

Robert F. Nagel

*on the decline  
of federalism*

In the last century, federalism dramatically declined in significance to the American public. One reason for this deterioration was the development of new individual rights, particularly as a result of the civil rights movement, when state sovereignty was closely associated with opposition to racial integration and, more distantly, with slavery itself. The expansion of government at the national level also reduced the importance of states. If states sometimes

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did fulfill their vaunted function as laboratories of democracy, as was true with welfare reform, ensuing reforms enacted at the national level soon eclipsed the states' contribution.

Most people have not mourned this loss of state authority. In fact, only a few years ago, sophisticated observers became alarmed at what they perceived as the Supreme Court's attempts to engage in a radical, even revolutionary, effort to revive the role of states in the federal system. Over the past three years, however, the clamor has begun to subside as the Court has issued several rulings that once again expand the scope of Congress's power and limit state immunity from that power. These recent decisions, together with a long-running series of cases that constrict state regulatory authority through the aggressive creation of individual rights, make it clear that federalism is not nearly as high a priority for the justices as their occasional states' rights rhetoric might suggest.

Yet a lack of public or scholarly interest in states is not the same as a lack of interest in decentralization. In fact, since at least the 1950s, considerable academic and journalistic concern has been expressed about the loss of political life at the local level. On both the right and left, many have called for the reinvigoration of neighborhood councils, school boards, and the various private clubs and associations that grow up around local governmental institutions. What makes this kind of decentralization appealing, of course, is that it provides the opportunity for direct, personal dealings among citizens and for decision making that is highly sensitive to local conditions.

These communitarian values have also attracted the justices of the Supreme Court. For instance, they have approved local financing of public education, de-

spite the unequal funding patterns that result, because local taxation means local control. They have also urged district judges in school desegregation lawsuits to return authority over educational policy to elected school boards as soon and as fully as possible. Many other decisions – for example, favoring the autonomy of the Boy Scouts, the prerogatives of parents in shaping family life, or the participation of religious schools in voucher programs – acknowledge the importance of decentralized community life.

Political and cultural life at the national level, then, is naturally appreciated because it is visible, important, and dramatic, while political and cultural life at the local level is naturally appreciated because it is intimate and responsive. Associational life at the state level, poor gray thing, cannot regain the appeal it lost during the long history of racial conflict because it seems to be neither especially significant nor highly personal.

But what if the intermediate organizations constituting (and also surrounding) state governments enable local institutions and associations to remain healthy? In that case, the very structures that almost everyone neglects would be vital to the kind of social and political life that almost everyone values.

There are some commonsense reasons to think that federalism promotes local community life. As Theda Skocpol shows in her recent book, *Diminished Democracy*, local groups can affect national policies through state-level organizations. Moreover, leadership that circulates up and down through a federated system can become relatively sophisticated while staying connected to local communities. In fact, small associations and governments, while easy to romanticize, have many disadvantages if isolated. Without intermediate connections, they tend to be homogeneous, provin-

cial, ingrown, and oppressive. Localism in America is so attractive precisely because we have had very few truly isolated communities; the norm, largely taken for granted, has been a federated political system that ensures various ties to wider communities and thus helps local institutions and associations to function in healthy ways.

This possibility finds some support in the fact that local associational life began its precipitous decline in the 1960s along with the waning of federalism. Skocpol observes that as the range of national undertakings widened during the civil rights revolution, organizations centralized, abandoning the membership-based structure previously so common and altering their lobbying tactics. Consequently, a national leadership class, cut off from any roots in local communities, emerged, replacing the rich associational life of federated organizations with direct mailings and single-issue advocacy.

But the damage to state-level organizations must have been more complex than a mere quantitative increase of power in Washington. The expansion of the power of the national government began, after all, long before the 1960s. What changed during the civil rights era was qualitative. It was during this period that the federal government began to determine not just industrial or commercial policies but moral issues of immediate significance in people's lives.

During the 1960s federal courts and bureaucracies began to control sensitive aspects of public education, including such issues as attendance policies and the place of religious subject matter and observances. They also began to have significant influence over mental health policies, police practices, contraception, defamation rules, standards for public decency, and so on. This extraordinary

set of initiatives was followed within a decade by the nationalization of policies on abortion, gender relationships, and family life. The extension of national power to such vital, and often intimate, issues came in the form, of course, of expanded individual rights.

The civil rights revolution, therefore, did far more than nationalize a new range of public policy issues. In some of the most crucial areas of human life, it severed individuals from their state and local governments. These governments, after all, were the institutions that rights were held against. In part, the states were disabled from regulating, and in part, they were actually delegitimized – seen as potential threats to the individual’s happiness and freedom. State institutions became less important and, at the same time, vaguely sinister.

As a result, political discourse at the state and local level became more bland and insignificant, and less self-assured. Moreover, the repeated validation by national institutions of individuals’ claims to autonomy and self-realization helped to unleash what the postwar prosperity had made possible: limitless demands for happiness and freedom from responsibility. This utopianism fueled dissatisfaction with constraints of all kinds, most especially those imposed as part of the traditional regulatory functions of state and local governments.

At the same time that the moral status of states was receding, reformist impulses found their outlet in Washington, D.C. Political control over some of the most interesting and significant issues had moved from local and regional arenas to the national stage. Of course, ambitious professionals could not be content to devote their energies as a part of federated organizations. Suddenly, there was the possibility of imposing reform – relating to the most significant areas of

life – nationwide! Even if states had not been stripped of important regulatory authority and delegitimized, they would still have had the defect of limited jurisdiction. No longer would the antiquated system of federalism frustrate the utopian desire for uniform progress.

It is, then, only a small step from Skocpol’s data to the hypothesis that what happened beginning in the 1960s was the eclipse of the moral status of state and local governments. When participation at intermediate levels of organizational life became less important and less morally attractive, local associational life suffered as a consequence.

If the decline of state governments is in fact linked to the deterioration of local associational life, reinvigorating the moral status of state governments may help to remedy the depletion at the local level. But is that solution practical? Maybe not, but we should approach the issue with the recognition that many of the alternative reforms suggested are not especially likely to be effective either. Modern communitarians tend to exhort people to join and participate; their concrete proposals often involve peripheral matters like national holidays and shaming rituals.

Nevertheless, we must acknowledge that the system of federalism in the United States is in many ways past the point of no return; indeed, the dynamics of centralization are now self-reinforcing. Strong identification with or attachment to a particular state, much less political loyalty, is now largely a thing of the past. It is also true that potent political, intellectual, and cultural trends underlie the moral eclipse of state governments.

We should consider a number of countervailing factors, however. First, the federated structure of American government has, needless to say, deep historical

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roots. Second, state governments, while often neglected and sometimes scorned, are still ongoing operations. They perform fundamental functions like taxation and moral regulation, and they provide important services such as education, transportation, and police protection. These functions, moreover, are carried out as a consequence of familiar political processes and institutions, and they are carried out by officials who utilize all of the signs and rituals that attend governmental status. Third, given the constitutional functions that states play in the operation of the national government, the quasi-sovereign, constitutive nature of state power is visible to all and difficult to eliminate.

In short, even if powerful and cumulating forces are working against any broad revival of state power, state governments remain significant institutions. The pivotal issue, therefore, is how much invigoration of status and power at the state level is necessary to help revive local associational life. If such a revival would require radical changes, such as a significant rollback of New Deal regulatory power or the dismantling of the technology that underlies the nationalization of political discourse, the widespread tendency to ignore federalism is understandable. But some degree of reinvigoration of community life may be realistic without wholesale changes in state power and prestige and even in the face of a continued decline in state power as a quantitative matter.

Some moderate qualitative shifts in the public attitude toward state governments are within the realm of possibility. After all, what changed with the civil rights campaigns of the 1960s was the way Americans perceived state governments. It is not entirely unthinkable that state governments might gradually

regain some of the moral status and sense of connection that they lost, especially if a significant public reaction against the excesses of the rights revolution were to develop.

Another realistic change would be for scholars who value local associational life to give more attention to the relationships between that life and intermediate organizations at the state level. Without an accurate understanding of the preconditions for vigorous local associations, no reform will be effective. One of those preconditions may be state governments that are not discredited in the eyes of their citizens and not disconnected from organizational life at the local level. And, as for the Supreme Court, it does not need to lead a federalism revolution, but it might at least take into account more fully its own role in isolating and, therefore, diminishing local community life.