

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION STANDING PANELS ON THE FEDERAL SYSTEM

MEETING OF SEPTEMBER 26, 2007

THE BUSH ADMINISTRATION & FEDERALISM: A RETROSPECTIVE

PANEL ATTENDEES & GUESTS: Paul Posner, *Panel Chair*; William R. Barnes, Enid Beaumont, Beverly A. Cigler, Mortimer L. Downey, Dave Garrison, Doris Hausser, Tom James, Bruce McDowell, Michelle A. Sager, John Samples, Michael Springer, Mary Ann Troanovitch, Charles R. Wise, Alan Greenblatt

STAFF ATTENDEES: Torrey Androski, Ken Ryder

SPEAKERS: Timothy Conlan, professor in George Mason University's Public Administration Program and Martha Derthick, professor emeritus, at University of Virginia

Paul Posner, Chair of the Federal System Panel, explained the purpose of the meeting and introduced the speakers.

As the country prepares for another presidential transition, the National Academy and others in Washington are beginning efforts to prepare the next administration for the realities of governance. The Federal System Panel would like to be a part of this effort. The intergovernmental system will be implicated in almost anything we do as a country so it is important that issues related to federalism be considered. This meeting will focus on whether and how this Panel would be helpful in a presidential transition.

To have an impact on the next presidency will require looking back at the recent trends. This session examines the record of the Bush Administration on federalism issues. Have its policies collectively maintained, enhanced or undermined the position of states and localities in our system, and what are the implications for the next Administration and Congress?

We invited Timothy Conlan, professor in George Mason University's Public Administration Program and Martha Derthick, professor emeritus, from the University of Virginia to speak based on a recent symposium published in *Publius: The Journal of Federalism*.

Timothy Conlan is currently Associate Professor of Government and Politics at George Mason University. Prior to this, he served as Assistant Staff Director of the Senate Subcommittee on Intergovernmental Relations. Professor Conlan is the author of several books and articles in the areas of federalism and public policy, the most recent edition of *Publius* that we will discuss at this meeting, as well as *New Federalism: Intergovernmental Reform from Nixon to Reagan*, *Taxing Choices: The Politics of Tax*

Reform, and "Deregulating Federalism? The Politics of Mandate Reform in the 104th Congress," in *Publius*. He earned his Ph.D. in Government from Harvard University.

Martha Derthick is a professor emeritus in the Department of Government and Foreign Affairs at the University of Virginia. She is one of the leading scholars on American Government Federalism. She is currently doing research on emergency response and the role of federalism in this area. She is the author of numerous books on American government, including: *Dilemmas of Scale in America's Federal Democracy*; *Agency Under Stress: The Social Security Administration in American Government*; *The Politics of Deregulation*; and *Policymaking for Social Security*, which won the Kammerer Prize of the American Political Science Association as the best book of the year on American public policy. Before going to the University of Virginia, she was for twelve years a member of the Governmental Studies Program of The Brookings Institution, and was the program's director between 1978 and 1983. She has also taught at Dartmouth College, Stanford University, Harvard University and Boston College.

TIM CONLEY:

Dr. Conley's remarks build on the essays in the issue of *Publius* which attempts to capture the relationship between concepts of federalism and the Bush Administration. Unlike Presidents before him, Bush did not have a signature type of relationship with federalist principals. Domestic policies have had a major impact on our intergovernmental system that can be identified over the past 7 years and we will try to consider some explanatory factors for these patterns.

Bush is denounced as a big government conservative which can be see with new federal expenditures like the Medicare Modernization Act and increased defense spending, but there is also increased spending in grants to state and local government. The trajectory of federal outlays went up in the later part of President Clinton's term, continued through the first term of Bush administration and then finally leveled off. This record spending—particularly in federal grants—is not the pattern one would expect from a conservative president and Republican Congress.

During Bush's Presidency there has also been an increase in federal mandates over years past, including No Child Left Behind, the Help America Vote Act, the Real ID Act and policies supporting Homeland Security. What is striking about this is that it moves into an area that previously has been under local control—pushing towards more centralized policy direction than past policy actions had before.

The number of new preemptions adopted goes back to Reagan's preemptions. This research shows that the number of preemptions under George Bush reverses a pattern of declines and is now at a higher level than we have seen in a number of years. It is informative to look at the pace of preemption which has been escalating in recent years.

In terms of Supreme Court Appointments, although it is a bit early to judge, Justices Alito and Roberts are more likely to look like Justice Scalia than Justice O'Connor on

issues such as state authority. This may suggest something about the changing nature of conservative thought in the country.

Finally, it is important to look at what the Administration has tried to do but has not accomplished. The Administration's efforts on tort reform, assisted suicide, and medical marijuana help explain where the administration was coming from. And, the Administration attempted to move forward certain policy objectives through the use of waivers to let certain policies to go forward while blocking others.

There are myriad factors that explain why this took shape. One factor is the nature of the problems. Homeland security spending was in reaction to events that required policy direction after 9/11. Events happened that required changes in policy direction—shifting towards a more centralized stance. Another factor is the management approach that Bush has chosen. Bush is the first president with a business background and this impacts his decision-making which may imply a somewhat more centralized approach to decision-making. Further, many of the grant initiatives that the Bush Administration took on do not rate well in PART scores. Block grants in particular have a low rating which calls grants—a tool of decentralization—into question because they don't demonstrate effective results. The political agenda of this administration, especially under Karl Rove, to solidify the majority party, helps understand some of the policies such as the Medicare Modernization Act which was an effort to appeal to a large constituency—taking away what was viewed as one of the Democrat's issues. In the end it became one of the greatest expansions of entitlements in American History.

All of this says a lot about the changing nature of conservative thought in the country. There is more than one strain of conservative thought—institutional, economic, social, and neoconservative, etc. One reason we identify conservatives with decentralization is that it was a dominate strain of conservative thought from the past that focused on state sovereignty. Newer views do not focus as much on state sovereignty; some focus on enhancing free markets which may or may not focus on centralizations. By the same token, social conservatives are happy to use the division of federal/state responsibilities to advance their ultimate policy objective—but when they conflict, like with medical marijuana or assisted suicide, these conservatives are eager to focus on federal intervention over states rights. So, what counts is the ultimate policy objective, not the intergovernmental system.

The Administration ultimately pays lip service to limiting the size and scope of government but it is not a top priority. Bush's strategy is to use government as a means to conservative ends.

MARTHA DERTHICK:

Dr. Derthick spoke on emergency management, based on an article she wrote for the Public Administration Review that was devoted to Hurricane Katrina. This topic shows a lot about federalist society and how we hope to govern it. Emergency management is particularly difficult for government because they usually act through routines based on

rules, but emergencies require a lot of flexibility and rapid improvisation. Emergencies are difficult especially for chief executives who are required to act with digression in an emergency to protect the lives of citizens. They are especially difficult for a contemporary US President who is expected to act swiftly with perfect information, and in turn, be perfect while in the public eye.

Expectations have risen over time. Calvin Coolidge who was President during the great Mississippi flood refused to visit the disaster zone despite criticism. He appointed his Secretary of Commerce, Hubert Hoover, to be in charge of humanitarian relief, and he got such good publicity that Hoover became President. Franklin Roosevelt was President during the hurricane of 1938, which killed a greater proportion of the country than Katrina, but nobody thought to hold the President responsible for failures of the weather bureau. In fact, Roosevelt was criticized for doing too much by displacing voluntary efforts. As late as 1965, when hurricane Betsy struck New Orleans, Lyndon Johnson resisted visited but was pressured to do so.

Presidential landings have become extremely disruptive of the public peace whenever and where ever they occur. The current president sustained great criticism for not coming back to Washington quickly enough and was also criticized for not landing in New Orleans and only flying over the devastation. Historians of the Bush Administration will treat Bush's reaction to Katrina as a failure which demoralized him and others in his Administration.

The extreme pressures on the President from both 9/11 and Katrina forms the context of what Dr. Derthick spoke about. Ms. Derthick sees the Bush Administration's assault on traditional American federalism in its handling of emergency management.

The status of emergency management when President Bush took office in January of 2001 consisted of two parts—a civilian core and a military periphery. She argues that the actions of the Bush Administration have undermined the civilian core and pushed the military more towards the core. The President was given authority to declare a disaster which followed federal aid to state and local areas in need. This conformed to the traditional paradigm of intergovernmental relations which functions based on grant giving. This led to a steady increase in number of declared emergencies.

Presidents began increasingly declaring emergencies. President Clinton declared 379 emergencies during his tenure as President. New categories of beneficiaries were added on top of local and state government—shifting funds to individuals and households. Disasters became broadly defined and spending rose tremendously. State officials hoped for more accountability in 1979 when President Carter created FEMA through an executive order, but there was tension between civil defense and emergency preparedness. FEMA had a very hard job—with a trail of negative comments from Congress and citizens to come.

Emergency managers now look back on the 1990s as years of fame and glory because of work of Jamie Lee Witt who was Clinton's FEMA director. He promoted mitigation

grants such as removing people from flood plains as a means of proactive preparation. During the 1990s there was little conflict between civil and military workers as the Cold War ended. Further, there were no major emergencies like in the current decade. Finally, there was a growing professionalization of emergency managers and an intergovernmental bond created – giving it a foundation beyond self-interest. While the Bush administration was negative about the job that the Clinton Administration had done with FEMA, Bush declared a similar number of disasters as Clinton until 9/11 when DHS took over FEMA.

Bush's revision of federalism after 9/11 stemmed from the unusually revision of central planning. In February of 2003, the President issued the fifth in a number of homeland security directives under the heading of "management of domestic incidents." The directive called for DHS to consolidate all response planned in an "all hazards approach" to domestic incidents management. FEMA previously had a federal response plan, covering only federal agencies. The new plan included all levels of government, volunteers and nonprofit organizations. DHS then began preparing the National Response Plan that was contracted out to the Rand Corporation—where FEMA did not play a large role. The plan went into effect 4 months before Katrina—its first serious test. Post-Katrina, there emerged the 2nd phase of Bush's revision of emergency management. The first phase had been an assault on the intergovernmental core and the second phase pushed the military forces more towards the core of emergency response.

American federalism has long focused on reducing the need for military for domestic issues—but the President can ask the military to assist for a period not to exceed 10 days for preservation of life and property (this goes back to Magna Carta). The Bush Administration, after Katrina, acted to change this norm. Bush said that challenges as large as Katrina needed greater Federal authority—which in turn brought a broader role for the arms forces. In the hurricanes that followed—Rita and Wilma—the Bush Administration acted very aggressively to bring in the military and DHS employees without the request of state officials. The most significant shift was a change in federal law that allowed the President to bring in federal forces without the consent of the governor for matters broadly defined as a natural disaster, epidemic, public health emergency, terrorist attack, or other condition. This caused chaos and uncertainty.

There has been a lot of push-back against the Administration for these shifts. Congress was not sure after Katrina whether to disband FEMA or embrace it, and ended up embracing it—appropriating more money than the Bush Administration has asked for. Congress has also pushed for FEMA to be headed by someone with emergency response experience and asked that the agency have greater direct access to the President.

The National Response Plan was no help for Katrina. Even the secretary of DHS didn't seem to know much about it. The Administration went back to the drawing board and recently created an alternative—the National Response Framework which, like its predecessor, has enlisted sharp criticism from state governments.

The state of Florida successfully resisted the military invasion during hurricane Wilma. Jeb Bush was an outspoken opponent of the federalization of emergency response with the National Guard. He testified before Congress expressing this view. Most surprisingly, Congress is on the brink of repealing the defense authorization they allowed a few years ago that gave Bush's the ability to federalize forces. The Defense Act contains a repeal of what was done a year ago so it isn't clear that the nation is ready to substitute Bush's view of federalism because there is response against it.

The nation's future disaster response plan and its impact on federalism is unclear.

PANEL DISCUSSION

Response of the States

Dr. Posner asked if the speakers noticed any pushback from the states.

Dr. Conlan said the states have pushed back to some extent on issues they have not agreed with when the federal government tries to overstep. There is a vehicle for states to act with bargaining. There are cases where states have clearly disagreed with national policy and attempting to go their own way, such as with climate change. States have pushed back on NCLB with modest results, but the broader issues of how much this carries over to the next Administration is unclear.

Dr. Derthick believes that the Bush Administration's often extreme intrusions on state rights have elicited a sharper response than has been seen in past administrations. In many cases, those that respond have very capable leaders. For example, when Florida confronted problems in response to hurricanes, Jeb Bush, who was a good governor, pushed back. Individual states can resist but it is hard for states to collectively resist. The states that do it best are looking at how to cooperate better in practical ways. One major question that will have an impact is whether the next administration will assume that there will always be war on terror and will fight for a long time, or will it calm down.

Possible Academy Presidential Transition paper

Members of the Panel have expressed an interest in developing a presidential transition paper. They discussed the possibility of following through with this idea.

Is there interest on the part of the presidential candidates to write a Presidential transition paper for issues concerning the Federal System? Can we make a difference and if so, how? What would our input look like?

The Panel will explore in the months to come what potential there is for a presidential transition paper. They will devote time to discussing this more at the next meeting being held in conjunction with the fall Meeting in November.