

Racialized Anti-Statism and the Failure of the American State

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Abstract: How well do we understand the political moment in which we find ourselves in the wake of the Trump presidency? The United States has long failed to keep up with its democratic peers on a wide range of social outcomes but the struggle to keep a pandemic at bay, coupled with increases in social violence and new uprisings over state violence have exposed the failures of the American state in a stark manner. While research on political attitudes continues to offer crucial insights into what Americans want from government and how race, class, and gender are formative dimensions of public opinion, we know considerably less about how these attitudes intersect with the highly fragmented and decentralized nature of U.S. political institutions. In this essay, I offer a framework for understanding our current moment through the lens of racialized anti-statism and state failure. I focus on the intersection of two reinforcing and overlapping features of the U.S. political system: the highly fragmented, veto-laden structure of American politics and the persistence of anti-egalitarian movements. By situating our analysis at this intersection, we observe the convergence of racial and economic power in an anti-statist alliance that undermines American state-building, even when large majorities of Americans favor it.

Keywords: Racial inequality, institutional fragmentation, anti-egalitarianism, white supremacy, veto points.

The COVID-19 pandemic, the protests over police killings of African Americans, and the uptick in urban violence have laid bare the multiple and overlapping failures of the American state. Though the Trump Administration's response to these crises was exceptionally poor, the failures do not originate with him, will not end when he leaves

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office, and go well beyond the current context. Perhaps the most one can say about the Trump presidency is that it has drawn into sharp relief what has long been true of the American state: highly uneven, racially disparate, and insufficient investment in the people, coupled with high levels of social and state violence. If we take the measure of a state's relative success to be the "well-being and flourishing of the people it governs" (Evans and Spencer 2017, 380), the United States is failing in relation to its wealthy democratic peers on almost every important outcome, including health care, education, income security, public safety, and limits on state violence (Avendano and Kawachi 2014; DeSilver 2017; Hacker and Pierson 2010). And African Americans experience the worst of all of these outcomes, sometimes by staggering margins. Two decades into the 21st century, American state-building has produced an anemic system of social and economic investment, tethered to a muscular criminal punishment apparatus, with relentless racial disparities. It is not hyperbole to say that, compared to our highly developed democratic peers, the U.S. is a failing state.

How well do we understand the political roots of this failure? We know a fair amount about the persistence of white racial resentment, the outsized influence of corporate power, and the impact of both on social policy (Gilens 1999; Hacker 2002; Hutchings and Valentino 2004). We know less about how the fundamental structural features of American politics, e.g., bicameralism, federalism, separation of powers, the Senate, intersect with racial and economic power to hobble American state-building. Institutional arrangements have profound consequences for political outcomes (e.g., Downs 1957; Olson 1965; Persson and Tabellini 2003; Riker 1964; Tsebelis 1995), yet in the field of American politics, we too often take these institutions for granted, treat them as static, or assume particular outcomes are inevitable.

In this essay, I offer a framework for understanding our current moment that focuses on the intersection of two features of the U.S. political system that are dynamic and reinforcing: the highly fragmented, veto-laden structure of American politics and the persistence of anti-egalitarian orders. Political scientists have taken ample note of this intersection (King and Smith 2005; Michener 2018; Pierson 2019; Riker 1964; Smith 1997), but I am not sure we have systematically integrated the *scope* of fragmentation, its *malleability*, or the role of both *racial and economic anti-egalitarian political orders* in maintaining them.

Situating our analysis at the intersection of institutions and anti-egalitarianism reveals three important and overlooked dimensions of the American state. First, anti-egalitarians have helped to *construct and*

maintain political fragmentation, which is then used to dilute, disrupt, or downright block public policy aimed at social and economic progress. Though institutional structures such as federalism and bicameralism are in some sense, immutable, they are not static. Different aspects of fragmentation have been more or less prominent and important at different periods of American history. Some of this is a function of exogenous forces such as economic depressions or wars, which have resulted in expanded congressional and presidential powers. But it is also the outcome of deliberate efforts to cultivate specific institutional levers at particular moments in time, depending on where advocates of the racial and/or economic status quo believe they are most likely to find success in blocking state-builders.

Second, these efforts are aided by a powerful *anti-statism*—that is, opposition to national, centralized authority—which is as old as the Republic and also a function of political fragmentation. Debates about where power should reside have always been entangled with the major political conflicts of the day, precisely because the geography of political power has a direct effect on who wins and who loses. By the second half of the 20th century, proponents of the race and economic status quo begun to converge on race-neutral and constitutionally plausible objections to federal intervention in social, racial, and economic hierarchies (Smith 1997). I refer to this as *racialized anti-statism* (see also Hosang and Lowndes 2019) and, while it has deep roots in American history, it becomes a mainstream political position in the wake of the civil rights movement, masking the influence of both private economic power and white supremacy.

Finally, this approach illustrates how the intersection of veto points and anti-egalitarianism brings about the deeply racialized *state failure* that we see in the contemporary persistence of ill-health, societal and state violence, environmental hazards, rising inequality, and economic stagnation.¹ While white racial attitudes are a cornerstone of this process, taking the structural features of American politics into account helps us to see that this failure occurs *even when large majorities of Americans*—including a majority of whites—support the expansion of social policies for long periods of time. This is particularly important because fragmentation is largely counter-majoritarian, allowing anti-egalitarian orders to prevail more often than they would under different institutional arrangements (Huber, Ragin, and Stephens 1993). As David Wilson (2020) notes, our understandings of racial attitudes often fall back on the binary—actions and attitudes are either biased or they are not. But,

while opposition to state-building policies certainly has deep roots in racial resentments, our focus on this feature of political attitudes has obscured the ways in which *private* power has long exercised outsized influence in public policy as well, and has helped to construct a plausible, *prima facie* race-neutral narrative against national state-building policies. Racialized state failure is the convergence of fragmentation and *both* racial and economic anti-egalitarian orders.

I begin with a discussion of the institutional, constitutionally rooted veto points that form the core building blocks of political activity in the United States. I illustrate how powerful economic interests have utilized fragmentation to undermine fundamental state-building activities. I then turn to the role of white supremacy in drawing on various institutional levers in order to resist power-sharing with African Americans and forms of state-building that could benefit non-white groups. Here, I take a brief historical interlude to illustrate how anti-statist rhetoric has been deliberately cultivated and adapted over time by both powerful economic and racial interests, and how this rhetoric, which is embraced by both liberals and conservatives, reinforces fragmented institutions. Finally, I provide several illustrations of the intersection of racialized anti-statism and political fragmentation, revealing how defenders of racial and economic hierarchy have fought off state-building, helping to bring us to this moment in which the failures of the American state have been laid so bare. I conclude with some suggestions for how this understanding of our politics can provide a roadmap to a more productive and equitable state-building future.

FRAGMENTATION'S POLITICAL UTILITY FOR ECONOMIC ELITES

A substantial body of work in American politics recognizes that the fragmentation of U.S. political institutions is crucial to explaining the limited production of comprehensive, social, and economic policy reform in the public interest and the persistence of racial inequality (Hacker 2002; King and Lieberman 2020; Riker 1964; Schattschneider 1975; Soskice 2010; Stepan and Linz 2011). These works highlight the importance of institutional features of political systems as key to understanding social outcomes, particularly “the degree to which procedural rules create a status-quo bias” (Hacker 2004, 247; see also Immergut 1992; Krehbiel 1998; Tsebelis 1995).

Still, I agree with Stepan and Linz (2011) that we have not fully and systematically accounted for fragmentation as *veto* opportunities, or the full scope of veto opportunities. The more parties “whose agreement is required for a change in the status quo,” the more opportunities there are for small groups’ interests to stand in the way (Tsebelis, 1995, 593). The United States is exceptional among developed democracies in the number of constitutional structures that create clear veto opportunities including, federalism, presidentialism, bicameralism, judicial review, a rigid constitutional amendment process, extreme malapportionment in the Senate, and the uniquely undemocratic Electoral College (Miller 2016; Stepan and Linz 2011). A higher number of institutional veto points consistently correspond to higher levels of social inequality (Brooks and Manza 2008; Huber, Ragin and Stephens 1993; Persson and Tabellini 2003).

Several important points follow. First, multiple veto points make comprehensive state-building difficult. By comprehensive state building, I refer to the development of clear, legitimate governmental authority that can “deliver collective goods that will expand the capabilities of their citizens” (Evans and Spencer 2017, 381). This includes protection from exogenous forces that threaten people’s lives and livelihood—such as illness, recession, crime, environmental risk—as well as from the violence exercised by the state itself (Rotberg 2004). The fundamental challenges to state-building in the United States are a feature of ordinary politics, independent of racial, ethnic, or other forms of ascriptive bias. In fact, one could argue that the biggest winners in this system have been corporate and individual economic power (Hacker and Pierson 2010). Of course, economic power is highly concentrated among the white population, and whites benefit psychologically from white racial hierarchy (see Olson 2008). But the material conditions experienced by a large number of white Americans are still substantially below those of whites in other developed, democratic nations.

Second, and relatedly, the fact that policy reform is difficult creates ample opportunity for the use of, what Bachrach and Baratz (1962, 948) called, “the second face of power:”

Of course, power is exercised when A participates in the making of decisions that affect B. But power is also exercised when A devotes energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A.

When powerful political actors representing narrow, as opposed to collective interests, are able to craft political agendas behind the scenes, kill off reform policies before they see the light of day, or create seemingly neutral anti-statist political narratives, state-building is hampered and policies are less likely to reflect the preferences of majorities. Political systems with myriad veto points present fertile ground for use of this second face of power.

A few illustrations will help illuminate fragmentation's effects. The American labor movement, for example, enjoyed far fewer successes than its counterparts in Britain, despite the two country's similar political economies and electoral systems (Soskice 2010). Part of what inhibited labor organizers was the fact that powerful business actors had long been entrenched in the extraordinarily decentralized multitude of state and local governments where they had exercised considerable influence throughout the 19th and early 20th centuries. During the height of the labor movement, these actors exploited the decentralized political system, exerting enormous pressure on lawmakers to support union-busting tactics. Overcoming this required a broad scope of coercive power that only the national government could provide, but presidentialism and bicameralism essentially required *super-majorities* in order to succeed (Soskice 2010).

Another example is the Family Medical Leave Act (FMLA). Table 1 illustrates the legislative history of the bill, as well as the veto points where it was blocked. Advocates worked for two decades on a bill to mandate parental and medical leave, generated sustained majority support for the proposal, and in 1985, Senator Christopher Dodd (D-CT) introduced the bill. A group of organized, highly-resourced, and influential business interests, however, notably the U.S. Chamber of Commerce and the National Federation of Independent Businesses (Gottschalk 2000) worked hard to keep the bill from being considered, and they were successful as long as Republicans retained control of the Senate. Once Democrats gained control of both chambers of Congress, the FMLA passed twice (1990 and 1992), but was vetoed by President H.W. Bush. In the first instance, the House failed to override the President's veto despite 54% of the House voting to do so (override requires two-thirds of each chamber of Congress). In 1992, the Senate voted to override the President's veto by a vote of 68–31, a vote that included 14 Republicans.² The House of Representatives, however, failed to reach the two-thirds threshold yet again, but a full 60.4% of the House of Representatives (219 Democrats and 38 Republicans)

Table 1. FMLA, policy development, 1985–93.

	Congressional action	Outcome	Veto point	Public opinion ^a
1985	Introduced by Sen. Christopher Dodd (D-CT)	No hearings or mark-up	Senate	1989 <i>Parents Magazine</i> , 89% support leave for new working mothers, 57% for new working fathers
1990	Introduced in both chambers	Passage in both chambers; vetoed by President	President and House of Representatives (54.0% to override veto)	1990 CBS poll, which included mention of the increase costs to businesses, found 66% still in favor of FMLA
1992	Introduced in both chambers	Passage in both chambers; vetoed by President	President and House of Representatives (60.2% vote to override veto)	
1993	Introduced in both chambers	Passage in Congress and signed by President Clinton	None—unified government	79% of the public supported the bill's passage

^a <https://ropercenter.cornell.edu/mandating-better-work-life-balance-fmla-and-public-opinion>.

voted to do so.³ Finally, in 1993, with unified Democratic governance, the FMLA passed, with 79% of the public agreeing that it was a step in the right direction.

Let us be clear about what happened here. A supermajority of the electorate supported a very modest social policy bill—one that is far less comprehensive than family leave policies in other high-income countries—yet it was a full seven years before the bill became law and only then because one party managed to capture all three legislative venues, a configuration of government that occurred only 38% of the time over the past 75 years (and only 25% of the time since 1980). An economic-political minority exploited the fragmentation of national government—presidentialism, bicameralism, and the supermajority requirement for veto overrides—to block the policy, and only a relatively uncommon government configuration salvaged it (see also Gottschalk 2000; Hacker 2004).⁴

As noted above, however, the overt veto of social policies is just one way that power operates. Fragmentation provides rich terrain for the “second

face of power,” particularly in the form of federalism. As Alexander Hertel-Fernandez (2019) illustrates, over several decades, the American Legislative Exchange Council, Americans for Prosperity, and the State Policy Network formed an extraordinarily successful troika of conservative policy organizations that tapped into the fragmentation of federalism to promote their interests. They primarily worked behind the scenes to fend off regulatory policies, and develop pro-business rhetoric and legislative support, despite popular support for such regulations (see also Grumbach 2019). Hertel-Fernandez (2019) traces the learning and eventual success of these organizations, in part, to the endless supply of state elections, where many candidates are inexperienced and therefore provide fertile ground for shaping their policy preferences and the political capacity of legislatures. It is worth quoting Hertel-Fernandez at length here (2019, 11, emphasis added):

Focusing on the states also meant that conservative activists and business leaders could get a second shot at promoting policy ideas that failed to stick at the federal level, *or that were complete nonstarters to begin with*. The US states thus offered *fifty different alternative arenas* for the troika to pursue their objectives. . . . What is more, in recent times, these right-wing policy activists and corporate representatives could use legislative control of state government to *stymie the progressive policies* passed by liberal cities in those red states—for instance, blocking efforts by urban areas to raise minimum wage or enact paid family and sick leave programs.

In other words, despite the fact that the policy preferences of powerful economic interests *are not particularly popular*, the vast and decentralized jurisdictional landscape provided ample opportunities for them to learn the most effective—and least visible—strategies for influencing policy in their favor (see also Collingwood, El-Khatib, and Gonzalez O’Brien 2019). Advocates of *expanding* popular social policies have sometimes sought to exploit these opportunities as well, Hertel-Fernandez notes but, in his assessment, these groups have been far less successful because they focused more on national politics and neglected state venues, and identified fewer long-term funders for organizational infrastructure.

There is another reason, however, why powerful economic interests find more success at the state level than state-builders and it has substantial implications for racial hierarchy as well: federalism in the United States is not economically or racially neutral.⁵ State governments are weak venues for state-building and social risk reduction policies for two reasons. Unlike the national government, states do not have macro-

economic policy authority, substantial borrowing capacity, the ability to carry substantial debt, or the expansive coercive power to command compliance. As Desmond King notes (2017), though the national government's enforcement of civil rights and racial equality is weak and often fraught with contestation and paralysis, "forceful federalism"—the deliberate and concerted work by the national government—is nonetheless the only mechanism through which real changes in material racial equality have had any success. One could make the same claim for state-building more generally. Absent aggressive action by the national government to tackle social and economic risks, negative outcomes, including ill health, economic ruin, widespread poverty, abound. Recent work on the strategic use of fines by local police in response to fiscal strain powerfully illustrates a particularly pernicious and problematic local response to the economic constraint of local governments (Harris, Ash, and Fagan 2020).

In addition, the simple fact of open borders between states means that social risks travel. Environmental hazards, viruses, guns, global capital, and racists groups, for example, cannot be contained by state policies without cooperation from other states—precisely the reason advocates seek national level standards.⁶ While powerful economic interests would surely prefer regulatory consistency across the states, preference intense actors can enjoy both nationally-enforced regulatory floors, while also gaining specific advantages, such as blocking minimum wage increases or collective bargaining, in individual states (Hertel-Fernandez 2019). Such unevenness for state-builders, however, is more problematic because it lowers the floor for risk protections, can induce others to do the same, and, by definition, does not build (national) state capacity.

It is worth noting briefly that federalism is also a major obstacle to serious criminal justice reform. The simple fact of roughly 18,000 jurisdictionally distinct law enforcement agencies, several thousand prosecutors' offices, and 51 prison systems' biases the system in favor of the status quo. Substantial nationally driven changes can happen, as evidenced by the overhaul of the nation's horrific prison systems in the 1970s (Feeley and Rubin, 2011; Schoenfeld 2018). But, as we will see in the next section, such political moments are particularly fragile when the racial hierarchy is at stake.

In sum, institutional fragmentation has a status quo bias and private economic interests often benefit (Huber, Ragin, and Stephens 1993) because they seek to block policy as much as create it and because fragmentation provides ample opportunities to defeat redistributive policies or keep them off of political agendas in the first place.

FRAGMENTATION AND WHITE SUPREMACY

In the previous section, we observed some of the ways in which comprehensive social policy protections can be stymied in fragmented political landscapes. But fragmentation is further exacerbated by a long, deep, and powerful racial anti-egalitarian political order. That is, fragmentation is not only extreme in the United States, there is a sustained and preference-intense set of actors that regularly exploit the available veto points to resist change to the status quo if it might increase power-sharing with, and/or economic opportunity, for black Americans. In fact, such orders often occupy the very institutional roles that allow them to further buttress fragmentation and its effects (Mickey 2015).

The political utility of fragmentation for white supremacists is perhaps most visible in the promulgation of states' rights as a mechanism for opposing black equality. As David Brian Robertson (2018) notes, federalism offers a "double battleground," where the question of *what* government should do to address social problems is often supplanted by arguments over *which* level of government should do it. By the late 1960s, it became increasingly clear that proponents of white racial hierarchy were going to have to find alternatives to the overtly racist language that they had deployed for over a century in service of white supremacy (see Finkelman 2019 on defenses of slavery).

In a process akin to what Vesla Weaver (2007) has called "frontlash," white supremacists sought rhetorical alternatives that could stave off further efforts by the federal government to dismantle racial hierarchies. They did not have to look far. By the 1960s, robust political and legal arguments about constitutional constraints on national power and the constitutional rights of states were well-established. This ideological narrative had decades of success (e.g., fending off trust regulation, opposing national intervention in local racial hierarchies) and they help to construct the obstruction/veto of national policies as an admirable and essential quality of American constitutionalism.

Historical Interlude: The Roots of Racialized Anti-Statism

In order to understand why this narrative was so readily available, and what happens next, we need a slight historical detour. As it turns out, the conventional wisdom about the constitution's origins and purposes—that the Framers sought to construct a limited government with

substantial powers reserved to the states—is, put simply, largely incorrect. Rather, this narrative itself is a function of deliberate political strategy, one that is not entirely racial in its origins. It emerges first in the effort to rescue the ratification of the constitution from the critiques of the Anti-Federalists; and only later, in efforts to promulgate and maintain economic and racial hierarchy (Feeley and Rubin 2011; Klarman 2016; Robertson 2018).

Tulis and Mellow (2018) argue persuasively that in order to defend the constitution from the charge by the Anti-Federalists that the new constitution was a “constitutional coup” (Klarman 2016)—a charge, it is worth noting, that was largely accurate—the Federalists repurposed the Anti-Federalists’ language to highlight enumerated powers, federalism, and other features of the new document. In other words, advocates of the new constitution sought to undercut the Anti-Federalists’ claims that the constitutional convention had produced a radically new form of government and that this government would severely curtail state power. By drawing attention to the inherent limitations on national power in a federal system, advocates of the new constitution sought to deflect concerns about the expansive new federal powers they had deliberately created. The Federalists not only won ratification, their embrace Anti-Federalist rhetoric was so successful that even contemporary Supreme Court justices can mistake the Federalists’ defense of a strong national government for critiques of it.⁷

It did not take long for the limited government/state sovereignty rhetoric to become untethered from its history and repurposed for sectional interest in the 19th century. As Feeley and Rubin (2008, 107) note:

When federal policies ran counter to their economic interests, state officials and their citizens issued ringing declarations that their sovereignty was sacred, but they abandoned this position or issued equally fervid declarations of patriotic loyalty when they stood to benefit from these policies.

In the early 19th century, these conflicts were resolved without any significant threat to the Union (though various regions did threaten to secede during this period) because, as the country expanded, most major economic interests were better off within the union than outside of it. Human bondage, however, involved a direct clash of economic interests and a larger set of morality concerns that could not be resolved without clear and definitive rules about where ultimate decision-making power about racial subordination and free labor would reside (Feeley and Rubin, 2008).

The Civil War should have largely ended state sovereignty claims in matters of national economic and racial concern but instead, limited government and state sovereignty not only survive the bloody conflict, they arguably thrive. The rhetorical strength of these claims could not be killed off in the way that the Confederacy's sectional rebellion was, in part because they retained deep appeal in the former Confederacy but also because states continued to be sites of political authority (aided, for a long period of time, by the federal courts). Beginning almost immediately after Lincoln's assassination, President Andrew Johnson used the power of the Executive to "preempt and obstruct" (read: veto) virtually every move the Reconstruction Congress made to bring the Confederacy to heel with respect to economic and racial opportunity (Johnson 2007; Tulis and Mellow 2018). And he did so by actively undermining the new political framework that the war's victors sought to establish. Rather than leading a new, more powerful national government that would wrest control of race and class relations from state and local governments, Johnson was able to use the presidency to "launch an alternative narrative of America and of constitutionality, often borrowing from Anti-Federalist discourse. . . . With this, he disrupted the Republican frame and constructed ideological space for the South to inhabit in defining the nation's political future" (Tulis and Mellow 2018, 72).

Here we see the convergence of fragmentation and racialized anti-statism in full view. The Reconstruction Congress was engaged in a radical overhaul of the structural features of the U.S. government and, owing to many veto points available to block such changes, this was going to be difficult even under the best of circumstances. But President Johnson's commitment to white supremacy helped to fuel his use of political fragmentation to great strategic advantage in part by drawing on an existing set of rhetorical ideals—that states' have rights under the constitution, that these rights cannot be trammelled by Congress, and that the national government is deliberately one of limited power. Just as Lincoln had to find persuasive constitutional arguments for his Emancipation Proclamation in order to avoid alienating the loyal slave states and others less interested in the abolition of slavery (Finkelman 2008), Johnson needed to make plausible constitutional claims to justify his direct overriding of the Reconstruction Congress. He did so, in part, by reviving state sovereignty as a legitimate, constitutionally mandated principle.

In the 20th century, Barry Goldwater provided another illustration of winning while losing. Goldwater's famously failed presidential bid did

not keep his core ideas of limited national government interference in state economic and racial affairs from becoming central to right-wing politics over the next 50 years (Tulis and Mellow 2018, chapter 4). I do not want to belabor this historical detour—the point is not about the Anti-Federalists, Johnson, or Goldwater per se—but, rather, to illustrate how effectively opponents of racial progress have been able to shape politics in their interest *despite being the losers of multiple national battles over equality*.

Racialized anti-statism is not an inevitable feature of American politics. Multiple moments point to large majorities of Americans having a preference for national use of power to further social, economic, and political progress. Rather, anti-statism has been carefully cultivated, given constitutional sanction, and deployed in strategic fashion.

RACIALIZED ANTI-STATISM AND POLITICAL FRAGMENTATION AT WORK

If, by the late 1960s, then, the overt language of white supremacy was largely lost to economic and political elites anxious to maintain a racial hierarchy, there were ample other legal and political traditions to draw upon. Whereas states' rights and sovereignty were tainted by their clear association with white supremacy, other terms, such as big government, limited government, and, more recently, government overreach were useful political tools precisely because they appear to have no particular racial bias (see Decker 2016, on the emergence of the Pacific Legal Foundation and the regulatory state).

Figure 1 illustrates the dramatic emergence of these terms in the post-war period, particularly in the 1960s.⁸ States' rights have a long history, with heavy usage in the decades preceding and following the Civil War, and then a return in the 1940s, when President Truman desegregates the military, and the pace of dismantling of racial apartheid begins to quicken. By the 1960s, however, big government and limited government dwarf states' rights, and by the Obama era, a new term, "government overreach" comes into greater usage. Notably, "government overreach" is deployed against both the banking regulation bill in the wake of the 2008 Great Recession, and later, to the Affordable Care Act (ACA).

Party platforms reflect the adoption of these terms as well. As Table 2 illustrates, before 1968, none of these terms were much in use.⁹ In 1948, Republicans reference restoring "a working federalism" to

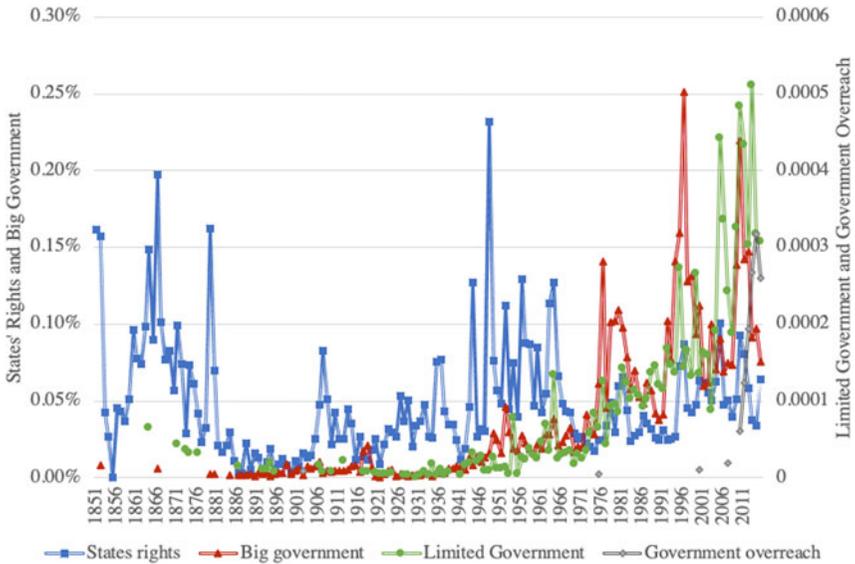


FIGURE 1. Anti-national government terms in historical newspapers, 1851–2015 States’ rights, big government, limited government, government overreach

Table 2. Key terms in presidential platforms, 1948–2016 limited government, big government, government overreach, and federalism.

	Republican	Democrat
1948–76	3	1
1980–2016	27	6
Total	30	7

America, which promises to address overlap in federal and state taxation, and in 1964, the platform included a section entitled “Faith in Limited Government,” which emphasizes efficiency and markets. By the 1980s, however, Republicans incorporated these terms into their platforms at nearly three per platform. Democratic platforms barely reference them except, primarily, in the 1990s (1994 and 1996), when Democrats respond by promising to bring an “end to the era of big government.”

The hostility of a substantial portion of the white electorate to national social policies aimed at reducing risks for black Americans fit quite well with the interests of private economic power, whose main aims were “elite rule, social inequality, and market liberalism” (Lowndes 2017, 632). For

decades, this “racial conservatism” brought together civil nationalists and racial nationalists and coalesced in the Republican Party to oppose universal, social risk reduction policies of any kind (Hosang and Lowndes 2019). Enacting such policies became increasingly difficult so long as Republicans controlled at least one of the three national branches of government.

Using David Mayhew’s major legislation dataset (Mayhew 2011),¹⁰ I extracted all 106 laws passed between 1947 and 2018 that were aimed at addressing social risks of various kinds, including reducing risk exposure (e.g., access to health care, food, old-age insurance), limiting the impact of risks’ consequences (e.g., expanding unemployment eligibility, increasing housing affordability), addressing new risks (environment/climate, opioid crisis, economic recessions), or protecting basic civil rights (voting, race, gender, age inclusion) and examined the configurations of government for each policy. Table 3 illustrates the number and percent of these bills passed under different configurations of the divided and unified government.

Of the 106 policies enacted during this 72-year period, 93 of them (87.8%) were enacted with a Democratic Congress, with an average of 2.2 policies per year. While it is true that Democrats enjoyed considerably more control over government than Republicans during this period (Democrats controlled both branches of Congress in 58.3% of years) and therefore, had more opportunities to enact law, there has been no shortage of other government configurations. Republicans had full control of Congress for 16 years and averaged less than one major social policy a year. Divided Congresses fared no better.

Moreover, earlier Republican presidents and Congresses, particularly the Nixon/Ford years, presided over most Republican social policy expansions. Since the late 1980s, however, such policies have become increasingly rare (Table 4).

Table 3. Major social policies, by government type (divided/unified) 1947–2018.

	Major social policies	Total years	Policies per year
Unified Democrats	48 (45.3%)	20	2.4
Democratic Congress	45 (42.5%)	22	2.0
Divided Congress	5 (4.7%)	14	0.4
Unified Republicans	4 (3.8%)	8	0.5
Republican Congress	4 (3.8%)	8	0.5
Total/average	106 (100.0%)	72	1.5

Table 4. Major social policy enactments, pre- and post-1980.

Truman to Carter (1947–1980)	69 (73%)
Reagan to Trump (1981–2018) ^a	36 (27%)
Total	106 (100%)

^aIncludes Grove City Civil Rights measure from enacted over President Reagan’s veto.

Even if control of all three branches is in the hands of state-builders, however, the malapportioned Senate means that success is not guaranteed. Equal representation offers disproportionate representation to white Americans because black and Latinx Americans are concentrated in the medium and larger states, while whites are concentrated in the smaller ones (Griffin 2006; Lee and Oppenheimer 1999; Malhotra and Raso 2007). Table 5 shows that the (non-Hispanic) whitest quartile of states is 75% white but have just 3.8% of the U.S. population. The least white quartile has nearly 60% of the population, but both sets of states have 24 votes in the Senate. Even without the filibuster, it is not that difficult to construct a winning Senate coalition with *none* of the states that have substantial black or Latinx populations. Gun control has fallen prey to this malapportionment problem on more than one occasion, where

Table 5. Percent U.S. population, by top and bottom quartile, and percent white.

	Bottom quartile		Top quartile		
	White	U.S. Pop	White	U.S. Pop	
WY	84.2%	0.18%	VA	61.9%	2.6%
VT	93.1%	0.19%	NJ	55.0%	2.8%
AK	61.0%	0.22%	MI	75.3%	3.1%
ND	84.6%	0.23%	NC	63.1%	3.1%
SD	82.5%	0.26%	GA	52.9%	3.2%
DE	62.6%	0.29%	OH	79.2%	3.6%
RI	72.2%	0.32%	PA	76.7%	3.9%
MT	86.5%	0.32%	IL	61.3%	4.0%
NH	90.6%	0.41%	NY	55.1%	6.1%
ME	93.7%	0.41%	FL	53.9%	6.5%
HI	20.6%	0.43%	TX	41.9%	8.7%
ID	82.1%	0.53%	CA	37.0%	12.2%
U.S. Population	3.8%		59.8%		
Percent white	75.0%		54.2%		
Senate seats	24		24		

even bi-partisan bills were rejected by a coalition of Senators from extremely white and disproportionately small states.

Despite these obstacles, lawmakers do manage to enact some social risk reduction laws. A unified Republican government passed the Medicare Prescription Drug Act in 2003, and President Bush worked with a Democratic Congress to pass energy conservation and economic stimulus laws. Democrats, for their part, passed the Children's Health Insurance Program, FMLA, Motor Voter (increasing access to voter registration), the Fair Pay Act, the Brady Handgun Violence Prevention Act of 1993 (Brady Bill), and the ACA of 2010.

Social policies enacted under Democratic governance, however, can face one final veto Hail Mary: the federal courts. One of the political utilities of the constitutional arguments against federal power is its usefulness as a veto opportunity when social policies do manage to get past the national policy-making juggernaut. Even when social policies are enacted, such as the Brady Bill and the ACA, both of which passed under unified Democratic control of the government, the federal courts can be called upon to at least disrupt and dilute, if not downright overturn, such legislation.

In both the Brady Bill and the ACA, opponents filed federal lawsuits arguing that Congress had exceeded its authority and, in both cases, key provisions of the acts were struck down. For gun control, this meant that, while background checks themselves were constitutional, local law enforcement could not be forced to conduct them.¹¹ In *National Federation of Independent Businesses v. Sebelius*, the Supreme Court determined that the ACA's requirement that states expand Medicaid was unconstitutionally coercive, reducing the expansion of public health care coverage to a larger number of low-income people to a voluntary act by the states.¹² The result is the reinforcing of deep regional (and thereby race and class) inequalities in public safety and health care. Access to firearms and access to health care have important consequences for social outcomes. There is some evidence that states with less restrictive gun policies have higher rates of firearms deaths and health outcomes are worse in states with more uninsured persons (Broadus and Aron-Dine 2019; Schell *et al.* 2020).

Moreover, white racial resentment figures prominently in opposition to both gun control and the ACA (Filindra and Kaplan 2016; McCabe 2019; Tesler 2012; Yancy 2019). Rejection of the latter also comes from the economic sector, where groups such as the National Federation of Independent Businesses—a key opponent of the FLMA in the 1990s—mobilized in opposition to broad risk-reducing social policies. Figure 2 illustrates the states that have expanded Medicaid and adopted universal

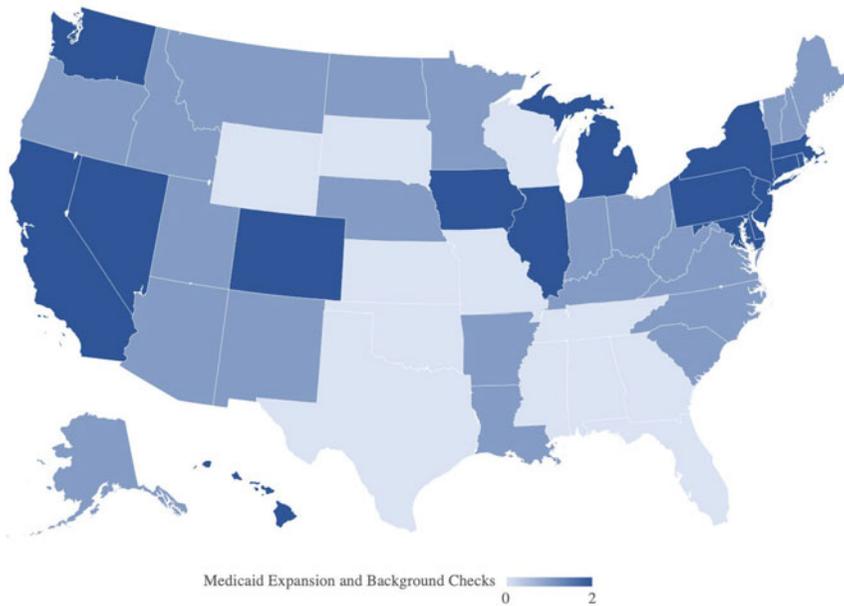


FIGURE 2. Medicaid expansion and background checks for gun sales, by state

background checks. Not a single state of the former Confederacy has adopted both, and half have neither.¹³ It is hard to overstate the consequences of these decisions for state-building. As scholars of American political development and political economy have so powerfully illustrated, the unevenness of social risk protections has significant consequences for life outcomes, depending on the state in which one resides (Campbell 2014; Michener 2018; Soss, Fording, and Schram 2011).

Importantly, this inequitable state-building has consequences for the American population *writ large*, as social policy outcomes overall are weakened through the lack of comprehensiveness and universality of social protections (López-Santana 2015). And while racialized anti-statism is a central factor in the patterns described in this section, so is institutional fragmentation for the simple reason that a large majority of Americans, *including a majority of whites*, support both gun control and major provisions of the ACA. We know this from by decades of surveys about a wide range of gun control and health care policies, by the fact that a unified Republican government was unable to repeal the ACA when they had the chance in 2017–18, and by numerous bi-partisan gun control bills that have failed to get past the malapportioned Senate. Space does not

permit a comprehensive list of social policies consistently supported by a majority of Americans that have been killed off through the fragmentation and racialized anti-statism, but even if we confine the list to those discussed in this essay—health care, gun control, labor/workplace protection, family and medical leave, voting rights, and basic racial inclusion—the constraints on state-building are difficult to overstate.

CONCLUSION: THE FAILURE AND FUTURE OF AMERICAN STATE-BUILDING

If the question is “how did we get here?” my answer is that state-building is exceptionally difficult when super-majorities are required, which is, in effect, how our highly fragmented system functions. This is due, in part, to the simple realities of fragmentation, but, crucially, it is also a function of their exploitation and reification by intense racial/economic orders. Under these conditions, the passage of any major social policies over the past 40 years starts to look remarkable. I have offered a framework for understanding the contemporary failures of the American state by examining the intersection of racialized anti-statism and institutional fragmentation. In doing so, I suggest that we gain a clearer picture of how powerful economic interests have long benefited from this system and how racial attitudes have helped to construct and maintain our veto-laden politics. The political battles over the scope of national power and over jurisdictional control between the national and subnational governments on every major social issue are not inevitable. They are a function of political strategy and those strategies have roots in two sources: ante-bellum racial ideology and anti-regulatory economic interests.

The key strategic value of institutional fragmentation is that one need not win over political majorities in order to enjoy political successes. As opponents of state-building converged within the Republican party over the past 50 years, whether motivated by corporate or racial power, the party’s dominant strategy has been to exploit as many features of the highly fragmented political system as possible, and draw upon centuries-old anti-statist rhetoric to do so. This strategy has involved blocking national policy efforts while simultaneously seeking control of state governments to enact policies that directly benefit economic elites and undermine the strength of non-white electorates. Of the eight presidential elections since the Reagan presidency (1988–2016) Republicans have won the popular vote only twice (1988 and 2004). But the Electoral College,

persistent gerrymandering efforts at the state level (itself a function of federalism), and the deeply malapportioned Senate have allowed them to control at least one of the three branches for all but two of the 30 years since (both President Clinton and President Obama's first two years were unified Democratic governments).

As Hosang and Lowndes (2019) powerfully illustrate, this convergence has not only slowed and even reversed civil rights advancements, it has led to stagnant or declining life outcomes for Americans of every background. It is possible that the COVID-19 pandemic and its devastating economic consequences will create a substantial shift in the white electorate, away from the politics of resentment, exclusion, and opposition to modern state development. As this essay has illustrated, however, in order for substantial change to occur, that shift will need to be dramatic. Even if the Biden–Harris ticket manages to win a majority of white voters for the first time since 1964, veto points will still facilitate the disproportionate influence of white racial and corporate economic powers.

But now for the good news. Paying attention to institutional fragmentation also suggests that there is substantially more common ground among Americans of all backgrounds than a singular focus on racial attitudes and identities suggests. It also shows that fragmentation can be overcome and that calling attention to the true purposes of its most frequent defenders might gain political traction. This approach can also reconcile the very real and persistent white racial resentment that scholars have consistently identified, and that has undermined state-building and social policy formation, with the simultaneous fact that large majorities of Americans, including white Americans, would actually prefer considerably more state-building than they get. Consistent with this claim is recent work that identifies whites who are racial sympathizers or low-racial identifiers and, therefore, “ripe for closer scrutiny” (Chudy, Piston, and Shipper 2019; Perez 2020).

Understanding that the majority of Americans, including a non-trivial portion of the white electorate, are *not* dedicated to subverting state-building that benefits non-whites is crucial in a country with such fragmented institutions and a long track record of racial and economic hierarchies exploiting them to maintain power. Moreover, as I have tried to illustrate, though there are undoubtedly some immovable features of our structural system (e.g., presidentialism), fragmentation is not static or inevitable. Moves towards greater accountability, more consolidated and forward-thinking governance, and a renewed focus on productive state action that benefits all Americans have had success in the past. If we are

to move out of the realm of the least successful state among rich democracies, we will need to remember that it can be—and has been—done before.

Supplementary material

The supplementary material for this article can be found at <https://doi.org/10.1017/rep.2020.41>

NOTES

1 I developed the concept of “racialized state failure” to describe the exceptionally high and racially disparate state and societal violence that has long characterized life in the United States and to explain their institutional and anti-egalitarian roots (Miller 2015; 2016). Here, I draw on the framework to explore the challenges to American state-building more broadly that result from the intersection of the complex, fractured American institutional landscape and racial and economic orders.

2 Three Senate Democrats voted against the override, Senators Heflin and Shelby from AL, and Hollings from SC.

3 The final vote count in 1990 in the House of Representatives was 194 Democrats and 38 Republicans in favor (231/427), <https://clerk.house.gov/Votes/1990262>. In 1992, 219 and 38 Republicans voted yea (258/427), <https://clerk.house.gov/Votes/1992443>.

4 There are other important institutional realities of American politics that affect these outcomes, including partisan gerrymandering and voter suppression, for example. My focus on the constitutional structures is not intended to be exhaustive. Rather, I highlight these features because they are not routinely a part of our analyses of race and economic inequalities.

5 Space does not permit a larger discussion of federalism’s relative utility for state-builders but there are some who argue that it is equally valuable for progressives, see Gerken (2012).

6 Ironically, these very problems—coordination across states and localities for economic and social progress—are what drew the Framers of the Constitution to Philadelphia in 1787 in the first place (Klarman 2016).

7 In 2012, the dissenting justices in *National Independent Businesses v. Sebelius*, the case that ultimately upheld the Affordable Care Act (with caveats), quoted Alexander Hamilton as fearing the national government becoming “the hideous monster whose devouring jaws... spare neither sex or age, nor high or low, nor sacred or profane” (Tulis and Mellow 2018, 29). But Hamilton’s words, from Federalist No. 33, are, in essence, mocking the Anti-Federalists concerns that the “necessary and proper” and “supremacy” clauses are going to produce this monstrous government. These clauses, Hamilton goes on to say, are a simple fact of constituting a national government and providing it the means by which to govern.

8 The data are from ProQuest Combined Historical Newspapers, which includes six newspapers: New York Times (from 1851), Philadelphia Inquirer (from 1860), Pittsburgh Post-Gazette (from 1786), Chicago Defender (1909–75), Wall Street Journal (from 1889), and Washington Post (from 1877). I used Boolean search terms to capture states’ rights/state’s rights/rights of states.

9 Political platforms are available at the American Presidency Project: <https://www.presidency.ucsb.edu/documents/presidential-documents-archive-guidebook/party-platforms-and-nominating-conventions-3>.

10 Major policy enactment data are drawn from David Mayhew’s *Partisan Balance: Why the Political Parties Don’t Kill the U.S. Constitutional System* (Princeton University Press, 2011) and are available at <http://campuspress.yale.edu/davidmayhew/dataset-partisan-balance/>. Details on the 106 policies are in the On-line Appendix.

11 *U.S. v. Printz* 521 U.S. 898 (1997).

12 567 U.S. 519 (2012).

13 Gun background check laws are culled from a review of gun laws published by the *Washington Post* on February 20, 2028: <https://www.washingtonpost.com/graphics/2017/national/assault-weapons-laws/>. Data on Medicaid expansion is from the Kaiser Family Foundation, <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>. States that recently expanded Medicaid by referendum are counted as non-expanders because they required referenda in order to force state lawmakers to expand eligibility: MO (8/4/2020), OK (6/30/2020), and NE (11/2018).

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