



Federalism: Power and Property

by Arlan DeBlieck

In “Federalism and the Protection of Property,” Dr. Bruce Yandle defines federalism as the “harmonious decentralization of political power that deliberately pits one Leviathan against others.” Without this “opposite and rival” competition, power tends to concentrate within a centralized government, threatening property rights and the rule of law, which eventually weakens constitutional order.

Throughout history, man has fought natural and man-made elements to control resources needed to sustain life. In earlier times it was brute force that defined and defended property and resources. As a result of force counteracting force, order came. With order came the ability of people to create and accumulate wealth. However, the Leviathans that developed from the force-on-force counteraction soon discovered they liked the wealth that was created by ordinary people. In exchange for order, they took a portion of the wealth. Modern Leviathans are no different. In return for order, they absorb and redistribute wealth. Federalism is designed to pit force against force in order to keep the Leviathans tame.

The Fifth Amendment to the U.S. Constitution is part of our federalist system that is supposed to protect private property from being consumed by Leviathans. Specifically, the “Takings Clause” of the Fifth Amendment requires “just compensation” when Leviathan takes property from private owners. The result of this clause was the establishment of private property rights and a recognition that private property has a “superior standing” in our constitutional order. For over one hundred years the recognition of private property rights kept Leviathans tame, resulting in an increase in wealth accumulation.

By the twentieth century, the decentralized power of the states began to concentrate within the federal government, through an assault on federalism and the replacing of private property rights with “regulatory property rights.” As power accumulated at the national level, a national Leviathan replaced fifty smaller Leviathans substituting uniformity for competition. Agencies of the federal government began undercutting the notion of private property rights by implementing an increasing number of regulations on property use. A conflict between the superior standing of private property rights and the regulatory rights of a central government developed, and eventually came to a boiling point with the Sagebrush Rebellion.

The Sagebrush Rebellion began in 1964 with an Interior Department moratorium on claiming desert land for farming in Nevada. In 1979, the Nevada State Legislature voted to take ownership of 48 million acres of federally owned land and appropriated \$250,000 to fight the federal government in court. Though the 1964 moratorium was lifted in 1978, it set the stage for battles that continue today over who gets to determine the use of land owned by individuals. Special

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interest groups, such as environmentalists and recreationists, continually attempt to use the centralized power of the federal government to usurp the private property rights of individuals and impose their own ideals on how land should be utilized. This was the impetus behind the rebellion.

By the 1980s, the rebellion lost steam, and not one acre of federal land was transferred. There is debate over the causes of the rebellion's failure, but one argument is that cost-benefit analysis showed advantages to having the federal government retain control over the land. For the average western state taxpayer, having the federal government own the land was a good deal. Even though some property rights were being abused, others were enjoying huge subsidies. What did develop from the failure was the "Wise-Use and Property Rights Movement," a group of grass-root and industrial organizations that were tired of environmental and command and control regulations emanating from the federal government. The movement is a formidable and effective opponent to the environmental movement. Unlike environmental groups who like to use the federal government to impose their will, Wise-Use groups focus their efforts at the state and local levels.

During the 1970s, the environmental movement, with the help of federal agencies, essentially nationalized property rights. Land-use decisions now rested with the federal government, where regulations regarding land use were created, then handed back to the state and local levels for enforcement. The Wise-Use Movement and other grass-root organizations mobilized to restore the "Takings Clause" of the Fifth Amendment by getting state governments to pass laws strengthening property rights. By 1999 some 30 states had enacted laws strengthening property rights protections.

Dr. Yandle concludes that "without federalism or some form of competition among governments, there can be no property-rights protections." Without competition between governments, there is no incentive for government to accommodate ordinary people and their property rights. Concentrated power has an incentive to control property rights, and "any government strong enough to protect property is strong enough to take property. Federalism and property rights go hand in hand."

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. Bruce Yandle, member of Public Interest Institute's Academic Advisory Board and Alumni Distinguished Professor of Economics and Legal Studies at Clemson University, Clemson, South Carolina.

This summary of Dr. Yandle's chapter was written by Arlan DeBlieck, a Research Analyst with Public Interest Institute.

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