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COVID-19 and the Evolution of Federalism

The United States federal government has been steadily gaining power since the early 20th century. While the Framers created a constitution that protected states from a powerful central government, the evolution of the world has forced the federal government to take control over important issues. Before the coronavirus, the United States was living in an ad-hoc federalist system where partisanship and politics ruled. Now that we are currently living in the coronavirus pandemic I have been able to witness the ushering in of a new form of federalism. This form of federalism has given states more power than they have ever had before, and it seems to be working rather well. Through the lack of response from the federal government and the need for citizens, governors have wielded their power and used them to protect the greater good.

To understand how the coronavirus has ushered in a new state of federalism in the United States one must understand the definition federalism and its evolution must be understood. Federalism is a political system that the United States has used since the constitution was ratified into law. Federalism allows the federal government and regional governments to share powers “and are considered independent equals” (Smith, pg. 23). The United States gave the state's power in order to prevent any sort of tyrannical government from taking over the country and to make sure this would happen the framers wrote in the constitution that any power not explicitly

given to the federal government would fall to the states. Responsibilities in a federal system are split between the federal government and the state government, and “each is given the appropriate power and legal authority to fulfill those requirements (Smith, pg. 23). But the amount of power each level has held throughout history has changed and evolved over time.

There have been five waves of federalism in the United States history. The first wave of federalism deployed in the United States was dual federalism — which lasted from 1789 to 1933. This form of federalism gave state governments and the federal government operates and distinct jurisdictions and responsibilities along with the freedom to operate without interference from one another (Smith, pg. 35). The problem that arose was that as the country urbanized the state and federal government interests became intertwined and it was impossible to neatly separate their power. Then when President Franklin D. Roosevelt took office he ushered in the second wave of federalism— cooperative federalism. Cooperative federalism operated from 1933 till 1964, and this new form of federalism was born from FDR’s New Deal agenda. In Cooperative Federalism the federal government was in charge of identifying problems, figuring out a program to address the problem, and making money available to the program, but after that was done the power to maintain the program fell to the states (Smith, pg. 37). After cooperative federalism came centralized federalism, operating from 1964 to 1980, and this continued to build the power of the federal government. Centralized federalism allowed the federal government's goals to shape policy, and the state and local governments were meant to implement those policies (Smith, pg. 38). Then in 1980, the fourth wave of federalism was introduced into the United States, New Federalism. New federalism shifted some power back to the states by allowing the states to authority on how to use money given to them by the federal government, but at the same time,

the federal government cut state's funding (Smith, pg. 39). The fifth wave of federalism (the wave that operated before the beginning of the coronavirus pandemic) is ad-hoc federalism. Ad-hoc federalism is a system of federalism where states or the federal government may have more power than the other depending on the issue at hand. Ad-hoc federalism is driven by partisan or political convenience (Smith, pg 41). There has been a power struggle between the federal government and state governments since the creation of this country, and the coronavirus is shining a bright spotlight on those issues.

The evolution of federalism continued to change with each wave that came, but there is something that can be seen throughout the waves of federalism: ever since the United States left dual federalism the states have continued to lose power. Federalism continued to grow and evolved and all of a sudden the cooperation that was seen between federal, state, and local governments eroded away. Federalism today is a system that can be "characterized by corrosive opportunistic behavior" focused on creating policies that will benefit a party instead of the American public (Conlan, pg. 1). This is why that the fight for the state's autonomy has increased because people want to prevent the chance for the federal government from "quashing the opposition or playing its lawmaking trump card" (Bulman-Pozen and Gerken, pg. 1). People fighting for state's autonomy want to make sure that their voices are still heard and that they will not be drowned out by the much louder voice of the federal government, and it even gives states a chance to hold the federal government accountable (Bulman-Pozen and Gerken, pg. 1). This argument between whether states or the federal government should have more power has been going on since the Federalist Papers and we are living in a time where this battle is in full view.

When the coronavirus pandemic started picking up steam in the United States the citizens looked to the federal government for answers. It is perfectly normal to look at the highest position of power in a crisis to see what we should do. The coronavirus was the perfect time for the federal government to take control of the situation, the disease itself “is highly transmissible, costs borders efficiently, and threatens our national infrastructure and economy” (Duff-Brown). All three of those characteristics of COVID-19 make it an issue that should be handled by the federal government. However, that is not how the response to COVID-19 happened. When the pandemic struck the “initial federal response” dropped the ball, with a lack of test kits, test kits malfunction, and “the president downplaying the risk” (Burns). Since the federal government left the American public in an extremely dangerous situation it became the state government’s responsibility to pick up the slack. The problem is that even the states reacted to the pandemic differently. For example, in Nevada, Governor Sisolak on March 17 “directed all Nevadans to stay home and all non-essential businesses to close to the public for 30 days”; California on March 19 was put under a stay-at-home order by their governor (huschblackwell.com). These two states border each other, but their governors implemented their strategies differently. On top of that, the federal government handled it differently as well, so there has been no cohesiveness between the state governments and the federal government.

The coronavirus pandemic has demonstrated how much power state governments have. One way that this power has been seen is through what the President has been saying during this time. In a press conference regarding numerous governors request for help in procuring protective gear and lifesaving medical equipment the president said that “governors are supposed to be doing a lot of this work,” and he even went on to say that “the Federal government is not

supposed to be out here buying vast amounts of items and then shipping” (Brutuco, pg. 1). The president said it himself that the governors are supposed to be taking these matters into their own hands, and that is just what they did.

As a resident of Nevada, I have gotten to see firsthand Governor Sisolak’s response to the pandemic. I have gotten to witness a governor supersede the power of the president as he took control of the state of Nevada. By the middle of March the coronavirus pandemic needed to be addressed in the state of Nevada, so on the 15th Governor Sisolak held a press conference to explain the measures he was planning to take. In this press conference he shut down Nevada schools for three weeks, and he also explained how he was “directing executive branch agency leadership to close state offices to the public” leaving only essential services open (nv.gov). Two days later Governor Sisolak held another press conference closing down all non-essential businesses. At this point, I began to see the effects that coronavirus was having in my community. After Governor Sisolak held that press conference to make it mandatory for all non-essential businesses to close down I was laid off from my job as a swim coach. The federal government did not enforce this, it was only enforced by the state government. Another consequence of the state government’s reaction to COVID-19 was that it closed all public schools for the rest of the year, meaning it was up to me to homeschool my sister as she was finishing up her last year of elementary school.

All of these responses and changes have come from the state government instead of the federal government. This is why I believe that the coronavirus has demonstrated that we are in a new system of federalism. Looking back at the past five waves of federalism the state governments have never been given this much power. There has never been a wave of federalism

that has allowed the executive branch of states to supersede the rule of the federal government, but that is exactly what is happening today. It has been an interesting time in the world to see the Governor of Nevada take control of the state regardless of what the federal government has asked it to do. This is a new era of federalism, one where the states have been able to take control.

Works Cited:

Brutoco, R. (2020, April 23). Perspectives: A New Federalism Awaits us in a Post-COVID-19 America, Part 1 of 4. Retrieved May 4, 2020, from <https://worldbusiness.org/perspectives-a-new-federalism-awaits-us-in-a-post-covid-19-america/>

Bulman-Pozen, Jessica, and Heather K. Gerken. "Uncooperative Federalism." *The Yale Law Journal*, vol. 118, no. 7, May 2009, pp. 1256-1310. *JSTOR*, www.jstor.org/stable/40389506.

Burns, Nick. "America's Response to the Coronavirus Proves Federalism Isn't Dead." *National Review*, National Review, 2 Apr. 2020, www.nationalreview.com/2020/04/coronavirus-response-federalism-state-local-governments-take-lead/#slide-1

Conlan, Tim. "From Cooperative to Opportunistic Federalism: Reflections on the Half-Century Anniversary of the Commission on Intergovernmental Relations." *Public Administration Review*, vol. 66, no. 5, 2006, pp. 663–676., doi:10.1111/j.1540-6210.2006.00631.x.

Duff-Brown, Beth. "Federalism Meets the COVID-19 Pandemic: Thinking Globally, Acting Locally." Stanford Law School, 6 Apr. 2020, law.stanford.edu/2020/04/06/federalism-meets-the-covid-19-pandemic-thinking-globally-acting-locally/.

"Governor Sisolak Updates Public on State Action and Guidance Regarding COVID-19." *Governor Sisolak Updates Public on State Action and Guidance Regarding COVID-19*, 15 Mar. 2020,

Smith, Kevin, and Alan Greenblatt. "Federalism." *Governing States and Localities*, 6th ed., SAGE, 2018, pp. 25–55.

"State-by-State COVID-19 Guidance: Resources for COVID-19 Restrictions and Rules by State." *Resources for COVID-19 Restrictions and Rules by State* | Husch Blackwell, 2020, www.huschblackwell.com/state-by-state-covid-19-guidance.