JAMES T. PATTERSON

The New Deal and States

Federalism in Transition

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JAMES T. PATTERSON

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★★★

TO MY FATHER,

who served his state well

for many years as a legislator

and speaker, and

TO MY MOTHER,

who encouraged him

★★★

Preface

THIS book covers both more and less than the title suggests. Because the New Deal years cannot be studied intelligently without some background, two chapters deal with state policy before the Roosevelt administration. The task of scanning all the state documents and newspapers, however, would take decades, and consequently this book does not even pretend to be definitive. Instead I have tried to suggest a few important trends in state affairs and in American federalism between 1920 and 1940. A more solid study of these subjects must await that distant day when scholars turn from the excitement of Pennsylvania Avenue to the more prosaic events of Albany, Atlanta, and Santa Fe.

Readers expecting dramatic new insights into national decision-making or into New Deal ideology may be disappointed. The focus here is as much on the states as it is on the federal government. How did the states act before the New Deal? How did they respond to Hoover, to the 100 days and thereafter? Did the New Deal promote forward-looking state administrations, or did it weaken state initiative? Was it discriminatory, and did it encourage cooperative federalism? In what states, or kinds of states, did it seem to have the greatest impact?

Generalizations on federal-state relations can be misleading. It may be that the most faithful way of describing them in the 1930's—or in any period—is to begin with the assumption that only a state-by-state analysis would give proper emphasis to the great dissimilarities among the states. This is a tenable view, and distinctive state traditions and institutions indeed posed formidable and at times insurmountable barriers in the way of New Deal planning.

But a state-by-state approach risks losing the forest for the trees, and it surrenders the chance of finding the generalizations which give meaning to history. Accordingly, I have tried to compromise, describing some of the countless variations in state responses, but searching always for whatever broad trends or patterns may have existed.

My thanks go to Professor Frank Freidel of Harvard University, who first suggested to me the need for studying the states during the depression years, and to Indiana University, which generously provided the financial aid necessary for travel and typing. Professors George I. Juergens and G. Cullom Davis of Indiana University offered very helpful comments on parts of the manuscript, as did Michael Webster, an Indiana graduate student. Marjorie Putney of the Princeton University Press proved a very patient and skilled editor. I am especially grateful to Professors Chase C. Mooney, John E. Wiltz, and David M. Pletcher of Indiana University and to William E. Leuchtenburg of Columbia University. Each read the entire manuscript very critically and saved me from many errors of fact and interpretation. My wife, Nancy, encouraged me every step of the way and devoted countless hours to improving the manuscript—without her, the book could not have been done.

James T. Patterson

Bloomington, Indiana
January 1969

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1. The 48 States in the 1920's

"IT IS ONE of the happy incidents of the federal system," Supreme Court Justice Louis D. Brandeis wrote in 1932, "that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country."[1] Governor Franklin D. Roosevelt of New York shared Brandeis' faith in the states. "There is a tendency," he insisted, "and to my mind a dangerous tendency, on the part of the national government to encroach, on one excuse or another, more and more upon state supremacy. The elastic theory of interstate commerce . . . has been stretched almost to the breaking point."[2]

Brandeis, a devout Wilsonian liberal, maintained his faith in states through the vastly changed period of the depression, while Roosevelt, himself flexible almost to a breaking point, veered to a more nationalistic course. Yet Roosevelt, too, was sincere, and his remarks not only represented the views of many politicians, especially governors, in the 1920's, but were considered sound and forward-looking at the time. Few party leaders between 1919 and 1929 expected meaningful reform from the national government, and fewer still called for federal aid to the needy or legislation to benefit the laboring man. Even those who pursued the

[1] New York State Ice Co. v Liebmann, 285 US 262 (1932).

[2] Cited in Alfred B. Rollins, Jr., *Roosevelt and Howe* (New York, 1962), 271. The speech was delivered at the annual governors conference, and though the implied stress on state responsibility was sincere, the warning about federal intrusion was exaggerated to suit the occasion.

quest for social justice often preferred to work on the state instead of the national level.

Their faith in the states was understandable, for states and municipalities remained basic institutions with the background to indulge in progressive experiments. Though judicial decisions had discouraged some reforms, states still had managed to expand their powers considerably before 1920. They had preceded the federal government in regulating large corporations, establishing minimum labor standards, and stimulating economic development. By the 1920's state and local governments accounted for 74 percent of public spending and 67 percent of taxes.[3] They dominated the fields of education and public welfare, and their impact on American citizens was considerably more tangible than that of Washington. The activism of governors such as Roosevelt and Alfred E. Smith of New York contrasted sharply with the more relaxed pace of the United States Congress.

Indeed, the national government profoundly discouraged reformers. Theodore Roosevelt and Woodrow Wilson were gone; complacency replaced concern in the White House; and conservatives were usually able to restrain progressives on Capitol Hill. Congress gladly supported such "reforms" as prohibition, immigration restriction, and tariff revision, and it happily approved legislation for large commercial farmers and corporations. But it refused to pass welfare bills, broaden the authority of regulatory agencies, or spend surplus revenue to help low income groups.[4] The

[3] *Federal, State, and Local Fiscal Relations*, 78th Cong., 1st Sess., Sen. Doc. 69 (Washington, 1943). This excellent source contains many relevant statistics on state and local finance during the 1930's. (Hereafter cited as *Fiscal Relations*).

[4] My interpretation contrasts with that of Arthur Link, in "What Happened to the Progressive Movement in the 1920's?" *American Historical Review*, LXIV (July 1959), 833-51. He argues that progressiv-

progressive impulse had become so feeble that in 1929 Congress gave up aid for child and maternal hygiene, approved only eight years before. Other federal operations, such as grants for agricultural extension work, vocational education, and highways crept forward in the 1920's, but they ignored the low income masses in the cities.[5] Although regulatory agencies such as the Federal Trade Commission continued to function, they did so under increasingly conservative guidance.[6] The national government was hardly a fount of progressive legislation during the decade.[7]

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ism remained strong in the 1920's, in Washington as well as in the states. His evidence for state progressivism, however, seems limited to Wisconsin, New York, and Louisiana, and he admits the need for state studies covering the 1920's. So does Herbert F. Margulies, in "Recent Opinion on the Decline of the Progressive Movement," *Mid-America,* XLV (October 1963), 250-68.

[5] Total expenditures for these programs hovered around $110 million per year during the 1920's. Approximately 80 percent of this money was for highways, distributed according to a formula favoring large and thinly populated states. In 1913, prior to the introduction of aid for roads, federal assistance to states had totaled $12 million, and in 1927 aid except for highways had even dropped a bit—to $11 million. See U.S. Dept. of Commerce, Bureau of the Census, *Historical Statistics on State and Local Government Finances, 1902 to 1953* (Washington, 1955), 17, 22; and Dept. of Commerce, Bureau of Foreign and Domestic Commerce, *Statistical Abstract of the United States, 1929* (Washington, 1929), 127, 177. Also Austin F. MacDonald, "Recent Trends in Federal Aid to the States," *American Political Science Review,* XXV (August 1931), 628-33; and Bureau of Census, *Historical Review of State and Local Finance* (Spec. Study No. 25, Washington, 1948), 19.

[6] G. Cullom Davis, "The Transformation of the Federal Trade Commission, 1914-1929," *Mississippi Valley Historical Review,* XLIX (December 1962), 437-55.

[7] It is arguable that prewar reform on the national level had never been very striking, that it had been dominated by businessmen seeking to preserve their socioeconomic position or to bring order to a distended society. See Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916* (New York, 1963), and Robert Wiebe, *The Search for Order, 1877-1920* (New York, 1967), for such interpretations. See also Irwin Yellowitz, *Labor and the Progres-*

With so little reform coming from Washington, the way was open for the states. The 1920's thus seemed a kind of crossroads. Governors could either seize the initiative for social progress from an indifferent Congress, or they could turn away from an opportunity to prove themselves enlightened and responsible leaders.

Some state legislation of the 1920's seemed to justify progressive hopes. Several states created deposit insurance in an effort to cope with periodic bank failures. Although the insurance was to prove woefully inadequate in 1929, it was a precedent upon which Congress would draw in establishing the Federal Deposit Insurance Corporation in 1933.[8]

A more important development was the effort of a few conscientious legislatures to introduce modern, efficient means of administration. This movement, an outgrowth of the progressive era, first succeeded in Illinois during 1917 and accelerated rapidly after the war. Between 1918 and 1928 sixteen more states enacted administrative reorganization plans. Aimed at strengthening gubernatorial powers, coordinating staff services, and eliminating waste, the move-

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sive Movement in New York State, 1897-1916 (Ithaca, 1965), for a case study suggesting the weakness of labor unions as promoters of reform in the progressive period. Grant McConnell, in *The Decline of Agrarian Democracy* (Berkeley, 1953), shows that large commercial farmers dominated the drafting of farm legislation from the progressive period on.

From this perspective prewar reform was mild: it had never stressed social welfare, spending for lower income groups, or regulation *of* (as opposed to regulation *for*) big business. It was "business," not "social" progressivism. While such a view of the progressive period is persuasive, it does not negate the case for the weakness of social-welfare progressivism in the 1920's; on the contrary, it helps account for it. A relevant article is George Tindall, "Business Progressivism: Southern Politics in the Twenties," *South Atlantic Quarterly*, LXII (Winter 1963), 92-106. Tindall emphasizes the efficiency minded character of southern progressivism after the war.

[8] W. Brooke Graves, *American State Government* (Boston, 1941), 12-14.

ment was attractive not only to progressives but also to businessmen and economy conscious citizens. While these laws were hardly revolutionary, they indicated the persistence of the efficiency ideal of mild progressives; and a few states, notably New York and Virginia under governors Alfred E. Smith and Harry F. Byrd, became better equipped to provide positive government.[9]

Easily the most remarkable development in state government in the 1920's was the increase in spending. Increases in school attendance on the one hand and in automobile ownership on the other presented states and municipalities with rapidly rising costs for education and highways, and most politicians moved to meet the needs.[10] Total state expenditures rose from some $400 million in the prewar year of 1913 to $1.2 billion in 1921, and to nearly $2.1 billion in 1929. Using the 1926 dollar as a standard, the per capita increase in state spending between 1922 and 1929 was some

[9] Arthur E. Buck, *The Reorganization of Governments in the United States* (New York, 1938), 7-37.

[10] Automobile registrations increased from 6.7 million in 1919 to 23.1 million in 1929, and state spending for roads rose from $221 million to $1.1 billion in the same period. Bureau of Census, *Historical Statistics: Colonial Times to 1957* (Washington, 1960), 462, 459. (Hereafter cited as *Historical Statistics*.) Average elementary and secondary public school attendance rose from 16.1 million in 1920 to 21.2 million in 1930, and the average length of the school term increased during the same period from 162 to 173 days. State spending for public schools grew accordingly—from $202 million in 1922 to $398 million in 1932. *Ibid.*, 207, 228. Whether these activities should be called "progressive" is debatable, and in many states the backing for these programs was widespread. Nevertheless, such legislation did represent an increased willingness to use state government for positive purposes. Two case studies are: Elmer S. Puryear, *Democratic Party Dissension in North Carolina, 1928-1936* (Chapel Hill, 1962), 62-90; and Cullen B. Gosnell, *The Government and Politics of Georgia* (New York, 1936), 107ff. These states were leaders in the movement toward assumption of support of schools and roads. For statistics, William G. Carr, "School Finance Legislation in 1929," *State Government*, III (June 1930), 10-11.

60 percent.[11] Highway needs caused most of this increase—state expenditure per capita for roads in 1919 was 59 cents; in 1930 it was $2.06.[12] In some states the absolute sums spent for roads and schools grew remarkably. Expenditures for Missouri highways literally "lifted her out of the mud." Under Governor Smith, New York spent $80 million for schools in 1928; in 1919 the expenditure had been $9 million.[13] Total state spending in California increased from $36 million in 1919-1920 to $110 million in 1928-1929.[14] While the rate of increase in state spending during the 1920's was not quite so high as that of the 1910-1920 period, the absolute sums were a good deal larger, and except for the 1940's no subsequent decade matched the per capita rate of increase.[15]

[11] Relevant articles are Henry Black, "Taxes Will Grow Heavier," *New Republic*, LXXII (October 26, 1932), 290-91; and Mabel Newcomer, "Tendencies in State and Local Finance and their Relation to State and Local Functions," *Political Science Quarterly*, XLIII (March 1928), 1-31.

[12] See the excellent study, James A. Maxwell, *The Fiscal Impact of Federalism in the United States* (Cambridge, Mass., 1946), 25. Also his *Financing State and Local Governments* (Washington, 1965).

[13] For Missouri see Duane Meyer, *The Heritage of Missouri: A History* (St. Louis, 1965), 587-88. For New York, Bernard Bellush, *Franklin D. Roosevelt as Governor of New York* (New York, 1955), 31-2. The volume by Meyer is one of many scholarly histories of western states to appear in recent years. They fill a very large gap. Others include Edwin C. McReynolds, *Missouri: A History of the Crossroads State* (Norman, 1962); Carl Ubbelohde, *A Colorado History* (Boulder, 1965); T. A. Larson, *History of Wyoming* (Lincoln, 1965); James C. Olson, *History of Nebraska* (Lincoln, 1955); Warren A. Beck, *New Mexico: A History of Four Centuries* (Norman, 1962); Edwin C. McReynolds, *Oklahoma: A History of the Sooner State* (Norman, 1954); and Elwyn B. Robinson, *History of North Dakota* (Lincoln, 1966). See also Gilman M. Ostrander, *Nevada: The Great Rotten Borough, 1859-1964* (New York, 1966); and Seth S. McKay and Odie B. Faulk, *Texas After Spindletop* (Austin, 1965).

[14] Graves, *State Government*, 507ff.

[15] *Historical Statistics*, 22. For figures on some individual states see

State debts reflected this surge in spending. Although many new taxes appeared—total state revenue from taxes rose from $1.1 to $2.1 billion during the decade—they seldom covered the entire increase in expenditures.[16] Gross state debts per capita rose from $8.65 in 1922 to $15.38 in 1929, and annual interest charges jumped from $41 million to $94 million.[17] The rate of per capita increase in state debt was higher than that of local or federal debt (which decreased absolutely in the 1920's), and was never again so high.[18] States, it seemed, were not only anxious to spend but were willing to incur deficits to do so.

This readiness to go into debt would leave many states in desperate straits when the depression came in 1929, but there were some compensations. With little help from the federal government, states and municipalities improved schools and highways during the 1920's, and the experience of shouldering these burdens prepared states for still more onerous tasks in the years to come. If the concept

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Howard Odum's exhaustive study of the South, *Southern Regions of the United States* (Chapel Hill, 1936).

[16] See *Historical Statistics*, 727, for figures on state taxes. States varied greatly in debt accumulation in the 1920's. Seventeen states, including 11 plains and mountain states, reduced their gross per capita debt. Many others had huge relative per capita increases, topped by Arkansas ($1.50 to $54.60 per capita) and North Carolina ($13.10 to $56.50). Most other southern states also accumulated large debts in the decade. Debts in densely populated, wealthy states varied considerably, but tended to increase at a slower rate than those in the South, and faster than those in the West. The federal matching grant formula for highways enabled western and plains states to control their indebtedness, but sheer need to overcome past omissions, combined with low per capita incomes, helped account for the rise in southern state debt. For figures on debt by states see *Statistical Abstract, 1931* (Washington, 1931), 226-27.

[17] *Fiscal Relations*, 359. Also "Going into the Red," *State Government*, v (April 1932), 10-11.

[18] Edna Trull, "Two Decades of State Borrowing," *National Municipal Review*, xxvi (June 1937), 277-82.

of positive government existed in any strength during the 1920's, surely it was most evident in state spending for schools and roads.

There was another side to the picture. Though state governments in the 1920's improved administration and began providing more money for selected purposes, their overall record was mediocre.

One disappointment was the promising administrative reform movement itself. Except in Illinois, New York, and Virginia under strong governors Frank E. Lowden, Smith, and Byrd, the changes were modest. Civil service reform was largely ignored between 1920 and 1937. Moreover, some of the so-called reforms involved attempts by governors to strengthen their hold on the distribution of patronage or to expel rival factions from entrenched posts; others, as in Virginia, aimed primarily at cutting costs.[19] A survey of administrative reorganization laws in 1938 found that the statutes of the previous twenty years had had little effect.[20] When the depression began, outdated administrative structures and impotent governors too often prevented effective action against hard times.

More serious was the failure of states to adopt social legislation. Advances occurred only here and there: Alabama abolished her iniquitous convict labor system in 1926; Wis-

19 Smith's motives in New York included the desire to reduce boss influence over patronage; similar aims were important in Ohio. Leslie Lipson, *American Governor from Figurehead to Leader* (Chicago, 1939), 103-10.

20 William H. Edwards, "A Factual Summary of State Administrative Reorganization," *Southwestern Social Science Quarterly*, XIX (June 1938), 53-67. For a gloomy assessment of government in Oklahoma see Brookings Institute survey as reported in *New York Times*, July 7, 1935, II, 3. Also G. Lyle Belsley, "Trends in State Personnel Legislation and Administration," *State Government*, X (May 1937); and Arthur A. Schwartz, "Legislative Laboratories Compared," *ibid.*, III (August 1930), 3-7.

consin outlawed yellow dog contracts in 1929; North Carolina improved its workmen's compensation law in 1929; and the administrations of Gifford Pinchot in Pennsylvania, Smith and Roosevelt in New York, and George W. Hunt, governor of Arizona from 1911 to 1929, were somewhat friendly to labor.[21] Existing legislation dating from the progressive era—laws limiting working hours for women and children and providing aid to the needy blind, dependent, and disabled—also remained on the books. More often than not, however, they were poorly financed and indifferently enforced. Even the social workers continued to tap private rather than public sources for welfare money.[22]

[21] For Alabama, *Nation*, CXXVII (July 18, 1928), 55; for Wisconsin, Edwin E. Witte, "Labor's New Deal," *State Government*, VI (April 1933), 3-5; for North Carolina, Puryear, *Democratic Party Dissension*, 54; for Pinchot, M. Nelson McGeary, *Gifford Pinchot: Forester-Politician* (Princeton, 1960); for Smith, Oscar Handlin, *Al Smith and His America* (Boston, 1958), 90-111; for Roosevelt, Bellush, *Roosevelt*; and for Hunt, Mary Austin, "Americans We Like: Hunt of Arizona," *Nation*, CXXVII (November 28, 1928), 572-74. See also Rowland L. Mitchell, Jr., "Social Legislation in Connecticut, 1919-1939," Unpublished Ph.D. thesis, Yale University, 1954; Josephine C. Brown, *Public Relief, 1929-1939* (New York, 1940), 1-62; and Irving Bernstein, *The Lean Years: A History of the American Worker, 1920-1933* (Boston, 1960), 1-82 and passim.

[22] In 1918, 40 states had maximum hour laws for women workers; between 1919 and 1932 two more added laws, and 12 of the 40 improved theirs. But many exceptions to these statutes remained, and social workers were despondent. Clarke A. Chambers, *Seedtime of Reform: American Social Service and Social Action, 1918-1933* (Minneapolis, 1963), 61-66. The record in child labor reform was little better—only 6 states (Arkansas, Arizona, California, Washington, Montana, and Colorado) ratified the federal child labor amendment from 1924 to 1932; 14 would ratify it in 1933 alone. *Ibid.*, 34-45, 203. For a slightly different perspective see Jeremy P. Felt, *Hostages of Fortune: Child Labor Reform in New York State* (Syracuse, 1965), 195-224. Felt notes the political liabilities of the amendment (it set the age for child labor at a high of eighteen), and the narrow, piecemeal tactics of its New York sponsors. State minimum wage laws, rendered useless by the Supreme Court in 1922, received little subsequent attention by states in the 1920's; and

The 48 States in the 1920's

Perhaps the most publicized advance in social welfare during the decade was the gradual spread of the movement for old age pensions. Beginning with Montana in 1923, ten states enacted such laws before 1930. Seven more followed suit by 1931.[23] But the measures were hardly sweeping. In most states recipients had to be at least seventy years old and to have established a residency of fifteen years. Pensions were very small, the highest annual award amounting to $390. Most systems were optional and left administration to penurious counties. Only 75,000 elderly Americans received help annually in 1931.[24]

The laboring man also obtained little aid from states in the 1920's. By 1933 eighteen states had enacted anti-injunction statutes, but none was effective. Only three states had mediation boards of any utility. The attitude of most legislators toward unions was at best neutral, more often hostile. In southern textile communities bloody battles broke out between strikers and police, with public officials consistently aiding mill owners. The failure of the states to enact protective legislation for labor in the 1920's stemmed neither from a lack of funds nor from legislative factionalism but from a prevailing feeling that labor unions were undesirable and dangerous.[25]

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no state passed an unemployment insurance law until Wisconsin in 1932. See Chambers, *Seedtime*, 66-76, 174-180. For other discussions of social legislation in the 1920's see Brown, *Public Relief*, 56-64; and Bernstein, *Lean Years*, 475-504.

23 They were Nevada, Pennsylvania, Wisconsin, Kentucky, Colorado, Maryland, Minnesota, Utah, New York, Massachusetts, Delaware, Idaho, New Jersey, New Hampshire, California, and Wyoming. See Chambers, *Seedtime*, 163-68.

24 "A Brighter Outlook for the Aged," *Review of Reviews*, LXXXI (May 1930), 126-28; Allen Moore, "De Senectute," *State Government*, V (May 1932), 10-12; and Gertrude Springer, "A New Year for the Old," *Survey*, LXV (January 15, 1931), 434-35.

25 Bernstein, *The Lean Years*, is an almost encyclopedic study of

The record of the states in the regulation of public utility holding companies was also unencouraging. Although most states had created public utility commissions before 1920, these proved inadequate to deal with holding companies, which rapidly dominated the industry thereafter. Throughout the 1920's states amended existing legislation—in 1927 alone 35 states enacted new provisions—but until the end of the decade few states even tried to curb holding companies.[26] And then they failed: in 1929 stringent bills went down to defeat in the eight legislatures where serious efforts occurred.[27] Such a bill finally succeeded in New York in 1930, but even it did not permit officials to examine the books of out-of-state companies within holding company empires which had invaded the state.[28] One authority remarked in 1929 that "men of mediocre ability [were] filling the regulatory commissions. Under such conditions, regulation is likely to be little more than a farce."[29] Adequate control of holding companies would have to await federal action in the 1930's.

Tax policy also revealed the fundamental conservatism

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legislation relating to labor and social welfare in the 1920's. See 20-33 for an account of textile strikes, 204-05 for court actions against strikers, and 83-143 for the "paralysis of the labor movement." A liberal's account of textile mill troubles is "The South Fights the Unions: What the State Stoops Did at Elizabethton," *New Republic*, LIX (June 10, 1929), 202-03. States were also careless of civil liberties. See O. G. Villard, "New Fight for Old Liberties," *Harpers*, CLI (September 1925), 440-47.

26 Orren C. Hormell, "State Public Utilities Legislation in 1927," *American Political Science Review*, XXIII (February 1929), 106-11.

27 H. S. Raushenbush, "The Triumph of the Power Companies," *Nation*, CXXIX (September 18, 1929), 294-96.

28 William E. Mosher, "Regulating Utilities," *State Government*, III (December 1930), 7-10.

29 Hormell, "State Public Utilities," 110. An exception was North Dakota, where state-owned projects existed. Alfred S. Dale, "Public Ownership in North Dakota," *New Republic*, LIX (July 3, 1929), 174-76.