

fact that it can be too much like us. In its usual simplicity and economy of chords, it offers up to player and listener alike a musical structure so elemental that it puts a premium on the lyrics. And those lyrics force us to look inward rather than away, to introspect rather than project. Looking away is almost always easier, but it is a direction from which we have less to gain. Blues artists at the level of Muddy Waters and Howlin' Wolf do a lot of heavy lifting for you. They are our muscle men of the night, when black shades to purple.

Music is supposed to be less than or different from that. It's supposed to entertain and buoy us, not make us wince and weep. Most music is like the smells and sounds of a sunlit kitchen where a cook makes breakfast for the expectant; the blues is the broom sweeping out the mess after everyone's done and we're left alone past dusk. The blues, as someone said, "lives upside your head." Perhaps that's why it's so hard to study. 🎸

Colin Fleming is a regular contributor to NPR's *Weekend Edition* and the author of *The Anglerfish Comedy Troupe: Stories from the Abyss, which comes out in August.*



RETROVIEW

The Centralization Paradox

Patrick S. Roberts

On this past January 12, Martha Derthick passed away at the age of 81. Obituaries duly appeared in the American elite media: *Washington Post*, *New York Times*, *Wall Street Journal*, and so on. Save for dyed-in-the-wool political scientists and political theorists, readers of those publications had mostly never heard of Derthick. In death she did not even rate the standard Warholian 15 minutes of fame—it takes five minutes at most to read a 700-word obit. Lots of obituaries fall into this category: people who were renowned

in their professional guild for one reason or another, but who never cracked the surface of American celebrity culture to become known outside of it.

The fact that Derthick was not famous outside her professional circle probably says something about broader trends in American society and politics. Derthick was for many years one of the ablest expositors of the Anti-Federalist tradition in American political thought, a tradition that lives on in the form of resistance to the overweening power of the presidency and the creeping centralization of government authority in Washington. Her work shows why federalism remains part of the core of American identity and the bedrock of the Constitution's commitment to self-government. It also shows why the distortion of the balance within American federalism lies at the root of the political distemper we have experienced in recent times.

The matter so far sounds simpler than it is. Derthick, who was a protégé of Edward Banfield and a colleague and friend of James Q. Wilson, was no simple thinker. Many observers have argued that what's wrong with the U.S. political system is that it has too weak an Executive Branch relative to the Legislative and Judicial Branches. From Samuel Huntington to Francis Fukuyama, the argument has been that we are a "Tudor" polity heavy with "parties and courts", that Federal and state bureaucracies are hidebound and slow because, unlike most European and other democracies, they are encumbered by mounds of pointillist but often pointless and inconsistent directives from lawmakers and judges. The more nuanced question, then, is this: Can the American political system be *simultaneously* overbalanced toward the central, Federal government and yet still suffer from a relatively weak Executive? Martha Derthick understood perhaps better than anyone that it could.

Anti-Federalists such as Patrick Henry and George Mason were formally those who opposed the ratification of the Constitution and a strong central government. They were dismayed at how much power some framers of the Constitution wanted to take away from the states. More broadly, they worried that the complexity of the new government, and particularly the separation of powers, would obscure the re-

sponsibilities of politicians to their constituents and their lines of accountability to the public at large.¹ In other words, in the original tension, as understood by the Founders, between a republican form of government and a democratic form, the Anti-Federalists leaned somewhat optimistically toward the latter.

Martha Derthick never referred to herself as an Anti-Federalist. Like most people today, she quoted the famous Federalists such as James Madison far more often than she cited the Anti-Federalists.² In some sense, Americans are all Federalists now, at least in the sense that we are all members of one nation governed under the Constitution (a post-Civil War amended Constitution at that). If Anti-Federalism is merely a collection of historically specific and partisan ideas then it is a museum piece, an artifact in the history of ideas. If, however, Anti-Federalism represents an orientation toward power that favors the local and is suspicious when authority is concentrated and concealed, then it is part of a debate in which we are still engaged. Elvin Lim has aptly described the ongoing debate between the inheritors of the Federalist and Anti-Federalist traditions as a “Lover’s Quarrel” that traverses political parties and ideologies throughout American history.³

Derthick did not want to return to the Articles of Confederation, but she did favor the parts of the Constitution that protected the sovereignty of the states—the foundational crucibles of self-government in a large, extended republic. She used her knowledge of the founding period to shed light on how far America had drifted from its original constitutional design, particularly through the erosion of local deliberation by commandeering profiteers masquerading as advocates of rational design and the public interest. Her position should not be confused with states’ rights arguments. Like Madison, she was critical of state legislatures as founts of political demagoguery, but like the Anti-Federalists she worried that the same forces could infect national politics.

Her work highlights one of America’s central contributions to the world: how decentralized federalism can preserve liberty in a large republic, and how each citizen can maintain

the delicate balance of being a member both of a state and of a larger nation. American federalism offers hope to nations crippled by regional differences and overbearing central governments: the benefits of a small republic through membership in states and the benefits of a large republic through membership in one nation. In recent decades, however, federalism’s benefits—civic deliberation and laboratories of democracy—have been themselves crippled by an increasingly national, centralized, and presidentialized political culture.

The principal lesson from Derthick’s work is that policy interventions invariably have unintended consequences. At their best, policymakers anticipate consequences and plan for contingencies. At their worst, they ignore or even conceal the self-serving consequences of their proposals. For example, the end of smoking in airplanes, bars, and restaurants in the United States is considered a triumph for public health. Derthick’s *Up in Smoke* reminds us of the knavish tricks that led to this triumph. Crusading state Attorneys General and trial lawyers joined forces to extract riches from the 1998 Master Settlement Agreement (MSA) that sharply increased taxes on cigarette sales

¹The author would like to thank Gareth Davies, Joshua Dunn, Elvin Lim, Robert Saldin, and this journal’s editors for their helpful comments on drafts of this essay. Herbert J. Storing, *What the Anti-Federalists Were for: The Political Thought of the Opponents of the Constitution, Vol. 1* (University of Chicago Press, 1981); Derthick, Review of “Ratifying the Republic: Antifederalists and Federalists in Constitutional Time”, *Journal of Politics* (November 2004).

²Derthick, “Roosevelt as Madison: Social Security and American Federalism”, in *Keeping the Compound Republic: Essays on American Federalism* (Brookings Institution Press, 2001); David Epstein, *The Political Theory of The Federalist* (University of Chicago Press, 1984).

³Lim, *The Lovers’ Quarrel: The Two Foundings & American Political Development* (Oxford University Press, 2014).

⁴Derthick, *Up in Smoke: From Legislation to Litigation in Tobacco Politics* (CQ Press, 2001).

and created a powerful constituency that benefits from the tobacco industry.⁴ State governments now have a substantial interest in seeing revenue from smoking continue.

The tobacco settlement shows the prescience of the Anti-Federalist concern that judicial decrees replace democratic deliberation when politicians opt for expedient solutions. (Here is a stellar example from Derthick's analysis of how a bias against excessive centralization and an appreciation of a weak executive can coexist happily, even as they produce decidedly unhappy consequences.) Prior to the ratification of the Constitution, one Anti-Federalist, writing under the name of Brutus, warned that judges would not limit themselves to the plain meaning of laws and the Constitution, but would reconstruct words according to their "spirit." Interpreting laws according their spirit and applying them to new contexts may seem perfectly reasonable. The Founders never envisioned the internet, or drone spy cameras, for instance, and judges must apply law to changing contexts. But Brutus and the Anti-Federalists worried that judges and politicians—the Tudor "courts and parties", again—would take advantage of laws and rules to satisfy their own narrow interests in ways not intended by the public mandate behind the original law or the Constitution. They were indeed prescient.

At the founding, states and the national government each had separate spheres. The national government pursued foreign policy, and the states formulated education, health, and welfare policies, among others. In modern federalism, the spheres overlap. States and the national government share responsibilities for a range of activities. Politicians at all levels of government propose policies to meet public concerns, and they attempt to shift costs to other levels of government or institutions. In the case of the tobacco settlement, state Attorneys General shifted the cost of public services to addicted smokers, who paid increased taxes on tobacco products.

Like the Anti-Federalists, Derthick's sympathies lie with local communities and, through them, with the principle of subsidiarity. But to principle she joined the practical: Local governments, being at the bottom of the political food chain, have less opportunity to outsource the

financing and implementation of their goals than do states or the Federal government. Alas, over time, local governments have lost significant control over setting their own priorities.⁵ With the capillaries of the body politic thus impaired, the entire body has suffered.

To show this ill health, Derthick's first book unpacked the development of the usually uninspiring topic of federal grants-in-aid with her characteristic verve and humor.⁶ She described early public assistance grants to states as entreaties to change their behavior. As befits her Anti-Federalist sympathies for subnational governments, she characterized intergovernmental relations as a diplomatic rather than a hierarchical process:

Federal enforcement is a diplomatic process. It is as if the terms of a treaty, an agreement of mutual interest to the two governmental parties, were more or less continuously being negotiated. In these negotiations, numerous diplomatic forms and maneuvers are observed, especially by the federal negotiators.

Her vision of intergovernmental relations was one of polite discussion, continuous negotiation and accommodation, and threats held in reserve. The Federal ability to withhold funds "is in fact one of the major resources of federal influence—but it is of use mainly as a potential resource. It lies at the foundation, as a weapon in reserve, of all federal enforcement activity, and the nature of that activity is such as to make the best possible use of it."

In Derthick's view, what began as a reasonable adaptation of federalism to a new era of national government expansion has become, in its worst iterations, a club that the Federal government can use to beat the states into submission without opportunity for public involvement. For example, Congress and the President went too far in demanding state compliance to

⁵See Joshua M. Dunn, *Complex Justice: The Case of Missouri v. Jenkins* (University of North Carolina Press, 2008).

⁶Derthick, *The Influence of Federal Grants: Public Assistance in Massachusetts* (Harvard University Press, 1970), pp. 209–10.

education reforms in the initial get-tough period of No Child Left Behind.

At the same time, she observed, the Federal government's authority to selectively enforce laws by granting waivers poses problems for the rule of law. Executive waivers have an uncontroversial origin as a tool to adapt Federal government involvement to differences among states.⁷ If waivers are used often and selectively, however, they raise questions about why a law is not applicable to all citizens, or why it is a law rather than just a good idea. President Obama has issued more than a thousand temporary waivers exempting businesses and labor unions from various provisions of the Affordable Care Act. The constitutional source of the President's right to issue waivers to laws is murky at best. At worst, the President's unilateral suspension of the law threatens the rule of law itself.

Government works best, in Derthick's view, when it operates through deliberation at the lowest possible level. Citizens can more easily observe government operations at the smaller scale, look their chosen representatives in the eye, and together decide what their communities should do through discussion and debate. Where local action is not possible or desirable, national level programs should be given clear goals, and, above all, Executive Branch agencies should hit the sweet spot between too much autonomy and too little.

Thus, in *Agency Under Stress*, Derthick shows how the Social Security Administration suffered from a lack of innovation when it was the domain of experts alone.⁸ So yes, bureaucrats can be henpecked by "courts and parties", to be sure, but left alone they can be highly inertial, too. This led Derthick to the conclusion that experts should be on tap, not on top. In other cases, politicians, judges, and advocacy lobbies henpeck relentlessly, hobbling administrative agencies so severely that they cannot see straight or work effectively. For example, Derthick pointed out the absurdity of bureaucracy-ensconced school reformers who purport to improve student achievement by punishing the teacher workforce.⁹

Honest observers can differ on whether the generic problem with bureaucracy is too much autonomy or too little, but the problem isn't really amenable to generic determination. Each situation is different and things change;

Derthick understood that. Nevertheless, she believed that the lack of transparency in state and national policy should be cause for concern for anyone who holds democracy to be the best form of government because it offers citizens informed consent. If democratic decision-making processes are transparent, the rules of the game are clear, and citizens have an opportunity to debate and discuss the wisest course of action, then, rational apathy given its due, democracy can provide for informed consent. If the authors of policy hide behind the scenes, or bury their designs in obscure "tax credit" amendments, the authority for government action becomes unclear, special interests have a field day, and citizens are pushed away from meaningful participation. Then the political process fails at offering the meaningful informed consent that gives the political system legitimacy.

The Anti-Federalists worried that the Constitution would oppress people from two directions. They suspected that the legislature would be unable to stand up to the unchecked power of the Supreme Court, and they feared that the populist presidency would grow in power until it overwhelmed popular rule and sober self-government. Such concerns have risen to high collective consciousness many times in American history. The trope of the "imperial presidency" rings out from Lincoln to FDR to Richard Nixon. Several contemporary observers of the American political scene have predicted that, if the United States government were ever to fall, a despotic presidency would be to blame.

Derthick did not frame her criticism of American politics in such apocalyptic terms, but she did worry that the rise of a populist presidency could obscure how policy is actually

⁷Thomas Gais and James Fossett, "Federalism and the Executive Branch", in *The Executive Branch*, Joel D. Aberbach and Mark A. Peterson, eds. (Oxford University Press, 2006), pp. 486–524, at 508–11.

⁸Derthick, *Agency Under Stress: The Social Security Administration in American Government* (Brookings Institution Press, 1990).

⁹Derthick and Andy Rotherham, "Obama's NCLB Waivers: Are They Necessary or Illegal", *EducationNext* (Spring 2012).

made and put too great a distance between citizens and the policy process. A populist American President appears on television and video daily as a sponsor of grandiose policy proposals: free community college education; a mission to Mars. The populist-style President himself is a product of the cauldron of election contests that demand ambitious proposals but offer hazy details on implementation or any reasonable metric as to how such proposals might be evaluated. This sort of President nowadays invariably gets absorbed into an electronic celebrity culture saturated by advertising language. Nowhere is this form of political theater more evident than in recent education policy, where proposals for reform—first charter schools, then school choice and vouchers, then smaller class sizes—appear as “flavors of the month” without enough time having passed to evaluate their effects. Meanwhile, laws emerge behind the scenes from issue networks rather than the minds of lawmakers.

The presidentialization of everything has spread beyond health, welfare, and education to other domains, including disaster management.¹⁰ At the founding, disaster management was a responsibility for states and localities, if for the government at all. Today, the President is the responder-in-chief to any major disaster, from floods to hurricanes to oil spills.¹¹ Disasters make for good news stories, and responding to them is one way in which the President and the Federal government can palpably affect citizens’ lives and deliver benefits. The President cannot issue “waivers” in disaster management, but he does have sufficient discretion to issue “declarations” that trigger Federal resources to flow and pre-planned protocols to spring into action.¹² The number of disaster declarations has increased over time. While “no dough for snow” was once a rallying cry at the Federal Emergency Management Agency, it is now routine for the President to declare snow disasters.

In emergency management, as in the tobacco settlement, politicians sometimes derive benefits from a social ill. Disaster losses offer politicians an opportunity to come to the rescue. It is too perverse to say that politicians hope for disaster losses, but they do have more incentives to respond ably than to take steps to prevent disaster losses in the first place by, for example, limiting development in flood plains and other

risky locations. Questions about how to manage sustainable development, however, depend on context and buy-in rather than on rational planning.¹³ These decisions are best left to communities, which can draw on expert guidance to come to their own decisions about implementation.

Making the presidency the locus of policymaking in areas previously reserved for the states, such as education or welfare, risks closing off avenues for participation and for creative implementation in different regions. Critics of the contemporary Anti-Federalist approach might point out that state legislatures, elected judges, and city councils are even more likely to be captured by special interests than Presidents.¹⁴ In reply, a defender of local and state prerogatives would point out that centralization is at best a temporary fix to special-interest control, and often no fix at all. Derthick’s study of the Federal and federalized tobacco settlement shows how mercenary state officials engaged in a “race to the trough” of tobacco settlements.

Today’s term “special interests” conveys just what the Anti-Federalists were worried about. The best way to defeat narrow, particularistic interests is to reinvigorate participatory processes, electoral contests, and opportunities for

¹⁰Patrick S. Roberts, *Disasters and the American State: How Politicians, Bureaucrats, and the Public Prepare for the Unexpected* (Cambridge, 2013).

¹¹Roberts, “Our Responder in Chief”, *National Affairs* (Fall 2010).

¹²Francis X. McCarthy, *FEMA’s Disaster Declaration Process: A Primer*, Congressional Research Service, November 12, 2014; Naim Kapucu, Montgomery Wart, Richard Sylves, and Farhod Yuldashev, “US Presidents and Their Roles in Emergency Management and Disaster Policy 1950–2009”, *Risk, Hazards & Crisis in Public Policy* (October 2011).

¹³Kristina Ford, *The Trouble with City Planning: What New Orleans Can Teach Us* (Yale University Press, 2011); Martha Derthick, “Where Federalism Didn’t Fail”, *Public Administration Review* (December 2007).

¹⁴Alexander Hertel-Fernandez, “Who Passes Business’s ‘Model Bills’, Policy Capacity and Corporate Influence in US State Politics”, *Perspectives on Politics* (September 2014).

interaction with the bureaucracy that implements laws and policy. This doesn't mean that more democracy can always solve the problems of democracy; sometimes opening the policy decision process just makes it easier for well-organized groups to employ the logic of collective action to accrue even more political leverage.¹⁵ But it does mean that shutting the citizenry out of the process will ultimately undermine the legitimacy of the government as a whole.

Derthick's *The Politics of Deregulation* offered a salutary example of how the public policy process can serve the public interest rather than narrow, particularistic interests. She explains in that book why the time was ripe for a consensus among economists to lead to deregulation of the trucking, banking, and airline industries in the late 1970s.¹⁶ Economists agree about many topics, but only occasionally do their ideas lead to policy change in the general interest.¹⁷ The rise of expertise in government, new communication technologies, and, most importantly, arguments that served both the Left and the Right propelled deregulation from the realm of expert ideas to policy action. Though often associated with conservatives, deregulation proceeded apace during the presidency of Jimmy Carter. Derthick's portrayal of how deregulation came about defied the stereotype of government agencies as slow to change. She showed how ideas can persuade bureaucrats to join coalitions for reform. Here, as in other cases, she was at pains to show how settled truths about political behavior are often not true at all.

Reading through Derthick's oeuvre shows the virtues of an orientation toward political power that leans more Anti-Federalist than Federalist. She recognized the advantages of nationhood but observed that democracy is best practiced when power is local, transparent, and, as much as is possible, open to all. Nevertheless, she understood well the dark side of political subsidiarity. She drew attention to the fact that the "tenacity and violence of southern resistance to changes in race relations gave federalism a very bad name. . . . When a system of decentralized power was seen to produce flagrant violations of fairness (now literally seen on national television), the system itself was discredited."¹⁸

Derthick came of age during the civil rights struggle, when claims for states' rights fell under suspicion of being covers for racism and the preservation of what was a *de facto* single-party system. She completed her Ph.D. under the direction of V.O. Key, a scholar of American elections at Harvard, but Edward Banfield employed her to assist in compiling reports on the politics of cities.¹⁹ Banfield soon became embroiled in the racial politics of the 1960s by writing a book about why the tall and foreboding, racially segregated Chicago housing projects were doomed to make the problems they intended to solve worse. This view is now conventional wisdom, thanks in no small part to the pioneering anti-social engineering work of *The Public Interest*, which twice hosted Derthick essays. But at the time it brought down a virulent, early form of political correctness on Banfield's head that followed him from Harvard to Penn. Perhaps this perspective on university life is what helped Derthick decide to spend much of her career at the Brookings Institution, where she served as director of its Governance Studies Program from 1978 to 1983. She ultimately returned to university life as a chaired professor at the University of Virginia and continued to write articles and books and take an interest in students even after her formal retirement in 1999.

Derthick described herself as a journalist by temperament and method, a disposition

¹⁵See Bruce E. Cain, "Populist Illusions and Pluralist Realities", *The American Interest* (November/December 2014).

¹⁶Derthick and Paul J. Quirk, *The Politics of Deregulation* (Brookings, 1985).

¹⁷Eric Patashnik and Alan S. Gerber, *Promoting the General Welfare: New Perspectives on Government Performance* (Brookings Institution Press, 2006); Patashnik, *Reforms at Risk: What Happens After Major Policy Changes Are Enacted* (Princeton University Press, 2008).

¹⁸Derthick, "Crossing Thresholds: Federalism in the 1960s", *Journal of Policy History* (January 1996).

¹⁹Derthick, "On James Q. Wilson" (presentation, Thinking About Politics: A Conference Dedicated to Explaining and Perpetuating the Political Insights of James Q. Wilson, Cambridge, MA, April 4–5, 2013).

perhaps inherited from her father, who was a reporter and editor for the *Cleveland Plain Dealer*. She had a deep respect for the facts, an early instinct she never lost. Her modesty, however, understates the depth of understanding found in her method. To begin with, she read everything, from scholarship to government reports. Then she spoke to people involved in whatever she was studying. She folded all that she learned into beautiful prose. She was not afraid to master the quotidian—what policymakers do and how they define their tasks—and not only the ideas that presumably motivate them.

Derthick was concerned with what mattered most: meaningful participation in government; citizenship in the fullest sense of the term; effective public services; and structuring government so that markets and regulation each have their place.²⁰ She respected the careful work of economists and policy analysts who evaluated the actual effects of policy interventions. But she also knew, along with sociologist Peter Rossi, that the better the test, the closer the effects get to zero.²¹

Because of her relentless pragmatism, diligence in pursuing detail without regard to the procrustean influence of theory, and her lucid writing style, the American Political Science Association gave her name to its award for the “best book that made a lasting contribution to the study of federalism.” In 2006, the proud recipient of the Martha Derthick Award was none other than Derthick herself—though, as

²⁰Timothy J. Conlan, “Administration and Governance in a Compound Republic: Martha Derthick’s Contributions to the Study of American Federalism”, *Public Administration Review* (September/October 2010).

²¹Rossi, “The Iron Law of Evaluation and Other Metallic Rules” in Joann L. Miller and Michael Lewis, eds., *Research in Social Problems and Public Policy: A Research Annual* (April 1987).

²²She received the award in 1996 for a book published by the Urban Institute in 1972, *New Towns, In Town: Why a Federal Program Failed*. The award is given for “the best book on federalism and intergovernmental relations published at least ten years ago that has made a lasting contribution to the study of federalism and intergovernmental relations.”

she reminded people, she was not on the nominating committee.²²

While her intellectual identity formed during the social upheavals of the 1960s, unlike many of her contemporaries she did not believe the solution to social problems lay in a unitary form of government, which she saw as a nod toward social authoritarianism. Instead, she believed, solutions could only be found in the push and pull of mutual accommodation among the Federal government, states, and localities, and in opportunities for meaningful participation at all levels. Local communities are where people decide what they want to do and who they want to be. They are the only avenue most Americans have for deliberation—for meeting with one another to discuss their collective goals and plans.

Pushing more policymaking down from the Federal heights to states and localities will not satisfy everyone, nor should it. It does not allay concerns about states that enshrine discrimination in law, or states that give short shift to their most vulnerable citizens, or states so weak that they fail without Federal government intervention, as appeared to happen during Hurricane Katrina in Louisiana.

The modern-day Anti-Federalist looks much better, however, when considering how open a system of state sovereignty and local control is to many different kinds of interests. State sovereignty leads to a greater number of genuinely empowered elected and appointed officeholders, and to a wider variety of policy experiments. In the nation as a whole, state sovereignty can allow the parts of the United States that want to be “red” to be “red” and the parts that want to be “blue” to be “blue” simultaneously. If government’s ultimate purpose is to serve a diverse and ever-changing society, there is a strong case for preserving Derthick’s modern Anti-Federalist legacy. If more of us understood that, perhaps we would not have had to wait for an obituary to recognize a leading light in that vanguard. 🌍

Patrick S. Roberts is an associate professor in the Center for Public Administration and Policy in the School of Public and International Affairs at Virginia Tech in Alexandria, Virginia, and author of *Disasters and the American State: How Politicians, Bureaucrats, and the Public Prepare for the Unexpected* (Cambridge, 2013).