
AHR Exchange
A State Both Strong and Weak

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WILLIAM NOVAK'S ESSAY IS PROVOCATIVE in the best sense of the term: it challenges us to rethink what we thought we knew about the American state. It is bold in conception and execution, as Novak ranges across the entire span of U.S. history and brings to bear on his topic remarkable erudition and a penetrating intelligence. I can think of few other works on the state that are grounded in such a comprehensive knowledge of relevant literatures, not just the critical works of theory, history, and historical sociology but also the illuminating work of American pragmatism and jurisprudence. In developing a critique of interpretations that stress the American state's chronic weakness, Novak also asks profound questions about how it is we study states, and what measures we use to determine whether a state is strong or weak. This line of inquiry leads him to reconceptualize how states exercise their power, and to insist that the true power of the American state can be grasped only if we shift our attention from what sociologist Michael Mann has called the "despotic" power of governments to their "infrastructural" reach.

Novak not only refines our conceptual approach to the problematic of state power but also begins the historical-empirical task of identifying the institutions and practices through which the American state expanded its infrastructural reach across the past two centuries. He takes note in particular of the sprawling and intensely localistic structure of American government, a characteristic that enabled the state to make its presence felt in the most remote stretches of the nation; the dense systems of courts, clerks, and police forces that inserted state power into the daily lives of countless Americans in the most mundane but nevertheless influential ways; and the success of the American state in extending its authority by enlisting the private sector to achieve public aims.

To these examples of infrastructural power that Novak discusses, we might add others. I have in mind in particular the increase these last seventy-five years in the technologies of public knowledge that the American state has at its disposal and through which it has augmented its infrastructural influence. In addition to gathering census data, which it has been doing since 1790, the state enmeshes itself in the lives of its citizens through complex systems of taxation, social security, selective service, and affirmative action that both extract knowledge (and in the case of taxation, money) and shape identities. To take just one example: the ubiquitous ethno-racial classification system that affirmative action has spawned has profoundly organized how we think about American workplaces, universities, and, indeed, ourselves as a

nation.¹ To speak about technologies of state knowledge in this way brings to mind the work of James Scott and Michel Foucault, and indeed, Novak's essay might have benefited from a discussion of how Mann's theory of infrastructural power is similar to or different from Scott's notion of "seeing like a state" and Foucault's vision of individuals in modern societies caught in powerful force fields of public and private knowledge.² Nevertheless, for anyone interested in thinking in new ways about how the American state exercises its power, Novak has mapped a rich terrain for future study.

Novak has also infused his exploration with moral passion, as he seeks to awaken readers to the political danger of insisting that the United States is home to a weak state. How can anyone continue to indulge this myth in light of the power that the American state exercises in the world today? "Coming to terms with the historical rise of the mechanisms of legal, political, economic, corporate, and technological power," Novak argues, will lead to a long-overdue reckoning with American global hegemony and empire.

It may be, however, that Novak's concern with America's current status as world hegemon leads the essay somewhat astray. There is a tendency in the essay to treat America's surge toward global power as the working out of a perpetually aggrandizing and power-seeking state. I am not convinced that America's imperial status today should be interpreted as destiny already manifest in American state-building in the earliest years of the republic. If we accept Mann's contention that all successful modern states exercise infrastructural power, then we have to concede that the existence of infrastructural power alone cannot explain why one state has become so powerful in world affairs. And while the United States has possessed a militaristic and imperialist streak since its early years, apparent in its nineteenth-century expansion across the North American continent, the defeat of rival empires, and the seizing of land that had belonged to Native Americans and Mexico, this "gunfighter nation" was not the same as the "garrison state" that would emerge during the Cold War and that would enforce a Pax Americana on a sizable part of the world.³

To merge the gunfighter nation and garrison state into one story ignores, among other things, the historical vigor of anti-imperialist movements in the United States, movements that helped to ensure that America's formal empire in the early twentieth century would be far smaller than the empires of rival imperialist powers such as Great Britain, Germany, France, and Japan. And it overlooks, too, the deep and longstanding antipathy in the U.S. toward what formal empire requires: a large professional army. On the eve of the Spanish-American War (1898), the U.S. Army consisted of barely 25,000 troops. It ballooned into the millions during World War

¹ David Hollinger, *Post-Ethnic America: Beyond Multiculturalism* (New York, 1995), 19–50.

² James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, Conn., 1998); Michel Foucault, "Governmentality," in Graham Burchell, Colin Gordon, and Peter Miller, eds., *The Foucault Effect: Studies in Governmentality* (Chicago, 1991), 87–104. See also Patrick Joyce, "What Is the Social in Social History?" *Past and Present* 205 (November 2009): 175–210; and Matthew G. Hannah, *Governmentality and the Mastery of Territory in Nineteenth-Century America* (Cambridge, 2000).

³ "Gunfighter nation" is a term drawn from Richard Slotkin, *Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America* (New York, 1992). Harold D. Lasswell was among the first to use the term "garrison state." See Lasswell, "The Garrison State," *American Journal of Sociology* 46, no. 4 (January 1941): 455–468.

I, of course, but by 1923 it had been reduced to 130,000, the level at which it hovered until the eve of World War II. A fundamental change in the history of American attitudes toward a standing army came only at the end of World War II, when the outbreak of the Cold War impelled American policymakers to insist that the safety of the free world demanded that a sizable part of the military machine that the U.S. had built in World War II be maintained indefinitely. Thus did a large military become a permanent feature of American life, spanning the forty-three years of the Cold War (1946–1989) and, after what now looks like a 1990s interlude of relative peace, continuing with a War on Terror that has no foreseeable end.

My point is that any history of the American leviathan must recognize the changes that the Cold War, or what we might call the “era of permanent war,” ushered in. The post-1945 period made a prophet of Randolph Bourne, and of his declaration that “war is essentially the health of the State.”⁴ Permanent war triggered major flows of power to the central state, apparent not just in terms of the emergence of a military-industrial complex but also in terms of the growth of the American welfare state, a development that is usually credited to the New Deal alone. It also legitimated the rise of formidable apparatuses of national security and surveillance and the concomitant strengthening of the executive branch of the federal government. Theories about the “imperial presidency” and “unitary executive” are products of this era of permanent war.⁵ And while there are infrastructural elements to this growth in central state power, its driving force is what Mann would label despotic. Among the manifestations of this “despotism” are the hundreds of thousands of Americans who came under government surveillance during the Cold War and the War on Terror and the readiness of the state to violate civil liberties when it perceived national security to be at stake. A state of permanent war renders these violations far more dangerous to the life of the republic than earlier wars with clear beginnings and ends.

Taking note of the war-fed power of the American leviathan in the years after 1945 certainly underscores Novak’s point about how problematic it can be to adhere to the myth of the weak American state. But it also cautions us against advancing an argument for this state’s unremitting strength as a substitute for the older argument about its chronic weakness. The strength of the U.S. state today has resulted as much from specific historical events and circumstances such as war as from enduring structural characteristics and political ambitions that were always pushing this state toward strength. We should resist, then, the teleological tendency to read the current power of the U.S. state back to the beginnings of the American Republic.

IF WE TREAT THE PRE-1945 PERIOD of state-building on its own terms, the argument about the inherent strength of the American state becomes a more difficult one to make. Let me take two examples that Novak brings to our attention regarding struc-

⁴ Randolph S. Bourne, “The State,” in Carl Resek, ed., *War and the Intellectual: Essays by Randolph S. Bourne, 1915–1919* (New York, 1964), 69.

⁵ Arthur M. Schlesinger, *The Imperial Presidency* (Boston, 1973); John Yoo, *Crisis and Command: The History of Executive Power from George Washington to George W. Bush* (New York, 2009); Dana D. Nelson, *Bad for Democracy: How the Presidency Undermines the Power of the People* (Minneapolis, 2008).

tures that he sees as contributing to the strength of the American state but that I see as sources of both state strength and state weakness: first, the broad distribution of jurisdictional power, and second, the public/private character of many state formations in the United States. By broad distribution of power, Novak means the multiplicity of centers of public authority in the U.S. The figures that he marshals—for example, the nearly 90,000 distinct governmental units that make up the American state—are indeed stunning.

Novak is right to be impressed by the success of this system of “horizontal” rule in establishing its legitimacy across a large terrain, much of it thinly populated, and to take note of the importance of America’s system of law in overcoming the fragmentation that one would expect such a complex and overlapping set of jurisdictions to generate. Through law, the United States devised a system of rule that was on the one hand local. On the other hand, the countless local legal jurisdictions and courts were integrated into a chain of legal command that ran directly to a national court that, by the late nineteenth century, was recognized by virtually everyone in America as supreme. A quarter-century ago, Stephen Skowronek recognized the indispensability of a “state of courts” to containing the centrifugal forces in American society.⁶ Novak is correct to insist on the accuracy of this insight, and on the need to go beyond it by making the history of what he calls the legal or jural state central to a history of American political development.

In other respects, however, the jurisdictional sprawl of American governance, what we used to call federalism, generated weaknesses that were not so easily overcome. The power of the states endured far longer in American history than many have realized. Sometimes these states, within their jurisdictions, themselves became models of what strong governments could do—a subject Novak wrote about eloquently in his book *The People’s Welfare*.⁷ But at other times, these states frustrated the legislative ambitions of the central state. This was true, for example, of the New Deal period (1930s and 1940s), often thought to have constituted a revolution in governance that shifted power decisively from the states to the federal government. As a result, the federal government is finally thought to have implemented the kind of strong central-state policies that progressives had long dreamed about: regulating capital and labor markets, establishing an extensive welfare state, deepening the progressivity of tax policies, and deploying fiscal and monetary measures to manage the business cycle.

The New Deal state did indeed undertake important initiatives in each of these areas, making this moment one of the most successful in American history in terms of imposing public regulation on private market forces. But the careful work that historians and social scientists have done on these New Deal policies across the last generation reveals that, at almost every turn, the ambitions of central-state planners were frustrated by the power and the conservatism of individual states. Congress wrote Social Security and other welfare and relief legislation in such a way as to give individual states effective control over the amount of federal money that would be

⁶ Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge, 1982).

⁷ William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, N.C., 1996).

spent on welfare within their jurisdictions. With regard to other important New Deal-era legislation, such as the GI Bill of 1944, Congress insisted that critical decisions regarding who would be eligible for benefits and through which educational and commercial institutions the benefits would flow should also be left up to the individual states. One can interpret these policy decisions, of course, to be indicative of “state strength,” if by that we mean the enduring power of the individual states themselves. But I interpret the import of these policies differently. Quite a number of states, especially in the South, used the autonomy granted them by national welfare legislation to weaken central state policies, either by limiting the number of beneficiaries (through racial exclusions, for example) or by diverting substantial sums of federal monies meant for welfare programs into the pockets of party loyalists and supporters. In most periods, the American welfare state has been weaker than its West European counterparts, and the fragmentation of jurisdictional authority between the central government and the states has played a role in making it so.⁸

We might offer a similar critique of Novak’s analysis of the public-private character of state formations in the United States. His emphasis on the interpenetration of public and private spheres as a mode of American governance is a major contribution to our understanding of the American state and the mechanisms of its rule; it opens up a new and vital field of inquiry. But I am less convinced than Novak that explorations of public-private interpenetration will always point in the direction of state strength. He focuses on two dimensions of the public-private relationship. The first is the use by the state of private organizations to achieve its ends, as it did, for example, in regard to internal improvements. Throughout the nineteenth and early twentieth centuries, governments extended public infrastructure by giving corporations charters or grants of eminent domain to build bridges, canals, railroads, aqueducts, roads, and airports. The second dimension of the public-private relationship on which Novak concentrates is the state’s ability through law to penetrate deeply into and shape the character of civil society. As he rightly points out, the flourishing of capitalism in the United States depended at least in part on the willingness of the state to insert into the heart of civil society a detailed system of rules that governed the chartering of corporations, limited their legal liability, enforced conditions of “free” trade and “free” labor, and (in a strange but influential piece of legerdemain) extended to corporations the privileges and immunities given to individuals under the terms of the Fourteenth Amendment.

Paralleling these efforts in the economic realm were equally influential interventions by the state (and the individual states) into the private realm of marriage and family. Through these latter interventions, the states sought to ensure the triumph of monogamy and heterosexuality, ban interracial marriage, make men the masters of their households, and privilege those who lived in these male-dominated

⁸ Gary Gerstle, “The Resilient Power of the States across the Long Nineteenth Century,” in Lawrence Jacobs and Desmond King, eds., *The Unsustainable American State* (New York, 2009), 61–87; Anthony J. Badger, *The New Deal: The Depression Years, 1933–1940* (New York, 1989); Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in Twentieth-Century America* (Oxford, 2001); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York, 2005); Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* (Ithaca, N.Y., 1998); Kathleen Frydl, *The GI Bill* (Cambridge, 2009); Barry Karl, *The Uneasy State: The United States from 1915 to 1945* (Chicago, 1983); Grant McConnell, *Private Power and American Democracy* (New York, 1966).

households by granting them superior tax and welfare benefits. Historically, the state in America has been far more involved in the “private” realms of the economy and family than many apostles of American freedom—and in particular those who celebrate the true American as the individual who has freed himself from state regulation—have usually been willing to acknowledge.⁹ Novak is right to interpret these interventions into civil society as indicative of an important kind of state strength.

But there is another dimension of the private-public interpenetration that Novak neglects: the way in which it enabled private interests to use public power for their own purposes. If the corporations that built the transcontinental railroad were assisting the federal state in accomplishing a key infrastructural aim, they were also profiting handsomely from the terms offered them by the government. And even if we judge in this instance that public-private cooperation benefited both public and private parties, we must still reckon with the new era that the building of the transcontinental railroad inaugurated: one of rapid industrialization and urbanization during which private economic interests got fabulously wealthy through their close associations with the state. Any account of the state during the Gilded Age must come to terms with the degree to which private entities feasted legally and illegally on public resources. State and local governments issued lucrative contracts to build infrastructure, and the federal government gave away or sold for a pittance massive amounts of public land and the minerals that underlay them. Private corporations and their representatives penetrated the two mainstream parties and exerted extensive influence over these parties’ deliberations in state legislatures. Political machines eager to keep themselves in power issued contracts for urban construction to the highest bidders, regardless of whether they could do the job, and spun complex webs of bribes and kickbacks. In many cities, the stench from this public corruption in the late nineteenth and early twentieth centuries became unbearable. Foreign observers of American politics were frequently stunned by what Daniel Rodgers has called the “porosity” of the American political system to private influence.¹⁰

Other than the Civil War and industrialization itself, there was arguably no more important issue in late-nineteenth-century U.S. politics than the corruption of public institutions by the allied force of party machines and private economic interests. From the Mugwumps through the progressives and beyond (and including some of the pragmatists about whom Novak writes), political reformers invested their energies in movements dedicated to walling off the state from society or to compelling private interests to submit to public ends. But in the United States, this turned out to be a very hard thing to do. The radical nature of electioneering in America—the large numbers of elected officeholders serving in the tens of thousands of jurisdictional entities that Novak has called to our attention and the frequency with which they had to run for office—in combination with the absence of any provision in the Constitution for public financing of electoral campaigns made the institutions that took charge of elections, the political parties, chronically dependent on private fi-

⁹ Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York, 1998); Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, Mass., 2000); Kessler-Harris, *In Pursuit of Equity*; Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, N.J., 2009).

¹⁰ Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, Mass., 1998), 152–159.

nancing. And this dependence opened the sluice gates to both private money and private influence on state affairs, even during moments of apparent progressive triumph such as the New Deal.

The New Deal yielded important consequences in terms of empowering the state to enlarge its field of economic and welfare activity and to regulate private power in the public interest. But as Jacob Hacker, Jennifer Klein, and others have argued, such progressive victories almost always invigorated private power, too. Thus, for example, the passage of Social Security in 1935 ignited across the next thirty years a marked expansion in private pension plans, sold to the public as an indispensable supplement to what the state was providing. Hacker shows that this explosive growth in the “private welfare state” depended crucially on incentives the government issued to the providers and holders of pensions (in the form of tax breaks and insurance); in that respect, we can see the hand of Novak’s “strong state” in bringing this private welfare state into being. But Hacker also stresses that “the politics of private social benefits” was “far less visible to the broad public, far more favorable to the privileged, . . . and far more dominated by conservative political actors” than the politics of Social Security itself. In other words, even during a moment of progressive advance (in terms of the provision of public welfare), the U.S. state permitted private interests to burrow deep into the centers of public power.¹¹

Novak might respond that Hacker’s and Klein’s work is actually evidence of the argument he is trying to make about the strength of the American state, given how indispensable the structure of federal incentives was to the spread of the private welfare state. Fair enough. But if this emphasis on the unrelenting strength of the American state costs us an understanding of the vulnerability of this public institution to private influence, then we will have lost more than we will have gained. For all its strength, the American state has exhibited serious weakness: a chronic inability or unwillingness to corral the influence of private money and private power on American politics. Many of those who once imagined the American state as weak were trying to make sense of this institution’s reluctance or inability to discipline markets and corporations in the public interest. To ignore their insights is to imperil our ability to understand key aspects of the U.S. state, and many other issues in American history, too.

¹¹ Jacob Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States* (New York, 2002), xiii; Jennifer Klein, *For All These Rights: Business, Labor, and the Shaping of America’s Public-Private Welfare State* (Princeton, N.J., 2003).

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