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### Changing Federalism in the Times of Coronavirus

In the wake of the failed Articles of Confederation, the founders sought to devise a stronger central government but still bristled at the perceived threat of a unitary system of government, and its potential for tyrannical rule. To this end, a system of separated powers allowing citizens to exert power indirectly were put forth as a compromise between Federalists and members of the Constitutional Convention opposed to granting the federal government too much authority.

It can not be forgotten that our federal system was also designed in part to safeguard the institution of slavery. In the present-day the current administration seeks to protect its power base in much the same way southern states sought to protect their interests. It is very much like the original federalist fight in reverse wherein the federal government insists that state governments are expected to stand alone despite the fact that the federal government was created specifically for the purpose of assisting in national crises.

Dual Federalism's focus on the separate spheres of government provided comfort for states' rights actors right up until the country suffered its first cataclysmic downturn, the Great Depression. The period was marked by as much conflict as collaboration between the states and

federal government (Smith and Greenblatt 35). The limits of dual federalism were brought to the fore when every state in the nation found themselves in need of federal assistance. Due largely to these limitations and exacerbated by the Great Depression, a period of Cooperative Federalism was ushered in to combat the stifled economy with a variety of programs providing uplift for states, business, and the citizenry. It can be argued that this period proved to be the most proactive and productive before, or since. As time passed, and states found themselves in a more robust economic situation, they subsequently became less inclined to cooperate as extensively with the federal government. The mid-sixties saw the advent of Centralized Federalism comprised of grant programs designed to both aid states, while encouraging or demanding certain behaviors in return. Some grants-in-aid were simply investments in infrastructure while others came with expectations as to their use or adherence to federal policy.

The era of divided government was marked by the policies of Reagan and the devolution revolution of Clinton. New Federalism sought to replace the grants-in-aid of centralized federalism with block grants to the states in an effort to provide them greater autonomy. The period beginning in 1980 saw many New Deal era programs cut or eliminated and a small decrease in the number of federal employees, yet Reagan spent more than his predecessor and tripled the national deficit. The first indications of extreme partisanship can be traced to this time, the election of Clinton solidifying the growing zero-sum mentality in Washington D.C.

Smith and Greenblatt posit that Ad Hoc Federalism brings us into the present day, a system of federalism “on the basis of political or partisan convenience.” (41). The recent past is riddled with examples of ad hoc federalism and the outcomes of partisan politics over the interests of constituents. What we appear to have, however, is what social and political science literature refers to as Executive Federalism, directed and influenced by the executive alone.

Greve notes that in “ an executive-centered party system. The parties have ceased to fight over the size of government; instead, they fight over its control” and that “the executive’s distribution of federal funds and of regulatory burdens among and between rival state blocs.” (294). The second half of this quote is most telling in reference to the handling of the current Covid-19 pandemic. In a press conference President Trump indicated that he felt Governor Gavin Newsom of California “has been gracious” and Governor Andrew Cuomo of New York had not, disregarding the follow up question as to the importance or necessity of graciousness in dealing with the federal government (Wiersema). This both contrasts and affirms reporting such as: “Advisers to Jared Kushner, the president's son-in-law, have surprised FEMA officials in recent weeks to deploy supplies to communities after the area's representatives got through to Mr. Trump, even if the state had not yet gone through the formal process to secure supplies.” (Kanno-Youngs and Nicas), and the fact that Governor Ron Desantis of Florida, a vocal supporter of the administration, received Florida’s first requested supplies within three days while most other states are left to endure bidding wars for the same (Wiersema).

Countless indicators demonstrate that we have outstripped ad hoc federalism and its almost quaint reliance on partisanship. Executive Federalism is beyond hyper-partisanship, instead it is federalism based on the consideration of praise for the executive rather than policy. It is difficult to assess the current or future ramifications of the administration’s approach to favoritism, dressed up as federalism. The administration has taken the approach that governors should take the lead in the Covid-19 pandemic, couching this in purported federalism. Placing the burden of responsibility on governors and their states without any cohesive leadership has resulted in shortages and bidding wars for resources. In what appears to be a sort of forced separation of the spheres of government, the federal government not only has failed to assist

many states to acquire essential resources, but seized shipments of medical supplies to add them to national stockpile, such as the incident involving Kaiser Permanente, after paying higher than usual rates for masks, had them taken by FEMA with the assurance that they would receive a small allotment of them (Kanno-Youngs and Nicas). Further complicating the situation was Senior Advisor to the President, Jared Kushner, who stated that "the notion of the federal stockpile was it's supposed to be our stockpile, it's not supposed to be states' stockpiles that they then use." (Gittleson), and then amending the language of FEMA's website the next day to match this erroneous position.

The president has on numerous occasions indicated that the states are largely responsible for themselves during the pandemic. This has not stopped the president and his staff from singling out governors that are deemed as less than appreciative of the federal government's efforts. Governor Andrew Cuomo wondered: "I don't know what I'm supposed to do — send a bouquet of flowers?" (Shear and Mervosh). The Democratic governors of Michigan, Washington, New York, and California have all suffered direct attacks from the president either during press briefings or by twitter but the Republican governors of Ohio and Florida are praised not because of their handling of the pandemic within their states, but for their treatment of the president personally (Wiersema). This trend has been growing since the inauguration of Donald Trump but has clarified in response to Covid-19. Some analysts stop at the partisan division as evidenced by ad hoc federalism but there is something more at work, many Democrats fly under the radar or are occasionally praised while some republicans are lambasted by the administration for divergent policy positions or vocal disagreement. Without presenting a unified strategy to guide the national emergency, The president has also publicly undercut governors nationwide by supporting demonstrations against stay-at-home orders, commenting that "They seem to be very

responsible people to me” (Shear and Mervosh), and taking to twitter to berate and denounce governors perceived to disagree with the White House.

In addition to conflicting and combative messaging towards the states, the administration has gone as far as diminishing or concealing data surrounding Covid-19 produced by federal agencies such as the CDC. The CDC’s chief of staff, Robert McGowan, was told by the White House, one day before the president’s planned re-opening that the CDC’s guidelines for such would “never see the light of day” (Dearen and Biesecker). The president did eventually enact the Stafford Act declaring the Covid-19 pandemic a national emergency but failed to provide for national guidance or direction to the states despite long standing long standing legislation such as U.S. Code Title 42 Section 243(a), the General Grant of Authority for Cooperation, requiring the HHS Secretary to “assist States and their political subdivisions in the prevention and suppression of communicable diseases” and to “cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations.” (ncsl.org)(Blake and Arianina).

States are not the only players left out of the federal response. Despite federal responsibility tied to direct treaty agreements, Native Americans have not received requested support. According to President Nez of the Navajo Nation, the Navajo Nation is third behind New York and New Jersey as having the highest coronavirus infection rates in the nation. (Cuomo). Here in Nevada, Laura Perry, the Moapa River Band of Paiutes chairwoman, expresses frustration with the difficulty in meeting these demands in light of the emergency closures of their sole revenue producing businesses (Solis). Stacey Montooth, executive director of the Nevada Indian Commission, notes that tribes are at odds with the bureaucratic hurdles involved with receiving assistance and that many tribes lack the labor force capable of handling the necessary bureaucratic paperwork (Spillman and Kane).

Despite, or perhaps because of, uneven federal guidance, states have largely rallied. States have formed coalitions such as the Western States Pact of California, Oregon, and Washington, joined by Colorado and Nevada on April 27, 2020. The commitments seek to safeguard residents' health, proclaiming in part, that: "Health outcomes and science – not politics – will guide these decisions. Modifications to our states' stay at home orders must be made based off our understanding of the total health impacts of COVID-19 (nv.gov). It should come as no surprise that the White House has claimed credit for the successes of the states, claiming his push to reopen the country proves his *America First* policy platform (Forgey).

My quarantine memories will be predominantly composed of fear and stress. Split vocationally between service work and education, my opportunities for income evaporated overnight. Likewise, my spouse, who works in a restaurant, was similarly furloughed. As a full-time student, we relied heavily on my wife's income while I supplemented with part-time work. Having faith in the logic behind stay-at-home orders, I was willing to suffer a bit for the greater good. Unfortunately, the state of Nevada's Unemployment Insurance system has proved to be an absolute farce. As a counterpoint, the state's Department of Health and Human Services was incredibly helpful, providing at least a small piece of security and assistance. The economic stimulus did help immensely and shows what bipartisanship can be if it is important enough. A significant concern for me is testing. I recently needed blood drawn and was asked upon arrival if I was there for a Covid-19 antibody test. Since I was not sure what that meant, I asked and inquired as to the cost. I was told the test was \$130 but that my insurance would *probably* reimburse me. Though this seems to be directed at senior citizens and those with compromised immune systems, I found myself wondering if the federal government would ever promote

comprehensive testing? Quarantine has been personally debilitating, which is exacerbated by the seeming lack of interest by the public to actually observe social distancing and wear a mask.

As expressed earlier, I believe that we have entered a new phase of federalism. Some argue that the current president is an aberration and the next may return us to the normalcy of ad hoc federalism. That ad hoc federalism has brought us into the present-day with our current struggles, not just with Covid-19 but with rule of law in general, hardly instills a sense of well-being. Neither has history demonstrated that presidents give back powers and controls cultivated by their predecessors. Partisan division in politics has grown and strengthened over the last few decades but where ad hoc federalism is defined for its adherence to partisan lines, what we are witnessing today is something else entirely. There is a definite foundational split between parties, but we find ourselves with an executive that grants largesse not only along partisan lines but by demands for supplication and exaltation. The levers of power are not necessarily bound to partisanship today, they are as much tied to the relationship one has with the personality of the president. Recently it was not uncommon for a party member to vote along party lines but now it is equally, or perhaps more important, to vote in accordance with the desires of a specific individual in addition to or in lieu of, one's party. That this represents exactly what our founders feared most should be of enormous concern to all Americans.

## Work Cited

- Arianina, Kristina, and Blake, David. "Potential Federal vs. State conflicts due to Covid-19." Law 360, 9 Apr. 2020, <https://www.law360.com/articles/1262048/potential-federal-vs-state-conflicts-due-to-covid-19>
- Cuomo, Chris. "Native Americans Disproportionately Impacted by Covid-19." *YouTube*, uploaded by CNN, 24 April 2020, [www.youtube.com/watch?v=AkrWzyenoLc](http://www.youtube.com/watch?v=AkrWzyenoLc).
- Dearen, Jason, and Michael Biesecker. "Emails: Trump Nominee Involved in Shelving CDC Virus Guide." *AP NEWS*, Associated Press, 14 May 2020, [apnews.com/0cd4f7bdfc577e234a2c84fbc0b5e7ee](http://apnews.com/0cd4f7bdfc577e234a2c84fbc0b5e7ee).
- Forgey, Quint. "'Trump Was Right': President Claims Pandemic Has Proved His Economic Theories." *POLITICO*, 14 Apr. 2020, [www.politico.com/news/2020/05/14/trump-pandemic-coronavirua-257856](http://www.politico.com/news/2020/05/14/trump-pandemic-coronavirua-257856).
- Gittleson, Ben. "After Kushner Says 'It's Our Stockpile,' HHS Website Changed to Echo His Comments on Federal Crisis Role." *ABC News*, ABC News Network, 3 Apr. 2020, [abcnews.go.com/Politics/kushner-stockpile-hhs-website-changed-echo-comments-federal/story?id=69936411](http://abcnews.go.com/Politics/kushner-stockpile-hhs-website-changed-echo-comments-federal/story?id=69936411).
- Greve, Michael S. "Bloc Party Federalism." *Harvard Journal of Law & Public Policy*, vol. 42, no. 1, 2019, pp. 279–307.
- Kanno-Youngs, Zolan, and Jack Nicas. "Some States Awaiting Medical Gear Instead See It 'Swept Up by FEMA'." *The New York Times*, 2020, p. A10.
- Law, John. "How Can We Define Federalism?." *Perspectives on Federalism* 5.3 (2013): 88-120.



“Nevada & Colorado Join California, Oregon & Washington in Western States Pact.” *Press Releases 2020*,

[gov.nv.gov/News/Press/2020/Nevada\\_\\_\\_Colorado\\_Join\\_California,\\_Oregon\\_\\_\\_Washingtton\\_in\\_Western\\_States\\_Pact/](http://gov.nv.gov/News/Press/2020/Nevada___Colorado_Join_California,_Oregon___Washingtton_in_Western_States_Pact/).

Shear, Micael, and Sarah Mervosh. “Trump Encourages Protest Against Governors Who Have Imposed Virus Restrictions.” *The New York Times*, The New York Times, 17 Apr. 2020, [www.nytimes.com/2020/04/17/us/politics/trump-coronavirus-governors.html](http://www.nytimes.com/2020/04/17/us/politics/trump-coronavirus-governors.html).

Solis, Jeniffer. “Tribes in Nevada Brace for Coronavirus.” *Nevada Current*, 21 Apr. 2020, [www.nevadacurrent.com/2020/03/26/tribes-in-nevada-brace-for-coronavirus/](http://www.nevadacurrent.com/2020/03/26/tribes-in-nevada-brace-for-coronavirus/).

Spillman, Benjamin, and Kane, Jenny. “Native Communities in Nevada Turn to Tradition and Each Other during Pandemic Crisis.” *Reno Gazette Journal*, Reno Gazette Journal, 23 Apr. 2020, [www.rgj.com/story/news/2020/04/23/coronavirus-impact-nevada-tribes-indigenous-people/5160591002/](http://www.rgj.com/story/news/2020/04/23/coronavirus-impact-nevada-tribes-indigenous-people/5160591002/).

Smith, Kevin B., and Alan Greenblatt. *Governing States and Localities*. SAGE | CQ PRESS, 2020.

Wiersema, Alisa. “Trump's Election-Year Tangles with Swing-State Governors Unfold amid COVID-19 Confusion.” *ABC News*, ABC News Network, 7 Apr. 2020, [abcnews.go.com/Politics/trumps-election-year-tangles-swing-state-governors-unfolds/story?id=69879408](http://abcnews.go.com/Politics/trumps-election-year-tangles-swing-state-governors-unfolds/story?id=69879408).