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Ending Federalism as We Know It

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A new book shows how the fragmented American state arrests democracy. What we need is nothing short of a reconstruction.

The early days of the COVID-19 pandemic were heady ones for federalism apologists. As the Trump administration dithered, governors took center stage, issuing emergency declarations, holding daily press conferences clad in polo shirts, brandishing slide decks from McKinsey & Company, and outlining their strategies for controlling the spread of the virus while “safely” reopening state economies.

Indeed, to early observers, American federalism — which divides authority between central and regional governments — seemed like a crucial element of crisis management. Across nearly all fifty states, gubernatorial approval spiked. As the political scientist Kathleen Hall Jamieson put it, “A person from Mars observing the rhetoric and actions of our leaders would reasonably assume that Andrew Cuomo is the president.” Some scholars even lavished praise on the decentralized, federal structure of the American state itself. Writing in *Foreign Affairs*, Danielle Allen — director of Harvard’s Edmund J. Safra Center for Ethics — praised federalism as an essential asset in pandemic response, suggesting

that local control “provides flexibility and the ability to tailor responses to the context — just what the United States needed.”

Paeans to decentralized government sit at odds with bleak realities in the states. As recent research has suggested, states’ decisions about social distancing didn’t reflect local conditions so much as the partisan identity of the governor and the state legislature. Moreover, as soon as social-distancing measures were imposed, most states quickly reopened their economies, despite lacking adequate test-and-trace infrastructures. In several Republican-led states, most notably Arizona, Florida, and Texas, new viral hot spots have appeared.

As the public-health emergency cascaded into an economic crisis, state and local governments were set to experience combined revenue shortfalls of at least \$500 billion between 2020 and 2022. Constrained by balanced-budget provisions in state constitutions and abandoned by Congress, governors have prepared to make excruciating budget cuts. Amid a pandemic, one of the first programs on the chopping block is Medicaid, which provides health insurance to one in five Americans and may cover nearly half of all those losing employer-sponsored insurance due to COVID-19-related job losses. With the prospect of a pandemic election looming, political crises join fiscal and humanitarian ones. Many states seem primed to repeat the experience of Wisconsin’s disastrous spring primary, which disenfranchised thousands of voters and likely contributed to the spread of the virus.

Slide decks and press conferences notwithstanding, COVID-19 exposes not merely failures of leadership, but the structural defects of America’s brand of federalism as well. The allocation of critical responsibilities to state governments — from the financing of social programs to the administration of elections — has left civil and social rights dependent on one’s state of residence. States’ limited fiscal capacities make them particularly ill-suited for financing key responsibilities, including and especially public health, in the midst of an economic crisis. Furthermore, interstate competition for capital investment incentivizes states to decrease tax stringency and weaken labor protections. As Harold Laski put it in 1938, for states to compete with “the integrated power of giant capitalism is to invite defeat in every element of social life.”

Given federalism’s impact on the COVID-19 response, the publication of Donald F. Kettl’s *The Divided States of America: Why Federalism Doesn’t Work* could hardly be more timely. A renowned scholar of public administration and intergovernmental relations, Kettl offers a lucid, searing critique of American federalism as a contributor to growing socioeconomic inequalities, both within and among states. Moreover, this inequality, he argues, has fueled a broader decline in Americans’ trust in government, as well as polarization and dysfunction in Washington, DC. Reversing these outcomes, Kettl suggests, will require major changes to the fiscal and administrative relationships among federal, state, and local governments. Yet in the absence of a more fundamental political reconstruction — including a restoration of the right to vote, a recovery of the right to organize and join a union, and the abolition of the carceral state — the structural inequalities of American federalism are likely to endure.

Federalism Against Democracy

At the center of Kettl’s critique is how American federalism has, from its origins, locked in deep inequalities that are fundamentally incompatible with the values of democracy. The Constitution’s

federal architecture was itself the product of a crude political bargain, in which delegates from slave-owning states were pivotal coalition members. Yet not only did the internal division of authority between state and federal governments allow slavery to endure, the creation of a newly powerful federal government would help stamp out egalitarian state-level schemes for the more equal division of property and the abolition of debt, which James Madison referred to in Federalist No. 10 as “wicked projects.”

The history of American federalism, specifically its relationship to the institution of slavery and Jim Crow, has generated a debate among political theorists. One side, best represented by political scientist William H. Riker, views federalism’s sour fruit as cause for chopping down the tree — abandoning the federal bargain entirely. If the main beneficiaries of federalism in US history have been capitalists and racists, he argued, perhaps it is not much of a bargain after all. The other position, articulated most powerfully by public administration scholar Martha Derthick, essentially argues that history alone is no cause for giving up the compound republic. “As the burdens of governing grow,” she suggested, “the inability or unwillingness of the federal government to bear them alone is manifest.” Whatever federalism’s sins, the existence of local governments allowed controversial issues to remain open to “political and judicial dispute.”

Yet what both poles of the Riker–Derthick spectrum neglect is that the democratization of the American polity has always hinged on fundamental renegotiations of federalism — enduring shifts in authority that have empowered the federal government to engage in redistribution (the Sixteenth Amendment’s construction of the income tax) and to delimit undemocratic tendencies in the states (the Fourteenth Amendment’s equal protection clause, the civil rights legislation of the 1960s, *Baker v. Carr*’s challenge to legislative malapportionment). But these renegotiations are often incomplete and subject to dramatic political reversals.

Most telling, federalism allowed authoritarian enclaves in the South to endure for nearly a century after Reconstruction. They were snuffed out not through modest reforms, but through the 1965 Voting Rights Act’s sweeping revision of the federal role in election administration, which dramatically enhanced black political incorporation and stalled numerous state efforts at disenfranchisement. Yet in subsequent decades, a legal and administrative mobilization of conservatives gradually chipped away at the act’s protections over time. By 2013, the Supreme Court’s five-to-four decision in *Shelby County v. Holder* effectively erased the Voting Rights Act’s preclearance process, its most powerful tool for combating voter suppression.

Reconstructing the federal bargain requires overcoming the essential obscurity of subnational politics, which allows local elites to suppress conflict and maintain their power. As Grant McConnell wrote in 1966, while public attention is occasionally drawn to “scandalous” conditions in the states, “These moments pass; state affairs recover their wonted obscurity and it is assumed that the wrongdoers have been exposed and punished.” In other words, states’ ills are not one-off incidents or failures of leadership, they are a structural product of federalism.

One of the virtues of Kettl’s book, then, is the extensive space he devotes to mapping inequality in the states. By tabulating a wide variety of social indicators, Kettl shows how subnational policy regimes produce consistently unequal social and economic outcomes. Income inequality is 3.4 times higher in

New York than in Alaska. In Mississippi, more than 20 percent of the population lives below the poverty line, compared to just over 5 percent in New Hampshire. States that expanded Medicaid saw significant declines in mortality rates for both infants and adults, yet state Medicaid coverage varies so widely that it has spawned the phrase “If you know one state Medicaid program, you know one state Medicaid program.”

All sufficiently large polities — federal or otherwise — contain a modicum of regional variation, yet the United States stands apart in inequality, even when compared to other federal countries. Kettl effectively shows how state policy choices reproduce inequality by offering meager financing for Medicaid and public schools, the regulation of air quality, and the management of a significant part of the carceral state. It’s important to note that these choices do not simply reflect variations in the tastes and preferences of popular majorities in different states. Despite broad popular support for Medicaid expansion in many Republican-led states, weak electoral competition, ambivalent interest-group support, and limitations on popular referenda have stifled its advancement.

Inequality Engineered

Divided States goes well beyond merely tabulating and mapping interstate inequalities, by analyzing how the evolution of American federalism has helped to generate and reinforce them. Essentially, Kettl claims that the centralization of governance brought on by the civil-rights reforms and social policies of the 1960s caused a pendulum-like political reaction. “Even though the federal government aggressively promoted equality through law,” he argues, “it also increasingly relied on the states as administrative agents for federal policies and reinforced their role as independent decision-makers.” Drawn into a growing range of partisan conflicts over social and regulatory policy, states chose divergent paths that reflected the interests of increasingly nationalized political parties.

While Kettl’s story about the nationalization of American public policy and the subsequent polarization of state politics is true as far as it goes, it can only take us so far. After all, there was rampant inequality in the American states at the dawn of the twentieth century, too, even though parties and policy-making were highly localized. Understanding federalism’s impact on inequality requires attention to several important shifts in the American political economy that have weakened the power of workers and imperiled the capacity of state governments to mitigate inequality.

Perhaps most important, the decline of labor unions left working-class Americans with less power to make demands on both their employers and the state. As Laura C. Bucci’s research shows, unionization has played a crucial role in reducing income inequality, a process that was halted by the passage of right-to-work legislation. If Michigan had kept its 1976 unionization rate, for example, its level of economic inequality would decrease by more than 10 percent.

In parallel to the decline of working-class power resources, conservatives consolidated power at the subnational level in ways that ultimately enhanced inequality. The formation of organizations like the American Legislative Exchange Council and the State Policy Network helped to speed up the passage of right-to-work legislation, weakening the power of the labor movement and strengthening Republicans’ state-level prospects. As labor’s power declined, Democrats in turn sought out resources from wealthy donors. At both the federal and state levels, the Democratic Party has foregone numerous opportunities to support greater labor organizing in the states.

Shifts in the class composition of the electorate have contributed to rising inequality. As William Franko and his colleagues illustrate, between 1976 and 2006, more than half of the states experienced an increase in electoral class bias — with the poor voting at declining rates relative to the rich. This bias helps to erode the connection between mass public opinion and government policy, skewing the distributional outcomes of government in favor of the rich. State election administration policies, more fully unfettered in the wake of the Shelby decision, create barriers to the ballot box that depress voter turnout. Moreover, as Jamila Michener has shown, states can depress turnout among low-income Americans by depriving them of key social policy benefits, namely health care. This feedback process can also reinforce inequalities over time.

Finally, several developments in monetary and fiscal policy further entrenched economic inequality. Combined with the Federal Reserve's 1979 credit crunch, the Reagan administration's program of "New Federalism" further decentralized the economy, forcing states to compete more intensely for capital investment, which allowed businesses to reset the terms of class compromise. Measures limiting the growth of the local property-tax levy, which emerged with increasing rapidity in the late 1970s, have constrained spending in the public sector, with significant implications for the quality of education, health, and social services. As state governments began to take on an increasing array of policy responsibilities, they continued to rely overwhelmingly on their own revenue rather than on federal transfers as a source of financing.

With the rise of deficit-reduction politics in the 1980s, the federal government politely discarded the program of general revenue sharing it had embraced in the early 1970s. In 1996, Congress shuttered the Advisory Commission on Intergovernmental Relations (ACIR), which had once advocated for a more expansionary approach to fiscal federalism. During its heyday in the 1970s, the ACIR endorsed public jobs programs as well as automatic stabilizer payments to state and local governments. By the time of the Great Recession, such ideas were a vague memory at best.

Reconstruction, Not Reform

Redressing the inequalities caused by American federalism will require a fundamental political reconstruction of the federal bargain. Kettl argues that federalism has evolved through four historical "generations" punctuated by significant political upheaval as well as legal reinterpretations of state and national sovereignty. If this is correct, any proposal to "democratize" federalism will necessarily fall closer to the left side of the Riker–Derthick spectrum: an aggressive renegotiation of the status quo on all fronts.

Curiously, however, Kettl's proposal for reforming federalism appears far more limited in scope, focusing primarily on a transformation of federal grants-in-aid targeting inequality-reducing initiatives. This is a worthy goal in principle, but the devil is in the details. Does it include Canadian-style general-purpose equalization payments to the states? Will these payments be apportioned on the basis of per-capita income, state fiscal capacity, or some combination of the two? These sorts of questions have plagued past efforts at renegotiating federalism, and thus they merit serious scrutiny. Federalizing Medicaid financing, as Kettl suggests, would indeed help to stabilize the program during moments of crisis. Yet if eliminating inequality across the states is the goal, why should we prefer a means-tested program administered by the states rather than universal social insurance?

Kettl also calls for a greater role for local governments in the federal system. To accomplish this goal, it is imperative that we eliminate state preemption laws, which have been used as a cudgel to strike down local efforts to raise the minimum wage, strengthen labor protections, and combat climate change. In the same vein, voters in urban areas deserve better representation in Congress, which we could accomplish by enlarging the House of Representatives and reapportioning the Senate. During the COVID-19 pandemic, state and local governments have been treated as just one more lobbying sector, but one with far less political capital than finance or health insurance. If anything, this suggests that we need to replace the defunct White House Office of Intergovernmental Affairs with a formal venue for considering and acting on state and local fiscal issues, along the lines of the Council of Australian Governments.

A renewed program of fiscal federalism is, no doubt, urgently needed, especially as Congress appears to be telling states and cities to drop dead. Ending the bias of state and local government toward austerity is an important point, one missed by legal scholars like Heather Gerken, who call for a “progressive federalism” constituted primarily by left-leaning states’ resistance to national policy interventions coupled with incremental policy changes. If state and local governments cannot find some way of relaxing their own fiscal constraints (such as through issuing complementary currency), we should not be forced to rely on them to support the provision of vital services. Rather, we should follow the ACIR’s old maxim that policy functions should be assigned to “jurisdictions that have adequate fiscal capacity to finance their public service responsibilities in a manner which insures interpersonal and interjurisdictional fiscal equalization.”

Putting this logic into practice, however, will require tying relatively obscure efforts to reorganize fiscal federalism to broadly popular demands. This could include enacting Medicare for All to alleviate states’ need to pay for Medicaid — currently more than one-fifth of state budgets — and health care for public employees and retirees. It could also include a jobs guarantee, which would provide a significant fiscal stimulus to states, as well as a federal fiscal stabilization program of the sort recently proposed by Alex Williams, which would eliminate the need for state and local governments to engage in painful cuts in the midst of an economic recession. We should ideally recognize the federal government’s fiscal primacy — and the structural limits on state and local finances — by cementing these automatic stabilizers in the Constitution.

Yet the inequalities that define American federalism are not merely fiscal — they are political. State governments are not “laboratories of democracy,” but regimes with highly variable — and often deeply reactionary — characteristics. And since the 1980s, political leaders have increasingly instrumentalized federalism to undermine working-class power. Creating a more democratic society thus demands politically reconstructing the federal system to strengthen working-class power. We can start by using the power of the federal government to protect workers’ rights to organize and join unions. This means flexing federal authority to preempt state right-to-work laws, establish geographical and sectoral bargaining agreements, and expand labor protections to include informal and self-employed workers, as well as the incarcerated, the disabled, and the undocumented.

Simultaneously, we must significantly expand voting rights, reimposing and broadening the Voting Rights Act’s preclearance provision, making elections a national holiday, mandating automatic voter registration, and enfranchising the currently incarcerated. Finally, redressing federalism’s inequalities

requires abolishing the carceral structures that lock inequality in place — ending intergovernmental programs that militarize the police, repealing cash-bail policies and predatory fines and fees that prop up state and local revenues by criminalizing poverty, and dramatically reducing incarceration rates.

However necessary, tinkering with the details of federalism — whether by reengineering federal grants-in-aid or retooling intergovernmental relations — will not reduce inequality in the states. The only way to do that is by ending American federalism as we know it.

ABOUT THE AUTHOR

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