3 Intergovernmental Relations

SUPERMAYOR

According to an ancient Greek poet, the fox knows many things, but the hedgehog knows one great thing. If the poet is right, then Jerry Abramson is a hedgehog. First elected mayor of Louisville, Kentucky in 1985 and then reelected twice, Abramson knew his city must learn to work with other jurisdictions in its area if it was to prosper. Between 1960 and 2000, Louisville's population dropped from 391,000 to 256,000, its factories drastically reduced their workforce, and its middle-class whites drifted to suburbs and beyond. A Brookings report did not paint a pretty picture:

> Louisville and the surrounding Jefferson County had split into politically separate and routinely hostile enclaves—an increasingly poor, black, and highly taxed core city; a cluster of relatively affluent eastern suburbs, with scores of small cities more akin to homeowners' associations than municipalities; and a large swath of unincorporated, blue-collar neighborhoods to the south and southwest characterized

by meager public services, inadequate roads, dysfunctional drainage, and deep resentments. All were further separated from their metropolitan neighbors to the north by the Ohio River, the Kentucky-Indiana [s]tate line that follows it, and a long history of mutual disdain. And in every other direction, they were surrounded by small rural Kentucky counties averse to change.

So, in 2003, Louisville merged with surrounding Jefferson County—thanks in large measure to the efforts of Abramson and Jefferson County Judge/Executive Harvey Sloane. Abramson easily won the top job in the new "Louisville Metro," acquiring a domain six times bigger than the city of Louisville and containing twice as many people as the city had in 1985. He became responsible, reports *The Economist*, "not just for urban areas, from the old rubber plants to the newly hip Butchertown, but suburban subdivisions and farms."

Within the new consolidated city–county government, Abramson led efforts to:

★ Create a "City of Parks," a public-and-private partnership to add 4,000 acres of suburban parkland

★ Improve public safety, adding police officers and launching a new communications network for emergency responders

★ Revitalize downtown with projects such as a new riverfront arena, an entertainment district expansion, a Museum Plaza tower, the Muhammad Ali Center, new hotels, and more

★ Keep Louisville's economy strong by attracting and creating new jobs, with initiatives in the life sciences area

★ Transform a public housing project into a mixed-income neighborhood

★ Improve public health by establishing a new community-wide Emergency Medical Service and launching a Healthy Hometown Movement with community partners to cut high rates of obesity, diabetes, heart disease, and cancer

★ Reduce the size of government by 10 percent while improving the delivery of basic services

Outside of Metro Louisville, Abramson's influence grew, extending northward across the Ohio River into southern Indiana, with which Metro Louisville shares an economic future. Indeed, Greater Louisville Inc., the metropolitan chamber of commerce, helped companies like Geek Squad, a computer-service outfit, move beyond the city's borders, based on the philosophy that it's better that a company locate in the next county than in, say, Chicago or Atlanta. Greater Louisville Inc. also addressed a big problem for a city that claims to be a logistics hub, namely, the two aging, congested bridges that link Louisville and Indiana. Greater Louisville Inc. joined with its equivalent in southern Indiana to promote plans for two new bridges and began considering whether, and how, to share revenue from a new industrial park in southern Indiana.

Besides the creation of Metro Louisville and the work of Greater Louisville Inc., there is a third element in the economic development of the area that should be mentioned. The state of Kentucky embraced sweeping educational reforms, including major support for expanded research at the University of Louisville and a "new economy" agenda emphasizing the commercialization of research-generated knowledge.

Why are so many mayors across the country forming alliances with nearby settlements? What factors make these alliances—not to mention consolidation—so hard to achieve?

Chapter 2 argued that public administrators find themselves, for better or worse, in a force field of politics. To drive that point home, the chapter presented a simple model of the political environment in which the head of an agency must operate (see Figure 2.4). In that model, the agency is surrounded by legislative bodies, political bosses, courts, cognate agencies, other governments, clients, nonprofit organizations, the media, subordinates, and labor unions.

This chapter takes a close look at just one set of relationships in that force field of politics: the relationships between an agency and other jurisdictions. And what a set of relationships this is! First, there are the relationships between scores of federal agencies and 50 state governments. Then, there are the relationships between state capitals and their local governments. How many local governments do you think there are in the United States? Here are the latest figures from the *Statistical Abstract of the United States 2009:*

Counties	3,033
Municipalities	19,492
Townships and towns	16,519
Total	39,044

This means that state capitals must, on average, manage relationships with 781 local governments (39,044 divided by 50).

But the universe of intergovernmental relations (IGR) does not end there. In addition to counties, municipalities, and townships and towns, there are 13,051 school districts and 37,381 special districts. The latter are authorized by state or local law to provide only one or a limited number of designated services—such as water and/or sewage services, natural resource management, fire control, public housing, library and educational services, and/or health care. Special districts or authorities are the fastest-growing form of local government, with almost triple the number since 1952. Meanwhile, the other forms of local government remain about the same, and because of consolidation, the number of school districts has declined to one-fifth of what it was in 1952.

The importance of IGR to program management cannot be overemphasized. Apart from a few programs, such as the administration of the Social Security system, the federal government is not a direct provider of domestic public services. Instead, the majority

Sources: Edward Bennett and Carolyn Gatz, *Louisville, Kentucky: A Restoring Prosperity Case Study* (Washington, DC: Brookings, 2008); www.louisville.gov/mayor/biography; "The Rise of the Super-Mayor," *The Economist* (March 8, 2008); Carolyn Gatz, "Job Sprawl Could Weaken Louisville," *Courier-Journal* (May 17, 2009); Conor Dougherty, "Localities Facing Merger Push," *Wall Street Journal* (March 5, 2009); www.citymayor.com/mayors/louisville-mayor.

of national domestic programs are implemented through a complex arrangement among federal, state, and local governments. This approach to public services delivery reflects the fact that the United States is a federal system in which responsibilities are both divided and shared among separate levels of government, each possessing a base of legal and fiscal authority.

Given the sheer number, importance, and—as we will see in this chapter—complexity of these IGR, it should not be surprising that we are devoting an entire chapter to the subject. The discussion is straightforward. First we will distinguish IGR from federalism. Next we will survey the evolution of this intergovernmental system, putting particular emphasis on the relationship between the national government and the state governments. This historical perspective on federal–state relations is followed by an economic perspective, in which we will consider the economic rationale for the national government's role in the system. Then we will turn to other important relations: state-to-state (interstate), state-to-local, and local-to-local (interlocal) government. Lastly, we will examine the implications of the intergovernmental system for public administration.

Federalism and Intergovernmental Relations Compared

Some might say that IGR is just another term for federalism. But that would not be accurate.

What, then, is **federalism?** In its most formal sense, a federal system (such as that of the United States, Canada, Switzerland, and Germany) stands in contrast to a unitary or centralized system (such as that of France or Great Britain). A federal system divides power between central government and regional governments (states, provinces, cantons, and lands); each government, central or regional, is legally supreme in its own area of jurisdiction. Thus, in the United States the federal government controls external affairs, regulates interstate commerce, and establishes rules for immigration and naturalization. But the Constitution reserves certain powers for the states: control of elections, local governments, and public health, safety, and morals. Although some powers are shared between governments—taxing and spending for the general welfare, defining and punishing crimes, and so forth—the traditional or **"layer cake" model of federalism** assumes that functions appropriate to each level can be defined with reasonable precision and should be kept independent. This view holds that the three levels of government—national, state, and local—are almost totally separate, like a cake baked in three layers, which are placed one on the other with icing in between.

Morton M.Grodzins and Daniel J. Elazar reject this model of the federal system, preferring instead a **marble cake model of federalism.**[1] According to Grodzins and Elazar, separation of functions is both impractical and undesirable when governments operate in the same area, serve the same clients, and seek comparable goals. This view holds that the cooperative relations among the various levels of government result in an intermingling of activities like a cake made of light and dark batter mixed to give a streaked, marblelike appearance.

Models should simplify the world, but layer cakes and marble cakes take this simplification a little too far. We need a more accurate picture of how governments operate together in the same program area. That is, what are the *relationships* among administrators in the federal system? We also need to recognize that many more governments are involved than the concept of federalism implies.

A major deficiency of federalism as a descriptive model is that it tends to recognize mainly national–state and interstate relations but to ignore national–local, state–local, national–state–local, and interlocal relations. In contrast, **intergovernmental relations** "includes as proper objects of study all the permutations and combinations of relations among the units of government in the American system."[2]

Federal–State Relations: A Historical Perspective

Talk about the evolution of the intergovernmental system may offend bureaucrats in Washington, a city where a feeling of national dominance and self-importance always seems to be in vogue. It may bore the life out of many journalists, who tend to be preoccupied with what is current rather than long-range historical changes in the relationship among national, state, and local governments and agencies. Nevertheless, the relationship of states to the federal government is the cardinal question of the U.S. constitutional system. "It cannot be settled," Woodrow Wilson once wrote, "by the opinion of any one generation, because it is a question of growth, and every new successive stage of our political and economic development gives it a new aspect, makes it a new question." Wilson could not have been more right. As we shall see in this section, IGR have changed greatly since the early nineteenth century. These changes are closely linked to the overall growth of government in American society. As public administration has come to play a larger and larger role in our lives, the links among the different levels of the federal system have become both tighter and more complex.

Dual Federalism (1789–1933)

The idea of dual federalism is simple: The functions and responsibilities of the federal and state governments are separate and distinct. For example, in the first half of the nineteenth century, when emerging economic interests sought subsidies or tax breaks, they were likely to go to their state government. But when those interests wanted protection from competition by cheap imports, they had to go to the national government.

Roughly speaking, it can be said that this era lasted until the New Deal years of the 1930s, despite the fact that cooperation between national and state governments on matters such as railroad construction and banking existed both before and during Franklin Roosevelt's administration. But not until the New Deal did the idea really take hold that the national government and the states were complementary parts of a single governmental mechanism for coping with problems.

Cooperative Federalism (1933–1960)

The Great Depression of the 1930s led to several new and important changes in IGR. The Social Security Act of 1935, for example, included national grants for state and local unemployment and welfare programs, and the Housing Act of 1937 was the first instance of national involvement in local public housing. The Tennessee Valley Authority, created in 1933, was charged with developing the Tennessee River and its tributaries to promote their use for electricity, irrigation, flood control, and navigation.

During the era of **cooperative federalism,** IGR became more centralized in Washington, and the role of federal dollars became more important. Without question, the national government had given money to states since its creation; in fact, the first such **grants-in-aid** were used to pay the debts the states had incurred during the American Revolution. Since the early 1800s, however, the tendency had been for the national government to give money for specific purposes. Such **categorical grants**—as they are also called—require that funds be spent for particular programs in particular ways (in other words, "with strings attached").

Creative Federalism (1960–1968)

If the great growth in national aid to state and local government began with Franklin Roosevelt's New Deal in 1933, then it is fair to say that the most explosive period of such growth occurred during Lyndon Johnson's Great Society (1963–1968). The number of grant programs grew at an astounding pace—from about 50 in 1961 to some 420 by the time Johnson left office. These programs included both legislative landmarks—Medicaid, the Elementary and Secondary Education Act, and the Model Cities program—and smaller initiatives tailored to the interests of narrower constituencies. Federal aid to states and localities in this period almost doubled—from $7.9 billion in fiscal year 1962 to $13 billion in fiscal year 1966. Johnson called his program "creative" federalism. Scholars disagree as to the inventive merit, the insight, and the imagination that went into the design of some of these programs, but none dispute Johnson's creation of many new categorical grant programs.

Creative federalism constitutes a turning point in the development of the intergovernmental system for several reasons:

- The federal government became a far more significant presence in the daily lives of state and local administrators and in the delivery of government services to citizens, raising practical and philosophical questions. Did the individual programs created in Washington work as intended when implemented in dozens, hundreds, or thousands of state and local sites?
- The intergovernmental system became more difficult to manage. Federal administrators now had to manage a larger number of separate and increasingly complex programs, work with many more governmental units, and oversee the expenditure of increasing amounts of money.
- Because governors, mayors, and other state and municipal officials had a growing financial stake in intergovernmental aid, creative federalism developed a strong constituency that was prepared, when necessary, to lobby for the programs. This lobbying

activity was carried out either individually or collectively, through scores of organizations. For links to over 140 of these organizations, go to www.governing.com/govlinks. Five of the largest and most influential of these organizations are listed below:

1. National League of Cities (NLC)
   www.nlc.org
2. United States Conference of Mayors (USCM)
   www.usmayors.org/uscm
3. National Conference of State Legislatures (NCSL)
   www.ncsl.org
4. National Association of Counties (NACo)
   www.naco.org
5. National Governors Association (NGA)
   www.nga.org

- Governors and mayors complained about categorical grants because their purposes were often defined so narrowly that it was impossible for a state to adapt federal grants to local needs. A mayor seeking federal money to build parks might discover that the city could get money only if it launched an urban renewal program that entailed bulldozing several city blocks.
- Because grants frequently went directly to agencies that ran federal programs, governors and mayors found they had less power.

New Federalism (1968–1980)

Richard M. Nixon, who won the presidency in 1968, recognized the five political realities listed above and created his new policy for IGR accordingly. He would call it the "new federalism." To effect the policy of **new federalism**, Nixon proposed **revenue sharing**, in which states and localities would receive funds with virtually no restrictions on how they might be used. He also proposed the consolidation of existing categorical programs into broad-purpose **block grants** in a particular policy area, such as education, with relatively few restrictions on their use. (The idea of block grants actually had begun in the mid-1960s, when such a grant was created in the health field.)

Thus far, we have noted two types of grants, and before going further, let's be clear on how each works.

1. **Categorical grants** appropriate funds for special purposes such as Food Stamps (now the Supplemental Nutrition Assistance Program) for the poor and the construction of transportation and sanitation systems. Such grants usually require the state or locality to put up money to "match" some part of the federal grant. Categorical grants may be made in one of two ways: by formula or by individual application. **Formula grants** are available across the board to all who are eligible in a category, such as the blind. In contrast to formula grants, **application** or **project grants** are made only for specific purposes and require a complex application procedure. Examples are grants by the National Science Foundation to universities and research institutes to support the work of scientists or grants to states and localities to support training and development pro-

grams. Although there are hundreds of grant programs, about two dozen, including Medicaid, account for more than half of total spending for categorical grants.

2. **Block grants** are broad grants to states for prescribed activities with few strings attached. States have considerable flexibility in deciding how to spend block grants. Examples include the Housing and Community Development Block Grant (created in 1974) to provide funds to states and localities for general development purposes and Temporary Assistance to Needy Families (created in 1996) to provide funds to states to design and implement their own welfare programs.

In sum, Nixon's revenue sharing and block grants were part of a strategy to give more policymaking discretion and responsibility to the subnational governments by diminishing Washington's policy control. At the same time, the Nixon administration increased the fiscal resources of state and local governments to "do things."

The New New Federalism (1980–1993)

The inauguration of President Ronald Reagan in 1981 signaled the arrival at the national level of a chief executive committed to reducing the size and scope of government and creating an intergovernmental system that gave much greater prominence to states and localities. In particular, Reagan wanted to return to a more dual form of federalism by stepping back from the cooperative federalism that had developed over the previous 50 years. He also wanted to devolve certain federal responsibilities to the subnational level. Although the president experienced moderate success in these efforts, governors and local officials found that their jobs had become considerably more difficult for two reasons—money and unfunded mandates. During the 1980s, the era of **"new new federalism,"** there was less of the former and more of the latter.

Changing national priorities, tax cuts, and mounting deficits drove federal policymakers to cut funds going to states and localities. The numbers speak for themselves: In 1980, federal grants to states accounted for almost 40 percent of state and local government expenditure; by 1985, they had dropped to 30 percent and would continue dropping until they bottomed out in 1990 at 25 percent.

Another way to look at what was happening in the 1980s is to consider federal grants to states as a percentage of total federal spending. In 1980, grants to states constituted 15.5 percent of total federal spending—by 1990 they were only 10.8 percent. However, during George H. W. Bush's administration, federal funding would rise to about 31 percent and remain at that level during the administrations of both Bill Clinton and George W. Bush.

Compounding the money problem was the problem of **unfunded mandates.** Most of these requirements dealt with health, safety, and education. For example, Aurora, Colorado had to cut thousands of street curbs to make them wheelchair compatible—and in compliance with the Americans with Disabilities Act. Bids on curb repairs averaged about $1,500 apiece—and Aurora, not Washington, had to find the money to pay for these repairs. Although Reagan had pledged to give states and localities more flexibility and authority, that pledge was undercut by an avalanche of such mandates imposed by Washington. Indeed, more than a quarter of all statutes in which the federal government preempts state and local laws—setting its own standards and telling the states to enforce them—were enacted in the Reagan years.

Federal courts also created unfunded mandates for the states, issuing orders in areas such as prison construction and management. These court orders often required states to spend funds to meet standards imposed by the judge.

Devolution? (1993–2008)

Like Reagan, Bill Clinton came to office wary of Washington and committed to cooperating with state governments. As a former governor, he especially wanted to reform federal–state relations. Except in the area of civil rights, he claimed to support state activism. During the period from 1994 through the end of his administration, Clinton and congressional Republicans supported policies that delegated or devolved power to the states.

In government, the term **devolution** (from the Latin *devolutus,* rolling down) refers to the transfer of power or authority from a central government to a state or local government. The idea suggests that solutions to national problems in health, welfare, crime, and the like can emerge from the experiences of various states—the "laboratories of democracy." For example, in recent years, states have embraced a rich variety of education reforms: merit pay for teachers, teacher certification through testing, minimum competency standards for high school graduation, and the so-called no-pass, no-play rules for student extracurricular eligibility. In contrast, the federal Elementary and Secondary Education Act and its progeny set up rigid rules, spent billions of dollars on programs to upgrade the education of children of low-income parents, and generally failed in their purpose.

An often-cited example of the devolution during the Clinton years is the 1996 welfare reform legislation that replaced the basic welfare program with a program called Personal Responsibility and Work Opportunity Reconciliation Act. Its name captures two themes of the law—(1) individuals should take more responsibility for themselves, and (2) work, not welfare, is the goal of public assistance. The burden of administering the new program was shifted entirely to states. The federal government now gives block grants of money to the states and generally requires that the states match these funds. The law has significant ramifications for federal–state relations. This evolution of power in the area of welfare is seen as a testing ground for the future. If the states are creative and successful in enacting welfare reform, other federal programs and powers may be handed down to the states.

Clinton and Congress also addressed the vexatious issue of unfunded mandates. In 1995, Congress passed and Clinton signed a law that requires both chambers to take a separate, majority vote in order to pass a bill that would impose unfunded mandates of more than $50 million on state and local governments. All antidiscrimination legislation—and most legislation requiring state and local governments to take various actions in exchange for continued federal funding (such as grants for transportation)—are, however, exempt from this procedure. The problem with the Unfunded Mandates Reform Act is that it allows federal agencies themselves to determine whether the proposed rules are "economically significant." In the first three years of the act, no more than three federal actions triggered its provisions.

Like Clinton, George W. Bush came to the presidency from the governorship of a southern state. Unlike Clinton, who advocated targeting specific areas for decentralization, Bush advocated, in principle, the return of power to the states—what might be called a state-centered federalism. Clinton favored delegating rule implementation to state agencies, but he insisted on the right of federal agencies to set national standards, such as those for clean air and water as well as consumer and worker safety. In contrast, Bush, within months of taking office, issued a new order making it harder for federal officials to overrule state decisions.

But the Bush administration sent mixed signals on state-centered federalism. For example:

- Although an advocate for devolution in domestic policymaking, especially regulatory policy, Bush believed in greatly strengthening the office of the president and the national armed forces.
- His support for expanding the role of the states in making and implementing welfare reform was countered by his intervention in public education to impose mandatory national testing on local systems.
- He disagreed with the majority of governors who wanted to regulate the distribution of electric power in their states. Bush argued that state regulation was inefficient.
- He disagreed with the majority of mayors who wanted more funding for homeland security.

Obama and States and Cities (2009–)

What can states and cities expect from the administration of Barack Obama and, just as important, a new Congress? A lot, because the Obama administration bought the idea that

AP Photo/Alex Brandon, File

one of the most effective ways to stabilize the economy is through massive aid to states and localities. The Recovery Act of 2009 is estimated to cost about $787 billion over several years, of which about 280 billion will be administered by states and localities. About 90 percent of the estimated $49 billion is to be provided to states and localities in fiscal year 2009 for health, transportation, and education programs. Within these categories, the three largest programs are increased Medicaid assistance grants, funds for highway infrastructure investment, and the State Fiscal Stabilization Fund, which provides aid to states to plug holes in their budgets.[3]

Beyond the economic stimulus package is the sense that the Obama administration will modify or reverse policies many states disfavored. It's unlikely that the No Child Left Behind education law will survive in its present form. Environment and energy policies will probably change even more. For example, states, which have fought with Washington for years over carbon dioxide emissions, will probably find their adversary becoming their leader.

Possibly the biggest change will come not in the relationship between the national government and the states, but rather between the national government and the cities. For the past 40 years, "urban policy" in the United States largely meant dealing with the problems of the poor. But Obama and his chief urban adviser, Valerie Jarrett, want federal urban policy to evolve into something more: a means of helping cities and their regions become institutions of American economic growth. As Obama told a group of mayors in June 2008, "We also need to stop seeing our cities as the problem and start seeing them as the solution. Because strong cities are the building blocks of strong regions, and strong regions are essential for a strong America." Jarrett has made the same point. "We're going to change things. We understand that it is the cities that are the economic engines of our country."[4] Significantly, Obama created a White House office devoted to formulating and promoting urban policy.

These changes should not surprise us, since Obama is the first big-city president the United States has had for nearly a century. To be sure, other modern presidents have lived in cities at various times in their lives, but before Obama, none had been rooted in a major city. Obama grew up in Honolulu, went to college in Los Angeles and Manhattan, and has spent virtually his entire working life in Chicago.

Alan Greenblatt explains the significance of Obama's urban orientation:

> Obama has fundamentally accepted the argument of mayors and other local officials that metropolitan areas are the primary economic drivers in the country and deserve to be treated as assets rather than problems. It's not just that many central cities have experienced downtown revival and an uptick in population over the past decade. It's that metro areas are punching well above their weight in contributing to the nation's economic activity, even during the economic downturn.[5]

In other words, urban policy is not just about poverty. Rather, it is about making the economic investment in core cities and their suburbs to keep the United States economically competitive in an increasingly knowledge-driven global economy.

Most state and local leaders will probably welcome what appears to be a new sense of collaboration rather than confrontation with the national government. But it might be a good idea not to assume too much. When it comes to IGR, the only safe assumption is that nothing will go quite the way either side expects.

Looking Ahead

Is the beginning of the twenty-first century really a time of devolution in the federal system? This view is derived from the passage of welfare reform in 1996 (discussed above) and a series of Supreme Court decisions that have sought to strengthen states (discussed below). The view is simplistic, however. Change is occurring—as it always has in American federalism—but it is going in contrary directions—centralizing and decentralizing at the same time. To sort out what is happening, we will examine two spheres of activity: constitutional interpretations by the Supreme Court and the everyday work of government as manifest in policies and programs.

The Supreme Court Although recent decisions have not had the sweep of the historic *McCulloch* and *Gibbons* decisions (see box: "The Supreme Court and Federal–State Relations"), they have had a considerable effect incrementally on IGR. We might examine those decisions in four areas: (1) commerce clause, (2) Tenth Amendment, (3) Eleventh Amendment, and (4) eminent domain.

The Commerce Clause Article I, Section 8 of the Constitution states that the federal government has the power to regulate commerce among the states. In a widely publicized 1995 case, *United States v. Lopez,* the Supreme Court held that Congress had exceeded its constitutional authority under the commerce clause when it passed the Gun-Free School Zones Act in 1990. The Court stated that the act, which banned the possession of guns within 1000 feet of any school, was unconstitutional because it attempted to regulate an area that had "nothing to do with commerce, or any sort of economic enterprise." This marked the first time in six years that the Supreme Court had placed a limit on the national government's authority under the commerce clause.

In 2000, in *United States v. Morrison,* the Court held that Congress had overreached its authority under the commerce clause when it passed the Violence Against Women Act of 1994. The Court invalidated a key section of the act that provided a federal remedy for gender-motivated violence, such as rape. Chief Justice Rehnquist said that "the Constitution requires a distinction between what is truly national and what is truly local." (The states can, of course, pass such laws, and many have.)

Just when some thought they were witnessing a clear trend toward the centralization, in 2005, the Supreme Court ruled, 6-3, that the commerce clause gave Congress the power to outlaw the local, noncommercial production and use of marijuana for medical purposes, which had been legalized in California and a number of other states. The case, *Gonzalez v. Raich,* had begun as an attempt to block enforcement of federal antidrug laws against medicinal marijuana use in California.

The Tenth Amendment The Tenth Amendment states that powers not delegated to the national government by the Constitution, nor prohibited by it, are reserved to the states.

The Supreme Court and Federal–State Relations

The Early Years

The Founders defined federalism, but the Supreme Court fine-tuned it. No case was more important to establishing the supremacy of the national voice in governance than *McCulloch v. Maryland* (1819). To raise a little money, the state of Maryland decided to place a tax on a branch of the Bank of the United States. When the tax collector called on James McCulloch, cashier of the Baltimore branch, McCulloch refused to pay. The national courts faced two questions: (1) Because creating banks was never listed as an enumerated power of Congress, was its creation of the Bank of the United States thereby unconstitutional? and (2) Does a state have the power to tax the national government?

Chief Justice Marshall recognized that the power to create banks was not one of the powers specifically delegated to the federal government by the Constitution, but he interpreted the "necessary and proper" clause of Article I broadly so that it enhanced those powers that were specifically delegated and enumerated by the Constitution. By means of this interpretation, Marshall found the creation of the Bank to be a necessary and proper exercise of congressional power. He also held that the state of Maryland lacked the power to tax the national bank. In Marshall's opinion, the power to tax included the power to destroy, and he held the state law providing this power to be unconstitutional and void under Article VI of the Constitution.

The *McCulloch* decision has been used to support a broad construction of the Constitution that enables the federal government to apply the supreme law flexibility to meet the new problems of changing times. In this case, Marshall made a memorable statement, which is often quoted to support a broad interpretation of the national government's constitutional powers: "This . . . is . . . a Constitution we are expounding, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."

The Marshall Court strengthened its argument five years later in *Gibbons v. Ogden*. This case involved a steamboat operator, Aaron Ogden, who had a New York license to operate the only ferry on the interstate waters between New York and New Jersey. A competitor named Thomas Gibbons sued, arguing that only Congress could regulate interstate waters.

The Marshall Court agreed unanimously. The Constitution had specifically granted Congress the power to regulate commerce, but there was much more room for interpretation in this broad grant. Marshall interpreted "commerce" broadly, and he further held that commerce power was complete in itself, with no limitations other than those specifically found in the Constitution.

The *Gibbons* case paved the way for later federal regulation on all transportation, communication, buying and selling, and manufacturing. In the twentieth century, for example, the court has ruled that the commerce clause permits Congress to fine a farmer for producing a small amount of wheat for his own use in violation of the quota set by the Department of Agriculture. Suffice it to say, little economic activity remains outside the regulatory power of Congress today.

In *New York v. United States* (1992), the Supreme Court held that requirements imposed on the state of New York under a federal act regulating low-level radioactive waste were inconsistent with the Tenth Amendment. According to the Court, the act's "take title" provision, which required states to accept ownership of waste or regulate waste according to Congress' instructions, exceeded the enumerated powers of Congress. Although Congress can regulate the handling of such waste, it may not order state governments as its agents in attempting to enforce a program of federal regulation.

In 1997, the Court revisited the Tenth Amendment issue. In *Printz v. United States*, the Court struck down the provisions of the federal Brady Handgun Violence Prevention Act of 1993 that required state employees to check the backgrounds of prospective handgun purchasers. The federal government, the Court said, "may neither issue directives requiring the states to address particular problems, nor command the States' officers . . . to administer or enforce a federal regulatory program." The Court held that the provisions violated "the very principle of separate state sovereignty," which was "one of the Constitution's structural protections of liberty."

The Eleventh Amendment The Eleventh Amendment, which protects states from lawsuits by citizens of other states or foreign governments, has also helped advance state power. As interpreted by the Court, that amendment precludes lawsuits against state governments even for violations of rights established by federal law—unless the states consent to be sued. For example, in *Alden v. Maine* (1999), the Court held that Maine state employees could not sue the state for violating the overtime pay requirements of a federal act. According to the Court, state immunity from such lawsuits "is a fundamental aspect of sovereignty." Similarly, in *Kimel v. Florida Board of Regents* (2000), the Court held that the Eleventh Amendment precluded employees of a state university from suing the state to enforce a federal statute prohibiting age-based discrimination. Although private-sector employees are protected under this federal law, state employees are not.

In 2002, the Court further expanded the states' sovereign immunity from private lawsuits. Writing for the majority, Justice Clarence Thomas declared in *Federal Maritime Commission v. South Carolina Ports Authority* that dual sovereignty "is a defining feature of our nation's constitutional blueprint." States, he continued, "did not consent to become mere appendages of the federal government" when they ratified the Constitution.

Because the majority of pro-state sovereignty decisions have been decided by a tenuous five-to-four margin, the president's authority to nominate justices will be one of the decisive factors—perhaps *the* decisive factor—in determining the future trajectory of federal–state relations.

Eminent Domain In 2005, the Court greatly expanded the power of local governments in relation to the property rights of private citizens. In *Kelo v. New London*, the Court ruled, five to four, that local governments may seize people's homes and businesses—even against their will—for private economic development. Roughly 70 percent of Americans own their own homes, a statistic that helps explain why the ruling was widely reviled. The New London, Connecticut residents who challenged the loss of their property had conceded that the city government could properly take private property for a clear public use such as roads or schools under the well-established power of **eminent domain**. But, they argued, government should *not* be able to take private property for projects such as shopping malls and hotel complexes to generate local tax revenue.

At first blush, the *Kelo* decision appears to be a clear win for cities. Homeowners could be forced now to sell not just to a city but to private developers who want to build a project that would expand the city's tax base. The court clearly indicated that localities have a legitimate role in planning and that economic development—and particularly, improving blighted areas—cannot be halted simply because some property owner objects. But the courts do not make decisions in a political vacuum. According to the Institute for Justice, since *Kelo*, 43 states have amended their laws to protect private property more vigilantly. Federal legislation curtailing eminent domain was introduced but did not pass.[6]

Policies and Programs Those who see devolution point to welfare reform in 1996 as "proof." But those who see the federal system as centralizing have their own "proof": the No Child Left Behind Act of 2001 that imposes new rules on a 200-year-old state and local education responsibility. Those who see the balance of power shifting to Washington also remind us that Congress continues to refuse to pay for programs in special education and homeland security that it insisted on enacting. Further, the jointly administered State-Federal Medicaid program has brought some states to the brink of insolvency.

In the view of some federalism experts, the American federal system has evolved into one in which Congress simply seizes control of any state issue it wishes to grab. Paul Posner, for example, cites a dramatic increase in the number of state laws that Congress has voted to preempt in recent years, especially in the fields of health, environment, transportation, and public safety. According to Posner, before 1970, there were rarely as many as 40 of these preemptions in a decade. Since then, the number appears to have roughly tripled.[7]

Yet one could argue that the reason the number of preemptions has risen is that *states have become more active.* When Congress failed to pass meaningful health-care legislation in the 1990s—much less solve the riddle of how to provide health insurance for the 46 million Americans who lack it—many states acted. For example, the Massachusetts legislature passed a bill in 2006 that would make health insurance compulsory. Just as everyone who drives a car must insure it, so everyone with a body must insure that, too. The same pattern of states taking charge of the agenda, while Washington remains too politically polarized to act, can be seen with such disparate policy issues as utility regulation, stem cell research, abortion, immigration, minimum wage, and mercury emissions.[8]

One of the more powerful arguments against the centralization thesis has been the crucial activism of attorneys general. With regard to these state officials, Alan Ehrenhalt writes, "In the years since their first important victory—the multibillion-dollar legal settlement reached by more than 40 states with the major tobacco companies—attorneys general have been active on almost every conceivable legal front: suing utilities to limit carbon dioxide emissions; filing legal actions against mutual funds and insurance companies; taking pharmaceutical companies to court with accusations of illegal marketing of prescription drugs."[9]

Federal–State Relations: An Economic Perspective

Thus far, we have been looking at federal–state relations in historical terms. But historians, political scientists, and constitutional lawyers are not the only ones who have something valuable to say about the nature of these relations. In this section, we will hear from the economists in the *Economic Report of the President, 1996*:

> Some might make the case that the federal government should do nothing other than national defense. After all, states and localities are better able to tailor their programs to meet the different needs and preferences of their residents, and competition among the states may enhance efficiency and innovation, just as it does in the private sector. But this view ignores the benefits of [f]ederal action in a number of areas. The enumeration of powers given to the federal government under the Constitution suggests that even in the early infancy of the Republic, [the Founders] recognized the advantages of federal involvement across a broad range of endeavors. The economic strength of the United States rests in part on [its] vast national market, fostered not only by the free flow of commerce without artificial trade barriers, but also by national standards and a national transportation and communications system.
>
> Economists have sought to identify some general principles that would elucidate a "rational" division of responsibilities between levels of government. At least four categories of arguments justifying federal action can be identified.
>
> *The Need For Uniformity*
>
> Although diversity among state government programs is often desirable, in some cases the benefits of uniform government action across the states tip the scale toward federal involvement. Uniformity of standards and regulations may improve efficiency. For example, uniform rules for interstate commerce preserve one of America's strengths: our large national market. Conflicting state regulations could fragment this market and impede producers' ability to take advantage of economies of scale. Likewise, uniformity in minimum safety net benefits would guarantee that all needy Americans, regardless of where they live, enjoy at least a certain level of well-being, and would avoid distorting and inefficient movements of households in response to differences in benefits.
>
> *Direct Spillovers*
>
> Actions taken or not taken by states sometimes affect residents of other states. Residents of a state might be willing to tolerate pollution of their ground water, but the contaminated water could seep across state boundaries and harm residents of other states. States may also engage in activities that unintentionally benefit the residents of other states. For example, one state's successful innovation in its schools can lead the way for other states to reform their education systems, and states' efforts to prevent communicable diseases can benefit the health of nonresidents. Similarly, when

states invest more in education, and incomes rise as a consequence, they confer a positive benefit on all taxpayers: The federal government reaps some of the rewards of the higher incomes in the form of higher federal tax revenues. When the policies of one state affect the residents of others, for good or for ill, states may lack the right incentives to provide an appropriate level of public services, because the effects of policies on nonresidents may not factor strongly in their decision making.

The Effects of Policy-Induced Mobility

The freedom of people and firms to move at will from state to state promotes competition among state governments. Although this competition can enhance the efficiency of government, it can also make it difficult for states to pursue certain worthwhile policies. For example, the fear of welfare-induced migration may cause states to reduce welfare benefits to a level below what they would otherwise provide. Similarly, state competition for jobs may limit the generosity of unemployment insurance programs.

Inequality of Resources

States that are poorer than the average, or that are experiencing temporary downturns, are able to raise less revenue, yet have to spend more than other states to provide services for the needy. Clearly, only the federal government can transfer resources among the states. Not only does such redistribution help poorer states, but financial assistance from the federal government that increases during economic downturns can also help to stabilize regional economies. This assistance can be given through a number of channels: direct transfers of cash or in-kind benefits to lower-income individuals, grants to lower-income states or localities, matching grants to state or local programs for the needy, or direct provision of public services in poor communities. The role of the federal government in transferring resources to states and localities is more complicated, both in theory and in practice, than is often recognized.

These rationales for a federal role are not mutually exclusive, and sometimes it is their interaction that makes a strong case for a federal role in policy. For example, national safety standards, when desirable, might evolve on their own, were it not for spillovers. States could simply agree to a set of voluntary standards, and each state would weigh the benefits and costs of complying. In doing so, however, it would ignore the costs it might impose on others. A state might adopt more lax safety regulation for its cars, but then when its cars cross over into another state, the other state bears part of the costs. Federal action is therefore needed to ensure uniform national standards that avoid these spillover effects.[10]

Other Important Relationships in the Intergovernmental System

The first three sections of this chapter have focused primarily on relationships between the federal government and the 50 states. But IGR also comprise state–state (interstate) relations, state–local relations, and local–local (interlocal) relations. To these important relations we now turn.

State–State Relations

Some aspects of interstate relations are governed by constitutional rule, while other aspects are the result of practical needs.

Constitutional Aspects Three clauses in the Constitution are especially relevant to interstate relations. First, the **full faith and credit clause** (Article IV, Section 1) requires state courts to enforce the civil judgments of the courts of other states and accept their public records and acts as valid. It does not require states to enforce the criminal laws of other states; in most cases, for one state to enforce the criminal laws of another would raise constitutional issues. The clause applies especially to enforcement of judicial settlements and court awards.

The full faith and credit clause became part of the national debate on May 17, 2004, when Massachusetts became the first state to allow same-sex couples to get married. Although much has been written about how other states should treat these marriages, the real legal conundrum concerns how they treat the breakup of a same-sex marriage. Because states are not prohibited by federal law from recognizing same-sex marriages performed in other states, they should be able to grant same-sex divorces. Even the 39 states that oppose gay marriage may have an interest in doing so, because they would be ending something they view as a problem in the first place. If they refuse to do so, they would be making same-sex marriage even more binding than those between heterosexuals.[11]

Article IV, Section 1 of the Constitution also asserts that when individuals charged with crimes have fled from one state to another, the state to which they have fled is to deliver them to the proper officials upon the demand of the executive authority of the state from which they fled. This process is called **extradition.**

Second, under Article IV, Section 2, states must extend to citizens of other states the privileges and immunities granted to their own citizens, including the protection of the laws, the right to engage in peaceful occupations, access to the courts, and freedom from discriminatory taxes. Because of this clause, states may not impose unreasonable residency requirements—that is, withholding rights of American citizens who have recently moved to the state and thereby have become citizens of that state.

Third, Article 1, Section 10 permits states to enter into **interstate compacts,** or agreements (with the consent of Congress). The Crime Compact of 1934, which allows parole officers to cooperate across state lines with a minimum of red tape, is now subscribed to by all states. States lacking adequate facilities make compacts with other states to help them with problems that might arise, such as with professional education, welfare, tuberculosis, and mental illness.

As state officials have had to cope with problems involving transportation, energy, pollution, water resources, and fishing rights across state boundaries, the number of compacts has risen accordingly. Whereas there were only 24 compacts before 1900, today more than 170 exist.

The Port Authority of New York and New Jersey is one of the more notable and larger interstate agencies established by an interstate compact. Created in 1921 to develop and operate the harbor facilities in the area, the authority now also constructs and operates bridges, tunnels, terminal facilities, and airports.

Practical Aspects States collaborate—must collaborate—on many issues. For example, few highways end abruptly at a state's border, so states must coordinate road construction. Likewise, few mosquitoes end their flight paths at a border, so states must coordinate insect control.

Sometimes states cooperate not because they *must* but because it can save money. For example:

> Hawaii chose to piggyback on Arizona's system for medical patients, instead of building its own. The system Arizona runs for both itself and Hawaii is a huge and complex Prepaid Medical Management Information System for managed care. Arizona operates Hawaii's system from its (Arizona's) Department of Administration mainframe with the same staff that manages its own. Not all of Hawaii's state requirements are the same as Arizona's, but Arizona enhanced its system so that it could support Hawaii's requirements. All the information on doctors and hospitals and the services delivered to patients in Hawaii are run through Arizona's system, and the data resides there.[12]

One important way the states collaborate is by adopting uniform laws. A notable example of this is the Uniform Commercial Code (UCC), which was created in 1952 through the joint efforts of the National Conference of Commissioners on Uniform State Laws and the American Law Institute. All 50 states have adopted the UCC. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. The UCC assures businesspersons that their contracts, if entered into validly, normally will be enforced.

Another means of interstate collaboration is the establishment of regional commissions. With the backing of the federal government, various states have formed the following regional commissions: the Appalachian Regional Commission, the Northern Great Plains Regional Commission, and the Delta Regional Authority.

One type of cooperative action, the first of its kind in the nation, came after the George W. Bush administration decided not to regulate the greenhouse gases that contribute to global warming. In 2005, officials in nine northeastern states agreed to freeze power plant emissions at the current levels and then reduce them by 10 percent by 2020. Although any reduction achieved in the region would be significant, environmentalists believe that the real importance of the cooperative effort is the example it sets for other states.

One final means of collaboration between states should be mentioned: *bartering.* Some barter systems might have made sense at any time because they allow states to cut the size of government, split their cost, and share services. But the urgent political will to barter was absent until the 2008–2009 recession, which forced states to share. Consider, for example, how Minnesota and Wisconsin have teamed up:

> Minnesota was looking for a bargain on the tiniest walleye fish, known as frylings, that the state stocks in some of its lakes. Wisconsin needed more of the longer fingerlings for its fishing lakes. So the neighbors have decided to share a fish—Wisconsin's frylings for Minnesota's fingerlings—along with hundreds of other items: bullets for the police, menus for prisoners, trucks for bridge inspections, and sign language interpreters.[13]

State–Local Relations

As the federal government became a less dependable source of financial assistance to local government, expectations about the role of states in domestic policy shifted. That states moved to replace some lost federal grant funds to local governments contributed to a widespread sense among observers of the intergovernmental system that states were "on the move." In 2000, local governments received $327 billion in revenue from state governments, while $292 billion came from Washington.

Cash is not the only connection between states and localities. Although we associate police forces, firefighting companies, and public health and zoning agencies with the very essence of local government, it is important to note that all those functions and agencies operate under state laws. The state legislature and courts allow cities to adapt state laws to local needs, but cities remain under state authority. This principle was confirmed in 1868 in a famous ruling known as **Dillon's rule.** Judge John F. Dillon of Iowa ruled that *state legislatures were supreme over cities.* Legislatures could, in his words, "sweep from existence" all cities—and the latter could not do a thing to prevent it.

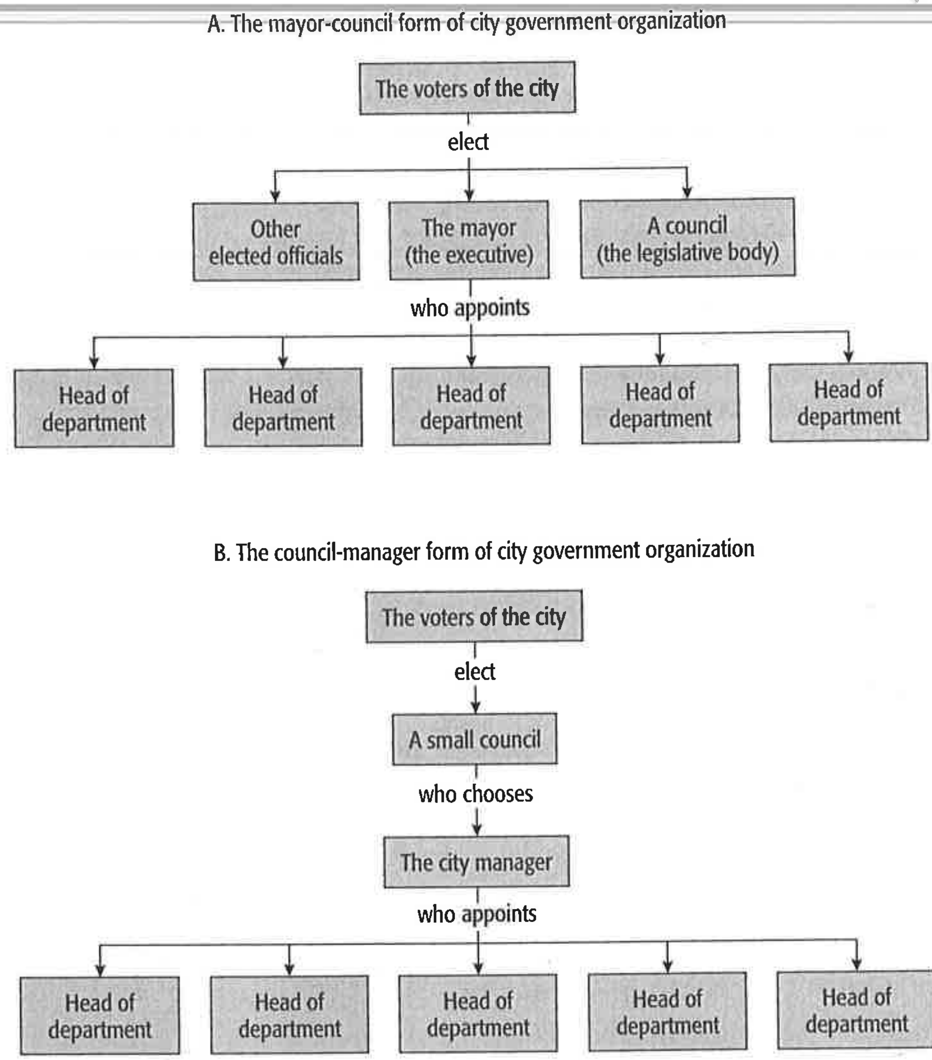
Of course, state governments did not sweep cities from existence. Quite the contrary. They gave them more power and autonomy. The most important means of giving cities independence was **home rule.** Essentially, home rule is *the power vested in local units of government—mostly cities—to carry on their affairs with a minimum of external legislative or administrative control.* Home rule implies that local units have the power to write and adopt a charter, to change the charter, and to adopt ordinances and make administrative decisions that have the force of law. State home rule laws vary, but all permit a measure of freedom for cities. Most home rule provisions are incorporated in state constitutions. These provisions guarantee that state legislatures will not pass legislation concerning the local affairs, property, and government of cities except by laws of statewide application. In other words, no city can be subjected to special legislation imposed on that city alone by the state legislature.

Although some states have departments to coordinate state and local affairs, administrative relations between the city and the state generally are conducted on a functional basis. Thus, the state department of education supervises the activities of local school districts, and the state department of health, the activities of local health departments.

State bureaucracies have several techniques of supervision. First, they can simply require reports from local communities. Reports warn the state agency when trouble spots (for example, excessive debts) begin to appear. Second, state agencies can, as the federal government does for them, furnish advice and information. Third, with larger budgets and more specialized equipment and personnel, the state can provide technical aid. Finally, if all else fails, the state can use its coercive power. For example, it can grant or withhold permits for certain things (for example, to dump raw sewage into a stream under prescribed conditions); issue orders (for example, to prescribe the standards for water-supply purification); withhold grants-in-aid; require prior permission from a state agency for an action; and appoint or remove certain local officials.

State bureaucracies clamor for relief from unfunded mandates, but many of them do unto their localities what Washington does unto them. After spending more than a decade

Figure 3.1 Forms of City Governments

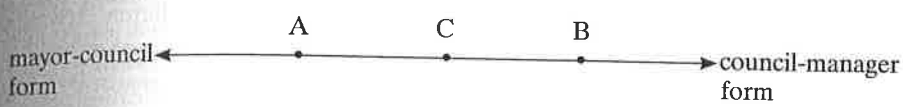


deliberating the propriety of federal mandates imposed on states, politicians and administrators have begun to focus on the tension between states and their localities. South Carolina has in effect 695 administrative and legislative mandates—some dating from 1842. The cumulative effect of such mandates to a town is burdensome, if not devastating.

Local–Local Relations

Cities Although there are some variations, most municipalities have one of two basic types of institutional arrangements: a mayor-council form of government or a council-manager form. The **mayor-council form** reproduces at the municipal level the standard institutions of American government with a separately elected legislature (the city council) and chief executive (the mayor). See Figure 3.1(A). The council typically has five to nine members, except in very large cities, such as Chicago, where the council has 50 members.

The **council-manager form** is unique in American government. See Figure 3.1(B). It is the closest thing the United States has to a parliamentary system. In the council-manager form, as in a parliamentary system, there is no independent executive. Instead, the legislature (city council) appoints the chief of the executive branch, the city manager. Unlike in the parliamentary system, however, the city manager is not a political leader. Instead, the city manager is a professional trained in city management and is supposed to administer city services in an expert, nonpartisan way. It is useful to think of these forms as being at the ends of a continuum (as shown below), and city residents as being able to adapt extensive variations along that continuum (as indicated by points A, B, and C).



If we ask ourselves what it is we admire about a successful corporation, it's not hard to see why city residents might want to be on the right end of the continuum. First, successful corporations are efficient: They get their work done with a minimum of wasted effort and resources. Second, top management is accountable. Ideally, chief executive officers are held firmly responsible for their performance and results. Although a city can't become a corporation, it can hire a professional manager or chief administrative officer to replace wasteful political patronage with nonpartisan administration. The downside of this arrangement is that the city loses the benefits of having highly visible political leadership. Now it lacks any public figure with the power and influence to make tough decisions and get them accepted.

So some cities might want to be on the left end of the continuum. Residents in these cities can choose a strong mayor and get the leader they seek. The downside of this move is that it can bring an element of management cronyism and politically tainted policy decisions. Thus, cities at either end of the continuum will have incentive to adapt at least a few of the features of the alternative form of government—in other words, move to positions A, B, or C.

What might a move from a pure council-manager form of government to, say, point C involve? Whereas the council used to select the mayor, now the people directly elect him or her. Whereas the mayor did not have veto power, now he or she may have it. Whereas the people used to elect council members at-large—in other words, in citywide elections—now they can choose some members by district. The upshot of this change is to make the member more beholden to the political and economic interest of particular neighborhoods rather than the best interest of the entire city.

And what might a move from a pure mayor-council form of government to, say, point A look like? Whereas voters elected most council by district, now voters may elect some at large. Whereas the city had no chief administrative officer, now it may. Whereas council had a staff, now it may not. Whereas the mayor served as the chief administrative officer, now he or she may hire and fire one without consent of counsel.

For empirical support of this analysis of how and why cities might adapt their structures, we turn to a recent study by H. George Frederickson and his colleagues. I cannot present here a thorough discussion of their findings but will outline some relevant points:

1. In 1900, virtually all U.S. cities employed the mayor-council form of government.
2. "For much of the 20th century, council-manager city government was thought to be the new idea, the reform model. As we approach the 100th anniversary of council-manager government, it is no longer a new idea. . . . Council-manager government was designed to solve corruption, inefficiency, and management problems, and it did. Now . . . most reform cities with council-manager structures have turned their attention to economic development, political responsiveness, political leadership and accountability, and equity."
3. For the first half of the 20th century, the mayor-council and council-manager forms of government were relatively good descriptions of distinctly different structures. Beginning in the 1950s, cities using both structures began a steady process of structural adaptation. "But these cities continue to be legally categorized as mayor-council or council-manager structures, categories that often mask actual structural details."
4. As early as the late 1920s, some council-manager cities began moving to point C.
5. "Beginning in the 1950s, the most prominent features of council-manager government, such as a professional executive and a merit civil service, were widely adopted in mayor-council cities. At the same time, the most prominent features of mayor-council government, such as a directly elected mayor and some or all members of the city council elected by districts, were being widely adopted in council-manager form government."
6. In summary, over the past 50 years, more and more mayor-council cities have adopted many of the key features of council-manager cities to increase their administrative efficiency. Meanwhile, more and more council-manager cities have adopted many of the key features of mayor-council cities to increase their political responsivensess. "Fewer cities now are either distinctly mayor-council or council- manager form, and most cities are structurally less distinct, constituting a newly merged or hybrid model of local government."[14] Point B represents that hybrid model.

Counties and Special Districts The difference between a county and a municipality is that a county may not be created at the behest of its inhabitants. The state sets up counties on its own initiative to serve as political extensions of the state government. Counties are sometimes called "invisible governments." The media tend to ignore them—and many citizens are not even aware of the functions counties provide. (County governments' responsibilities include zoning, building regulations, health, hospitals, parks, recreation, highways, public safety, justice, and record keeping. Counties also run airports, bridges, water systems, and sewage systems.) Size—even enormous size—is no guarantee of public attention. Los Angeles County's 10 million people make it the nation's most populous local jurisdiction. It has more people than all but eight states, and it boasts a land area bigger than Delaware and Rhode Island combined. Yet even local residents frequently become confused over just who is a county supervisor and who is on the Los Angeles City Council. The supervisors, among the most powerful public officials in America, still manage to operate in anonymity most of the time.

Although the media and most of the electorate have continued to ignore counties, the fact is that they are becoming more important players in American government with each passing year. As the state and federal governments have pulled back on funding in areas such as health care, aid to the poor, and criminal justice, it is counties—much more than states and cities—that are generally obligated to fill the gap.

Towns—not to be confused with the word "town" when used as a synonym for city—are a unique governmental creation. In Maine, Massachusetts, New Hampshire, Vermont, and Connecticut, the unit called the town combines the roles of city and county in one governing unit. A New England town typically consists of one or more urban settlements and the surrounding rural areas. Consequently, counties have little importance in New England.

Townships operate somewhat like counties. Where they exist—there may be several dozen within a county—they perform the same functions that the county would otherwise perform. Indiana, Illinois, Kansas, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin all have numerous townships.

Special districts are usually run by commissioners who may be elected or may be appointed by elected officials in other governmental units. Among the largest special districts in the United States are the following: Port Authority of New York and New Jersey, Salt River Project District (Arizona), Washington Public Power Supply System, Washington [D.C.] Metropolitan Area Rapid Transit Authority, Chicago Transit Authority, Massachusetts Bay Transportation Authority, Southern California Rapid Transit, Southeastern Pennsylvania Transit Authority, and Southern California Metropolitan Water District. One important feature of special districts is that they cut across geographic and governmental boundaries. Sometimes special districts even cut across state lines. For example, a metropolitan transit district may provide bus service to dozens of municipalities and several counties.

Fragmentation, Cooperation, and Competition The following story took place several decades ago—and it's all true. After hearing about the impressive governmental reforms Frederick Gardiner had effected in Toronto, a group of Pittsburgh civic leaders invited him to a dinner in their city. Naturally, they asked how he had managed to accomplish so much. One reform, Gardiner said, made it all possible: consolidation of many small and inefficient municipal governments into a single, all-encompassing metropolitan regime. As he spoke, guests at tables in the front row began to notice small missiles flying over their heads and toward Gardiner. The assembled mayors, council members, and police chiefs of Allegheny County were throwing dinner rolls at Gardiner for advocating consolidation![15]

It is not difficult to figure out why they were upset. Pittsburgh and surrounding Allegheny County are home to possibly the most unwieldy and inefficient patchwork of local governments in America. The 1.3 million county residents live in 130 different municipalities, the vast majority of them with fewer than 10,000 residents. Yet each tiny government has its own mayor and council as well as its own struggle to maintain police forces, public utilities, street maintenance, and a host of other services. Today most urban experts would agree with the ill-fated Gardiner from Toronto: Any big city needs to join forces with the suburbs around it in order to survive.

Although the situation in Allegheny County may be extreme, fragmentation of local government is not a problem unique to this county. Each governing body in thousands of cities and towns tends to look at problems from its narrow perspective. As a result, local bodies fail to cooperate with one another and plan effectively for the region's future needs.

Traditionally, regional cooperation on specific policy areas—for example, transportation and water and sewage—has been undertaken through the use of the special districts discussed above. But there are limits to the number of districts that can be established efficiently and the level of coordination these districts can achieve. What then can be done to coordinate a variety of public services in a metropolitan area? For starters, local governments can enter into interlocal service arrangements or agreements to determine/deliver services to their citizens. Essentially, there are three types of such arrangements.[16]

1. *Intergovernmental service agreements:* One jurisdiction pays another to deliver certain services to its residents. Most favored services delivered through intergovernmental service agreements are prisons and programs for the elderly and public health.
2. *Joint service agreements:* Two or more governments agree to the joint planning, financing, and delivering of certain services to the residents of all participating jurisdictions. Libraries and public safety communication are popular areas.
3. *Intergovernmental service transfers:* A jurisdiction permanently transfers one of its responsibilities to another government, private corporation, or nonprofit agency. Favored areas of transfer are public works and utilities, health, and welfare.

In many areas of the country, a **council of governments** (frequently referred to as a COG) exists wherein officials from various localities meet to discuss mutual problems and plan joint, cooperative action. These cooperative arrangements facilitate a regional approach to growth, transportation, pollution, and other problems that affect a region as a whole. These COGs are often formally very weak, being underfunded, poorly staffed, and lacking in any real legislative or taxing power. However, a few areas have developed superlocals, institutional arrangements that act almost as general-purpose governments for an entire region. Seattle, Miami, and Minneapolis-St. Paul all have a metropolitan council that serves such a function. For example, the Minneapolis-St. Paul Metropolitan Council operates the region's bus service, provides sewer and water services, operates a regional housing and development authority, and funds and plans regional parks and trails—all activities that cut across traditional local government's physical and policy area boundaries.

Unfortunately, such examples of institutions for regional coordination are the exception rather than the rule. For the most part, Americans have shown little interest in promoting regional cooperation to correct the inequalities and coordination problems that result from metropolitan fragmentation. Generally speaking, the United States lacks the strong tradition of regional planning evident in Europe. Consider how British planners prevented the overgrowth of London: They encircled the city with a "green belt"—a designated area in which the countryside would be preserved and no new development permitted. The growth of the region's population was absorbed in planned "new towns" that were built some distance from the central city. The result was a mixture of city and countryside in a metropolitan area and the avoidance of American-style urban sprawl.[17]

Global trends might also have a decisive effect on complacent American urban areas such as Pittsburgh. Neal Peirce argues that the actions of "citi-states," or great metropolitan regions, whether they be Singapore or Seattle, are increasingly driving the global economy.[18] Accordingly, each regional economy must define its own profitable niche, and its localities and leaders must work collaboratively toward that end. That work will involve regional systems of governance, regional transportation and environmental planning, fiscal equity between big cities and their suburbs, and, according to Peirce, preparation for a multicultural future.

It will also involve rethinking the notion of what a city is. For official purposes, such as allocating federal funds, OMB has produced a formal definition of metropolitan areas. They are referred to as **metropolitan statistical areas (MSAs)** and defined as a county or group of counties that contains at least one city of 50,000 or more. The contiguous counties are included in an MSA if they are all metropolitan in character and are socially and economically integrated with the central city. The Pittsburgh MSA, for example, consists of Allegheny County, Armstrong County, Beaver County, Butler County, Fayette County, Washington County, and Westmoreland County.

Robert Lang and Dawn Dhavale at Virginia Tech advocate that the federal government use an even broader overlay than the MSA to capture regional economic and social realities. They identify ten *megalopolises* in the United States that function in the same ways as giant cities. Many features define and create a megalopolitan area. The flow of goods, services, and people—where the branch offices of a company are, where associated businesses and industries locate or emerge—plays an important part. But the principal piece of infrastructure is the interstate highway. For example, one megalopolis, which stretches from Kansas City down through Oklahoma City, Dallas, Austin, and San Antonio, is knitted together by I-35. Similarly, I-85 and I-81 pull together the Charlotte, Atlanta, and Raleigh megalopolis. The second largest of the ten megalopolises is the Midwest, stretching from Pittsburgh to Chicago. See Figure 3.2.

Lang and Dhavale would argue, along with Peirce, that megalopolises are the new competitive units in the global economy. Robert Yaro, president of the Regional Planning Association in New York City, says: "We've used up the capacity in our existing infrastructure systems, and we need to build more in a focused, thought-out way. Our competitors in Europe and Japan are doing this already."[19]

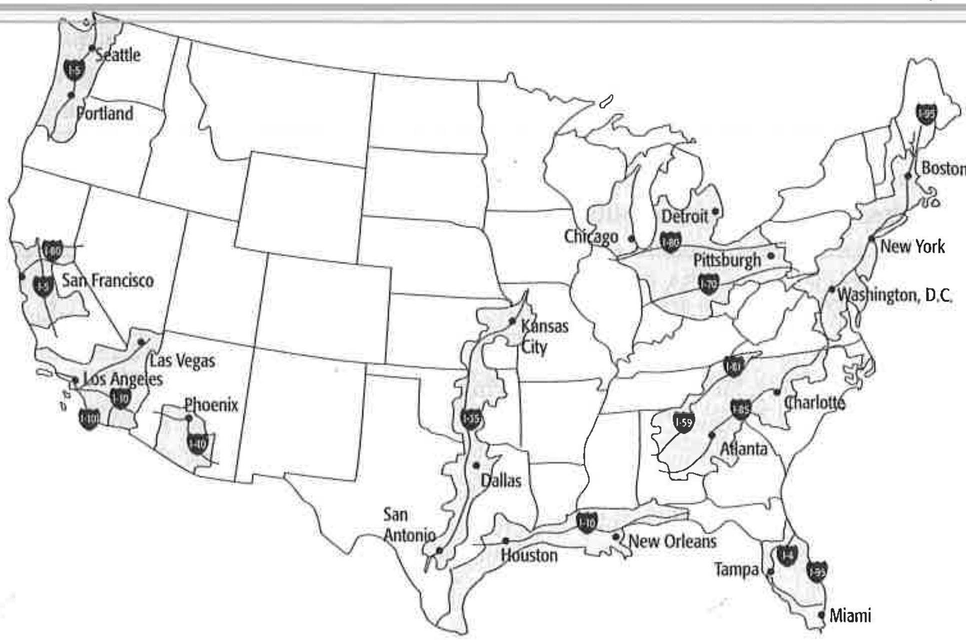
Managerial Implications

Besides the political skills noted in the previous chapter and the program management skills discussed in Part Two, what else does it take to be effective at managing IGR? This section suggests two additional tools: agency theory and negotiating. Although we will be discussing them chiefly in the context of IGR, it should be kept in mind that these tools have very broad application in public administration.

Principal–Agent Theory

Economists have developed an analytical framework well suited to the task of managing in an interorganizational setting: the **principal–agent model.** Essentially, the model expresses analytically any relationship in which one party, the principal, considers entering

Figure 3.2 Megalopolises and Interstates



Megapolitan Areas	2000 Population
Northeast	49,182,941
Midwest	39,489,865
Southland (includes Los Angeles)	20,962,590
Piedmont (Atlanta)	18,391,495
I-35 Corridor	14,465,638
Peninsula	12,837,903
NorCal	11,568,172
Gulf Coast	11,533,241
Cascadia (Seattle)	7,115,710
Valley of the Sun (Phoenix)	4,095,622
Megapolitan Total	189,643,177
United States	281,421,906

Source: Robert E. Lang and Dawn Dhavale, *Beyond Megalopolis: Exploring America's New "Megapolitan" Geography*, Metropolitan Institute Census Report Series (July 2005), 14 and 15.

into a contractual agreement with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principal. The employer (the principal) seeks to purchase the skills of an employee (the agent) to perform the organization's task. The government agency (the principal) hires another organization (the agent) to help in the attainment of the principal's goals. Other examples of agency relationships include doctor–patient, broker–investor, lawyer–client, politician–citizen, and politician–administrator. Obviously, principals seek agents for various reasons. They may lack the requisite knowledge or the legal certification that the agent has, or they may find the task too large or complex to perform alone.

Adverse Selection and Moral Hazard Regardless of the reason for relying on an agent, the principal faces two problems:

- *Adverse selection.* Consider an example in which a government bureau seeks bidders for a project requiring independent, creative work. Although the bureau would like to attract highly qualified and motivated companies, its top administrators cannot know any given company's true intellectual resources or work habits. So they must proceed on the basis of rough indicators, such as educational credentials and previous work experience, thus declaring the government's willingness to pay a certain price for companies that are nominally qualified according to these indicators. "The price is, in effect, a statistical average, reflecting both the estimated implications of the indicator for productivity and the estimated variation in productivity across all [companies that] qualify."[20] In other words, the company's true worth may be substantially above (or below) the price offered. If the company is, in fact, highly qualified, it will tend to find that the government's proxy-based price is too low; if the company is, however, severely lacking in qualifications but still meets the proxy requirement, it will tend to find the price attractive indeed. The highly qualified type of agent is, however, likely to look elsewhere for "better" jobs with proxy categories that are either more finely measured or are simply "pitched" at a higher level. Thus, the **adverse selection theory** contends that principals tend to hire lower-quality agents than desired.
- *Moral hazard.* Once the contract has been signed, the bureau faces another problem: The actual behavior of the company is not entirely observable. Because the principal cannot know for sure to what extent the agent is productive, it must again rely on proxies: quality of reports, timeliness, diligence, and so forth. As a result, the agent has an incentive to redirect its efforts toward the proxy measures rather than abstract goals implicit in the contract. For example, a city (the principal) hires a company (the agent) to treat people with drug addiction. Although the real goal of the program may be to turn hard-core drug addicts into drug-free, solid citizens, the proxy measure of performance is "people treated per month." Therefore, the agent has an incentive to sign up as many people as possible (some of whom may be only recreational users) and process them through the program as rapidly as possible. Further, the agent has an incentive to substitute leisure or shirking behavior for productive effort, because the agent knows that inadequate performance may not be detected. After all, the city has numerous contracts at a variety of locations and cannot possibly have an employee at each site all the time monitoring the work. This problem is an example of **moral hazard,** which is the form of postcontractual opportunism that arises because actions that have efficiency consequences are not freely observable. So the person taking these actions may choose to pursue his or

her private interest at the other's expense. In short, the term *moral hazard* refers to *any behavior under a contract that is inefficient.* Interestingly, the term originated in the insurance industry, where it referred to the tendency of people with insurance to change their behavior in a way that leads to larger claims against the insurance company. For example, being insured may make people lax about taking precautions to avoid or minimize losses.

Principles of Agency Theory How, then, can the principal design an incentive structure that will induce the agent to pursue the principal's objectives? The answer is "bound up with the development of monitoring systems as well as mechanisms for inducing the agent to reveal as much of his privately held information as possible."[21] Several concepts have emerged in the literature regarding the principal–agent relationship to explain why different relationships entail different levels of monitoring and types of incentives, and why this monitoring and incentive structure exists. Some concepts are self-evident but have implications that are frequently overlooked:[22]

1. There tends to be less monitoring, or monitoring of poorer quality, when monitoring is expensive.
2. Administrative difficulties are the most severe when the interests or values of the principal and agent diverge substantially, and information monitoring is costly. See example below.

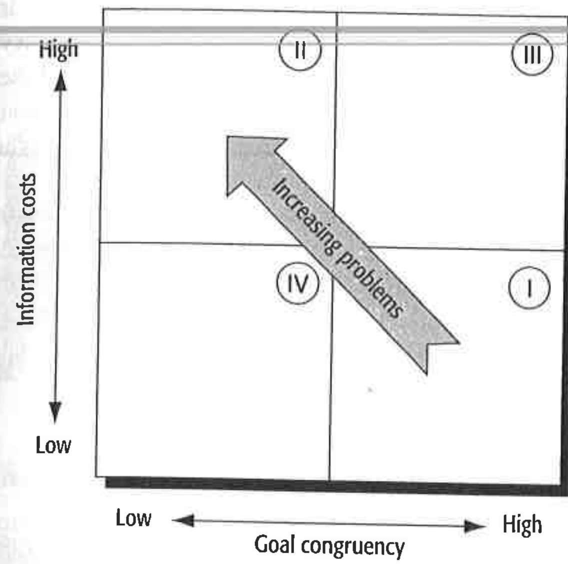
Some concepts are less obvious, or counterintuitive, but no less important:

3. Ideally the agent's information *and* action should both be monitored. However, in a range of real-world situations, much more limited monitoring—say of an indicator of output—can be successful.
4. A large stock of value, such as reputation or assets subject to suit, that could be lost because of bad behavior is a strong incentive for good behavior.
5. Long-term relationships, among other benefits, develop the stocks of value needed for "enforcement" and make limited monitoring more effective.
6. The benefits of a reduction in agency costs or an increase in agency output will be shared between principal and agent in most situations. For example, if a contractor hired by a state to deliver some service discovers a cheaper way to do so, the savings will be shared with the state. Therefore, the principal (the state) and the agent (the contractor) have a common interest in defining a monitoring-and-incentive structure that produces outcomes as close as possible to ones that would be produced if information monitoring were costless.

An Example Bureaucratic institutions in the United States have evolved in large numbers and remarkable variety, making the search for generalization difficult. Kettl has suggested a way to use agency theory to better understand how administrative practice varies.[23]

Agency behavior varies with respect to two factors: information costs and goal congruency. Consider the Federal Aviation Administration's (FAA's) air traffic controllers. Because they work with willing clients (pilots) who have a keen interest in avoiding traffic, **goal congruency**, or the amount that both parties strive in common toward a goal, is

Figure 3.3 Variance of Programs by Information and Goal



Source: Adapted from Donald F. Kettl, "The Perils—and Prospects—of Public Administration," *Public Administration Review* (July–August 1990): 416.

very high. Because radar and computers observe precisely what is happening in the skies, **information costs** to controllers are low. Such programs belong in quadrant I of Figure 3.3. Generally speaking, programs with high goal congruency exhibit fewer problems than most. Perhaps for that reason, governments often administer them directly.

But not all FAA programs reside happily in quadrant I. Air safety regulation is a case in point. FAA employees who regulate and inspect the airline industry to ensure the safe maintenance and operation of airline fleets find this job markedly different from that of air traffic controllers with respect to both factors, goal congruency and information costs. With so many planes and so few inspectors, regulators can only randomly and indirectly try to determine whether companies are complying with the FAA's myriad regulations. Because airlines are constantly seeking to minimize expense and downtime in one of the country's most competitive industries, goal congruency between company and government is relatively low. Most regulatory programs appear in quadrant II.

Figure 3.3 also offers insight into the difficulty of managing grants and contracts. The information costs associated with these activities are high. How does government know for sure that the contractor is qualified—much less best qualified—for the job? How does government get good feedback about the contractor's day-to-day operations while keeping information costs low? Goal congruency is seldom as neat and automatic a fit as in the air-traffic control programs, but high goal congruency can be achieved through negotiated agreements. Accordingly, grants and contracts can be placed in quadrant III.

Programs such as Medicare and welfare, which involve payments by a government to individuals who provide no goods or services in return, appear in quadrant IV. Transfer programs such as these account for 36 percent of federal expenditures.

Information costs are relatively low with such programs. "In the U.S. Department of Health and Human Services (HHS), officials know how much money is being spent on different medical services through the Medicare program because they know to whom they are writing checks and in which categories. Beyond the mailing of checks by HHS and cashing those checks by recipients, there needs to be little coordination."[24] Not so with goal congruency. Administrators of transfer programs must be concerned with whether recipients spend their money according to the government's goals.

How does the principal–agent conceptual framework apply to federalism? Arguably, the states are the principal because they hold political legitimacy and have delegated authority to the national government. The states ratified the Constitution—a document that begins, "We the people of the United *States* . . . do ordain and establish this Constitution." But the federal government can be the principal. For example, federal welfare law shifts authority back to the states that act as its agents.[25]

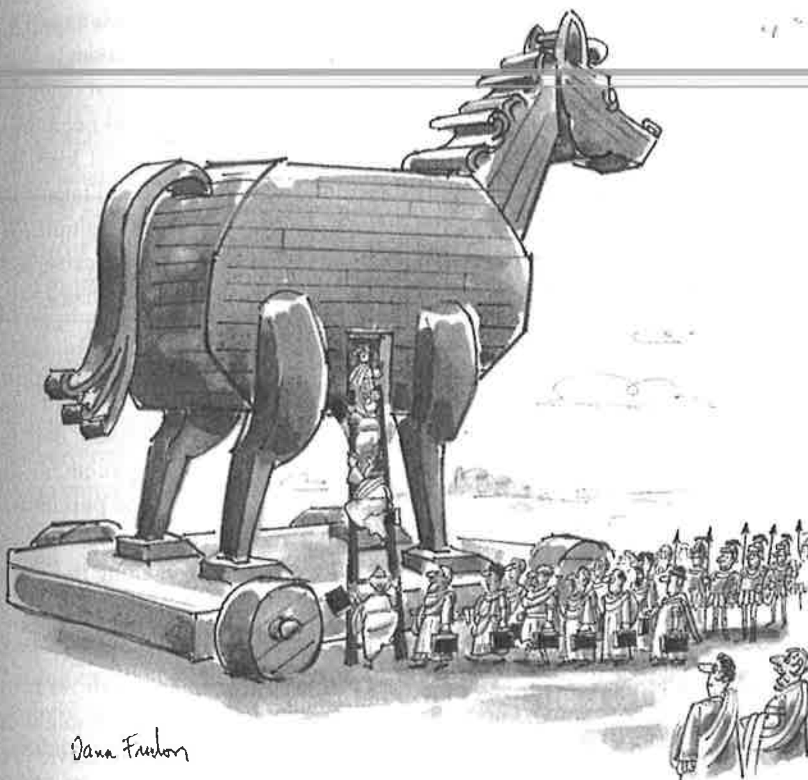
Negotiating

Like agency theory, negotiating is a valuable tool for public administrators trying to cope with the demands of IGR. Just consider the case of a federal official who is responsible for increasing the fire safety of nursing homes in Massachusetts:

> A state agency has jurisdiction over the fire inspections he is seeking. To get the inspection carried out, his actions must reach across organizational and jurisdictional lines. The traditional direct management tools and systems are inaccessible to him. He has little or nothing to do with the state agencies; their budget processes; or rewards, punishments, and other aspects of their employees' career paths. In short, if he seeks their "agreement" to carry out these inspections, his ability to manipulate [the consequences of not agreeing] is extremely limited. But the federal official's political and organizational superiors hold him accountable for achieving results. Should there be a disaster in such a federally funded nursing home, he would be held responsible by members of the legislature, the victims, the general public, elements of the media, and quite conceivably, the courts.[26]

Like agency theory, negotiating has relevance outside the context of IGR. Recall that Chapter 1 identified *negotiator* as one of the 10 basic roles all managers must play. For instance, they may have to negotiate for resources from their boss, work out differences with associates, or resolve conflicts among subordinates. By using negotiation, public executives save time and money. Parties are better satisfied with dispute resolution processes over which they have control, and negotiated settlements are implemented at higher rates. As a general proposition, negotiating an acceptable settlement is preferable to enduring protracted litigation or waging war. (See cartoon.)

What then is **negotiation?** It is a process in which two or more parties, who have different preferences, must make joint decisions and come to an agreement. Many people view negotiation not as a process but as an event—haggling or trading offers at the bargaining table. But to be an effective negotiator, that view must change. Essentially, the negotiating process consists of three activities: preparing, probing, and proposing.



"*We're going to try to negotiate first.*"

Preparing The most important aspect of negotiating occurs before negotiators ever meet. Most people clearly realize that preparation is important, yet they don't prepare in an effective fashion. Faulty preparation is not due to lack of motivation; rather, it has its roots in negotiators' failure to know the right questions to ask. Among the more important questions to address during the preparation stage are the following:

1. *What are the precedents?* As one experienced negotiator explains, if you don't know what has happened in similar situations in the past, "you can't quote or cite, as well as learn from, those events that have already happened, thereby giving legitimacy and credence to your position. Knowing how similar transactions turned out in the past may also guide you in structuring this one. But don't focus on a single precedent, such as one that supports your position. Be familiar with precedent(s) the other side might use."[27]
2. *What are the issues and alternatives?* Leigh L. Thompson, at the Kellogg Graduate School of Management, writes:

   Many negotiators make the mistake of identifying only a single issue to be negotiated in a situation. Usually, this is money (for example, in the sale of a house, the selling price may seem like the central issue of negotiation; similarly, in a job negotiation, salary may emerge as the key issue). It is a grave mistake to focus on a single issue in a negotiation because, in reality, there are more issues at stake in most negotiation situations. By identifying other issues, negotiators can add value to negotiations. For example, in the purchase of a car, the payment terms, cash up-front, loan agreement, or warranty could all be negotiable issues. Negotiators should take time to brainstorm how a single-issue negotiation may be fractionated into multiple issues. Unbundling negotiations into several issues goes against rationality because people have a tendency to simplify situations into single issues. However, negotiators should try to make single-issue negotiations more complex by adding in issues.

Once the negotiator has identified the issues to be negotiated, it is a good idea to identify several alternative courses of action within each issue. In a negotiation for a new car, for example, loan payment terms might be broken down into percentage paid up-front or percentage of interest or a loan agreement might involve how many months or years the option is available to the purchaser. By identifying issues and alternatives, negotiators create a type of matrix, organized such that the identified issues in the negotiation are located along the columns and the alternatives are located along the rows.[28]

3. *What are the interests?* Among the many valuable suggestions Roger Fisher and William Ury of the Harvard Negotiation Project make in *Getting to Yes* is to "focus on interests, not positions."[29] If you are locked into a position, you might overlook other ways to achieve what you want. An example was the Camp David Treaty between Israel and Egypt in 1978. The two sides were at an impasse for a long time over where to draw the boundary line between the two countries. Israel wanted to keep part of the Sinai Peninsula, while Egypt wanted all of it back. Resolution became possible only when they looked at each other's underlying interests. Israel was concerned about security: It wanted no Egyptian tanks on its border. Egypt was concerned about sovereignty: The Sinai had been part of Egypt from the time of the Pharaohs. The parties agreed on a plan that gave all of the Sinai back to Egypt while demilitarizing large parts of it.
4. *What are the deadlines—for me and for them?* Knowing your own realistic deadline in advance will tell you how much leeway you have before you take an entrenched position. Similarly, understanding the other side's deadline may give you an edge or allow you to forgo a point in order to gain elsewhere. Deadlines are pressure points. Herb Cohen, a practicing negotiator, writes:

> If there is no perception of a deadline there's little inducement for taking action, much less for accommodation and compromise.
>
> Unfailingly, all of us know that legislative bodies from Parliament to Congress enact most of their bills and appropriations just prior to recess.
>
> Where a manager or secretary is asked to complete a report at his or her leisure, when will it get done? Even the most conscientious person will put it off to work on matters that have a more immediate due date.

Still not convinced? Ask your child to clean his or her room when they have time. Just see when it gets done.[30]

5. *What are the strengths and weaknesses of the participants?* Ronald M. Shapiro, a negotiator in the sports industry, thinks that virtually all negotiators overestimate their own weaknesses and the other side's strengths. He recommends trying to take an honest inventory of each side's real strong points and vulnerabilities. "Ask yourself," he writes, "if your vulnerabilities appear as weaknesses to the other side or if you are more sensitive to them. The same applies to strengths. Give yourself credit for your pluses. Assess the other side's strengths analytically, not emotionally. The real strength you have is knowing your strengths and weaknesses."[31]
6. *What is your BATNA?* A negotiator needs to determine his or her best alternative to a negotiating agreement. Doing so is so important that Fisher and Ury made it into an acronym: BATNA (Best Alternative to a Negotiated Agreement). A BATNA determines the point at which you are prepared to walk away from the negotiation table. In practice, this means that you should be willing to accept any set of terms that is superior to your BATNA and reject outcomes that are worse than your BATNA. Surprisingly, negotiators often fail on both counts.

A BATNA is not something to strive for—rather, it is something that harsh reality and external factors sometimes force you to accept. A common problem is that negotiators are reluctant to recognize their real BATNAs; they fall prey to wishful thinking and unrealistic optimism. The best means of preparation is to continually try to improve your BATNA. Max H. Bazerman and Margaret A. Neale at Northwestern University suggest a strategy for doing this: Follow the "falling in love" rule, which applies to most negotiation situations.

To see how the rule applies, consider the following situation. A friend finds a house listed at \$249,000, makes an offer of \$222,000, and receives a counteroffer of \$237,000. The friend wants your advice on what to do. But this is a no-win situation for you. If your advice leads to a higher price than the friend had hoped, he or she is unimpressed with your expertise. If your advice leads to losing the house to another buyer, the friend might be angry with you. So what advice can you give your friend? Here is the answer Bazerman and Neale give:

> We say that he or she has already violated the most important rule of buying houses (or making any other important exchange, with the possible exception of mate selection): "Fall in love with three, not with one." To make a well-informed decision, a buyer must first think about what would happen if he or she did not buy the house. How attractive is the next best option? To the extent that the buyer loves only this house and has to have it, any bargaining position is weakened.
>
> Falling in love with one house (or car, or company) prevents you from thinking clearly and rationally about your best alternative and compromises your competitive edge in the negotiation. If you have an alternative, you are better able to risk losing the first house by waiting for the other party to make a concession. An alternative strengthens your position.[32]

7. *What is the other party's BATNA?* Lisa Bingham provides this illustration:

> Is the other party a small supplier whose primary contracts are with your agency? If the supplier desires a continuing relationship with the agency, its BATNA is not going to be as desirable as negotiating. However, if the other party is a member of a major regulated industry and has substantial financial resources, it may conclude that its BATNA (for example, to delay implementation of a new environmental or safety technology through protracted litigation) is more desirable than negotiating to comply now. Collect as much information as you can on the cost of compliance, the cost of litigation, and the resources of the party you are dealing with. Also, determine whether you can worsen the party's BATNA through punitive sanctions or criminal prosecution of responsible executives. Sometimes a party's BATNA is so undesirable that it really has no choice but to negotiate. For example, a felon caught red-handed can either face prosecution or plea-bargain and turn state's evidence. If the felon's BATNA is a long prison sentence, bargaining may be the only reasonable choice.[33]

Probing Skilled negotiators are better listeners, ask more questions, focus their arguments more directly, are less defensive, and have learned to avoid words or phrases that can irritate the person with whom they are negotiating (such as "generous offer," "fair price," or "reasonable arrangement"). In other words, they are better at creating the open and trusting climate that is necessary for reaching a win–win settlement.

"Ask questions," Shapiro tells us, "and an amazing thing happens: you get answers." He continues: "Most people don't ask questions. They seem to think it's a sign of weakness, as if they should already know everything. And they are reluctant to go to the key source of information about the other side, *which is the other side.*" Shapiro recommends asking the other side direct questions, such as: What do you really want? Why have you taken this position? What are your short-term goals? What are your long-range plans? He also recommends asking questions that seem unrelated to the negotiation issues, such as: Where do you live? Where did you go to school? What do you do when you're not working? Answers to these questions provide clues as to how the other side thinks, acts, and feels.[34]

One further point about the probing phase to negotiation: Address problems, not personalities. Concentrate on the negotiation issues, not on the personal characteristics of the individual with whom you are negotiating. When negotiations get tough, avoid the tendency to attack this person. Remember, it is the person's ideas or positions that you disagree with—not him or her personally. Fisher and Ury sum up the idea neatly: Separate the people from the problem.

Proposing Experts differ on whether one should make the first offer or encourage the other side to make it. In any event, initial offers—whoever makes them—are usually only points of departure. Initial proposals tend to be extreme and idealistic and should be treated as such. When you finally do propose, remember that the quality of your proposal is only as good as the quality of your preparation and probing. For example, if you considered interests broadly and looked for new options that might bring advantages to both sides—in other words, you generated many options—then the chance of a better agreement increases.

This brings us to the fundamental dilemma in the proposing stage of the negotiation. Is the process a win–win situation in which all participants can walk away from the table better off, although not necessarily to the same degree that they were when they first sat down? Or is this process analogous to slicing a pie—the bigger my piece is, the smaller your piece must be? David A. Lax and James K. Sebenius at Harvard described this dilemma not as a choice between a win–win game and win–lose game (as we have here) but as a choice between "creating value" and "claiming value."

> Value creators tend to believe that, above all, successful negotiators must be inventive and cooperative enough to devise an agreement that yields considerable gain to each party, relative to no-agreement possibilities. Some speak about the need for replacing the win–lose image of negotiation with win–win negotiation. In addition to information sharing and honest communication, the drive to create value can require ingenuity and may benefit from a variety of techniques and attitudes. The parties can treat the negotiation as solving a joint problem; they can organize brainstorming sessions to invent creative solutions to their problems.
>
> Value claimers, on the other hand, tend to see this drive for joint gain as naive and weak-minded. For them negotiation is hard, tough bargaining. The object of negotiation is to convince the other guy that he wants what you have to offer much more than you want what he has; moreover, you have all the time in the world, while he is up against pressing deadlines. To "win" at negotiating—and thus make the other fellow "lose"—one must start high, concede slowly, exaggerate the value of concessions, minimize the benefits of the other's concessions, conceal information, argue forcibly on behalf of principles that imply favorable settlements, make commitments to accept only highly favorable agreements, and be willing to outwait the other fellow.[35]

To better see the difference between these two orientations toward negotiations, we need only think of a process most Americans know well: the purchase of a new car. As we go through this example, keep in mind that the lesson applies to anything public administrators might purchase for their organizations. Let's look first at the claiming value, or win–lose, approach:

> The dealer starts with some fanciful "sticker price," and the buyer starts somewhere lower, depending on the quality of his or her research. The parties then take turns taking positions that move incrementally toward each other's stance. This negotiation style assumes a fixed pie (in this case, the parties are negotiating over how much the dealer will profit from the sale). One party's concession is the other party's gain. Each party's BATNA is to walk away from the deal. The buyer can go to a different dealer; the seller can sell to a different buyer.[36]

Now let's consider what the negotiations might look like if the same parties took the creating value, or win–win, approach:

> They would discuss issues such as the dealer's cost, the salesperson's interest in meeting a particular monthly quota or commission target, the buyer's ability to pay, the fact that there is a profit in light of the time of the year or the demand for the particular model, and a variety of other objective criteria that relate to the parties' respective interests in sealing the deal. The parties would focus on interests, not positions. They would try to identify ways to enlarge the pie. Will the customer refer friends? Will the customer be purchasing another car anytime soon? (Agencies can provide a continuing source of business for many vendors.) How will the customer's experience affect the dealer's reputation in the community? Can the customer provide the dealer with some free advertising?[37]

Thus, there are two dramatically different approaches to the question of negotiations. But do public administrators choose between them? They might ask how much opportunity exists for achieving a win–win outcome. If everyone will be much better off with an agreement than without one, it makes sense to emphasize creating value. If the administrator will have to work with the same people again in the future—which is very often the case in the public sector—it would be very dangerous to use value-claiming tactics that leave anger and mistrust in their wake. Administrators who have a reputation for being manipulative and self-interested will have a hard time building the networks and coalitions that are requisites for effectiveness.

In his influential *The Evolution of Behavior,* Robert Axelrod suggests that when negotiators must work together over time, they adopt a strategy of "conditional openness." This strategy tells the negotiators to start with open and collaborative behavior and to maintain this approach if the other party does too. If the other party becomes adversarial, however, the negotiator should respond in kind and remain adversarial until the opponent makes a collaborative move. Axelrod's strategy is, in effect, a friendly and forgiving version of the old rule "Do unto others as they do unto you." In Axelrod's experimental research, this conditional openness strategy worked better than even the most cold-blooded adversarial strategies.[38]

When public administrators choose a negotiating strategy, there is, of course, another consideration: What is the ethical thing to do? Negotiators often deliberately misrepresent their positions, even though few actions are more universally condemned than lying. This leads to a profoundly difficult question for the public administrator as negotiator: What actions are ethical and just? The next chapter examines that question in some depth.

Concepts for Review

adverse selection theory
application or project grant
block grants
categorical grant
cooperative federalism
council-manager form
council of government (COG)
creative federalism
devolution
Dillon's rule
dual federalism
extradition

federalism
formula grant
full faith and credit clause
goal congruency
grant-in-aid
home rule
eminent domain
information costs
intergovernmental relations (IGR)
interstate compacts
layer cake model of federalism
marble cake model of federalism
mayor-council form
metropolitan statistical area (MSA)
moral hazard
negotiation
new federalism
new new federalism
principal-agent model
revenue sharing
unfunded mandates

Key Points

This chapter focused on the thousands of relationships that exist among a bewildering number of jurisdictions that make up the U.S. federal system. We explained how that system evolved, what its economic implications are, and how public administrators can still make things happen within it. Although some say this is a time of decentralization in the federal system, the view presented here is more complicated: Change is going on simultaneously in contrary directions—centralizing and decentralizing. The chapter made the following points:

1. The U.S. federal system stands in contrast to the unitary or centralized systems such as those of France or Great Britain. The federal system divides power between central government and regional governments; each government, central or regional, is legally supreme in its own area of jurisdiction.
2. Although some powers are shared between governments—taxing and spending for the general welfare, defining and punishing crimes, and so forth—the traditional layer cake model of federalism assumes that functions appropriate at each level can be defined with reasonable precision and should be independent. Some scholars reject this model of the federal system, preferring a marble cake model, which holds that the cooperative relationships among the various levels of government result in an intermingling of activities.
3. A major deficiency of federalism as a descriptive model is that it tends to recognize mainly national–state and interstate relations but to ignore national–local, state–local, national–state–local, and interlocal relations. In contrast, IGR include as proper objects of study all the permutations and combinations of relationships among the units of government in the American system.
4. The history of federal–state relations in the United States can be divided into six eras: dual federalism (1789–1933), cooperative federalism (1933–1960), creative federalism (1960–1968), new federalism (1968–1980), new new federalism (1980–1993), and devolution (1993–present).

5. Because governors, mayors, and other state and municipal officials had a growing financial stake in intergovernmental aid, creative federalism developed a strong constituency that was prepared, when necessary, to lobby for the programs.
6. Categorical grants may be made by formula or by individual application. Formula grants are available across the board to all who are eligible in a category, such as the blind. Application or project grants are made for specific purposes and require a complex application procedure. In contrast to categorical grants, block grants are broad grants to states for prescribed activities with few strings attached.
7. The federal government giveth and taketh away. Unfunded mandates are regulations that impose burdens on state and local governments—without appropriating enough money to cover costs.
8. In 1980, federal grants to states accounted for almost 40 percent of state and local government expenditure. By 1990, they had dropped to 25 percent. During George H. W. Bush's administration, federal funding would rise again to about 31 percent and remain at that level during the administrations of Clinton and Bush the Younger.
9. In government, devolution refers to the transfer of power or authority from a central government to a state or local government. An often-cited example of devolution is the 1996 welfare reform legislation that replaced the basic welfare program with a program called the Personal Responsibility and Work Opportunity Reconciliation Act. The burden of administering the new program was shifted entirely to states. The federal government now gives block grants to the states and generally requires that the states match these funds. This devolution of power in the area of welfare is seen as a testing ground for the future.
10. Besides launching bold initiatives like creative federalism, new federalism, new new federalism, and devolution, presidents can influence the future of IGR in three other ways: regional offices, Internet commerce, and Supreme Court appointments.
11. Since the 1990s, the Supreme Court has been (1) reining in the national government's power under the commerce clause, (2) increasing state power under the Tenth Amendment, and (3) giving new life to the Eleventh Amendment.
12. Economists have sought to identify principles that would elucidate a rational division of responsibilities among levels of government. At least four categories of arguments justifying federal action can be identified: the need for uniformity, direct spillovers, the effects of policy-induced mobility, and inequality of resources.
13. Three clauses in the Constitution are especially relevant to interstate relations: Article I, Section 1, which requires state courts to enforce the civil judgments of the courts of other states and accept their public records and acts as valid; Article IV, Section 2, which requires states to extend to citizens of other states the privileges granted to their own citizens; and Article I, Section 10, which permits states to enter into interstate compacts.
14. The state legislature and courts allow cities to adapt state laws to local needs, but cities remain under state authority. This principle is known as Dillon's rule. The most important means of giving cities independence is home rule. Essentially, home rule is

the power vested in local units of government—mostly cities—to carry on their affairs with a minimum of external legislative or administrative control.

15. Although there are some variations, most municipalities have one of two basic types of institutional arrangements: a mayor-council form of government or a council-manager form.
16. A state sets up counties on its own initiative to serve as political extensions of state government. The responsibilities of county governments include zoning, building regulation, health, hospitals, parks, recreation, highways, public safety, justice, and record keeping.
17. Towns are a unique governmental creation. In Maine, Massachusetts, New Hampshire, Vermont, and Connecticut, towns combine the roles of city and county in one governing unit. Townships operate somewhat like counties. Where they exist—there may be several dozen within a county—they perform the same functions that the county would otherwise perform. Special districts are usually run by commissioners who may be elected or may be appointed by elected officials and other governmental units.
18. Economists have developed an analytical framework well suited to the task of analyzing IGR: the principal–agent model. Essentially, the model expresses analytically any relationship in which one party, the principal, considers entering into a contractual agreement with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principal. Regardless of the reason for relying on an agent, the principal faces two problems: adverse selection and moral hazard.
19. Negotiation is a process in which two or more parties, who have different preferences, must make joint decisions and come to an agreement. Essentially, the negotiating process consists of three activities: preparing, probing, and proposing.
20. Among the more important questions to address during the preparation stage are the following: What are the precedents? What are the issues and alternatives? What are the interests? What are the deadlines—for me and for them? What are the strengths and weaknesses of the participants? What is my BATNA? What is the other party's BATNA?
21. This is the fundamental dilemma in the proposing stage of the negotiation: Is the process a win–win situation—in which all participants can walk away from the table better off, although not necessarily to the same degree that they were when they first sat down? Or is the process analogous to slicing a pie—the bigger my piece is, the smaller your piece must be?

Problems and Applications

1. Some of the major social and economic innovations in the United States have begun with small-scale experiments on the state level. For example, Wyoming permitted women's suffrage 50 years before the Nineteenth Amendment was ratified. Can you think of other examples? What current state experiments might one day be taken up by the federal government?

2. How do you think business executives view centralizing power in Washington rather than decentralizing it via the 50 states?
3. A respected faculty member of a major university came up with a potentially valuable invention working in the basement laboratory of her home on weekends. With visions of altering the course of industry, she approached the dean for free laboratory space at the university so that she could perfect her breakthrough. But the dean bluntly informed her that university policy clearly states that any invention developed by a faculty member while at the university is owned by the university. She does not, however, want to sign over the invention. How might she negotiate with the dean?
4. The fragmentation and redundancies of the U.S. federal system are expensive in terms of coordination and personnel costs. Would you favor or oppose greater consolidation? Why or why not?
5. "American federalism was born in ambiguity, it institutionalizes ambiguity in its form of government, and changes in it tend to be ambiguous too." Discuss.

Favorite Bookmarks

lcweb.loc.gov/Global/state/stategov The Library of Congress was established as a legislative library for the U.S. Congress. Today the Library of Congress has grown to encompass many information-related activities, including a topical index of state government Web pages. It also provides a useful index for state and local government information.

www.icma.org The International City Management Association is a professional organization for appointed chief executives of cities, counties, towns, and other local governments. Its primary goals include strengthening the quality of urban government through professional management and developing new concepts and approaches to management through information services.

www.nlc.org
www.btg.com/uscm
www.ncsl.org
www.naco.org
www.nga.org

These are the Web sites of the five largest lobbies for state and local government: National League of Cities, United States Conference of Mayors, National Conference of State Legislatures, National Association of Counties, and National Governors Association. These organizations do more than advocate for state and local government interests: They foster intergovernmental cooperation and provide technical assistance and information sharing.

www.kellogg.nwu.edu/research/des_res/
www.PON.harvard.edu

A wide range of case, simulation, gaming, role-playing, and exercise material in the areas of negotiation and dispute resolution is available from the Kellogg School of Management at Northwestern University and from Harvard Law School. The first of the two negotiation materials collections is that of the Dispute Resolution Center of Northwestern University, whose offices are located within the Kellogg School of Management, but the collection is sponsored by faculty from the Schools of Law, Management, and Arts and Sciences, with affiliations with other schools in the Chicago area. The second is the Program on Negotiation at Harvard Law School.

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temporary medical facility. About 550 National Guard troops provide security.

Monday, August 29, 2005

6:10 A.M.: The eye of Katrina makes its landfall near Buras, Louisiana.
6:30 A.M.: Buras is obliterated.
7:50 A.M.: A massive storm surge causes immediate flooding in St. Bernard Parish and eastern neighborhoods of New Orleans. Water levels in most areas are 10 to 15 feet.
10:30 A.M.: Bush declares emergency disasters in Louisiana, Mississippi, and Alabama.
11:00 A.M.: Brown issues a memo ordering 1000 FEMA employees to the Gulf Coast and gives them two days to arrive.
8:00 P.M.: Blanco speaks with Bush to impress upon him the destruction caused by Katrina: "Mr. President, we need your help. We need everything you've got."
9:27 P.M.: FEMA officials give Chertoff's chief of staff a first-hand description of the levee breaks and the extensive flooding in New Orleans.
9:30 P.M.: Bush goes to bed without taking any action on the Katrina disaster or Blanco's request for assistance.

Tuesday, August 30, 2005

7:00 A.M.: In San Diego, staff tells Bush of the severity of the crisis along the Gulf Coast and advises him to end his six-week vacation early. He agrees.
9:00 A.M.: Chertoff flies to Atlanta, where he will attend a conference on avian flu.
10:00 A.M.: The breach in the 17th Street Canal has grown to about 200 feet. Looting is reported all over New Orleans.
10:53 A.M.: Nagin declares a mandatory evacuation for the city and orders police to forcibly take residents away, if necessary.
7:00 P.M.: Chertoff designates the Katrina destruction an "incident of national significance."

Wednesday, August 31, 2005

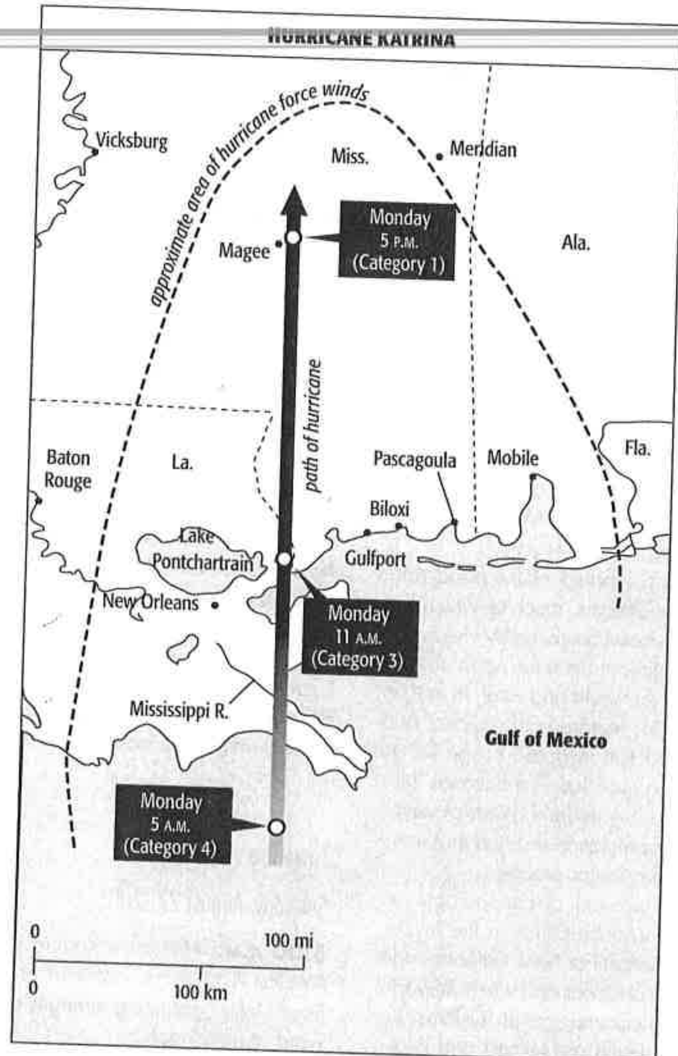
10:00 A.M.: Blanco makes a joint announcement with FEMA that plans have been laid to evacuate residents remaining in New Orleans to the Astrodome in Houston. Air Force One flies low over the Gulf Coast so Bush can see the damage. Lt. General Russell Honore is placed in charge of Joint Task Force Katrina, the Pentagon's command center for disaster response.
12:15 P.M.: Bush political adviser Karl Rove advises Blanco that Bush wants to federalize the evacuation of New Orleans.
2:20 P.M.: Blanco telephones Bush, informing him that federalization of evacuation and the Louisiana National Guard will not be necessary.
3:00 P.M.: Bush convenes a task force at the White House for an hour to discuss ways to improve the response.
4:11 P.M.: Bush addresses the nation in his first speech devoted to Hurricane Katrina.
7:00 P.M.: Martial law is declared in New Orleans. Nagin orders police to stop rescue efforts and focus entirely on controlling the looting, which has become rampant.

Thursday, September 1, 2005

7:00 A.M.: In a radio interview, Chertoff calls the reports of thousands of people stranded in and around the Convention Center in New Orleans "rumors," and states, "Actually, I have not heard a report of thousands of people in the Convention Center who don't have food and water."

Friday, September 2, 2005

6:20 A.M.: The head of emergency operations for New Orleans expresses his frustration: "This is a national disgrace. FEMA has been here three days, yet there is no command and control. We can send massive amounts of aid to tsunami victims, but we can't bail out the city of New Orleans."
10:35 A.M.: At the start of a tour of the Gulf Coast, Bush praises Brown: "Brownie, you're doing a heck of a job."
4:00 P.M.: Bush meets with Blanco, Nagin, and others aboard Air Force One. An agitated Nagin demands that the president and the governor work out a chain of command for the deployment of military personnel. After that, the president would privately raise a sensitive question with the governor: Would she relinquish control of local law enforcement and the 13,000 National Guard troops from 29 states that fall under her command?



Source: National Hurricane Center

Sunday, August 28, 2005

7:00 A.M.: Gulf Coast residents awaken to the news that Katrina is a Category 5 hurricane, with winds blowing steadily at 160 mph. The eye is 250 miles away, moving now at 12 mph.

9:25 A.M.: President George W. Bush calls Blanco, advising that she and Nagin order a mandatory evacuation.

9:30 A.M.: With the storm due to come ashore in about 15 hours, Nagin orders a mandatory evacuation of New Orleans.

4:15 P.M.: Mayfield conducts an electronic briefing for Bush, Brown, and Chertoff and warns them of the danger of destruction and flooding in the wake of Katrina. Brown also tries to prepare federal leaders for the magnitude of the coming disaster: "We're going to need everything that we can possibly muster, not only in this state and in the region, but the nation, to respond to this event."

10:30 P.M.: The last people seeking refuge in the Superdome in New Orleans are searched and allowed in. Between 8000 and 9000 citizens are in the stands and about 600 are in a

CASE 3.1 THE KATRINA BREAKDOWN

Catastrophe struck the Gulf Coast on August 29, 2005, when the eye of Hurricane Katrina made landfall near Buras, Louisiana, packing high storm surges and sustained winds of over 140 mph. The Category 4 hurricane would move slowly inland, carving a path of destruction across low-lying regions of southern Louisiana, Mississippi, and Alabama. See map.

Experts had long warned of the flood danger faced by New Orleans, much of which lies below sea level in a bowl bordered by levees that hold back Lake Pontchartrain to the north and the Mississippi River to the south and west. In fact, in the summer of 2004, hundreds of regional and federal officials had met in Baton Rouge for an elaborate simulation exercise. The fictional "Hurricane Pam" left the city under 10 feet of water. The report from the simulation warned that transportation would be a major problem.

The simulation proved disconcertingly accurate. Katrina caused breaches in the levees, leaving about 80 percent of New Orleans under water and knocking out electrical, water, sewage, transportation, and communication systems. Katrina also flattened much of Gulfport and Biloxi, Mississippi, flooded Mobile, Alabama, and leveled or inundated small cities and towns across an area the size of Great Britain. Up to 100,000 people were stranded in New Orleans for days in squalid and dangerous conditions awaiting relief and evacuation.

Katrina was the deadliest hurricane to hit the United States in more than 75 years. The confirmed death toll exceeded 1200, with more than 80 percent of the fatalities in Louisiana, predominantly in the New Orleans area. It was among the costliest natural disasters in U.S. history. Nearly three-fourths of all the homes in New Orleans, the fifty-ninth largest city in the United States, were damaged or destroyed.

Poor coordination between local, state, and federal officials raises important questions not only about U.S. disaster preparedness but also about federalism. The following five government officials, in particular, were criticized for their response to the distaster: New Orleans Mayor C. Ray Nagin, Louisiana Governor Kathleen Blanco, Federal Emergency Management Agency (FEMA) Director Michael Brown, Department of Homeland Security Secretary Michael Chertoff, and President George W. Bush. Before considering those criticisms, we need to review the facts of the case.

Timeline

Saturday, August 27, 2005

5:00 A.M.: Hurricane Katrina is in the Gulf of Mexico 435 miles southeast of the Mississippi River Delta, gathering strength and moving forward at just 7 mph.

10:00 A.M.: FEMA Director Michael Brown appears on CNN to encourage residents of southeastern Louisiana to leave as soon as possible for safety inland.

5:00 P.M.: Governor Kathleen Blanco and Mayor C. Ray Nagin appear in a press conference to warn residents of the storm. Nagin declares a state of emergency in New Orleans.

7:25–8:00 P.M.: Max Mayfield, director of the National Hurricane Center, calls officials in Alabama, Louisiana, and Mississippi to warn them of the severity of the coming storm.

11:20 P.M.: Bush Chief of Staff Andrew Card sends Blanco a fax indicating that she need only sign an attached letter requesting that the federal government assume control of the rescue and recovery in Louisiana, including oversight of the National Guard troops.

Saturday, September 3, 2005

7:56 A.M.: Blanco faxes a letter to Card refusing the federal government's attempt to assume control.
8:00 A.M.: Bush announces the deployment of 7000 active-duty troops that would arrive in the Gulf Coast over the next three days.
9:30 A.M.: Brown announces that millions of army rations and water bottles are now in the disaster area.
12:00 NOON: Buses arrives at the Convention Center to take people to safety and comfort elsewhere.

Issues

The events between August 27 and September 3 can be viewed productively from several standpoints: disaster management (based on the Katrina experience, how well would the United States handle another major terrorist attack?), organization theory (should FEMA have remained an independent agency?), and leadership (what would a Giuliani or an Eisenhower or a Johnson have done?). But here we want to consider these events in terms of intergovernmental relations. For that limited purpose, the following issues seem particularly relevant.

Did Nagin Have a Plan? Despite all appearances to the contrary, the city of New Orleans had a plan. In 2000, city officials and various consultants prepared a 14-page booklet "City of New Orleans Comprehensive Emergency Management Plan." It offered a series of clear-cut guidelines that seemed to be ignored by Nagin, a former executive with Cox Communications who was elected in 2002. After suggesting that "evacuation zones" based on probable storm flooding should be used as the basis of mass evacuation, the plan advised that such zones "will be developed pending further study." They never were. The city of New Orleans followed virtually no aspect of its own plan in the disaster caused by Hurricane Katrina and failed to implement most federal guidelines. Douglas Brinkley writes:

> Apparently unimpressed by the emergency management plan, even though it was posted on the City Hall Web site . . . Nagin behaved in a hesitant, perplexing fashion. The plan was the collective wisdom of an entire generation of New Orleans political thinking, going back as far as those who had grappled with Hurricane Betsy in 1965. The plan instructed that when a serious hurricane approached, the city should evacuate 72 hours prior to the storm to give "approximately 100,000 citizens of New Orleans [who] do not have the means of personal transportation" enough time to leave. Mayor Nagin also ignored FEMA guidelines, which urged City Hall to "coordinate the use of school buses and drivers to support evacuation efforts."

Before any disaster, the first responsibility of local responders is to evacuate hospitals, nursing homes, and special needs populations. Aside from some informal plans to rely on churches and neighborhoods to get people out, the city had not developed any solution to that challenge in time for Katrina.

Where Did the Federal Money Go? In 2003, the federal government gave New Orleans a $7 million grant for a communications system that would connect all the region's first responders. Soon after the hurricane struck, the radios used by police, firefighters, and the mayor drained their batteries. Then their satellite phones would not recharge. And, of course, landline and cell phones went out. For two days the mayor and his emergency team were cut off from the outside world.

That did not need to happen. For example, emergency officials across Florida are linked by a system of satellite phones, and lines of authority between local and state officials are sharp. And in Texas, ham operators share a place at the table in the emergency bunker in Austin along with the high-tech communication experts.

The bigger question is, Why were federal funds that might have been used to strengthen the levees around New Orleans diverted to widening ship channels? Brinkley writes:

> Over the years, improvements were made [in the 17th Street Canal], patches introduced and the need for repairs noted and sometimes neglected. Incredibly, no one was in charge: no one was fully responsible for overseeing just who was doing what to the levees. Various entities had a hand in the fortunes of the system—and fortunes are all that the levee system meant to a great many of the greedy scoundrels involved through the years. . . . For example, in the months just before Katrina, while a $427,000 repair to a crucial floodgate languished in inexcusable bureaucratic delay, [the board of directors of the Orleans Levee District] went ahead with happier pursuits, building parks, overseeing docks that it had constructed, and investing in on-water gambling . . .

"We Need Everything You've Got" That is what Blanco, who became governor in 2003, told Bush the day the storm hit. The question of whether she requested federal government assistance as effectively or as forcefully as the catastrophe demanded still haunts her. And yet, with the exception of Nagin, no one was in a better position than her to know precisely what was needed and how soon. Not until Thursday did she come up with specifics: 40,000 troops (a number she says she "pulled out of the air"); urban search-and-rescue teams; buses; amphibious personnel carriers; mobile morgues; trailers of water, ice, and food; base camps; staging areas; housing; and communication systems. State officials concede, according to *Time*, that Blanco had unrealistic expectations of precisely what the federal government could do. "She thought it would be more omniscient and more omnipresent and more powerful than it turned out to be."

Getting Through to the President Wednesday morning Blanco tried to telephone the president to tell him that the expected federal resources still had not arrived. In response to the call, the White House did not make the president available. After attending some official ceremonies, she returned to her office and tried to reach the president again. After a short delay, her call was transferred to the White House Office of Intergovernmental Affairs. During the course of the morning, Blanco did receive calls from presidential surrogates, including one from Chief of Staff Andrew Card, who was on vacation in Maine. According to Blanco, Card didn't exactly promise help; rather, he affirmed that he believed he could help her.

Brown's Method of Operation Bush appointed Brown head of FEMA in 2003. At the time, he was staff attorney and second in command. He had been brought into the agency by his longtime friend Joseph Allbaugh, then agency head. Before joining FEMA, Brown had been the head of the International Arabian Horse Association.

Now, three years into the new job, his agency was being inundated by requests from thousands of organizations, jurisdictions, and individuals—requests for medical equipment, chlorine bleach, cleaning supplies, generators, body bags, inoculations, tents, boats, and the like. During this period, Brown's focus was on the "recovery," which was to be executed as carefully and precisely as possible. Otherwise, so he thought, FEMA risked lawsuits, distributional problems, and sundry other worries. *Time* reports that foreign nations, responding to urgent calls from Washington, readied rescue supplies, then "were told to stand by for days until FEMA could figure out what to do with them." Florida airboaters complained that they had an armada ready for rescue work but FEMA wouldn't let them into New Orleans. Brown defended his agency's measured steps saying aid "was to be coordinated in such a way that it's used most effectively."

Brown's Boss At 7:00 P.M. Monday, Brown received an urgent telephone call from his FEMA representative in New Orleans. The call had a sobering effect on Brown; for the first time, he fully understood the gravity of the situation. Convinced that Blanco was "dysfunctional," Brown called his boss, Chertoff, pleading for help. It was the first time Brown and Chertoff had spoken together that day.

Eight months earlier, Bush had appointed U.S. Court of Appeals Judge Chertoff to head the nation's second-largest cabinet agency, the sprawling Department of Homeland Security. As the head of the criminal division in the Justice Department in 2001, Chertoff had helped formulate the government's response to the 9/11 terror attacks. Now, as Homeland Secretary, Chertoff was in charge of all major disasters—whether from international terrorism, natural causes, or infrastructure collapse. Until Chertoff designated it "an incident of national significance" and appointed someone (presumably the FEMA director in the case of hurricanes) as the "principal federal official," relief would be halting at best. Without that designation, Brown could not legally take charge, giving orders to local and state officials and overseeing deployment of National Guard and other U.S. military personnel. Unfortunately for the people in New Orleans, Brown could not convince Chertoff that things were going as badly as Brown (and the media) were suggesting. Brown tried to maneuver around Chertoff, to appeal directly to the president, but it was hard to get through to the White House.

A Government Accountability Office report noted that the delay in Chertoff's response was critical: "The DHS secretary designated Hurricane Katrina as an incident of national significance on August 30—the day after a final landfall. However, he did not designate the storm as a catastrophic event, which would have triggered additional provisions of the National Response Plan (NRP) calling for a more proactive response. . . . In the absence of a timely and decisive action and clear leadership responsibility and accountability, there were multiple chains of command, a myriad of approaches and processes for requesting and providing assistance, and confusion."

A DVD for GWB Early Friday morning, the president boarded Air Force One for the flight to Mobile, Alabama, as his first stop on his inspection of the disaster area. Because White House staffers were uncertain that he actually understood what was going on—had "situational awareness," as they say in the military—they had prepared a compilation of news coverage recorded onto a DVD for him to watch during the three-hour flight.

"I Don't Know Whose Problem It Is" In a radio interview the day before Bush's flight to the disaster area, Nagin had said, "I don't know whose problem it is. I don't know whether it's the governor's problem. I don't know whether it's the president's problem, but somebody needs to get their ass on a plane and sit down, the two of them, and figure this out right now."

Later the next day that's pretty much what happened. Bush met with Blanco and Nagin aboard Air Force One on the tarmac of the New Orleans Airport. Nagin said, "Mr. President, Madame Governor, you to need to get together on the same page, because of the lack of coordination, people are dying in my city."

Three Perspectives on Katrina and Federalism

Not surprisingly, the worst natural disaster in U.S. history generated many scholarly articles. This section briefly summarizes three recent ones that offer different interpretations of what went wrong, what went right, and what needs to be done. Each provides a basis for class discussion.

(1) Stephen M. Griffin, professor of constitutional law at Tulane, argues in "Stop Federalism before It Kills Again" that the national government might need to become more directive in numerous areas. Although much attention has been focused on the response and recovery that followed Katrina's landfall, Griffin explores the role of federalism prior to Katrina. Why would the federal government fund levee construction then turn different parts of the project over to four different local sponsors who worked at cross-purposes? Why would it help fund the purchase of communication technology and not require that states and local governments develop interoperable communications? The general answer is that, according to Griffin, federalism is as much a commitment to localism as it is to states' rights. As Chertoff has stated on several occasions, disasters are typically to be managed at the "lowest possible, geographic, organizational, and jurisdictional levels." To the contrary, Griffin thinks the failure to respond to Katrina exposed one of the few real structural weaknesses in the U.S. Constitution: a lack of a mechanism to coordinate the work of local, state, and national governments.

Interestingly, federal responses to natural disasters—events nearly by definition beyond the capacity of state and local governments—is a relatively recent phenomenon. In fact, it took many decades of repeated disasters such as the vast flooding unleashed by the Mississippi River in 1927 to convince national officials that the federal government had a role to play in alleviating the effects of natural disasters. For much of U.S. history, victims of natural disasters were on their own. "The federal system as it exists today," Griffin writes, "is our system, not that of the founding generation. We—generations still alive—created it and we continue to change it. The best example during the Bush administration was the No Child Left Behind Act, legislation that involved an unprecedented intrusion into a subject, education, that everyone used to argue should be left to the states."

(2) Martha Derthick, professor emeritus at the University of Virginia, argues that the "governmental response to Katrina was not the unalloyed failure that is often protrayed. The response was a mixture of success and failure. Successes occurred when a foundation had been laid for intergovernmental cooperation, as with the largely successful pre-landfall evacuation of Greater New Orleans, the multistate mobilization of the National Guard, and the search and rescue operations of the U.S. Coast Guard and the Louisiana Department of Wildlife and Fisheries." The failures include New Orleans' failure to limit its growth, its lack of flood protection plans, and the influence of politics on flood protection there.

Above all, Derthick argues, "do no harm to the first responders. Dependency on them is inescapable. Indeed, they could become the country's only functioning and legitimate governments in case of a successful terrorist attack on Washington, D.C. Continue to think of federalism in the traditional way, as a source of strength through cooperation."

(3) Marc Landy at Boston College calls Katrina a "mega-disaster" and argues that such events put federalism to an especially difficult test because they require speed, efficiency, decisiveness, and effective coordination. Faced with such events, the big advantage of federalism, he maintains, is its greater flexibility, responsiveness, and capacity to mobilize mutual aid. "It presumably benefits from the unique virtues that each level of government and that the citizen himself or herself possess. These virtues compensate for its inherent complexity and redundancy. The example of personal responsibility and neighborly concern is a superior substitute for government intervention."

Clearly, Landy conceptualizes federalism as being composed of four dimensions: three levels of government and the civic realm. With regard to the latter, it's worth recalling that Alexis de Tocqueville recognized in the early nineteenth century that "government can't match the energy and resourcefulness of citizen cooperating informally or through voluntary associations."

Landy finds the direst examples of civic failure in the city of New Orleans, and an especially edifying example of its success in Mississippi. Landy does not sugarcoat the former:

> The impression given by the media was that those who did not get out of New Orleans could not, either because they had no car or were disabled. This impression stuck even though the visuals accompanying those media reports showed streets crowded with abandoned cars. A congressional report confirmed that the pictures were more reliable than the words. It stated that more than 250,000 cars remained in the city during the storm and the cars were found parked in the driveways of many of the dead. The report chastised the governor of Louisiana, and the mayor of New Orleans for being slow to issue mandatory evacuation orders, and those individuals "share the blame" for incomplete evacuation. Resorting to the verb "share" shows just how reluctant the report writers were to concede that not all bad things that happen are the fault of the government. Those car owners who fail to evacuate in the face of mandatory evacuation orders that, however tardy, still left them plenty of time to leave, do not *share* in the blame, they *are* to blame. If indeed a major, or perhaps even the major, cause of death from Katrina was a failure to obey a mandatory evacuation order, this puts the whole Katrina problem in a different light. It shifts the blame from errors made by the various levels of government to the actions of the populace itself.

Case Questions

1. Which of the three perspectives do you find most persuasive? Least persuasive? Support your answer.
2. Much of the debate over the response to Hurricane Katrina centers on the question of the division of responsibility among different levels of government—local, state, and federal. If the federal government played a more aggressive role—say, taking command of all response

efforts and placing them in the hands of the regular army—would that violate tenets of federalism, specific provisions of the Constitution, and specific statutes (such as the Posse Comitatus Act of 1878, which limits military participation in law enforcement)? What other legal options are there besides giving the federal government a more powerful role?

3. Setting aside the philosophical and legal issues this case raises, what are the management or efficiency arguments for and against a more centralized response to large national disasters like Hurricane Katrina? Why would we not want to have a federal fire department? If the federal government tells the states and cities they will receive no assistance in the event of a disaster, what do you think will happen?
4. To what extent was the Katrina breakdown due to federalism, and to what extent was it due to the players in the story?

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