2 Nationalizing State Policies

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As we enter the 1980s, state and local governments find themselves in the midst of a major institutional upheaval. They are at the center of one of the most significant legal, administrative, and political changes to challenge U.S. government officials in this century. These have not been revolutionary changes, but instead have arisen since World War II in the subtle, incremental fashion typical of modern American politics and policymaking. They are not changes in the internal structures, procedures, or personalities of specific government entities, but rather in relations among them. They not only challenge the legal autonomy and constitutional authority of state and local units, but also their fiscal resources and administrative capacities. Most important of all, they are challenges to the fundamental roles that had evolved in the American federal system through the New Deal era.

To understand these changes and challenges, we must look to two simultaneous and closely related trends; the nationalization of American public policy and the increasing reliance on regulatory mechanisms by American policymakers. As separable developments, both trends are easy to document. The increasing role played by Washington in American public policy is indicated by both the growth of expenditures at that level and the rapid expansion of federal jurisdiction in a variety of domestic areas. Some of this growth and expansion involves issues previously outside the scope of all government levels (for example, nuclear power), but most reflects the escalation of policy responsibilities from state and local to national arenas (for example, highway speed limits and education).[1] The increasing application of regulatory solutions is indicated by the recent proliferation of both regulators and regulations, as well as a growing public and policymaker concern for the costs and changing nature of regulatory activity.[2] However, while each is important as an independent trend, the two combine to form an even more significant development: the *nationalization of regulatory policy*.

The nationalization of regulatory policy took root during the middle 1960s and gained momentum and substantive form during the 1970s. Traceable to the New Deal and the discovery of "national police powers," its more immediate sources are events surrounding Kennedy's New Frontier and Johnson's Great Society. During that period and its aftermath, the "positive national state and its programs" were accepted "as a positive virtue, as something desirable for its own sake and patently necessary for

the society."[3] At first it emerged in efforts to guarantee and extend civil rights, but it was soon rationalized as acts necessary to protect the nation's public health and safety. By the 1970s, national regulatory efforts were commonplace in such issue areas as consumer protection, environmental protection, energy conservation, and economic stability.

State and local governments were not unaffected by this trend; in fact, they may have now become the principal vehicles through which nationalized regulations are instituted. This chapter examines the potential and actual roles played by subnational governments in the nationalization of regulatory activity and offers a descriptive framework for further analysis. The focus is on intergovernmental mechanisms in terms of both their form and long-range implications for American government. The basic theme directing this examination is that government regulations, like other public-sector services, are "deliverable" actions, and it is from this perspective that we begin.

Delivering Regulation

The nationalization of regulatory policy has had considerable impact on how governments operate *at all levels*. The means by which regulatory policy nationalization occurs can and have varied. The frequent assumption is that the nationalization of policy authority is directly related to the centralization of policy administration. This assumed correlation is inherent in a number of widely accepted theories used to explain the general trend toward nationalization.[4] The facts indicate otherwise, however, since there are numerous examples of policies involving the concentration of authority accompanied by decentralized implementation mechanisms. This is as true for regulatory policies as it has been for other forms of government activity in the United States. The difference is that the nationalization of regulatory policies is a relatively recent phenomenon, thus posing new situations and unique challenges for the American intergovernmental system and those who participate in it.

The simple distinction between policy formulation and implementation functions must be stressed at the outset if we are to understand the options available to policymakers charged with designing mechanisms for administering nationalized regulatory policies. Although often linked, these functions are structurally separable both analytically and in fact. Who formulates a policy and how that person (or persons) goes about the task are not necessarily correlated with a particular set of policy implementors or implementation procedures. It is on the basis of this premise that we can develop a typology of implementation mechanisms applicable to our analysis of nationalized regulatory policy.

An equally important premise is the view that regulations, like all government policies, can be perceived as *deliverable goods and services.* That is, it is not enough to regard a regulatory policy as a mere institution that has power just because it exists. Rather, a regulation, like a subsidy or service must be delivered. For present purposes, we assume a narrow definition of *regulation* by regarding it as a policy action by an authorized governmental agent imposing a specific standard of behavior on a target population under its jurisdiction.[5] Given this delineation, we can examine how regulations are delivered without presuming that officials promoting or authorizing the establishment or sanctioning of regulatory policy actions are identical to those authorized to carry them out.

The possibilities for nationalized regulatory policy implementation logically follow once these premises are accepted and placed within the context of the American federal system. These include situations in which

1. Both the authorizing and authorized units are national (*complete preemption*).
2. The authorizing entity is a state government, while the delivery of regulatory policy actions is national (*federalization*).
3. The national government authorizes or promotes the delivery of regulatory actions through interstate agreements or multistate organizations (*interstate organizations*).
4. The national government authorizes or promotes the delivery of regulatory actions through state and local governments (*intergovernmental relations*).

Of these four possibilities, only the first and fourth have been extensively used in the delivery of nationalized regulatory policies, and the first was of greater significance in the past than at present.

Federalization is an idea usually associated with proposals to reform the delivery of social-welfare policies. It is typically related to a fiscal crisis in states or cities and involves having national officials assume the responsibility for given policy functions at the behest of state and local officials.[6] In nationalized regulatory policy actions, an approach resembling federalization has been used, but generally only in emergency situations when state and local authorities have found conditions temporarily overwhelming. Examples are found mainly in activities involving immediate public health and safety problems, such as those associated with natural disasters or civil disorders. The sporadic, short-term, and localized nature of these efforts makes them unlikely models for more substantial long-term efforts to implement nationwide regulatory policy actions. On the one hand, it is unlikely that all states will simultaneously and of their own volition defer to national officials in policy areas where they retain legal authority to act. On

the other hand, even if such mass deference was to occur, there is little likelihood that a single national agency would be capable of carrying out its functions without having to mobilize state and/or local authorities in that effort. In such a situation, federalization would actually become merely a variation of the intergovernmental mechanisms that are being used to implement nationalized regulations.

Interstate organizations also are often proposed as mechanisms for implementing nationalized regulations, but they have in fact not been used in that role. Such mechanisms are rationalized on three grounds.[7] First, they would meet specific public problems at the appropriate *scale of effort*. That is, given problems may be of such nature that neither national nor state and local efforts would be relevant. Certain problems and their potential solutions may be technically regional in character, thus rendering interstate efforts as most appropriate.[8] In regard to this form of regulatory action, a regional approach to fighting water pollution in specific water basins or air pollution in contiguous areas would seem relevant.

Second, regional arrangements can facilitate the *administrative coordination* of national policies by bringing together relevant actors and resources at politically and economically more manageable levels.[9] As a possible means of implementing regulatory policy on a nationwide basis, these organizations could be used to plan and oversee the consistency of enforcement efforts by member units.

Third, regional organizations are often regarded as a means for *checking the tendency toward the centralization of power* while not barring nationalization of effort. Thus, while they permit the use of national resources in solving policy problems, they also decentralize the locus of national executive power through the establishment of distinct, functionally specialized, frequently autonomous government entities that can prove more flexible, adaptive, and open to regional interests and needs. Again, put in a regulatory-policy context, this type of arrangement could prove politically feasible and economically beneficial by accommodating regional variations on nationwide regulatory standards.

In operation, regional organizations have performed regulatory functions, but none are national in scope or impact. Most of these entities are primarily planning and coordinating bodies and thus perform no regulatory tasks outside those administrative mandates they impose on their institutional members.[10] In the total picture of nationalized regulatory policies they are not treated as special regional implementing mechanisms, but as variants of state and local jurisdictions. In short, they are regarded as participants in the intergovernmental system rather than as unique exceptions to those relationships. As such they have not been utilized as a primary means for delivering nationwide regulations despite suggestions along those lines.[11] Nor is a change in this direction likely to prove politically or admin-

istratively feasible.[12] Regional organizations would be difficult to design on *a nationwide basis and even more difficult to operate* given the jurisdictional conflicts that inevitably arise. It is little wonder that this implementation mechanism for nationalized regulatory policies has not been utilized.

Complete preemption is not only more often applied, but also is the most significant one historically. On a formal and legal level, preemption involves the *national government's assertion and assumption of exclusive jurisdiction* over policy formulation and implementation functions in an issue area. As applied here, the idea of preemption is taken literally and is understood to entail the *complete* assumption of regulatory policymaking and policy implementation authority.[13] In this extreme form, preemption mandates that national officials *totally* occupy a "'field' to the exclusion of . . . state action."[14]

In spite of its historical and constitutional significance, especially with respect to regulations rooted in the commerce power, the recent application of these preemptive mechanisms has been limited.[15] This is not to say that Congress has been reluctant to assert its authority in constitutionally preemptive terms. To the contrary, there have been a number of recent and significant legislative actions bluntly declaring it "to be the intent of Congress that the provisions of the Act shall supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for. . . ."[16] However, among these acts there are few that have explicitly preempted *both* the power to formulate *and* the power to implement regulatory-policy actions. In most cases, the details of implementation and enforcement are either vaguely defined or else indicate a role for state or local governments in the implementation of the act.[17]

There is one major exception, but even that is limited in effect and qualified. Section 209(a) of the 1970 Clean Air Act expressly prohibits states or their subdivisions from adopting or attempting "to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicles' engines" subject to the act's motor vehicle emission and fuel standards. According to Lettie Wenner, this provision "constituted the first and only congressional mandate to the Environmental Protection Agency (EPA) to undertake directly enforcement of pollution controls without the assistance of state government.[18] However, there were several loopholes in this assertion of complete preemption. For one thing, states were given jurisdiction over the maintenance of these standards and related control devices once the vehicles were purchased and on the road. For another, the 1970 act contained a major exemption to the preemption. Termed the "California waiver," it authorized the state to impose more stringent controls.[19] Section 177 of the act as amended in 1977 extends this exemption to specially designated "nonattainment" areas.

The fourth and final group of delivery mechanisms for nationalized

regulatory policies are *intergovernmental*, and they are obviously the preferred option among the four types available to policymakers. At the heart of intergovernmental mechanisms is the assumption that regulatory-policy formulation and implementation are separable in fact as well as in theory. However, relying on state, local, and even regional entities to administer a set of nationally applicable regulations seems to violate several principles of good management. The use of intergovernmental mechanisms would be an open invitation to those seeking to qualify or subvert nationwide policy actions, and some analysts have demonstrated that a "Gresham's Law of Regulation" (that is, "less stringent regulations chase out more stringent regulation") is evident in certain regulatory areas.[20] Yet, there are a number of factors that can explain the tendency to place implementation responsibilities with lower-level jurisdictions.

First among these are the forces of history, particularly as these reflect long-standing constitutional traditions. Despite the increasing trend toward the nationalization of American public policy, there has rarely been any serious consideration given to proposals to abolish states.[21] Local-government units have proven less sacrosanct and there have been some successful (although hard fought) efforts toward metropolitan consolidation.[22] Tradition does not die easily, and this is as true of government functions (for example, building codes, water-quality control, and highway traffic speed limits) as it is of government jurisdictions. It is not surprising, therefore, to find national policymakers deferring in part to states and localities by allowing them to implement regulatory policies set in Washington.

A second and related factor is more ideological, for there exists a deeply rooted bias within America's political culture favoring decentralized governance.[23] This belief in the value of state and local policymaking and policy implementation may seem irrational or based on a number of potentially questionable assumptions (for example, local governments are "more representative," "more flexible and adaptable," more familiar with the "needs and desires" of local populations), but it is nevertheless a force to be contended with by policymakers and others involved in the design of nationalized regulatory policies. Under the influence of this bias, national policymakers are likely to minimize the degree of centralization either by providing for the participation of lower-level jurisdictions in the formulation of regulatory policies or by leaving the administration of regulations to state and local officials.

A third factor favoring the use of intergovernmental mechanisms is the technical nature of the problems being regulated. There are certain subjects of regulation calling for nationwide policy actions which nevertheless also demand that regulatory treatments be adjusted to regional and local conditions. In energy conservation, for example, a national regulatory policy that might call for new commercial buildings to achieve a minimum level of energy efficiency would seem desirable in theory, but in practice would

prove extremely difficult to enforce. The technical benefits to be gained from relying on state or local officials are obvious. Standards appropriate to achieving national goals will differ from region to region and city to city given differences in geography, climate, and even economic and social conditions.[24] In the face of these variations the use of intergovernmental relations seems appropriate.

Related to technical factors are those rooted in the administrative capabilities, and fiscal resources of various levels of government are also factors favoring intergovernmental policy mechanisms. One commonly cited characteristic of America's federal system is the uneven distribution of those capabilities and resources. The national government has traditionally relied on transfer payments, grants-in-aid, and other forms of indirect policy implementation and has rarely established the organizations or a pool of trained personnel needed to carry out large-scale policy operations. It has offset this with a revenue-raising capacity that provides national policymakers with a substantial advantage over state and local officials. Taken together, these characteristics provide a powerful reason for Washington's reliance on lower-level jurisdictions to carry out a variety of national functions, including the delivery of nationalized regulatory policies.

Fifth and finally, political factors are an important determinant of the use of intergovernmental mechanisms. Viewing politics as the mobilization of bias, Schattschneider and others have indicated how political conflicts can be escalated or reduced as part of the tactics employed by interests involved in a policy debate.[25] The "privatization" or "socialization" of conflict is particularly relevant to political battles taking place within the American federal system. Simply put, an interest "losing" at one level or merely wishing to improve its standing in a political conflict can attempt to change from that level to another in a political conflict. Thus, if you are not getting your way at the state legislature, you might choose to raise the issue either locally in a city council or nationally in Congress. Given this perspective, one can explain the recent emergence of nationalized regulatory policies as a reflection of the increasing socialization of conflict from local, state, and nonpublic arenas to the national stage. Many activists—for example, environmentalists, consumer protectionists, Naderites—realized that theirs was a national constituency and that only by working in national policymaking arenas could they achieve their regulatory-policy objectives.[26] Simultaneously, however, there have been forces at work attempting to counter these efforts by seeking to privatize the conflict or otherwise reduce it to an issue involving lower-level jurisdictions. The typical result of this push and pull between socialization and privatization is a compromise in which a generally applicable policy is authorized by national officials, but with the stipulation that implementation would be left to state or local bodies.

The overall result of these five factors is a variety of intergovernmental delivery mechanisms for regulatory policies. The specific forms involved vary along two basic dimensions: (1) the extent to which lower-level jurisdictions participate of their own volition, and (2) the degree of discretion permitted to state and local officials in determining the specifics of a nationalized regulatory-policy action.

While the fundamental structure of the federal system (that is, national-state-local) lends itself to centralized organization and hierarchical relationships, in both constitutional theory and early historical practice the stress has been on noncentralized structures and fluid, pragmatically developed interactions among the many units making up the system.[27] Centralized and hierarchical tendencies have become increasingly evident in recent decades, but there remains a propensity among national policymakers to avoid overtly mandating state and local actions on behalf of national policy objectives. Therefore, one is likely to find that lower-level jurisdictions are often permitted a large degree of freedom in choosing to participate in the implementation of national policies. In other cases, the degree of choice is either nonexistent or merely symbolic. Between these extremes are the intergovernmental arrangements that either promote or constrain the options available to state and local officials in the face of national policy demands.[28]

The amount of substantive policy discretion allowed state and local officials will vary in a similar fashion. National regulations can be either specific or vague. In certain cases, the regulatory action or goal may be narrowly defined, and the substantive policy discretion allowed to states and localities is likely to be minimal. However, there are situations that allow state and local officials a considerable amount of choice in determining the objectives of regulatory actions and how they will be implemented. By issuing general guidelines for these policy efforts, national policymakers may seek their regulatory objectives while deferring to state and local decisions in most matters. As with the degree of volition, there is an almost infinite range of options for delivering nationalized regulatory policies.

These two dimensions are graphically correlated in figure 2-1. The resulting matrix illustrates the range of options available to policymakers in their efforts to deliver nationalized regulatory policies through intergovernmental mechanisms. An operational approach representative of each cell is provided in the figure, and the next section offers examples of each.

Four Intergovernmental Mechanisms

Technical Assistance: With Neither "Carrot" nor "Stick"

Each of the four representative mechanisms highlighted in figure 2-1 are distinctive not only because of the degree of volition and discretion they

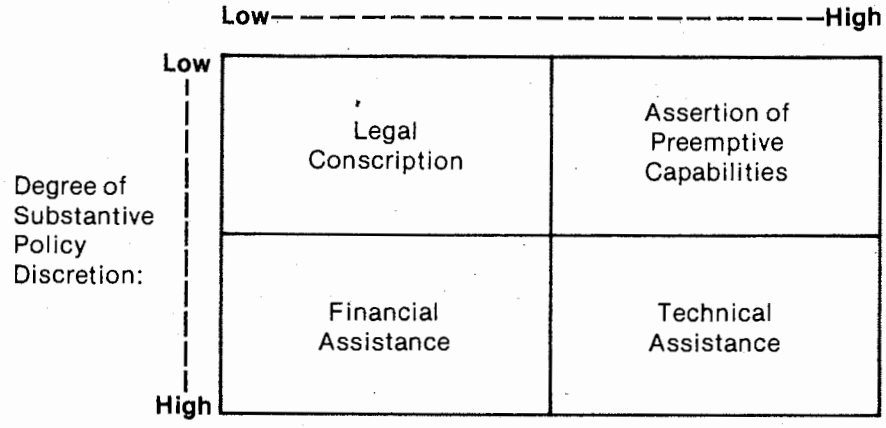

Figure 2–1. Degree of Volition Allowed Lower-Level Jurisdictions

allow state and local officials, but also because of the conditions they require for their effective application to specific regulatory-policy efforts. This is especially true for *technical-assistance* mechanisms. In its purest form, technical assistance involves neither the "carrot" nor the "stick," which is characteristic of the other three approaches to be discussed. By definition, technical assistance refers "to programs, activities, and services provided by the Federal Government, a Public Interest group, or another Third Party to strengthen the capacity of recipients to improve their performance with respect to an inherent or assigned function."[29] While this kind of assistance can be linked to a grant (or other form of aid) or perhaps even made mandatory through the imposition of sanctions, we are concerned with its use when unencumbered by "strings" in the form of either rewards or punishments.[30]

Technical assistance usually takes three forms.[31] First, it involves "general management assistance" aimed at helping recipient units build their capacity to deal with general-purpose government functions, for example, planning, budgeting, and staffing. Second, it takes the form of "technology transfer and sharing" programs that disseminate information that recipient units might find relevant and useful to their tasks. Finally, technical assistance can be used to deliver management and/or technical services (that is, "functional assistance") appropriate for specific programs or projects of the recipient government.

It is this last form of technical assistance that has been used to deliver nationalized regulatory policies. The surprising thing is that a form of functional assistance has been used quite successfully for this purpose since *at least* the turn of the century.

The primary example is the national standards of weights and measures implemented through state and local agencies by the Department of Commerce's National Bureau of Standards (NBS). National authorities in

this particular area are given jurisdiction over uniform weights and measures by Article I, Section 8 of the U.S. Constitution, and the federal government has been active in this area through NBS and its predecessors since the early 1800s.[32] Yet this is a policy arena in which national regulatory standards are effectively delivered by state and local officials without the use of federal sanctions and with a great deal of discretion being left to lower-level jurisdictions regarding the details of implementation and enforcement.

At the heart of this system of regulatory-policy delivery are the technical services NBS provides for state and local officials. As the legally accepted reference for standard weights and measures, NBS derives considerable power from its acknowledged legitimacy on these matters. In addition, it has organized itself as a government laboratory ready to serve the needs of its clientele rather than as an enforcement agency ready to assert its constitutionally sanctioned authority. Through annual conferences on weights and measures it offers general advice and maintains its long-term functional dominance of the field. In case a unique or immediate problem arises, NBS is capable of mobilizing a team of highly trained scientists and technicians to develop solutions. And, all the while, the regulatory-policy actions that maintain a nationally uniform set of weights and measures are being delivered by state and/or municipal inspectors who are enforcing the statutes and codes of their own jurisdictions.

There seem to be three factors that make this approach viable. First, the subject of the regulatory effort is perceived as technical, therefore making functional assistance an appropriate channel for intergovernmental interaction. The less technical the subject is perceived to be, the more likely it is that state and local policymakers would be willing to interject their own values and priorities into the decision-making and implementation processes. Related to this is a second factor: the perceived legitimacy of those providing the services. This legitimacy can be built on grounds of either law or "expertness," or a combination of both. In weights and measures, NBS derives its legitimacy from both. On the one hand, through constitutional delegation and congressional action, NBS is empowered to be the sole determinant of national standards in this area. On the other hand, NBS's status and reputation as a "scientific" organization with unquestionable expertise in the field of weights and measures makes it the obvious resource for state and local officials working in this area. Third, the regulated activity should already be the subject of state and local government policies. In the absence of both federal carrots and sticks, the nationalization of regulatory policy through a voluntary mechanism such as technical assistance will succeed only where an operational unit is in place within recipient jurisdictions. NBS's job is made much easier, for example, by the fact that the regulation of commercial weights and measures is regarded as a

common function of lower-level jurisdictions. Without a relevant state and local agency to implement these standards, NBS would have to turn to other arrangements or at least create appropriate state and local agents.

As a model for more recent efforts at nationalizing regulatory policy, the technical-assistance approach is being used again by NBS, this time with regard to building codes. The rationale for nationalizing building-code standards is both technical and political. Technically, it is possible—and for many officials, desirable—to develop a national system of effective performance standards regarding building structures and construction materials that can be adapted to specific regional and local needs. This has become possible because of advances in both communications and building technology that improve the dissemination of information and desirable because of the pressures derived from recent economic and energy crises. Politically, efforts to change local building codes are a manifestation of recent regulatory reform movements.[33] Increasing the role of performance standards in building codes would not only make these regulations less arbitrary, but would also help break the hold of local cartel-like arrangements in the construction industry. It would simultaneously promote innovation and help stimulate rehabilitation projects and energy-conservation experiments.

Whatever the specific reasons behind the nationalization of building-code standards, the use of technical-assistance mechanisms to implement them is well under way. However, of the three major conditions needed for the successful application of technical assistance in this implementation effort, only one is in place; that is, regulation through building codes is a common function of state and local governments. Whether these codes are perceived as technical issues and whether NBS's role is regarded as legitimate are the more important problems to be solved if this nationalization effort is to have a chance for success.

NBS has attempted to solve these problems through a strategy based on its statutory function to encourage, in cooperation "with other governmental agencies and with private organizations," the "establishment of standard practices, incorporated in codes and specifications."[34] Applying this general objective and utilizing its reputation as a primary "state-of-the-art" consultant on technical issue related to problems of measurement, NBS conducted a survey of the states in 1967 to ascertain their interest in establishing a "consortium of state building administrators" to deal with common issues of building regulation.[35] The response was positive, and NBS guided the creation of such an organization with technical assistance and administrative support. By December 1967, the National Conference of States on Building Codes and Standards (NCSBCS) was a reality. From 1968 to 1975, under NBS guidance, NCSBCS grew in size and influence as a regulatory delivery mechanism.[36]

In 1975, NCSBCS was incorporated as a separate nonprofit organization. NBS still provides a substantial amount of technical assistance to NCSBCS, and the two organizations jointly sponsor an annual conference on building regulations as well as other specialized meetings.[37] In short, the NBS-NCSBCS relationship is a firm and continuing one.

How effective has this NCSBCS strategy been in NBS's efforts to develop a nationally accepted building-code regulatory system through technical assistance? NCSBCS has been an effective vehicle for creating a sense of agreement among various state officials and the governments they represent. Its model acts and codes have drawn considerable attention and have been adopted in many jurisdictions. Working in conjunction with HUD, NCSBCS has played a central role in the Mobile Home Standards Enforcement Program, which is applied in many states. The energy crisis also has helped facilitate this implementation effort by enhancing the legitimacy of technically based building regulations in state and local conservation programs. Twenty-six states have already adopted NCSBCS's National Code for Energy Conservation in New Buildings, and with the technical assistance provided by NBS's National Engineering Laboratories, NCSBCS has developed a widely used Building Energy Performance Standards Program.

Extending these efforts to local governments provides an even greater challenge. In 1966, the Advisory Commission of Intergovernmental Relations estimated that approximately 8,000 government units had some form of building-code policy. Promoting statewide code adoptions is one tactic, but local circumstances—both political and technical—tend to make statewide solutions inappropriate or impossible. In the face of this, the technical-assistance approach has been applied to major local jurisdictions, and following the NBS model, NCSBCS has helped create and operate the Association of Major City Building Officials.

The jury is still out on these attempts to nationalize building-code regulations, but the preliminary verdict seems positive. No doubt the efforts of NBS are being aided by a variety of financial and legal programs operated through HUD, the Department of Energy, and related agencies. Nevertheless, this implementation approach does show promise as a distinctive mechanism useful under certain conditions that can attain national goals while imposing minimal burdens on lower-level jurisdictions.

Financial Assistance: The Tightening Strings

Intergovernmental relations are often based on fiscal ties among participating units. This financial link is so common and important that intergovernmental relationships are frequently defined as fiscal interactions.[38] There-

fore, it is not surprising that the nationalization of regulatory policy has come to rely heavily on grants-in-aid and related mechanisms. The key to utilizing financial assistance is the attachment to grants of "strings" that reward or punish specific actions by recipient jurisdictions. Designing this system of carrots and sticks specifically to promote the implementation of nationalized regulations by state and local governments is the challenge.

The tools needed to meet this challenge are found among the great variety of mandates that accompany federal grants. For our purposes, a *mandate* "is any responsibility, action, procedure or anything else . . . imposed by constitutional, legislative, administrative, executive or judicial action . . . that is required as a condition of aid."[39] These mandates come in many forms, but again for our purposes we will focus on two characteristics: (1) what they require of recipients, and (2) the parameters of their application.

Mandates are either organizational/procedural or programmatic. Organizational/procedural mandates constituted most of the early forms of conditions attached to federal grants-in-aid and were originally regarded as a means for improving state and local governments rather than as a means for achieving certain national policy goals. Along these lines, receipt of federal funding depended on such things as reorganizing a recipient agency, hiring professionals, or the adoption of Civil Service personnel procedures in relevant program units. More recent mandates of this nature demand that recipient program units perform their tasks in a certain way, keep records and report about program activities in a certain fashion, hire and pay personnel according to a given set of rules, and carry out planning and evaluation functions. While these organizational/procedural mandates may ultimately affect what regulatory policies are adopted and enforced by state and local officials, they are not intended for that purpose. Rather, these are *administrative regulations* intended to influence the performance of government agencies and not the behavior of clientele groups or some other target population.

Programmatic mandate requirements, on the other hand, can result in state and local officials imposing a nationally designed or sanctioned regulation on a targeted group within a given jurisdiction. On a general level, these mandates can address three aspects of a required program or policy: first, that it exists (*program* mandates); second, that it be applied to a given quantitative level (*program quantity* mandates); and third, that it be of a certain quality (*program quality* mandates).[40] Thus a grant might require that a municipality have a public housing policy (program), that the policy generate *x* number of new public-housing units each year (program quantity), and that the units meet specified standards, such as location, type of occupancy—for example, family, elderly—and so forth (program quality). Applied to a regulatory-policy area such as building codes, a set of

mandates might require that a municipality receiving HUD funds have a code (program), that the code's enforcement involve ten full-time inspectors (program quantity), or that it be based on performance standards set forth in a NCSBCS model code (program quality). It is through these programmatic requirements that mandates can be made effective vehicles for implementing nationalized regulatory policies.

The second dimension of mandates relevant to our discussion sets forth their application parameters. Simply put, mandates are either vertical or horizontal. *Vertical mandates* establish requirements within narrowly delineated policy areas. Thus, while a building code may be required by conditions laid out in a HUD urban renewal grant, the same requirement is unlikely to be found attached to a Law Enforcement Administration grant. *Horizontal requirements*, however, cut across often dissimilar and unrelated grant programs.[41]

Putting these two dimensions together in a matrix, we can illustrate the major forms these financial-assistance mechanisms can take. Figure 2–2 also specifies the examples for each cell, and these are briefly discussed in the following paragraphs.

An example of a *vertical program mandate* used to implement a national regulatory policy is the 1972 Coastal Zone Management Act.[42] Although the act itself affects only coastal states, section 303 makes it quite explicit that Congress intended it to be "the national policy . . . [t]o encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve the wise use of land and water resources. . . ."[43] Federal support for such state programs came in the form of grants to be issued under provisions set forth in Section 305 of the act. Those provisions call for recipient states to: (1) "identify the boundaries" of the zone subject to their program; (2) "identify land and water uses which have direct and significant impacts on coastal waters"; (3) inventory "geographic areas of particular concern"; (4) "develop broad guidelines on priorities of uses" within those areas; (5) "describe the organizational structure that will be used to implement the management program"; (6) "include a planning process that can identify public shorefront areas appropriate for increased access and/or protection"; (7) "include a planning process that can anticipate and manage the impacts from energy facilities in or significantly affecting the State's coastal zone"; (8) "include a planning process that can assess the effects of shoreline erosion . . ."; and (9) most relevant for our purposes, "identify the means by which they will exert control over land and water uses subject to the management program"[44]

In short, money was made available to recipient units *if* they would establish a coastal-zone management program and *if* that program included the *regulatory* means for dealing with coastal-zone issues. There are some

	Vertical	Horizontal
Program	Coastal Zone Management	Court-approved Desegregation plans
Program Quantity	Certificates of Need Program	10% minority business participation in public-works programs
Program Quality	55 m.p.h. maximum highway speed limit	Architectural barriers act requirements

Figure 2–2. Categories of Program Mandates

details provided, but only in very general terms.[45] One analyst described the act as little more than a "gentle nudge," and this is typical of most vertical-program mandate approaches; that is, they rely heavily on the willingness of potential recipients to participate, and when they do, there is considerable discretion left to state and local officials.[46] What differentiates these from technical-assistance strategies is the strong pull of financial aid. The carrot is offered as an inducement for voluntary action, thus rendering the degree of volition somewhat less than when the federal government does no more than makes technical services available.

Turning to *vertical program quantity mandates,* the federal Certificates of Need (CON) Program provides an example.[47] Under the National Health Planning and Resources Development Act of 1974, a CON Program was to be in place in every state by September 1980 using minimum standards set forth by HEW and implementation mechanisms organized on state and substate levels.[48] These standards were intended to help regulate and plan health-care delivery systems in ways that would improve the quality and distribution of such services while reducing aggregate costs. The type of minimum standards regarding substate needs was typically quantitative, with national guidelines permitting a distribution of certain health-care facilities (for example, intensive care units, CAT scanners) relative to the number, nature, and distribution of local populations. The "catch" was that while technically voluntary, states not complying with CON Program requirements would have Medicaid, child health care, and other health-care-related funding cut off. Thus in aid programs such as this there is a

tendency for both the degrees of volition and discretion to be reduced—although the option not to participate or comply still exists.

The most obvious example of a *vertical program quality mandate* is the 55 mph maximum highway speed requirement attached to highway funding programs during the early 1970s. Highway funds, like all federal aid, are technically optional, particularly in the area of road maintenance. From the outset they have involved strings, but these have primarily been procedural or substantively technical (for example, materials to be used, engineering standards to be applied in designing roads, and so forth). The imposition of a specific national-program quality mandate such as the 55 mph speed limit constituted a major shift, for it involved a congressionally determined regulatory policy that was to be adopted and implemented by states *as their own*. To challenge this mandate was to risk losing access to a significant source of funding—a threat no state has been willing to test, although at least two (Wyoming and Oklahoma) have made gestures in that direction. The degrees of volition and discretion have proven extremely low in this instance.

Examples of horizontal or crosscutting mandates also reflect a variety of uses, some procedural and some substantive. Their application is based on the judicially accepted principle that the federal government "may properly attach terms and conditions to grants-in-aid to States, as long as such conditions are related to a legitimately national purpose and are not coercive."[49] Major horizontal mandate tools include Title VI of the 1964 Civil Rights Act, which forbids federal funding for organizations or government units that disciminate. This has been interpreted not only to make federal agency participation illegal, but also to make it the grantor's "affirmative duty" to monitor and prevent discriminatory actions by funded entities.[50] For the most part this has been an organization/procedural mandate, since the courts have narrowly defined Title VI to call for the termination of aid only to the specific program in which discriminatory action has been proven.[51]

In educational funding, however, the situation is different. If a recipient school district is lacking a court-approved desegregation plan, its funds may be cut off under Title VI provisions.[52] This use of Title VI as a *horizontal program mandate* has been at the heart of many confrontations both in and out of the courtroom. A *horizontal program quantity mandate* related to Title VI provisions is found in the 1977 Public Works Employment Act. That act requires that there be at least 10 percent minority business participation in the funded projects.[53] There are very few examples of *horizontal program quality mandates,* because national policymakers have been reluctant to create entire programs mandated for state and local adoption that use the threat of withholding federal assistance.[54] One example is found in provisions of the Architectural Barriers Act of 1968,

which denies federal funds to any state or local agency that does not have an acceptable policy of accessibility for handicapped persons in all buildings and other public areas leased by the national government or whose construction is in part funded through Washington and for all "public conveyances" within their respective jurisdictions.[55]

There are many more instances of how intergovernmental financial-assistance mechanisms have been mobilized to implement nationalized regulatory policies.[56] These mechanisms also serve a variety of other purposes (administrative, political), and often alternative objectives take priority or otherwise contradict nationalization goals.[57] What we are witnessing, however, is a developing situation in which the national government's ability to use financial assistance to implement regulatory programs is gaining strength. State and local governments are becoming increasingly dependent on the many categorical and block grants generated in Washington, and there is some evidence that the priorities of officials at those levels are being reshaped by the programmatic opportunities they are offered.[58] Under conditions of fiscal stress, these tendencies are likely to be reinforced, and Washington's ability to fashion an effective intergovernmental delivery system for national regulations is going to improve in the process.[59]

Asserting Preemptive Capabilities: Using the Big Option

As noted earlier, complete preemption of a field by the national government is one major method for bringing about the nationalization of regulatory policy. In that instance we discussed the unqualified occupation of a field by Washington—a method used more in the past than at present. Nevertheless, a less than complete form of preemption continues to play a significant role today, but now in the context of intergovernmental strategies.[60]

The idea of using preemption to stimulate state and local participation in a nationwide policy system is not new. Its first major application as a delivery mechanism dates back to Washington's role in establishing an unemployment compensation system now in force in all fifty states. What is unique about that accomplishment is that all fifty states opted to join the system with full knowledge that federal officials would institute the policy if the state chose not to.[61]

The reasoning behind this approach is that if preemption gives national officials total jurisdiction over the formulation and implementation of a policy in a given field, then it also provides them with the ability to delegate their powers to lower-level jurisdictions if they so desire for purposes of carrying out national policy objectives. Formally this would involve (1) the legal assertion that the federal government was preempting state and local jurisdiction in a field, followed by (2) the development of a national pro-

gram organized on a state-by-state basis, which includes (3) provisions and incentives for state and local assumption of all program responsibilities within their jurisdictions, with (4) the stipulation that these state or local programs meet a detailed set of structural, procedural, and substantive policy standards. Thus we have a system in which participation is highly voluntary but discretion is relative low.

A case in point is the Occupational Safety and Health Act (OSHA) of 1970, which asserts [section 2(b)] that it is the "purpose and policy" of Congress (under its commerce powers) "to assure so far as possible to every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. . . ."[62] State jurisdiction in such matters is technically preempted, and in section 6 the Secretary of Labor is given the responsibility for instituting national standards for occupational safety and health. Having established the legal supremacy of national authority in this field, the act goes on to provide two roles for the states. First, section 18 explicitly allows for state action in those areas where the Secretary had chosen not to promulgate rules and regulations. Second and more important, sections 18(b) and 18(c) (2) permit states to develop and enforce their own safety and health standards *if* they are at least as effective as the national standards established under section 6. Whether state programs meet this criterion is to be determined by the Secretary of Labor.

The incentives used to draw states into the OSHA system are set forth in section 23 of the act, and the emphasis is on providing financial assistance for states to study and plan for their involvement (up to 90 percent) followed by aid of up to 50 percent for the administration of a plan acceptable to the Secretary. This approach has proven only partly successful, for by 1977, only twenty-three states had processed approved plans, while interest among the others was waning.[63] This was a relatively poor performance in light of the complete acceptance of a similar option offered the states in the unemployment compensation programs set up under the 1935 Social Security Act. (In that instance, the incentive was tied into a tax-offset mechanism, and that would be difficult to apply in a regulatory program such as OSHA).[64] OSHA remains the primary example of this approach, but it is a delivery system coming into increasing use in areas such as strip mining and through judicial decisions having the effect of permitting state involvement in supposedly preempted issue areas.[65]

Legal Conscription: Toward Unitary Government

Of all the intergovernmental mechanisms used to nationalize regulatory policy, none is more revolutionary than the approach first applied in the Clean Air Act Amendments of 1970. It is an approach minimizing both the

voluntariness of state and local participation and the substantive policy discretion provided for officials in subnational units. In fact, it is a mechanism that challenges the very essence of federalism as a noncentralized system of separate legal jurisdictions and instead relies upon a unitary vision involving hierarchically related central and peripheral units. It is an arrangement that goes beyond complete preemption or the assertion of preemptive capabilities. Rather it focuses political and administrative attention on national problems and assumes that policy solutions should determine the relationships among national and subnational governments. Using this logic, it is an approach allowing national policymakers and policy implementors to mobilize state and local resources on behalf of a national policy program. As preliminary measures, these resources can be mobilized using technical, financial, or other forms of assistance, but underlying this mechanism is the ability of national officials to formally and officially "draft" those resources into national service. We call this *legal conscription.*

As the first major use of this approach, the 1970 Clean Air Act (CAA) Amendments is a prime model for describing legal conspiration.[66] Ironically, the CAA begins [section 101 (a) (3)] by noting "that the prevention and control of air pollution at its sources is the primary responsibility of States and local governments. . . ." This declaration is immediately qualified [section 101 (a) (4)] by the finding "that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution." Given these grounds for action, section 107 (a) of the CAA asserts that each state *must* submit an "implementation plan" covering its "entire geographic area" and specifying "the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State." These implementation plans were to be based on air quality criteria and control techniques found to be acceptable by the administrator of the Environmental Protection Agency (EPA), who is also responsible for issuing the national ambient air quality standards to be adopted, maintained, and enforced by the states.[67] Moreover, if a state "fails to submit an implementation plan" meeting those standards, or if the EPA administrator finds a submitted plan unacceptable and the state does not meet EPA objections "within 60 days after notification," then the administrator "shall . . . promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State. . . ."[68] Similar provisions [section 111(a) (2)] are also in place for national performance standards to be applied to "new stationary sources." Regarding enforcement, provisions in section 113 of the 1970 Clean Air Act make it clear that it is the responsibility of states to carry out the approved implementation plans, and if 30 days after notification by the

EPA administrator they do not enforce the plan, the EPA will take over such duties.

Other mechanisms are used in the 1970 Clean Air Act that are less demanding of states. We have already noted that (with exceptions) state involvement in new motor vehicle engine emission standards is completely preempted,[69] and the same holds true for aircraft emission standards.[70] In addition, there are certain provisions resembling the "assertion of preemptive capabilities" approach discussed earlier. Thus, according to section 112(d) (1), a state may, at its own volition but with the approval of EPA, implement and enforce emission standards for hazardous air pollutants. Similarly, a state can opt to participate in the inspection and monitoring of emission sources if its plan for this participation is approved.[71] However, in neither instance does this mean that the administrator cannot assert EPA's authority to carry out those tasks. Finally, section 105 of the Clean Air Act does make use of financial-assistance mechanisms by authorizing the administrator to offer aid of from 50 percent to two-thirds of the cost of planning, improving, and maintaining of air pollution control programs. Nor did the Act cut off all policy input for the states in those areas in which it applies legal conscription. Very prominent in the act is section 116, which states that, except where noted, nothing in the legislation "shall preclude or deny the right of any state or political subdivision thereof to adopt or enforce" a regulation that is *at least as stringent* as those provided by EPA.

In spite of these exceptions, the 1970 act represents a major alteration in national-subnational relations. The unitary system it assumes shows up most clearly in sections dealing with ambient air quality standards and performance standards set for new stationary sources. The precedent it sets has not gone unfulfilled. Major modifications of the act in 1974 and 1977 failed to make any significant changes in these provisions and, in fact, may have further enhanced them.[72] These mechanisms also were used in the Federal Water Pollution Control Act Amendments (FWPCAA) of 1972.[73] In fact, many FWPCAA provisions seem a direct copy of those in the CAA. In section 402(c), for instance, the act requires that all permits granted by the states under the National Pollution Discharge Elimination System (also established by FWPCAA) must comply with national minimum standards. Another case in point is section 303 of FWPCAA, which stipulates that states may adopt water quality standards of their own in addition to those set forth by the EPA administrator, but (as in CAA) these must be reviewed and approved by EPA to ensure that they are at least as stringent as the national standards.

An even more significant adoption of the legal-conscription approach is found in the 1978 National Energy Policy Acts. For example, section 212 of the National Energy Conservation Policy Act (NEPCA) mandates that the

Department of Energy (DOE) establish standards for the safety, effectiveness, and installation of energy conservation efforts, and that these be incorporated in state residential energy conservation plans that *must* be submittted by the governor of each state within a specified time.[74] If no such plan is forthcoming or found acceptable, DOE's Secretary is authorized under section 219 to promulgate and implement such a plan. Similarly, the legal-conscription approach is used in Title III of NECPA, which mandates state plans for energy conservation programs in schools, hospitals, and other public buildings. If a state plan fails to get Washington's approval, the Secretary may issue and force implementation of a DOE plan.

While legal-conscription mechanisms are "on the books," they have seen rather limited use. For a variety of reasons which we will not go into here, national policymakers and policy implementors are likely to prefer less coercive and more indirect approaches—those which provide either greater discretion or volition for state and local officials. Yet legal conscription is a potentially powerful tool for national officials to use, and in the case of environmental protection, we may see greater reliance on it in the near future. For the moment, however, it is only a "high explosive" in the arsenal of intergovernmental mechanisms that can be used to nationalize regulatory policies.

Implications

As a major trend in American public policy, the nationalization of regulatory policy can be easily documented. In this chapter we have focused on one aspect of that trend which might, in the long term, prove even more significant than the nationalization process itself: the increasing utilization of intergovernmental mechanisms to deliver those regulatory actions.

The implications of this development will, of course, have a direct influence on regulatory efforts. There can be little doubt that the effectiveness and efficiency of public-sector actions to achieve policy objectives through regulation will be affected by the choice of an intergovernmental delivery mechanism. Under certain conditions, the use of these mechanisms may prove technically and administratively justified. For instance, where regulated acts or conditions vary from location to location, it might prove beneficial to leave the specific context of nationally sponsored regulations to the judgment of state or local officials. And even where local circumstances do not warrant such discretion, the distribution of available human and financial resources among jurisdictions may mandate that subnational officials undertake various administrative responsibilities associated with a given set of regulatory policies. In most cases, however, the fact that intergovernmental approaches prove appropriate and relevant seems more the

result of fortuitous coincidence than of calculated design.[75] Were it possible to associate the effectiveness and efficiency of a regulatory-policy endeavor with a particular intergovernmental delivery mechanism, the possibility of designing nationwide regulations would be enhanced. For that reason alone it might be fruitful to investigate the immediate policy implications of the four mechanisms.

However, it is the systematic implications that will ultimately prove more interesting, for the growing reliance on these intergovernmental mechanisms will inevitably take its toll on America's political institutions and relationships. The major dimensions of these systemic implications are threefold: fiscal, political, and legal/constitutional. In this brief conclusion we will touch on each implication both in terms of its actual impact and in terms of potential effects it might have in the near future.

Fiscal Implications

In the current period of fiscal stress and economic "stagflation," the past behavior of governments seems perverse and almost self-destructive. We often forget how comfortable we were as an affluent society and how satisfied we were with a policy system that distributed and even redistributed rather than regulated. We have come from a time when intergovernmental relations were truly "cooperative," when the relationships among federal, state, and local units were essentially "fiscally facilitative." That is, until recently, intergovernmental relations were marked by two fundamental characteristics: first, they were primarily based on financial assistance, with funds flowing from the center to peripheral units; and second, when conditions were attached to that assistance, they were typically designed to enhance subnational (as opposed to national) policy objectives and program implementation.[76]

While recipient units might have felt at times that the organizational/procedural strings and mandates attached to many grants were arbitrary and bothersome, these requirements were rarely intended as means for "controlling" state and local officials or making them mere agents of the national government. But all this changed in the middle 1960s, specifically with the passage of the 1964 Civil Rights Act. This early period witnessed a shift in national policymaker intentions, for from that time forward there has been a growing tendency to use intergovernmental relations as a means for asserting national control over state and local policies.

A second and related development emerged during the recent period of fiscal conservatism. This past decade has been characterized by budget cuts, "sunset" laws, deregulation programs, Proposition 13's, and associated retreats from "distributive politics." It also has witnessed an increasing pro-

pensity on the part of national officials to rely on regulation rather than spending and the delegation of authority rather than the acceptance of responsibility. The result has been twofold: first, an intergovernmental system that is more capable of imposing national policy requirements on subnational actors; and second, a declining reliance on financial assistance alone to accomplish that control. The fiscal implications of utilizing each intergovernmental mechanism must be examined within the context of these developments.

Generating state and local cooperation through technical-assistance programs alone is, as we have noted, a rarely used approach. For an agency such as NBS to successfully nationalize building-code regulations, there must exist the right combination of time, technical policy conditions, resources, and personnel. Obviously, when these conditions are all present, the technical-assistance approach promises to have minimal impact on government spending. Creating and maintaining the intergovernmental organizations (for example, NCSBCS) and relationships needed to carry out the assistance program would call for adjustments in expenditures by governments at all levels, but these would prove relatively insignificant.

Where optimal conditions do not exist, however, the technical-assistance strategy for nationalizing regulatory policies will have to be supplemented with alternative mechanisms. Using the building-code example, financial assistance can be made available to those jurisdictions needing help in developing the necessary infrastructures or training programs that would make it possible to participate in the technical-assistance effort. This is, in fact, an ingredient in the current NBS-NCSBCS strategy. It also might be possible for NBS to assert its preemptive capabilities in the area of standard setting as a means for imposing a basic building code that states and localities could build upon if they wished. This could prove a costly proposition whether or not subnational officials opted to participate in such a program. The same would hold for a strategy in which state and local participation in a nationwide building-code system was legally prescribed. In short, while technical-assistance mechanisms can deliver nationalized regulatory policies with relatively minimal economic and fiscal implications for state and local governments, creating the right conditions for such assistance could prove very costly.

Except in situations where existing state or local policies already meet national requirements, the use of the other three intergovernmental mechanisms is likely to increase the costs of government operations. Where their respective impacts will differ is in the distribution of those costs. A delivery strategy relying on legal conscription alone will obviously place the burden almost entirely on subnational units. The distribution of costs under the "assertion of preemptive capabilities" approach will depend on the role state and local units choose to play in the regulatory effort given their

options. In either instance there is bound to be considerable pressure to modify the costly implications of each approach, and it is in this context that we see why financial assistance had proven to be the most commonly utilized mechanism. Faced with demands mandated by a system of legal conscription, state and local officials will lobby long and hard for fiscal assistance to help offset the costs of their participation.[77] And faced with the state and local reluctance to get involved in regulatory programs where they have an option, federal officials are likely to include substantial financial incentives in national programs.

However, financial-assistance programs, whether used as the primary mechanism for nationalizing regulatory policies or as a supplement to other approaches, have their own limitations and drawbacks. For one thing, as the "balanced budget" and "Proposition 13" mentality spreads from lower-level jurisdictions to Washington, the funding available for financial assistance of any kind may become more problematic. Under such conditions, national officials charged with carrying out regulatory mandates might feel compelled to rely more heavily and directly on legal conscription or any of the other mechanisms at their disposal. The fiscal burdens may therefore end up at the subnational level regardless of the current high reliance on financial assistance.

Assuming that the federal government's financial capabilities are not reduced in the future, there remain several drawbacks that can have significant implications for the fiscal condition of recipient units. These drawbacks emerge from the ever-expanding number and scope of fiscal-assistance programs, and not merely those associated with nationalized regulatory actions. The lure of federal grants is substantial, for they enhance state and local capabilities to provide more services and undertake new activities in areas that would go unserved without the availability of outside funding. The attractiveness of community development block grants and categorical assistance for water quality control, mass transit, law enforcement, flood control, and similar programs cannot be overstated. Nor can we stress too much the political and economic pressures on eligible subnational units to take advantage of these opportunities. The carrots are much too inviting, and besides there is the feeling that "If we don't take it [federal grants], someone else will.[78]

Problems arise, however, because of the distorting effects these grants produce in state and local activities. Levine and Posner have noted at least six such distortions: (1) the erosion of budgetary flexibility in subnational units; (2) the distortion of overall budgetary and program priorities within recipient entities; (3) the tendency to "protect" federally funded programs first; (4) increasing intraorganizational, interagency, and intergovernmental conflicts over policy and program priorities; (5) increasing deference to the federal determination of local problems; and (6) reductions in local planning and coordination.[79]

The adverse implications of these developments are not merely predictions, for they are having considerable influence right now. The distorting effects of financial-assistance mechanisms were brought home to New York City officials in their effort to cut back expenditures during their recent fiscal crisis. They found so much of their spending tied to federal aid "matching fund" programs that they were forced to focus their reductions in police, fire, sanitation, and other basic "housekeeping" functions where federal grants did not mandate major cutbacks. In the meantime, "special" programs that were linked to federal funding tended to survive.[80]

A less dramatic and perhaps more typical example is the experience of Lompoc, California. There a federal grant for the development of flood and water control will prevent the accumulation of storage of much needed water resources for this community during its long dry season.[81] Clearly, the possibility of a large federal grant was too inviting a carrot for the local city council and manager to ignore, and as the number of such opportunities increases, some very mundane yet critical choices will be made regarding local government priorities. Ultimately these choices will be reflected in fiscal patterns that might prove as significant for Lompoc and similar jurisdictions as New Yorks' past decisions did for it.

Of course, the *actual* fiscal implications of relying primarily on financial assistance or any other delivery mechanism could prove positive. Moreover, even where adverse impacts arise, these must be weighed against the productive and beneficial side of each effort.

Political Implications

At first glance the nationalization of regulatory policies through intergovernmental mechanisms would seem to have rather obvious political implications, that is, an increase in the relative power of national over subnational units. Nationalization necessarily implies state and local deference to Washington, and it would logically follow that national officials have the potential leverage to work their will on lower-level jurisdictions through the manipulation of technical, financial, or legal resources. This has led one local official to describe himself and others in his situation as the intergovernmental systems' "grunts." A *grunt* is defined as a low-skilled, poorly qualified worker requiring the most supervision. "In short, you have to keep the grunt on a short string." He goes on to describe the grunt's perspective as analogous to that of a "drunk's" view of a Salvation Army soup kitchen—we'll take their religion as long as we can get our bellies warmed."[82] In such a subordinated and subservient position, the local official appears relatively powerless, a victim of centralized power who must defer to survive. The label best summarizing this situation is Michael Reagan's "permissive federalism," that is, an intergovernmental relation-

ship in which subnational units function in areas and ways that national officials permit them to function.[83]

A contrasting image also can be made, one that focuses on the considerable political leverage state and local officials gain from involvement in a variety of national regulatory efforts.[84] The various intergovernmental arrangements developed for carrying out federally sanctioned or promoted policies have one thing in common: they generally make subnational officials part of a national program. Within specific programs where state or local officials are provided some discretion concerning the content or administration of a national policy, the power of lower-level jurisdictions is greatly enhanced. This is the case in pesticide regulation, which is coordinated by EPA but implemented in many major farm states by agencies (for example, departments of agriculture) that are likely to prove less stringent in both their standards and enforcement.[85]

State and local officials also can obtain considerable political leverage over some national programs because of the roles they play in other intergovernmental capacities. Thus governors who wish to influence national energy policies in their states can mobilize the resources put at their disposal by Congress (and EPA) through environmental legislation, and vice versa. Or a city manager can significantly delay or adjust federal highway construction plans by activating provisions of environmental acts or the historical preservation requirements mandated in many grant programs. Here the image is not that of grunts, but of Machiavellians capable of using resources at their disposal to manipulate the system for desired ends. The significant point is that many of these resources are derived from the leverage state and local officials obtain from being part of the intergovernmental arrangements used to deliver nationalized regulatory policy actions.

Therefore it would be difficult to draw any straightforward conclusions regarding the political implications of our four delivery mechanisms. A great deal depends on whether the subnational official involved takes on the qualities of a grunt or a Machiavellian. Some generalizations can be offered, however. For example, those mechanisms characterized by high volition (that is, technical assistance and the assertion of preemptive capabilities) provide greater leverage and opportunities for Machiavellian behavior than those marked by lower volition. Among financial-assistance mechanisms, block grants and general revenue-sharing programs will facilitate more leverage for recipient units than categorical grants. Moreover, while it might prove more difficult to gain leverage in a situation where legal conscription is the principal vehicle for delivering nationalized regulatory policies, the payoffs (in terms of increased political power) are likely to prove extremely valuable for subnational officials who learn how to utilize their positions in the nationalized regulatory policy system.

In short, as with fiscal implications, it is difficult to predict the political impact of using any of these four intergovernmental delivery mechanisms. The only thing that can be said with certainty is that there will be some political effects. What they will be, however, remains an empirical question.[86]

Legal/Constitutional Implications

If there is one area where the potential impact of these alternative delivery mechanisms seems reasonably clear, it is first, the question of any government's legal right to regulate in given areas; and second, the question of federalism and intergovernmental relationships. On the first point, there can be little doubt of government's legal standing to pursue regulatory programs in the areas of new or social policies (for example, occupational safety and health, environmental quality, energy usage, and so forth). Many of these have not traditionally been associated with national policy actions, but a perusal of early urban and state records indicates that government actions in these areas are historical facts. Generally falling under the rubric of police powers, government activities in these arenas have only recently been taken up in Washington. Nevertheless, they have been and remain legally relevant matters for governments to deal with.

Somewhat more controversial is the second issue of jurisdictional responsibilities and the condition of American federalism. In a formal and theoretical sense, federalism and intergovernmental relations are separable concepts. One might regard all federal relations as being intergovernmental, but not all intergovernmental relations as being federal. Taking the formal definition, *federalism* is a nonhierarchical, noncentralized pattern of interactions among member units in an organization. Ideally it is a system that operates on a principle of conflict among member units that can be resolved only through negotiations and the development of an acceptable consensus to which disagreeing units can consent. This *conflict-consent model* is in contrast to a unitary system in which a single dominant unit renders a decision that is imposed on subordinated units. The subordinates should defer to the leading entity and cooperate in carrying out its mandates. Reluctance to cooperate is met with coercive sanctions. This is called a *cooperative-coercive model.*[87]

Of the four intergovernmental mechanisms examined here, only technical assistance seems to avoid a tendency toward unitary organization. The federal bias is a strong ingredient in the decision to rely totally or primarily on technical aid. The idea that national officials might be entrusted to activate this approach is evident in the case of NBS-NCSBCS. Even more

significant is NBS's use of this mechanism in the area of weights and measures, since it is obvious from a reading of the Constitution that Congress can easily and quite legally assert its preemptory capabilities in that area. In areas of less explicit constitutional delegations, this approach would seem even more inviting *if* the right conditions were in place.

In certain cases, financial assistance also complements the federal bias. The greater the degree of volition and policy discretion permitted grant recipients, the more relevant the conflict-consent model becomes. However, in delivering nationalized regulatory mandates, financial-assistance mechanisms are unlikely to be very loose along either dimension. The 55 mph maximum highway speed requirement may not be typical, but it reflects the overall direction and form of grant programs as a means for producing changes in state and local regulatory policies. The cooperation-coercion image is obviously more relevant in such cases.

When national officials choose to formally assert their preemptive capabilities in an issue area, they are likely to be moving in the direction of unitary arrangements while maintaining some semblance of federalism. The latter emerges in the options that national officials allow subnational governments, but even here the federal bias is extremely limited. In OSHA, for example, states have the option to either take part in a unitary national regulatory system or retain their independence by avoiding any activities in those matters that OSHA chooses to address.

However, it is in legal-conscription mechanisms that the movement away from traditional federalism is both most blatant and extreme. By being able to use its legal capacities to literally force subnational units to act on behalf of national policies, Washington takes on the role of a hierarchical superordinate that can use coercive sanctions to compel cooperation from state and local units.

Legally and constitutionally this can only be described as a revolutionary change in formal American government institutions. It is a change that has been obscured both by our tendency to use the terms *federalism* and *intergovernmental relationships* interchangeably and by the propensity for policymakers and implementors to rely directly and primarily on financial assistance. Legal conscription, like the abstract set of relations we call *federalism*, is intergovernmental, but of an entirely different breed. As we witness a movement toward it and the assertion of preemptive capabilities (as well as a simultaneous movement away from financial and technical assistance), we are witnessing one more step in the ongoing demise of traditional federal relationships. Some might welcome this, others not. The point is, however, that the choices made among the available intergovernmental delivery mechanisms have more than immediate, short-term consequences. The implications can prove much more radical and enduring in constitutional as well as fiscal and political terms.

Notes

1. See Theodore J. Lowi and Alan Stone (eds.), *Nationalizing Government: Public Policies in America* (Beverly Hills, Calif.: Sage, 1978), especially Lowi's "Europeanization of America? From United States to United States." In another context Lowi asserts that perhaps 90 percent of the functions addressed by federal action today were almost exclusively within the jurisdiction of the states prior to the nationalization trend; see his *American Government: Incomplete Conquest* (Hilsdale, Ill.: Dryden Press 1976), p. 135.

2. See William Lilley III and James C. Miller III, "The New 'Social Regulation'," *The Public Interest* 47(Spring 1977), especially table 1, p. 50. Also see "Interventionist Government Came to Stay," *Business Week,* September 3, 1979, p. 39. On the general costs of government regulation, see Murray L. Weidenbaum and Robert DeFina, *The Cost of Government Regulation of Economic Activity,* reprint No. 88 (Washington: American Enterprise Institute for Public Policy Research, 1978). For a summary of relevant cost studies, see Lee Dymond, Donald Zimmerman, and Terrance Davey, "Costs and Benefits of Regulation: A Survey of Studies," in *Regulatory Reform Seminar: Proceedings and Background Papers* (Washington: Office of Regulatory Economics and Policy, U.S. Department of Commerce, 1978), appendix A. The changing "nature" of regulation has been described in a number of ways. Lilley and Miller, p. 53, distinguish between the "old" economic regulation and the "new" social regulation. Paul H. Weaver makes a similar distinction between older regulations which reflected the values of the populist-progressive movement, and the newer regulations emerging from the values of a "new class"; see his "Regulation, Social Policy, and Class Conflict," in Chris Argyris et al. (eds.), *Regulating business: The Search for an Optimum* (San Francisco: Institute for Contemporary Studies, 1978). Still another analysis sees the shift from regulatory policies which sought to *facilitate* the activities of target populations to contemporary regulations which seek to *control* those activities; see Melvin J. Dubnick and Lafayette Walker, "Problems in U.S. Standard-Setting: The Implications of the Shift to Control Functions," *Midwest Review of Public Administration* 13(1):25–49.

3. Lowi, Theodore J. "Europeanization of America?" in *Nationalizing Government* (1978), pp. 17–18.

4. One finds this assumption, for example, in a variety of "developmental" theories of economic growth (for example, those associated with Adolph Wagner, Alan T. Peacock and Jack Wiseman, and W.W. Rostow); see Bernard P. Herber, *Modern Public Finance: The Study of Public Sector Economics,* 3rd ed. (Homewood, Ill.: Irwin, 1975), pp. 366–375. Discussions of the centralizing pull of technological developments also tend to

assume the correlation of authority and implementation; see Samuel H. Beer, "The Modernization of American Federalism," *Publius* 3(2):74–80. The "traditional paradigm" of public administration includes a normative bias along these lines; see Vincent Ostrom. *The Intellectual Crisis in American Public Administration,* rev. ed. (Univ. of Alabama Press, 1974).

5. This "policy action" perspective is different from those relying on "institutional" or "functional" views of regulation; see Mel Dubnick, "Making Regulators Regulate," paper presented at 1979 National Conference on Public Administration, Baltimore, Maryland. Governments often authorize private entities to regulate themselves or others under a contractual arrangement (that is, self-regulation), but for present purposes we will limit our analysis to regulations carried out by government agencies.

6. This approach to social-welfare reform was initially presented in a June 1966 report issued by HEW's Advisory Council on Public Welfare ("A Nationwide Comprehensive Program Based upon a Single Criterion: Need"): for more background, see Daniel P. Moynihan, "The Crisis in Welfare," in *Coping: Essays on the Practice of Government* (New York: Random House, 1973).

7. For an indepth discussion of interstate and regional organizations, see Martha Derthick and Gary Bombardier, *Between State and Nation: Regional Organizations of the United States* (Washington: Brookings Institution, 1974), especially chapter 1.

8. This is the rationale behind several major interstate authorities: the Tennessee Valley Authority, the Delaware River Basin Commission, and the Appalachian Regional Commission.

9. "Coordination" functions are the primary reasons underlying the creation of several interstate organizations developed under Title V of the 1965 Public Works and Economic Development Act: Coastal Plains, Four Corners, Ozarks, and Upper Great Lakes Commissions.

10. For example, Title V commissions and various entities created under Title II of the 1965 Water Resources Planning Act, see Derthick and Bombardier, *Between State and Nation,* p. 7.

11. Frank P. Grad, "Intergovernmental Aspects of Environmental Controls," in *Managing the Environment* (Washington: U.S. Environmental Protection Agency, November 1973), pp. 323–349.

12. See conclusions reached in Derthick and Bombardier, *Between State and Nation,* chapter 11.

13. See Harrop A. Freeman, "Dynamic Federalism and the Concept of Preemption," *DePaul Law Review* 21(1972):630–648.

14. Samuel Krislov, "The Supreme Court in the Political Process," in Daniel J. Elazar et al. (eds.), *Cooperation and Conflict: Readings in American Federalism* (Itasca, Ill.: Peacock, 1969), p. 157. The national government's ability to mobilize preemptive mechanisms is found primarily

in specific passages of the Constitution; for a brief overview, see James B. Croy, "Federal Supersession: The Road to Domination," *State Government* 48(1):32–36. However, preemption also has emerged through court decisions not directly linked to those passages, for example, whenever significant conflicts arose between national policies and state actions; see Freeman, "Dynamic Federalism."

15. See C. Herman Pritchett, *The American Constitution,* 2d ed. (New York: McGraw-Hill, 1968), chapter 14.

16. Croy, "Federal Supersession," p. 33.

17. York Willbern, "The States as Components in an Areal Division of Powers," in Arthur Maass (ed.), *Area and Power: A Theory of Local Government* (Glencoe, Ill.: Free Press), p. 71. For example, the 1964 Civil Rights Act contains clearly preemptory declarations of state and local activity in the area of civil rights while simultaneously mandating state and local efforts to carry out national policy wishes in these areas. Thus the act outlaws any discriminatory policy actions required by state law or "carried on 'under color of the law' or 'any custom or usage required or enforced by officials of the state.'" See Pritchett, *The American Constitution,* pp. 729 and 736. This is not atypical of the approach taken by national policymakers in many regulatory areas; that is, preemptive terminology is used but never actually intended.

18. Lettie McSpadden Wenner, *One Environment Under Law: A Public Policy Dilemma* (Pacific Palisades, Calif.: Goodyear, 1976), p. 90.

19. See James E. Krier and Edmund Ursin, *Pollution and Policy: A Case Essay on California and Federal Experience with Motor Vehicle Air Pollution, 1940–1975* (Berkeley, Calif.: Univ. of California Press, 1977).

20. C.K. Rowland and Roger M. Marz, "Interstate Inequities in the Implementation of Toxic Substance Regulations: The Case of Pesticides," paper presented at December 1979 Symposium on Regulatory Reform, Chicago, Illinois.

21. Such proposals have been primarily academic, for example, Roscoe C. Martin, *The Cities and the Federal System* (New York: Atherton, 1965), p. 76.

22. See Elinor Ostrom, "Metropolitan Reform: Propositions Derived from Two Traditions," *Social Science Quarterly* 53(December 1972): 474–493.

23. See Anwar H. Syed, *The Political Theory of American Local Government* (New York: Random House, 1966).

24. For example, Ronald D. Brunner, "Decentralized Energy Policies," *Public Policy* 28(1):71–91.

25. E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960); also see Roger W. Cobb and Charles D. Elder, *Participation in American*

Politics: The Dynamics of Agenda Building (Baltimore: Johns Hopkins University Press, 1972); and Robert Eyestone, *From Social Issues to Public Policy* (New York: Wiley, 1978).

26. See Mark V. Nadel, *The Politics of Consumer Protection* (Indianapolis: Bobbs-Merrill, 1971); also Paul Sabatier, "Social Movements and Regulatory Agencies: Towards A More Adequate—and Less Pessimistic—Theory of 'Clientele Capture,'" *Policy Sciences* 6(3):301-342; and Jeffrey M. Berry, *Lobbying for the People: The Political Behavior of Public Interest Groups* (Princeton, N.J.: Princeton Univ. Press, 1977).

27. Daniel J. Elazar, *American Federalism* (N.Y.: Crowell, 1972); also Parris N. Glendening and Mavis Mann Reeves, *Pragmatic Federalism: An Intergovernmental View of American Government* (Pacific Palisades, Calif.: Palisades Publishers, 1977).

28. For a potentially useful typology of middle-range approaches, see David L. Weimer, "Federal Intervention in the Process of Innovation in Local Agencies: A Focus on Organizational Incentives," *Public Policy* 28(1):93-116.

29. This Office of Management and Budget Policy Study Committee definition is cited in *State and Local Governments' Views on Technical Assistance, A Staff Study,* issued by the General Accounting Office on July 12, 1978 (pp. 1-2).

30. See Paul J. Flynn, James D. Carroll, and Thomas A. Dorsey, "Vertical Coalitions for Technology Transfer: Toward an Understanding of Intergovernmental Technology," Publius 9(3):3-33.

31. General Accounting Office, *State and Local Governments' Views on Technical Assistance* (Washington: USGPO), pp. 2-3.

32. Rexmond C. Cochcrane, *Measures for Progress: A History of the National Bureau of Standards* (Washington: U.S. Department of Commerce, 1966), chapter 1.

33. Scandals have long plagued this field, and it is usually regarded as a prime example of "capture" and "producer protection" regulation, wherein some special interests (in this case, plumbers, carpenters, and other members of the building trades) are served rather than the "public health, safety, and welfare."

34. Cited in *C.F.R.* 200.100(a) (4).

35. *C.F.R.* 200.104(a).

36. Among other accomplishments, it has issued model state legislation and regulations on such matters as mobile homes, manufactured buildings, statewide building codes, and the registration of enforcement officials. It developed a system for accrediting evaluation testing laboratories and established formal and informal operational linkages between itself and other relevant private and public organization (for example, the American Society for Testing and Materials, the National Institute of Building Sciences, the Building Seismic Safety Council).

37. The relationship was further enhanced by the activities and career of NCSBCS's first chairman, Gene A. Rowland, who later became chief of NBS's Building Research Division and director of its Office of Engineering Standards. In short, there exists strong personal ties that have added to NCSBCS's success as an NBS strategy. See, "A Brief Overview of NBS-NCSBCS Research and Assistance to the Building Community," in *Research and Innovation in the Building Regulatory Process,* NBS Special Publication 552 (Gaithersburg, Md.: U.S. Department of Commerce, National Bureau of Standards, July 1979), pp. 5-12. The authors would like to thank Lafayette Walker of NBS for his help in this research.

38. See Deil S. Wright, *Understanding Intergovernmental Relations: Public Policy and Participants' Perspectives in Local, State, and National Governments* (North Scituate, Mass.: Duxbury Press, 1978), pp. 8-14.

39. Catherine Lovell, "The Mandate Issue," in Catherine Lovell et al. (eds.), *Federal and State Mandating on Local Governments: An Exploration of Issues and Impacts* (Riverside, Calif.: Graduate School of Administration, University of California, June 1979), p. 32. The definition used by Lovell is modified here to exclude nonaid mandates.

40. Ibid., pp. 35-36.

41. U.S. Office of Management and Budget, *Managing Federal Assistance in the 1980s: Working Papers* (Washington: OMB, August/September, 1979), especially A1-A8.

42. Pub. L. 92-583; and Pub. L. 94-370.

43. Cited in *C.F.R:* 920.1

44. *C.F.R.* 920.10-920.19.

45. See especially *C.F.R.* 920.14(b) (2) (i).

46. Walter A. Rosenbaum, *The Politics of Environmental Concern,* 2d ed. (New York: Praeger, 1977), p. 219.

47. See Wayne Penn and C. Gregory Buntz, "State Responses to Federal Health Regulatory Requirements," *Journal of Health and Human Resources Administration* 2(3):282-298.

48. Pub. L. 93-641.

49. *Managing Federal Assistance,* p. A-7-7.

50. Ibid., p. A-7-9.

51. Ibid., pp. A-7-9-10.

52. Ibid., pp. A-7-10-11.

53. Ibid., p. A-7-12.

54. The one major possible exception to this was the 1974 amendment to the Fair Labor Standards Act which extended federal minimum wage and maximum hour standards to all state and local employees, but even this is a poor example of horizontal program quality mandates on two grounds: first, although withholding or rescinding federal aid might have been useful as a tool in enforcing these standards, the law itself was a more direct assertion of federal power and could have been implemented through litiga-

tion alone; and second, the amendment was declared unconstitutional in a 1976 decision, National League of Cities v. Usery, 426 U.S. 833.

55. *Managing Federal Assistance,* p. A-6.

56. See ibid., paper A8; also Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design,* Report A-52 (Washington: ACIR, 1978).

57. Administrative purposes are those discussed earlier as organizational/procedural and include such requirements as having a single agency dealing with a program area (for example, highways) or requiring that the state supply the granting agency with certain types of program feedback. Political goals are served by using grants in a presidential or other election campaign to draw attention to the incumbent's activities.

58. Often under pressures generated by state and local officials themselves. See Donald H. Haider, *When Governments Come to Washington: Governors, Mayors, and Intergovernmental Lobbying* (New York: Free Press, 1974); also Samuel H. Beer, "The Adoption of General Revenue Sharing: A Case Study in Public Sector Politics," *Public Policy* 24(2): 127-195.

59. Charles H. Levine and Paul L. Posner, "The Centralizing Effects of Austerity on the Intergovernmental System," revision of paper presented at 1979 American Political Science Association meeting, Washington, D.C. Also see the exchange between a resident of a small California city and the city's mayor: Bess Christensen, "Playing the Grants Game in Lompoc," *Business Week,* June 2, 1980, pp. 12 and 15; and letter from E.C. Stevens, "The Other Side of the Coin," *Business Week,* July 7, 1980, p. 4.

60. See David E. Engdahl, "Preemptive Capability of Federal Power," *University of Colorado Law Review* 45(1973):51-88.

61. W. Joseph Heffernan, *Introduction to Social Welfare Policy: Power, Scarcity and Common Human Needs* (Itasca, Ill.: Peacock Publishers, 1979), pp. 134-137.

62. Pub. L. 91-596.

63. Richard Zeckhauser and Albert Nichols, "The Occupational Safety and Health Administration—An Overview," in *Study on Federal Regulation,* Vol. VI: *Framework for Regulation, Appendix* (Washington: Committee on Governmental Affairs, U.S. Senate, 1978), p. 209.

64. Heffernan, *Introduction to Social Welfare Policy,* p. 135.

65. The Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) has the federal government establishing and enforcing strip mining and reclamation standards which can be turned over (in 1981) to those states which demonstrate the ability and willingness to adopt and implement standards at least as stringent. There are certain instances, however, where the preemptory assertion of federal law is vague enough to allow for court interpretations regarding the states' right to adopt and

enforce standards and regulations at least as strict as those set forth by Washington. One such instance is described in Lee S. Weinberg, "Askew v. American Waterways Operators, Inc.: The Emerging New Federalism," *Publius* 8(4):37-53.

66. Pub. L. 91-604.

67. Pub. L. 91-604, sections 108-110.

68. Pub. L. 91-604, section 110(c) (1).

69. Pub. L. 91-604, section 209.

70. Pub. L. 91-604, section 233.

71. Pub. L. 91-604, section 114(b) (1).

72. The Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319) and the Clean Air Act Amendments of 1977 (Pub. L. 95-95).

73. Pub. L. 93-500.

74. Pub. L. 95-619.

75. A number of studies focused on the development and implementation of recent regulatory policies gives credence to this contention. See Charles O. Jones, *Clean Air: The Policies and Politics of Pollution Control* (Pittsburgh: Univ. of Pittsburgh Press, 1975). Also three articles in Charles O. Jones and Robert D. Thomas (eds.), *Public Policy Making in a Federal System*, (Beverly Hills, Calif.: Sage, 1976): Robert D. Thomas, "Intergovernmental Coordination in the Implementation of National Air and Water Pollution Policies," pp. 129-148; Shelton Edner, "Intergovernmental Policy Development: The Importance of Problem Definition" pp. 149-167; and Bruce P. Ball, "Water Pollution and Compliance Decision Making," pp. 169-187.

76. See Mel Dubnick and Alan Gitelson, "Intergovernmental Relations and Regulatory Policy," paper presented at Symposium on Regulatory Policy, November 1979, Houston, Texas.

77. One can read Justice Rehnquist's opinion in *National League of Cities* v. *Usery* to mandate such assistance; see discussion in Laurence H. Tribe, "Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Government Services," *Harvard Law Review* 90(6):1091.

78. Christensen, "Playing the Grants Game."

79. See Levine and Posner, "The Centralizing Effects of Austerity."

80. Temporary Commission on City Finances, cited in Levine and Posner, ibid.

81. Christensen, "Playing the Grants Game."

82. John V. Weatherspoon, "Life Among the 'Grunts'," *The Urban Interest* 2(1):52-58.

83. Michael D. Reagan, *The New Federalism* (New York: Oxford Univ. Press, 1972), p. 10.

84. See Dubnick and Gitelson, "Intergovernmental Relations."

85. Rowland and Marz, "Interstate Inequities."

86. The authors would like to thank Eric Anderson, City Manager of Munster, Indiana, for his help in clarifying the political leverage issue.

87. See Aaron Wildavsky's discussion in "A Bias Toward Federalism," in *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979), chapter 6.