To Enlarge the Machinery of Government

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To Enlarge the Machinery of Government: Congressional Debates and the Growth of the American State, 1858–1891.

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In 1887 Woodrow Wilson championed the idea of expertise in the administration of government in an article in a fledgling academic journal, *Political Science Quarterly*. Many regard the article, “The Science of Administration,” as one of the founding documents of political science, but one passage in particular stands out: “to answer our purposes, it [methods of administration] must be adapted, not to a simple and compact, but to a complex and multiform state, and made to fit highly decentralized forms of government.” Wilson had an ambitious program: “If we would employ it, we must Americanize it, and that not formally, in language merely, but radically, in thought, principle, and aim as well. It must learn our constitutions by heart; must get the bureaucratic fever out of its veins; must inhale much free American air.” In writing these words, the future president participated in and contributed to the conversation about the nature and course of the American state.

Given the fact that Wilson himself was seeking a professorship in this field, we could also conclude one of his goals was to make the case for political science as an academic discipline. The search for a legitimate, scholarly, academic basis for his position made him one of the leading young intellectuals and academics
of his time. But his ideas, lauded as a vision of the future, were in fact a tribute to the already existing “second state,” with its melding of expertise and the antibureaucracy ethic. He garbed that state in the raiment of American exceptionalism, the concept that the United States stands apart from the rest of the world, even as the approach he described verged closer to European models. Nevertheless, in his view the federal government did not need the “bureaucratic fever” to run its new bureaus. It could regulate its railroads and its corporate empires without recourse to highly centralized, supposedly undemocratic agencies. In short he knew, even if only subconsciously, that the second state had arrived, and he knew—and what a close reading of the congressional debates reveals—how its advocates had cloaked their invention.

The wonderfully rich sources examined here demonstrate that the thought process behind an expanded national government in the United States, from 1858 to 1891, did not constitute a series of radical departures but, rather, revealed a halting, gradual, and almost self-effacing series of overlapping dramas. The recognition that the administrative apparatus of government must change did not accompany a full-blown shift in the older ideas of a limited government, the “government of states,” or the “first state.”

The process, in fact, allowed antibureaucracy thinking—the demand for the dispersal of power, economy, and representativeness of any new institution—to be almost as visible in the debates at the end of our period of study as at its inception. What is more, the debates show how members from different sections, parties, and interests came to share certain notions of government building. At times the extent of the consensus is astounding, and thus the advocates of each of these programs often deployed the same set of concepts as their opponents. Congressmen learned to encode novelty as the most conservative possible response to absolute exigency or as the most practical housekeeping measure to deal with pesky inefficiencies. They spoke of localities, borrowed techniques from state government, and promised that the character and piety of appointees to the new commissions, departments, and bureaus would always matter. As a result, the ideas of the second state approach exhibited a disconnect with the acts of enlarging the government. Thus, legislative inventions such as the Interstate Commerce Commission which appear to many historians as heralds of a new age of economic regulation were for their creators nothing of the sort. Everyone knew the steps to this dance; it was only a matter of who would lead.

But consensus was not the whole story, for the continuities were in constant tension with a series of complicating and evolving ideas, influences, and contexts.
Geographical section mattered. So, too, political partisanship added another dimension to the debates. Partisan rivalries for office and the spoils of office also cut across the second state mind-set. Economic issues, political scandals, and foreign policy shaped the contours of the Congress. Scheduling and congressional procedures combined with these party exigencies to influence the course of the discussion.

Finally, varieties of personal experience found their way into the debates—for example, in the educational background of representatives as well as their Civil War experiences. Perhaps the most controversial among them centered on the foreign travel of some of the participants. Some brought back from abroad an admiration of German and English administrative solutions. For others, the mere mention of foreign institutions raised hackles of American exceptionalism. Proposals had to find a way through these complications.

Above all, lawyers found ways through this thicket of conflicting interest and advocacy. Deferred to for their expertise and numerous, in every session lawyers dominated the debates over the creation of new institutions or the undertaking of a new task. By training and practice they accustomed themselves to give-and-take over details. They participated in the debates as though they were arguing a case in court, scoring points and sharing insider knowledge of the ways of lawyers. Their courtroom demeanor allowed them to criticize one another’s points with professional courtesy. It was this lawyerly style that allowed the congressmen to end the day of linguistic jousting only to repeat the process the next. As lawyers, they grasped the implications of legislative initiatives. They translated for their colleagues how changes in the law could change the way that everyone lived and created a set of ideas consistent with their predispositions. In the process they infused their discourse with their professional attributes as well as into the concepts with which they were wrestling.

The fact that lawyers and their concepts and way of thinking dominated the discussion played a substantial role in this transition from the first state mind-set to that of the second state. Legal devices such as the trust, experience with administration of estates, the professional ethic of service, the centrality of courts and courtlike proceedings, the drawing on precedents to argue a policy point and a legal point, and even their very style of presenting their arguments as if to a jury or an appeals court gave them the language, if not the actual apparatus, to enable this shift. At the same time that many of them derided elites, remote power, and cosmopolitanism, their own experiences allowed them to
draw on both esoteric legal knowledge and popular notions about the nature of the American state.

Closer reading of the debates reveals not only the concepts behind congressional actions but also the inch-by-inch progress by which a larger state emerged consistent with the antibureaucracy ethic of the country as well as its legislators. The Jeffersonian/Jacksonian/old republican (the first state) conception of government envisioned a small, lightly staffed, largely amateur, and highly politicized administrative apparatus for the federal government in which the victor distributed the spoils of office, all the while decrying the corruption and cupidity of its opponents. The federal government took on only the most necessary functions of order keeping described in the Constitution. Even the National Republicans’, later the Whigs’, advocacy of internal improvements did not include an expansion of federal power, expense, or expertise. Loose construction of the Constitution in the Hamiltonian manner might include a national bank, but that bank was largely a private affair, with no federal bureaus or bureaucrats in the vicinity.

By contrast, second state thinking about the federal government evolved to encompass a more intrusive style of government, responsible for a number of social and economic activities. Although this kind of government seems to anticipate, indeed include, elements of the regulatory administrative model of the Progressive Era and thereafter (the “third state”), two important qualifications separate the two. First, there was no clear transition from the second state to the third, any more than there was a smooth, logical, and self-conscious transition from the first state to the second. Instead, one finds overlapping layers of continuity: first state ideas appearing in the middle of debates on second state innovations; both first and second state concepts carrying over into the Progressive period. Second, the second state was not itself a transition period. Its values, honed in the cauldron of the Civil War and Reconstruction, were distinct from those of the old republican and the Progressive period to come. While not self-contained, the second state heyday deserves attention for itself—for its creative power and its limitations.

In the initial debates over the Morrill Act antebellum conceptions of the state dominated the contributions of southern representatives, who struggled with the idea of sponsorship. The plan was not original in method, but the goal was substantially different from the piecemeal efforts Congress had accepted in the first state’s set of precepts. In particular, constitutional interpretation—the very
nature of the government—came into question. Despite these difficulties, the congressmen groped their way toward a group of legal terms that enabled them to make the leap into a new approach. Only President Buchanan’s veto prevented them from carrying out their vision, but they had already laid the foundation for further action.

In the second debate on the Morrill Act and the discussion of the creation of a Department of Agriculture during the first years of the war, antebellum conceptions persisted, even though their southern advocates had departed. The fear of foreign competition, the need to shore up a vital constituency, and wartime demands led Congress to act. Nevertheless, the federal government committed itself to a limited form of sponsorship of higher education and agriculture. Advocates of these additional programs had finessed the bureaucratic implications by giving the states a choice. The Department of Agriculture began its existence with a small budget and a commissioner at its head. Congress shrank from making a total commitment to the establishment of a cabinet level department until 1889. But the new task of supervision had plagued the debate. Having committed the national government to sponsoring two fields of endeavor—higher education and agriculture—they now had to deal with the attendant task of supervising the activity. Shrinking from the implications, they compromised by imposing additional restrictions on how the programs would be run. This was still congressional government, to use Woodrow Wilson’s phrase. Events conspired against this fragile compromise.

Later in the war, when the federal government had grown larger and more expensive, the Freedmen’s Bureau debates indicated how limited the congressmen’s conception of the state remained while they accommodated their thinking to a different social, political, and economic landscape. The advance of Union armies had created another crisis: what to do with the freedmen. The Congress’s goals might have been expansive, including federal supervision for a limited time of reconstructed states and southern localities, but the means the congressmen assayed to reach these goals remained consistent with antebellum ideas of the state. Ultimately, the leaders in Congress took the Freedmen’s Bureau away from the radicals and made it consistent in both origins and conceptualization with the antibureaucracy traditions. The second state compromise with power allowed sponsorship and supervision but only with limited means. Congress was still uncomfortable with the new way of thinking.

The same was true of the rise and fall of the Department of Education, even though the debate now included Union Civil War veterans and took place dur-
ing the supposed reign of the Radical Republicans. Despite these setbacks, those supporting a larger role for the national government had succeeded in introducing another new task to the state’s repertoire: standardization. The Bureau of Education was only one instance among many of second state thinking about how to govern the country.

The creation of the Department of Justice featured the language of economy, efficiency, and reform borrowed from the older terminology, but it also represented this same breakthrough in the character of congressional thinking about the proper place of the state. The scandal of mounting legal bills from outside attorneys and ever-increasing legal work might not seem like much of a crisis, but its apparent minor status hides its larger ramifications. The debate over the Department of Justice cemented the concept of standardizing an activity, in this case law enforcement. This “second pillar” of its creators’ republican state concept fit naturally into the architecture of ideas that now included ongoing federal supervision and sponsorship that the Congress built into the Morrill Act and the Department of Agriculture. What was more, it gave to lawyers an open, central, and prominent role in the management of the administrative apparatus. With the Department of Justice, would-be creators of additional institutions had found the model for the three great administrative innovations of the 1880s: the civil service, the Interstate Commerce Commission, and the circuit courts of appeal established by the Evarts Act.

The triumph of the second state mind-set should not blind us to the very real restraints on congressional enactments in this period. Even failures to approve proposals show a great deal about the development of congressional thought. Aid to common schools came up most significantly with the Hoar bill, the Perce bill, and, famously, the Blair bill. The very evolution of these plans impacted congressional thinking. From the supervisors in the Hoar bill to the land grants of the Perce bill to the emergency ten-year allocation in the Blair bill, the senators and representatives quarreled, waxed eloquent, and occasionally agreed about the nature of the republic, the proper means to enact policy, and their place in the process. Coalitions of thought emerged from these discussions which contributed to the increasing preeminence of second state principles in the 1880s.

The supporters of the Pendleton Act, the Bureau (later Department) of Labor, the Interstate Commerce Act, and the Evarts Act all characterized the legislation in the language that the proposers of the earlier measures had pioneered. Some southern representatives and Democrats could go on record in support of
these initiatives precisely because they were couched in the second state conceptual framework. Even those who opposed novelties such as rate-making powers and circuit courts conceded the preeminence and the legitimacy of the courts as administrative adjudicators. As lawyers themselves, they could do little else.

At the same time, these were critical departures from the supervisory and sponsorship policies of the first Morrill Act and the Department of Justice, respectively. Each in turn was prompted by a perceived crisis in the civil service system, labor relations, railroad rates, and the overflow in the federal courts. The Pendleton Act sought the limitation of the democratic patronage system in favor of examinations such as those taken by applicants for admission to the bar. The Bureau of Labor satisfied the need for information collection and dissemination as well as giving a voice to its constituency. The ICC was the first, though hesitant, foray into regulation. The Evarts Act abandoned the old system of courts in favor of a more elaborate circuit court arrangement. From the arguments both for and against the legislation, the Congress acknowledged its accession to the precepts of the second state. Information gathering and dissemination, limited financial support, an ethic of service to Congress, and lawyer-like personnel attributes characterized the building blocks of the nonbureaucratic bureaucracy. Standardization had taken its place alongside sponsorship and supervision.

It was very fitting, therefore, when Congress debated a second Morrill Act. It had come full circle in many ways, arriving, however, at a different place. Although the voices of limited government continued to resound in both chambers of the Capitol, the prevailing set of ideas included funding the land grant colleges, even though the monies came out of a shrinking resource. They still had trouble providing for the supervision of the money. They still had to accommodate the older federal structures. They still could not easily reconcile themselves to a substantial commitment. They still worried about local distinctiveness. Nevertheless, they had gone past the sectional rivalry by recognizing the Jim Crow South. The second state mentality had lost its novelty and had become de rigueur.

Future generations of congressmen and women would build on this legacy just as these Congresses had built on the intellectual foundations of the first state paradigm. The problems inherent with a regulatory agency such as the Interstate Commerce Commission would be met with new compromises—with a third state mentality that accepted the dictates of progressive governance. If we were to trace out developments, we might find a fourth state—one of national
security in the wake of the Cold War. It was not that the Congress had abandoned the first, second, and third states’ ways of thinking. They continued to apply. Congress still doled out benefactions to constituents as in the first state conception. Individual representatives and senators sought ways to sponsor, supervise, and standardize activities, as with the second state approach. Regulatory agencies and welfare programs survived. But now they could reconcile themselves to other functions.

In a way it was destined to happen. A legalistic and antibureaucratic political culture could not fathom a different kind of state. Conceptual persistence is a part of human psychology. The U.S. second state, like its predecessor and successors, was like a bound leviathan. The paradox of national government expansion in the United States both emerged from and was represented in the congressional debates between 1858 and 1891. That they would repeat these debates was a choice made, a reaffirmation, and a peculiar outgrowth of the nature of the discussion. When unitary, authoritative, and universalistic bureaucracies are perceived as the greater threat, the United States must accept the consequences. The politics of post-9/11 America may or may not be new, but the supposed dilemma is perennial. Opinion shapers in Congress and outside of those halls will always pose the issue as a choice between freedom and tyranny. As long as that preconception exists, we will see these debates again, along with the crises that provoke them.