AMGA survey at cejkasearch.com. Heart transplant surgeons (median \$405,725), 4/07 HR survey by salary.com. S&P 500 CEOs (\$14.78 million in 2006), Corporate Library survey reported at aflcio.org/corporatewatch/paywatch. Rankings of pay and efficiency, “CEO Compensation,” forbes.com 5/03/07. Total 2007 compensation of specific executives in “CEO Compensation Scorecard” at wsy.com, accessed 11/8/07.

11. Estimates of CEO/worker pay ratios vary. Our figures for S&P 500 CEOs (\$14 million) and skilled factory workers (\$44,000) imply a ratio of 318:1.

12. *Alpha* magazine, May 2008, reported at Bloomberg.com.

13. According to Wolff, the top 1 percent of U.S. wealth-holders owned 38.5 percent of net worth in 1995 and 34.3 percent in 2004; they had 47.2 percent of non-home wealth in 1995 and 42.2 percent in 2004. Edward N. Wolff, “Recent Trends in Household Wealth in the United States,” Working Paper #502, Levy Economics Institute of Bard College, June 2007, 11. See Wolff, *Top Heavy* (New York: The New Press, 2002).

14. Perceptions of an increase in wealth inequality were nearly the same across party affiliations and income levels.

15. Wolff, “Recent Trends,” 11, found a rise in inequality from 1983 to 1995 but then a decline to about the 1983 level. Wojciech Kopczuk and Emmanuel Saez, “Top Wealth Shares in the United States,” *National Tax Journal* LVII 2–2 (June 2004): 457–8, found relative constancy since 1946, except for a drop in the 1970s that was reversed between 1982 and 1986.

16. Pew release, 2/15/07, at people-press.org.

17. Throughout this paper, “Republicans” refer to the 27.9 percent of Inequality Survey respondents who said that generally speaking they thought of themselves as Republicans; “leaners” are not included. (36.1 percent thought of themselves as Democrats.) “High-income” people are the 25.2 percent of respondents who reported \$80,000 or more in annual family income; “low-income” people are the 27.5 percent reporting less than \$40,000.

18. In Figure 6.1 and elsewhere in this chapter, all percentage breakdowns for partisan or income groups (and, when they are directly compared, for the general

public) have been recalculated excluding “don’t know” and “no opinion” responses. This is necessary to ensure comparability among subgroups with differing proportions of “don’t knows.” The resulting percentages describe proportions among those subgroup members who express opinions.

19. Six CBS/NYT surveys, 2/96 to 3/05.

20. Samuel Bowles, Herbert Gintis, and Melissa Osborne Groves, eds., *Unequal Chances* (New York: Russell Sage, 2005), 2.

21. Since this survey question seems to refer to government takings of private property without just compensation, it may have elicited outrage at such unconstitutional action rather than opposition to a properly conducted procedure of eminent domain. Using an open-ended version of this question, Hochschild (*What’s Fair?*, 161, 182) found that most of her interviewees “grudgingly accepted” the power of eminent domain, though they eyed it dubiously.

22. Twenty NES surveys, 1958–2004.

23. Considerably *higher* proportions of low-income (78%) than high-income (56%) respondents actually said that government must always protect private property, perhaps because of lower sophistication about eminent domain. See note 20.

24. The GSS, allowing a “neither agree or disagree” response, found substantial pluralities opposed to government responsibility for income redistribution in 1987, 1992, and 2000.

25. Lloyd A. Free and Hadley Cantril long ago made a similar distinction, in *The Political Beliefs of Americans* (New York: Simon and Schuster, 1968).

26. The 1958 PAB study found that 75 percent disagreed. Herbert McClosky and John Zaller, *The American Ethos* (Cambridge, MA: Harvard University Press, 1984), 147.

27. For her 1981 book Jennifer Hochschild asked an open-ended version of this question (*What’s Fair?*, 306) and got generally similar results.

28. Harris 9/64 (68% “believe”); PSRA for Pew 9–10/97 (72% “completely” or “mostly” agree).

29. NES 1956, 1958, and 1960. Unfortunately this question was replaced in 1964, 1968, and later years by confusing queries that mixed jobs and “a good standard of living.”

30. GSS 1987, 35 percent to 35 percent.

31. PIPA 10/99, 12/03, 6/05.

32. Epinet.org and wikipedia.org, accessed 11/1/07.

33. U.S. Census Bureau, 8/28/07, data for 2006.

34. See Fay Lomax Cook, *Who Should be Helped?: Public Support for Social Services* (Beverly Hills, CA: Sage, 1979).

35. Frank R. Westie, 1965. “The American Dilemma: An Empirical Test,” *American Sociological Review* 30 (4): 527–38.

36. CCFR 1990–2002; CCI for CCFR 2004. There was a substantial rise in support for expanding education programs after the 1974–82 period.

37. 1977 OVS (53% “good idea,” 16% “bad idea”). McClosky and Zaller, *American Ethos*, 91.

38. Excluding don’t knows, 57 percent of Republicans and 76 percent of Democrats said they were willing to pay more taxes for early childhood education; 57 percent of high-income and 72 percent of low-income respondents said the same thing.

39. U.S. Census Bureau 8/28/07, CPS data for 2006.

40. CCFR 1994 (71% “expanded”), 1998 (78%), 2002 (77%), 2004 (79%).

41. CNN/*USA Today*, 1/2000; Gallup, 9/2000–11/2006. The proportion of Americans saying that universal health coverage is the responsibility of the federal government rose from 58 percent in 1958 to 73 percent in 2007, with a big jump since 2005.

42. PSRA for Kaiser and Harvard, 12/99; ICR for Kaiser and NewsHour, 1/-2/2000.

43. CBS/NYT, three surveys 2/80 to 4/81 and seven surveys 10/90 to 12/95; ICR for Harvard and RWJ 8/2000.

44. Eight surveys between 11/98 and 11/04 for Harvard and Kaiser, by PSRA, ICR, and Washington Post.

45. See [usatoday.com/news](http://usatoday.com/news), 10/3/07, p.1.

46. 1958 PAB study, McClosky and Zaller, *American Ethos*.

47. Fay Lomax Cook and Lawrence R. Jacobs, “Assessing Assumptions about Attitudes Toward Social Security: Popular Claims Meet Hard Data,” in *The Future of Social Insurance: Incremental Action or Fundamental Reform*, ed. Peter Edelman, Dallas Salisbury, and Pamela Larson. (Washington, DC: Brookings Institution, 2002), 82–118.

48. Rebecca M. Blank, *It Takes a Nation* (New York: Russell Sage, 1997), 20, 228.

49. JCPES 9/98. Support among African Americans was 66 percent, a bit higher than among whites. It stayed essentially the same in November 2005.

50. Seven CCFR surveys between 1982 and 2004 show widespread support for expanding Social Security.

On resistance to any lowering of Social Security benefits see Cook and Jacobs “Assessing Assumptions”; Lawrence R. Jacobs and Robert Y. Shapiro. “Is Washington Disconnected from Public Thinking about Social Security,” *The Public Perspective* (June/July 1998): 54–7; Lawrence R. Jacobs and Robert Y. Shapiro, “Myths and Misunderstandings about Public Opinion Toward Social Security,” in *Framing the Social Security Debate*, ed. R. Douglas Arnold, Michael Graetz, and Alicia Munnell (Washington, DC: Brookings Institution, 1998), 355–88.

51. Our question: “A proposal has been made that would allow or require people to put a portion of their Social Security payroll taxes into personal retirement accounts that would be invested in private stocks and bonds. Some people think that individuals would have more money for retirement if they were allowed to invest and manage some of their Social Security payroll taxes themselves. Others think that it is too risky and could leave some people without adequate money for retirement if the stock market were to decline in value significantly. Do you favor or oppose this proposal?”

52. Andrea Campbell, *How Americans Think about Taxes: Public Opinion and the American Fiscal State* (Princeton, NJ: Princeton University Press, forthcoming); 9/07 draft, p.31. Campbell shows that the ups and downs in “too high” responses reflect changes in effective tax rates and in the perceived benefits from government programs.

53. 37 surveys between 11/68 and 7/07 by NES (18), CBS and/or NYT (10), and others. The 1958 and 1964 NES surveys showed a more even balance between “a lot” and “some” waste, but only 10 percent and 7 percent “not very much.”

54. 2005 figures from [oecd.org](http://oecd.org).

55. ICR for NPR, Kaiser and Harvard, 2–3/03; PSRA for Pew, 6/01; Gallup for Times Mirror, 1–2/89.

56. The fraction of Democrats (20%) favoring a general tax *increase*, however, was significantly higher than the fraction of Republicans (6%).

57. Since our tax questions were asked toward the end of the Inequality Survey, one might object that respondents were “primed” to think about attractive spending programs before they got to taxes. But that is precisely the point. We are interested in what Americans think about taxes when they have in mind the real-world connections between taxing and spending.

58. Princeton for Knight-Ridder 1/96 found that 68 percent favored using tax money for Food Stamps and 52 percent for welfare benefits.

59. Roper for *Fortune*, 3/39; Gallup for GM, 4-5/98; Gallup, 4/07.

60. GSS 3/87, 3/00.

61. Bill Gates, Sr., and Chuck Collins, “We Still Need the Estate Tax,” *Miami Herald*, December 26, 2006; Transcript of Bill Moyers interview with Bill Gates, Sr., and Chuck Collins, 1/17/03, at pbs.org.

62. In 2007 the maximum marginal tax rate on estate amounts well above the exclusion was 45 percent (see irs.gov.) The average rate for most estates was lower than that.

63. Larry M. Bartels, “Unenlightened Self-Interest: The Strange Appeal of Estate-tax Repeal,” *The American Prospect*, May 17, 2004; Penn, Schoen 7/20–24/05 and 2/26/06 at coalition4americaspriorities.com; BNA (Frank Luntz), “Estate Taxes Poll Shows 85% of Voters Favor Eliminating, Reducing Estate Tax,” at policyandtaxation-group.com. Luntz tried to hype the 35 percent pro-repeal figure up to 85 percent by lumping repealers together with those who favored reduced rates.

64. OMB, *Budget of the United States, FY 2008*, gpoaccess.gov/usbudget/fy08, Table 2.2; letter from CBO Director Peter Orszag to Senator Kent Conrad, 5/18/07, at cbo.gov.

65. *U.S. Budget FY 2008*, Table 2.2.

66. See Larry Bartels, “Homer Gets a Tax Cut: Inequality and Public Policy in the American Mind.” *Perspectives on Politics* 3, no.1 (March 2005): 15–31; “Unenlightened Self-Interest: The Strange Appeal of Estate Tax Repeal,” *The American Prospect*, June 2004, A17–A19.

67. Suzanne Mettler and Matthew Guardino, “How Policy Information Influences Political Support for Tax Expenditures,” Paper Presented at the Midwest Political Science Association, April 3–6, 2008.

68. See Bartels, “Homer Gets a Tax Cut”; Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton, NJ: Princeton University Press, 2008).

69. These matters are pursued further in Benjamin I. Page and Lawrence R. Jacobs, *Class War? Economic Inequality and the American Dream*, in progress.

70. See Benjamin I. Page and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago: University of Chicago Press, 1992); Lawrence R. Jacobs and Robert Y. Shapiro, *Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness* (Chicago: University of Chicago Press, 2000); Benjamin I. Page with Marshall M. Bouton, *The Foreign Policy Disconnect: What Americans Want from Our Leaders but Don't Get* (Chicago: University of Chicago Press, 2006).

## Economic Inequality and Political Representation

*Larry M. Bartels*

One of the most basic principles of democracy is the notion that every citizen's preferences should count equally in the realm of politics and government.<sup>1</sup> As Robert Dahl (1971, 1) put it, "a key characteristic of a democracy is the continued responsiveness of the government to the preferences of its citizens, considered as political equals." But there are a variety of good reasons to believe that citizens are *not* considered as political equals by policy makers in real political systems. Wealthier and better-educated citizens are more likely than the poor and less-educated to have well-formulated and well-informed preferences, significantly more likely to turn out to vote, much more likely to have direct contact with public officials, and much more likely to contribute money and energy to political campaigns. These disparities in political resources and action raise a profound question posed by Dahl (1961) on the first page of another classic study: "In a political system where nearly every adult may vote but where knowledge, wealth, social position, access to officials, and other resources are unequally distributed, who actually governs?"

The significance of Dahl's question has been magnified by economic and political developments in the United States in the decades since he posed it. On one hand, the shape of U.S. income distribution has changed markedly, with substantial gains in real income at the top outpacing much more modest gains among middle- and low-income earners. For example, the average real income of the top quintile of American households increased by \$68,000 (68 percent) between 1975 and 2006, while the average real income of the middle quintile increased by about \$9,000 (23 percent) and the average real income of the poorest quintile increased by less than \$2,000 (17 percent).<sup>1</sup> The increasingly unequal distribution of income—and the even more unequal distribution of wealth—are problematic for a democratic system to the extent that economic inequality engenders political inequality.

At the same time, the political process itself has evolved in ways that may be detrimental to the interests of citizens of modest means. Political campaigns have become dramatically more expensive since the 1950s, increasing the reliance of elected officials on people who can afford to help finance their bids for reelection. Lobbying activities by corporations and business and professional organizations have accelerated greatly, outpacing the growth of public interest groups. And membership in labor unions has declined substantially, eroding the primary mechanism for organized representation of blue collar workers in the governmental process.

In light of these dramatic changes in the American economy and polity, and the importance attached to political equality in American political culture, one might suppose that political scientists have been hard at work documenting the ways in which resource inequalities shape political representation and public policy in contemporary America. Alas, that supposition would be mistaken. According to a task force convened by the American Political Science Association, we know “astonishingly little” about the “cumulative effects on American democracy” of these and other developments (Task Force on Inequality and American Democracy 2004, 662).

One aspect of political inequality that has been unusually well-documented (for example, by Verba, Nie, and Kim 1978; Wolfinger and Rosenstone 1980; Verba, Schlozman, and Brady 1995) is the disparity between rich and poor citizens in political participation. Studies of participatory inequality seem to be inspired in significant part by the presumption that participation has important consequences for representation. As Verba, Schlozman, and Brady (1995, 14) put it, “inequalities in activity are likely to be associated with inequalities in governmental responsiveness.” It is striking, though, how little political scientists have done to *test* that presumption. For the most part, scholars of political participation have treated actual patterns of governmental responsiveness as someone else’s problem.

Meanwhile, statistical studies of political representation dating back to the classic analysis of Miller and Stokes (1963) have found strong connections between constituents’ policy preferences and their representatives’ policy choices (for example, Page and Shapiro 1983; Bartels 1991; Stimson, MackKuen, and Erikson 1995). However, those studies have almost invariably treated constituents in an undifferentiated way, using simple averages of opinions in a given district, on a given issue, or at a given time to account for representatives’ policy choices.<sup>2</sup> Thus, they shed little or no light on the fundamental issue of political equality.

My aim here is to provide a more nuanced analysis of political representation in which the weight attached to constituents’ views in the policy-making process is allowed to depend on those constituents’ politically relevant resources and behavior—primarily on their incomes, and secondarily on a

variety of other resources and behaviors that might mediate the relationship between income and political representation, including electoral turnout, political information, and contact with public officials.

My analysis focuses on representation by U.S. senators in the late 1980s and early 1990s. That focus is inspired not by any particular substantive feature of the time period or of the Senate as a representative body, but by the availability of unusual data, facilitating systematic analysis of the relationship between senators' policy choices and the views of their constituents. Using both summary measures of senators' voting patterns and specific roll call votes on the minimum wage, civil rights, government spending, and abortion, I find that senators in this period were vastly more responsive to the views of affluent constituents than to constituents of modest means. Indeed, my analyses suggest that the views of constituents in the upper third of the income distribution received about 50 percent more weight than those in the middle third, with even larger disparities on specific salient roll call votes. Even more strikingly, I find that the views of constituents in the bottom third of the income distribution received no weight at all in the voting decisions of their senators. Far from being "considered as political equals," they are entirely *unconsidered* in the policy-making process.

The selective representation of constituents has occurred even after the expansion of formal equality in terms of race, gender, and other ascriptive characteristics. Selective representation amidst formal guarantees of political equality introduces a potential strain in the normative justification of the American system of government as anchored in popular sovereignty.

## MODEL, DATA, AND ESTIMATION

Empirical analyses of representation are typically grounded in a simple statistical model relating elite policy choices to mass preferences. Variation in mass preferences and policy choices may be observed in a cross section of districts or other geographical units (e.g., Miller and Stokes 1963), across issues (e.g., Page and Shapiro 1983), or over time (e.g., Stimson, MacKuen, and Erikson 1995). The basic model treats an observed roll call vote (or summary of roll call votes) cast by a senator as a function of the opinions of the senator's constituents (as measured in surveys), controlling for the senator's party affiliation other influences on the senator's legislative behavior.

The key assumption in this basic model is that elected officials are equally responsive to the views of all their constituents. Here, however, I relax that assumption to allow for the possibility that senators respond unequally to the views of rich, middle-class, and poor constituents. (If senators are equally



responsive to constituents from different income groups, the results from the basic model will be equivalent to those produced by my elaborated model.)

While my model for studying the potential of differential responsiveness is clearly more flexible than the basic model for examining political representation, it still falls far short of being a realistic causal model of legislative behavior. Obviously, a good many factors may influence senators' roll call votes, in addition to the senators' own partisanship and the policy preferences of their constituents. Equally obviously, "responsiveness" in the statistical sense captured by these models may or may not reflect a direct causal impact of constituents' preferences on their senators' behavior. Nevertheless, the relationship between constituency opinion and legislative behavior in reduced-form models of this sort is an important descriptive feature of the policy-making process in any democratic political system, regardless of whether that relationship is produced by conscious political responsiveness on the part of legislators, selective retention of like-minded legislators by voters, shared backgrounds and life experiences, or other factors.

My empirical analysis of representation employs data on constituency opinions from the Senate Election Study conducted in 1988, 1990, and 1992 by the National Election Studies (NES) research team.<sup>3</sup> The Senate Election Study was a national survey of 9,253 U.S. citizens of voting age interviewed by telephone in the weeks just after the November 1988, 1990, and 1992 general elections. Although some details of the sample design and questionnaire varied across the three election years, the basic design remained unchanged, and a substantial core of questions was repeated in similar form in all three years. In the absence of any marked changes in constituency opinion across the three election years, I combined the responses from all three years to produce more precise estimates of public opinion in each state.

An important virtue of the Senate Election Study design, for my purpose here, is that the sample was stratified to produce roughly equal numbers of respondents in each of the fifty U.S. states. Thus, whereas most national surveys include large numbers of respondents in populous states but too few respondents to produce reliable readings of opinion in less populous states, the Senate Election Study included at least 150 (and an average of 185) respondents in each of the fifty states. In addition, whereas most commercial surveys include very few questions about specific political issues, the Senate Election Study included questions on general ideology and a variety of more specific issues. It also included a good deal of information about characteristics of respondents that might account for differences in their political influence, including not only income but also turnout and other forms of political participation, knowledge of senators and Senate candidates, and the like.

As is commonly the case with telephone surveys, the Senate Election Study sample significantly underrepresented young people, racial and ethnic

minority groups, and people with little formal education. Since these sample biases are especially problematic in a study of economic inequality, I post-stratified the sample within each state on the basis of education, race, age, sex, and work status. (The post-stratification is described my book, *Unequal Democracy*.)

Previous statistical analyses of legislative representation have often been plagued by measurement error in constituency opinions due to small survey samples in specific states or congressional districts. Because the Senate Election Study included at least 150 respondents in each state, measurement error is likely to be a less serious problem in my analysis than in most analogous studies. Nevertheless, in order to gauge the effect of measurement error on the results reported here, I repeated the main regression analyses using an instrumental variables estimator, which is less efficient than ordinary regression analysis but produces consistent parameter estimates in spite of measurement errors in the explanatory variables. In general, these results are consistent with the results of the corresponding ordinary regression analyses—but a good deal less precise. Thus, I rely here on ordinary regression and probit analyses, but with the caveat that some modest biases due to measurement error remain unaccounted for in my analysis. (My book, *Unequal Democracy*, provides a full discussion of my post-stratification and the results of the instrumental variables estimations.)

## IDEOLOGICAL REPRESENTATION

I begin by relating the voting behavior of senators to the general ideological views of their constituents as measured by the conservatism scale in the NES Senate Election Study survey.<sup>4</sup> The 7-point conservatism scale is recoded to range from -1 to +1, with negative values reflecting liberal opinion and positive values reflecting conservative opinion. The balance of opinion is at least slightly conservative in every state, ranging from .012 in Massachusetts and .034 in California to .320 in Alabama and .333 in Arkansas.

I use the resulting data on constituents' opinions to account for the roll call votes of senators on issues that reached the Senate floor during the period covered by the Senate Election Study: the 101st (1989-90), 102nd (1991-2) and 103rd (1993-4) Congresses. Poole and Rosenthal's (1997) first-dimension W-NOMINATE scores provide a convenient summary measure of senators' ideological positions based on all the votes they cast in each Congress.<sup>5</sup> (Later, I also examine individual votes on specific salient roll calls related to the constituency opinions tapped in the Senate Election Study.) The W-NOMINATE scores are normalized to range from -1 for the most liberal member of each Senate to +1 for the most conservative member.

The overall relationship between constituency opinion and the ideological tenor of senators' voting records is summarized in Figure 7.1. The figure shows separate points for each senator in each of the three Congresses covered by my analysis, as well as regression lines summarizing the relationship between constituency opinion and senators' conservatism for each party's senators in each Congress. *It is clear from the positive slopes of the regression lines that, as expected, more conservative states tended to get more conservative representation in the Senate.*<sup>6</sup> The responsiveness of senators to constituency opinion was roughly similar for both parties and for each of the three Congresses, except that Democrats representing conservative states were somewhat more liberal in the 103rd Congress (the first two years of Bill Clinton's presidency) than in the 101st and 102nd Congresses (with George H. W. Bush in the White House).<sup>7</sup>

It is also clear from Figure 7.1 that there is a marked ideological difference in the voting behavior of Republican and Democratic senators even when they represent constituents with similar ideological views. Indeed,

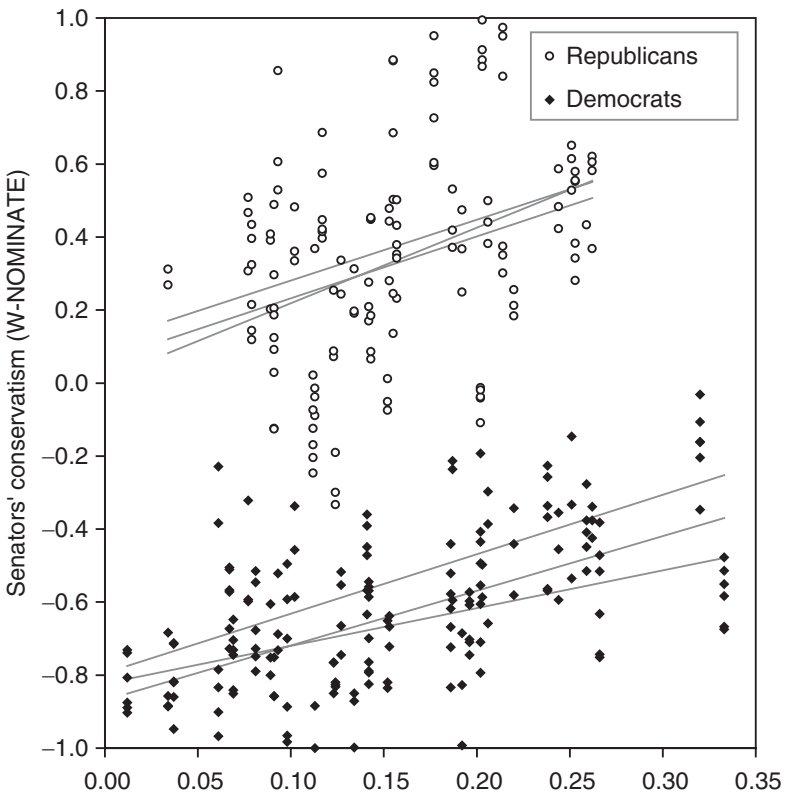


Figure 7.1. Constituency Opinion and Senators' Roll Call Votes, by Party

since each state has two senators, we sometimes observe markedly different ideological behavior from Republican and Democratic senators representing exactly the same constituents. These differences were somewhat smaller 15 years ago than they are now, but even then they were larger than the differences between senators of the same party representing liberal and conservative states. For example, the Republican senators representing California in the 101st and 102nd Congresses were a great deal closer in their voting patterns to their Republican colleagues from Texas and Mississippi than to their Democratic colleague from California.<sup>8</sup>

### UNEQUAL RESPONSIVENESS

The next step in my analysis is to examine whether the overall pattern of ideological representation depicted in Figure 7.1 reflects differential responsiveness to the views of senators' affluent constituents. I separate respondents in the Senate Election Study survey into three income groups: a low-income group with family incomes below \$20,000, a middle-income group with family incomes ranging from \$20,000 to \$40,000, and a high-income group with family incomes above \$40,000.<sup>9</sup> Averaging across states, these groups constitute 30.7 percent, 40.2 percent, and 29.1 percent of the (weighted) Senate Election Study sample, respectively. I then compute the average ideology of survey respondents in each state within each income group, multiplied by the proportion of that state's sample with incomes in the relevant range.<sup>10</sup>

Table 7.1 reports the results of a series of regression analyses in which senators' roll call votes, as summarized by their W-NOMINATE scores in the 101st, 102nd, and 103rd Congresses, are related to these income-specific constituency opinion measures and to the senators' own party affiliations. The first three columns of the table report separate regression results for each Congress, while the final column reports the results of a pooled regression analysis employing the roll call data from all three Congresses.<sup>11</sup>

In each case, senators' voting patterns are strongly and consistently related to their party affiliations, as one would expect from the partisan differences in voting behavior summarized graphically in Figure 7.1. As in Figure 7.1, the expected difference in voting behavior between Republican and Democratic senators representing the same constituency amounts to about half of the total ideological distance between the most conservative senator and the most liberal senator in each Congress.

In addition, *senators seem to have been quite responsive to the ideological views of their middle- and high-income constituents—though, strikingly, not to the views of their low-income constituents.* Whether we consider the three

**Table 7.1.** Differential Responsiveness of Senators to Constituency Opinion

	101st Congress	102nd Congress	103rd Congress	1989-1994 (Pooled)
Low-Income	-.11	-.50	-.39	-.33
Constituency Opinion	(.61)	(.59)	(.55)	(.44)
Middle-Income	2.47	2.91	2.58	2.66
Constituency Opinion	(.72)	(.71)	(.65)	(.60)
High-Income	4.73	4.43	3.22	4.15
Constituency Opinion	(1.03)	(.99)	(.92)	(.85)
Republican Senator	.91	.95	.99	.95
	(.04)	(.04)	(.04)	(.04)
Intercept	-.87	-.96	-.92	Congress- specific intercepts; observations clustered by senator
	(.06)	(.06)	(.05)	
std error of regression	.216	.213	.195	.207
adjusted R <sup>2</sup>	.83	.84	.88	.85
N	100	102	101	303
High- vs. Low- Income Responsiveness Gap	4.84 (1.30)	4.92 (1.25)	3.61 (1.17)	4.48 (1.04)

Ordinary least squares regression coefficients (with standard errors in parentheses) for Poole-Rosenthal W-NOMINATE scores

Congresses separately or together, the data are quite consistent in suggesting that the opinions of constituents in the bottom third of the income distribution had *no* discernible impact on the voting behavior of their senators. (The point estimates are actually negative, but in every case the standard error is large enough to make it quite plausible that the true effect is zero.)

In contrast, middle-income constituents enjoyed a good deal of apparent responsiveness; for example, the pooled parameter estimate of 2.66 in the right-most column of Table 7.1 implies enough responsiveness to move a senator's W-NOMINATE score by .34 (on the -1 to +1 scale) in response to a shift in middle-income constituency opinion from the liberal extreme to the conservative extreme in Figure 7.1 (that is, from the ideological climate of Massachusetts to that of Arkansas).<sup>12</sup> The apparent responsiveness of senators to the views of high-income constituents was even greater, despite their somewhat smaller numbers; the pooled parameter estimate of 4.15 implies a shift of .39 in a senator's W-NOMINATE score in response to an equivalent shift in high-income constituency opinion.

These results imply that responsiveness to the views of middle- and high-income constituents account for significant variation in senators' voting behavior—but that the views of low-income constituents were utterly irrelevant. These patterns of differential responsiveness are illustrated in Figure 7.2, which shows the estimated weights attached to the ideological views of low-, middle-, and high-income constituents in each of the three Congresses covered by my analysis. The roughly linear increase in apparent responsiveness across the three income groups, with those in the bottom third getting no weight and those in the middle and top thirds getting substantial weight, suggests that the modern Senate comes a good deal closer to equal representation of *incomes* than to equal representation of *citizens*.<sup>13</sup>

The last row of Table 7.1 presents the difference in estimated responsiveness to high- and low-income groups for each regression analysis. The *t*-statistics for these differences range from 3.1 (for the 103rd Congress) to 4.3 (for the pooled analysis including all three Congresses). Thus, we can reject with a great deal of confidence the hypothesis that senators were equally sensitive to the views of rich and poor constituents. Indeed, even the differences in responsiveness between the middle- and low-income groups

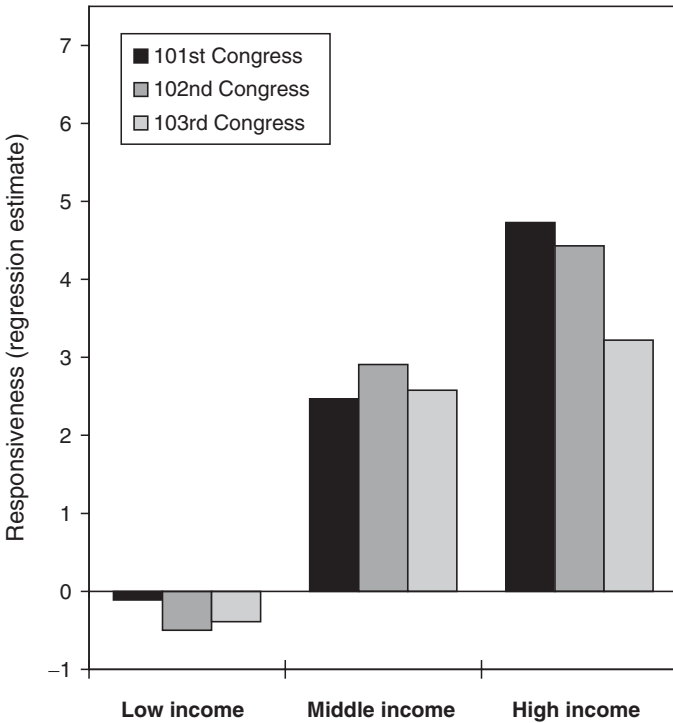


Figure 7.2. Senators' Responsiveness to Income Groups (W-NOMINATE Scores)

are much too large to be coincidental, with *t*-statistics (not shown) ranging from 2.0 to 3.0.

The W-NOMINATE scores analyzed in Table 7.1 are summary measures of senators' ideological postures on the whole range of issues brought to the Senate floor in each two-year period. Table 7.2 presents parallel analyses of four specific roll call votes on salient issues that reached the Senate floor during the period covered by my analysis: a 1989 vote to increase the federal minimum wage, a 1990 cloture vote on an amendment strengthening the Civil Rights Act, a 1991 vote on a Budget Act waiver to shift \$3.15 billion in budget authority from the Defense Department to domestic programs, and a 1992 cloture vote on removing the "fire wall" between defense and domestic appropriations. (More detailed descriptions of these roll call votes are presented in *Unequal Democracy*.) As it happens, a "yea" vote on each of these roll calls represented a liberal ideological position; however, I reverse the coding of the votes so that, as before, the expected signs on the parameter estimates for Republican senators and conservative constituencies are positive.<sup>14</sup>

Since the dependent variable in each column of Table 7.2—a "nay" or "yea" vote on a specific roll call—is dichotomous, I use probit analysis rather than ordinary regression. Since the scale on which probit coefficients are

**Table 7.2.** Differential Responsiveness on Salient Ideological Roll Call Votes

	Minimum Wage	Civil Rights	Budget Waiver	Budget Cloture
Low-Income	-.70	-1.64	1.54	-1.67
Constituency Opinion	(1.61)	(1.52)	(2.99)	(1.77)
Middle-Income	.95	2.22	7.43	4.42
Constituency Opinion	(1.77)	(1.96)	(3.75)	(2.31)
High-Income	14.63	10.52	10.71	3.98
Constituency Opinion	(4.40)	(4.04)	(4.86)	(3.09)
Republican	1.00	1.00	1.00	1.00
Senator	(.20)	(.19)	(.25)	(.15)
Intercept	-1.29	-1.15	-.87	-.78
	(.34)	(.32)	(.30)	(.20)
$\sigma$	.252	.254	.689	.362
log likelihood	-22.97	-20.57	-41.51	-30.70
pseudo-R <sup>2</sup>	.65	.69	.29	.55
N	100	100	97	99
High- vs.	15.33	12.16	9.17	5.65
Low-Income	(4.72)	(4.46)	(6.19)	(3.95)
Responsiveness Gap				

Rescaled probit coefficients (with standard errors in parentheses) for conservative positions on roll call votes.

estimated is essentially arbitrary, I normalize the results for each roll call to produce a coefficient of 1.0 on Republican party affiliation.<sup>15</sup> This normalization is intended to make the probit results more nearly comparable across roll calls, and also at least roughly comparable to the ordinary regression results reported in Table 7.1 (where the coefficients for Republican party affiliation ranged from .91 to .99).

By that comparative standard, the magnitude of unequal responsiveness on the specific salient roll call votes in Table 7.2 is even more striking than for senators' overall ideological postures in Table 7.1. On one hand, low-income constituents fared no better; only one of the four estimates of responsiveness to their views is positive, and none of the estimates is statistically distinguishable from zero. On the other hand, senators seem to have been a good deal more sensitive to the views of high-income constituents on three of these four roll calls than on the day-to-day business summarized in the W-NOMINATE scores. In the case of the civil rights and budget waiver votes, the parameter estimates imply that the effect of a senator's own party affiliation would be entirely neutralized by a shift in the views of his most affluent constituents from one extreme to the other of the distribution of state opinion shown in Figure 7.1. For the minimum wage vote, an even smaller shift in opinion among high-income constituents—say, from the average opinion in California to the average opinion in West Virginia—would be sufficient to counteract the effect of a senator's own partisanship.<sup>16</sup>

*The results for the vote on raising the minimum wage reflect the political plight of poor constituents in especially poignant form.* Those results suggest that senators attached no weight at all to the views of constituents in the bottom third of the income distribution—the constituents whose economic interests were obviously most directly at stake—even as they voted to approve a minimum wage increase. The views of middle-income constituents seem to have been only slightly more influential. On this issue, even more than the others considered in Table 7.2, senators' voting decisions were largely driven by the ideological predilections of their affluent constituents and by their own partisan inclinations.<sup>17</sup>

## **DIFFERENTIAL RESPONSIVENESS ON SOCIAL ISSUES: THE CASE OF ABORTION**

The results presented in Tables 7.1 and 7.2 provide strong evidence of differential responsiveness by senators to the views of rich and poor constituents. However, there is some reason to wonder whether economic inequality might be less consequential in the domain of social issues, which tend to be “easier” than ideological issues (in the sense of Carmines and Stimson 1980) and less



directly tied to economic interests.<sup>18</sup> The civil rights vote analyzed in Table 7.2 is something of a hybrid in this respect, since it clearly taps both general ideology (the federal government's role in preventing discrimination) and the partially distinct issue of race.<sup>19</sup> However, a more extensive analysis of representation in the domain of social issues requires focusing on an issue that figured more prominently on the congressional agenda than civil rights did in the late 1980s and early 1990s. The obvious choice is abortion.

In this section I examine four key roll call votes touching on various controversial aspects of abortion policy: requiring parental notification prior to abortions performed on minors, overturning the Bush administration's "gag rule" on abortion counseling, prohibiting federal funding of most abortions, and criminalizing efforts to obstruct access to abortion clinics. (More detailed descriptions of these roll calls are presented in *Unequal Democracy*.)

I measure constituency opinion in each state using the abortion question in the NES Senate Election Study survey.<sup>20</sup> The 3-point scale is coded to range from -1 to +1, with negative values reflecting pro-life opinion and positive values reflecting pro-choice opinion.<sup>21</sup> The probit parameter estimates relating individual senators' votes on the four abortion roll calls to their constituents' views about abortion are shown in Table 7.3. Because a "yea" vote represented the pro-choice position on each of these roll calls, both the abortion opinion variables and the control variable for Democratic partisan affiliation are expected to have positive effects on the probability of casting a "yea" vote.<sup>22</sup>

Each of the four abortion roll call votes analyzed in Table 7.3 provides additional evidence of differential responsiveness by senators to the views of affluent constituents. In general, the disparities are smaller in magnitude than for the ideological roll call votes considered in Table 7.2; moreover, for two of the four votes the parameter estimate for middle-income opinion is larger than the corresponding parameter estimate for high-income opinion (though these estimates are far too imprecise for the differences to be statistically reliable). Thus, the overall pattern of responsiveness is somewhat more egalitarian in Table 7.3 than in Table 7.2. However, the political irrelevance of constituents in the bottom third of the income distribution is just as striking for abortion votes as for economic issues (the one parameter estimate for low-income opinion that is larger than its standard error is perversely negative); and the estimated responsiveness gaps (in the last row of Table 7.3) provide strong, consistent evidence of affluent advantage. These results make it clear that differential responsiveness is not limited to ideological issues or to the specific measure of general ideological opinion in the Senate Election Study. Even on abortion—a social issue with little or no specifically economic content—economic inequality produces significant inequality in political representation.

**Table 7.3.** Differential Responsiveness on Abortion Roll Call Votes

	Parental Notification	Counseling Ban	Public Funding	Clinic Access
Low-Income	-.20	1.09	-1.24	-2.14
Constituency Opinion	(2.04)	(1.69)	(2.32)	(1.74)
Middle-Income	1.94	-.75	5.13	2.85
Constituency Opinion	(2.29)	(2.51)	(2.47)	(2.29)
High-Income	4.79	6.35	3.48	2.23
Constituency Opinion	(1.85)	(2.40)	(1.83)	(1.74)
Democratic	1.00	1.00	1.00	1.00
Senator	(.18)	(.20)	(.20)	(.18)
Intercept	-1.08	-.53	-1.39	-.49
	(.22)	(.16)	(.26)	(.17)
$\sigma$	.545	.432	.603	.488
log likelihood	-42.30	-31.94	-44.67	-37.55
pseudo-R <sup>2</sup>	.36	.44	.33	.38
N	96	99	99	99
High- vs.	4.99	5.26	4.72	4.38
Low-Income	(2.87)	(2.66)	(3.15)	(2.51)
Responsiveness Gap				

Rescaled probit coefficients (with standard errors in parentheses) for pro-choice positions on roll call votes

## PARTISAN DIFFERENCES IN REPRESENTATION

My analysis thus far provides a good deal of evidence that senators are more responsive to the opinions of affluent constituents than of middle-class constituents—and totally unresponsive to the opinions of poor constituents. In this section, I examine whether there are different patterns of responsiveness for Republican and Democratic senators. Given the distinct class bases of the parties' electoral coalitions, one might expect Republican senators to be especially sensitive to the opinions of affluent constituents and Democrats to attach more weight to the opinions of poor constituents. On the other hand, votes, campaign contributions, and the various other political resources associated with higher income are presumably equally valuable to politicians of both parties; thus, Democrats as well as Republicans may be especially responsive to the views of resource-rich constituents, notwithstanding the historical association of the Democratic Party with the political interests of the working class and the poor.

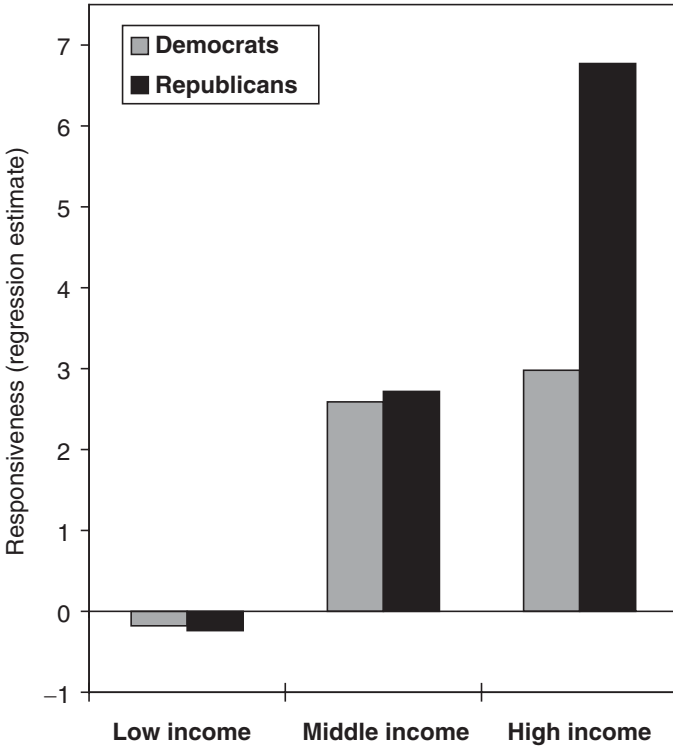
I look for partisan differences in responsiveness by repeating the analyses of differential responsiveness reported in Table 7.1 separately for senators in each party. The results are summarized in Table 7.4. Not surprisingly, the

Table 7.4. Differential Responsiveness by Party

	101st Congress	102nd Congress	103rd Congress	1989-1994 (Pooled)
<b>REPUBLICANS</b>				
Low-Income	-.36	-.52	.19	-.24
Constituency Opinion	(1.07)	(1.07)	(1.11)	(.75)
Middle-Income	2.78	2.95	2.45	2.72
Constituency Opinion	(1.45)	(1.45)	(1.37)	(1.26)
High-Income	6.59	6.91	6.79	6.77
Constituency Opinion	(2.22)	(2.21)	(2.24)	(2.02)
Intercept	-.04	-.10	-.10	Congress-specific intercepts; observations clustered by senator
	(.13)	(.13)	(.12)	
std error of regression	.263	.262	.257	.255
adjusted R <sup>2</sup>	.20	.22	.23	.24
N	45	44	44	133
High- vs. Low-Income Responsiveness Gap	6.95 (2.50)	7.43 (2.50)	6.59 (2.57)	7.01 (2.20)
<b>DEMOCRATS</b>				
Low-Income	.32	-.28	-.55	-.18
Constituency Opinion	(.68)	(.65)	(.44)	(.44)
Middle-Income	2.20	2.85	2.69	2.59
Constituency Opinion	(.75)	(.73)	(.51)	(.63)
High-Income	3.76	3.33	1.84	2.98
Constituency Opinion	(1.01)	(.96)	(.66)	(.66)
Intercept	-.84	-.93	-.87	Congress-specific intercepts; observations clustered by senator
	(.05)	(.05)	(.03)	
std error of regression	.173	.170	.116	.155
adjusted R <sup>2</sup>	.42	.40	.47	.44
N	55	58	57	170
High- vs. Low-Income Responsiveness Gap	3.44 (1.38)	3.62 (1.30)	2.39 (.89)	3.16 (.83)

Ordinary least squares regression coefficients (with standard errors in parentheses) for Poole-Rosenthal W-NOMINATE scores

intraparty parameter estimates—especially for Republicans—are a good deal less precise than those for the entire Senate.<sup>23</sup> Despite that imprecision, three facts emerge clearly. First, the roughly linear increase in apparent responsiveness from one income group to the next in Figure 7.2 overstates the gap



**Figure 7.3.** Democratic and Republican Senators' Responsiveness to Income Groups

in influence between the middle and upper classes for Democratic senators, while understating the gap for Republican senators. Second, Republicans were about twice as responsive as Democrats to the views of high-income constituents. And third, there is no evidence of any responsiveness to the views of constituents in the bottom third of the income distribution, even from Democrats.

The patterns of differential responsiveness implied by these parameter estimates are presented in Figure 7.3, which shows separate estimates of responsiveness for senators in each party (pooled across all three Congresses) comparable to the overall estimates presented in Figure 7.2. The figure makes clear both the similarity in responsiveness of Republican and Democratic senators to low- and middle-income constituents and the divergence in their responsiveness to high-income constituents. (The *t*-statistic for the estimated partisan difference in responsiveness to high-income constituents is 1.78, suggesting that the true difference is more than 95% likely to be positive.)

Table 7.5 reports estimates of responsiveness for the entire Senate and separately for Republican and Democratic senators on the four salient

**Table 7.5.** Responsiveness on Salient Ideological Votes by Party

	All Senators	Republicans	Democrats
Low-Income	-.92	-.36	-1.28
Constituency Opinion	(1.30)	(2.19)	(1.44)
Middle-Income	2.87	-.37	5.98
Constituency Opinion	(1.23)	(2.23)	(1.64)
High-Income	7.91	18.90	4.18
Constituency Opinion	(2.53)	(4.34)	(2.54)
Republican Senator	1.00	—	—
	(.13)		
Intercept	roll call-specific intercepts; observations clustered by senator		
$\sigma$		.374	
log likelihood	-129.42	-50.01	-62.81
pseudo-R <sup>2</sup>	.53	.29	.41
N	396	175	221
High- vs. Low-Income	8.84	19.26	5.46
Responsiveness Gap	(2.93)	(5.05)	(2.84)

Rescaled probit coefficients (with standard errors in parentheses) for conservative positions on minimum wage, civil rights, budget waiver, and budget cloture votes (pooled)

ideological roll call votes analyzed in Table 7.2. Table 7.6 does the same for the four abortion roll call votes analyzed in Table 7.3. In each table, I pool votes on all four issues in order to generate enough variance in senators' behavior to facilitate separate analysis of each party's Senate delegation.<sup>24</sup>

The results presented in Table 7.5 are qualitatively similar to those presented in Table 7.4, but even more striking in magnitude. For Republican senators there is no evidence of responsiveness to middle-income constituents, much less low-income constituents. On the other hand, the views of high-income constituents seem to have received a great deal of weight from Republican senators on these four issues—almost three times as much as in Table 7.4, and more than four times as much as for Democrats in the rightmost column of Table 7.5. Meanwhile, Democrats seem to have responded at least as strongly to the views of middle-income constituents as to the views of high-income constituents—though, once again, there is no evidence of any responsiveness to the views of low-income constituents.

The results for abortion votes presented in Table 7.6 suggest a generally similar pattern, albeit with a good deal less overall responsiveness to constituency opinion and more muted differences between the two parties. Again, Democrats seem to have been somewhat more responsive to the views of middle-income constituents, while Republicans were somewhat more responsive to the views of upper-income constituents. Again,

**Table 7.6.** Responsiveness on Abortion Votes by Party

	All Senators	Republicans	Democrats
Low-Income	-.77	-1.00	-.45
Constituency Opinion	(1.28)	(1.49)	(2.04)
Middle-Income	2.61	1.19	4.44
Constituency Opinion	(1.59)	(2.34)	(2.28)
High-Income	3.93	4.34	3.27
Constituency Opinion	(1.19)	(1.77)	(1.46)
Democratic Senator	1.00	—	—
	(.13)		
Intercept	roll call-specific intercepts; observations clustered by senator		
$\sigma$		.526	
log likelihood	-160.32	-85.20	-72.62
pseudo-R <sup>2</sup>	.40	.19	.31
N	393	173	220
High- vs. Low-Income	4.70	5.33	3.71
Responsiveness Gap	(1.71)	(2.20)	(2.39)

Rescaled probit coefficients (with standard errors in parentheses) for pro-choice positions on parental notification, counseling ban, public funding, and clinic access votes (pooled)

neither party's senators seem to have attached any weight to the views of low-income constituents.

The intraparty analyses presented in Tables 7.4, 7.5, and 7.6 suggest that upper-income constituents got a good deal less responsiveness from Democratic senators than from Republican senators. It seems natural to wonder whether they also got less responsiveness from Democrats than from Republicans in the White House. The fortuitous fact that the roll call votes analyzed here spanned the partisan turnover from President George H. W. Bush to President Bill Clinton allows for a rudimentary test of that possibility. Returning to the right-most panel of Figure 7.2, senators seem to have been a good deal more responsive to upper-income constituents when a Republican was in the White House (during the 101st and 102nd Congresses) than they were with a Democrat in the White House (during the 103rd Congress). The parameter estimates presented in Table 7.1 suggest that constituents in the upper third of the income distribution got 52 and 91 percent more weight than those in the middle third in the two Congresses of the Bush administration, but only 25 percent more under Clinton. The results for individual roll call votes are generally consistent with this pattern. The only two votes on which estimated responsiveness to the middle class exceeded estimated responsiveness to the upper class by more than 11 percent were the two from Clinton's presidency, the abortion funding vote in 1993 and the clinic

access vote in 1994. On the other hand, for the six roll call votes selected from the Bush administration, senators' average responsiveness to upper-income constituents was more than three times their average responsiveness to middle-income constituents. While these comparisons are obviously far from definitive, they suggest that differential responsiveness may stem not only from the partisan values of senators themselves, but also from the partisan values of presidents whose agenda-setting and lobbying activities may mitigate or exacerbate economic biases in congressional representation.

### WHY ARE AFFLUENT CONSTITUENTS BETTER REPRESENTED?

Having found that senators are significantly more responsive to the views of affluent constituents than of those with lower incomes, I turn in this section to a brief consideration of the bases of that disparity. Are the affluent better represented because they are more likely to vote? Because they are more knowledgeable about politics? Because they are more likely to communicate their views to elected officials?

To test these possibilities, I used survey questions in the NES Senate Election Study to measure inequalities in turnout, political knowledge, and contacting. Turnout should matter to the extent that representatives are disciplined by a specific desire to get reelected (Key 1949; Bartels 1998). Contact with elected officials and their staffs provides potentially important signals regarding both the content and the intensity of constituents' political views (Verba, Schlozman, and Brady 1995). And political knowledge is potentially relevant because better-informed constituents are more likely to have crystallized preferences on specific political issues and more likely to be able to monitor the behavior of their representatives (Delli Carpini and Keeter 1996).<sup>25</sup>

For each of these characteristics I constructed weighted versions of the constituency opinions tapped in the Senate Election Study and estimated the effects of these weighted opinions using a version of my elaborated regression model. If the apparent disparities in responsiveness evident in Tables 7.1, 7.2, and 7.3 are attributable to differences between rich and poor constituents in these specific political resources, including direct measures of constituency preferences weighted by turnout, information, and contacting in my analyses should capture those effects. For example, if senators are more responsive to the views of affluent constituents because affluent constituents are more likely to vote, including turnout-weighted constituency opinion in analyses paralleling those presented in Tables 7.1, 7.2, and 7.3 should drive the remaining disparities in responsiveness to different income groups to zero. On the other hand, if we continue to find disparities in responsiveness to rich and poor constituents, even after controlling

for differences in political participation, the implication is that the effect of income works through mechanisms other than differential participation—or perhaps that money matters in its own right (for example, through responsiveness of elected officials to potential campaign contributors).

The results of my elaborated analyses of the bases of differential responsiveness are presented in Table 7.7. With all three weighted opinion variables included in these analyses, the only one that has a consistent positive effect (with an average *t*-statistic of 1.9) is the contact-weighted opinion variable.<sup>26</sup> The coefficients for this variable suggest that each reported contact with a senator or his staff increased the weight attached to the contacting constituent's views by from 1 percent to 21 percent of the original estimated gap between high- and low-income respondents—an effect of modest political significance in light of the fact that the average constituent reported about one contact, and most constituents reported none at all.<sup>27</sup> Meanwhile, neither turnout nor political knowledge seems to have increased the influence of constituents' views on their senators' roll call votes.<sup>28</sup>

The other important point to note about the results presented in Table 7.7 is that they continue to suggest substantial disparities in responsiveness to the views of rich and poor constituents, even with three distinct measures of differential political resources included in the analyses. Comparing the parameter estimates in the first column of Table 7.7 with those in the fourth column of Table 7.1 suggests that accounting for differences in turnout, knowledge, and contacting reduces the gap in representation between high-income and low-income constituents by only 24 percent (from 4.48 to 3.41). Similar comparisons between the parameter estimates in the second and third columns of Table 7.7 and those in the first columns of Tables 7.5 and 7.6 suggest that differences in turnout, knowledge, and contacting account for only 32 percent of the original disparity in responsiveness on ideological roll call votes and only 3 percent of the original disparity in responsiveness on abortion votes. In each case, the disparities in responsiveness are statistically significant (with *t*-statistics ranging from 2.2 to 3), despite the inclusion of three additional (and strongly correlated) measures of constituency opinion in the analysis. These results provide surprisingly strong and consistent evidence that the biases I have identified in senators' responsiveness to rich and poor constituents are *not* primarily due to differences between rich and poor constituents in turnout, political knowledge, or contacting.

A tempting alternative hypothesis is that the disproportional influence of affluent constituents reflects their disproportional propensity to contribute money to political campaigns. It is impossible to investigate that possibility directly here, since the Senate Election Study did not include questions on political giving. As it happens, however, a contemporaneous survey



**Table 7.7. Income, Political Resources, and Differential Responsiveness**

	W-NOMINATE Scores	Ideological Votes	Abortion Votes
Low-Income	-.74	-.98	-2.15
Constituency Opinion	(.65)	(1.72)	(1.48)
Middle-Income	2.04	2.13	1.23
Constituency Opinion	(.67)	(1.66)	(1.77)
High-Income	2.66	5.03	2.44
Constituency Opinion	(1.31)	(3.24)	(1.42)
Turnout-Weighted	.25	-.96	2.50
Constituency Opinion	(.82)	(1.75)	(1.53)
Knowledge-Weighted	-1.30	-2.84	-.98
Constituency Opinion	(1.13)	(2.52)	(2.62)
Contact-Weighted	4.14	10.99	.32
Constituency Opinion	(1.51)	(3.72)	(3.48)
Republican	.94	1.00	1.00
Senator	(.04)	(.08)	(.12)
Intercept	Congress-specific intercepts; observations clustered by senator	roll call-specific intercepts; observations clustered by senator	roll call-specific intercepts; observations clustered by senator
$\sigma$	—	.364	.511
std error of regression	.201	—	—
log likelihood	—	-121.42	-158.36
adjusted R <sup>2</sup>	.86	—	—
pseudo-R <sup>2</sup>	—	.56	.41
N	303	396	393
High- vs. Low-Income Responsiveness Gap	3.41 (1.13)	6.00 (2.74)	4.58 (1.74)

**Public Funding.** HR2518. Fiscal 1994 Labor, Health and Human Services, and Education Appropriations. Committee amendment to strike the Hyde amendment provisions included in the House bill that prohibit federal funds from covering abortions except in cases of rape, incest, or when the life of the woman is endangered.

*September 28, 1993. 40-59.*

**Clinic Access.** S636. Abortion Clinic Access/Conference Report. Adoption of the conference report to establish federal criminal and civil penalties for people who use force, the threat of force, or physical obstruction to block access to abortion clinics. *May 12, 1994. 69-30.*

Ordinary least squares regression coefficients (with standard errors in parentheses) for Poole-Rosenthal W-NOMINATE scores in 101st, 102nd, and 103rd Congresses (pooled); rescaled probit coefficients (with standard errors in parentheses) for conservative positions on minimum wage, civil rights, budget waiver, and budget cloture votes (pooled); rescaled probit coefficients (with standard errors in parentheses) for pro-choice positions on parental notification, counseling ban, public funding, and clinic access votes (pooled).

focusing in detail on various forms of political participation provides the data necessary for a very rough test of the hypothesis. Verba, Schlozman, and Brady (1995, 194, 565) reported that citizens in the top quarter of the income distribution (with 1989 family incomes exceeding \$50,000) provided almost three-quarters of the total campaign contributions in their sample. Citizens in the broad middle of the income distribution (with family incomes between \$15,000 and \$50,000) accounted for almost all of the rest; citizens in the bottom quintile (with family incomes below \$15,000) accounted for only 2 percent of total campaign contributions.

These figures suggest that if senators *only* responded to campaign contributions they would attach about six times as much importance to the views of a typical affluent constituent as to the views of a typical middle-income constituent—and virtually none to the views of low-income constituents. All of the disparities in representation documented here are consistent with the latter implication; regardless of how the data are sliced, there is no discernible evidence that the views of low-income constituents had any effect on their senators' voting behavior. On the other hand, the estimated gaps in representation between high-income and middle-income constituents are generally less extreme than the disparity in their campaign contributions would suggest, especially for the day-to-day Senate business reflected in the Poole-Rosenthal W-NOMINATE scores. Nevertheless, it is striking that two of the eight salient roll call votes considered here (raising the minimum wage and overturning limitations on abortion counseling) produced estimated disparities in representation between high-income and middle-income constituents large enough to match or exceed the disparities in campaign giving reported by Verba, Schlozman, and Brady. For these specific issues, at least, the data are consistent with the hypothesis that senators represented their campaign contributors to the exclusion of other constituents.

## CONCLUSION

My analysis suggests that senators are vastly more responsive to the views of affluent constituents than to constituents of modest means. The magnitude of this difference varies from issue to issue, and some of the separate estimates fail to satisfy conventional standards of “statistical significance.” Nevertheless, the consistency of the difference across a variety of political contexts, issues, opinion measures, and model specifications is impressive, and the magnitude of the disparities in responsiveness to rich and poor constituents implied by my results is even more impressive.

It is important to reiterate that I have been using the terms *responsiveness* and *representation* loosely to refer to the statistical association between

constituents' opinions and their senators' behavior. Whether senators behave the way they do *because* their constituents have the opinions they do is impossible to gauge using the research design employed here. It is certainly plausible to imagine that senators consciously and intentionally strive to represent the views of (especially) affluent constituents. However, it might also be the case, as Jacobs and Page (2005) have suggested in the context of national foreign policy making, that public opinion *seems* to be influential only because it happens to be correlated with the opinion of influential elites, organized interest groups, or the policy makers themselves.

The correlation between public opinion and elite opinion, in turn, might reflect conscious efforts by elites, interest groups, or policy makers to shape public opinion in support of their views, or it might reflect the patterns of political recruitment and advancement that put some kinds of people rather than others in positions of influence in the first place. In the present context, it seems unlikely that affluent constituents are sufficiently sensitive to the policy views of their senators, specifically, for the problem to be one of reverse causation. On the other hand, the fact that senators are themselves affluent—and in many cases extremely wealthy—hardly seems irrelevant to understanding the strong empirical connection between their voting behavior and the preferences of their affluent constituents.<sup>29</sup>

There is clearly a great deal more work to be done investigating the mechanisms by which economic inequality gets reproduced in the political realm. The simple assumption that the rich are more influential than the poor because they are more likely to vote receives no support in my analysis. The idea that they are more influential because they are better informed about politics and government fares equally poorly. The notion that they are more influential because they are more likely to contact government officials receives some modest support, but is clearly far from being the whole story. The even simpler assumption that the rich are more influential than the poor because they provide the contributions that fuel contemporary campaigning and lobbying activities receives somewhat stronger support; but that support is quite indirect, and the role of money in shaping public policy clearly deserves much more careful empirical examination (Hall and Wayman 1990; Ansolabehere, de Figueiredo, and Snyder 2003).

Whatever their basis, however, the massive disparities in responsiveness documented here must be troubling to anyone who accepts Dahl's (1971, 1) stipulation that "a key characteristic of a democracy is the continued responsiveness of the government to the preferences of its citizens, considered as political equals." While it might not be surprising to find that elected officials gave less weight to the preferences of low-income constituents than of middle-class and affluent constituents, only the most cynical critic of American democracy

could be unsurprised to find that the preferences of millions of low-income citizens seem to have been entirely ignored in the policy-making process.

This pessimistic conclusion finds a striking parallel in a separate study conducted by my Princeton colleague Martin Gilens. Gilens collected almost 2,000 survey questions measuring Americans' preferences regarding a wide variety of national policy issues. For each issue, he examined whether a policy change supported or opposed by various segments of the public was subsequently adopted. He found a strong statistical relationship between the views of affluent citizens and the subsequent course of public policy. However, for less affluent citizens the relationship was weaker; and when the analysis was limited to issues where rich and poor people had divergent preferences, Gilens found that the well-off were vastly more likely to see their views reflected in subsequent policy changes. Gilens (2005, 794) concluded that "influence over actual policy outcomes appears to be reserved almost exclusively for those at the top of the income distribution."

Do these results imply that it is fruitless for poor people to participate in the electoral process? Not necessarily. Although the evidence presented here suggests that their views are very unlikely to have a significant *direct* impact on the behavior of their elected officials, whether or not they participate, it also underscores the powerful *indirect* effect of public opinion through the electoral process. In every analysis presented here, the differences in voting behavior between Democratic and Republican senators representing similar constituents are substantial, often dwarfing the differences among Democrats (or Republicans) representing constituents with very different political views. Thus, whenever the votes of those poor people who do turn out make the difference between electing a Democratic senator or a Republican, they will clearly be enormously consequential for the course of public policy, despite the fact that the views of poor people have no *direct* effect on the behavior of Democrats or Republicans after they get elected.

More affluent citizens, on the other hand, have significant *direct and indirect* effects on the behavior of elected officials. While their choices at the polls affect the partisan composition of Congress, their political views also have a substantial *direct* impact on the day-to-day policy choices of their representatives. That impact is a testament to the ubiquitous sway of economic inequality in the American political system.

What do these findings suggest about the state of American democracy? Political leaders appear to be responding significantly to the policy preferences of millions of middle- and upper-income citizens. This crucial popular element in the American political system is aptly reflected in a term coined by Dahl (1971): *polyarchy*. However, the pattern of responsiveness portrayed

here, and by Gilens, is a very far cry from approximating Dahl's loftier *democratic* ideal of "continued responsiveness of the government to the preferences of its citizens, considered as political equals." Indeed, Gilens (2005, 778) has suggested that "representational biases of this magnitude call into question the very democratic character of our society."

These disparities in representation are especially troubling because they suggest the potential for a debilitating feedback cycle linking the economic and political realms: increasing economic inequality may produce increasing inequality in political responsiveness, which in turn produces public policies increasingly detrimental to the interests of poor citizens, which in turn produces even greater economic inequality, and so on. If that is the case, shifts in the income distribution triggered by technological change, demographic shifts, or global economic development may in time become augmented, entrenched, and immutable.

Of course, the patterns of responsiveness documented here are for a single governmental institution in a single six-year period, now more than a decade in the past. Gilens's work is broader in scope, and he is currently gathering and analyzing data that may provide a clearer picture of how disparities in representation have, or have not, varied over decades. Perhaps future scholarly investigation will demonstrate that the disparities in representation portrayed here are somehow anomalous or otherwise misleading.

In the meantime, however, the available evidence is striking and sobering. Aristotle made the relationship between wealth and political status the fundamental basis for classifying regimes: "... what differentiates oligarchy and democracy is wealth or the lack of it. The essential point is that where the possession of political power is due to the possession of economic power or wealth, whether the number of persons be large or small, that is oligarchy, and when the unpropertied class have power, that is democracy." By that standard, the contemporary American political system clearly seems to be functioning more like an *oligarchy* than a *democracy*. If we insist on flattering ourselves by referring to it as a democracy, we should be clear that it is a starkly *unequal* democracy.

## NOTES

1. The real incomes of households in the top 5 percent of the income distribution increased even faster, by 96 percent. These figures, expressed in 2006 dollars, are calculated from the historical income data available at the U.S. Census Bureau's web site, <http://www.census.gov/income/>, Table H-3.

2. A pioneering exception was Rivers's (n.d.) unpublished analysis of differential responsiveness to the views of political independents by comparison with incumbent- or opposition-party identifiers. More recent studies of differential responsiveness include Jacobs and Page (2005), Griffin and Newman (2005), and Gilens (2005).

3. Data, codebooks, and a more detailed description of the study design are available from the NES Web site, <http://www.electionstudies.org/>.

4. “We hear a lot of talk these days about liberals and conservatives. Think about a ruler for measuring political views that people might hold, from liberal to conservative. On this ruler, which goes from 1 to 7, a measurement of 1 means very liberal political views, and a measurement of 7 would be very conservative. Just like a regular ruler, it has points in between, at 2, 3, 4, 5, or 6. Where would you place yourself on this ruler, remembering that 1 is very liberal and 7 is very conservative, or haven’t you thought much about this?” Respondents who “haven’t thought much about this” were asked a follow-up question: “If you had to choose, would you consider yourself a liberal or a conservative?” I coded respondents who answered “liberal,” volunteered “moderate” or “middle of the road,” or answered “conservative” to the follow-up question at 1.5, 4, and 6.5, respectively, on the original 7-point scale. I omitted respondents (75% of the total sample) who refused to place themselves on either the original question or the follow-up question.

5. Data and documentation are available from the Voteview Web site, <http://voteview.com/>. I use W-NOMINATE scores rather than the more familiar D-NOMINATE or DW-NOMINATE scores because the W-NOMINATE scores are estimated separately for each Congress, avoiding any danger of artificial consistency or redundancy in the results of my separate analyses of voting patterns in three successive Congresses. In practice, however, the various NOMINATE scales are very highly intercorrelated (and, for that matter, highly correlated with other general measures of legislative voting patterns). On the calculation and specific properties of the W-NOMINATE scores, see Poole and Rosenthal (1997, 249–51).

6. The *t*-statistics for the six slope coefficients range from 2.2 to 5.8.

7. The estimated slope for Democratic senators in the 103rd Congress is 1.03 (with a standard error of .20). The other five estimated slopes range from 1.50 to 2.07.

8. The average first-dimension W-NOMINATE score for Senators Wilson (R-CA) and Seymour (R-CA) was .29. The average score for Senator Cranston (D-CA) in these two Congresses was –.87, while the average score for Senators Gramm (R-TX), Cochrane (R-MS), and Lott (R-MS) was .51. When Cranston retired and Seymour was defeated, they were replaced by two new Democratic senators, Boxer and Feinstein, whose average score in the 103rd Congress was –.78.

9. These thresholds are chosen to make the three income groups as similar as possible in size, given the categorization of family incomes in the Senate Election Study survey. The survey recorded respondents’ family incomes in six categories in 1988 and 1990 and seven categories in 1992. Income levels were ascertained using a series of branching questions. Partial responses (for example, “Less than \$30,000 (DK or NA if under or over \$20,000)”) were recorded for 307 respondents who opted out before being placed in one of the six or seven final income categories; I include partially reported incomes of less than \$30,000 in the “low income” category and partially reported incomes of more than \$30,000 in the “high income” category. An additional 697 respondents (8% of the weighted sample) did not supply even partial income information; I imputed these missing data on the basis of demographic variables plus fixed effects for years and states. (Of these 8.0%, 3.2% are classified as “low income,” 4.0% as “middle income,” and 0.8% as “high income.”)

10. In the notation of equation {2}, the average ideology of the low-income group within each state is  $(\sum_{i \in kL} X_i) / N_{kL}$ , where  $N_{kL}$  is the number of low-income constituents

in that state's survey sample. Multiplying that average ideology by  $N_{kl}/N_k$ , the proportion of low-income constituents in the state, reproduces the income-specific summation ( $\sum_{i \in kl} X_i$ )/ $N_k$  in equation {2} (and similarly for the middle- and high-income groups). The parameters attached to these weighted averages of constituency opinion reflect the responsiveness of senators to an entire constituency made up of each income group (or, equivalently, the relative responsiveness to a single constituent in each income group), *not* the aggregate responsiveness to each income group given its actual share of the state's constituency, which varies somewhat from state to state. I have also explored versions of the analysis in which survey respondents in each state are grouped on the basis of their place in the state income distribution rather than the national income distribution; the empirical results are generally quite similar.

11. Since unmeasured influences on the roll call votes cast by each senator in three successive Congresses seem very unlikely to be statistically independent, the standard errors reported in the right-most column of Table 1 (and in my subsequent pooled regression analyses) allow for arbitrary patterns of correlation in the disturbances for each senator. These standard errors were calculated using the *CLUSTER* option in the STATA statistical software package.

12. I assume here, for purposes of exposition, that middle-income constituents constitute 40.2 percent of the public (the average in the sample as a whole) and that their views shift by .321 (the ideological distance between Massachusetts and Arkansas in Figure 7.1), so that the net effect is  $.402 \times .321 \times 2.66 = .34$ . Analogous calculations, but with different percentages (30.7% for low-income constituents, 29.1% for high-income constituents) and parameter estimates, are the basis for the subsequent reports of total responsiveness in the text.

13. In an earlier version of the analysis reported here, I included direct measures of average constituency opinion and income-weighted constituency opinion in each state, rather than separate measures of opinion among low-, middle-, and high-income constituents. That linear specification of differential responsiveness produced results quite consistent with those reported here. Pooling the data from all three Congresses, the parameter estimate for unweighted constituency opinion was  $-.20$  (with a standard error of  $.62$ ), while the parameter estimate for income-weighted constituency opinion (with family incomes measured in thousands of dollars) was  $.062$  (with a standard error of  $.021$ ). Thus, even more literally than here, the results of that analysis suggested that senators represent *income* rather than *constituents*.

14. Senate support for the conservative position on these four roll calls ranged from 37 votes on the minimum wage to 69 votes on the 1991 budget waiver.

15. Conventional probit results can be recovered simply by dividing each of the parameter estimates and standard errors in Table 7.2 by the estimated value of  $\sigma$  (the standard deviation of the stochastic disturbances in the underlying probit relationship) in the same column of the table.

16. In the latter case,  $.291$  (the average proportion of high-income constituents)  $\times .232$  (the ideological difference between California's  $.034$  and West Virginia's  $.266$  on the NES conservatism scale)  $\times 14.63$  (the estimated responsiveness to high-income opinion in the Minimum Wage column of Table 7.2) =  $.99$ , exactly balancing the normalized difference between Democratic and Republican senators. In the former cases, parallel calculations substituting the slightly larger ideological difference between Massachusetts and Arkansas and the slightly smaller estimated

responsiveness parameters in Table 7.2 again match the normalized impact of the senators' own partisanship.

17. Democratic senators were very likely to support raising the minimum wage regardless of their affluent constituents' ideological views; they voted 53–2 in favor. For Republicans, who split 10–35, the probit results presented in Table 7.2 suggest that the predicted probability of voting to raise the minimum wage increased from less than .02 in a state whose affluent constituents were one standard deviation more conservative than average to .45 in a state whose affluent constituents were one standard deviation more liberal than average.

18. More prosaically, it is also possible that the results presented in Tables 7.1 and 7.2 might reflect some idiosyncratic feature of the NES conservatism scale, which I use to measure constituency ideology.

19. On the relationship between racial issues and general ideology, see Carmines and Stimson (1989) and Poole and Rosenthal (1997, 109–112).

20. “Do you think abortions should be legal under *all* circumstances, only legal under *certain* circumstances, or *never* legal under any circumstance?” I code these responses +1, 0, and –1, respectively. I omit respondents (4.8% of the sample) who answered “don’t know” or refused to answer. In 1990 and 1992 (but not in 1988), the Senate Election Study also included questions on two narrower aspects of abortion policy related to the specific roll call votes analyzed here, parental consent and public funding of abortions; however, senators' votes were less closely related to their constituents' responses to those more specific questions than to constituency opinion as measured by the general question about circumstances in which abortions should be legal.

21. Given my coding of the response options in the NES abortion question, the estimated balance of opinion is pro-choice in all but four states (Kentucky, Mississippi, West Virginia, and Louisiana). The correlation between conservatism and pro-choice opinion at the individual level is –.25, and the corresponding correlation between state-level conservatism and pro-choice opinion is –.69.

22. Senate support for the pro-choice position on these four roll calls ranged from 40 votes in support of public funding to 73 votes in favor of overturning the abortion counseling ban.

23. The greater imprecision for Republicans is not only due to the fact that there were fewer Republicans than Democrats in the Senate during the period covered by my analysis. An additional problem is evident from the data presented in Figure 7.1: the observed variance in constituency opinion is considerably less for Republicans than for Democrats or for the Senate as a whole—a reflection of the fact that very conservative voters in states like Alabama, Arkansas, Georgia, and West Virginia were still routinely electing Democratic senators in this period. For both these reasons my estimates of the impact of constituency ideology on senators' voting behavior are much less precise for Republican senators than for Democrats, with standard errors about twice as large.

24. As with the issue-by-issue analyses presented in Tables 7.2 and 7.3, I normalize the probit coefficients to produce a coefficient of 1.00 on party affiliation. I apply the same normalization to the separate analyses for Republican and Democratic senators. Thus, I assume that the same scale factor  $\sigma$  represents the magnitude of unobserved stochastic influences on the voting behavior of Republicans and Democrats on



all four roll calls in each table. (Allowing distinct scale factors for each roll call would make party-specific estimation untenable in cases whether either party's delegation was nearly unanimous.) However, I allow for the possibility of different choice thresholds (that is, probit intercepts) for each roll call (and, in the party-specific analyses, for each party).

25. The specific measure of political knowledge employed here is based on the ability of survey respondents to recall the names and party affiliations of their incumbent senators and senate candidates.

26. The corresponding average *t*-statistic for turnout-weighted opinion is 0.5, and for knowledge-weighted opinion -0.9. These variables consistently get positive coefficients when they are included in the analyses separately, but the results presented in Table 7.7 strongly suggest that those apparent effects are an artifact of the positive correlations among the three distinct resource-weighted opinion measures.

27. My book *Unequal Democracy* provides a detailed discussion of my analysis. Since the zero-to-one contact variable I use to weight constituents' opinions is based on six potential contacts with senators or their staffs, the mean value of .184 translates into an average of 1.1 contacts per respondent. The analyses in my book produce normalized effects of .15 for W-NOMINATE scores, .21 for salient ideological votes, and .01 for abortion votes.

28. The non-effect of turnout in Table 7.7 contrasts with Griffin and Newman's (2005) finding that voters are better represented than non-voters. However, their analysis did not take account of the income-based disparities in responsiveness considered here, or of alternative resource-based explanations for differential responsiveness. Omitting contact-weighted opinion from the analyses reported in Table 7.7 generally produces positive but statistically insignificant coefficients on turnout-weighted opinion; omitting contact-weighted opinion and replacing the income-specific opinion variables with undifferentiated statewide opinion measures generally produces positive and statistically significant coefficients on turnout-weighted opinion. Thus, it appears that voters get more representation because they are affluent, not because they vote.

29. The salary of U.S. senators increased during the period covered by my analysis from \$89,500 to \$133,600. The cutoff for the top 5 percent of the family income distribution over the same period ranged from \$99,000 to \$120,000. The Senate's financial disclosure forms do not allow for precise estimates of senators' overall financial status, much less their economic backgrounds. However, CNN reported on the basis of 2003 disclosure forms that "at least 40" members of that year's Senate were millionaires, while "[a]t least 10 senators reported net worths of less than \$100,000" (Loughlin and Yoon 2003).

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## Promoting Inequality

### The Politics of Higher Education Policy in an Era of Conservative Governance

*Suzanne Mettler*

As economic inequality has escalated over recent decades, the U.S. government's failure to mitigate its effects has been surprising in both comparative and historical terms. From the 1970s to the present, market-based income disparities have grown sharply in most comparable nations as well, but others have done far more than the United States to reduce its effects through their tax systems and social programs (Hacker, Mettler, Pinderhughes, and Skocpol 2005, 158–64). The American record is even more striking when compared with the nation's own past, especially throughout the middle of the twentieth century. Those decades, marked by a robust economy and relatively strong social programs and labor policies, constituted the period of greatest economic egalitarianism of the twentieth century (Goldin and Margot 1992). By contrast, since the mid 1970s many U.S. policies have deteriorated either in real terms or in their efficacy amidst changing circumstances. These changes are especially manifest and consequential in the domain of higher education policy.

Throughout American history, governmental efforts to expand opportunities for college attendance has represented a key means by which the nation has provided channels for upward mobility, and in the process, lessened the scope and impact of economic inequality. Thus, although often regarded as a “laggard” with respect to some aspects of welfare state development, the United States has been distinguished as a pioneer in the higher education policy realm. Beginning with the creation of the public land grant universities in the late nineteenth century, and culminating in the middle of the twentieth century from the enactment of the GI Bill in 1944 through Pell grants in 1973, American policies helped expand access to college, enabling growing numbers of Americans from across the income spectrum to attend (Gladiuex and Hauptman 1995; Gladiuex and Wolanin 1976). Such policies

offered a means of satisfying the American yearning for equal opportunity: the idea that all citizens, if they exercised sufficient personal initiative, should have the chance to improve their circumstances and become better off. The nation has long been willing to tolerate some degree of inequality as long as citizens felt confident that mechanisms existed to guarantee upward mobility to those who worked to advance themselves (Page and Shapiro 1992, chap. 4). Perhaps due to the prevalence of such values in the United States, higher education policies—relative to other types of social provision—have historically enjoyed high bipartisan support.

Today, however, such policies are no longer continuing to expand access to college as they did in the 1950s through the 1970s; progress has stalled, undercutting the potential of the higher education system to facilitate upward mobility and leaving it to exacerbate rather than mitigate economic inequality.<sup>1</sup> This transformation has occurred as the federal grants that helped enable so many to attend college a few decades ago have deteriorated in real terms, even as tuition rates have skyrocketed. As a result, students who attend college now borrow more than ever in student loans, and this approach likely deters less advantaged young people from pursuing further education. Moreover, those who must borrow substantially to attain higher education put themselves at the risk of personal financial crisis, a route that can lead to downward rather than upward mobility. Although the number of Americans who attain college degrees is still growing, the increases come from the ranks of the relatively privileged, whereas enrollment has stagnated among those from households with below-median incomes. That policy makers have permitted these developments is surprising, given that the possession of a college degree has become a far more important determinant than in the past of subsequent wages and benefits, and upward mobility generally (Mishel, Bernstein, and Boushey 2003, 158–62).

This chapter seeks to explain why the United States has experienced such a departure in higher education policy. I highlight the significance of “policy feedback effects,” meaning how policies created at earlier junctures foster new political dynamics, in turn reconfiguring the range and viability of policy alternatives available to elected officials in subsequent rounds of policy making. Such effects have made it easier and more likely for policy makers to take action to expand or create some types of policies and to ignore others. In the higher education arena, these dynamics have occurred largely as policies have influenced the relative role and power of various organizations and groups of constituents. Higher education policies promoted capacity-building and development among key interest groups—namely lenders. Yet while empowering these groups, the same policies failed to mobilize ordinary citizens, including students and their families and those who hoped to send their children to college.

The impact of such policy effects has depended on the extent to which they have coalesced with broader changes in American political and institutional arrangements. While the period from 1980 to 2006 was characterized generally by a conservative resurgence, higher education policies fared quite differently in the 1980s, when fiscal conservatism prevailed, than they did after 1994, when conservatives instead embraced government spending selectively, promoting markets involving their favored constituencies. The 2006 elections, followed by the revelations of the student loan scandals and the subprime mortgage crisis, ushered in new shifts in the political landscape; the 2008 election results may strengthen these trends. Whether these changes will be sufficiently powerful to disrupt the organizational and participatory outcomes fostered by decades of policy development is not yet clear.

### HOW POLICIES RESHAPE POLITICS

Understanding changes in the American welfare state from the late 1970s to the present demands a different sort of analysis than that of the “big bang” moments of policy formation in the New Deal and Great Society eras. Rather, it requires us to examine what Wolfgang Streeck and Kathleen Thelen identify as “incremental change with transformative results” (Streeck and Thelen 2005, 9) and to probe processes that unfold slowly, over long periods of time, as recommended by Paul Pierson (2004, 79).

Public policies have played a leading role in promoting such gradual, cumulative change once they themselves have become established components of the political landscape that in turn influence political activity. As explained by Karen Orren and Stephen Skowronek, “All political change occurs on a site, a prior political ground of practices, rules, leaders and ideas, all of which are up and running” (2004, 20). By the 1980s, particular higher education policies were an established part of the “political ground” encountered by organizations and agencies seeking to pursue their interests and by elected officials, and thus they became highly consequential for political mobilization and strategy.

Scholars have already identified the most general mechanisms through which policies engender the capacity to promote political change. As Paul Pierson has explained, policies may produce “resource effects,” meaning that they contain “incentives and resources that may facilitate or inhibit the formation or expansion of particular groups” (Pierson 1993, 599). These may in turn create “spoils” that induce groups to mobilize for the expansion of benefits (Skocpol 1992, 59), extending resources that lower the costs of political activity, and providing access to policy makers (Pierson 1993, 600–3). In addition, policies act as a source of information and meaning, and as such

they convey “interpretive effects.” Among mass publics, for instance, the degree of visibility and traceability of a government program may influence citizens’ awareness of it and attitudes toward it (Pierson 1993; Arnold 1992). Some policies may convey messages to citizens that promote their active participation in politics, while others fail to do so (Campbell 2003; Mettler and Stonecash 2008; Schneider and Ingram 1997; Soss 1999).

Scholars are just beginning, however, to identify the specific processes through which such resource and interpretive effects materialize and develop and how they influence politics (Hacker, Mettler, and Soss 2007); that is the task undertaken here. *First*, for example, we will see that policies may—by virtue of their design—structure political conflict and the choices open to policy makers in particular ways. Pell grants required policy makers to make costly political decisions in order to maintain them, subjecting them to neglect. Student loans, by contrast, have expanded even when they have been left alone, as students have borrowed more and more to make ends meet; their design has permitted them to grow despite fiscal scarcity and political conflict. *Second*, policies can provide tools to policy makers to use for broader political purposes, such as channeling government funds toward their supporters and withholding them from their opponents, or for obscuring particular redistributive effects. Student loans have been replete with such tools. *Third*, policies may alter citizenship by encouraging participation for some citizens and discouraging it among others. We will see that higher education policies collectively seem to have promoted organizational development among the student loan industry while discouraging it among students and potential students and their families. In sum, such political dynamics have promoted the expansion of student loans, the development of higher education tax expenditures, and the neglect of grant-style policies; these developments have, in turn, exacerbated inequality in college degree attainment.

The chapter highlights a prominent trend in the design of social policy making over recent decades: granting program resources and administrative authority over policies to private actors and third party interests, in a manner that promotes market power. Christopher Howard and Jacob Hacker have both shown that tax expenditures and publicly subsidized benefits from private employers function in this way (Howard 1997; Hacker 2002). I consider student loans also to exemplify this trend: they are administered largely through private institutions, which stand to gain considerable profits in the process; government’s primary role is to guarantee them, paying them back if borrowers themselves cannot, and meanwhile providing lenders with subsidies to offset their costs. (Some parallels with the way quasi-federal agencies Fannie Mae and Freddie Mac guaranteed mortgages are obvious and not without alarming similarities.) Both Howard and Hacker note that policy making through such market-based mechanisms tends to be obscured from

public view, taking a form that Hacker calls “subterranean” (Howard 1997; Hacker 2002, 24). Such designs may render third-party interests more likely to mobilize—advocating on behalf of themselves—while making beneficiaries less likely to do so (Hacker 2002, 56–8). I will offer empirical examination of these kinds of effects by tracing the impact of such policies on group mobilization and its subsequent political influence.

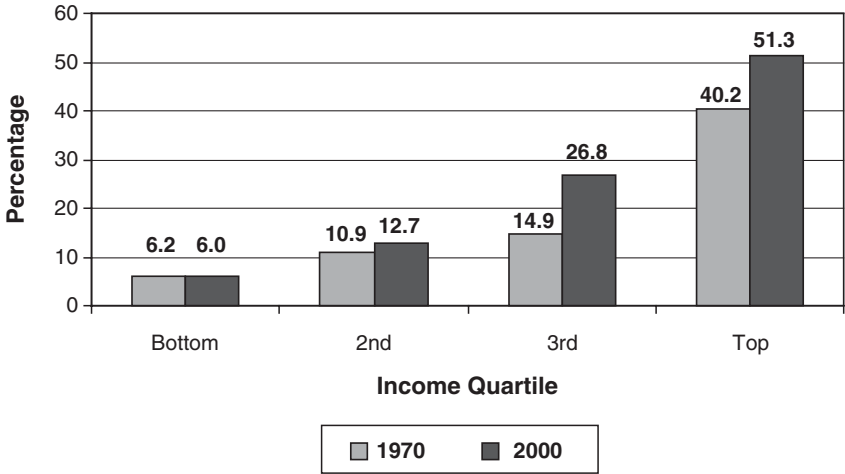
However, such policy feedback effects are not static and fixed across time. Rather, policies that grant authority or resources to third-party interests are more easily dominated by those interests at junctures at which business is privileged. During the 1970s, American policy makers sought to restrict business power more aggressively than they had previously (Sanders 1987; Harris and Milkis 1989). Enthusiasm for that approach waned during the Reagan era of the 1980s, and the tide shifted especially from the mid-1990s through 2006, a period during which policy makers more thoroughly embraced and promoted business and uncritically favored market processes over government delivery. Especially after 1994, the new Republican leadership sought to increase its ties to “K Street,” seeking to place its loyalists in key lobbying positions in order to promote its pro-business interests (Loomis 2007; Confessore 2003). Over time, private actors grew increasingly powerful in directing policy developments, and dimensions of policy feedback became exaggerated in ways that have undercut access to higher education and the promise of equal opportunity in the United States.

## THE DEMISE OF OPPORTUNITY

In the middle of the twentieth century, the United States led the world in expanding access to college. Americans who came of age during this period became the most educated citizens internationally. In recent years, however, the nation has stood still while others have surpassed it in expanding rates of educational attainment. A recent Organisation of Economic Co-operation and Development (OECD) report finds, “the United States has moved from first place for higher education attainment levels among 55-to-64 year olds to fourth place among 35-to-44-year-olds and tenth place among 25-to-34-year olds. Belgium, Canada, Denmark, France, Ireland, Japan, Korea, Norway, and Spain now show higher levels of higher education attainment in the younger population aged 25 to 34” (OECD 2007).

Not only have U.S. college degree attainment rates stagnated overall, but furthermore, their distribution has become increasingly skewed toward those who grew up amidst greater privilege. Today, young Americans who grow up in affluent families attain four-year college degrees at ever-higher rates, but as seen in Figure 8.1, those from families with low-to-moderate





**Figure 8.1.** Estimated Percentage of U.S. Population with Baccalaureate Degree by age 24 by Family Income Quartile, 1970–2002. Source: Mortenson 2005, 61.

incomes are no more likely to complete such degrees than were similarly situated individuals three decades ago (Kane 2004; Mortensen 2005). While generally young people from higher-income backgrounds are more likely to excel in important prerequisites for college, such as grades and scores on standardized tests, controlling for such factors reveals that among individuals with the *same* academic credentials, those from less-advantaged families are less likely to attend college (Kane 2004, 332–5). College completion rates are even more skewed by income than college attendance, and retention of students from low-income families presents a particularly great challenge (Seidman 2005; Tinto 2004; Corrigan 2003). And college costs leave non-affluent students heavily encumbered in debt; average debt levels per student doubled during the 1990s alone.

Worsening their impact, these changes have occurred at the same time as US economic inequality has escalated sharply (Bardolini and Smeeding 2006; Gottschalk 1997; Jencks 2002). In this context, college degrees have taken on greater significance in determining individuals' socioeconomic well-being. As recently as 1980, a male with a college degree earned about 20 percent more than one with a high school degree; today, the differential has grown to 40 percent (Mishel, Bernstein, and Boushey 2003, 146–7). Those lacking bachelors' degrees are far more likely to be unemployed (Ruppert 2003, 3), and they earn considerably less over the course of their lifetimes (OECD 2004, Table A.11.4). Cumulatively, the resulting stratification of American society closely resembles that which existed prior to the civil rights movement, reinscribing racial and ethnic divisions and blocking progress toward greater egalitarianism.

In a sharp reversal after the public policy achievements of the middle of the twentieth century, through which increasing numbers of students from across the socioeconomic spectrum attained college degrees, from the 1980s to the present higher education policies developed in ways that undercut their ability to promote equal opportunity. Whereas previously Pell grants represented the primary form of financial assistance, policy makers neglected to raise benefits to keep pace with inflation, even as tuition rates rose far more quickly. The value of the maximum grant deteriorated from covering over 80 percent of the costs of attendance at a public four-year institution in the mid-1970s to about 40 percent in recent years; as a share of four-year private tuition, it shrank from nearly 40 percent to about 15 percent (College Board 2004; King 2000, 9–10). As tuition rose and grants deteriorated, students increasingly turned to loans to make up the difference, making them the primary form of aid. By the early 1990s, policy makers lifted borrowing limits and waived restrictions on student loans, further promoting their growth (Hearn and Holdsworth 2004; Gladieux and Perna 2005). As of 2002, the average undergraduate completed her studies \$18,900 in debt, up 66 percent from just five years previous (Baum and O'Malley 2003). Low-income individuals have greater difficulty gaining approval for loans and are less willing to borrow; if they do, they are also at a greater risk of not being able to repay and are more likely to default (Price 2004, 82; Fossey 1998a, 3; Fossey 1998b, 13). Overall, therefore, the deterioration of grants and the ascent of loans in the face of soaring tuition have combined to undermine the goal of expanded access to college.

To the extent that policy makers have pursued new policy initiatives during this era, they have primarily taken the form of tax expenditures. Examples include the Hope Scholarship or Lifelong Learning tax credits, which allow families to pay less in taxes if they have spent some portion of their income on college tuition, and the Coverdell Education Savings Accounts, which are not subject to taxes. While these represent a drain on federal revenues, meaning that fewer resources are available to policy makers, they also fail to expand access to college; rather, they channel benefits to students who would attend college regardless (McPherson and Schapiro 1998, 86; Long 2003; Dynarski 2000, 2004). Now we will assess the political context in which policy makers have permitted higher education policies to deviate from their prior goals.

## THE CHANGING POLITICAL CONTEXT: CONSERVATISM ASCENDANT

These changes in higher education policy have emerged during a period of conservative ascendance in American politics (Critchlow 2007; Pierson and Skocpol 2007). While the momentum for this transformation began at the

state, local, and grassroots levels in the 1960s and 1970s, it achieved national prominence in 1980, with the election of President Ronald Reagan. Reagan gained institutional leverage to claim a mandate for more limited government by bringing in a Republican-controlled Senate on his coattails. Democrats regained the Senate in 1986, but lost both chambers to the Republicans in 1994, who were invigorated under the leadership of the Reaganite “Contract with America” Newt Gingrich.

Over this period of time, congressional Republicans not only became the majority party but also they simultaneously grew more ideologically conservative (McCarty, Poole, and Rosenthal 2006). These changes combine a few distinct trends. First, the average ideological distance between elected officials in the two parties widened. By the early 1980s, party members moved rightward in their voting tendencies, and they did so once again from 1994 through 2005. Democrats, by contrast, have retained a fairly steady average ideological placement over time. Second, each party has grown more homogeneous in the positions its members take, as regional differences between members of the same party have declined. In the wake of the enactment of major civil right legislation, the ranks of Southern Democrats thinned considerably, replaced by Republicans. Third, less overlap exists between the parties today than a few decades ago because the moderate Republicans and Democrats of the past, those who often voted as much with the other party as with their own party, have largely disappeared (McCarty, Poole, and Rosenthal 2006, chap. 2).

Using DW-NOMINATE scores, I have tracked members in each of the major House and Senate committees that deal with higher education policy across this time period.<sup>2</sup> Figure 8.2 shows average scores for Democratic and Republican members of the Senate Committee on Health, Education, Labor and Pensions over time. These reveal that the ideological distance between Democratic and Republican committee members had diminished considerably by the early 1970s, around the time of the creation of Pell grants. It grew again the early 1980s and then especially from 2000 to 2005. The House committee changed in parallel ways over the same time period.

The ideological transformations evident in the chambers and higher education committees were also manifest in the shift in leadership of those committees, particularly in the House of Representatives. From 1967 to 1995, the House Education and Labor Committee was chaired by Democrats with fairly liberal orientations, from the more moderate Carl Perkins (NC) to liberals Gus Hawkins (CA) and William D. Ford (MI) (Hook 1984; Cooper 1991). In 1994, when Republicans gained control, moderate Bill Goodling (PA) initially claimed the chairmanship. By 2001, conservative John Boehner (OH) successfully challenged moderate would-be successor Thomas Petri (WI). Committee Republicans supported Boehner in part because they perceived

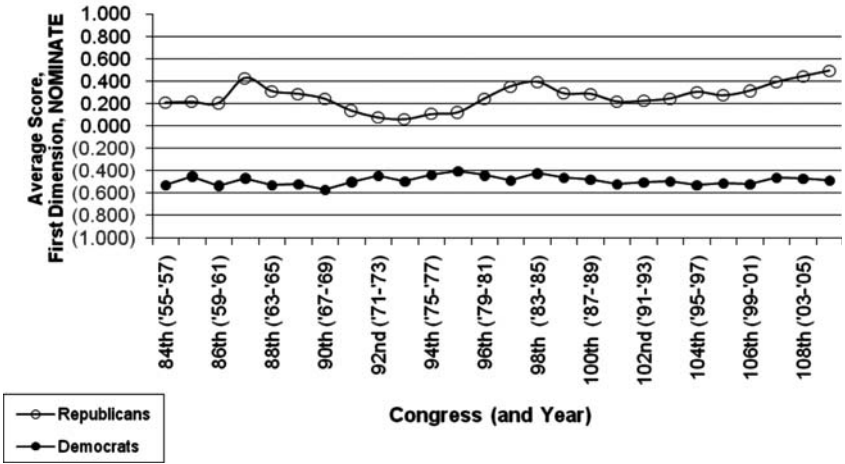


Figure 8.2. Average DW-NOMINATE Scores, Members of the Senate Committee on Health, Education, and Labor and Pensions, 1955–2005, by Party. Note: The range of NOMINATE scores is approximately  $-1.0$  to  $+1.0$ , denoting liberal to conservative.

him to be friendlier to banks and lending agencies (Jeff Andrade, quoted in Burd and Brainard 2001).

These shifts in partisan control, ideology, and leadership set the political context in which higher education policy making occurred during this period. But elected officials also found their choices constrained and directed by existing policies.

### HOW POLICIES INFLUENCED ORGANIZATIONAL DEVELOPMENT

From its origins, U.S. higher education policies prompted organizational development, stimulating interested parties to form associations to represent their political interests or to improve the ability of existing groups to do so. Today, three constellations of organizations in the higher education arena are discernible.

The first and largest constellation, sometimes called the “higher education establishment,” is composed of organizations that represent colleges and universities and the professionals who work in them. These include such major players as the American Council on Education, the National Association of State Universities and Land-Grant Colleges, the National Association of Independent Colleges and Universities, and many others. Most have offices in the same building—the National Center for Higher Education, located at 1 Dupont Circle. Many originated in response to federal policies, from the

Morrill Act of 1862 through the Higher Education Act of 1965, as individuals involved in higher education realized that they needed to respond to the incentives and resources being offered by the federal government. The tidal wave of federal policy making in the 1960s and 1970s prompted such organizations to improve their capacity for “intergovernmental relations.” Yet although these organizations maintain a visible presence on Capitol Hill, their role with respect to policy development in recent decades has been primarily a reactive one (Babbidge and Rosenzweig 1962, 92–113; Parsons 1997; Cook 1998). Further, because they speak on behalf of institutions and professions that themselves benefit from increased enrollments and higher tuition, policy makers are often inclined to dismiss their message.

The second constellation, lenders’ organizations, has emerged more recently, and its development has been spurred directly by federal legislation. The 1972 Reauthorization of the Higher Education Act established the Student Loan Marketing Association, known formally as “SLM” and informally as “Sallie Mae.” In order to encourage lenders to make loans to students, policy makers set up Sallie Mae as a government-sponsored enterprise that would function as a secondary market for student loans, thus freeing lenders to increase the volume of student loans. Today, Sallie Mae is only the most prominent of a multitude of lending organizations that emerged either directly in response to the creation of Guaranteed Student Loans or, in the case of banks already existing, diversified their portfolios to include the lucrative student loan business.<sup>3</sup> Over time, as lending became more lucrative, lending organizations became political actors in their own right. Already in the 1980s, two trade associations represented the lenders’ interests in Washington, D.C.: the Consumer Bankers’ Association, created in 1919, which represents its members on a wide array of banking issues; and the National Council of Higher Education Loan Programs, established in 1967, which is a coalition of guaranty agencies, secondary markets, lenders, loan services, and collectors. While the interests of these organizations may at times overlap with those of the general public, students, and borrowers, their participation in politics is aimed primarily at promoting lenders’ interests, namely in making financial profits by providing student loans.

Yet, although higher education policy stimulated considerable development among these two constellations of organizations that represent vested interests, it has done little to prompt associational activity by ordinary citizens, such as current, former, or potential students and their families. Only two membership organizations exist in this area today. The U.S. Student Association predated the tidal wave of federal higher education policy, having been established in 1947; it exists still. The U.S. Public Interest Research Group, founded in 1983, only began organizing and lobbying on higher education policies in the early 1990s. Like many other

federated membership organizations, these groups have suffered from declining membership in recent decades (Skocpol 2003; Interview, 2007). Some new advocacy organizations have been founded in recent years, such as the New American Foundation and Institute for College Access and Success, but these lack grassroots members and lack much clout. Ordinary citizens thus lack much of an organizational voice with respect to higher education policy.

This begs the question, why have higher education policies *not* fostered the development of more and stronger citizen organizations? Some other generous social policies have been known to prompt political mobilization among beneficiaries. The GI Bill's education and training provisions, for example, prompted beneficiaries to join a wide array of civic organizations at significantly higher rates than veteran non-beneficiaries (Mettler 2005). Social Security receipt has spurred recipients' active involvement in the American Association of Retired Persons (AARP), which itself has lobbied extensively to protect Social Security (Campbell 2003).

While existing data is insufficient to yield more than a speculative answer at this point, it suggests that contemporary financial aid policies may lack the mobilizing capacity of these other policies. The National Student Loan Survey of 2002 found that borrowers consider the loans to be extremely valuable, with the vast majority ranking them as extremely or very important in allowing them to continue their education after high school (Baum and O'Malley 2003).<sup>4</sup> Yet, it is unclear whether recipients viewed the loans as a government benefit and attributed their value to government, as did beneficiaries of the highly visible, direct educational benefits of the GI Bill in the postwar era (Mettler and Welch 2004, 661-3). The obscure delivery of student loans, mingled with institutional sources of aid and administered by banks and higher education officials rather than government itself, may make government's role less than clear. If so, it may suggest that loan usage does little to foster civic engagement.

Using the Citizen Participation Study of 1990, Kay Schlozman, Sidney Verba, and Henry Brady explored such possibilities. They found that generally beneficiaries of non-means-tested government benefits became considerably more politically active in relation to those benefits than recipients of means-tested benefits, but that beneficiaries of guaranteed student loans proved to be an exception. Such individuals were much less likely than beneficiaries of other non-means-tested programs to make campaign contributions in relation to the program or to belong to organizations concerned with the program, and they were even less likely than beneficiaries of mean-tested benefits to make voting decisions in relation to the program (Schlozman, Verba, and Brady 1999, 439). This may help explain the low levels of organizational involvement among current and former loan beneficiaries.

In short, higher education policy has fostered an unequal universe of organizations. Generally, it has provided *strong* incentives to lending organizations, actually establishing Sallie Mae and expanding business opportunities for existing financial institutions. It has offered *moderate* incentives to traditional representatives of colleges and universities and to the professionals who work in them. By contrast, it appears to have *failed* to generate significant new mobilization among citizens' groups, those that might represent students, borrowers, and other citizens. Now we will consider how preexisting policies combined with the political context to shape the recent history of policy development in this area.

### THE INTERPLAY OF POLITICS AND POLICY FEEDBACK

While higher education policies began to influence organizational development soon after their enactment, their subsequent impact on political activity and the policy process did not occur immediately. Rather, as we shall see, the timing of such effects depends on the interplay between the gradual unfolding of feedback effects and the unpredictable dynamics of political change. Over this period in time, American politics generally shifted from being dominated by liberalism in the 1960s and early 1970s, to fiscal conservatism in the 1980s, then to a market-promoting conservatism in the 1990s to 2006, and finally toward a resettling period at present. In this context, higher education policy feedback effects have commenced in four broad stages: (1) they were set in motion, 1964–1972; (2) they developed slowly and quietly, 1974–1989, with visible effect gradually surfacing by late in the period; (3) their momentum grew more quickly, 1990–2006, a period during which they yielded increasing returns and eventually reached the point of overreach; (4) overreach prompted modest backlash, and a mitigating of effects, 2006 to the present.

Ronald Reagan's 1980 presidential victory turned the tide in higher education policy, ending the long mid-century period of innovation and reform and putting its proponents on the defensive. Previously, when the landmark higher education policies were created, many moderates of both parties held office in Congress, and policy making was characterized by a relatively high degree of bipartisan support. By contrast, Reagan came into office advancing severe cuts, prompting congressional Democrats to go on the defensive to protect their party's achievements of past decades. The 1980s were marked by annual budget skirmishes as the Reagan administration, amidst rising deficits, sought to reduce Pell grant spending, while Democrats—pointing to rising tuition—sought increases. The compromise between these positions left Pell grants dwindling in real terms. With regard to student loans,

Republicans—in that era still true proponents of fiscal conservatism—proposed cutting subsidies to lenders, while Democrats—still believing as they had in 1972 that financial institutions might not make sufficient loans to students without encouragement from government—defended subsidies. Nonetheless, officials in both parties more easily found common ground on the expansion of student loans than on grants, as the former offered the “path of least resistance” (Gladieux and Hauptman 1995, 19).

Throughout this era, an analyst could easily have missed the impact of the policies on organizational development because it was not yet pronounced. Policymakers of both parties gradually became aware that student lending had become a highly lucrative business: in banks’ profits, it ranked third behind only credit cards and commercial and industrial loans (CQ Almanac 1991, 368). Still, the lenders had not yet become politically active in visible ways. Meanwhile, the organizations of the higher education establishment reliably sought to protect established policies, but they were not sufficiently powerful to shift the prevailing currents. In retrospect, the lack of strong organizations of citizens to protect higher education policy is striking. When such policies were established, labor unions and other federated membership groups had rallied behind them, but now these groups were largely absent, and the few student organizations struggled to maintain members. Yet, scholars had not exposed the sharp decline in memberships and activity of civic organizations, and their lack of involvement went largely unnoticed (Putnam 2000; Skocpol 2003).

Still, the growing largesse of the lenders increasingly disturbed many lawmakers, and by the late 1980s, some began to advocate “direct lending,” an arrangement that would circumvent lenders by being run directly through the U.S. Internal Revenue Service (CQ Almanac 1992, 441). Although in 1992 they managed to include only provisions for demonstration projects for the approach in legislation, one year later newly elected President Bill Clinton sought to transform student loans entirely by completely replacing the current system with direct lending. The controversy that ensued can be identified as the political moment when lenders first mobilized in full force to protect their profit-making interests.

The Consumer Bankers’ Association took the lead in the fight, bringing representatives from more than 90 banks from all over the country to Washington, D.C., and sending them forth on Capitol Hill with booklets listing members of Congress serving on committees responsible for direct-lending legislation and tips on how to approach them (Jaschik 1993a). Meanwhile, Sallie Mae launched a major public relations campaign (Zook 1993). Some lending organizations attempted to promote campus activism to oppose direct lending, even hiring students to initiate such efforts (Jaschik 1993b). Ultimately, Congress enacted a weakened version of Clinton’s plan, permitting



the adoption of direct lending but only at a slower pace and on a more limited basis than its proponents had hoped (CQ Almanac 1993, 410–11).

The Student Loan Reform Act, as the legislation was called, represented a victory for Democrats due to various provisions, yet it exacerbated the elevation of loans and the demise of grants, thereby diluting further the capacity of government policy to expand access to college. The direct-lending debates had also redrawn the lines of political conflict in higher education policy, ending the fragile bipartisanship that had survived the Reagan era and signaling the emergence of lenders as increasingly powerful political actors.

The policy feedback effects of student loan policy came to fruition in tandem with the ascendance of conservative politics that followed the midterm elections of 1994 and especially the election of George W. Bush in 2000. Unlike Presidents Reagan and George H. W. Bush, the congressional Republicans of this period focused little on restraining spending; they aimed instead to transform the purposes of government and to reward key allies in the business community. Whereas their predecessors in the 1980s had tried to scale back student loans, by the early 1990s Republicans ceased objecting to them; by the later 1990s, they promoted expanded lending and changes that enhanced lenders' profits. Now it was Democrats who sought to limit subsidies. Remarkably, within just a decade, congressional Democrats and Republicans had traded positions on the issue.

The 1998 Reauthorization of the Higher Education Act epitomized the shifting landscape of higher education politics. The bill featured substantial subsidies to banks to guarantee their rate of return on student lending.<sup>5</sup> As it journeyed through Congress, the Consumer Bankers' Association lobbied extensively, threatening that its members would cease lending unless Congress applied a more favorable subsidy formula that would boost their profits. After months of partisan wrangling, House Chairman Buck McKeon and Ranking Minority Member Dale Kildee worked out a compromise with the Clinton administration. Illustrating the partisan policy reversal on the issue since the 1980s, the White House later complained that the provision to which they had agreed—assuring lenders profits of 7.96 percent—was too generous; it was Republicans who had pushed for such rates (CQ Almanac 1998, 9-3-9-14).

Meanwhile, policy makers had to find the hundreds of millions of dollars required to finance the increased subsidies to lenders, and in a little-noticed development in conference committee, they placed the burden on borrowers in crisis. The final bill included a provision stating that borrowers who declared bankruptcy could no longer discharge their student loan debt (CQ Almanac 1998, 9-12-9-13). This change rendered student loans comparable to a very small category of debts—such as child support payments—that unlike credit card debt and most other varieties, cannot be escaped even

under the dire circumstances of bankruptcy. This critical policy change for which ordinary Americans would bear the cost was enacted in the absence of a public outcry of opposition.

Rather, even Democrats, who were on the defensive given Clinton's status at that time, rallied in support of the bill on final passage. As McKeon explained, "They want a signing ceremony badly. If you were President Clinton, would you want to sign a higher education bill or talk about Monica Lewinsky?" (CQ Almanac 1998, 9-12.)

In the same period of time, the Clinton administration took the initiative on another policy initiative that similarly aided lenders and occurred without public scrutiny: it promoted the privatization of Sallie Mae. As one long-term lobbyist on higher education issues explained, privatization represented a popular political strategy, Clinton wanted to get credit for some aspects of it, and Sallie Mae appeared to be a reasonable locus for such efforts (Personal interview, 2007). Sallie Mae executives had been urging privatization since the fights over direct lending in the earlier part of the decade. Thus, in 1996 policy makers permitted the government-sponsored enterprise—which had become tremendously profitable, worth \$45 billion and with stocks traded on the New York Stock Exchange—to reorganize as a private company (CQ Almanac 1996, 7-20-7-21; Zook 1993). Remarkably, they neglected to stipulate that Sallie Mae—which owed its existence and profits to government activity—should make substantial contributions back to the federal budget.<sup>6</sup>

Riding on the anti-tax wave, Clinton also took the initiative to usher in new higher education policies in the form of tax breaks to offset families' college tuition payments. Here again, none of the mass-based organizations that address higher education policy had mobilized to advocate for these new tax expenditures. Rather, it was Clinton himself who, in the midst of his 1996 reelection campaign, proposed tuition tax breaks as a means to counter opponent Bob Dole's promise to cut taxes (Crenshaw 2001). After his victory at the polls, Clinton delivered, signing into law the Taxpayer Relief Act of 1997, which included the Hope Scholarship and Lifelong Learning tax credits, each of which allows families to deduct up to \$3,000 from their taxes.

These new credits, enacted with little fanfare, quickly offered a greater amount of total aid than Pell grants—remarkable after all of the years of unsuccessful struggle to increase spending for that program. They did so, however, by placing an immense drain on federal resources. Further, instead of expanding access to higher education, such policies permit students who would attend college regardless to attend more expensive institutions, and they give colleges an incentive to increase tuition prices (Long 2003; Dynarski 2000). Once the model of tax breaks for higher education had been established, conservatives quickly expanded it, with additional

such provisions added to the Tax Relief Act of 2001 and epitomized by the Coverdell Education Savings Accounts of 2002. Such changes illustrate how by the early years of the twenty-first century, expanding access to college had disappeared from the policy agenda.

### POLICY FEEDBACK COMES FULL CIRCLE

While higher education policy no longer advanced equal opportunity for Americans, it certainly promoted profits for lenders. As tuition soared and loans proliferated, Sallie Mae, itself a creation of government, had become the nation's largest student loan company. It was a considerable enterprise: by 2007, it managed more than \$126.9 billion for over 10 million borrowers and it employed 12,000 individuals. Even after privatizing, Sallie Mae continues to benefit from government subsidies and the government-guaranteed status of its loans (*Inside Higher Ed* 2007). A CNN report noted that between 1995 and 2005, Sallie Mae's stock returned nearly 2,000 percent, compared to the S&P 500's average 228 percent gain. Between 1999 and 2004, CEO Al Lord received \$225 million in total compensation (McLean 2005). As of 2006, the next CEO, Thomas J. Fitzpatrick was the most highly compensated CEO in the nation, according to the *Washington Post*, gaining compensation (salary, bonus, stock awards, etc.) of approximately \$37 million (*Washington Post* 2006).

As the volume of student loans grew, lenders grew increasingly active politically. First, they created additional associations to represent their interests in Washington, D.C. In the midst of the direct lending battles of the early 1990s, they created two new organizations: the Education Finance Council and the Student Loan Serving Alliance. Then, in 2000, they established America's Student Loan Providers. These organizations stood poised to defend them in subsequent policy making.

Meanwhile, lenders became increasingly visible in donating large sums of money to political campaigns. Such financial activity takes several forms, including: first, donations by corporate Political Action Committees (PACs) to specific candidates or political parties; second, "soft money" donations by organizations that may focus on issues in elections but cannot be channeled through campaigns or parties; and third, individual (as opposed to corporate) political donations—for example, by CEOs and board members and their family members—that take either of these forms. Among these corporate forms of financial influence, the "hard money" donations—through PACs—are easiest to track. Sallie Mae only created its PAC in the late 1990s, but by 2006 it had already emerged as the top donor within the entire finance and credit industry, donating \$952,295, with amounts nearly equally

split between the Democratic and Republican parties. Fellow lender Nelnet, Inc., ranked fifth, giving 72 percent of its \$590,100 to Republican candidates (Center for Responsive Politics 2007).<sup>7</sup> “Soft money” contributions are more difficult to follow, but to the extent that records are available for the last three election cycles, it is evident that student lenders have also become increasingly generous in that domain. Relative to all other finance and credit companies, Sallie Mae ranked as high as fifth and as low as eighth in the generosity of its soft money contributions. In 2002, it contributed \$552,000 in soft money, and was joined by several other student lenders (Center for Responsive Politics 2007).

Campaign finance laws permit individuals to contribute up to \$95,000 overall in a single election, spreading it around between PACs, parties, and candidates (Currinder, Green, and Conway 2007). Well in advance of the creation of Sallie Mae’s PAC, company leaders made contributions on an individual basis.<sup>8</sup> Over the period from 2001 to 2006, Sallie Mae CEO Albert Lord made contributions totaling \$262,161.<sup>9</sup> Lord’s spouse, Suzanne Lord, who is self-described in Federal Election Commission records as a “homemaker,” herself donated \$145,291 in hard money between 1999 and 2007, giving \$25,000 directly to the Sallie Mae PAC, \$75,650 to the Republican National Committee, and smaller amounts to Republican leadership PACs and state-level party committees (Center for Responsive Politics 2007).<sup>10</sup>

Some of the organizations advocating student loan reform have pointed to these PAC and personal contributions as clear attempts to buy political influence. The New American Foundation, for example, exposed Nelnet for contributions in 2006 that appeared especially instrumentalist. That year, the lending organization made the single largest donation received by the National Republican Congressional Committee, and three of its top executives each gave over \$80,000 on one single day; these contributions followed an audit of Nelnet by the Inspector General at the Department of Education, who found that the organization had illegally claimed \$1.2 billion in subsidies (New America Foundation 2006). On the one hand, such contributions appear fairly paltry when viewed in light of the vast total amounts of money spent in contemporary campaigns. Consider, for example, that while former House education committee chair and Majority Leader John Boehner received \$1,965,985 in PAC contributions in 2005–06, the \$20,000 he received from Nelnet and Sallie Mae PACs combined represents just one percent of those donations. On the other hand, accounting for both PAC and individual contributions combined reveals that student lenders figured prominently among Boehner’s most generous donors: Nelnet ranked fourth, giving \$19,600, and Sallie Mae seventh, giving \$16,000 (Center for Responsive Politics). Similarly, for subsequent House Committee Chair Buck McKeon, Sallie Mae represented the largest single contributor (\$12,000);

tying for second place were a large number of financial and business organizations including Nelnet, American Bankers Association, and others (Center for Responsive Politics, 2007).

Do such contributions directly influence the policy-making process? Leaders of student organizations and some in the higher education establishment associations believe that they do. Several I interviewed told me a story, also reported in the *Chronicle of Higher Education*, about House Committee Chair John Boehner, who had received \$172,000 from student lenders in 2003 and 2004. In 2005, soon after Hurricane Katrina, Republicans put forward a budget reconciliation piece that angered lenders by imposing stringent new origination fees on loans as a means of making more government funds available for rebuilding New Orleans and the Gulf coastal region. At this juncture, in a speech at the annual meeting of the Consumer Bankers' Association, Boehner assured them, "Know that I have all of you in my two trusted hands... I've got enough rabbits up my sleeves to be able to get us where we need to" (Burd 2006; Personal Interview #7, 2007). Shortly thereafter, the final bill emerged, and it contained sharply reduced penalties for lenders as well as some other features they had been seeking.

Lending organizations have also engaged in lobbying. Many lenders employ their own lobbyists "in-house": in 2006, College Loan Corp maintained twenty-six registered lobbyists; Sallie Mae, eighteen; and the Education Finance Council, eight. In addition, some lenders employ other lobbying firms to advocate on their behalf.<sup>11</sup> As shown in Table 8.1, even accounting only for its in-house lobbying, Sallie Mae ranked third that same year among all finance and credit companies in terms of spending on lobbying. The student lender spent less than Visa and HSBC Bank, but more than MasterCard and American Express (Center for Responsive Politics).<sup>12</sup> By 2007, it outspent all other finance and credit companies in lobbying.

The amount Sallie Mae spends on lobbying appears to be related to the timing of the reauthorization of the Higher Education Act and other policy developments. Sallie Mae spent more in 1998, the last time the Higher Education Act was reauthorized, than it has in recent years until 2007. In 1998, it spent \$3.66 million, employing seven lobbying firms in addition to its own in-house team. The industry achieved the passage of the new bankruptcy provisions, which have enabled it to collect considerably more on defaulted loans and fees associated with them. Then, in 2007, in anticipation of a new reauthorization, it spent \$5.01 million (Center for Responsive Politics 2008).

By contrast to the lending organizations, neither the groups representing universities and professionals nor those advocating on behalf of students engage in either campaign financing or extensive lobbying. The currency of the student groups is that they speak for students, though their capacity

**Table 8.1.** Top Five Spenders on Annual Lobbying by Finance/Credit Companies, 2006–2007

Company	Amount		Amount	
	Spent, 2006	Rank, 2006	Spent, 2007	Rank, 2007
Visa, USA	\$4,829,687	1	\$3,920,000	2
HSBC North America	\$3,440,000	2	\$1,480,000	4
Sallie Mae	\$1,620,000	3	\$5,014,700	1
MasterCard International	\$1,540,000	4	\$2,310,837	3
American Express	\$1,460,000	5	\$1,320,000	6

Source: Center for Responsive Politics, Lobbying Database.

to mobilize this constituency has been unimpressive compared to that of the AARP or labor unions. The associations representing the higher education establishment pride themselves on presenting information and ideas to elected officials, but they seem to have limited receptivity in recent years (Mettler 2007). The lending organizations, on the other hand, have gained a far more audible political voice over the past decade and a half as they capitalized on ascendant forms of political influence and did so in a political environment that was particularly amenable to such involvement. Meanwhile, federal higher education policy waned in its capacity to assist those who, by virtue of their socio-economic background, were not already destined to attend college.

## THE SHIFTING TERRAIN OF HIGHER EDUCATION POLICY

Between 2004 and 2006, investigative journalists and others began to expose the intense, mutually supportive relationship that had developed between lenders and conservative politicians. They revealed the stunning profits enjoyed by Sallie Mae and other lenders and also their extensive efforts at political influence (e.g., Burd 2004; CBS 2006). Once Republicans lost control of Congress in the 2006 elections, Democrats seized on the issue (Burd 2007). When the new Congress convened in January 2007, leaders unveiled legislation aimed to cut interest rates on student loans and to increase Pell grants, financing the changes by increasing lenders' costs to government and reducing their subsidies (Schema 2007). Putting the student loan industry even more on the defensive, in February 2007 New York Attorney General Andrew Cuomo launched an investigation into the lending practices of Sallie Mae and several others, alleging that they maintained improper relationships with institutions of higher education. Many universities had endorsed "preferred lenders," promoting them to their students; those lenders, in

turn, offered perks to financial aid officers and kickbacks to their institutions (Bosman 2007; Dillon 2007). Reports about the U.S. Department of Education, one of which was issued by the agency's own inspector general, indicated that the agency had long "looked the other way" regarding such practices and that staff aided institutions even when they circumvented federal rules regarding lending (U.S. General Accounting Office 2007; Glater 2007; U.S. Department of Education, Office of Inspector General, 2006). Such practices appear to have been facilitated by political appointees of the Bush administration, many of whom are former staff of the lending agencies (Basken 2007).

These changing political circumstances enabled Congress to enact bills that diverged quite considerably from the policy approach of past years, suggesting that the lenders' star—though by no means being extinguished—would not burn as brightly as it had in the previous decade and a half. In 2007, Congress produced the College Cost Containment and Access Act of 2007, a bill that reduced lender subsidies and used the savings to increase student aid. In 2008, in reauthorizing the Higher Education Act, it raised Pell grants considerably and imposed new regulations on colleges in their relationships to lenders. President George W. Bush signed both measures into law. The new measures would not immediately restore the promise of equal opportunity that had been conveyed by the higher education legislation of the mid-century, but they did offer Americans greater assurance than they had received in several decades that lawmakers were attempting to do so.

## MAKING OPPORTUNITY SUSTAINABLE

Still present in the memories of many American families—those in the middle to upper income ranges—is an era in which their members of an older generation became the first to attend college. Those individuals typically found opportunity provided to them as their own abilities and hard work met with generous public policies or sufficiently funded public institutions of higher education. Once they took the leap and achieved a college degree, the subsequent course of family history unfolded differently, as children and grandchildren also attended college and some pursued graduate degrees, taking such opportunities increasingly for granted.

For those families in which no one gained those opportunities in the mid-twentieth century, however, the chance of doing so in recent years has been slim. As a result, the American dream of "equal opportunity" has little real meaning. Their experience, increasingly, is that the United States features a class-based society in which upward mobility is extremely difficult, if not impossible, to achieve.

This case of higher education policy illustrates the enormity of the challenges of sustainability for American government. Policies enacted at a particular point in time do not simply maintain themselves and continue to offer the same results that they did at the outset. Changing social and economic circumstances may alter their effectiveness, and their own policy designs may render some more easily sustainable than others. In addition, established policies vary in the extent to which they foster the development of interested parties who will defend and promote them in subsequent rounds of development. These policy feedback effects, as we have seen, have become important dynamics in shaping the future development of the American state. New political circumstances can fuse with feedback effects to transform policy purposes in ways that never could have been imagined by the original creators: indeed, the architects of Sallie Mae in 1973 certainly did not foresee that within a few decades, the agency would yield huge corporate profits and develop a cozy, mutually beneficial relationship with conservative Republican leaders (as did other government-sponsored agencies in the mortgage lending business). Restoring the promise of equal opportunity to acquire a college degree today—a principle that has become critical to Americans' sense of legitimacy of the system—will require lawmakers to devote significant attention to how government can help facilitate such goals amidst transformed circumstances.

## NOTES

1. A full explanation of stalled progress would include attention not only to *affordability*, which is the focus here, but also to the lack of *preparedness* for college among many low-income youth, circumstances emanating from social inequality generally and disparities in K-12 education in particular, and the inequality in access to *information* about financial aid and ways in which current procedures disadvantage those from families with lower socioeconomic status.

2. The DW-NOMINATE scores, compiled by political scientists Keith Poole and Howard Rosenthal, offers a measure of ideological distance between Senators and House members of the U.S. Congress from 1789–2004. The data are available at: <http://voteview.com/dwnomin.htm>.

3. Examples of those that focus on student lending are Collegiate Funding Services, which is part of Chase Bank; College Loan Corp; Education Lending Group; EdAmerica; Nelnet; Northstar; and Student Loan Xpress. Banks that feature student loans as major components of a diversified business include Bank of America, CITI Group, Citibank, Citizens Bank, and numerous others.

4. Forty-six percent responded “extremely important,” and 24 percent, “very important.” Baum and O’Malley 2003, 13.

5. Certainly the Democrats managed to include some features in the bill that they could defend: lower interest rates on student loans, modest increases in Pell grants (though rates still lagged well behind even their real value in the 1970s), and various perks such as forgiveness of up to \$5,000 in loans for borrowers who taught for five years in underserved areas.



6. Some who testified at a hearing on this subject in 1995 promoted the adoption of substantial offset fees and exit fees. See U.S. Senate, Committee on Labor and Human Resources, Hearing on Privatization of Sallie Mae and Connie Lee, 20 June 1995.

7. I have relied on two web sites to examine the public record on campaign financing: that of the Federal Election Commission, available at <http://www.fec.gov/>; and the more user-friendly site of the Center for Responsive Politics, <http://www.opensecrets.org/about/index.asp>. My further research in this area will draw on CQMoneyLine as well, at: <http://moneyline.cq.com/pml/home.do>

8. Lawrence Hough made frequent contributions while CEO in the 1990s; I have yet to trace back further into FEC records.

9. The way in which he distributed them appears to reflect a bipartisan approach: he gave money not only to the Sallie Mae PAC, but also to both Democratic and Republican Congressional Committees, to Republican Leadership PAC "Freedom Project," and to numerous individual candidates for Congress. His successor, Thomas Fitzpatrick, by contrast, offered funds to a wider array of Republican PACs, including the 21st Century PAC and Federal Victory Fund, but refrained from contributing to Democratic committees (Center for Responsive Politics 2007).

10. Any of these donors can make unlimited "soft money" donations as well, but those cannot be easily tracked.

11. In 2006, for example, Sallie Mae spent \$1.6 million itself on lobbying, and also employed several other firms to lobby on its behalf, including Clark and Weinstock and ML Strategies.

12. Data on lobbying is less accessible than hard money campaign contributions, but the OpenSecrets.org web site has a useful lobbying database from which these data are derived.

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## Moving Feminist Activists Inside the American State

### The Rise of a State-Movement Intersection and Its Effects on State Policy

*Lee Ann Banaszak*

For all these years, Catherine East of the Women's Bureau of the Labor Department has been the pivot of the feminist underground in Washington spreading from government agencies to Capitol Hill. Midwife to the birth of the women's movement, she has served its development with research, intelligence, and alerts to sabotage or strategic possibilities that the movement itself would never have been able to afford. She never violated any Government Secrets Act, but if it had been known by her superiors in the Women's Bureau how actively she was supporting and servicing the organization of an independent, activist women's movement, she would have been fired.

—Betty Friedan (1998, 95)

#### INTRODUCTION

In her praise of Catherine East, Betty Friedan points to the existence of a group of feminist activists spread throughout government institutions in Washington, D.C. These activists worked from *inside* the state as feminists to alter the policies of the American state on a number of issues important to feminists, including the enforcement of equal pay laws, building opportunities for women to play sports, and the creation of foreign policies that focused on women. Feminist activists inside the state were important actors in achieving all of these policies. They championed important sex discrimination cases through the legal system and organized protests against the Equal

Employment Opportunity Commission (Banaszak n.d., 2005; Paterson 1986; Pressman Fuentes 1999). They marshaled feminist organizations in support of Title IX, providing them with important information that allowed outsider feminists to demand the regulations that would become the backbone of women's equity in sports (Banaszak, n.d.; Millsap 1988). They worked with members of Congress to encourage foreign policy legislation that would include a specific focus on women (Fraser 2004; Tinker 1983). While none of these policies fundamentally altered the nature of the American state, they had enormous consequences for the gender order of the United States (see Ritter 2006 for the concept of the gender order), even as they left untouched its existing racial and class hierarchies. For example, these policies transformed norms of the relationship between women and work, yet they had fewer effects on stereotypes of poor women or women of color.

The networks of feminist activists inside the American state that helped render these changes were not a result of the mobilization of the women's movement during the mid-1960s. Rather, these networks of feminist activists were already located in many places in the federal government in 1960; indeed, networks of feminist activists inside the state helped to mobilize the women's movement through their activism (Banaszak n.d.; Duerst-Lahti 1989; Pedriana 2004). The existence of this intersection between the women's movement and the state was a major advantage to the movement, as it had supporters already well placed to take advantage of the burgeoning interest in feminist policies and the increasing mobilization of women and allies at the beginning of the second wave. Skrentny (2006) argues that gender equality was less legitimate than racial equality in the American state of the early 1960s. But what he misses is that the existence of feminist activists inside the state allowed the women's movement to quickly alter the playing field.

This chapter examines in broad strokes the historic roots of feminist activists in the state and their consequences for the development of the American state. I will argue that three factors were crucial to these women entering government service and developing the social networks that allowed them to mobilize as feminists. First, large-scale changes in women's education and employment created a pool of working professional women who chose government service as a means of pursuing the careers they desired. Second, changes in the nature of the U.S. bureaucracy—both permanent in the move toward a civil service, and temporary, as when government burgeoned during wartime—created opportunities for professional women within the state. Third, the continued activity of feminist organizations throughout the 1930s, 1940s, and 1950s provided extensive networks of women activists, allowing women bureaucrats to participate in networks of activism even prior to the mobilization of the second wave in the 1960s.

The consequences for the American state were not just a change in policies toward women. The activism of feminist activists in the state illustrates

the contradictions that are inherent in the American state. Like all individuals who occupy positions within the state, feminists bring with them interests that shape policies and their implementation. While state theorists have focused largely on class control of the state (see for example Miliband 1969), in fact, there are a number of other intersecting biases within the American state (see, for example, King and Smith 2005 on racial hierarchies, and Ritter 2006 on the gender order of the Constitution). Even though feminist activists within the federal bureaucracy focused on policies that often reinforced the existing class bias of the state, they also introduced a source of contradiction as these state actors injected feminist ideology into their state actions creating conflict within the state on issues of gender.

In this chapter, I begin by conceptualizing feminist activists within the state as a state-movement intersection and discussing the role that the historical development of state and society can play in allowing other interests into the state. The following three sections describe the historical developments that contributed to the creation of a network of feminist activists in the federal bureaucracy, focusing specifically on how this set the women's movement apart from the civil rights movement, which lacked the structural opportunities for a network inside the state during its initial mobilization. I then briefly discuss how feminist activists in the federal bureaucracy were essential to the mobilization of the women's movement, and to many of its lasting achievements. I conclude with a discussion of how these developments help us understand both the disproportionate response to middle- and upper-class interests, as well as some of the contradictions inherent in the actions of the American state.

## CONCEPTUALIZING FEMINIST ACTIVISTS INSIDE THE AMERICAN STATE

State scholars have generally been less concerned with the entrée of groups into parts of the state, in large part because the literature on the state focuses on state interests as independent from those of individual groups. Seen as a corrective to pluralist theories that do not acknowledge the state as an independent entity or the existence of separate state interests, where theories of the state deal with societal interests the debate has largely focused on whether class interests drive state actions. Yet, society has many other social cleavages that create inequality such as race and gender, and these intersect rather than reinforce class interests. As such examinations of the dominance of class interests within the state do not speak to the role of other interests. In this chapter, I examine the role of gender interests by focusing on feminist activists inside the state. I see this network of feminist activists as representing an intersection between the feminist movement and the state.<sup>1</sup>



While the state as a whole has specific interests, it is also complex, composed of many institutions (Miliband 1969). Many of these institutions have additional interests, resulting in “a set of pluralistic goals” (Zald and Berger 1987[1978], 218) that can lead state actors to act in opposition to each other (Rockman 1990). For example, state actors have interests both in the maintenance of the state as a whole and in furthering the particular part of the state they inhabit (Carpenter 2001; Evans, Reuschmeyer, and Skocpol 1985). In the United States, the later interest may lead state actors to respond to some societal interests, depending on the specific array of electoral and political institutional arrangements. Moreover, these interests develop in a historical process where they are redefined, refined, augmented, or combined through continual contestation within society, between state and society and between different constituent parts of the state (Pierson 1993; Rockman 1990). Thus, any particular state agency, department, bureau, or office has a specific set of historically defined interests that may be closer or far away from the interests of a social movement. Moreover, the individuals who occupy positions within the state also bring with them interests that can shape policies and their implementation.

The complex nature of the state and the multiple, potentially conflicting interests that are connected to state actors allow intersections between movements and states to play a role in the creation of state policies. Not only can such intersections “capture” particular parts of the state, but movement activists within the state may influence particular policies in ways that, while not contradicting elemental state interests, may nonetheless have large influences on the gender inequalities perpetrated by state policies. While the effects on state interests are relatively small, they may be fundamentally important in creating and maintaining social change (Skrentny 2006, 2002). For example, the introduction of Title IX, a law requiring equity in education, and the rules that implemented this law did not change the essential character of the state. Yet, the specific provisions of the law and the rules that implemented it are vitally important in fundamentally altering not only intercollegiate sports, but the sports industry and our gendered conceptions of athleticism.<sup>2</sup> Thus, as Zald and Berger (1987 [1978], 200) note in discussing movements within other bureaucracies: “Often . . . insurgency operates in gray areas where organizational behavior has not been explicitly prescribed,” allowing the movement activists to “establish their own definition of the situation or shift the weighting of priorities.” The complexity of the state, along with the ability of state personnel to interject other interests, undoubtedly leads to contradictions within the state in administration of policy, even as it allows the interjection of some social movement goals.

If the personnel of the state can have such influence, who is recruited into these positions is of critical importance. As explained below, feminist activists gained entrée into the state through the confluence of three factors—specific

historical or demographic trends in the United States that created a pool of well-educated, middle-class women seeking employment; the needs and interests of the state that led it to recruit these women; and the influence of the first wave of the women's movement, which maintained a network among the women who were recruited, even as it also pushed the state to incorporate women at policy-making ranks. But it is important to recognize the limitations of these factors. Feminist activists recruited into the state were middle-class and as such they continued to represent their class interests in the demands that they made. They were also largely white, which means that the racial order of the U.S. government remained undisturbed and that the feminist activists inside the state effectively represented white women's interests. Indeed, recruitment of African Americans into the federal bureaucracy was considerably different. As a result, as the women's movement mobilized during the mid-1960s, networks of feminist activists were already located in many places in the federal government, while the same was not true for African Americans. The existence of this intersection between the women's movement and the state was one of the major advantages enjoyed by the movement; consequently, feminist activists within the state played a major role in changing the gender order of the state during these crucial years.

## THE CHANGING NATURE OF WOMEN'S EDUCATION AND EMPLOYMENT

Women could not have achieved a significant presence in the federal bureaucracy had they not experienced substantial gains in education and employment. Of particular importance for feminist activists within the state was women's experience within the legal profession, because many feminist activists within the state are lawyers. One reason for the concentration of women lawyers within government bureaucracy was their experiences in the legal profession. Although women entered law school in increasingly large numbers in the 1950s, few outlets in private practice were open to them. The result was (and continues to be) a large movement of women lawyers into government. In comparison, in the 1940s and 1950s, the federal bureaucracy was almost completely closed to African Americans lawyers, meaning that black civil rights activists, especially those in the law, were completely excluded from government.

### Women's Education and Employment

Although the 1950s stereotype of white women was one of happy homemakers attentive to the house and children, in fact the long-term changes

in women's education and employment made women active outside of the home in this period. Even when the proportion of women among students receiving college and graduate degrees dropped in the 1950s and 1960s, the actual number of women in postsecondary education climbed, outstripped only by the flood of veterans taking advantage of the GI Bill (Sapiro 1994, 129; Ware 1981, 22). By the mid-1970s, women high school graduates were attending college at the same rate as their male counterparts (Ford 2002, 183). Women's employment statistics heading into the 1960s also showed that women were working in increasing numbers. In 1950, one-third of all women over the age of 16 were in the paid labor force (U.S. Bureau of the Census 1975, 128). By 1960, as the second wave of the women's movement began, almost one-third of married women were working outside the home, and the proportion of widowed, divorced or separated women who were working was even higher (Ries and Stone 1992, 320).<sup>3</sup> The percentage of married women in the labor force doubled by the end of the twentieth century (U.S. Bureau of the Census 2002, 372).

These changes have implications for two specific aspects of our story. First, as women's education and employment increased, more and more women began to work for the federal government. Indeed, as we shall see below, even though the federal government discriminated against women, it was in many ways more open to women employees than the private sector. Second, women's employment and education also created an increasing need for action on many feminist issues, giving rise to political concerns about family and maternity leave and the quality of child care facilities, as well as spurring much of the activism on issues of women's employment.

### Women Lawyers

As a group, women lawyers were particularly attracted to federal employment and constituted a large number of the women at the more senior ranks of the bureaucracy in the early years of the second wave women's movement. The rise in the number of women lawyers in the ranks of the federal bureaucracy partially reflected an increase in the number of women lawyers overall. While law schools were relatively closed to women, the number and proportion of women in the profession of law grew modestly between 1920 and 1970. In 1920, women constituted 1.4 percent of the legal profession while by 1970 that number had risen to 4.7 percent (see Table 9.1). These modest changes in proportion hide an almost tenfold increase between 1920 and 1970 in the *number* of women lawyers, because the legal profession expanded greatly during these years.

Despite this expansion, discrimination against women in the law was widespread. Most law schools had informal quotas limiting the number of

**Table 9.1.** The Number of Women in the Law Profession, 1910–2000

Year	Number	Percentage
1910	558	0.4
1920	1,738	1.4
1930	3,385	2.1
1940	4,447	2.4
1950	6,348	3.5
1960	7,543	3.3
1970	13,000	4.7
1980	72,312	13.8
1990	190,145	24.4

Source: **1910:** U.S. Bureau of the Census. **1940:** *16th Census of the United States: Population: The Labor Force (Sample Statistics): Usual Occupation*. Table 9 and Table 10. **1920–1970:** Epstein (1993): 4; see also Drachman (1998): 253. **1980:** Calculated from *1980 Census of the Population*. Vol. 1. *Characteristics of the Population*. Individual State Reports. Table 219. **1990:** *1990 Census of Population*, Table 2

women in the entering class (Epstein 1993, chapter 3). As one graduate of an Ivy League law school noted:

“Every single... class had had 6 [women] or under until our class, which had 13 out of 180. And people said that our class was like the sky was falling. That it was an accident because there were a couple of people in our class who had men’s names. So they said that those people had been accidentally admitted. At the time people were alarmed. And the class after us had 6. And then it continued that way until there was this sudden increase in the number of women that came to law school.” (Interview, June 25, 2004)

Marguerite Rawalt, a long-time Internal Revenue Service attorney, noted that she was one of only 3 or 4 women in her class at George Washington University (Chester 1985, 75). When women gained admission, they were told that they should not be there, and that they were unlikely to have careers in the law (Epstein 1993, 52). Moreover, some elite law schools—Harvard, Notre Dame, and Washington and Lee for example—did not admit any women until the 1950s (Epstein 1993, 50). For many women employed by the federal government, the ability to study law part-time in the D.C. area was especially important. In the pre-World War II period, Howard University was the first DC law school to accept women<sup>4</sup> (Drachmann 1998, 152). The Washington College of Law, which later became American University’s Law School, opened in 1898 originally to offer white women an alternative to Howard (Drachmann 1998, 150–2; Chester 1985), but many of the other

part-time law schools remain closed to women either officially or by maintaining stringent quotas.

Women law school graduates faced enormous discrimination when trying to find a position. Describing her search for a position with a law firm, Sonia Pressman Fuentes, one of the first women lawyers in the Equal Employment Opportunity Commission (EEOC), noted that two interviewers offered her jobs as a secretary or receptionist, another asked her point blank how he would know she wouldn't get pregnant, and a third suggested that she marry him and become co-partner in the firm in that way (1999, 119–22). Fellow women law students told Marguerite Rawalt: “You'll never make a lot of money hanging up a shingle by yourself. There isn't a law firm in the city that would employ you as a partner. They might employ you as a ghostwriter and a researcher, but you would not be a member of the firm” (Chester 1985, 76). Overt discrimination meant that women who considered joining a law firm or opening up their own practices faced many problems; they were excluded from the kinds of networks that might bring in high-paying customers and from activities, such as appearing in court, that aided career paths in the law (Epstein 1993, 103). When they did open their own practices or join firms, they largely ended up in lower-paying areas of matrimonial law, real estate and estate law (Epstein 1993, 102).

As a result of these obstacles, women lawyers opted for government employment more often than men. An analysis of the employment sector for lawyers and judges from 1950 to 1990 helps convey the consequences of private-sector discrimination. Table 9.2 shows that women lawyers and

**Table 9.2.** Type of Employment for Male and Female Lawyers and Judges, 1950–1970 in percentages

Year	Sex	Private Firms	Government	Self-Employed
1950	Men	24.9	14.2	61.0
	Women	31.0	27.7	41.1
1960	Men	20.6	14.3	65.0
	Women	31.2	28.1	40.0
1970	Men	27.5	18.3	54.1
	Women	30.0	36.7	32.8
1980	Men	38.8	18.8	42.4
	Women	51.1	33.7	14.9
1990	Men	37.9	17.3	44.7
	Women	55.1	26.0	18.5

Source: **1950–1970:** Epstein (1993): 97. **1980:** U.S. Bureau of the Census. *Census of the Population: Characteristics of the Population*: Vol. 1-50 [50 State publications], Table 220. **1990:** Ruggles et al. (2004) SPSS code and output available upon request.

judges were twice as likely to work in government as their male counterparts from 1950 to 1980, with women disproportionately taking advantage of the growth of government legal jobs during that period. The proportions in Table 9.2 translate into roughly 1,700 women lawyers in government in the 1950s and over 4,800 women lawyers employed in government bureaucracies in 1970. Indeed, by 1970 government was the primary employer of women lawyers—more than either private firms or individual law practices. Starting in 1980, women lawyers began to move away from employment in government, moving increasingly into private firms instead. Yet, even as late as 1990, women lawyers were still more likely than their male counterparts to enter government as opposed to private practice or other law firms.

### African-Americans in the Legal Profession

Discrimination had a very different effect on African American lawyers than it did on women.<sup>5</sup> Because the legal system was so imbued with racial discrimination, the law was one of the last professions that blacks sought (Smith 1993, 4). Excluded from most white law schools, the number of black law students even declined starting in the early 1920s, as changes in credentialing by the American Bar Association (such as requiring some college experience from incoming students) hurt many black law schools (Smith 1993, 43). Moreover, the color bar in the American Bar Association fell only in 1944, long after white women had already been admitted. Careers in the law were even more limited for African Americans; many ended up leaving the profession because it was impossible to practice law in any form. When they did remain in the law, African American lawyers were largely confined to criminal law because even other blacks were more likely to turn to “white lawyers in the more lucrative civil cases” (Smith 1993, 4).

Moreover, racial discrimination kept black lawyers largely out of the federal government, even as sex discrimination propelled women lawyers into government. In 1942, for example “the number of black lawyers in the federal government could be counted on two hands” (Smith 1993, 548). Although black lawyers in the D.C. area often went into the federal government, discrimination was so strong that they often ended up in non-legal or even menial government jobs (King 1995). For example, a National Bar Association study found that there were 225 black lawyers in Washington, D.C.—half of which “worked at government jobs during the day and practiced law in the evening” (Smith 1993, 565).

Thus, patterns of sex discrimination created a pool of highly educated (overwhelmingly white) women lawyers in the federal government. A network of these women, along with other feminists in government, would play a large role in the women’s movement. But discrimination did not have the

same effect on the civil rights movement. While black lawyers were also important to this movement, those lawyers largely remained outside of the federal government, creating quite a different relationship between the activist legal community and the state.

## WOMEN IN THE FEDERAL BUREAUCRACY

If education and employment patterns, especially in the professions, influenced women's entry into the federal government, changes in the nature of the federal government also helped to speed the movement of women into civil service positions. Part of the integration of women into the civil service arose from the needs of the state, particularly a constant need for cheap labor but also a need for civil servants that waxed and waned with wars and economic cycles. Civil service reform and government reorganization also encouraged women's incorporation into the federal bureaucracy. Thus, despite continued discrimination and limits on women's occupational life, the federal government had a long history of employing women, allowing a network of professional women to thrive within the ranks of the state, before the advent of the second wave women's movement in the 1960s.

Women had been in government service since the founding of the federal government, although largely in lower-paying jobs (Morgan 1913). Indeed, the first attempted uniform pay scale in 1853 included a separate class for women (McMillin 1941). In these early years, women entered the federal government as low-paid wage workers (such as money counters in the Department of Treasury) or through the patronage system (Aron 1987; Claussen 1996; McMillin 1941). An 1870 law allowed women to be appointed to clerkships, and because women received less compensation than male clerks, department heads attempted to increase productivity by replacing male clerks with lower-paid women. The result was that by 1880 women accounted for 29 percent of those employed in executive departments in Washington, D.C. (Claussen 1996, 236).

When the U.S. Civil Service Commission and a competitive examination system were created in 1883, women were technically allowed to compete for the same positions as men (Morgan 1913). However, the Civil Service Commission interpreted the new law as allowing agency heads to "specify the preferred sex of a worker," which resulted in women largely receiving the lower-paying jobs (Harrison 1988, 142).<sup>6</sup> Moreover, civil service examinations could be limited to men if the agency whose vacancy prompted the examination asked for male applicants. Since agencies seeking to hire the same category of worker later were required to draw from the same examination for their pool of eligible workers, this policy greatly limited women's

government employment (McMillin 1941, 18-9). A 1919 Women's Bureau report showed that this process excluded women from 60 percent of all examinations, leaving them largely confined to the clerical, teaching, nursing, and office service areas (Nienburg 1920, 11). Pressure resulting from this report forced the Civil Service Commission to allow women to attend all examinations, although agencies could still request candidates of a particular sex (Harrison 1988, 143; see also Aron 1987). With a brief exception between 1932 and 1934, agencies continued to be able to request only men for their positions until 1962, when President John F. Kennedy implemented new regulations prohibiting this practice (Harrison 1988, 143-5).

Until 1920, departments were also authorized to pay women considerably less than men (Claussen 1996, 238). The Classification Act of 1923, which instituted pay grades for government workers, altered these inequalities by requiring that men and women employees in the same positions be given equal compensation. A 1925 survey of women in the Federal Service conducted by the Women's Bureau, found that this law did help equalize the pay imbalance for women, compared to men in the same grade, although women continued to be concentrated in lower end jobs (McMillin 1941, 21).

Women's representation in the federal government also waxed and waned with the supply of male labor and the shifting demands of the state. Not surprisingly, war provided major opportunities for women to enter the federal government by simultaneously creating a shortfall in male labor and increasing the responsibilities of the state. While war was the major period of increased demand for women in the federal government, it was not the only one. State expansion during the New Deal also increased the number of women in the federal government (Ware 1981). Ware (1981, 61) argues that women's entry in this case was helped by the creation of new agencies in the bureaucracy, since these had "less prejudice against using female talent."

On the other hand, economic downturns and returning veterans reduced opportunities for women in the federal government. During hard times, women's employment was often reduced by prohibitions against employing a number of people from the same family. In the 1870s, many departments forbade hiring "more than one family member" (Claussen 1996, 234), and the 1932 National Economy Act, adopted after the 1929 economic collapse, included Section 213, prohibiting both husband and wife from being employed by the federal government. While these laws did not explicitly exclude women, women largely suffered its consequences. About 75 percent of dismissals because of Section 213 were women (McMillin 1941, 30); and Ware (1981, 79) estimates that approximately 1,600 female government employees were dismissed between 1932 and the repeal of Section 213 in 1937.

The onset of peace also resulted in sharp reductions in women entering the federal government. This was particularly true after World War I and



World War II. The Veterans' Preference Act of 1944 reduced the number of women entering the federal government, since women were largely excluded from the armed forces during the war. Between 1945 and 1949, the percentage of federal employees receiving preference in employment because they were a veteran shot up from 16 percent to 47 percent (Ingraham 1995, 49). Women's absence from the military reduced their ability to get hired and to advance up the career ladder—an obstacle African Americans also faced.

Even with the large variation caused by war and depression, the proportion of women employed in the federal government grew steadily. For example, from 1930 to 1939—a period that encompasses the passage and then repeal of the National Recovery Act—the percentage of federal government employees who were women grew from 14.6 to 18.8 percent (see Table 9.3). Moreover, women were an even larger part of the federal workforce within the nation's capital. As early as 1923, women constituted fully 40 percent of federal employees within the district of Columbia, and that number rose as women became concentrated in the secretarial positions that kept the state working (Claussen 1996, 242). Once in the federal government, most women were then protected by civil service rules about hiring and firing, allowing them long careers in the bureaucracy. Catherine East, working in the Civil Service Commission at the end of World War II noted for example:

After the war, there were a lot of agencies that wanted to fire the women wholesale... [T]here was a memorandum that went out from the Civil Service Commission saying that although the law was that you could hire by sex, there was nothing in the law that said you could fire by sex... the agency heads were advised to separate employees in an orderly fashion, but reminded... once they started to hire, they could then hire only men if they wanted to. (East 1982, 56)

Overall, women were more likely to be employed by the private sector than by the federal government as a comparison in Table 9.3 of the percentage of women in the total workforce to the percentage of women in the federal government shows. However, many of those private-sector jobs were low-level manufacturing jobs, and the lack of women in the federal government reflected a lack of opportunities in the federal bureaucracy outside of Washington, D.C. The federal government in Washington, D.C., was a relative haven for women seeking full-time employment.

### Race and Federal Employment

In comparison women constituted a much larger percentage of the civil service than blacks, and they were located in mid-level and even some lower-level administrative positions. As King (1995) documents, blacks were largely

**Table 9.3.** Women's Employment in the Federal Government

Year	% of Employed in General Population who are women <sup>a</sup>	% of Federal Government employees who are women	% Washington DC Government employees who are women
1870	13.1		16.4 <sup>b</sup>
1880	14.7		22.5 <sup>b</sup>
1890	17.4		
1893			32.6 <sup>b</sup>
1900	18.8		
1903			26.6 <sup>b</sup>
1920	21.0		
1923		14.9 <sup>c</sup>	41.4 <sup>c</sup>
1930	22.0	14.6 <sup>c</sup>	41.1 <sup>c</sup>
1939		18.8 <sup>c</sup>	40.0 <sup>c</sup>
1940	25.4		
1941		19.6 <sup>d</sup>	42.3 <sup>d</sup>
1966	40.3	26 c	41 c
1997		42.8	

<sup>a</sup>All of the numbers in this column come from U.S. Bureau of the Census. *Historical Statistics of the United States: Colonial Times to 1970*; Series D11-25 (p. 127-8).

<sup>b</sup>Calculated from Aron 1987: 5

<sup>c</sup>*Statistical Abstract of the United States* 1967 Table No. 570 (p. 407)

<sup>d</sup>Calculated from McMillin 1943: 6-7

<sup>e</sup>Nyswander and Hooks 1941: 8-9

relegated to custodial or labor positions within the federal government, particularly after the election of Woodrow Wilson. Discrimination against blacks in the hiring process was aided by the inclusion of photographs on job applications between 1913 and 1940 (King 1995, 48-9). Washington, D.C.'s location in the South meant that much of the capital's white population supported segregationist policies. Highly trained African Americans often ended up taking jobs as menial laborers or were given the more menial tasks within a civil service grade, which in turn made it difficult to be promoted.<sup>7</sup> For example, when the Department of Commerce hired an African American messenger in 1937 he had both a BA and a law degree (King 1995, 72).

While comparable statistics between African-Americans and women in the federal government are impossible to find, two separate studies both conducted in 1938 provide a fairly clear picture of the employment differences. L. J. W. Hayes, studying African Americans in the District of Columbia employed by the federal government found that 90 percent were employed

in custodial positions (Davis and Golightly 1945, 340; see also King 1999, 349); in contrast, Nyswander and Hooks (1941, 52) examining all women within the federal service within the same year found that only 3,200 out of the more than 145,500 women employed in the federal government (slightly more than 2%) worked as “janitors, charmen and charwomen.” Moreover, Nyswander and Hooks note that only 1.3 percent of all men—not distinguished by race—held these custodial positions. At the upper levels, Hayes found only .5 percent of African Americans in federal employment in the District could be classified as sub-professional (Davis and Golightly 1945, 340; see also King 1999, 349)<sup>8</sup> while the Nyswander and Hooks data show that nationwide 7.9 percent of women (and 6.9% of all men) fall into that category. Together, these two studies indicate that African Americans in the 1930s were concentrated in unskilled government occupations, while women were concentrated at secretarial and clerical levels and could even be found in higher administrative positions.<sup>9</sup>

Thus, by the 1930s women were an accepted part of the federal workplace even as they were held back from the highest positions, but for African Americans integration into the federal workplace came much later, long after the end of World War II (King 1995). The consequences for the movement-state intersection are important, though. When civil rights organizations mobilized in the 1940s around the war and in the 1950s, the few black activists they had within the state were largely political appointees—beholden to the president who had appointed them for their continued presence within the state. The civil rights movement lacked a network of middle-level policy makers within the federal bureaucracy who could serve the cause. The women’s movement, however, had activists, spread throughout government: a few as political appointees, a few in Congress, and a few in the upper levels of the civil service. The existence of this network and the ties among congressional women, bureaucratic women, and the political appointees were an important part of the mobilization of the movement.

## FEMINIST ORGANIZATIONS BETWEEN THE FIRST AND SECOND WAVES

The existence of a network of feminist activists within government at the rise of the second wave of mobilization also resulted from the continued activism for feminist causes between 1920 and 1960. Although women’s organizations split over whether to pursue protective legislation for women or an Equal Rights Amendment (Banaszak 1996; Ryan 1992; Ware 1981) and the Red scares of the 1920s linked many of these organizations to Communist organizations (Banaszak 1996; Talbot and Rosenberry 1931), a robust network of

women's organizations and activism continued throughout the 1930s, 1940s, and 1950s (Anderson 1996; Mathews-Gardner 2005).

This wide range of women's organizations included women's rights organizations, professional organizations, and a number of other women's organizations. The National American Woman Suffrage Association reformed itself as the League of Women Voters in 1920, focusing on supporting women candidates and encouraging women voters to serve as a force for progress (Young 1989). The National Woman's Party focused its energies on an Equal Rights Amendment but also encouraged women into elective office (Rupp and Taylor 1987). Additional women's organizations that fought for women's interests after 1910 included the General Federation of Women's Clubs (Wells 1953); the National Association of Colored Women (White 1999); the Women's Christian Temperance Union; the Women's Trade Union League, the National Association of Women Lawyers (Smith 1999); and the Association of Collegiate Alumnae (later the American Association of University Women),<sup>10</sup> to name but a few. In addition, in the period after suffrage, a number of women's professional organizations appeared as well, including the National Business and Professional Women (1919), Financial Women International (1921), the National Federation of Press Women (1937), and the American College of Nurse-Midwives in 1955 (Barakso 2005, Appendix B).

These organizations enjoyed a very healthy membership; for example, in 1969 the League of Women Voters (LWV) had over 156,000 members, while the National Federation of Business and Professional Women's Clubs (BPW) more than doubled its membership from 79,332 in 1944 to 175,274 in 1960 (Rawalt 1969, 341).<sup>11</sup> The National Association of Colored Women's Clubs attracted high numbers of African-American women—more than 1 percent of the entire black female population according to Mathews-Gardner (2005, 551).

Particularly important for the building of a feminist network within government was the fact that many of these organizations were concentrated in the Washington, D.C., area. Two organizations illustrate this point: the Business and Professional Women's club and the National Woman's Party. Between 1941 and 1949—when a decision was made to create sister organizations and a state federation—the D.C. club of the BPW was the largest local club in an already large and active national association in the country (Rawalt 1969, 285). Moreover, the D.C. group played a large role in the national BPW, since from 1946 an office focusing on lobbying was located in D.C., and national headquarters were moved there in 1956. Of the eighteen presidents of the BPW who served from 1919 to 1960, three worked for the federal government, one for state government, and one served as a judge, providing leadership that understood the workings of government bureaucracy.

Similarly, the National Women's Party (NWP) was small but played an important role among Washington's feminists. Although the NWP had only 627 active members in 1947, and only 200 in 1952, members were concentrated in Washington, D.C., and "most of the activity took place in Washington" (Rupp and Taylor 1987, 26). As one member observed, "we had women in every department in Washington" (Rupp and Taylor 1987, 40). These activists recruited other women they met in government into the organization, facilitating an enduring network of feminist women in the federal government around the feminist agenda.

Women's organizations pursued a wide agenda between 1920 and 1966 including a number of feminist issues (Anderson 1996; Mathews-Gardner 2003, 2005; Skocpol 1992). I focus here on two limited aspects of their agenda because these issues helped to create opportunities for feminist activists to enter the federal bureaucracy: the pursuit of civil service reform and the increased representation of women in government. Despite other divisions, women's organizations were unified on the issue of increasing women's representation in the federal bureaucracy.<sup>12</sup> Even those organizations whose primary purpose was charitable works or serving religious communities occasionally engaged themselves on these issues. Nearly all of the women's organizations engaged in attempts to increase women's representation in government, either individually or in umbrella organizations like the Committee on the Participation of Women in Postwar Planning. At the forefront of this battle was the BPW, which continually pushed "the election and appointment of qualified women to city, state and national office" (Bowman and White 1944, 88; see also Rawalt 1969, 26).

Women's organizations focused extensively on increasing women's representation in appointed office. The National Association of Women Lawyers devoted considerable attention to getting women into judgeships<sup>13</sup> (Smith 1999). The General Federation of Women's Clubs (GFWC) pushed for women's inclusion in the diplomatic service and the U.S. delegation to the United Nations (Wells 1953, 221). From the 1920s to the 1960s, the American Association of University Women (AAUW) nominated qualified women to public service commissions and boards (Talbot and Rosenberry 1931; Levine 1995); its D.C. branch, dominated by a large number of government employees, focused extensively on the situation of female federal employees (Talbot and Rosenberry 1931, 207-10).

In addition to focusing on women's representation, women's organizations turned their attention to discrimination within the federal bureaucracy between 1920 and the 1960s. Because the federal government was a major employer of women, especially in the capital, civil service reform was important to the women's organizations that represented professional women like the AAUW and BPW. Even at its first convention in 1919, the

BPW passed a resolution demanding that all civil service examinations be open to women and calling for the collection of statistics on women in government service (Bowman and White 1944, 21). Advocacy of civil service reform by the League of Women Voters, the Women's Trade Union League, the Women's Christian Temperance Union and the GFWC (among others) in the early 1900s contributed to the adoption of the Classification Act of 1923 (Claussen 1996, 241).

The adoption of Section 213 of the Economy Act of 1932 stimulated substantial activism among women's organizations. Beyond its direct impact, Section 213 also inspired the passage of similar laws in the states where schoolteachers were then forced to resign (Claussen 1996: 245; Rung 2002, 64–6). Women's organizations, including the LWV, NWP, WTUL, the Women's Joint Congressional Committee, and NAWL, fought hard to have Section 213 removed from the Economy Act. In 1935, Geline Bowman, the president of BPW, met with President Roosevelt to argue the injustice of Section 213; "she had also asked frankly for Presidential support to bring about the amendment of the Civil Service Act so as to render discriminations against women impossible" (Bowman and White 1944, 68). Although it took until 1937, Section 213 was eventually repealed.

The BPW took a particularly tough stand on the treatment of women within the civil service. In addition to supporting changes in merit reform that would make the civil service less biased against women, the BPW opposed the "attempt to drive women out of the upper bracket jobs in government" after World War II (Independent Women cited in Rawalt 1969, 23). For example, Margaret Hickey, president of the BPW in 1946, argued that "there are grade cuts, demotions, firings, all to reduce women from the technical, professional and administrative classifications in Civil Service. In the matter of new appointments, most jobs paying more than \$2400 are tagged 'Men Only' although Civil Service policy claims to be nondiscriminatory." (Rawalt 1969, 23).

Thus, the activism of women's groups facilitated the entrée of feminist activists into the bureaucracy during the 1930s, 1940s, and 1950s, well before the rise of the second wave, and especially in the nation's capital. Many of the women in the federal bureaucracy were members of one or more of these organizations, and they would come to play an important role in creating the network of professional women who were interested in pursuing feminist policies in the early 1960s.

### Race and Feminist Networks in the "Doldrums"

However, the network created by *these* women's organizations in the 1930s through the 1950s was one that excluded almost all African American

women. Thus the racialized structure of the American state's employment patterns were unwittingly reproduced and maintained in feminist women's organizations.

Most women's groups were slow to integrate black women into their networks, and many explicitly excluded black women, particularly in the DC area where segregated race relations were entrenched. Rupp (1985, 719) notes that Mary Church Terrell was the only black member of the National Woman's Party that she could identify. Although it allowed national membership for black women, the AAUW permitted local branches to choose whether to accept black women into their ranks. This policy remained until the end of World War II<sup>14</sup> when Mary Church Terrell's application for branch membership moved the organization to a national policy of non-discrimination.<sup>15</sup> While the YWCA also integrated black women into its ranks in the post-World War II years, the National Federation of Business and Professional Women, the League of Women Voters, and the General Federation of Women's Clubs were slower to do so (Levine 1995, 107; Wells 1953, 362–8). The few networks that existed between white and black women were tenuous at best, and even when African American women were included in white women's organizations, racial discrimination limited the strength of the ties between individuals (White 1999).

Black women developed their own network through a number of organizations: black sororities like Alpha Kappa Alpha and Delta Sigma Theta (both founded before 1920), women's church organizations, and organizations like the National Association of Colored Women and the National Council of Negro Women. Both of the latter organizations fought for the cause of African American women during the period of the doldrums. The National Council of Negro Women, for example, engaged in lobbying during this period on a wide range of policies designed to increase black women's employment, such as the inclusion of blacks in New Deal programs and the elimination of photographs from civil service job applications (White 1999, 150). They also organized local grassroots self-help actions designed to aid the African American community, particularly black women and children (White 1999, 52).

Despite their activism, many of these organizations remained largely unnoticed in (white) national politics (White 1999, 173–4). Moreover, the Depression reduced opportunities for blacks in general as high unemployment in the white population created dire conditions among African Americans, and New Deal policies discriminated heavily against blacks. Even as political opportunities began to open slightly for black men on the national level in the 1940s, black women's organizations did not gain greater governmental access. For example, after Hoover, presidents began to react to the call for equality from the black community by increasingly appointing black advisors, most of whom were men. Only one black woman was appointed in FDR's

administration—Mary McLeod Bethune as Director of African American affairs in the National Youth Administration (Smith 1999, 148).

Thus, while women's organizations were active on both sides of the racial divide during the 1920s to 1960s, the networks created were heavily divided by race, and when the state responded to women's demands, they were largely the demands posed by middle-class white women. Although women's networks, particularly in Washington, D.C., slowly began to integrate after World War II, the networks of feminist activists inside the state were still largely white and middle-class in the 1960s (Jones 1982). The networks of these feminist activists in government were strengthened by connections forged in women's organizations outside of government so that insider feminists knew not only each other but also other women who supported and fought for women's rights.

## THE EFFECTS OF FEMINIST NETWORKS INSIDE THE STATE

While the effects of feminist activists inside the state are too numerous to chronicle completely in this chapter, I provide two brief examples here: equal pay and educational equity. In both cases, feminist activists within the state acted against the prevailing governmental interests to engage feminist policy, although in neither case did their actions run counter to those of the state. In both cases, action by feminist activists within the federal bureaucracy had observable influences on state policy that altered the larger societal structure, illustrating the significance of the American state as a force in U.S. society.

### Sex Discrimination Policy

Two government changes activated existing networks of feminist activists in government around the issue of sex discrimination. First, the Equal Employment Opportunity Commission (EEOC) charged with the task of enforcing the Title VII of the Civil Rights Bill of 1964 came into being in July 1965. Although the sex clause of Title VII had been actively pursued by feminists, the EEOC's initial actions and public statements by government officials showed that most commissioners had very little interest in enforcing this clause. For example, in August 1965 the EEOC voted 3-2 that employers could place sex-segregated job advertisements in newspapers (Harrison 1988, 188). Second, President Kennedy's Presidential Commission on the Status of Women (PCSW), which had reviewed women's status and made recommendations on how to increase women's equality, had multiple effects on feminist activity. Not only had the PCSW encouraged the creation of



state-level commissions, but when the PCSW disbanded in 1963, one of the two new committees created in its wake—the Citizen’s Advisory Committee on the Status of Women—continued through 1969 to monitor activities in the state and support conferences of the state commissions on the status of women (Duerst-Lahti 1989, 262–7; Harrison 1988, 184–5).

Continued inaction on the numerous cases of sex discrimination filed at the EEOC and rumors that Richard Graham, one of the strongest supporters of the sex clause, was not going to be reappointed by President Johnson galvanized feminist activists in government into action. Initially, insider feminists who knew what was going on tried to organize existing women’s organizations but nothing happened. As one activist noted:

We wrote up a one page flyer and used [Marguerite] Rawalt’s connections to women’s clubs to try and get the organizations to adopt resolutions asking them [the EEOC] to enforce this law, especially concerning sex-segregated advertisement. From [Catherine] East’s basement...we sent several hundred envelopes out but nothing happened because the women’s organizations took too long to function. (Interview with activist, March 22, 2002)

After realizing that existing women’s organizations were not going to take up the battle, feminist activists within government then turned their attention to the creation of a new organization to pursue women’s equality. Two key insiders—Catherine East, the executive secretary for the Citizen’s Advisory Committee on the Status of Women and Mary Eastwood, a lawyer from the Department of Justice—met multiple times with Betty Friedan to encourage her to form a new organization, provided her with a list of potential supporters, and invited her to the Third Annual Conference of Commissions on the Status of Women sponsored by the Women’s Bureau (East 1982; Harrison 1988, 193). Although Mary Keyserling, director of the Women’s Bureau under President Johnson, was not a strong feminist and did not approve of including Friedan at the conference, she eventually allowed her to attend (East 1982, 173–4). Prior to the meeting, Catherine East distributed copies of Martha Griffith’s speech lambasting the EEOC to attendees as part of the materials delivered by the Women’s Bureau (Harrison 1988, 191). From these events came the creation of the National Organization for Women, and its first act was to protest the inaction of the EEOC.

Feminist activists within government also attempted to change state policy directly by utilizing their networks to assure that landmark sexual discrimination cases were brought before the courts. This was important because the EEOC had little power prior to 1972; it could at best file *amicus curiae* briefs when individuals sued privately or, if the case constituted a “pattern or practice” case, the EEOC could refer it to the U.S. Department of Justice, which could take it up at its own discretion (Equal Employment Opportunity

Commission 2000). These rules rendered implementation of the sex clause of Title VII very dependent on private litigants' pursuit of their own complaints (Lieberman 2006). Feminist activists inside the state recognized the necessity of encouraging private litigants to pursue their cases in court and developed a network of lawyers to work on them. The network began within the Equal Employment Opportunity Commission where Sonia Pressman Fuentes would forward cases to a network of feminist lawyers, many of whom worked in the federal bureaucracy:

I passed on to this network information on women's rights cases that were developing at the EEOC, which the members of this network would then pass on to Marguerite Rawalt. (Pressman Fuentes 1999, 134; see also East 1982, 121-2)

Their employment within the state meant feminist activists inside the federal government were unable to undertake such high-profile cases as the lawyer of record, and as a result their participation occurred mostly under the table.<sup>16</sup> Caruthers Berger, one of this group, even asked for a ruling from the Solicitor of Labor on whether she could sign a brief as a charitable donation but was told that was impossible (Berger 1982, 48). Despite their inability to take credit for their work, several feminist activists inside the state were critical to the development of the legal strategies, briefs, and motions that constituted several landmark cases. Often times, they would work late at night researching and writing the briefs and preparing arguments that would be submitted in court. Compared to many cause lawyers, these activists conducted this legal work after hours of their jobs within the federal bureaucracy. Marguerite Rawalt's biographer notes the amount of time that just one case took for this group:

For months.... Marguerite, Phineas, Caruthers, and Mary worked on the Mengelkoch brief, trying to prove that the state laws of California denied women opportunities to which they were entitled under the Fourteenth Amendment.... The work was slow and tedious and the weight of their inexperience heavy. They were in new territory. No one else had experience either. (Paterson 1986, 175)

Caruthers Berger notes that even after months of work, the final production of the brief often meant very long hours: "The day I produced this [Mengelkoch] brief, I worked around the clock to get it done because I had to do it on a weekend. I think I spent about 28 hours straight and then I turned it over to Marguerite" (Berger 1982, 49).

The cases pursued by these feminist activists within government became among the most important precedents in equal employment law (Hernandez 1975). These included two cases against state protective legislation (*Mengelkoch v. Industrial Welfare Commission* and *Rosenfeld v. South Pacific*), as well as

against prominent companies' and trade unions' discriminatory practices (*Bowe v. Colgate Palmolive* and *Weeks v. Southern Bell*). Several of these early cases—especially *Weeks v. Southern Bell Telephone and Telegraph* and *Bowe vs. Colgate-Palmolive Co.*—are still cited in discussions of equal opportunity law (see, for example, Sedmak and Vidas 1994). *Weeks v. Southern Bell Telephone and Telegraph* was particularly significant because it was one of the first cases to invalidate a state's existing protective legislation for women (The Association of the Bar of the City of New York 2007)<sup>17</sup> and was the first case in which the court held that Title VII applied to women (Tully 1973).

### Educational Equity and Title IX

Title IX was largely the work of Representative Edith Green (D-OR) who had long been aware of issues of sexual discrimination in education and, as chair of a subcommittee of the House Education and Labor Committee, was uniquely situated to introduce new policies. Feminist activists within the state had been urging Green to hold hearings on educational equity, especially Congressional staffer Phineas Indritz, a founding member of National Organization for Women and part of the network of feminist lawyers working on employment equity. In 1970 she convened the hearings on a new piece of legislation that she had drafted on educational equity (Sandler 1997, 4).

The Nixon administration sent a representative from the Department of Health, Education and Welfare (DHEW) to testify *in opposition to* the bill. Yet, the text of the administration's statement helped to develop support *for* the passage of the bill. How this happened illustrates the influence that activists within the state can have. The testimony had been written by a feminist activist in DHEW who had been trying to convince the administration to support Green's bill. As she recalls it:

I wrote a fairly strong draft, detailing all of the instances of sex discrimination in education that I could find, with all the statistics I could find, and concluded that the administration supported the bill. It was very strong testimony.... The last part of this process was a meeting at the White House with representatives of... other departments that were considered to be stakeholders.... I argued that the administration should support the bill and the decision of the meeting was that the administration would oppose it.... All I did was change the last couple of paragraphs. And that's all I was required to do. So I left all the statistics and what a general problem this was, and how unequal this was... I was required to cut out the last paragraph and two, and instead of saying "and therefore we support the bill," say "however, we do not believe it's necessary—this legislation is necessary—at the time." (Interview with activist, May 25, 2004)

Activists in the education area noted that the result of the testimony was to encourage support for the legislation and to give Representative Green's

argument about the need for such legislation stronger credence (Interview with activist, October 16, 2003; Millsap 1988, 21–22). As Millsap (1988, 22) notes, the reaction to the DHEW testimony was immediate:

In questioning the officials, Representative Green pointed out the discrepancy between the “effective and eloquent testimony” . . . and HEW opposition to the bill, and expressed doubt whether existing law or executive orders were sufficient.

While Green’s legislation did not pass that year, the testimony from the hearings were widely distributed and two decades later were considered “an excellent source of information about the status of women’s education” (Stetson 1991, 108). The Green bill was incorporated into a reform of the Civil Rights bill two years later largely under the radar of educational specialists; the major controversy in congressional debate around that bill involved the issue of court-ordered busing for racial integration (Stetson 1991, 109). Moreover, Representative Green urged feminists not to lobby or call attention to Title IX and was content that debate focused on other aspects of the bill. The bill also closed loopholes in the Equal Pay act—a feat accomplished by another feminist activist in government—Morag Simchak—who attached a technical rider to Title IX. Labor officials did not notice that the bill affected the Equal Pay Act and so the technical rider entered into law without controversy or comment.

If passage of Title IX attracted little attention, an intense battle began as the initial regulations implementing the bill were written. The controversy around initial regulations was so intense that it took from 1972 to 1975 (spanning the Nixon and Ford administrations) to publish initial regulations (Stetson 1991, 109). Feminist activists within government, including B. Ann Kleindienst, worked to assure that the women’s movement was included in the public comment process (Millsap 1988 32–3; interview with activist, May 25, 2004).<sup>18</sup> According to Millsap (1988, 35) the result was that 10,000 comments were provided on the draft regulation, whereas most regulations elicited less than 1,000.

Feminist insiders also influenced the final regulations about the complaint process under Title IX. After the public comment period, the HEW transmitted final recommendations to the president that included newly added wording to place stronger limitations on when individuals could register complaints under Title IX:

they put in a clause, kind of at the last minute, that would have said, that before you could file a complaint you had to go through an internal grievance process in . . . your . . . college . . . . So again, this was the inside stuff we found out. I was best buddies with . . . [name withheld] by this time she was inside, I was outside . . . so we found out about this . . . draft regulation with this horrible clause, we thought was just absolutely a disaster because then there would

be no enforcement, and people who wanted redress would cool their heels for years with some internal grievance process... So we finally got this meeting with an aide to the President and we jumped up and down and said how horrible this whole, this exhausting internal remedy thing was, and it had to come out, and they did take it out... If we hadn't had people who had been inside... we wouldn't have known about it until it went on the Hill and then it would have been too late. (Interview with feminist activist, May 25, 2004)

In the end, the final regulations did not include the requirement that individuals complete internal grievance procedures but allowed complaints to go through the Office of Civil Rights in the Department of Education, which could then threaten to cut federal financial aid, or permit individuals to sue as well (Millsap 1988; Stetson 1991).

These recommendations that feminists organized to fight were not public, and as Millsap (1988, 37-8) notes, feminists had no access to the White House or Cabinet officials who could have provided information on the new regulation or supported feminist positions. Yet, by providing information about the regulations and encouraging women's organizations to mobilize, feminist activists within the state were able to alter the final outcome. In the end, feminist activists within the government bureaucracy played an essential role in assuring that Title IX passed and was implemented in a way that ensured some enforcement protection. While there are many ways in which Title IX has been weakened (in excluding many types of extracurricular organizations and some types of sports), feminist activists inside the state assured the existence of educational equity policy during both the adoption and the implementation stages.

These two examples illustrate how feminist activists inside the state affected policy change that had some equalizing effects on American society. While in neither case can the policies be said to have created equality in the workplace, educational institutions, or sports arenas, there have been fundamental shifts in the position of women that resulted from these policies. Moreover, the specific examples above are just two from a wider array of examples that occurred throughout the U.S. federal bureaucracy. Significant changes also occurred in the areas of women's health, foreign policy, and law enforcement. Nonetheless, the examples also show the limits of feminist activists within the state. The policies above benefited middle-class women most of all, and fit well with existing conceptions of the state and society—representing liberal conceptions of society and ignoring more radical critiques that existed in the feminist movement.

## **CONCLUSION: FEMINIST NETWORKS WITHIN THE AMERICAN STATE**

As the women's movement began its upward trajectory in the early 1960s, women in the federal government were already poised to play an important

role. Their position in the bureaucracy resulted from general changes in employment and education but also from the specific gender characteristics of the American state. Their sensitivity to women's social and political inequality grew out of the continued activism of women's organizations since the 1920s, which carried the feminist agenda through a period of little receptivity and helped to assure the openness of the federal bureaucracy to some women at the mid- and upper-levels of the civil service.

Here comparisons to African Americans in the federal government are telling. African Americans were confined to the lower levels of the civil service, regardless of their level of education or experience. While women also faced discrimination, there were always a few women who broke the barrier into mid- and upper-level civil service positions. While the federal government was more welcoming for women lawyers than private practice, African American lawyers found no openings in the policy-making ranks of the federal bureaucracy. Although lawyers would play an important role in the burgeoning civil rights movement, these lawyers remained outside the state. On the other hand, feminist lawyers were located both inside and outside the state, and at times their position within the federal government provided important information and access to plaintiffs for landmark cases. While the civil rights movement developed outside the state, as we traditionally expect of social movements, the existence of a part of the women's movement inside the state—although only a small part of the movement—helped to mobilize the movement, and changed policies that altered the gender order of American society.

The implications for an analysis and understanding of the American state are significant. First, the effects of these insider feminist activists suggest other interests besides class interests can affect the activities of the state. Just as Miliband (1969, 51) noted that the highly educated middle- and upper-class professionals who administer the state "cannot divest themselves of all ideological clothing in the advice which they tender to their political masters," so too it is important to recognize that those professionals carry gender, racial, and sexual preference biases that color their governance as well. As such it is not surprising that the interjection of feminist activists into the policy-making levels of the bureaucracy changes state policy in perceptible ways. In short, movement-state intersections do affect the state.

However, those changes are highly constrained. Above all else, the feminist activists who entered the federal government were still highly educated middle- and upper-class professionals. As a result the effects on state policy were largely in forms that benefited middle-class women above other groups of women continuing the pattern of inequality associated with the American state. Certainly not all of the feminist activists I studied fit this pattern completely. There were a handful of examples of feminists active within the state who strongly critiqued the inequality perpetrated by the state or who tried to engage the state in ways that would ameliorate inequality (e.g., by focusing

on women in poverty), but in those cases it was also much more difficult to discern lasting effects on state policy.

Finally, examining the effect of this movement-state intersection on the American state itself is pertinent. The policy changes effected by feminist activists inside the federal bureaucracy did not in any way challenge state interests. Indeed, in many ways it increased state capacity—as when it expanded the reach of the EEOC even further into the economic relations between employer and worker. Yet, by injecting a different viewpoint within the limiting realm of dominant class interests, it also planted the potential for conflict within the American state.

## NOTES

1. Social movements have traditionally been viewed as outsiders to the state by social movement scholars (Diani 1992; Birnbaum 1988; Burstein, Einwohner, and Hollander 1995; Flam 1994; Jenkins and Klandermans 1995; Tarrow 1998; Tilly 1978). If activists are acknowledged to be part of the state at all, they are assumed to enter *after* the initial mobilization of the movement and the entry is taken to be a sign of movement success (Gamson 1990; Burstein, Einwohner, and Hollander 1995; Piven and Cloward 1978; Reinelt 1995; Santoro 1999; Wolfson 2001). In contrast, I argue that movement-state intersections occur at any point in a movement's history.

2. Although, as McDonagh and Pappano (2007) suggest, Title IX did not completely eliminate gendered stereotypes in sports and even reinforced some essentialist notions of women.

3. These statistics hide huge disparities by race. African American women were always part of the paid labor force. Although labor force statistics were not collected by race prior to 1972, in that year African American women's labor force participation exceeded that of their white counterparts by over 10 percent. On the other hand, African American women did not receive the same benefits from the expansion of women's educational opportunities in the nineteenth and twentieth centuries. In 1957 only 3 percent of black women over 25 years of age had completed four years of college, half that of white women.

4. Women at Howard (including black women) experienced the same hostile environment as elsewhere. For example, Pauli Murray noted that her cohort of women students at Howard was publicly ridiculed by a few of the professors (Smith 1993, 55).

5. Women lawyers, both inside and outside government, were overwhelmingly white; few African American women became lawyers. In 1940, for example, blacks constituted less than 1 percent of all women lawyers (Smith 1993, Appendix 2), although they constituted a higher proportion of black lawyers (3.7%) than the percentage of women among all lawyers (Smith 1993, 636, taken from the 1940 Census).

6. Agencies generally asked for male candidates only. Indeed, in 1902, when the Civil Service was unable to supply agencies with enough qualified male stenographers, it sent out a memorandum calling attention to the quality applicants on the female list (McMillin 1941, 15-16).

7. Moreover, looking only at grades and promotion does not give us much of a sense of the level of integration into the workplace on a social and cultural level.

Aron (1987, chapters 6–7) discusses how offices in the federal government changed to integrate women into their work spaces as early as the late 1800s. Despite problems in fully incorporating women, it is likely that even stronger interpersonal problems occurred for African Americans.

8. The remainder of African Americans (9.5%) were categorized as clerical, administrative, fiscal, or clerical-mechanical.

9. As with women, there were a higher percentage of African American civil servants in higher grade levels in the nation's capital compared to other federal bureaucracy locations, although the numbers were still quite miniscule (King 1995, 75).

10. The AAUW began life as the Association of Collegiate Alumnae. In 1903 a parallel organization was formed in the South—the Southern Association of College Women. In 1921 the two groups merged to form the American Association of University Women.

11. Membership in the National Federation of Business and Professional Women's Clubs exceeded that of the League of Women Voters throughout the postwar period (cf. Rawalt 1969, 341; and Young 1989, 3).

12. On the AAUW see Talbot and Rosenberry 1931; Levine 1995; on the National Association of Women Lawyers see Smith 1999; see also Rupp and Taylor 1987, 77–8.

13. They were also on the forefront of the fight to include women on juries.

14. Interestingly, the International Federation of University Women, which the AAUW had initially helped found, began pressuring the AAUW to eliminate its racial barriers during World War II, in part as a response to Germany's discriminatory policies (Levine 1995, 111).

15. Levine (1995 135) argued that the conflict over desegregation both within the AAUW but also in the larger society helped to push the AAUW away from taking issue positions and toward more research and "abstract study."

16. One exception was Marguerite Rawalt, who retired from the Internal Revenue Service in 1965, just as many of these cases were beginning to be tried (Paterson 1986, 160). Because she had given up her government position she was able to appear as the attorney of record on a number of these cases.

17. Although it was not the first suit brought by this group in an attempt to invalidate state protection laws. The same group of feminist had also aided in the suit *Mengelkoch v. North American Aviation Co.*, but this suit was dismissed on appeal. *Rosenfeld v. Southern Pacific Company*, which also invalidated restrictive state laws, came later. Many of the same feminist activists worked on this case as well.

18. Equally important for this issue was the existence of feminist activists within many of the traditional educational organizations like Association of American Colleges and Universities. These women were often able to bring the pressure of these larger organizations, although in all likelihood the membership of the organizations would not be strongly supportive of the positions these women took.

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## From Kanye West to Barack Obama

### Black Youth, the State, and Political Alienation

*Cathy J. Cohen*

Only three days after the tragedy that would become known simply as Katrina, NBC News secured some of the top performers in the entertainment industry to participate in a one-hour live special meant to raise money for the survivors of this catastrophe. All donations would be funneled to those in need through the auspices of the American Red Cross Disaster Relief Fund. The lineup on this Friday evening included stars of film and music from multiple genres, with the hope that such an eclectic show of celebrity power would not only attract fans from across the spectrum of pop culture, but also stand in visible contrast to the disproportional devastation of Katrina on the lives of poor black people who lived only days ago in the Lower Ninth Ward of New Orleans.

The show began with performances from two New Orleans natives, Harry Connick, Jr., and Wynton Marsalis. Other performers who appeared that evening included Randy Newman, Aaron Neville, Chris Tucker, Lindsay Lohan, Glenn Close, Richard Gere, and Leonardo DiCaprio. Despite the presence of such sought-after celebrities, the most reported-on moments of the evening came about halfway through the hour, when Kanye West, who was paired with Mike Myers, went off-script and began denouncing the portrayal of those black people devastated by the flood and the racism of the Bush administration. Mr. West's comments follow:

I hate the way they portray us in the media. You see a black family, it says, "They're looting." You see a white family, it says, "They're looking for food." And, you know, it's been five days [waiting for federal help] because most of the people are black. And even for me to complain about it, I would be a hypocrite because I've tried to turn away from the TV because it's too hard to watch. I've even been shopping before even giving a donation, so now I'm calling my business manager right now to see what is the biggest amount I can give, and just to imagine if I was down there, and those are my people down there. So

anybody out there that wants to do anything that we can help—with the set-up the way America is set up to help the poor, the black people, the less well-off, as slow as possible. I mean, the Red Cross is doing everything they can. We already realize a lot of people that could help us are at war right now, fighting another way—and they've given them permission to go down and shoot us!<sup>1</sup>

Following the stage directions, the cameras returned to Mr. Myers, who, although visibly stunned by Mr. West's deviation from the script, began to read his lines on the teleprompter about the possible destruction of the spirit of people devastated by the flood. He then stopped, expecting Mr. West to dutifully return to the script. Instead, Mr. Myers and all those watching were confronted with Mr. West's most succinct and controversial statement of the night: "George Bush doesn't care about black people." At this point it seemed no one knew what to do, so the cameras turned to a shocked Chris Tucker, who made no reference to Kanye West or his comments and went back to the script and NBC's plan for this one-hour program.

The responses to Kanye West's comments came fast and furious. NBC issued a statement that evening distancing their networks from Mr. West's statements: "His opinions in no way represent the views of the networks." They went one step further, however, pitting against Mr. West the work of the other artists on the program (those who stayed on script) and those individuals who called in to donate money, writing, "It would be unfortunate if the efforts of the artists who participated tonight and the generosity of millions of Americans who are helping those in need are overshadowed by one person's opinion." Commentary on Mr. West's remarks could be found just about everywhere: in the print media, on the evening news, in the blogosphere, and, of course, on YouTube. Some have noted that prior to stating a word, Mr. West was visibly nervous and that his appearance should have been a tip-off that something was going to erupt. Others have downplayed the sincerity of his comments, highlighting the fact that Mr. West has a reputation for such off-the-cuff rants.<sup>2</sup> Not surprisingly, blacks and whites differed significantly in their evaluations of Mr. West's comments. In a study on attitudes about Hurricane Katrina led by Michael Dawson at the University of Chicago, Dawson found that while 56 percent of white respondents believed that Mr. West's comments were unjustified, only 9 percent of blacks agreed with that position.<sup>3</sup>

In spite of his history of outbursts, Mr. West's comments about Katrina provide insight into the struggles, frustration, fear, and disillusionment of not only Mr. West, but many other young black Americans today. When young black adults and adolescents are interviewed or asked about their lives and political views, Katrina is just one more example of what many believe to be their secondary position in the American political community. For many in this group of young people, Katrina, the Jena Six, and the exponential

rates of both HIV/AIDS and incarceration disproportionately affecting black youth all serve as reminders that they can never depend on the government to fully recognize their contributions or respond to their needs and concerns.<sup>4</sup> As one nineteen-year-old black woman from Chicago explained, Hurricane Katrina reminded her that she really can't count on anyone—the government or other people. “Just like with Hurricane Katrina, you know it took a disaster for people to open up, and ‘Oh I’m going to help you’ and this and that. And now you got people from Hurricane Katrina that’s poor, that’s still in Chicago, out in the street, you know, so it’s like, I don’t know. They just [out there] for themselves.”<sup>5</sup> A fifteen-year-old black girl from Chicago explicitly mentioned the secondary position of black people, stating, “. . . we [black people] come second, and, like, the rich and stuff comes first before we do.”

For this generation of young black people, Katrina is their “Rodney King moment,” that visible rendering of black people and the black body as expendable, especially in the eyes and behavior of the state. In the case of Rodney King, it was not only the physical beating of yet another black man at the hands of the police witnessed around the world, it was also the vindication of those white police officers who took part in the attack (also witnessed around the world). Both components of this event served as a reminder to black Americans across the life-course that although the formal laws of the United States may have changed, the ideologies and instruments of brutality used historically against black people were still employed and available to those in power.

Young black Americans today view Katrina as a reminder that, although the rhetoric of a color-blind society has come to dominate ideological and political discussions of race—especially in light of Barack Obama’s historic presidential campaign—and the fact that the promise of black middle-class expansion has been realized for more black people, in general, black people are still thought of and treated like second-class citizens on any given day. And so on August 29, 2005, this generation of young people turned on their televisions, radios, and computers and found a barrage of images and news stories that highlighted the disproportionate impact of Katrina on poor black people, the mistreatment of those same individuals in evacuation centers and by government officials, and finally the vindication of such ineptitude and discrimination. One need only recount President George W. Bush’s proclamation that FEMA (Federal Emergency Management Agency) head, Michael Brown, was effectively dealing with this calamity: “Brownie, you’re doing a heck of a job.”<sup>6</sup>

The importance of young people to our current political process was highlighted at every rally for Barack Obama, where thousands of young people, especially those in college, showed up to visibly demonstrate their support



for his candidacy and their potential political influence. However, beyond the “college kids for Obama” crowd, other segments of the youth population in this country, especially marginalized black youth, serve as an important indicator of the current strength and future functioning of our democracy. While this generation of young black Americans did not live under Jim Crow or experience the harshest realities of systematic economic, political, and social exclusion, they represent the generation of black Americans expected to benefit most from the country’s attempts at societal transformation. Without the participation of young black Americans and other marginalized populations, our democracy is left vulnerable to the continued and increasing control of those with more power, more access, and more status, reinforcing and exacerbating divisions that will only lead to greater disparities, divisions, and violent recourse. Moreover, our democracy is left vulnerable to decreasing support not only of politicians and policies, but for the fundamental political order meant to ensure equality, justice, and opportunity.

Barack Obama and Kanye West both call Chicago home and both are favored sons. President Obama delivers a message of hope, inspiration, and tough love to “urban youth,” suggesting that if he can make it, so can they. The trade-off, of course, is that to succeed these young people (and their parents) have to do some soul-searching and decide to embrace traditional priorities such as getting an education and performing at their highest ability. But to truly pursue these higher goals Obama, and others such as Bill Cosby, repeatedly emphasize the role of personal responsibility. Their message is centered on the belief that young black people and their parents have to channel their agency and turn off the television and video games, make their kids pull up their pants or pull down their skirts, and stop buying and listening to most rap music.

Kanye West’s message is less of hope and more of learned skepticism. His directive to young people and their parents is not about pulling up their pants, but instead about lowering their expectations of what the government will do for black Americans. West also believes that young black people must harness their agency, for the simple reason that the U.S. government has no desire to protect the basic rights and survival of black people. Interestingly, while clearly not a “hope monger,” West does believe in hope and fortitude. As he recounts in one of his hit songs: “That doesn’t kill me can only make me stronger.”

This chapter is an exploration of which messages and—informally—which messengers resonate with black youth today. Will these young people who “never experienced the harshest realities of Jim Crow” express the hope in the government, the country, and the citizenry currently made popular by Barack Obama? Or will these young people who daily confront the “New Jim Crow” replicate the political cynicism, alienation and measured “hope” of

Kanye West? Given the popularity of rap music and rap music videos among this group of young people, one might suspect that we are more likely to find attitudes similar to those of Kanye West expressed by young black Americans. However, given the historic election of the nation's first African American president, the tide of cynicism toward the government may be changing. In this chapter I will focus on the attitudes of young black Americans prior to the election of Barack Obama. I am especially interested in the question of whether rap music has any effect on the feelings of black youth toward the government and their general sense of political alienation.

Interestingly, when black youth talk about their political status today, their concerns do not start or end with Katrina, Kanye West, or Barack Obama. One is as likely to hear mention of the suppression of black votes during the 2000 and 2004 presidential elections, the constant and increasing attacks on rap music and hip-hop culture, the mass incarceration—or what I have deemed the “domestic deportation” of black men and women—as well as the treatment of blacks in the aftermath of Hurricane Katrina, as reasons that many young black people feel like secondary citizens in this country—fifty years after the civil rights movement and the passage of the Voting Rights Act.

Far from feeling that Kanye West's moment of “speaking truth to power” was unjustified, these young people welcome and largely agree with his comments. Mr. West said what millions of young black people believe—namely, that the government does not care about people like them, that black people and young black people in general are not treated as full citizens in the political community of this country, and that young black people face so much discrimination that it is hard for them to get ahead. As one twenty-one-year-old black woman explained, “To me, I really don't think that they [the government] care about black people. They put us up there up front and say, ‘Oh, we got a lot of black people in high places.’ But things would be different if they were actually, if they had any power. You know, or if the power they had, they used it.” A twenty-one-year-old black male from Chicago succinctly stated that when he hears the word “politics,” he thinks of “a bunch of white people just trying to get together and just trying to get blacks back into slavery.”<sup>7</sup>

Even when respondents to the Black Youth Project in-depth interviews were asked, years before the election of Barack Obama, about the importance of having a black president to the lives and condition of black communities and black youth, most respondents were clear to point out that just having a black person in the presidency does not guarantee substantial change. Most of the young black people who were interviewed focused not on the race of the president but on their policies, intellect, and ability to govern. One twenty-four-year-old black woman from Chicago explained: “I don't think that

it can't just be a black president. Just like, that's going to solve the problems. Just him being black.... Being black is one thing, but what's up here, whats, whats your thought process and your ethics and your morality and all that stuff ties into it.... George Bush could have a black counterpart, we never know." Another young black man from Chicago provided a qualified yes to the question, stating "yes, I do [believe a black president could make life better for black people] to a certain extent but he can't change too much of nothing because he still has to go through the House of Representatives." Again, it was an understanding of the process of governing, where the president can help to set the agenda and push legislation, but must secure the cooperation of the entire governing apparatus, that gave young people pause in terms of the impact of a black president and allowed them to be skeptical that there would be significant changes in the way the government approached young black people even under the "control" of a black president.

It is important to highlight that, although the comments from black youth interviewed through the Black Youth Project may seem extreme, especially in their sense that black people have been neglected, marginalized, and made into secondary citizens by the government, these same young people, like Kanye West, are quick to point out their own personal faults and responsibilities. In conjunction with attacking the government for their inaction, Mr. West also acknowledged that he was a hypocrite because "I've been shopping before even giving a donation." Although the balanced nature of his attack was lost on the media, Mr. West's willingness to publicly berate himself for his own shortcomings is a trait witnessed over and over again in my discussions with young black people. Specifically, when asked what has led to the often dangerous and devastating condition that many black youth face, the young people in our study first articulated the personal failings of black youth, and then proceeded, sometimes after prompting, to outline the structural circumstances that make it hard for young black people to get ahead. Unlike their critics who seem focused only on the personal shortcomings of black youth, this group seems to have a more comprehensive and nuanced understanding of themselves, their communities, and politics in this country.

Given the insight of young black people and their centrality to some of the most important issues facing the country, it is ironic that they should feel so tangential to the operation of American democracy. Arguably more than any other group living in the United States, black youth reflect the challenge of inclusion and equality in our current political era. Whether the issue is the mass incarceration of African Americans, the controversy surrounding affirmative action as a policy to redress past discrimination, the increased use of high-stakes testing to regulate standards of education, debates over appropriate and effective campaigns for HIV and AIDS testing and prevention programs, efforts to limit what material is taught in sex-education

classes, debates about sexual and violent images in videos, or even initiatives to tie means-tested resources to family structure and marriage, most of these initiatives and controversies are focused on, structured around, and disproportionately affect young, often marginalized black Americans.

It is the relationship of black youth to the state and how such experiences shape their support for, or disillusionment with, politicians, the political community, and our political order that I explore in this chapter. Increased access to information through the Internet, television, and popular culture, as well as the constant presence of the state in the lives of vulnerable populations, means that the age of significant political engagement with the state and other political entities, if not formal political citizenship, comes early in the lives of young people from marginal communities, especially black youth. Daily, young black Americans interact with the state and its representatives, and those interactions inform their opinions about themselves, their communities, and their government. For example, young black people engage with the state on a regular basis through state-run health care policies such as Medicaid, through their own experiences or their children's experiences in the public schools, through the payment of taxes, and through the all-too-familiar encounters, personal and observed, with the police. Thus, politicians, policy makers, and even researchers are sorely mistaken if we proceed as if young people, who are often the targets of institutional and state campaigns, programs, and policies, do not have strong opinions about their position in society, their life chances, and the distribution of power in their communities and the country.

Generally, data gathered over the years suggest that on most traditional markers of affect toward the government, young black Americans, like the public in general, are cynical and distrust politicians, feeling alienated from the government.<sup>8</sup> However, little recent scholarship has attempted to understand the nature of that discontent. Specifically, is there something different about the political alienation registered by black youth compared to other young people? Are black youth upset with government policies, or do their negative feelings extend deeper to question the fundamental fairness of opportunity and inclusion in the political community or citizenry? And finally, if there is severe and differently structured political despair evident among black youth, what are the consequences of such a condition for black youth and the country at large? It is time, I believe, to once again focus on the politics of young people, not with an eye toward how such attitudes will influence their behavior when they are older adults, but instead with a determination to understand their sense and practice of politics today, given that they are critical members of our democratic experiment.

To explore these questions, I will examine data from the Black Youth Project. The Black Youth Project is a research effort centered on exploring, highlighting and making the attitudes of young black people recognized. The

first stage of this work included the mounting of a national representative survey of young people ages fifteen to twenty-five. The sample included an oversample of African American youth and a small oversample of Latino young people. The survey was constructed using the lives of young black people as the normative experience, so this instrument includes substantial questions about rap music, ideas about race and racism, and feelings toward the state. The data from the first phase, collected from July to November 2005, will be the primary data source for analysis presented in this chapter.<sup>9</sup>

## THE POLITICAL LIFE OF YOUNG BLACK AMERICANS—IDEAS MATTER

It is an unfortunate fact, but since the late 1970s and until very recently, there was a dearth of rigorous research and careful reporting on the political attitudes and actions of black youth.<sup>10</sup> Instead, much of the writing, whether by academics or journalists, that takes black youth as its primary subject has sought to describe their lives, challenges, and choices, often exploring the impact of a marginal existence on the norms, sexual choices, and cultural vehicles of this group.<sup>11</sup> Most of the academic and journalistic studies of black youth published during this era pay no attention to their politics and political agency. In recent years, however, led primarily by the Center for Information and Research on Civic Learning and Engagement (CIRCLE), some researchers are once again turning their attention to the political and civic engagement of young people. Even with this jolt to the academic research agenda, though, problems still remain. For example, most of the research focuses on civic engagement or voting, and the presumed normative population of study is still white youth.

In spite of such limitations, one important question has reemerged and is being explored, namely, to what degree do we find racial and ethnic differences in the political behaviors and attitudes of young adults and adolescents? Ironically, as in studies of black political participation in the past, current researchers argue that black youth “out-participate” other young people, at least in the civic arena. Peter Levine, in *The Future of Democracy*, writes that while

education and income generally promote participation, and African American youth continue to have lower average levels of education and income than whites. . . . Nevertheless, African American youth are well ahead of whites on several measures of civic engagement.<sup>12</sup>

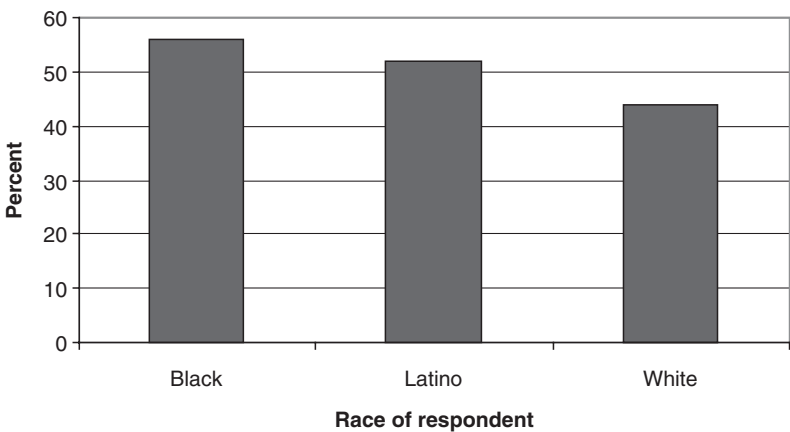
Levine’s bottom line is that “being young and black is currently a positive predictor of civic engagement.” Furthermore, he attributes their larger rates of engagement as possibly being tied to the political organizing and

mobilization learned in the African American church.<sup>13</sup> I think it is important to note that while Levine is correct that on many measures, black youth are more *civically* engaged than other young people, we should remember that in general, the majority of all youth are disengaged, so the advantage that black youth hold is a slight one. Data from the Black Youth Project indicate that in general, very few young people reported engaging in politics.

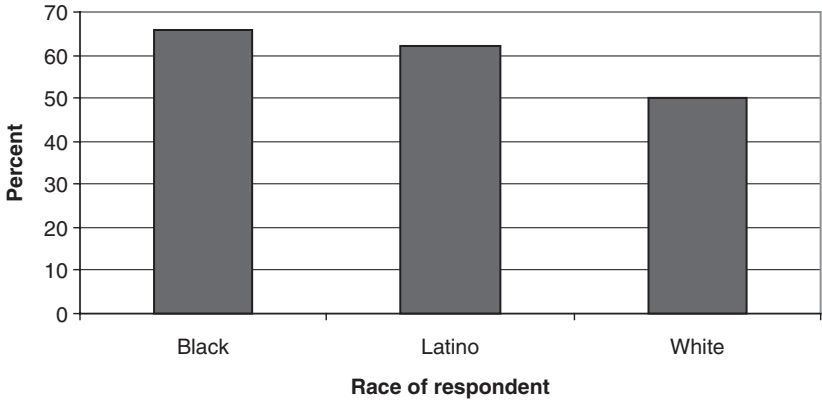
### Feelings about the Government

Differences in rates of civic and political participation tell us something about the political life of young black Americans and how their patterns of political activity differ from other groups of young people. However, attention to political behavior tells us only part of the story. We still have no sense of how young blacks think and feel about the political system. When we posed such questions to adolescents and young adults participating in the Black Youth Project, striking differences emerged among different racial groups. On most measures, black youth, more than any other group of young people, hold negative views of the government. For example, the majority of black youth—56 percent—believe that “the leaders in government care very little about people like them.” This is compared to 52 percent of Latino youth and 44 percent of white youth (Figure 10.1).<sup>14</sup> Interestingly, when disaggregated based on race and gender, the largest gap appears between black women and white women, with 58 percent of black females and only 41 percent of white females believing that the government cares little about people like them.

Similarly, we can see in Figure 10.2 that black and Latino young people are more likely than white youth to agree that “the government is run by



**Figure 10.1.** Percentage of respondents who agree that “The leaders in government care very little about people like me.”



**Figure 10.2.** Percentage of respondents who agree that “The government is run by a few big interests looking out for themselves and their friends.”

a few big interests looking out for themselves and their friends.” Sixty-six percent of black youth, 62 percent of Latino youth, and 50 percent of white youth agree with this assessment.<sup>15</sup>

Again, when the data are disaggregated by sex, the greatest disparity is found between young black women and young white women, with 66 percent of black women and 49 percent of white women believing that the government is run by a few big interests. These negative orientations toward the government were clearly on display in our in-depth interviews with black youth. When we asked a twenty-two-year-old black woman from Chicago what came to mind when thinking about the government, she responded that the government was “a whole bunch of guys in suits that represent people that they don’t necessarily help. And, I think about a small population of so-called, maybe rich or wealthy people, men predominantly, controlling or making decisions about millions of people, and they have no idea what those people want or need.”<sup>16</sup> One nineteen-year-old black woman from Chicago explained that politicians and politics are “scams... just scams. A bunch of scams, con artists.”<sup>17</sup>

Interestingly, not only was such contempt expressed about wealthy, white, male politicians, but similar feelings of disappointment and cynicism were also spoken about black politicians. A twenty-four-year-old black woman from Chicago reluctantly said, “I hate to say a lot of, but a lot of black politicians are normally in it for them... or themselves. You know, not necessarily for what they can do and change about their race and how their race [is] perceived or how things are being dealt with in relation to their race. But I think they’re more into it for themselves. And that... that sucks. It’s like, why are you even bothering to run?”<sup>18</sup>

New information suggests that the political cynicism toward the government evident in the previous quotes and findings from the Black Youth Project actually might be on the rise among black youth. For instance, data from CIRCLE’s Civic and Political Health of the Nation Survey indicate that between 2002 and 2006, African American youth registered the greatest increase among those groups agreeing that the government is not responsive to the genuine needs of the public. Thirty-five percent of African American respondents believed the government to be unresponsive in 2002, while 52 percent called the government unresponsive in 2006. African American youth were also the only group of young people in which a majority indicated that they believed the government to be unresponsive.

There are, of course, many examples of the failure of the government to act, which would explain the declining faith of black youth in the government. These young people, however, are not suggesting that the failing of the government in their lives is only a story of race and racism. Instead, as was evidenced most clearly in the in-depth interview, this is a familiar tale for these young people of those with power, whether white, black, man or woman, ignoring those most vulnerable from communities like theirs, thought to hold little political power and even less political meaning.

### Race and the Government

Barack Obama, during his speech at the Democratic National Convention in 2004, made the statement that “there’s not a black America and white

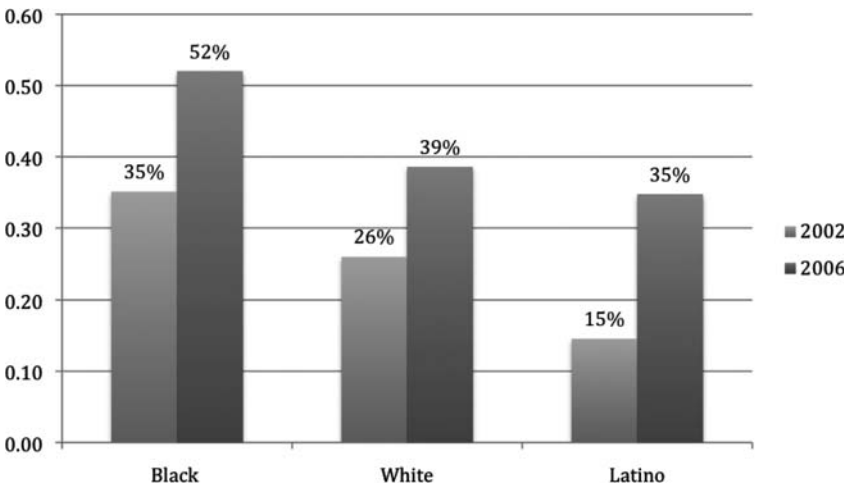


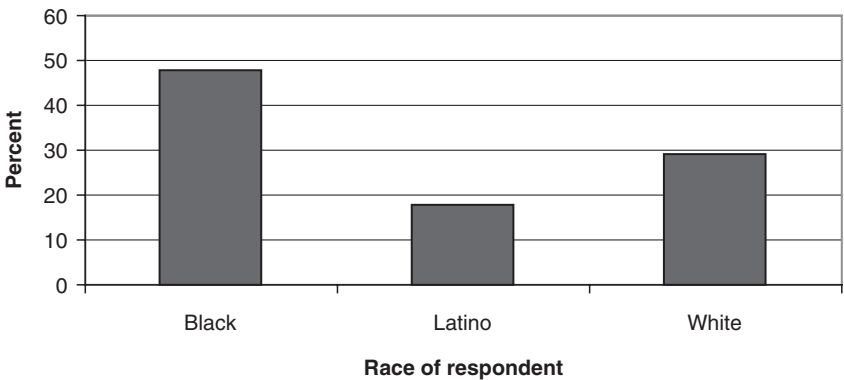
Figure 10.3. CIRCLE: Government Not Responsive. Data from CIRCLE Civic and Political Health of the Nation Survey, respondents ages 15–25.



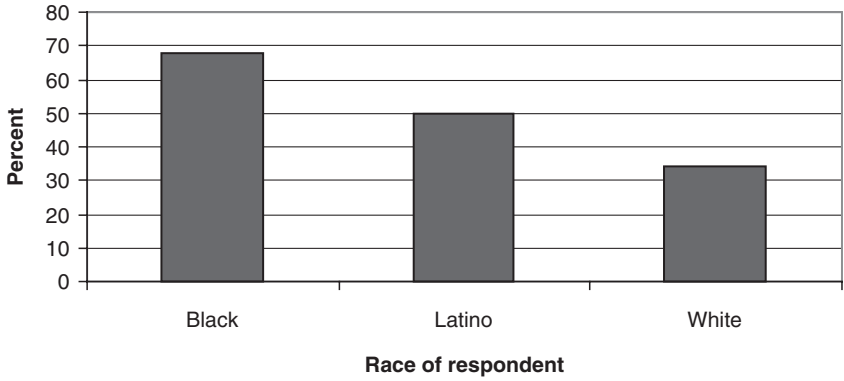
America and Latino America and Asian America; there's the United States of America." Again, after his victory in the South Carolina primary race, he underscored his color-blind approach to viewing the United States, stating, "I did not travel around this state over the last year and see a white South Carolina or a black South Carolina. I saw South Carolina." While the social positioning and political ambitions of Barack Obama that generate such color-blind politics surely will be debated for years to come, I raise his comments to draw out the contrast in how then Senator and candidate Obama saw the United States and how many of the young black people whom we surveyed understand the United States. Most of these young people not only see a black and white America, they would contend that they live and negotiate the consequences of such a racial ordering every day.

When respondents to the Black Youth Project were asked more racially explicit questions about the government's treatment of blacks and black youth, we found even greater disparity between the attitudes of black youth and, in particular, those of white youth. For example, nearly half of black youth—48 percent—agree with the statement that "the government treats most immigrants better than it treats most black people born in this country." As we would expect, much smaller proportions of Latino (18%) and white (29%) youth agree (see Figure 10.4).<sup>19</sup>

Also, like Kanye West, it seems that the majority of black youth believe that in times of crisis, the government is prone to do more when the victims are white. In Figure 10.5, the overwhelming majority of black youth (68%) believe that "the government would do more to find a cure for AIDS if more white people had the disease." Again, smaller proportions of Latino (but still substantial at 50%) and white youth (34%) agree.<sup>20</sup> Much of this perspective is probably fueled by the lived reality of these young people. Theirs is



**Figure 10.4.** Percentage of respondents who agree that "The government treats most immigrants better than it treats most black people in this country."

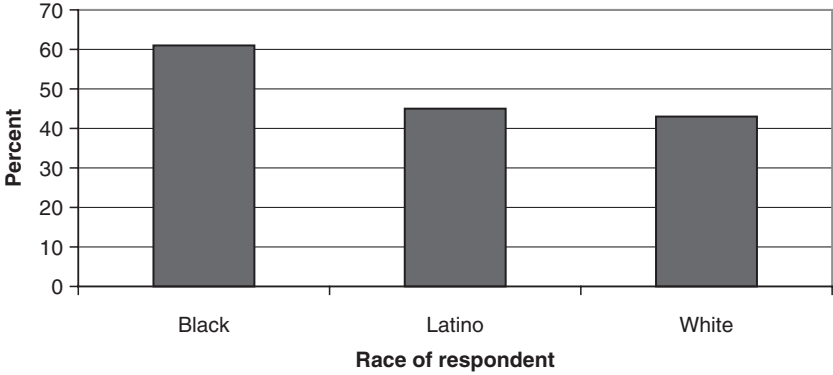


**Figure 10.5.** Percentage of respondents who agree that “If more white people had AIDS, the government would do more to find a cure.”

a reality in which African Americans thirteen to nineteen of age comprised only 16 percent of all those thirteen to nineteen years of age in the United States, but were 69 percent of reported AIDS cases among those thirteen to nineteen in 2006. Unfortunately, the infection rate for black youth twenty to twenty-four years of age reflects a similar disparity. African Americans represented 14 percent of all those twenty to twenty-four years of age in the United States in 2006 and 57 percent of reported AIDS cases among those twenty to twenty-four. In comparison, whites made up 62 percent of those twenty to twenty-four and only 17 percent of reported AIDS cases in this age group in 2006.<sup>21</sup>

When we probed the perceived discrimination that black youth experience in other aspects of their lives, we found a similar pattern of large gaps in attitudes between, in particular, white and black youth, reflecting what might be called the viewpoint of young white America versus young black America. For example, when we asked if respondents agreed with the statement “It is hard for young black people to get ahead because they face so much discrimination,” 61 percent of black respondents agreed, 45 percent of Latino respondents agreed, and 43 percent of white respondents agreed (see Figure 10.6).<sup>22</sup> The largest intra-sex gap was found between young black men and young white men, with 65 percent of black males agreeing with the statement, while only 45 percent of white males agreed.

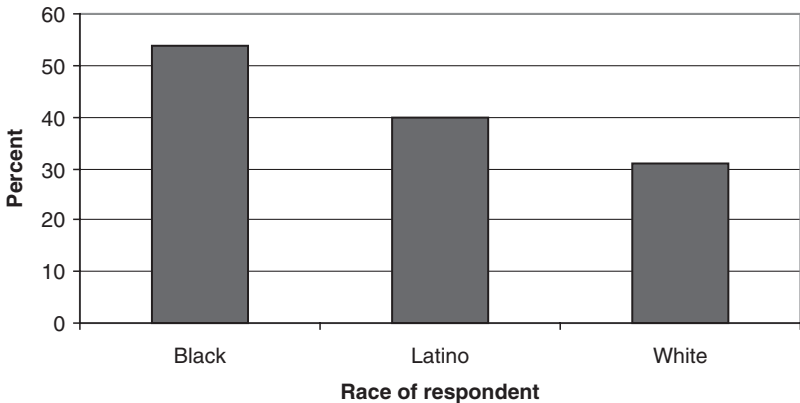
Again, this difference is not just a difference in perspective but more accurately a difference in experience. Recent research has shown that black job applicants can expect to face greater scrutiny and often less employment success than whites with prison records when applying for the same job. For example, a recent study by Pager, Western, and Bonikowski demonstrated “that whites and Latinos are systematically favored over black job seekers.



**Figure 10.6.** Percentage of respondents who agree that “It is hard for young black people to get ahead because they face so much discrimination.”

Indeed, the effect of discrimination is so large that white job seekers just released from prison do no worse than blacks without criminal records.”<sup>23</sup>

When we asked respondents if they agreed with the statement “On average, black youth receive a poorer education than white youth,” 54 percent of black youth concurred, compared to 31 percent of white youth and 40 percent of Latino youth (see Figure 10.7).<sup>24</sup> Of note is the fact that the gap in support between black males (56%) and white males (33%) was 23 percentage points. This substantial gap was less than the 25 percentage-point difference in agreement between black females (53%) and white females (28%). One need look no further than the Chicago public school system to understand the racial gaps expressed about the type of education many black



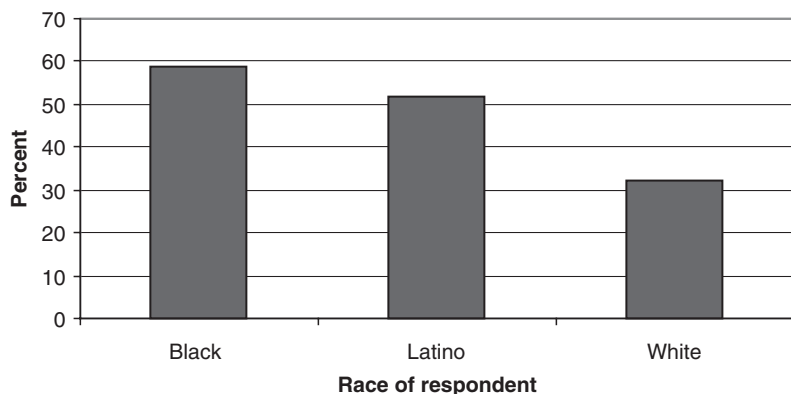
**Figure 10.7.** Percentage of respondents who agree that “On average, black youth receive a poorer education than white youth.”

youth receive. For example, in 2007 it was reported that 54 percent of black students in the Chicago public school system met or exceeded state educational standards. That figure was up from 30 percent in 2001. And while the progress made is to be commended, black parents and students wonder why in the same school system 85 percent of white students in 2007 met or exceeded state standards, up from 66 percent in 2001.<sup>25</sup>

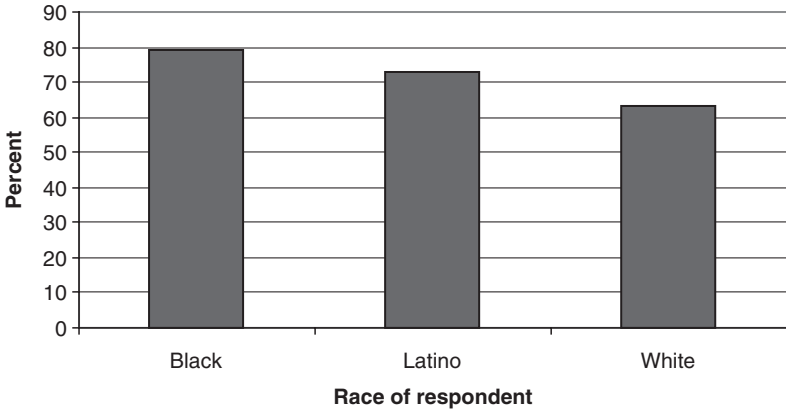
There is the persistent belief articulated among young black people that they are receiving a substandard education. As one young male from Chicago explained, “white people have laptops and we have a pen that don’t work with paper.” Another young man from Chicago argued that part of the reason for the poorer education of blacks had to do with teacher expectations. “These white kids can get the extra help or whatever. Black people can too, but it’s like white people (teachers) already expect black people to only do a certain amount. You know, just do enough. So they don’t ever push them to, you know, go above that limit.”

Perceptions of the treatment of blacks in the health care system also registered interesting racial and ethnic differences among respondents. When asked if they agreed with the statement “In the health care system, blacks are treated less fairly than whites,” the majority of black (59%) and Latino (52%) youth indicated their agreement, while only 32 percent of whites agreed (see Figure 10.8).<sup>26</sup>

Among racialized questions concerning the treatment of black youth at the hands of state entities, the one area where there is overwhelming agreement among all young people surveyed is in their assessment of how the police treat black youth. In Figure 10.9 we see that the majority of all young people across racial groups agreed with the statement that “on average, the



**Figure 10.8.** Percentage of respondents who agree that “In the health care system, blacks are treated less fairly than whites.”



**Figure 10.9.** Percentage of respondents who agree that “On average, the police discriminate much more against black youth than they do against white youth.”

police discriminate much more against black youth than they do against white youth.” Seventy-nine percent of black youth, 73 percent of Latino youth, and 63 percent of white youth agreed that the police discriminate much more against black youth.<sup>27</sup>

It is a sad statement, but there are a plethora of examples of black youth being harassed, beaten, and killed by the police. Of course, there are the seemingly extreme stories that receive national attention, like the killing of Sean Bell on November 26, 2006, by three New York City police officers, the evening before he was to marry. Bell, twenty-three, and two friends were fired at fifty times by plainclothes New York City Police detectives who suspected a member of Bell’s entourage of going to get a gun. Again, while many know the story of Sean Bell’s sad and unthinkable death, daily black youth experience what they perceive to be harassment by the police. For example, findings from the Black Youth Project suggest that over half of black males—54 percent—report being treated unfairly by the police, compared to 42 percent to Latino males and 38 percent of white males.<sup>28</sup>

When talking to young people in our in-depth interviews, nearly all the young people we interviewed discussed how the police stereotypically defined the motives and behavior of black youth. As one seventeen-year-old black male from Milwaukee explained, “if they see four or five black young dudes standing on the corner, we gotta be selling dope and stuff like that. So, they just already got us labeled.” When asked if he had ever seen the police physically harass anyone, he responded, “I seen them harassin’ people every now and then. . . . Like if you run and they catch you, they beat you up. Rough you up a little bit. Stuff like that.”<sup>29</sup>

## POLITICAL ALIENATION

As noted earlier, the focus of this chapter is on trying to understand and scrutinize the attitudes of black youth toward politics and how their lived experience shapes how they feel about politics. There are, of course, myriad factors in the daily life experiences of many black youth that would make them more likely to disengage from political and civil society. But in this chapter, I want to focus on the role of political alienation—not just black youth's feelings toward the government, but their assessment of the entire political landscape—as one reason many black youth have been largely disengaged actively and emotionally from the political process.

I am interested in the role of political alienation because it is so prevalent in our data and because the topic has been shown to be relevant for so long. One need only read the sociological classics of Durkheim and Marx to underscore the significance of the concept of alienation for our understanding of how individuals exist and interact in the world.<sup>30</sup> In political science, much of the work on alienation emerged in the 1960s, in part because of the availability of survey data through the Survey Research Center (SRC) at the University of Michigan. Throughout the years, alienation has been conceptualized and measured in various ways. In political science, most scholars take political alienation to be a subjective condition in which feelings of inefficacy or the belief that formal political decision making is impenetrable by the average citizen is found in conjunction with feelings of cynicism and distrust toward the government. This observation of the combination of low efficacy and high cynicism signals alienation.<sup>31</sup>

Early data gathered through the Michigan SRC Presidential Election Studies showed increasing levels of political alienation among the populace in the 1960s and 1970s.<sup>32</sup> Although the Michigan data were central to the expansion of alienation studies, concern over the social and political uprisings of the 1960s and 1970s, encompassing the civil rights movement, Black and Brown Power movements, opposition to the Vietnam War, and the women's movement, also fueled work in this area. Alarm was voiced over what impact growing levels of political alienation would have on the political system and, more specifically, the political behavior of the masses. Some argued that rising alienation, especially among the young and those who were disadvantaged, would lead to political uprisings, riots, and greater political activism.<sup>33</sup> Others suggested that amplified alienation would lead to disengagement from the political system, possibly most evident among the middle class, since their absence would be noticed.<sup>34</sup> Still others suggested that mounting alienation would have little or no effect.<sup>35</sup> Basically, those who had participated in the past would once again find their way to the polls or the office of a public official to voice their concerns.

In the end, researchers generally concluded that while certain “demographic groups” such as blacks and college-educated youth seemed to be more willing to engage in extra-systemic political behavior such as protest, across the public there was a rise in political alienation but without a significant withdrawal from politics or support of the underlying political structure.<sup>36</sup> The majority of people were fed up with political officials they viewed as corrupt and unresponsive. Feelings individuals held toward political authorities and specific policies were grouped under the label of *specific support*. Ironically, these same individuals who held limited specific support for the political authorities and their policies still harbored what political scientist David Easton called *diffuse support* for the larger political order. Easton explains the difference between specific and diffuse support:

Some types of evaluations are closely related to what the political authorities do and how they do it. Others are more fundamental in character because they are directed to basic aspects of the system. They represent more enduring bonds and thereby make it possible for members to oppose the incumbents of offices and yet retain respect for the offices themselves, for the way in which they are ordered, and for the community of which they are a part. The distinction of roughly this sort I have called “specific” against “diffuse” support.<sup>37</sup>

For Easton and other scholars, diffuse support may be the most important form of support a political system both generates and depends upon. Diffuse support exists independent, to some degree, of the specific policies of any one administration. It is instead an attachment or bond that members of the political community develop to or with the broader or underlying political order. Diffuse support is an attachment to what has been called the political regime, constitutional order, or political structures that design how authorities are elected, policies emerge and are validated, and participants contribute to the work of the government. Diffuse support, which develops during childhood, is durable and acts as a buffer when the outputs that authorities produce do not meet the demands of the political community, generating system stress.

Diffuse support is the component that can curb violent outbursts and sustained collective action among the masses because it calls upon a reservoir of goodwill and faith in the government and the political order during times of specific discontent. Fundamentally, diffuse support is an underlying belief that the political system is fair and that one’s concerns will, on balance and over time, be recognized and addressed by those in power. Easton does concede, however, that largely stable diffuse support can be altered. He provides two scenarios in which diffuse support may erode either over time or quickly.

On the one hand, if discontent with perceived performance continues over a long enough time, it may gradually erode even the strongest underlying bonds of attachment. On the other hand, there may be instances, not so rare as they

might seem, in which the sudden frustration of expectations can so jolt the deeper loyalties of the members of a system that their diffuse support falls into a precipitous decline.<sup>38</sup>

Researchers in the 1960s and 1970s, among others, worried that events such as the civil rights and Black Power movements, the Vietnam War, the 1968 Democratic Convention, and Watergate would not only diminish specific support among most Americans, but might also provide a significant and defining shock to diffuse support, putting political stability and persistence into question. Eventually, however, most scholars would breathe a sigh of relief when they concluded that while the white populace was registering increasing alienation toward elected officials (declining specific support), they still strongly supported what they believed to be the fundamental structure and fairness of the political system (diffuse support).

The same, however, was not true of black Americans, who repeatedly pointed to deep-seated flaws in the political process, questioned the legitimacy of foundational political documents such as the Constitution, and believed it their right, if not their patriotic duty, to take to the streets to demonstrate their lack of diffuse support for the political system. Many black Americans had been socialized politically since childhood to hold greater distrust of public officials and the political system. Early researchers in the field of political socialization repeatedly found that black schoolchildren registered lower levels of trust in the government and political efficacy and higher levels of cynicism than white schoolchildren.<sup>39</sup> Some researchers and politicians worried that black Americans could work to destabilize the political system if their specific and diffuse support became too weak. They feared revolution of black Americans never occurred, in part because of the social mobility experienced by some in the group. As educational, employment, political, and residential opportunities expanded for some black people in the wake of the civil rights and Black Power movements, diffuse support for the promise of equality and opportunity through our current political structure stabilized among black Americans.<sup>40</sup>

Ironically, nearly forty years after the heyday of political alienation studies, the political attitudes of black youth raise some of the same questions asked by a previous generation of scholars concerning the link between alienation and diffuse support for U.S. politics. Specifically, why is it that forty years after the Civil Rights Act and the Voting Rights Act, black youth continue to feel alienated from the government? Do their rates of discontent continue to exceed their counterparts in other racial and ethnic groups? Moreover, does their alienation toward government officials, or what I am labeling *government-oriented alienation*, influence their feelings toward other components of the political system, such as their feelings



of full inclusion in the larger political community of presumed equals and their sense that all are given an equal chance to succeed?<sup>41</sup> Finally, what factors seem to be driving these dynamics, and are they the same across racial and ethnic groups?

As noted earlier, it has long been observed by scholars that black Americans exhibit more distrust and skepticism of the government than do other groups.<sup>42</sup> However, many believed that this generation of black youth would no longer hold the levels of government alienation witnessed among previous generations of blacks who withstood pervasive marginalization through systems such as Jim Crow. Prominent commentators and figures in black communities, including Bill Cosby, Stanley Crouch, Oprah Winfrey, Juan Williams, and John McWhorter, have all complained that the current generation of black youth, including those who are middle- and upper-class, has a tight grasp on the victim mentality, leading them to be alienated from and unproductive in a society in which opportunity is greater than it ever has been for black people. For example, black elites ask, why would young black adults at some of the nation's most prestigious colleges and universities, with nothing but earning power in their futures, be alienated from politics and the state? This question will undoubtedly be amplified now that the state or the government is headed by a black president. Surely, many Americans will wonder why black youth feel alienated from the government now. And while those of an older generation might be frustrated with the attitudes and behaviors of young black people, the data from the Black Youth Project suggest that black youth are not the only ones exhibiting feelings of alienation from at least government officials. If we refer back to two questions discussed previously, we can explore and compare the levels of alienation held among white, black, and Latino youth.

### **Alienation and the Numbers**

Two questions, in particular, seem to correspond to two dimensions of alienation prevalent in previous studies: efficacy and trust. One question asks if respondents agree with the statement that “leaders in government care very little about people like them”—a traditional efficacy/trust question. As noted earlier in the chapter, we found that 56 percent of black youth, 52 percent of Latino youth, and 44 percent of white youth agreed with the statement.<sup>43</sup> Similarly, a majority of all young people agree with the statement that “the government is run by a few big interests looking out for themselves.” Sixty-six percent of black youth, 62 percent of Latino youth, and 50 percent of white youth agree with the statement, suggesting that all young people, and especially black youth, harbor feelings of inefficacy and distrust directed, in particular, at political officials.<sup>44</sup>

Not to be lost in our discussion of political alienation is the question of how broadly such alienation extends among black youth. Traditional measures of political alienation have often limited their target or inquiry to public officials, serving as a referendum on the government—do you trust them and are you able to impact their decisions? Such questions are thought to tap into respondents' feeling about political authorities, which are often represented as their specific support for the outputs generated through the political system. I believe that the political alienation that black youth feel extends beyond their feelings about government officials. So while most young people (and adults) agree that political officials are not to be trusted and just want to “throw the bums out of office,” black youth are also questioning the fundamental fairness of the political order and their standing in the larger political community. Thus, borrowing from Easton's delineation of the political system, which includes political authorities, the political community, and the regime, I investigate whether there are significant differences in the feelings that young people from different racial and ethnic groups have toward not only politicians, but also the political community and their sense that everyone has an equal chance for success under this political order. While the three domains of political alienation I am investigating—government, community, and opportunity—differ slightly from the three domains designated originally by Easton—government, community and regime—I believe my configuration will still provide current-day insights into the levels of diffuse support to be found among young black Americans. Thus, it is only when we explore black youth's attitudes toward political officials, their feelings of inclusion in the political community, and their sense of equal opportunity under the current state order that we are truly able to assess their feelings of *political* alienation, not just *government-oriented* alienation.

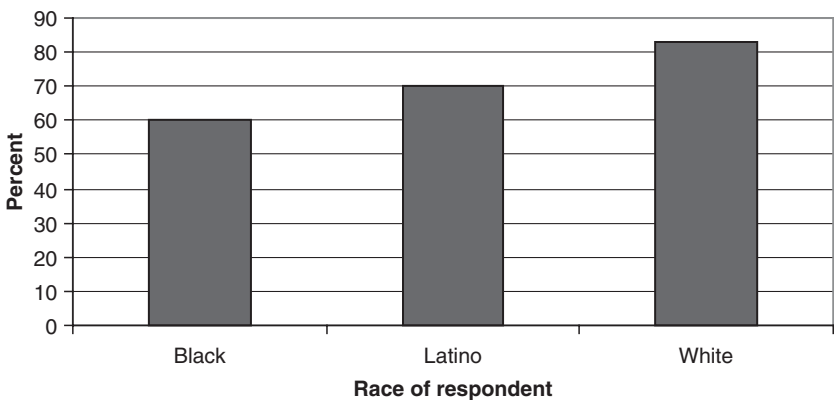
To more fully interrogate how young people think about their place in the political community and the structure of opportunity, I turn to two questions in the Black Youth Project data set. The first question asks respondents to what extent they agree with the statement “Generally, I feel like a full and equal citizen in this country with all the rights and protections that other people have.” This measure I label the *political community* dimension of political alienation. This question is an indicator of how fully integrated and respected black youth feel as members of the political community. While there might be shared skepticism toward elected officials among young people, their experiences with the government and their general life experiences may differentiate their feelings of political status and equality. Finding from our national survey suggest that a significant number of black respondents—60 percent—feel like full and equal citizens; however, this was 23 percentage points less than the 83 percent of white respondents who feel

like full and equal citizens and the 70 percent of Latino respondents who believe they hold such status (see Figure 10.10).<sup>45</sup>

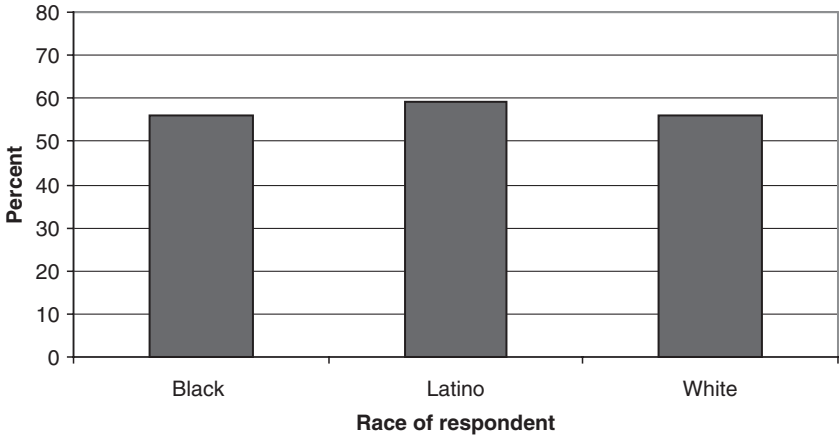
A similar important distinction in the attitudes that black youth hold toward the political system might also be found in their sense of the provision of equal opportunity to all citizens. Do they believe that generally the system provides some means so that everyone has a chance to get ahead? To explore these feelings, I use another question on the Black Youth Project survey: “Do you agree with the statement that in the United States everyone has an equal chance to succeed?” This question is an indicator of what I am calling the *equal opportunity* dimension of political alienation.

Interestingly, for this question there is less marked disparity among racial and ethnic groups. In Figure 10.11 we find that 56 percent of whites, 56 percent of blacks, and 59 percent of Latinos all agree that in the United States everyone has an equal chance to succeed.<sup>46</sup>

For many, it is this last question and the general consensus evidenced among young people that causes the greatest pause. How is it that young blacks who are more alienated from the government officials, who are less likely to believe that they are fully included as equal citizens in the democracy, similarly feel that everyone has an equal chance to succeed—however they define success? To provide even a partial answer to this puzzle, I again rely on the idea of diffuse support and relativity. It is possible that while young black Americans are disgusted with the current running of this political system and are willing to withhold their specific support, they are conflicted about whether there is any hope short of revolution that can right the democracy. These young people seem torn between a feeling of being



**Figure 10.10.** Percent of respondents who agree that “Generally, I feel like a full and equal citizen in this country with all the rights and protections that other people have.”



**Figure 10.11.** Percentage of respondents who agree that “In the United States, everyone has an equal chance to succeed.”

secondary in the political community, as expressed by Kanye West, and the promise of opportunity and mobility they hear from politicians like Barack Obama. I daresay that while one component of political alienation, namely, disgust with political authorities, seems to be standard fare, with young Americans and young black Americans in particular holding disdain for this segment of the population, the feelings of black youth about being full members in the political community and the fundamental equality in opportunity provided by the political order are still up in the air. This is not the definitive answer that many would like, but I believe it to be an accurate assessment. These young people are at a crossroads, as is our democracy, and the governing of President Obama as well as possible changes in attitudes around race and class may determine if young black Americans are to be decidedly alienated from the entire political process and community or if they are to revive their faith in the country and the possibility of a fully functioning democracy. If we are to intervene and gently push black youth in one direction or another, we will need to answer at least one substantial question—where does *political* alienation among black youth come from? In the rest of this chapter, I take up this question.

## WHAT IS DRIVING POLITICAL ALIENATION?

To understand what factors are related and possibly contribute to the political alienation registered by young black Americans we turned to the Black Youth Project dataset. Specifically, we<sup>47</sup> used the data available through the BYP to statistically examine what variables might influence how black youth

feel about the three dimensions of political alienation detailed previously—government alienation, political community, and equal opportunity.<sup>48</sup> Because we are primarily interested in the structure of political alienation and diffuse support among black youth, but want to understand how the factors related to black youth's feelings of political alienation might differ from those of white and Latino youth, we divided our sample into three groups—blacks, whites, and Latinos—and ran the same model of the three dimensions of political alienation for each group. The first dimension of political alienation explored focused on one's trust and efficacy toward the government. For this analysis, we created a government-oriented alienation scale that is the composite score from questions regarding two statements: "The leaders in government care little about people like me" and "The government is pretty much run by a few big interests looking out for themselves and their friends."<sup>49</sup> As noted previously, the second dimension of political alienation, as I conceptualize it—political community—is measured by the statement "I feel like a full and equal citizen." Likewise, the third dimension of political alienation—equal opportunity—is operationalized with the statement "Everyone has an equal chance to succeed in the United States."

Included in our models of political alienation were essential control variables that we believe constitute four overlapping groups. In *Voice and Equality*, Verba, Schlozman, and Brady use a four-step process to explore the complex factors that result in political and civic activity.<sup>50</sup> While we will not replicate the same statistical model used by Verba, Schlozman, and Brady, we believe the grouping of their control variables into categories makes them more instinctively comprehensible to the reader. We will, therefore, borrow this approach.

We call the first group of variables, like Verba, Schlozman, and Brady, *initial characteristics variables*. These are largely demographic variables representing characteristics of our respondents over which they have little to no control. Variables in this group are: age, sex, family socioeconomic status (SES),<sup>51</sup> and immigrant status.<sup>52</sup> A second group of variables included in our model are those we label *political socialization variables*. These are experiences or influences thought to shape the political socialization that a young person receives. Variables in this group include respondent's education, parental interest in politics, levels of exposure to rap music and videos,<sup>53</sup> personal experience with discrimination,<sup>54</sup> the socioeconomic status of his or her neighborhood, and the racial diversity of his or her neighborhood. A third set of variables included in our model are those measuring institutional involvement. Numerous studies have found that individuals who are enmeshed in organizations and structured environments are provided not only greater political information, often in the form of political discussion, but also the opportunity for political mobilization, positively impacting one's

probability of engaging in politics.<sup>55</sup> In this model we include variables that measure whether the person is in school or working, if they belong to an organization or group, and if they are active at their place of worship.<sup>56</sup> The final group of variables included in the model is largely attitudinal, measuring a person's perception and not experiences. In this category of variables is one's perceived political efficacy,<sup>57</sup> linked fate (meaning to what degree you believe your fate is tied to your racial group),<sup>58</sup> and how you believe others outside your racial group view your racial group.

When exploring the factors thought to be related to negative orientations toward the government among black youth, it is the absence of family SES that jumps out initially. Amazingly, there is no direct relationship between the education and income of one's parent(s) and the degree to which one is distrustful and cynical of government officials. This is not to say the young black Americans do not hold negative views toward the government, as discussed earlier. Instead, it seems that family SES is not a clear marker of which black youth will be alienated and which ones will not. Across the class divide in black communities, one can find young black people fed up with government officials. Consistent with our findings about black youth is the finding that family SES is also not related to the attitudes that Latino or white youth hold about government officials. In some ways this is not that surprising, since it seems that nearly all Americans, regardless of race, ethnicity, sex, or class, seem to be frustrated and unhappy with elected officials. We might expect that those with fewer resources, less income, and less formal education might be the most upset. Our data, however, suggests that among young people, family SES seems to have no impact on their attitudes toward government officials.

Black youth, however, seem to develop more negative attitudes as they grow older and have more interactions and experiences with the government through entities such as the police or the court system and possibly service agencies. The difference between being fifteen and twenty-five may only be ten years; however, during that time period some young people start families, some graduate from college and start their first full-time job, others leave home and establish their residence, while others come to know the daily frustration of not being able to find or keep a job, being hassled by the police, or worse yet, spending time incarcerated. Given the range of experiences that occur during this period, it is not surprising that age is related to feelings toward the government among black youth. The impact of age is relatively significant. What I mean by that is: if you are twenty-five you are 8 percent less likely to hold positive attitudes toward the government than if you are fifteen.<sup>59</sup>

A bit more surprising is the relationship between rap exposure and feelings toward government officials. We find that there is a negative relationship

between exposure to rap music and rap music videos among black youth and feelings toward the government. As young black Americans experience greater exposure to rap, we find a corresponding increase in levels of alienation toward the government. Specifically, black youth who listen to more rap music and watch more rap music videos are 4 percent less likely to register positive feelings toward the government than those black youth who have little to no exposure to rap music and rap music videos, if everything else remained stable. In general, this is a mild but significant effect, what we would expect given that so many people have negative feelings about government officials.

Despite the limited impact of rap exposure on the attitudes toward the government, this is still an especially interesting finding because numerous articles have crowned hip-hop as the defining cultural form in the lives of young people, not only in the United States but also in many different parts of the world. By all reports, hip-hop culture—rap music, graffiti, break dancing, and DJing—comprises much of what young African Americans listen to, watch, talk about, and possibly emulate. Our data confirmed that a majority of black youth (58%) indicate that they listen to rap music every day. And while a substantial literature has emerged detailing the history and current manifestations of hip-hop culture, there has also developed substantial writing and some research warning of the possible negative impact of hip-hop culture on young African Americans, stemming from its perceived focus on and promotion of sex, drugs, crime, misogyny, consumerism, and nihilism. Many “experts” surmise that hip-hop culture, especially rap music, has a negative impact on young people in any number of domains of their life, but especially in terms of their sexual decisions. There is, however, very little systematic work that has empirically tested such propositions. Our data suggest that there is an impact on political attitudes, but the force of exposure to rap is constrained when it comes to attitudes about the government.

In addition to rap music and videos being related to greater alienation, so too are experiences with personal discrimination and feelings of linked-fate among black youth. Again, we find relative mild effects for both influences. So if a young black person moves from having no experiences with personal discrimination to the highest levels of experiences with personal discrimination, we can expect them to be 5 percent less likely to hold positive feelings toward government officials, everything else being equal or the same. Similarly, a young black person who feels that what happens to other black people will affect him or her is 3 percent less likely to hold positive feelings about government officials than a young black person who does not feel a sense of linked-fate yet shares all the other characteristics with the first young person. It is only a feeling of political efficacy that can bolster the positive feelings one has about government officials. The belief that

one is politically efficacious diminishes negative feelings toward the government. Thus someone with the highest level of political efficacy is 5 percent more likely to hold positive feelings toward government officials than someone with little to no political efficacy, all other things being equal between the two individuals.

The model for white and Latino youth found similar and different patterns when it comes to variables related to attitudes toward the government. Among whites, experiences with personal discrimination was related to negative feelings toward the government. There were, however a number of other factors that corresponded with positive feelings toward the government for white youth. For white youth, those whose parents were interested in politics, those who were engaged in activities at their place of worship, and those who had a sense of political efficacy were likely to have more positive attitudes toward government officials. Latino youth were similarly positively impacted by feelings of political efficacy. We also find their experiences with personal discrimination and the older age of the respondent correspond to less positive evaluations of government officials. Interestingly, Latinos were the only group where sex was statistically significant in our models, with Latina or young Hispanic women and girls demonstrating less alienation from government officials than young Latino men and boys.

When we attempt a similar analysis to understand what factors are related to the political alienation dimension of full inclusion among black youth, far fewer clues materialize. And while the number of variables in our model that demonstrated statistical significance is much smaller, the magnitude of their effect is much larger. For example, again, personal experience with discrimination emerges as a significant component related to feelings of full inclusion in the political community. Specifically, one's daily experiences with discrimination based on factors such as race, gender, age, or class seems to have a negative impact on their feelings of inclusion. Sadly, black youth who score the highest in terms of experiences with personal discrimination are 34 percent less likely to feel like a full and equal citizens, compared to black youth who score the lowest on the personal discrimination scale. The only good news in this finding is that by far the majority of black youth do not score at the highest level in terms of experiences with personal discrimination. In fact, only 9 percent of black youth indicate they have experienced personal discrimination often or very often.

The bad news, however, is that even when we look at the differences between those black youth who are average or at the mean in terms of their experiences with personal discrimination and those who indicate that they have never experienced discrimination, there is a substantial difference in the probability of them feeling like full and equal citizens. Black youth who register an average number of experiences with personal discrimination are



10 percent less likely to feel like full and equal citizens, compared to those black youth who report having experienced no discrimination.

In contrast to declining feelings of inclusion, our data suggests that black youth who feel politically efficacious are also more likely to report feeling a part of the political community. Of course, it is difficult to decipher if political efficacy leads to greater feelings of inclusion or if feeling included leads to greater efficacy. And while some statistical tests allow us to try to disentangle the question of causality for this analysis, we will be content to highlight the relationship without making claims about what is causing what. Specifically, those young black Americans who register the highest levels of political efficacy are 29 percent more likely to feel like full and equal citizens, compared to those black youth at the lowest levels of our political efficacy scale. Luckily, most black youth (79%), like most white youth (79%) and Latino youth (77%), believe themselves to be politically efficacious; thus we would expect that many of them would feel increasingly like a member of the political community if all other variables are stable.

Among white and Latino respondents, a number of other interesting variables seem to be related to feelings of inclusion. White youth with higher levels of family SES and who are more politically efficacious are more likely to feel like full and equal citizens. In contrast, white youth who have more experiences with personal discrimination or register some immigrant status are less likely to feel included in the political community. Latino respondents who are immigrants or whose parents are immigrants feel less included in the political community. So too do those Latino youth who have experienced personal discrimination. However, Latino youth who are in school or are older seem to exhibit higher feelings of inclusion in the political community.

The third dimension of political alienation as conceptualized here is that of equal opportunity. As in previous models, black youth's personal experiences with discrimination correspond with more negative perceptions of the opportunity available to all in the United States. Moreover, experiences with personal discrimination are related to a substantial decline in the belief that there is an equal chance to succeed. In particular, black youth who register the highest rates of personal discrimination are 46 percent less likely than those young black Americans who report no experiences with personal discrimination to believe there is equal opportunity for success in the United States. Again, the impact of experiences with personal discrimination is also felt by those who report the average or mean number of such encounters. For example, black youth who report an average number of experiences with personal discrimination are 14 percent less likely to believe in equal opportunity than black youth who have had no experiences with personal discrimination that they can identify. And while the general impact of personal discrimination is not surprising, the reverberations of such experiences,

making black youth less likely to feel a part of the political community and to believe in the equal opportunity to succeed are findings that should reinforce our commitment to ending personal discrimination, not only because of the destructive nature of such experiences to an individual's self-esteem and pride, but also because discrimination undermines the functioning of our democracy, increasing alienation among a new generation of political participants.

Also, shown to be related to black youth's lower likelihood in believing that everyone has an equal chance to succeed in the United States are age, linked fate, and exposure to rap. Specifically, as black youth get older, their agreement with the idea that everyone has an equal chance to succeed is much less strong than those who are younger. In fact, age in this case has one of the strongest effects on the beliefs of black youth. If you are twenty-five, you are 54 percent less likely to believe that everyone has an equal chance to succeed than those black youth who are fifteen and have yet, in many cases, to experience the realities of an independent life. Similarly, the more black youth see their life as tied to what happens to other black people (linked fate), the less likely they are to accept the idea that there is an equal chance for success among all Americans. All things being equal, black youth who register the highest levels of linked fate are 18 percent less likely to believe in equal opportunity than those black youth who do not believe that what happens to most black people in the country will affect them. Black youth who listen to more rap music and watch more rap music videos are also less likely to agree that there is an equal chance for success in the country. Specifically, black youth who record the highest levels of rap exposure are 17 percent less likely than black youth who do not listen to rap music or watch rap music videos to believe that in the United States everyone has an equal chance to succeed. Undoubtedly, many of the messages found in rap music underscore the inequality found in American society, directing listeners to try to "get theirs" because nothing is promised or guaranteed. Interestingly, black youth who are members of an organized group also are 8 percent less likely to agree with the premise of equal opportunity than young blacks who are not in a group. While there is no clear or obvious explanation for this finding, we might imagine that in many organized groups young people are told that one has to work hard to succeed and that they have been encouraged to join a group by an adult or mentor because there is the understanding that one needs an advantage to get ahead in society where there exists significant inequality.

There were two variables that corresponded positively with the idea that in the United States everyone has an equal chance to succeed—political efficacy and religious activity. Black youth who were the most politically efficacious were also 23 percent more likely to agree that everyone has an equal

opportunity to succeed in the United States than those with the lowest levels of political efficacy. Again, we cannot make claims about which factor might be driving or causing this relationship. Similarly, black youth who are the most active religiously are 13 percent more likely to believe in equal opportunity in the United States, compared to those who are the least religiously active. In this case, we might expect that those individuals who are participating in the activities of their religious institution come to this work with a fundamental belief in the equality of all human beings and the ability of such individuals to succeed in the country, given the opportunities available to all.

White youth exhibit interesting relationships in terms of their belief in the equal opportunity to succeed in the United States. Among white youth, those with higher levels of family SES are less likely to agree that in the United States everyone has an equal opportunity to succeed. Possibly seeing up close what it takes to get ahead, these young people are more skeptical of any claims about equal opportunity in the United States. Also, those white youth who have experienced some form of personal discrimination are less likely to believe that equal opportunity is available in the United States. Finally, like we found with our black respondents, religious activity and political efficacy were related to a higher probability of agreeing with the idea that everyone has an equal chance to succeed in the United States. Latino respondents provide a scaled-down version of what we found among both black and white youth. Specifically, experiences with personal discrimination decrease the probability that Latino respondents agree that there is equal opportunity to succeed while higher political efficacy bolster the belief that there is equal opportunity among Latino youth.

### **WHY ARE BLACK YOUTH SO ALIENATED?**

Even given the findings I just discussed, it may seem puzzling, if not disturbing, to most people that in a historical period when black youth have more opportunities than ever before, especially with the election of Barack Obama, they still are alienated, at least politically. Why should a population of young people who benefit from policies such as affirmative action (or at least its remnants) feel that on average, black children receive a poorer education than white youth? Why should young black Americans who never formally experienced the poll tax or other legal mechanisms that denied black people the right to vote feel that the government will work to deny them the right to vote and, if given the chance to cast a ballot, their votes (literally) won't be counted? Why should black youth who live at a time when, for the first time, a black man has a realistic chance to be elected president believe that black youth face so much discrimination that it is hard for them to get ahead?

Part of the answer to these questions is undoubtedly rooted in the lived reality that far too many young black Americans face daily. By now, most people know that black youth suffer disproportionately in the economic, political, and social realms, compared to young people from other racial and ethnic groups. Black youth are more likely to be in jail, in prison, or on parole; out of school; unemployed; and living in poverty than white and sometimes Latino youth.<sup>60</sup> But how can we explain the alienation of black young people across class categories? It might make sense that someone who lives in poverty and attends a school with few of the needed resources would feel alienated from the government and maybe the political process in general, but why should middle-class black youth hold similar feelings of distance and disgust?

Here I believe the answer lies in the systemic pathologizing of all black youth. It is the rare young black person who has not experienced being pulled over by the police because he or she looks suspicious, being followed through a store under the assumption that he or she is there to steal something, or being chastised by an older person for listening to “that” rap music. The surveillance and demonization of black youth is pervasive in this country and extends across class lines and across racial and ethnic communities, although it is clearly concentrated in poor communities. Even young black people with privilege and access talk about how they believe race and racism structure and limit their experiences in the classroom and boardroom. One recent example might better illustrate our current willingness to criminalize black youth culture, often independent of class. Recently, the *New York Times* and the *Miami Herald* published articles on the emergence of sagging-pants laws across the country.<sup>61</sup> It seems that city councils and state legislatures are debating and, in some instances, passing laws that criminalize wearing one’s pants too low below the waist. So, in a time of war, when the housing market is in a free-fall, and with many cities facing economic shortages, some city officials have decided that the issue that needs addressing is how low many black youth, in particular black males, wear their pants. As Robert Samuels of the *Miami Herald* wrote in his article, there is a “nationwide movement to curb youth from being too small for their britches.” The penalties for such an offense range from a mere admonishment to community service to a fine of \$500 and up to six months in prison. It seems the supporters of such laws believe that it is part of the tough love that black youth need to get them on the straight and narrow. As one state representative from Louisiana said, “Hopefully, if we pull up their pants we can lift their minds while we’re at it.”<sup>62</sup> Predictably, many of these laws have originated in black communities with the backing of the local black leadership.

At the heart of this move to criminalize sagging pants is the belief that this appearance is the marker of truly dangerous and deviant individuals. As Koppel writes in the *New York Times* article, “Behind the indecency laws may

be the real issue—the hip-hop style itself, which critics say is worn as a badge of delinquency, with its distinctive walk conveying thuggish swagger and a disrespect for authority.<sup>63</sup> Of course, criminalization of what is perceived as an oppositional, deviant, often racialized male style is part of our history. Thus, sagging-pants laws should be understood in the context of moral panics that surrounded zoot suits and the black leather jackets and berets worn by the Black Panthers and their followers. The example of sagging-pants laws, I believe, helps to illustrate both how quickly those with dominant and indigenous or community-based power can unite to criminalize black youth and black youth culture as well as use their power to generate feelings of alienation among black youth across any class divide. Such targeting of black youth contributes to their feeling of cynicism and alienation and to the lessening of their diffuse support for the legitimacy of our democracy.

We must remember that the criminalization of black youth is just one component of the systematic pathologizing of these young people. Even among those who we might argue have a commitment to better the condition of young black people, one hears an almost instinctive return to stereotypes and partial truths when describing this group of adolescents and young adults. We might take Barack Obama as an example. Senator Obama has repeatedly focused on his days as an organizer, working among the poor and young people, as reasons why he turned to politics, namely to improve the condition of those most marginalized—including and especially black youth. This exchange between Obama and a voter in Iowa is illustrative of possibly the unintended but still detrimental pathologizing of black youth that happens daily both inside and outside of black communities. A woman complained to Obama about how “inner-city” kids don’t know how to dress for a job. Below is Obama’s response as reported in the *Washington Post*.

“Pull up your pants!” Obama interjected, as the crowd laughed. “Pull up your pants!” Appearance is key to urban youth succeeding, he stressed. “You’ve got people coming in, heads hanging down, hat cocked. They’re mumbling. [Obama mutters a few nonsensical words.] You can’t understand what they’re saying. The employer asks them to do something and they’ve got an attitude. Why do I got to do it? Why didn’t you ask Pookie to do it? They come in late. The employer says, why are you late? I don’t know.” The crowd laughed and cheered as Obama spoke.<sup>64</sup>

## CONCLUSION

Cornel West has probably been the most evenhanded and genuinely concerned scholar focusing on black youth to argue that they are nihilistic. In *Race Matters*, West suggests that nihilism must be a concept that researchers concerned with African American youth make central to their analyses.

West argues that we must tread “into the murky waters of despair and dread that now flood the streets of black America. To talk about the depressing statistics of unemployment, infant mortality, incarceration, teenage pregnancy, and violent crime is one thing. But to face up to the monumental eclipse of hope, the unprecedented collapse of meaning, the incredible disregard for human (especially black) life and property in much of black America is something else.”<sup>65</sup>

While the prospect of nihilism among black youth is a plausible fear, especially given the lived condition many inhabit, young black people seem to be resisting a descent into nihilism by holding onto the belief that opportunity and inclusion either are or may be available to them if they play by the rules. It is just this teetering on the brink of full-blown political alienation that I believe stands in contrast to the nihilism of black youth predicted by scholars such as West. For those young people who have seen a few or maybe some family members benefit from the lessening of racial restrictions on jobs, housing, health care, and education, this optimism probably makes sense. Others who have not experienced such mobility directly may have seen it on television, in movies, or witnessed it in the lives of their favorite rap artist or sports hero. This is a generation that witnessed both the continuing marginalization of black people—in particular poor black Americans—while also witnessing the growing power and prosperity of some African Americans. It was simultaneously the best of times and the worst of times for black people, and the political attitudes of this generation of young people reflect the confusion, unease, and disjuncture generated from such dueling narratives.

It is also important that we qualify our understanding of the willingness of black youth to embrace the idea of equal opportunity in the United States. Through our in-depth interviews, young black respondents explained their belief in the fairness of the United States as true relative to other countries. Many of the young black people we interviewed compared the United States to other countries that they believe are less well-off and have fewer rights. In more than one interview, a respondent would point out the discrimination that black youth face in the United States but would qualify that criticism by mentioning the greater sense of fairness they believe exists in the United States. One twenty-four-year-old black woman from Chicago explained what she meant by the relative fairness of the United States: “I think it’s a lot more fair than other countries. I don’t think it’s a lot, like, *so* great as they make it out to be. But if you compare it to other countries, I think it is *a lot* better than those other countries.” A seventeen-year-old black female went further, stating, “I see a lot of different countries that seem like they have more freedom than a lot of countries. And, like, they’re more, hmm, like they more strict, but the United States, to me it seems like a 50/50. Like you free but then again you’re not.”<sup>66</sup>

Some might predict that the higher levels of political alienation that black youth hold will drive them away from any civic or political activity, believing that the system is not only closed to them but out to get them. And while that might be true, another interpretation of this very basic data might be that such feelings of anger and frustration function as a motivator, leading young black people to act: we need only look at the mobilization surrounding the Jena Six as an example. So we are now left with the question of how political alienation impacts black youth. Does political alienation really matter or affect anything that matters? Specifically, does the political alienation evident among young black Americans hinder their political engagement? This is a question I address in a larger book project.<sup>67</sup> But as we move forward in our investigations of black youth and their politics, let us not forget the continuing and disproportionate social, political, and economic marginalization of African American youth. Without serious investigation into how

**Table 10.A1. Appendix A: Ordered Probit Estimates for White, Black, and Latino Respondents**

Government Orientation	White	Black	Latino
<b>INITIAL CHARACTERISTICS</b>			
Family SES	.00	-.02	.02
Sex	.09	.03	.27*
Age	-.02	-.08***	-.08***
Immigrant Status	-.01	.03	-.02
<b>POLITICAL SOCIALIZATION</b>			
Education	.00	-.01	.03
Parent Interest	.11*	-.03	.03
Rap Exposure	.00	-.05***	.00
Personal Discrimination	-.06***	-.06***	-.06
Neighborhood SES	-.00	.00	-.00
Racial Diversity	.01	-.03	-.00
<b>INSTITUTIONAL INVOLVEMENT</b>			
In School	.11	-.06	-.16
Organization/Group	.05	-.05	-.13
Religious Activity	.05*	.01	.08
<b>POLITICAL ATTITUDE</b>			
Political Efficacy	.47***	.29***	.27
Linked Fate	.08	-.10*	-.09
Positive View	.01	-.05	.01
Sample Size	458	548	258

\*Significant at .05 level.

\*\*Significant at .01 level.

\*\*\*Significant at .001 level.

**Table 10.A2. Appendix B: Ordered Probit Estimates for White, Black, and Latino Respondents**

Political Community	White	Black	Latino
<b>INITIAL CHARACTERISTICS</b>			
Family SES	.03*	.00	.01
Sex	-.10	-.04	.05
Age	.03	.00	.07**
Immigrant Status	-.12***	-.02	-.11***
<b>POLITICAL SOCIALIZATION</b>			
Education	-.01	-.02	-.00
Parent Interest	.02	-.01	-.06
Rap Exposure	.02	-.01	-.03
Personal Discrimination	-.04*	-.06***	-.07***
Neighborhood SES	.00	-.00	-.00
Racial Diversity	.10	-.07	-.04
<b>INSTITUTIONAL INVOLVEMENT</b>			
In School	.18	.21	.63***
Organization/Group	.09	.04	-.26
Religious Activity	.02	.03	.06
<b>POLITICAL ATTITUDE</b>			
Political Efficacy	.46***	.25***	.16
Linked Fate	.00	-.08	-.08
Positive View	.00	-.01	-.02*
Sample Size	458	555	259

\*Significant at .05 level.

\*\*Significant at .01 level.

\*\*\*Significant at .001 level.

**Table 10.A3. Appendix c: Ordered Probit Estimates for White, Black, and Latino Respondents**

Equal Opportunity	White	Black	Latino
<b>INITIAL CHARACTERISTICS</b>			
Family SES	-.03*	-.02	-.02
Sex	-.06	-.08	-.18
Age	-.03	-.06***	.02
Immigrant Status	.02	.00	-.02
<b>POLITICAL SOCIALIZATION</b>			
Education	-.01	.01	-.02
Parent Interest	.02	-.00	.08
Rap Exposure	-.01	-.04*	-.03
Personal Discrimination	-.07***	-.08***	-.09***
Neighborhood SES	-.00	.00	.00
Racial Diversity	.03	.05	-.05

*Continued*



Table 10.A3. Continued

Equal Opportunity	White	Black	Latino
INSTITUTIONAL INVOLVEMENT			
In School	-.06	.08	.25
Organization/Group	-.19	-.21*	-.13
Religious Activity	.09***	.05*	.05
POLITICAL ATTITUDE			
Political Efficacy	.33***	.19***	.35**
Linked Fate	.08	-.11*	.08
Positive View	.00	-.01	.00
Sample Size	459	550	261

\*Significant at .05 level.

\*\*Significant at .01 level.

\*\*\*Significant at .001 level.

living with constrained opportunities, fewer resources, and systematic racism impacts their feelings about this country and their resulting political engagement, we will never completely comprehend or address the political lives of African American youth.

## NOTES

1. See [www.washingtonpost.com/wp-dyn/content/article/2005/09/03](http://www.washingtonpost.com/wp-dyn/content/article/2005/09/03) or [www.cbsnews.com/stories/2005/09/03/katrina/printable814636](http://www.cbsnews.com/stories/2005/09/03/katrina/printable814636)

2. It was November 14, 2004, when Mr. West stormed out of the American Music Awards broadcast after learning he lost in the category of best new artist to Gretchen Wilson for her song “Redneck Woman.” He would later tell reporters, “I felt like I was definitely robbed, and I refused to give any politically correct bullsh—ass comment . . . I was the best new artist this year.” [www.mtv.com/news/articles/1569536/20070912/west\\_kanye.jhtml#](http://www.mtv.com/news/articles/1569536/20070912/west_kanye.jhtml#)

3. Dawson, Michael C. November 2005. “Katrina, Race and Poverty: Study,” conducted by Knowledge Networks.

4. “Jena Six” is the label given to six African American youth arrested in Jena, Louisiana, and charged with second-degree murder for fighting a white youth, Justin Barker. This fight followed a number of incidents in which black students were harassed and physically attacked by white students at the high school. The incident that gained the most attention was the hanging of three nooses by white students from a tree at Jena High School after black students dared to sit by the tree informally reserved for whites, for which they had received permission from a school administrator. The events surrounding this case, especially the racially exaggerated charges against the six black youth, first attracted attention from black media sources and eventually received national media attention. Successful political mobilization around the case produced a massive march in September 2007.

5. Quote came from an in-depth interview that was part of the Black Youth Project. The Black Youth Project is a research initiative headed by Professor Cathy Cohen at the University of Chicago. This project examines the attitudes, resources, and culture of African American youth ages fifteen to twenty-five, exploring how these factors and others influence their decision making, norms, and behavior in critical domains such as sex, health, and politics. The first phase of the research focused on mounting a new national representative survey of young people ages fifteen to twenty-five with an oversample of African Americans. There were 1,590 respondents to the 45-minute telephone survey conducted between July and November 2005. The primary sampling mode was a national random digit dial conducted by NORC. A secondary oversample of blacks and Hispanics was used to supplement low N from those groups in the primary sample. Participants in the oversample came from areas of the United States with at least 15 percent black or Hispanic populations. There was also a very small oversample of respondents in the Chicago area. The response rate for the telephone surveys was 62 percent. During phase two of the project, researchers conducted in-depth interviews with 35 African American respondents of the new national survey. The third phase of the project will explore the themes and narratives found in the most popular rap songs through the methodology of content analysis.

6. <http://politicalhumor.about.com/od/currentevents/a/katrinaquotes.htm>

7. In-depth interviews from the Black Youth Project were conducted in 2006, prior to the historic campaign and election of Barack Obama.

8. See, for example, Schley R. Lyons, "The Political Socialization of Ghetto Children: Efficacy and Cynicism," *The Journal of Politics* 32, no. 2 (1970): 288-304; Edward S. Greenberg, "Black Children and the Political System," *The Public Opinion Quarterly* 34, no. 3 (1970): 333-45; and Paul R. Abramson, "Political Efficacy and Political Trust among Black Schoolchildren: Two Explanations," *The Journal of Politics* 34, no. 4 (1972): 1243-75. For more recent work in this area, see Andrea Simpson, *Tie That Binds: Identity and Political Attitudes in the Post-Civil Rights Generation* (New York: New York University Press, 1998).

9. For more information about the Black Youth Project and the data presented in this chapter go to the website of the Black Youth Project, [www.blackyouthproject.com](http://www.blackyouthproject.com) or see Cathy J. Cohen, *Rebirth of a Nation: Black Youth and the Future of American Democracy* (New York: Oxford University Press, forthcoming 2010).

10. During the 1970s, scholars such as Greenberg (1970), Lyons (1970), Abramson (1972), Clarke (1973), and Liebscutz and Niemi (1974) relied on small datasets generated from paper-and-pencil surveys in a limited number of schools and community programs to explore the political attitudes of black youth. Working under the rubric of political socialization, most of these studies focused on issues of trust and efficacy and did not explore the political positions of these young people on specific political and public-policy issues of the time. Even given the problems associated with these research designs, scholars identified interesting findings, suggesting that African American youth had lower levels of trust in the government, while their political efficacy varied depending on such factors as age and class. Unfortunately, instead of building on the insights learned from such studies and generating data from broader and more reliable research strategies, social science research in this area was severely neglected in the 1980s and the contemporary period.

11. See, for example, Elijah Anderson, *Streetwise: Race, Class and Change in an Urban Community* (Chicago: University of Chicago Press, 1992); Elijah Anderson, *Code of the Street: Decency, Violence and the Moral Life of the Inner-City* (New York: W. W. Norton, 1998); Carl Husemoller Nightingale, *On the Edge: A History of Poor Black Children and Their American Dreams* (New York: Basic Books, 1993); Mary Pattillo-McCoy, *Black Picket Fences: Privilege and Peril among the Black Middle Class* (Chicago: University of Chicago Press, 1999); Anne Arnette Ferguson, *Bad Boys: Public Schools in the Making of Black Masculinity* (Ann Arbor: University of Michigan Press, 2001).

12. Peter Levine, *The Future of Democracy: Developing the Next Generation of American Citizens* (Hanover: University Press of New England, 2007), p. 92.

13. *Ibid.*, p. 92.

14. The mean difference for blacks and whites is significant at the .01 level. The mean difference between blacks and Latinos is not statistically significant. The mean difference between Latinos and whites is significant at .05 level.

15. The mean difference for blacks and whites is significant at the .001 level. The mean difference between blacks and Latinos is not statistically significant. The mean difference between Latinos and whites is significant at .01 level.

16. In-depth interview.

17. In-depth interview.

18. In-depth interview.

19. Latina respondents registered the lowest levels of agreement with this statement, with only 14 percent in accord, marking a 34 percentage difference between their support and the concurrence of black women, which registered at 48 percent. The mean difference for blacks and whites is significant at the .05 level. The mean difference between blacks and Latinos is not statistically significant. The mean difference between blacks and Latinos is statistically significant at the .05 level when testing unweighted data. The mean difference between Latinos and whites is not statistically significant.

20. Difference in means between all three groups is statistically significant at .001 level.

21. Centers for Disease Control and Prevention, "HIV/AIDS Surveillance in Adolescents and Young Adults (through 2006) Slide Set." [http://www.cdc.gov/hiv/topics/surveillance/resources/slides/adolescents/slides/Adolescents\\_10.pdf](http://www.cdc.gov/hiv/topics/surveillance/resources/slides/adolescents/slides/Adolescents_10.pdf) and [http://www.cdc.gov/hiv/topics/surveillance/resources/slides/adolescents/slides/Adolescents\\_11.pdf](http://www.cdc.gov/hiv/topics/surveillance/resources/slides/adolescents/slides/Adolescents_11.pdf)

22. The difference in means between blacks and Latinos and blacks and whites is statistically significant at the .001 level. The difference in means between Latinos and whites is not statistically significant.

23. Devah Pager, Bruce Western, and Bart Bonikowski. "Race at Work: A Field Experiment of Discrimination in Low-Wage Labor Markets." January 2008.

24. The difference in means between blacks and whites is significant at .001 level. The mean difference between blacks and Latinos is significant at .01 level. The difference in means between whites and Latinos is not statistically significant.

25. Report from Chicago public school web site [http://research.cps.k12.il.us/export/sites/default/accountweb/Reports/Citywide/isat\\_msexcel\\_cps\\_categories\\_2007\\_mexc.xls](http://research.cps.k12.il.us/export/sites/default/accountweb/Reports/Citywide/isat_msexcel_cps_categories_2007_mexc.xls).

26. The difference in means between the three groups is not statistically significant when analyzing weighted data.

27. The difference in means between blacks and whites and Latinos and whites is statistically significant at the .001 level. The mean difference between blacks and Latinos is not statistically significant.

28. The mean difference between black males and white males is significant at the .01 level. The mean difference between black males and Latinos is just outside the range of statistical significance at .078. The mean difference between Latinos and white males is not statistically significant.

29. In-depth interview. It is important to note that none of the quotes is meant to lessen the tragedy of black youth killing other black youth. Similarly, attention to the dynamics that have been labeled "black on black crime" should not lessen our commitment to stop the harassment of black youth by the police.

30. Emile Durkheim, *Suicide: A Study in Sociology*, trans. by John Spaulding and John Simpson (New York: The Free Press, 1951).

31. Cedric Herring, "Acquiescence or Activism? Political Behavior among the Politically Alienated," *Political Psychology* 10, no. 1 (1989): 135-53.

32. James S. House and William M. Mason, "Political Alienation in America, 1952-1968," *American Sociological Review* 40, no. 2 (1975): 123-47.

33. S. Bowles and H. Gintis, "The Crisis of Liberal Democratic Capitalism: The Case of the United States," *Politics and Society* 11 (1982): 51-93.

34. David Easton, *A System Analysis of Political Life* (New York: Wiley, 1965).

35. Jack Citrin, "Comment: The Political Relevance of Trust in Government," *American Political Science Review* 68 (1974): 973-88.

36. House and Mason, op. cit., 145.

37. David Easton, "A Re-Assessment of the Concept of Political Support," *British Journal of Political Science* 5, no. 4 (1975): 437.

38. *Ibid.*, 445.

39. See, for example, Schley R. Lyons, "The Political Socialization of Ghetto Children: Efficacy and Cynicism," *The Journal of Politics* 32, no. 2 (1970): 288-304; Edward S. Greenberg, "Black Children and the Political System," *The Public Opinion Quarterly* 34, no. 3 (1970): 333-45; and Paul R. Abramson, "Political Efficacy and Political Trust among Black Schoolchildren: Two Explanations," *The Journal of Politics* 34, no. 4 (1972): 1243-75.

40. A similar argument is made by Gibson and Caldeira regarding the diffuse support of black Americans for the Supreme Court in response to the limited advances in civil rights made under the Warren Court. See James L. Gibson and Gregory A. Caldeira, "Blacks and the United States Supreme Court: Models of Diffuse Support," *The Journal of Politics* 54, no. 4 (1992): 1120-45.

41. David Easton has argued for a systems approach to the understanding and study of the political system. Such an approach would capture the multiple dimensions of political life that are structured around the processing of inputs into outputs through a number of functional organizational entities. A much more elaborate discussion of this approach can be found in Easton, *A System Analysis of Political Life* (Chicago: University of Chicago Press, 1965).

42. John S. Jackson, "Alienation and Black Political Participation," *The Journal of Politics* 35, no. 4 (1973): 849-85.

43. The mean difference for blacks and whites is significant at the .01 level. The mean difference between blacks and Latinos is not statistically significant. The mean difference between Latinos and whites is significant at .05 level.

44. The mean difference for blacks and whites is significant at the .001 level. The mean difference between blacks and Latinos is not statistically significant. The mean difference between Latinos and whites is significant at .01 level.

45. The mean difference between blacks and whites and Latino and whites is significant at the .001 level. The mean difference between blacks and Latinos is significant at the .01 level.

46. The mean difference between the three groups is not statistically significant.

47. Jamila Celestine-Michener is the project manager for the Black Youth Project and Claudia Sandoval is a graduate student researcher on the project; both were significantly involved in the statistical analysis presented in this part of the paper.

48. The statistical technique used for this set of analyses was the ordered probit. Ordered probit was used because the dependent variables under examination are ordinal scored as a Likert scale.

49. The reliability or consistency score (cronbach alpha) for the government orientation dimension of my political alienation concept is .663 for blacks, .728 for whites, and .754 for Latinos.

50. Sidney Verba, Kay Lehman Schlozman and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Cambridge, MA: Harvard University Press, 1995).

51. Family SES index is an index of responses to questions about father and mother education, reception of government assistance, did the family rent or own, and family income. For significant parts of our sample, family income was missing. To address this issue we used multiple imputation. For more information on the variables used in the multiple imputation model for the Black Youth Project data analysis, please see Cathy J. Cohen, *Rebirth of a Nation: Black Youth and the Future of American Democracy* (New York: Oxford University Press, forthcoming 2010).

52. Composite score from two questions asking whether the respondent or their parent(s) were born outside the United States.

53. Composite score from two questions assessing how often the respondent listens to rap music and watches rap music videos. This variable is a possible alternative or oppositional source of information about the government and the political system.

54. Composite score from four questions asking respondents how often they have experienced discrimination based on their race, sex, class, or age.

55. See for example, Sidney Verba, Kay Lehman Schlozman and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Cambridge, MA: Harvard University Press, 1995); Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Touchstone, 2000); and Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation and Democracy in America* (New York: Longman, 2002).

56. Composite score from two questions: How often do you attend religious services? And how often do you engage in activities at your place of worship?

57. Level of agreement with the statement "I believe that by participating in politics I can make a difference."

58. The degree to which black youth believe that what happens to most black people in this country affects them.

59. I assume everything else is at its mean.

60. Black Youth Project Research Summary.

61. Robert Samuels, "It's a Boxer Rebellion over Opa-locka's Saggy Pants Ban," October 15, 2007, Miami Herald.com, [www.miamiherald.com/494/v-print/story/271840.html](http://www.miamiherald.com/494/v-print/story/271840.html); Niko Koppel, "Are Your Jeans Sagging? Go Directly to Jail," August 30, 2007, NYTimes.com, [www.nytimes.com/2007/08/30/fashion/30baggy.html](http://www.nytimes.com/2007/08/30/fashion/30baggy.html).

62. Bethany Thomas, "La. Proposes Crackdown on Belly-baring Pants," May 13, 2004, MSNBC.com, [www.msnbc.msn.com/id/4963512/?GTI=3391](http://www.msnbc.msn.com/id/4963512/?GTI=3391).

63. Koppel, August 30, 2007.

64. [http://blog.washingtonpost.com/the-trail/2007/11/25/post\\_212.html](http://blog.washingtonpost.com/the-trail/2007/11/25/post_212.html)

65. Cornel West, *Race Matters* (Boston: Beacon Press, 1993), 12.

66. In-depth interviews.

67. See Cathy J. Cohen, *Rebirth of a Nation: Black Youth and the Future of American Democracy* (New York: Oxford University Press, forthcoming 2010).

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# **Part IV**

## **THE INHERITED STATE MOVING FORWARD**



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## American State Building

### The Theoretical Challenge

*Desmond King and Robert C. Lieberman*

Ever since it was “brought back in” more than twenty years ago, the state has remained at the center of political studies ranging from comparative and international politics to political theory, spanning historical and contemporary periods and embracing a range of methods and analytical approaches. Nowhere has the idea of the state been more central than in the field of American politics, and particularly in the study of American political development, an endeavor that arose precisely out of a challenge to the then-prevailing view that the United States was exceptional in its “statelessness.” It is now well-established that the apparent “statelessness” of the United States is an illusion. The American state is, in a variety of domains and through unexpected mechanisms, more potent as an authoritative rule maker, national standardizer, and manager of the nation’s affairs than earlier accounts generally concluded.<sup>1</sup> Nevertheless, the literature on the American state often appears stuck in an older mode that relies on a rather flat and rigid analytical vocabulary to describe the state—weak versus strong, unitary versus fragmented, dominant versus subordinate—despite the empirical contributions of American political development scholars showing the limits of this vocabulary. In this standard language, and especially when compared to the “strong” centralized states of Europe, the American state generally comes off as weak and anemic. This juxtaposition—weak state and strong outcomes—creates a paradox and suggests that the time has come to rethink analytical approaches to the American state.<sup>2</sup>

This reconsideration, we suggest, has already begun. Recent empirical scholarship on the American state points toward a more nuanced account of the American state’s form and development, accounts that stretch the notion of the state beyond the national government’s central administrative apparatus to include state and local governments and even apparently “private” organizations that are not conventionally considered to be part of

the state at all. At the same time, the standard comparative template of the state (against which American state building has typically been measured) is shifting. Just as the revival of the state as an object of theoretical and empirical interest, led by Theda Skocpol and others, was underway in the 1970s and 1980s, countervailing trends, especially the growth of international economic interdependence and transnational norms of rights, potentially heralded the state's demise as the essential unit of global politics in the face of seemingly porous national borders. Such anticipation now seems premature. An emerging theoretical perspective in comparative state research aims to parse the paradox of the state's resilience in the face of the forces that threatened to marginalize it.

This emerging understanding of the state makes it timely not only to revisit the state in the international realm but also, in dialogue with recent Americanist studies, to revise and deepen our understanding of the state's paradoxical role in American political development. The very comparative literature that once found the United States to be "stateless," following J. P. Nettl's classic paper on the state as a multidimensional conceptual variable, unexpectedly provides the basis upon which to build an alternative perspective on the American State, enriched by comparative insights.<sup>3</sup> In this retheorization, American state building, strength, and institutional capacity form through links with society, not necessarily through autonomy from society. In this chapter, we aim to draw a suppler, multidimensional picture of the American state's origins, structure, and consequences.

## THE PREMATURE DEMISE OF THE STATE

Contrary to the brave new world many expected in the wake of globalization and global economic integration—a world in which the ability of states to exercise control over the territories, populations, and economies contained within national boundaries would atrophy in the face of economic interdependence—the state is doggedly present. Some states have doubtless ceded aspects of their autonomy to supra-state entities, whether through trade agreements (such as NAFTA or Mercosur) or binding legal and political integration (such as the European Union). Elsewhere in the world, states increasingly share political primacy with non-state entities, bereft of territorial sovereignty but which nevertheless perform some combination of governance functions through means ranging from social services to armed force, and often enjoy substantial popular support and civil-society penetration (such as Hezbollah, Hamas, the Taliban, and even al-Qaeda). At the same time, however, new states such as Kosovo continue to form, especially in the wake of the breakup of the Soviet empire, and old states continue to do (or at least try to do) many

of the activities that states have traditionally done: maintain order, provide protection, and manage the economy, among other tasks.

Correspondingly, there is now a resurgence of the state (and a broadening of the idea of the state and state building) in the comparative politics and international relations literatures. Indeed, the state has been adjoined with a series of new adjectives such as the “post-colonial state”; “post-communist state”; “post-conflict state”; “post-cold-war state”; “failed state”; and “collapsed state.” Connecting these new descriptions is the centrality of the state as both an empirical institution failing or succeeding in developing activities with enormous political consequences and a theoretical concept core to organizing systematic comparative analysis.

Materially, it is impossible to look at the modern world order and not to recognize the over whelming significance of the state as an institutional force. At present, and especially post-9/11, the notion of growing statelessness in the international system and the global economy has evaporated. This has become even more apparent in the wake of the collapse of global financial markets in late 2008, which has prompted rapid and vigorous state intervention in the economy on a scale not seen in seventy-five years. Gone are the days (as in early years of the “Washington Consensus”) when analysts could prophesy, champions could celebrate, and skeptics could anguish over the eventual withering away of the state in the face of globalization’s onward march.<sup>4</sup>

This empirical and theoretical centrality vindicates the project to “bring the state back in” sponsored by the Social Science Research Council (SSRC) in the 1970s and 1980s and led by Theda Skocpol, Ira Katznelson, and others. In reaction to the society- and class-centered analyses of Marxism and modernization theory, this move brought new focus and attention to the potential autonomy of the state from class or other group interests and to the state’s variable capacity to bring about the desired ends of those who occupied its offices.<sup>5</sup> This scholarship on the revival of the state employed a Weberian framework as its core concept, to emphasize the expansion of centralized bureaucratic structures as they became entrenched throughout a polity’s geographic jurisdiction.<sup>6</sup> These accounts revolve around such activities as tax gathering to fund war mobilization, the imposition of a common language to forge national identity, and the routinized administration of public services evolving from the modesty of the postal service into the modern regulatory and welfare state regime.<sup>7</sup> But this model may be less relevant to efforts to theorize contemporary states. This model saw the state as forged primarily in the crucible of territorial conflict and wars hot and cold, and it was not clear how the modern nation-states that Skocpol and her collaborators so penetratingly analyzed would fare in the emerging era of increasing economic integration or whether the model would be capacious

enough to explain the variety of state forms or the myriad pathways to state building in the post-Cold War, post-colonial world—whether, in short, the autonomy and capacity of states would remain robust or whether this was an owl-of-Minerva moment.<sup>8</sup>

Indeed, many states are in difficulty, facing economic failure or external or internal threats to their endurance.<sup>9</sup> Nevertheless, the proposition that the organizing notion of the state is under threat seems overstated. This conclusion does not mean that the state has been unaffected by global trends: far from it. For instance, there is an important debate about the extent to which national welfare state arrangements are threatened and restructured under pressure from global trends. The logic of globalization seemed to suggest that because national economies are growing less self-contained, costly welfare states and heavy regulatory regimes at the national level would drive capital away to the detriment of national economic performance. In order to maintain growth, then, it was expected that national governments would seek to retrench welfare states and deregulate markets. The journalist Thomas Friedman has described the phenomenon as the “golden strait-jacket” of globalization: “your economy grows and your politics shrinks.”<sup>10</sup> But despite the economic logic of globalization and the tightening embrace of a neoliberal policy paradigm, states have remained salient actors and have even expanded the scope and range of their activities in response to demands for compensatory social protection and the need to support and promote market development and increasingly to regulate social and market-based risks.<sup>11</sup> Scholars such as Paul Pierson, Geoffrey Garrett, Cathie Jo Martin, Duane Swank, and others have importantly shown how political and ideological structures as well as economic forces shape national public policies, particularly welfare state policies and the tax regimes that underline welfare capacities.<sup>12</sup> This theme is not entirely new, however, since comparativist scholars such as David Cameron and Peter Katzenstein addressed the effects of economic openness and interdependence on national policy regimes thirty years ago.<sup>13</sup> The state is also a crucial player in a more recently influential model of comparative political economy, the Hall and Soskice “varieties of capitalism” framework, premised on a dichotomy between coordinated and uncoordinated market economies, although as Jonah Levy has pointed out, the state’s role in the varieties of capitalism framework is more passive than active.<sup>14</sup>

## THE DOMESTIC RISE OF THE AMERICAN STATE

Turning more directly to the unlikely case of the United States, it is clear that even in its inhospitable institutional environment—the horizontal separation

of powers and the vertical federal system—the centralized expression of institutional power and political authority has been of immense and growing importance in the last decade. Whether in domestic policy measures such as the centralizing “No Child Left Behind” education measure or in the post-9/11 “war on terror”—the invasion of Afghanistan and the war in Iraq, the Patriot Act, the National Security Agency’s domestic surveillance program, the detention and treatment of “enemy combatants” both at home and abroad—or in response to national catastrophes such as Hurricane Katrina’s devastation of New Orleans, myriad political events have provoked a centralized expression of political authority in a way consistent with state power. Indeed, delivering his post-Katrina speech from New Orleans in September 2005, President George W. Bush declared that the crisis demanded “greater federal authority and a broader role for the armed forces” in American society.<sup>15</sup> More stealthily, the federal government’s expansive legislation against criminal activity and perpetrators has markedly extended the intrusive and coercive apparatus of the American state.<sup>16</sup>

Since the 1930s, during national crises citizens look to the political center for authoritative governing responses to alleviate suffering and ameliorate unequal conditions of membership: just recall the recent inaugural ceremony for President Barack Obama to convey a sense of this national expectation. In contrast to George W. Bush’s recent predecessors—think of Carter’s commitment to deregulation, Reagan’s reduction of domestic spending (though not defense), or even Clinton’s declaration that “the era of big government is over” and his reform of federal welfare policy—the Bush administration has self-consciously pursued institutional expansion and rendered the American national state more assertive and visible, both at home and abroad, than at any time since the 1960s.<sup>17</sup>

The global recession and financial breakdown of 2008 have further underscored the resurgence of the state as a central actor in both the American and international political economies. In response to the collapse of financial markets and the banking system, despite the efforts of the monetary instruments of central bankers, Congress enacted and President Bush signed into law the \$700 billion Troubled Assets Relief Program (TARP), under which the federal government was empowered to buy devalued loans and securities and even to purchase equity stakes in teetering financial institutions, raising the specter of nationalization of firms and industries. As President-elect Barack Obama prepared to take office in January 2009, he and Congress were deliberating over the terms of an economic stimulus package expected to be valued at nearly \$1 trillion, signaling the return of long-dormant Keynesian fiscal practices that place the state at the center of macroeconomic management. As Obama assumed office in the midst of the country’s gravest economic crisis since the Great Depression, he was routinely the object of

comparisons with Franklin D. Roosevelt, perhaps the country's most important state builder in both the domestic and international realms.

Not only is it more forceful, the American state is also more contested and controversial than it has been in a generation or more. There is increasingly fundamental disagreement among Americans, at least among political parties and elites, about the role, size, and national capacity of the state—the basic liberal-conservative dimension that captures the range of belief in state intervention in the economy and society. As Nolan McCarty and colleagues have shown, ideological polarization on this dimension has increased dramatically since the 1960s, significantly correlated with the increase in income inequality that has occurred over the same period.<sup>18</sup>

Curiously, however, the poles are, in some respects, reversed with regard to the role of the state. In the immediate postwar era, the conservative position on the ideological spectrum was resolutely opposed to state intervention in the economy and society. Barry Goldwater's nomination for president in 1964 neatly sums up this position. A Western small-government conservative, Goldwater was the mouthpiece for a burgeoning movement of anti-government Republican activists who resisted their party's accommodationism toward the still-dominant New Deal.<sup>19</sup> This ideological movement reached its crest with Ronald Reagan's election as president in 1980. But in the wake of the Vietnam War, the conservative, nominally anti-statist position came increasingly to be associated with a more assertive role for the United States in international politics and a more confrontational stance in the Cold War with the Soviet Union. That assertive and increasingly unilateral internationalism, along with the George W. Bush administration's arrogation of executive power, have put liberals in the position of opposing the expansion of some aspects of state power even as they continue to promote increased state activity in domestic areas such as health care.

These intellectual and empirical trends give important grounds for a renewed interest in the American state. It is a significant actor in American domestic politics and thereby a source of division between Americans.<sup>20</sup> This role stems in part from the mobilization of the federal government as an agent of democratization in the United States under the civil rights and voting legislation enacted in the 1960s (which Barry Goldwater and other conservative Republicans opposed not because he opposed integration but because they feared that these acts granted excessive power to the federal government and risked creating a police state).<sup>21</sup> Not only did these laws advance democratic institutionalization in the United States, but they also generated their own antitheses, especially in respect to American stances toward both race and the state.<sup>22</sup> To this pattern we can add an ambitious domestic policy program involving major centralized initiatives. Furthermore, an administration that entered office indifferent to international politics—including reaching

multilateral agreements or supporting humanitarian interventions—did little except engage internationally, though often unilaterally and in opposition to traditional allies' preferences, since the United States was the object of terrorist attacks in September 2001.

Yet scholars have mostly failed to grasp this analytical opportunity to understand the American state as a “state,” opting, by and large, to repeat rather than critically to engage the assumption that the American case is too exceptional to warrant comparative attention.<sup>23</sup> This failure of imagination stems from the distinct puzzles presented by this Janus-faced and complex institution.<sup>24</sup> Given these dual patterns—both the state's general survival in the face of globalization and interdependence and the American state's particular development—it is time, we suggest, to reconsider the prevailing Weberian view of the state and revive, or at least revisit, the more multidimensional understanding of the state suggested by Nettl's contribution, particularly in order to find a framework better to understand the sources and workings of the American state's curious yet enduring power.

## THEORIZING THE AMERICAN STATE

Recent American and comparative literature on the politics of the state finds that many features, conventionally understood as hindrances to the development of strong and effective states—federalism and robust private associationalism, for instance—can, in fact, be shown to be state-building assets. Instead of crowding out the development of state capacity, these factors can, under certain circumstances, enhance the construction of effective national states. The mechanisms behind these patterns of development commonly differ from the conventional routes to state building, which tend to follow principally from the imperatives of modernization and war, mediated by the administrative legacies of varieties of absolutism. In these alternative cases, however, state building followed alternative pathways in which state building was enabled by the simultaneous development of *restraints* on state power that accompanied the expansion of state capacity in order to prevent predation against citizens by dominant groups through control of the state.<sup>25</sup>

In the 1970s and 1980s, scholars of what would crystallize into the field of American political development began to consider the peculiarities of the American state against the earlier conventional backdrop. Reacting to early accounts of the American state as a peculiarity in comparative terms—an underdeveloped “Tudor state” that lacked the coercive capacity to maintain order in a rapidly modernizing society, as Samuel Huntington argued in the 1960s—the foundational work of Stephen Skowronek showed that the United States was not as “stateless” as Huntington contended.<sup>26</sup> Rather, American



national administrative capacities, Skowronek suggested, developed out of America's distinctive political patterns rather than the European model of the progressive democratization of absolutism.<sup>27</sup> Following Skowronek's lead, legions of studies have examined the development, peculiarities, and capacities of the American state, placing it at the center of the subfield of American political development.<sup>28</sup> But for Skowronek, as for those who have followed, the American state was defined by the existence of formal, coercive administrative power lodged with public bureaucracies, and its dimensions—presence, size, strength, autonomy, and the like—measured against the European-derived Weberian model. In this perspective, the American state is regarded as weak, bloodless, and limited in scale and scope.

This conventional framework derives from a number of characteristics of the American state comparatively and historically, which are usually cited cumulatively as evidence of American statelessness. But if we break down these aspects of the American state and examine each closely, we see that such a simplistic weak-strong metric fails to capture the complexities of the American state—just as, for example, Daniel Ziblatt and Kimberley Johnson show variety in forms of federalism and Anna Grzymała-Busse and Jacob Hacker expose significant roles for non-state actors in engineering administrative growth in nominally strong state polities.<sup>29</sup> The cumulative effect of looking at the American state in this way is not to observe the weakness of the state but rather to expose the ironies and complexities of the American state that demand explanation. We briefly examine five aspects of the American state and suggest how the new comparative literature can help push American scholarship in a constructive direction: (1) the administrative state; (2) the standardizing state; (3) the fragmented state; (4) the associational state; and (5) the segregated state. Each of these dimensions of American stateness—and particularly the last—highlights limitations of the conventional approach as well as the possibilities offered by the more nuanced and multidimensional comparative approach.

### The Administrative State: Capacity without Bureaucracy

One reason for the absence of the term *state* in respect to the United States is the search for a common bureaucratic form, which has proved misguided and misleading. The quintessential bureaucratic state, made famous by the German sociologist Max Weber, was the contemporary Prussian and French forms. In contrast to the professional elite bureaucrats who presided over centralized power in these countries, American national bureaucracy is notoriously fragile, fragmented, and incapacitated by its ambiguous position in the governmental structure. American national bureaucracy does not wield the sort of authoritative coercive power considered to be enjoyed by

its European counterparts; there is no cadre of professional elite bureaucrats comparable to the senior civil servants who preside over centralized power in Europe. Furthermore, American civil servants do not move among agencies during their career, and consequently individual agencies in the American national government are more autonomous and must rely on their own networks and entrepreneurship for influence.<sup>30</sup>

Together with the rule of law, however, these bureaucracies proved to be preconditions for democratization in the United States. The American state has at times been able to act as a guarantor of democratic rights alongside its role as a maintainer of internal order and external integrity, protecting and extending at least the procedural elements of democracy that Robert Dahl long ago identified as essential—a polity with free and open elections, low barriers to participation, genuine political competition, and the protection of civil liberties. These conditions, then, have possibly proved to be necessary for the extension of the American state's authority, by at least minimally ensuring the legitimacy of democratic outcomes. Thus, a Dahlian procedural conception of democracy illustrates an alternative to the Weberian approach to stateness, connected precisely to its democratic openness.<sup>31</sup>

Recent scholarship suggests both the limitations of a bureaucratic view and the plausibility of a more expansive view of the state in American political development. Ziblatt and Johnson, for instance, reveal mechanisms of state building based not exclusively on the direct building of central administrative capacity. Rather, these scholars highlight cases of state building that occurred through the negotiated colonization of capacity that originated outside the central state, even in the case of German unification, which remains the classic model of the bureaucratic state. In the German case, this development fed the creation of the Weberian state and buttressed the already formidable Prussian bureaucracy. But in the United States, as Johnson shows, this path enhanced the federal government's ability to achieve a range of policy objectives through federal-state partnerships that produced effective state capacity without bureaucracy. The differences between the European and American paths suggest again the importance of democracy as a precondition for the distinctive American pattern of state building. In continental Europe, states predated democracy, its arrival often triggered by war-induced collapse and external pressure. American experience differs from continental European trajectories in that a comprehensive democratic framework as a set of procedures was established before the expansion of national federal bureaucratic departments of the sort compelled upon politicians from the Civil War. However, inclusion within these procedures, despite a rhetorical commitment to the rule of law, was limited and defined many American citizens (and those ineligible for citizenship) as outside the democratic process. American state development was, as Johnson (and others) suggest, shaped

by these distinctive democratic pressures, producing a state whose means of action depended on links with lower-level governments, private associations, and other actors. Thus to equate the absence of a centralized bureaucratic Weberian structure with an absent state is false, and no longer tenable analytically. What the United States possesses is a different kind of state.<sup>32</sup>

### The Standardizing State

Both because many central initiatives have been resisted and because the center's institutional capacity is weak comparatively, it is often maintained that the American state's capacity to establish and enforce uniform national standards for policy and governance is limited.<sup>33</sup> For example, Margaret Weir demonstrates just how durable pre-Progressive patterns of state-level governments were until long after World War II, despite the dramatic central interventions of the New Deal. Weir concludes that "because the reform impulse that transformed the federal government in the 1930s had no enduring counterpart in the states," the persistence of state level patterns of local politics and skewed policy was assured.<sup>34</sup>

The resistance to national standards and the persistence of localism in policy making represent the national state's limits in commanding uniformity in the design and application of policy and the enforcement of rights across the population. Among the principal costs of the devolution of power to small local units and the resulting policy diversity has been the tendency to place policy making in the hands of oppressive local majorities; the principal bearers of this cost, for most of American history, have been African Americans.<sup>35</sup>

Thus this federal-state policy divergence, among other effects, helped to cement the segregationist racial order manifest not only in the ideology of states' rights and the locally rooted policies of Jim Crow but also in patterns of urban residential segregation, local labor markets, and access to local government. It withstood the shock of World War II, although this engagement, along with the Cold War that followed, did open later opportunities for change by mobilizing national political actors in the cause of civil rights.<sup>36</sup>

While differential treatment of disadvantaged groups, especially African Americans, and lack of uniformity in national policy have long been hallmarks of the American national state's performance, standard setting by the national state has not been entirely unsuccessful. Again, as Ziblatt and Johnson show, federalism need not be a barrier to the development of national policy uniformity, directed by a central state. Moreover, Grzymała-Busse suggests how democratic competitiveness might be associated with greater uniformity and standardization in national governance, or at least

with the relative absence of patronage and its attendant variability in relations between the state and electorally defined groups. These insights direct our attention to the mechanisms by which the American state has managed to achieve some measure of policy standardization despite its roots in a patronage-based party system and its perpetually fraught relations with racial and ethnic minorities, immigrants, and other disfavored groups.

Since the Progressive Era—particularly during those bursts of political innovation and federal activism associated with the New Deal, World War II, and the Great Society, and again under the George W. Bush administration—it has been the national center of the polity that has been most active, guided by the notion of establishing universal standards in policy. Such activism is manifest in federal initiatives in regulation, welfare policy, education policy, defense, enforcement activities such as anti-drugs and prison programs, environmentalism, and recently, homeland security. This drive has not been entirely centralizing, of course; the 1996 welfare reform, for example, restored some policy authority to states in an area that had been increasingly centralized since 1935, and recent Supreme Court decisions have begun to reverse what had seemed like a nationalizing trend.<sup>37</sup> The central state's role in setting national policy standards, then, remains a contested area, but it is the only authority capable of such activity.

Although partisan in origin, federal programs nonetheless compose a recognizable expression of national authority and policies, in ways comparable to other countries.<sup>38</sup> Those occupying the enduring institutional core of political authority—lawmakers, presidents, and judges—proclaim ends and mobilize support for policy ideas; implementation, definition of detail, regulation of practices, policing of deviance from identified standards, and renewal of mandates depend critically upon bureaucrats, their allies, and public compliance.<sup>39</sup>

Indeed, without the development of a central bureaucratic state to enforce standards of democratic procedure (such as the Fourteenth and Fifteenth Amendments) the American democratization process would have remained incomplete. Nor is standard setting at an end: aspects of American procedures for reaching democratic outcomes continue to create important inequities—such as the Electoral College—and lines of exclusion—such as the denial of voting rights to ex-felons in many states.<sup>40</sup>

The American state engages continuously in policy formulation, regulation, standard setting, and enforcement as much as other states. That this formulation and enforcement of uniform standards have occurred in distinct ways—for instance, relying on judicial power or creative bureaucratic rule making—and are regularly subjects of contestation and contention are further reasons that the American state's institutional capacity can be examined comparatively.<sup>41</sup>

### The Fragmented State: Multiple Sites of Power

Aside from foreign policy, the term *state* has frequently been considered problematic when applied to the United States because of its fragmented polity.<sup>42</sup> Consequently, few Americanists (outside of the American political development specialization) consider the “American state” a recognizable unit of analysis. The horizontal separation of powers among the executive, legislature, and judiciary makes the identification of a national source of authority more complicated than in centralized states, a tendency strengthened by federalism, which, combined with early franchise for white men, enabled strong ethnic-based community politics to develop around local political parties, a concatenation celebrated in former House Speaker Tip O’Neill’s aphorism, “All politics is local.”<sup>43</sup> A well-rehearsed motif in American political culture is that of being a strong nation with a weak state whose citizens prize decentralization and localism, that is, a political system less centralized, less interventionist, and less Weberian than that found in comparable advanced democracies, including some with strong federal systems, such as Australia or Germany.

As a consequence of confronting a fragmented polity, scholars of American politics typically opt to focus discretely on the institutions of separated power, the presidency, Congress, the courts, or the bureaucracy or regulatory activity or election cycles. The new comparative politics of the state, however, suggests that fragmentation by itself need not be debilitating to state development. The classical model of the state emphasizes its unitary character and tends to presume that alternative sites of power arise at the expense of the centralized national state. But as these works show, this is not necessarily the case. The relationship between alternative sites of power and the state is not always zero-sum. Federalism, for example, long held to be one of the critical causes of structural fragmentation in American politics—dissipating power to fifty state governments and thousands of counties, municipalities, and other subnational units—can also be a lever to advance the reach and functionality of the national state, as Ziblatt and Johnson show. Similarly, robustly competitive political parties need—one of the cornerstones of Skowronek’s rendering of the nineteenth-century “state of courts and parties”—need not descend into the sort of clientelistic state-society relations that often hinder the development of unified state authority. Finally, Hacker’s account of the development of the American welfare system shows quite clearly how the behavior of ostensibly “private” actors—employers, labor unions, the insurance industry, and others—operating in often disconnected ways in far-flung venues has cumulated into an identifiable, if distinctive and contested, welfare *state* that serves broadly public purposes of social protection through a variety of means.

These considerations subvert the standard presumption that the fragmentation of the American polity has necessarily produced a “weak” state

and mean that the American political development literature should rethink its rendering of the state. Indeed, not only has the American state as a whole taken on an ever-increasing role in policy making and governance in the last century, the state's core institutions have significantly expanded their particular mechanisms of wielding power. The federal courts, for example, have been increasingly inclined to employ constitutional authority to protect civil and political rights (while leaving the other branches substantial leeway to pursue their own policies in other realms). Thus in the late 1930s only 10 percent of the Supreme Court's decisions concerned individual rights (other than property rights), whereas by the late 1960s two-thirds of the Court's decisions pertained to individual rights.<sup>44</sup> This transformation marked an especially important legal and political revolution in the state's constitutional role in American society, from protector of limited government to instrument for the protection of civil rights. Similarly, the presidency has expanded its power through the use of executive orders as a powerful complement to often-elusive statutory instruments. Like court decisions, executive orders were an important component of the American state's expansion into civil rights protection, and they were key elements of the development of federal affirmative action in the 1960s.<sup>45</sup>

Since 9/11, of course, the American state has found itself further involved in security at home and abroad, including imposing new immigration and visa restrictions, expanding resources to monitor aliens in the United States, developing airport and other points of entry security, expanding dramatically the homeland security budget, and creating a new national intelligence office overseeing the roles of CIA and FBI.<sup>46</sup> The Bush White House also seized on post-9/11 conditions to pursue further expansion of presidential powers, through its issuance of "signing statements" asserting the right to implement statutes selectively and its energetic promotion of the theory of the "unitary executive," which would limit congressional oversight of the executive.<sup>47</sup> Furthermore, there is now little political reluctance at the center to use these features of the American state to achieve partisan ends: the American state is a forum in which struggles over standards and public policy unfold, as current education reforms illustrate, struggles that have lately been exacerbated by growing inequality and ideological polarization.<sup>48</sup> These indicators of the increasing yet unconventional "stateness" of the American state highlight anew the need to revisit the question of the American state's distinctive history and characteristics.

### The Associational State: A Strong Nation

From de Tocqueville's America writings onward, many analysts emphasize the strength of American political culture and the country's sense of nationhood, reinforced by an ideology of liberal individualism, a decentralized

institutional framework, and the rhetoric of inclusion to newcomers. Such a view complements the analytical bias already created by the multiple sites of power. American political culture remains imbued with Tocquevillian assumptions about the superiority of decentralized policy and the dangers of excessive national regulation. These Tocquevillian assumptions underlie an important tradition that sees civil society as a counterbalance to the centralization of state power and a necessary ingredient for the success of democratic governance.<sup>49</sup>

But these assumptions have not limited an expansion in national state power and remit. Indeed, in his account of America's welfare state, Hacker outlines a comprehensive and convincing framework for considering the role of actors conventionally understood to belong to the "private" sector in constituting the welfare state. The evolution of this idea of what historian Michael Katz has called the "mixed economy of the welfare state" has, in fact, been one of the signal achievements of welfare state scholarship in recent decades, culminating in Hacker's lucid and sophisticated account of the porous boundary between "public" and "private" social benefits in the United States.<sup>50</sup> Such a perspective on the state, which de-emphasizes the public-private distinction and instead emphasizes the state as part of an associational network, can be found elsewhere in recent studies of American politics: Sean Farhang and Paul Frymer on law, for example, or Daniel Carpenter on bureaucracy.<sup>51</sup>

This approach to the American state has potentially broader application. For instance, education policy has been a quintessential local policy in the United States, and localism in education is generally defended in Tocquevillian terms, emphasizing the role of local communities in education. Yet the recent "No Child Left Behind" law gives the federal center exceptional involvement in local education, setting national standards in more or less direct defiance of the Tocquevillian tradition. The American state has also played a major role in sustaining the values of American nationhood through a variety of policies and their enforcement: for instance, the phrase "under God" was added to the Pledge of Allegiance in 1954 as an intentional buttressing of nationalist sentiment.<sup>52</sup>

The Tocquevillian version of American political culture has taken quite a scholarly hammering in the last few decades. Political scientist Rogers M. Smith demonstrates the presence of multiple traditions in American political culture, rather than the exclusive creed of egalitarian liberalism emanating from Tocqueville that found its most influential expression in the work of Louis Hartz.<sup>53</sup> The degree to which many groups of American citizens were excluded from membership and had systematically to struggle for inclusion is now part of the nation's narrative.<sup>54</sup> Recent work on the role of civil society organization in governance suggests that a robust civil society is not

a substitute for a weak state but rather that civil society can best support democracy when it is closely aligned with strong political institutions and a functioning state.<sup>55</sup> Finally, there is growing appreciation of the importance of the American state in fostering, sustaining, and renewing the values perceived as intrinsic to American political culture. National state institutions play a major integrative role in the United States, providing central foci around a common vision of the nation, which the country's many ethnic, racial, and national groups are invited to share and support (and which most do).

The most fundamental limitation of the Tocquevillian celebration of decentralization and local communities is to neglect how localism permitted enduring discrimination and racism in the twentieth century. In practice, localism has meant discrimination and inequities.<sup>56</sup> As we know from many comparative studies of federalism, excessive local powers can become an enemy of civil liberties.<sup>57</sup> This certainly occurred in the United States, where states chose either to implement constitutional safeguards and legislative mandates for segregation in the 1880s and 1890s (in place until the 1960s) or to permit *de facto* segregated race relations, as in housing and schooling.<sup>58</sup> How federal policy did or did not complement these tendencies has been unduly overlooked.

### The Segregated State

No theme better highlights the fruitfulness of this emerging approach to the state and the puzzles and dilemmas inherent in studying the American state than its relationship to race. The American state's deep and complex entanglement with patterns of racial classification, division, and hierarchy makes squeezing it into conventional comparative understandings of the state especially difficult.<sup>59</sup> The historic racially constructed differences among the population have been central to the structure and processes of American politics such that white and black Americans (and, more recently, Latinos, Asian Americans, and other groups) have experienced the state in very different ways.<sup>60</sup> Moreover, the state's orientation toward racial minorities, African Americans in particular, has changed dramatically over the course of American history. The color line has undergirded some of the most notorious instances of state repression in American history—not only slavery and Jim Crow but also race-based immigration and citizenship restrictions, the internment of Japanese Americans during World War II, and the FBI's COINTELPRO operations of the Cold War era, to name a few. At the same time, race is most commonly associated with state weakness through its effects on such processes as regional differentiation, class formation, and welfare state building.<sup>61</sup> More recently, the state has been an agent of civil rights advancement, going from oppressor to protector in the span of



a generation. These divergent outcomes highlight the profound puzzle that race poses for a coherent understanding of the American state.

Between the 1880s and passage of the civil rights legislation in the 1960s, the Federal government in a range of areas colluded in the maintenance of segregated race relations, supported by the Court's condoning of segregation between 1896 and 1954. Federal authority was employed either to impose or to accommodate segregated race relations in government departments and public policies.<sup>62</sup> This included the United States Civil Service Commission's use, from 1914, of photographs in appointment decisions in a way that discriminated against African Americans. The general post-Reconstruction spread of segregation, legitimated by the Supreme Court, thus structured the American state's institutions notably in the federal civil service (and obviously black representation in other national institutions was modest). Within the federal bureaucracy, physical working conditions and daily routines were constructed around the segregation of one group of employees because of their race, and furthermore, advancement and promotion for bureaucrats was delimited by race. One group of employees, African Americans, was placed in a subordinate position to whites, both formally and informally, as a consequence of their "race." Before the 1960s, African Americans in the federal government rarely achieved positions in the professional or senior administrative classes and were disproportionately confined to clerical, janitorial, or custodial positions. These arrangements dented the potential for equality of treatment by race in the federal government. Throughout the United States, African American citizens could not look to the national government to act impartially on their behalf, but instead watched it reproducing and on occasions promoting racist interests from society.<sup>63</sup>

Paradoxically, many leading works of scholarship on core institutions of the American state overlook how race and segregation shaped their content and policy effects.<sup>64</sup> This deficiency is one reason for singling out the segregationist dimension of the American state. The enduring significance of this segregated state has been documented most recently in Ira Katznelson's analysis of how a system of "affirmative action for whites" functioned concurrently with the expansion of the American state's organizations, administrative capacities, and public programs from the 1930s.<sup>65</sup> Katznelson gives the example of how in practice the GI Bill widened inequalities, since few African Americans in either the North or the South were beneficiaries; thus American state policy was not neutral but quite partial in its effects, as officeholders will have appreciated.<sup>66</sup>

The white supremacist racial order was maintained at key points by Southern political control of Congress. But citing Southern influence insufficiently explains how the segregationist order was accommodated and fostered in federal government from the 1920s and 1930s; in this setting it

was bureaucratic autonomy at work, defining the contours of the American state. For instance, federal bureaucrats willingly engaged in the policies fostering and extending racial residential segregation of the sort permitting, from the 1940s, the development concurrently of all-white suburbs outside major cities and overwhelmingly African American ghettos within the same cities. Federal housing agencies engaged in systematic racial structuring of mortgage applications, using the instrument of “redlining”—an assessment of property valuation that hinged on the presence of black Americans—to prevent African Americans from becoming home owners, a preference consistent with many white Northerners.<sup>67</sup>

Terminating this segregated state, institutionalized in national government between the 1880s and 1960s, necessitated forceful executive action designing and enforcing equal rights of citizenship. The American state (including the Justice Department, the Supreme Court, the presidency, and eventually the Congress) became an agent of racial transformation because it both confirmed in legislation such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965 certain basic rights to be enjoyed by all citizens, no matter where they lived in the United States; and it provided the resources to enforce these standards—all of this in the supposedly “stateless” United States.

Underlining such expansionist expressions of national state power is the articulation and maintenance of common standards, be these in social policy such as education, civil rights such as voting rights, administrative devices for industrial organization, or compensatory measures for historical injustices such as affirmative action. Often contested, never constant in content, such manifestations of the national state demonstrate how inescapable the institution of an American state has become to American politics. In fact, it has always had this salience for race, but because its effects were part of a taken-for-granted order, many analysts overlooked state policy.<sup>68</sup> For over half a century the federal government proved unwilling to enforce voting and civil rights throughout the United States, despite the powers vested in the Fourteenth and Fifteenth Amendments; and unwilling actively to engage in policies which not merely maintained but extended a segregationist racial order.

## THE AMERICAN STATE IN AN ERA OF UNSUSTAINABILITY

This assessment of the American state’s weaknesses generates a profound puzzle: if the United States is “stateless”—or, more precisely, if the American state is limited in so many of these conventional ways in which “stateness” is conventionally measured—how are we to account for the scale of its activity and its growth into a powerful institutional force, at home and abroad,

for good and ill? Examples of this efficacy include the expansion of affirmative action programs in employment from the 1960s, despite the relatively underresourced and weak institutional arrangements put in place by the Civil Rights Act of 1964 to achieve these goals. This success demonstrates both the dangers of assuming the national state lacks well-placed institutional and bureaucratic actors capable of pursuing national public policy to achieve social engineering reforms; and the costs of assuming that because the American state appears to lack the common traits of stateness found in comparable advanced democracies it therefore does not possess nationally distinct public-private associational arrangements capable of delivering policy.<sup>69</sup> It is one achievement of recent American political development scholarship to flesh out the distinct ways in which the American state has operated, rather than invoking statelessness as an excuse for ignoring the exercise of national authority and power.

The theoretical challenge now is to direct this literature and scholarly material to the problems posed by American state policies in an era of unsustainability. In particular, the confluence of profound economic crisis and heightened expectations for real progress toward race equity facing the Obama administration underline the relationship between state policy efficacy and state legitimation. Barack Obama's soaring approval ratings when he entered the White House provide an opportunity for huge success in redefining the contours of state power away from the deeply unpopular Bush years, but his aims for race equity confront profound economic constraints. Economic problems limit state policy efficacy, thereby pushing the problems or challenges of unsustainability, identified in chapter 1 of this book, by Jacobs and King, to center stage. What we can anticipate from President Obama's initial actions and statements is a determination to improve administrative coherence, to retrieve the extremes of military and fiscal overstretch that have plagued recent policy, and to concentrate on delivering economic benefits as widely as possible. Success in these aims will enhance state legitimacy. Failure will show that the problems of sustainability are systemic and not just ones of partisan incompetence.

## NOTES

This chapter is part of a set of joint work by the authors which includes: Desmond King and Robert C. Lieberman, "Finding the American State: Transcending the 'Statelessness' Account," *Polity* 40 (2008): 368-78; and Desmond King and Robert C. Lieberman, "Ironies of State Building: A Comparative Perspective on the American State," *World Politics* (forthcoming).

1. Frank Dobbin and John R. Sutton, "The Strength of a Weak State: The Rights Revolution and Rise of Human Resource Management Divisions," *American Journal of Sociology* 104 (1998): 441-76; Robert C. Lieberman, "Weak State, Strong Policy:

Paradoxes of Race Policy in the United States, Great Britain, and France,” *Studies in American Political Development* 16 (2002): 138–61; Paul Frymer, “Acting When Elected Officials Won’t: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions 1935–85,” *American Political Science Review* 97 (2003): 483–99; Paul Frymer, “Race, Labor, and the Twentieth-Century American State,” *Politics and Society* 32 (2004): 475–509; John D. Skrentny, “Law and the American State,” *Annual Review of Sociology* 32 (2006): 213–44.

2. See Karen Orren and Stephen Skowronek, *The Search for American Political Development* (Cambridge: Cambridge University Press, 2004).

3. J. P. Nettl, “The State as a Conceptual Variable,” *World Politics* 20 (1968): 559–92. Nettl was quite explicit about his view of the United States as stateless: “an American sociopolitical self-examination simply leaves no room for any valid notion of the state” (561).

4. See, for example, Peter Evans, “The Eclipse of the State: Reflections on the State in an Era of Globalization,” *World Politics* 50 (1997): 62–87.

5. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985). See especially Skocpol’s introduction to the volume.

6. A conception echoing back to the influential work on political development sponsored by the SSRC Committee on Comparative Politics in the 1960s and 1970s. See Leonard Binder et al., *Crises and Sequences in Political Development* (Princeton, NJ: Princeton University Press, 1971). See also Bertrand Badie and Pierre Birnbaum, *The Sociology of the State*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 1983).

7. See Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton, NJ: Princeton University Press, 1975).

8. See Erik Gartzke, “The Capitalist Peace,” *American Journal of Political Science* 51 (2007): 166–91.

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11. Peter A. Hall, “Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain,” *Comparative Politics* 25 (1993): 275–96; Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (Cambridge: Cambridge University Press, 2002); Linda Weiss, ed., *States in the Global Economy: Bringing Domestic Institutions Back In* (Cambridge: Cambridge University Press, 2003); Jonah D. Levy, ed., *The State after Statism: New State Activities in the Age of Liberalization* (Cambridge, MA: Harvard University Press, 2006).

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and Welfare (Cambridge: Cambridge University Press, 2005); Sheri Berman, *The Primacy of Politics: Social Democracy and the Making of Europe's Twentieth Century* (Cambridge: Cambridge University Press, 2006).

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14. Peter A. Hall and David Soskice, eds., *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001); Jonah D. Levy, "The State Also Rises: The Roots of Contemporary State Activism," in *The State after Statism*, ed. Jonah D. Levy, 22–4.

15. George W. Bush, "Address to the Nation on Hurricane Katrina Recovery From New Orleans, Louisiana," September 15, 2005, *Weekly Compilation of Presidential Documents, Administration of George W. Bush, 2005*, 1408.

16. Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006); Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007).

17. Bill Clinton, "Address Before a Joint Session of Congress on the State of the Union," January 23, 1996, *Public Papers of the Presidents, Administration of William J. Clinton, 1996*, 79. It is also worth noting in passing how angry many conservatives were with the Bush administration's expansive use of state authority and resources, particularly economic conservatives.

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19. Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001); Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge, MA: Harvard University Press, 1993).

20. Paul Pierson, "The Rise and Reconfiguration of Activist Government," in *The Transformation of American Politics: Activist Government and the Rise of Conservatism*, ed. Paul Pierson and Theda Skocpol (Princeton, NJ: Princeton University Press, 2007).

21. See Robert C. Lieberman, *Shaping Race Policy: The United States in Comparative Perspective* (Princeton, NJ: Princeton University Press, 2005), 160–61.

22. Edward G. Carmines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton, NJ: Princeton University Press, 1989); Desmond S. King and Rogers M. Smith, "Racial Orders in American Political Development," *American Political Science Review* 99 (2005): 75–92.

23. See William J. Novak, "The Myth of the 'Weak' American State," *American Historical Review* 113 (2008): 752–72.

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war and tempered by a tragically realistic liberalism. Ira Katznelson, *Desolation and Enlightenment: Political Knowledge after Total War, Totalitarianism, and the Holocaust* (New York: Columbia University Press, 2002).

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27. Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1966); Mann, *The Sources of Social Power*, vol. 2; Shefter, "Party and Patronage."

28. Daniel P. Carpenter, "The Multiple and Material Legacies of Stephen Skowronek," *Social Science History* 27 (2003): 465–74; Orren and Skowronek, *The Search for American Political Development*.

29. Daniel Ziblatt, *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism* (Princeton, NJ: Princeton University Press, 2006); Kimberley S. Johnson, *Governing the American State: Congress and the New Federalism, 1877–1920* (Princeton, NJ: Princeton University Press, 2007); Anna Grzymala-Busse, *Rebuilding Leviathan: Party Competition and State Exploitation in Post-Communist Democracies* (Cambridge: Cambridge University Press, 2007); Jacob S. Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States* (Cambridge: Cambridge University Press, 2002).

30. Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton, NJ: Princeton University Press, 2001).

31. Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971); Desmond King and Robert C. Lieberman, "American Political Development as a Process of Democratization," in *Democratization in America: A Comparative-Historical Analysis*, ed. Desmond King, Robert C. Lieberman, Gretchen Ritter, and Laurence Whitehead (Baltimore, MD: Johns Hopkins University Press, 2009).

32. It may well be that the European Union's development as a state resembles the American case more than the experience of member states. The way the European Court of Justice operates, the way in which the European Commission formulates, issues, and enforces regulatory policy, and the relative smallness of the central bureaucracy compared with member state bureaucracies all suggest parallels. The hesitant development of a common currency across the EU member states and the pinched character of EU foreign policy, however, exemplify the limitations of state building at the EU level. There are several useful US-EU comparative studies now in print, such as Kalypso Nicolaidis and Robert Howse, eds., *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* (Oxford: Oxford University Press, 2001).

33. 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*, ed. Evans, Rueschemeyer, and Skocpol.

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36. Daniel Kryder, *Divided Arsenal: Race and the American State during World War II* (Cambridge: Cambridge University Press); David R. Mayhew, "Wars and American Politics," *Perspectives on Politics* 3 (2005): 473–93; Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, NJ: Princeton University Press, 2000).

37. *United States v. Lopez*, 514 U.S. 549 (1995); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *United States v. Morrison*, 529 U.S. 598 (2000).

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41. Nicholas Pedriana and Robin Stryker, "The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965–1971," *American Journal of Sociology* 110 (2004): 709–60.

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## A Historian's Reflection on the Unsustainable American State

*Lizbeth Cohen*

I am delighted to have the opportunity to reflect on how these eminent political scientists are conceptualizing a crisis of sustainability for the American state. In particular, they have drawn our attention to how the rising economic inequality of the last quarter century may be undermining Americans' confidence that their democratic capitalist system remains sufficiently meritocratic in distributing political and economic benefits to its citizens. These engaging essays stimulate many thoughts, but I will limit myself here to the terrain I know best as a historian of the United States. I will aim to introduce into this discussion of the complex connections between the state and inequality the key concept for the historian—time. As these scholars advance an analysis of the way that current inequality is contributing to an “unsustainable American state,” it behooves us to historicize the way state structure has long—and variably—shaped inequality in American society. The current condition can only be understood fully, I would argue, when it is historically contextualized and considered as part of the long evolution of the American state, which at different moments in time has promoted distinctive kinds of inequality.

Time is not absent in these essays. Taken as a whole, in fact, they pivot around several watershed moments that are familiar to historians. But what is missing is a deliberate effort to locate this volume's discussions of particular points in time in a longer trajectory of state development. If that is achieved, political scientists' orientation toward theorizing can contribute to a valuable conceptual braiding of the twin concerns of state power and the shape of equality and inequality in America, which historians—with their more historically specific and empirical approach—are less likely to do. This marriage of political science and history will ideally yield a temporal framework that puts contemporary concern about an unsustainable American state in longer-term perspective and reorient that historical inquiry away

from simplistic assumptions about a sudden rise in inequality to probing its evolution over time.

Working with the essays in this volume, let me suggest a rough schema of five regimes of state building and their consequences for the shifting nature of inequality in American society, to include the *nineteenth-century federalist state*, the *turn-of-the-century Progressive state*, the *New Deal state*, the *Cold War security state*, and the *late twentieth-century anti-state*. I will close with some reflections about the current moment as the United States faces a contradictory future: a likely retreat from the anti-statist era with the Democratic Party's sweep of Congress and the presidency in 2008, alongside a devastating economic depression that threatens to severely limit state capacity. How government officials negotiate these dual pressures will have enormous consequences for whether the glaring inequalities of the last quarter century are extended or reversed.

The first regime, the nineteenth-century federalist state, is well delineated in Gary Gerstle's and Kimberley Johnson's chapters. We find a structure of governance throughout most of the nineteenth century, defying our common assumptions that it was an era of weak state authority (apart from strong-state years of Civil War and Reconstruction). Rather than an absence of government, a federalist system of a weak central government and more powerful local and state governments thrived, as the latter in particular exercised robust police powers. Wielding this doctrine of police powers and backed by state and federal courts, states and localities controlled vast arenas of economic and moral activity. Establishing the enduring power of local and state governments in the nineteenth century has implications for our concern with the nature of equality and inequality during this era. As political authority fragmented in localities and particularly states, so too did protection of individual rights and access to economic resources. The strength of powerful interests presiding in a state—whether white elites passing Jim Crow or miscegenation laws in post-Civil War Southern states or capitalist elites pushing anti-labor legislation in Northern industrial states—determined the extent and nature of inequality on the ground. In this first regime of federalism, then, government may have been more powerful than we commonly assume if our only measure of state power is the mid-twentieth-century central state. But this more geographically decentralized federalist state offered little across-the-board protection against unequal treatment due to race, class, or gender. An individual's fate depended to a large extent on where he or she resided.

The second regime of state building emerged with the Progressive movement and is insightfully explored in Kimberley Johnson's essay on what she calls the "First New Federalism." She convincingly argues that the Progressive

state provided a kind of transitional stage between the federalism of the nineteenth century and the greater centralization of the New Deal state. Reformers' growing frustration with the corruption of state legislatures—which increasingly seemed unable or unwilling to redress problems created by industrialization, urbanization, immigration, and the other crises facing the nation in the early twentieth century—led to a search for alternative governmental structures that would deliver reform. What emerged was a new kind of power-sharing whereby Congress in Washington, D.C., set standards through legislation such as the Pure Food and Drug Act of 1906 or the Sheppard-Towner Act of 1921 and the administrative machinery of the individual states implemented the resulting programs. This second period of state building fueled more national leadership in solving economic and social problems but produced little uniformity in implementation, given the country's continued dependence on state-level administration. Progressive Era welfare and regulatory reforms may have proliferated in the early decades of the twentieth century, but their variation by state and region perpetuated inequalities long established in the states during the nineteenth century.

The New Deal state marked the third regime of state building. It brought greater political action from the central government in Washington, though important vestiges of federalism persisted, even in the most innovative of New Deal reforms. As Gerstle points out, programs ranging from the Federal Emergency Relief Administration to Social Security required state matches and thereby gave states autonomy to choose how much they would spend and who would benefit. Nonetheless, certain sectors of the labor force systematically benefited from new national standards, as laws like the Wagner Act and the Fair Labor Standards Act were passed and implemented at the national level. Now the inequalities, however, became less state and regionally based and more aimed at particular social groups like African Americans and women, who were left out of the big national tent due to their exclusion from many unions successfully bargaining for better pay and benefits and from government programs—such as Social Security, Unemployment Insurance, and the Fair Labor Standards Act—that privileged employees in the kinds of jobs held by white men. Agricultural and domestic service jobs, where women and African Americans clustered, were generally excluded from coverage. Under the New Deal order, individuals' equal access to rights and benefits or deprivation from them depended less on their states or regions and more on their social identities. The internment of Japanese Americans during World War II provides a particularly stark case of how greater assertiveness by the national government created a regime where unequal treatment was based on social identity, in this case

ethnicity. Inequality defined by race or ethnicity could, however, shape a region's political economy. In the South, the exclusion of agricultural and domestic workers from coverage by the minimum wage deprived African Americans of a decent living and supported a distinctive regional political economy built on racial discrimination.

The fourth regime of state building was the even more robust Cold War security state of the 1950s, 1960s, and into the 1970s that became a critical engine of the military-industrial political economy and entailed ever greater centralization and bureaucratization of state power. Desmond King and Robert Lieberman mention in their essay that even supposedly anti-statist conservatives embraced an assertive role for the United States in international politics. That Cold War statism, moreover, strengthened the federal government's authority at home, whether it entailed McCarthyite surveillance of citizens to protect national security or legislating the National Interstate and Defense Highway Act of 1956 to engage the federal government in building and funding a national highway system as necessary for the country's defense. As the state grew in the Cold War era, it offered equal access to the full rights and benefits of citizenship to more social groups than ever before in return for acknowledgement of the central state's authority and legitimacy. Those who benefited ranged from African Americans whose second-class citizenship became a great embarrassment to America's image in the world and whose struggle for civil rights ultimately legitimized federal authority over state resistance to integration; to women like Lee Ann Banaszak's female lawyers who found employment in the growing federal government and then shaped their liberal feminist agenda for equal rights around exploiting their access to the mechanisms of federal legal protections; and to the beneficiaries of the Great Society programs, such as the elderly who received Medicare and in turn came to depend more on the federal government. As Cold War-era Washington deliberately reached out to include many of the social groups who had been left out of the New Deal regime, it demonstrated that a powerful state, enhanced on grounds of national security, could become a force for greater social and to some extent economic equality on the domestic front. Those gains, however, had to be carefully weighed against the vicious Cold War attacks on free speech that introduced their own kind of political inequality for those on the Left whose views fell outside the mainstream.

Finally, I think these essays point to a fifth regime of the American state that has been less well conceptualized but has had enormous implications for inequality in the United States today. What I will call here the "anti-state" began to take shape in the 1970s and 1980s and continued with ever greater momentum until at least the election of Barack Obama, the implications of

which I will discuss below. Some of the key steps in the retreat from the assertive state of the Cold War and liberal Great Society include:

- The implementation of President Richard Nixon's New Federalism of the early 1970s, which returned some authority to state legislatures through block grants, revenue sharing, and other strategies.
- The increased mobilization by corporate interests in the 1970s through lobbying organizations like the newly founded Business Roundtable to fight attention to consumer interests in government policy making and to promote private sector over public sector economic activity.
- The devastating deindustrialization of America and corresponding rise of globalization beginning in the mid-1970s that together deprived organized labor of its ability to defend effectively the economic rights of working people.
- The citizen tax revolts of the late 1970s, such as California's Proposition 13, and the federal tax cuts, beginning with President Ronald Reagan's in 1981, that made the tax structure more regressive and limited the capacity of government to intervene in the economy and civil society.
- The rollback or at least growing suspicion of strategies for social inclusion such as affirmative action, beginning in the late 1970s with the Supreme Court's *University of California v. Bakke* decision of 1978.
- Increasingly neoliberal state policies from the 1980s through the administration of President George W. Bush that weakened state authority through deregulation and privatization and turned initiative and control over to private markets. To the extent that government remained involved, authority at the states' level was preferred. The welfare reform of 1996, for example, removed the federal government from delivering social rights of citizenship to low-income Americans and returned the provision of a weaker safety net to the states. (Although conservatives sought a decline in the federal government's economic and political authority, they remained committed to using its power to legislate morality, such as prohibiting abortion and gay marriage, and increasingly in the Bush years to protect national security.)

This rise of the anti-state regime over the last quarter century has been accompanied by historic increases in economic inequality in American society, which in turn has threatened the sustainability of the American state. Essays by Lawrence Jacobs and Benjamin Page, Suzanne Mettler, Larry Bartels, and Cathy Cohen all attest to an America in the early twenty-first century where the gap between haves and have-nots has grown decisively since the 1970s. By all kinds of measures, the wealth of the top 20 percent of

income earners, and within that the top 5 percent and even more so the top 1 percent, has mushroomed disproportionately. This convergence of record levels of economic inequality with a preference for state-level and private sector activity in the anti-state regime (rather than the more powerful and centralized government of the New Deal and Cold War security state regimes) begs for deeper analysis. How did “taking the state back out” (to adapt a phrase well-known to political scientists) and empowering supply siders, neoliberals, small government conservatives, states righters, and the like contribute to current conditions of inequality?<sup>1</sup> Here is the challenge for the political scientists whose work is assembled in this volume.

The historical record offers some clues. A recent essay by Jane Berger on the urban crisis in Baltimore in the 1970s and 1980s argues that the macroeconomic policies of Presidents Richard Nixon, Jimmy Carter, and Ronald Reagan fueled urban decline and African American unemployment by prioritizing American global economic dominance over investment at home.<sup>2</sup> When federal policies increasingly encouraged capital flight from cities, promoted privatization over Keynesian social spending to remedy the severe economic problems of the era, and directed federal tax dollars to the states through block grants rather than directly to cities, Baltimore municipal officials were forced to link their future to the profit-making agenda of its business community at the expense of efforts to combat poverty, including, most dramatically, shrinking the municipal workforce. Employment in city health, education, and welfare agencies had provided poor Baltimoreans, particularly African American women, who made up almost two-thirds of the full-time female workforce, with a crucial vehicle of upward mobility. In the new era of fiscal austerity created by these devastating cuts in federal funding, the city was forced to shrink its workforce by 37 percent, eliminating 18,400 municipal jobs between 1980 and 1990. African American city employees, with few options in the private sector and little geographical mobility, suffered greatly. Although this summary of Berger’s more complicated analysis is brief, hopefully it dramatizes the way shifts in state structure during the anti-state regime fed growing income inequality in America. Suzanne Mettler’s case of how the federal government’s recent higher education student loan policies have reversed the postwar trend toward expanding access to baccalaureate degrees provides another excellent example of how specific state action has fueled economic inequality.

On the heels of the election of Barack Obama and the Democratic Party winning control of both houses of Congress, it is appropriate to speculate whether we will see a sixth, new regime of state building emerge that rejects the anti-state orientation of the last four decades. If so, one wonders how it will relate to the previous five regimes and whether the Democrats will make reversing economic inequality a high priority. As they struggle to make the

American state sustainable in the face of frightening world economic depression, the Obama administration and Congress face many challenges. It has become clear as the crisis deepens that many interest groups are looking to the federal government for protection and salvation. A relegitimation of central authority appears to be underway. At the same time, Obama ran for president on a platform that promised tax relief to the middle class and higher taxes for those making over \$250,000. Addressing the inequalities of wealth through fiscal policy at least seems on the table for the first time in decades.

The signs are good that government officials are recognizing and working to redress the unsustainability of the American state. One might ask whether the New Deal state and the Cold War state offer any models as the nation explicitly embraces more centralized political authority. While the precedent of these two earlier regimes helps legitimize a new, stronger one capable of counteracting the forces of unsustainability, including rampant inequality, it also bears warnings about state fallibility. In the midst of the Great Depression, the New Deal state often faltered in finding the right balance between the need for economic recovery and attending to the most vulnerable social groups in American society. Much progress has been made by women and racial minorities since the 1930s and 1940s, but the danger remains that the pressure to bring back prosperity will eclipse the pressure to redress glaring inequality, creating a recovery more beneficial for those at the top than those at the bottom. The Cold War state carries its own lessons about the excesses of the federal government, where global dominance both created new opportunities for political equality at home for excluded groups like African Americans and undermined it for others considered outside the political mainstream, like those on the Left. It is hard to picture the Obama administration embarking down the path to a national defense-driven political repression, but should there be a terrorist attack, pressures could mount to use a newly strengthened state for undemocratic ends. If a new state regime emerges during the first decade of the twenty-first century, it will be important to locate it in this longer history of American state building and recognize that all American state regimes have rewarded some citizens while punishing others. The trick is to keep an eye on who is benefiting and who is not and then push for state structures and policies that promote more equality, not perpetuate inequality.

## NOTES

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2. Jane Berger, "‘There Is Tragedy on Both Sides of the Layoffs’: Privatization and the Urban Crisis in Baltimore," *International and Working-Class History* 71 (Spring 2007): 29–49.



## Taking Stock

*Stephen Skowronek*

By most measures, the movement to “bring the state back in” proved to be a great success.<sup>1</sup> During the past quarter century, enterprises spun off from that project have substantially reoriented the study of American politics. Attention was focused anew on law and legal traditions, on governmental structures and institutional rules, on relations of authority and politically constructed interests, on policy feedback loops and regime biases, on critical junctures and reconstructive processes. These concerns are now so integral to research in the field that it is hard to imagine a time when they were not central. In every particular, investigations along these lines have pulled scholars toward a deeper understanding of interrelationships between state and society in America and of dynamics of change.

It is fair to observe as well what these investigations did not deliver. Indeed, if there was an irony in this great outpouring of intellectual energy, it was that discovery of the many dimensions and manifestations of state operations quickly submerged the initial promise of developing a theory of the state itself. The instruments and arrangements brought into view by these new lines of inquiry were of such variety, incongruity, and historical specificity as to deflect serious thoughts about synthesis and to cast new doubt on the descriptive value of “the state” as overarching construct of independent meaning.

*The Unsustainable American State* is a timely reminder of that unrealized ambition. As Desmond King and Robert Lieberman put it, scholars have yet “to understand the American state as a ‘state.’” There is little mystery as to why the editors of this volume are pushing this unmet challenge to the forefront now. In their introductory essay, Lawrence Jacobs and Desmond King sound the same alarm bells that filled the air years ago when the initial call went out to attend more directly to the state. Then, as now, the “sustainability” of current arrangements of power had been thrown into doubt. Then, as now, worries about a deepening “fiscal crisis” and a widening “legitimation crisis” raised questions about state capacity and culpability.<sup>2</sup> With current

manifestations of these difficulties dwarfing those of that earlier seedtime, the case for reaching beyond particulars to a more systemic and comprehensive view would appear to be stronger than ever before.

But the questions remain: How are we to reach a larger view in light of all these disparate particulars? Can the American state be grasped meaningfully—that is, in an analytically useful way—“as a state”? Why should we think that the present crisis will spawn more powerful and durable generalizations than the last one? This volume’s many excellent contributions offer a fair summary of the current challenge of following through. The essays range across broad swaths of American political history, and they identify many different configurations of state power along the way. More to the point, virtually all of them take issue with simple characterizations of these historical arrangements. Their common aim and cumulative effect is, in this sense, a perfect reflection of the overall thrust of state-centered research to date: they break down traditional period demarcations, confound familiar categorizations, explode false dichotomies, and generally reproblematicize the relationship between old and new. It is evident from what is presented that original and provocative insights are still being brought to light in this way. At the same time, one cannot help but notice that, in the main, the American state is still being described in terms of what it is not. We are still taking issue with the same old shopworn caricatures—strong versus weak, active versus passive, modern versus provincial, centralized versus decentralized, conservative (market oriented) versus liberal (governmentally managed), top-down vs. bottom-up, even state versus society—that one might have thought we had discredited long ago.

Reviving the theory-building project and moving it forward is a tall order. It is one thing to acknowledge that more history will only get us so far; quite another to know how much is enough, or to figure out how to digest the glut of new material coming to light in a way that gets us back to fundamentals and helps us build a more positive view of the whole. My guess is that we have some way to go before we can leap safely to these heights, and that in the near term at least, aspirations for theory building would be well advised to remain close to the ground. They might best be expressed in more determined efforts to step back from the particulars now in view and tease out what appears emergent within them.

There are a number of ways in which this might be done. One is indicated by the King and Lieberman essay. It catalogs comparable and variable features of state organization, identifies emblematic characteristics of the American state along these dimensions, and indicates how each characteristic might operate historically and comparatively as either a strength or a weakness, depending on the circumstances. There are, in fact, several different versions of this same basic approach to be found in the extant literature:

Daniel Carpenter identified bureaucratic autonomy as a variable feature of state organization, one that was manifested in some agencies of U.S. national government but not in others;<sup>3</sup> Adam Sheingate identified historical stages of economic management common among states and found the United States comparatively strong in some and comparatively weak in others;<sup>4</sup> Theda Skocpol considered different modes of state welfare provision so as to identify the United States as a precious provider in one period and a laggard in another.<sup>5</sup> Earlier still, in an examination of the expansion of national administrative capacities around the turn of the twentieth century, I challenged the notion of a historical shift in America from statelessness to state-ness or weakness to strength.<sup>6</sup> Instead, I found extended political contests taking place in a variety of different institutional settings in which the same three dimensions of early American state operation—organizational, procedural, and intellectual—were put in play. Looking across institutional setting revealed a systemic struggle to alter the tenacious mode of state operations that had taken hold over the nineteenth century, a struggle that implicated old and new alike in an *exchange* of strengths and weakness.

Efforts of this sort point to another way in which the character of the American state might be expressed. One of the most provocative conclusions to be extrapolated from this volume is that the American state is not a coherent whole. By exploding false dichotomies, these essays prompt us to consider a political formation whose leading features are steeped in paradox and contradiction. For all appearances, this state is prompted to be many contrary things at the same time. And increasingly so: the American state appears in these pages to be increasingly egalitarian but while still managing to be stubbornly hierarchical; it is increasingly inclusive but still stubbornly selective, increasingly government-heavy but still stubbornly market oriented, increasingly voluntaristic but still stubbornly alienating. The confounding of coherent organizing principles appears not only across different policy domains but increasingly within the same domains: that is to say, we find greater central government involvement alongside greater reliance on non-governmental, market-driven solutions in the organization of national health care, education, economic regulation, and national security. Sustainability boils down here to a question of whether any organization of power designed to operate at cross-purposes can long survive.

Grappling with paradox at the level of state organization and operation has always been a powerful spur to theory building, but by the same token, we have known all along that states manage contradictions. If prior generations of state theorists taught us anything, they taught us that. Modern principles of state organization tend to be radical and universal; modern practices tend to be politically impacted and historically unique. First among modern democracies, the United States led the way in confounding principled

expectations. One need look no further than the Founding documents of this state to observe how formal declarations of equality and promises of liberation can be absorbed and transformed by complex institutional designs that divide the polity and protect established interests. Woodrow Wilson, a man whose Southern sensibilities mixed uneasily with a penchant for articulating universal truths, was keen on this point: “No state,” he insisted, “can *ever* be conducted on its principles.”<sup>7</sup> For Wilson, the cognitive dissonance was something of a virtue, a sign of realism and maturity. Suffice it to say, decoupling principles from practices is a vital management strategy for states; sustainability is a long-term proposition that states might well prefer to deal with later and only as the need arises.

But there is something else than might be said of the American state in this regard. At issue in these pages is not simply the distinctiveness of state organization in America as viewed against some comparable set of states, nor is it simply the tensions and contradictions this state juggles. Equally striking is the American state’s apparent changeability. The motivating puzzles of this volume are indicative of this characteristic: a general trend toward the amelioration of economic inequality in America in the decades immediately following World War II was reversed in the 1970s and followed by growing economic inequality; relatively robust regulatory institutions were developed during the New Deal and World War II but eviscerated in the late twentieth and early twenty-first century; a civil rights revolution that transformed government and politics in the 1960s and 1970s stalled and drifted uncertainly in ensuing decades. All told, a description of the American state circa 1966 would be quite different from a description of the American state circa 2006. More to the point, a description of the American state that took in the whole period after World War II would push to the fore some very un-state-like characteristics—volatility, unpredictability, reversibility.

This is curious, and it suggests yet another twist on the theme of sustainability. But it does not in itself argue against the effort to grapple with the American state “as a state.” Much depends on what that effort adds to our understanding of the dramatic changes that have been taking place. In this regard, I think one would be hard pressed to describe what has occurred in American government over the past half century reflexively, as a functional adaptation to a changing environment. There is no denying that these decades witnessed sweeping alterations, foreign and domestic, in the conditions of governance, and that pressures to respond these new conditions have been intense. But, as the pages of this volume indicate, there are no seamless transitions in modern American government. Just as surely as the state has changed since the 1970s, it has also accumulated inconsistencies, intensified conflicts, and stumbled into calamitous distress. One might come closer to the mark by tying the fickle course of recent developments to a shift in the balance of

political power, to the decline of a liberal insurgency which had taken hold in the New Deal and the rise of a conservative insurgency which took hold in the Reagan Revolution. But the manifest effects of this ideological shift to conservatism in jolting seemingly settled governing arrangements and reversing prior trajectories are only part of the story. Equally important are the convoluted devices conservatives were forced to deploy to work their priorities around and through the political and institutional legacy of liberalism.<sup>8</sup>

Indeed, the conservative turn did as much to expose the legacy of liberalism as it did to displace it. If we are to make sense of a state that appears, in the wake of that turn, less coherent and predictable in its course—one that appears even more contentious and riddled by contradictions—I think it might be a good idea take a step back and examine the structural impact of liberal reform itself. The various movements that swept through American government over the course of the twentieth century—the farmer’s movement, the labor movement, the civil rights movement, the women’s movement, the environmental movement—had far-reaching and durable effects on the organization and operation of the state power. They dislodged whole fields of governance from their tightly held legal boundaries and threw them into the realm of discretionary policy and political choice. At once, they opened policy making to wholly new influences, and vastly broadened the scope of political conflict over the state priorities. Gary Gerstle notes that the constraints imposed on national action by federalism were not fully broken until the civil rights revolution of the 1960s, but what we see now, these many decades later, is that the toppling of that structural constraint on national law making did not determine civil rights policy so much as it threw it up for grabs and politicized its future course.

The point may be broadened. The early American state did not govern less than the modern American state; it was simply able to do more of its work through structural restraint and proscription.<sup>9</sup> In large part, the apparatus of the state has expanded to compensate for the collapse of these older, far less accommodating ways of governing. New guarantees proved to be less determinative than those displaced because they entailed an expansion of the number of interests and interest conflicts for the state to reconcile. Disavowing commitments to fixed social hierarchies produced a state with more moving parts, one less firmly anchored in its ways and thus more likely to be torn in different directions.

## THE POLICY STATE: A PRELIMINARY HYPOTHESIS

It is a common observation, one nicely borne out by the essays collected here, that the farther one moves through the twentieth century, the more problems of American political development present themselves as

problems of public policy and policy choice. The surprise is how little thought has been given to the elevation of discretionary policy as the emblematic medium of state action in modern America or to the emergence of this “policy state” as the central story line of modern American political development. By “discretionary” is meant more than the conventional sense of U.S. federal budget items outside of Social Security, Medicare, and Defense; it refers to the extension of positive rule making over vast areas of governance which were previously ordered by structural assumptions and legal proscriptions. Perhaps the novelty of this emergent formation has escaped attention because some aspects of American government have always been matters of discretionary political choice and because we naturally tend to focus on the contention those matters routinely generate. Or perhaps it is because, in earlier periods, much of the remaining political energy was expended in efforts to break down impediments to the further expansion of the domain of discretionary action. In any case, discretionary policy is no longer just one of the mechanisms through which the American state governs; the policy state is distinctive because there are few other mechanisms left.

In ongoing collaborative work, Karen Orren and I are seeking to draw out the distinctive features of this emergent state form. One is suggested indirectly by the new language being employed by those analyzing the politics of public policy today. At the heart of this burgeoning research interest are questions about whether and when a governmental commitment will become “locked-in”; that is to say, whether and when a policy will become secure enough to weather the political changes that are bound to occur around it over time. Attention to political processes and conditions that might enhance the stability and durability of stated governmental commitments seems an altogether appropriate preoccupation for contemporary study because those are precisely the qualities of governance that a full-fledged policy state places in relatively short supply. Lock-in is now understood as a variable feature of modern state operations, something that applies to commitments here and there, and only for so long as certain threshold conditions hold.<sup>10</sup>

As historical commentary, our search for devices that might explain pockets of stability and durability in modern American government points us back to prior eras when the state commitments were “locked in” by virtue of prescribed limits on discretionary action, to times when race relations, labor relations, property relations, gender relations, family relations, and the like were largely “locked out” of the nation’s democratic deliberations. Beyond that the variable, here-and-there quality of policy lock-in in modern American governance speaks to the relative incoherence of the whole. It points to discrete policy domains, each of which tends to develop a politics of its own and to the different, often inconsistent, ways in which they are affected by broader currents of change.

Next to its pervasive commitment problems, a policy state may be distinguished by the absence of any clear division of labor among its parts. At issue here is not just the government's reliance on the private sector to carry out its policy preferences, though, as noted in this volume, that practice has yielded some rather extreme arrangements in recent years. A more general and durable feature of this state is the evisceration of the constitutional allocation of roles within the government itself. Policy making is no longer the special province of the legislature. What Karen Orren once called the "fully legislative polity" is one in which virtually *all* the major governing bodies have become more deeply and candidly engaged in positive law making.<sup>11</sup> It is now common, if not uncontroversial, to observe that contemporary judges are doing more to "make" law than just to "find" it; that contemporary presidents are not just executing the law but declaring it unilaterally; that modern bureaucrats do not just administer the law but give it content. Of course, the fact that everyone is making public policy at their own discretion does not mean that all are pulling in the same direction. The separate terms of appointment and tenure enshrined in the Constitution have persisted even as the old division of labor that made sense of those distinctions has been undermined. Expanding the range of actions subject to policy discretion, expanding the number of actors routinely engaged in policy making, and expanding the kinds of political and institutional interests brought to bear on policy questions cannot but affect the organization and operation of the whole. In such a state, everything assumes a heightened level of contingency.

A final attribute of the emergent policy state speaks more directly to portents of a legitimation crisis. As Lawrence Jacobs and Desmond King describe it, this crisis has been gestating in the glaring incongruity developed in recent decades between *de jure* equality and *de facto* inequality. Enormous gains for the principle of full and equal citizenship have been accompanied by growing disparities in life chances. This is surely a cause for grave concern, all-the-more-so for the evidence presented by Larry Bartels that these results have been engineered by elites acting on their own ideologically-charged preferences. Bartels stunning depiction of the gross inefficiencies to be found in translating public opinion about taxes into national public policy gives new meaning to old theoretical tropes about the "autonomy" of state actors. But by the same token, Bartels description of substantial policy differences between Democratic and Republican ideologues in office leaves open the question as to whether current disparities of income are a reliable emblem of the modern American state.<sup>12</sup> At the very least, it would seem too early to tell. The fact that the sharpening economic stratification of recent years is the reversal of an earlier trend toward greater economic equality, the fact that this reversal coincided with the political empowerment of a

conservative insurgency in American national politics, the fact that the conservative insurgency seems now a spent force, the fact that alternative coalitions have come into play—all of this suggests that the possibility of another ameliorative turn might be in the offing. Without denying the difficulty of negotiating such a turn in the near term or downplaying the wrenching and lingering consequences of recent social and economic policies, the more reliable emblem of this state might again turn out to be its heightened levels of volatility, reversibility, and politicization.

The broader point is that change of this sort carries its own portents of a legitimation crisis, and that these are more likely to be exacerbated than resolved by the Obama administration as it seeks to redirect the lumbering ship of state once more. Whatever the results of the government's newfound determination to alter the social policy priorities of the recent past, it is hard to imagine that they will yield settlements with the durability of, say, the New Deal Social Security program. Assumptions of the sort that must always be made in the construction of big social programs must now range across many more moving parts and interdependent factors; many more conditions will have to hold steady to keep these programs securely in place, and the indications that conditions will hold steady across so broad a field are not very promising. The problem is suggested in a different way by the improvisational drive and radical penetration of the government's emergency response to the financial collapse and economic meltdown.<sup>13</sup> If the pragmatism of this search for policies that might “work,” and the intensity of these efforts under the pressures of the moment have illustrated anything, they have illustrated just how little remains fixed in form or principle, how easy it has become to breach boundaries, and how uncertain the standards of state action are.<sup>14</sup>

The policy state does have a sustainability problem, and it is closely related to a legitimation problem. But it has less to do with the egregious disparities to found in particular arrangements than with an engrained incapacity to guarantee any arrangements at all. This view of the legitimation problem, like other aspects of the policy state, is constitutional in its bearing. Just as the burgeoning field of public policy analysis has alerted us to the precariousness of reform in the modern American state, the burgeoning field of constitutional theory has alerted us to the growing uncertainty at its foundations. The academy is flush with ingenious solutions to the problem of restoring intellectual coherence to the state and defensible standards to its operations. But the proliferation of these ideas is itself indicative of the absence of any effective and durable consensus about how to go about discovering fundamental principles or to recover an “original understanding” or to determine a reliable “constitutional moment.” All we can say for sure is that all this too is now up for grabs.



## NOTES

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14. A similar point might be made about government's response to the war on terror in the administration of George W. Bush.

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