

Democracy and the Origins of the American Regulatory State

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Democracy and the Origins of the American Regulatory State

Samuel DeCanio

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For my father

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Introduction

This book contains two arguments, one historical and the other theoretical. The historical argument seeks to explain the creation of the American regulatory state in the late nineteenth century; the theoretical argument examines the implications that high levels of voter ignorance have for democratic politics and the autonomy of modern states.

The historical argument examines how political and media elites helped build the American state's bureaucratic regulatory authority in the final decades of the nineteenth century, and argues that such authority initially emerged in the Treasury Department and the Interstate Commerce Commission. Although many scholars have examined conflicts over monetary policy and railroad regulation during the nineteenth century, I argue that autonomous elites created a new state to accomplish unpopular policy objectives, and that the state that emerged from these conflicts had lasting implications for American politics.

In addition to this historical argument, I develop a theory of the state that challenges widespread assumptions regarding the nature

of political power in modern democracies. Although democracy is believed to ensure voters' influence over modern politics, I argue that high levels of public ignorance grant democratic states significant autonomy from society, allowing implementation of policies that do not reflect social demands or preferences. By suggesting that voter ignorance may prevent societal control of the state, my theoretical argument challenges both commonsense assumptions regarding political power in modern societies and academic theories of democracy.

Before I turn to my argument, it is necessary to provide a brief methodological discussion of my explanatory objectives. Historically oriented political science has come under intense scrutiny, and important questions have been raised regarding the role of historical data for the social scientific project, and the relationship between case selection and the validity of inferences drawn from specific historical periods. Three general challenges face historically oriented social science: (1) the nature of the generalizations drawn from discrete historical cases, (2) problems with making causal inferences from a small number of observations, and (3) the criteria used for case selection.

Social scientific theories often attempt to construct generalizations that are valid across time and place.¹ Although understanding general patterns or "laws" of social behavior is critical for any analysis, understanding general patterns and typical behavioral responses remains a *preliminary* step necessary for the analysis of historical data.² Indeed, my argument is predicated upon the assumption that a characteristic feature of social analysis is *developmental*; involving questions regarding why specific institutions emerged at specific times and not others.³ Efforts to explain the emergence of certain developmental patterns must be guided by theoretical assumptions regarding social behavior. However, my focus on explaining the origins of a new developmental pattern assumed by a specific type of state is an explanatory objective that is distinct from identifying general laws of social behavior.⁴

As I examine a transformation in state authority that takes place under a specific set of historical conditions, certain characteristics of my cases must briefly be mentioned. Although social scientists recommend selecting cases to induce variation across independent and dependent variables, my primary objective is to explain why a new type of state was created at a specific point, and is not simply to "test" a theoretical argument. My cases were not selected to induce variation across variables, nor do I examine cases where bureaucratic regulatory authority failed to emerge. Rather, I selected my cases because they

were the initial instances of a new type of state that had important implications for popular control of democratic politics.⁵

There are two problems with selecting cases to ensure variation across independent and dependent variables. First, not all theories and historical transformations are equally important: their importance can only be determined through their association with cultural values. This methodological issue is conceptually distinct from questions associated with variation and questions associated with causality and “tests” of a theory. Hardly specific to the social sciences, *all* scientific inquiry is predicated upon assumptions regarding the value or “meaning” of the patterns scientists seek to explain.⁶

Second, selecting cases to generate variation across variables is a problematic method for isolating causality when a limited number of observations are being examined.⁷ Expanding the number of cases under examination is no guarantee this problem of isolating causality will be overcome, because doing so expands the number of possible confounding variables, thereby failing to overcome the problem that the inclusion of additional cases is supposed to overcome in the first place.⁸

One way to overcome this problem is to use experimental methods that allow the manipulation of treatment and control groups to determine causal relationships among independent and dependent variables.⁹ Although social scientists have increasingly adopted experimental methodological techniques, elite decision making—a key subject of analysis in this book—rarely allows assignment of treatment and control. Furthermore, important historical events rarely occur in the context of natural experiments, and when a small number of decisions are responsible for new developmental patterns, the application of experimental methods becomes even less appropriate.

If we seek causal explanations for developmental sequences associated with important cultural values, and if we do not merely study phenomena that generate variation on independent and dependent variables, occur as a result of quasi-natural experiments, or facilitate the application of statistical methods, one must adopt methodological techniques, such as process tracing and historical counterfactuals, that are appropriate for studying elite phenomena with small numbers of cases.¹⁰

This book studies three cases that influenced the creation of the American regulatory state. First, I examine how conflicts over the gold standard influenced American party ideology and state formation. This section of the argument considers how the Northern Civil War funding operations and partisan

conflict over the gold standard influenced the Treasury Department's administrative capacity, and suggests that the Treasury Department was empowered to exercise powers preceding the subsequent emergence of central banking authority that occurred later in American history.

My second case examines the politics of free silver and inflationary demands for the free coinage of silver at the ratio of 16 to 1. This section discusses how voter ignorance influenced political decisions and the myths surrounding the free silver issue during the 1870s through the 1890s. Unlike my other cases, my examination of the silver issue does not directly focus on American state formation. Instead, this case examines how conflicts over free silver influenced the Democratic Party's demands for federal economic intervention, inaugurating a shift in the ideology of the Democratic Party with important implications for American politics.

The third case examines how railroad regulation influenced American state formation. This section focuses on the creation of the Interstate Commerce Commission (ICC), one of America's first independent commissions that regulated the American railroad industry. Instead of focusing on public opinion or the demands of organized economic groups, this case examines how the contested election of 1876, and the political bargain that became known as the Compromise of 1877, influenced railroad regulation and the creation of the ICC. Even though there are important differences among these cases, each played an important role in influencing party ideologies and the creation of the American regulatory state.

Although I do not examine cases where this type of state authority failed to emerge, the historical conditions surrounding these cases constitute "most difficult" tests of my theoretical argument for four reasons.¹¹ First, I focus on how elected officials, and not unelected judges or bureaucrats, operated autonomously from public opinion and electoral demands. As elected officials are those officials most exposed to elections and public opinion, I examine actors that should be most sensitive to democratic pressures, and not those whose positions are removed from influence by public opinion.

This focus, however, has important implications for the inferences we draw from these cases. For if elected officials enjoy ignorance-induced autonomy from society, unelected officials may enjoy even greater levels of autonomy because they do not directly face electoral pressures. Indeed, my focus on elected officials may *understate* the autonomy of the more numerous bureaucratic officials staffing modern states.

Second, I focus on two policies—monetary policy and railroad regulation—that were among the most contentious issues of the late nineteenth century. Instead of studying the far more numerous policies that never solicited public attention or became topics during elections, I examine two issues that generated widespread media coverage and popular attention. If state elites enjoyed autonomy over contentious policy decisions, state autonomy may be even more pervasive for the far more numerous, and less visible, policies that receive little media attention or popular interest.

Third, the historical period I examine (1860s–1890s) is a particularly unlikely arena to find evidence of state autonomy. Unlike contemporary America, where around 50 percent of the public does not vote in presidential elections, late nineteenth century America exhibited a vibrant participatory political culture where more than 80 percent of the electorate participated in elections at all levels of government. This period's extensive political participation has led many to conclude this was a uniquely democratic moment in American politics. If elites were able to elude popular control and manipulate public opinion during a period of rampant political engagement, democratic states may enjoy even greater autonomy when voters are apathetic and disengaged.

Fourth, the restricted scope of government during this period should have made it relatively easy for voters to become politically informed. Nineteenth-century policy debates were relatively simple, often merely involving such questions as whether more or less money should be put into circulation or whether railroads should be prevented from charging different prices based upon the distance they shipped goods. As the scope and complexity of government has expanded dramatically since the late nineteenth century, the thousands of public decisions and proliferation of governmental regulatory agencies that has occurred have compounded the amount of information voters need to become informed. If political elites acted autonomously when the scope and complexity of government was limited, state autonomy may be more extensive when the scope and complexity of government is expansive.

Aside from revealing this period's importance for American politics, these issues indicate that studying representation in the late nineteenth century may also help illuminate certain aspects of contemporary American politics. For since the nineteenth century, Americans' political engagement has declined while the scope and complexity of government has expanded. If my argument about the relationship between voter ignorance and state autonomy is correct, contemporary democratic states may enjoy even more autonomy than they

did in prior historical periods because voters have become more apathetic and democratic politics involves regulatory issues that are more numerous and complex than they were in earlier periods of American history.

I should note that while my historical argument is limited to explaining the origins of American state authority, my theoretical argument is predicated upon general propositions that make it applicable beyond the American case. However, the specific way that voter-ignorance-induced state autonomy influences different democracies in specific historical episodes cannot be extrapolated from my theoretical argument. Rather, it is only possible to develop certain general propositions to serve as preliminary assumptions to guide empirical inquiry into how voter ignorance and state autonomy vary in different contexts and settings.

Using underutilized manuscript collections, and drawing new interpretations from these sources, this book offers a new explanation for the creation of the American regulatory state. Aside from explaining this institutional development, I develop a theory of state autonomy in democratic societies with implications for understanding how political power is exercised in the society that emerged from these historical transformations.

CHAPTER SUMMARY

Let me say something about the structure of the book and the role each chapter plays in my general argument. Each empirical chapter's introduction summarizes the chapter's objectives, and is followed by historical material organized around questions determined by the theory. Each empirical chapter concludes with a counterfactual discussion of what would have happened if voters had been informed, or if the events the chapter examines had not occurred, or had occurred in a different way.¹²

The individual chapters of the book are organized as follows. Chapter 1 conceptually distinguishes the specific historical transformation I seek to explain, the creation of a new type of American state. It is critical to note the numerous studies documenting the existence of governance and administration in the antebellum republic, especially at the state and local levels. Despite recognizing the numerous cases of active governance and administration that existed prior to the Civil War, chapter 1 argues that the postbellum American state exhibited three novel characteristics distinguishing it from prior forms of American government.

First, the *level* of government was altered, and new forms of authority were placed in the hands of federal, not state or local, officials. Second, there was a shift in authority between the *branches* of government, as power shifted from legislatures and courts to executive bureaucrats and independent commissions. Third, the federal state pursued regulatory objectives that were distinct from prior forms of government, increasingly focused on *regulating* the market price system and not simply facilitating industrialization or engaging in distributive actions such as postal delivery. The combination of these three characteristics constituted a new type of state that was increasingly applied to the American economy, marking a divergence from prior forms of American governance.

My discussion of this institutional shift is embedded within a discussion of party ideologies before the Civil War, a discussion that examines the political parties' positions on such issues as federal power, the role of respective branches of government, and the types of government action they endorsed. In addition to discussing the institutional characteristics of the state that emerged following the Civil War, this chapter examines the ideological belief systems of political parties in the second (1828–1854) and third (1854–1896) American party systems. This discussion is intended to clarify both the institutional shift I focus on explaining and the changing components of the party ideologies associated with this shift in state power.

Chapter 2 presents a theory of the state that argues widespread public ignorance grants democratic states autonomy from society. This chapter makes three arguments regarding the consequences high levels of voter ignorance have for modern democratic political systems: I argue that public ignorance grants democratic states autonomy from society, allows elite manipulation of public opinion, and facilitates regulatory capture. Although this theory is applied to the context of nineteenth-century American state formation, its simplicity makes it generally applicable to the analysis of modern democratic states, especially since certain changes that have occurred since the nineteenth century, such as an expanded scope and complexity of government, have made it more difficult for anyone to become politically informed.

Chapter 3 begins the historical analysis by examining how Civil War finance policy influenced American state formation. This chapter considers Northern war finance in the context of Eastern financiers' preferences and demands, and argues that the public was largely unaware of how the federal government financed the Civil War. Although this chapter examines how war influenced

American state formation, it is also used to establish certain conditions that are important for the following chapter, which focuses on how voter ignorance created opportunities for certain politicians to manipulate public opinion in the elections following the conclusion of the Civil War.

Chapter 4 analyzes how public ignorance influenced elections and monetary policy in the immediate postbellum period. Recognizing that the Democrats' associations with secession made them electorally vulnerable, Midwestern Democrats George Pendleton and Clement Vallandigham began demanding inflationary monetary policies to introduce an economic issue that was isolated from secession, the Civil War, and the "bloody shirt." Doing so required these Democrats to popularize fictitious claims regarding their preferred policies, the positions they took during Civil War, and the positions of bankers and members of the Republican Party. However, since voters had little understanding of the government's Civil War funding operations, or various political and economic groups' positions toward such funding methods, Pendleton's message was more persuasive than it would have been had voters been informed.

Chapter 5 examines the election of 1868 and argues that despite winning the presidency, the Republican Party was convinced that the Democrats had reintroduced monetary policy into postbellum American political debate and had placed the Republicans on the unpopular side of the issue. In addition to influencing the specific issue positions occupying political debate, the Democrats' new monetary activism inaugurated a new willingness to use the federal government to intervene in the economy.

Although the Democrats initially focused on increasing the volume of paper "greenbacks" in circulation, in the early 1870s collapsing silver prices created the possibility that inflationary monetary policy could reenter political debate in the form of silver, and not paper, currency. The politics of free silver would become deeply associated with the Populist Party, William Jennings Bryan's candidacy in the presidential election of 1896, and the ideological development of the Democratic Party. Indeed, when Bryan used the Democratic platform of 1896 to endorse free silver and the proactive government action necessary for inflationary monetary policy, he completed the Democrats' transition to endorsing federal regulation of the economy.

Aside from influencing Bryan and the election of 1896, the free silver issue has been used as evidence of Americans' willingness to endorse paranoid conspiracy theories. This argument was famously made in Richard Hofstadter's essay "The Paranoid Style of American Politics," and was further developed in

The Age of Reform. Hofstadter claimed there was little evidence supporting the Populists' claims that bankers bribed public officials to remove silver currency from circulation, and subsequent studies by Irwin Unger, Allen Weinstein, and Milton Friedman and Anna Schwartz shared Hofstadter's conclusion that the Populists exhibited paranoid and irrational tendencies.

Chapter 6 argues that the studies echoing Hofstadter's claims have erroneously dismissed the Populists' suspicions of conspiratorial dealings. This chapter claims that the Populists' central contention—that a banker bribed a key official to influence silver policy—is far more accurate than has been realized. The chapter examines how William C. Ralston, president of the Bank of California, paid thousands of dollars to Henry Linderman, the official who wrote the Coinage Act of 1873, the legislation that the Populists claimed was influenced by bankers and bribery and was denounced as the "Crime of '73." Rather than being based upon circumstantial evidence, this chapter presents evidence from Ralston's correspondence detailing his payments to Linderman, including one of the actual checks he paid Linderman with, which were preserved in Ralston's papers.

Ralston's involvement in the Coinage Act's passage requires a revision of our understanding of the Populists and the ideological transformation that Bryan's candidacy inaugurated. Furthermore, the errors in the subsequent historiography, and the fact that Ralston's involvement in finance policy was unknown to practically every major study of this period, have broader ramifications for our understanding of issues involving dissemination of information in modern societies, the nature of conspiracy theories and myths, and the difficulties facing anyone attempting to understand political events. Although chapter 6 examines how public ignorance distorts democratic representation, the chapter also suggests that talented elites with high incentives to become informed face the same epistemological problems confronting voters, difficulties that frustrate anyone's efforts to understand or accurately reconstruct political events.

Thus, in addition to helping improve our understanding of certain political events during this period, chapter 6 serves as a critique of elites' ability to understand political events, indicating that the problems posed by public ignorance cannot be eliminated by simplistic recommendations such as increasing education or the wider dissemination of factual data. Indeed, the fact that the suspicions of the Populists and many nineteenth-century Americans were, in a sense, more accurate than the academic studies that followed indicates that popular understanding may, in certain instances, be more accurate than elite understanding of political events.

Chapter 7 examines how the Panic of 1873 resulted in a final wave of popular support for greenback inflation, leading to a Democratic House majority for the first time since the conclusion of the Civil War. In this context, lame-duck Republicans drafted a bill delegating monetary policy to the Treasury Department to prevent the incoming House Democratic majority from implementing inflationary currency policies. Delegation to the Treasury Department was a critical moment in American state formation, marking one of the initial instances where federal bureaucrats were granted regulatory authority over the national economy. Hardly a response to interest group pressure or public opinion, this decision was a desperate effort by certain conservatives who sought to resume the gold standard despite recognizing its widespread unpopularity.

Chapter 8 examines how, a mere two years after the Democrats' victory in 1874, a victory that was widely interpreted as a mandate for currency inflation, both parties endorsed the gold standard in the presidential election of 1876. This policy convergence was influenced by the strategy Rutherford Hayes used to emerge as an unexpected candidate for the Republican nomination. Despite the Republicans' dire electoral situation, Hayes recognized that if he could win the Ohio gubernatorial election of 1875 he could become the Republican presidential nominee for the election of 1876.

Aware of the unpopularity of the Republicans' economic policy positions, Hayes exploited voter ignorance in the Ohio gubernatorial election of 1875 by claiming that the Ohio Democrats sought to impose Catholic religious instruction on the Ohio public schools. Although there was no basis for these claims, Hayes successfully drew public attention away from his unpopular economic policies, and after he won the Ohio election, he secured the Republican presidential nomination for the election of 1876, which he subsequently won. Hayes's 1875 victory in Ohio caused a convergence in the parties' monetary positions in the subsequent presidential election, ensuring the country would resume the gold standard regardless of which party won the election of 1876.

Chapter 9 examines how the election of 1876 was thrown into controversy when it became unclear which party had carried certain Southern states. This chapter focuses on how the Republicans promised certain Southern Democrats railroad subsidies to extend Thomas Scott's Texas and Pacific Railroad into their districts in exchange for making Hayes president. Initially documented by C. Vann Woodward in *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction*, the Compromise of 1877 collapsed after

Hayes became president and refused to fulfill his vague promises to aid Scott's railroad.

Aside from robbing Southern Democrats of railroad subsidies, the collapse of the Compromise of 1877 led Texas Democrat John Reagan to introduce legislation to help Scott's railroad empire and deliver railroad developments to Reagan's district. Although few understood why Reagan was suddenly championing railroad regulation, his bill generated support from agrarian groups and other House Democrats. While various studies have argued that railroad regulation was a result of popular opposition to the railroads, shippers' demands, or the railroads themselves, political pressures associated with the collapse of the Compromise of 1877 led Reagan to introduce his important bill.

Although Reagan championed railroad regulation to pursue short-term political objectives, his bill tapped into widespread dissatisfaction with the railroads, leading him to advocate railroad regulation long after the factors that had led him to introduce his bill subsided. However important the Reagan bill was for regulating the railroads, the ultimate product of the railroad issue was the creation of an independent regulatory commission, even though Reagan never sought to use his bill to create such an entity. In this sense, Reagan and the interests that endorsed his bill were not responsible for the effects railroad regulation had upon American state formation. It took a second set of actors to propose creating an administrative agency to regulate the railroad industry, an institutional development that Reagan consistently opposed.

Chapter 10 explains how Reagan's bill caused a reaction among members of the liberal reform faction of the Republican Party who endorsed creating an independent commission to blunt the more radical implications of Reagan's bill. Liberal reformers hoped expert commissioners would make more effective regulatory decisions than legislatures, and also hoped commissioners would disseminate impartial information to help voters make rational decisions. Liberal reformers' endorsement of a regulatory commission was influenced by their pessimism regarding the public's understanding of the complex forces that were transforming the American economy.

Chapter 11 examines the free silver movement and how William Jennings Bryan's demands for the free coinage of silver marked the Democrats' final turn toward federal regulatory activism. This chapter discusses how some of Ralston's allies either remained silent regarding their actions on Ralston's behalf or popularized fictitious claims regarding the forces responsible for the Coinage Act of 1873. The chapter focuses on the actions of one of Ralston's allies, Nevada Republican William Stewart, who became a prominent leader

of the free silver movement even though he had assisted Ralston with the Coinage Act.

Chapter 12 discusses how populist social demands led certain liberal reformers and Republicans to endorse bureaucracy as a means of resisting public opinion and in an attempt to educate voters. This chapter suggests that public opinion was not demanding the creation of bureaucracies or the specific policies the Treasury Department and the Interstate Commerce Commission were implementing. The chapter argues that, far from responding to popular demands, certain conservatives empowered bureaucracies to implement policies they believed were deeply unpopular. In this sense the American regulatory state cannot be explained as a product of popular outrage toward industrialization. Although the public was increasingly turning to democratic politics to protect it from the forces of industrialization, the bureaucratic institutions that were created in response to these demands were not intended to satisfy popular policy preferences but were instead intended to remove political decisions from popular control and implement policies that elites of all political orientations recognized were unpopular.

The book's concluding chapter is divided into two sections. The first section discusses the effects these specific historical transformations had for subsequent episodes of American political development. The second section steps back from the details of the historical argument and reflects on the more general ramifications this book has for our understanding of democratic politics.

Specifically, the second section of the Conclusion focuses on discussing how the informational problems that existed in the nineteenth century have only been exacerbated by certain political conditions in contemporary America. For since the nineteenth century, Americans have become increasingly apathetic and politically ignorant, while the expanding scope of the administrative state has made it progressively more difficult for anyone to become informed. As the state has come to regulate an increasing number of economic and social relationships, the sheer number of public decisions has multiplied. This has made it impossible for anyone to become informed of what government is doing, and has rendered the state increasingly autonomous from society, while also empowering political elites who disseminate explanations of politics for popular consumption. This indicates that American society has changed in ways that have only made it more difficult for contemporary voters to become informed, indicating that this book's theoretical argument may be more applicable to explaining political events in our contemporary democracies than in prior periods of American political development.

Chapter 1 The Modern Regulatory State

Since the nineteenth century scholars have focused on studying two developments that have transformed the modern world. On the one hand, they have sought to understand the conditions that led to the rise of capitalism, the engine of economic growth that has altered every society it has touched. Yet on the other hand, as markets have proliferated and societies industrialized, there has been a corresponding expansion in another object of scholarly investigation: the modern state.

Modern states are engaged in a wide variety of regulatory and redistributive actions; they possess enormous coercive powers, have extensive financial resources, and impose a range of regulatory decisions upon their economies. Given these attributes, and their derivation of legitimacy from the consent of the governed, modern states are among the most powerful human organizations ever created. The study of the modern state's origins, development, and tendencies has occupied countless scholars operating from a range of theoretical traditions.¹

This book examines the origins of a specific type of state authority that initially emerged in late nineteenth-century America. I do not examine all types of state activity, nor do I suggest that America's specific developmental sequence necessarily resembled other areas of the Western world. I do not examine the numerous cases of local and state government action that existed throughout the nineteenth century, and I ignore the development of the state's military capacity, its taxation powers, and its varied social welfare functions. Instead, I focus on explaining the initial instances where the American state acquired bureaucratic regulatory authority over the market economy, and am specifically interested in assessing popular control over this institutional development.

This focus might initially seem odd, for America is often depicted as a stateless society, a laggard in terms of political development.² This view of America is often due to comparisons with European states that developed powerful bureaucracies, systems of public credit, and standing armies prior to mass democratization.³ Different European states exhibited different types of bureaucratization: in certain countries corporatist class and occupational alliances checked state authority; other countries were influenced by the institutional legacies of the Catholic Church. Great Britain and the Low Countries developed legal-rational bureaucracies and systems of public credit necessary for imperial expansion.⁴ Nor was the rise of the bureaucratic state simply a European development. In Ming China vast bureaucracies promulgated regulations delineated by Confucian religious doctrine. Before the centralization of Chinese political authority, bureaucracies extracted resources to finance war against neighboring states, leading to the creation of legal-rational bureaucracies prior to the emergence of such bureaucracies in Europe.⁵

While premodern states were influenced by variables associated with war and revenue extraction, modern democratic states pursue regulatory functions distinguishing them from prior forms of government. Instead of having to subjugate recalcitrant principalities, separate state revenue from the private control of the nobility, or impose religious homogeneity upon society, modern democratic states regulate market economies in ways that are markedly different from those of their predemocratic predecessors.

This is partially due to the economic conditions surrounding modern states. Modern states are immersed in market economies that are qualitatively more rationalized, and quantitatively more extensive, than those of their premodern predecessors. As the regulation of market economies requires significant technical expertise, modern states have assumed a distinct form, employing career

civil servants in functionally specialized bureaucracies empowered with discretion by their legislative principals.⁶

Aside from the nature of their administrative decisions, perhaps the single most striking feature of modern democratic states is the sheer scope of their regulatory operations. Exhibiting numerous bureaucratic agencies and quasi-public corporations, producing disparate goods and services, consuming between one-third and one-half of their societies' GDP, employing nearly a quarter of the civilian labor force, and possessing highly developed coercive capacities, modern states' actions are more varied and more extensive—in the range of regulations they promulgate and in the number of officials they employ—than prior forms of governance. Indeed, the expanding scope of decisions made by democratic states has been described as a “defining characteristic of our times,” a characteristic shared by every democracy in the Western world.⁷

Aside from their unique organizational characteristics, modern states are also distinct from their premodern predecessors due to the source of their legitimacy. Although modern states appeal to popular ambivalence over the antagonistic values embodied by democratic politics and market economies, modern states are legitimized by their democratic characteristics—by elections and the power of public opinion.⁸

The democratic basis of modern states' legitimacy has a number of implications for popular control of politics. Instead of being able to ignore public opinion or suppress societal dissent through force of arms, democracy is believed to ensure that states respond to popular demands and interests. Indeed, some suggest democracy makes it difficult to distinguish the state from the society it claims to represent.⁹ As Richard T. Ely noted some time ago, in democracies it appears that “the state is not something apart from us and outside us, but is we ourselves.”¹⁰ By combining democratic electoral institutions with discretionary regulatory bureaucracies, modern states exhibit a combination of characteristics unique to the modern world.¹¹

Despite the unprecedented power of modern states, elections and public opinion are believed to ensure that democratic states remain responsive to the societies they govern. This assumption is prevalent in popular political culture, and is exhibited by both scholarly theories of democracy and historical studies of American political development. Indeed, unlike Europe, where industrialization and state centralization preceded democratization, the American state was created in the nineteenth century when more than 80 percent of eligible voters were participating in elections at all levels of government.¹²

As America's participatory political culture was the "one area" where nineteenth-century America was "profoundly different" from European societies,¹³ it seems difficult to study American political economy without acknowledging the influence of public opinion and electoral demands.¹⁴ For when popular participation is robust—as it was throughout the nineteenth century—it seems natural to assume that democratic states respond to societal demands "because they must."¹⁵ By assuming democracy ensures societal control of the state, studies of American political development "dissolve any stark analytic separation between state and society," as the nineteenth century's competitive electoral environment and vibrant partisan political culture appear to have limited state autonomy from society.¹⁶

Some argue that the influence of popular demands extended beyond elected officials to unelected bureaucrats as well.¹⁷ Bureaucrats allegedly required "sustained ties" to voters and organized social groups to ensure successful policy implementation.¹⁸ With nineteenth-century American government closely monitored by voters, and facing unprecedented levels of electoral participation, "sweeping assertions" of democratic responsiveness are often found in studies of this period.¹⁹

There are, however, several facts that, when examined from this theoretical consensus, are difficult to explain. Clearly, by the end of the nineteenth century voters were turning to democratic politics to ameliorate the effects of inequality and industrialization. Yet prior to the Civil War "few if any of the common people regarded government as a means by which economic and social power might be redistributed or the problems of their lives resolved."²⁰ Oddly, some have noted that before the Civil War the disadvantaged economic groups that led demands for the state's expansion had expressed opposition to positive visions of the federal government. Before the war it was "among subsistence farmers in the most remote and economically underdeveloped regions of states" that the "doctrine of a negative state . . . became . . . [a] dogma."²¹

Although various late nineteenth-century electoral groups demanded legislation to counteract the effects of markets and industrialization, the writings of antebellum Democrats such as Orestes Brownson, Thomas Hart Benton, and William Leggett express views of government diametrically opposed to these demands.²² While many have documented exceptions to these attitudes, "the tendency of democratic politics"—where contemporaries would expect to find the disadvantaged demanding government action—was in fact "to let more and more alone."²³ Thus although subsequent reformers championed

redistribution, social programs, and various forms of market regulation, antebellum Democrats “envisioned no such programs.”²⁴

One can, of course, find exceptions to this trend. For example, Thomas Skidmore, theoretician of the New York Working Men’s Party, is regularly cited as a precursor to New Deal liberalism.²⁵ Skidmore is interesting, however, precisely because he “was not a typical artisan who espoused ‘representative’ views,” for when he advocated property redistribution in *The Rights of Man to Property*, he was “savagely attacked” by members of the labor movement and conservatives who were critical of it.²⁶ Although some claim liberal ideas are “deeply imbedded,” albeit “carefully hidden,” in the writings of antebellum labor radicals, these ideas have been difficult to find.²⁷

This is not to suggest that antebellum Americans ignored economic grievances or failed to advocate political remedies during periods of hardship. Writers such as George Fitzhugh produced scathing critiques of capitalism and industrialization.²⁸ The remedies suggested by these critics, however, were often qualitatively different from those espoused by subsequent reformers. Antebellum agrarian and labor organizations denounced poverty, working conditions, economic exploitation, and inequality—and then demanded free trade and the gold standard; Fitzhugh indicted Northern industrialization and endorsed slavery and racial apartheid; Fourier socialists denounced mechanization and poverty only to recommend creating phalanxes in local townships.

Antebellum Americans’ attitudes become even more perplexing when we examine the Democrats’ Whig opponents. While contemporary conservatives’ opposition to state intervention seems natural and self-evident, before the Civil War affluent Protestant Whigs sought to provide “centralized direction to social policy.”²⁹ Hardly championing a negative state, the antebellum Whigs endorsed Henry Clay’s “American System” and its combination of a protective tariff, a national bank, and government support for internal improvements to facilitate industrial development. Oddly, it was only after the Civil War that “the idea of a positive relationship between government and economic life . . . [fell] out of favor among those who underwrote the conservative program.”³⁰ Despite government efforts to promote industrial development, “*interestingly*, a laissez-faire critique of government . . . *did not* surface” during this period among the affluent Protestant Whigs.³¹

Antebellum attitudes “appear illogical” to commentators today because they reverse the means that have become associated with specific cultural values and ends.³² For it was the Whigs, and their affluent Protestant constituents,

who supported state-led industrialization and positive government action, while ethnic and religious minorities, laborers, marginal agrarians, and the poor supported the Democrats and their commitment to nonintervention.³³ Indeed, it was this paradoxical combination of ideas that progressives such as Herbert Croly sought to replace with a new nationalist culture and a state that would wield Hamiltonian means to achieve Jeffersonian ends.

Antebellum Americans' attitudinal configuration has been described as an "unresolved paradox," a "massive confusion of political traditions" so severe that, in the words of one historian, it apparently "reverses the facts."³⁴ Yet at some point these assumptions were transformed, and as marginal economic groups began demanding the state take a more proactive role in American social life, there was a corresponding institutional transformation as the American state began empowering independent commissions and federal bureaucracies to regulate the industrial market economy.

It is, of course, necessary to recognize important exceptions to these generalizations, for antebellum Democrats were not simply advocates of *laissez-faire*, and at no point has America ever resembled a "night-watchman" state. Although the intellectual positions of various writers often express skepticism toward federal power, the actions of antebellum government were far more active than such rhetoric suggests. Jacksonian Democrats endorsed programs such as federal appropriations for the Cumberland Road and the improvement of harbors and lighthouses, and the antigovernment rhetoric of Jacksonian Democrats was often at variance with their actions in office, especially at the state and local levels.³⁵

Indeed, antebellum America was hardly "stateless," for state and local governments regulated numerous activities, ranging from banking and internal improvements to education.³⁶ Yet when all the exceptions are catalogued it is clear that the scope of *federal* action remained restricted, and yet it is the federal government that has experienced a great expansion.³⁷ As the American state existed in a political culture hostile to enlarging federal authority, there were "few advances in its services and activities" during this period.³⁸

At some point in the late nineteenth century, however, a transformation of popular attitudes clearly occurred, and this attitudinal reversal influenced American state formation. Once the public began demanding federal regulation of the economy, the expansion of state authority appeared to be a "near-automatic response" to industrialization; for with every new market discovered, developed, and exploited, corporations were seen to be "fit subjects for

regulation.”³⁹ But while the creation of the American regulatory state is often attributed to popular demands, it is unclear why the assumptions that structured American politics throughout the first and second party systems were abandoned.

It is possible that this attitudinal reversal was a response to changes in the American economy. With the demise of artisanal modes of production, the proliferation of production for markets, industrialization, the rise of the modern corporation, and a transportation revolution that transformed isolated “island communities” into an economically integrated society, voters may have turned to the federal government to control the impersonal economic forces that were increasingly influencing their lives.⁴⁰

Changes in the American economy do not, however, appear to be correlated with this attitudinal reversal. Between 1839 and 1859 the value added by manufacturing and agricultural output grew by more than 270 percent.⁴¹ Surging industrial productivity and trade among the country’s major industrial centers were linked by a canal system and regional railroads, long before the Golden Spike was driven at Promontory Point.⁴² Before the Civil War, rising levels of industrial production, the creation of stock markets, and improvements in communication technology occurred nationally, integrating capital markets and causing a convergence in short-term interest rates that extended to the South by the 1840s.⁴³

Although a virtual “market revolution” occurred decades prior to the Civil War, this economic transformation did not create a corresponding ideological shift among the political parties.⁴⁴ Even if we assume that voters’ demands for federal action were a response to the intensification of these economic transformations after the Civil War, we cannot explain the *type* of regulatory state that emerged from these transformations. Although nineteenth-century Americans came to demand a greater role for government in the economy, the radical groups that led these demands, such as the Granger movement and the Populists, opposed the *type* of state that emerged: federal, regulatory, and bureaucratic.⁴⁵

Although labor and agrarian groups often called for increasing the federal government’s role over the economy, they did not call for an expansion of *bureaucratic* authority. In cases where antebellum labor theoreticians demanded proactive government action, they tended to endorse legislative decrees such as general incorporation laws or the ten-hour workday, measures requiring little administrative regulation. Recognizing the novelty of these attitudes,

labor historian David Montgomery has suggested that the general “incapacity to envision the state as an administrative agency” was indicative of a “mental limitation” exhibited by many Americans during this period.⁴⁶

Yet here we encounter another paradox: although the Whigs endorsed state-led industrialization, they drew upon an intellectual tradition that demanded subordinating the executive to the legislature.⁴⁷ The opinions of Whigs such as Adams, Webster, and Clay on the tariff and internal improvements exhibit hostility toward executive power, indicating that although the Whigs endorsed an activist state they did not endorse expanding *bureaucratic* authority.⁴⁸ Given the disjuncture between these political attitudes and institutional forms, the creation of the American bureaucratic state has been described as a “major anomaly” that remains “*the paradox*” of American political development, for popular demands “deeply hostile to bureaucracy” appear to have “produced a great bureaucratic expansion.”⁴⁹

This indicates that the expansion of bureaucratic authority is an *institutional* innovation that requires explanation.⁵⁰ Although bureaucracy has become a ubiquitous feature of the American state, before the Civil War there was widespread “distrust of professionalized administration and complex administrative machinery,” and expert administration was believed to be neither “necessary or desirable.”⁵¹ Since many believed discretionary administrative action to be “unequal and impolitic but also coercive and evil,” the “strict limitation of executive discretion was a cardinal principle” endorsed by many Americans.⁵² The empowerment of regulatory bureaucracies with discretionary authority poses an additional paradox for understanding American political development, for this regulatory technique was not widely used prior to the Civil War.⁵³

This claim is admittedly imprecise; it is critical to recognize that the development of American bureaucratic institutions was not a linear process, and that both state and federal bureaucrats took a range of positive actions before the Civil War.⁵⁴ Furthermore, it is important to recognize that the Federalists developed defenses of executive authority,⁵⁵ and bureaucrats exercised discretion in decisions ranging from Treasury assessment of imports, mail delivery, granting patents, military procurement, and Indian affairs.⁵⁶

As Jerry Mashaw has demonstrated, within the Treasury Department an independent commission regulated steamboat safety and developed a coherent body of administrative law years before the Civil War.⁵⁷ In addition, the General Land Office sold vast tracts of Western land, and the U.S. Postal Service developed a professionalized bureaucracy with significant independence from