
Review

The policy state: An American predicament

Karen Orren and Stephen Skowronek

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Imagine that our political concepts had become detached from reality, that our words no longer corresponded to what we thought they meant. We would be left with a tenuous grasp on the world. Yet short of a jolt, we may go on like that for quite some time. Instead of disclosing reality, our vocabulary would conceal it for us, lulling us into a false sense of familiarity.

The Policy State describes a sea change in American politics taking place before our eyes, yet one we do not perceive because it is disguised under headings that appear familiar. Karen Orren and Stephen Skowronek are not concerned with specific policies, but with policy as an instrument of government. They understand policy as an intentional and programmatic commitment to a designated goal or course of action. Policy is how the state adapts itself to changing circumstances, taking on new problems and responding to the demands of shifting constituencies.

Orren and Skowronek's central claim is that, beginning in the second half of the nineteenth century and accelerating through the twentieth, policy has gone from being *an* instrument of government to being synonymous with government as a whole. In doing so, it has displaced two other instruments of government that were originally meant to contain it: constitutional rights and structure. Rights are claims that one person may make on others, enforceable in a court of law (p. 29). Structure designates, roughly, the distribution of prerogatives and responsibilities among offices and the patterns of answerability between them (p. 32). Freed from its shackles, policy has become the ruling motive in American politics, ushering a qualitative change in the nature of government.

There are two reasons why this profound shift may have gone unnoticed. The first is that the social sciences do not usually look at policy as a mode of state intervention, but at specific policies. They thus fail to see the forest for the trees. An important contribution of the book is to invite us to take a more holistic look.

The growing significance of policy is masked, secondly, by a political discourse that still speaks reverentially of constitutional rights and structure. Orren and



Skowronek argue, however, that this continuity is only superficial, and that the meaning of the terms has in fact changed.

While rights were once ‘trumps,’ particularly weighty reasons that override other reasons, they have gradually morphed into ‘chips’, considerations that can be weighed against others, leaving legal outcomes undetermined (p. 41). Looking at a range of supreme court decisions, the authors show that whether one has an enforceable right is increasingly dependent on the policies of administrative agencies and courts.

One of the cases meant to illustrate this claim is *Town of Castle Rock vs. Gonzales*. The plaintiff, Jessica Gonzales, sued the town and individual police officers for failing to enforce a restraining order against her husband even after she had placed multiple calls informing them that he had taken their three daughters away. The daughters were later found in the back of the husband’s truck, murdered.

Gonzales claimed that she was denied her rights of due process under a statute that had been expressly passed to overcome ‘the slowness and reluctance of police to intervene in cases of domestic violence’ (p. 44). The statute specified that police ‘shall use every reasonable means’ to enforce restraining orders. The court ruled, however, that ‘shall’ was ‘mandatory in some cases but not in others, and therefore insufficiently forceful on its own to overcome the established custom of police discretion’ (p. 46). It was up to police officers to decide whether to enforce the restraining order, weighing Gonzales’ claim against other demands on their time.

Orren and Skowronek go to great lengths to show that this controversial case is not an isolated incident, but indicative of a larger pattern whereby rights have effectively become a matter of administrative and judiciary policy. They argue that the same goes for structure. The separation of government into multiple specialized bodies checking one another was meant to contain the state’s tendency to expand its reach. The authors claim, however, that the ‘the constitution has come to operate over time less as containment structure than as an opportunity structure’(p. 17), with incumbents in every office acting as policy entrepreneurs.

This is perhaps most visible in the large bureaucratic agencies spawned by policy. As they expanded over time, these agencies opened themselves up to input from other branches of government, inviting them to register their policy preferences through various consultative practices. What resulted was a form of cooptation into the logic of policy, reducing the differences between types of governmental bodies, and dispersing the locus of authority to a nebulous network of actors. Rather than being contained by other branches of government, administrative agencies effectively drew them into the fray of policy.

In an evocative phrase, Orren and Skowronek describe the rise of the policy state as government’s ‘historical awakening to choice’ (p. 13). This might seem like a term of praise, and indeed it partially is. If there was a time when rights and structure were firmly entrenched and seemingly secure, it was also a time when large segments of the population were excluded from full citizenship. Policy was



the instrument through which the state became more inclusive and fair, responding to grievances and enlarging its compass to address pressing social problems. The rise of the policy state was concomitant with the rise of democracy. Turning back to the olden days would be both impossible and undesirable.

But the current state of affairs, they insist, should also leave us circumspect. In the policy state, achievements are provisional, for they could be upended at the next election. Protections are unreliable, for they are open to bargaining and negotiation. Accountability is tenuous, because government is in a state of perpetual rearrangement. More worryingly, authority is both dispersed, since public bodies are involved in each other's business, and homogenized, since everyone seems to be in the business of promoting policy. This leaves us with a state that is both volatile and open to gridlock.

The problem with the policy state as we know it today, then, is that it undermines the very promise on which it was built: that of offering more responsive, adaptive, and accountable government. It is the story of this gradual entrapment that Orren and Skowronek relate in their slim, but rich book. It is a gripping narrative, one that makes a familiar landscape look strange, opening up new avenues for reflection along methodological, conceptual, and normative lines.

Scholars of bureaucracy will be familiar with the idea that public policy is nothing but the sum-total of the actions of bureaucrats. This dictum, which has proved useful in spurring empirical research on policy implementation, betrays a certain impatience at drawing fine distinctions between policy, the law, and how officials behave. Ultimately, the state is nothing but what it does. Orren and Skowronek note that this way of thinking about the state has a long history, one that dates back to the pragmatists who saw the state as 'officials-in-action.' They claim, however, that one consequence of seeing the state as such is to render the very distinction they seek to bring out – between policy on the one hand, and rights and structure on the other – invisible. As someone whose research is indebted to the 'officials-in-action' approach, I found the cautionary note valuable, a reminder not to approach the state with a methodological lens that prejudices its nature.

The Policy State is a work in American political development. It attempts to reconstruct the logic underpinning a sequence of historical events. As for any such endeavor, it is not always clear which parts of the story it tells are contingent, and which are not. It is no fault of the authors, of course, that history did not run its course multiple times over for the sake of hypothesis testing. Still, we may be left wondering just how tight the connection between the policy state and democracy really is. Is the growth of policy a necessary correlate of greater social and political inclusiveness? Or are there other trajectories of political development in which inclusive democracies do not beget a policy state? Or to put the matter differently: to what extent is the rise of the policy state a distinctively American story?

Political theorists, finally, may be tempted to ask more bluntly than the authors do why it is, precisely, that we ought to be troubled by the rise of the policy state.



The authors mention gridlock and volatility. But how much of this owes to policy as an instrument of government, and how much to other facets of the political landscape within which policy must find its course? And is the culprit the policy state itself, or the fact that we are torn between the policy state and the remnants of a containment structure?

We may also wonder who stands to be most concerned by the erosion of rights and structure. Liberals may justifiably be alarmed, but I suspect that some democrats might welcome the opening of the state to popular choice, just as the Progressives before them had. I suppose that some realists may salute the change too, for it would reveal politics for what they thought it was all along: a power play, the so-called ‘containment structure’ serving primarily to exclude segments of the population from having a seat at the table. Seen in that light, the policy state would be politics as usual, only with less mystification.

Orren and Skowronek suggest that if we were to resign ourselves to the policy state, we would at the very least have to rewrite textbooks to reflect the waning influence of the constitution. That might be right, but would it be such a bad thing? I ask these questions genuinely, not because I have answers to them, but because they are the questions we would be left with if *The Policy State* did indeed capture our current predicament.

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