THE FEDERAL TOOL BOX: ADMINISTRATIVE CRAFTSMANSHIP IN INTERGOVERNMENTAL REGULATION

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Paper presented at the Annual Meeting of the American Political Science Association, September 3-6, 1981, New York City.

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I. IGR As A "Dismal Science"

A dismal picture has begun to emerge from the study of intergovernmental relations (IGR). Of course, most students of IGR have rarely had anything to cheer about in recent decades. Whether reflecting pro-centralization or pro-decentralization perspectives, the tone of most discussions on IGR typically has been less than enthusiastic about current or future conditions. Nevertheless, there always seemed to be a glimmer of hope in some policy plan or fiscal scheme that would produce a new era of intergovernmental cooperation or creativeness. Usually the hoped for changes never took place, failed to provide solutions to IGR problems, or actually created still more dilemmas for participants in the federal system. Yet there was always that constant feeling of optimism that the system could be changed for the better. It is that hopefulness which is missing in contemporary analyses of IGR, and in that sense the study of intergovernmental relations is today's "dismal science.

The lack of optimism and hope is reflected in the two major schools of thought which now dominate the study of IGR. One school is linked to the study of policy implementation while the second is rooted in the examination of changing legal relationships among governmental units in the United States. Each of these schools has approached IGR in a different way, and each presents a distinctive verdict on the federal system to match its analysis. The study of policy implementation has focused on the key role IGR has played in government program failures, and in so doing has found fault with the centrifugal forces at work in the federal system. Those analysts who concentrate on changing legal relationships in modern federalism regard the trend toward the "nationalization" of American government and policy as both inevitable and counterproductive. In both views, however, the outlook for IGR and the American political system is gloomy.

II. The Policy Implementation Perspective

In the study of policy implementation, there is perhaps no better example of the dismal nature of IGR than that provided by Pressman and Wildavsky (1979) in their study of the Economic Development Administration's Oakland Project. The lessons of their study are obvious for all students of modern federal policy. Even in a case (such as the Oakland EDA Project) where the "dice" are loaded in a program's favor, "the ultimate probability of success is very low." (p. 107)

> What had looked like a relatively simple, urgent, and direct program -- involving one federal agency, one city, and a substantial and immediate funding commitment -- eventually involved numerous participants and a much longer series of decisions than was planned. None of the participants actually disagreed with the (program's) goal. . . , but their differing perspectives and sense of urgency made it difficult to translate substantive agreement into effective policy implementation. (p. 113)

Potential solutions to these problems are not easily found and, as Pressman and Wildavsky note, such solutions would have to live within the constraints of

American federalism. "No one supposes that the federal system is going to disappear. If the federal principle maintains its vitality, then it means precisely that state and local organizations must be able to oppose, delay, and reject federal initiatives." (p. 161)

That outlook is seconded by Lowi, et al. (1976) in a more direct indictment of the current IGR system and its impact on policy implementation:

> Federalism in the United States has become responsibility's escape route. Because of the federal structure of government and the institutional consequences that flow directly from that federal structure, when federal policies are carried out by those with local responsibilities, the policies become, as Swift would put it, "but a ball bandied to and fro, and every man carries a racquet about him to strike it from himself among the rest of the company." (p. 27)

Thus, under current conditions, relationships among the various levels of government create "mutual interference and mutual ignorance." (p. 28) Policy implementation is adversely affected rather than aided in the process.

What has emerged from these and other studies is a picture of an implementation system that is doomed to fail in its primary tasks unless the fragmenting influence of IGR is either minimized or eliminated (e.g., Lowi, et al., p. 28; Larson, 1980, pp. 5-6; Sabatier and Mazmanian, 1980, p. 546). Yet the likelihood of succeeding in either endeavor is not very high by anyone's measure. While policy implementation through intergovernmental means may seem an administrative nightmare and technically unwise at times, the political payoffs have more often than not proven sufficient to outweigh those considerations (Salamon, 1980, p. 9). Policy makers must therefore learn to take the effects of IGR fragmentation into account when formulating public policies, and policy implementors must adapt to the realities of federalism if they are to have even the slightest chance of succeeding. The odds, however, are against them no matter how hard they try.

III. The Changing Legal Relationships Perspective

Those who focus on the changing legal relationships in modern American federalism see a somewhat different set of problems emerging: the nationalization of government and policymaking. For this group of analysts there has been a constant historical movement in the IGR system from relative state and local autonomy toward a condition of subnational unit dependence bordering on the creation of a unitary government. Rather than seeing the frustration of national programs, these analysts focus on the development of a new set of relations in which the demands of national policy implementation give both form and direction to intergovernmental structures and processes. The link between IGR and the limits of jurisdictional power is disregarded or forgotten as the constitutional notion of federalism gives way to the prerogatives of national policies.

This trend and its causes have been described in a number of ways. Elazar (1973, 1976, 1978, 1980) sees it taking hold in LBJ's Great Society programs which reorganized government along lines of a highly centralized Jacobin model (1978, pp. 51-55). Nixon's so-called "New Federalism" built upon that model rather than changed it, for what Nixon achieved was a new hierarchical configuration through the "recentralization" of an already centralized federal structure (1973, pp. 240-252; 1976, p. 10). According to Elazar, the "natural history" of these developments ran from the 1950s when "the federal government became actively involved in a supportive role in virtually every field of government endeavor, . . ." through the 1960's when Washington began "taking the initiative and requiring the states and localities to conform to federally established directions. . .", to the 1970s when the conventional wisdom held to "the notion that the federal government was the policymaker by right, while the states and localities were merely convenient administrative arms to be subjected to all kinds of federal regulations. . . ." (1980, p. 84)

Walker (1978, 1981A, 1981B) has not only taken note of the scope and direction of these changes, but has also pointed out their contradictory and "dysfunctional" nature. Today's IGR is characterized as a "greatly expanded . . . 'partnership'" in which the relative power of participants has become blurred. More and more public sector activities have become "intergovernmentalized" and the discretion of "general" government officials at the state and local levels has been increased through greater reliance on block grants and general revenue sharing programs. At the same time there are more categoric grants available than ever before, greater subnational government dependence on federal aid, and a proliferation of "more intricate, more intrusive, and more pervasive" conditions for participating in federal programs (1978, pp. 103-105). These patterns have emerged as a result of both presidential initiatives (e.g., Johnson's "creative federalism," Nixon's "New Federalism," and Carter's use of intergovernmental aid programs in his anti-recession policies) (1978, pp. 105-107) and what Walker describes as the Congressional "theory of federalism" which stresses, among other things, the view of administrators as "mere functionaries, even as administrative agents of Congress." (1981, p. 55) Together these have combined to create an "endlessly proliferating national policy agenda and an interest-group-dominated enactment process" that has relied "in nearly all cases on subnational instrumentalities for...program implementation...." (1981B, p. 242)

In previous papers on this subject, Dubnick and Gitelson(1979, 1981) described the trend toward nationalized government in terms of the rise of "regulatory federalism" (1979, p. 30). This development reflected several fundamental conditions which came together during the mid-1960s: first, the expanding role of Washington in social and environmental policy arenas; second, the increasing reliance of national policymakers on regulatory means to deal with issues arising in those arenas; and third, the tendency (rooted in historical, ideological, technical, administrative and political factors -- see 1981, pp. 44-45) for federal officials to use intergovernmental mechanisms to "deliver" national policies (1981, pp. 40-46).

Those mechanisms took various forms ranging from the use of technical assistance and financial aid to more direct and coercive approaches such as "partial preemption" and the "legal conscription" of state and local resources into the service of national policy implementation programs. (See the detailed discussion of these mechanisms in Dubnick and Gitelson, 1981; also see Lovell, 1979 and U.S. Office of Management and Budget, 1979 for details of the "mandate" system associated with financial assistance; also Croy, 1975 and Engdahl, 1973 on the use of preemption). The picture of the IGR system which emerges from the Dubnick and Gitelson description is one in which the legal and constitutional standing of state and local governments is declining while their role in policy implementation is increasing. State and local officials face a situation where they are becoming part and parcel of a nationalized government system similar in fact (if not in form) to the unitary systems of Britain and France.

These pictures of an emerging shift toward unitary government are rooted in a developmental perspective that sees the problems as naturally evolving rather than being caused by any single events or individuals. No specific reform is therefore likely to seriously challenge current trends -- not revenue sharing, not block grants, not greater citizen participation, etc. Rather, those who hold to this perspective see real hope only in changing the attitudes of people. Elazar (1980, pp. 86-90) seeks revitalization of the Constitutional standards and barriers that characterized the federalism of the past. Walker seeks changes not only in the Congressional theory of federalism which helped generate these trends (1981A, p. 57), but also a more fundamental and widespread "shift in attitudes and approaches to national agenda issues, to the role of elected national officials, and to program enactments and executions as dramatic as... those that evolved over the past decade and a half." (1981B, p. 246)

Changes such as those proposed by Elazar and Walker are perhaps as feasible and likely as the elimination of federalism sought by some members of the implementation school. Being aware of this, it is not surprising that there is little optimism being generated from these authors.

IV. Living Within the System

While it is unlikely that the current situation in IGR can be changed, there is little reason for analysts or practitioners to walk away from the system in complete disgust or frustration. If, as we argue, IGR is a dismal science, it is certainly not the first. As the first and still principal dismal science, economics still thrives as both a field of study and practice. In spite of "revolutions" in economic thought and behavior, the overall "dismal" direction of economic life probably remains as Smith, Ricardo, Malthus, and other classical political economists had predicted (see Lowi 1979, pp. 7-10).

Yet we deal with this and other entropic developments daily through both thought and action--that is, we learn to work with our current and emerging constraints. Oftentimes this means overcoming those constraints, as when we develop new technologies that can produce goods and services on a scale and with an efficiency that was previously unheard of (on this optimistic view see Gilder, 1981). At other times the methods we use for dealing with our finite surroundings do little more than speed up the process of deterioration and potential for calamity (see Georgescu-Roegen, 1971).

The point to be stressed here is that the most interesting short-term questions in dismal sciences are not necessarily those dealing with general directions and trends. Rather, the important questions are likely to focus on how we cope with those developments. To do that we need a working model of the system--one which focuses on the actors and actions in contemporary IGR. Cakes and fences have provided simple models which captured the static relationships among various actors in the IGR system, but they have their all too obvious limits. Ideally, we would like to have a highly developed, empirically warrantable model that can relate to IGR behaviors rather than the characteristics of some metaphor. That kind of model, however, is nowhere in sight given the underdeveloped nature of IGR theory. What we must seek, therefore, is a more useful analog model, one that adds some active and immediate perspectives to the study of IGR.

The seeds of such a model are found in the recent literature of both implementation theory and IGR. In an insightful critique of implementation studies, Salamon (1980) criticized the continued concern for "programs" and called for approaches focusing on the tools and techniques of implementation. Different "tools of government action," contends Salamon, "have their own distinctive dynamics, (their) own 'political economics,' that affect the content of government action." (p. 7) By understanding those tools, their place in the public policymaking system, and their utility for those in the system, we can get a much clearer picture of how the world of policy implementation operates.

IGR can be (and has been--see Dubnick and Gitelson, 1981) viewed in terms of the tools and techniques of government action available to various actors in the system. The image of IGR as a tool box--a collection of implements that can be used by various actors to accomplish their respective objectives--can prove valuable as both an analytic and prescriptive model.

V. The Tool Box Metaphor

Initially, the idea of a federal tool box implies the existence of a single large collection of utensils at the disposal of all actors in the IGR system. A more appropriate image is that different actors at different levels in the system have their own tool box, each containing a distinctive set of instruments provided through the many programmatic "hardware stores" that do business in the IGR arena (cf. the "shopping mall" analogy in Murphy, 1981, pp. 133-134).

The content of tool boxes available to specific national officials is typically dependent on the program related resources at their disposal. These, in turn, are derived from a variety of sources inlcuding Congressional authorizations, executive orders and specific delegations of authority, and the influence or legitimacy the official (or agency) has accumulated in its relationships with subnational governments. For example, the Environmental Protection Agency has a substantial set of IGR-relevant tools at its disposal derived from the Clean Air Act, the Water Pollution Control Act, the Resource Recovery Act, the Toxic SubstancesControl Act, and the many other statutes from which it obtains its wide-ranging program responsibilities (see Advisory Commission on Intergovernmental Relations, 1981).

In contrast, consider the amount of influence that the National Bureau of Standards (NBS) has over state and local weights and measures regulation. In spite of its constitutionally-rooted authority in this area, NBS has established a high degree of legitimacy among subnational officials based on its technical expertise and capabilities. Thus, through technical assistance and related "tools" it is able to use state and local officials to deliver its regulations (see Dubnick and Gitelson, 1981, pp. 47-49).

Still other agencies (especially in HHS and Education) have depended on available fiscal utensils in order to obtain state and local cooperation. It would, of course, be an understatement to note that many federal programs have successfully used the tools of financial assistance to sell their wares at subnational levels. It is extremely difficult to reject some offers, especially when they require little or no cost participation on the part of recipients (see Advisory Commission on Intergovernmental Relations, 1977).

These examples only touch the surface in pointing out the variety of tools that have been developed to help national officials in their IGR activities. Recent attempts to generalize about those tools (Dubnick and Gitelson, 1981, Beam, 1981) are in need of further development, but their lists indicate that federal tool boxes are filled with some heavy duty implements.

Subnational officials, in contrast, have less powerful instruments in their boxes. As the material upon which national officials apply their crafts, state and local units seem to have few IGR relevant tools of their own that might be useful in counteracting national efforts. They could, of course, refuse to take federal monies or reject the conditions and mandates attached to them. However, such options usually are impractical or impolite given current fiscal conditions and the high levels of subnational unit dependence on federal aid. Or they could have recourse to the courts, but in all but the rarest of instances (e.g., NLC v. Usery) this has not proved to be an accessible or viable alternative.

The IGR tool boxes of subnational officials seem (at first glance) more appropriate for dealing with peer level or subordinate units. Thus, a city in Indiana can take an upstream municipality to court over the latter's sewer water treatment (or lack thereof); or the State of Illinois' EPA can order the City of Chicago to take actions to halt the Windy City's pollution of Lake Michigan. But on the surface there seems little either unit can do to influence the actions of national officials.

This is especially true when the subnational recipient of a national requirement, mandate, or order is a functionally specialized unit. Such specialization will usually be associated with a high level of dependence on specific federal programs for either authority or financial resources. State occupational safety and health administrators, for instance, will work closely with federal OSHA officials and look to them for both policy guidance and support. After all, under current laws it is OSHA which sets (and must approve) the minimum standards those state officials will enforce. In addition, since federal funds pay up to half of the costs for operating that state agency, the state official has few options at his or her disposal. What IGR tools the state OSHA agency has are useless in dealing with its Washington counterpart.

Less specialized units and officials, however, are not in such poor positions vis-a-vis federal programs. In fact, they may have a distinct advantage. General government officials at subnational levels (e.g., governors, mayors/city managers) have frequently been provided with some quthority in recently developed IGR programs. This has been especially true in environmental and energy programs passed during the past decade. While these officials are not given extremely powerful or broad ranging roles to play, the tools they have accumulated through their various tasks as federal policy implementors can prove extremely useful when properly organized and applied under the right circumstances. Wearing many hats, a general government executive may not only be able to deal with national officials; he or she may actually be capable of bringing about significant policy changes or, at the least, program delays.

It is here that the tool box analogy has implications for our image of the successful subnational IGR "manager". In years past, when the national government was more a source of funds than a source of regulations (or, if we be allowed the luxury of mixing our metaphors still further, more a banker than a cop), the successful "grantsman" was the model of the ideal IGR actor for state and local governments. Following through with our tool box analogy, however, we would predict that the "craftsman" is the new ideal. The craftsman will not necessarily get his or her unit all the available funding or new programs that Washington has to offer; what he or she can do is create a situation in which the subnational unit can achieve its objectives in spite of the constraints imposed by the IGR system. (For an interesting discussion of the "craftsman" as a managerial type, see Maccoby, 1976, chapter 2. It is also interesting to compare that type with the "gamesman" model [chapters 5-6] which might be representative of the "grantsman" manager.)

The need for administrative craftsmen to deal with the national government is not unique to subnational governments. There are more than a few similarities between the situation of state and local officials and private sector managers. Both are becoming increasingly regulated by Washington, and both have complained vehemently about that development (e.g., see Witherspoon, 1980). Yet, within the private sector there has been an ongoing adaptation to the emerging regulatory state (see Weidenbaum, 1981, Part Two) to the extent that analysts now speak about the "strategic uses" of regulation by American businesses (Leone, 1977; Owen and Braetigam, 1978; Mitnick, 1981). This too is occuring in IGR as the role of the administrative craftsman becomes more evident and more important.

VI. Case Studies in the Federal Tool Box

Thus far we have suggested that the federal/IGR system can be viewed as a "tool box" which can supply both policy makers and implementors with a variety of instruments to construct, repair, and even redesign public policies, policy arenas, and even the political and institutional relationships which underlie the system itself. By focusing on specific jurisdictions and actors within the federal/IGR system, we can empirically demonstrate the utility of the tool box metaphor. The tool box contents will vary according to location and specific actor, as will the quality and quantity of the tools made available to the actor.

As we have noted, the astute policy maker is no longer the "grantsman" of the 1960's and 1970's but the "craftsman" of the 1980's. Our assumption is that while federal and state regulatory policies may, at times, be constraining, a gifted policymaker can draw on an assortment of competing regulations to satisfy or redefine policies affecting local needs.

Specific examples of the craftsman's use of the federal tool box can be used to demonstrate our point. One such case involved the use of environmental protection laws, historical preservation requirements, and other federal regulations to delay and subsequently suspend sections of a federal highway construction project located in the Hartford, Connecticut SMSA. The project, begun during the late 1960's, was opposed by a coalition of communities and environmental groups on the grounds that it would have a negative environmental and economic impact on the surrounding communities.

Specifically, Interstate Highway 291 was to serve as a beltway around the city of Hartford, eliminating through-traffic congestion on the local streets of the city. In addition, pbans were made to extend parts of Interstate Highway 91 including the widening of the road. Surrounding communities in the Hartford SMSA, including Winsor and West Hartford, objected to the construction on a number of grounds, including: an increase in environmental noise and pollution; economic displacement of local community businesses that would be affected by plans for the construction of a shopping center adjacent to I-291; the displacement of homes; and the increase in traffic flow as a result of the road expansion. This case represents an example of local grantsmanship being brought into play in order to delay and partially block the I-291 and I-91 construction. Two factors appear to be relevant. First, local communities like W. Hartford had strong and effective representation in Congress and thus were able to influence DOT and state planning efforts. The second factor, "craftsmanship", is more relevant to our discussion, for it represents a case of using an assortment of federal regulations to bloc a federally mandated highway project. Of critical importance in this study is the point that the regulations used as "tools" to prevent, or at least delay, the highway construction had little or no substantive connection with federal highway construction acts or regulations.

Grounds for delaying or halting construction of sections of I-291 included violations by the federal and state government of the National Historic Preservation Act of 1966 (a number of buildings in the path of the proposed beltway were protected by the Act), environmental pollution violations including infractions of HUD noise guidelines, and environmental impact statements outlining pollution problems associated with increased traffic flow in the region. In addition to the use of these federal regulations as tools for blocking road construction, plans for construction of the highway through the West Hartford area were halted because of the existence of park lands and a water shed in the area protected by Department of Interior regulations. Finally, arguments for halting construction were also based on a federally funded Community Impact Analysis study that demonstrated adverse economic effects on communities affected by I-291 construction.

The lessons of I-291 are clear. Local officials (in conjunction with local citizen groups) used federally mandated regulations to thwart federal and state efforts to implement a federally funded and state supported highway program. In effect, local officials, carefully selecting tools from the pool of federal regulations, could frustrate a competing set of regulations they did not wish to implement.

There was one exception in the Hartford SMSA. Winsor was not successful in blocking construction of its section of I-291. But even in this case, present court action, backed by the plethora of cross-cutting federal and state regulations surrounding the construction project, has given the community a final crack at blocking the project. For all intents and purposes, the local communities effectively stopped the construction of I-291.

The I-291 case does not stand in isolation. The city of Winsor, with the cooperation of other surrounding communities in the Hartford area, has prevented the federally financed expansion of the local airport, Bradley Field. Their action was based on federal regulations dealing with air and noise pollution standards.

In the area of energy development, we have also witnessed the use of the environmental regulatory system (federal <u>and</u> state) to influence energy policies in order to modify their impact upon state and local interests. For example, under its authority to protect the natural environment by maintaining minimal stream flows, the Colorado Division of Wildlife has sued the Colorado River Conservation District in its effort to halt the over-allocation of water to commercial developers in the Carbondale, Colorado area--an effort at least indirectly related to synthetic fuel and fuel transport projects being considered in the area. State officials in the west are likely, in the future, to apply Regulations of the Wild and Scenic River Act related to environmental protection in order to block, control, or influence national energy policy plans.

An example of states using stricter standards of regulation to thwart or at least influence national policy and regulation is found in state standard setting for sulfur dioxide (SO_2) under the provisions of the 1970 Clean Air Act. The level of allowable SO_2 emissions and SO_2 air quality standards is important for energy developers, for the stricter the standards the more costly the process of extracting or converting any synthetic fossil fuels. In the eight state western region where energy development is a salient issue, seven states have imposed more stringent air quality standards for SO_2 than those mandated by the Federal EPA. The ability and willingness of states to use these higher standards as leverage against the federal government and private developers is demonstrated by Colorado. Colorado tightened its emission standards for SO_2 several years ago under conservationist Governor Richard Lamm to a point which would greatly hinder the development of certain oil shade retorting processes in the Rifle, Colorado area. These have since been moderated, but not without some assurances on the part of the federal government and private developers of deference to state and local policy concerns.

VII. Summary

Numerous scenarios can be devised in which one set of regulations at the state or national level can be used to frustrate or block other state or national policies or regulations. The "tool box" metaphor suggests, however, that while there is justifiable concern for the growing unitary dimensions of IGR, states and municipalities are not left defenseless in their attempt to assert local autonomy. As craftsmen with a command of the Code of Federal Regulations, an astute local or state policy-maker can use available tools to influence the national policy-making and implementation process.

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