



By: Aziz Huq

The militarization of American cities – a failure of federalism



Here in my upper-middle-class Chicago neighborhood – among the hipsters, natural wine stores, and restaurants featured on FX's *The Bear* – a war is unfolding, and I mean that literally.

In recent weeks, a couple with a two-year-old child had to flee when ICE agents **threw** a smoke grenade into a crowded street.

Elsewhere, a Chicago alderperson was roughed up and **handcuffed** when she asked ICE agents whether they had a warrant to make arrests at a community clinic.

Now that a Customs and Border Protection agent has **shot** a woman in another part of the city, everyone holds their breath when black SUVs pass. Children I know are afraid to go out, even though they are not undocumented.

Chicago is just the most recent Democratic-run city to experience this state-initiated violence.

For all the media coverage of National Guard deployments, it is worth underscoring how much terror immigration agents alone can incite. Los Angeles, Washington, and Portland have had similar experiences. Other cities will soon join the list.

A failure of federalism

The militarization of American cities – apparently selected because of their partisan divergence from the White House – represents a failure of federalism, the constitutional arrangement by which America's national and subnational governments are supposed to be distinct.

The point of creating two constitutionally separate layers of government was to create a healthy diversity of political environments, which in turn helps foster democracy.

Of course, there have long been tensions between the federal government and the states, most recently during the Civil Rights Movement of the 1950s and 1960s.

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But whereas federal deployments in that era were intended to safeguard rights, federal forces today are being unleashed to spread fear and inflict losses on citizens and noncitizens alike.

Nor is this the only way that federal-state relations are eroding. In recent days, the Trump administration has **withheld** funds for transportation **repairs** in New York City and Chicago.

While the government claims that such funds might be used for "DEI principles" (building roads in majority Black neighborhoods, perhaps, is now a sign of discrimination?), the real motive is obvious: To turn every lever of federal power into an instrument of political repression against non-aligned states.

Political system is irretrievably broken

This breakdown of American federalism should concern everyone. When a large and diverse country like the United States starts to experience geographic fissures, and when large slices of the public start to believe (perhaps reasonably) that their relationship with the center is all "take" and no "give," a sense of fear and foreboding is justified.

Americans are already more likely than not to **believe** that their national political system is irretrievably broken, and this administration's actions are only deepening these sentiments.

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But the breakdown of American federalism flows from another structural failure of American constitutionalism: the effective collapse of the separation of powers.

Partisan-aligned majorities in Congress and on the Supreme Court have increasingly abdicated their constitutional responsibilities.

While the unwillingness of legislators, mostly Republican, to oppose the administration, even when it acts plainly unlawfully or in profoundly harmful ways, is a familiar issue, the Supreme Court's responsibility for the collapse of the separation of powers (and hence also federalism) is less well understood.

Until recently, the Court, led by Chief Justice John Roberts, was fully committed to protecting the states from federal overreach.

That is why it **invalidated** the Affordable Care Act's mandatory expansion of Medicaid in 2012. But now, the Court is largely ignoring federalism and making dramatic changes to the separation of powers.

The **result** is a central government that looks very different from the Congress-centered model envisioned by America's founders.

A club against political and ideological foes

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The Court's 2024 **decision** on presidential immunity, most notably, has dramatically limited the force of criminal prohibitions on presidential power.

As I explain in a forthcoming academic **study**, while the immunity decision formally applies only to the president, it functionally applies to many other executive branch officials.



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For example, it bars the use of evidence of presidential communications from any prosecution, and it eliminates subordinates' longstanding ability to object to orders that may violate a criminal statute.

These risks are not hypothetical. The Trump administration has cited the Court's immunity decision endlessly in briefs touching on a wide variety of cases. In this Justice Department's hands, the ruling is not an articulation of constitutional doctrine but a permission slip to "do as we please."

Second, over the last eight months, the Court has issued those permission slips.

It has **granted** some 21 of the 23 Trump administration requests for emergency relief, setting aside lower court **orders** in cases involving refusals to spend money (albeit in non-federalism domains) or to fire personnel (which involves not spending money).

In doing so, the justices have granted the executive branch broad permission to wield fiscal resources as a club against political and ideological foes.

These decisions have unraveled the separation of powers in vital areas; and now, the Court's licensing of untrammelled presidential power, regardless of law, is hitting the states hard.

The executive is operating with little to no regard for Congress's decisions about what is

criminal, or about how money should be spent.

The states find themselves on the front lines, because they are often staging grounds for Trump's political foes as well as essential partners in a host of health, education, security, and regulatory programs.

Perhaps Trump would have pursued these policies even without Supreme Court prompting. But I am skeptical.

The Court's general "have-at-it" approach is one of the big differences between Trump's first term and this one.

And the effects of this breakdown will continue to trickle down in the form of smoke grenades, masked men in unmarked cars yanking people off the streets, and a miasma of fear and anger that is unlikely to dissipate any time soon.

Aziz Huq is Professor of Law at the University of Chicago Law School and an associate professor in the University's Sociology department.