

Should Power Be Transferred from the Federal Government to the States?

An understanding of the federal system today requires an examination of what federalism is, why it was established, and how it has evolved. Federalism is a system of government under which power is distributed between central and regional authorities in a way that provides each with important power and functions. The United States is but one of many federal systems around the world. Canada, India, and Germany are examples of nations that have federal systems. In the United States the central authority is known as the federal government, and the regional authorities are the state governments.

Federalism is a structural feature not necessarily coterminous with democracy. A federal system divides power. A unitary system, in contrast, concentrates power. In a unitary system power is controlled by the central authorities, as it is, for example, in Great Britain and France. In Great Britain, regional governing authorities are created, abolished, or rearranged by the central government at Westminster. In the federal system of the United States, however, state governments cannot be so restructured. No state boundary can be changed by the government in Washington, D.C., acting on its own authority. (An exception occurred during the Civil War when the state of West Virginia was created out of Virginia.)

A federal system was adopted in 1787 because a unitary structure would have been unacceptable to the people of the United States, who had strong loyalties to their states. In addition, the Framers of the Constitution wanted a government that would be stronger than the one existing under the Articles of Confederation, but they feared a central government that was too powerful. The federal system allowed for a compromise between those who favored a strong central government and those who supported a weak central government.

The central government was given some exclusive powers (e.g., to coin money and to establish tariffs). The states and federal government shared some powers (e.g., to tax and to spend money). The Tenth Amendment to the Constitution provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Constitution is not so clear about where the powers of the central government end. Two centuries of conflict over states' rights followed its ratification. In general, the trend was away from states' rights and toward national supremacy, until the past few decades. Since the administration of President Richard Nixon, state power has received new emphasis. The Nixon administration launched a program of New Federalism in which revenue sharing was the central feature. Revenue sharing provided a general grant to states and localities to be used as they saw fit, but with certain restrictions. The Nixon administration also devised block grants, in which the federal government provided funds to state and local governments for use in general policy areas rather than targeted to specific purposes. These grants gave states increased flexibility. President Ronald Reagan's New Federalism slowed down the rate of increase in funding grants and promoted grants to state governments rather than local governments.

The Republican victory in midterm elections of 1994 reinvigorated the policy of transferring power from the federal government to the states. Republicans also held thirty governorships, including nine out of the ten largest states, a dominance that made it additionally desirable for the Republican Congress to transfer power to the states.

The key elements of the Republican program were devolution of power from the federal government to the states, block grants, and an end to unfunded mandates — federal laws requiring the states and localities to perform certain tasks or meet certain standards but not supplying funds for doing so. Supporters argued that devolution would return power to the people, make government more efficient, and increase the flexibility of state and local authorities. In 1995, Congress passed, and President Bill Clinton signed, the Unfunded Mandates Reform Act requiring a point of order vote on bills imposing more than \$50 million in implementation costs to states or localities not reimbursed by the federal government. While the law may slow down the pace of unfunded mandates, it does not repeal existing mandates, nor does it furnish funds for existing underfunded mandates. Clinton also encouraged the trend toward transferring power to the states by granting waivers from federal regulations that allowed states to experiment in welfare reform. And in 1996 he signed a bill that transferred power over many welfare programs from the federal government to the states and gave the states vast discretion in the use of block grant funds.

Supreme Court decisions also returned power to the states. In 1995, in *United States v. Lopez*, the Supreme Court reversed sixty years of increasing federal power under the Constitution's Commerce Clause, which grants Congress the power to regulate interstate and foreign commerce. In its 5-4 decision, the Court declared unconstitutional the Gun-Free School Zone Act, which prohibited firearms near schools, on the grounds that Congress had not shown that the possession of a firearm near an education building would disrupt interstate commerce. Regulating guns in and around schools, said the Court, was the responsibility of the states, not the federal government.¹

☒ YES

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to the States?*

KIRK COX

Power to the States

In the broadest possible sense, block grants should be used to restore State powers that have been inappropriately assumed by the Federal Government. This should be accomplished as part of a conscious strategy to balance the Federal budget by 2002. Let me suggest an outline of such a process. There are three fundamental steps.

First, there should be a comprehensive review of Federal programs in relation to State and local governments. Each program should be examined to determine whether or not the Federal Government has the authority under the Constitution, and whether the Federal Government is best suited to accomplish our goals and objectives. In most cases, I believe that an objective analysis will find that a Federal role is not necessary, justified, or efficient. These programs should be devolved.

Second, with respect to programs that should be devolved, Congress should establish block grant programs immediately. These block grants should be as functionally broad as feasible. At a minimum, block grants should encompass broad program functions, such as education, transportation, health and human services, and so on.

And, perhaps most importantly, virtually all Federal mandates should be removed as an element of the block grant program. These mandates dramatically increase costs while substantially reducing services.

Let me also emphasize the importance of providing block grants directly to State governments, to be administered consistently with the existing mechanisms of State laws and constitutions. All local governments are creations of the State. It is not appropriate for the Federal Government to skip over the States to establish relationships with local governments. We have already paid substantially for such inappropriate arrangements, through overlapping programs, duplication, and even lobbying before Congress that pits the interests of State governments against those of local governments.

State governments have proven they can deliver more service for less money. Federal programs have been particularly costly. Centralization of power at the Federal level has resulted in waste, duplication, and contradiction as the Federal Government has intruded into functions that are also handled by State and local governments.

Yet State and local governments have been forced to spend more than they would have if they had spent taxes raised directly from their own citizens. States

and localities, like people, are more careful with their own money than with other people's money.

For example, the Congressional Budget Office has confirmed that local governments routinely spend more to construct federally funded wastewater treatment plants than they spend to construct the same locally funded wastewater treatment plants. In the final analysis, we should all remember that Federal money is not other people's money; it is the people's money.

There is considerable potential for improving the cost effectiveness of federally funded programs. State and local governments have taken the lead in implementing strategies that improve government efficiency.

From privatization to right-sizing, State governments are leading the way. Take my home State for instance. In Virginia we are actively pursuing privatization in a whole host of areas from transportation to corrections to child support collections.

Let's look at just one example: Deadbeat dads are a serious problem. To increase collections we are experimenting with privatizing collections. Private collection companies were allowed to compete with their public counterparts. The results are dramatic.

A private company collects over 11 percent more a month from deadbeat dads than their government counterparts, and at substantially less cost. The direct cost for government collections was \$7.03 per case. The direct cost for the private company was \$5.77 per case.

And best of all, customer service increased. The private company offered 24 phone lines — the State office had 5 phone lines. Further, the private office was open 11 hours more a week than the government offices. The private offices were open on Saturday and provided child care. All this for less money.

And then there's pork. The Federal Government grants billions of dollars annually to State and local governments for pork-barrel projects. By definition, pork-barrel projects have no national significance. Moreover, State and local taxpayers are generally unlikely to consider such programs important enough to finance themselves.

Further, the States are laboratories of democracy. By experimenting with different approaches, the most effective public policy approaches can be identified, and copied by other States.

Just last week [1995], Virginia's Gov. George Allen signed into law the most revolutionary welfare reform program in the Nation. It features a real work requirement, a two-year benefit limit, and a cutoff of aid for additional children.

I can't help but note that the welfare reform movement currently sweeping the Nation began in the States and is still being led by the States. Virginia was able to build on the efforts of Wisconsin and Illinois, and now other States will be able to build on Virginia's example. That is why we call the States laboratories of democracy.

Federal policies that hamstringing our efforts and unnecessarily increase public costs are unwise. Indeed they are unconscionable.

Government at all levels must become more efficient. America's private sector has been restructuring and reengineering for some time. This has not occurred simply because of a desire to become more efficient; it has rather occurred

because restructuring was required to survive in an increasingly competitive market. Government, too, must be restructured — it must be restructured because our present method of operation threatens the living standards of future generations. Devolution of programs to the States, through block grants, is an important component of this long overdue restructuring.

I am happy to report that the States, and their local units of government, are up to the challenge — we are prepared to do our part — but we must be freed to perform. Immediate and comprehensive relief from Federal mandates is an absolute necessity.

I want to make sure that we have not been misunderstood. We are not here today to suggest to you that State and local governments are more virtuous than the Federal Government. They are not. Nor are the State and local governments necessarily more competent than the Federal Government.

But they are closer to the people, and that makes all the difference in the world. Their closeness simply permits them to be more reflective of the public will, and provides incentives for them to spend the tax money they collect from their citizens more effectively. Moreover, it is easier for the people to effect changes through the electoral process where government is closer to the people. Greater accountability is naturally and necessarily associated with government that is closer to the people.

So, in summary, here is what I am proposing:

Congress should devolve substantial powers to the States that are not appropriately the responsibility of the Federal Government; and Congress should use a broad block grant mechanism to return funding responsibility to the States over a seven-year period. At the same time, Federal tax rates should be reduced.

We as a nation have strayed from our democratic ideals. Government has become too remote, too wasteful, and too expensive. It is time to reverse course and return government to the people. All of us hope that Congress will take effective action to return power to the States, to restore the balance envisioned in the Tenth Amendment of the Constitution of the United States.

☒ NO

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JOHN G. KESTER

Forever Federal

There is a loud buzz about reallocating power away from Washington and back to the states — something most Republicans claim to favor. Cursus sell books on the virtues of decentralization, local decision-making, and neighborliness. Judgment day for Washington is forecast.

Not so fast. Meaningful federalism — the classical concept of states that actually behave like sovereign governments with real power — is an idea with a past brighter than its future.

Some of the anti-Washington talk stems from the successful conclusion of the Cold War. It ended big central government's most tolerable excuse for being: defense from foreign military force. A federal government busy guarding you from missiles can't be all bad. One focused on taking your money to give to someone else seems less legitimate.

Some decentralization is possible, and perhaps along with it some shrinking of hyperactive government. But restoring the states to anything like real sovereigns, with noticeably different laws and unique customs, is a notion that crested at Gettysburg on July 3, 1863. And although many Americans hope for curbs on federal spending, few want simply to substitute state bureaucracies for federal in running their lives.

Always the federal government has held two unbeatable ways to expand — provided that the voters who select the Congress wanted it to do so.

First, the Constitution makes federal laws supreme over any state laws, to the contrary. Until 1913, that power was restrained by having U.S. senators chosen by state legislatures.

Starting in the 1930s, the federal government decided it could regulate practically everything to make life better. The Supreme Court by 1937 decided to give up and let it try. The court turned its own energy to interpreting general clauses in the Constitution as tight limits on state laws. All Congress needs is some constitutional handle to legislate, and state laws must give way.

Second, that stick of federal supremacy is backed up by the carrot of federal grants. Grants can have conditions that Washington otherwise would lack power to order. Let us feds pay for part of that new school — as long as its curriculum adds the programs the national government wants. The Supreme Court doesn't worry; in 1987 it held that Congress could use the highway pork barrel to dictate the minimum age a state set for beer drinking.

So with legal restrictions on federal power gone except for occasional extreme cases, any real restoration of state power would have to come from the voters themselves, with an assist if the Supreme Court ever decided to loosen its supervision of state laws, including touchy issues like abortion and school prayer.

Real federalism in the United States — a twenty-first century in which state governments wield great power — is a pipe dream. Here is why.

STATES ARE GREEDY

The dirty little secret of states' rights is that the states want only rights — not responsibilities. Justice Sandra Day O'Connor wrote in 1992 that the Constitution did not convert the states into "regional offices nor administrative agencies of the Federal Government." But the states themselves don't seem to agree. Often they look like

caricatures of welfare mothers. They look for regular handouts from federal officials, they don't say thank you, they expect to be bailed out of their problems — in short, they exhibit all the passive cunning of classic dependent behavior.

The states have not been turning away those federally funded grants, which add up to a quarter-trillion dollars a year. Even let's-run-against-Washington governors like California's Pete Wilson or Virginia's George Allen do not hesitate to ask the nation's taxpayers to pick up their earthquake and hurricane bills. Many state officials complain about the strings attached to federal education grants, but only a handful decline the money.

State irritation about distasteful conditions has brought the current block-grant frenzy. This old Republican favorite — bundles of federal money given to the states without strings — began as Richard Nixon's "revenue sharing" and was revived in Reagan's "new federalism." The 1970s notion was that the federal government was so rolling in tax revenue that it would send extra dollars back to the states (but not to the taxpayers, except when Congress under Reagan actually cut taxes).

Unclear then and unclear now is why federal money should be handed out to state governments, or anyone else, without careful regulation of how it is to be spent. The best answer may be that the regulatory red tape and bureaucracy that Democrats persistently write into federal aid is an even worse alternative.

Still, why should the federal government tax people to give money to the states at all? If the states need funds, they have their own power to tax. And if for its own activities the federal government does not need all the revenues it takes in, why are the taxes it collects so high?

Do not, however, count on Congress to forgo the pleasure of giving away money. No one said it better than FDR (Franklin D. Roosevelt) crony Harry Hopkins: "We will spend and spend, and tax and tax, and elect and elect." And state politicians are not competing to raise state taxes to pay for what the states want to spend.

FEDERAL TAXES ARE VERY HIGH

In a federal system in which the states really mattered, the significant taxes that people pay would be levied by the states. The big checks in April would be addressed to Annapolis or Richmond, not the IRS (Internal Revenue Service).

For a century and a half, that was so; for the first hundred years, except during the Civil War, the federal government was financed entirely by the tariff and a few excises, and until the Sixteenth Amendment in 1913, it could not tax incomes. The federal income tax affected scarcely anyone until the New Deal, and did not bite ordinary people until money was needed to fight World War II.

Since then, there have been no peace dividends, just federal programs that expand to meet and exceed revenue. Congress and lobbyists have never failed to discover reasons why federal taxes must stay stratospheric.

So for two generations now, the tax structure has been inverted. Federal taxes, which now go principally to pay off interest groups (agribusinesses, shipbuilders,

retired people, government employees) are the big portion of the tax burden. State income taxes, though no longer trivial, are puny in comparison — not what one would expect if the principal functions of government were carried out by states. Local functions like schools and police rely on local property taxes, plus some conditional federal handouts.

As long as the federal government's voracious income tax vacuums up most of the country's tax revenue, there is little left for the states. States will not play a central role in domestic affairs as long as Washington has confiscated the tax base.

WE HAVE A NATIONAL ECONOMY

States have trouble maintaining autonomy when each is part of a larger economic unit, where goods and capital and workers move freely about. More economic integration means reduced sovereignty. (That is NAFTA's [North American Free Trade Agreement] downside, as Ross Perot and Pat Buchanan with purple prose tried to point out, while ignoring its advantages.)

The United States is a free-trade zone without state border guards. If a state cuts taxes and welfare benefits, it will wind up with businesses and taxpayers. If it adopts generous welfare or medical programs, eager recipients will be moving in. Perhaps up to some point states should not have to bear the competitive cost of their social policies. Their helplessness to control who lives there is a reason to keep the federal government involved, at least by setting some minimum national standards. Otherwise, few states would dare provide social benefits much above the average, lest they attract too many takers.

STATES ARE LETHARGIC

A Herblock cartoon not long ago pictured a leering figure of "Congress" handing a horse collar and harness to a naïf labeled "States and Cities," asking him to pull a huge cartload of baggage. The burdens being handed over were called:

- "Welfare Costs"
- "Crime Prevention"
- "Emergency Relief"
- "Health Costs"
- "Increased Local Spending Responsibilities"

Anyone who looked at that cartoon when the Constitution was drafted, or even 30 or 40 years ago, would not have understood it. Each item on the list, assuming such matters concerned government at all, was almost entirely a concern of local mayors and city councils. Only in extraordinary emergencies would even state governors and legislatures get involved, much less the federal government, whose main tasks were national defense, foreign affairs, the tariff, coinage, and keeping

out of the way of business. Who, else but "states and cities," grandfather, would have asked, would Herblock expect to handle such responsibilities — assuming that these were governmental responsibilities at all?

As late as [John] Kennedy's administration, it was still possible for Congress to debate whether a particular issue was appropriate for the federal government to address. By the end of [Lyndon] Johnson's, the only issue was how much government money was needed. That social problems are federal problems had become assumed.

State governments display the Patty Hearst syndrome. They have been subjected to federal coercion for so long that now they depend on it, and forget what self-government means. For a pathetic exhibit, look at your state income-tax form. Little effort is made by Maryland, Virginia, or other supposed sovereigns to decide what is income, how incomes should be taxed, or to build a tax structure reflecting local judgments. Instead, state legislatures simply adopt whatever rules Congress decides for the current year, make a handful of adjustments, and apply a percentage rate. Basic decisions of social policy, which any tax code is full of, are decided not in Richmond or Annapolis, but on Capitol Hill.

The taxpayer's form-filling is made simpler. But if something as basic as tax structure is to be designed elsewhere, what are state legislatures for?

WE HAVE A HOMOGENIZED COUNTRY

A real federalist system presupposes diversity. There may be a national interest in drivers staying on the right side of the highway from coast to coast, but the speed limit in Wyoming is quite a different call. States with real power would have different definitions of crimes, and even different choices as to whether particular behavior is criminal. Some would enact local preferences on many subjects into law, while others would remain permissive. Differing legal codes and customs would reflect the differences in the attitudes of their citizens.

Before World War II, and even into the 1960s before the civil-rights acts, there were distinct local cultures in this country, which a simple automobile trip could reveal. Now they are blotted out — first by radio and then television, by national control of schools, by cheap air travel. That is not all bad. The career of federalism — more aggressively described as states' rights — suffered for two centuries from becoming entangled with, first, the cause of southern slavery, and then its follow-up of racial segregation. Baggage like that could make any political theory look disreputable.

WE HAVE A MOBILE SOCIETY

Scarcely anyone born in this country has chosen to become a citizen of some other country, and then another, and then another. Yet Americans change their state citizenship almost without thinking. To them the issues in moving are jobs or real estate,

not emigration to a strange land. If they feel pangs about moving, these usually relate to what a particular community is like, not the nature of its state government.

The willingness to pull up stakes is nothing new; it is how the West was won. This is a country with cheap transportation and an economy that moves workers around, so that it is not unusual for a person to live in four or five states in a lifetime. And most Americans are not looking for surprises when they travel from one state to another. Ask the people at McDonald's and every hotel chain from Super Eight to Four Seasons.

LOYALTY

When secession came, Robert E. Lee followed his first allegiance: to Virginia. The regiments that fought the Civil War, on both sides, were enlisted under state banners. Now, even the national guards of each state, successors of the state militias, have long been federally funded and supervised.

Except in some corners of the South and on a few football weekends, states no longer mean much emotionally to most of their citizens. Such people do not feel great pain when states' rights are slighted by the feds.

NEW AMERICANS

The flood of immigrants to the United States over the past two decades makes federalism an even less likely bet. These new faces, who quickly become voters, have little reason for attachment to a particular state. Consider Quebec, whose citizens of French descent would have seceded from Canada in October [1995] but for the decisive votes of national-minded newcomers.

To expect more than a few immigrants to become attached to what surely seems a mere political subdivision of the country they joined is unrealistic, particularly when dysfunctional public schools will not teach history to their children. It is not likely that new inhabitants will go to great pains for states that are abstractions—particularly states that may be theirs only for the moment.

MODERNISM

Federalism is not going to prevail based on nostalgia. Reverence for the past has never been this country's strong suit, and the current generation is a little vague about events before, say, 1992. Our commander-in-chief, indeed, on this summer's [1995] V-J Day anniversary, recalled that Japan had surrendered on "the aircraft carrier *Missouri*." People like that don't ponder in awe political arrangements designed in the good old days.

STATE GOVERNMENTS AREN'T SO GREAT

Republicans are correct that many citizens are tired of the things the federal government does. But one cannot assume that the states are the level of government that people miss. Where people want more decision-making power, and less outside interference, is in their cities and communities. The local level is where hope lies for doing something constructive about education and public safety, and it is locally that individuals can make their view felt.

State governments, by federal pressure and funds, often now are simply clones of the federal bureaucracy, though sometimes staffed with less talent. Federal domestic programs always have demanded paperwork and compliance with regulations. So state governments have grown departments to do so, and even added a few forms and regulations of their own—for which, in turn, local school districts and police departments have to hire employees who can speak and write bureaucratese. State bureaucracies are not noticeably more efficient than federal. If you think the U.S. Postal Service is bad, spend an hour or two (you seldom can spend less) at the Virginia Department of Motor Vehicles.

There is a widespread concern that the federal government has overreached, and now intrudes too far into local affairs. By setting up programs and issuing mandates, it can displace the lower levels of government from their own responsibilities.

To political scientists, decentralization may be an attractive way of channeling political participation, and to economists an efficient prod for governmental responsiveness to regional needs. But the need to decentralize does not mean that Americans are ready for states that are really governments.

There are many cleavages in today's society, but regionalism is not a big one. Emotionally, this is a country of Americans. The political theory of federalism is not going to sell to people whose hearts do not feel state allegiance.

Nor is there any reason to encourage regional differences, which states' rights promote, as if they were good. Countries get torn up by such things. The United States already has racial and ethnic frictions that need to be healed.

It is unwise for a country to try to govern local matters from Washington. But it would be folly for a country to encourage significant divisions. Ask the prime minister of Canada, or the former president of the former Yugoslavia.

Much can be done to detach federal tentacles from local affairs. But the states aren't going to handle the biggest domestic decisions, because the people don't expect them to.

Questions for Discussion

1. Which is closer to the people: the state or the federal government? Why?
2. What criteria can be used in evaluating whether a policy area properly belongs to the states or to the federal government?
3. What can the federal government do today to strengthen state governments?