

How North Carolina's controversial bathroom bill provides a window into the complexities of public policymaking in a federalist system

In March, the North Carolina House of Representatives passed a bill to overturn an earlier non-discrimination ordinance in Charlotte, North Carolina, which had expanded protections for the transgendered. [Sierra Smucker](#) writes that the situation shows the complexities of the US federal system, which was established as a compromise between the national government and the states. This federal system allows the states – and even cities and local constituencies – to make their own policies, but these policies can still lead to conflict with the laws and norms of the rest of the country, and the federal government.



Last month, President Obama [assured Londoners](#) that residents of North Carolina are hospitable people despite the fact that laws in the state are discriminatory toward gay and transgender people. The President's comments were prompted by the passage of HB2 by the North Carolina state legislature which invalidated an existing provision approved in the city of Charlotte, NC. This provision expanded a non-discrimination ordinance that added anti-discrimination protections for individuals whose gender expression and identity differ from their biological sex, allowing them to use bathrooms and locker rooms in public facilities according to the gender they identify with, instead of their sex indicated on their birth certificate.

Besides the obvious question of how and why a policy that actively discriminates against a group of people exists today, this situation has prompted other questions about how American federalism works. That President Obama would vehemently oppose a local policy, may seem odd, particularly to Britons, who do not regularly experience the tug and pull of power that occurs in a federalist system of government with a national, state, and city level governments that all work at the same time. Imagine the Mayor of Walthamstow's actions being overruled by the Mayor of London and then the Mayor being reprimanded by the Prime Minister. (I realize that isn't even remotely plausible given the diverging and sometimes completely ceremonial duties of some of those positions but, I couldn't help myself).

In the wake of this controversy, it makes sense to review the way federalism in the United States works and the implications of it for public policy. Creating many levels of policy making, Russian Doll style, was a novel concept in 1776 when the US first attempted to separate from their tea loving rulers. At this point in time, the United States consisted of thirteen colonies, each with its own history, population, economy, laws, and politics. The thirteen colonies were more similar to the distinct countries in the European Union than to the counties of the United Kingdom. Each state wanted to act as a sovereign nation with the ability to make treaties, receive ambassadors, coin money, and regulate their commerce. But, like the nations in the EU, the states saw the power of coming together for a common goal: to end British rule in America.

In an effort to reach their collective goal, leaders from each state agreed to the [Articles of Confederation](#), the first constitution of the United States, to create a weak national government with very limited powers. This national Congress could wage war and negotiate peace but could not even raise taxes to pay for either. When the war ended and the United States won independence, the states felt so detached from the national government that many did not even want to obey the peace treaty signed with Great Britain. In desperation, [George Washington](#) wrote to Secretary of Foreign Affairs, John Jay, "What a triumph for the advocates of despotism to find that we are incapable of governing ourselves." But, a few constitutional conventions, civil war, and decades later, the national government

own policy position. As I spoke about in another post on this blog, the president's Bully Pulpit can be an [effective means of pressing for change](#). But Obama can also threaten to redirect funds received by North Carolina from the federal government if the state does not comply with human rights standards.

Thus, the multiple levels of American federalism remain – as ever – in contention as states continue to demand the right to govern their citizens without the interference of the federal government and cities make similar arguments to state legislatures. The national government has strengthened since 1776 but recent push back against federal intervention into state affairs as well as constitutional restrictions on the federal government's role in states' affairs restricts Congress and the president from retaining the level of command given to the central government here in the UK.

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Sierra Smucker is a PhD student at Duke University's Sanford School of Public Policy, and a Visiting Research Student the LSE US Centre. Her research, work, and teaching explore the ways in which less-advantaged groups gain access to political power and influence in important policy debates. Focusing on the role of social movements and the political feedback effects of policy making, Smucker looks at the politics of the policy process and how the state can influence who has access to power. She has particular expertise in the politics of gun reform in the United States and policy addressing violence against women.



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