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## **Power to the States**

This Week in Washington

The Presidency

As Washington bogs down again in stalemate and bitterness, many states are taking up the slack. On issues such as gun control, legalizing marijuana and gay marriage, state governments are assuming, correctly, that Washington can't get its act together and are adopting policies that reflect what local citizens are comfortable with. The outcomes can be very different. In some places, gay marriage is welcomed; in others it is condemned. In some states, gun ownership is severely limited; in others, it is accepted.

The issue of abortion is being debated in a number of states, including Arkansas, Arizona, Missouri and North Carolina. In Indiana and Arkansas, there are battles over religious freedom versus the rights of gay people.

To conservatives, this is the way the federal system is supposed to work, with the states acting as incubators of solutions to society's problems, especially when the federal government can't find a national consensus.

Republican presidential contenders including former Florida Gov. Jeb Bush and Sen. Ted Cruz of Texas argue that this is a good development, one in which the states act as laboratories of democracy. This is the term used in 1932 by Supreme Court Justice Louis Brandeis, who served on the high court from 1916 to 1939. Brandeis argued that "[T]here must be power in the States and the nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs."

Brandeis also wrote, "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

These macro ideas resonate in politics today. Referring to the issue of whether the states should be able to legalize marijuana within their borders, Cruz told conservative commentator Sean Hannity, "I actually think this is a great embodiment of what [Justice] Brandeis called 'the laboratories of democracy.' If the citizens of Colorado decide they want to go down that road [which Colorado has done], that's their prerogative. I personally don't agree with it, but that's their right."

Cruz was also among scores of Republican legislators and religious groups to urge the Supreme Court earlier this month to uphold state bans against same-sex marriage, which the high court is considering. Much of the GOP argument rests on the concept of letting the states work out their own solutions rather than imposing a one-size-fits-

all approach from on high. On the other side of the issue, many gay-marriage supporters filed briefs arguing that fairness demands allowing same-sex marriage as a national policy. It's shaping up as a classic test of the extent of states' rights.

The point isn't that the states are marching in lockstep on same-sex marriage. It's precisely the opposite -- individual states are considering the same-sex marriage question based on conditions and values within their own borders. "How much better for this issue to play out, state-by-state, with citizens locked in urgent conversation," argues one brief, according to USA Today. "That is precisely what was happening before the courts began to intervene two years ago. The [high] court should let that process of self-governance continue."

It's not just that the individual states are experimenting with social policy. Just as important, if a state succeeds, other states can emulate what works and at some point the federal government can follow. This has happened in recent years when states originated important policies such as school vouchers, welfare reform, energy efficiency standards and health care reform. Individual states have their own battles over policy but they are often not as bitter and relentless as the ones in Washington, which have led to frustrating deadlocks between President Barack Obama, a Democrat, and Congress, which is controlled by Republicans.

In a case of the federal government following a state's lead, Obama announced an initiative in January to pay for many students to attend community college, which he based on a program in Tennessee. Republicans weren't eager to impose the program nationwide but they said it might make sense in individual states.

Overall, there's a lesson here for political leaders in Washington: Find solutions or the states may do it for you. It's an idea as old as the Republic.

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By Kenneth T. Walsh

BURLEIGH, NINA. "Those Nutty Nullifiers." *Newsweek Global* 164.23 (2015): 20. MasterFILE Premier. Web. 12 Aug. 2015.

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## **THOSE NUTTY NULLIFIERS**

### **Formerly fringe ideas are going mainstream in some states**

REPUBLICAN presidential candidates gathered last month at the Oklahoma City Cox Conference Center, just a few blocks from the site of what was the Alfred R. Murrah Federal Building. Two decades ago, anti-government militia sympathizer Timothy McVeigh blew it up in what he called an act of war against the U.S. government. It was the worst crime of domestically bred terrorism in American history. McVeigh was executed in 2001, but since then, some of his militia ideals have gone mainstream and even been introduced as laws in many states, including Oklahoma.

Legislators in dozens of states have submitted proposals to nullify or block federal laws—a longtime goal of militias. These have included exempting states from federal gun laws and educational standards, as well as, of course, Obamacare. That doesn't make these anti-federal statutes part of McVeigh's madness, but Republican politicians now often echo conspiracy theories once relegated to troglodyte pamphlets. And several states have passed laws making gold a currency—a step toward returning to the gold standard—even though currency is a federal responsibility.

When Cliven Bundy engaged in an armed standoff with Bureau of Land Management agents in 2014, after a federal court order demanded he get his cattle off federal land, as he hadn't paid grazing fees for 20 years, several of the current Republican presidential candidates sided with the outlaw. As armed militia members converged in Nevada to protect Bundy, Senator Ted Cruz of Texas called the events "the unfortunate and tragic culmination of the path President Obama has set the federal government on." Rick Perry, then the governor of Texas, said: "I have a problem with the federal government putting citizens in the position of having to feel like they have to use force to deal with their own government." Mike Huckabee opined: "There is something incredibly wrong when a government believes that some blades of grass that a cow is eating is [such] an egregious affront to the government of the United States that we would literally put a gun in a citizen's face and threaten to shoot him over it."

Tarso Ramos, executive director of Political Research Associates, which tracks right-wing extremism, says formerly fringe ideas became mainstream after McVeigh's assault—just not right away. "The Oklahoma City bombing had a sobering effect for a while," he says. "Then, with the election of Obama, you get a whole new wave of Patriot [militia] activity and a new variant of conspiracy-ism, including the birther stuff and the idea that Obama is an agent of powerful elites."

The surge in fringe activism was so dramatic after Obama's election that the Department of Homeland Security issued a warning in 2009 predicting that right-wing extremists would multiply and "the consequences of their violence [could be] more severe." The report was withdrawn after an outcry by conservatives.

Militia sympathizers today have the ears of many Republican politicians. Texas Governor Greg Abbott vowed to keep watch on the U.S. military this spring as it runs a series of war games called Jade Helm 15. Some Texans sensed an armed federal takeover of the Lone Star State and demanded action. Cruz said of their fears, “I understand the reason for concern and uncertainty, because when the federal government has not demonstrated itself to be trustworthy in this administration, the natural consequence is that many citizens don’t trust what it is saying.”

The nullifiers fear Washington and the United Nations. Anti-U.N. anxiety dates back to the John Birch Society, but today some of those doing the raving are lawmakers. State legislators and local officials have passed dozens of laws barring implementation of Agenda 21, a nonbinding 1992 U.N. white paper about environmental sustainability. President George H.W. Bush and the leaders of 177 other nations signed it.

Twenty years later, the Republican National Committee in 2012 denounced Agenda 21 in a resolution as a “destructive and insidious scheme” that would impose “socialist/communist redistribution of wealth.” Cruz, a presidential candidate, claims Agenda 21 would “abolish” golf courses and paved roads. Last year, Oklahoma lawmakers passed an Agenda 21 nullification law.

Conservatives are also using the 10th Amendment—which reserves powers for the states not mentioned in the rest of the Bill of Rights and the Constitution—to audaciously challenge federal authority. In 2004, a Montana gun enthusiast named Gary Marbut found another use for the 10th Amendment: pushing a bill exempting guns manufactured and retained in Montana from federal regulation. The bill in 2009 became a law called the Firearms Freedom Act, which declared that federal gun laws did not apply. A half-dozen other states soon followed suit. A survey by ProPublica in 2012 found that 37 states have since passed laws circumventing federal gun laws and 12 states are considering so-called Second Amendment Preservation Acts, which would nullify federal gun laws altogether. In some cases, the state laws have criminalized federal agents who try to enforce the federal laws. Versions of that twist passed in Kansas, Alaska and Idaho.

Besides freeing guns from Washington’s control, there are bills nullifying Obamacare, the National Security Agency and Common Core State Standards, as well as federal laws on environmental standards, marijuana and tracking license plates. The federal government is “diving off into areas unchecked that they’re not supposed to be involved in,” said Montana state Representative Krayton Kerns, who introduced a bill in 2013 to limit the ability of local police to help enforce federal laws. “Not only is it our right in state legislatures to do this, it’s our obligation to do it,” Kerns told NBC News. “Somebody’s got to put a ‘whoa’ on it.” Oklahoma Attorney General Scott Pruitt is such a nullification enthusiast that he created a separate “Federalism Unit” devoted to fighting federal government “abuses of power.”

Oklahoma joined Utah and Arizona last summer in giving a glimmer of hope to fans of another goal of the militia world—returning America to the gold standard. In 2014, Oklahoma made it law that “gold and silver coins issued by the United States government are legal tender in the State of Oklahoma.” Similar proposals are being pushed in at least a dozen states.

When I asked Oklahoma Governor Mary Fallin about the gold currency law she signed, she deferred to her press secretary, Alex Weintz. He later emailed to say the governor’s counsel reads the law as one that would help gold investors— not necessarily promote the use of gold as money. But Michael Boldin, founder of the libertarian Tenth

Amendment Center, writes that by passing the law, Oklahoma “took the first step towards following the tender requirements of the Constitution and nullifying the Federal Reserve’s near-monopoly on money.”

There are some intriguing similarities between the current political climate and that of the mid-’90s, when McVeigh gathered up the fertilizer for his Ryder truck bomb. Back then, as now, a Democratic president presided over an improving American economy, and his popularity provoked the fear and loathing of an edge of the right-wing political spectrum contemplating—and occasionally engaging in—armed resistance.

Then, as now, the number of anti-government armed resistance groups was at a watermark high. According to the Southern Poverty Law Center (SPLC), the amount of Patriot militias peaked at 858 in 1996, just after McVeigh killed 168 people, including children, in the heart of Oklahoma City. The militia tally fell almost immediately—a consequence, analysts say, of shame over the horrific act, followed by new fears of Islamic terrorism, which in the minds of some militia members made the American government look like the lesser of two evils.

Then came Obama. Since his election in 2008, the number of anti-government extremist groups tracked by the SPLC has risen to another record high, 874.

Ramos says he and his colleagues believe the difference now is that fringe rage is being channeled into a larger right-wing populist movement. “The Tea Party represents this coalition between those working in the formal system and those focused outside—white nationalists who depict Obama with a Hitler mustache,” Ramos says. “What’s happening now is a little hard to say, but there are strong indicators that the forces that redirected a lot of that energy into the formal arena of politics do not hold the sway that they once did. The ability of formal politics to deliver sufficiently to appease the most hard-line elements at the base almost never succeeds in the long run.”

To suggest that today’s tyranny rhetoric bears any link to McVeigh-style violence provokes outrage among conservatives, and Wichita State University political scientist Neal Allen, who has studied nullification laws past and present, says the politically active new-model nullifiers do differ from their anti-government precursors. “There is a lot of distance between Timothy McVeigh and attempts by state government to block or limit federal power, not least because Timothy McVeigh was coming from a clearly racist position,” he says.

Allen says the most tangible problem with the GOP’s absorption of all this extremist rhetoric and goals is not that it encourages more violence but that it obstructs the normal ebb and flow of politics. When politicians court a base that believes the federal government is the enemy, it becomes nearly impossible to negotiate. Judging by the gridlocked committee rooms of the Capitol, that metaphorical truck bomb has already detonated in the heart of the American political process.

PHOTO (COLOR): SHOWING THE MCVEIGH: Some of the fiery, conspiracy-laden rhetoric behind the 1995 bombing of a federal building in Oklahoma City is now popping up in state legislatures.

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## **The New Commons: Jeffersonian Republicanism for the 21st Century, *The New York Times***

By SCOTT COHEN

The founders of the United States harbored varied, and often disparate, ideas about the future of their nascent country. Federalists, such as Alexander Hamilton, sought a strong central government willing to embrace capitalism and use government institutions to further economic prosperity. Thomas Jefferson's Republicans, on the other hand, believed a strong republic consisted of several sovereign state governments founded upon widespread property ownership. Hamilton, Jefferson, and many other influential thinkers greatly shaped the nation's political and economic future. But it is the foundation of Jefferson's republican vision – the yeoman farmer – that has left the indelible mark upon our country's civic psyche. The small-scale property owner, economically independent and politically vested in the nation's future, continues to represent the makings of the ideal citizen. How many Americans, however, are economically independent today? And, if we are truthful, how many are politically vested in the country's future? Everyone will answer these questions differently but we might all agree that one answer is, "not enough."

How then might we reignite civic passion among our nation's disengaged? Past generations have seized upon Jefferson's vision of widespread property ownership to extend the rights and responsibilities of citizenship to more Americans. In 1862 Congress passed the Homestead Act, granting 160 acres to any American who would settle the land and improve upon it, usually through farming. Many variations followed: the Carey Land Act, the Desert Land Act and the Reclamation Act, to name but a few. Though those legislative initiatives all differed, in spirit they found common ground with Jefferson's republican ideals. So, should Congress enact a Homestead Act for the 21st century? Acreage for any person willing to put in several years of hard work? No, but we, as citizens (including our local, state and federal legislators), should call upon that same republican spirit to invigorate our civic institutions.

We can start thinking about public lands as a new "commons," thus empowering communities to implement their own visions for the places where they live. Citizens need not be economically independent or even property owners, but they do need to have a vested interest in their homes and communities.

To a great extent, the United States is still locked in Progressive era thinking. We allow scientific or policy specialists to initiate the bulk of the country's environmental and land-use strategies, rarely involving citizens in the planning process. Although procedures force the bureaucracy to solicit public opinion, this almost always occurs after a plan has been designed. Citizens are simply asked whether they like or dislike the plan. Unfortunately, this greatly resembles the conceived bedrock of our democratic institutions: voting. "Yes or no" we are asked, and rarely anything more.

By bringing disparate interests together to plan for the present and future communities earn civic empowerment. American democracy and civic engagement are founded upon dissent and debate. Colonial Americans often disagreed with their government, and constantly argued about the best way to solve the growing rift. Our country was founded upon an intellectual revolution; we are the children of democratic dissent, debate and policy. Asking all

citizens to come to the table to plan for their community's future might seem unwieldy, but it may also inspire people to re-engage with the civic institutions and policy debates that our republic is founded upon.

In "Where Land & Water Meet: A Western Landscape Transformed," the ecologist and historian Nancy Langston explores a century of top-down environmental management failures in Southeast Oregon's Malheur Basin. In the late 1990's, however, several groups with very different interests came together to formulate a management plan for Steens Mountain, the headwaters for much of the Malheur Basin. Ranchers, environmentalists, recreational organizations and government scientists and policy makers all convened to initiate management strategies for their community. It was an arduous task and the work is far from finished, but citizens who once relied on the federal bureaucracy or the court systems to resolve disputes found themselves working together, planning for their community's future. Dr. Langston uses this example to underscore the importance of community-based environmental policy-making. Citing American pragmatist thinkers such as William James and John Dewey, Dr. Langston explains that "the answer is not simply to give complete power to communities but rather to institute a democratic process that creates a structure for useful conflict. A democratic process...should both empower multiple voices and devise a method for negotiating the conflict those multiple voices soon lead to." Such adaptive management styles can avoid the pitfalls of inflexible policies devised solely by specialists without community input.

In empowering citizens to come together to plan for their community's future, the stakes are undoubtedly raised, but civic engagement is not cheap and easy. It requires patience, critical thinking, and perhaps most importantly, a commitment to community. Some might argue that those attributes must come before allowing citizens to set environmental and land-use policies. However, historical citizenship, environmental stewardship and civic engagement are all intricately linked. As a person becomes more aware of his or her place, the stories behind that place and the relationships (both human and natural) within the place, a sense of ownership, responsibility and pride emerge. I have seen it in myself since arriving in Oregon. The state's bold experiments in direct democracy, regional government and urban management have changed my entire perspective on civic engagement. Oregon still has a long way to go. Our environmental and land-use policies are often proposed without citizen input and the debates are frequently dualistic. But communities, such as the Steen Mountain/Malheur Basin area, are beginning to take policy matters into their own hands, proposing strategies to their elected officials rather than the other way around. This is a good sign and example for instilling civic pride back into our communities. Let's revel in the mud of dissent and debate, emerging empowered to take responsibility for the future.

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