



P E R S P E C T I V E S

by Rinaldo S. Brutoco



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A New Federalism Awaits us in a Post-COVID-19 America

Up until January, the main concerns being touted by political pundits was a fear of executive overreach from the White House. Resulting from several decades of an expanding role in the Executive Branch, an ever more powerful executive has arisen at the expense of Congress' appropriate role. These fears have been particularly acute for a president who flouts long held political customs and often acts in an authoritarian manner. Then the novel coronavirus hit, and despite a hunger from the public for clear and effective executive action, all we got was silence, deflection, unreasonable optimism, and lots of excuses about why it's "not my job" to lead the national public health response.

In response to growing requests from numerous governors for help in procuring critical protective gear and lifesaving medical equipment from the national stockpile, President Trump pushed back, saying, "Governors are supposed to be doing a lot of this work." He finished the thought with this dismissal: "The Federal government is not supposed to be out there buying vast amounts of items and then shipping. You know, we're not a shipping clerk."

And with that statement, President Trump broke yet another long held political norm, and unleashed an era that will redefine the relationship between the federal government and the states: A New Federalism.

Over the last 200 years...we've gotten increasingly used to thinking of ourselves as a single country, and we've forgotten what "Federalism" means.

Federalism is a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units— in this case, the respective states. It is based upon democratic rules and institutions in which the governing power is shared between national and state governments, creating a federation. The United States of America formally became a federation in 1781, when the Articles of Confederation first drafted in 1777, was finally ratified by the states. Despite the long gestation period, it soon became clear to the Founding Fathers (in part motivated by the impotency of the Federal government to put down Shay's Rebellion) that they needed to meet and create a new governing document: The Constitution, ratified in 1789, 22 years after the start of the Revolutionary War. The Articles of Confederation had to be abandoned because the Federal government had almost no power, as all serious power (banking, tolls, raising a militia, trade, etc.) was held by the states. It was totally unworkable to create one Nation, or as the Great Seal reads, "E Pluribus Unum" ("Out of Many, One").

Hence, from the origin of our nation, the relationship between the powers exercised by the Federal government and the states has been dynamic. In certain times, states held onto more control, and since World War I, the Federal government has dominated.

Federalism changed in the wake of the Civil War, which the Union won in large part due to centralized control of supply chains and wartime production of material. When it became clear that "States' Rights" could be used to disenfranchise black voters, passage of the 13th and 14th amendments in 1865, as further enhanced by the 1968 Civil Rights Act, spelled the beginning of the end of that era in Federalism. The Federal government became the ultimate arbiter over individual civil rights until last year when that monumental piece of legislation was "gutted" by the Roberts Supreme Court, empowering 22 states to enact voter suppression measures to reduce black, brown, and student voting.

Over the last 200 years, and especially since the New Deal in the 1930s, we've gotten increasingly used to thinking of ourselves as a single country, and we've forgotten what "Federalism" means. As the powers embraced by the Federal government have expanded, and as the powers invested in the Executive Branch of the government grew, the states have ceased operating as independent nations in a coordinated relationship. People have largely stopped thinking of themselves as state citizens," instead identifying as "American"— until now!

Many would argue that was a good thing— especially in light of the civil rights era, and in expanding protections for women and minorities, protecting national health and safety through environmental regulations, ensuring the safety of our food supply, and managing our national economy out of grave distress— but we are now past that. The Federal government is not interested in leading us through the COVID-19 crisis. We are likely entering into a new era characterized by a New Federalism that will rise, like the phoenix, from the ashes of this pandemic.

If you think Governor Newsom has done a good job protecting Californians from the worst ravages of the coronavirus, or if you gained great comfort from Governor Cuomo's daily report to the Nation on his battle to minimize death and the potential destruction to New York's healthcare system, you'll want to watch this column for the next installment of The New Federalism— in two weeks' time.

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