To Enlarge the Machinery of Government
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“Badly in Detail but Well on the Whole”

The Second State

In a 1904 memoir Carl Schurz recounted a conversation he’d had with the minister president of Prussia and future architect of German unification, Otto von Bismarck Schonhausen, in 1868. Both were astute students of government, and both had seen its operation from the center of power. Schurz already had had a distinguished career in the United States. He had escaped the Prussian-ruled Rhineland in 1849 as a fugitive revolutionary and once in the States had served in state and federal government, as a general in the Union army in the Civil War, a civil service reformer, and an elder statesman of the German-American community.¹ He recalled that Bismarck “seemed to be much struck when I brought out the apparent paradox that in a democracy with little government things might go *badly in detail but well on the whole*, while in a monarchy with much and omnipresent government [as in Prussia], things might go very pleasingly in detail but poorly on the whole.”² Schurz overgeneralized and likely couched his remarks to suit his audience, but his message could not have been clearer: Americans preferred the occasional incompetence of small government to the threatening competence of big government. The progressive agencies that proliferated in Schurz’s old age had their place, but only as subordinate and closely watched dependencies.

Schurz was a brilliant and successful outsider, but other native-born observers shared his views. His observations on the character of American government were much in the mainstream of his generation’s thinking. Autocratic bureaucrats and administrative agencies might get the details of government right, but, if they grew too intrusive, they would obstruct the progress of an energetic people. Writing on March 23, 1870, Horace Greeley—sometime politician, reformer, editor of the influential *New York Tribune*—responded to Mississippi federal judge J. Tarbell’s suggestion that the U.S. Congress create bureaus of immigration to help rebuild the South.³ Instead, Greeley recommended “good laws, thoroughly enforced. . . . Cheap and simple government, low salaries, light taxes. . . . Impartial justice to every one regardless of caste, or color, secured by
an upright judiciary. . . . Making the state too hot for blacklegs, duelists, harlots, rum-sellers, etc.” Above all, he cautioned, “avoid public debt.”

This philosophy of “anti-institutionalism” went beyond the political groups Greeley might have been courting to the major political parties and all regions of the country.

Schurz and Greeley enunciated with crystal clarity the central tenets of what may be called the “first state.” Variously styled “Jeffersonian,” “old democratic/republican,” “Jacksonian,” “limited government,” or even “states’ rights,” the ideology had its origins in the founding era of the nation. Government was dangerous. It must protect liberty and keep order but not intrude too far into private lives or enterprise. Government was best that comportd itself economically and responsibly to the people’s wishes (albeit with the full recognition that all the people’s wishes did not count equally). American government must not copy from foreign governments, for the United States was exceptional. Borrowing foreign political ideas would lead to tyranny at the top and slavishness at the bottom of society. American government must bow to federalism: the central government should not infringe upon states’ rights.

Above all, the first state men such as Greeley were suspicious of bureaucrats, that is, professional government officials. Government was best that proceeded by committee, in deliberative rather than administrative fashion, arriving at ad hoc solutions to pressing problems. Expertise was suspect. Partisanship, though decried, was made welcome. Character and piety were the true, sure guides to probity and ability in office with political affiliation an acceptable surrogate. Last but not least, the courts had an important role to play in any kind of government action. The first state allowed their administrative activities.

All the more striking for the pride and the attachment Greeley and Schurz had to the first state was the fact that the nation had just passed through a most terrible test of that ideology and found it wanting. The Civil War had cost over a million casualties in dead and injured, destroyed much of the South, and called into question every basic American political value, from loyalty to the Union to personal liberty. Schurz and Greeley had seen all this firsthand and knew of their own experience that the powers that be had saved the Union and based the reconstruction of the nation upon a substantial, albeit temporary, expansion in the federal administrative apparatus. Without vast armies, themselves sprawling bureaucracies, hordes of administrators working in the multiplying offices in Washington, D.C., the systematizing of everything from the distribution of blankets to the troops to the issuance of new bond issues, the Union would have
lost the war. Despite this experience, Schurz and Greeley’s first state creed resisted change.\textsuperscript{6}

But it did change. Consider a piece of a remarkable letter that Felix Frankfurter—like Schurz, an outsider (Frankfurter came to the United States from Austria at the age of eleven)—wrote to himself on the eve of his acceptance of a professorship at Harvard Law School in 1913: “All along the line we propose, determine, legislate—without knowing enough. . . . The problems ahead are economic and sociological, and the added adjustments of a government under a written constitution, steeped in legalistic tradition, to the assumption of the right solution of such problems.”\textsuperscript{7} Only an informed and professionalized government, one that respected expertise and administrative skill, could chart its way through modern public life. In short, Frankfurter’s “Great State” must embrace its own expansion into ordinary life.\textsuperscript{8} Frankfurter had no idea that a world war would make the United States the greatest power in the world or that another layer of administrative bureaus and agencies would enable the nation to prosecute that war. Nevertheless, he felt sure that the nation needed a regulatory, administrative regime and, furthermore, that legislation must work hand in hand with administration to solve problems.

Frankfurter had laid out the core concept of the Progressive Era’s state, also known as the administrative state.\textsuperscript{9} It grudgingly accepted the need for ongoing, trained, and semi-independent agencies to carry out an expanded mission. It welcomed new bureaus and commissions, so long as they fit the model of democratic responsiveness.\textsuperscript{10} How did this about-face in attitude come about?

American history textbooks agree that something new and decidedly different marked the Progressive state, “Something astir in the country, something so important and pervasive that it altered the course of American history in the twentieth century.” In this new age one would find “a shift in temper in American public life.” There is some disagreement among historians and political scientists on exactly when this new era began and where its roots lay. Some chroniclers find precedent “in the effort to regulate and control big business” in the 1870s and 1880s, while others propose a later date: “As early as 1900 these reformers had set out to cleanse and reinvigorate an America whose politics and society they considered in decline.” But all agree that the first, republican state gave way directly to its Progressive successor.\textsuperscript{11}

This transition from the republican idea of the nation-state to the Progressive ideology, however, is difficult to fathom. They do not seem to go together
easily. In fact, even at their edges, where pieces of one might be expected to fit into pieces of the other, one finds little overlap. One might simply attribute this leap from one set of ideas to the other to the “exceptionalism,” the uniqueness, of American political culture. Part of that alleged uniqueness is Americans’ ability to hold diametrically opposed ideas simultaneously. Another element of our self-congratulatory exceptionalism is our supposed pragmatism. Unfortunately, this explanation does little to illuminate the process by which a political leadership dedicated to a largely antibureaucracy set of ideas created a strong, expansive, and dominating state, nor does it explain why and how these same leaders insisted on preserving the localistic, collective, antiauthoritarian character traits of the first state.

Like a celestial body whose discovery depends on its effect on other objects before someone could actually observe it, the very dissimilarity between the state of Schurz and Greeley and that of Frankfurter’s hints that another state—a second state—lay between them. But where can one find evidence of that second, intermediate state? The usual sources of political history—private papers, published memoirs, newspapers, journals of opinion, and speeches—in the time between the Civil War and the Progressive Era provide little discussion about the nature of American government, particularly with regards to the administrative apparatus.

Where to look, then? Oddly enough, in the frequently quoted, huge, often unwieldy debates recorded in the *Congressional Globe* and *Congressional Record*, one finds a treasure trove of thinking about the nature and function of government embedded in the debates on particular pieces of legislation. There is little free-floating theorizing there, for most of the congressmen were not intellectuals in any sense of that word. Moreover, they came to their notions of a new kind of state not through abstract philosophizing but in the pressing and partisan contemplation of particular necessities. In short, they improvised, and all such improvisations gain a life of their own. The *Globe* and *Record* preserve a record of how and when those ideas began to appear, how the congressmen tested and modified, and sometimes camouflaged them; how party and interest, section and personal animus and alliance, shaped them. In these archives of living speech one can see how the second state resulted from the actions of a handful of men, not always fully conscious of what they were doing and rarely prescient about how the new ideas would play out over time. Reconstructing the dialogue within those pages profoundly alters our understanding of this period.

Instead of finding a distinct moment or a sudden transition from the republican state to the Progressive state, when congressional remarks changed from
that of limited government to a regulatory one, we find a distinct set of ideas developed in between. Even many in Congress who developed the ideas of the second state never really understood what they had done. They were not philosophers, only politicians groping their way toward solutions to their problems.

The seven chapters that follow reconstruct the debates on the Morrill, or Land Grant College, bill in 1858–59 and 1861; the Department of Agriculture and the Freedmen’s Bureau during the Civil War; the Department of Education, the Hoar bill for national funding for common schools, and the Department of Justice during Reconstruction; the Blair bill and the Pendleton or Civil Service Reform Act in the Gilded Age; the creation of the Bureau of Labor and the Interstate Commerce Act that created the Interstate Commerce Commission; the discussions surrounding the elevation of the Bureau of Labor to a department and the Evarts, or Circuit Courts of Appeals, Act of 1891; and the Second Morrill Act. The topics—education, law enforcement, the staffing of the executive branch, labor-management relations, railroad regulation, and the courts—are representative of the broad range of activities that Congress tackled during this period, though any number of other topics would serve just as well. Taken together, they present a compelling story of intellectual change.

Certainly, the debates on these pieces of legislation do not constitute all of those affecting the ideas governing the shape of the national government. Nevertheless, they do reveal what changed and what did not in rhetoric, concerns, and perspective over this critical period from directly before the Civil War, through the Civil War and Reconstruction, to the convulsive industrialization of the nation during the Gilded Age. The debates on the U.S. military do not appear here because this work examines ideas about the civil administration—the traditional focus of government building for scholars—even though, in all probability, the debates on military matters developed along similar lines.

From mere sponsorship of education Congress agreed to serve that sponsorship with administrative organs. It then recognized that sponsorship required supervision and began to provide that as well. Because supervision without standards made all of Congress’s efforts subject to the vagaries of partisanship and local resistance, standards and standardization followed. Reorganization of the federal courts was the capstone to this testing of ideas about the state, when the paradox of antibureaucracy ideas and administrative necessity found ways to compromise. The debate on the Second Morrill Act makes plain the changes in congressional thinking. The three functions—sponsorship, supervision, and standardization—went beyond the mere monitoring and service functions of the
first state. Each one presented its own difficulties despite the fact they were inextricably linked to one another.

Thus, the second state was not a physical entity so much as a state of mind, a way that members of Congress began reconceptualizing the powers and limitations of government and were willing to explore, in the debates on specific measures, how those powers and limitations applied to a series of increasingly complex and novel demands. In the years between the eve of the Civil War and the end of the Gilded Age, those demands proved the first state conception of government inadequate. Thus, the coming of the war, the need to help the freedmen and women, the unprecedented demand for regulation, and the unnerving spread of corruption drove the legislators. But events alone did not lead to the rise of the second state.

Nor was the invention of the second state the conspiratorial plot of a few nationalist centralizers—big government men yearning for expensive, extensive, professional administrative rule. True, some members of Congress were more receptive to the foundational ideas of the second state than others. But it is important to resist the temptation to regard the former as a band of visionaries, intellectually superior to their more conventional colleagues. These kinds of arguments about motive do not fit the evidence. Instead, the second state mentality also came about through a punctuated evolution of ideas, a series of questions whose answers led, bit by bit, to further and often unexpected explorations of old notions. Often, older terms gained new meanings in the course of the debates, and subtle shifts in political alignments produced new ways of looking at older assumptions.

The basis of this inquiry, then, lies in the over eight thousand pages of the recorded debates on these proposals in Congress, thousands of hours of debate.\textsuperscript{15} Read closely this cornucopia of verbiage reveals that the period from just before the war, in 1858, to just before the rise of the Progressives, in 1891, represented an era of thinking about the national state in and of itself. By focusing on the ideas contained within, we can see how the earliest elaboration of the second state, its back edge, fit the first state approach and how the fullest development of the second state, its leading edge, fit into the Progressive Era. Step by step, congressmen conceptualized their own roles and that of the government in a new way: an antibureaucracy ethic that could create bureaucracies.\textsuperscript{16}
marks—one must leave the arguments in their original order in the records. Necessarily, some of the discussions will seem disjointed, haphazard, and without a coherent structure. That was how the debate occurred. Most often, the logic appears just as tortured; it too reflects the debates’ nature. These exchanges did not arise in an academic journal, and scholarly omniscience does violence to their historical quality. Although these qualities make the narrative more difficult to discern, the result rewards the reader with a more accurate understanding of this dialogue.

In some of these debates the issue of the role of government arose in the minds of congressmen from the outset. In debates on other pieces of legislation the issue of how to effect the will of Congress arose suddenly and sharply, without warning. All of the episodes built upon their predecessors, for Congress had a memory for its own precedents. The reader will find that the similarities in the debates become a kind of background, or gestalt field, to the differences in them. In the details of these differences of attitude and ideas lie both the source of the paradox and the remarkable ways in which the policy makers enabled the modern state.

Seen from this distance, over a long course of time, it might appear that the ideas about state development as posed here progress linearly, the first state leads to the second and the second leads to the third. Although a Whiggish interpretation of national government’s growth has its appeal, and for many years was the orthodoxy, the second state approach did not result from a universal agreement but from contestation. Consistent with the congressmen’s backgrounds, professional practices, and context, they made the second state approach practical, grounded it in time and place, and cogently imposed it from above—from themselves. The long and complicated conflict between the exigencies of governing a great nation and the reluctance to confer power upon administrative agencies dominated these critically important moments in Congress’s nineteenth-century legislative history.

Only an analysis of this public dialogue unearths these conclusions. While examinations of the manuscript sources and newspapers reveal other layers of the machinations behind the consideration of these proposals, they also divert our attention away from the implications of these arguments. The nature of this dialogue—public, both prepared and extemporaneous, governed by the rules of each house of Congress, from the congressmen themselves without the gloss of an observer—makes it necessary to view it without looking behind the curtain. Its performance alone carries meaning, a meaning otherwise missed. Neither a
parliamentary history nor a series of statutory histories, this retelling of the his-
tory of a vital era in American political thought seeks an insight into the para-
dox of the American state’s development through its avoidance of traditional ma-
terial. It cannot do otherwise and retain its analytical power.

Although the elements of the second state were not entirely novel, the co-
herence and the interrelationships of these notions over time and the way this
set of ideas became commonplace are both striking and a vital addition to our
understanding of the American polity. The Congress created a leviathan, one
that its members restricted according to their precepts, their ways of thought,
and political exigency.¹⁸
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