

Politics, Law, and the American State

Fall 2010

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An investigation of the political and legal development of the American state in the contemporary era. Topics include the interplay of the president, courts, and Congress; the role of government in regulating American society and promoting economic security; and the challenges to American governance posed by rising inequality and global economic integration.

In contemporary legal and political analysis, “state-building” is a narrative of the distant past, when the modern administrative state was forged out of the institutional chaos of the nineteenth-century proto-state of courts and parties. Yet in the decades after this institutional big bang, the American state just kept on expanding—and evolving—its form and purposes altering, its balance of players shifting, its effects on American society changing. The one constant in this process has been the dynamic interplay of the branches in a context marked by persistently contested and ambiguous public authority. The American state suffers from—and grows through the resolution (or evasion) of—a never-ending crisis of legitimacy.

This course is about the contemporary American state: its political and legal wellsprings, its constituent and conflicting parts, and its effects on the lives of those within the reach of its authority. It is motivated by three observations. The first is that state-building is an ongoing process. “American political development” did not end with the New Deal, as many texts on American political development do. To study politics and law is to study the shifting ways in which authority is exercised to alter the contours of American society. While these shifts are hardly even over time—major changes do indeed occur in clusters—the contemporary American state is not a fixed legacy of the past. Development is the rule, not the exception, and understanding how and why development unfolds as it does is the central goal of this course.

The second observation is that American state-building is distinctive in its constitutional, institutional, and legal foundations. Rooted in the separation of powers, American state-building features a series of paradoxical combinations: a commitment to popular sovereignty alongside declining responsiveness to popular input in key areas of American politics, a fear of state power that nonetheless coexists with breathtakingly expansive and intrusive exercises of state power, and a commitment to constitutional fidelity that coincides with rapid changes in institutional and legal practice. To see these distinctive features requires casting our eyes abroad. Comparison across time and space is essential to seeing American state-building.

The final observation is that all this matters immensely for the quality of life within the United States. The American state may be hidden and contested, but it is certainly not passive or immaterial. To see its influence requires looking at what American government actually does, and asking why it does what it does the way it does. This is what we will do in this course.

Course Structure

The course is divided into four parts. After an introductory session, we examine a series of foundational arguments concerning the study of political development and the processes of American state-building. Then we turn to excavation of the three major branches of national government: the presidency, the courts, and Congress. The third part of the course looks at the varied faces of the American state, from the carceral state to the welfare state. Finally, we turn to two great questions of contemporary American governance: the relationship between rising economic inequality and U.S. politics and policy, and the ability of our political institutions to grapple with the challenges it faces in a new century.

The requirements for this course are as follows: first, to read all the required reading for each week and contribute to seminar discussion; second, to write a research paper, substantial literature review, or dissertation proposal related to the themes of the course, due at the end of the semester; and, finally, in any two of the first seven weeks of the course, to write a short (no more than 1,000 words) reaction piece on the readings.

In terms of grading, class participation will represent one-third of the final grade, the final paper half, and each paper approximately 8 percent.

Readings

All readings not available online are in the course packet, available at Tyco (262 Elm Street, (203) 562-9723).

Week 1: Introduction

Week 2: Institutionalism and its Discontents

Paul Pierson and Theda Skocpol, "Historical Institutionalism in Contemporary Political Science." *Political Science: State of the Discipline* (Norton, 2002).

Paul Pierson, "Path Dependence and the Study of Politics," *American Political Science Review* 2000.

Herman Schwartz, "Down the Wrong Path," Unpublished manuscript.
<http://people.virginia.edu/~hms2f/Path.pdf>

Week 2: The Marginalization of Policy Studies

Jacob S. Hacker and Paul Pierson, "The Case for Policy-Focused Political Analysis," 2009.

John Kingdon, *Agendas, Alternatives, and Public Policies*, selections.

Frank Baumgartner and Bryan Jones, *Agendas and Instability in American Politics*, selections.

James Farr, Jacob Hacker, and Nicole Kazee, “The Policy Scientist of Democracy: The Discipline of Harold Lasswell,” *American Political Science Review*, 2006.

Week 3: Roots of the Activist State

Stephen Skowronek, *Building a New American State*, selections.

Daniel Carpenter, *The Forging of Bureaucratic Autonomy*, selections.

Paul Pierson, “The Rise and Reconfiguration of Activist Government,” in *The Transformation of American Politics*.

Brian Balogh, *A Government Out of Sight*, selections.

Week 4: The Presidency

Stephen Skowronek, *The Politics Presidents Make*, selections.

Daniel Galvin, *Presidential Party Building*, selections.

Steven G. Calabresi & Saikrishna B. Prakash, *The President’s Power to Execute the Laws*, 104 YALE L.J. 541 (1994).

Cass Sunstein, “The Myth of the Unitary Executive,” *Administrative Law Journal*, 1992.

Week 4: Courts

Keith Whittington, *The Political Foundations of Judicial Supremacy*, 2007, selections.

Robert Kagan, “Adversarial Legalism and American Government,” *Journal of Policy Analysis and Management*, 1991.

R. Shep Melnick, *Between the Lines*, 1994, selections.

Week 6: Congress

David Mayhew, *America’s Congress*, 2001.

Eric Schickler, *Disjointed Pluralism*, 2002, selections.

Frances Lee, “Representation and Public Policy: The Consequences of Senate Apportionment for the Geographic Distribution of Federal Funds,” *Journal of Politics*, 1998.

Week 7: The Welfare State

Jacob S. Hacker, *The Divided Welfare State*, 2002, selections.

Michele Landis Dauber, The Sympathetic State, 23 *Law and History Review* 387 (2005).

Health care reading (TBD)

Week 8: The Regulatory State

James Q. Wilson, "The Politics of Regulation," in Wilson, ed., *The Politics of Regulation* (New York: Basic Books), 1980, pp. 357-94

David Vogel, "The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation," *British Journal of Political Science*, Vol. 33, 2003, pp. 557-80.

Elizabeth Sanders, "The Regulatory Surge of the 1970s in Historical Perspective," in Elizabeth Bailey, ed., Public Regulation, 117-150

Week 9: The Civic State

Suzanne Mettler, *Soldiers to Citizens: The G.I. Bill and the Making of the Greatest Generation*, 2005, selections.

Theda Skocpol, *Diminished Democracy: From Membership to Management in American Civic Life*, 2004.

Aaron L. Friedberg, "Why Didn't the United States Become a Garrison State?" *International Security* 16, #4 (Spr. 1992), 109-42

Week 10: The Carceral State

Marie Gottschalk, *The Prison and the Gallows*, 2006, selections.

Jeff Manza and Chris Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*, 2006, selections.

Jonathan Simon, *Governing Through Crime*, 2007, selections.

Week 11: The Fiscal State

Andrea Louise Campbell and Kimberly Morgan, "Financing the Welfare State: Elite Politics and the Decline of the Social Insurance Model in America," *Studies in American Political Development* 19, 2 (Fall 2005): 173-95.

Julian Zelizer, *Taxing America*, 1998, selections.

Paul Pierson, “The Deficit and the Politics of Domestic Reform,” in *The Social Divide*, 1998.

Week 12: Economic Inequality and American Democracy

Jacob S. Hacker and Paul Pierson, *Winner-Take-All Politics*, 2010.

Larry Bartels, *Unequal Democracy*, 2008, selections.

Week 13: Can the Government Govern?

Eric Patashnik, *Reforms at Risk: What Happens After Major Policy Changes are Enacted*, 2008.

Terry M. Moe, “The Politics of Bureaucratic Structure,” in *Can the Government Govern*, 1989.

James Fallows, “How America Can Rise Again,” *Atlantic Monthly*, Jan/Feb 2010.

David Brady, et al. “The consequences of economic globalization for affluent democracies,” *Annual Review of Sociology*, 2007.