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FEDERALISM AND THE MODERN PRESIDENCY FROM EISENHOWER TO OBAMA
If All Men Were Angels...

A thesis presented

by

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to

The Political Science Department

in partial fulfillment of the requirements
for Honors in Political Science

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Abstract

American government is an experiment. It is theory in application based on a principle of design that specifies the terms and conditions of the experiment's proper extent and structure. Federalism is the original design principle enumerating *representation, divisions of power, checks and balances*, and the capacity for *self-government* as the terms and conditions of the experiment of the American Republic. In an extended republic federalism is the "republican remedy for the diseases most intrinsic to a republican government." (*Publius 1787-1788* [2003], 46) The experiment has continued for over 200 years although the terms and conditions have not always been met. In such instances, the extent and structure of government changes resulting in sub-experiments or operational forms of federalism. Modern government is increasingly characterized by the centralization of authority to the national government, especially to the president. By observing modern presidential administrations it appears that each fits into one of four categories of operational federalism: *functional, legislative, managerial* or *constitutional*. These sub-experiments and the associated administrations reveal operational realities of federalism that Hamilton and Madison could not have accounted for when they published *The Federalist Papers* in 1787-1788. Operational outcomes of the modern presidency from Eisenhower to Obama are not perfect. But to dwell on the diseases of our republican government is to let the diseases fester and affect our liberty and security. The American experiment is by principle of design equipped with the republican remedies for these governmental ailments. By reflection and choice we must remember the terms and conditions of federalism if we wish to reestablish good government.

Glossary

Centralization:

- The assumption of formal responsibilities by the federal government that states will not adopt or cannot adopt on their own. Federal assistance acts (supposedly) to re-enforce the administrative or policy-making powers of the state governments vis-à-vis the interests that lobby before them, supporting rather than interfering with them as civil societies. (Elazar 1966, 34-35)

- The effect of the modernization process and resulting economic interdependence which shift power away from state and local governments towards Washington. (Conlan 1998, 312)

- Centralization occurs when power – scattered among a multitude of hands – becomes greater in one institution than in another. (Tocqueville [1835-1840] 2004, 92)

Compound Republic:

- The ordering of numerous associations that citizens constitute in local, state, regional, and nation-wide activities of governance. (Ostrom 2008, 4)

Confederation:

- As the organizing principle of the Articles of Confederation, *confederation* implies the alliance of states. While *confederation* and *federal* are used for the same referent, Hamilton in *Federalist No. 15* and *No. 16*, is clear that a confederation does meet the minimal defining characteristics of government. (Ostrom 2008, 11)

Covenant:

- A partnership that unites separate parties without merging them. (Elazar 1966, VI)

- The general agreement between several independent governments entering into a joint arrangement. (Ostrom 2008, 11)

Decentralization:

- When states decentralize power or transfer it to the national government the outcome is centralization or nationalization of power (Elazar 1966, 35)

- The reduction of power, influence, and morale of the national bureaucracy. Also called devolution, decentralization's focus is not on the improvement of intergovernmental management and effectiveness. (Conlan 1998, 3)

Federal:

- A federal system of government has reference to many concurrently existing governments having autonomous existence in relation to one another in a general system of government – not just the national government. When referring to the national government Ostrom capitalizes “Federal” on the assumption that such terminology has the characteristics of a proper name rather than a properly defined term. (Ostrom 2008, 12)

- When used by Elazar, federal implies national. He discusses “state-federal relations” which implies the relationship between the states and the national government in the federal system.

- The term federal or “federal government” as used by Peterson implies national or “national government.”

- Federal, as used by the Framers means the states or state government. Ambiguity arises because their promotion of federalism was in favor of a strong national government as compared to the Anti-Federalists who wished to remain separate states under the Articles of Confederation. This definition of federal has led many to wrongly assume that federalism is then equivalent with pro-states policy.

Federal Republic:

- A federal republic according to Montesquieu is confederate. It is the confederation of small democracies to form an extended republic. According to The Federalist a federal republic also refers to the confederation of states done so via the creation of a strong national government. Both Montesquieu’s confederate republic and Hamilton’s federal republics were efforts to constitute compound republics – the compound nature of federal republics requires what Hamilton refers to as a general theory of limited constitutions: limits to the prerogatives of each unit of government are to be maintained by reference to a general system of constitutional law. Montesquieu articulates the basic structure of a republic that is capable of maintaining liberty by using power to check power. (Ostrom 1994, 44-45)

Federalism:

- Constitutional choice reiterated to apply to many different units of government in a system of government where each unit is bound by enforceable rules of constitutional law. (Ostrom 2008, 22)

- The mode of political organization that unites smaller polities within an overarching system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both national and *subnational* political systems, enabling all to share in the overall system’s decision-making and executing processes. Federalism is a mode of political activity that requires certain kinds of cooperative relationships through the political system it animates. (Elazar 1966, 2)

- Modern federalism no longer implies dual sovereignty but rather means that each level of government has its own independently elected political leaders and its own separate taxing and spending capacity. (Peterson 1995, 10)

- The structure of intergovernmental responsibilities. (Conlan 1998)

National:

- The central center of authority in a system of governance with multiple centers. (Ostrom 2008, 19)

Nationalization:

- See Centralization (Elazar and Conlan)

- In the absence of specific constitutional prohibitions the observed pattern in the exercise of governmental authority is a transfer of that authority to the national government especially to the office of the president. (Ostrom 1994, 116)

Non-Centralization:

- The distribution of power among the several smaller centers of government united by partnership within an overarching political system. (This definition does not imply power away from or power towards but rather the powers among units of government.) (Elazar 1966, 2)

Subnational:

- Political systems that exist below the national level – state and local governments (Elazar 1966, 2)

Chapter 1 – Introduction

After an unequivocal experience of the inefficiency of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare on the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not on establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crises at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong elections of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind. (*Publius* [1787-1788] 2003, 1)

In the paper that follows it is my hope to provide a comprehensive analysis of American federalism. Federalism is the essential and original design principle of the American experiment in government, providing the terms and conditions by which the experiment is to operate. These terms and conditions are offered by James Madison, Alexander Hamilton and John Jay in a compilation of papers called *The Federalist*. Federalism provides for an extended representative republic deriving its authority from the self-governing capacity of the people. It allows for the separation of powers and a system of checks and balances. When the terms and conditions are effectively met by the government and by the people, liberty and security are insured. Federalism is the republican cure for the “diseases most incident to republican government.” (*Publius* [1787-1788] 2003, 46)

History has shown that these terms and conditions cannot always be met, and yet the experiment still continues. The experiment takes on different operational forms based on a variety of factors. I base my observations and understandings about these operational forms of federalism on the work of Daniel J. Elazar, Timothy Conlan, Paul E. Peterson and Vincent Ostrom. These scholars study federalism in very different ways. Elazar approaches federalism from the states perspective and views federalism as a partnership or a covenant. Conlan (whose method of observation I most closely adopt in my study) studies federalism via intergovernmental relationships

but uses periods of government, like presidential administrations or Congressional coalitions to compare and illustrate changes in operational forms of the principle. Peterson addresses the fiscal element of federalism and how the exchange of funds is largely what connects units of government with each other and with the people. The exchange of funds determines the form of operational federalism because policy (reflecting the intergovernmental relationship at a certain time) requires money in order to be implemented. Ostrom's work reconsiders the original terms and conditions of the experiment and seeks to explain where we have come up short. He explains the bureaucratic tendencies in our current administration of government and explains that the more efficient alternative would be to view all units of government and American society as shared communities of understanding.

After providing an introductory analysis to the academic interpretations I outline four observed operational forms of federalism. Like Conlan, I have chosen to look at operational federalism essentially as sub-experiments of the larger theory based on modern presidential administrations. The forms of federalism I observe are *functional federalism*, *legislative federalism*, *managerial federalism* and *constitutional federalism*. These sub-experiments do not change the original terms and conditions of federalism, they instead occur when the original terms and conditions are ignored or forgotten by any of the actors in the intergovernmental system. Because my study focuses on the presidency, I observe and assess the president's role in such instances. I offer conjectures as to why each administration fits into certain categories.

To further explain my methods and assessments of each federalism sub-experiment I provide four case studies of presidential administrations and a more comprehensive assessment of the category of operational federalism each fits into. I look first at Lyndon B. Johnson and managerial federalism, then Ronald Reagan and legislative federalism, followed by Bill Clinton's (first term) functional federalism. I conclude the case studies with that of constitutional federalism and

Dwight D. Eisenhower's presidency. Each form of federalism has practical application in the modern American political system but because the first three categories overlook or ignore some of the original terms of conditions of federalism they also have consequences in the American political system. These consequences would have been considered by Madison as instances of republican disease. Federalism began as a theory untested in practice thus The Founders had no way of knowing if the experiment would work. Dwight D. Eisenhower's constitutional federalism demonstrates that the terms and conditions of the original design principle can be met efficiently and effectively in the modern era.

Constitutional federalism, however, has not been seen in operation since Eisenhower. So, what does this mean for the future of the experiment? If Federalism's terms and conditions are no longer important or applicable, what terms and conditions are? *Are societies of [citizens] capable or not of establishing good government based on reflection and choice?* I posit at the end of this paper, based on my observations and research, that the answer to the question of *Federalist No. 1* is yes, we are capable of establishing good government and we have established good government. We have, however, forgotten that reflection and choice must be employed continuously in order to realize the terms and conditions that make republican government good in the first place. Perhaps my optimism is naïve, but the American experiment is tenacious. It has endured episodes of civil war and depression as well as episodes of peace and tremendous prosperity for over two centuries. The American experiment was unprecedented at its conception and continues to be unprecedented in its many achievements. The current circumstances of bureaucracy marked by strict partisanship and gridlock in American government are unfortunate and frustrating – but this frustration reinforces why the study of federalism is important. As the experiment continues we must remember the principle upon which it was designed and the terms and conditions this design establishes. American

government must not be considered only in light of its current ailments but rather in light of the remedies federalism equips us with.

Chapter 2 - Academic Interpretations of Federalism

Federalism is often understood (misunderstood) as the basic interactions between various units or levels of government in a unified system. The dictionary definition of federalism is no more specific; Webster's Collegiate Dictionary defines it as "the federal principle of organization." The term federal originates from the Latin word for compact or treaty, *foedus*. The federal principle of organization is therefore the "various conditions establishing permanent, friendly relations between the contracting parties." (Encyclopedia Britannica) American Federalism provides the terms and conditions for the experiment of American government.

The idea of federalism was first conceptualized by French philosopher Charles de Secondat, baron de Montesquieu in his political treatise, *The Spirit of the Laws*. Montesquieu's notion of federalism was then adopted less than half of a century later by Madison, Hamilton, and Jay in *The Federalist*. The American vision of federalism found in *The Federalist* has become the prototypical academic understanding of the idea. The America of 1789 had a vastly different political climate than that of the late 20th century and today and yet the idea of federalism remains important.

Elazar, Conlan, Peterson and Ostrom have all sought to academically define federalism and its modern variants according to varying times in American government. These contemporary understandings move away from a pure theoretical understanding of federalism and begin to explain its operational forms. By assessing federalism in its original conception according to Montesquieu and *The Federalist*, we are able to use these authors to explain how and why operational federalism occurs in modern politics.

Chapter 2.1 – Montesquieu

In 1748 Montesquieu published his political treatise *The Spirit of the Laws*. His discussion of republican regimes contains the original conceptualization of federalism. The examination of republican government begins in Part One, Book 3 (Ch. 2) as Montesquieu bequeaths the basic principle of such a regime; “the nature of republican government is that the people as a body have the sovereign power.” When resting the sovereignty of a government in the collective whole as opposed to a king or a ruling class, Montesquieu admits that an additional element must be applied to the republic – virtue.

When that virtue ceases, ambition enters those hearts that can admit to it and avarice enters them all. Desires change their objects: that which one used to love, one loves no longer. One was free under the laws, one wants to be free against them. Each citizen is like a slave who has escaped his master’s house. What was a *maxim* is now called *severity*; what was a *rule* is now called a *constraint*; what was a *vigilance* is now called *fear*. There, frugality, not the desire to possess, is avarice. Formerly the good of individuals made up the public treasury; the public treasury has now become the patrimony of individuals. The republic is a cast-off husk, and its strength is no more than the power of a few citizens and the license of all. (Montesquieu [1748] 1989, 22)

In order for a republic to exist, he insists that the virtue of the sovereign – the citizens – cannot and must not be overlooked.

Virtue in a republic is simple; it is the love of the republic, it is patriotism. Patriotism in a democracy is as follows the love of democracy or synonymously, equality. In Part One, Book 8 (Ch. 2) Montesquieu discusses the corruption of the principle of government; he explains that the corruption of the principle will almost always lead, in turn, to the corruption of the government. When the ruled think that they are equal with the rulers and wish to then rule themselves, the virtue of equality is corrupted. To prevent this phenomenon a democratic republic must avoid two excesses. The spirit of extreme inequality must be avoided as it “leads it to aristocracy or to the government of one alone.” Extreme equality is also to be avoided as it “leads it to the despotism of

one alone, as the despotism of one alone ends by conquest.” (Montesquieu [1748] 1989, 113) A small democratic republic best guarantees patriotism and equality and avoids these excesses.

A small democratic republic that fosters virtue in its citizens is, however, subject to certain fallbacks due to its small size. Conversely a large republic struggles to promote equality and patriotism. Montesquieu recognizes these flaws. “In a large republic, there are large fortunes, and consequently little moderation in spirits: the depositories are too large to put in the hands of the citizens; interests become particularized at first man feels he can be happy, great and glorious without his homeland; and soon, that he can be great only on the ruins of his homeland.” (Montesquieu [1748] 1989, 124) Since small republics best foster virtue and large republics provide security, Montesquieu posits a scenario in which the merits of each eliminate the associated vices. In perhaps the most exciting chapter of his treatise, which establishes the tradition of federalism, Montesquieu writes:

If a republic is small, it is destroyed by a foreign force; if it is large it is destroyed by an internal vice...It is very likely that ultimately men would have been obliged to live forever under the government of one alone if they had not devised a kind of constitution that has all the internal advantages of republican government and the external force of monarchy. I speak of the **federal republic**. This form of government is an agreement by which many political bodies consent to become citizens of the larger state that they want to form. It is a society of societies that make a new one, which can be enlarged by new associates that unite with it. (Montesquieu [1748] 1989, 131 emphasis added)

The federal republic combines the love of virtue (patriotism and equality) in small republics as well as the forces capable providing security in the face of imperialism and conquest found in large monarchies. “This sort of republic [federal republic], able to resist external force, can be maintained at its size without internal corruption: the form of this society curbs every drawback.” (Montesquieu [1748] 1989, 132) The federal republic provides a *republican cure for republican disease*. “Composed of small republics, it enjoys the goodness of the internal government of each one; and with regard to the exterior, it has, by the force of the association, all the advantages of

large monarchies.” (Montesquieu [1748] 1989, 132) The spirit of the federal republic, facilitated by liberty and security, is moderation and peace. Federal republics – “united in a political confederation have given themselves entirely and have nothing more to give.” (Montesquieu [1748] 1989, 133)

Montesquieu’s federal republic is the framework for the design principle of the Founding Father’s experiment of American government. The confederation of smaller republics to form a larger one, ruled both by one central government and their own internal governments, protects against societal forces and foreign powers. An additional feature provided for by federalism is the protection of the liberty of the sovereign. Liberty, defined as the right to do everything the laws permit, “is present only when power is not abused, but it has eternally been observed that any man who has power is led to abuse it...So that one cannot abuse power, power must be made to check power by the arrangement of things.” (Montesquieu [1748] 1989, 155) Checks and balances and the separation of powers are now two of the terms and conditions of the American experiment.

Montesquieu’s *Spirit of the Laws*, while often overlooked in the study of the American founding, is crucial to understanding the history of federalism and its theoretical basis. Montesquieu’s federalism works threefold in protecting the state, fostering virtue and protecting the liberty of citizens. Half a century after the publication of *The Spirit of the Laws*, his idea of federalism would be tested. Madison in Federalist No. 47 would write that “the oracle who is always consulted on this subject, is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying, and recommending it most effectually to the attention of mankind.” (*Publius* [1787-1788] 2003, 235) The Founding Fathers would employ federalism as the design principle for a political experiment never before seen, establishing an extended republic of continental scale.

Chapter 2.2 – The Federalist Papers

Between October of 1787 and August of 1788 Madison, Hamilton and Jay published a series of 85 papers promoting the new Constitution. *The Federalist Papers*, as they have become known, provided arguments in favor of the American extended republic. These papers exist as the most important work of American political theory, containing an exposition of the American republic and the principle of federalism.

In *Federalist No. 10*, Madison presents the American variation of Montesquieu's federal republic. He argues that the representative republic proposed in the Constitution protects individual liberties from the threat of majority tyranny. The extended republic is the basis for the idea of American federalism establishing the principle of organization and the condition of representation. Representation allows a large republic to remain attentive to local circumstances without infringing upon personal liberty.

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the right of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. (*Publius* [1787-1788] 2003, 45)

This extent and structure is, like Montesquieu first noted in *The Spirit of the Laws*, “the republican remedy for the diseases most incident to Republican Government.” (*Publius* [1787-1788] 2003, 46)

In the case of the American republic the republican disease is not a lack of political virtue, but rather majority tyranny.

American federalism establishes an extended commercial republic that provides the original design for the intergovernmental system. In *Federalist No. 39* Madison explains that no other principle of organization “would be reconcilable with the genius of the people of America; with the

fundamental principles of the revolution; or with that honorable determination, which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government." (*Publius* [1787-1788] 2003, 181-182) Self-government, a condition of federalism, applies to citizens and to the units of government. Government authority derives from the capacity for self-government. Authority flows directly or indirectly from the people to government where it is administered by persons holding office. Madison elaborates that "it is essential to such a government, that [authority] be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it." (*Publius* [1787-1788] 2003, 182) Self-government ensures that all citizens are active participants in the political process; since authority originates with the people the people reserve the right to change the terms and conditions of the experiment.

Self-government explains how the experiment begins and how the experiment is administered. The act establishing the Constitution is to be considered a federal (an act of the states –see glossary), not national, act; "the assent and ratification of the several states, derived from the supreme authority in each State, the authority of the people." (*Publius* [1787-1788] 2003, 184) The proposed Constitution, however, is not strictly federal but rather a combination of federal and national.

"In its foundation it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal, and partly national: in the operation of these powers it is national, not federal: In the extent of them again, it is federal not national: And finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national." (*Publius* [1787-1788] 2003, 187)

This combination of federal (state) consent with national organization is what defines American federalism at its conception. The people, through self-government, create a more perfect union organized and operated by states and a national government.

The experiment of American federalism continues but in the modern era political leaders are able to perpetuate sub-experiments via their policy and methods of implementation.

Contemporary scholars of federalism are able to draw conclusions from the operational forms of federalism they observe. Federalism in application provides situational accounts of the viability of the original experiment. As interpreted by the following scholars, sub-experiments of federalism begin at the national level of government, often according to the president. These patterns and changes in intergovernmental relations are what form federalism's operational history and allow us to reflect on what works and what does not.

Chapter 2.3 – Daniel J. Elazar

Daniel J. Elazar, historian and professor of political science, looks at American federalism and its relationship with the American political system in his 1966 book *American Federalism: A View from the States*. He examines and explains how intergovernmental partnerships form the organizational basis of federalism. "If there is any single point the book tries to make about the American political system as a whole it is that the system is – or at its best, strives to be – a partnership, of governments and publics and individuals. Indeed, the federal principle, which I argue is the animating principle of the American political process, calls intrinsically for partnership." (Elazar 1966, VI) The term "federal", from the Latin *foedus*, "indicates that federalism is best conceived as the end product of a *compact* or *covenant* uniting separate parties without merging them – in other words, a partnership." (Elazar 1966, VI) The most integral component of this partnership, according to Elazar, is the states – which he views as the "keystones of the American governmental arch." (Elazar 1966, 1)

Elazar defines federalism "as the mode of political organization that unites smaller polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both national and subnational political systems, enabling all to share in the overall system's decision-making and executing processes." (Elazar 1966, 2) The partnership he observes implies the distribution of power

among the several centers. This distribution of power, he admits, is often thought to be a mechanism for decentralization or a way to justify the movement of power away from the national government to the subnational institutions or states. But Elazar defines this phenomenon more appropriately as noncentralization. The United States would not exist as a political body without the states, nor would the states exist without the individuals and thus “in the noncentralized American system, there is no central government with absolute authority over the states in the unitary sense, but a strong national government coupled with strong state governments in which authority and powers are shared, constitutionally and practically.” (Elazar 1966, 3-4)

Federalism (as Montesquieu intended) implies that small states unite to form an extensive union. In this union the states maintain some autonomy so as to represent the interests of the people while the partnership protects the nation as a whole from outside forces. When this partnership is put into practice it becomes more complicated due to the reality that there is “continuous involvement of both the states and the federal government in the same public concerns.” (Elazar 1966, 33) Elazar believes that because of this continuous involvement a majority unable to gain satisfaction at one level of government will take the issue to the next level. “Federal assumption of new formal responsibilities is most likely to occur when substantial majorities within a majority of the states have come to advocate or accept the necessity for a particular program or course of action which their governments will not adopt or, as is most frequently is the case, cannot adopt alone.” (Elazar 1966, 34) This phenomenon is the centralization of power toward the national government (also called nationalization). The power is not nationalized by the national government itself but rather by decentralization of powers by the states. Issues that are frequently nationalized in this manner are “unemployment insurance, workmen’s compensation, water pollution control and major highway reconstruction etc.,” (Elazar 1966, 35) as they require assistance or funding from multiple levels of government.

Elazar, in discussing the ever evolving partnership between the states and the national government, seeks to define the “new politics” or the politics of democratic government that emerged in the late eighteenth century. The “new politics” affects the state-federal relationship because the political process occurs via two noted political channels: territorial democracy, and the political parties. Territorial democracy affects state-federal relations because it postulates that American politics is formally organized around units of territories as opposed to economic or ethnic groups. This means that varying interests are embodied by the representatives from each state. This allows for a neutrality of territory and reinforces the fundamental basis for political representation. The party system also plays a major role, according to Elazar, in “maintaining the basic structure of American politics and basic American political values, including those of federalism.” (Elazar 1966, 50) The party system exists, for the most part in-between the states and the national government, while their finances and power exist primarily at the state and local levels. Because the parties are responsible for the nomination and election of most candidates to state and national offices the party system has in many ways “become the organizing principle around which national and state politics have been able to develop...” (Elazar 1966, 50) Elazar’s observations about the “new politics” recognize that there exists outside forces that shape how the terms and conditions of federalism are met.

Elazar does not spend much time discussing the role of the president in the American federal system as his focus is for the most part on the partnership of the states. The role of the president, however, becomes increasingly important in the modern era when observing intergovernmental relations and various operational forms of federalism.

2.4 – Timothy Conlan

Professor Timothy Conlan’s approach to federalism differs from Elazar’s. Conlan treats federalism as a matter of national policy making. Because of this more nationalistic approach,

different operational forms of federalism occur and categorize modern presidencies based on a set of explanatory factors. He categorizes presidential administrations according to the forms of federalism they employ, with particular emphasis on the Nixon and Reagan records on federalism policy.

Federalism has become a form of public policy or a “governmental response to outside pressures and demands.” (Conlan 1998, 20) Policies of federalism, whether centralizing or decentralizing, now seem to launch “a government-led search for solutions to government’s problems.” (Conlan quoting Lawrence Brown) An administration’s tendency to nationalize power away from the states or devolve power away from the national government effects operational federalism. Either way the authority shifts, the federalism policies that Conlan describes change aspects of the constitutional design.

When Richard Nixon took office, he sought to streamline and restructure government at all levels. The policies of Nixon’s New Federalism are called “managerial”. The Nixon Administration attempted to reform intergovernmental relations so that “power, funds and responsibility flow[ed] from Washington to the States and to the people.” (Conlan 1998, 32) Nixon inverts the order of authority transfer as provided by the original design. The Nixon administration was inconsistent.

Nixon sought to decentralize federal involvement in some traditional state and local fields – community development, education and man power training – and at the same time proposed a complete national assumption of the costs of income maintenance, on the grounds that a more uniform, effective, and equitable welfare system could best be achieved through greater nationalization.” (Conlan 1998, 20-21)

Nixon intended to streamline block grants, revenue sharing and welfare reform but his new federalism was unsuccessful. He intended to decentralize national power and yet because of his top down managerial approach he centralized policy and administration.

Ronald Reagan’s presidency differed from the managerial federalism of Nixon. Conlan discusses Reagan’s push for deregulation and his administration’s hopes for revitalizing federalism in

its original form but he concludes that “for Reagan, strengthening federalism was an instrument rather than a policy objective in itself” and that “he resembled his more liberal predecessors by his willingness to sacrifice his federalism goals whenever they conflicted with other, more deeply held policy objectives.” (Conlan 1998, 211) Reagan stated in his first inaugural address that it was his 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 and to the people.” (*First Inaugural Address* January 20, 1981) This reveals a misunderstanding of the terms and conditions of federalism on Reagan’s behalf; federalism does not imply that the power of the national government must be limited in order for the states to be powerful. What is implied by the design of federalism is that the ends to which the national government can act are limited while power is not limited but is based on the authority of the people.

While Reagan intended to devolve power from the national government to the states he was ultimately unwilling to do so because it meant he would be unable to use his office to centralize other policies like education reform and affirmative action. Reagan overlooked the multi-dimensional aspect of federalism and the need for balance, by “consistently defining federalism reform as a one-sided equation that reduced the federal role but did little to encourage the states and localities.” (Conlan 1998, 109) Conlan admits that policy affects modern federalism but it is possible for policy outcomes of an administration to differ from the perceived intent. The operational form of federalism of Reagan’s presidency is discussed further in Chapter 4.2.

Federalism takes different forms based changes in the organization and relationship of intergovernmental units. The allocation of funds and services increasingly affects the intergovernmental relationship between national and state governments. *With money comes power*

and as a physically larger unit of government, the national government has more money and more power than states and localities.

Chapter 2.5 – Paul E. Peterson

Paul E. Peterson, in *The Price of Federalism*, responds to the disparity between a President's personal conception of federalism and his administration's operational federalism. He presents two theories, the legislative theory of federalism and the functional theory of federalism. He elaborates on the role both the national and state governments play in each theory according to what he calls policies of redistribution and development.

Legislative theory of federalism explains the observations Conlan made about the Nixon and Reagan presidencies. This theory assumes political incentives cause a president to do the wrong thing things and make choices that negatively affect other units of government. According to this theory of federalism the president "care[s] more about overall consequences [of federal programs] for the nation and less about the distributional consequences of these policies." (Peterson 1995, 40) Peterson explains that federalism is more likely to change according to congress because Congress has the power to make laws and also because congressmen have a direct connection with state constituencies. Nixon and Reagan were unable to achieve balance in intergovernmental relations because of the conditions of legislative federalism.

Peterson's more optimistic alternative is functional federalism, which distinguishes two economic purposes of domestic government – developmental and redistributive. "Developmental programs provide the physical and social infrastructure necessary to facilitate a country's economic growth" while "redistributive programs reallocate societal resources from the 'haves' to the 'have-nots'." (Peterson 1995, 17) Functional federalism assumes that state and local governments take responsibility for their area's physical and social development while the national government takes responsibility for the redistributive economic obligations. In 1995 Peterson asserts that the direction

of American federalism more closely resembled functional federalism. Functional federalism is more likely to occur if the President enjoys a period of unified government. (See Table 2.) The Democratic 103rd Congress and Democratic president Bill Clinton agreed on the legislative agenda and achieved many successes.

Peterson's functional theory of federalism assumes that states provide development policies, building infrastructure for economic growth, while the national government allocates and reallocates resources according to need. Nonetheless there are diseconomies of scale and fiscal disparities in the public sector. To address these inequalities, "functional theorists typically recommend that national and state grants to local governments be designed to offset inequalities in local tax resources." (Peterson 1995, 22) National grants to states and local governments can be either regulated categorical grants or block grants. Categorical grants are typically used for redistributive purposes while block grants – federal funding to be used at a state's discretion – "if matched to some level of local or state expenditure, can not only stimulate local expenditure along appropriate lines but can also help offset disparity in local fiscal capacity." (Peterson 1995, 23) Categorical grants, unlike block grants, are accompanied by rules to make sure funds are not diverted from redistributive purposes to developmental purposes. Categorical grants allow the national government to ask the states for assistance with redistribution.

According to Peterson, the president plays a greater role in the sub-experiment of functional federalism. The President is constitutionally subordinate to congress: "The Constitution gives the President the duty to faithfully execute the laws of the United States, but Congress is given the authority to make these laws. The President may veto laws passed by Congress but Congress can still pass the law over the President's veto by a two-thirds vote...The subordination of Presidents to Congress is ultimately established by the congressional power of impeachment." (Peterson 1995, 40) The President is most effective at making and implementing policy during a time of unified

government. Divided government often prevents the President from achieving his full legislative agenda. (See Table 2.)

As authority shifts towards the president and the national government, the terms and conditions like checks and balances, separation of power, representative rule and the capacity for self-government are overlooked. Vincent Ostrom attempts revisit to these conditions of federalism and explain their role in the modern political era.

Chapter 2.6 – Vincent Ostrom

Vincent Ostrom's *Political Theory of a Compound Republic* is one of the most recent depictions of American federalism. His argument rests upon the concept of constitutional choice and the founding so as to "understand and reconstruct the theory that was used to design the U.S. Constitution." (Ostrom 2008, 5) Ostrom urges American government to return to the notion of individualism and personal liberty. Hamilton sought to create a limited national unit of government that could operate concurrently with state governments based on the concept that individuals form the basic unit in all political institutions. (Ostrom 2008, 34) Governments, composed of individuals, are subject to human fallibility. Federalism is the best defense against human fallibility, majority tyranny and the oppressive nature of government.

Ostrom makes four assumptions about the first principles about *The Federalist* tradition. *First* is "that the individuals are the basic units to be considered in the design of political institutions." *Second* is that these individuals are self-interested and will look to enhance their personal relative advantages. *Third* is that humans are imperfect but have the capacity to learn and to maintain and modify their governments. And *finally*, political constraint is advanced "based on an assumption that that conditions of reason and justice, and conditions of social organization, depend on some form of political order." (Ostrom 2008, 30) These assumptions frame Ostrom's assessment of modern federalism.

Ostrom emphasizes that a distinction must be made between a constitution and a law before federalism can take an operational form. According to Madison, in *Federalist No. 53*, a constitution is “established by the people and unalterable by the government while a law is established by the government and alterable by the government.” (Ostrom 2008, 49) The government cannot redefine the terms and conditions of federalism because “if governments were free to define their own authority, there would be no incentive for them to impose limits upon that exercise of authority.” (Ostrom 2008, 50)

Ostrom believes that the President’s policies and agenda are no more important than any other unit of government’s as “no single structure dominates.” (Ostrom 2008, 129) Similarly, the national government is no more important than the states. But he observes that as the experiment with constitutional choice continues, authority is concentrated nationally and the system is dominated by the executive. The covenant or partnership that exists between the states and the national government less and less resembles a shared community of understanding as *power over* is now more important than *power among*.

Ostrom warns that the nationalization of power creates greater “potential for congressional standards to become increasingly ambiguous.” (Ostrom 2008, 188) This ambiguity occurs when the national government attempts to regulate public goods or create laws that apply to all the people of the United States regardless of differing environments and cultures. Public goods like health care and education are “co-produced” meaning that they “require the interest and participation of the immediate beneficiaries of a service.” (Ostrom 2008, 188) These co-produced goods are what fall victim to ambiguity because Congress and the executive, involved in power politics, cannot “establish adequate standards of legislation that are appropriate to all matters of governance in a continental republic whose physical environments [vary greatly], and whose citizens represent the diverse cultures, languages and expectations of governance brought to the New World over more

than four centuries of colonization and immigration.” (Ostrom 2008, 188) Co-production relies on Ostrom’s first principle – that the individual is the unit of the American political institution. His theory assumes that government at all levels can co-produce necessary public goods with their citizens via shared communities of understanding and best protect the people of the American extended republic.

Chapter 2.7 – Conclusions

Federalism has changed from its initial academic conception in Montesquieu’s *Spirit of the Laws* to the operational forms it takes in today’s political system. It remains, however, that as long as the experiment of American government continues so will the terms and conditions established by federalism. In the chapters that follow I look at the modern presidency and various operational forms of federalism. I assess the degree to which each sub-experiment remains true to the original terms and conditions promoting liberty and fostering balance within intergovernmental relationships.

Chapter 3 – Operational Federalism

The idea of federalism, first defined by Montesquieu in 1748 has changed with history. Federalism was adopted as part of the experiment of American government and is outlined in *The Federalist*. Federalism accounts for the extensive republican structure of the United States as well as the terms and conditions of checks and balances and the separation of powers. As a core idea of American government, it is inevitable that as intergovernmental relationships change so does American federalism. My study of modern presidents, from Eisenhower to Obama, documents these varying intergovernmental relationships including the shift of power toward the presidency and the increasing influence of the President in the relationship between all units and levels of government.

Each of the eleven presidents in this study has attempted to implement an agenda that reveals personal or party preferences and also how they view American federalism. Each has

pursued policies to fit the political, social and economic climate but not all presidents have been successful in all regards. The policies of an administration determine intergovernmental relations and thus the form of federalism a presidency is categorized by.

In this section, I describe four categories (or operational forms) of federalism: *functional federalism*, *legislative federalism*, *managerial federalism* and *constitutional federalism*. Each operational form can be explained by particular political factors and specific policy objectives. Table 1 below lists the modern presidents chronologically. It also lists policies of each administration that help categorize the operational form of federalism. Table 2 below then lists the modern presidents according to their respective category of operational federalism based on patterns of explanatory factors.

Chapter 3.1 – Functional Federalism

Functional federalism derives from Paul Peterson's assertion that domestic policies serve two different economic purposes, development and redistribution. Developmental programs provide and create social and physical infrastructure and are more effectively undertaken by the states. Redistributive programs reallocate resources to those in need and are better undertaken by the national government. (Peterson 1995, 17) Functional federalism is the operational result when the administration recognizes the differences between redistributive and developmental policy and designs or acts upon policies accordingly. Redistributive and developmental programs both require an exchange of funds – the former from the national government to states or localities based on determinations of need and the latter from the national government to the states that have requested funding for specific developmental programs. Functional federalism is subject to the Article One requirement that Congress approves the exchange of funds and so it occurs only when Congress and the President agree. Thus, functional federalism more frequently occurs during times of unified government. Unified government, when the same party controls the White House and

Congress, is the factor that best explains functional federalism as the operational outcome of a presidency.

Three presidents fit in the category of functional federalism and all held office during a time of unified government. John F. Kennedy, 1961-1963, was able to propose tax reforms and New Frontier legislation with the support of a Democratic majority in both houses of Congress. Bill Clinton, 1993-2001, enjoyed a period of unified government during the first two year if his presidency, 1993-1995, and pursued a “functional federalism” agenda allowing him to successfully pursue domestic economic policies and balance the budget. Clinton’s second term fits the category of legislative federalism (see Chapter 4.3.) Like Clinton, George W. Bush, 2001-2009, enjoyed unified government from 2003-2007 and, as a result, was able to pass a number of controversial and far reaching domestic programs, including the Patriot Act which expanded the police power of the national government and created the Department of Homeland Security, educational reform (“No Child Left Behind”) which expanded the federal role in public school instruction, and a generous by unfunded Medicare-Based drug benefit for senior citizens. (Conlan and Dinan, 2007)

It has been observed that functional federalism most often occurs when a president enjoys a period of unified government and is able to use this unity to expand presidential power as it relates to his policy agenda. Unified government, however, is a condition over which the president himself has no control. Just as the president is unable control which party is the majority in Congress, unified government does not guarantee functional federalism as the operational outcome of a presidency. Peterson presents an alternative to functional federalism which he calls the legislative theory of federalism.

3.2 – Legislative Federalism

Functional federalism occurs when Congress and the President agree on policy objectives. Legislative federalism “thinks that the political incentives that shape the decision of policymakers

induce them to make the wrong choices.” (Peterson 1995, 39) Political incentives include, for instance, the pressures a president faces when seeking reelection. In these circumstances a president might promise certain policies or express a particular ideology in order to win an election or re-election. After winning the office policies or ideologies may be implemented that diverge from those original promises. The legislative form of federalism is also explained by periods of divided government, when the President’s party is not the majority party in Congress. This form results because a President may be unable to implement his agenda due to opposition from Congress.

There are four modern presidents who practiced legislative federalism. Ronald Reagan, 1981-1989, faced divided government for the entirety of his presidency. President Reagan expressed explicit pro-federalism, pro-state beliefs and was able to move these beliefs through congress during his first year in office making strides towards the simplification of the federal system. After 1981, however, he struggled to maintain and build on these early successes. Reagan, seeking re-election in 1984, promised to continue this small government crusade but because of the pressures of divided government was unable to make these promises a reality (Reagan’s presidency is discussed further in Chapter 4.2). George H.W. Bush, 1989-1993, also faced divided government and it eventually cost him his re-election. He assumed federal deficits left over from the Reagan years when he took office in 1989 and while, as a Republican, he would have preferred to cut spending in an effort to reduce the deficit, (Wildavsky 1991, 117) the Democrats in Congress badgered his administration into raising taxes instead. Bush had promised convincingly that he would implement no new taxes at the 1988 Republican National Convention and so the tax increases of 1990 came as a surprise to many Republicans. The pressures of dived government in this case of legislative federalism, cost Bush his re-election. Bill Clinton felt similar pressures to Bush as he sought to pass national health care legislation. Clinton proposed a bill in 1993 seeking nationalization of health care. It would ultimately be rejected when the party in power shifted from the Democrats to the Republicans in 1995. Our

current president Barack Obama, 2009-2015, so far fits the category of legislative federalism because of the divided government he has faced since 2011. Although it was unified government that allowed The Affordable Care Act of 2010 to pass (not a single Republican voted in favor of the legislation) he faces strong opposition from the Republican majority in the House as he seeks legislation regarding gun control, immigration and tax reform.

Legislative federalism, as made operational by the presidency, relies largely on the make-up of Congress. Divided government affects the agenda a President is able to pursue by checking the power of the office. In some cases the power of Congress in an instance of divided government can cost the president his re-election. The next category of federalism, managerial federalism, can occur during divided or unified government but is best explained by the individual preferences and leadership style of the president.

Chapter 3.3 – Managerial Federalism

Managerial federalism is an operational form of federalism explained by factors outside of the partisan realm – by the character of the president himself. The term managerial comes from Timothy Conlan in *From New Federalism to Devolution*, who uses it to describe the presidency of Richard Nixon based on Nixon's administrative approach to the office. Managerial federalism occurs most frequently when a president has a particular governing style or way of running the office. This form may also result when presidents face pressures from leaders of their own party in Congress.

Five modern presidents fit into the category of managerial federalism. Lyndon B. Johnson, 1963-1969, assumed office following President Kennedy's assassination. Johnson's presidency, seen as a response to many of Kennedy's initiatives, employed a military-style of leadership. He faced pressures from his Democratic Party to resolve economic and social issues. Johnson's resulting Great Society programs (discussed in Chapter 4.1 below) were unsuccessful. Richard Nixon, 1969-1974, sought "to rationalize, reform, and restructure active governmental intervention across the broad

range of public functions and governmental levels.” (Conlan 1998, 20) Nonetheless Nixon was unsuccessful in shifting power back to the states because he employed a top-down approach. He faced Democratic majorities in Congress during his time in office which intensified the managerial approach of his administration. Gerald Ford, 1974-1977, like Nixon “wanted to decrease the size of government and reduce government spending and taxes...” (Miles 1997, 117) He faced pressures from his own Republican Party to restore its honor but ultimately Ford lost the 1976 election to Democrat Jimmy Carter. Carter, 1977-1981, looked to reorganize the federal government and “make [the bureaucracy, the health system, the welfare system, the tax system etc.] simple.” This political theory of comprehensive change, however, was overly simplistic. His desire for uniform policy meant that differences in population, area, need or performance could not be taken into consideration. Carter overlooked one of the most basic terms and conditions of American federalism – the notion of the extended republic. “Comprehensiveness, in the sense of fundamental and inclusive change, often contradicts predictability and simplicity.” (Knott and Wildavsky 1977, 54-55) George W. Bush’s second term fits into the category of managerial federalism but because of slightly different explanatory factors. Bush, before his career as a politician, was a business man. His style of governing perpetuated a corporate management style in the White House. Additionally, Bush faced considerable pressure from his Republican Party which asked him to actively push for a nationalization of social conservatism via the presidency.

Managerial federalism is an unsuccessful operational form of federalism with respect to a president’s political and electoral objectives. Even more significantly, it overlooks many of the terms and conditions of original American federalism. In contrast to the shortcomings of managerial federalism is constitutional federalism which I argue to be the ideal operational form. Constitutional federalism (explained and named after original order found in *The Federalist*) is the operational

outcome of a presidency that effectively protects and perpetuates constitutional order according to the original design principles of American federalism.

Chapter 3.4 – Constitutional Federalism

Constitutional federalism is the form of operational federalism that occurs when constitutional order and the terms and conditions of original federalism, as presented by *The Federalist* are met. Only one modern president, Dwight D. Eisenhower, 1953-1961, made this form operational. In his Farewell Address to the Nation in 1961 Eisenhower summarized the appropriate constitutional order between the various departments of government so as to best protect and serve the people and the nation. In some respects he anticipates the shortcomings of legislative and managerial federalism by stating that in meeting inevitable crises “there is a recurring temptation to feel that some spectacular and costly action could become the miraculous solution to all current difficulties.”

Each proposal must be weighted in light of broader consideration; the need to maintain **balance** in and among national programs – **balance** between the private and the public economy, **balance** between the cost and hoped for advantages – **balance** between the clearly necessary and the comfortably desirable; **balance** between our essential requirements as a nation and the duties imposed by the nation upon the individual; **balance** between the actions of the moment and the national welfare of the future. Good judgment seeks **balance** and progress; lack of it eventually finds imbalance and frustration. (*Eisenhower’s Farewell Address to the Nation of 1961*, emphasis added)

Eisenhower recognized the potential threat to security and liberty that imbalance in government could create. He believed that the purpose of government is to ensure security and liberty for all citizens. These two virtues are what the American republic was created to protect. By creating a government of small states liberty is ensured and by confederating those small states into a larger republic security is ensured. Eisenhower is the last president to actively recognize this basic design principle of American federalism.

I discuss Eisenhower's presidency in Chapter 4.4 of this paper as an example of the operational goal to which all presidents strive. In the Chapters immediately below I provide an examination of specific cases of operational federation, Johnson and managerial federalism, Reagan and legislative federalism and Clinton (first term) functional federalism.

Table 1: Modern Presidents and Policies with Potential Effects on Federalism

Modern Presidents	Policies Producing Federalism Outcomes
1953 - 1961 Dwight D. Eisenhower	Expansion of Social Security Federal Aid Highway Act of 1956
1961 - 1963 John F. Kennedy	New Frontier Programs Tax Reform
1963 - 1969 Lyndon B. Johnson	Great Society Legislation and the "War on Poverty" Elementary and Secondary Education Act of 1965 Revenue Act of 1964
1969 – 1974 Richard Nixon	New Federalism Creation of the Environmental Protection Agency "War on Drugs" 1974 Health Insurance Reform Clean Air Act of 1970
1974 – 1977 Gerald Ford	Creation of the Economic Policy Board Abortion Rights to the States
1977 – 1981 Jimmy Carter	Creation of the Department of Energy Creation of the Department of Education Deregulation of American Beer Industry and of Airlines
1981 – 1989 Ronald Reagan	"Reagonomics" Tax Reform Act of 1986 Decreased funding to Medicaid, federal education programs and the EPA Increased funding to the "War on Drugs"
1989 – 1993 George H. W. Bush	Raised tax revenues despite promising "no new taxes"
1993 – 2001 Bill Clinton	Welfare Reform Balanced the budget
2001 – 2009 George W. Bush	No Child Left Behind Act of 2001
2009 – 2017 Barack Obama	Patient Protection and Affordable Care Act of 2008 Proposed Gun Control Legislation of 2013

Table 2: Operational Forms of Federalism

<u>Operational Form</u>	<u>Divided/Unified Government</u>	<u>Explanatory Factors</u>	<u>Policy & Personal Preferences</u>
<u>Functional Federalism</u>		<u>Electoral Pressures</u>	
John F. Kennedy	Unified - D		New Frontier
Bill Clinton (1st term)	Unified - D (1993-1995)		Balanced Budget
George W. Bush (1st term)	Unified - R (2003-2007)	Party Pressures	9/11 Policies
<u>Legislative Federalism</u>			
Ronald Reagan	Divided	Re-Election Pressure	"Reaganomics"
George H. W. Bush	Divided		
Bill Clinton (2nd term)	Divided (1995-2001)		Failed Health Care Bill
Barack Obama	Divided (2011-2015)	Re-Election Pressure	
<u>Managerial Federalism</u>			
Lyndon B. Johnson	Unified - D	Party Pressure	Individual Preferences
Richard Nixon	Divided		Individual Preferences
Gerald Ford	Divided	Party Pressure	
Jimmy Carter	Unified - D		Individual Preferences
George W. Bush (2nd term)	Divided (2007-2009)	Party Pressure	Individual Preferences
<u>Constitutional Federalism</u>			
Dwight D. Eisenhower	Unified - R (1953-1955) Divided (1955-1961)		Perpetuation and Protection of Constitutional Order

- *Party Pressures*: Pressures the President Feels from his party to pursue policies perhaps alternative to what he himself prefers
- *Re-Election Pressure*: The pressure and desire, when seeking re-election, to win re-election
- *Individual Preferences*: A residual category accounting for a president's leadership style, personality or a approach towards the office
- *Divided Government*: A period of time that occurs when the Majority Party of the House or Senate differs from the Party of the President
- *Unified Government*: A period of time that occurs when the Majority party of Congress is the same as the Party of the President
- *Functional Federalism*: (Peterson: *The Price of Federalism* 1995)
- *Legislative Federalism*: (Peterson: *The Price of Federalism* 1995)
- *Managerial Federalism*: (Conlan: *From New Federalism to Devolution* 1998)
- *Constitutional Federalism*: An original idea based on the intergovernmental design outlined in *The Federalist*

Chapter 4 – Case Studies of Federalism Sub-Experiments

This chapter presents case studies of four presidents and four forms of operational federalism, *managerial*, *legislative*, *functional* and *constitutional*. These forms are operational sub-experiments of the original experiment presented by Hamilton and Madison in *The Federalist*. Each sub-experiment is explained by differing situations of intergovernmental relations. I have chosen to examine the operational forms of federalism specifically via the presidency because of the recent power-centralizing trends in American government. I have chosen four presidents, Lyndon B. Johnson, Ronald Reagan, Bill Clinton and Dwight D. Eisenhower as case studies of each operational form of federalism.

Chapter 4.1 – Case Study: Lyndon B. Johnson’s Managerial Federalism

The operational outcome of Lyndon B. Johnson’s presidency was managerial federalism, brought about by his desire for intergovernmental reform and his fight in the “war on poverty.” Johnson’s desire for reform also existed as a response to the initiatives of President Kennedy with which Johnson disagreed. Johnson’s policies and presidency as a whole served as an outlet for his military-style of governing and general self-loathing (Wildavsky 1991, 23). The Great Society legislation, which now defines Johnson’s domestic agenda as president, was his attempt to perpetuate New Deal programs and win the “war on poverty.” “Great Society programs supplemented the New Deal’s legacy of social insurance and economic regulation with a large dose of what opponents called social engineering, the melding and application of professional services and social science technology to solve society’s problems.” (Conlan 1998, 8) Johnson’s Great Society was unsuccessful as he sought to fight an unwinnable war. War is a state of conflict between armed actors and cannot be waged, or won, against a societal condition.

The Great Society program, Johnson’s agenda for Congress in 1965, advocated legislation to provide aid to education, Medicare and Medicaid and create programs to fight urban poverty. The

Great Society programs failed to achieve Johnson's goals largely because of his hands-on managerial approach. "Johnson was ultimately unwilling to turn management responsibility over to his senior staff. And without his backing, efforts at systematic coordination became no more than false starts." (Peterson 1989, 226) Aaron Wildavsky posits that there exist three doctrinal parties of government, each presenting a different vision for how government ought to be run, the *party of opposition*, the *party of balance* and the *party of government*. "The party of opposition is opposed to growing government; it is for increasing the absolute and relative size of the private sector." The party of balance, composed of deviant wings of the major parties, seeks fiscal balance via increased spending and decreased taxation on the Democrat side (George W. Bush as a Republican exception) and decreased spending and increased taxation on the Republican side (Bill Clinton as a Democratic exception). Lyndon B. Johnson's presidency, however, pursued the party of government and attempted to create citizens who are employees of, producers for or beneficiaries of government. Those who pursue the party of government also view government as the solution to anything from energy to inflation to poverty. (Wildavsky 1991, 117) Under President Roosevelt the party of government found success as New Deal programs effectively used government to solve problems. Johnson's approach with the Great Society was inefficient and unsuccessful because his style of management ignored the basic principle of checks and balances within government.

Paul Peterson associates policy type with level of government. Peterson argues that the tax and fiscal posture of the national government makes it better suited to pursue redistributive policies whereas the tax and fiscal situations of state and local governments require that they pursue developmental policy. These policy arenas, when applied to Johnson's Great Society, allow the observation of many of the program's shortcomings and failures.

To the extent that Great Society programs were concerned with reducing economic poverty as distinct from racial exclusion, the mechanisms they chose for addressing the problem were hopelessly inept...The underlying theory of many of these Great Society programs understood bureaucratic imperatives and group processes to be

the primary obstacle to local redistribution. It was thought that local government agencies administered a potpourri of uncoordinated services in haphazard fashion to a predominantly middle-class clientele...to redirect local services to the poor, the federal government needed to galvanize the political resources of low-income and minority communities. At the same time it was believed that the federal government could entice existing agencies into innovative programs by distributing grants to reform-minded applicants. In this way, a limited amount of federal resources would leverage much larger local resources in a redistributive direction...This theory assumed that cities operated under economic constraints that were no different from those under which the federal government operated. It assumed that the obstacles to redistribution were local elites, bureaucratic ineptitude, insufficient group formation in low-income areas and noncompetitive local politics. Instead of seeing that these were the symptoms of an underlying structural problem, Great Society leaders attempted to muscle local officials into a set of policies they could not afford. In the end the federal government only strained the New Deal coalition that had made possible the national commitment to Great Society reforms. (Peterson 1981, 213-214)

Johnson's zeal for reform in American social policy included an equally intense commitment to the execution of these policies through state and local governments. In 1965 Congress enacted twenty-one health programs, seventeen education programs, fifteen economic development programs twelve programs to meet city problems, four programs for manpower training and seventeen resource development programs. Federal intergovernmental transfers to state and local governments increased from \$7.7billion in 1962 to \$41.7billion in 1973. (Peterson 1981, 86) And yet the disappointment, lack of cooperation, conflict and confusion of the Great Society stemmed from the fact that the "programs were federal programs formulated and financed by central departments but administered and executed by state and local governments." (Peterson 1981, 85) The Great Society programs attempted to replicate developmental successes in redistributive programs. (Peterson 1986, 45)

President Johnson tried to manage all levels of government and implement programs that would effectively fix the domestic problems. This managerial approach overlooked the complexities of the American political system such as differences in tax and fiscal structures between the states and the national government as well as the differing economic, cultural and ecological situations of

cities. Great Society legislation confused state and local leaders as it did not “establish adequate standards of legislation that [were] appropriate in a continental republic whose physical environments [vary greatly], and whose citizens represent the diverse expectations of governance...” (Ostrom 2008, 188) Government managed from the top-down prevents power from checking power and leads to inefficient policy creation and ineffective policy implementation.

The scope of national government authority increased as a result of Great Society legislation. Johnson’s managerial federalism did not occur because of bad intentions but rather because he misunderstood the complexity of intergovernmental relations and the reform process of such. Managerial federalism, in this instance, failed in part as a response to party politics and part because Johnson maintained successful New Deal coalition programs ineffectively.

Chapter 4.2 – Case Study: Ronald Reagan’s Legislative Federalism

President Reagan, remembered as an advocate of states’ rights, verbalized a desire to protect federalism in its original design. His statements in favor of reducing the scope of federal government and increasing the power of the states, however, did not match the federalism he made operational. Ronald Reagan’s federalism, determined by re-election pressures and divided government, fits in the category of legislative federalism. Like Johnson, Reagan also sought intergovernmental reform. “The objective of the Reagan administration was simplification of the federal system: the federal government would assume full responsibility for some policy domains while the states would assume others. (Peterson, 1986, 5) Reagan’s presidency foundered politically as he was unable to achieve these reform ideals. He struggled to convince state leaders to assume fiscal responsibility for programs previously funded by the federal government. He did not delegate what the federal government would cease to have powers of and he left the states with no direction or instruction for powers they were to assume. According to Peterson, legislative federalism assumes that often “the political incentives that shape the decisions of policymakers induce them to

make the wrong choices. The national government takes on responsibilities it should best avoid. It imposes unaffordable tasks on lower levels of government.” (Peterson 1995, 39) Reagan’s federalism goals were lost in his 1984 reelection bid just as Peterson asserts that the president is more concerned with electoral consequences (reelection) than with policy itself.

President Reagan took office in 1981 following the Watergate Scandal and the mediocre presidencies of Gerald Ford and Jimmy Carter. Wayne Vallis, in *The Future under President Reagan*, summarized the tasks awaiting the Reagan Administration at this time. Vallis writes that all Reagan had to do was “turn around the vast American government and economy, reducing inflation and unemployment, enhancing productivity, stabilizing the value of the dollar, addressing our energy needs and at the same time remedying rapidly deteriorating foreign and defense policy deficiencies. Above all, President Reagan needed to restore a sense of optimism about America’s future, a sense that America had once again regained its lost vitality.” Reagan did not assume the office at a particularly calm moment in American history and while he did have many successful undertakings as president his federalism initiatives were not among them.

If Lyndon Johnson’s presidency exemplified the policy activism of a *party of government*, Ronald Reagan’s presidency is example of a *party of opposition*. Parties of opposition oppose the growth of government, and seek to increase the absolute and relative size of the private sector. (Wildavsky 1991, 117) A party of opposition looks to foster a citizenry that also seeks limited government. Unlike Johnson who, through his management style, sought to streamline intergovernmental relationships by increasing the size and scope of government, Reagan’s “primary focus of management reforms was to reduce the power, influence and morale of the national bureaucracy rather than to improve intergovernmental effectiveness.” (Conlan 1998, 3) The context of the ideological federalism of Reagan appears in his first inaugural address.

It is time to check and reverse the growth of government which shows signs 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 the people. (*First Inaugural Address* January 20, 1981)

The administration's agenda for minimizing the federal government's role and influence included proposed budget reductions, tax cuts, personnel freezes, block grants and deregulation initiatives. In 1981, his first year in office, he achieved many significant victories in this direction. That year federal income tax rates were cut by 25%, business taxes were reduced by an additional \$50 billion and federal spending for domestic programs was reduced by \$35.2 billion; nine new block grants were established, consolidating seventy-seven programs, and sixty-two additional programs were terminated. Additionally, new regulatory review procedures were instituted and various pending regulations were halted or amended leading the administration to claim that it had reduced the regulatory burden on states and localities by millions of work hours and by billions of dollars. (Conlan 1998, 96)

While 1981 exemplifies successful federalism and intergovernmental relations, there exist differing views on Reagan's overall approach to federalism. Was Reagan committed whole-heartedly to the broad principles of American federalism or was "federalism reform a Trojan Horse for Reagan's plan to slash the federal budget and dismantle social programs?" (Conlan, 1998, 108) In truth, both views are partly right and underscore a basic ambivalence in Reagan's views toward federalism reform. Altering the balance of power between the federal government and the states was an important goal of the president and his administration, but Reagan's plans for doing this overlooked the multi-dimensional component of the American republic. The national government, specifically the executive branch, cannot simply decide that rule-making authority must be transferred – all actors in the American intergovernmental system (including the citizens) must exercise self-government in order to resort or implement an appropriate balance of power.

Far from being the hidden goal of a secret and contradictory agenda, cuts in federal aid were viewed as an important tool of intergovernmental reform because they lessened the influence and fiscal profile of the federal government. These cuts in aid did not increase the power of the states but rather left them in the lurch with no directions for how to proceed. “In sharp contrast to Nixon, Reagan consistently defined federalism reform as a one-sided equation that reduced the federal role but did little to encourage states and localities.” (Conlan 1998, 109) The long term failures of Reagan’s federalism reform initiatives serve to illustrate the limits of the president’s own personal commitment to the reform. “Whenever Reagan had to choose between the goals of his federalism agenda and competing budgetary and philosophical objectives, he consistently fell short of his federalism aims.” Herbert Stein, former Nixon economic aide has famously said that “even conservative governments don’t want to limit their power.” (Conlan 1998, 190) This aspect of legislative federalism overlooks an original condition of the American experiment – that the authority of government is derived from the people, not the government itself. It is the people reserve the right to alter the terms and conditions of American government. (Ostrom 2008 [3rd ed.] 78)

Reagan’s legislative federalism was successful in 1981, realizing policies promised despite a Democratic majority in Congress. After that, however, federalism and pro-state policies became nothing more than terminology he employed in order to gain reelection in the ’84 campaign. The smaller government message worked in winning votes but post-election was given less attention than other policy initiatives. Reagan’s presidency failed to simplify the federal system and strengthen state governments as promised. “Even if the Reagan partisans genuinely desired to return to a free-market system, their methods did not augur well for such a reaction. They focused not on institutional change but on altering the budget numbers, on getting income-tax rates down – particularly at the top bracket – and, with much less enthusiasm, on reducing governmental

spending. Number juggling is not the stuff of revolutions.” (Higgs 1987, 256) While the legislative federalism of Reagan is still viewed more positively than the managerial federalism of Johnson both forms of operational federalism failed to effectively protect and perpetuate the constitutional order of intergovernmental relations based on the federal principle of organization.

Despite differences in party and policy objectives, President Reagan and President Clinton employed similar political tactics. Like Reagan, Clinton’s overall presidency fits into the category of legislative federalism but his first term, 1993-1997, corresponds better with the conditions of functional federalism. During Clinton’s first term his legislative actions and policy plans indicated an awareness of the authority and semi-autonomous nature of the states. Clinton and Reagan, both former governors, knew first-hand the state’s struggles in dealing with the national government. Nonetheless, Clinton, whose call for federalism reform was much quieter, was more effective at balancing state-national relations.

Chapter 4.3 – Case Study: Bill Clinton’s First-Term Functional Federalism

Functional federalism, as discussed in Chapter 3 derives from Paul Peterson’s assertion that domestic policies serve two purposes, development and redistribution. Developmental programs are more effective at the state level while redistributive programs are more effective at the national level. (Peterson 1995, 17) Functional federalism is the operational result when a president and his administration recognize the relative advantages of pursuing policy purposes at the more suitable level of government and design their agenda based on such recognition. Both redistributive and developmental programs require an exchange of funds – redistributive from the national government to states or localities based on need and developmental from the national government to states who have requested funding for specific programs or projects. As stated in Chapter 3, Functional federalism is subject to the Article One requirement that Congress approves the

exchange of funds and so it occurs only when Congress and the President agree. Thus, functional federalism more frequently occurs during times of unified government.

Bill Clinton enjoyed unified government from 1993-1995 and pursued policies that fit into the category of functional federalism. With help from Democratic majorities in Congress, Clinton was able to “expand the federal role of education, job training, law enforcement and economic development.” (Conlan 1998, 213) Clinton’s expansion of the federal role was sympathetic and understanding of the needs of the states, and during the initial years of his administration federal aid to state governments as a percent of total federal outlays increased by 36% (1990 to 1995). “By virtually every measure, federal aid to state and local governments increased in relative importance compared with what it had been at the end of the Reagan era.” Grant outlays in current dollars increased by 67% (1990 to 1995) and grant outlays in constant 1987 dollars increased by 45% (1990 to 1995). (Conlan 118, 217) Clinton, a former governor and “new Democrat,” (as compared to his “tax and spend” Democratic predecessors) (Conlan 1998, 218) used the Democratic Congressional majority to pursue policy of benefit to the states. This is demonstrated by the increase in federal aid to the states during his first term.

Federal aid was increased to combat crime, invest in education and grow the economy from a national platform but by approving state waivers to federal legislation, Clinton allowed states to retain some autonomy and decision making authority. As Conlan asserts in *Intergovernmental Management for the 21st Century*:

It was not chance that led former governors turned president to support waivers. Like Reagan, Presidents Clinton remembered [his] own desires for freedom from sometimes onerous federal requirements and the ability to tailor programs to their preferences. [He] also felt that waivers could be used to improve program efficiency and control expenditures. This is especially important in entitlement programs, such as Medicaid, that can grow substantially in the very times when state revenues are negatively affected by economic downturn. (Conlan 2008, 160)

The role that waivers play in functional federalism during times of unified government is interesting as they have the potential to work to the advantage of state governors as well as the president. “Waivers allow governors to take credit for major reforms from constituents and get special recognition from Washington...Waivers also allow presidents to pursue controversial policy goals without seeking approval from the often politically divisive and slow legislative process...Congress sometimes chafes under the idea of waivers – recognizing that waivers can very much change the nature of the program devised by Congress.” (Conlan 2008, 161) If a president is backed by a unified government he is more likely to receive approval from Congress to allow waivers from states. He can then implement his own policy goals and also allow states to best tailor policy to their needs. A president during a time of divided government is less likely to receive congressional approval allowing waivers from states.

When Clinton became president, “he stalked the prestige of his office on a plan to complete the welfare state legacy of the New Deal and extend health insurance to all Americans.” (Conlan 1998, 218) His presidency was successful in a sense because he was able to balance the budget and because much of his legislative agenda was efficacious. Nonetheless he failed to implement legislation nationalizing health care as he had intended. In 1995 when power shifted in both the House and Senate to a Republican majority (and remained that way for the remainder of the administration) many of Clinton’s legislative goals including national health care lost significant backing. Additionally, when power in Congress shifted to the Republicans in the 1994 elections “his pretensions generated recurring bouts of lawlessness as the bureaucracy tried to fulfill the president’s directives.” (Ackerman 2010, 37) Peterson calls functional federalism optimistic, as it is dependent on variables not under the president’s control. And while Clinton’s first term is categorized in the form of functional federalism, ultimately his presidency takes the form of

legislative federalism (as discussed in Chapter 4.2) due to the divided government he faced from 1995-2001.

The federalism outcomes of the Clinton administration and the administrations discussed in the individual case studies (see Chapters 4.1-4.3) provide snapshots of history allowing us to reflect upon how the idea of federalism has changed as a result of the modern presidency. *functional*, *legislative* and *managerial federalism* have practical benefits for the way American government works today but they depart in many respects from the principles of American government presented in *The Federalist*. The next chapter discusses the presidency of Dwight D. Eisenhower and his practice of federalism which I call constitutional federalism. Constitutional federalism is so named because it reflects the original principles of the American Constitution as described in *The Federalist*. Constitutional federalism is efficient because of the way it effectively orders intergovernmental relations; it takes advantage of the unique capabilities of the various levels of government to provide and produce the public goods and services voters actually prefer. Federal systems of government can, after all, only be expected to work “when those who use instrumentalities of government also *know how* to make *proper* use of them.” (Ostrom 2008, 129)

Chapter 4.4 – Dwight D. Eisenhower’s Constitutional Federalism *The Modern Anomaly*

Defined in *The Federalist* as the part of the experiment of American government, federalism is the concept that accounts for the structural design of the republic. Federalism establishes the system of checks and balances and the separation of powers which both protect the republic from majority tyranny and ensure liberty. *Federalist No. 39* explains the basis of these governmental powers in the federal system – the authority of the people. “The assent and ratification of the several states, is derived from the supreme authority in each State, the authority of the people.” (Publius [1787-1788] 2003, 182) The source of power, however, does not delegate power. “In its foundation it is federal, not national; in the sources from which the ordinary powers of Government

are drawn, it is partly federal, and partly national: on the operation of these powers it is national, not federal: in the extent of them again, it is federal not national; and finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national.” (*Publius* [1787-1788] 2003, 187)

President Dwight D. Eisenhower, 1953-1961, recognized *The Federalist's* call for balance. “Eisenhower was a maintainer not an innovator; he brought the Republican Party into the postwar consensus – internationalism abroad, acceptance of the welfare programs at home – while maintaining domestic tranquility.” (Wildavsky, 1991) The 34th president to perpetuated and protected the appropriate constitutional order of intergovernmental relationships. Without maintenance there cannot be balance. To maintain is to recognize existing relationships; to innovate is to alter the balance between various intergovernmental actors. Eisenhower’s presidency fit into the category of constitutional federalism because he carefully considered the multiple units and actors in the American system of government.

In order to understand Eisenhower’s commitment to the original *Federalist* principles I consider his legislative agenda. Prior to his inauguration, the Water Pollution Control Act of 1948 was passed. The act established standards to eliminate pollution. The act shifted power incrementally to environmental groups and allowed them to seek regulations and to pressure the national government to comply. These politically autonomous agencies sought rigorous national standards for clean water and strict and swift enforcement by the federal government. Eight years later in 1956 the Clean Water Act was up for renewal. The legislation now called for more federal involvement. The revised 1956 act, among other requests, solicited the federal government to provide grants to local communities for the construction of waste treatment plants. President Eisenhower rejected the 1956 act on budgetary grounds and because he felt it presented a threat to

independent local government. (Peterson 1989, 307-308) The act, despite any perceived benefits, did not maintain the appropriate constitutional order.

Eisenhower believed that there existed, in the whole system of politics, a principle of contradiction due to an inability of men to forego immediate gain for a long time good. In the instance of the Clean Water Act, the environmental groups or pressure groups pretended to a moral purpose that examination proved to be false. (Griffith 1982, 92) Eisenhower recognized the importance of protecting resources as well as constitutional order for generations to come.

Another factor in maintaining balance involves the element of time. As we peer into societies future, **we – you and I, and our government – must avoid the impulse to live only for today, plundering for, for our own ease and convenience, the precious resources of tomorrow.** We cannot mortgage the material assets of our grandchildren without asking the loss also of their political and spiritual heritage. We want democracy to survive for all generation to come, not to become the insolvent phantom of tomorrow. (*Eisenhower's Farewell Address to the Nation of 1961*, emphasis added)

The notion that today's political actions have consequences on the politics of tomorrow is often overlooked in favor of short-term and immediate gains. (Particularly by those who seek bold innovations and do so quickly because the opportunity presents via unified government or because party pressures force a quick fix to hot button issues.)

Eisenhower's corporate commonwealth body of thought represents an attempt to resolve the contradictions of modern capitalism to create a harmonious corporate society without class conflict, unbridled acquisitiveness and contentious party politics. (Griffith 1982, 88) His administration is characterized by a desire to better delineate state and national duties. He believed in progress through compromise. (Griffith 1982, 93) During the 1950's his administration advanced a broad set of grant reform proposals. "In 1954 Eisenhower endorsed grant consolidation legislation that covered several public health and social service functions, though nothing was enacted... He also established the Kestnbaum Commission in 1953 to undertake a comprehensive review of federal aid and intergovernmental relations as a whole. In 1957 he created the Joint Federal-State

Action Committee, whose mission was to simplify and sort our federal-state responsibilities.” (Conlan 1998, 24) The Eisenhower administration actively strengthened the bonds of trust between all levels of government.

Constitutional federalism, unlike functional and legislative federalism, is characterized by a working relationship between Congress and the Executive whether the government is divided or unified. Eisenhower recognized the importance of this relationship and “was masterful in dealing with Congress. In the eight years of his Presidency his own party had control of the Congress in only two years, and then by the narrowest of margins. But this never proved an impediment to his legislative programs.” (Hoxie 1983, 606) The creation of the Interstate Highway and Defense System provides an example of just how effective Eisenhower was in dealing with Congress as well as state and local leaders.

The Federal Aid Highway Act of 1956 which created what we now call the Five Star Interstate Highway System is the most noteworthy domestic achievement of the Eisenhower presidency and is an example of constitutional federalism in practice. The Highway Act of 1956 was an undertaking by the federal government to build interstate highways in rural areas to make travel easier. In an address to a conference of state governors, Vice President Richard Nixon spoke on behalf of Eisenhower and explained how the program would solve the “penalties” of the nation’s current obsolete highway network. These penalties included the annual death and injury toll, billions of dollars wasted in detours and traffic jams, clogged of courts with highway-related suits, inefficiency in the transportation of goods and “the appalling inadequacies to meet the demands of catastrophe or defense, should an atomic war come.” (Weingroff 1996, 6)

Eisenhower knew that the creation of the interstate highway system would solve these “penalties” and would stimulate the economy. (The Interstate Highway Act of 1956 produced enormous growth in the auto industry, trucking industry, oil industry, construction and engineering

industries) (Griffith 1982, 106) In Eisenhower's State of the Union Address to Congress in January of 1955 he argued that "a modern highway system is essential to meet the needs of our growing population, our expanding economy, and our national security." He continued, "This problem has been carefully considered by the Conference of State Governors and by a special Advisory Committee on a National Highway Program, composed of leading private citizens." Eisenhower did not hope to expand his own power or the power of the presidency but rather created effective policy by involving actors from all levels of government.

The main controversy surrounding the funding of the act involved the apportionment of funds to states and localities. "Heavily populated states and urban areas wanted population to be the main factor, while other states preferred land area and distance as factors." \$175 million authorized for the interstate system in the 1954 bill was to be distributed based on a 60-40 ratio, representing a compromise: one-half based on population and one-half based on the federal-aid primary formula (one-third on roadway distance, one-third on land area and one-third on population.) (Weingroff 1996, 6) Later in June of 1955 Eisenhower discussed financing the project in The President's News Conference to Milton R. Freudenheim from the Akron Beacon Journal:

Now, the question of financing raises problems. Either you must find some way to finance these things out of current revenues as you go along, which means very greatly increased taxes, and in this case that would be on related products, gasoline, tires, and so on, or you must find some method of having a bond issue. If you had the bond issue, then you have the problem: do you want to add it to the national debt or do you want to put it under a special organization in which liquidation is provided for, and which will get this whole sum of debt off our books as rapidly as possible. The Governors of the United States, and the Clay Committee which I had appointed, in cooperation developed a plan that made road building, plus a bond issue which would be liquidating, under a U.S. Corporation. Now, here is one of the reasons against just raising taxes and trying to do it in that way, getting in a lot of revenue and building that much each year: where are the States going to get the money to do their part of this thing? It seems to me that we have got to recognize occasionally the very great responsibility, authority, and power that should reside in our States, allowing them to have the decent sources of revenue. (*The President's News Conference of June 29, 1955*)

Recognizing the “great responsibility, authority and power that should reside in our States” is an invocation for constitutional federalism recalling the state’s close proximity to the people from whom the power of government derives. The Interstate Highway Act of 1956 is an example of successful operational federalism: the intended results match the actual outcomes. “The interstate system has encouraged an unprecedented democratization of mobility. It has opened up access to an array of goods and services previously unavailable to many and created massive opportunities for five decades and three generations of Americans. It made the country more accessible to itself while also making it safer and more secure...” (Snyder 2006) The original principles of federalism exist to ensure liberty while maintaining security; these principles are made operational via the Interstate Highway Act of 1956.

Eisenhower explains in his *Farewell Address to the Nation in 1961* that “We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that **security and liberty** may prosper together.” (*Eisenhower’s Farewell Address to the Nation of 1961*, emphasis added) The protection of security and liberty is the original basis for the confederate republic as conceived by Montesquieu and adopted by the authors of *The Federalist*.

If a republic is small, it is destroyed by a foreign force; if it is large, it is destroyed by internal vice. Thus it is very likely that ultimately men would have been obliged to live forever under the government of [democracy or aristocracy] alone if they had not devised a kind of constitution that has all the internal advantages of a republican government and the external force of a monarchy. I speak of the **federal republic**. This form of government is an agreement by which many political bodies consent to become citizens of the larger state that they want to form. It is a society of societies that make a new one, which can be enlarged by new associates that unite with it.” (Montesquieu [1748] 1989, 131 emphasis added)

The modern presidency since Eisenhower has left the people afflicted by the “fatal combination of helplessness envy and greed created by the gradual appeals of politicians in seeking to win reelections and form winning coalitions.” (Ostrom 2008, 17) In order for the American experiment of

federalism to endure we must take Eisenhower's approach as an example and reapply the original terms and conditions to the modern political environment.

Chapter 5 – Conclusions

American federalism, as the glue which has bound constitutionalism, republicanism and democracy together since the late 18th century, is a fundamental component of the American political experiment. Federalism provides the remedies for the “diseases most incident to Republican Government.” (*Publius* [1787-1788] 2003, 46) The Founding Fathers “applied for the first time theories either previously unknown or deemed inapplicable, they stage[d] for the world a spectacle for which nothing in the history of the past had prepared it.” (Tocqueville [1835] 2004, 30)

The American experiment has continued for over 200 years and we are fortunate to consider it in light of that experience. Has the great experiment worked the way that Hamilton and Madison thought it would? Does federalism still provide a set of remedies for the republican diseases? I observe *legislative, functional, managerial* and *constitutional* federalism, each with practical benefits for the way American government works today.

With the exception of constitutional federalism, (Chapter 4.4) the operational forms depart from many of the principles of American government. This departure does not indicate a failure in the design of the original experiment. I conclude that constitutional federalism is more effective at ordering intergovernmental relations and realizing the original terms and conditions of federalism.. But the sub-experiments of federalism prove effective in a difference sense; they confirm that the experiment continues. The terms and conditions of American federalism remain intact no matter what operational form the idea takes. But as different periods of American government face different and often unpredictable problems, some of the terms and conditions are *overlooked* in an effort to provide quick solutions. In *The Meaning of American Federalism*, Ostrom observes that it is “in our anxiety to be modern, that we are apt to neglect the wisdom that has been accumulated

through the ages and made available to us as a cultural heritage.” (Ostrom 1994, 52) The wisdom, neglected or not, still exists. We will, as long as the experiment continues, be able to recall and revisit the original design of American federalism. “The achievements of the past afford us with the capabilities for today and the prospects of tomorrow.” (Ibid. 52)

The modern presidency influences operational federalism but not imply that the president is alone in doing so. The sub-experiments of federalism I observe present different arrangements of the same puzzle of intergovernmental relations. I have chosen to examine the puzzle according to where each presidency fits. Hamilton, in *Federalist No. 70* observes that “energy in the executive is a leading character in the definition of good government.” (Publius [1787-1788] 2003, 341) Just as power checks power, and ambition ambition, “the legal and political competence of each unit of government is limited in relation to the legal and political competence of other units of government.” (Ostrom 2008 [3rd ed.], 79) Operational forms of federalism occur as a result of these reciprocal interactions between all units of government during a given administration. These sub-experiments of federalism, however, depart from the original principles because they alter the original “extent and proper structure” (Publius [1787-1788] 2003, 46) of intergovernmental interactions. Ostrom explains that this proper structure, the most necessary remedy for republican disease, has changed, because of “the transfer of rule-making authority to executive instrumentalities (executive branch).” As the executive gains rule-making authority beyond the original terms of the experiment, other units of government (and the people) lose authority.

The authority of each unit of government (and of the departments contained therein) in the American federal system originates from the “great body of the people.” This is “essential to such a [republican] government” (Publius [1797-1788] 2003, 182) because “the system of administration which Hamilton and Madison envision in the American federal system was to operate in the context of a political system in which all units of government were to be fashioned upon principles of self-

government.” (Ostrom 2008 [3rd ed.], 77) The people (through the principles of self-government) reserve the right to alter the terms and conditions. This right is expressed through processes of constitutional decision making which require action by extraordinary decision rules. (Ibid. 78) The transfer of authority to executive instrumentalities not only overlooks the proper structure but also the principles of self-government. The design requirements of American federalism therefore necessitate that through self-government the people “provide remedies against those who usurp authority and abuse their public trust and also reform the structure of government so as to maintain the essential equilibrium of a system of constitutional rule.” (Ibid. 92)

My study of the relationship between the modern presidency and federalism is meant to critique the current system of intergovernmental operations not to blame any individual president for a failure to meet all the terms and conditions of the original experiment. To hold any one unit of the government responsible for instances of ineffective operational federalism would be to overlook the multidimensional design requirements of the American republic. Federalism establishes a bond of mutual trust between citizens and governments as well as between each level of government and thus requires balance in order to best occur. The sub-experiments of federalism I observe represent modern instances of imbalance in operation. Dwight D. Eisenhower’s modern constitutional federalism illustrates successfully that this balanced bond, grounded in principles of self-government, can use “processes of conflict and conflict resolution to elucidate information, clarify alternatives, stimulate innovation, and extend the frontiers of inquiry to open new potentials for human development.” (Ostrom 1994, 272) The current state and future of the American experiment requires that these bonds of mutual trust are reconsidered and reapplied – not only by the government but also by the people.

Ostrom writes in *The Meaning of American Federalism* that federalism has a future, perhaps just not in America. (Ostrom 1994, 272) But I disagree and believe that the future of federalism will

endure within these United States. Sub-experiments of the idea, as I have shown, highlight inefficiencies of American government and can stray from original principles of *The Federalist*. But by showing what doesn't work in practice we move closer to what might. Government itself is a reflection of the fallibility of man because "if men were angels, no government would be necessary." (*Publius* [1787-1788] 2003, 252) We – citizens and government – are fallible and we have erred and we may err again in the struggle to meet the terms and conditions of the great experiment. "An enlightened zeal for the energy and efficiency of government" (*Ibid.* 3) will remind us that the diseases of our republic, now an epidemic in the current state of intergovernmental confusion, can be remedied. We must reapply the experiments' terms and conditions, re-balance, re-distribute and re-assert self-governance.

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