



Institutional Biases Thwart Competitive Federalism

by Amy K. Frantz

In his chapter “Competitive Federalism in Institutional Perspective” in *FEDERALIST GOVERNMENT IN PRINCIPLE AND PRACTICE*, Dr. Richard Wagner explores the characteristics of competitive federalism and how institutional biases have swung the competitive process in favor of the federal government.

Federalism can be thought of as mapping territory and assigning functions. The first layer of the map would be the nation as a whole. Additional layers of the map would divide the nation into states or provinces, then counties, and in some areas continuing further into cities and other local governmental units. Functions of each level of government become apparent by the area the service in question covers. For example, the armed forces are meant to protect the entire nation, and are provided by the federal government.

“Competitive federalism is an intellectual construction that locates governance within an openly competitive approach to processes of social organization. This construction stands in contrast to that of dual federalism, which envisions different levels of government as possessing sole, monopolistic authority in their assigned areas.” Competitive federalism allows for different levels of government to compete to provide services, maximizing the number of people whose preferences are met.

Education is provided to children throughout the nation, and as such might be assigned to be provided by the federal government. However, decentralization, or allowing local governments to provide education, allows more variability and flexibility in the type of education provided. The central government may offer one curriculum for all students. Local governments can tailor their curriculum to accommodate local preferences.

For instance, Dr. Wagner imagines two jurisdictions, one mainly coastal, the other mainly mountainous. In teaching safety and health courses, the school near the coast may prefer to concentrate on water safety, while the school in the mountains prefers to teach hiking and survival skills. Decentralization allows each school to emphasize its chosen curriculum. Citizens can choose whichever curriculum they prefer by moving to the jurisdiction which highlights those elements. Competition between the schools and curriculum provides more options to citizens.

Dr. Wagner examines institutional elements that have caused the competitive process to favor the federal government rather than allowing all governments to compete equally. One element is the independent taxing authority of the federal government. Without the power to tax, the federal

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government would need the approval of the states to raise revenue. It would not be possible to enact programs of benefit to some states while imposing the cost of the program on all. Those states opposed could simply withhold payment from the federal government.

The federal government was granted the power to tax income by the 16th Amendment to the Constitution. The ability of the federal government to collect this tax allows it to favor one group over another by providing a project or service for one state, while imposing the cost over all. If the federal government can compel the states to pay, rather than the states agreeing to provide funding to the federal government (see Dr. Lee's reverse revenue sharing proposal in Chapter 6 and *INSTITUTE BRIEF* Volume 7, # 36) the competitive process is biased toward the federal government.

Another element is that the federal judiciary rules on challenges to the constitutionality of federal actions. If the charge is made that a state legislature has overstepped its bounds, the arguments may be made before a federal forum. However, if the same charge is made regarding the federal government, there is no other body to hear the arguments. "The federal government is a judge in its own cause." (For more on this, see the "Federal Questions" court proposal in Chapter 12 by Dr. Racheter and *INSTITUTE BRIEF* Volume 7, # 45).

Dr. Wagner concludes, "[s]uch things as direct taxation and direct elections, along with the inability of state bodies to rule on the constitutionality of federal action, bias the processes of federalist competition in a direction that favors federal action over other forms of action. Such biases will have to be addressed in any effort to move our federalist system in a competitive direction."

This Institute Brief is one in a series on the chapters of a just published book, FEDERALIST GOVERNMENT IN PRINCIPLE AND PRACTICE, edited by Dr. Don Racheter, President of Public Interest Institute, and Dr. Richard Wagner, Economics Professor at George Mason University and Chairman of the Institute's Academic Advisory Board. FEDERALIST GOVERNMENT IN PRINCIPLE AND PRACTICE looks at the relationship between federalism and liberty and explores the substantive practice of federalism, particularly the centralizing processes at work and the opportunities for decentralization.

The author of this chapter of FEDERALIST GOVERNMENT IN PRINCIPLE AND PRACTICE is Dr. Richard E. Wagner, Economics Professor at George Mason University and Chairman of the Institute's Academic Advisory Board.

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