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Introduction: The Rise of a Policy State?

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This book grew out of a major conference at the University of Virginia's Miller Center of Public Affairs. Seeking to place scholarly attention to, and partisan disputes over, recent landmark policy in areas such as homeland security, health care, and financial markets in a broad theoretical and historical context, we convened a group of distinguished scholars to consider the politics of major programmatic reforms – specifically, courses of action aimed at dealing with perceived public problems – since the Second World War. The chapters that follow shed light not only on significant efforts to ameliorate perceived ills in domestic and foreign affairs, but also on systemic developments in American politics and government.

This time period corresponds with the emergence of what Karren Orren and Stephen Skowronek have termed a “policy state” – that is, a political order where policy choice has become a principal dimension of American government and politics.¹ Of course, policy clashes have always been an important part of American politics. But the explosion of government responsibilities in foreign and domestic affairs, the emergence of programmatic political parties, and the formation of a dense network of advocacy groups and think tanks have made conflict over competing policies a defining feature of contemporary American politics.

Given the fragmented nature of public policy during the past sixty years, the concept of an “emergent state” – suggesting a centralized, purposeful deployment of power and an autonomous bureaucracy – might deflect attention from the variety and complexity of programmatic developments during this period. Nevertheless, as Hugh Hecló has pointed out, the leading characteristic of American politics since the 1960s has been what he terms “policy mindedness,” that is, the emergence of an outlook that considers “everything in public life besides policy [to be] secondary.”² This volume suggests that policy mindedness began prior to the 1960s, and the case studies that follow, even as they illustrate powerful centrifugal forces, when considered together represent major developments in

ideas and institutions, originating during the 1930s, that dramatically changed the politics of public policy by the end of the Second World War.

Although the volume does not presume to cover all important policy arenas, it includes discussion of nine critical issues – spanning civil rights, social welfare, trade, immigration, and national security – that offer a comprehensive understanding of how major breakthroughs are achieved, stifled, or compromised in a political system conventionally understood as resistant to major changes. As David Mayhew’s Chapter 2 on the “long 1950s” (1949–1963) shows, distinguishing policy *reform* from policy *change* or even policy *stasis* is no easy task. But the basic premise that inspires this volume is that policy reforms involve non-incremental change that addresses what policy makers and advocates regard as a major public problem. How something becomes defined as a critical public problem and what constitutes non-incremental change are thorny questions. It is intriguing, for example, that scholars, indeed the authors of this volume, disagree about whether the Patient Protection and Affordable Care Act and No Child Left Behind act were significant policy breakthroughs. Similarly, some of the big-ticket items of the long 1950s, such as the creation of the Interstate Highway System – which Daniel Patrick Moynihan called “the largest public works program in history” and had an immense effect on the economy and society – would be condemned as reactionary by reformers during the late 1960s and 1970s and become the target of programmatic initiatives dedicated to ameliorating the “negative externalities” they created. Mayhew suggests that the post-Second World War years mark an ongoing contest between conservative and liberal policy advocates, neither of whom has been able to forge a consensus on the role of government.

Our central point is that a massive health care initiative, the overhaul of education policy, and the creation of a vast network of interstate highways are just the sorts of major programs, seeking to address what had come to be perceived as substantial public problems, that *prima facie* have defied policy stasis and marked a substantial departure from existing policies. Whether these policies imposed positive or negative externalities on the economy and society is an important question left unresolved by this volume; however, there is little doubt in our view that these programs marked a substantial departure from prevailing government action.

POLICY REFORM AND AMERICAN POLITICAL DEVELOPMENT

This volume adds a new dimension to the growing attention that scholars have paid over the past decade to the relationship between American political development and public policy. Building on the seminal contributions of scholars such as E.E. Schattschneider, Theodore Lowi, Grant McConnell, and James Q. Wilson on the politics that attended different types of policy,³ more recent

work has sought to discover the logic by which policies have endured and changed throughout history.⁴ Placing programs, in time, has aroused a healthy debate over whether the policy process privileges inertia or development,⁵ and has fostered important theoretical insights into how enduring policy “paths” have been interrupted by “critical junctures.”⁶ Like the chapters that follow, this scholarship has posed hard challenges to the shibboleth that American politics remains tightly bound by cultural constraints and constitutional veto points. Policy-mindedness, Hecló argues, has smitten Democrats and Republicans, Liberals and Conservatives alike. Although rancorous politics divide them, both Democrats and Republicans have their own ambitious visions for policy reform in some arenas even as they staunchly defend the policy status quo in other domains.

In fact, the politics of postwar policy reform has often stirred liberals, moderates, and conservatives to propose different solutions to commonly perceived crises. Dwight Eisenhower, a self-styled “new” (read moderate) Republican, responded to the New Deal not by rolling back the national state that it forged, but, rather, as Mayhew shows in Chapter 2, by pursuing policies such as the Interstate Highway System and the Upper Colorado River Storage Project that would promote economic growth. Far less accommodating to New Deal liberalism, Barry Goldwater – the first major American politician to embrace the conservative label – represented important policy aspirations from the political right that began to emerge in the 1950s, most notably a rejection of détente and the embrace of a less-flexible anticommunism.⁷ Similarly, the Republican-controlled 104th Congress (1995–1996), led by House Speaker Newt Gingrich, did not propose eliminating welfare policy, but, rather, *reforming* it by linking public assistance to strict time limits and work requirements.

This is not to suggest that the timeless question of whether the federal government has the authority to devise policy solutions to social, economic, and international problems has become a nonissue. Indeed, a major theme of this volume is that the Republican Party has grown more conservative since Ronald Reagan’s presidency, a development that crested with the rise of the grassroots Tea Party movement. Militant Tea Party members of Congress, ensconced in the conservative House caucus, the Republican Study Group (RSG), have sought the repeal of the major reforms enacted during Obama’s first term, especially the Patient Protection and Affordable Care Act; moreover, the RSG defied Speaker John Boehner’s negotiations with the president to reach a “Grand Bargain” that would have overcome partisan gridlock in fiscal policy through a combination of entitlement savings and tax increases.⁸

As Paul Pierson suggests in Chapter 12, the very legitimacy of the policy state, then, has become a flashpoint for partisan rancor. But given how entrenched and expansive policy commitments have become, contemporary “conservative policy” presupposes that comprehensive tax and entitlement reform are necessary to remedy the pathologies of American politics. Moreover, many of those who are active in, or identify with, the Tea Party support middle class entitlements

and strengthening America's armed forces.⁹ Finally, as Carol Swain and Virginia Yetter show in Chapter 8, many insurgent conservatives promote comprehensive immigration reform, which has been incubating in states such as Arizona, that would establish a stronger role for the national government in cracking down on illegal aliens.

The "legitimacy barrier," as Wilson described the wall of separation between the public and private, has thus been lowered considerably. Since the Second World War, there has been a great expansion of problems, once considered beyond the scope of government action, that are now viewed as legitimate issues on the national agenda.¹⁰ From this perspective, the long 1950s described by Mayhew in Chapter 2 might have paved the way for, rather than been the target of, this breakthrough. By the 1960s, Americans were on what Wilson calls an "Eisenhower High": "a plateau of self-confidence and enthusiasm produced by successfully overcoming a great depression, winning a world war, and establishing this nation as the undisputed economic and military power house of the world."¹¹ It was not Eisenhower, however, but rather Kennedy who most inspired the sense of national glory that resonated with the historical experience of postwar America. Roosevelt's New Deal, Kennedy said in his acceptance speech at the Democratic convention, had "promised security and succor to those in need." But more prosperous times called for a New Frontier that was "not a set of promises" but a "set of challenges." The New Frontier "sums up not what I intend to offer the American people, but what I intend to ask of them," he declared. "It appeals to their pride, not their pocketbook – it holds out the promise of more sacrifice instead of security."¹² The giftedness or charisma of the young president matched America's feelings that it could solve the world's problems and break through the ancient barriers that had previously limited humankind – even, Kennedy pledged, "landing a man on the moon and returning him safely to earth."¹³

After Kennedy's assassination, it fell to Lyndon Johnson (LBJ) to join this sense of pride to the most nettlesome problems left undone by the national policy advances of the 1950s and early 1960s. He transmuted the New Frontier into the Great Society, trumpeted in the signature speech of his administration on May 22, 1964: a commencement address at the University of Michigan. "The Great Society," Johnson told the graduating seniors and their families, "demand[ed] an end to poverty and racial justice," but this was "just the beginning." Challenging the students and their parents to embrace more ambitious goals for America, LBJ described his vision of a "great society" as a place

where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness. It is a place where the city of man serves not only the needs of the body and the demands of commerce but the desire of beauty and the hunger for community.¹⁴

This was not merely rhetorical flourish; Johnson's exalted vision would take programmatic form through the 1960s and 1970s, making policy reform,

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hitherto a rare political commodity, a rather common occurrence. As Wilson points out,

Until the mid-1960s, Washington was not held responsible for the problems of crime, drug abuse, schooling, or the environment, and it had no meaningful policy on civil rights. . . . During the Johnson and Nixon administrations, all that began to change. The government embraced new goals – improving education, delivering health care, combating crime, eliminating racial injustice – that had only their lofty moral appeal to compensate for the manifest difficulty of achieving them.¹⁵

The wayward path of transportation policy reveals how an expansive and controversial policy state was layered atop, and transformed, the programmatic innovations of the 1950s. In 1956, the Federal Highway Act codified the interstate highway system in twenty-eight pages. Thirty-five years later, the Intermodal Surface Transportation Efficiency Act (dubbed “Ice-Tea”) reauthorized that program, but did it in a complex bill of 293 pages with goals that went well beyond the building of roads:

In 1956, we wanted to build a highway system; by 1991, we also wanted to aid mass transit, reduce air pollution, encourage the use of seat belts and motorcycle helmets, preserve historic sites, control erosion and outdoor advertising, use recycled rubber in making asphalt, buy iron and steel from U.S. manufacturers, define women as disadvantaged individuals, and protect native American reservations.¹⁶

THE POLICY STATE AND THE CONSTITUTION

The path of transportation policy highlights how the new policy regime operated within a highly contentious but pluralistic politics; by the same token, the new policy state emerged within the broad contours of an old constitutional order. The case studies of this volume reveal that the expansion of public policy has been superimposed on constitutional institutions, so that each branch of government and the states have become active in the development of national public policy. As Orren and Skoronek describe this phenomenon,

The hallmarks of this new state of affairs are imprinted in the now-common indictments levelled against each of the old players: that judges routinely make law rather than simply find it; that presidents routinely declare law rather than simply execute it, that bureaucrats routinely give content to law rather than simply administer it; that Congress routinely delegates rather than legislates; that the several states routinely serve objectives promulgated at the center at the expense of local self-rule.¹⁷

Of course, the blending of constitutional institutional powers and responsibilities begins in an important sense with the Founding. Madison argued in *Federalist* 48 that “a mere demarcation on parchment of constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.”¹⁸ Instead, as he argued in a well-known phrase in *Federalist* 51,

“The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.” Constructing a system where “ambition counteracts ambition” necessarily required a complex mixing of powers. Indeed, observing the conventional wisdom that “in republican government, the legislative authority necessarily predominates,” Madison proposed that the president and Senate might forge an alliance from time to time, drawing the chief executive into the details of lawmaking, to buttress the integrity of national administration.¹⁹ Similarly, during the Constitutional Convention, he had proposed formally joining the executive and judicial powers in exercising the veto, so that the authority of the president and the Supreme Court might be allied in moderating the important role that Congress would invariably play in shaping executive power and defining rights.

Just as the aggrandizement of congressional power was the principal concern of the architects of the Constitution – a fear that reverberated throughout the nineteenth century – so the breach of the legitimacy barrier aroused fears of centralized administration, grounded in a powerful, if not imperial, presidency. The “conceit” that, as Franklin Roosevelt put it, “the day of enlightened administration has come,” underlay most New Deal and Great Society programs. Paradoxically, however, the expansion of “big policy” during the late 1960s and 1970s went hand in hand with the distrust in government.²⁰ According to James Patterson, this popular disenchantment followed from the overselling of policy reforms that began in the 1950s and reached a crescendo during the Great Society. The “optimists . . . underestimated the formidable divisions – of race, class, and region that persisted in the United States.” Although Johnson’s liberal faith was attractive and well-meaning, Patterson argues, it contributed to the strong alienation from government that abetted the rise of conservatism.²¹

Yet a number of scholars who have probed the deep roots of the new politics of public policy have argued that faith in public policy and distrust in government were not sequential; rather, there was a singularity to this symbiotic relationship. Of course, fear of centralized power is a signature feature of American political culture. But Heclö argues that there was something novel about the animus to public authority that arose in the 1960s. The emphasis shifted from traditional suspicion of power to a defiance of all authority.²² As Brian Balogh has observed, this pervasive distrust of authority “became embedded in the very relations between students and teachers, doctors and patients, elected officials and constituents.”²³ Clearly, Vietnam and Watergate were important contributing factors, but animus toward public authority went well beyond these troubling episodes. The vision of the Great Society itself – the shift from “quantitative” to “qualitative” liberalism – held that an active and energetic national state was no less dangerous than it was necessary. At the core of the New Deal state stood the modern presidency – centered in the White House Office and Executive Office of the President. Even as LBJ extended this

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institution's legacy, his rhetoric and programs – celebrating a “desire for beauty,” “hunger for community,” and “participatory democracy” – presupposed limiting the discretion of presidents, bureaucrats, and policy experts. Significantly, between 1965 and 1975, trust in government fell furthest among those who described themselves as liberal Democrats. By the early 1970s, surveys showed, liberals were more opposed to big government than were conservatives.²⁴

Teaching Americans both to expect more from government and trust it less, the Great Society was the fulcrum on which the decline of liberalism and the rise of conservatism tilted. But conservatives, too, were complicit in the rise of a policy state that combined the expansion of public programs and profound cynicism toward public authority. The Tea Party's ambivalent orientation to government – expressed in its support for Social Security and Medicare as well as its positions on Homeland Security and immigration – has its origins in the rise of modern conservatism. As Goldwater's messianic campaign foretold, in the wake of the Great Society's sweeping new commitments to activist government self-styled conservatives were no longer content with the policy of forbearance. Nor was conservative policy activism limited to foreign affairs. Rather than seeking a balanced budget, for example, Republicans since the late 1970s have embraced a form of conservative Keynesianism, dubbed “supply side” economics, advanced by innovative thinkers such as Arthur Laffer and Paul Craig Roberts, who argued that a large tax cut would stimulate productivity so much that tax revenues would actually increase and allow the budget to be balanced. Moreover, no less than liberals, conservatives practice an activist politics that expects government to solve national problems. Ronald Reagan, the apostle of contemporary conservatism, promised to “get government off the backs of the American people,” but his administration became committed not only to expanding the national government's role in containing communism, but also to preserving “family values.” George W. Bush (GWB), a self-professed Reagan disciple, sought solutions to society's ills in government-supported “faith based” groups (a conservative version of community action), educational reforms that would ensure that “no child was left behind,” and the creation of a Department of Homeland Security.

THE CONTOURS OF POLICY REFORM IN POSTWAR AMERICA

At the dawn of the twenty-first century, then, both liberals and conservatives had developed an Ibsenesque love-hate relationship with the policy state. A major question addressed by this volume is how this mixture of yearning and dread have affected politics, especially collective efforts aimed at ameliorating problems such as economic insecurity at home and terrorism abroad. Not surprisingly, given the complexity of contemporary American politics, the chapters of this book do not offer a simple answer to this question. The authors differ significantly, for example, in their understanding of the roles that interest

groups and the bureaucracy play in policy reform. Whereas Sean Farhang in Chapter 3 and R. Shep Melnick in Chapter 4 reveal how institutional partnerships between interest groups, Congress, and the courts have resulted in significant reform of civil rights and regulatory policy, Terry Moe in Chapter 6 has identified “vested interests” that have thwarted meaningful change in education. Just as Judith Goldstein argues in Chapter 9 that bureaucratic autonomy abetted the liberalization of international trade after the Second World War, and Jennifer Merolla and Paul Paludo in Chapter 11 find that the public and Congress willingly delegate substantial authority to the president and executive agencies to protect the homeland from terrorism, so Richard Immerman shows in Chapter 10 how departmental and agency turf protection has thwarted intelligence reform.

Moreover, the authors of this book offer competing views on the policy effect of constitutional checks and balances. In Chapter 5, Dorian Warren argues that the federal characteristics of the Constitution, made effective at the national level by the Senate filibuster, have severely weakened the labor movement. Similarly, Moe shows in Chapter 6 how teachers unions’ powerful influence on state and local governments has obstructed educational reform. In contrast, in Chapter 7, Lawrence Jacobs and Theda Skocpol, in their examination of the Patient Protection and Affordable Care Act, and Carol Swain and Virginia Yetter in their study of immigration reform in Chapter 8, spy a new stage of federalism, where the states play an important role in advancing national reform.

In the first instance, these distinctive tales show the need to transcend long-standing debates about the course of American government in the twentieth and twenty-first centuries. The politics of public policy in post-Second World War America is neither susceptible nor intractably resistant to reform; and when it does come, reform takes many forms, often directly through landmark legislation, sometimes through the autonomy of administrative agencies, other times as a result of judges who overcome bureaucratic intransigence, occasionally through the states filling the void left by policy deadlock in the nation’s capital.

The question remains, however, whether the chapters of this volume point to any broader insights into reform politics in the policy-minded polity. Tentatively, we suggest that some order can be discerned among the disparate policy paths traced in our authors’ chapters. First, rights are still central to the rhetoric and institutional arrangements of American politics. At the same time, as Chapters 3 and 4 by Farhang and Melnick respectively, demonstrate, new rights – related to race, gender, and consumer and environmental protection – have profoundly transformed education and the workplace. Indeed, the Kennedy administration described what would become the 1964 civil rights legislation as “constitutional policy,” suggesting that the idea of natural rights presupposing a wall of separation between government and society had been modified by a new understanding of rights that was embodied in programs. Although this “rights revolution” began during the New Deal with programs such as Social Security and the National Labor Relations Act, it was greatly

expanded during the 1960s and 1970s, when the courts became extensively involved in the details of policy reform. As Warren shows in Chapter 5, new rights did not trump old rights. In labor politics the “right to work,” codified by the Taft-Hartley Act, has seriously constrained the right to bargain collectively established by the National Labor Relations Act. Indeed, as Moe observes in Chapter 6, the combination of the Great Recession and the success of Tea Party and other conservative activists in the 2010 state and local elections led many states, most notably Wisconsin, to limit the collective bargaining rights of public workers. Even more telling, toward the end of 2012, Michigan, the home of the United Auto Workers, became the twenty-fourth state in the Union to enact a right-to-work law under the auspices of Taft-Hartley, a dramatic sign of just how great a threat current conditions pose to worker solidarity.

Traditional battles regarding the national government’s power thus still have cultural resonance and political consequences. But unlike the fault line that divided America during the 1930s – when Liberals and Conservatives fought over whether or not to expand the responsibilities of the national government – both of the competing rights that currently roil labor politics (one invoking the “natural” right of property, the other the collective right of workers) have increasingly taken on the attributes of policy. To a point, Democrats and Republicans battle over the legitimacy of national government action; but many of the chapters of this volume make clear that the real fight is for command of the sprawling, regnant policy state that has formed in the postwar years.

Second, just as the growth of policy-mindedness has been intertwined with rights talks, so the merging of rights and policy has modified, but not overcome, the division and separation of powers. The leading paradigm for reform has been drawn from the New Deal realignment, when a major transformation of parties joined, for a time, the usually separated branches of government to bring about major changes in domestic and foreign policy. But Mayhew’s Chapter 2 demonstrates that major policy breakthroughs, such as the emergence of the interstate highway system and the establishment of the National Aeronautics and Space Administration, also occurred under conditions of divided government.²⁵ Bipartisan agreements to seek ambitious policy initiatives in the service of growth, development, productivity, and efficiency, he argues, “allowed a more or less consensual ticket out of the polarizing and exhausting class politics inherited from the 1930s.” By the twilight of the Great Society, however, divided partisan realms were grounded in the cultural and institutional changes that shaped the policy state: paradoxically, the expansion of government programs was allied to distrust of centralized power that encouraged aggressive oversight of executive administration and insurgent assaults on the “Washington establishment.” Rather than pursuing solutions to the nation’s problems with New Deal-style executive-centered and pragmatic policy solutions, political activists began to engage in ideological confrontation that defied consensus and diminished the public’s trust in government. As Farhang shows in Chapter 3, the combination of partisan contestation and divided government that has prevailed

since the late 1960s has spawned a regime of private litigation that transformed civil rights regulatory policy – converting “theoretical statutory rights into practical substantive benefits.” Of course, the courts established important precedents that challenged the legal ramparts of Jim Crow during the 1940s and 1950s in landmark decisions such as *Smith v. Allwright* (1944), which declared the all-white primary unconstitutional, and a decade later, in the famous *Brown v. Board of Education of Topeka, Kansas* (1954), which forbade “separate but equal” school systems. But such constitutional decrees had a limited impact on forced segregation until they were transformed into public *policy*, formulated and administered by institutional alliances that joined judicial authority to reform advocates in Congress, administrative agencies, and public interest groups. The civil rights regulatory regime, Farhang shows, was greatly expanded by the development of a network of private for-profit attorneys who benefited from legislation that authorized court-appointed lawyers’ fees, which made public interest law attractive to regular commercial firms. Private enforcement soon became a model for other areas of social regulation, such as environmental and consumer protection, housing, education, and health care.

Similarly, Melnick shows in Chapter 4 that far-reaching civil rights reform in education and employment were achieved through an institutional partnership of the courts and bureaucratic agencies that he and other public law scholars have defined as “adversarial legalism.” In this process, courts and litigation have strengthened the American state by combining an “expansion of the responsibilities of the central government with a decentralized, party-driven form of decision making.” This odd but effective combination, Melnick adds, “arises from a fundamental tension between a culture that expects and demands comprehensive governmental protection from serious harm, injustice, and environmental dangers – and hence a powerful, activist government – and a set of government structures that reflects mistrust of concentrated power and hence that limits and fragments political and government authority.” So enduring and strong did this court-centered approach to reform become, Melnick argues, that contentious litigation became “our home grown alternative to bureaucratic centralization and thus an essential element of the contemporary American ‘state.’”²⁶

At the same time that the courts – long considered an obstacle to national reform – emerged as a vanguard of civil rights, environmentalism, and consumer protection during the 1960s and 1970s, the states also became surprisingly engaged in the policy state. Madison argued that federalism would complement the separation of powers; competition between the national government and States would become, he envisaged, the second pillar of a “compound republic” – a “double security [arising] to the rights of the people.”²⁷ The conventional wisdom of most examinations of federalism is that states retard national policy reform – competition among them, as Louis Brandeis feared, has more often than not led to a “race to the bottom” that empowers private interests and weakens social welfare policies such as Medicaid and unemployment benefits.