

# The Federal System



*Morton Grodzins*

Federalism is a device for dividing decisions and functions of government. As the constitutional fathers well understood, the federal structure is a means, not an end. The pages that follow are therefore not concerned with an exposition of American federalism as a formal, legal set of relationships. The focus, rather, is on the purpose of federalism, that is to say, on the distribution of power between central and peripheral units of government.

## I. The Sharing of Functions

The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system. . . .

A long, extensive, and continuous experience is . . . the foundation of the present system of shared functions characteristic of the American federal system, what we have called the marble cake of government. It is a misjudgment of our history and our present situation to believe that a neat separation of governmental functions could take place without drastic alterations in our society and system of government.

## II. Dynamics of Sharing: The Politics of the Federal System

Many causes contribute to dispersed power in the federal system. One is the simple historical fact that the states existed before the nation. A second is in the form of creed, the traditional opinion of Americans that expresses distrust of centralized power and places great value in the strength and vitality of local units of government. Another is pride in locality and state, nurtured by the nation's size and by

variations of regional and state history. Still a fourth cause of decentralization is the sheer wealth of the nation. It allows all groups, including state and local governments, to partake of the central government's largesse, supplies room for experimentation and even waste, and makes unnecessary the tight organization of political power that must follow when the support of one program necessarily means the deprivation of another.

In one important respect, the Constitution no longer operates to impede centralized government. The Supreme Court since 1937 has given Congress a relatively free hand. The federal government can build substantive programs in many areas on the taxation and commerce powers. Limitations of such central programs based on the argument, "it's unconstitutional," are no longer possible as long as Congress (in the Court's view) acts reasonably in the interest of the whole nation. The Court is unlikely to reverse this permissive view in the foreseeable future. [But note that the Supreme Court's decisions in the *Lopez* and *Morrison* (Reading 13) cases reestablished limits on Congress's power to regulate the states under the commerce clause.]

Nevertheless, some constitutional restraints on centralization continue to operate. The strong constitutional position of the states—for example, the assignment of two Senators to each state, the role given the states in administering even national elections, and the relatively few limitations on their lawmaking powers—establishes the geographical units as natural centers of administrative and political strength. Many clauses of the Constitution are not subject to the same latitude of interpretation as the commerce and tax clauses. The simple, clearly stated, unambiguous phrases—for example, the President "shall hold his office during the term of four years"—are subject to change only through the formal amendment process. Similar provisions exist with respect to the terms of Senators and Congressmen and the amendment process. All of them have the effect of retarding or restraining centralizing action of the federal government. The fixed terms of the President and members of Congress, for example, greatly impede the development of nationwide, disciplined political parties that almost certainly would have to precede continuous large-scale expansion of federal functions.

The constitutional restraints on the expansion of national authority are less important and less direct today than they were in 1879 or 1936. But to say that they are less important is not to say that they are unimportant.

The nation's politics reflect these decentralizing causes and add some of their own. The political parties of the United States are unique. They seldom perform the function that parties traditionally perform in other countries, the function of gathering together diverse strands of power and welding them into one. Except during the period of nominating and electing a President and for the essential but non-substantive business of organizing the houses of Congress, the American parties rarely coalesce power at all. Characteristically they do the reverse, serving as a canopy under which special and local interests are represented with little regard for anything that can be called a party program. National leaders are elected on a party ticket, but in Congress they must seek cross-party support if their leadership is to be effective. It is a rare President during rare periods who can produce legislation without facing the defection of substantial numbers of his own party. (Wilson could do

this in the first session of the Sixty-Third Congress; but Franklin D. Roosevelt could not, even during the famous hundred days of 1933.) Presidents whose parties form the majority of the Congressional houses must still count heavily on support from the other party.

The parties provide the pivot on which the entire governmental system swings. Party operations, first of all, produce in legislation the basic division of functions between the federal government, on the one hand, and state and local governments, on the other. . . .

The party system compels administrators to take a political role. This is a third way in which the parties function to decentralize the American system. The administrator must play politics for the same reason that the politician is able to play in administration: the parties are without program and without discipline.

In response to the unprotected position in which the party situation places him, the administrator is forced to seek support where he can find it. One ever-present task is to nurse the Congress of the United States, that crucial constituency which ultimately controls his agency's budget and program. From the administrator's view, a sympathetic consideration of Congressional request (if not downright submission to them) is the surest way to build the political support without which the administrative job could not continue. Even the completely task-oriented administrator must be sensitive to the need for Congressional support and to the relationship between case work requests, on one side, and budgetary and legislative support, on the other. "You do a good job handling the personal problems and requests of a Congressman," a White House officer said, "and you have an easier time convincing him to back your program." Thus there is an important link between the nursing of Congressional requests, requests that largely concern local matters, and the most comprehensive national programs. The administrator must accommodate to the former as a price of gaining support for the latter.

One result of administrative politics is that the administrative agency may become the captive of the nationwide interest group it serves or presumably regulates. In such cases no government may come out with *effective authority*: the winners are the interest groups themselves. But in a very large number of cases, states and localities also win influence. The politics of administration is a process of making peace with legislators who for the most part consider themselves the guardians of local interests. The political role of administrators therefore contributes to the power of states and localities in national programs.

Finally, the way the party system operates gives American politics their overall distinctive tone. The lack of party discipline produces an openness in the system that allows individuals, groups, and institutions (including state and local governments) to attempt to influence national policy at every step of the legislative-administrative process. This is the "multiple-crack" attribute of the American government. "Crack" has two meanings. It means not only many fissures or access points; it also means, less statically, opportunities for wallops or smacks at government.

If the parties were more disciplined, the result would not be a cessation of the process by which individuals and groups impinge themselves upon the central government. But the present state of the parties clearly allows for a far greater operation of the multiple crack than would be possible under the conditions of

centralized party control. American interest groups exploit literally uncountable access points in the legislative-administrative process. If legislative lobbying, from committee stages to the conference committee, does not produce results, a Cabinet secretary is called. His immediate associates are petitioned. Bureau chiefs and their aides are hit. Field officers are put under pressure. Campaigns are instituted by which friends of the agency apply a secondary influence on behalf of the interested party. A conference with the President may be urged.

To these multiple points for bringing influence must be added the multiple voices of the influencers. Consider, for example, those in a small town who wish to have a federal action taken. The easy merging of public and private interest at the local level means that the influence attempt is made in the name of the whole community, thus removing it from political partisanship. The Rotary Club as well as the City Council, the Chamber of Commerce and the mayor, eminent citizens and political bosses—all are readily enlisted. If a conference in a Senator's office will expedite matters, someone on the local scene can be found to make such a conference possible and effective. If technical information is needed, technicians will supply it. State or national professional organizations of local officials, individual Congressmen and Senators, and not infrequently whole state delegations will make the local cause their own. Federal field officers, who service localities, often assume local views. So may elected and appointed state officers. Friendships are exploited, and political mortgages called due. Under these circumstances, national policies are molded by local action.

In summary, then, the party system functions to devolve power. The American parties, unlike any other, are highly responsive when directives move from the bottom to the top, highly unresponsive from top to bottom. Congressmen and Senators can rarely ignore concerted demands from their home constituencies; but no party leader can expect the same kind of response from those below, whether he be a President asking for Congressional support or a Congressman seeking aid from local or state leaders. Any tightening of the party apparatus would have the effect of strengthening the central government. The four characteristics of the system, discussed above, would become less important. If control from the top were strictly applied, these hallmarks of American decentralization might entirely disappear. To be specific, if disciplined and program-oriented parties were achieved: (1) It would make far less likely legislation that takes heavily into account the desires and prejudices of the highly decentralized power groups and institutions of the country, including the state and local governments. (2) It would to a large extent prevent legislators, individually and collectively, from intruding themselves on behalf of non-national interests in national administrative programs. (3) It would put an end to the administrator's search for his own political support, a search that often results in fostering state, local, and other non-national powers. (4) It would dampen the process by which individuals and groups, including state and local political leaders, take advantage of multiple cracks to steer national legislation and administration in ways congenial to them and the institutions they represent.

Alterations of this sort could only accompany basic changes in the organization and style of politics which, in turn, presuppose fundamental changes at the parties'

social base. The sharing of functions is, in fact, the sharing of power. To end this sharing process would mean the destruction of whatever measure of decentralization exists in the United States today. . . .



## State Politics and Constitutional Government

In the following selection a celebrated national columnist and political observer finds that the growing use of initiative petitions in state politics threatens the Madisonian system of balanced government.

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## A Republic Subverted



*David Broder*

At the start of a new century and millennium a new form of government is spreading in the United States. It is alien to the spirit of the Constitution and its careful system of checks and balances. Though derived from a reform favored by Populists and Progressives as a cure for special interest influence, this method of lawmaking has become the favored tool of millionaires and interest groups that use their wealth to achieve their own policy goals—missing a lucrative business for a new set of political entrepreneurs.

Exploiting the public's disdain for politics and distrust of politicians, it is now the most uncontrolled and unexamined arena of power politics. It has given the United States something that seems unthinkable, not a government of laws but laws without government. The initiative process, an import now just over one hundred years old, threatens to challenge or even subvert the American system of government in the next few decades.

To be sure, change is the order of the day in the United States and elsewhere in the advanced countries of the world. The computer and the Internet are revolutionizing the economy. The speed of communications and the reduction in barriers to trade are making national boundaries less and less meaningful. The end of the