Agile Federalism January, 2020

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**The Many Forms of Federalism**

Despite the clear language of the framers of the Constitution that, “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.” (10th Amendment to the Constitution of the United States) the relationship between states and their subsidiary local government has been the subject of numerous discussions over the past almost 50 years.

From Nixon’s New Federalism, to Executive Orders by both Reagan and Clinton[[1]](#footnote-1), the topic has been a constant focus of public administration scholars. Recent thinking suggests that the political status of various states has conditioned their response to federal initiatives, particularly in health care.

Unlike Nixon, President Trump has not articulated a comprehensive doctrine of federalism. That doesn’t mean that federalism has been forgotten. At the state level, efforts to work around the federal government- particularly in health care,climate change and marijuana regulation- are wide spread. At the federal level, the recent bi-partisan introduction of HR 3883 “Restoring the Partnership” by representatives Gerry Connolly (D-VA) and Rob Bishop (R-Utah) indicates that the issue is alive and well.[[2]](#footnote-2)

The Pew Charitable Trusts recently sponsored a program looking at “Federal-State Fiscal Relationships in Times of Recession”. This effort anticipates the need for a framework between states and the federal government to be in place when the next severe recession arises. While none of us can accurately predict when that will happen, we can draw some lessons from the last recession as a guide to the future.

**Lessons Learned from the American Recovery and Reinvestment Act**

The primary federal effort in response to the last recession was the American Recovery and Reinvestment Act (ARRA) , which was introduced in the House of Representatives on January 26, 2009 and passed on February 16, 2009. The Act passed in the House without Republican support, while only three Republicans voted to support it in the Senate. This underscores how hard achieving bipartisan consensus can be today, even in times that demand national mobilization.

The lack of bi-partisan support at the federal level set the stage for partisan rancor. However, state governors from both parties had been particularly active in helping to draft the bill. This resulted in one of the primary objectives of the bill being:

“(5) To stabilize State and local government budgets, in

order to minimize and avoid reductions in essential services and

counterproductive state and local tax increases.”

The total amount of funding that went to states under ARRA was about $300 billion. Much of this was additional federal share for Medicaid that allowed states to avoid cutting their budgets or increasing taxes. Additional funding for infrastructure, education, energy and environmental programs created jobs within states and bolstered tax revenue.

There were three stages to state participation in ARRA. The first was working to advocate for provisions of the Act and for the Act as a whole. The Obama Administration credited state support as extremely helpful in obtaining passage of the bill. The second stage was working with various federal agencies and the White House to put in place agreements to receive funding. Most ARRA programs, particularly at the state level, involved the provision of funding for existing programs, such as the Federal-Aid Highway program, with which the states and federal agencies were familiar. This facilitated the use of existing regulations and funding methods to get funds out quickly.

The third stage was the active and comprehensive participation by states in oversight and implementation. Working closely with the White House, particularly Vice President Biden’s office, each state and territory designated a “Single Responsible Individual” (SRI) who became part of a direct communication chain from the Obama Administration (White House and agencies). This allowed a simple direct mechanism for the federal government to contact states with information, concerns and solutions to issues. In addition, the Vice President continually reached out to governors in a series of meetings and conference calls designed to discuss problems that the states had and offer advice about where additional effort was needed. The network of SRIs and calls from the Vice President created a close bond even in cases where the state administration was of a different political party.

States were extremely helpful in assuring that grantees’ quarterly reporting to the Recovery and Transparency Board took place in a timely way. States also worked with their local governments to stress the importance of this reporting and helped avoid instances of misuse.

**Lesson Learned in Federalism from ARRA**

The creation and implementation of ARRA was the result of a coalition that included state governments as very active participants. When localities asked why the states had done so well under the terms of the bill, the White House responded that they had been active in providing input and support early and often. Similarly, states worked closely in implementation with federal agencies and the White House. Clearly, there was self-interest involved but the level of coordination, especially at the top, was seen as unprecedented.

What are the take-aways for future recessions?

* Federalism can work when the interests of all parties are recognized and respected.
* Clarity of mission allows trust to be developed and leads to effective measurement of success
* Managed networks[[3]](#footnote-3) allow swift resolution of issues and common awareness of opportunities.
* Technology, such as geospatial mapping, creates tools that increase speed of operation and allow greater transparency.
* Engaged leaders provide support from the top that allows smoother functioning at all levels.

Beyond meeting the objectives of the Act, the partnership between the states and the federal government helped to assure program integrity. In its January 2014 report, the Government Accountability Office said, “GAO is not making any recommendations in this report”. Given the high level of waste, fraud, and abuse[[4]](#footnote-4) that was projected for ARRA, the cooperation between states and other grantees proved a well-documented means of preventing misuse of funds.

**Toward Agile Federalism**

The idea of “Agile Government” is in its infancy. The National Academy of Public Administration will establish an Agile Government Center (AGC) to determine if it is possible to develop principles similar to those used in Agile Software Development[[5]](#footnote-5) to improve the management, as some corporate and governmental entities have done, of government programs around the world.

As part of the research around the development of the AGC, the Academy will work with states and federal agencies to see if the lessons learned in ARRA can be used to inform a new kind of Agile Federalism. We expect that, by better defining missions, relationships, and results, we can improve outcomes for many programs across a wide state-federal spectrum.

One of the first efforts of the Agile Government Center will be to identify current instances of “agility” in federal/state and local relationships that can be shared across all levels of government. Below are three examples of this agility.

***Reducing Veterans’ Homelessness- A Collaboration Across Federal Agencies and with Local Housing Authorities***

The Veteran’s Administration and the Department of Housing and Urban Development used an interagency memorandum to create the “HUD-VA Supportive Housing Program” (HUD-VASH). This program is described by the agencies as follows:

“HUD-Veterans Affairs Supportive Housing (HUD-VASH) program combines Housing Choice Voucher (HCV) rental assistance for homeless Veterans with case management and clinical services provided by the Department of Veterans Affairs (VA).  VA provides these services for participating Veterans at VA medical centers (VAMCs) and community-based outreach clinics.”[[6]](#footnote-6)

Since its inception in 2008, HUD-VASH has provided more than 97,500 housing vouchers through more than 300 Public Housing Authorities (PHAs).

HUD-VASH is part of a broader effort to end homelessness for various groups that is led by the United States Interagency Council on Homelessness (USICH). This agency oversees the Federal Strategic Plan to Prevent and End Homelessness:

“USICH will work with its federal partners and the interagency working groups we manage to implement this Plan. USICH will lead and support federal activities aligned with the Plan’s Objectives and Strategies, partner with states and communities to implement the most effective practices, and assess the Plan’s impact to further strengthen our actions and outcomes.”[[7]](#footnote-7)

Despite proposals from the Trump administration to cut funding for homelessness programs, broad support exists for maintaining HUD-VASH and USICH within Congress and within the homelessness and housing sectors. This support is partially the result of broad intergovernmental involvement. As noted above, the clear mission- “Ending Veterans Homelessness” and the managed network created by USICH and the state and local participants in ending homelessness among various groups provide a robust platform that can be duplicated in other program areas.

***The National Wildfire Coordinating Council***

The National Wildfire Coordinating Group (NWCG) was established in 1976 through a Memorandum of Understanding between the Department of Agriculture and the Department of the Interior. The memorandum defined the function and purpose of NWCG as follows:

“To establish an operational group designed to coordinate programs of the participating agencies so as to avoid wasteful duplication and to provide a means of constructively working together.  Its goal is to provide more effective execution of each agency’s fire management program.  The Group provides a formalized system to agree upon standards of training, equipment, aircraft, suppression priorities, and other operational areas.  Agreed upon policies, standards, and procedures are implemented directly through regular agency channels.” [[8]](#footnote-8)

The “regular agency channels” include the National Interagency Fire Center and its National Interagency Coordination Center (NICC) and the National Multi-Agency Coordinating Group (NMAC).

The NIFC is physically located adjacent to the Boise airport and explains its role as follows,

“Wildfire suppression is built on a three-tiered system of support - the local area, one of the 10 geographic areas, and finally, the national level. When a fire is reported, the local agency and its firefighting partners respond. If the fire continues to grow, the agency can ask for help from its Geographic Area Coordination Center (GACC). When a GACC has exhausted all its resources, it can turn to NICC at the National Interagency Fire Center (NIFC) for help in locating/reallocating what is needed, from air tankers to radios to firefighting crews to incident management teams.”

When NIFC/NICC resources are exhausted, the National Multi-Agency Coordinating group (NMAC) becomes the coordination point for additional resources and is tasked with reallocating resources across agencies as a part of national wildland fire operations management, priority setting, and resource allocation through multi-agency coordination. This coordination occurs across Geographic Areas and across the member agencies:

* U.S. Forest Service
* Bureau of Indian Affairs
* Bureau of Land Management
* National Park Service
* U.S. Fish and Wildlife Service
* National Association of State Foresters
* U.S. Fire Administration
* Intertribal Timber Council
* International Association of Fire Chiefs

I have had the privilege (a somewhat frightening one) of watching the management of two wild fires unfold. Under the direction of Beth Lund, Type 1 Incident Commander (U.S. Forest Service), more than 2,000 firefighters were assembled near Hailey, ID to fight the “Beaver Creek” fire in 2013 and almost 1,000 for the “Sharps” fire in 2018. Lund and the incident management team, local forest leadership, and local state and federal officials created specific responsibilities for each entity. In essence, a Managed Network was created, operating seamlessly to do everything from providing care for and feeding of the fire fighters to coordinating air support and ground operations to coordinating media coverage.[[9]](#footnote-9)

In 2013, from our back porch, we could watch the flames descending a hill across the Wood River from our neighborhood. Each evening we would go to the high school and listen as all relevant officials briefed the community on what has going on. Each responsible official briefed on items such as evacuation plans (the County Sheriff); road closures (the State Police); shelter for evacuees (the School District, FEMA and local non-profits). Finally, on August 13, 2013, it was our turn to evacuate due to the Beaver Creek fire. Although we were in no imminent danger, our home was in a box canyon with only one way out. The Sheriff decided it was time for a “Mandatory Evacuation Notice”. We complied immediately and sought refuge with friends outside the area.

Ultimately, the Beaver Creek fire burned over 100,000 acres including some in residential areas. Only one home was lost and there were no fatalities. The coordination among all levels of government was very impressive. This was thanks in no small measure to the advance preparation by the wildland fire community, NMAC and its members working through the coordination system including the NICC.

***California’s effort to create new “agile” governmental units of government***

California enacted two new statutes over the past three years: SB628, which establishes Enhanced Financing Districts and AB313, which modifies the Boards of these Districts to be flexible (“agile”).[[10]](#footnote-10) These authorize new governmental entities to be created around the concept of generating new investments in infrastructure, environmental mitigation and economic development.

The Boards of these new governmental entities, called Public Financing Authorities (PFAs), can be cities, counties, or special districts. They do not need to share powers in common but rather must be willing to develop a business plan to jointly carry out the investment and expenditures needed to solve a problem-partnership arrangement with a clear mission tied to a business plan. They are created to provide leadership for problem solving.

The Boards have been granted expansive funding authority ranging from tax increment financing, fees, contracts, public/private arrangements, as well as an ability to participate in state and federal programs, grants and licenses. They can issue debt and are accountable to both constituents and funders.

In the first year, three districts were enacted:

* City of West Sacramento, to fund both transportation infrastructure and community support services involving multiple sources of funds that will amortize over $2 billion dollars of debt[[11]](#footnote-11);
* City of San Diego, to fund transportation and community support investments to develop the eastern part of the Otay Mesa that is adjacent to Mexico that has an airport and a border crossing, with a similar investment portfolio of $2 billion.[[12]](#footnote-12)
* City of LaVerne demonstrates the leveraging capacity of the tax increment provisions. A $33 million investment catalyzes $600 million of increased assessed evaluation and $50 million of new tax increment.

Now multiple jurisdiction agencies are in formation to address more diverse and difficult problems and with more funding streams involved. The County of Sonoma and the City of Santa Rosa are developing an investment program to rebuild homes, business and habitat destroyed in a fire that devastated the area in 2017. The investment program will not only be a joint effort of these two entities but will also involve both State of California and Federal participation. The collective leadership effort is aimed at recovering over thirty percent of the area.[[13]](#footnote-13) Another emerging district involves the Ports of Long Beach and Los Angeles, both Cities and the County of Los Angeles to create an investment program to deal with the movement inland of cargo containers and elimination of the emissions from these activities. In addition to the governmental entities, the major utilities (Southern California Edison and Department of Water and Power) are involved in the investment program. Technology innovations, another “agile” principle, will be key to the success of this effort.

Federal participation can expedite the problem solving/investments of these multiple agency efforts. For example, the zero-emission investment program for goods movement in southern California could use a TIFFA loan for credit enhancement similar to the Alameda Corridor loan made twenty years ago, and could involve DOE in the technology development of new Superconducting Magnetic Energy Storage (SMES) systems that can be used for trucks, trains and grid energy storage of renewables. Additionally, portions of the project are located in Opportunity Zones and would be assisted by the financing provisions specific to those zones.

**Can Federalism be Agile?**

Based on the three disparate examples above, my answer is yes. There are five factors that can enable federalism to be agile

* *Mutual respect among the parties*. Too often relationships between the federal government and the state and local governments are jaundiced from the start, with a sense at the federal level that states and localities are trying to game the system, and are not sophisticated enough to set their own regulatory agendas. At the state and local level, federal regulations can be seen as obstacles to program execution that is beneficial to the public. Instead, the right starting point is the recognition that a partnership exists and both parties should be included from the beginning in design of programs and implementation of policies. Establishing jointly agreed to performance metrics can go a long way toward providing assurances on both sides.
* *Clarity of mission.* When each of the parties shares a jointly developed statement of the mission of the programsto be implemented, they can focus on achieving common objectives. The American Recovery and Reinvestment Act had five objectives clearly spelled out in the legislation that created it. These ranged from creating and saving jobs to assuring that states were not forced to raise taxes or cut services. The clarity of these objectives allowed both the federal government and its state and local partners to move quickly and surely to implement the intent of the law.
* *Managed networks*. I have written previously about the nature of Managed Networks. These differ from social networks in that they have the kind of common mission discussed above. Additionally they have the following elements:
  + *Trust*
  + *Networked structure*
  + *Governance*
  + *Access to Authority*
  + *Resources*
  + *Leadership*

Invoking a managed network ties together the interests and actions of multiple parties toward the common mission as in the wildfire case described above.

* *Technology*. Electronic communications, geocoding and mapping, use of social networks, and continuous web based reporting are all examples of technology that can bind agile networks together and allow the public to observe progress, and even the process, as it unfolds.
* *Engaged leaders*. There is no substitute for involvement of senior leaders in Agile Government efforts. The World Bank has embarked upon an “Agile Journey,” and in their case the CEO was committed to the long term nature of the effort, while the COO himself directed the day to day implementation.

At the National Academy of Public Administration Agile Government Center, we will continue to document cases of agile government, develop principles to guide its implementation and help governments around the world on their “Agile Journey”. Please contact me with any ideas or suggestions for case studies of Agile Government. [gedeseve@gmail.com](about:blank).

**Conclusion**

The next recession, when it comes, can draw upon lessons learned in the “Great Recession” and new techniques of “Agile Federalism” that focus on accomplishing the mission of helping those most harmed by the recession, creating and saving jobs and improving the functioning of he economy generally. We may wish to adopt the motto of the Boy Scouts, “Semper Paratus” (Always Prepared) as watch words.

1. See Reagan EO 12612 and Clinton EO 13132 [↑](#footnote-ref-1)
2. Testimony by Fellow of the National Academy of Public Administration on the Bill can be found at [https://www.napawash.org/page/congressional-testimony](about:blank) [↑](#footnote-ref-2)
3. The Presidential Appointees Handbook, (Second Edition) Brookings Press 2016 [↑](#footnote-ref-3)
4. By some estimates this was as high as 5% of total funds or more than $40 billion dollars. [↑](#footnote-ref-4)
5. [https://agilemanifesto.org/](about:blank) [↑](#footnote-ref-5)
6. [https://www.hud.gov/program\_offices/public\_indian\_housing/programs/hcv/vash](about:blank) [↑](#footnote-ref-6)
7. [https://www.usich.gov/home-together](about:blank) [↑](#footnote-ref-7)
8. [https://www.nwcg.gov/executive-board](about:blank) [↑](#footnote-ref-8)
9. See the The Presidential Appointees Handbook, (Second Edition) Brookings Press 2016 for a more detailed description of Managed Networks. [↑](#footnote-ref-9)
10. [https://www.caeconomy.org/reporting/entry/qa-on-enhanced-infrastructure-financing-districts](about:blank) [↑](#footnote-ref-10)
11. [https://blob.cityofwestsacramento.org/city/depts/admin\_services/finance/eifd\_formation.asp](about:blank) [↑](#footnote-ref-11)
12. [https://www.sandiego.gov/city-clerk/officialdocs/legisdocs/omeifd](about:blank) [↑](#footnote-ref-12)
13. [https://cafwd.app.box.com/s/w4onz35cvujydvnoryjekrptk51pg6tv](about:blank) [↑](#footnote-ref-13)