

Federalism and Intergovernmental Relations

In the contemporary United States, and contrary to Bill Clinton's 1999 assessment, federalism is most assuredly *not* a "substitute for a sleeping pill." In both the George W. Bush and Barack Obama presidencies, issues concerning the relative authority—and debates about the *proper* authority—of state and national governments have surged to the forefront of our national political dialogue. In early 2009, for example, the Obama administration proposed (and Congress enacted) the **American Recovery and Reinvestment Act (ARRA)**, which was designed to stimulate new economic activity in the private sector in the midst of a steep recession, and which came with a \$787 billion price tag. Many detractors of the president objected, and continue to object, to this assertion of national government authority, which they view as both unprecedented and unjustified. Another instance of debate over national and state authority surfaced in 2010 when Arizona Governor Jan Brewer initiated a restrictive state-level immigration policy, arguing among other things that the national government had not fulfilled its responsibilities to create a nationwide immigration policy. Also in 2010, Texas Governor Rick Perry announced his intention of *not* seeking enactment of state appropriations necessary to implement health care reform in the state. At about the same time, Virginia Attorney General Ken Cuccinelli asserted, as a formal legal doctrine, that the state government can constitutionally prevent the implementation of health care reform legislation within the boundaries of Virginia (a legal doctrine, first articulated in the mid-1800s, known as "nullification," and a key issue leading up to the Civil War of 1861–1865). At a conference of state governors in early 2011, there was considerable debate over the desired amounts of national government aid to state governments, especially within very tight budgets at both levels of government (national and state). Political and policy

I think it is quite an interesting thing that we have this impressive array of people to come to a conference on federalism, a topic that probably ten or twenty years ago would have been viewed as a substitute for a sleeping pill.

Bill Clinton
Forum of Federation Conference,
Mont-Tremblant, Canada
October 8, 1999

American Recovery and Reinvestment Act (ARRA)

an economic stimulus package proposed by President Obama and enacted by the 111th U.S. Congress in February 2009. The stimulus bill was intended to create jobs and promote investment and consumer spending to help recover from recession.

federalism

a constitutional division of governmental power between a central or national government and regional governmental units (such as states), with each having some independent authority over its citizens.

“battle lines” were drawn over such issues, and others like them, suggesting that the nature of U.S. federalism is not merely the subject of abstract or conceptual debate (although it is that, too).

Federalism is a widely recognized feature of American government. The federal system consists of a national government and state governments existing independently of each other in the same territory while commanding the loyalties of the same individuals as citizens of both state and nation. Under the Constitution, the powers of all governments are drawn from the same fundamental source—the sovereign people—and are exercised concurrently. States, in turn, are composed of numerous subjurisdictions, such as cities, counties, municipalities, townships, and special districts, which are dependent entities chartered by the state. The original rationale for establishing a federal system in the United States was to prevent the concentration and misuse of power by a strong national government. The states were viewed as counterweights and protectors of individual liberties against the national government—and many are again coming to view the states in that light.

The nature and operation of federalism have been the subject of much controversy since the founding of the Republic. Referring to our basic governmental structure, former Vice President Al Gore observed that “America was born angry at government. We were so sick of the [distant and insensitive] English crown . . . we quit colonialism before we had something else lined up.”¹ Indeed, this nation was later torn by civil war that resulted from conflict over the twin issues of slavery and the extent of the states’ authority to oppose the national government. Since the New Deal in the 1930s, and with rising emphasis in the last few years, many Americans (including public officials of both major political parties) have expressed concern about the wide-ranging authority of the national government—perhaps most prominently, in 2009, relating to the economic stimulus package and, in 2010, to financial regulation and health care reform. These concerns focus on, among other things, how the expansion of that authority has affected state and local government powers. In turn, the states’ relations with—and influence over—their respective local governments have increased in importance. There have also been growing concerns about citizens’ power to retain a significant measure of control over governmental structures at all levels in the federal system.

Public administration is at the heart of many of the questions and controversies that have characterized contemporary federalism. The two have had a reciprocal effect on one another. The administration of national government programs requires recognition of, and accommodation to, the existence, prerogatives, and preferences of states and localities that have their own decision-making apparatus and political majorities. At the same time, the growth of bureaucracy at all levels of government has helped to reshape the federal system.

In this chapter, our concerns will include (1) the definition of federalism and a brief historical review of its evolution; (2) the rise of **intergovernmental relations (IGR)**, the multitude of formal and informal contacts among

intergovernmental relations (IGR)

all the activities and interactions occurring between or among governmental units of all types and levels within the U.S. federal system.

governmental entities throughout the federal system, and the ways in which these have modified federalism as a formal concept; (3) the expansion, after 1960, of financial assistance from the national government to states and localities, with accompanying shifts in leverage exerted by the former over the latter, and since 1980, changes in national government aid, together with reduced leverage in the hands of national officials for pursuing national goals through state and local action; (4) administrative and political consequences of increased intergovernmental aid, especially administrative complexity and bureaucratic controls accompanying national government grants, and the resulting political conflicts, including a rising public backlash against both government **unfunded mandates** and the professional public administrators responsible for managing intergovernmental programs; (5) growing concern about managing homeland security and antiterrorism initiatives within the existing IGR and grants system; and (6) questions about the future course of IGR, including the impacts of diminished national government fiscal support for many of its own activities as well as those at state and local levels.

Two comments are in order about key terms in this discussion, namely, *federal* and *federalism*. First, technically, *federal* describes the formal relationships among different levels of government and various qualities or characteristics of those relationships. In a more colloquial sense, however, many people refer to the national government as “the federal government.” Such usage, which has roots in debates over ratification of the Constitution in the 1780s, can lead to confused thinking about contemporary federalism and IGR. In this chapter and elsewhere, when reference is made to the *national government*, that is generally the phrase employed; *federal* is used in its more technical sense, for the sake of clarity.

Second, *federalism* has been used to refer to *one variety* of federal practice—namely, with the main emphasis on states and state authority (by implication, at the expense of national government authority). In contrast, when we use the term *federalism* in this chapter and elsewhere, we will be referring to the fundamental distributions of power between national and state governments rather than to any particular version or “brand” of federalism.

The Nature of Federalism: The Formal Setting

The most elementary definition of federalism suggests that it is a *constitutional* division of governmental power between a central or national government and a set of regional units (such as the American states, Canadian provinces, and Swiss cantons); that, under a federal arrangement, both the national and regional governments have some independent as well as some shared powers over their citizens; that neither government owes its legal existence to the other (as local governments in the United States do to the states); and that, as a matter of law, neither may dictate to the other(s) in matters of structural

unfunded mandates

federal (or state) laws or regulations that impose requirements on other governments, often involving expenditures by affected governments, without providing funds for implementation.

organization, fiscal policies, or definition of essential functions. This definition clearly implies that the regional governments have substantial independence from the national government but that both may exercise powers of government directly over their citizens. It leaves unanswered, however, some pertinent questions about how authority is to be exercised *simultaneously* by different units of government sharing jurisdiction over the same territory and citizenry.

Federalism is also an explicitly *political* arrangement. This relates in important ways to how power in a governmental system is distributed, structured, and exercised. A federal arrangement is designed to restrain and counteract centralized power through multiple centers where decisions are made in widely scattered geographic regions. Such a system, with separate, legitimate, and authoritative government units operating individually within the same overall territory, makes it less likely that a central government could achieve an excessive concentration of power, which might endanger individual freedoms. Finally, federalism has an increasingly important *fiscal/administrative* dimension. This pertains both to the operations of government programs that have impact on at least one other level or unit of government and to the growing complexity and interdependency of programs created, funded, and managed by different governments. Later in this chapter, we will treat the phenomenon of intergovernmental fiscal relations in considerably more detail.

In the early 1800s, the U.S. Supreme Court defined some essential boundaries in national-state relations, with long-term implications. The fundamental issue was the scope of national authority, particularly when it overlapped and conflicted with state powers. Specific questions included whether states could tax national government agencies (they cannot, under *McCulloch v. Maryland*, 4 Wheaton 316 [1819]); whether the national power to regulate interstate commerce superseded state regulatory actions, setting up conflicting rules (it does, with some exceptions); and whether the states could interfere in any way with national enforcement of national laws (they cannot—though in recent years, as we shall see shortly, the Supreme Court has handed down a series of rulings that have changed the rules of the game in this regard). Some other issues were resolved in Congress and by presidential action. The question of slavery, however, proved unsolvable through the political system. This failure, coupled with irreconcilable differences (related to slavery) over national versus state sovereignty, resulted in the secession of the South and the creation of a confederation of eleven states. The Civil War followed, culminating in a Union victory that was both military and political: slavery was ended, the Union was preserved, and a federal—not confederate (state-centered)—system was reaffirmed.

The next half-century was a time of transition in American federalism. Many basic decisions affecting the legal structuring of federalism were resolved and, as government generally became more active in dealing with problems of

society, some forms of joint or overlapping governmental activities became more common. A number of new national programs combined participation by (especially) state governments with use of the first cash grants-in-aid from the national government to the states; early examples included agricultural extension programs in 1914, federal aid for state highways in 1916, and the Vocational Education Act of 1917. Fundamental structural-legal questions were receding in importance, but modern IGR was still being defined within the broader federal context.

Intergovernmental Relations: The Action Side of Federalism

Intergovernmental relations is a relatively new term, having come into common usage only in the past sixty years. It designates "an important body of activities or interactions occurring between governmental units of all types and levels within the [U.S.] federal system."² In the words of the late political scientist Deil Wright, IGR embraces "all the permutations and combinations of relations among the units of government in our system."³ These include national-state and interstate relations (the areas traditionally emphasized in the study of federalism), as well as national-local, state-local, interlocal, and national-state-local relations. In addition, other key features of IGR are worth noting.

One is the fact that the consequences of IGR are often unpredictable and decision making is hidden from public view. There is no direct electorate and decisions shift from year to year with no particular direction. There is no policy-making body, no executive, no legislative, and no judiciary to oversee the results of billions of dollars transferred to states and local governments from the federal government. Predictably, this lack of consistency leads to considerable inequities in the distribution of federal money to states and cities.

A second feature of IGR is that, although we speak of IGR in the abstract, the individual actions and attitudes of elected and appointed officials determine what kinds of relations exist between units of government. Understanding IGR has to be formulated largely in the context of human relations and human behavior. Who the officials are, the roles they play in the governmental process, their policy views, and the interests they seek to promote all have a bearing on the conduct of IGR.

Third, IGR does not refer only to occasional interactions, single contacts, or formal agreements. Rather, it is a continuous series of informal contacts and exchanges of information and views among government officials aimed at solving shared multigovernmental problems. Virtually all policy areas have an intergovernmental dimension, and some are almost totally the product of shared policy formulation, implementation, or

No Child Left Behind Act (NCLB)

a controversial statute that reauthorized the Elementary and Secondary Education Act in 2002 and established national assessment standards for annual testing of students and yearly accountability reports on progress toward meeting objectives for individual schools.

financing. Examples of such policy areas include homeland security, air and water pollution control, criminal justice, agriculture, education (a prominent example was the No Child Left Behind Act [NCLB]), and transportation. The fact that policies are fashioned through intergovernmental processes, however, does not always mean that government officials agree with one another on all or even most major aspects of a program. IGR can be cooperative, competitive, conflicting, or a combination of all three and still be IGR.

Another key feature of IGR is the involvement of public and private, government and nongovernment, officials at all levels. Clearly involved are chief executives and legislators in Washington, state capitals, county seats, and city halls, because they formally promote and enact the programs that constitute IGR. As appointed administrators at all levels of government have assumed greater responsibility and as IGR has become more pervasive, intergovernmental *administrative* relations have taken on ever greater significance. And, although we speak of intergovernmental relations, many public purposes are accomplished through nongovernmental institutions and organizations. Thus, IGR, properly understood, also includes the public functions of organizations not formally part of any government, such as voluntary action groups, civic organizations, and the United Way.

Action in the federal system is often taken on selected parts of a general problem rather than on the total problem area; that is, decisions are *fragmented* rather than *comprehensive*. Governments are prone to act in response to relatively specific pressures for narrow objectives and find it difficult and politically "unprofitable" to do otherwise. Thus, although government policies exist in areas such as water quality and air pollution control, no *single* policy governs the nation's approach to environmental quality. Similarly, there are policies concerning urban mass transit and public housing, but there is no *one* overall urban policy. A major reason for this is the ability of literally hundreds of governmental agencies at all levels to act independently of one another. When a policy emerges, it is usually in incomplete form and, in the majority of cases, lacks a centrally coordinated direction.⁴ Contributing to this, of course, is the fact (discussed in Chapter 2) that the national government itself is far from a monolithic entity. According to Russell L. Hanson:

The structure of intergovernmental relations is . . . a federal one in which the powers and responsibilities of government in general are shared among specific governments. However, *the sharing of power and responsibility is not equal, nor is it unalterable*. As a result, the structure of authority [in IGR] tends to be rather loose, and it invites frequent clashes between governments over the right to make certain kinds of decisions. *Conflict often arises in the course of day-to-day interactions between governments as they seek to define and redefine their relationships with one another in order to satisfy the demands of their respective citizenries.*⁵

Because a wide spectrum of political opinions and issue preferences are reflected in the multitude of national government activities, it is inaccurate to speak of what “the national government” desires, intends to do, or is actually doing. The same may be said, though perhaps to a lesser extent, of many state and local governments as well. Thus, when different governments do try to integrate their efforts through cooperative activity, their joint undertakings may well be based on a foundation of programs that are not consistent in intent, design, or execution. IGR is characterized both by this lack of central direction and by some efforts in recent decades to overcome it.

Thus, IGR involves virtually all governments and public officials, it is highly informal and very dependent on human interactions, and it involves the nonprofit and private sectors. A vivid example of IGR at work dates back to the mid-1950s, when President Dwight Eisenhower secured enactment in Congress of legislation creating the Interstate Highway System—a major expansion of the existing system of roads. All “federal” highways, but especially the interstate system, involve national, state, and local road officials (as well as highway contractors and many others) in continuing and frequent contacts—not to mention chief executives and legislators at all levels who are involved in funding and management decisions on a regular basis.

HOW WOULD YOU DECIDE?

The Crumbling of America

The History Channel's 2010 documentary *The Crumbling of America* examines the decaying infrastructure of American roads, bridges, sewer and water systems, and electrical grid. The documentary, released during the same year the *Deepwater Horizon* oil spill in the Gulf of Mexico occurred, is designed to call attention to the weakened and undermaintained necessities of infrastructure across the United States. Expert interviews, on-location filming, maps, and graphs are used throughout the documentary to emphasize the urgent need for federal, state, and local government attention and collaboration.

Intergovernmental relations factors greatly into the decisions made (or not made) concerning things such as rebuilding bridges, repaving streets, cleaning the water supply, and eliminating unnecessary health hazards caused by deteriorating infrastructures. Federal, state, and local governments must work together in order to pass legislation and move forward with rebuilding and restoring

America. Legislation concerning maintenance, rehabilitation, and replacement has not been passed in a timely or efficient manner, leading to delayed response—or lack of response completely. Policy makers are hesitant, or unwilling, to address the grave issue often because of cost, both political and financial.

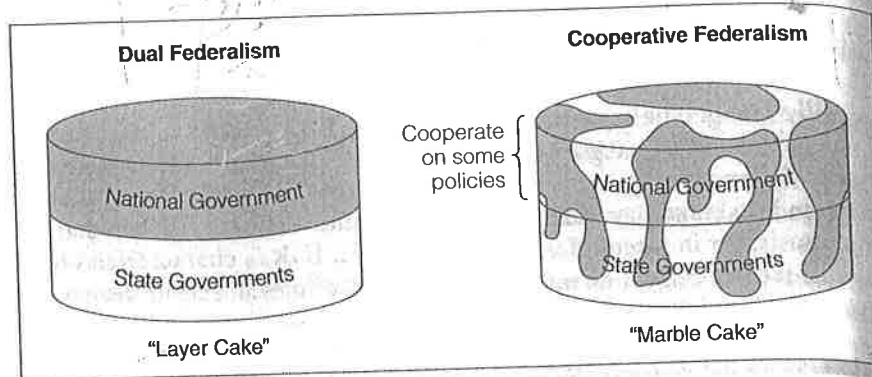
The involvement of public and private, government and nongovernment, officials at all levels is needed to accomplish goals as encompassing as rebuilding a nation's infrastructure. Appointed administrators at all levels of government have assumed greater responsibilities as IGR has taken on even more significance in recent years.

When faced with a nationwide crisis such as a crumbling infrastructure, what issues need to be addressed and resolved within IGR in order to bring about change?

Source: <http://shop.history.com/the-crumbling-of-america-dvd/detail.php?p=104694>, accessed April 18, 2011.

FIGURE 3-1

Dual Versus Cooperative Federalism



Source: © 2013 Cengage Learning.

Historically, the evolution of federalism and the emergence of IGR have been accompanied by continuing disagreements and tensions over just how national and state governments were to relate to each other. Scholars and others who have studied federalism often have referred to two competing concepts or models, in distinguishing between two broadly different viewpoints. Figure 3-1 illustrates these concepts, known as “dual federalism” and “cooperative federalism.” Under the dual federalism approach symbolized by a “layer cake” analogy, the functions of national and state governments are separate and distinct from each other. On the other hand, under the cooperative federalism approach, symbolized by a “marble cake” analogy, the functions of national and state governments are mingled—some say, deeply intertwined—and exhibit widespread patterns of cooperation and mutual support. Disagreement exists among both scholars and practitioners about the extent to which each of these models has existed, in our history—let alone which one is to be preferred over the other!

The Courts and Intergovernmental Relations

The role of the courts (especially the U.S. Supreme Court) in shaping federalism has been very significant throughout much of our history. But if anything, it has become more prominent in the past sixty years, and especially since 1990. Indeed, both national and state judiciaries have been called on to resolve federalism-related disputes. Especially under the leadership of the late Chief Justice William Rehnquist (1999–2005), the U.S. Supreme Court handed down significant rulings directly affecting the relative authority of state and national governments. Most, though not all, of these rulings favored state authority at the expense of both national authority and citizen rights and remedies. Among other things, the Supreme Court “curbed congressional power under the interstate commerce clause,”⁶ and “limited congressional legislative authority to protect minority groups under Section 5 of the

14th Amendment.⁷⁷ These decisions dealt with issues as diverse as age and gender discrimination, handgun control, minimum wage, employment conditions, and civil rights. Some have even suggested that the Supreme Court has been engaged in a so-called “federalism revolution,” in which a central goal “has been to more firmly fix the boundaries of national versus state authority.”⁷⁸ As part of that effort, the Court frequently has acted to “restrict statutory claims against state and local governments”—in effect, further strengthening the freedom of state governments to act on their own, without legal challenge.⁷⁹

For example, in 1992, in *New York v. United States* (505 U.S. 144), the Court ruled unconstitutional a 1985 federal statute that in the majority’s view exceeded the legal boundaries for national government activity established in the Tenth Amendment to the Constitution. The statute, dealing with low-level radioactive waste, had directed state governments to implement a federal regulatory program. Three years later, in *United States v. Lopez* (514 U.S. 549), the Court took a similar position with regard to the Gun-Free School Zones Act of 1990. Congress had enacted this statute on the basis of its authority to regulate interstate commerce, but the Court ruled that provisions of the statute went beyond the scope of the commerce clause, and were therefore in violation of Congress’s powers.

In the case of *Alden v. Maine* (527 U.S. 706 [1999]), the legal question at issue was whether the state of Maine could be sued in its own (state) courts under the federal Fair Labor Standards Act. Again, the majority opinion favored state over national authority by holding that the powers delegated to Congress under Article I of the Constitution do not include the power to subject nonconsenting states to private suits for damages in state courts. This decision was in keeping with a 1984 ruling, when the Court sharply limited the power of lower federal courts to order state officials to obey state laws. That earlier decision had greatly expanded the scope of the Eleventh Amendment, the relatively obscure provision giving state governments immunity from being sued in U.S. courts without the states’ consent. The *Alden* ruling reaffirmed the earlier ruling, and strengthened the legal reasoning set forth in that decision.

In *United States v. Morrison* (529 U.S. 598 [2000]), the Court ruled that Congress’s right to regulate interstate commerce does not include permitting women to sue their alleged abusers in federal court, when alleged private acts of violence do not cross state lines. The net effect of these and similar Supreme Court rulings (many of them by narrow 5–4 majorities) has been to limit the national government’s legal and administrative authority, and to place more discretionary authority in the hands of state (and, by extension, local) officials.

Not all Supreme Court decisions have invalidated or narrowed national government authority. For example, early in 2004 the Supreme Court ruled that the U.S. Environmental Protection Agency (EPA) has

preemptions

the assumption of state or local program authority by the federal government.

eminent domain

power of governments to take private property for a legitimate public purpose without the owner's consent (although governments are required to pay an owner "just compensation" [a fair price]).

authority, under the Clean Air Act of 1970, to "override state officials and order some anti-pollution measures that may be more costly." Although state officials can make some decisions involving facilities within their borders, the EPA retains significant enforcement authority regarding the 1970 statute.¹⁰ In addition, this decision is an example of a growing phenomenon known as **preemptions**—legal actions by federal courts or agencies to preclude enforcement of a state or local law or regulation. These direct assumptions of power have increased significantly during the past three decades, even as prevailing judicial philosophies have pointed in very different directions.¹¹

And in mid-2005, in a highly controversial decision, the Court greatly expanded the power of local governments in relation to the property rights of private citizens. In *Kelo v. New London* ([Connecticut] No. 04-108), the Court ruled that local governments may seize people's homes and businesses—even against their will—for private economic development. It was a decision "fraught with huge implications for a country with many areas, particularly the rapidly growing urban and suburban areas, facing countervailing pressures of development and property ownership rights."¹² The New London residents who challenged the loss of their property had contended that while the city government could properly take private property for a "clear public use, such as roads or schools, or to revitalize blighted areas"—under the well-established power of **eminent domain**—it should not be able to take private property "for projects such as shopping malls and hotel complexes, to generate [local] tax revenue."¹³ But the Court (again in a 5-4 decision) ruled against the property owners and in favor of this exercise, by the city of New London, of eminent domain power—sparking, among other things, a growing number of *state legislative* efforts around the country to place limits on local authority in this regard.

Three trends are worth noting with regard to recent Supreme Court federalism-related decisions. First, "the Court did not invalidate any congressional statutes on federalism grounds after 2002."¹⁴ Second, under Chief Justice Roberts the Court has allowed the Rehnquist Court's decisions in this area to stand with virtually no change. And third, while decisions of the Rehnquist Court were often supportive of state government authority, the Court did not overturn a single judicial precedent that supported the basic elements of either the Franklin Roosevelt New Deal of the 1930s and 1940s or Lyndon Johnson's Great Society of 1965-1969.

The courts, then, have been highly influential in shaping the organization and operation of—and within—the federal system. The continuing expansion of IGR has served only to increase the reach of judicial decision making because more governments and their actions are potentially affected by any given ruling. This expansion is testimony to the increased complexity within American federalism, and it is that subject to which we now turn our attention.

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Contemporary Intergovernmental Relations: The Rise of Complexity

It was under the presidency of Franklin Roosevelt, a Democrat, that national government activity underwent a quantum leap in terms of scope and diversity, and IGR became more closely interwoven with general (and more centralized) governmental undertakings. With little fanfare, but steadily, intergovernmental aid and joint efforts became more important components of public policy making. Thus, for example, national government grants for rural highway construction and maintenance (begun in 1916) became more numerous; grants for urban renewal became more widespread; and direct aid to urban governments for airport construction and other transportation purposes also appeared on the scene.¹⁵ After the Great Depression, federally funded state and local social welfare, along with farm support and public-assistance bureaucracies, gradually replaced voluntary sources for aiding those in need. In the 1950s, under Republican Dwight Eisenhower, the pace of national government expansion slackened but did not stop completely. Significantly, it was just after Eisenhower took office in 1953 that the Department of Health, Education, and Welfare (HEW) was created, paving the way for later expansion of grants and other provisions relating to social services. Throughout the period 1930–1960, increased national government activity and the rising importance of IGR paralleled one another and often coincided. With the advent of the 1960s, however, IGR experienced its own quantum leap into new forms and new impacts.

In the last five decades, the structure of IGR has been transformed by the rapid proliferation of financial transactions among different levels of government; by the development of new and often permanent linkages among program administrators at all levels; by the establishment of new forms of government at what is called the “substate regional level,” such as local-level “special districts” (providing many services, including water, education, and transportation), economic development districts, and health planning agencies; and by the issuance of literally thousands of rules, guidelines, and regulations—collectively known as mandates and often accompanying fiscal aid packages—to hundreds of governmental units (see Chapters 9 and 10). This expansion of national government power has sparked political controversy of various kinds, resulting from the complexity associated with increasing numbers of federal grants and their accompanying regulations. Despite the best efforts of state and local elected officials to keep pace with the rapidly changing rules of the game, there is growing concern that the national government may have acquired excessive influence over state and local decisions. Also, many citizens apparently believe that these same complexities have weakened the people’s control over many of the activities and decisions of government that affect their daily lives either directly or indirectly.

It is also true, however, that we rely heavily on state and local governments to implement domestic policies, including those established by the national government. That is one reason that IGR, in general, and especially its fiscal side, is so important to understand. In recent years, IGR has been affected (though more indirectly) by another change: the growing service-delivery roles of nonprofit community organizations and various for-profit organizations in the private sector. Since 2009, the broad policy initiatives of the Obama administration, combined with greater fiscal constraints and pressures at all levels of government, have introduced significant new dimensions to the operations of the U.S. federal system. These developments have posed immense new challenges to those responsible for effectively administering government programs in a constantly changing environment. That these developments have been largely interrelated has made coping with them all the more difficult.

Several principal themes stand out. One is the importance, in this context and in broader terms, of government purposes organized by *function*. Functional alliances have tended to dominate contemporary IGR (much as they have done in "subsystem politics" at the national level) and, as a result, have become centers of ongoing controversy. A second theme, closely linked to the first, is the growing political and managerial struggle between elected public officials and administrative/functional specialists (and their respective political allies) for control of major IGR program directions. A third, broader theme focuses on the tensions between forces promoting greater centralization in the general governmental system and those favoring decentralization (including a lessening of national government regulation of state and local government activity). Nowhere is that issue more crucial than in the federalism/IGR realm, since a prime purpose of federalism is to prevent excessive centralization of governmental authority. Deliberate efforts both to centralize and to decentralize government programs have been numerous. Calls for downsizing, decentralization, and deregulation have been gaining ground in the past thirty years, and reinventing government implicitly (if not explicitly) puts considerable emphasis on decentralizing government functions in order to put them within easier reach of popular control. All these themes have fiscal, administrative, and political dimensions.

fiscal federalism

the complex of financial transactions, transfers of funds, and accompanying rules and regulations that increasingly characterizes national-state, national-local, and state-local relations.

Intergovernmental Fiscal Relations

Intergovernmental fiscal relations, also referred to as **fiscal federalism**, have been central to contemporary IGR for some time. Although there have been some forms of financial aid from one governmental level to another throughout U.S. history, the scope of such transactions has expanded rapidly and dramatically since 1961. This applies to national government aid to states and localities and, to a lesser extent, to state aid to local governments.

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Intergovernmental aid has taken on greater importance for a relatively simple reason. Traditionally, many state and local governments have had weaker economic bases and less productive systems of taxation than the national government has. Yet the former provide the great bulk of public services in health, education, welfare, housing, highway construction, law enforcement, police protection, parks and recreation, conservation, and agricultural services. The national government, with far stronger fiscal resources and revenue-generating capacity, *directly* delivers relatively few public services.¹⁶ These include Social Security benefits, postal services, federal law enforcement, veterans' payments, and farm subsidies. In essence, the national government, with the greatest tax resources, delivers the fewest direct services; local governments, with the narrowest and weakest tax bases, are frequently the most heavily laden with costly service obligations such as police, emergency management, fire, streets and roads, sewage and sanitation, water, and utilities; the states fall between them on that spectrum. It should be noted that the national government—through *mandated* grants, contracts, loans, regulations, and the like—now has many avenues of *indirect* service provision.¹⁷

There are two basic reasons for the revenue-raising disparity among different governmental levels. First, local and state governments have limited geographic areas—often dependent on one or two products or services—from which to extract revenues (for instance, tourism in Florida and coal in West Virginia). A more diversified economy is a more stable and productive source of government income, and only the national government has access to the nation's full range of economic resources.

Second, different types of taxes yield different amounts of revenue from the same income base. The most responsive, or *elastic*, tax (a tax that shows the greatest increase in revenue for a given percentage increase in taxable income) is the graduated income tax (so called because the tax rate rises as income increases). Somewhat less elastic is the sales tax, which levies a flat percentage rate on the price of purchased goods; some sales taxes are general and allow few exemptions, while others are selective and apply only to certain items. Least elastic is the personal property tax, which is levied on real estate and other personal belongings. The national government is the principal user of the graduated income tax. States rely heavily on sales and other excise taxes, though, increasingly, state revenues are also derived from nongraduated or "flat-rate" income taxes. Local governments, including special districts, depend most heavily on personal property taxes, though sales and wage taxes have come into increasing use by many local governments.¹⁸

Thus, the government with the broadest tax base (the national government) also uses the most efficient generator of revenue, while the governments with the narrowest and least diversified tax base (local governments) employ the least elastic tax, with the states again falling between the two. The result is a **fiscal mismatch** between the service needs and fiscal capacities of different levels of government, and among different governments at the same level in

fiscal mismatch

differences in the capacities of various governments to raise revenues, in relation to those governments' respective abilities to pay for public services that they are responsible for delivering.

terms of their varying abilities to pay for needed public services (for example, wealthy school districts versus less affluent ones). Rising service demands on government at all levels have placed a particular strain on those governments least able to expand their tax revenues rapidly, that is, local units. The consequence of all this has been increasing demand for aid from higher levels of government to help pay for government services.

Grants-in-Aid

The growing needs of state and local government during the first half of the twentieth century coincided with rising congressional and executive-branch interest in expanding and upgrading available public services at all levels of government. By the 1960s, the stage was set for the national government (and some state governments) to utilize financial assistance on a much larger scale than before as a means to expand public services. The principal device adopted to bring all this about was the grant-in-aid, which had been an established mechanism for thirty years and was now to be given a substantially enlarged role.

grants-in-aid

money payments furnished by a higher to a lower level of government to be used for specified purposes and subject to conditions spelled out in law or administrative regulation.

Grants-in-aid are money payments furnished by a higher to a lower level of government to be used for specified purposes and subject to conditions spelled out in law or administrative regulation. Cash transfers are used most widely by the national government, although states also make some use of them. When John F. Kennedy was inaugurated in 1961, only 45 separate grant authorizations existed. Under each authorization, multiple allocations of funds can be made. But in the period 1965–1966, when Lyndon Johnson commanded decisive Democratic majorities in both chambers of Congress, he took advantage of the opportunity to legislate a host of new federally directed grant programs as he pursued his vision of the “Great Society.” By the time Richard Nixon entered the White House, only eight years after the start of Kennedy’s term, the number of grants had mushroomed to about 400. Using the criterion of separate authorizations, the U.S. Advisory Commission on Intergovernmental Relations (ACIR) estimated that almost 540 grant programs existed in fiscal year (FY) 1981. During the Reagan administration, the number of grants dropped to about 400 by FY 1985, with significant adverse implications for state and local delivery of many public services and for the fiscal well-being of many state and local jurisdictions. The number increased again, however, to 478 grant programs in FY 1989 and to upwards of 600 such programs in FY 2008. Grants have financed state and local programs in virtually every major domestic policy area—urban renewal, highway construction and maintenance, mass transit, education, criminal justice, recreation, public health, and so on.

Equally dramatic is the increase in dollar amounts appropriated under national grant programs. In FY 1960, the figure was about \$7 billion; by FY 1970, it had risen to \$24 billion; by FY 1981, it was just under \$95 billion; by FY 1990, it had reached \$135 billion; in FY 2001, it was approximately

\$318 billion. In FY 1960, the figure was about \$7 billion; by FY 1970, it had risen to \$24 billion; by FY 1981, it was just under \$95 billion; by FY 1990, it had reached \$135 billion; in FY 2001, it was approximately

AMOUNT OF GRANTS-IN-AID
(IN BILLIONS)

Source:

\$318 billion; and in FY 2008, it had reached approximately \$461 billion. In FY 2009–2011, the total amount of grant program aid increased sharply: \$538 billion in 2009, \$608 billion in 2010, and \$625 billion in 2011. After President Reagan's success in slowing the rate of growth in spending for grants, Presidents George H. W. Bush, Bill Clinton, and George W. Bush presided over significant increases in the number of grant programs, along with the funds appropriated for them (see Figure 3-2). Early in 2011, however, the Obama administration proposed a number of dramatic aid reductions for FY 2012 and 2013.

National grants-in-aid were originally enacted to achieve certain broad purposes.¹⁹ These included establishing minimum nationwide standards for programs operating in all parts of the country; equalizing resources among the states by redistributing proportionately more money to poorer states; improving state and local program delivery; concentrating research resources on problems that cross government boundary lines (such as air and water pollution) or that attract interest from numerous governments; and increasing public services without enlarging the scope of the national government or its apparent role in domestic politics. Other purposes have included improving the structure and operation of state and local agencies (such as merit personnel

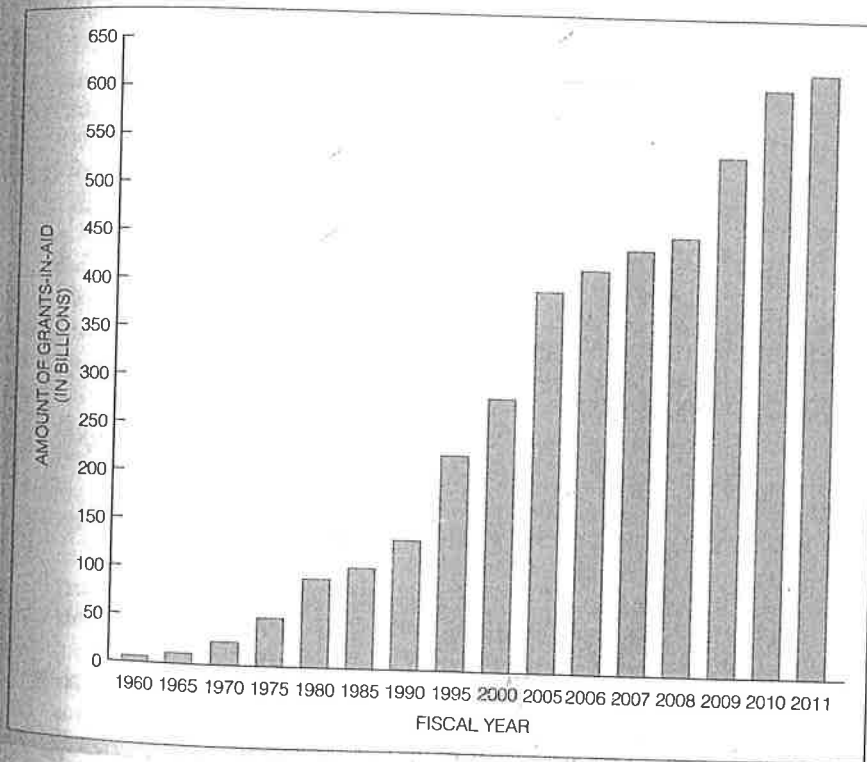


FIGURE 3-2

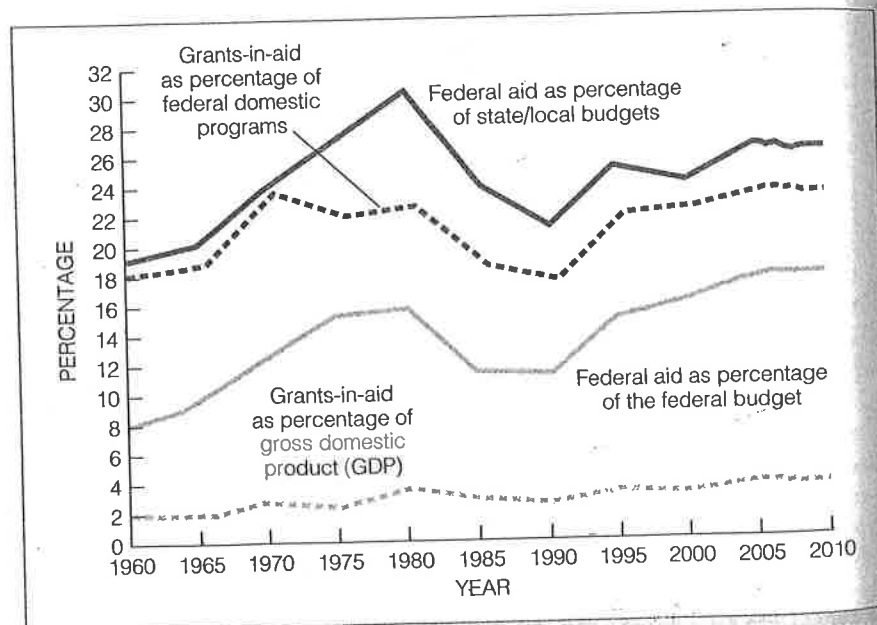
Historical Trends of
Federal Grants-in-Aid,
1960–2011

practices or better planning), demonstration and experimentation in national policy, encouragement of general social objectives (such as nondiscrimination in hiring), and provision of services to otherwise underserved portions of the population.

In the 1970s and 1980s, federal grants-in-aid loomed large in the total picture of all government domestic programs (including those at state and local levels). During those two decades, these grants provided about one-fourth of state-local revenues each FY, while at the same time comprising between 12 and 17 percent of all national government outlays. Those proportions began to decline in the early 1980s, following Ronald Reagan's election to the presidency, and continued at a reduced level (especially the proportion of federal outlays) during George H. W. Bush's administration. Between FY 1982 and 1991, the proportion of total federal outlays devoted to grant programs hovered in the range of 11–12 percent before beginning to rise again after the election of Bill Clinton in 1992. The proportion stayed between 14 and 16 percent of outlays for the rest of the decade (even after the Republican takeover of Congress in the 1994 elections), and increased, during the second Bush presidency, to around 17 percent in 2005—1.5 percent higher than the proportion that existed in FY 1980 (see Figure 3–3). At the same time, however, state and local governments became more active in raising their “own-source” revenues (taxes and other

FIGURE 3-3

The Rise and Fall of Federal Assistance, 1960–2010



Source: U.S. Office of Management and Budget, Budget of the United States Government, Fiscal Year 2010, Analytical Perspectives (Washington, D.C., Government Printing Office, 2009), Table 8.3, p. 131; U.S. Bureau of Census, Statistical Abstract of the United States, 2007 (Washington, D.C., Government Printing Office, 2007), Table 421. Retrieved at: <http://whitehouse.gov/sites/default/files/smb/budget/fy2012/assets/hist.pdf>.

revenue generators that they establish by law); nonetheless, in 2010, federal grants still provided about one-third of all state-local revenues despite the fact that grants-in-aid as a percentage of federal domestic programs declined.

The advantages attributed to grant-in-aid programs are numerous. First, the national government affords a single focal point for bringing about a greater degree of concerted action on a policy problems. Second, political minorities in states and localities, such as African-Americans and Hispanics, have an opportunity to seek some measure of national support for their policy demands. Third, grants-in-aid are an appropriate way to deal with nationwide problems; many policy questions are interrelated in terms of their impact, such as those linking highways, urban transportation, and air pollution or education, unemployment, poverty, and welfare. Although a fully coordinated attack on such sets of problems has yet to be mounted (and is not likely to be), a greater degree of consistency is possible at the national level than among fifty separate states and 87,000 local governments.

Finally, and perhaps most important, it has been suggested that national funds assist states and localities with programs and projects that benefit citizens outside the borders of the recipient government. These so-called ripple effects—more formally known as **externalities**—justify national monetary support for state or local efforts because of the wider benefits realized from them. Three examples illustrate the point: (1) a state job-training center, whose graduates may find employment in other states; (2) a state park system that attracts tourists and vacationers from a much wider geographic area; and (3) local education systems that, in a mobile society such as ours, are undoubtedly investing in the future productivity and contributions of persons who will reap the benefits of their education elsewhere. Because the nation as a whole gains from such investments of state and local funds, it is agreed that there is good reason to add grant funding from the national treasury.

Grants-in-aid have taken several forms; we “can usefully categorize grant programs along two dimensions”²⁰: the degree of discretion national government administrative officials possess in distributing funds and the “degree of restriction imposed on the use of [national government] funds.”²¹ Administrative discretion in distributing funds is smallest under **formula grants**, which are created by legislation that clearly specifies the criteria for determining eligibility to receive the funds. Depending on the purpose of a grant, these criteria might include population, unemployment rates, or the percentage of the population living in poverty. Administrative discretion is much greater in the case of **project grants**; with these, agency officials have wide latitude in deciding which states or local governments will receive funding and how much each will get. Formula and project grants are subtypes of **categorical grants**, the most commonly used kind of national government assistance programs to state and local governments. Of the approximately 600 categoricals in existence, three-fourths are project grants, available by application; the remaining one-fourth are formula grants, for purposes such as aid to the blind

externalities

the economic consequences or impacts of federal grants-in-aid at the regional and local level.

formula grants

type of national government grant-in-aid available to states and local governments for purposes that are ongoing and common to many government jurisdictions; distributed according to a set formula that treats all applicants uniformly, at least in principle; have the effect of reducing grantors' administrative discretion. Examples are aid to the blind and aid to the elderly.

project grants

form of grant-in-aid available by application to states and localities for an individual project; more numerous than formula grants but with less overall funding by the federal government.

categorical grants

a form of grant-in-aid with purposes narrowly defined by the grantor, leaving the recipient relatively little choice as to how the grant funding is to be used, substantively or procedurally.

and disabled. On the other hand, although individual project grants outnumber formula grants, the dollar amounts available under formula grants exceed those of project grants.

Grants also can be distinguished with regard to how freely recipient governments can use national government funds. Under categorical grants, states and local governments can spend the money only for certain clearly designated "categories" of expenditure, leaving very little room for adjustments on the part of a recipient government. The extreme specificity of categorical grants has been described as "hardening of the categories," which

created such proliferation of minutely targeted grants that . . . a local government wishing to improve its recreational amenities ha[s] to make separate applications to several different agencies if its total program include[s] buying land for park purposes; building a swimming pool on it; operating an activity center for senior citizens; putting in trees and shrubbery; and purchasing sports equipment. In the area of urban transportation, there are [or have been] separate categorical grant programs covering car pool demonstration projects; urban transportation planning; urban area traffic operations improvement; urban mass transportation basic grants (based on a formula for fund distribution); and mass transit grants (on a project application basis).²²

Thus, the categorical grant business has become immensely complicated; and is difficult for even experienced professionals to comprehend at times.

With grants-in-aid of all types, the proportion of total expenditures paid by the national government varies considerably. Congress defines some grants as representing important nationwide initiatives and sets the national government share at 100 percent. Other grants require dollar-for-dollar matching funds by the state/local government, which doubles the total amount of money available. Some other grant allocations require recipients to share the burden to some extent but not fifty-fifty (sometimes as little as 1 percent of the total). The national share for all types of grants-in-aid, then, is at least one-half and can cover the total.

One other observation should be made with reference to federal grants and grant-funded state/local programs. Throughout the 1990s and the first decade of the twenty-first century, a mere twenty-one categorical grant programs accounted for 80 percent of total spending for categoricals, and an additional two dozen programs accounted for another 10 percent of spending. These included, among others, the **Medicaid** program (with 55 million poor and disabled recipients), child nutrition grants, wastewater treatment plant construction, Aid to Families with Dependent Children (AFDC), training and employment programs, low-rent public housing, and community development programs. Under the Welfare Reform Act of 1996, the old AFDC programs—now known as Temporary Assistance for Needy Families (TANF)—were to be administered as formula grants by the states, with federal standards. Still, nearly

Medicaid

federal health care program operated by the states to assist the poor.

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90 percent of the funds allocated for categorical programs were expended by the largest forty-five programs, fewer than 10 percent of the total number of programs.

Expansion of grants-in-aid was accompanied by qualitative and administrative changes: there were increasing numbers of project grants, and an increased variety of matching-grant formulas; Congress broadened the eligibility of grant recipients and increased joint-recipient possibilities; aid was concentrated in large urban areas and directed to the urban poor in numerous new ventures; there was increased national aid not only to governments but also to private institutions, including corporations, universities, and nonprofit organizations; and the national government made funding available specifically to assist state and local jurisdictions in improving both their planning capabilities and their actual planning activities. All these changes grew out of an expanding emphasis on achieving national goals under the direction of the national government.²³

Prior to the 1960s, aid had been used primarily to supplement the policy actions of states and localities. Under Kennedy and then Johnson, however, presidential and congressional initiatives were couched more in terms of *national* purposes. Given this emphasis, it was deemed entirely appropriate to write into grant legislation substantive and procedural requirements that would promote those purposes.²⁴ Administration of these programs remained predominantly in the hands of state and local governments, but the national role in defining the uses of grant funds was clearly becoming decisive in determining general policy directions and many specific state and local program activities. In the 1990s, funding for grants-in-aid increased from 11 to 16 percent of total federal spending; grant-in-aid funding constituted just over 17 percent of total outlays in FY 2005, before falling to 16 percent again in FY 2006 and 2007, and to 15.3 percent in FY 2009. The percentage of total outlays jumped sharply in FY 2010, to 17.6 percent, but is projected in FY 2012 federal budget documents to fall back under 16 percent in the next few years.²⁵

While major changes were unfolding in national categorical programs, state aid to local governments continued to expand assistance programs as well. Not only were states contributing increasing amounts to local government functions (especially to school districts and to the growing suburbs), but they also were making much of the funding available in the form of revenue sharing, that is, funds drawn from the respective state treasuries and allocated to local governments with few if any "strings" attached. Many states also established the practice (still in use across the country) of returning to each local government a portion of state sales-tax revenues, in proportion to the amount of sales-tax revenue collected within each locality. Thus, from the local perspective, state and national governments, in their differing methods of organizing fiscal assistance to local governments, have moved in somewhat opposite directions during the past forty years. This is not to say, however, that states have given their local governments free rein to allocate funds—far from it. Nevertheless, key features of state aid, especially categorical grants, differ in significant respects from those of national aid.

Categorical Grants and Administrative Complexity

In the preceding discussion of grants-in-aid, we noted a number of administrative dimensions, including the objectives of providing more and better public services, with growing emphasis recently on efficiency and effectiveness—both squarely in our administrative traditions; establishing minimum uniform programmatic standards nationwide; enhancing both the procedure and the substance of state and local programs; and strengthening the planning function. How all of this should be accomplished, however, was and still is a serious question. The use of categorical grants rather than some other instrument of assistance contributed directly to increased interdependence, reliance on political bargaining, and the rise of administrative complexity. This is so because of historical patterns in grants management that are worth reviewing.

Today, states receive more than two-thirds of all formula grants and act as conduits for the majority of project grants to local governments. As Congress deliberated over expansion of successive aid programs, a principal concern was ensuring that the national purposes of programs were not lost by dividing up administrative responsibility among fragmented state agencies. One way to prevent such jurisdictional jostling would have been through the assertion of strong gubernatorial prerogatives, whereby the appropriate state agencies were designated to receive given grant funds and to administer program activities under congressional authorization. Most governors, however, were ill equipped to serve that function, especially in the early years of grant activity, when the operations of state executive branches often lacked unified direction and were hampered by partisan politics and administrative chaos.

One response from the national level was the **single state agency requirement**. Only one agency is designated to administer any individual grant and to establish direct relationships with its counterpart in the national government bureaucracy. This provision first appeared in the 1916 Highway Act and was duplicated the following year in the Vocational Education Act. Currently applicable laws either name a specific state agency or call for one to be designated in policy areas such as child welfare, library services, urban planning, water pollution control, civil defense, and law enforcement assistance. Thus, for most of the twentieth century (and continuing into the twenty-first), the administration of grant funds was largely in the hands of professional administrative personnel in individual agencies.

As the grant-in-aid system grew more specialized, national agency personnel came to work even more closely with their state and local counterparts. Partly as a result of national grant policies, the latter were now much more professionalized than they had been in the past, operating under state merit systems that had created a contingent of administrators whose backgrounds, interests, and professional competencies were similar to those of national government administrators. Parallel relationships

gubernatorial

a term that refers to anything concerning the office of a state governor—for example, gubernatorial authority or gubernatorial influence.

single state agency requirement

a requirement contained in federal grants designating only one state agency to administer national grants, and to establish direct relationships with its counterpart in the national government bureaucracy.

were formed between officials of the Bureau of Public Roads and state and local highway department personnel; national educational administrators and their counterparts in state departments of education and officials in local school districts; and Agriculture Department staff with state and, especially, county agricultural officials. This process of strengthening intergovernmental administrative linkages led to a situation largely invisible to the general public but fraught with consequences for the governmental process. Political scientists Harold Seidman and Robert Gilmour, among others, have suggested that what we have in a number of important functional areas are "largely self-governing professional guilds"²⁶ composed of bureaucrats at all levels with common programmatic concerns. The ACIR, describing the same phenomenon, coined the term **vertical functional autocracies**, the autocracy label signifying not only the agencies' operating autonomy from chief executives and legislators but also the extent of agency control over essential program decisions.²⁷

The development of intergovernmental administrative ties gave rise to a new label for the federal system. Previously, dual federalism was likened to a layer cake, with different levels of government clearly distinguished from one another, and growing cooperation was likened to a marble cake, with functions of different levels of government intermingled. The new vertical administrative patterns gave rise to the term **picket-fence federalism**, illustrated in Figure 3-4.

vertical functional autocracies

informal associations of federal, state, and local professional administrators who manage intergovernmental programs; also referred to as **picket-fence federalism**.

picket-fence federalism

a term describing a key dimension of U.S. federalism—intergovernmental administrative relationships among bureaucratic specialists and their clientele groups in the same substantive areas; suggests that allied bureaucrats at different levels of government exercise considerable power over intergovernmental programs. See also **vertical functional autocracies**.

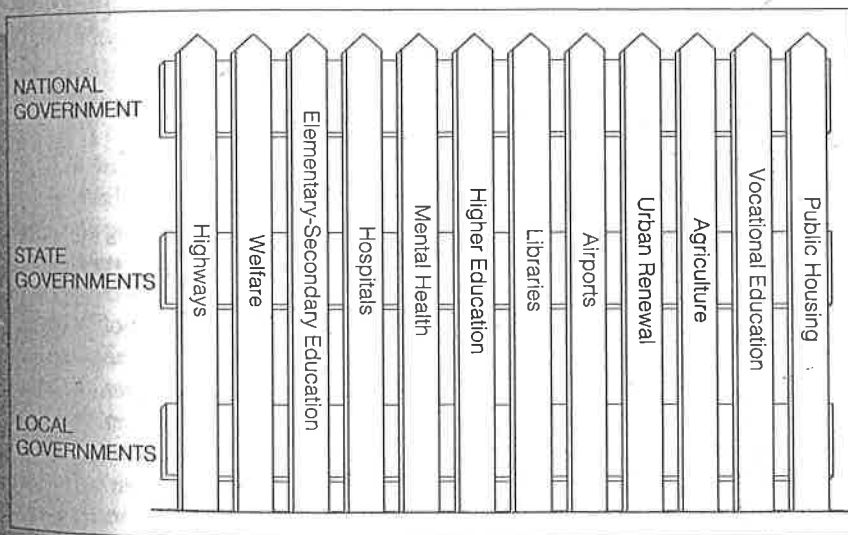


FIGURE 3-4

Picket-Fence* Federalism:
A Schematic Representation

*Each picket represents the political and administrative ties among specialists in each policy area at all three levels of government.

Source: Adapted from *Understanding Intergovernmental Relations*, 3rd ed., by Deil S. Wright. Copyright © 1988, 1982, 1978 by Wadsworth, Inc. Reprinted by permission of Brooks/Cole Publishing Company, Pacific Grove, Calif. 93950.

Former North Carolina Governor (and later U.S. Senator) Terry Sanford provided this definition:

The lines of authority, the concerns and interests, the flow of money, and the direction of programs run straight down like a number of pickets stuck into the ground. There is, as in a picket fence, a connecting cross slat, but that does little to support anything. In this metaphor it stands for the governments. It holds the pickets in line; it does not bring them together. The picket-like programs are not connected at the bottom.²⁸

Bureaucratic officials within each of these pickets, together with their clientele groups at all levels, do not always agree, of course, on the substance and procedures of programs they administer. But the responsibility for formulating many basic policies and for resolving many of the conflicts that arise rests largely—and often exclusively—within the discretion of these functional groupings. How that situation can be reconciled with democratic values of public accountability and control is an important question and one not easily answered. One hopeful sign, however, has been noted: The pickets may have already been somewhat altered. Only ten years after Sanford used the picket-fence label for the first time, David Walker of the now defunct ACIR suggested a variation, namely, *bamboo-fence federalism*. Walker asserted that this new label more accurately “captures the vertical functionalism, continuing professionalism, [and] greater flexibility and realism” of contemporary public administrators, even though most still give primary emphasis to their functional concerns, including the protection of programmatic interests as a high priority.²⁹

Categorical Grants: Growing Dissatisfaction

The tremendous proliferation of grants, the rise of vertical functional autocracies, picket- or bamboo-fence federalism, and particularly the duplicative and overlapping nature of so many available grants soon led to a growing chorus of concern about management of grants and about the impacts they were having on recipient governments.

These criticisms suggest several dimensions of the politics of grants.³⁰ One is provision of essential public services, and equality or inequality among (and sometimes within) jurisdictions in the levels of those services. Another concerns tensions among different levels and units of government over setting program priorities, and program management. A third dimension is the procedural pitfalls that can hamper applicant governments in their efforts to obtain grant assistance. Many state and local officials tell horror stories about rejection of applications on seemingly narrow technical grounds, about having to resubmit applications because a relatively minor section was improperly filled out. Underlying all such concerns, however, is a common theme: considerable conflict between elected state and local officials and the specialists of their own bureaucracies as well as those in the national government's administrative agencies (see Figure 3-4). Much of the criticism came from state and

local chief executives and legislators, and was directed explicitly toward the greater control that bureaucrats at all levels were coming to have over government aid programs. As the criticisms grew in intensity and became a partisan issue dividing Democrats and Republicans, the critics increasingly gained the attention of the Congress and, significantly, the president.

Increasing attention was also given to the problem of grant coordination that resulted from the sheer number of grants and the variety of grant sources within the national bureaucracy. The availability of urban transportation grants from different national agencies for similar, often overlapping, purposes made it difficult to select the most appropriate grant program. Also, many general development projects in states and communities had component parts funded independently by separate national agencies. As a result, a grant applicant was faced with applying separately for each part of the overall project, thereby running the risk of applications being approved for some portions of the project but not for others.

Furthermore, most national aid-granting agencies did not have much (if any) knowledge of what other programs were being funded by other agencies; at the other end of the aid pipeline, most recipient governments knew or cared little about what funds other governments were receiving, or even applying for. Grant applications were being reviewed and approved or rejected by national agencies with no means of keeping track of which states and localities were asking for aid, for what purposes it was requested, and how much aid was distributed. Nor were there any provisions for systematically monitoring which agencies were responsible for programs with similar purposes or for determining the actual results, if any, of grant funds. Meanwhile, state and local officials were chafing under what many considered unreasonable guidelines for spending grant money, as well as the problems they encountered in obtaining funding in the first place.

The problems of coordination have been compounded at the recipient end of the aid pipeline by growing intergovernmental administrative linkages in *horizontal* as well as vertical dimensions. Various types of contracting arrangements, consortia, cooperative agreements, regional interagency councils, commissions, multijurisdiction functional agencies, ad hoc planning groups, temporary clearinghouses, and a multitude of other intergovernmental structures have been created to administer federal programs. Interstate compacts, such as the Port Authority of New York and New Jersey, have come into greater prominence; other regional bodies crossing state lines, created by either state or national governments, have also been established.

Likewise, there has been an increase in the phenomenon of substate regionalism.³¹ Special districts of all kinds (excepting school districts) have proliferated in recent years—many in response to national government encouragement—for a variety of purposes, such as planning, review of grant applications, economic development, public health, and provision of care for the aging. Here, again, the picket-fence analogy is evident because national, state, and local administrative officials all have active roles in substate regional functions. The formation of these nearly independent federal-local government

systems poses considerable administrative difficulties because it frees districts to compete (often successfully) for grant monies available to all other types of local government. Thus, these systems are also woven into the pattern of functionally organized administrative relationships but, at the same time, they are among the most invisible and least accountable of all forms of government.

POINT/COUNTERPOINT

Should the national government truly be the "Senior Partner" in the U.S. "federal partnership"?

THE ISSUE For nearly a century, the national government has distributed increasing amounts of grant funding to state and local governments, for wide-ranging policy and program purposes. In more recent decades, the national government also has increasingly engaged in intergovernmental regulation of states and localities. The national government courts, especially the U.S. Supreme Court, have handed down many rulings that have helped define both requirements and restrictions on state and local action.

Arguments for the National Government Being the "Senior Partner"

- Since enactment of the graduated income tax in 1913, the national government has had fiscal resources superior to those of individual states and localities. Its tax base, for obvious reasons, also is superior. It follows logically that when states and localities are in need of assistance, the national government is the "place to turn."
- Nationwide purposes can be pursued, and nationwide needs met, through a single (albeit diverse and cumbersome) government entity. Those purposes and needs must be defined by Congress and the president, but when they are defined, it is easier to track expenditures and programmatic successes and failures than it would be to do such tracking across fifty separate state governments and 87,000 units of local government.
- By using categorical grants, the national government is in a better position to target geographical and programmatic areas across the nation for assistance.
- State and local political interests are well represented in the U.S. Congress, thus providing ample opportunity for state/local policy preferences to be incorporated into national government actions.

Arguments against the National Government Being the "Senior Partner"

- Throughout the twentieth century and into the twenty-first, the national government has increasingly tried to utilize grant assistance to influence the course of state and local government activity in policy and program directions that are consistent with the purposes of presidents and congressional leaders. That has tended to weaken the states as "independent actors" in a federal system of shared authority.
- The "national purposes" said to be defined in Washington may or may not be in line with preferences of statewide or local majorities "back home," creating considerable potential for conflict among national, state, and local majorities and their elected leaders.
- What the national government, through Congress and the bureaucracy, chooses to target may be too narrowly targeted to suit many who do not benefit from national government financial assistance.
- The state and local political interests represented in Congress may ignore, or conflict with, other interests that command majority support among state and local voters.

Grant Reform: Multiple Efforts, More Complexity

By the late 1960s, pressures were mounting for changes in the grant-in-aid system, particularly in grants management. Although various concepts and options had been explored from time to time, few actions had been taken. The changes that followed, and that have continued up to the present, have emphasized efforts to reduce the programmatic influence of the national government, through both fiscal and administrative reform. We will consider these, and their major components, in turn.

Fiscal Reform: General Revenue Sharing

During the late 1960s, political reaction mounted to the strings (conditions and specifications) attached to grant-in-aid funding. Increasingly, state and local elected officials sought financial assistance that would permit them greater discretion in spending decisions. The Nixon proposal for general revenue sharing (GRS) appeared to meet such demands. GRS de-emphasized concern for national policies, goals, and standards; defined state and local rather than national majorities as the key decision makers about program spending; and built into the intergovernmental fiscal system greater discretion for state and local elected officials. But, despite attracting quite a following among state and local officials, GRS never lived up to its advance billing.

The principle behind revenue sharing was a simple one: A portion of tax revenues would be returned to states and to general-purpose local governments according to a prescribed formula defined by Congress and automatically followed each year. Revenue-sharing funds would be allocated with no strings attached, and recipient governments could use the money for almost any purpose. There would also be no need for a state or locality to apply for the funds; once the formula was determined, the funds would be available with no uncertainty and no delay. Such an arrangement seemed to respond directly to the sharpest criticisms of the grant-in-aid system. In particular, revenue sharing seemed to represent a way for local political majorities, through their elected officials, to reassert their priorities in local and state spending and not to be bound to grant programs with which they increasingly disagreed on both policy and procedural grounds.

One of the reasons, of course, for its appeal was precisely that GRS would allow officials of recipient governments to exercise wide latitude in deciding how to spend the funds; however, some of those officials proved wiser than others. For example, some communities applied GRS monies to special projects, usually construction projects of limited scope or duration, while others, often out of necessity, incorporated GRS funds into their operating budgets. Those who confined their funding to capital improvement turned out to be better off when the flow of funds stopped in 1986.³²

Even when GRS was most strongly supported at the White House, it represented only a small proportion of total spending for intergovernmental aid

(less than 5 percent). Ronald Reagan, however, opposed extending revenue sharing, and Congress did not renew the program. Reagan's willingness to allow GRS to lapse was apparently due to two policy preferences: (1) an overriding interest in reducing national government spending and growing annual budget deficits and (2) a commitment to another alternative to categorical grants, namely, block grants.

Fiscal Reform: Block Grants

If GRS represented a departure from existing categorical aid and its attendant problems, block grants were a more modest attempt (at least initially) to "decategorize" federal grants and "devolve" authority to states and localities.³³

Block grants, while also given out for use in a specific policy area (such as community development, public assistance, or health care), leave much more discretion and flexibility in the use of such funds in the hands of recipient governments. They represent a middle way between the alleged restrictiveness of categorical grants and the elimination of all national-level influence and responsibility in intergovernmental aid.

In general, block grants have the following features: (1) recipient jurisdictions have fairly wide discretion within the designated program area; (2) administration, reporting, planning, and other program features are designed to minimize grantor supervision and control; (3) most allocation provisions are based on a formula, which is also intended to limit grantor discretion as well as to decrease fiscal uncertainty for the grantees; (4) eligibility provisions are fairly precise, tending to favor general local governments as opposed to special districts, and generalist officials over program specialists; and (5) matching-fund requirements are usually relatively low.³⁴ The original block grant concept retained the notion that national goals were to be pursued in a program area through expenditure of allocated funds; the ACIR noted that block grants "do not imply a hands-off [national] role, nor one confined to purely procedural matters."³⁵ These observations were clearly descriptive of the block grants of the 1960s and 1970s.

Under Ronald Reagan, block grants took some sharply different directions: limiting the use of categorical grant programs, shifting away from pursuing national government purposes, spending less for categorical grants, and so on. For example, the number of categorical programs dropped from 534 in FY 1981 to 404 in FY 1984—a decrease of about 24 percent.³⁶

Also, there is evidence that the block grant strategy was used implicitly to cut spending and not only to alter the degree of program control exercised by government administrators through categorical grants. None of Reagan's successors, however, adopted that course of action, at least to the same extent. Block grants have been allowed to operate as more of a "freestanding" form of fiscal assistance—although reliance on such grants signals an implicit, if not explicit, federalism-related aid strategy.

block grants

a form of grant-in-aid in which the purposes to be served by the funding are defined very broadly by the grantor, leaving considerable discretion and flexibility in the hands of the recipient.

Under the administration of President George H. W. Bush, the shifts (both ideological and administrative) toward a stronger state role were reaffirmed and consolidated—although, significantly, not expanded. In FY 1991, for example, Bush proposed increasing block grant funding by the modest sum of \$15 million, with the explicit proviso that state governors be given exclusive responsibility for deciding how the funds would be used. This proposal typified the overall approach of the Bush administration toward intergovernmental change: the allocation of generally small amounts of money to these programs in a manner consistent with the philosophical directions defined in the previous administration. The total amounts appropriated for both categorical and block grants increased somewhat but with more attention to budgetary constraints than to explicitly intergovernmental concerns.

Likewise, President Bill Clinton had to grapple with budgetary concerns and seemingly tried to do so with only minimal attention to IGR. Early in his first term of office, Clinton advocated terminating or consolidating some 150 existing grant programs. In the FY 1995 budget, however, the president proposed a combination of programs in selected programmatic areas that represented some expansion of funding to state and local governments. These included assistance for education, job training, and public works. Interestingly, during President George W. Bush's first term, the administration presided over a fairly significant increase in intergovernmental funding, with FY 2004 budget documents showing continued upward trends in both total dollars allocated and the proportion of total federal outlays going to state and local governments (it should be noted that the majority of the funding was in the form of payments to individuals for Social Security or to institutions, such as hospitals, for medical expenses). That trend was not sustained entirely, however, in budget proposals for FY 2005–2008. While total dollars allocated were projected to increase, intergovernmental aid as a proportion of total federal outlays was projected to level off or to decrease somewhat, as already noted.

Early in 2011, President Barack Obama and his administration proposed significant cuts in national government aid to some of those in need, in larger cities. Fiscal (and political) pressures on Obama will, in all likelihood, cause him to be more reluctant to push for intergovernmental aid than he might otherwise be.

Fiscal Reform: Impacts of Change

Various studies of GRS and block grants have suggested the following patterns of how they were used: (1) more funding was allocated to existing operating programs than to new ones; (2) the largest category of use in smaller communities was capital expenditures—for new municipal buildings, waterworks, even public golf courses; (3) keeping tax rates stable in inflationary times was a major concern of many local decision makers in considering how to use these funds; (4) local political majorities became, if anything, stronger

and more entrenched; and (5) alleviating poverty in larger cities, a major aim of many categorical grants in the 1960s, was not a primary purpose of either GRS or block grants. A major consequence of the shift to this form of aid was a decline in public-policy concern for needy minorities, many of whose members were concentrated in the poorest central cities. The distinction between local political majorities and minorities as primary beneficiaries of GRS/block grants and categorical grants, respectively, was a significant one; the effects of the grants on each of these recipients form a crucial corollary to debates over types of national government assistance. The politics of fiscal federalism overlaps policy fields such as urban policy and civil rights. To "increase the flexibility of state and local governments" is to de-emphasize the policy concerns (much more prevalent in the 1960s than now) with problems of urban minority groups and, more generally, with problems of poverty.³⁷

In addition to these general impacts, neither generation of block grants operated precisely in the manner predicted by their strongest advocates. Soon after being enacted, the early block grants showed signs of what some called "creeping categorization"—a pattern of various abuses discovered in the course of grant implementation, followed by the gradual reassertion of national agency control in order to prevent further abuse.³⁸

During the George W. Bush administration in 2005–2009, some patterns of policy and management evident in previous years began to reassert themselves. For example, President Bush (like President Reagan) used spending reductions in intergovernmental programs as part of a larger strategy of budget reductions. However, President Bush differed from President Reagan in at least three respects. First, the president targeted specific intergovernmental programs for reductions, rather than attempting across-the-board cuts (in intergovernmental programs only). Second, particularly with respect to funding for national government antipoverty efforts, the president "pushed for increased funding for religion-based groups while proposing deep cuts for many traditional anti-poverty programs."³⁹ And finally, the president experienced some significant failures in his efforts; one notable example came in the spring of 2005, when the U.S. Senate voted by 68–31 to restore "funds the White House wanted to eliminate for Community Development Block Grants (CDBG)" (a favorite of local officials ever since their inception in the mid-1970s).⁴⁰ Even that vote, however, does not change the fact that "[w]hen adjusted for inflation, spending on CDBG is at its lowest point ever, less than half the fiscal 1978 funding level."⁴¹

Thus, echoing patterns of the 1980s, it is possible to suggest that some of the current debates over federalism and IGR (at least with respect to intergovernmental aid) are essentially debates about government budgets and spending reductions. It can be said with more certainty that national budget considerations have played a role in shaping the course of funding for states and localities—and to that extent have influenced the relationship of the national government to states and localities:

Both GRS and block grants achieved, at least in part, what their proponents intended for them—to loosen the conditions attached to aid from Washington. Powerful forces, however, will continue to support increases in categorical aid. This fact is reflected in the perpetuation of nearly 600 such programs; together, they still make up about 75 percent of all intergovernmental funding by the national government. This reflects congressional interest in defining and targeting national aid in ways favored by members of Congress, even though their decisions may or may not match the preferences of state and local elected officials, or even those of the public at large. Thus, the debate is likely to continue for some time over the direction of intergovernmental aid.

Administrative Reform: Multiple Initiatives and Shifting Tides

Other efforts to reduce national government influence in IGR have taken numerous—and often contradictory—directions. One early effort was the movement for *citizen participation* in administrative decision making, especially where decisions on expenditures of grant funds were concerned. By incorporating such requirements into a large number of grant authorizations, Congress was responding to substantial pressures from previously underrepresented constituencies, notably poorer urban minority groups (see Chapter 2). The underlying assumption was that government officials had been insensitive to the needs of aid recipients in the past and that, as aid categories multiplied, it would be necessary to expand clientele representation. Thus, in many grants as well as GRS, provision was made for public hearings, and sometimes for more formalized participation, at crucial points in the decision-making process. The promise of citizen participation may well have been greater than the realization of it, not least because some administrators may have succeeded in co-opting potential adversaries from citizen groups.

Another approach to bringing the grants system (and functional specialists) under better control centered on achieving better *coordination* among proliferating aid programs. The earliest efforts focused on coordination among aid applicants and stressed regionwide coordinative mechanisms. A number of efforts were made to promote better communication among aid applicants (especially at the local level). Despite some protests, these efforts were deemed necessary by many in Congress and federal agencies because of widespread local and state unwillingness to consider the effects of their own programs and planning on those of neighboring jurisdictions. Improving coordination through better communication was a consistent theme in the IGR arena.

Emphasis also has been placed on more information and training. Information resources currently available to grant seekers include the “bible” of grantmanship, the Catalog of Federal Domestic Assistance (CFDA), published by

the national government containing descriptions of 1,400 separate assistance programs administered by fifty-seven federal agencies, and available online at <http://www.cfda.gov>; a computerized information system based largely on the CFDA, known as the Federal Awards Assistance Data System (FAADS); and publications of the Grants Management Advisory Service in Washington and the Grantsmanship Center in Los Angeles.

Yet another broad example of multiple initiatives and shifting tides concerns the various approaches of different U.S. presidents in the past thirty years. For example, more than any other president, Ronald Reagan actively sought to change the way national government agencies conducted their intergovernmental activities. By making frequent use of presidential executive orders, he attempted to alter many features of national-state and national-local relations that existed when he first took office. During his second term (1985–1989), President Reagan took more explicit steps to promote his conception of “New Federalism”—a view of the federal system that, if fully adopted, would limit executive agency activities in contemporary IGR and instead return to a position that favored heightened state government activity and influence. National government departments and agencies were told to consider the effects of their regulatory and legislative policies on state and local governments in an effort to improve the management of state-administered federal programs. During the presidency of George H. W. Bush, executive-branch agencies were advised

to pursue further . . . relief to State and local governments by providing administrative flexibility, promoting efficiency through Governmentwide common rulemaking, cutting . . . red tape, decentralizing the decision-making process, and seeking State and local government views in the development of [national government agency] rules.⁴²

In all these formulations, there is the clear assumption that national programs and procedures have had generally adverse effects on state and local governments, and that both states and localities should be in the forefront of planning and managing future intergovernmental programs.⁴³

The Clinton administration came to office in 1993 without the same ideological commitment to state and local government predominance that the two previous administrations had, but Clinton (like Reagan, a former governor) was eager to apply to the national government many lessons learned during his experience with state government. In addition, President Clinton (in part from budget/deficit concerns) exhibited some of the same inclinations as Reagan and Bush did toward downsizing, and devolving functions from, the national government. Nevertheless, President Clinton strengthened some national government initiatives for funding intergovernmental activities, especially in policy areas such as education, environmental protection,

transportation, and infrastructure improvements. Significantly, however, the Clinton administration spoke consistently of moving decision authority "closer to the people" by allowing state and local governments greater flexibility in managing their programs.

George W. Bush came to the presidency articulating a program designed to lessen the tax burden, reduce national government spending, and promote actions by state and local governments over those of "Washington." By the early years of his second term, however, it was obvious that President Bush's federalism-related record was a mixed one. On the one hand, the president succeeded in reducing national government revenues through lower taxation; he also made considerable headway in redirecting many national government efforts in more philosophically (and programmatically) conservative directions. On the other hand, there was some concern—particularly, and perhaps ironically, among many conservative supporters of the president—that in pursuit of some conservative policy objectives, the president expanded the role of the national government—contrary to long-standing conservative inclinations "to downsize government and devolve power to the states."⁴⁴ The concern, on the part of "Republicans inside and outside the White House," was that the president was "fostering what amounts to an era of new federalism in which the national government shapes, not shrinks, programs and institutions to comport with various conservative ideals."⁴⁵

During the Bush administration, the national government moved into more of a predominant position in many aspects of our lives—albeit in a more philosophically (especially socially) conservative direction. One example was the Bush effort to achieve enactment of a constitutional amendment banning gay marriage. Although this effort is supported by many social conservatives, regulations concerning marriage and divorce traditionally are state, not national, government matters. Another example (somewhat more obscure, perhaps) was the proposal—supported by the president and many other Republicans—for the national government to place a cap on punitive damages in medical liability cases. This proposal, if enacted, would have achieved a long-sought policy objective—but in the process, would also usurp some state government powers (for example, significant regulation of both the medical profession and the insurance industry). The problem for the president, and others, is that many proposals would "require conservatives to sacrifice one principle to accomplish another"—never an easy dilemma for any government official, of any persuasion or philosophy, to resolve.⁴⁶

The cuts to the CDBG program, referred to earlier, were yet another example of dilemmas faced by the Bush administration, because of the strong resistance encountered from local elected officials—many of whom were Republicans. And their resistance made it more difficult to accomplish something more fundamental that the president wanted to do.

One other Bush administration initiative should be noted—an initiative with major implications for increased national government spending. In

Medicare Prescription Drug Act

passed by Congress in December 2005 and provides supplemental (Part D) prescription drug coverage for seniors eligible for Medicare.

December 2005, Congress passed by a slim margin the controversial (and costly) **Medicare Prescription Drug Act**. Creation of a prescription drug benefit under the Medicare program was the first new federal "entitlement" program since the 1960s; the drug benefit went into effect in January 2006. An "entitlement" is a government program under which total spending is heavily influenced by the total number of eligible individuals who take advantage of the program, with no fixed ceiling established by law on the overall dollar amounts available to support the program. The federal government, late in 2005, estimated that the total costs of the drug benefit in the first ten years would be \$725 billion—a substantial spending commitment, especially for an administration publicly committed to limiting government spending.

Another dimension of federalism under George W. Bush was the emergence of a new activism at the state and local levels—an activism that clearly has continued into the Obama years. Although this is hardly the first time in our history that state and local governments have assumed an activist role, the reasons for that happening in the past twenty years are complex. They included, among other things, national government budget deficits in the mid- and late 1980s (and larger deficits again in recent years), combined with reductions in aid to states and localities—what one observer has labeled "fend-for-yourself federalism."⁴⁷ Another reason, in the early twenty-first century, is the greatly increased level of state and local responsibilities in the wake of the September 11, 2001, attacks—especially under tighter budget constraints.

The Obama Administration and Contemporary Federalism

The Obama administration assumed office in January 2009 with what many regarded as a popular mandate for change, a principal theme of the president's election campaign throughout 2008. But even many Obama supporters were not prepared for the scope and intensity of some early, key initiatives that the president undertook—most notably the American Recovery and Reinvestment Act (ARRA), a "stimulus package" with a \$787 billion price tag, which was designed to spark renewed economic activity across the board, especially in the private sector. That statute provoked both widespread support and considerable opposition, representing as it did a significant expansion of national government activity and authority.

Under Obama, there have been many developments such as ARRA and health care reform with direct impacts on, and implications for, our federal arrangement of governments. Thomas Gais, director of the Rockefeller Institute of Government, State University of New York at Albany, has identified

seven key features of Obama-era federalism⁴⁸:

1. *More money for state and local governments than in any previous national government stimulus effort.* Of the \$787 billion appropriated under ARRA, \$246 billion went to or through state governments, which was more than twelve times the amount sent to states in the Jobs and Growth Act of 2003 (a more modest stimulus initiative under George W. Bush). Among other purposes, these dollars were directed to Medicaid, the **Race to the Top** education program, infrastructure spending, social and economic “safety net” programs (for example, Food Stamps, Head Start, and unemployment insurance), and energy programs. State governments can expect more national government dollars for higher education expenditures, university research funding, and more grants under NCLB. Also, various health care–related undertakings have received more fiscal support from the Obama administration.
2. *Direct efforts to control state budgets, policies, and administration.* Much of the money “comes with strings attached,” continuing a long-term trend under both Republican and Democratic presidents and Congresses. Under ARRA, states had to retain existing Medicaid eligibility rules and current K-12 and higher education spending levels. Under health care reform (provisions of the Patient Protection and Affordable Care Act [PPACA] of 2010), states must maintain current Medicaid/Children’s Health Insurance Program (CHIP) eligibility levels for children until 2019. States also must maintain current Medicaid eligibility for adults until health care exchanges are fully operational.
3. *Expanded use of project grants.* The number of such grants is especially noticeable in PPACA/health care reform and the Elementary and Secondary Education Act (ESEA); Race to the Top also included many project grants.
4. *Blurred, entangled, uncertain, and varied division of responsibilities.* In other words, “marble cake” federalism is taken to new heights. This is particularly a result of enactment of PPACA/health care reform. Responsibilities will be interwoven between federal and state governments.
5. *Influence of the president and other national government administrators.* Beginning with the Reagan administration, presidents have used “a growing variety of executive powers to influence the states: from waivers to rulemaking, memoranda, demonstration projects, [and] grant conditions.”⁴⁹ The use of competitive grants in ARRA and PPACA gives national government administrators considerable influence. Obama’s Department of Education insisted that states document education reforms required under ARRA.
6. *Strong interest in reducing disparities across state and local governments in outcomes and resources.* A leading example of this interest is demonstrated in the “Blueprint for Reform,” which mandates that high-poverty and low-poverty school districts receive comparable funding. The “Blueprint” would also classify high-poverty schools, districts, and states into “Reward” and “Challenge” categories, based on student performance. Flexibility in operations, policies, and reporting as well as financial rewards would follow. This would have the effect of focusing national government resources on areas of greatest need.⁵⁰

Race to the Top

the Obama administration’s \$4.35 billion U.S. Department of Education program designed to encourage reforms in state and local district K-12 education. Funded as part of the ARRA of 2009.

7. *Continues stress on accountability based on measured “results” but with emphasis on evidence-based practices and greater concern about data quality and comparability.* Three elements of practice have been altered since 2009. First, Obama’s administration has moved away from state-developed tests toward “more comparable interstate measures of graduation rates and readiness for postsecondary programs.” Second, there is a “new emphasis on research and diffusion of evidence-based practices—i.e., practices in education and health care that have been evaluated and found to be more effective than others.” Finally, a new focus on how goals are to be pursued represents a change from earlier “devolution” practices where the national government was said to be “loose on means, tight on goals.” Defining means more specifically is to be done before those means are used at the state and local levels.⁵¹

In summary, many policy initiatives in the first two years of the Obama administration were characterized by a strong tendency toward “centralization—using [a] combination of controls and selective flexibility to advance [the national] government’s views of appropriate policies and budgets.”⁵² However, this centralization trend differed from those during some previous presidencies, involving “money, targeted assistance, executive control, federal entanglement in state policies and operations, and interest in using states to identify and diffuse ‘effective’ practices across the entire system.”⁵³

After Republicans gained majority control of the U.S. House of Representatives and increased their numbers in the U.S. Senate in 2010, President Obama had more difficulty in pursuing the directions taken in 2009–2010. According to Gais, divided government gives states a wider range of opportunities to influence the national government, and makes it harder for Congress and the president to resolve a wide range of issues, and this clearly has been the case since the beginning of 2011.⁵⁴ Pressures for *less*, not more, national government activity built during Obama’s first two years in office. It is likely that the broad debate concerning national versus state authority, initiative, and control—a debate as old as the Republic—will not only continue but also intensify in the immediate future.

State and Local Activity in Contemporary Federalism

In the past few years, officials at the state and local levels have been unmistakably more active, even assertive, relative to the national government, even as the national government has itself expanded many areas of its own policy activism. Examples include the following:

- In Parkland, Florida, where the motto is “Environmentally Proud,” the city began in 2008 to dispense cash rebates to its 25,000 residents for

being more environmentally friendly. The city of Baltimore offers at least \$2,000 toward closing costs for people who buy new homes close to where they work. Residents of Albuquerque, New Mexico, get fast-track building permits and other perks if they agree to make their homes more energy efficient. And in Arizona, many cities pay residents to replace grass with artificial turf or plants that use less water. Scottsdale, outside Phoenix, will pay homeowners up to \$1,500 for such improvements. "We're in the middle of a desert, and water is absolutely the most precious resource we have," said city spokesman Mike Phillips.⁵⁵

- A joint investigation of mortgage-lending companies' foreclosure—involving all fifty states and the District of Columbia—led to greater compliance by those companies with state foreclosure laws. Almost predictably, there has been some variation in the patterns of compliance across the states, but the general trend has been in the direction of greater compliance, and, as a result, more equitable foreclosure processes for millions of homeowners.⁵⁶
- On Election Day 2010, voters in all ten California cities with a referendum on the ballot dealing with taxing marijuana sales approved new or higher taxes. This happened on the same day that California voters rejected Proposition 19 that would have legalized recreational marijuana use statewide.⁵⁷
- In Washington, the notion of using a "cap-and-trade" system to reduce greenhouse gases is a major point of contention between liberals and conservatives, and between many Democrats and many Republicans. But in 2008, ten northeastern and Middle Atlantic states formed the Regional Greenhouse Gas Initiative (RGGI), which "imposed a cap-and-trade regime on large power plants in Delaware, Maryland, New England, New Jersey, and New York." In December 2010, the results to that point were considered to be largely a success.⁵⁸
- According to a 2010 National League of Cities survey, most U.S. cities face worsening economies, and local governments will have to cut personnel or stop construction over the next few years, even though the national economy was recovering from the deep recession. Three in four city officials reported that overall economic and fiscal conditions worsened in 2009 and 2010, and more than six in ten said poverty intensified. Ninety percent of officials said unemployment was a problem for their communities and that joblessness had mounted. Underlying these problems is the fact that local (and state) economies take more time to recover from a recession than the national economy does, because demands for public assistance rise just as tax revenue falls.
- Some state governments deliberately took action *against specific national government proposals, policies, and/or enactments*. For example, a substantial number of states filed suit in 2010, seeking to overturn PPACA/health care reform. The essence of their argument (both legal and political) is that the

national government vastly exceeded its constitutional authority by enacting PPACA. They took issue, especially, with the provision that makes the purchase of health insurance mandatory for individuals. On another front, officials in the state of Texas announced, in late 2010, that they would not comply with greenhouse gas regulations that took effect in early January 2011. One consequence was that EPA took "the unprecedented step of directly issuing air permits to industries in Texas." (In an unrelated, but parallel, action, Texas Governor Rick Perry announced that he would not ask the Texas legislature to appropriate funds to implement state action associated with national health care reform.) Also, Arizona, in 2010, and Utah, in 2011, have adopted statutes that would allow a police crackdown on illegal immigrants. Arizona Governor Jan Brewer justified her state adopting the statute in part on the grounds that in the absence of national government enactment of a new immigration policy, the states have every right to step in. As of early 2011, the Arizona statute was on hold, pending resolution of a lawsuit filed by the U.S. Justice Department in federal court. Finally, many political conservatives, including dozens of state lawmakers, have supported a proposal to amend the U.S. Constitution that would allow states to repeal or void pieces of congressional legislation with which they strongly disagree. Virginia's Attorney General, Ken Cuccinelli, has taken the public stance that as the chief legal officer of his state, he has the constitutional authority to initiate such an action.⁵⁹

- On the other hand, the continuing controversy surrounding health care reform "has largely overshadowed some states' efforts to use the law to help them move as fast as possible to insure more people and increase control over insurance companies."⁶⁰ Among others, Minnesota, Connecticut, Maryland, Vermont, and Oregon have moved aggressively on one or more fronts contained in PPACA, in the interests of leveraging more national government dollars for coverage of childless adults (in Minnesota and Connecticut), for providing preventive care (in Oregon), and for constructing an online infrastructure for an insurance marketplace (also in Oregon). Four other states, each of which elected a Republican governor in 2010, also are using grant funds to build the same sort of online infrastructure Oregon is pursuing, putting them in the ironic position of accepting money to implement parts of the law while joining with other states in seeking to overturn PPACA in federal court.⁶¹

All of this, of course, is in addition to state activism in a variety of other policy areas, in recent years—for example, state attorneys general who pursued, and won, a major settlement from tobacco companies; and a few governors (and some others in state government) who have actively sought to import pharmaceuticals (especially from Canada) in defiance of both

Congress and the Food and Drug Administration (FDA). Small wonder that, over the years, many observers have described the states as “laboratories” of government.⁶² And plainly, those “laboratories” have been playing an increasing role in the overall governmental scheme of things.

Prospects and Issues in IGR: A Look Ahead

Any attempt to forecast even the near future in IGR is a highly speculative venture. But there are already certain indications. One issue that has been addressed by both academics and politicians is the extent to which intergovernmental *regulation* has become part of IGR.⁶³ Intergovernmental regulations, which have become far more numerous since the 1960s, have been enacted as part of national government bureaucracies’ efforts to direct implementation of categorical grant assistance programs. In most instances, the regulations are designed to implement other national government legislation aimed at achieving wide-ranging social and economic objectives. Political scientist Donald Kettl explains the rise of **regulatory federalism**:

regulatory federalism

an approach to intergovernmental relations under which federal agencies use regulations as opposed to grants to influence state and local governments.

The [national] government cannot constitutionally order state and local governments to examine the environmental impact of projects they propose or to keep their financial records in specified ways. The . . . government can, however, set those standards as conditions for [both categorical and block] grants.⁶⁴

Literally hundreds of such regulations now exist. An examination of a small sampling of them may help to convey the scope of this regulation. Under statutory authority from Congress, for example, the EPA may prescribe the treatment local governments must give to their drinking water, as well as the inspections some states must conduct on automobile emission controls. Health care regulations govern the operation of Medicaid programs run by state governments with shared funding by the national government. National mine-safety regulations set standards for the operation of state and local gravel pits. One reason for the creation of new special-purpose local “quasi governments” (such as regional health planning organizations) was a regulatory requirement imposed by agency officials who distrusted—and therefore wanted to bypass—traditional local political institutions. Professor Kettl summarizes the consequences:

In all of these areas, the [national] government has spun out elaborate requirements about who can make decisions, who must be consulted,

and even how records of performance must be filed. Rules stipulate who must benefit from [nationally] aided programs, and how state and local governments must administer those benefits. These regulations have created a wide channel of [national] influence over the most intimate details of state and local operations. They have also made state and local governments front-line administrators for numerous national programs.⁶⁵

The point has been made, however, that such regulations often have positive substantive aspects as well; the experience of numerous states has suggested how important and useful national government requirements often turn out to be. The central challenge for reforming IGR is to reduce the number of so-called unproductive regulations without abolishing those serving important national (and sometimes *state*) purposes.

Two varieties of regulations have developed. So-called *crosscutting rules* apply across the board to many national aid programs. *Program-based rules* apply to individual programs. Some rules, such as the 1931 Davis-Bacon Act, govern administrative and fiscal policy; other rules, such as those accompanying the 1990 Americans with Disabilities Act, the 1993 Family and Medical Leave Act, and the NCLB of 2002, impact social and economic policy.⁶⁶

Two particular aspects of regulatory federalism deserve mention. One is the concern that many mandated activities are costly—for example, paying prevailing wages (determined by the U.S. Labor Department) on construction projects receiving national government funds, or providing “reasonable accommodation” for access by the physically handicapped—and that governments imposing such mandates have not been supplying necessary funding. This has placed numerous local governments and private organizations in increasingly difficult financial positions because the intergovernmental aid they receive is not sufficient to pay for mandated activities. The federal government has little systematic data concerning the cumulative costs it imposes on state and local governments. Several studies in the past twenty years suggest, however, that an average of 10–15 percent of all municipal budgets is devoted to meeting the financial obligations associated with mandates. These unfunded mandates (legal requirements that states and local governments must undertake a specific activity or provide a service meeting minimum national standards) cover a very wide range of public-policy areas, including community development, environmental pollution, transportation, public health and safety, and public housing. Perhaps predictably, many state and local officials increasingly objected to this practice; one response was enactment of the Unfunded Mandates Reform Act of 1995, which made it more difficult for Congress to impose new laws

rules, or regulations that would add significantly to state or local government costs.

The other aspect of the mandating question, however, is the widely shared impression that national government mandates have been the hardest to bear. Though there is obvious variety among the fifty states, a study commissioned by one state legislature intended to highlight the extent of federal mandates on local governments found instead that four-fifths of the burden (in this case, in the education field) was imposed by state rather than national government law. This does not downgrade the significance of the mandating issue in general; it does, however, suggest that grouping national and state mandates together may foster false impressions about some aspects of the extent of the problem. Since the 1990s, increased attention has been paid to such problems of intergovernmental regulation, and steps have been taken to ease the burden, especially that on local governments. For example, many of the more detailed (and, many say, more burdensome) regulations have been eliminated; also, government regulatory agencies have been directed to cut obsolete regulations and to act like partners with affected businesses, states, and local governments.

Another issue area affecting IGR is the phenomenon known as **devolution**—referring to shifts of governmental authority from the national government to state governments (and possibly from states to localities as well). In the 1980s and especially the 1990s, many advocates joined in promoting devolution, contending that it would “provide more efficient provision and production of public services; better alignment of the costs and benefits of government for a diverse citizenry; better fits between public goods and their spatial characteristics; increased competition, experimentation, and innovation in the public sector; greater responsiveness to citizen preferences; and more transparent accountability in policymaking.”⁶⁷

There is evidence, however, that devolution has not “taken hold” as its supporters hoped it would. “Analysts seeking evidence of the impact of devolution have not been able to uncover much.”⁶⁸ In the late 1990s and the early twenty-first century, new federal mandates were imposed; at least one survey of city officials found strong feelings that very little devolution had taken place; and as noted above, federal intergovernmental aid expenditures rose, rather than fell, for a time—not what one might expect to find in an era of devolution.⁶⁹ “The devolution that has occurred has tended to be of an administrative variety (for example, the federal government’s granting of a waiver to a state implementing a federal statute); meaningful substantive devolution is notably absent.”⁷⁰ Regardless of the future of devolution, these and similar issues concerning the nature of federalism will almost certainly continue to be debated. For example, improving the capacity of state and local governments to provide greater homeland security already has prompted significant

devolution

a process of transferring power or functions from a higher to a lower level of government in the U.S. federal system.

changes in IGR. These include, among other things, increased financial, legal, operational, and political resources for national, state, and local agencies, and new methods of interaction involving those agencies, many of which are less familiar with horizontal coordination than with vertical communication.⁷¹

Intergovernmental Relations and Public Administration

The diffuse nature of federalism (which is perhaps not as diffuse now as it was in the past) has combined with growing intergovernmental ties in all directions to create an unquestionably complex situation. Public administration has been altered, perhaps permanently, by rapid changes in IGR.

For example, it is clear that the patterns of political influence termed *subsystem politics* in the national government (see Chapter 2) have been extended into intergovernmental politics. Despite recent efforts to gain greater control of their bureaucracies, most chief executives have failed to stem the growth of vertical functional bureaucratic linkages—the picket-fence “autocracies” originally referred to by ACIR. One reason for the inability of a president or governor to overcome the institutional strength of multilevel bureaucracies is precisely that the latter can call on political support from at least one other level or unit of government much more easily than a chief executive can. Intergovernmental administrative relations, in other words, have served to strengthen existing bureaucratic autonomy at every level of government. (Whether that general pattern will continue without change—or without external efforts to *impose* change—is an important and intriguing question.)

A second area of serious concern for public administration is fiscal relations, especially the financial difficulties of some American governments. State and local government revenues have been severely affected by the economic downturn of recent years. Even though the private economy has been showing signs of recovery since late 2010, it is very likely that (as in past recessions and recoveries) government revenues will lag well behind private-sector economic activity in returning to fiscal strength and stability. Adding to these difficulties is the fact that about one-third of the states suffer from *structural* budget imbalances resulting from revenue growth that is chronically slower than increases in the costs of services those states must provide. Also, problems like those experienced at various times in New York City, Miami, Detroit, and Cleveland, as well as other major cities and counties (and some smaller ones), may come to hound political leaders, administrators, and citizens in other communities as they struggle to avoid fiscal chaos caused by antitax sentiments among voters, declining property-tax bases, and escalating

service costs. Although intergovernmental aid can do much to bail out a city here and a suburb there, a real question exists as to whether costs imposed by inflation, tax limitation movements, and rising service needs can, in fact, be met over the long term by infusions of aid. At the core of the problem is the fact that recipient governments can easily develop a continuing dependency on such aid (whether from national or state sources), which may not always be available. Programs funded in whole or in part through intergovernmental aid face more sharp cuts or even curtailment as funding declines or ceases, and in states facing their own increasing fiscal stress, that possibility is growing stronger. Program cuts, efficiency, priority setting, strategic planning, and "entrepreneurial thinking" are relatively new concerns in public administration—in degree, at least—arising out of the very real fiscal crunch enveloping all levels of government.

A third area of concern is control over grants-in-aid and other funding. A stark reality of IGR is the existence of bureaucratic, and "interbureaucratic," controls on much of the money flowing from one level to another. These controls raise questions about public accountability and about the ability of chief executives to coordinate spending effectively. Public administrators have considerable discretionary authority over public spending; this authority has affected the age-old issue of fiscal responsibility and accountability. A related concern is that, until the last decade, some government institutions (such as state legislatures) have lacked any real access to key decision makers or any impact on decisions regarding intergovernmental funding. For the most part, bureaucrats are in the driver's seat when it comes to categorical grant funding, still by far the largest part of intergovernmental aid. Whether the situation will stay that way is unclear, given new pressures on both intergovernmental aid and the administrators in charge of intergovernmental programs.

Other emerging patterns in contemporary IGR include some decline in the relative prominence of fiscal and grant-related issues and a corresponding rise in the importance of intergovernmental regulatory issues (among others), and the key role of the courts in settling federalism-related questions (such as health care reform and immigration policy, among many others). There is also growing recognition of a disturbing possibility that increased coordination among local governments—a worthwhile objective—may prove to be elusive in the long run. Finally, scholars in the field of federalism will, in all likelihood, continue their efforts to bring some intellectual order out of the seeming chaos that has occurred in IGR just in the last fifty years. For example, there have been spirited debates about the degree of centralization appropriate as a remedy for bureaucratic control of categorical grants; also at issue is the question of just how functional or dysfunctional contemporary IGR has become. It is no exaggeration to suggest that few areas of governance in this country are as complex or as challenging as this one has proved to be.

Summary

Federalism, in its original meaning, defined an arrangement of governments in which a central government and regional units each had some independent standing in the governmental system. Federalism has important constitutional, political, fiscal, and administrative dimensions. Our federal system has evolved through a variety of choices and changes, and today, IGR is predominant on the federal scene.

In the past fifty years, contemporary IGR has become highly complex. Contributing to the complexity are the present grants system, functional alliances among program administrators, and continuing tensions between political executives and functional specialists (and their respective clienteles). Bureaucratic activity at all levels is central to IGR and to fiscal federalism. Categorical grants are the most widely used form of fiscal assistance, though greater political resistance has emerged to "categoricals." Besides being used to achieve a wide range of programmatic purposes, these grants also have served to encourage a number of changes in the behavior of recipient governments. From the early 1960s to the late 1990s, categorical grants of both project and formula types were increasingly used to promote explicitly national purposes.

That led to considerable administrative complexity. Political and administrative choices made early in the history of cash grants set a precedent for single state agency relationships with national agencies in charge of a given grant program. A sequence of events was thus set in motion that led to the creation of self-governing guilds (also called vertical functional autocracies) and picket- or bamboo-fence federalism. These allied interests gradually consolidated control over grant programs, causing a political reaction that sparked a continuing search for ways to control those guilds. Coordination is increasingly difficult to achieve, however, given the proliferation of politically potent government units and of both horizontal and vertical linkages among them.

Grant reform has occurred in several ways. Fiscal reforms included the use of GRS and block grants (though neither has ever approached categorical grants in scope or funding). Since the presidency of Ronald Reagan, block grants have assumed new importance. Administrative reforms have taken the form of either decentralization (in particular, through increased citizen participation) or efforts to improve coordination and management of the grants system. Improved information and communication have also been stressed. In recent years, state authority clearly has grown, due both to many favorable decisions of the U.S. Supreme Court and to an emerging state-level activism that frequently leaves at least some states at odds with the national government in important policy areas.

The Obama administration has both undertaken key initiatives, such as ARRA and health care reform, and introduced new controversies to modern federalism and IGR. Hallmarks of federalism in Obama's first term included more money for state and local governments; direct efforts to control state budgets, policies, and administration; expanded use of project grants; blurred, entangled, uncertain, and varied division of responsibilities between national and state governments; strong interest in reducing disparities across state and local governments in outcomes and resources; and continued emphasis on accountability based on measured "results" but with emphasis on evidence-based practices and greater concern about data quality and comparability.

Issues to be dealt with in the immediate future include the continuing and perplexing problem of unfunded mandates, prospects for further reductions in both national and state aid, and changes in the extent of bureaucratic autonomy at all levels of government. Also important will be questions of continuing fiscal constraints facing government across the board, IGR-related policy directions of the current administration, and the challenge of maintaining governmental accountability in the federal system. Continued complexity in IGR is a certainty.

Discussion Questions

1. In defining the scope of national government authority, especially regarding conflict and overlap with state authority, what issues have had to be resolved—in our early history, in more recent decades, and very possibly in the years ahead?
2. Identify the key features of IGR in contemporary American politics and discuss their significance. What major themes may be said to exist in contemporary IGR?
3. What "fiscal mismatch" exists in modern federalism? Why does it exist? What solution(s) is(are) currently implemented? Does the "mismatch" need to be "solved"? Are there better solutions? If so, suggest what one or more might be.
4. As trust in the national government declines, will trust in local governments increase? Why or why not?
5. What role has the Supreme Court played in defining contemporary IGR?
6. How did the proliferation of categorical grants lead to administrative complexity?
7. What administrative and fiscal problems arise from problems associated with lack of grant coordination? What steps have been taken to prevent such problems from occurring and to deal with them when they do arise?
8. Compare and contrast block grants, categorical grants, project grants, and formula grants. What are they and what are the political consequences of each (referring to questions of political and administrative control, and different patterns of programmatic benefit and lack of benefit for each type of program)?
9. Discuss the use of regulations by administrative agencies as a vehicle for intergovernmental control and how changes in administrative autonomy at all levels of government affect IGR.
10. What political and administrative patterns in federalism/IGR are associated with the presidency of Barack Obama?

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