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Weathering the Storm:

How Federalism Has Struggled Under the Test of the COVID-19 Pandemic

It was sometime around the end of February or the beginning of March when Americans' lives, much like the rest of the world, were turned upside down. Due to only leaving your home for essentials and not wearing real clothes in months, it is easy to lose track of the timeline of the COVID-19 Pandemic and the responses that followed. Yet, it seems as though every day can be marked by some type of political tug-of-war between the President and state governments.

Federalism is meant to be the sharing of powers between the federal and state governments, but in recent years, this relationship has seemed to become blurred. In the United States' current era of ad hoc federalism, combined with the lack of federal preparation or action regarding COVID-19, state governments have had to take matters into their own hands in order to try to protect and save the lives of the Americans who live within their borders.

Federalism, the political system in which the United States is built on, is the sharing of powers between the national and regional governments, who are independent, yet equal with one another (Smith and Greenblatt 23). The United States has changed a lot compared to when the Framers were creating the Constitution, as has the Nation's various stages of federalism. The first three varieties of federalism that the United States adopted were dual federalism, cooperative federalism, and centralized federalism (Smith and Greenblatt 34-38). Dual

federalism created clear and separate responsibilities between local, state, and the federal government. Cooperative Federalism was similar except it shifted power away from the states and gave it to the federal government by weakening the jurisdiction between responsibilities. Centralized Federalism continued ushering power from the state governments to the federal government by allowing all three levels of government to work cohesively on certain issues and agencies (Smith and Greenblatt 38). New Federalism, which occurred from 1980-2002, was the work of Presidents Nixon and Reagan and their administrations in an effort to give power back to the states (American Government). In their mission to give states back their power, President Reagan created block grants, which was federal money to help states with their policymaking efforts. In 2001, Justice Sandra Day O'Connor spoke about the symmetry of power and responsibility distribution in the United States. She said, "each state regulates within its own borders on equal terms" with international responsibilities falling on the national government (O'Connor 503). Then, about a year after her remarks, the United States entered the era of ad hoc federalism, which then nation remains in through present day.

Ad hoc federalism is much more partisan and unclear than any of the prior types of federalism. In ad hoc federalism, the era in which the United States is currently in according to *Governing State and Localities*, the process consists of "choosing a state-centered or nation-centered view of federalism on the basis of political or partisan convince" (Smith and Greenblatt 41). The issue with ad hoc federalism is that there are no permanent or official guidelines. Everything is decided on a case-by case basis. In "Uncooperative Federalism," Jessica Bulman-Pozen and Heather K. Gerken discuss how the relationship between state governments and the federal government can begin to unravel when the level of governments' jurisdictions are not clear. They write that the "state's status as servant, insider, and ally might enable it to be a

sometime dissenter, rival, and challenger” (Bulman-Pozen and Gerken 1256). This decomposition of the relationship between the various levels of government is what has taken place in their efforts to combat the COVID-19 pandemic. Additionally, ad hoc federalism contributes to the growing partisanship and polarization of politics in the United States, thus furthering the divide between political parties. The political division that arises from ad hoc federalism has been another contributing factor to the power struggle of the levels of government during the pandemic.

After watching COVID-19 spread rapidly and ravage other nations, like China and Italy, one had to expect that an outbreak in the United States was unavoidable. With no vaccine and the likely overrun of the medical systems, countries across the globe were forced to prepare and take swift action. However, the United States fell behind in what was a critical time in assuring that the country was prepared for the pandemic. *Forbes* shared a study focusing on how the Trump Administration’s actions compared with other nations. The study was based on the level of stringent response when compared to the number of cases in each country. It was found that the United States ranked last behind every country in the study, except for China, where the virus was first discovered (Corley 2020). The lack of response from President Trump forced states to take matters into their own hands. Some states issued stay-at-home orders a lot quicker than others, something President Trump has yet to do at the national-level. In federalism, part of the responsibilities of states and localities is protecting the health of the public (Blake and Arianina 2020). However, states and localities cannot do that when President Trump has failed to focus “the national attention on the emergency and channeling the massive resources of the federal government to the states most in need” (McCarthy 2020). In the United States, federalism is meant to ensure that the various levels of government work cohesively, and yet the pandemic has

shown how the system has buckled under the President. The Stanford Health Policy's Michelle Mello argues that "the response to the COVID-19 pandemic has exposed major weaknesses in the federalist system of public health governance, which divides powers among the federal, state, and local governments" (Duff-Brown 2020). During a national crisis, there should not be 50 different messages and actions coming from each of the states and another coming from the White House. There needs to be some kind of uniformity because if they do not work together, everything will fall apart.

Lawrence O'Gostin, a professor of public health at John Hopkins University, said that in order for federalism to work "You need every oar to work together. We have fragmentation, name-calling and wildly different responses" (McCarthy 2020). According to *The Guardian* and data from the *Kaiser Foundation*, "States with Democratic governors have been quicker to declare emergencies, close schools, shutter non-essential businesses and impose limits on bars and restaurants" (McCarthy 2020). Similar to President Trump, many Republican Governors seemed to downplay the threat of the virus. Just look at how long Republican Governor Ron DeSantis allowed the Florida beaches to be packed with no social distancing guidelines, while other states had already chosen to shut down nonessential businesses. Manual Pastor, a University of California professor, best described how the shut down and actions of the states compare with one another. He said, "it's more like the rational states versus the Trump Republican States" (McCarthy 2020). The virus does not discriminate based on one's party affiliation, so why has the response been divided along party lines?

It seems as though since the outbreak started in the United States, there has been an outcry from medical professionals and states for personal protective equipment (PPE) and other medical supplies, such as ventilators. Americans have stepped up and began sewing masks for

frontline workers and their loved ones alike. However, much of this pressure could have been alleviated had President Trump evoked the Defense Production Act a lot sooner than he did. He did not call on GM Motors to begin producing ventilators until March 27th and the country was already in dire need (Estes). This late decision, and quite frankly the lack thereof, has forced states to go into bidding wars against each other and the federal government in order to get critically needed medical supplies. This battle is extremely dangerous because “state boundaries mean very little to the virus” (Gawthorpe 2020). No state can afford to be shut out from receiving critical resources because every American is at risk for needing these materials in order to survive this virus.

This pandemic is different than other crises the United States has faced in the past because it is not an isolated occurrence. If there are hurricanes or wild fires, the federal government and other states will typically send relief and resources to those areas that are in need. However, rather than helping one another, states are being forced to bid against each other and the federal government in order to get the resources they need to keep their citizens alive. New York’s Democratic Governor, Andrew Cuomo has been one of the most vocal elected officials when it comes speaking out about the dire situations the states are facing due to a lack of federal support. He said “this is not the way to do it, this is ad hoc, I’m competing with other states, I’m bidding up other states on the prices” (Estes 2020). While New York has been the epicenter for the outbreak, other states are experience the same issues. Kentucky Governor, Andy Beshear, criticized President Trump’s comments after he states that it is up to the states to find their own resources. Governor Beshear responded by saying, “The federal government says ‘states, you need to go find your supply chain’ and then the federal government ends up buying from that supply chain” (Estes 2020). Andrew Gawthorpe is a historian of the United States who

works at a university in the Netherlands. He argues that President Trump's lack of guidance and failure to maintain the relationships between the various levels of government is simply another ill-attempt at leadership. Gawthorpe writes, "federalism has become another casualty of a president unprecedented in his disregard for everything which truly makes America great" (2020). President Trump's love for name-calling and partisanship not only brings out the crippling qualities of ad hoc federalism, but it also plays a factor into the millions of Americans who have fallen ill and the thousands who have perished thus far.

Not only is there a shortage of proper PPE and supplies needed for our frontline workers to be able to combat this virus, but there is also a lack of testing. Experts, like Dr. Fauci, continue to warn that as the United States begins to enter the various stages of reopening, the nation may experience severe spikes due to its low testing capacity. It appears President Trump has given false hope when boasting that whoever needs a test could get one. Experts and analysts alike say that "without centralized governance and coordination, the national effort remains a competing coalition of state and local outfits hampered by duplicated work, competition for supplies, siloed pursuits of non-transferable solutions and red tape that leaves some labs with testing backlogs and others with excess capacity" (McCarthy 2020). Once again, state and local governments are being overtaken by competing and duplicated efforts because there has been a lack of leadership from the federal government, specifically President Trump and his task force. Social distancing and "flattening the curve" are intended to be tactics that not only protect more people from becoming infected, but they also prevent our healthcare systems from becoming overwhelmed at one time. The progress that the country has made thus far will have been pointless if we open up too soon without the proper testing capacity.

Another issue related to COVID-19 testing in America is that there are many different varieties of tests. This variation has allowed for labs to produce a massive number of tests, but they all differ which can make them less dependable. If the federal government coordinated better with labs to standardize a certain test or processes, then the results would create a greater sense of reliability. Paul Reider, a research chemist at Princeton University said, “If we had an effective administration – this is where the federal government comes in – they could essentially turn around and say, ‘What we would like to do is, we want one test, maybe two, that are fast, that are accurate, that are scalable and transferable... You want a gold-standard test” (McCarthy 2020). *NBC*’s medical contributor Dr. Joseph Fair found out the effects that discrepancies in the various testing kits can have. He was tested four different times and all of the results came back negative (Dr. Joseph Fair). It was not until he ended up in intensive care, fighting for his life, that he was diagnosed with COVID-19. The failure to have this so-called “gold-standard test,” a cure, or a vaccine are all things that may hinder the reopening of the United States’ and its economy.

The effects of the United States’ crumbling ad hoc federalism has resulted in yet another power struggle in regards to a very critical topic: reopening. In early April, President Trump tweeted that it was him holds the power to reopen states and their economies, rather than the governors (Forgey and Gerstein 2020). In a piece written for *The Hill*, Andrew McCarthy explained that the President’s comments were actually incorrect. Governors do in fact have the power to decide when and how their states will reopen, just as they made the decision to shut them down. According to the Constitution, which states the federal government’s limited powers, “The states are supreme in regulating their internal affairs. These include public safety and intrastate commerce. The Tenth Amendment makes explicit that unless the Constitution vests specified powers in the federal government, or prohibits such powers to the states, they are

reserved to the states...” (McCarthy 2020). He does note that the evolving forms of federalism over the last century, overall, have taken powers away from the states and given more power to the federal government. Yet, this does not change the states’ crucial powers and responsibilities vested in them by the constitution. Thankfully, many states have created reopening plans based on the information they are given from researchers, scientists, and medical professionals.

Additionally, President Trump has created a “Reopening America” task force filled with people who have a wide range of backgrounds in order to help get the country back on its feet. It is exciting to note that Senator Jacky Rosen (D-NV) was appointed onto the task force and she was the only Nevadan chosen (Sanchez 2020). Nevada has a unique economy that runs on casinos, events and tourism. It is crucial that we have someone like Senator Rosen to bring our state’s voice to the table.

On a personal level, I have done my best to adapt to the unprecedented times we are all currently living in. As a student, I am grateful that UNLV and other higher-education institutions made the decision to shut down when they did. I just hope they continue this distance learning policy through the fall semester because the impending possibility of another spike in the fall and winter worries me tremendously. I feel much safer learning from the comforts of my own home than wearing a cloth mask in a shared classroom on a large college campus. As someone who has young family members who are in the Clark County School District (CCSD), I am grateful that Governor Sisolak ordered schools to not only close, but to remain closed through the remainder of the school year. Up until Sisolak’s announcement, CCSD officials said that schools would remain open. However, as we have learned, federalism gives states the power to run their school systems. As a daughter, it has been hard to see my dad be laid off from a job that he has worked at for 25 years. However, my mom and I are still working and luckily, he had no issues filing for

unemployment. Now, it is just a waiting game to see when casinos will open so that he can return to work. To be honest, I think my biggest adjustments during this time have come from my job and my daily routine being completely turned upside down.

At Senator Jacky Rosen's office, our team is extremely close. We are like one big family which has made the adjustment of not seeing each other every day very difficult. Luckily, in an effort to plan ahead, our chief of staff made sure that every staffer had the materials necessary to work remotely should we have to make that decision. On March 12th, all three of our offices began teleworking procedures. I am grateful that our office made the decision early on in the outbreak because otherwise we might not be all safe at home. As someone who answers the phones, I have had a lot of hard days. People have screamed at me because they did not like the relief bill that the Senator supported. I think the hardest conversations are with the people who call seeking help in receiving their unemployment. Because unemployment is a state issue, it is beyond the jurisdiction of our federal office. However, in a partnership with the governor's office, we have been able to take people's information and pass it on so that they can receive help. While there have been some difficult and draining days, there have been plenty moments of good. We have done virtual check-ins with the Senator to discuss how we are all doing and share any life updates. Our co-worked did a virtual gender reveal for his baby, it's a girl! I have had many people thank my coworkers and myself for simply answering the phones. Not many places have real humans to talk to, let alone answer the phones. Our close-knit team continues to work tirelessly for Nevadans and I am grateful that we can still lean on each other for support, even when we are not physically together.

The leadership of states and their Governors, like Governor Sisolak, is what has helped flatten the curve, keep Americans safe, and prevent our health care systems from being overrun. However, the emphasize on party lines in ad hoc federalism has led to a lack of leadership from President Trump, mixed responses from the states, and a battle over power and resources. All of these things act as a black cloud over the thought of reopening and the effects that it might have regarding the public's safety. Personally, I am grateful for my health, my ability to continue working, and for being able to be safely home with my family. At the end of the day, the states cannot stay closed forever, but the reopening process must be handled carefully and in-coordination with the various levels of government. If not, I fear that more lives will be lost from preventable deaths. A sickness is not a partisan issue.

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