



Paul E. Peterson

## The New Politics of Federalism

By Paul E. Peterson, Harvard University

*The maturation of the welfare state has altered partisan political and policy interests. Republicans are rediscovering the virtues of national power once celebrated by Alexander Hamilton, while Democrats are returning to their Jeffersonian roots.*

Federalism is usually treated as a philosophical question. For the writers of *The Federalist Papers*—Alexander Hamilton, James Madison and John Jay—power was best divided between central and lower tiers of government so as to check each from threatening the liberties of individuals. But, in practice, political and economic interests often dictate the positions that are taken. Even the two principal writers of *The Federalist Papers*, Hamilton and Madison, entered into intense, bitter conflicts over the appropriate meaning of the U. S. Constitution. Hamilton, a New Yorker appreciative of the wealth passing through that rapidly growing port city, wanted a strong central state in order to promote commerce and international trade. Madison, together with his fellow Virginian, Thomas Jefferson, worried more about defending southern agrarian interests against northern speculators.

Jefferson is recognized as the spiritual father of the Democratic Party, while Hamilton is at times given comparable status among Republicans. But as political interests changed, so did the positions of the two political parties. Throughout most of the 20<sup>th</sup> century, it was the New Deal Democrats who celebrated an expansion of the national government in ways Hamilton might have blessed, while conservative Republicans defended states' rights that Jefferson had extolled.

Today, the parties are returning to their historic roots. In the spring of 2005, the Republican leadership in Congress asked federal courts to assure jurisdiction in the Schiavo case, which raised issues long thought to be the preserve of state courts. Most Democrats opposed the move. Only weeks earlier, the Republican majority in Congress, at the behest of the president, had passed sweeping legislation that shifted class action suits that transcended state boundaries from state to federal courts, a nationalizing move that harkens back to the days of Hamilton and his close ally, Chief Justice John Marshall. Meanwhile, the vast majority of congressional Democrats fiercely defended the prerogatives of state trial courts—notwithstanding the party's deep-rooted preference of federal over state courts during the Great Society years.

Political and economic interests are dictating these changes in party position. Corporate interests closely associated with the

Republican Party have long complained about venue-shopping by trial lawyers for courts in which plaintiffs can win large legal settlements. Meanwhile, those same trial lawyers have been one of the key financial pillars of the Democratic Party.

The changing partisan views of federalism are not limited to class action suits. Rather, they are rooted in broader societal changes, most importantly, the maturation of the welfare state. When the welfare state was in its expansive phase, Democrats supported national power as the agent of change. Through federal action, Social Security benefits increased, Medicare and Medicaid were adopted, welfare eligibility was expanded, school funding increased, and the federal government passed money to states and localities through a system of categorical and block grants.

Once the welfare state became as much of a burden as a blessing, politics began to change. With the election of Ronald Reagan, the politics of the welfare state shifted from growth to retrenchment. The age of retirement was lifted, some social security benefits were cut or eliminated, welfare was reformed, school reform was initiated, and new entitlements became impossible to enact. Reform no longer meant finding new ways to serve the putatively needy but rather testing ideas for making more effective use of tax dollars.

### Political Trends

These changes were reinforced by political developments, both nationally and locally. It is too simple to say that parties like that level of government they happen to control at any specific moment. But if a party has little opportunity to win a particular bastion of power, they are unlikely to appreciate its virtues. When Republicans found themselves unable to capture undivided control of Congress for any more than four years out of over 60 between 1933 and 1968 and when control of the executive branch was in the hands of Democrats for all but eight of these same years, Republicans had few partisan incentives to support the expansion of federal power. For Democrats, the shoe was altogether on the other foot.

But as the South became solidly Republican instead of solidly Democratic, Republicans only had to approach parity elsewhere to capture national power, giving them an advantage in presiden-

tial and congressional elections. After decades in the wilderness, the Republicans now enjoy the opportunity to exercise unified power over the central government in the same way the Democrats once did. For the winners, it is hard not to become more interested in federal power; for the losers, it's easy to rediscover the value of state and local control.

Although change at the state and local level has been more gradual, the transformation has been no less dramatic. Traditionally, governments within the United States served conservative interests, such as banks, commercial firms, and manufacturing companies. Each community had to become an attractive place for business—low taxes, minimal regulations—or lose out to competing cities and towns with more supportive policies. Within state legislatures, agrarian interests were given preference over urban ones, in part because many state legislatures overrepresented voters in rural areas. Voting laws restricted access to the ballot of African Americans and other disadvantaged interests, especially in the South. State judges, key to courthouse rings, were usually beholden to conservative interests.

Beginning in the 1960s, a series of political and economic changes began to undermine the conservative bias of the lower tiers of the federalism system. In 1961, the Supreme Court required states to reapportion their state legislatures so that all representatives—in both the upper and lower chambers—would represent roughly equal numbers of residents. The 1966 voting rights legislation gave minority voters access to Southern politics, forcing candidates to find more balanced platforms upon which to campaign. An increasingly liberal Democratic Party won sweeping majorities in many states, allowing them to elect and appoint state judges friendly to more liberal causes.

Economic forces were undermining business influence at the local level as well. With the globalization of the economy, and the amalgamation of firms into international corporations, corporate headquarters disappeared from middle-sized cities, leaving them without home-owned businesses with a vested stake in the town's economic fate. Most significantly, the hometown bank went the way of the spotted owl. Traditionally, it was the president of the leading bank in a community who organized business and commercial interests for political action. The bank's financial well-being was closely connected to that of the community as a

whole. Local banks also were the traditional source of funding for local governments, when loans were needed to finance capital expenses and short-term deficits. As such, banks were natural community leaders. But tax reform in 1986 made it costly for banks to hold municipal loans, and the financial needs of local governments came to be supplied by an international investment community less engaged in the immediate affairs of any given community. Opportunities for local banks to shape local politics were reduced accordingly.

As economic elites lost the interest in and capacity to act in local affairs, their influence was replaced by policy professionals spawned by a maturing welfare state. As intergovernmental programs increased in number and size, so did the number of knowledgeable civil servants who had a stake in the programs they operated. These professionals became advocates for causes in which they believed and developed strong ties to groups dependent on the largess they distributed. The balance of power shifted from those with an interest in low taxes to those who wished to perpetuate a high level of welfare provision.

As just one sign of this transformation, growth in state and local government expenditure from their own fiscal resources grew almost as fast as federal domestic expenditure. As state and local governments expanded their activities, their work force grew even when the size of the federal work force hardly changed. Few realize that the federal civilian work force numbered less than 3 million workers both in 1951 and, 50 years later, in 2001. Meanwhile, the size of the state work force expanded from 1 million to 5 million, and local workers skyrocketed fourfold from 4 million to 12 million. The federal government may be paying half the cost of domestic public expenditure, but the state and local governments are doing most of the work.

### Public Sector Unionism

In the early years of the 20<sup>th</sup> century, laws against public-sector strikes had prevented government workers from exercising the crudest form of political power, the power to withhold their services. When Gov. Calvin Coolidge was asked to respond to the Boston police strike of 1918, he won widespread public backing when he declared “there is no right to strike against the public safety by anybody, anywhere, any time.” So popular was his stance, it propelled him from a little known governor to the

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vice presidency and beyond. For decades to come, public-sector unionists were at risk if they went on strike.

All this began to change in 1961 when President John Kennedy authorized collective bargaining by unions representing federal workers. The practice quickly spread to lower tiers of government. With the right to bargain well in hand by the mid-1970s, public-sector unions were able to boost their membership rapidly. The percentage of public-sector employees unionized jumped from about 13 percent in the 1960s to around 40 percent in the mid-1970s, where it has since remained.

This expansion occurred at the same time that unions were losing ground in the private sector. Having peaked at about 38 percent of the private labor sector in 1952, it had fallen to 8.5 percent by 2002. As private-sector unions lost membership, the Democratic Party's most reliable base of support was eroding away beneath its feet. Fortunately for the party, public-sector unions filled the breach, as the membership in these unions became nearly one half of all union workers by 2002. Were it not for public-sector growth, the Democratic Party of the 21<sup>st</sup> century would bear little resemblance to the party that wrote New Deal and Great Society legislation.

By far, the most important of the public-sector unions are two teacher organizations, the National Education Association and the American Federation of Teachers. During the early 1970s, they conducted successful strikes in numerous cities, opening the floodgate to collective bargaining rights across the country. Teachers, spread as they are across the political landscape, located in every political constituency, trained in the arts of writing and speaking, are effective campaign workers and able policy advocates. Ever since the days of Jimmy Carter's endorsement of a national Department of Education, teacher unions have committed all but a small fraction of these resources to the service of Democratic Party candidates.

Significantly, teacher unions have more influence in state and local politics than at the national level. In Washington, teacher unions are challenged by a network of think tanks, cause organizations and policy professionals. In state and local politics, unions seldom face as well defined an opposition. In Washington, presidents are able to use their rhetorical powers to control the political agenda. Interest groups must work within the constraints the agenda setter creates. At the state and local level, these same issues become matters of implementation, something that well organized insiders can control.

What is true in education applies to other government employees as well. Public-sector unionism carries greater weight in state and local elections than in national ones, simply because, at the local level, elections have low visibility, with few voters and obfuscated issues. As V. O. Key noted long ago, it is in such contexts that the well organized have the most clout. According to some estimates, public-sector employees outvote the ordinary citizen in local politics by a ratio of anywhere between 2:1 and 6:1.

### **Partisanship and the Health of a Federal System**

Nothing in this analysis should leave the reader convinced that Republicans will in short order become aggressive Hamiltonians.

Especially within the judiciary, one should expect a sentimental attachment to past Republican federalism clichés. The quaint revival of a faded version of dual sovereignty theory by a bare majority of Supreme Court justices, all of them Republican appointees, is particularly out of step with the times. But one should not give too much weight to the Rehnquist court's rediscovery of dual sovereignty. Thus far, the Supreme Court decisions in which the concept has been invoked have been of minor significance.

Outside the courts, the pressures for a resurgent Hamiltonianism within the Republican Party seem stronger than ever. A security agenda requires a strong national government. Containing the welfare state will require the exercise of national control. State professionals can be expected to resist the new reform agenda to which many Republicans are committed. Public-sector unionism, one of the most powerful sources of resistance to Republican objectives, is more entrenched locally than nationally. Inasmuch as Republicans control all the power centers of the national government, they have little reason to trumpet the rights of states, many of which remain in Democratic hands.

Conversely, the Democratic Party must either win the presidency or find solace in the gubernatorial chairs it holds and the state legislators it has elected. Much of the time, it is fighting a rearguard action, one better fought in the hinterland than in the capital city. The street-level bureaucrat is now, more than ever, a major source of its political strength.

One should not expect either party to give up nominal commitment to the ideals they have each long expressed. But neither should one expect either party to act assiduously to protect them. Party interests have changed. So must their principles. We call attention to this fact not to lament it but to underline the durability—and value—of American federalism. Institutions need to have strengths beyond the interests of particular groups and parties. As Madison pointed out, federalism safeguards liberty by protecting minorities. As Brandeis observed, it provides places for experimentation. Its place in the American political system needs to be more deeply embedded than in the faith system of any one particular party. At the same time, Hamilton's view of the value of central authority cannot be gainsaid. Without a strong central government, a nation's economic prosperity is endangered. The United States needs to search for the appropriate balance as much today as it has in centuries past. Shifts in partisan attachments may be one way of finding it.

### **Editor's Note**

This article is drawn from a longer, more documented piece that will appear in Scott L. Greer, ed., *Rethinking Territorial Politics: Decentralization, Federalism, Democracy and the Welfare State* (Palgrave, forthcoming).

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### **Bio**

Paul E. Peterson is the Henry Lee Shattuck Professor of Government at Harvard University, Kennedy School of Government, Harvard University, 79 J.F. Kennedy Street, Taubman 306, Cambridge, MA 02138. (617) 495-7976. ppeterso@latte.harvard.edu.