PATHWAYS TO THE PRESENT:
POLITICAL DEVELOPMENT IN AMERICA

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The United States is a relatively young nation, young enough for contemporary issues of government and politics to implicate the whole of its history. This is not to say that little of significance has changed over the years; quite the contrary. Americans have negotiated alterations in their government and politics all along the way, and the cumulative impact of innovation grows ever-more profound. The point to be made is that these changes have all been worked through institutions framed at the nation’s founding and that we continue to wrestle with cultural norms and constitutional standards that the founding jumbled together. Whether the issues are cultural, constitutional, or political, the entire historical record bears down with remarkable immediacy on present-day controversies.

In these circumstances, the study of America’s political development (APD) is of more than mere historical interest. Current affairs are constantly prompting us to think about how, and with what consequence, institutional legacies project themselves forward and insinuate themselves in new controversies; about how, and with what consequence, new interests and ideas intrude upon government and connect to older elements already in play; about how, and with what consequence, received lines of authority are redrawn and ideological cleavages recast. Through inquiry into these relationships between past and present, APD’s research program illuminates the historical construction of the American polity—its composition in time, through time, and over time. Attending to the
sequential rearrangement of familiar elements in new compounds, APD weighs departures against continuities and identifies pathways to the present.

This is an inclusive project. APD occupies an attractive point of intersection among research communities where scholars of different disciplines, and different perspectives on politics, can engage in a productive exchange of ideas. Important contributions have been made by political scientists and historians, “comparativists” and “Americanists,” cultural and constitutional theorists, “institutionalists” and social analysts. But APD’s porous boundaries should not be mistaken for the absence of core concerns. Examining the movement of the polity through different historical configurations pushes forward certain kinds of issues; scrutinizing the present against the backdrop of where we began enables particular kinds of insights. The questions at the heart of this research agenda speak to the defining characteristics of the regime; the debates it spawns revolve around the American polity’s identity, integrity, capacity, adaptability, and trajectory.

These concerns lend the APD literature a distinctive cast. The work tends to be “polity centered.” That is to say, it focuses on the mutually constitutive relationships of state and society in America and the push and pull and rearrangement of their various parts. Attuned to the polity’s dynamic qualities, it draws out endogenous as well as exogenous sources of change. The emphasis, overall, is on the contingencies of political order and the engrained processes that upend and reshape it. The APD literature also has a decidedly “presentist” orientation. Though it explores transitions that occurred long ago, the significance it assigns to these events references relations of power and authority today, and because the bearing is toward the present, the insights practitioners seek from
the past tend to be more analytic and overarching than those usually found in historical work on particular periods. They want to distinguish different mechanisms of change, examine their portability across periods, and compare their effects. Finally, this literature situates political development in America comparatively. Reference to the experience of other countries serves to identify American variations on broad developmental themes. Though cultural claims of “American exceptionalism” are routinely put to the test in the APD literature, comparison is used, by and large, to draw out emblematic features of the American regime and to consider their consequences.

Research into America’s political development flourishes when government and politics in the present seem most unsettled, when patterns drawn from the past are thrown into doubt and observations no longer conform to what is expected (Orren and Skowronek 2004, 33-77). Hardly surprising, then, that interest in the field has surged in recent decades. Over the past thirty years, questions of America’s “governability” have deepened, and political assaults on long-established institutions and practices have intensified into a near-constant siege. Whether this is all part of a “new normal,” in which consensus on basic precepts of governance will be in short supply, or whether we are living through a protracted interregnum soon to be resolved, is difficult to say. But with old signposts unreliable and public anxiety running high, the contingencies of political order in America have been thrown open for reexamination and inroads to the future have come under intense review.

Other essays in this volume provide ample testimony to the multifaceted reassessment under way, and we will not attempt a comprehensive overview here. A candid inventory of recent work on constitutional change, institutional change, cultural
change, and so on would likely point up more debate than agreement among scholars. But all speak, in one way or another, to the same unsettled condition. If we are correct that the drive to review and revise has been accelerated by the current condition of American politics, we should be able to catch some meaning in the drift.

In the first part of this essay, we take up three ideas about development that are presently percolating through APD research: displacement, path dependence, and creative syncretism. We chose these ideas among the many available because each has wide application to a range of political phenomena, because each idea implicates the other two, and because they seem to us more suggestive taken together than separately. In order to bring them to bear directly on one another, we will focus our discussion on a single developmental question, that of state formation. State formation is a major concern of APD research, and while the literature on the topic has grown more contentious in recent years, its inconsistencies point in interesting ways to different aspects of the current moment. Our hunch is that the prominence of these three ideas in recent scholarship is no accident, and that as different as they are, each is picking up something essential about the new situation in contemporary political affairs.

In the second part of this essay, we follow up with a substantive proposition of our own about America’s political development. We introduce the concept of a “policy state,” both as a description of the emergent form of modern American government and as a vehicle for drawing greater analytic leverage from recent insights into displacement, path dependence, and creative syncretism. The rise of the policy state tracks familiar historical trends: the dismantling of ascribed social hierarchies and the democratization of the polity, the nationalization of politics and the bureaucratization of government, the
expansion of policy choices and the dispersion of power and authority, the erosion of constitutional boundaries and the elevation of pragmatic standards of action. Picture a fully-developed policy state as one in which everything about government has become negotiable and every public servant a policy entrepreneur. This, it seems to us, captures the momentum and direction of America’s political development. At the very least, it pulls together much of what the recent work on state formation has been telling us.

**Pathways to the Present**

*Displacement:* Politics entails a persistent testing of the status quo, and political development tracks the successive alteration of arrangements by which the status quo is maintained. To create something new in politics is, in the nature of things, to displace institutions, norms, or routines that exist. Some displacements cut wider and deeper than others through extant arrangements of power and authority. The overthrow of Jim Crow was a major displacement. It demanded extensive adjustments from elements, like federalism, that were carried forward, and it resulted in a thoroughgoing rearrangement of governmental operations overall. Compare that to the displacement of the old Civil Service Commission by the Office of Personnel Management. The rearrangement of authority relations here, though not insignificant, was relatively contained. We have here a metric of development. Displacements set the distance between past and present; the more they disrupt, the broader the ensuing rearrangement of authority is likely to be and the greater will be the difference between the old system of government and the new. Displacements accumulate over time, magnifying distances and departures from points of origin.
To conceptualize development as a series of displacements is to call attention to the plenary nature of the state’s authority. Change never occurs in a void; it is always negotiated against prior arrangements of government and typically exchanges one form of authority for another. Revolutions are events expected to displace authority categorically, their purpose being to dislodge whole systems of rule. In the United States, where reform has been the norm, decisive dismantling has been a rare event, and when it occurs, it is quickly contained (Chinn 2012).

The partial, often-attenuated character of the displacements observed in American political development has given rise to its own analytic vocabulary. Scholars compare evidence of outright “dismantling” to evidence of a “replacement” of bits and parts, or of a gradual “conversion” of earlier practices to new purposes (Thelen 2004), or of a “layering” of some new arrangement onto an older one (Tulis 1987; Schickler 2001). Reckoning with development through the metric of displacement shows the normal condition of the American polity as a contentious mix, an “intercurrence” of old and new elements (Orren and Skowronek 1994, 1996, 1998, 2004). Intercurrence is not only a hallmark of the historical construction of polities; it is itself a dynamic element. The incongruous juxtaposition of old and new norms, of old and new ideas, of old and new institutions is inherently unsettling. Intercurrence, as a normal condition of the polity, invites further alteration.

For much of American political history, displacement had a decidedly progressive cast, and pragmatic problem-solving figured prominently in the common-sense accounts of the changes brought about. In the 1980s, however, empowerment of a long-gestating conservative insurgency reversed field, calling into question the standards, programs, and
procedures that had been established over the twentieth century in repeated waves of progressive reform. By assaulting bulwarks and priorities of government installed by progressives – by condemning their departure from founding norms as a mistake in principle, a failure in performance, and, in the near term, unsustainable — the conservative insurgency recast the modern American state as the source of the nation’s problems rather than the solution to them. Scholarship was recast as well. With less to be taken for granted about either the past or the future, modern forms of rule were thoroughly historicized. With progressive norms under siege, scholars began to take a closer look at exactly how the twentieth-century departure in American governance was negotiated.

The primary target of the conservative critique was the national bureaucracy and the methods of its empowerment. The critics were challenging the efficacy as well as the appropriateness of the extensive machinery the federal government had acquired to manage social and economic relationships. APD scholars responded accordingly. The current generation of research began with studies of state building that connected the rise of national administration to the displacement of early forms of rule. Stephen Skowronek’s *Building A New American State* (1982) described the expansion of national administrative capacities as a jagged and prolonged campaign under the pressures of industrialization to open new avenues for governmental action against the tangled and entrenched arrangements of the nineteenth-century’s “state of courts and parties.” Research in this vein (e.g. Milkis 1993; Skocpol and Feingold 1995; James 2000; Carpenter 2001) described various mechanisms of displacement, but in each, administrative expansion was driven by categorically new demands on government and
assessed in terms of the scope of the displacement of older forms. Success was tied to the contingent removal of prior constraints—constitutional, procedural, social, cultural—on federal action.

This research uncovered uneven, odd, and, at times, contradictory results. It documented rampant inconsistencies in twentieth-century state building—an advance for reformers here but not there, institutional relationships altered on one front but not another, new competencies secured in this area but not that. Party-based administration yielded to modern bureaucracy, and localism to nationalism, in incongruous exchanges (Skowronek, 1982; Milkis, 1993). Bureaucratic autonomy appeared in pockets amidst the stubborn persistence of congressional control elsewhere (Carpenter, 2001); new forms of cooperative management took hold next to more strident forms of regulatory policing (Skocpol and Feingold, 1995). By these accounts, the performance problems that draw so many complaints from today’s critics are more appropriately tied to reform’s shortfall than to its reach, to the fact that reformers’ aspirations for a new mode of government far exceeded their ability to deliver. There is ample evidence in this work to support the charge that progressive reform has made hash of the original constitutional design, but here too explanations for the jerry-built character of the modern American state follow upon reform’s irregular course. Twentieth century state-builders opened new terrain for political action by displacing what they could, where they could, and by making do with rest. As improvisations accumulated, rules of action became less generalizable and more policy specific. The resulting system of authority has retained many of its older features but with practical working relationships transformed, operational inconsistencies
permeate the whole and the structure of government appears less determinative of outcomes overall.

Notwithstanding the limitations observed, there is little in this literature to inspire conservative hope for reclaiming the governmental discipline lost to twentieth century reform. The implication is that the polity to which those old rules of action applied no longer exists. That point has been underscored by another line of research taking the displacement of older forms as the central developmental dynamic. Though the connection is seldom drawn out, there is a rough historical correspondence in the APD literature between the gradual reconstruction of American government to facilitate national administrative management and the displacement of legal rights that previously governed primary social relationships. In earlier days, the rights of slave masters, employers, husbands, parents over their respective subordinates, and officers in the separate states over the designated affairs of their respective citizens, narrowed the field of action left open to the federal government. Fair to say, the original constitutional scheme, and the ideology of “limited” government that underwrote its legitimacy, depended upon the continued enforcement of the very legal rights in society that progressive reform movements would work to dislodge.

Research on the displacement of these rights points again to uneven and compromised results and to the insinuation of old systems and norms into the new (e.g. Smith 1997; King and Smith 2011; Valelly 2004; Frymer 2008; O’Brien 1998; Lowndes et al, 2008; Mettler 1998; Lieberman 1998; McDonagh 2009). But though the dismantling of rights-based social hierarchies has followed a tortured course, and the victories for historically subordinated groups remain qualified, there is no argument that
decisive shifts in government followed directly. In *Belated Feudalism* (1991), Karen Orren linked labor’s emancipation from the constraints of a court-imposed common-law discipline to the expansion of political choice in industrial relations and to the wholesale expansion of lawmaking through legislation. This has been the recurrent pattern. The opening to public policy is the effect of these displacements, not just their rationale, leaving all rights—both new and remaining—more regularly contested, more assiduously managed, and more contingently balanced.

The cumulative impact of displacing rights-based social hierarchies and of reworking the governmental structures that supported them has been transformative. Notwithstanding the ongoing effects of the Constitution’s multiple veto points and the stubborn persistence of cultural biases, the field of public action has been thoroughly redrawn. Legally and socially, politics is less firmly tethered than before; moves on all sides are less ritualized and more open to political manipulation. With the formal structure of government less strongly determinative of the range of discretion in any of its several parts, and with the rights of any one group of citizens less exclusive of the rights of all others, state operations have become less rule-bound. This is the hard, new reality both for conservatives who would limit government anew in the name of a return to first principles and for progressives concerned to preserve and protect hard-won advances. The new American state makes ever-more promises but offers steadily fewer guarantees. Successive displacements have expanded the commitments of government, but those commitments are more susceptible than ever before to the contingencies of political circumstances and the ambitions of institutional actors.
Path dependence: Studies of the displacement of older forms of rule have shown that breaking decisively with the past is difficult even under opportune conditions. Old rules die hard; the arrangements of government, once established, are not easily dislodged. The weight of history makes itself felt in a variety of ways. It figures in the grafting of old values onto new forms, and in the imposition of settlements made long ago as constraints on the range of action open to decision makers in the present. Contemporary conservatives wrestle with this reality every day: thirty years into their insurgency, the monuments of progressive state building remain.

This circumstance lends considerable currency to the idea of path dependence in assessments of modern American state formation. As displacement addresses the question of “what’s new” in the development of American government and politics, path dependence considers “what’s durable.” The two ideas play against one another in obvious ways, for the same factors that make an arrangement durable also make it harder to displace. In the leading work, Dismantling the Welfare State? (1995, also Pierson 2000; Pierson 2004), Paul Pierson offered an explanation for the persistence of the governmental commitments which the newly empowered conservative insurgency had targeted for assault, and he identified conditions making it more or less likely that governing routines might persevere in the presence of hostile changes in the surrounding environment.

The path-dependent properties of development have been of particular interest in studies of public policy, and for evident reasons. As artifacts of political discretion, public policies are particularly vulnerable to the shifting currents of the day. Their persistence is indicative of their own formative effects, that is, of their success in having
changed politics in ways that reinforce demands for their continued operation. Research in this vein scouts the construction of “positive feedback loops” through which policy implementation refashions the political environment to comport with its particular purposes (e.g. Pierson 1993; Campbell 2005; Hacker 1998; Klyza 1996, Gottschalk 2000, Mettler 2005). Once a policy has “locked in,” that is, secured itself within a mutually supportive network of interests and institutions, it takes on the properties of a governmental subsystem, relatively impervious to outside forces.

As one might suspect, there is a critical period of uncertainty in the formation of these subsystems, and an important connection can been drawn in this regard between durability and displacement. Eric Patashnik makes that point in Reforms at Risk (2008), finding that new programs are especially vulnerable to the play of politics just after they are adopted, that is, before other institutions have accommodated themselves to the innovation through adjustments in their own operation. Often program advocates will need to engage in acts of "creative destruction," attempting to clear away adjacent authority and change protocols of communication so as to provide the new policy with security and influence. To this extent at least, displacement is critical to the creation of the positive feedback loops that lock-in new developments and establish durable paths. Together, the two concepts point to a general definition of political development as a “durable shift in governing authority” (Orren and Skowronek 2004, 120-32).

There remains, however, an underlying tension between these two ideas, one that the literature on state formation has yet to confront directly. Consider each in its larger historical aspect: Path dependence conveys the weight of past, the “sunk costs” that make it difficult to break with settled patterns, dislodge received arrangements, and change
direction. The long history of displacements points to just the opposite: to a gradual discarding of elements that had once seemed fixed, to a widening of the field of conflict, to a diffusion of choices throughout the institutions of government, to an expansion of political discretion – in short, at least presumptively, to the opening of all parts of government and society to change. A clear view of the “path” of American political development would suggest a polity that has become less “locked-in” overall; or to put it another way, any notion that the contemporary American government can “lock-in” its policy commitments must be balanced against results achieved earlier in American history when policy remedies were less widely accessible and many more interests were locked out. The trend in APD research toward a focus on policy history is itself a reflection of the expanded range of discretion and choice, of just how much of government in contemporary America has become so-much policy.

Absent awareness of this larger pattern of development, we will likely lose sight of the most telling features of the new state of affairs. Policy subsystems have proliferated upon the displacement of a prior discipline, one which employed other forms of rule and limited access to policy remedies. The loss of security overall is currently expressed in the growing list of qualifications and demurrers in assessments of path dependence as an analytic framework for understanding American state formation: Work on deregulation during the 1970s (Derthick and Quirk 1995) showed the preemptory dismantling of policy subsystems that had long been regarded as iron clad, so strongly fortified politically and bureaucratically as to appear immovable. Similarly, studies of agenda setting and of shifts in “political attention” (Baumgartner and Jones 1993; Baumgartner and Jones 2009) have suggested that every policy subsystem is a potential
target, that a shift from apparent security to vulnerability can be, and often is, quite sudden. As the interregnum in American politics brought by the sustained assault on progressive priorities drags on, scholars are going farther, modifying the concept of path dependence itself to accommodate the notion of “policy drift.” (Hacker 2005; Thelen 2004). This work shows that policies can be transformed by mere neglect, that a choice to let a policy stand is not necessarily a commitment to the broader status quo, that changes that occur in the environment that surrounds a policy can have a significant impact on that policy’s operations and effects. Pushing farther still: recent reassessments of social security policy, long the leading example of self-reinforcing effects in policy development, indicate an ongoing susceptibility to “programmatic” rule manipulations that variously dismantle, evade, reinterpret, or displace substantively important provisions (Jacobs 2010; Beland 2007).

This is not to deny the evidence that “new government policy creates new politics” (Schnattschneider 1935) or that policies “lock in,” by degrees, here and there, and from time to time. In that sense, the study of path dependence all by itself tells us a lot about historical construction of modern American state. It accounts for the sprawling array and incongruous operation of relatively independent subsystems of government in modern America, it speaks to contemporary problems of central management and direction, and it explains why the affairs of state remain a good deal less volatile than the politics surrounding it. But all of this appears against the historical backdrop of greater susceptibility to strategic action. Risk, shift, drift, evasion, reinterpretation, manipulation - as more of government turns on policy, these are the features of state operations that grow more pronounced.
**Creative syncretism:** These same features also signal the opening of the state to agency and creativity. Nobody familiar with the story of how Alexander Hamilton used his office in the Treasury Department to undertake the construction of a national political economy will be surprised to learn that the original structure of American government left much about state action undetermined and opened opportunities for officials willing to seize the initiative. The many rules that organize institutional relationships, at multiple levels, and frame relations of authority power have always been riddled with operational ambiguities. Innovations themselves serve to magnify slippages and multiply incongruities. A fixation on the veto points, or on the density of interest networks blocking concerted action, will likely cause us to overlook change fashioned on a continuous basis by political entrepreneurs who achieve their ends by exploiting rule ambiguity and the protean nature of governmental forms (Sheingate 2007; Mahony and Thelen 2010; Carpenter 2001; Carpenter and Moore 2007; Hattam and Lowndes, 2007).

Though agents of change figure prominently in all the literature on state formation, APD research has been slow to elaborate a conception of agency that corresponds to the political universe depicted in its case studies (Skowronek and Glassman 2007). The regular emphasis on architecture, structure, rules and constraint – on the difficulties of displacement and the pervasive evidence of path dependence – might well seem at cross purposes with the field’s professed interest in political dynamics, in highlighting *development* and elaborating upon its significance. Critics have charged that this imbalance leads to distorted depictions of the American experience, that the emphasis on gridlock and the many observations of slow, delayed, or attenuated development, are hard to square with the evident persistence of state action and
innovation. Some scholars have traced this imbalance to the invocation of comparative perspectives, and, in particular, to the adoption, often implicit, of standards of evaluation drawn from European models of state organization and operation. Eschewing those standards as misleading and inappropriate, they urge the elaboration of a theory of state formation that credits the pervasive creativity of agents inherent in all complex institutional settings, and in particular, the plasticity of the American system.

Gerald Berk and Dennis Galvan have advanced this position with the idea of reorienting historical research theoretically around the concept of “creative syncretism” (Berk and Galvan 2009; also Berk, Galvan and Hattam, 2013). Their claim is that “all institutions are syncretic, that is, they are composed of an indeterminate number of features, which are decomposable and recombinable in unpredictable ways;” and that “action within institutions is always potentially creative, that is, actors draw on a wide variety of cultural and institutional resources to create novel combinations” (Berk and Galvan 2009, 543). As the basis for a theory of action, creative syncretism purports to makes sense of much of what the literature on state formation has found to be routine – intercurrence, conversion, drift, reinterpretation, rule manipulation. The syncretic approach argues for a new program of study, raising doubts, for instance, about the utility of period boundaries that have traditionally divided American political history and separated past from present. “Time does not cordon institutions off from one another” because “it is always possible for creative actors to find resources for recomposition by reaching across temporal boundaries” (Berk and Galvan 2009, 558). Along with bridging of period divides in favor of a more continuous history of political entrepreneurship in institutional settings, scholarship along these lines would dissolve the analytic
dichotomies that have long organized much of the study of American political development: structure and action, order and change, path and juncture, regularity and perturbation.

To anchor a syncretic analysis, Berk and Galvin propose a return to pragmatism. They hitch their program to the philosophy of John Dewey, in particular, to the priority Dewey assigned to human agency in social reformation. Thus, it might be said that as work on displacement looks to “what’s new” in the development of the polity, and work on path dependence looks to “what’s durable” in the development of the polity, creative syncretism directs attention to “what’s American.” A similar appeal informs the work of a burgeoning group of American historians. In a lead essay, William Novak draws on the insights of America’s pragmatist philosophers to redirect the study of state formation away from “metaphysical debates about definitions, essences, norms, formulas, models, and first principles” and toward the practical effects of officials-in-action, in particular toward the efforts of those in government and politics to deploy the “infrastructural power of the American state to penetrate civil society and implement policies throughout a given territory” (Novak 2008, 763). A focus on practical action and experiential problem-solving will, Novak argues, debunk “the myth of the ‘weak’ American state,” and connect government in early America more directly and harmoniously to the superpower it has become.

Taking a new look at American government in the nineteenth century, these historians have begun to telescope the whole of American state formation through the modality of pragmatic action. Treating differences among periods as “technologies” of practice, their method shows that much of modern state activity was anticipated in earlier
forms. In one way or another, Americans have always demanded the services of a strong central government (Edling 2003). In one way or another, the American state has always been a robust promoter of national development (John 1998; Balogh 2009); it has always supported administrative autonomy and national regulation (Mashaw); it has always been in the business of welfare provision (Novak 1996; also, Skocpol 1995; Jenson 2003).

Invoking trans-historical models of development and discovering substantive parallels to present-day activities diminishes the novelty of twentieth-century departures. In that respect, the new pragmatic history of state formation could not be more timely. It offers a potent corrective to conservative critics in our day who claim that the modern American state is somehow un-American, that twentieth century state-building has been in all important ways a deviation from the nation’s original impulses, and most importantly, that there is a different or authentic tradition to which we might return, at least with regard to the role of the state. But the historian’s reminder that Americans have used government to solve problems all along – that they have consistently relied on an activist state – also challenges the political scientist’s penchant for demarcating historical breaks, for distinguishing old and new, for belaboring the obstacles to innovation, and for ferreting out unintended consequences. The outstanding question to those studying developmental processes is how far we can go in disowning “problems” of state formation in favor of a seamless narrative of responsiveness and instrumentalism.

In this regard, it is worth pausing to recall that the pragmatist philosophers on whom the theorists and chroniclers of syncretic action lean for authority had a historical agenda of their own. Their argument for the primacy of agency was trained on what they saw as the polity’s excessive attachment to received rules in a critical period of industrial
transition. Their method was not merely a cultural expression of “the American way,” or for that matter, the only such expression at the time. Pragmatism was part of a widespread “revolt against formalism,” a movement that rejected received conceptions of authority, demanded a new way of governing, and that fueled progressive state-building efforts. (White 1947; also Orren 1992; Gilman, 1997). None in this movement glossed over the systemic adjustments necessary to accommodate a new economic and social order, or the difficulties of navigating away from the liberalism of the nineteenth century to a new, more pragmatic state, or the cultural obstacles standing in the way of citizen empowerment and creation of an effective public. Timely as it is, then, an account of American state formation buttressed by American pragmatism does not dissolve the dilemmas of development. Indeed, as the conservative insurgency has insisted, pragmatic departures raise conundra of their own.

The Development of a Policy State

Scholarship thrives on variety and contention. There is nothing gained by submerging differences or forcing connections. Still, these three analytic perspectives on state formation seem to us to align with one another and to suggest something more than a sum of their separate insights. In fact, looking more closely, it is not entirely clear where the contenders lock horns. It is easier to describe how they diverge and to appreciate the different episodes they bring to light than to weigh their relative advantages for a definitive choice.

For instance, there is little disagreement with the new pragmatic historians that government was a significant force in early America, that the American state was active from the beginning and always of great consequence for national development. None of
the three perspectives lends support to a colloquial shorthand that would reduce
development to a shift from a “weak” state to a “strong” state, or a “small” government to
a “big” government, or even from “less” government to “more” government. (Orren and
Skowronek 2004, 20-24). For all its other merits, this part of the historians’ new account
of state activity in the nineteenth century has been, as it were, pushing against an open
door.

The return to pragmatism in historical assessments of state formation does stand
apart from the other two perspectives in its treatment of matters of form and structure. To
focus on displacement or path dependence is to approach preexisting arrangements of
state power as constraints, difficult to dislodge, and with both approaches, the process of
transition from one set of arrangements to another is implicated in political developments
long afterward. Creative syncretism, by contrast, describes government as flexible, forms
as fungible, outcomes as open-ended, structures as protean, transition as perpetual. On
close inspection, however, even this difference is hard to pin down. The first two
approaches hardly deny that constraints can be overcome through political action; they
merely observe that some have been more difficult to overcome than others. Similarly,
they do not claim that early American government belabored all innovation, that it was
so rigidly structured as to filter out all but minor changes; their interests rather lie in
degrees of openness and in arenas of action in which responsiveness and creativity were
more attenuated. Evidence of plasticity, fungibility, and improvisation in state formation,
continuously and from the beginning, does preclude evidence on other fronts of
engrained constraints that required extraordinary effort to dislodge or of systemic shifts
attendant upon their displacement. Much of what has already been said about
displacement suggests that American government has become *more* pragmatic, *more* open ended, *more* “syncretic” as prior rules and limits have lost their grip, that political development registers its effects by rendering forms and structures more permutable or open to recombination, that creative syncretism is a mode of action that has gradually expanded its range against barriers that once contained entrepreneurial manipulation and cordoned off discretionary choice. But to know this empirically, we require a more systematic understanding of constraints, of what in particular they inhibited, and the consequence of their successive dissolution.

Our intuition is that these different lines of investigation point to something that has yet to be addressed directly, and our aim is to capture that missing piece of the puzzle by introducing the concept of a “policy state” (Orren and Skowronek forthcoming). Thinking about American state formation in terms of the development of a policy state recasts the analytic choices offered above, allowing variations in the developmental processes observed to suggest the substantive variables upon which development turns. The “policy state” refers to those aspects of governance that have, at any given time, been thrown open to elements of agency, discretion, and choice. The policy state’s “development” connotes a historical sequence of overcoming limits on—well—policy making, that is, the removal of obstacles to agency, discretion, and choice as it has occurred over time. Driven by the pressure to resolve problems in society, this development has accelerated through to the present day where it has come to encompass virtually all aspects of governmental operations (see also, Wilson 1979).

Consider as a starting point, the shift in the 1780s from the Articles of Confederation to the Constitution. This was a major step in the development of a policy
state in America and it set the pattern for future changes. The impetus was eminently practical: to address urgent matters of national security and trade, and to instill in the national government the authority to act independently of the several states for those purposes. This unshackling of agency and expansion of choice at the level of national decision making entailed a significant reshuffling of authority relations throughout the entire governing system. But it only went so far. The Constitution’s ratification hinged on protections offered to authority operating over other spheres. Its elaborate structure was designed, in large part, to provide assurance that the new policy-making powers were limited, cordoned off. Developments moving forward tested these limits as political conflicts gravitated immediately toward the Constitution’s ragged seams and boundaries. These conflicts held in the balance the containment of policy and its further erosion of limits on power. Whenever formal barriers to policy making fell, governmental relationships throughout the system had to be reconfigured and over the course of multiple iterations, governmental operations at large were transformed.

Toward a theory of the policy state: The broad outlines of this story are familiar, and tracking the process of policy’s expansion is a program that should pull together much of what has been written about other aspects of American political development. The old “realignment synthesis” may, for example, be said to mark major breakthroughs for policy against prior proscriptions. But if the concept of a policy state is to be worthy of consideration, it should do more than just synthesize what is already known; it should also redirect inquiry in timely and productive ways.

As we see it, our formulation prompts more careful thinking about policy as a distinctive method of governing, one with its own attributes and entailments, and its own
patterns of transition (Orren, 2012; Skowronek, 2009). By and large, government by policy is now taken for granted. The rule of policy has become so pervasive and varied in its applications that we seldom take its measure as one way of governing among others; nor do we pause to identify the alternative ways in which government has expressed itself in America history. By historicizing policy as a way of governing, our inquiry leads directly to consideration of what was “not policy” in the early American governance, of those aspects of government in the past that were more or less closed off to official discretion, and political choice. In this way, a study of the development of the policy state opens inquiry into how a system of government which once balanced different methods of rule has adjusted to the dominance of one method over all others.

To have a “policy” is to have an active commitment to a goal or designated course of action, one undertaken authoritatively on behalf of a given entity or public, with accompanying guidelines rationally aimed at the goal’s accomplishment. None of these attributes of policy is controversial, but on inspection each element in this definition is fully laden with implications. “Commitment to a goal or designated course of action” means policy is intentional, discretionary, willfully “set.” “Made authoritatively on behalf of a given entity or public” is a condition of legitimacy; it references an expectation of compliance by others. This characteristic also anchors policy in a foundation broader than individual policymakers and anticipates mobilization of whatever social resources may be implied. “Guidelines rationally aimed at its achievement” signals the play of discretion in implementation and the orientation of policy toward performance under variable conditions. “Guidelines” captures better than “rules” policy’s pragmatism, its openness to learning and reassessment, and to the likelihood of incremental adjustments down the
Guidelines also suggests a point beyond which a policy may be said to have been abandoned or decisively shifted.

The unifying theme of policy’s several attributes is openness to the future. Its orientation is creative, positive, instrumental, calculating. Policy is a style or method of rule animated by circumstances, by social and political problems as they arise, by long or short term goals, and by expected results. As a normal aspect of government, policy always implies trial-and-error corrections, potential reversals, and supplementary policies to come. This forward looking disposition establishes policy’s constitutional home-base in the legislature, alone dedicated to the making new law, though here as elsewhere, policy’s pragmatic, problem-solving gist breaks down any such narrow confinement. The gradual saturation of all state operations by considerations of policy is the essence of the development of the policy state. Even so, and except for instances of express constitutional or legislative delegation, the making of new law outright, as opposed to its enforcement, is still subject to branding as illegitimate when it occurs outside Congress. Therein lays a good part of the predicament of the policy state in contemporary America (Lowi 1969).

The opposite of policy is not “no policy.” A decision not to set a policy can be a positive determination to let existing arrangements stand. This is what the Obama administration did in its early years with regard to gay marriage. In recent years, we have also seen that a decision not to set a policy can be a programmatic determination to let existing arrangements drift and atrophy. The contrast we wish to draw is more thoroughgoing and schematic, that is to say, the opposite of policy must be government by standards that run directly counter to policy’s animating attributes. Think of a
complete inversion of policy’s ideal type. This would be government that is substantively and procedurally determined in advance, that looks backward in time to precepts that constrain choices and changes; it would be government that is animated to uphold and perpetuate a prescribed order, whose rules are compulsory, applied strictly and pointedly to those preselected, on the expectation that they operate timelessly, locked-in to the settings in which they appear.

The opposite of policy’s attributes in fact turns out to be something historically familiar—government animated by rights. Whereas rule by policy is impersonal in character, subordinating individuals-at-large to the goal or the course set out, “rights” are claims, enforceable in a court of law, which one person, in or out of the government, may make against the actions, persons, or property of another. Rights are asserted not expediently, but on the basis of ascribed status or position, relative to another. To be sure, rights have origins; at some point they were agreed to or “legislated” -- by an English monarch, or a Constitution, or an amendment, or in some cases, especially recently, by the legislature alone. But onward from that point, rights are understood to function a priori, as “natural” or established features of an ongoing government, features that in disputed instances will be “found” or “affirmed” rather than “made” or improvised. If adjudication of rights results in court opinions that are discordant with well-rooted expectations there will be charges of “judge-made law.”

As a matter of law, rule by right occurs within jurisdictions; taken together jurisdictions comprise authority in society as a prescribed and coordinated system of discretion and command. Jurisdiction means, literally, “the right to say what the law is,” and is most commonly associated with the rights of government officers and of public
institutions, as in “states rights.” That is what James Madison had in mind when he argued that the elaborate system of checks and balances in the Constitution would regulate and contain policy making at the center by tying “the interest of the man to the constitutional rights of the place” (Madison 332). Jurisdictions actively articulate government structure, their distribution across the institutions of the state make up separate spheres of authority and myriad points of intersection between (collective) constraint and (individual) motivation. The realms of private life—families, corporations, churches—are likewise sites of jurisdiction, albeit of a less formal variety, but parallel in their relations of privilege and rule. Jurisdiction implies autonomy, for the state of Virginia, for instance, or for the slave master, or for the husband – each within a designated sphere. The rights of the criminal conveys an area of activity—a defined sphere of behavior—in which he may not be commanded by anyone, including a judge, to comply (Orren1990).

This may seem an outdated conception of how rights function, that it misses important changes how they have been organized and administered over the last half century. But this is precisely our point: the impact on rights of policy’s expansion has been substantial. An examination of the development of the policy state in America might fruitfully begin here, with the erosion once-sharp distinctions between these two methods of rule. The “rights revolution” of the twentieth century paced a vast expansion of policy’s reach in government; at once, policy displaced older rights and created new ones. The new rights, unlike the old, were neither backward looking nor preservative; on the contrary, they required an extensive transformation of the existing state of affairs for their expression. As a sustained assault on the boundaries insulating rights in personal
relations from policy, the “rights revolution” went far toward an erasure of the distinction between protecting an ascribed status and prescribing a new set of social relationships to be promoted pragmatically and programmatically. Workers’ rights, woman’s rights, minority rights, welfare rights, children’s rights – all called upon policy to fill the breach left by displacement of older jurisdictional prerogatives. Because each of these rights is more dependent than the old on elaboration through policy, each has also become less absolute, more susceptible to balance against the others, more a guideline than a rule. There are, to be sure, more rights that claim protection now than ever before, but that itself means a wider range of considerations is taken into account in the protection of any one. In the course of their development and dispersion, rights have lost much of their historical resistance to policy and their indifference to the exigencies of the moment. They have become more fully integrated into programmatic governance.

Something similar can be said of the impact of policy’s expansion on the structure of government. The gradual erosion of the institutional boundaries erected by the Constitution to contain policy is well documented. “Dual federalism” gave way to “cooperative federalism,” and state interposition gave way to “intergovernmental relations.” The rights carried into the original governmental frame, including the Bill of Rights, reinforced the constitution’s structural divisions; modern day improvisations – consider, for example, the independent regulatory commission or the secret FISA court – relax them. By prioritizing performance over form, policy assumes an aggressive stance toward structure. The developmental effect is to break down jurisdictional divides. As policy is called upon to do more of the work of governing, the Constitution’s intricate division of labor comes to operate less as a containment structure than as an opportunity
structure. Officials in all the branches and levels of government now act as policy entrepreneurs. They maximize the power afforded by the positions they hold to advance their policy preferences and, by advancing policy, they strengthen the positions they hold. Formal demarcations of the terrain on which they compete have lost much of their historic correspondence to substantive specialties: “Congress-as-administrator;” “president-as-legislator.” As the play of syncretic manipulation and recombination has opened wide, it has become harder to draw rules from structure or to distinguish between institutional constraints on policy and the policies of the moment.

Broadening the analysis still further, one might consider the impact of policy’s expansion on American politics at large. Take, for example, party politics. Trust in the policy-constraining effects of jurisdictional divides helps explain the curious failure of Framers to predict the rise of parties, with their capacity to bridge institutional divisions and to coordinate action among the different parts of government on behalf of programmatic ends. And yet, though party organization presented an early and serious complication to the constitutional containment of policy, the relationship between party and the development of the policy state has been anything but straightforward. For one thing, for most of American political history, party competition at the national level tied programmatic appeals closely to jurisdictional disputes — for or against congressional prerogatives, for or against executive prerogatives, in defense of states’ rights or of national authority. For another, the early occupation of federal field offices by local party organizations eventually became an impediment to the development of problem solving capacities at the national level. Long into the twentieth century, the expansion of the policy state was either anti-party in its orientation or concerned to rebuild party
organizations in ways that would be less beholden to structural commitments and more responsible for the promotion of national programs.

The irony is that today, with both the policy state and programmatic parties more fully formed, the relationship between them has become even more fraught. Old jurisdictional disputes continue to hold cultural and ideological resonance, so that instead of just competing on alternative policy programs, American parties have recently begun to polarize around the legitimacy of the policy state itself. One organization has become an unabashed defender of this state, stalwart in its promises to solve problem as they arise but stuck with pragmatic juggling of the increasingly unwieldy set of programmatic commitments already on hand. The other organization has become an increasingly radicalized critic, driven by its nostalgia for limits to reject outright the problem-solving ethos of the policy state and to assault the system broadside as an intolerable betrayal of original understandings.

**What Goes Around Comes Around**

The late, great legal historian, James Willard Hurst once remarked: “I do not find it profitable to distinguish ‘law’ from ‘government’ or from ‘policy” (Hurst 1977). Looking out over the operations of American government today, it is easy to appreciate that unabashedly pragmatic disposition. A state in which differences among law and government and policy have all-but dissolved is one in which all aspects of authority have been opened to negotiation and subject to performance standards (Eskridge and Ferejohn 2010). But just as surely as Hurst caught the drift of affairs, his casual dismissal of historic differences should give contemporary scholars pause. We are made aware every day that the field of action was not always so uniform and that its latter-day
leveling has had real consequences. Constitutionally, politically, and culturally, the United States is reaping the policy whirlwind, caught in the cumulative effects of problem solving and the collapse of once-meaningful distinctions.

The American state was framed in the midst of a world-historic turn in governance. The Constitution juxtaposed two modes of rule, intercurrently if you will. One, rule by policy, was ascendant and aggressive, the other, rule by right was defensive and, as a consequence, refortified. Governing was not yet an either/or proposition; the assumption was that each method would have had its own spheres of operation. The Constitution provided for both, its elaborate jurisdictional arrangements anticipating mutual containment and marginal adjustment. But the displacement that began at the start was not so easily tamed, and this finely articulated structure has borne the brunt of later-day developments. Its distention and distortion are reflected today in contemporary concerns about congressional dysfunction, presidential aggrandizement, judicial activism, and the reliability of rights; they frame the knotty issues that surround bureaucratic accountability, federal mandates, social provision, and party polarization. The effects haunt the efforts of contemporary progressives to vindicate themselves against ever-more stringent standards of performance and the efforts of contemporary conservatives to retrieve “original intent” now that performance has eroded all other standards of rule. These are developmental problems, products of the path pursued. Their original resolution hovers over every aspect of the contemporary predicament.

To better understand the relationship between past and present, we need all the tools at our disposal. With the concept of path dependence, we can account for the development of an incongruous array of sub-governments in the modern American state,
and with the concept of creative syncretism, we can account for the responsiveness and malleability of governmental forms. These stories are not as incompatible as they seem, but each on its own is incomplete. A different but equally incongruous array of sub-governments defined the early American state. Those older forms were firmly “locked-in,” legally and socially, so much so that they were not dislodged until they became, under the pressure of mass insurgencies, wholly unenforceable. The development of the policy state connects these dots, clarifying in the process of displacing these older forms the distance travelled. This process has brought a switch from rules to guidelines, a growing politicization of rights, and a transformation of the government’s elaborate divisions of labor into a single arena of entrepreneurial problem-solving.