

**THE HISTORY OF AMERICAN FEDERALISM AND THE IMPACT OF ITS  
EVOLUTION ON INTERGOVERNMENTAL RELATIONS**

by

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A Field Project Submitted  
In Partial Fulfillment of the Requirements  
For the Degree of

Master of Public Administration

at

The University of Wisconsin Oshkosh  
Oshkosh WI 54901-8621

December 2013

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12/4/13 Date Approved

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## **Introduction**

Across the nation, in places big and small, most Americans have more daily contact with their state and local governments than with the federal government. Local police and fire departments; schools and libraries; garbage trucks; as well as driver's licenses and speeding tickets, among others, are usually administered by state and local units of government. Unlike many of the public services and programs overseen by a federal agency headquartered in Washington, D.C., state and municipal functions are much more visible in our daily lives.

Along with this continuing presence and accessibility comes an increased level of accountability. Mayors and municipal managers live in and are active members of our communities. In many cases they are friends, neighbors, and relatives of fellow residents, and it is not uncommon for many in town – especially in smaller communities – to know exactly how to reach them. And by and large, people do. If a resident spots a pothole on his street; if the snowplow missed a spot; or if the spotlight shining on the U.S. flag at village hall burned out, people will call, write, or stop their leader in the street corner to speak their mind. In addition, when a mayor, city administrator, or county board is planning to make a decision that will impact the community in some way – especially financially – it is expected that community members will show up at their local board meetings to ask their council members a long list of 'what,' 'why,' 'how,' and 'how much' type of questions. After an open debate on the proposed plan and a long – sometimes too long – evaluation of the pros and cons, the board members take a straightforward aye or nay vote and majority rules. If this basic model (propose-debate-

vote- implement-evaluate) would be correctly implemented across all levels of government, we would certainly have more open, participatory, and likely effective democratic governments in our hands. But unfortunately, political theory is one thing and political reality is another.

When we move to a state capitol, Madison for example, the levels of accessibility and accountability are lower. The demanding work schedules of state legislators, caused in large part by frequent travel to, from, and around the electoral districts they represent, as well as numerous committee meetings, hearings, and floor votes, limit the public's opportunities to have direct contact with them and influence their policy decisions. At this level of government, mysterious procedural rules, political gimmicks, and special interest groups also begin to muddle the decision-making process considerably. There are loopholes, partisan strategy, political gridlock, and the typical nuisances that come with more high-profile seats and elections, including expensive political campaigns and the time needed to find enough resources to outspend and outwit an opponent. Nonetheless, because of the relatively small number of constituents that a state legislator represents – in Wisconsin, approximately 160,000 within senate districts and 55,000 in assembly districts (Wisconsin Blue Book, 2013) – it is possible for a large enough group of voters to take the political reins and influence the decision-making process at the state level. Approximately three years ago in Wisconsin, during the debate and protests following Governor Walker's Act 10, we saw a clear example that political power lies in unity.

Now, when we evaluate how accessible and accountable the federal government is compared to the local level, most of us will conclude that the gap is much wider. Despite the high-profile image of national government leaders courtesy of the sleepless media, it is much more difficult to make and maintain direct contact with our legislators in the nation's capital. First of all, most members of Congress live and work in Washington, D.C. and spend considerably more time on Capitol Hill than they do back in their home states. When there is time for state business, a series of crowded and short events quickly fill the state calendar, greatly limiting any potential one-on-one interaction between legislator and constituent. Second, the rules of the game are confusing and obscure, even more so than at the state level. For the average American, it is difficult to follow congressional proceedings closely enough to even know how our Congressman voted on a particular issue. Therefore, it is a bigger challenge to hold national legislators accountable at all times because it is more time-consuming for voters to keep up with Washington's fast pace and complexities. Luckily, today we have a number of think tanks and publicly-funded organizations whose mission is to make government more accountable and transparent by shining the spotlight on certain legislators and issues that the mainstream media may not have an interest in airing. A third dangerous factor feeding this low level of accountability at the national level is the public's growing disinterest in government. Whether this detachment is due to a lack of understanding of the political process and its impact in our daily lives; distrust in our legislators; or disinterest because "my vote doesn't matter anyway," this unawareness results in even greater unaccountability. It is really difficult to hold the players accountable if we forget

to turn on the game. Further, I believe that this lack of interest in national government tempts national legislators to behave more irresponsibly because when only a few people are watching every play of the match, the players tend to get away with more penalties and bad calls. Today's historically low approval ratings of Congress among Americans are a testament – and maybe even a cause – of the national government's diminishing effectiveness, reliability, and accountability. Now, the more optimistic news is that there have been countless times in U.S. history that small and large groups of citizens have, against all odds, pierced through Washington's bubble and accomplished significant and historic changes.

If we tuned into CSPAN any given day when Congress is in session, chances are good that we will hear a national legislator insert the rhetoric phrase “if our Founding Fathers were here today, they would...” into a speech. Despite the great confidence with which this phrase is uttered in the chambers of Congress, it is difficult to gauge the accuracy of the statements that follow it. And of course, it does not help when politicians constantly throw out the phrase simply to add legitimacy to their personal convictions. But in some cases, we luckily do not have to wonder what this brave group of English settlers would say if they were magically teleported to modern times, or what they actually meant when they wrote the United States Constitution in September 1787. One of these breaks comes when we analyze their vision for a government that would unselfishly share power with other governing units. Since no title accurately described what they created, the Framers captured the word “Federalism” and transformed the meaning into a description of this new form of government. Federalism – which will be

spelled with a capital “F” throughout this paper because it is our main character – was essential to accomplishing the Founders’ goal to maintain individual liberty by constitutional structure. And they firmly believed that the only way to preserve liberty was to limit government power. The Founders created a horizontal separation of powers to divide control between the three branches of the national government (executive, legislative, and judicial). This is what is commonly referred to as *the* separation of powers that we learned about in high school. However, some argue – and in this paper it is more relevant to do so – that even more important was the *vertical* separation of powers now typically called Federalism, which provided balance between state and national government power. In order to clearly understand the motive behind the Founders’ Dual Federalism strategy, we must simply remember the abuse of power in the hands of the English crown that they desperately fled in search for freedom. A document listing specific yet limited roles for a central government, while vesting all other powers to the states, seemed like the safest way to avoid any confusion or abuse of authority in the future.

Despite how clear the Founding Fathers made these checks and balances, Federalism has evolved since its creation over two centuries ago. At different points in history, and due largely to the socio-political environment at the time, the balance and boundaries between the national and state governments have changed substantially. As Federalism changed, the rapport between the federal government and the states, and later local governments, has inevitably changed along with it. In this paper, we will not aim to crack the code on healthy intergovernmental relations because I do not believe that a

magic formula exists that can accomplish such a multifaceted and ongoing endeavor. Instead, we will analyze how the continual evolution of Federalism from its birth to modern times has revolutionized the relationship between federal, state, and local governments. We will also explore just how influential the three branches of the national government have been in cooking the flavor of Federalism that Washington promotes and delivers to communities across the country at different times in history. Lastly, as a believer that human beings learn best from our own mistakes – particularly those of us who work in government – we will end the paper by taking a close look at the intergovernmental response to Hurricane Katrina in 2005 and why this disaster should be part of all “Federalism 101” courses across the country.



## **Chapter I**

### **The Political History of Federalism**

#### **The Birth of Federalism**

Since its creation over 200 years ago, American Federalism has undergone significant changes. Today, all governments – federal, state, and local – play a greater role in the lives of their citizens; expectations about what type of services people want from government have changed; and relations among all three levels of government have become infinitely more complex. Also today, government is on a trajectory to continue growing in size, scope, and cost. In fact, only in case this paper ends up being read aloud on CPAN, I dare to write that “if our Founding Fathers were here today” they would be astonished at how differently government operates. But we know it was not always this way. When the thirteen North American colonies declared their independence from Great Britain on July 4, 1776, they recognized the need to coordinate their efforts in order to defeat the mighty British crown. Thus, in November 1783, a congressional assembly in Annapolis adopted the Articles of Confederation (“Articles”), which created a league of independent states and committed each of them to cooperate with each other in military affairs, foreign policy, and other essential areas. But the Articles – known by some as the nation’s first constitution – were barely sufficient to glue the states together through the war against England and, at the successful conclusion of the war, fell apart completely as the states pursued their individual interests rather than the national interest of the new United States (The Library of Congress). To remedy the flaws of the Articles,

George Washington, Alexander Hamilton, James Madison, and other nationalist leaders called upon the states to send delegates to a constitutional convention in Philadelphia scheduled for May 1787. It was that convention that produced the Constitution of the United States (“Constitution”) we are all familiar with and abide by today.

Most governments around the world at the time of the constitutional convention were unitary governments, meaning the source of power rested in a central power and the states, if they existed at all, were mere administrative arms of the central government. The exact opposite is confederal government, which reserves power to the individual member states and individuals are citizens of their respective states, not of the national government (Welch, Gruhl, Comer, & Rigdon, 2010). The Framers of the Constitution rejected both models. Instead, they based the new American experiment on an entirely new theory called “Federalism.” Under this new hybrid-like system, the people retain their basic sovereignty and delegate some powers to the national government while reserving other specific powers to the states. Individuals are citizens of both, the general government and their respective states. This means that the states are not administrative units that exist only to implement policies made by an omnipotent central government. States are fully functioning constitutional units of government in their own right, empowered by the people to create and implement a wide range of policy decisions. Furthermore, the Founding Fathers expected that the states would be the main policymakers under a Federalist system. The powers granted to the federal government are relatively few in number and deal mainly with foreign and military affairs, as well as national economic issues. Most domestic policy issues – the ones closest to the governed

– were strategically left to the states to resolve in keeping with their own histories, cultures, capabilities, and needs. While Articles I through III expressly delegate certain powers to the three branches of the federal government, the 10<sup>th</sup> Amendment specifically reserves to the states those powers not delegated to the federal government (Katz, 1997).

As it was expected following the creation of a brand new nation, the United States' first century of life was marked by political conflict sparked by its Federalist DNA. Washington, Hamilton, and their Federalist colleagues argued for an expansive interpretation of federal authority, while Jefferson, Madison, and their allies maintained that the American union was little more than a confederation in which power remained with the states (Welch, et al., 2010). The strongest arguments for Federalism were written during the ratification of the U.S. Constitution. The Federalist Papers, a set of 85 essays written by Hamilton, Madison – who would later change his political views to favor stronger state governments – and John Jay, were published between October 1787 and May 1788 in various New York newspapers under the pen name Publius (Scigliano, 2001). The collection was meant to explain the advantages of the proposed U.S. Constitution and urge New Yorkers to ratify it. The essays pointed out that the Constitution would allow the principle of popular sovereignty to continue and would prevent internal dissolution and uneven distribution of power, which were problems that contributed to the failure of the Articles of Confederation. The Federalist Papers are often used today to help interpret the intentions of those drafting the Constitution, including the proper roles for the federal and state governments. Thomas Jefferson himself called the collection “the best commentary on the principles of government

which was ever written.” Nonetheless, issues with Federalism continued into the 20<sup>th</sup> century and beyond as it was to be expected. After all, this was a new democratic nation of the people and by the people, open to ongoing public participation and criticism; the term Federalism is nowhere to be found in the text of the Constitution; and the Framers left it for subsequent generations of Americans to work out the details, allowing us, in effect, to provide our own definition of the term in what can best be described as an ongoing national dialogue.

### **John Marshal and The Supreme Court’s Influence**

The most visible federal institutions participating in the perpetual exercise to properly define Federalism have been the U.S. Supreme Court and Congress. Typically, cases involving vertical separation of power issues have come before the Court after Congress enacted a law that a state believed encroached on its sovereignty. However, some were born pre-Congressional action and directly out of mundane disagreements that either state courts could not resolve, or that the Supreme Court claimed jurisdiction over. These two national governing bodies have played such a significant role in shaping the evolution of Federalism that it is worth studying their shifting attitudes through time.

From the moment the body specified itself as the supreme interpreter of the Constitution a decade after its creation in the late 18<sup>th</sup> century, the Supreme Court became an integral driving force behind Federalism’s progression. Through the early 1900’s, the Court ruled mainly in favor of expanding the scope of the federal government and reducing states’ authority. But in the incessant tug of war that

Federalism provoked, states still did what they could do to flex their muscle. In the historic case *Chisholm v. Georgia* (1793), the Supreme Court ruled that Article III of the U.S. Constitution gives the Court original jurisdiction over lawsuits between a state government and the citizen(s) of another state, even if the state being sued does not consent (Cornell University Law School [Cornell], 1992a). As expected, the decision generated immediate opposition from several states. Such was the outcry against this decision that two days after the Supreme Court publicized it, a U.S. senator put a proposal before Congress that was to become the 11<sup>th</sup> Amendment. The motivation behind the effort was clear: “the very object and purpose of the Eleventh Amendment was to prevent the indignity of subjecting a state to the coercive process of [federal] judicial tribunals at the instance of private parties” (Yale Law School, 1911). Eventually, the amendment was ratified and the Supreme Court’s original decision overruled. By limiting the power of federal courts to hear lawsuits brought against state governments, the 11th Amendment marked a victory for the states in their ongoing struggle for sovereignty.

Historic records show that the epic presidential election of 1800 between Federalist President John Adams and Democratic-Republican Vice-President Thomas Jefferson was an emotional and hard-fought campaign. For the first time in U.S. history, a President found himself running against his Vice-President and, ironically, each side believed that victory by the other would ruin the nation. In fact, records show that the same dynamic duo that had combined powers to help claim America’s independence back in 1776 ran equally offensive political campaigns full of personal attacks and slurs

(Swint, 2008). But despite the mudslinging, which we have grown quite accustomed to in modern times, each side's platform was straightforward and clear. Overall, the Federalists wanted strong federal authority to restrain the influence of popular majorities in the states, while the Democratic-Republicans wanted to reduce national power so that citizens could rule more directly through their state governments. The election's outcome brought a dramatic victory for Jefferson and his party, who also swept both houses of Congress. The far-reaching significance of the election of 1800 between two of the most influential men in U.S. history is evident, as it also marked the first peaceful transition of political power between opposing parties in U.S. history. I would also argue that the wide margin of victory by the Democratic-Republicans across the board is a good indicator of the direction in which the political winds were blowing at the time; more specifically, of the vision that the American people had for their Federalist government.

Despite the Federalists' departure from most elected offices following the 1800 election, they remained a powerful force in American life, especially through their leading position among federal judges. In the final months of Adams' administration, he enlarged the federal judiciary and appointed many new judges who shared his Federalist views. The most important of Adams' midnight appointments was naming John Marshall as Chief Justice of the Supreme Court – a position he held until his death over three decades later, making Marshall not only the fourth Chief Justice but also the fourth longest-serving justice in the history of the Court (Khan, 2002). Under his leadership, the body specified itself as the supreme interpreter of the Constitution and significantly

raised its stature. And it is with that strong belief in national supremacy that John Marshall defined the basic relationship between federal and state governments for decades, even centuries after his death. Marshall's earliest landmark decision as Chief Justice came in *Marbury v. Madison* (1803), which became an early example of his remarkable political savvy and leadership. The issue at stake was precisely the Federalists' controversial last-minute expansion of the judiciary in 1801. The Judiciary Act of 1789 passed by Congress granted the Supreme Court the authority to issue commissions for (meaning, to officially confirm) new justices. When James Madison, President Jefferson's Secretary of State, refused to deliver several commissions for the Federalists' new justices, the frustrated Federalists asked the Supreme Court to force the executive branch to act. Marshall's written decision on behalf of the unanimous court agreed that the new justices were entitled to their commissions, but he refused to take the legal action that the Federalists requested. Chief Justice Marshall was thinking bigger. Even though the Judiciary Act of 1789 grew the Supreme Court's scope – a goal that Marshall was clearly supportive of – the Court argued that it grew it to an unconstitutional size. Therefore, Marshall and his colleagues decided that the Supreme Court had the authority to declare this and any other act of Congress void if it was found to be in conflict with the Constitution (Cornell, 1992b). Since *Marbury v. Madison*, the Supreme Court has been the final decision-maker regarding the constitutionality of congressional legislation – a legacy that is very much present today.

Throughout the rest of the 19<sup>th</sup> century, the Marshall Court (1801-1835) continued to rule in favor of the Federalists' objective to expand the federal

government's jurisdiction. *Martin v. Hunter's Lessee* (1816), for example, came about after the Virginia courts argued that the Supreme Court did not have authority over cases originating in state courts. The Supreme Court reversed the state's decision and concluded, under the Supremacy Clause, that it had ultimate jurisdiction and authority over state courts on matters involving federal law (Cornell, 1992c). Another landmark decision by the Marshall Court that amplified the authority of the federal government and set the tone for Federalism during the 19th century was *McCulloch v. Maryland* (1819). The case reached the high court after the state of Maryland attempted to impede the opening of a branch of the Second Bank of the United States by imposing a tax on all notes of banks not chartered in Maryland. Though the state of Maryland argued that the law was unbiased and applicable to all out-of-state banks, the Second Bank of the United States was the only one that fit the description at the time. The Supreme Court concluded that the law had specifically targeted the U.S. Bank and ultimately, it determined that Congress did have the power to incorporate the federal bank in Maryland and in any other state (Cornell, 1992d). In his decision, Marshall invoked the Necessary and Proper Clause of the Constitution (also known as the Elastic Clause), which allowed the federal government the flexibility to pass laws not expressly provided for in the Constitution in order to create a functional national government, as long as those laws did not go against any of the existing limited powers of Congress under the Constitution. The most important principle this case reinforced is that state action may not impede valid constitutional exercises of power by the federal government; period. In Marshall's unequivocal words: "let the end be legitimate, let it be within the scope of



the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional...the Necessary and Proper Clause purports to be an additional power, not a restriction on those already granted.” (Cornell, 1992e).

Allocation of power to the federal government probably reached its peak under the Supreme Court’s expansive interpretation of congressional lawmaking power exercised pursuant to the Commerce Clause, which gives Congress authority to regulate issues affecting interstate commerce. In what became *Gibbons v. Ogden* (1824), the Supreme Court ruled that the Commerce Clause power of Congress is “supreme, unlimited, and plenary,” and had “no limitations, other than those prescribed in the Constitution” (Cornell, 1992f). Near the end of Marshall’s historic tenure, the Court’s impetus to reiterate the supremacy of the federal government was still evident. Under the *Cherokee Nation v. Georgia* (1831) decision, the Supreme Court invalidated a Georgia state law regulating Cherokee Indian lands on the grounds that the law violated several U.S. treaties. Claiming that the Supreme Court was overstepping its bounds, Georgia ignored the Court’s decision and President Andrew Jackson, a vocal proponent of states’ rights, refused to deploy national troops to enforce the Court’s order in what became one of the earliest ideological and political standoffs between a President and the mighty Chief Justice (Cornell, 1992g).

## **The New Deal & the Civil Rights Eras**

Two tragically significant eras in the U.S. led to the expansion of federal authority and, according to critics, brought about a new wave of imbalance in American Federalism: the weakest economy and the strongest inequality in the nation's history. Under the New Deal programs of President Franklin D. Roosevelt (1933-1945), the functions of the federal government expanded enormously in what many argue was a "necessary evil" to deal with the socio-economic chaos of the Great Depression. It was the New Deal that gave rise to Social Security, unemployment compensation, federal welfare programs like "food stamps," price stabilization programs in industry and agriculture, and collective bargaining for labor unions, along with heavier taxes on the wealthy in order to finance this growth of the social safety net (Freidel & Sidney, 2006a). Before FDR, the federal government had never been involved in regulating in these policy areas because that power had been seen as belonging exclusively to the states. Many of the New Deal programs were funded by the federal government but managed by the states, an intergovernmental dynamic that gave rise to the now-popular federal grant-in-aid system, whereby the feds give tax revenue to state governments to feed their state budgets and finance mutually agreed-upon goals (we will explore the growth of grant-in-aid programs later). The U.S. Supreme Court legitimized the expanded federal role that FRD promoted and, since 1937, has basically allowed the national government to define the reach of its size and scope for itself. For example, before the New Deal, the Supreme Court interpreted the Commerce Clause literally and narrowly, ruling in *United States v. E.C. Knight Company* (1895) and *A.L.A. Schechter Poultry Corp. v. United States* (1935) that the Commerce Clause only permits federal regulation of the buying, selling, and

transportation of goods between states, not over the manufacture of goods within the states, even if that manufacture was closely related to interstate commerce. Yet in the late 1930's, the Court greatly changed course, ruling that federal laws regulating the local production of goods "substantially affected" interstate commerce and was therefore constitutional." I hope we are beginning to realize that this parallel redefinition of federal authority by the executive and judiciary branches is no coincidence; it is, in fact, a common trend in the evolution of Federalism.

By the post-Marshall 1850's, when the debate turned to the issue of race relations and slavery and whether they should fall within the jurisdiction of the national or state governments, the Supreme Court, for better or for worse, deviated from its pattern of enlarging the powers of the federal government. In *Dred Scott v. Sanford* (1856), the Court invalidated the Missouri Compromise – a federal law that outlawed slavery in the northern Louisiana Territory – on the grounds that under the Constitution, Congress was intended "to be carefully limited in its powers, and to exercise no authority beyond those expressly granted by the Constitution, or necessarily to be implied from it" (Cornell, 1992h). This decision exacerbated the antagonism between the slave-holding states, the free states, and the territories – antagonism that eventually culminated in war. Many scholars accurately point out that the American Civil War (1861-1865) that followed did much to teach us about American Federalism. The victory by the northern union and the eventual adoption of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> amendments to the Constitution ended slavery, defined national citizenship to include former African slaves, limited the power of the states in the areas of civil rights and liberties under the Due Process and Equal

Protection clauses, and overall, established the supremacy of the national Constitution and laws over the states. To reiterate, this increased authority in the hands of state governments did not always result in a more free and righteous nation; and by definition, certainly not in a more united Union. In 1892, for example, an African American by the name of Homer Plessy took a seat in a “whites only” car of a Louisiana train. When he refused to move to the car reserved for blacks, he was arrested and eventually the case was sent to the high court. In *Plessy v. Ferguson* (1896), the Supreme Court once again deferred to local lawmakers and upheld a Louisiana state law mandating racial segregation on its trains. In the process, the Court upheld the constitutionality of the infamous Jim Crow laws that continued a legal regime of racial segregation in the South into the mid-20th century (Cornell, 1992i).

It was not until 1950 that the Supreme Court, in another case with a strong flavor of Federalism, began stretching its authority to bring about positive and legal changes to these unfair conditions. In *Sweatt v. Painter*, the Court decided in favor of black student Herman Sweatt concerning his appeal for entrance into the University of Texas Law School. The Court ruled that the educational opportunities offered to white and black students by the state of Texas were not substantially equal and contradictory to the Equal Protection Clause of the 14<sup>th</sup> Amendment (Cornell, 1992j). Four years later came the Court’s most significant decision affecting the state-backed Jim Crow laws: *Brown v. Board of Education* (1954), when the Court declared unconstitutional the policy of separate-but-equal educational facilities for blacks and whites, thus overturning its own precedent that had existed since *Plessy* in 1896 (Cornell, 1992k). During the Civil Rights

Era, the Supreme Court struck down many instances of state-sponsored racial segregation, as well as state laws that discriminated against women and state criminal proceedings that violated the due process of law. It was during this time that the national government became viewed as the principal promoter and defender of civil rights and liberties – a duty that remains in the federal government’s job description today (Katz, 1997). Furthermore, people began trusting and looking to the federal government – especially to the U.S. Supreme Court – to defend them against their own state governments.

### **FDR’s Cooperative Federalism**

These two developments of great historical significance resulted in an unavoidable restructuring of Federalism’s identity. Until the New Deal, the prevailing form of Federalism was “Dual Federalism,” a system in which the national government and the states have totally different sets of responsibilities (Botsch, 2008). Foreign affairs and national defense fell exclusively within the jurisdiction of the federal government, while education and family law were matters for the states alone. The New Deal broke this superficial separation and gave rise to the notion of “Cooperative Federalism,” a system of shared and mixed responsibilities, in which the national and state governments are encouraged to cooperate with each other to deal with a wide array of complex socio-economic problems. Cooperative Federalism characterized American intergovernmental relations through the 1950’s and into the 1960’s. The construction of the interstate highway system in the U.S. during the mid- 20th century is usually cited as

an example of effective Cooperative Federalism (Botsch, 2008). Through a grant-in-aid formula, the federal government provided about 90 percent of the cost of road construction, gave technical assistance to the states on building highways, and generally, set structural and safety standards for the new roads. The highways themselves were actually built and maintained by the states. These roles for the federal government as the overseer and consultant, and for the state governments as the doers, continue to be part of the story today.

In general, this new kind of Federalism that dominated during the 1950's and 60's offered a new perspective into federal-state intergovernmental cooperation. In the case of the interstate highway system, for instance, the federal government and the states both wanted the roads built; there was a mutual interest because there was a mutual benefit. The partnership formed to achieve this common goal was pragmatic and direct, as only the federal government and the states were involved in this mega project. It is important to note that local government units were not yet part of the Cooperative Federalism picture at this time perhaps to avoid complicating the relationship or because cities and other local governments did not have the necessary street credibility as the new kids on the block. Another important point about this sort of Federalism is that the grant-in-aid programs affected only a limited number of policy areas, like transportation (the construction of highways and airports) and housing. As late as 1963, the total funding for all federal grant-in-aid was only about \$9 million. As we will soon see, however, grant-in-aid programs exploded in size under President Johnson.

### **Local Government's Emergence**

Even though the original colonies that became the United States were born out of smaller units of government like townships – which remain alive in many parts of the East Coast as well as in our own state of Wisconsin – it took about a century for local government to be offered a seat at the governing table. During the 19<sup>th</sup> century, state constitutions began issuing municipal charters, giving townships, county governments, and city councils much of the responsibility for decision-making, which varied from state to state (National Association of Counties [NACO]). Following the world wars, as populations grew and began to spread beyond city boundaries into suburbia, local governments were increasingly called upon to provide certain services and regulate local affairs. Today, there are approximately 3,100 counties that have their own charter, and they are found in every state except Connecticut and Rhode Island – which have geographic areas called counties but without functioning county governments – and the District of Columbia (NACO). Priorities and service delivery responsibilities still vary considerably among counties, as does their size. In general, today's counties have more mandates, less discretionary funds, and are more vulnerable to state budgetary discretion. However, county government remains the basic political category and is still an influential presence, especially in rural America. As of 2007, there are almost 20,000 municipal governments across the nation, but they vary widely by quantity (Hawaii and the District of Columbia each have 1, Illinois has 1,300); designation (they may be called cities, towns, boroughs, districts, plantations, villages); and incorporation requirements (Florida requires 1.5 persons per acre) (NACO). Despite these variations, municipalities generally have similar powers and perform similar functions. In Wisconsin today, local

units of government include 72 counties, 190 cities, 405 villages, 1,256 towns, and several hundred special districts including 465 school districts. Local government leaders are well-organized and represented by a number of state-wide, national, and international professional associations most notably the Wisconsin City/County Manager Association; the National League of Cities; and the International City/County Management Association.

### **LBJ's Great Society & Nixon's New Federalism**

The Cooperative Federalism of the mid-20th century was a crowd favorite for longer than most had anticipated but finally ended by the mid-1960's. Although the increased autonomy that states began entrusting to local government units played a role in breaking up the federal-state exclusive marriage, it was President Lyndon B. Johnson's (1963-1969) ambitious socio-economic policies that really changed the direction of Federalism. Johnson's Great Society, which many critics argued was too utopic, proposed to focus on the urbanization and beautification of cities; cleaning the environment; and expanding educational opportunities to poor children (Freidel & Sidney, 2006b). To accomplish this aggressive agenda, Johnson advocated for a type of intergovernmental cooperation that he labeled as "Creative Federalism." Under this system, cooperation was once again the basis but the expectations within this area were significantly heightened. Under his Great Society, the federal government began writing grant-in-aid checks to finance programs that the states had little interest in or were actually opposed to. Federal funds were also given directly to counties, cities, towns,



schools, and other special local districts. Also, while previous grant-in-aid programs were limited to a few areas on which the federal and state governments agreed, the Great Society reached almost every policy area: education, police and fire protection, historic preservation, public libraries, infant healthcare, urban renewal, public parks and recreation, sewage and water systems, and public transit. The consequences of this expansion were clear. The most obvious one was the huge increase in the amount of federal grants to state governments, which more than doubled from \$10 billion to \$24 billion between 1965 and 1970. To put it another way, the number of individual grant-in-aid programs grew from 85 in 1955 to 327 by 1965 (CATO Institute [CATO], 2011). Secondly, as the pie grew, the number of players in the intergovernmental arena also grew dramatically from 51 (the states and the federal government) to the 80,000 or so units of local government that existed at the time. And third, because federal funding now reached almost all areas of public life, a number of administrative, logistical, and political problems emerged. There was a sudden lack of coordination and accountability because of this – as political scientist David Walker put it “hyperintergovernmentalization” – of American public policy (Walker, 1983).

Shortly after President Richard Nixon (1969-1974) took office in 1969, he, like most of his predecessors, proposed a dramatic restructuring of American government and American Federalism. He believed that the bloated federal bureaucracies and the “red tape” they created undermined creativity, entrepreneurship, and the entire private sector, and even worse, created a culture of government dependency. He called instead for a “New Federalism,” in which money and power were directed from the federal

government and toward states and municipalities (Freidel & Sidney, 2006c). Like many of today's small-government conservatives, Nixon was a strong supporter of the lower levels of government because they were more accountable and accessible and, as a result, could respond more effectively to the needs of the people. In fact, Nixon had been a new Federalist since he entered Congress in 1946. Throughout his career as a House and Senate member, and to some extent as Vice President under Eisenhower, Nixon had opposed big government and fought to restore authority to the local level. His New Federalism was the presidential vehicle to further his cause nationwide (PBS, 2013). During his presidency, nonetheless, Nixon tried to strike a balance between the federal and the lower levels of government. On one side, he launched a campaign to desegregate the South locally. He traveled across the southern states setting up biracial committees tasked with the planning and implementation of school desegregation policies. The appeal to local control was apparently successful, since by the late 1970's, with little violence and fanfare, less than 20% of black children in the South attended all-black schools (PBS, 2013). At the same time, Nixon used his presidency and the concentrated power of the federal government to help end gender discrimination. He increased the number of female appointments to positions in his administration; created a Presidential Task Force on Women's Rights; and worked with the Departments of Justice and Labor to enforce and implement sex discrimination laws. Another of Nixon's noteworthy New Federalism legacies was a novel revenue-generating formula called revenue sharing. Under this system of federal assistance, the federal government would collect income taxes and distribute the revenue to state and local governments, which had wide latitude

in spending it. The proposal's main goal was consistent with Nixon's overall mission to get rid of federal red tape and present state and local governments guaranteed revenue without strings attached. As predicted, revenue sharing was soon proved to be a success. The system initially delivered \$4 billion per year in matching funds to states and municipalities; about \$30 billion by 1976; and some \$83 billion before it was killed by President Reagan in 1986 (PBS, 2013). Call it political strategy or balanced government – or a little of both – but Nixon appeared to have found a stable form of Federalism. His controversy-plagued second term, however, greatly undermined any long-term efforts toward a more effective and stable national government.

### **The Reagan and Clinton Years**

Wanting an even smaller role for government in general and for the federal government in particular, President Ronald Reagan (1981-1989) successfully fought for a reduction of most entitlements programs and aggressive tax cuts. Reagan's domestic focus was that across-the-board economic growth would occur when marginal tax rates were low enough to spur investment and the federal government's cost, size, and scope were small enough to yield an expansion of the private sector (Freidel & Sidney, 2006d). Reagan froze the minimum wage at \$3.35 an hour and slashed federal assistance to local governments by 60%, cutting the budget for public housing and Section 8 rent subsidies in half, and eliminating the antipoverty Community Block Grant program (Dreier, 2011). He also cut federal funding of non-military programs like Medicaid, food stamps, federal education programs, and the EPA. As federal funding for many social services were cut,

financial and administrative responsibility for such efforts was shifted to individual state and local governments. So, while Reagan attempted to provide states and municipalities with more discretion and authority in the implementation of federal programs, state and local governments did not appreciate the simultaneous huge reduction of federal funding needed to meet his vision.

During his administration, President Clinton (1993-2001) switched gears on federalism once again. In 1998, he released Executive order 13083, which specifically created a series of new Federalism Policymaking Criteria that federal branches and agencies had to follow when formulating and implanting “policies that have Federalism implications” (meaning, federal laws that would directly impact lower levels of government) (Thierer, 1999). His executive order, which many conservatives criticized as unconstitutional, began from the premise that the federal government should not intrude on state or local affairs but at the same time, should recognize which matters were the responsibilities of the national government – of which, social programs were the most important – and avoid burdening states and municipalities by expecting them to fully manage them. Along with Clinton’s new definition of Federalism came a new wave of increased federal grants to state and local governments, which reached \$169 billion by 1995 (CATO, 2011). While the Clinton years were relatively good to local governments due in part to a strong economy, the trend toward devolution (meaning, shifting more responsibilities back to the states) continued. In 1996, Clinton and the Republican-dominated Congress ended the traditional welfare program Aid to Families with Dependent Children (AFDC), which was a formula grant that grew as the number of poor

grew. The program was replaced with a block grant called Temporary Assistance to Needy Families (TANF), which did not grow and also shifted much of the decision-making and funding responsibility back to the states (Botsch, 2008).

### **Bush, Obama, and a New Century**

A moderate republican, President George W. Bush (2001-2009) seemed to embrace Clinton's version of Federalism at the time of his inauguration at the turn of the century. However, the terrorist attacks on U.S. soil that took place in September 2001 quickly did away with any priorities, ideologies, or models that Bush may have planned to implement during his campaign and after his election. These attacks and the consequent re-shifting of priorities during his administration prevented the President from rolling out an explicit set of policies which would have reflected his honest vision for U.S. Federalism. Instead, Bush's principal legacy for Federalism is centralization of power in the federal government and executive power which, of course, was an understandable reaction to the level of national insecurity and the eventual War on Terror that followed the September 11<sup>th</sup> attacks. Cast against his conservative predecessors' support for limited government and states' rights, "the Bush administration's embrace of big government conservatism is potentially a highly significant development in American politics" (Posner, 2007). Although the Bush administration's heavy emphasis on domestic security and global stability deflected its attention from state and local issues per se, President Bush was able to roll out a significant piece of legislation with huge intergovernmental repercussions before the terrorist attacks, which I would argue

encapsulates his intended version of Federalism. Three days after taking office in January 2001, Bush announced No Child Left Behind, his framework for bipartisan education reform that he described as “the cornerstone of my Administration” (U.S. Department of Education [DOE], 2005a). Bush emphasizes his deep belief in the nation’s public schools, but an even greater concern that too many low-income children were being left behind despite the multi-billion dollar annual investment on education by the federal government. In general, the proposal – which passed Congress less than a year after Bush first announced it – had a number of Federalist ingredients and called for a robust intergovernmental dynamic. It called for increased accountability for states, school districts, and schools; greater choice for parents and students, particularly those attending low-performing schools; more flexibility for states and local educational agencies in the use of Federal education dollars; and a stronger emphasis on reading, especially for our youngest children (DOE, 2005b). Despite its good intentions, however, state governments and local school districts complained that the law was but an unfunded mandate that created a federal education framework which imposed a significant testing burden on state governments. What was worse, local schools and state school systems argued, was that the tough performance standards set by the law were the price for increased federal aid to local school districts. In addition, state and local officials would soon discover that complying with the law would prove hugely expensive. As one columnist wrote back in 2004, “The No Child Left Behind Act may be the Bush administration’s prize exhibit on devolution and Federalism...but it may not be one that the President’s campaign advisers will want to display too conspicuously. Even states

that have been among those friendliest to the Republican President have balked at the NCLB price tag” (Kettl, 2004).

During the Bush presidency, the federal government was forced to focus primarily on war and terrorism, leaving little time to concentrate on domestic matters. That left plenty of running room for states to address a wide range of issues such as stem-cell research, securities regulation, and minimum-wage increases (Greenblatt, 2010). However, under President Barack Obama (2008-present), that balance has shifted. Our current President has clearly set out to address nearly every major domestic issue. In many cases, that has meant calling on the states to implement policies he has pushed in areas such as education and health care. Given the continuing financial constraints states and local governments are facing, they have turned frequently to Washington for help. And, because of the federal government’s increasingly concerning level of debt and deficit – currently approaching \$17 trillion – the Executive and Legislative Branch’s willingness to help their state and municipal counterparts has been paired with stringent eligibility requirements, particularly in the area of grant-in-aid. Today, federal grants are certainly not what they were decades ago. Even though the number of federal aid programs for the states has greatly increased, the funding for most of them has either disappeared or greatly shrunk. Most of the spending in the 2009 federal stimulus law, for instance, passed through states and municipalities and helped states fill budget holes, keep Medicaid patients enrolled, and avoid laying off teachers. But as any state and local legislator will frustratingly point out, most of that money came with significant strings attached (Greenblatt, 2010). Obama’s Affordable Care Act, as well as its Race to

the Top-tied funding, are further examples of more stressors put on state and local governments in a time of dwindling budgets across the board. As Marcia Howard, Executive Director of Federal Funds Information for States said, “One of the trends that we see – it’s not really new in the Obama administration, but I think it’s increased exponentially – is this push toward the carrot and the stick” (Greenblatt, 2010). While President Obama has shown a great deal of interest in collaborating with states when he can and has been willing to federalize ideas that rise from them, he also understands that their budget situations have diminished the ability of states and local governments to set their own courses. Most have come to realize that, for better or for worse, this is an administration that arrived at the White House with a specific agenda already laid out, and the focus was and continues to be on national objectives. Like Paul Posner, a federalism expert at George Mason University stated “I can see this administration pursuing additional ways to put money down in the state and local sectors but tying it to strong national goals. It’s going to have to be a twofer” (Greenblatt, 2010). It will be interesting to see what shape Federalism takes at the end of President Obama’s second term in 2016. If one thing is true, an economic recession, a rising multi-trillion dollar federal deficit, the passage of historic reforms, and a ceaseless political gridlock in Congress have all played a significant role in setting the path forward.

## **Chapter II**



## **Federalism at Work**

Now that we have endured a journey through the evolution of American Federalism, we should have a better appreciation for its relentless flexibility considering the nonstop restructuring it has undergone since its immigration to this country. We should also have in our toolkit a much comprehensive definition of the concept and its distinct versions. What we have not explored in detail, however, is Federalism's practical and modern application. In the second half of this study, we will look at a specific scenario involving an intergovernmental response that has become the most vivid example of ineffective Federalism. My intention is not to end the paper on a pessimistic note and give you the impression that I do not believe in government's ability to be effective. Instead, the idea is to carefully study this real-life tragedy and understand how Federalism is intended to work by understanding when and how it does not work.

### **Hurricane Katrina Strikes**

In the morning of August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States. When the storm hit the ground, it brought sustained winds of 100 to 140 miles per hour and stretched from central Florida to Texas. At least 1,833 people died in the hurricane and subsequent floods, making it one of the deadliest U.S. hurricanes and the sixth strongest among recorded Atlantic hurricanes. Katrina affected 90,000 square miles of land across 138 counties in 4 states and led to the relocation of more than 800,000 area residents (Federal Emergency Management Agency [FEMA], 2006).

Overall, experts estimate that it caused approximately \$100 billion in damage, becoming the costliest natural disaster in U.S. history (Knabb, Rhome, & Brown, 2005). While the storm itself caused a great deal of damage, it was its aftermath that was catastrophic. Levee breaches created flooding conditions in 80 percent of the city of New Orleans. At the same time, the state and federal governments were slow to meet the basic needs of the storm's victims in the days and weeks that followed. Despite all the advances in satellite and radar technology that allowed meteorologists to quickly warn the Gulf Coast states that a major storm was on its way, no government could have predicted the actual consequences of this natural disaster. Many are correct to argue, however, that the government – in this case, all levels of government – should have dealt with the post-hurricane challenges much more effectively. There are two main areas of responsibility where ineffective Federalism contributed to the chaos caused by Hurricane Katrina: emergency preparedness and planning, and the delivery of economic assistance to victims. One is preventive and the other reactive, but they are both crucial to effectively deal with the aspects of a natural disaster that we can control. In order to fully understand what went wrong in the intergovernmental response to Hurricane Katrina, it would be helpful to know what it would have taken for things to go right.

### **The Theory**

Across the country, government is viewed as the only institution with the resources, capabilities, and authority to help citizens cope with natural disasters and other large-scale catastrophic events. More specifically, post-disaster relief efforts in the

U.S. rely on an intergovernmental structure that is designed to work from the bottom up. Disaster response begins at the local level and follows a series of pre-specified steps through the state and, ultimately, to the national government (Schneider, 1992). If they do become involved, higher levels of government are not supposed to overrule or replace the activities of the state and local levels. Instead, all three layers of government must continue to work together while implementing the proper disaster-relief policies. Cohesion, cooperation, and communication are essential.

Municipal and county governments are the first link in the chain (Schneider, 1992). Their task is to deal with emergencies that occur within their jurisdictions before asking for any outside assistance. Local governments develop a series of basic emergency preparedness and response procedures, which are used to inform local populations about possible hazards and to identify the processes for evacuating citizens in the event of an actual emergency. Local emergency management plans also specify how rescue and response activities will be coordinated within and across jurisdictions, as well as how local governments will obtain assistance from higher levels of authority if the situation exceeds their capacity. Towns, cities, and counties establish local emergency preparedness agencies or offices (or, in the case of small rural communities, individual coordinator positions) to manage disaster assistance policies. The most practical duty of these units is drafting a plan identifying the core responsibilities of all local officials during emergencies. These plans are prepared by local officials to meet the needs and conditions of their particular communities, but they also follow certain guidelines imposed by the state and federal governments (Drabek & Hoetmer, 1991). In recent

years, these emergency planning efforts have become fruitful opportunities for cooperation between communities, which have produced regional agreements between multiple jurisdictions. The goal in these partnerships is not only to coordinate efforts with adjacent units of government but also to use the acquired regional influence as an additional safety measure (after all, when disaster strikes, it is helpful to get along with your neighbors). If and when necessary, however, local authorities direct their requests for assistance directly to the state level.

In general, states mobilize additional and larger-scale resources to deal with situations that local leaders cannot handle on their own. The official responsibilities and duties of the state government are outlined in a state emergency preparedness plan (National Emergency Management Association [NEMA], 2006). These plans vary somewhat from state to state, but they do tend to have a number of common characteristics. Most state plans, for example, provide a clear framework to guide the distribution of statewide resources and support for local disaster relief operations. In addition, they identify the roles of law enforcement and emergency preparedness personnel in disaster situations. Each state tailors its plan so that it can address its own priorities and needs. In our home state, for instance, the Wisconsin Emergency Response Plan (WERP) – written and managed by the Wisconsin Emergency Management (WEM), a division of the state's Department of Military Affairs – serves as the outline for disaster response and recovery priorities unique to Wisconsin. The WERP's Severe Weather Incident section mainly deals with snow blizzards and ice storms, which are obviously not significant concerns for warmer Gulf Coast states like Louisiana. Another key

emergency support function on the WERP specifies the state's plan to safeguard Wisconsin's agricultural sector, which may not be a huge concern in Washington D.C. The key state level contacts with the federal government are the state's emergency management agency, the governor of the affected state, and the governor's authorized representative for a particular disaster situation. According to federal guidelines, a single state agency must be made responsible for coordinating all statewide activities and ensuring that the state maintains an effective system for dealing with disasters (NEMA, 2004). This state emergency management agency also serves as the main bridge between local units and any federal players that become involved in the process. The governor also plays a key role in the disaster response process at the state level, since most governors are granted a fairly high level of power during emergency situations affecting their state (Schneider, 1995). Governors can declare a "state of emergency" either through executive order or by proclamation; order evacuations (mandatory or voluntary) of local communities; mobilize the state's National Guard units; and identify how important resources (electricity, water, medications, etc.) will be used to help local jurisdictions (NEMA, 2004).

Federal involvement is reserved as the last resort in disaster situations nationwide. A local government must first exhaust their own resources before it calls upon its state government officials to respond. Likewise, a state government must meet the needs of a local government with their own resources before they request federal assistance (Townsend, 2006). This is often referred to as a "pull" system for federal assistance, since local and state governments successively "pull" resources and assistance from the

next level up in the hierarchy of the federal system (The White House, 2006). The specific conditions under which the federal government can intervene are specified through statutes, executive orders, and administrative actions. In general, the federal government is not expected to get involved in a relief effort on its own initiative (U.S. Department of Homeland Security [DHS], 2004). The overall policy is that “incidents are handled at the lowest possible organizational and jurisdictional level. Police, fire, public health and medical, emergency management, and other personnel are responsible for incident management at the local level” (DHS, 2004). The feds only steps in when a state or a governor makes a formal request for assistance, which is reviewed by emergency management officials at the national level and eventually sent to the President in the form of a recommendation. The President must decide whether the magnitude of the crisis is, in fact, beyond the capacity of state and local governments; if it is, the President issues a formal disaster declaration. A presidential disaster declaration opens the door to all other forms of federal assistance (Sylves, 2006). The declaration specifies the geographic boundaries of the disaster area (the ‘who’) and the types of assistance that will be provided (the ‘what’). This is very important, since it determines whether disaster victims will receive direct cash grants, housing, emergency medical care, or some combination of these services. In most major disaster situations, the Federal Emergency Management Agency (FEMA) – an arm of the U.S. Department of Homeland Security (DHS) – is tasked with mobilizing most federal resources. One of FEMA’s most important roles is to link victims with other federal agencies (i.e. U.S.

Army, National Guard, Department of Transportation, etc.), private companies, and nonprofits so they can obtain the assistance they need.

It is evident that an indispensable ingredient of a successful government response to a sizeable natural disaster is intergovernmental cooperation and communication. All three levels of government, in the most pragmatic version of federalism, must work together as partners rather than as superiors and subordinates (Caruson & MacManus, 2006). No single level of government should dominate or control the entire process; after all, this is Cooperative Federalism at its best. And all levels should follow instructions. But the reality is that some disasters generate unusually stressful and complicated conditions, which results in the government response not always unfolding so effectively. Under such severe circumstances, emergency management officials and organizations are unable or unwilling to perform their pre-assigned responsibilities. As a result, public officials at the local, state, and federal levels fail to react appropriately and the entire process becomes convoluted and ineffective. And intergovernmental blame is passed from one level to another much rapidly than assistance ever could. This is precisely what happened during the intergovernmental response to Hurricane Katrina during the summer of 2005.

### **The Practice**

The most significant number of deaths caused by Hurricane Katrina occurred in New Orleans, most of which flooded after the city's levee system failed. But even before the storm made landfall, experts knew that New Orleans was at particular risk. Over the

course of the 20<sup>th</sup> century, in the spirit of federalism, the U.S. Army Corps of Engineers had built a system of levees and seawalls to keep the city from flooding. The levees along the Mississippi River were strong and sturdy, but the ones built to hold back Lake Pontchartrain, Lake Borgne, and the waterlogged swamps and marshes to the city's east and west were much less reliable. Before the storm, government officials worried that those levees, jerry-built atop sandy, porous, erodible soil, might not withstand a massive surge of water. Neighborhoods that sat below sea level, many of which housed the city's poorest and most vulnerable people, were at great risk of flooding (Knabb, et al., 2005).

As a result of the warranted concern that New Orleans' levee system could if Katrina's fury proved to be real, the traditional bottom-up response plan was put into effect early on before the hurricane hit. The day before, New Orleans Mayor Ray Nagin issued the city's first- ever mandatory evacuation order. He also declared that the Superdome, a stadium located on relatively high ground near downtown, would serve as a shelter for those residents who could not leave the city immediately (some 112,000 of New Orleans' nearly 500,000 did not have access to a car). Only about 10,000 ended up seeking shelter in the Superdome, while tens of thousands of others chose to ride out the storm at home (Knabb, et al., 2005). At the state level, Louisiana Governor Kathleen Blanco declared a state of emergency and mobilized certain assets. Responding to state needs, the federal government was also involved before the storm hit. FEMA called a "full alert" and sent emergency supplies into areas that were on the predicted storm path. At the formal request of Governor Blanco, President Bush issued an emergency declaration on August 27 and subsequently declared a federal state of emergency in



Louisiana two days later (the morning before the storm hit the Louisiana Coast). At this early stage, the dominos seemed to be falling in the correct order and it appeared that public officials across all three levels of government had a solid grasp of their roles in the bottom-up process. However, it did not take long for the process to collapse. The capable emergency planning experts – particularly those in the front lines – appeared to be stunned by the severity of the storm. The worst conditions developed at the local level, particularly in the city of New Orleans. The city's emergency management plan was simply not implemented and many personnel were so overwhelmed that they could not fulfill their obligations as first responders (Baum, 2006). In turn, this inaction at the local level prevented the process to flow upwards and make its way through the intergovernmental sequence.

One level up, state emergency management officials did not stabilize local conditions or mobilize additional resources in an effective manner (Treaster, 2005). In the state's defense, they were operating under an emergency manual that specified certain local government triggers in charge of activating state and federal involvement in necessary. There were certain technical and costly oversights that state officials could have avoided. On Saturday August 27, two days before Hurricane Katrina made landfall, Governor Blanco sent a letter to President Bush asking him to declare a state of emergency in Louisiana due to the potential damage that the storm could cause. Her letter, however, did not include a request for military assistance because her office apparently "assumed that troops were prepositioned and ready to roll but they were not" (CNN, 2005). The night of the storm, Governor Blanco spoke with the President and

asked him for every type of assistance that the federal government could provide, but again failed to specifically request military aid. Eventually, both the Governor and the White House confirmed that it was only on Wednesday that Blanco made a specific request for federal troops. Most likely, the looting and rampant disruption of law and order in the first 48 hours could have been limited if National Guard troops, with their law-enforcement authority, would have arrived on location sooner. Before the end of the week, Governor Blanco admitted in a television interview that there had been missteps but on all sides. Pressed specifically about her poor communication with the federal government regarding what she requested and when, she stated that she and the President “got caught in trying to make a bureaucracy work on something bigger than it ever had imagined it would have to work on (CNN, 2005). About one week after the storm, Governor Blanco declined a proposal from the White House to put National Guard troops under the control of the federal government, which meant she maintained control of these soldiers. Regarding this decision, Blanco stated that “if I had seen a greater purpose, if I had felt it would make an immediate difference, it would have been a no-brainer, but by Friday, we had everything in control” (Luo, 2005). Under the state’s control, National Guard troops were unable to stabilize local conditions especially in the most affected locations (Duffy, 2005). In fact, it was not long before the National Guard announced their retreat from New Orleans altogether, claiming that they were not there to restore “law and order” (Roig-Franzia & Hsu, 2005).

The situation was not any better at the national level. DHS Secretary Michael Chertoff did not declare Katrina an “Incident of National Significance” – which, as the

National Response Plan specifies, would have immediately released an extensive and coordinated multiagency response (DHS, 2004) – until the day after Katrina hit. Federal officials assumed the normal stance of waiting for request (the “pull”) from lower level governments before they responded. But again, local and state level officials were too overwhelmed to follow instructions and help the process operate as it was intended. The normal “bottom-up” system was simply not applied in this situation. This led to some federal officials in the field to initiate a more practical and top- down push. Congress, for one, stood behind the Louisiana Congressional Delegation and passed a \$10 billion supplemental bill to keep FEMA and the Red Cross operating in Louisiana (CNN, 2005b). The only problem is that this federal aid got caught in the red tape web and when it reached its destinations, it was implemented in an uncoordinated manner. There were many who criticized Secretary Chertoff for waiting almost 36 hours after Katrina hit the Louisiana coast to form a standard interagency incident management team (IIMG), which is supposed to be created immediately after (or even before) an Incident of National Significance occurs (DHS, 2004). This delay of authorized measures caused the federal government to miss a key opportunity to pre-deploy emergency response teams and mobilize federal resources into the area before the storm came. As a revealing post-Katrina report requested by Congress states, “we will never know what the IIMG would have done if it had been created at an earlier point” (U.S. House of Representatives [U.S. House], 2006). What we do know with certain confidence, however, is that these federal efforts could not have made the situation any worse. Perhaps, a better evacuation plan and more effective search and rescue operations could have even saved hundreds of

lives. Another federal-level decision that might have added to the death toll came on September 1 (three days after the storm) when FEMA announced it was pulling back its search and rescue efforts in Louisiana because of looting and other security concerns in the days right after the storm hit (Associated Press, 2006).

Many of the lessons that all government levels are supposed to have learned from the mishandling of Hurricane Katrina were published in a congressional report titled “A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina.” One of the main and obvious conclusions published on the document was that there was a great deal of confusion about who was actually in charge of the federal response. As a result, during the initial days after the storm, there was no single, unified command structure for governmental operations. For example, the title of Principal Federal Official (PFO) – in essence, the representative of the DHS Secretary as the lead federal official in disaster situations (DHS, 2004) – went to FEMA Director, the inexperienced Michael Brown. But even though PFO Brown was responsible for guiding the entire nation’s emergency relief operations and coordinating the federal government’s total involvement, he did not have the legal authority to direct the activities of other federal agencies or direct the allocation of any federal funds. Instead, those powers fell to another federal official, the Federal Coordinating Officer (FCO), William Lokey of FEMA, who had a similar job description as the PFO. It took a couple of weeks for the federal government to name the same individual – no; it was neither Brown nor Lokey – as both PFO and FCO and finally consolidate leadership and clarify the lines of authority – accomplishments that would

have been appreciated two weeks before. A brief note about Michael Brown – who I am sure does not reflect the spirit of most of the brave first- responders and emergency preparedness officials post-Katrina – may offer a glimpse into how disastrous government’s response was and how a lack of effective leadership is to blame. During a number of post-Katrina congressional hearings in September 2005, New Orleans Congressman Charlie Melancon released a number of controversial emails sent by Brown to other federal officials as the storm was unraveling. “Can I quit now? Can I come home?” Brown wrote to Cindy Tailer, FEMA’s deputy director of public affairs, the morning of the hurricane (CNN, 2005c). Without any more excuses left in his bag, Brown eventually resigned from his post on September 12, fourteen days after the storm hit and ten days after President Bush told him “Brownie, you’re doing a heck of a job” (CNN, 2005c).

In short, “the failures of the government’s relief efforts following Katrina are tied more directly to the collapse of the intergovernmental framework upon which the entire system is based” (Walters & Kettl, 2005). At the local level, county and city officials expected the national government to step in and take charge of the situation. At the state level, Governor Blanco made broad decisions but apparently did not understand that additional actions were necessary to implement them. It is true that no single level of government deserves *all* the blame, as it is clear today that officials across all levels misunderstood their responsibilities during the response to Hurricane Katrina, especially in Louisiana. At the same time, we can conclude that the most serious misunderstandings occurred at the federal level (Derthick, 2007). Inexperience, fear, or pure incompetence

were certainly key factors in this mismanagement. And as the final report by Congress pointed out, the latest version of the national response plan was brand new, adopted the year before the storm. Katrina was the first declared Incident of National Significance following these changes. This means federal government officials were operating in uncharted territory during Katrina, trying to implement and follow policies whose level of success was immeasurable or completely unknown (House, 2006). Adding to this uncertainty about responsibilities, many federal officials continued to act as if the bottom-up system were still in place, even after it was forcefully taken over by the top-down “push” process for an incident of national significance (Van Heerden, 2006). Other specific faults accredited to the federal government were that it did not take proactive steps to help residents prepare for the looming hurricane, and that it failed to mobilize the available resources of other public, non-profit, or private disaster assistance organizations. Overall, federal agency directors and the White House took too long to make the necessary decisions. And when they finally did, because they came during desperate circumstances, they were not implemented appropriately and often trumped existing policies and procedures, thus creating greater confusion and disruptions (House, 2006).

### **The Lessons Learned**

The reason why government’s response to Hurricane Katrina seemed so inexperienced is because it was. The first lesson is one of human resources mismanagement. FEMA’s top three leaders – Director Michael Brown, Chief of Staff

Patrick Rhode, and Deputy Chief of Staff Brooks Altshuler – arrived to the agency with ties to President Bush’s 2000 campaign or to the White House (Hsu, 2005). Although their allegiance to the President was clear, their knowledge of what the job entailed was limited. Brown, the man tasked with coordinating the national response to Katrina, was hired to the agency after a rocky tenure as commissioner of a horse sporting group by former FEMA Director Joe Allbaugh, the 2000 Bush campaign manager and a college friend of Brown’s. Rhode, Brown’s chief of staff, is a former television reporter and Bush campaign deputy director, who joined FEMA in 2003 after stints at the Commerce Department and the U.S. Small Business Administration (Hsu, 2005). Inexperience in FEMA’s top ranks was so evident among local, state, and other federal officials during the hurricane that it became a significant part of the investigations post-Katrina. This issue touches on the broader and ongoing debate whether the “politicization” of the public sector is beneficial or dangerous. It is clear that the Bush Administration appointed long-time political allies to crucial management positions in, of all places, emergency response agencies. It can certainly be argued that government entities like DHS and FEMA are better-suited for long-term career civil servants with practical field experience who can put fear and political agendas aside and help save human lives.

When Hurricane Katrina hit, the initial bottom-up process of government response failed and chaos was imminent. In the normal Federalist process, movement must start with the local government then move up to states and, finally, reach the federal government. In the case of Katrina, however, local government was too overwhelmed by the magnitude of the disaster and as a result, failed to press all the right

buttons to start running the intergovernmental machine. At the state level, Governor Blanco did not declare martial law or a state emergency and later declined the President's officer to bring in National Guard troops. Because of their inexperience, panic, and confusion, federal government officials took little action in the initial days after the storm. The lesson here is to always implement the proposed plan. Yes, it is easier said than done. But at the same time, national, state, and local emergency preparedness plans, offices, and entire agencies are created precisely to implement emergency preparedness programs and post-disaster relief. When an emergency strikes, it is crucial for government officials to first, remember what they are supposed to do in similar situations, and secondly, act! Regardless of approval ratings or political sentiments, the public will always expect its government to be the first effective respondent in cases of emergency.

The mishandling of Hurricane Katrina by our government also led to countless academic works on the topic, as well as public surveys, which have made for great educational pieces. One of these government experts who followed the crisis closely is Saundra Schneider, a political science professor at Michigan State University. Schneider claims that there are two main lessons to learn from this tragedy. First is that misunderstandings regarding intergovernmental responsibilities can have a negative impact on the operations of the entire public sector. When the response process works the way it is supposed to, there are few complaints from the public regarding intergovernmental operations and capabilities. But when the process suffers breakdowns like it did post-Katrina, an intergovernmental game of blame can quickly begin. Under



public pressure, local officials criticize the state for not mobilizing available resources; state governments complain that the national government does not respond to its requests for assistance; and the federal government blames local and state governments for not being adequately prepared to handle the disaster (Schneider, 2008). In other words, especially in times of chaos, government officials should spend less time and energy blaming each other for mistakes made and more communicating with one another to avoid making new ones.

For her second set of lessons, Schneider relies on a large number of public opinion surveys that were conducted during and after Hurricane Katrina, since she believes that for it to be effective, governmental activity also has to coincide with public perceptions about intergovernmental responsibilities. During and after a large natural disaster, Schneider writes, it is the public that must react and participate in a wide range of policy activities across all three levels of government. Consequently, citizens must believe that the actions of government organizations and officials are appropriate; if not, this can have major consequences for the public's general feelings about the success or failure of governmental efforts (Schneider, 2005). Today it is evident that during Hurricane Katrina, neither the general public nor, what is worse, government officials had a clear understanding of which unit of government was responsible for addressing specific problems. The data gathered by Schneider showed that Americans expect local and state governments to help them prepare for emergencies before and as they develop, but they want the national and state governments to take charge of the situation after a disaster

actually occurs. But overall, the public believes that all three levels of government should play an important role throughout the response process.

## **Chapter III**

### **Conclusion**

American Federalism has experienced a long journey of evolution, one that is still not over. From the time the nation was founded until today, the most popular political debate in the nation's capital, state capitols, and city halls across the country is what role should and can the federal, state, and local government play in Americans' lives. Even though the Founding Fathers knew they wanted to start a nation where the abuse of power by a single omnipotent government entity was as unrealistic as possible, the Dual Federalism they laid out has taken many different shapes over the past two centuries. The Judiciary, Legislative, and Executive branches of our national government – which make up the horizontal divisions of power – have each taken turns promoting distinct forms of Federalism in order to change the dynamic of the vertical divisions of power. Countless Supreme Court cases; Congressional pieces of legislation; and individual Executive agendas have carried American Federalism through tumultuous times. And the evidence is clear that these decisions at the top had a real trickle-down effect, as with each new wave of Federalism came new standards that all levels of government had to abide by.

Whereas the colors and flavors of Federalism have been many, there have been a few factors that have remained constant. One of the most notable ones is the tendency to expand the Federal government's scope during difficult socio-economic times. From the Great Depression to the great oppression before the Civil Rights Movement of the mid-20<sup>th</sup> century, the nation has counted on the nation's capital to fix the national state of

affairs. And should not come as a surprise; the broader the diagnosis, the larger the operation must be. The issue that many have with such an expansion of the central government, however, is its tendency to pass on aggressive agendas that difficult times calls for onto the state and local level, along with an unyielding expectation that they must comply with Washington's rules and regulations with little to no financial assistance or political capital attached. And of course, the other concern is much more obvious and general, that is that when the federal government has the final word and larger authority, states and local entities miss the valuable opportunity to advance policies that they know for a fact will benefit their residents. But these clashes between the feds, states, and cities and towns around the country are precisely what make the Federalist experiment an ongoing one. The fact is that there is no single secret formula for totally effective Federalism. What we do know are some of the key ingredients that have withstood the test of time and *cannot* go unnoticed.

One of these critical ingredients – perhaps the most important one – is the understanding of the different roles and responsibilities of each layer of government. And nowhere did we learn about the dire consequences of a lack of such understanding more than during Hurricane Katrina in 2005. Even though post-Katrina investigations point out to a couple of lessons learned, the most elementary and obvious one is that in a Federalist form of government, the key players must understand their own and others' jurisdictions. This is even more imperative during a natural disaster where human lives are on the line. The emergency preparedness manuals and officers existed, but the knowledge of the top-down response was inexistent. Katrina taught us, among other things, that national

disasters test all aspects of the American Federalist fabric and unfortunately, we failed the test. The second ingredient, in my opinion, is effective cost-benefit analysis. It is evident today that the current Obama Administration came to power with a pre-formulated national agenda. What was not carefully considered by those pushing such agenda, however, is the impact of those national policies – in particular, their cost – on the lower levels of government. I do not intend to classify certain current national programs as effective or ineffective because only time will tell. In addition, we already studied other administrations – Democratic and Republican – that made the same policy generalizations. The focus here is on the misconception by the federal government that the White House or Capitol Hill have all the answers to every problem facing states and municipalities nationwide. Overall, my research has confirmed the theory that a balanced form of Federalism is more beneficial in the long-term and, we can add, more politically popular. It will be interesting to experience what the next stage of Federalism's journey will bring our nation. But if one thing is true, is that if our Founding Fathers were here today, they would be shocked at how resilient the form of government that they created has proven to be.

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