

CHAPTER ONE

American Federalism: More Than Two Centuries of Political Tension

Before one explores the components and particulars of the Connecticut polity, it is important to first discuss the features of American federalism, as well as the ongoing tension between federal and state authority throughout the course of American history. This general overview should demonstrate the centrality of state governments within the context of the American federal system, and why this work has special relevance in the twenty-first century.

One of the bedrock principles of the United States Constitution is that the power of government should be limited and restrained. Heavily influenced by the writings of classical liberal philosophers, most notably the English philosopher John Locke (1632-1704), the Founding Fathers devised an ingenious constitutional system in which power would never be concentrated in one branch or one level of government.¹ Limited government was viewed as a prerequisite to individual liberty and more generally the preservation of the newly-formed republic.

The Founding Fathers' deep belief in a system of limited government is clearly reflected in the principle known as federalism. Drafted during a swelteringly hot summer in Philadelphia more than two hundred years ago, the Constitution of the United States established a governing system in which power would be divided between two levels of government, national and state. The principle of federalism is among the several distinguishing features of the American constitutional framework.

Federalism and Divided Power

The Constitution, written in response to the failure of the *Articles of Confederation* (1781-88), provides the national government with both enumerated and implied powers. The enumerated powers of the national government are most evident in Article I, Section 8 of the Constitution. Seventeen clauses outline the enumerated powers of the United States Congress. Examples include the power to coin money, regulate interstate commerce, and declare war. By enumerating the powers of the United States Congress, the Founding Fathers ensured a fairly defined yet limited set of federal responsibilities.

The implied powers of the national government, also a component of Article I, Section 8, are found in the “necessary and proper clause” of the Constitution. This clause, sometimes referred to as the “elastic clause,” provides the Congress with the authority to make all laws that are “necessary and proper” for executing the enumerated powers of Congress, as well as other powers granted to the national government by the Constitution. Implied powers provide the Congress with law-making authority that may be employed in the interest of implementing national powers and, more generally, advancing the national interest. Although the “necessary and proper” clause has allowed the national government to expand its authority over time, all laws and policies enacted by the Congress must still be rooted in the enumerated powers of Congress and the Constitution. Thus, limitations are still imposed on the scope of national power despite this broad and implied grant of constitutional authority.

States’ rights are also preserved under the Constitution. Article IV, Section 4 of the Constitution, for example, guarantees a republican form of government to each and every state within the union and protects all states from foreign invasion. States are therefore guaranteed a representative form of government as well as federal protection.

The Tenth Amendment to the Constitution serves as the legal foundation for state power. For states’ rights advocates, the Tenth

Amendment is sacrosanct: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.” The “reserved powers” of the states have served as the constitutional basis of state authority throughout our nation’s history. Staunch advocates of states’ rights have been known to carry a copy of the Tenth Amendment on their person at all times.

Although the Constitution establishes a federal system of government, a careful reading of this document nevertheless raises questions regarding the scope and boundaries of national and state power. Federalism is by no means a perfectly defined governing principle, and there is considerable ambiguity with respect to the division of authority between the two levels of government. Most observers of federalism will agree that gray areas exist concerning the exact dimensions of national and state power. Precisely where national power ends and state power begins is difficult to pinpoint precisely.

The lack of precise guidelines regarding the constitutional scope of federal and state power has given rise to many controversial yet intriguing federal court cases. The United States Supreme Court frequently serves as the arbitrator in complex conflicts between the two levels of government. Students who enroll in constitutional law courses are invariably exposed to large blocks of class time devoted to court rulings regarding the principle of federalism. Such cases are among the most fascinating in the field of constitutional law.² The tension between federal and state authority, which has persisted for more than two hundred years, has very deep historical roots.

Historical Tension

Federalists versus Antifederalists

Since the founding of the republic, clashes involving federal and state authority have been at the heart, and perhaps soul, of American politics. A recurring source of political tension throughout our country’s history has been the continual

fluctuations in the locus of power within the federal framework. Repeatedly, intense political disputes emerge regarding which level of governing authority should have control over domestic policies. The debate over the scope of federal and state power has historically divided Americans into two rather distinct political factions: those who favor national solutions to domestic policy problems, and those who favor states' rights and a more decentralized approach to governing. The former faction favors what political scientists refer to as "nation-centered federalism," while the latter supports "state-centered federalism." If there is one constant debatable issue throughout the entire span of American history, it has been the contentious issue of where domestic power should reside.

The beginnings of the tension between national and state governments can be traced to the bitter conflict between Federalists and Antifederalists that erupted in 1788 during the struggle to ratify the federal Constitution. Those who supported the proposed Constitution were known as Federalists. Those who opposed the Constitution, and who supported a continuation of the Articles of Confederation, were known as Antifederalists. Patriotic Americans and men of distinction were associated with both political factions. On the Federalist side of the debate, examples of leading statesmen included Alexander Hamilton and John Adams as well as the "father" of our country, George Washington. Leading Antifederalists included an array of political leaders, such as Patrick Henry, George Mason, and George Clinton.³

Federalists believed that the time had arrived to strengthen national power. According to the Federalist point of view, a more effective and empowered national government was needed to promote national economic development and to provide national security. A constitution based on the principle of federalism would, according to the Federalists, effectively resolve the pressing economic and national security issues that were besieging the nation. Federalists viewed the Articles of Confederation, adopted in 1781, as a seriously flawed and deficient experiment in self-government. They argued that far too much power had been afforded to the states under the Articles of Confederation,

ultimately resulting in economic stagnation, inflation, ineffective commerce among the states and with foreign nations, and more generally a fragmented nation. A debtors' revolt in 1786 against the government of Massachusetts, led by former Revolutionary War Captain Daniel Shays, further underscored the frailty of American government under the existing Articles. "Shays' Rebellion," as it was known, is regarded as a key event in terms of mobilizing public support for constitutional reform and a stronger system of government. Correspondence among Federalists during this tumultuous time period demonstrate in no uncertain terms their displeasure with the Articles of Confederation and their desire for a stronger, more centralized and stable national government. Congressman James Madison's correspondence with Governor James Randolph of Virginia reveals such a perspective: "Our situation is becoming every day more and more critical . . . No money comes into the federal treasury; no respect is paid to the federal authority; and people of reflection unanimously agree that the existing confederacy is tottering to its foundation."⁴

George Washington, writing to Thomas Jefferson, expressed his grave concern for the future of the republic and his desire for a new form of government in these terms: "The situation of the General Government (if it can be called a government) is shaken to its foundations and liable to be overset by every blast. In a word, it is at an end, and unless a remedy is soon applied, anarchy and confusion will inevitably ensue."⁵

The Antifederalists, however, were deeply suspicious of the newly drafted Constitution. They feared that political power would gradually become centralized under the Constitution and that self-government, which Antifederalists equated with states' rights, would eventually be destroyed. Antifederalists, although by no means blind to the problems inherent in the Articles of Confederation, still believed a confederal form of government with sovereignty among the individual states, rather than a system of federalism, would be more effective for securing personal liberty and preventing tyranny. According to Antifederalists, eliminating the Articles of Confederation and adopting an entirely new

Constitution based on the federal principle was not only a radical and unnecessary response to existing economic and security problems, but a threat to freedom. Antifederalists therefore strongly opposed ratification of the Constitution.

Between 1787 and 1788, many essays critical of the proposed Constitution appeared in newspapers throughout the thirteen states. The writings of “Centinel,” “The Federal Farmer,” “Cato,” “Agrippa,” and “Brutus” are among the leading Antifederalist essays written during this uncertain time period.⁶ At the heart of practically every Antifederalist essay was a concern that the Constitution, if ratified, would result in tyranny and the gradual erosion of human freedom. Antifederalists feared the ambiguity and flexibility of the proposed Constitution, and argued that the new national government would most certainly destroy the political sovereignty of states and local communities. They were especially concerned that the proposed Constitution did not contain a Bill of Rights that would impose strict limits on national power, and they were deeply concerned with the vagueness and elasticity of presidential power. In the view of Antifederalists, the proposed Constitution contained many hidden dangers. The commentary of Brutus, published in the *New York Journal* on November 15, 1787, captures many of the key ideas of the Antifederalists:

In the investigation of the constitution, under your consideration, great care should be taken, that you do not form your opinions respecting it, from unimportant provisions, or fallacious appearances. On a careful examination, you will find, that many of its parts, of little moment, are well formed; in these it has a specious resemblance of a free government – but this is not sufficient to justify the adoption of it – the gilded pill, is often found to contain the most deadly poison.⁷

In response to Antifederalists, Federalists mounted their own campaign. The Federalist campaign to secure support for the proposed Constitution was most evident in the state of New York.

At the time, the New York political climate was characterized by strong Antifederalist sentiment, a good part of which was fueled by New York's governor George Clinton, an opponent of the Constitution and, according to some constitutional historians, author of the Antifederalist "Cato" essays.⁸ The controversial governor emerged as one of the main opponents of the Federalist movement.

In the interest of mobilizing support for the proposed Constitution, three distinguished and learned Federalists, all of whom were instrumental in drafting and designing the Constitution, collaborated to write a series of essays in defense of the document. This historic and scholarly effort resulted in eighty-five essays circulated by New York newspapers. Each essay, identified as "*Federalist 1*" "*Federalist 2*," and so on, was written under the pseudonym "Publius," a Latin word meaning "the Public." The essays appeared throughout a two year period, 1787-88, the same time period during which the Antifederalist writings were in circulation.

To this day, the eighty-five Federalist essays, collectively referred to as *The Federalist Papers*, serve as the leading reference regarding the strengths of the United States Constitution and original intent of the Founding Fathers. Indeed, one will find federal judges who rely on various Federalist essays to help guide their legal reasoning and interpretation of the Constitution.⁹ The authors of *The Federalist Papers* were Alexander Hamilton, James Madison, and John Jay, three of the nation's most prominent Founding Fathers and distinguished statesmen. Scholars of the *Federalist Papers* conclude that Hamilton is the author of fifty-one essays, Madison penned approximately twenty-nine, and Jay wrote five.¹⁰

The need for a stronger union and a stronger national government is one of the central themes of the *Federalist Papers*. Consider the words of John Jay in *Federalist 1*:

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient

for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties.¹¹

Although the authors of *The Federalist Papers* adamantly defended the powers of the proposed central government and the concept of a strong union, it should be noted that “Publius” also recognized the importance of state governments and states’ rights. State power would undoubtedly be diminished under the proposed Constitution, but state governments, in the view of Federalists, were to remain vital units of the new federal system.

Although the Antifederalists failed in their effort to prevent ratification of the Constitution, the conflict between nationalists and states’ rights advocates has in many ways continued unabated for well over two hundred years. The Federalist versus Antifederalist debate over the proper distribution of power is one of the most recurrent political themes in the history of the United States.

The Origin of National Parties

The first political party system in the United States (1796-1816) pitted Alexander Hamilton’s Federalist Party against Thomas Jefferson’s Democratic-Republican Party.¹² The party system emerged largely as a result of competing perspectives concerning the distribution of power between national and state authority. The Federalist Party, which included many strident economic nationalists, favored a more centralized form of federalism with broad national power. The Jeffersonians favored a more decentralized system of federalism in which the bulk of domestic power would be vested in state and local governments.

At the heart of this division was the highly volatile and controversial issue regarding the formation of a national bank. Federalists viewed the formation of a national bank as a desirable mechanism conducive to economic development and national prosperity. The Jeffersonians opposed the creation of a national bank on the grounds that such an institution would destroy state

banking interests and eventually states' rights. Party loyalties during the early days of the republic were heavily conditioned by perspectives regarding the desirability of a national bank.

In some respects, the Hamiltonian versus Jeffersonian visions of government were manifestations of the Federalist versus Antifederalist conflict that emerged during the fight for constitutional ratification. However, it would now be political parties, not political factions, that would carry the banners of nationalism versus states' rights. Moreover, the two major political parties in subsequent years, albeit under different party labels, would continue to embrace and espouse the Hamiltonian versus Jeffersonian doctrines.¹³ The intensity of this debate would eventually result in a tragic and extremely bloody civil war.

The Civil War: The Tension Erupts

Beginning in 1861, eleven southern states seceded from the United States and formed the Confederate States of America. Secession resulted in a civil war between Northern and Southern states and the subsequent loss of more than 630,000 lives, the most devastating war in American history. Although the issue of slavery was at the root of this horrific conflict, the war was also the end result of conflicting interpretations regarding the proper scope of federal and state power. The issue of federalism and the scope of national versus state power so deeply polarized the American people that war was deemed the most logical alternative for resolving the dispute.

Legal justification for southern secession was rooted in the controversial writings and theories of states' rights advocates, most notably those of southern statesman John C. Calhoun (1782-1850). Calhoun, a U.S. senator from South Carolina and former vice-president of the United States under Presidents John Quincy Adams and Andrew Jackson, articulated what became known as the "doctrine of nullification." This controversial doctrine placed states' rights above national authority with respect to legal supremacy, in direct contradiction of the supremacy clause located in Article VI of

the federal Constitution. The supremacy clause in no uncertain terms identifies the United States Constitution, national laws, and national treaties as the supreme law of the land. However, according to Calhoun, state law was superior to federal law by virtue of the fact that formation of the states had preceded the formation of the federal government. Thus, any federal law found objectionable by a state could potentially be nullified within its own borders by the state legislature. As Calhoun put it,

The sovereignty of the states, in the fullest sense of the term, is declared to be the essential principle of the Union; and it is not only asserted as an incontestable right, but also claimed as an absolute necessity in order to protect the minority against the majority.¹⁴

Calhoun also contended that the formation of the federal government in 1788 was the direct result of a voluntary “compact” between individual states. Since states had voluntarily entered into a governing “compact” with one another to form the federal government, it therefore legally fell within the realm of state authority that a state, or group of states, could voluntarily withdraw from the Union as well. In Calhoun’s view, the states had entered into a compact with one another “with the understanding that a state, in the last resort, has a right to judge of the expediency of resistance to oppression or secession from the Union.”¹⁵ Such a doctrine was more than appealing in states throughout the South whose economies and wealth were built squarely upon the backs of slave labor. In the view of Southern political leaders, state sovereignty and the compact theory inherently prohibited the federal government from interfering in the internal political and economic policies of the states. Thus, the policy of slavery, as well as the decision to withdraw from the Union was a prerogative of Southern states. To understand the American Civil War, one must first understand the intense commitment among Southerners to the concept of states’ rights, and, most certainly, to the controversial doctrines of John C. Calhoun.

Although the Union victory affirmed the supremacy of the federal constitution and federal law, the politics of the last half of the nineteenth century continued to reflect disagreement over matters related to federalism. Despite the outcome of the Civil War, questions regarding the legal scope of federal and state power persisted. While Calhoun's doctrine of nullification and support for state secession died with the collapse of the Southern Confederacy, party loyalty and voting behavior continued to reflect the ongoing debate as to whether state or national authority should serve the needs of the American people. Political division over matters related to federalism characterized the politics of the twentieth century as well.

The Twentieth Century

For most of the twentieth century, the Democratic Party was most closely identified with promoting national goals and national power. The New Deal policies of President Franklin D. Roosevelt initiated during the Great Depression of the nineteen-thirties shaped a nationalist image for the Democrats. Beginning in 1933, the year in which Roosevelt was inaugurated as president, big government and the Democratic Party have become synonymous with one another. To this day, many Americans still equate the Democratic Party with expanded government and social welfare programs.

President Roosevelt's New Deal, launched in response to a collapsed economy, significantly expanded the economic and fiscal responsibilities of the national government. National, rather than state and local, remedies provided economic stimulation and relief for millions of Americans forced into poverty by the Depression. As a result of Roosevelt's leadership, a large number of domestic policy responsibilities were delegated to newly-established federal administrative agencies. Several domestic responsibilities that prior to the 1930s had belonged to state and local governments were transferred to the national level. This was especially evident in the area of social welfare policy. With the passage of the Social Security Act in 1935, welfare policy in the United States shifted dramatically

from state and local governments to the federal government. According to Roosevelt, national solutions were required to resolve America's grave economic dilemma:

If I read the temper of our people correctly, we now realize as we have never realized before our interdependence on each other; that we cannot merely take but we must give as well; that if we are to go forward, we must move as a trained and loyal army willing to sacrifice for the good of a common discipline. . . . We are, I know, ready and willing to submit our lives and our property to such discipline, because it makes possible a leadership which aims at a larger good. . . . This I propose to offer.¹⁶

An expanded and more powerful national government, in Roosevelt's view, was necessary to meet the needs of the American people. As James MacGregor Burns notes, "Throughout Roosevelt's speeches of 1934 ran this theme of government as conciliator, harmonizer, unifier of all major interests."¹⁷

Support for an interventionist and powerful national government, initiated and institutionalized under Roosevelt, continued without interruption under subsequent Democratic Presidents. President Harry S Truman's Fair Deal, John F. Kennedy's New Frontier, and Lyndon B. Johnson's Great Society each promoted national, rather than state, solutions for resolving an array of pressing domestic dilemmas. In addition to instituting national economic programs, the agendas of Presidents Kennedy and Johnson included national legislation designed to promote civil rights. The issue of social equality henceforth became a primary concern of American presidents and the United States government; this development further expanded the scope of federal power. Consistent with the effort to create equality, President Johnson declared a "War on Poverty." With the exception of Roosevelt's New Deal, Johnson's Great Society was the most ambitious domestic agenda in American history. During the presidency of Johnson, the national government clearly superceded the states with respect to

meeting the social and economic needs of the population. The American people looked to the national government, rather than the states, for political leadership and creative public policy initiatives.

Declining Confidence in Federal Solutions

One of the great virtues of American government is that power tends to be fluid. This is true not only with respect to the distribution of power between branches of government, but also between levels of governing authority. After more than four decades of expanding national power, Americans began to reassess the policy-making role of the national government within the federal framework. By the end of the 1960s, the period of nation-centered federalism and big government appeared to have run its course. The cost and efficiency of federal programs funded by federal tax dollars began to come under close scrutiny. Many Americans began to question the costs and benefits of several federal domestic programs, such as social welfare, as well as housing and urban renewal. As John L. Palmer and Isabell V. Sawhill put it,

The public seemed to feel that too much money was being spent on such programs, sometimes with too little effect, and that too large a proportion of the population had become dependent on federal assistance, weakening the incentives for them to make it on their own.¹⁸

Moreover, it was during the latter part of the 1960s that many Americans began to express serious doubts regarding the logic and morality of the Vietnam War. In the minds of a growing number of Americans, military intervention in a remote country in Southeast Asia was a misguided foreign policy. The war began to be regarded as unwinnable and an enormous waste of American resources. The decline in public confidence was particularly acute among the nation's college population. In the spring of 1967, a Gallup Poll revealed that 49 percent of college students perceived themselves as

“hawks” with respect to the Vietnam War. By the winter of 1969, this figure had dramatically declined to 20 percent.¹⁹

To further complicate matters, misinformation disseminated by the federal government regarding the war’s progress and a so-called “light at the end of the tunnel” mentality created a serious credibility gap between the American people and those in positions of national authority. Negative perceptions toward the war, the judgment of national political leaders and military generals, and growing concerns over wasteful federal spending resulted in a dramatic erosion of trust and confidence in the federal government.

The presidencies of Richard Nixon (1969-74), Gerald Ford (1974-77), and Jimmy Carter (1977-81) did little to ameliorate negative attitudes toward federal authority. During the first term of the Nixon presidency, the war in Vietnam continued to escalate in spite of the President’s campaign promise to seek peace. More than 500,000 American troops were stationed in Vietnam during the first years of the Nixon administration, more troops than at any other time in the war’s history. President Nixon’s abbreviated second term was consumed by the Watergate scandal, which resulted in his resignation from the Oval Office in August of 1974, the first presidential resignation in American history. Although President Nixon had attempted to improve the efficiency of government, most notably in his domestic reform proposal known as “New Federalism,” and despite his masterful success in establishing diplomatic ties with Red China, trust and confidence in the federal government continued to plummet.

Trust continued to decline during the Ford and Carter administrations as well. President Ford’s highly controversial pardon of President Nixon cast a cloud of suspicion over the Ford presidency. Many accused Ford of cutting a private deal with Nixon, thereby allowing the former president to escape federal prosecution. Although it was never proven that a pardon had been prearranged prior to Nixon’s resignation, Ford’s decision to pardon the disgraced president was nevertheless viewed by many as yet another reason not to trust the federal government.

President Carter, elected in the aftermath of the Watergate scandal, pledged to restore trust and confidence in the presidency and the national government. However, despite high hopes on the part of the American electorate, Carter's ineffectiveness as a domestic and foreign policy leader did little to reverse the public's negative perception of the federal government. Carter's failed attempts at reforming energy policy, an economy racked by inflation, and American embassy personnel held hostage in Tehran for more than a year only served to reinforce the public's antipathy toward the federal government. By 1980, trust and confidence in the federal government had declined to alarmingly low levels. The following table documents this trend.

Table 1
Trust in the National Government

	1964	1968	1972	1976	1980
Percent Saying:					
Always/Most of time	76	61	53	36	33
Some of the time	22	36	45	61	63

Source: Steffen W. Schmidt, Mack C. Shelley, II, and Barbara Bardes, *American Government and Politics Today* (Belmont, CA: Wadsworth, 1997), Table 7-2, p. 233. Question: How much of the time do you think you can trust the government in Washington to do what is right: just about always, most of the time, or only some of the time? Data based on *New York Times*/CBS News Surveys, the University of Michigan Survey Research Center, National Election Studies, and the Washington Post/Kaiser Family Foundation. Reprinted with permission.

As the data reveal, trust in the national government from 1964 to 1980 plummeted precipitously. In 1964, three-quarters of the American adult population expressed trust and confidence in the nation's central government. By 1980, this figure had declined to a mere one-third of the adult population. It is evident that perceptions of wasteful federal spending, the war in Vietnam, Watergate, a controversial pardon, and ineffective presidential

leadership had seriously altered perceptions of Americans toward their national governing institutions. There can be no denying that attitudes shifted in dramatic fashion during this time period. In light of such a trend, it should come as no surprise that by 1980 the conservative political rhetoric of Ronald Reagan, the Republican nominee for president, appealed to millions of Americans. Reagan's strong support for states' rights, combined with relentless criticism of federal power, effectively connected with the American electorate. Although the Republican Party's support for states' rights had begun well before the election of Ronald Reagan, it was now more than evident that the Republican Party was in fact the party that advocated decentralized solutions to domestic policy problems and the restoration of state sovereignty.

The Reagan Revolution and New Federalism

Long before his bid for the presidency in 1980, Ronald Reagan had established himself as a leading spokesperson for conservative values and states' rights. Throughout the 1960s and 1970s, Reagan was one of the most persistent and visible conservative figures in American politics. In 1964, Reagan campaigned diligently for the Republican Party's arch-conservative and pro-states' rights presidential nominee, Arizona Senator Barry Goldwater. As a two-term governor of California (1966-74), Reagan continued to espouse the doctrine of states' rights and routinely criticized big government, federal taxation, and the liberal social policies of the Democratic Party. As a presidential candidate, first in 1968 and again in 1976, Reagan castigated the growth and power of the federal government and urged, in no uncertain terms, a restoration of state power in domestic affairs.

Decentralized power, in Reagan's view, was also conducive to free enterprise and economic growth. By devolving power to the states, business would be subject to less government regulation. Thus, states' rights, according to Reagan, would directly benefit American business activity as well society in general. Even during the 1950s, well before his entry into state and national politics,

Reagan had established himself as an engaging and dynamic spokesperson for states' rights and limited government. His support for limited government was also evident during his days as a public relations spokesperson for General Electric, a position that evolved from his job as host of *General Electric Theater* on television.

Although political support for Ronald Reagan was routinely firm among Republican conservatives, it was not until the latter part of the 1970s that the ideals expressed by Reagan began to appeal to a broader cross-section of the American electorate. By election year 1980, the American people, who had lost much faith in the national government, seemed willing to experiment with a more decentralized form of self-government. While economic inflation, economic recession, and the humiliating Iranian hostage situation during the Carter administration certainly contributed to Reagan's presidential victory in 1980, millions of voters were also attracted to the theme of limited government so eloquently and charismatically articulated by the former California governor. Many Americans seemed willing to experiment with Ronald Reagan's "New Federalism," as noted by George E. Peterson:

One of the president's most consistently articulated criticisms has been that the national government has usurped responsibilities and authority that belong to the states. He entered office promising to redress this imbalance by setting the states free to pursue their own policy goals under their own management and by bringing government "closer to the people."²⁰

"Devolution" was the term that became synonymous with the Reagan presidency, meaning, quite simply, the transfer or return of federal domestic responsibilities to state and local levels of government.²¹ To "devolve" governing power is to reverse the direction in which power has "evolved." With his inauguration in 1981, devolution clearly became one of the main priorities of President Reagan's domestic agenda. Reagan's commitment to devolution was more than evident in his inaugural address of

January 20, 1981, delivered with eloquence on the western, not eastern, steps of the nation's Capitol:

Our government has no power except that granted it by the people. It is time to check and reverse the growth of government which shows sign of having grown beyond the consent of the governed. It is my intention to curb the size and influence of the federal establishment and to demand recognition of the distinction between the powers granted to the federal government and those reserved to the States or to the people. All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.²²

The Reagan administration's attempt to devolve power could be observed in a number of policy areas, including but not limited to social services, business regulation, judicial power, and the manner in which federal grant money would be managed. For example, in fiscal year 1982, the Reagan administration consolidated seventy-six federal categorical grant programs into nine large block grants. By consolidating categorical grants into these block grants, Reagan intended to provide individual state governments with more discretion and flexibility over the control and expenditure of federal money.²³ Although federal guidelines still accompany block grants, such guidelines are broad and general, unlike the stringent, tightly-defined guidelines associated with categorical grants.

While it is beyond the scope of this work to empirically evaluate the success of President Reagan's attempt to establish a new model of federalism, most observers are willing to agree that a new trend in federal and state relations did commence with his election. State governments were substantially revitalized, and states, as units of the American federal system, seemed to acquire new life and energy. David Osborne, a domestic policy advisor to President Clinton and author of *Laboratories of Democracy*, offered this perspective on the Reagan era:

The 1980s have been a decade of enormous innovation at the state level. For those unfamiliar with state politics – and given the media’s relentless focus on Washington, that includes most Americans – the specifics are often startling.²⁴

According to Osborne, the creation of public investment funds for the purpose of providing business loans, technological innovation, reforms in public education, the emergence of collaborative tripartite arrangements between management, labor, and government, as well as the revitalization of regional industries are policy areas where states have demonstrated exceptional innovation and creativity in recent years.²⁵

In *Goodbye to Goodtime Charlie*, a penetrating work concerning innovative trends in state leadership, Larry Sabato summarized the Reagan era in these terms: “The most significant of the patterns is that the states, responsible in good part for their own earlier federal ostracization, have begun to fulfill their proper role in the federal scheme of government.”²⁶ According to Sabato, in recent years states have acquired “the will to act, to cooperate, and at the same time to compete with the national government for power and responsibility.”²⁷ In addition to the emergence of professional and efficient state governors, other trends identified by Sabato include the development of efficient and modern state legislatures, revitalized two-party competition at the state level, and the transformation of the National Governor’s Conference from a largely symbolic organization into a powerful voice on behalf of state governments.²⁸

The trend toward states’ rights continued under President George H.W. Bush (1989-93), yet another Republican president supportive of state-centered federalism, as well as under President William J. Clinton (1993-2001), the first Democratic president in many decades who looked favorably on the governing authority and potential of states’ rights. Clinton’s commitment to states’ rights marked a dramatic departure from the agenda of previous Democratic presidents and further revealed his serious effort to redefine the goals and priorities of the Democratic Party. To argue

that the Democratic Party under Clinton's leadership had become a states' right party similar to that of the Republican Party would be misleading, although it was clear that under Clinton's leadership, the Democrats exhibited an uncharacteristic appreciation for the place of states within the federal framework. Clinton's approval of a sweeping welfare reform bill in 1996 returning a vast amount of welfare control to state governments suggested a fresh perspective toward states' rights on the part of the Democratic Party. The bill was described as the most comprehensive reform effort with respect to the delivery of social services since the passage of the Social Security Act in 1935. Although the welfare reform bill reflected the efforts of congressional Republicans who had won control of the House of Representatives in 1994, it was nevertheless a Democratic President who eventually supported this legislation and who signed it into law.

The Twenty-First Century and President George W. Bush

The political rhetoric of Republican President George W. Bush, inaugurated on January 20, 2001, suggested a continuation of presidential support for state power and state experimentation, although there are legitimate reasons to question the President's commitment to decentralized government. The war on terror (which commenced following the devastating terrorist attacks on September 11, 2001) inevitably resulted in a more powerful federal government, and critics of the Bush Administration have suggested that such power has expanded well beyond constitutional limits. The PATRIOT Act, for example, vastly expands the domestic surveillance power of the federal government over private citizens, which raises questions about President Bush's commitment to limited government. Under the Bush Administration, the Department of Homeland Security was also established, thus bringing the number of federal cabinet departments to fifteen, and billions of dollars have been spent by the federal government to support a controversial war in Iraq. Moreover, President Bush's educational reform initiative known as "No Child Left Behind"

imposes federal mandates on local schools across the land, which further calls into question this Republican President's support for state sovereignty. Additionally, efforts by the Bush Administration, along with many Republicans in Congress, to keep an incapacitated woman, Terri Schiavo, alive through a forced feeding tube, over the objections of her husband, continued to contradict the Republican Party's rhetorical insistence on limited government. As federalism scholar John Kincaid notes: "Despite having a governor, George W. Bush, in the White House, the federal system has not been a more congenial environment for the states."²⁹

Nevertheless, despite apparent contradictions between President Bush's political rhetoric and federal policy, the fact of the matter is that American government is still in a decentralized mode. The current vitality of states continues to reflect in many ways the historic Reagan Revolution and President Reagan's vision of devolution. During the first decade of the twenty-first century, most of the innovative and creative domestic policy-making within the federal framework continues to take place at the subnational level of the political system. Within this decentralized era of federalism, state legislatures, state governors, and state judicial systems have assumed enlarged and vitally important roles. Special interest groups and lobbyists, not surprisingly, have also multiplied at the state level and their presence is more pronounced in the halls and committee rooms of state capitols.

State constitutions have also acquired new life in an age of devolved power. So important have state constitutions become in recent years that one would be remiss in a work on state government not to devote considerable attention to such vital documents. The Connecticut Constitution is therefore the focus of Chapter Two.

Notes

1. The seminal work of John Locke which has direct bearing on the American political tradition and constitutional framework is clearly Locke's *Second Treatise on Civil Government* published in 1689, the same

time period during which Great Britain was involved in its own revolution, known as “the Glorious Revolution.” Although Locke’s writings were not by any means the only intellectual influence on the perspectives of the Founding Fathers, he nevertheless occupies a very special place among those philosophers whose works served as theoretical underpinnings of the Declaration of the Independence and the U.S. Constitution.

2. A plethora of U.S. Supreme Court rulings exist regarding federal and state disputes. For many years, the high court sided with the national government and interpreted the implied powers and commerce power of Congress very broadly, thus allowing the national government to regulate a range of economic activity which at one time belonged exclusively to the states. An example of a court ruling reflective of this judicial perspective would be *U.S. v. Darby* 312 U.S. 100 (1941). In recent times, the Court has taken a more restricted view of Congress’ power to regulate economic activity within the states and has issued rulings that are favorable towards the states. *U.S. v. Lopez* 514 U.S. 549 (1995) would be a prime example of the Court’s restricted view of national power *vis-à-vis* the states.

3. Herbert J. Storing suggests that far too little attention has been devoted to the Antifederalists. In Storing’s view, Antifederalists, although “champions of a negative and losing cause” should still be considered among our nation’s Founding Fathers. Arguments presented by the Antifederalists against the proposed Constitution, according to Storing, did influence the debate over the Constitution and in some instances found their way into the Constitution itself. The Bill of Rights, for example, can be attributed to the insistence of the Antifederalists on a set of defined rights that would limit the power of the federal government. For a synthetic treatment of the Antifederalists, see Herber J. Storing, ed. *The Anti-Federalist: Writings by the Opponents of the Constitution* (Chicago: University of Chicago Press, 1981), pp. 1-5.

4. “Madison to Randolph, February 25, 1787,” in *The Debates of the Several State Conventions*, ed. Jonathan Elliot, 2nd ed. (New York: Franklin, Burt Publishers, 1888-96), 5:107. Correspondence quoted in Richard M. Pious, *The American Presidency* (New York: Basic Books, 1979), p. 19.

5. “Washington to Jefferson, May 30, 1787,” *The Papers of Thomas Jefferson*, Julian Boyd et al., eds. (Princeton: Princeton University Press, 1955), 9:389. Correspondence quoted in Pious, *The American Presidency*, p. 20.

6. A collection of Antifederalist writings can be found in Storing, *The Antifederalist*.

7. Storing, *The Antifederalist*, p. 122.

8. In practically all accounts of the fight to ratify the Constitution, Governor George Clinton of New York is identified as the author of the “Cato” essays.

9. In my class on constitutional law, I make it a point when covering executive powers of discussing the federal district court ruling of *Murphy v. Ford* 390 F. Supp. 372, 1374, U.S. District Court, Western District of Michigan, 1975), in which Chief Judge Fox relied on the *Federalist Papers* to uphold President Ford’s controversial pardon of President Nixon. In Fox’s view, the President’s pardon power, defended by Alexander Hamilton in *Federalist* 74, was intended to heal the nation in the aftermath of an insurrection. The Watergate crisis, in Fox’s view, was tantamount to an internal insurrection, and thus justified broad use of the pardon power on the part of the President.

10. Benjamin F. Wright, ed., *The Federalist: The Famous Papers on the Principles of American Government* (New York: Barnes and Noble, 2004).

11. John Jay, *Federalist* 2, in Wright, *The Federalist*, p. 94.

12. The development of the first two-party system is clearly covered by Paul Goodman, “The First American party System,” in *The American Party System: Stages of Political Development*, ed. William Nisbet Chambers and Walter Dean Burnham (New York: Oxford University Press, 1975), pp. 56-89.

13. For a concise discussion of Hamiltonianism versus Jeffersonianism, see John Kenneth White and Daniel M. Shea, *New Party Politics: From Jefferson and Hamilton to the Information Age* (Boston: Bedford/St. Martin’s, 2000), pp. 27-30.

14. Quoted in Herman von Holst, *John C. Calhoun* (New York: Chelsea House, 1980), p. 79.

15. Quoted in H.W. Brands, *Andrew Jackson* (New York: Doubleday, 2005), p. 479.

16. Quoted in James MacGregor Burns, *The Lion and the Fox* (New York: Harcourt Brace, 1956), p. 164.

17. Burns, *The Lion and the Fox* p. 183.

18. John L. Palmer and Isabell Sawhill, “Perspectives on the Reagan Experiment,” in *The Reagan Experiment*, ed. Palmer and Sawhill (Washington: The Urban Institute Press, 1982), p. 3.

19. William Appleman Williams et al., eds., *America in Vietnam* (New York: W.W. Norton, 1989) p. 290.

20. George E. Peterson, “Federalism and the States: An Experiment in Decentralization,” in *The Reagan Record*, ed. John L. Palmer and Isabell Sawhill (Cambridge: Ballinger Publishing Co., 1984), p. 217.

21. Peter Benda and Charles H. LeVine, "Reagan and the Bureaucracy: The Bequest, the Promise and the Legacy," in *The Reagan Legacy: Promise and Performance*, ed. Charles O. Jones (Chatham, NJ: Chatham House Publishers, 1988), p. 121.

22. President Reagan was the first President in U.S. history to be inaugurated on the west side of the Capitol. The image of Reagan as a man of the West who cherished Western values and limited government seemed relevant in the decision to relocate the inaugural ceremony.

23. Peterson, *Federalism and the States*, p. 229.

24. David Osborne, *Laboratories of Democracy* (Boston: Harvard Business School Press, 1990), p. 1.

25. Osborne, *Laboratories of Democracy*, p. 1.

26. Larry Sabato, *Goodbye to Goodtime Charlie: The American Governorship Transformed*, 2nd ed. (Washington: Congressional Quarterly Press, 1983), p. 179.

27. Sabato, *Goodbye to Goodtime Charlie*, p. 179.

28. Sabato, *Goodbye to Goodtime Charlie*, chapters 3, 4, 6.

29. John Kincaid, "Trends in Federalism: Continuity, Change and Polarization," in *Book of the States* (Lexington: The Council of State Governments, 2004), 36:21.