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Kimberley S. Johnson: Governing the American State

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Introduction

The First New Federalism and the Making of the Modern American State

The characteristic feature and special interest of the American Union is that it shows us two governments covering the same ground, yet distinct and separate in their action. It is like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing each other, yet each set doing its own work without touching or hampering the other.

James Bryce, *American Commonwealth*

FOR MANY Americans who worry about the size, complexity, or responsiveness of the American government, the nineteenth century is a lost Eden of Jeffersonian agrarian democracy. In this idealized perspective, nineteenth-century American government was limited and orderly, a great machine overseen by a night watchman state and held in check by an active yeoman citizenry. There were no overlapping lines of authority—the federal structure ensured that the national government and the states each had their respective and limited orbits. Indeed this structure ensured that in the dual machinery of government, the national government, even more so than the states, would remain small and limited. This system of limited governments precluded the emergence of a sprawling regulatory state with a cacophony of competing interest groups, unresponsive bureaucrats, ambitious politicians, and citizen-clients. In short, the idealized image of nineteenth-century federalism reflected a political system that was (thankfully) nothing like contemporary American politics.

As Americans enter a new century, we seem stymied by the intractable problems besetting our political system. Political institutions and public policy appear to be out of our control, dominated by an unholy alliance of career politicians, special interest groups, and government bureaucrats. Each group pursues its own agenda rather than the broader public interest. As a result, the public perceives the gov-

ernment as impervious to citizens' attempts to ensure more accountability, effectiveness, and efficiency in the cost and delivery of government services.

The competing voices of today are urging a reordering of governmental power to restore accountability and efficacy to our political institutions and public policy. For some conservatives and some liberals, the solutions to these problems lie in decreasing the size of government or devolving its powers—whether to the states, the private sector, or the people. Yet efforts to achieve these solutions are contested, either through the outright opposition of actors with a vested interest in the current political and institutional arrangements, or through political and institutional inertia and rigidity. Both of these factors make less likely the achievement of smaller, decentralized government that is more responsive to the people, than to the interests.

Yet what some Americans admire about nineteenth-century governance—smallness, decentralization—was the bane of many nineteenth century reformers and critics. To these individuals, the American political system was an assemblage of weak legislative institutions dominated by a multitude of powerful interests, and characterized by limited administrative capacity. America's small, bounded, and fragmented governmental sphere—the coglike machine described by James Bryce, a nineteenth-century analyst of American government—was an impediment to the creation of a “strong” state that could adequately address the demands of an industrializing and urbanizing country. For reformers and critics of the American political system from the end of the nineteenth century onward, the solutions of today—smaller government and more decentralization—were the obstacles of the moment.

At the beginning of the twentieth century, for these reformers—whom I will refer to as national state builders—better government for American citizens lay in expanding, centralizing, and strengthening existing institutions and policies, and in some cases, creating new ones as well. The goal of many of these state builders was Hamiltonian in its scope—a truly national government with significant powers and resources to address what reformers saw as the moral and political ills of the day.

Contesting and checking these statist visions, however, was the American federal system, designed to produce disjointed and weak political and institutional structures. The nineteenth-century federal system enabled a variety of interests and actors who benefited from existing fragmented and limited political and institutional powers to stand in the way of the state builders. To build and then to govern a modern American state, new ways of thinking about the role of the

state would have to be developed. New ways of governing would have to be found. Walter Weyl, a Progressive intellectual and journalist, captures the uncertainty of this statebuilding process.

[T]his 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; [it] 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."¹

Today a very different institutional, political, and ideological environment faces reformers of all stripes. Near the beginning of the twenty-first century, much like the beginning of the twentieth century, it is perhaps difficult for us to envision a world that strays very far from the boundaries of what is currently known or, because of a veil of nostalgia and wishful thinking for a supposedly better era, to perceive what happened in the past.

Yet as this book will show, change does occur in the American system. It is rarely as logical, coherent, or aesthetically pleasing as reformers would like, but it does happen. Understanding the roles played by ideas, interests, institutions, and history will perhaps provide guidance as well as comfort. We can better understand the political, policy, and administrative contours of the twenty-first-century American state by looking back to the previous century and observing the ways in which competing forces interacted with preexisting institutions. Perhaps we too can find our way to a new American state by understanding the source of one of the most important puzzles of state development in the United States: the disjuncture between institutional strength and coherence, and the disjointed and fragmented nature of public policy. At the beginning of the twentieth century, much like today, efficient and effective government, both by and for the people, seemed to be a wistful dream. This book returns to the beginnings of that dream.

Key Questions

Like many beliefs, the notion that American government was once limited and orderly is more of an ideal type than reality. Even at the time that this picture of ordered government was painted, that order was swiftly becoming unraveled. The great and simple machine of early American government was transformed, by 1929, into a much more

complex apparatus, what we now see as the modern American state. Despite the weight and influence of preexisting political and institutional arrangements, during the Gilded Age and Progressive Era something happened to alter the nineteenth-century machine of government, ultimately transforming the American state into something very different from the one that James Bryce surveyed in the late nineteenth century. Understanding, shaping, and ultimately governing this strange new governmental apparatus—the modern state—would be the focus of critics, reformers, politicians, and citizens from its initial appearance until today.

This book seeks to answer three questions about the emergence of the modern American state: How did preexisting political and institutional arrangements shape the preferences and choices available to those interested in centralizing and expanding government? How did forces in favor of a greater centralization and expansion of government establish their vision as a competitive, and eminently viable, option for structuring American politics and policy? Finally, how can understanding the timing and sequence of these changes in the American state help us to understand broader patterns in American politics and policy?

The book examines a period in American history when the answers to these questions can be unearthed. The nearly 60 years that spanned the Gilded Age and Progressive Era are a curious period in American political history. From the perspective of this study, it was an uneasy period when the United States was precariously balanced between a continued dual federal system and a centralized modern state.² I call this era the first New Federalism.

Before this story can be told, we must first define “federalism” in order to understand how this national statebuilding process unfolded. Over time, the term *federal* has meant many things to many people. To help clarify this book’s argument, I provide the following definitions. *National government* refers to what is commonly called the federal government. The term *intergovernmental policy* refers to laws, policies, or administrative arrangements that alter the relationship between the national government and the states. Finally, *federalism* will be reserved to mean the constitutional relationship between the national government and the states.

While the Civil War decisively ended the notion that the United States was a state subject to the will of its constituent members, the war and its aftermath did not fully take up the implicit nationalization project that a war based on union would predict. By 1877, the leviathan Union government created by Lincoln to win the war had been dismantled; the courts fairly quickly ended any notion of clarifying the

promise of national citizenship contained in the text of the Fourteenth Amendment; and the Republican Party with the end of Reconstruction pulled the national government back not only from its governing role in the South, but also as an active force in American life.³ Nationalization, and even more concretely, centralization of power seemed to be out of the realm of possibility.

By 1929, however, a form of national expansion, though uneasily accepted, had been agreed upon: congressionally enacted policy, with limited national oversight or implementation, matched by some degree of state and local control. The first New Federalism, with its widely accepted, yet at times bitterly contested, constraints on the national government, fell before the onslaught of the Great Depression and the upending of the settled order of American politics and society. The thirty-six-year reign of McKinley-Hoover Republicanism vanished in the 1932 elections. In its place came a new model of federalism, a more centralized national government led by a strong president, aided by an assertive and active national bureaucracy and a compliant legislature and judiciary.

Yet a closer look at this New Deal federalism would reveal a strong resemblance to its first New Federalism forebears. Even before President Franklin Roosevelt put the first phases of the New Deal into place, a state recognizable to modern eyes—in terms of bureaucratic organization, interest group activity, and even legislative oversight—was already established.⁴

The book begins with a curious puzzle: the crisis of Civil War and Reconstruction was not enough to create a centralized state, yet the key elements necessary for a modern state to form were already in place before the crisis of the Great Depression and the response of the New Deal. These key elements would constitute the source of the two problems of the modern American state: the jarring mix of institutional incoherence and strength, and the fragmented and disjointed nature of public policy.

The nearly sixty-year period that spanned the Gilded Age and Progressive Era, but ended prior to the New Deal, I call the first New Federalism. It was in this era, I argue, that the roots of the modern American state grew. The seeds of the modern American state were planted in the struggles of an earlier time, when the dual clockwork of (small) states and (smaller) national government was not simply an image but a hard reality. Yet the state developed during this period was not merely a New Deal state-in-waiting. The first New Federalism reflected and was fundamentally shaped by the partisan, institutional, and ideological struggles of the Gilded Age and Progressive Era.

From 1877 to 1929, Congress joined with bureaucrats, reformers, and interest groups in this paradoxical reshaping of the American state. Legislative and administrative choices made in pursuit of modernization were conditioned by the logic of America's federal structure. Federalism was accommodated, if not overcome, through the enactment and spread of intergovernmental policy.

Enacted by Congress, intergovernmental policy was a series of new policy and administrative innovations—including now familiar instruments such as intergovernmental regulations and grants-in-aid. These instruments would comprise a New Federalism that bridged the dualism of the nineteenth century with the centralization of the twentieth. The intergovernmental policies of the first New Federalism included significant legislation such as the Hatch Act of 1887, which established agricultural experiment stations, and, the Federal Highway Act of 1916, which established the foundation of the Interstate Highway System. The first New Federalism also included the obscure, such as the Standard Barrel acts establishing uniform measures for interstate shipping and commerce, and a grant for the American Printing House for the Blind (1879).

Intergovernmental policy fostered the development of interlocking bureaucracies at the national and state levels. At the same time, it 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. Most importantly, the first New Federalism reflected the uneasy balance between Congress's localist representational structure and modernist impulses for greater centralization and nationalization. By focusing on this era in national state development, we can better understand how the hallmarks of modern American politics evolved during this unique period of American federalism.

In this story of American political development I examine the role of ideas (of limited government versus modernization), interests (such as bureaucrats and interest groups), and institutions (such as Congress and federalism), in the creation of a new American state. Using a blend of historical narrative, case study investigation, and quantitative analysis, I trace the emergence and development of the first New Federalism across time and across policy areas as a way to develop a more accurate picture of the contours of national-state relations during the Gilded Age and Progressive Era. This multifaceted approach demonstrates how Congress became the key player in creating a new federalist policy system that would eventually substantively alter the relationship between the national government and the states.

