

## American Federalism and COVID-19: Party Polarization Trumped Cooperative Federalism

*John Kincaid*

### 1 Introduction

The United States did not respond adroitly to the COVID-19 pandemic because President Donald Trump failed to forge a coordinated response with the states' governors and mayors and because political party polarization often thwarted cooperative state-federal, interstate, and state-local relations. As of 22 June 2021, the United States recorded 183.43 COVID-19 deaths per 100,000 people. Only 19 countries had higher death rates. The United States has 331 million people, 16.5 percent of whom are age 65 and over. They experienced 79.8 percent of all COVID-19 deaths.

However, the dualist structure of U.S. federalism and the states' constitutionally reserved police power enabled the states to respond to COVID-19 in different ways, from strict to lax, reducing COVID-19 deaths below what might have prevailed if the federal government under President Trump had controlled the pandemic response but higher than might have prevailed under a cooperative federalism response. Overall, the pandemic has not led to significant changes in the constitutional or operational features of American federalism, partly because the partisan polarization that hobbled the pandemic response also hampers change.

### 2 Constitutional and Structural Features of U.S. Federalism

The U.S. federal system, with 50 states, is constitutionally dualistic. The federal government is responsible mainly for interstate and foreign economic matters, national social welfare, civil rights and liberties protection, and foreign affairs and defense. Many domestic powers are reserved to the states. The system is presidential, with a two-chamber Congress. The U.S. Supreme Court is the strong third branch of the federal government, and it exercises judicial review over federal and state laws. Each state has its own constitution and complete government consisting of an elected legislature, elected governor and often other elected executives, and a supreme court. The federal system operates with two parties: Democrats being left-oriented and Republicans right-oriented. Other parties (e.g., a Green Party) exist but have little political impact.

The states are primarily responsible for public health. Most states decentralize this responsibility in varying degrees to their county governments (which exist in 48 states). The federal government's public health duties apply to foreign and interstate travel and commerce and to supporting the states in such ways as financial aid, research, data collection and dissemination, pharmaceutical approvals, expertise, health guidelines, supplies, and emergency field hospitals. Health care and insurance are mostly private, but the federal Medicare program insures all citizens age 65 and over. The intergovernmental Medicaid

and Children's Health Insurance programs cover low-income people of all ages (about 18 percent of the U.S. population being enrolled in these programs), and the intergovernmental Affordable Care Act subsidizes private health insurance for another 23 million citizens. However, about 28 million non-elderly people are uninsured.

### **3 COVID-19 Background**

The first laboratory-confirmed COVID-19 case occurred on 20 January 2020. It was reported to the U.S. Centers for Disease Control and Prevention (CDC) on 22 January. The first announced COVID-19 death was on 29 February in Washington state. The country experienced its first COVID-19 surge in late March to early April 2020, a second surge in July, and a huge surge from November 2020 to February 2021. At that time, the United States had recorded 9,024,298 infections equaling 2,727 cases per 100,000 people. However, the commuter-connected states of Connecticut, New Jersey, and New York, with 9.6 percent of the U.S. population, had 27.2 percent of U.S. deaths on 18 September 2020 (dropping to 14.7 percent by 7 June 2021 after the virus spread nationwide).

The initial epicenter was New York City, with a second center on the West coast. COVID-19 entered California, Oregon, and Washington from China but entered New York from Europe. During the summer of 2020, COVID-19 spread to more urbanized areas in the Midwest and South but spread to all states and rural areas during September and October.

The federal government reacted first when President Trump restricted travel from China on 31 January 2020 and Congress enacted an 8.3 billion US-Dollar emergency supplemental appropriation signed by Trump on 6 March. State and local governments began reacting substantially on 11 March.

### **4 Constitutional and Legislative Framework for Pandemic Responses**

The states have primary responsibility for public health because they possess the police power, which is the authority to legislate for the health, safety, welfare, and morals of their citizens. It is a key reserved power of the states under the U.S. Constitution's Tenth Amendment (1791). Historically, state and local governments have managed epidemics with little or no federal assistance, such as the last major influenza epidemic in 1918.<sup>1</sup> Most states have devolved many public health duties to their county and big-city governments.

Responsibility for managing other pandemic matters is divided and shared between the federal and state governments. The federal government commands monetary policy and can enact laws to stimulate the economy by altering federal taxes and engaging in deficit spending to aid persons and jurisdictions. The federal government played the key

---

1 Barry, John 2004: *The Great Influenza*, New York.

roles in collecting relevant pandemic data from the states, providing public health guidelines for states, localities, and citizens, ordering and disseminating medical supplies, and organizing and funding vaccine development.

Most social welfare programs are intergovernmental, with the federal government paying half or more of the cost. Unemployment insurance, which was overloaded with claims during the pandemic, is a joint federal-state program. Child care, education, policing, emergency medical services, and small businesses, among other matters, come under the states' purview. They have the authority to close and re-open schools and businesses. They do not have clear authority to close their borders without federal consent because interstate travel is a federal matter, but many states required out-of-state arrivals to quarantine for 14 days, although it was difficult to enforce the quarantines.

The authority of county and municipal governments to take drastic measures varies among the states, but many big urban counties issued state-at-home orders (SAHOs) before their state government did so.

The U.S. Constitution contains no explicit provision for any federal branch to exercise emergency powers. However, Congress and presidents have found ways to assert some emergency powers. The National Emergencies Act (1976) terminated all previous emergencies and authorizes the president to exercise 136 specific emergency powers defined in the law and within procedural limits. A presidential emergency declaration can be ended by a joint resolution of Congress. The Public Health Service Act (1944) also includes some emergency powers.

Since enactment of the Federal Disaster Relief Act (1950), presidents have had authority to declare disasters. The significant federal disaster statutes are the Stafford Act (1988) and Homeland Security Act (2002). The leading federal agency is the Federal Emergency Management Agency (FEMA) created in 1979.

Ordinarily, a governor must request a disaster declaration from the president; under exigent circumstances, the president can issue a disaster declaration without a gubernatorial request. This unilateral presidential authority is unusual in the American system because many presidential decisions require consent or consultation with other officials. A disaster declaration authorizes the dispatch of sometimes substantial personnel, material, and financial aid to the affected jurisdictions. On 13 March 2020, Trump issued 57 disaster declarations for all states, Washington, D.C., and U.S. territories – the first all-state declaration in U.S. history. Past declarations covered only one state or a group of states affected by a disaster such as a flood.

The federal courts placed few constraints on states' emergency powers and on the federal government's pandemic responses. The principal U.S. Supreme Court ruling upholding state emergency responses to public health crises is *Jacobson v. Massachusetts* (197 U.S. 11, 1905), which upheld the authority of states to enforce compulsory vaccinations. During COVID-19, the U.S. Supreme Court issued several rulings requiring states to relax restrictions on religious institutions but otherwise did not interfere with federal, state, and local pandemic policies.

## 5 Disaster Preparedness and Responses

Compared to many countries, the United States was well prepared for a pandemic; however, President Trump was slow to deploy resources and less than efficient doing so later. He generally prioritized maintenance of the economy over suppression of the virus. In addition, the federal, state, and local governments had reduced funding for public health programs for decades.

The leading federal agency for pandemic responses is the U.S. Department of Health and Human Services, which houses the CDC, National Institutes of Health, Food and Drug Administration (FDA), and National Vaccine Advisory Committee. The U.S. Department of Homeland Security plays a role because FEMA and other relevant agencies are located there. The U.S. Department of Defense performs such functions as accelerating delivery of medical supplies to states and localities. The U.S. Department of the Interior oversees public health on 500 million acres of federal land and Indian reservations. All these agencies mobilized at varying speeds, and Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases since 1984, became the most televised and trusted voice on the pandemic. President Trump and Dr. Fauci had a tense relationship because Fauci sometimes contradicted Trump's messages. While running for president, Joseph Biden pledged to keep Fauci in his position, and did so.

The Public Readiness and Emergency Preparedness Act (2005) authorized more than 3 billion US-Dollar for pandemic preparedness. A Pandemic and All-Hazards Preparedness Act was enacted in 2006 providing for development of a National Health Security Strategy and a Biomedical Advanced Research and Development Authority. However, funding for most of the act's programs expired in 2018. President Trump signed a reauthorization of the act in June 2019. In 2016, President Barack Obama's administration developed a "Playbook for Early Response to High-Consequence Emerging Infectious Disease Threats and Biological Incidents." The Trump administration neglected it, relying instead on its own plans: a National Biodefense Strategy (2018), which was mostly goals rather than plans, and two plans generally viewed as flawed, a Biological Incident Annex (2017) and Pandemic Crisis Action Plan (2018). In an effort to coordinate federal-agency responses, Trump organized a White House Task Force on the Coronavirus led by Vice President Mike Pence.

None of the federal agencies or the task force are formally intergovernmental, although most have advisory committees that include state and local officials. Agencies such as the CDC have regularized channels of communication with state and local public health officials. The CDC also relies on those governments to report data regularly, such as COVID-19 cases, deaths, hospitalizations, testing rates, and vaccination rates. All of the states and many counties have public health agencies, although they vary in capacity and expertise.

## 6 Partisan Pandemic Responses

Most of the major federal, state, and local government responses occurred from mid-March to late April 2020 after the gravity of COVID-19 became apparent to public officials and citizens.

Most notable, however, was sharp political party polarization over COVID-19 among politicians and citizens. Generally, Democrats supported strict lockdowns to suppress COVID-19 and encouraged such behaviors as mask wearing. Generally, Republicans supported living with the coronavirus so as to maintain jobs and the economy and resisted state governments' mask-wearing mandates as violations of individual freedom. This polarization affected all aspects of intergovernmental relations and weakened pandemic responses. Partisanship was reflected as well in public responses to the coronavirus vaccine. A May 2021 poll, for example, found 32 percent of Republicans saying they would probably or definitely not get vaccinated compared to 8 percent of Democrats.<sup>2</sup>

Otherwise, the United States is not marked by deep multi-cultural diversity; however, blacks, Latinos, and indigenous peoples were affected more severely by COVID-19 than whites and Asians. This difference produced controversy, though conflict was channeled mostly through the party system because blacks, Latinos, and indigenous peoples are key voting blocs in the Democratic Party.

## 7 Federal, State, and Local Responses

The federal, state, and local governments acted at about the same time in March and April 2020. There was little conflict over which order of government should go first because governments acted largely independently along dual federalist lines within their spheres of authority. At first, there was little intergovernmental coordination but more coordination, especially among bureaucrats, developed fairly quickly. Bureaucrats are not as polarized as elected officials.

### 7.1 Federal Actions

Following President Trump's restrictions on international travel, his emergency and disaster declarations, and his signing of Congress's emergency supplemental appropriation on 6 March, and following the World Health Organization's declaration of a global pandemic on 11 March 2020, Congress passed six relief bills, the first five of which were enacted by huge bipartisan margins:

---

2 *AP-NORC Center for Public Affairs Research* 2021: Confidence in COVID-19 Vaccines Rises. May. [apnorc.org/projects/confidence-in-covid-19-vaccines-rises/](https://apnorc.org/projects/confidence-in-covid-19-vaccines-rises/).

- Families First Coronavirus Response Act, signed by Trump on 18 March 2020, providing 95 billion US-Dollar;
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (27 March) providing 2.2 trillion US-Dollar;
- Paycheck Protection Program and Health Care Enhancement Act (23 April) providing 484 billion US-Dollar; and
- Paycheck Protection Program Flexibility Act (5 June).
- Consolidated Appropriations Act providing 900 billion US-Dollar (27 December)
- American Rescue Act providing 1.9 trillion US-Dollar (11 March 2021).

Altogether, Congress provided about 750 billion US-Dollar of aid to state and local governments to fight and recover from the pandemic. The Federal Reserve (the U.S. central bank equivalent) initiated many stimulus programs, including 2.3 trillion US-Dollar in lending to support households, employers, financial markets, and state and local governments as well as a Municipal Liquidity Facility (MLF) for the state-local bond market. Although 500 billion US-Dollar was pledged to the MLF, few states and localities participated in the MLF because they obtained better or equivalent borrowing terms in the private markets.

The president conferred frequently with governors (although Vice President Mike Pence became the governors' preferred contact) and invoked the Defense Production Act on 2 April 2020, which enabled the federal government to expedite purchase contracts and loans for private companies to produce medical equipment and supplies needed for the pandemic. The president also expedited supply deliveries to states and localities and fast-tracked production of a COVID-19 vaccine. The U.S. FDA approved the first emergency use of a vaccine (Pfizer) on 11 December 2020. The CDC issued voluntary SAHO and other preventive guidelines for state and local officials. In taking these actions, the president did not substantially enhance executive powers or marginalize Congress.

By April 2020, the president was criticizing many governors, especially Democrats. He wanted them to end their SAHOs and re-open their states' economies. He called resistant governors "mutineers" and tweeted such messages as "LIBERATE MICHIGAN." By late June, gridlock settled in between the Democratic House and Republican Senate and between the president and congressional Democrats and some congressional Republicans.

For the most part, the federal government has not used the pandemic to augment intrusions into state and local powers. The federal government lacks constitutional authority to command a national response, and Presidents Trump and Biden largely left response responsibilities to the states. On 13 April 2020, Trump claimed he had "total" power to re-open states' economies, but he retreated the next day under heavy criticism. Similarly, President Biden, who pledged during his campaign to issue a national mask-wearing mandate, limited his mandate to federal lands and facilities and to public interstate transportation such as buses and aircraft. The first five bipartisan aid packages enacted by Congress and signed by Trump contained the usual conditions and structures of accountability attached to federal aid but no unusual regulatory leaps. However, under Biden, the Democrats' American Rescue Plan contained many regulatory conditions, including an unprecedented condition prohibiting states from using any of the act's 350 billion US-Dollar in State

and Local Fiscal Recovery Funds to cut taxes during 2021 through 2024. Several Republican state attorneys general filed lawsuits in federal courts to overturn this condition.

There was no supranational governance dimension to U.S. pandemic policy-making, except that the U.S. borders with Canada and Mexico were closed on 23 March 2020. Canada was expected to re-open its border with the United States for non-essential travel in August 2021.

## 7.2 *State Government Actions*

Many governors reacted to COVID-19 by mid-March 2020, usually without legislative approval. In 38 states, the governor can suspend certain laws during a disaster, but in 25 states, the legislature can terminate a governor's emergency declaration, and in six states, an emergency declaration ends within two to 60 days. Nonetheless, by fall 2020, about half of all state legislatures began considering bills to limit their governor's emergency powers.

Few legislatures constrained their governor's pandemic policies, and in some cases, governors vetoed legislative constraints. For example, Pennsylvania's Democratic governor vetoed seven bills passed by the Republican-majority legislature to reverse some of his policies. However, in May 2021, Pennsylvania voters were the first of any state to ratify two state constitutional amendments increasing the legislature's power over a governor's emergency powers. The legislature then ended the governor's 16-month state of emergency on 10 June 2021.

From 19 March 2020 when California issued the first SAHO to 7 April 2020, 43 governors issued SAHOs of varying scope and stringency. Of the first ten governors issuing SAHOs, nine were Democrats. The seven states having no SAHO had Republican governors. SAHOs required most residents to stay home, except for essential travel, and closed businesses deemed non-essential as well as some public functions, such as mass transit. Had governors and local officials not issued SAHOs in March, COVID-19 cases and deaths would have been higher. Most SAHO-issuing governors enjoyed public approval, although support ebbed as SAHOs endured.

Most state courts have not intervened in gubernatorial policy-making, although the supreme courts of Michigan and Wisconsin, which had Republican majorities, overturned most of their Democratic governor's SAHO in mid-2020, while Pennsylvania's Democratic supreme court upheld the Democratic governor's SAHO.

All the states with a Republican governor and Democratic legislature had a SAHO by 30 March. They were followed by states with a Democratic governor and Republican legislature on 1 April and Democratic trifectas (where the governorship and both houses of the state legislature are controlled by the same party) on 2 April 2020. Only 67 percent of Republican trifectas had SAHOs, and only by 31 July 2020. Republican trifecta states began reopening the earliest; Democratic trifectas reopened last. However, a few states re-asserted SAHO measures in response to case surges in October and November 2020. Democratic trifectas issued mask mandates much earlier than other states, although only

60 percent of states with a Republican governor and Democratic legislature and 43 percent of Republican trifectas mandated masks. Similarly, to date, vaccination rates have been higher in Democratic than Republican states.

Such partisan state responses contributed to gridlock in Congress over more relief. On 15 May 2020, the U.S. House passed a 3 trillion US-Dollar bill, which included about 950 billion US-Dollar for state, local, and tribal governments. The Republican Senate refused to consider the bill, arguing, in part, that it would bail out mostly Democratic states whose economic and fiscal straits were due to their own SAHO choices. Substantial aid to state and local governments was not provided until Democratic majorities in Congress and Democratic President Joseph Biden enacted the American Rescue Plan in March 2021 on a party-line vote.

States used their own funds and federal funds to ameliorate some of the economic and social consequences of their SAHOs, such as providing more unemployment benefits, subsidizing small businesses, and postponing evictions for non-payment of rent or mortgages. States also worked to mobilize private-sector resources for food banks and other welfare services.

States have been laboratories for some innovative policies, and some innovations diffused among some states, but party polarization limited diffusion. Otherwise, many states cooperated to coordinate policies, share medical equipment, engage in collective purchasing, and the like. Many states also loosened medical licensing rules to allow out-of-state medical personnel to practice in the state during COVID-19 surges.

### 7.3 Local Government Actions

Most local governments did not pursue policies substantially different from their state's policies, though many large urban-county executives and municipal mayors acted somewhat independently. San Francisco was the first U.S. jurisdiction to ban large gatherings on 11 March 2020. It joined five neighboring counties to issue the first U.S. SAHO on 16 March. Between then and 1 April, 136 counties (out of 3,031 counties) nationwide, accounting for 66.9 million people, imposed SAHOs before their states.<sup>3</sup>

County officials and mayors did not stray far from their legal powers or suspend customary accountability measures. Counties and big cities had primary responsibility for implementing state policies and providing direct services such as testing, contact tracing, and vaccinations. Many local governments helped mobilize resources for food banks and other services and provided grants and loans to small businesses. Many municipalities allowed restaurants to offer outdoor dining and closed streets to vehicular traffic for restaurants to do so.

3 Brandtner, Christoff/Bettencourt, Luis M. A./Berman, Marc G./Stier, Andrew J. 2020: Creatures of the State? Metropolitan Counties Compensated for State Inaction in Initial U.S. Response to Covid-19 Pandemic, Chicago: Mansueto Institute for Urban Innovation Research Paper, University of Chicago.

In some states, public schools were closed and re-opened by the governor; in others, decisions were left to local school districts. Most schools were closed during case surges, and many schools operated entirely online or with a mixture of online and in-person instruction. Most states also allowed universities and colleges to decide whether to welcome students on campus for the fall 2020 and spring 2021 semesters.

However, some conflict occurred between governors and local officials, especially those of different political parties. Most big cities are governed by Democrats, including those in states having a Republican governor and/or legislature. County and municipal Democrats resisted efforts by Republican state officials to end SAHOs, re-open the state economy, and overturn local mask mandates. In turn, some local Republican officials, such as county sheriffs, refused to enforce mask mandates and other measures emanating from Democratic state officials. Governors retaliated by threatening fund cutoffs and other punitive measures against local governments, as well as license revocations for non-compliant businesses.

One state-local conflict had catastrophic consequences for U.S. COVID-19 cases and deaths. In New York, Governor Andrew Cuomo and New York City Mayor Bill de Blasio, both Democrats, had clashed frequently before the pandemic. On 17 March 2020, De Blasio advised city residents to prepare to shelter in place, but Cuomo's office accused the mayor of "scaring people."<sup>4</sup> Cuomo preempted the mayor and delayed a state SAHO until 22 March. He also ordered elderly COVID-19 hospital patients relocated to nursing homes. On 11 June 2020, New York, with 5.9 percent of the U.S. population, had 6.0 percent of the world's COVID-19 deaths and 22.8 percent of U.S. deaths. As of 21 June 2021, New York City still had 397 COVID deaths per 100,000 population.

Counties, municipalities, townships, and school districts each have their own organizations (e.g., state municipal leagues) for fostering cooperation, communications, innovation sharing, and collective pressure on their state government and the federal government. These continued to function as usual, in part because most local governments shifted to online working fairly quickly. In some cases, online council and school-board meetings increased citizen attendance.

## 8 Intergovernmental Relations

State-federal relations were contentious in the political arena as President Trump jostled with the country's 24 Democratic governors and a few Republican governors. Under President Biden, federal-state relations became less contentious but not fully cooperative.

In the bureaucratic arena, cooperation largely continued as usual, such as cooperation between the CDC and state and local public health officials. Also, for example, the U.S. Army Corps of Engineers was praised for quickly constructing field hospitals to handle

4 *Vielkind, Jimmy/Palazzolo, Joe/Gershman, Jacob* 2020: In Worst-Hit Covid State, New York's Cuomo Called All the Shots, in: Wall Street Journal, 11.09.2020. [https://www.wsj.com/articles/cuomo-covid-new-york-coronavirus-de-blasio-shutdown-timing-11599836994?mod=hp\\_lead\\_pos6](https://www.wsj.com/articles/cuomo-covid-new-york-coronavirus-de-blasio-shutdown-timing-11599836994?mod=hp_lead_pos6).

case overloads in COVID-stressed localities. Since the demise of the U.S. Advisory Commission on Intergovernmental Relations in 1996, there has been no overarching intergovernmental institution, but intergovernmental mechanisms of varying types and robustness among federal, state, and local administrators as well as relevant private-sector stakeholders exist in virtually every policy field. COVID-19 did not adversely affect these mechanisms. These mechanisms are also important for communicating and sharing ideas and likely helped officials across policy fields to respond and adapt to COVID-19 such as new protocols for ambulance personnel, firefighters, and police.

States cooperated in many ways, especially on regional bases, although there was a period of intense competition for medical equipment and supplies during March-May 2020 when President Trump told the states to fend for themselves. The office of Michigan's governor dubbed the competition "the hunger games." Some states sought to alleviate the competition by forming joint purchasing arrangements. State officials also relied on their national associations, such as the National Governors Association, to share ideas, formulate policies, and lobby the federal government.

The rise of remote working generated tax conflict and competition between a few states where workers employed by an entity in one state worked remotely from their homes in other states. In October 2020, New Hampshire (a Republican trifecta), which does not tax earned income, filed suit in the U.S. Supreme Court against Massachusetts (a Democratic trifecta), arguing that Massachusetts' tax on the incomes of New Hampshire residents working remotely in New Hampshire is unconstitutional. Many commuter-connected states already have reciprocal tax agreements that resolve this issue, but a victory for New Hampshire could encourage many workers employed in or living in high income-tax states (which are more Democratic) to work remotely from states with no income tax or a lower tax (which are more Republican). This may be one reason why the Biden administration petitioned the Court to dismiss New Hampshire's suit. The Court did so in June 2021.

## 9 Intergovernmental Fiscal Relations

The first major federal-aid response to COVID-19, the 2.2 trillion US-Dollar CARES Act of March 2020, was extremely complex and allocated funds to governments, for-profit and non-profit entities, and citizens. CARES provided 150 billion US-Dollar directly to state, local, tribal, and territorial governments. This aid was distributed on the basis of population, though direct aid to local governments was limited to jurisdictions having more than 500,000 residents. States could use some of their CARES funds to help smaller local governments. No direct aid was in the form of a block grant, although 5 billion US-Dollar of local aid was funneled through the 47-year-old Community Development Block Grant program.

Most of the CARES funds were distributed through existing intergovernmental mechanisms and formulas, such as the federal-state unemployment insurance program. Little of the money was allocated according to COVID-19 case levels. All the CARES money was accompanied by the usual spending and accountability rules and regulations attached to federal aid.

The CARES Act and other spending resulted in a federal budget deficit of 3.1 trillion US-Dollar in fiscal 2020 (15.2 percent of GDP) out of 6.6 trillion US-Dollar in total spending, and total debt reached 102 percent of the nation's GDP (Committee 2020).

The Democrats' American Rescue Plan of 2021 provided 195.3 billion US-Dollar to states and Washington, DC; 130.2 billion US-Dollar for local governments; 20 billion US-Dollar for tribal governments; and 4.5 billion US-Dollar for U.S. territories. Again, most of the money flowed through established intergovernmental channels.

Overall, however, the pandemic had a much smaller negative impact on state and local government revenues than expected by most analysts. State revenues fell by 1.6 percent in fiscal year 2020.

## 10 Summary Conclusions

The U.S. response to COVID-19 was highly non-centralized, largely because President Donald Trump left most of the response duties to the states and because party polarization generated sharply different pandemic policy preferences across states and localities. This response pattern departed, therefore, from the tradition of cooperative federalism whereby federal and state officials work more closely to forge common guidelines and policy actions.

Dual federalism best describes the U.S. response; that is, pandemic-relevant federal agencies performed most of their customary public health functions while each state acted independently to formulate and implement COVID-19 policies.<sup>5</sup> The states' possession of the police power is a key feature of the federal system's dualist structure. States' governors especially used this power in unprecedented ways. There is no precedent in U.S. history for the SAHOs instituted by the states' governors and mayors to combat COVID-19. This expression of dual federalism also highlighted the continuing limits of federal power despite the centralization that has occurred in the federal system since its founding in 1788.<sup>6</sup>

The major weakness of this response pattern is that the United States has had one of the world's highest levels of cases and deaths. A most important rule for disaster response is clear, consistent, and trustworthy messaging. Such messaging was garbled by partisan polarization that generated often diametrically opposed COVID-19 messages and by diverse state and local policy responses conveying mixed messages to citizens. Further, the high levels of mistrust of governments and of each other displayed by Americans before the pandemic were exacerbated by mixed and combative messaging during the pandemic. President Trump set the narrative for Republicans by downplaying COVID-19's severity and focusing on opening the economy. Democratic governors in states with high case rates early in the pandemic framed the response for their party. Federal, state, and local

---

5 Kincaid, John/Leckrone, Wesley J. 2020: Partisan Fractures in U.S. Federalism's COVID-19 Policy Responses, in: State and Local Government Review, Vol. 52, No. 4, pp. 298–308.

6 Kincaid, John 2019: Dynamic De/Centralization in the United States, 1790-2010, in: Publius: The Journal of Federalism, Vol. 49, No. 1, pp. 166–193.

officials, and citizens, fell in line behind their party's narrative, and the fight against COVID-19 became a partisan battle throughout the federal system.

Although federal, state, and local executives played the leading roles during the pandemic, legislatures and courts still performed their customary functions as well as important pandemic functions, although most state legislatures will likely enact laws limiting executives' future emergency powers. However, due to partisan polarization, the federal government is unlikely to enact major reforms.