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“I go to the office. I sue the federal government. And then I go home.” That’s how Texas’s Republican Attorney General (now Governor) Greg Abbott summed up his job during the Obama administration. With the election of President Donald Trump, it is an increasingly bipartisan bragging point. When Texas challenged the Obama administration’s loosening of immigration law enforcement, Washington’s Democratic attorney general (AG) led a coalition of states siding with the federal government against the state challengers. Less than a year later, Washington led one of the first challenges to the Trump administration’s tightening of immigration law enforcement. Texas sided with the federal government in the case.

From Florida’s partial success in dismantling the Affordable Care Act in the *Health Care Cases* (2012) to Maryland’s recent claim that President Trump is violating the Foreign and Domestic Emoluments Clauses, states through their AGs are mobilizing to accomplish in the courts what Congress and the president cannot or will not do in the ordinary policymaking process. While this appears to be a recent spillover of today’s polarized politics into the courts, Paul Nolette traces the causes back nearly a half century in his rich account of the rise of AGs, *Federalism on Trial*. Nolette, a lawyer and assistant professor of political science at Marquette University, explains how “state litigation’s status as an increasingly powerful aspect of national policymaking is a product of the peculiar structure of new social policy regimes constructed by state and federal lawmakers in the 1960s and 1970s” (p. 3). Those early efforts to deputize and fund state enforcers of federal consumer and health-care laws, supplemented by the courts’ broadening recognition of state standing to sue, supported a new era of AG engagement in national policy debates. This increased capacity led to a model of coordinated multistate litigation exemplified by the tobacco litigation of the 1990s, in which AGs achieved through a settlement major regulatory reforms that had long eluded federal policymakers.

In bringing these cases, AGs pursue three different outcomes. Policy-creating litigation, such as the tobacco cases, asks courts to implement new policies that the federal government is unable to make. Policy-forcing litigation, such as litigation under the Clean Air Act to require the Environmental Protection Agency (EPA) to address acid rain or climate change, asks courts to make the federal government take enforcement action under a new interpretation of laws already on the books. Policy-blocking litigation, such as the challenges to the Affordable Care Act or President Trump’s executive orders on immigration, asks
courts to invalidate legislation or executive action as inconsistent with the Constitution or existing law. Ironically, Nolette argues, federal encouragement of AG litigation has helped empower states to challenge federal policy itself.

Nolette devotes six of ten chapters to detailed case studies of multistate litigation in the areas of health care and environmental protection. AGs are established players in health-care policy, due in part to federal encouragement of state anti-fraud enforcement in Medicare and Medicaid programs, as well as antitrust enforcement in healthcare markets more broadly. In the wake of failed health-care reform efforts by the Clinton administration, AGs led a two-pronged attack on pharmaceutical pricing and marketing, a leading driver of health-care costs. Using a combination of federal and state laws, and with significant assistance from private plaintiffs' counsel, AGs pressured several major drug firms to reform their sales practices in settlements. Although federal programs were a primary beneficiary of these reforms, federal regulators, such as the Food and Drug Administration (FDA), mostly stayed on the sidelines. Later, however, Congress ratified through legislation many of the pharmaceutical pricing reforms the states won through litigation.

In contrast to the policy-creating pharmaceutical litigation, environmental litigation by AGs drew on policy-forcing and, more recently, policy-blocking strategies. Nolette's account of three decades of state litigation under the Clean Air Act demonstrates the complicated, and increasingly partisan, courtroom dance among changing partners in state and federal agencies. Throughout the 1980s, AGs from northeastern states fought a losing battle to force the Reagan EPA to regulate acid rain. The campaign turned, however, when President George H. W. Bush signed Congress's 1990 Clean Air Act amendments to address acid rain. The case studies set the stage for Nolette's broader assessment of the AGs' role in refashioning federalism. He is skeptical. The pharmaceutical cases led to partial reforms in a complicated health-care market, and their ultimate impact may be unclear. Unlike the FDA, “AGs have neither the technical expertise ... nor the incentive to worry about how pulling on one thread of the national regulatory scheme may affect the larger tapestry” (p. 104). The environmental cases, so far, failed to catalyze a coherent federal policy to address climate change. Despite enormous costs and uncertainty in the area, Congress is still unmoved. “If Congress is unable to compromise on comprehensive policy solutions,” Nolette explains, “the
glorious mess of new policy problems left in litigation’s wake remains” (p. 167).

In this volatile moment of politics, it may be too soon to tell what becomes of the glorious messes that are national health-care and climate change policies. As Nolette finds, Congress did eventually ratify the AGs’ litigation positions as policy in both the drug pricing and acid rain cases. Ten years after *Massachusetts v. EPA* (2007) and five years after *The Health Care Cases* (2012), it seems unfair to blame the states for Congress’s failure year after year to clean up these policies. Nolette presents little evidence for the strongest implication of his argument: that states rather than Congress (or the Supreme Court) are primarily responsible for the messes left by the Clean Air Act after *Massachusetts* or the Affordable Care Act after *The Health Care Cases*. A weaker version of his argument—that states, on balance, have checked rather than catalyzed policy development in these areas through AG litigation—does not take sufficient account of Congress’s own dysfunction.

It is not too soon, however, to hold increased AG intervention in national policymaking responsible for increased influence by national party and interest groups in the traditionally state-centered sphere of AG politics. This is the focus of Nolette’s final two chapters, and the source of his most timely findings. As he explains, the seeds of AG partisan polarization were sown in the aftermath of the tobacco multistate litigation, when it became clear that the AGs’ case dockets raised the financial stakes for both Republican-leaning business interests and Democratic-leaning plaintiffs’ lawyers and unions. In response to the tobacco settlement, Republican Alabama AG (now federal judge) William Pryor founded the Republican Attorneys General Association (RAGA) in 1999 to raise money for AG campaigns and coordinate legal policy. In response to RAGA, Democratic AGs formed the Democratic Attorneys General Association (DAGA) in 2002. Not coincidentally, these partisan organizations facilitated campaign contributions, access, and coalition building by national interest groups. By the time Republican AGs mobilized against the Affordable Care Act in 2010, their co-plaintiffs, the National Federation of Independent Business, largely subsidized the states’ case all the way to the Supreme Court.

As AGs become more responsive to national interests, they may become less responsive to their own states’ interests. Nolette finds an “increasing tendency of AGs, collaborating among themselves and like-minded outside interests, to use their positions to pursue partisan and ideological goals that stretch beyond unified conceptions of state interests” (p. 187). In several individual rights cases, states weighed in as amicus curiae against their sister states and “advocated for increased federal authority over state policymaking,” whether it was Democrats arguing against Red State marriage laws or Republicans arguing against Blue State gun laws (p. 196). For these controversial policies, such arguments may put interstate partisan alignments ahead of individual states’ power of self-determination. Constitutional merits aside, these briefs amount to some states asking the federal courts to impose their preferred policies on other states, as opposed to defending a distinct state policy sphere as such.

Beyond presenting these qualitative accounts, Nolette makes a significant contribution to the empirical study of both AGs and the Supreme Court with a database of state briefs filed at the Court since 1980, and an even more ambitious three-decade database of multistate litigation. The findings are clear and troubling, especially considering a potential divergence between state interests and AGs’ influential national allies. Even as typically bipartisan multistate litigation steadily increases in the lower courts, the states’ positions in the Supreme Court are reaching unprecedented heights of partisanship. AGs filed more partisan amicus briefs in the first five years of the Obama administration than were filed during
each of the entire two-term Reagan and Clinton presidencies. This partly reflects the spread of one-party control in the states, and the different stakes involved in bread-and-butter multistate cases and ideologically charged Supreme Court cases. Yet it also suggests that AGs no longer enjoy as much institutional autonomy as the chief legal officers of the states. They may be just as susceptible to the nationalization of state politics as legislators, other statewide elected officials, and even elected state judges. If AGs, one of the most influential bars practicing before the highest court in the land, become just another lobby group for partisan influence, then the rule of law is bound to suffer.

*Federalism on Trial* concludes that AGs will not leave the national stage anytime soon. AGs are politically ambitious and unlikely to concede their policymaking power, industry prefers the certainty that comes with dealing with states as a group, and interest groups benefit from allying their ideological and financial goals under the banner of the states. The federal government has incentives to reinforce AG power too. At best, AGs offer enforcement of federal laws without spending federal dollars, and at worst they serve as just another check on one or another branch by one or another party. Federal officials of either party will find both allies and adversaries in the states on any given policy, often along partisan lines.

Nolette is right to worry about national politics co-opting state AGs. Yet he gives too much credit to a dysfunctional Congress and too little credit to the relatively energetic AGs. For Nolette, the legal process “is largely incompatible with the production of healthy dialogue” (p. 205). Compared with what? One need not share the juriscentric philosophy of Ronald Dworkin to find the briefing of policy disputes in open court by elected AGs to be at least as deliberative as Congress’s secret drafting of legislation to repeal the Affordable Care Act or President Trump’s lack of interagency consultation in taking executive action. Nolette’s concern that multistate settlements pile on to existing federal laws and lead to overregulation can be mitigated by Congress’s power to preempt most state policy achievements, and the rise of policy-blocking litigation. More fundamentally, most law is still state law, including most of the laws that AGs enforce. It inverts federalism to claim that states must forbear from addressing policy problems that Congress fails to solve.

Nolette’s most powerful criticisms go to the processes of political accountability rather than the substance of policy outcomes. “As AGs become more aggressive in using litigation to achieve policy goals in the name of the state,” he argues, “it has become more difficult for voters to know who to hold responsible for these policy decisions” (p. 212). Take the Affordable Care Act. It was not unusual for a state to elect a congressional delegation to enact the Affordable Care Act, then elect an AG to challenge it in court, then elect a legislature to implement its Medicaid expansion. Such accountability problems are endemic to a system of dual sovereignty.

AGs stand at the intersection of several systems of checks and balances. They can counter the federal legislature, executive, and judiciary, or side with one branch against the others. Meanwhile they face a similar separation of powers, often including a division of executive power with the governor, within their states. Each branch, federal and state, legislative, executive, and judicial, is more or less answerable to the electorate. As these checks and balances solve some accountability problems, they create others. Given these accountability problems across the system, does the power of AGs in contemporary policymaking help the system work better on balance? Regardless of whether one agrees with Nolette’s answer, *Federalism on Trial* goes a long way toward framing the question.
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