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Why Federalism Matters

PIETRO S. NIVOLA

What do we want from federalism?" asked the late Martin Diamond in a famous essay written thirty years ago. His answer was that federalism—a political system permitting a large measure of regional self-rule—presumably gives the rulers and the ruled a "school of their citizenship," "a preserver of their liberties," and "a vehicle for flexible response to their problems." These features, broadly construed, are said to reduce conflict between diverse communities, even as a federated polity affords inter-jurisdictional competition that encourages innovations and constrains the overall growth of government.

Alas, as Professor Diamond and just about anyone else who has studied the subject would readily acknowledge, the promise and practice of federalism are frequently at odds. A federal republic does not always train citizens and their elected officials better than does a unitary democratic state. Nor are federations always better at preserving liberties, managing conflicts, innovating, or curbing "big" government.

Whatever else it is supposed to do, however, a federal system should offer government a division of labor. Perhaps the first to fully appreciate that benefit was Alexis de Tocqueville. He admired the decentralized regime of the United States because, among other virtues, it enabled its national government to focus on primary public obligations ("a small number of objects," he stressed, "sufficiently prominent to attract its attention"), leaving what he called society's countless "secondary affairs" to lower levels of administration. Such a system, in other words, could help the central government keep its priorities straight.

Federalism's several supposed advantages are weighed in this first of two *Brookings Policy Briefs*. A subsequent one will delve more deeply into the facet of particular interest to de Tocqueville: a sound allocation of competences among levels of government. For arguably, it is this matter above all that warrants renewed emphasis today, because America's central government with its vast global security responsibilities is overburdened.

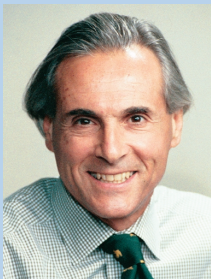
ENSURING UNITY?

Sometimes nations face a stark choice: allow regions to federate and govern themselves, or risk national dissolution. Clear examples where federalism is the answer exist. Belgium would probably be a partitioned state now if

Flanders had not been granted extensive self-government. If under Italy's constitution, Sardinia, a large and relatively remote Italian island, had not been granted significant autonomy, it might well have harbored a violent separatist movement—like the one



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Pietro S. Nivola is the vice president and director of Governance Studies at the Brookings Institution.

plaguing a neighboring island, Corsica, a rebellious province of unitary France.

Where truly profound regional linguistic, religious, or cultural differences persist, however, federating is by no means a guarantee of national harmony. Canada, Spain, and the former Yugoslavia are well-known cases of federations that either periodically faced secessionist movements (Quebec), or have had to struggle with them continually (the Basques), or collapsed in barbarous civil wars (the Balkans). Iraq seems headed for the same fate. The Sunni minority there is resisting a draft constitution that would grant regional autonomy not only to the Kurds in the north but to Shiite sectarians in the oil-rich south. So far, proposed federalism for Iraq is proving to be a recipe for discord, not accommodation.

In much of America's own history, federalism did not ease this country's sectional tensions. On the contrary, a long sequence of compromises with the southern states in the first half of the nineteenth century failed to prevent the Civil War. Then, through the first half of the twentieth century, additional concessions to states' rights did little to dismantle the South's repulsive institution of racial apartheid. Southern separatism was subdued by a military defeat, not diplomatic give-and-take, and only further assertions of central power—starting with the Supreme Court's school desegregation decision in 1954—began altering the region's corrosive racial policies.

If we fast-forward to present day America, the thesis that federalism is what holds the country together seems no less questionable, though for a different reason. For all the hype about the country's “culture wars,” the fact is

that socially and culturally, the contemporary United States has become a remarkably integrated society, particularly when compared to other large nations such as India, Indonesia, and Nigeria, or even some smaller European states. Thanks largely to massive inter-regional migrations, economic dynamism, and ease of assimilation, contrasts between America's deep South and the rest of the country seem minor today compared to, say, the continuing cultural chasm between the north and south of Italy. In America, where examples of religiously or ethnically distinct jurisdictions are mild ones, like Utah and Hawaii, it seems hard to argue that the nation's fifty states represent keen territorial diversity, and that they are the secret to this country's cohesion. Put more generally, the sub-national entities of an increasingly mobile and assimilative society such as ours tend to demand less independence than they once did, and how much of it they get may not make as much difference for national unity.

LABORATORIES OF DEMOCRACY

In principle, empowering citizens to manage their own community's affairs is supposed to enhance civic engagement in a democracy. Its “free and popular local and municipal institutions,” argued John Stuart Mill, provide “the peculiar training of a citizen, the practical part of the political education of a free people.” From this, informed deliberation and a pragmatic ability to respect both the will of the majority and the rights of minorities—in short, fundamental democratic values—are inculcated.

But in the real world of local politics, these results are often elusive. Prior to the Voting Rights Act of 1965, southern blacks got a “political education” all right, only not the kind Mill had in mind. Presently, even if it no

longer perpetrates wholesale disenfranchisement, community governance can fall short in other ways: it edifies few people when few participate. Keep in mind that the average municipal election in the United States engages less than a third of the local electorate. And the smaller the community's scale, the smaller the share of participants. At best, one in ten registered voters shows up at New England's quaint town meetings.

If local self-government interests average citizens less than it should, maybe at least it still has much to teach their elected officials. Supplying thousands of state and local elective offices, a federal system like America's creates a big market for professional politicians. Many of them (for example, state governors and big-city mayors) have demanding jobs. Their challenges help prepare the nation's pool of future political leaders.

There is no question that those who attain high public office in the United States mostly rise through the ranks of the federal system's multiple tiers, and have been schooled therein. Fifty-six senators in the current Congress were former state legislators or holders of state-wide elective offices. Four of America's last five presidents have been governors. It is by no means clear, though, that the ex-governors who worked their way up federalism's ladder outshine, for example, the national leaders of the United Kingdom. In the twentieth and twenty-first centuries, America elevated such former governors as Franklin D. Roosevelt, Ronald W. Reagan, and George W. Bush to the presidency. Were they better equipped than Britain's leadership (think Winston Churchill, Margaret Thatcher, or Tony Blair)?

Not only that, but there also is some question just how relevant the lessons learned in, for example, the statehouses of relatively small states—like Georgia, Arkansas, or Vermont—are to the men and women who move from there onto the national, or international, stage. As a one-term governor of Georgia, Jimmy Carter had successfully reorganized that state's modest bureaucracy and improved its budgetary performance. But the managerial magic he had worked in Georgia proved of limited use when, as president, Carter turned his attention to Washington's bureaucratic behemoths, such as the Department of Health, Education and Welfare.

Or consider Bill Clinton's presidency. Not infrequently, its cosmopolitan aspirations and impressive achievements were buried by the rest of this ex-governor's agenda, which sometimes seemed incongruously steeped in parochial concerns. Clinton's long speeches, we might recall, delved into the enforcement of truancy laws, the use of school uniforms, the math tests of eighth graders, the need to connect hospitalized children to the Internet, the marshaling of work-study students as reading tutors, the ability of medical insurance to cover annual mammograms, the revitalization of community waterfronts, the appropriate hospital stay for women after a mastectomy, the work of local development banks, the record of Burger King and other businesses in creating jobs for welfare recipients, and so on—in sum, preoccupations suited to governors, county supervisors, hospital administrators, or school boards. But to a world leader?

In 2004, another very good governor, Howard Dean, mounted a spirited campaign for the Democratic party's presidential nomination.

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Dean pointed to his accomplishments in Vermont, a state that had (as Mark Singer observed in a January 2004 profile in *The New Yorker*) a population smaller than metropolitan Omaha and an annual budget of barely a billion dollars. For a time, he became the front runner, the considerable limitations of his small-state political background notwithstanding. What was some of that experience like? According to an article in *The New York Times* (also in January 2004) reflecting on Dean’s gubernatorial years, “The profoundly local aspect of his job was clear in 2002, when he said, ‘I can assure you, of all the things that I had to live with...the most difficult were the cascades of calls in the summer of ’93 and ’94 about how long the wait was at the Department of Motor Vehicles.’”

No matter how seasoned and capable a governor may be, travails like these are not the same as those likely to be faced by anyone who aspires to lead the country, never mind the international community. Granted, there is no job that can adequately prepare a would-be president. Montpelier is not Washington, nor for that matter is Sacramento or Austin. Other things equal, however, a stint as the chief executive of a large place (like California or Texas) may offer a somewhat better test. Yet, more or less indiscriminately, the process of political recruitment in the United States seems to regard states large and small as equally promising springboards.

POLICY INNOVATION

What about the states as laboratories for other experiments—the testing of new public policies, for instance?

Yes, there have been important policy innovations that had their origins, as Justice Louis Brandeis famously said, in a few courageous

states. California has long been the pace-setter in the regulation of air quality. Texas provided a model for recent federal efforts to boost the performance of public schools (the No Child Left Behind Law). Wisconsin pioneered, among other novelties, the income tax and a safety net for the unemployed years before these ideas became national law. Yet, while myopic Washington insiders often pay too little attention to initiatives occurring outside the Beltway, aficionados of state government often devote too much. The significance of experimentation at the state and local level should be neither overlooked nor overstated.

Take the now-legendary example of welfare reform. Thanks to liberal use of federal administrative waivers in the early 1990s, the states took the lead in revising the nation’s system of public assistance. They were widely credited with setting the stage for the historic national legislation of 1996—and also for securing a dramatic decline in caseloads. How much of the decline, however, could be attributed to the actions of the states, both before and after the 1996 law, is actually a matter of considerable debate. Most of the caseload reduction had less to do with inventive state policies than with a strong economy and expanded federal aid (most notably, the Earned Income Tax Credit) to low-income persons who entered the workforce. In sum, although state experiments were undoubtedly instructive and consequential, other fundamentals were more so. One suspects that what holds for the welfare story also applies to some other local inventions—for example, smart growth strategies, school reform, or the deregulation of electric utilities—the impact of which state politicians sometimes exaggerate.

COMPETITIVE FEDERALISM

Does federalism necessarily deliver leaner, more efficient government? There is reason to think that it could. The states are constitutionally obligated to balance their budgets. To spend, these governments have to tax—and that unpleasant requirement supposedly disciplines profligate politicians. So does interstate competition. Presumably few jurisdictions will indulge in lavish social programs that are magnets for dependents from neighboring jurisdictions, and that could cause overtaxed residents and businesses to exit.

The federated political structure of the United States does indeed appear to have some restraining effect, at least when compared to the unchecked welfare states of Europe. Whereas there, the beneficiaries of unemployment compensation, for instance, often seem entitled to limitless support, the American state-run model maxes out at six months, and ordinarily replaces only a portion of a jobless person's lost wages. Why? Part of the reason is that no state in our locally-administered system can afford to let its benefits get too far out of line with those of competing states.

That said, contrary to the wishes of conservatives and the fears of liberals, devolution does not inexorably shrink “big government.” In fact, measured in terms of public employment, it is the state and local sector that has been swelling. With roughly three million employees, the federal payroll today is about the same as it was a half a century ago, but the number of state employees quadrupled to five million. Nor has the central government's spending outpaced that of the states and localities. Their outlays, only some of which are strictly mandated by Washington, more or less match federal ones.

The scope of government depends not just on how many people it employs or dollars it disburses but on what it ultimately does. But even by that criterion, the states are looming large. Phenomena such as the explosion of discretionary Medicaid spending for the “medically needy,” the work of state attorneys general that yielded a weighty legal settlement with the tobacco industry in 1998, the widening assault on improprieties in corporate governance, and increasingly aggressive measures to curb air pollution (including greenhouse gases), among other bold activities emanating from the states, suggest that, like it or not, much of the locus of vigorous government in recent years has shifted to state capitals.

In fact, so active have been the statehouses in the past decade that conservatives now frequently seem of two minds about federalism. They champion decentralization (when it suits them). But because decentralized government is not smaller, only situated differently, they also dissent. Confronting the surge of state activism, Republicans increasingly have favored national preemption of state powers in areas as diverse as tort law, land use regulation, and family policy. The proposed constitutional amendment barring marriages among gays is the latest case in point. Much as *Roe v. Wade* nationalized in a sweeping stroke the rules for abortions, the same-sex marriage amendment would toss into the scrap heap another traditional prerogative of the states: their control of matrimonial law.

WHEN WASHINGTON DOES IT ALL

Opinions are bound to differ on which level of government should have the last word about marriages or abortions. More puzzling is how the central government has come to meddle incessantly in matters that are ordinarily much more mundane, often meeting little or no

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resistance. Contemporary American federalism badly needs a realignment here. For the often indiscriminate preoccupation of national policymakers with the details of local administration is not just wasteful; it can be irresponsible.

Let us glance at a small sample of local functions now monitored by federal agencies and courts. Federal law these days is effectively in the business of determining the minimum drinking age for motorists, setting the licensing standards for bus and truck drivers, judging the fitness tests for recruits of local police or fire departments, overseeing spillages from thousands of city storm sewers, requiring asbestos inspections in classrooms, enforcing child support payments, establishing quality standards for nursing homes, removing lead paint from housing units, replacing water coolers in school buildings, ordering sidewalk ramps on streets, deciding how long some unruly students in public schools can be suspended, purifying county water supplies, arresting carjackers, mandating special education programs for preschoolers, influencing how much a community has to pay its snowplow operators or transit workers, planning athletic facilities at state universities, supplying communities with public works and reimbursements for nearly any kind of natural disaster, telling localities in some states how to deploy firefighters at burning buildings, instructing passengers where to stand when riding municipal buses, and so on.

Several of these illustrations may sound farcical, but none is apocryphal. The directives for firefighters, for example, are among the many fastidious standards formulated by the Occupational Safety and Health Administration. The pettifoggery about where to stand in buses is a Department of

Transportation regulation, which, believe it or not, reads as follows:

Every bus, which is designed and constructed so as to allow standees, shall be plainly marked with a line of contrasting color at least 2 inches wide or equipped with some other means so as to indicate to any person that he/she is prohibited from occupying a space forward of a perpendicular plane drawn through the rear of the driver's seat and perpendicular to the longitudinal axis of the bus. Every bus shall have clearly posted at or near the front, a sign with letters at least one inch high stating that it is a violation of the Federal Highway Administration's regulations for a bus to be operated with persons occupying the prohibited area.

Tangents like these are baffling. Why should a national cabinet department or regulatory bureaucracy be bothered with how “standees” ride local buses or how a town's firefighters do their jobs? If municipal transit authorities or fire departments cannot be left to decide such particulars, what, if anything, are local governments for? Surely, most of the matters in question—putting out a fire, taking a bus ride, disciplining a troublemaker in school, removing hazards like asbestos or lead from a school or a house—rarely spill across jurisdictions and so do not justify intervention by a higher order of government.

Nor can a plausible case be made that central overseers are needed for each of these assignments because communities would otherwise “race to the bottom.” How many states and localities, if left to their own devices, would practice fire prevention so ineptly that they require tutelage from a federally approved manual? Before Congress acted to rid the

Republic of asbestos, the great majority of states already had programs to find and remove the potentially hazardous substance. Long before the U.S. Environmental Protection Agency promulgated expensive new rules to curb lead poisoning, state and municipal code enforcement departments were also working to eliminate this danger to the public health.

Why the paternalists in Washington cannot resist dabbling in the quotidian tasks that need to be performed by state and local officials would require a lengthy treatise on bureaucratic behavior, congressional politics, and judicial activism. Suffice it to say that the propensity, whatever its source, poses at least two fundamental problems.

The first is that some state and local governments may become sloppier about fulfilling their basic obligations. The Hurricane Katrina debacle revealed how ill-prepared the city of New Orleans and the state of Louisiana were for a potent tropical storm that could inundate the region. There were multiple explanations for this error, but one may well have been habitual dependence of state and local officials on direction, and deliverance, by Uncle Sam. In Louisiana, a state that was receiving more federal aid than any other for Army Corps of Engineers projects, the expectation seemed to be that shoring up the local defenses against floods was chiefly the responsibility of Congress and the Corps, and that if the defenses failed, bureaucrats in the Federal Emergency Management Agency would instantly ride to the rescue. That assumption proved fatal. Relentlessly pressured to spend money on other local projects, and unable to plan centrally for every possible calamity that might occur somewhere in this huge country, the federal government botched its role in the

Katrina crisis every step of the way—the flood prevention, the response, and the recovery. The local authorities in this tragedy should have known better, and taken greater precautions.

Apart from creating confusion and complacency in local communities, a second sort of disorder begot by a national government too immersed in their day-to-day minutia is that it may become less mindful of its own paramount priorities.

Consider an obvious one: the security threat presented by Islamic extremism. This should have been the U.S. government's first concern, starting from at least the early 1990s. The prelude to September 11, 2001 was eventful and ominous. Fanatics with ties to Osama bin Laden had bombed the World Trade Center in 1993. Muslim militants had tried to hijack an airliner and crash it into the Eiffel Tower in 1994. U.S. military barracks in Dhahran, Saudi Arabia, were blown up, killing nearly a score of American servicemen in 1996. Courtesy of Al Qaeda, truck bombings at the American embassies in Tanzania and Kenya in 1998 caused thousands of casualties. Al Qaeda operatives attacked the USS Cole in 2000.

And so it went, year after year. What is remarkable was not that the jihadists successfully struck the Twin Towers again in the fall of 2001 but that the United States and its allies threw no forceful counterpunches during the preceding decade, and that practically nothing was done to prepare the American people for the epic struggle they would have to wage. Instead, the Clinton administration and both parties in Congress mostly remained engrossed in domestic issues, no matter how picayune or petty. Neither of the presidential candidates in the 2000 election seemed attentive to the fact that



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Editor
Frederick Dews

Production/Layout
Gladys L. Arrisueño
Merrick Buchanan
Bethany C. Hase

**The Brookings Office
of Communications**
202/797-6105

communications@brookings.edu

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the country and the world were menaced by terrorism. On the day of reckoning, when word reached President George W. Bush that United Airlines flight 175 had slammed into a New York skyscraper, he was busy visiting a second-grade classroom at an elementary school in Sarasota, Florida.

The government's missteps leading up to September 11th, in short, had to do with more than bureaucratic lapses of the kind identified in the 9/11 Commission's detailed litany. The failure was also rooted in a kind of systemic attention deficit disorder. Diverting too much time and energy to what de Tocqueville had termed "secondary affairs," the nation's public servants from top to bottom grew distracted and overextended.

To be sure, the past four years have brought some notable changes. Fortifying the nation's security and foreign policy, for instance, remains a problematic work in progress, but is at least no longer an item relegated to the hind sections of newspapers and presidential

speeches. Nonetheless, distraction and overextension are old habits that the government in Washington hasn't kicked. Controversies of the most local, indeed sub-local, sort—like the case of Terri Schiavo—still make their way to the top, transfixing Congress and even the White House.

The sensible way to disencumber the federal government and sharpen its focus is to take federalism seriously—which is to say, desist from fussing with the management of local public schools, municipal staffing practices, sanitation standards, routine criminal justice, family end-of-life disputes, and countless other chores customarily in the ambit of state and local governance. Engineering such a disengagement on a full scale, however, implies reopening a large and unsettled debate: What are the proper spheres of national and local authority?

How to think through that dilemma will be the subject of my next *Policy Brief*. B

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