

From Shades To Fragments: Us Federal Democracy Under The Trump Administration

Abstract

The controversies linked to the current US president aside, the Trump administration has faced obstacles in implementing its political programmes. This is unsurprising as governing in the United States is, in general, quite difficult. Reasons for this stem from the separation of powers at national level, but also the complexity of US federalism. The manifold division of powers in federal and democratic government render the US by comparison a rather uncoupled federal democracy. Despite these constitutional default settings, the United States has witnessed many instances and phases of cross-branch and cross-level cooperation. However, in recent decades, both American federalism and democracy have become increasingly wrought with tensions, polarization and political conflicts. In this contribution, I aim to show that the overarching pattern of US federal democracy has developed into one of fragmentation. This pattern has surely been exacerbated under the Trump presidency, but it has long been in the making.

Introduction

The multiple facets of controversy associated with the current US president aside, it is largely unsurprising that the Trump administration has faced multiple obstacles in implementing its political programmes. Translating electoral mandates and promises into policy outcomes is never easy in democratic rule-of-law systems. But governing in the United States is especially difficult. The institutional reasons for this lie, however, not only with the presidential system of government.^[1] They likewise derive from the complexity of federalism. Federalism in the US is constitutionally predisposed to *dual federalism*, but, as captured by John Kincaid, it has also developed in phases with further ‘shades’ or patterns: most notably of *cooperative* and *coercive* federalism, yet with these new elements persisting alongside one another to variable degrees (see e.g. in the *50 Shades of Federalism Series*, Kincaid 2019). Viewing moreover federal and democratic government, as Arthur Benz has prescribed, as two different dimensions interlinked or ‘coupled’ through various government institutions and governance practices, the US by comparison represents a rather *uncoupled* federal democracy (see e.g. also in this series, Benz 2020). Yet despite its default settings of manifold separation of powers (horizontally between branches, vertically between levels of government), US federal democracy has managed to achieve many instances and phases of cross-branch and cross-level cooperation and with extensive multilateral intergovernmental relations. However, as of recent years, both American federalism and democracy appear increasingly wrought with tensions and conflicts. In the following, I set out to show briefly that the overarching pattern of US federal democracy has developed into one of *fragmentation*. This pattern has been exacerbated under the Trump presidency for sure, but it has long been in the making.

Making and Breaking Great Expectations

One may recall an episode in American politics beginning around 2008 that was imbued with a political climate of ‘Change’. There was also an election producing remarkable permissive conditions for governing at federal level. Similar may be said of another episode beginning with the federal elections of 2016. And like the former episode, the latter one will end with more division than it started with.

The first episode involved the elections of Barack Obama to the Presidency and sizeable majorities of his party, the Democrats, to both houses of Congress. Subsequently major healthcare reform was achieved, as were several significant measures in financial-market regulation and economic recovery. However, the ensuing eight years witnessed a much more limited extent of reform than could have been expected under those favourable initial conditions. The Obama administration was also, perhaps more so, characterized by intense institutional rivalry horizontally, i.e. between the branches of US government.^[2] These tensions were mirrored vertically, i.e. between levels of government, and among ‘Red’ (Republican-led) and ‘Blue’ (Democrat-led) States. Rising polarization among the parties and in politics in general ensued, with policymaking deadlocks and federal budget impasses precipitating in multiple government ‘shutdowns’, and with intensified polarization and contestation likewise in federal-state and intergovernmental relations (see e.g. Conlan 2017; Conlan and Posner 2016; Hare and Poole 2014; Pickerill and Bowling 2014). In short, the US ‘division-of-powers’ polity was also severely divided politically.

The next episode commenced with the campaigns in the run-up to the 2016 elections and the eventual victory of Donald Trump to the Presidency. Tensions had mounted in the preceding eight years between the federal government and the States. Besides much division, brinkmanship and gridlock in politics, several societal rifts had become increasingly virulent, as had the trends of growing distrust, frustration and voter anger toward established parties and politicians at multiple levels (see e.g. Holbrook 2016; Sides, Tesler and Vavreck 2017). These circumstances set anew a stage conducive to political campaigns calling for change. Against most odds and political conventions, the candidate Trump managed to win the Republican primaries and the presidential election (albeit not by the majority of the aggregate popular but of the Electoral votes). With sizeable Republican majorities in both Houses of Congress and thus a *unified government*, President Trump

faced favourable conditions for converting campaign promises into policies. However, the respective efforts have met substantial resistance, with only limited policy and especially legislative results. The federal elections two years later in 2018 already reinstated *divided government* with a Democrat-majority in the House of Representatives. There are, yet again, no signs of decline in partisan polarization and political friction between federal branches of government and among the States (see e.g. Jacobson 2019). These circumstances have fostered the propensity to institutional rivalry and political brinkmanship further, but also for different levels of government to pursue separated governing approaches.

Fragmentation: Between Cause and Consequence of an Uncoupled Polity

Unlike earlier Republican campaigns, Trump's 'make-America-great-again' agenda and the Congressional Republicans' eventual rally behind it did not entail any notable appeals to some particular federal vision. Implicitly however, most major issues would inevitably have high relevance for federal-State relations. There were specific plans like the repeal of the 2010 Affordable Care Act (ACA, or 'Obamacare'), federal tax reform (e.g. tax cuts), stricter immigration policies and border security, the reinforcement of the 'War on drugs' given the rampant opioid crisis, the promotion of more privatization and competition in the education sector, and the dismantling of commitments and regulations on renewable energy, climate and environmental protection.

In addition to environmental and climate change policy, healthcare, and immigration, contestation has far from subsided concerning the legalization of recreational drugs, upholding the non-discrimination of LGBTQ persons and single-sex marriages, or the seemingly never-ending American stories of conflict around abortion for one, and the (non-)regulation of gun ownership for another (see e.g. Goelzhauser and Konisky 2019). Under the two-year period of unified government (2017-2019), the charge to repeal 'Obamacare' failed to muster enough voting discipline among the president's party. In turn, President Trump, like numerous predecessors, has often resorted to executive orders and other intra-executive measures like waivers or re-allocations of funding, whether to dismantle ACA or parts thereof (Thompson, Gusmano and Shinohara 2018), from rescinding environmental regulations to exiting the Paris Agreement (Konisky and Woods 2018), or to implement stricter immigration rules but also attempts to repeal Deferred Action for Childhood Arrivals (DACA) (Reich 2018). With regard to the States, the Trump administration early on called for making States "laboratories of democracy once again" [3] in the context of spurring federal deregulation. Nevertheless, the chief executive has also used unilateral actions to coerce the States. These measures include the 'Muslim Ban', retractions of protections to undocumented immigrants as well as their children, or the 2019 declaration of a trumped up 'national emergency'[4] on the border to Mexico.

The US polity appears now more disjointed with a view to the States and intergovernmental relations. States for instance led by Democrat governments (e.g. State executives and legislatures separately or in tandem) have served as checks on the federal level and attempted to thwart multiple measures by the current administration, analogous to the inverse political constellation with Republican-led States under the Obama administration. On immigration policy for example, multiple States and municipalities led by Democrat governments declared themselves "sanctuary cities" refusing to apply the stricter controls introduced by presidential executive orders (Conlan 2017; Reich 2018). Similar reactions by States have also ensued in many other issues listed above: e.g. whether in going their 'own way' on legalization of medicinal and recreational marijuana; in disparate attempts to re-regulate abortion; or, in the face of the federal deregulation in environmental protection and combatting climate change, individual States alone or in cooperation with each other introduce own environmental and climate change policies (see e.g. Goelzhauser and Konisky 2019). The same applies with regard to thwarting attempts to dismantle various anti-discrimination policies, whether through unilateral State actions or cross-State cooperation in appealing to federal courts – though the federal judiciary and the Supreme Court likewise have become increasingly polarized internally and their nominations subject to heightened partisan contestation (see e.g. Somin 2016).[5]

Finally, the novel coronavirus/COVID-19 pandemic so far has met with an at least equally fragmented patchwork of responses and conflicts, with some early federal relief measures but no pan-State intergovernmental conferences, let alone a national plan, achieved, and States left largely to manage the crisis, yet with approaches roughly divided along partisan lines and especially between the president and his administration.^[6]

These sorts of dynamics and developments on the part of the States activate the checks and balances immanent to the multilevel separation of powers in US federalism. They can also foster the 'laboratories of democracy' that precisely dual federalism permits. A politicization of *federalism* moreover does not pose a problem per se, certainly not from a *democratic* standpoint. However, the intensity of contestation and the frictions within the US federal democracy provide grounds for concern, particularly with a view to partisan polarization and fragmentation, demonstrated not least by the veritable breakdown of cross-party, cross-level intergovernmental relations and cooperation in the United States.

Conclusion: Divided We Stand?

The future is always uncertain. The direction US federal democracy will take is no exception. Even more uncertainty looms given the pending 2020 elections. However, gauging by the recent past and as things stand now, we can identify a pattern of dynamics in US federal democracy that comprises, in short, a *Gleichzeitigkeit des Ungleichen*, a concurrence of incongruent or incommensurable things: on the one hand, a national consolidation of both (and only) major political parties with simultaneous polarization under the conditions of simple majoritarian 'winner-takes-all' elections for all branches and at all levels of government; and, on the other hand, the persistence of a framework of complex horizontal and vertical division of powers among rather separated branches and levels of government. The latter requires cross-party, cross-branch and cross-level negotiations, coordination and cooperation in order to work, while the former is intensifying conflict and fuelling the obstruction of coordination, cooperation, and governance in general. The complex challenges posed by the fragmentation in federal and democratic government affected the predecessor Obama administration, and they have continued to confront the current Trump administration. When faced with a president who seeks measures that violate civil rights and rule of law or amount to executive overstretch, of which there have been ample incidences in the last three-plus years, the predisposition to an uncoupled federal democracy in the US and the growing tendencies toward fragmentation allow for constraints and safeguards that are normatively warranted. A different picture appears though with a view to the capacity to govern, to solve cross-cutting problems, and especially to the civil and socio-economic harmony in the United States. From this perspective, the fragmentation of American federal democracy appears deeply problematic, even pathological. And, irrespective of the 2020 electoral outcome, and barring fundamental institutional reforms, this pattern is all but certain to persist.

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[1] i.e.: a strict separation between executive and legislative branches, underlined by separated electoral linkages to the presidency for one and the Congress for another, the latter in turn comprising two distinctly and popularly elected chambers.

[2] Increased further once 'divided government' emerged just two years after the Democrats' landslide, with a Republican majority elected to the House of Representatives in the Congressional elections of 2010 and then to the Senate in 2014.

[3] See Presidential Statement to the National Governors Association of 27 Feb. 2017, available at: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-national-governors-association/>.

[4] See Presidential Proclamation 9844 of 15 Feb. 2019, available at: <https://www.federalregister.gov/documents/2019/02/20/2019-03011/declaring-a-national-emergency-concerning-the-southern-border-of-the-united-states>.

[5] At the time of writing, the heightened conflict is on full display in the ongoing Senate procedure to appoint Trump's nomination of Amy Coney Barrett immediately following the vacancy on the Supreme Court that resulted from the death of Justice Ruth Bader Ginsburg on 18 Sept. 2020.

[6] For recent overviews of the implications of the coronavirus on federal-state relations, see e.g. Bowling, Fisk and Morris (2020); Kettl (2020); Selin (2020).

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Further Reading

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