UNITED STATES OF AMERICA

Expert

Dr. Robert Agranoff

I. GENERAL QUESTIONS

1. How is the federation formally called (regional, federal state, other…)?

United States of America (one of 23 federations).

2. Since when has the power been decentralized in your federation? Was the decentralization established in its origins or in a later time?

The Constitutional Convention met May-September 1787. State ratification occurred through 1790. However, Congress met in 1788 and the first elections for president were established in 1788, with the new federal government taking office in early 1789.

3. Has decentralization been formally abandoned or practically inoperative in any historical phase?

Decentralization has never been formally abolished, except for the rebelling Southern states during the Civil War (1861-65). Also, certain Northern state powers were suspended during the emergency. Also, in the rebelling states, powers were suspended during some twelve years of Reconstruction (occupation). Virtually all state powers were restored in 1877, with the fall of the last occupying Republican governments and the removal of federal troops from the South.

4. Which are the deep reasons in the adoption of a politically decentralized system?

The colonial leaders believed in small state republicanism and objected to centralized control by the executive, i.e. British crown. In fact, each colony had a great deal of autonomy from the Crown. Colonies respected local governments.

5. Could you point out the main phases of the system and the main characteristics?

The main phases are detailed in the accompaning paper:
Early establishment of the federal government, 1790-1824, "the Federalist Period."
States control and the introduction of democracy, growth of state powers.
Post Civil War economic growth and national and state power growth, 1865-1932.
Accelerated intergovernmentalism and the growth of national power, 1933-1977.
Concern for balance in the system, national regulation, states more closely linked to Washington, 1978-2000.
Recentralization ??? 2000--.

6. How many territories or main territorial communities compose the federation? Do they all have the same nature (for instance, states) or do they have different nature and position (for example, states, federal capital, colonial lands, communities with a specific regime of autonomy)?

The union is comprised of 50 states, one capital district, two associated commonwealths (Puerto Rico and Northern Marianas), three territories (Guam, American Samoa, American Virgin Islands), one freely associated state (Micronesia), and nine minor outlying islands (of less than 2000 population-total), in the Pacific. The District of Columbia serves as the federal capital. All states have the same de jure status, whereas each territorial status is different, with Puerto Rico being the closest to a state. All non-states experience self-rule.

7. **Do they have singular features (for historical, linguistic, geographical, political, legal or economical reasons)? Do these singular features have political or legal consequences? In other words, how have the differences between the main territorial communities been approached from the perspective of uniformity/diversity or asimmetry/simmetry?**

Generally, the 50 states have many different features that are singular. Laws in one state follow another. However, Louisiana, for example, follows the French tradition in legal code, whereas the rest of the country does not. The New England states maintain the eighteenth century tradition of the town hall and town meeting. Linquistically the U.S. is officially monolingual, but in practice vast areas of the Southwest have many Spanish-speakers, and many big cities have immigrants speaking their native tongues. A given community could have up to 60 languages spoken in addition to English.

From a de jure standpoint U.S. states are symmetrical. However, de facto asymmetries are abundant. Large states are more politically powerful than small states, as are wealthier states and those that have higher proportions of educated people. Although mobility is changing this, states are culturally different, based on their ethnic makeup. The upper Midwest states (Minnesota, Wisconsin, Dakotas, Iowa) are predominantly Scandanvian-German in heritage and culture. South Dakota also has a notable proportion of Native Americans, on and off Indian Reservations. New Mexico's culture is Spanish/Native American Indian/Mexican whereas other western states, are more Mexican in orientation. Many other patterns follow. The border states (Kentucky, Tennessee, West Virginia and parts of Southern Ohio, Indiana) are comprised of old English stock, Saxon hill people, and French Huguenot protestants. The people in these states speak a different dialect and have a different subculture.

II. CONSTITUTIONAL LAW

1. **Do you have a written Federal Constitution? What is the procedure for its elaboration, ratification and amendment? To what extent can states participate in the process of elaboration, ratification, or constitutional amendment? Which have been the most important amendments or the main constitutional phases until now?**

The Constitution is written. It is elaborated by the acts of federal officials and adjudicated by the Supreme Court. Amendments are either proposed by Congress and ratified by State legislatures or the States are empowered to call a constitutional convention (they never have). The states' role therefore, has been to propose (through Congress) and ratify constitutional amendments, which pass with a three-fourths vote of the state/legislatures. The first ten amendments, the "Bill of Rights," were enacted in this way.

Most important amendments:

1-10	Bill of Rights
14	Equal Protection, ties the Bill of Rights to the States
16	Income Tax
17	Direct Election of Senate
19	Women's Voting
26	18 Year-old Voting

2. **Do you have any complementary constitutional federal rules? If so, which are the most important? Are "constitutional conventions", namely, unwritten binding agreements or rules of conduct, recognized in your system? Could you mention the most important?**

Supreme Court rulings on constitutional matters are the most important, as are the actions of the President and Congress, until challenged. There are no recognized, binding agreements of a constitutional nature.

3. Are there any written state constitutions? What is the procedure for its elaboration, ratification and amendment? To what extent can the federation intervene in these procedures? Could any federal organism provisionally suspend some of their provisions? Are state constitutions bound by federal rules other than the Federal Constitution? If so, which are they?

All 50 states have a written constitution. Most states amend and rewrite by convention and then have a referendum, but some put amendments directly to referendum. The general government does not intervene in state constitution-writing. There is no means of provisional suspension but the Supreme Court can render a provision of a state constitution invalid, and it has, e.g. on apportionment of legislative seats, residency requirements, welfare eligibility, and housing restrictions. Since the 14th amendment was adopted in 1868 rights under state constitutions are considered bound by the federal constitution. Other federal rules depend. Any rules relating to federal powers (e.g. commerce) apply; as would rules attached to federal funding or those rules affecting the right to Fifth Amendment "due process" guaranteed all citizens. (No person shall be deprived of life, liberty or property without due process of law).

III. CONTENTS OF THE FEDERAL CONSTITUTION. DOES THE FEDERAL CONSTITUTION:

1. expressly recognize federalism or political decentralization as a constitutional principle or value?

Federalism is not expressly recognized in that the country is not identified as a federation [in 1787 federation meant confederation]. However, the Preamble states "We the people of the United States, in Order to form a more perfect Union …" The federal powers designated in the Constitution are expressed and limited, and by implication all others are those of the states. Amendment X makes this explicit.

2. design a map of the territorial organization? In other words, does the Federal Constitution identify or enumerate the territories and/or the communities that conform the federation?

The federal government defines the territorial boundaries of each state by act of Congress. Normally, this has been accomplished when a state is admitted to the Union. In one case, after the Civil War, Congress removed the western, anti-slavery portion of Virginia and created the new state of West Virginia.

3. enshrine the autonomy of the states? If so, in which way?

Nonenumerated powers in the Constitution, plus the tenth amendment. Also, states are free to move into areas not entered into by the federal government, even though it might be empowered to. For example, cable television, insurance regulation, and private pension regulation.

4. recognize states or main territorial communities the capacity to federate among them? If so, can they establish links or celebrate conventions among them without the participation of the federation?

State federations (called in the Constitution as confederations) are not allowed, but compacts among them are, but must be ratified by Congress. Short of compacts states can convene in many ways without federal intervention. For example, the many Commissions in Uniform State Laws and state associations of officials. U. S. civic organizations are normally sub-organized on the federal model.

5. fully define the whole system of decentralization, or is this system thought to be developed to a great extent by future federal provisions? If so, which are they?

The system is defined by practice, enumerated federal and residual state powers. The accompanying paper explains the gradual growth of national power, but along with simultaneous growth of the states' powers.

6. allow the exercise of the right to self-determination or the separation of states or other territories?

The constitution does not provide for the right of self-determination (in the Spanish sense) or separation. The Civil War was fought over this issue. States can "voluntarily" join the union but cannot separate.

IV. INSTITUTIONAL ISSUES

1. Do states participate in the election, appointment or cessation of the federation's chief? Is there any other relationship between this figure and states or main territorial communities? Which one?

Presidential election is by states, in the sense that the popular vote elects "electors" to an electoral college, who traditionally (but are not bound) vote for the candidate they are pledged to. State votes are cast as a bloc, that is the popular vote winner wins all of the state's electoral votes. This, of course makes large states more powerful.

The president does not have a direct relationship with the states, but acts through governors in an informal fashion. The only exception is in calling out the militia. Indirectly, there are many contacts between the president, president's cabinet and the states. For example, on homeland security or health care.

2. Is there any Senate or second legislative assembly that represents the states? If so, does it exercise its representative role effectively? Why? What functions does the Constitution attribute to this legislative assembly? How are states represented in this chamber? Do they have the same kind of representation on the basis of the number of votes or seats? Does any state have a special position in this chamber (for instance, exclusive initiative or veto prerogatives, etc.)? How representatives are organized in this second chamber, according to their territorial origin or to their political groups?

The Senate is a popularly elected body (since 1913), two per state, that has basically equal powers and is equally effective with the House. The Senate has the exclusive power to ratify treaties and to confirm (advise and consent) presidential appointments, including federal judges and Supreme Court members. No state has special powers or, veto prerogatives – all 100 senators have the same legal standing, although large state senators have many more voters to represent than do small state senators. The senate is organized by party caucus. There is currently one independent, who is counted with the Democrats.

3. Do states have legislative initiative over federal subject matters? Is their consent required for the enactment of certain federal acts? In other words, do they have a veto? If so, what kind of veto?

States do not have direct legislative initiative over federal issues. But that is not a problem. It is easy for a state to ask a senator or house member to introduce a state bill. Hundreds of these bills are introduced each session.

4. Is there any neutral judicial court (Constitutional Court, Supreme Court, etc.) that protects the allocation of powers between the federation and the states? Do states participate in the process of designation of its members? How do you assess the influence of this court upon the current

system of political decentralization? Broadly speaking, could you tell whether its case law has been most favorable to the interests of the federation or the states? Are there any subject matters or historical phases in which this phenomenon occurred? Can ordinary lower courts interfere in conflicts of powers between the federation and the states?

Judicial review of federal government actions began with Marbury v. Madison (1803), when the Supreme Court overturned a portion of the Judiciary Act of 1801. The court ruled that Congress could not enlarge on the original jurisdiction of the Supreme Court. Had this review power not been exercised early in the country's history, it might never had come to pass, for it was not until 1857 that a federal statue was next invalidated by the Court.

Power to review state actions began with Fletcher v. Peck (1810), when the Court ruled that a Georgia law violated the Contract Clause of the Constitution. The ruling was that the state could not be viewed as a single unconnected sovereign power, on whom no other restrictions are imposed than those found in its own constitution. As a member of the Union, "that Union has a constitution the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several states, which none claim a right to pass." This was the "second stone" in American constitutional law.

The next move was to affirm the appellate power of the Supreme Court over state court decisions, in order to make them consistent with the Constitution, laws, treaties of the United States. In Martin v. Hunters Lessee (1816) reversed a Virginia court decision that a mandate of a federal court violated a treaty. Five years later, in Cohens v. Virginia (1821), the court affirmed its appellate power over decisions of state courts. The states, the Court maintained, are not independent sovereignties, but members of one nation, and the courts of that nation must be given the power of revising the decisions of local tribunals on questions that affect the nation. Since Cohens v. Virginia state attempts to make themselves the final arbiters in cases involving the Constitution, laws, treaties were foredoomed.

Federal power was reinforced in McCollch v. Maryland (1819), where the Court established the doctrine of implied powers, that is the broad construction of the "necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution" clause. The "necessary and proper" clause meant that the Court established the doctrine that federal government is "supreme within its sphere of action." This meant, as affirmed in Gibbons v. Ogden (1824), that federal action, if itself constitutional, must prevail over inconsistent state action. The Gibbons decision was also the first to expand the Commerce Clause, covering all forms of economic activity "between nations, and parts of nations, in all branches." It is the power to regulate, that is, to prescribe the role by which commerce is to be governed. This power, like all others vested in Congress is complete in itself, may be exercised to its utmost extent. As interpreted, the Commerce Clause was to become the most important source of federal government power in times of peace. It is how Washington regulates many aspects of American life.

The Supreme Court, settles federal-state disputes, determines allocation of powers, and reviews unconstitutional state actions. Although nowhere written in the Constitution, it is now accepted practice. States have no role in any federal court nominations, including the Supreme Court. The Court has had great influence on centralization or of the accretion of federal power, particularly through broad interpretation of the commerce clause, the "necessary and proper" Congressional power, and the fifth and fourteenth Amendments (see paper). Only recently has the Court slightly reversed this trend, limiting Congressional or federal powers over the states. Case law has most definitely favored the federation from 1868 to the present.

Lower federal courts (district, appeals) are the original venues for federal-state conflicts. In non-state government cases there must be an "aggrieved party" who files a motion based on a "federal question" that is heard in trial by a U.S. district court. Only rarely (e.g. 2000 Presidential Election dispute) does the

Supreme Court take a case directly. If the Supreme Court refuses to hear a case on appeal that has gone through a lower court, the last decision of the lower court is considered to be law. In practice, this happens in many more federal cases than do Supreme Court hearings, as the Court lets most earlier decisions stand. The Supreme Court is the original venue for all disputes between state governments.

5. **Which legal mechanisms do the federation and the states have to protect their powers? Are they recognized only against legislative acts, or against regulations and administrative decisions or omissions as well? Could you tell whether the safeguards and procedural position of the federation and the states are symmetrical? In other words, can the federation challenge state acts before a court? And vice-versa? Has the federation a veto against state legislative acts, regulations or decisions? And the states against the federation? Can a state bring a conflict of powers against another state before a court? In each state, which is the legitimate organism – legislative, executive, etc.- to bring judicial actions to protect state powers? Can local entities or municipalities bring judicial actions to protect their autonomy against federal or state acts o rules? Are there any other institutions or individuals legitimate to challenge federal or state legislative acts, regulations, rules or decisions on the basis of a conflict of powers?**

The first legal protection is federal court adjudication. But that is often not the last word. At the federal level Congress can act by reenacting legislation of slight variation, or hope the court might change over time. The president can control by enforcement - - strong or weak - - or even refuse to implement court orders. The states main protections are: 1) that they administer most programs, 2) their representatives in Congress do represent and protect states' interests, 3) can individually or collectively influence federal officials, 4) use public opinion for leverage, or 5) get Congress to propose constitutional amendments. This is true of both legislative acts, regulations and administrative decisions. These actions are de jure symmetrical but de facto are subject to political power, size of the state, same/different party as president, and so on.

Under the American system, normal constitutional suits are brought by aggrieved private parties, even when federal or state power questions are at issue, and a government may join in as amicus curae. However, any government - local, state, federal can challenge in federal courts.

The federal government thus can and does challenge state acts. At this writing the Justice Department is joining in another party's challenging Michigan's racial based admissions policies at its main university. States can and do challenge the federal government. For example, in the early 1980s Florida challenged the Vocational Rehabilitation Act, which mandated a particular form of state organization structure. (Note: Florida lost in the district and appeals courts, dropped the suit, then established a nominal "foundation" to meet the letter of the law, in practice maintaining its preferred organization to this day.)

The federal government has no direct veto of state legislative acts, regulations or decisions. It must pursue the federal court route. The states lack similar powers. The political route or informal settlement is often used both ways, because court processes are expensive, lengthy, and cumbersome.

A state can contest the powers or actions against another state, but only in federal courts. It happens often. One example is a boundary dispute between Kentucky and Indiana due to the changing course of the Ohio River. After nearly 100 years of competing state legislative actions, Indiana took the issue to the federal courts. It lost in 1991, so now part of the north bank of the river is Kentucky. It was a more symbolic than real victory. The famous Louisville (Kentucky) Slugger baseball bat factory is once again in Kentucky, as it sits some 10 meters from the Indiana line on the "Indiana" side of the river.

Any state entity is the legal vehicle for federal judicial action. Generally, it is the state's attorney general that brings action, which in all but a few states is an independently elected executive officer.

Local entities may also bring action in the courts as legal corporations. They do not have the same federal standing as the states.

Citizens or organizations can challenge both state and federal actions - -legislative, or administrative - - on the basis of misuse of powers. Normally, this comes in the arena of individual or civil rights (e.g. due process) that are infringed, but other powers can also be challenged. For example, during the New Deal economic recovery programs of the 1930s, many were challenged by businesses, associations, and individuals as violations of federal powers.

6. Who is in charge of the official appointment of the main state authorities (the chief of the state, government, parliament or legislative assembly, judicial power of the state, etc.)? Does the federation intervene in the process of appointment?

Most state officials are elected by popular vote, including judges. The U. S. has the long ballot, where separate administrative officials (Treasurer, Secretary of State, Attorney General, Auditor, and others) are independently elected. The governor appoints other department heads and fills judicial vacancies.

Unless there is a voting rights violation (Amendment 24, 1964) or some other violation tied to the Fourteenth Amendment, the federal government would not intervene in a state appointment.

7. Does the judicial power follow the allocation of powers? In other words, are there federal and state courts with jurisdiction to solve federal and state cases respectively? Regarding state courts, is the appointment of judges, magistrates and administrative staff a state power? Do states enjoy legislative power to regulate these issues? Is there any body of self-government of the judicial power? If so, which is its composition? What functions does it have? Who is responsible for the provision of material resources to the administration of justice (federation or states)? Which are the criteria for the allocation of resources? Can federal courts review state court's decisions? In what circumstances?

State courts generally deal with state issues only, but some do consider federal issues like due process or civil rights. Under the Constitution. Federal Courts deal with federal questions only, although an increasing number of states issues have federal connections.

States have complete control over appointment, election, or removal of state judges, magistrates and court administrators. They are regulated by state legislation only. Some states do have judicial commissions of lawyers who set standards and recommend judicial discipline. Those commissions are appointed by governors. Legislatures appropriate funds to pay for state courts (Congress for federal). Normally, the chief judge submits a proposed budget.

Federal courts only review state court decisions when an appeal is made based on a federal question. Most issues of contract, civil law, or criminal law remain in the state court systems. Very few cases ever make it to federal courts.

8. Are there others mechanisms for state participation in federal institutions or functions? Do states participate or are represented in relatively autonomous federal organisms, regarding, for instance, citizen's rights or intervention in the economy (independent agencies with regulative, financial and arbitration powers, etc.)?

Most of the mechanisms are informal and political. Another vehicle is bilateral or civic association contact and/or lobbying. Also contact with members of Congress is important. States have no direct

participation in federal bodies other than special commissions, although state interests are normally considered when these bodies are formed.

9. Can states freely convoke a referendum regarding political or legal measures? Are there any constraints? In other words, does the federation have any power over this field?

Unlike the federal level, most states have referendum powers. Many states give their citizens the power of initiative, or the right to petition issues directly into law by popular vote, and recall, or removal of office by popular vote. The federal government has no powers regarding these issues.

10. Is there any pro-state provision concerning symbolic issues (flags, protocol, languages, etc.)?

Symbolic issues of a state/regional nature are generally left up to the states, particularly in non-language areas. All states have their own state flags, birds, animals, trees, flowers and even "nicknames," e.g. Indiana is the "Hoosier State," for which there is no clear origin, and Oklahoma the "Sooner State," named for the early free land homesteaders.

Language is different. Some states have, in the past 4-5 decades, legally adopted English although that was more of a convention before. Some states have bilingual laws with English as primary, and usually Spanish as acceptable educational languages. The federal government once encouraged bilingual education, but it does so less and less. There have been U. S. Constitutional Amendments introduced to codify English, but none have passed.

V. THE ALLOCATION OF POWERS

1. Is the system of allocation of powers mainly enshrined in the Federal Constitution? Is it secured by the Federal Constitution?

Federal powers - - interstate commerce, defense, patents and trademarks, foreign affairs, postal service and roads, duties, naturalization, monetary system, promote science and industrial arts - - are enumerated in the Constitution and secured as "supreme" over state actions in those areas. There are areas where states have sometimes entered (e.g. science promotion, commerce, foreign affairs) but must yield to federal supremacy.

2. Which is the basic design of the system (a list of federal powers, a list of state powers, a double list, other solutions)?

See above, number V.1. States possess all other powers. There is no "double list," since state powers are a) residual and b) general.

3. Is there any constitutional provision concerning residual powers, namely, "new" subject matters, not allocated either to the federation or to the states by constitutional law? If so, where are allocated the residual powers (federal or state level)? Is it actually effective? Are there any rules or principles that presume that the power is vested in a certain level of governance?

Amendment X reaffirms that all powers not delegated to the United States, or prohibited by the Constitution, are "reserved to the states respectively, or to the people." This power has not meant a great deal, since the federal government has gradually expanded its powers (see paper). Thus, Amendment X has not been effective since the post-Civil War periods of Reconstruction and industrial expansion.

During the twentieth century the presumption is that the federal government can move into virtually any area through the commerce clause, necessary and proper clause, supremacy clause (below) or through such various other powers as due process.

4. Is there any rule that gives preference to federal law in case of conflict with state law? If so, has it been actually applied?

Article VI includes a provision that U. S. Constitution and laws "shall be the Supreme Law of the Land." It has regularly been applied and is a major contributor to the growth of federal power. Article VI along with Amendment X on the states residual powers has, as expected, created great constitutional confusion.

5. Are there other general rules? Which are they?

Article IV limits all states: states must give full faith and credit to other states' actions; citizens of each state are entitled to privileges and immunities of citizens of all the states; states have extradition requirements; there are restrictions on entry of new states; there is federal control over disposal and regulation of federal land in the states; the rights contained in the Bill of Rights limit the states since the Fourteenth Amendment adoption.

6. Does the Constitution allow making more flexible the allocation of powers by mechanisms other than constitutional amendment? In other words, can the federation, by itself, transfer or delegate powers to states? Through which mechanisms? What role did all those mechanisms play on the evolution of the federation? How have the decisions regarding the material, economic and human resources to be transferred as a consequence of a transfer or delegation of powers been taken?

Definitely (see paper on expansion of federal powers) through 1) broad interpretation of its enumerated powers, particularly commerce; 2) the implied power or necessary and proper clause; 3) war and emergency powers; and 4) to some extent due process under Amendments V and XIV.

The federation does not "transfer" power to the states, as the states have general powers. The constitution, as amended, has added federal powers, e.g. over voting rights and the levying of income taxes. The federal government also uses its powers often to preempt (force states to wholly or partially vacate) certain powers. This became prevalent after 1970.

These actions have without a doubt increased federal government power at the expense of the states.

Transfer of resources often does occur, but usually at a ratio far below their costs. For example, Congress recently appropriated $1.5 billion for federalization of state voting machines and training of officials, whereas the estimated cost is over $4 billion. Also, many such takeovers or preemptions are unfunded. When Congress ordered all states to perform driving license examinations in the 1960s, no funds were appropriated.

Has any subject matter been fully attributed to just one of the territorial levels of governance –federal or state-?

Clearly matters of the monetary system, national defense, foreign policy (not foreign affairs), naturalization, are fully federal. But most areas, e.g. policing, education, science, transport and highways, commerce are shared powers.

7. Is the technique of "shared" powers recognized (both federation and states have legislative powers, although federal law takes precedence over state law in case of conflict)?

Indeed, shared powers, although not formally recognized, is the normal operation. State shared powers are "understood" by the states powers in the U. S. Constitution and Amendment X.

8. Are there any subject matters in which legislative power is exclusively attributed to the federation, while executive power is attributed to the states? If so, is the regulative power regarded as legislative or executive power? Can federal legislation determine state administrative organization and practice?

Not in the Constitution, but in practice this is a very common pattern. In many social welfare, highways and transport, higher education, environmental, and now homeland security the states largely carry out federal programs through their administrative organs. As such, they have broad flexibility in setting priorities and allocating funds. The regulative power is both, as most states require that federal programs/funds be legislated through state legislatures. In fact, most federal-state programs experience dual laws/budget processes.

Federal legislation can and does determine state administrative practice for federal programs. In addition to the Florida example cited above, the federal government usually requires that a "single state agency" administer each program, that state civil service employees only be involved (no appointed patronage employees), and that as many as fifty "cross over requirements" in purchasing, procurement, civil rights and minority protection be followed, in addition to program requirements.

9. Are there any subject matters in which the federation can establish principles or basis for the state legislation? If so, has the federation made an extensive use of this power? Is there any mechanism to correct that situation?

Setting of state standards is an every day occurrence for Congress and the administration. It sets state standards in road safety, environmental protection, employee hiring and most recently in educational performance. States use their informal political power to affect these situations. There is no formal mechanism.

10. Does the federation have an own administrative organization on the state territory? How strong is that administration? In which fields does it act? Can the state administration exercise any federal power delegated by the federation? If so, are state administrative bodies hierarchically dependent of the federal administration? What mechanisms of review are reserved to the federation to secure that states correctly enforce federal law?

Federal programs of direct administration include: Social Security (pensions), Postal Service, most agriculture programs, Veterans Affairs and Hospitals, and a few others. In these areas the federal presence is everywhere, but it is programmatically small compared to the states' program presence.

States can and regularly exercise delegated federal power. The most common areas include environmental protection, occupational health and safety, housing, transportation planning, mass transportation, civil rights and protections, human rights and protection. All state and local governments are, in effect but not actual or legal, administrative arms of federal laws and regulations.

State administrative bodies are not hierarchically dependent; they are legally and financially dependent, and failure to act is either subject to political negotiation or federal litigation. The states try to negotiate the best deal they can. On occasion, a president has enforced federal law by use of force through militia

action. Normally, states directly appeal or seek administrative review in the agencies themselves, or try to get Congress to change legislation, and through federal court action.

The major vehicle of federal enforcement, however, is the threat (it rarely happens) of withholding federal money or monetary penalties. Also, fear of costly litigation where the state has more often than not lost, can move a state to act.

11. What are the general limits of state powers?

See V.5. Also, states must yield to federal legislative supremacy. Amendment XI (effective 1798) states that federal judicial power does not extend to suits involving citizens of one state against citizens of other states or foreign countries. States are bound to the federal constitution, particularly the Bill of Rights, through articles XIII, XIV, and XV. Finally, Article I, section 10 precludes state: treaty making or joining a confederation, money issuance, issuing bills of credit, bills of attainder or expost facto laws, laws that impair contracts, grant nobility titles, or grant letters of marque and reprisal.

12. In your opinion, what are the most important federal powers?

Commerce, necessary and proper, foreign policy, and the binding effect of Amendment XIV.

13. In your opinion, what are the most important state powers?

Education, higher education, non-federal highways, intrastate commerce and economic development, criminal and civil law, licensing and regulation, land law and land use, and control over local governments.

14. Have any of these federal or state powers been extensively interpreted?

Extensive legal interpretation is the normal procedure. See paper in expansion of federal power and state control in the 19th century. Extensive interpretation versus (literal interpretation) has been a pattern during the early Federalist Period (John Marshall Court 1801-1936) and since the Civil War. State courts have always provided extensive interpretation of their constitutions.

15. Does the Constitution provide the transfer of sovereign powers to regional or international organizations? Does it address this issue in the domestic legal system, taking into account the decentralized structure of the federation? Does it give the states the right to ratify international treaties or agreements? If so, in which conditions? How is the international responsibility of the federation addressed?

There is no transfer of sovereign powers but treaty agreements can change the nature of federal powers. Domestic legal affairs (including state actions) would have to yield to federal treaty powers, unless there was some other constitutional conflict. States must seek-Congressional approval for international agreements. Treaties are exclusively federal, according to Art. I, Section 10. See paper for general discussion of the states in foreign affairs.

VI. LOCAL AND MUNICIPAL GOVERNMENT

1. Does the Federal Constitution recognize local or municipal autonomy? And the state Constitutions? If so, which term is it used to refer this autonomy? What substantially follows from this constitutional recognition?

No, municipal status is a state function. The Constitution only mentions states. When the federal courts deal with local government matters they are legally referred to as "states and local governments."

2. Are the local representatives democratically elected by the people of the municipality or local entity? If not, which is the method for the election?

All local general purpose governments (cities, counties, townships) elect their representatives and executives. Many special purpose governments also do so. Some, however, have boards comprised of delegated local elected officials, similar to provincial, comarca and mancomunidad councils in Spain.

3. Are local entities under federal or state control? If so, are these controls limitated to issues of legality or do they also cover issues of opportunity? Can municipalities or other local entities challenge federal or state law or other decisions, on the grounds that they violate their autonomy? Before which bodies or courts?

All local governments are under state control, a process that evolved during the 19th century (see paper). Most controls are legal. Municipal corporations have broad opportunity to pursue their ends, so long as they do not conflict with state or federal laws or limits. However, municipalities or other local governments can challenge federal and state laws in their respective courts, if aggrieved, based on their respective constitutions, but not on matters of their autonomy, because they have no legal autonomy other than the that which is devolved (and can be removed). The U.S. Constitution only recognizes the autonomy of states.

4. Is the design of the local government (kind of local entities, organization, powers, human resources, etc.) under federal or state power? What local subject matters or functions are allocated to the federation and the states? Can the federation establish direct bilateral relationships with municipalities or other local entities? Can the federation intervene upon their activities by exercising federal powers concerning a particular sector or through its spending power?

All local government forms and functions are under law and state supervision. For example, the state determines the allowable forms of local government election/organization (strong mayor, weak-mayor, council-manager [hired administrator], commission [deputies from government]).

The federal government, particularly since the 1960s, has established bilateral relations with local governments, through grant and regulatory programs. For example cities over 50,000 in population and counties over 200,000 receive Community Development Block-Grant funds for economic development, urban revitalization and housing in primarily low income areas. It is normally the spending power through which the federal government intervenes at the local level.

5. Are there "city-states" in your system? According to which provision? Is their regime equivalent to the states' one? Apart from these city-states, are there any municipalities with a particular autonomous regime? Which ones? Which is the basis for the recognition of this regime?

The District of Columbia is the only city that has status similar to a state. It elects presidential electors (since 1961) and has non-voting members of Congress. The District was created by act of Congress. No other units are autonomous, although Puerto Rico has some free standing and is treated like a state for certain federal funding purposes. Congress decides on such status.

6. Can states create "intermediate" local entities between municipalities and states? Are there any intermediate local entities in your system? Do they exist only in some states or in the whole territory of the federation? Are states free to establish their territorial limits? What powers do they have? To what extent are they dependent on the states? What is the system for the election or appointment of the chiefs of their governmental bodies? Can the federation intervene in the organization, powers or financing of these intermediate local entities? How? For which purposes?

States regularly create intermediate structures. In addition to school and special districts, states operate through counties (comarcas in Spain) as basic state subdivisions, and townships within counties in rural areas. Basically, these structures exist in all states, although in the New England states counties have limited powers, towns general power. It is the reverse situation in the rest of the country (see paper).

County powers are state powers decentralized except for about 300 urban counties that also have municipal powers. States can set their territorial limits. (However, Article IV of the U. S. constitution sets the rules for changing state boundaries, which basically requires the consent of all affected legislatures and the Congress.) Counties in most states are governed by elected boards of 3-24 persons, who serve both legislative and executive functions. In addition, the voters directly elect other independent elected officials: sheriff, treasurer, auditor, clerk, surveyor, and others.

The federal government, except to protect Constitutional provisions, has no local intervention powers, and rarely becomes locally involved.

7. How are local powers determined? Can local governments provide services or perform federal or state powers? If so, which legal mechanisms coordinate their collaboration (delegation, assignment, etc.)? In which subject matters can this form of collaboration exist? Are local governments obliged to cooperate? Do they have a right to receive financial funds from the federation or the state that asks for the collaboration?

Local powers are set by state legislatures, although often broad “home rule” powers are devolved. Local governments can and do provide a range of federal and state services within their borders: election administration, registration and licensing, consumer protection, libraries, recreation and culture, public health and public safety, and many others. They are coordinated by federal and state law, and supervised by the city or county attorney who is the legal compliance officer as well as the chief executive. Local governments are obliged to cooperate, subject to court enforcement. They can and do receive federal and state funds for such enforcement, another collaborative tie, but not normally on a fully funded basis. Also, many mandated cooperative services are unfunded.

8. Do local governments have normative or regulatory power? Which other general powers do they have? What powers are lacking?

Local governments have ordinance or normative powers, so long as federal and state legal norms are maintained. Regulatory powers operate on the same principles. Good examples are land use, disposal of public land, and building standards. States also authorize local governments to take normative actions if they choose, e.g. tax abatement, tax increment financing, land rehabilitation, regulation adjustment and others, which are enacted by local ordinance. All of these powers may be preempted by state law, after which the local government merely administers state law.

Under these circumstances, local governments lack all of those powers in areas where the state has acted. For example, in most states that means public health standards, restaurant sanitation, traffic controls, water purification, criminal law, civil law, fire safety and many others.

VII. INTERGOVERNAMENTAL RELATIONS

1. Does a principle of collaboration or constitutional loyalty among the different political and administrative authorities exist in your federation? If so, where is recognized (constitutional law, convention)? Which is its content and what consequences follow from this principle? To what extent is there a hierarchy among the different administrations?

The principle of cooperative federalism is long standing. Cooperation occurs regularly in public safety, highways, transportation, economic development, social welfare, higher education, public health, vital statistics, and many other areas. It is nowhere recognized in any constitution but is a long-standing constitutional law and practical matter. There is no hierarchy among jurisdictions; the U. S. has a long history of jurisdictional independence (see below X.6)

2. Does the Federal Constitution establish a system of intergovernmental relations between the federation and the states? If so, through which mechanisms? Are these mechanisms established in other constitutional or legislative provisions? To what extent are institutional practices or conventions important on this matter? Generally, which is the importance of intergovernmental relations for the dynamics of the system? To what extent do they allow to make more flexible the formal allocation of powers?

The federal Constitution is silent on IGR. They are established through court and executive action, and by legislation. The most important mechanisms have been grants, regulations, contracts and intergovernmental agreements, all of which have greatly stretched formal powers at all levels.

3. Are there organisms to coordinate the horizontal collaboration among states? Does the federation participate in these organisms? Is an authorization required for their creation? How the states are represented? Are they important for the system?

Horizontal coordination is through: 1) bilateral or regional informal contacts, 2) interstate compacts, and 3) associations of state officials. The federal government is only informally involved, except where federal law requires official state consultation on a matter. In this case states are represented by designation of a state association, for example the National Governor's Association.

4. Which role do local governments play in the system of intergovernmental relations? In which organisms of collaboration do they participate?

Local governments directly or bilaterally make contacts, have representation in state and federal capitals, and participate through associations of local officials: U.S. Conference of Mayors, national Leauge of Cities, National County Association, and others. There are usually state parallels.

5. Do different governments or administrations usually participate in organisms or entities with legal entity (public or private: consortiums, associations, foundations, private societies, etc.)? Is this joint collaboration usual for developing public works, managing services, or financing of activities? Which legal regime is applicable?

See attached paper. The involvement with nongovernmental organizations in this era of collaboration and networks is extensive at all levels of government. Normally this collaboration is for many areas: economic development, social services, arts and culture, leisure and recreation, historic preservation, and many others.

VIII. TAXATION

1. What is the level of state autonomy regarding incomes? Can they establish taxes? If so, are there any constraints? In other words, can they make use of the same kind of taxes (official prices, rates, extra charges, etc.) that the federation establishes? Can they use both direct and indirect taxation? Can they establish taxes over subject matters already charged by the federation?

States have the same types of broad taxation powers that the federal government has. They often overlap, e.g. income taxes. However, states are constitutionally prohibited from taxing imports or exported goods, impose duties on other states, or on vessels. In practice states use the same taxes as the federal government, but have also taxed property. Indirect taxes (e.g. excises) are common, although no U.S. government uses the value-added tax.

2. Can states ask for credit or issue public debit within the state or federation without the authorization of the federation? Can they do this abroad? If the federation has the power to authorize these operations, which are the legal basis that regulate this?

States cannot issue credit, but can incur public debt on the private lending market. They do this for capital projects. Foreign lending is allowed, but often limited by state law. They do not require federal authorization or review.

3. To what extent are state incomes important in contrast to the transfers that the states receive from the federation? How are these transfers regulated?

Transfer payments make up from 25-40% of state revenues, depending on state wealth and federal payments. The remainders are own-source revenues, primarily through state income and sales taxes. Transfers are regulated by Congress, which attaches a distribution formula or ration to each piece of legislation that carries federal transfers.

4. Do states participate in federal taxes? If so, in which taxes and to what extent do they participate? When states participate in federal taxes, do they have any kind of normative power (for instance, power to fix deductions, exemptions, discounts, etc.)?

States do not directly participate in federal taxes, nor do they have any normative power over federal taxation. However, state income and inheritance taxes are usually ratioed to federal formulas. Also, most states accept the same deductions and computations to the federal income taxes, only apply different (and much lower) rates. This simplifies state tax forms and procedures.

5. Do states receive direct transfers or funds from the federation? What criteria are used to determine the amount of these transfers? Do states participate in the determination of the amount of transfers? If so, through which mechanisms?

Most state-transfers (there are hundreds) are set on the basis of complicated formulas including population and then depending on the issue. Most social welfare programs take into account poverty and unemployment levels, housing programs condition of housing, home heating assistance average heating days, etc. States lobby for the most favorable formulas before Congress but once the law is set, there is no more political participation. The Treasury Department neutrally implements the formula and divides the number of eligible jurisdictions into the total allocated money.

6. Can the federation intervene in what the transferred funds will be allocated to? If so, in which subject matters? To what extent? Generically or specifically? Can the federation determine their management or procedure? In general, how has the federal spending power determined state powers? What is its percentage with regard to state incomes? How does this system work regarding other federal and state transfers to local governments?

Most funds are earmarked and the federal government can (and has) asked for a return of funds. In all subject matters. This is done on a case-by-case or specific fashion. Many management rules are set up, as mentioned above in V.9.

Federal spending "influences," it does not determine state spending, by inducing the states to enter into areas like elderly health care or low income housing through the promise of funding. Federal regulatory mandates lead to required spending. The same pattern would hold with regard to federal inducement of the local governments. The states can require local spending but are often encouraged to as an alternative. In other words, sometimes state and local governments are "bribed" or induced into entering certain fields, whereas in others they are required to enter.

7. What follows from the principle of "tax solidarity" among states? In other words, what kind of economic contributions do the states make to the federation? How does this system work, on the basis of which criteria?

Other than cost-sharing of programs states do not make federal tax contributions. At one time, general revenue sharing for states existed (1967-1982), but solidarity (in the Spanish sense of redistribution) was not operative and the funds were small (like Interterritorial Transfer Funds). Poorer states are helped by larger federal shares of transfer payments for welfare programs like Medicaid, TANF (income maintenance), housing and social services.

8. Can the federation unilaterally compensate the debts that states owe to the federation (for example, reducing federal transfers)? If so, in which fields do this power exist? Do states have any safeguards (right of audience, judicial actions, etc.)?

This has been done, but infrequently, by exactly this method, of reducing transfers. It can occur in any field, but has been most prevalent in public assistance, social services and Medicaid. States can appeal and litigate in federal courts.

9. Who is in charge of the management, liquidation and collection of taxes? Can local governments collect taxes on behalf or by order of the federation or the state where they are located? To what extent and in which fields is this method used? To what extent is it relevant?

Each level of government is responsible for collecting its own taxes. At the local level, the county usually administers all taxes for special districts and municipalities, as well as for itself. The most important option is that excise taxes, that are collected at the point of purchase (e.g. merchants) and paid to the local, state, or federal treasury.

10. What is the percentage of public spending in which each level of government –federal, state and local- incurs? How would these percentages change excluding the spending on defense, education, health, pensions and administration of justice? How many civil servants or administrative officials have each level of territorial government? Which are the figures excluding the above-mentioned fields?

Federal spending about 40%, state 35%, local 25%. These figures are deceiving because of federal and state transfers to local governments. It is impossible to unbundled education (10-45-45), health (20-20-10-50 private), pensions (15 federal, 5 state, 80 private), justice (5-10-85). Defense is over 95 percent federal. Federal officials, 1.9 million civilian, state and local officials total 4.6 million. In addition there are 1.5 million uniformed military, 850,000 postal service workers and over 12.7 million nongovernment contract, grants, and mandate employees.

11. To what extent are the relationships between levels of governance regarding the tax system satisfactory? Which elements are more satisfactory? Which elements are less satisfactory? At present, is there any trend that should be noticed?

Satisfaction depends on the evaluator. They are so linked that a change in one affects the other. The simplification aspects are most satisfactory. The current trend is that federal tax cutting efforts will reduce connected state revenues beyond their projections which is alarming many state officials.

12. Can the federation establish the maximum or specified levels of state indebtedness or budgetary deficit? Can the federation establish the maximum wage of public officials (federal, state, local, etc.)?

States control their own deficit levels. Every state but one (Vermont) constitutionally requires a balanced budget. Capital spending is financed through borrowing on the open market. States bond ratings control deficits. The same is true for local governments.

Each level of government sets its own public official wages and rates. However, federal controls have been imposed on overtime and compensatory time, for all public officials.

13. Are there coordination mechanisms among the different levels of governance? If so, are there institutions with a political nature (for instance, an assembly of territorial representation – Senate-, governmental institutions -councils of prime ministers-, etc.)? Are there mechanisms of technical coordination? (i.e., deductions in quotes of subcentral taxes in central taxes, etc.).

Technical coordination, primarily through commissions of state tax administrators, and frequent U. S. Treasury - state tax conferences tend not to be political.

IX. LANGUAGES

Language is not a U. S. issue, with the exception of bilingual education. See above.

1. Does the Federal Constitution recognize more than one official language in the whole federal territory? If so, which are they? At the federal level, are they officially used on equal basis in the whole territory of the federation by the different authorities? Are they equally used in private?

2. Why? Does the federal Constitution or law establish linguistic citizens' rights or duties?

3. Beyond recognizing or not more than one official language, does the Federal Constitution recognize the existence of other languages and the need of protecting them as well? Could you tell, approximately, the quantitative importance of these diverse linguistic communities?

4. Do state constitutions recognize official languages different from those recognized by the Federal Constitution? If not, are they allowed to do it? Are federal and state official languages on an equal footing? Can states establish linguistic duties to citizens and companies different

from those established by the federation? Can states exclusively or mainly use an official language different from the one established by the federation as official?

5. **Broadly speaking, which is the linguistic system regarding education?**

6. **To what extent are legislation and administrative practice adapted to the multilingual reality of the federation? To what extent are they the origin of conflicts between the different levels of governance or among the population? Are the different languages an important identity symbol of the state?**

X. GLOBAL ASSESSMENT AND ADDITIONAL COMMENTS

1. **At present, how is the level of political decentralization generally assessed? What is your assessment?**

Since the 1960s, national power has accumulated by extensive use of grants and regulations, and in many cases partial or total preemption of programs. But rarely have these intergovernmental programs been exclusively federal. Because of state-local implementation(land ability to interpret programs) state power has grown along with federal power. Political decentralization at the state level is very much a live, as is the process of "cooperative federalism," as I maintained in an essay dedicated to the memory of Daniel Elazar in the 2001 volume of Publius: the Journal of Federalism.

2. **What are the main historical claims by states? To what extent are they satisfied?**

States originally formed the union, although all but 13 were admitted by Congress. The federal principle is based on: 1) shared power, 2) respect or comity for the autonomy of each sphere, 3) recognized divisions of primary responsibility or competency, 4) own-source revenue and expenditure control at each level, and 5) a long-standing tradition of respect for the role of constitutional law in settling disputes. They system broke down in the 1861-65 Civil War, but since then the right of the general government or the federation to act on behalf of all of the people has been maintained, although frequently questioned by those who wish to support greater state power.

3. **What are the risks and main opportunities for the development and consolidation of the system of political decentralization?**

The risks are great when the federation encroaches on traditional state functions, which has happened many times. Normally, the states can contain this accretion of federal power through the political arena, but not always. In recent years, an education law that requires testing of all school children in the same way with the same achievement standards is putting the federal system at risk because education (primary and secondary) has always been state-local. Since the law was passed states are now resisting. Homeland security and gun control are two other areas where federal power puts federalism at risk, but in the case of gun control the Supreme Court upheld the power of the states to regulate and enforce in this area (Prinz v. United States [1992]. The Court has also begun to limit the growth of national power through the commerce clause since they struck down a requirement that schools do mandatory gun checks on students (United States v. Lopez [1995]).

The opportunities remain in: 1) continuing cooperative federalism in joint programs, 2) reduction or elimination of unfunded mandates, 3) elimination of preemption of state-local programs, 4) full funding of federal program requirements (e.g. for testing of students, voting machinery), 5) the political will of state

and local officials to control the march of federal power, and 6) continuing day-to-day state and local control over the operation of most programs.

4. What are the main trends of development? Which is the likelihood of them coming true?

See X.1. Federal growth is more visible than state growth. The interdependence is largely invisible. The developmental trends in the U. S. are cycles of centralization (e.g. 1930-45, and 1976-1999) within a steady growth of the federal government, but the states are not far behind. Simultaneous growth will continue, but after the economy grows, war ends, and homeland security is under control, federal growth will fall back as it has in the past. The states and their governors will fight centralization when the times are right. In the United States, it is always dangerous to overlook the potential power of 50 governors/governments and 200-300 big city mayors, and thousands of other elected officials. At some point they get "the ear" of Congress. In the U.S. there are around 510,000 elected officials. Only 551 represent the federal government.

5. Generally, would you say that the system is becoming more centralized, decentralized or that it is in a relative equilibrium?

At its most basic it is always in some form of equilibrium, but with trends that shifted local power to the states by the mid-19th century, and state to federal power from the late 19th century to the present. The Constitution and federalization have combined to create a federal system not envisioned by the founders, but one that tries to balance shared power. The founders did not anticipate universal suffrage, industrialization, the welfare state, U.S. as a world power, heavy intergovernmentalization, governance networks, and international regimes. All of these have put new challenges to federal democracy. These forces plus the "real world" of making a new, uncharted federal bargain in 1787 to work all lead to the constant search for equilibrium.

6. Would you like to add any additional comment about the political decentralization of the federation that was not mentioned in the Questionnaire? Would you like to make any suggestion about the structure or the contents of it?

In the United States territorial-based jurisdiction is a vital force that explains the drive for local and state autonomy/power within the system. Local governments built the colonies for some two and one half centuries before federation in 1787. Each state and local government in the U. S. is a polity whose domain/space is not shared with another polity. Some tasks that each government faces are not reducible and governments are responsible for providing and usually producing certain public goods and services within them. In the U. S., an individual's location determines one's position very much as would ideology, occupation, religion or class. A shared power federation reinforces the jurisdictional tendency.

As a result, the system operates from the bottom-up as well as the top down. Jurisdictions regularly advance their own agendas, negotiate or bargain with higher ups, as well as comply. Many cities and states are very capable of formulating and advancing jurisdiction political and managerial agendas, holding their "own place" within the system. This is the subject of this writers recent co-authored (with Michael McGuire) 237 city study, Collaborative Public Management: New Strategies for Local Governments (Georgetown U. Press, 2003).

7. Would you mind listing particularly remarkable literature -on the basis its prestige, depth, clarity, approach-, which allows to achieve a better knowledge of your federal system?

The citations for my accompanying paper should suffice as references. In regard to the debate on centralization/decentralization, the Zimmerman book, Contemporary American Federalism is organized

around the centralization argument, the Walker book, Rebirth of Federalism is a more balanced view but explains the growth of national power, and the Beer book To Make a Nation argues that state and federal power have always existed together. The best book on the role of state governments is Daniel Elzar's American Federalism; A View from the States (1986) although it is now outdated.

ADDITIONAL NOTE

A Note on Allocation of Powers in the United States: An Intergovernmental Perspective

Dual Federalism?

It is highly doubtful that the American concept of dual federalism ever existed. Dual federalism accepts the doctrine of "two separate federal and state streams flowing in distinct but closely parallel channels" and not meeting except in rare cases, either implicitly or explicitly (Clark 1938:4). Virtually every analysis of federalism up to the 1930s assumed that the U.S. constitutional founders desired dual sovereignties in theory and that they existed in practice (e.g. White 1954). Such assumptions became canons of American political thought, of the pronouncements of public figures in the nineteenth century, later in decisions by the U.S. Supreme Court, and was generally accepted by political scientists as the discipline emerged and developed (Corwin 1934).

Empirical research on federal practice cast new light on the subject. Jane Perry Clark's (1938) pioneering work was one of the first to signal the existence of a co-operative federalism throughout the first four decades of the twentieth century. Then Daniel J. Elazar's (1962) doctoral dissertation research on federal-state relations in the nineteenth century found considerable overlap of functions in practice and considerable cooperation between the federal government and the states in a number of policy arenas. From these findings, he offered an alternative explanation, that of a cooperative federalism that takes "into account the continuous existence of an amount of intergovernmental collaboration equal to, and in fact greater than, the amount of separation …" (304). Elazar's theory of cooperative federalism "assumes a division of structures" but "accepts a system of sharing that ranges from formal federal-state agreements covering specific programs to informal contacts on a regular basis for the sake of sharing information and experience" (305). Finally, in a landmark study of cooperative federalism, Morton Grodzins (1966) expounds his well known "marble cake" (as opposed to layer cake) theory of federalism. "The American federal system has never been a time when it was possible to put neat labels on discrete 'federal,' 'state,' and 'local' functions. Since even before the 1789 Constitution came into effect, it had established a first principle of American federalism: the national government would use its superior resources to initiate and support national programs, principally administered by states and localities" (17).

This does not mean that states and local governments do not have allocated or delegated powers over certain functions, nor that subnational jurisdictions, e.g. states, do not make policies independently within their core areas of responsibility. Indeed, in many cases states make policy without federal involvement. In the U. S., the fifty states have vast arenas of reserved powers, in which they have acted and continue to act. But the fact is that at the founding of the U.S. Constitution, neither the Jeffersonian view of dual and separate powers, with the states having the dominant role and the federal government the limited role, nor the Hamiltonian perspective of one in which the national government would have the dominant role and the states weak yielders of local powers, actually prevailed. Neither theory was adopted, and though both sides maintained their view, in practice a whole new intergovernmental system emerged in this first modern federation.

Unlike post-Franco Spain, where powers have been gradually differentiated and decentralized (Agranoff 1996a), U.S. national powers developed and expanded over a very long period of time through a number of different means (including, as a result of a civil war fought partly over location of powers issues). As a result, a substantial amount of interaction and cooperation in federalism continues to this day (Agranoff 2001).

The Growth of National Power

Constitutionally and in terms of specified powers the national government (alternatively called federal government) is one of limited and enumerated powers, and to ease any doubts, the Tenth Amendment to the U.S. Constitution supports the residual nature of state power. In practice, there has been a gradual accretion of national power that can be attributed to no one force. It is a subject that gets the attention of scholarly volumes (e.g. Beer 1993; Walker 2000; Zimmerman 1992) and only the broad outlines can be identified here.

One would have to start with the role of the U.S .Supreme Court in upholding actions of the other branches of the federal government and in controlling the actions of the states as primary. Three broad doctrines are perhaps most contributory. First and foremost, is the broad use of the federal government's power to regulate interstate and foreign commerce. It is only in the 1990s that the courts have put any type of restriction on the "commerce clause," and these are minor. It provides a rationale for the federal government to step into many areas.

Second, the Constitution gives the Congress authority to act in a number of non-enumerated ways to carry out its delegated functions, that is its "implied powers under the necessary and proper clause" of the congressional powers article. Since McCullough v. Maryland (17 US (4 Wheat) 316 (1819)) the Court has largely taken the view that in order to achieve its ends, certain broad grants of power also include implied subsidiary powers. This doctrine has led to the support of many federal controls, for example the ability of the federal government to put program restrictions on subvented grants of money, even when the assistance is going to a primary state function.

Third, the Fourteenth Amendment to the Constitution, which requires that no state shall deny "equal protection of the laws" to the citizens of its state or those of any other state, has tied a broad range of national civil rights and civil liberties issues to the states. For example, the rights and services entitlements of handicapped persons in state run mental institutions are tied to Fourteenth Amendment guarantees. Indeed, this amendment, which was enacted after the Civil War along with amendments on the abolition of slavery and the guarantee of voting rights, ties the Bill of Rights (Amendments I-X) to the states.

Actions of the U.S. Congress in responding to constituent needs and pressures is another stream of federal growth. While many early settlers were skeptical about the power of central government, over a period of time the challenges of a growing economy and social changes led to growth in government at all levels. Programs were enacted to promote and then regulate railroads, agriculture, vocational education, child protection, war veteran's affairs, children, widows, worker safety, public health and many more. Initially, the federal government had a limited role in gathering statistics and with some funding. But over time these functions broadened, as did the nature of federal action (Wilson 1975). Funding for many programs increased, along with program oversight and funding rules. By the 1970s, an old practice - - regulation - - became prevalent, where normative standards increased and funding decreased. Such policy areas as environmental protection, occupational health and safety, telecommunication, and labor conditions were gradually brought under the federal umbrella. The states were sometimes totally or partially "preempted" (that is, legally removed from powers) and in other cases were required to meet minimum national standards. The Congressional implementation pattern, however, was not to bypass the states, but to use

them as first-line administrative mechanisms. Thus, the legislative branch has had a very large role in nationalization and intergovernmentalization.

The executive branch has also played a role in national growth. It goes without saying that legislative program expansion has led to newer agencies and bureaus that initially promoted clientele-based activities but later became involved in funding and regulation (Wilson 1975). Evolution of the presidential office also contributed to national growth. Originally limited in functions, the emergency surrounding the Civil War and its aftermath was one of the first great expansions of federal executive power, including temporary suspension of certain rights and culminating in what amounted to military occupation of the southern states (to most Americans this period is labeled "Reconstruction"). After the Civil War, America's growing industrialism, coping with periodic economic downturns, American emergence as a world power, involvement in two international wars and other military actions, plus national emergencies, have all contributed to the growth of presidential power at the expense of the states. To take one current example, since the terrorist attacks on September 11, 2001, the Bush administration has taken a number of security measures that basically change the states' emergency response powers, in effect "federalizing" state emergency management responsibilities.

What About the States?

State governments are not restricted in the purposes for which they can exercise power and can legislate comprehensively to protect the public welfare. They have plenary legislative powers and act in a broad number of arenas. While nationalization and intergovernmentalization have eroded exclusive powers, the states possess primary powers over private property and contract law, public health, roads and transportation, education and higher education, economic development, motor vehicle registration and drivers licensing, rural patrol and public safety, election administration and voting (including federal elections), regulation of state banks and financial institutions, corporation registration, licensing of crafts and professions, civil law, criminal law, local government, natural resources and conservation, intrastate commerce, weights and measures, food and beverage regulation and safety, mental health and mental disability services, law enforcement and public safety, prisons and corrections and many others. One might say that these are the equivalents to autonomous community competencies in Spain. Many other programs are shared with the federal government: vocational rehabilitation, job training, assistance payments, health financing for the poor and handicapped, social services, environmental protection, national highways, mass transportation, technical assistance in agriculture, and more. Concurrent powers include the power to tax, not subject to formal preemption, and powers granted to Congress and not prohibited to states (e.g. interstate commerce, economic development), where preemption is allowed. For example, taxation of intellectual property and regulation of online internet services were areas of state involvement long before the Congress considered it. The states are forbidden to exercise such nationally delegated powers as coinage of money, post offices, war declaration, and foreign affairs (which, as will be demonstrated, is changing). These are among the few equivalents to exclusive state competencies in Spain, but the federal government has many shared powers, for example commerce.

State constitutions are much longer than the U.S. Constitution and enumerate very broad powers under their residual authority to act in many areas. A clause of the Alaska Constitution (Art.12 Sect.8) states: "The enumeration of specified powers in this constitution shall not be construed as limiting the powers of the State" (quoted in Tarr 2000: 9). Unlike the federal constitution, states periodically rewrite their constitutions and regularly add amendments. State constitutions differ in some respects because they reflect the states' different political and policy choices, and reflect different choices regarding how they choose to limit governmental power (Tarr 2000).

During the twentieth century state governments grew considerably from their previously passive, decentralized (to local governments) mentality. They too centralized many programs that were the

province of cities and counties. To take one example, public primary and secondary education emerged in the 19th century as almost exclusively local in administration, financing, curriculum, and standards. The 20th century proved to be one of gradual state control over schooling. Today, there are fifty state systems of education, where local boards have more operational than policy and program control, and where most standards and the majority of funding is by the state governments. Likewise, in many policy areas states have increased their commitment to professionalism, expertise, efficiency and contemporary management. As Teaford's (2002) history of state governments concludes, the twentieth century was a period of development of legislative expertise, the rationalization and concentration of administrative authority under governors, and the transfer of power from local elected officials to expert state bureaucracies. The states became significant actors in American government (230). He concludes that the century has proved that contrary to the beliefs of many, history was made in Albany (New York) and Sacramento (California) as well as in Washington, D.C.

State-Local Relations

The U.S. Constitution neither delegates or reserves powers to local governments; there is no mention of them. This leaves them in a situation of obtaining their powers from the states. Since they do not have federal constitutional status, local governments are at the legal mercy of the states, which have imposed the ultra vires rule. A political subdivision can exercise only those powers granted specifically, and those powers came to be narrowly interpreted by state courts (Zimmerman 1995).

At an early period of American history the states largely ignored local governments. They were considered small "civil communities" that in many ways combined to form the colonies and later the states (Lutz 1988). Early state constitutions accepted their authority, along with the legitimacy of their prerogatives and in many states were offered direct representation in state legislatures. Based on the U.S. pioneer tradition, they were considered to be self-organizing and self-governing communities. As Toqueville (1967: 67) observed in the 1830s, "In all that concerns themselves alone the townships remain independent bodies, and I do not think one could find a single inhabitant of New England who would recognize the right of the government of the state to control matters of purely municipal interest."

This pattern began to change by the middle of the nineteenth century as local governments were legally redefined as creatures of state governments. New York was the first state to adopt constitutional provisions regulating cities and other states soon followed. The constitutional shift moved local governments to a status where their powers are derived from and subject to the sovereign state legislature rather than as component units of a quasi-federal government (Tarr 2000). This "unitary" relationship of subordination of local governments was solidified in legal doctrine through the now famous "Dillon's rule." It is based on a state court case where Judge John Dillon ruled that municipalities could exercise only those powers that were expressly granted by the state or that could be reasonably considered to be indispensable to those declared purposes (Clinton v. Cedar Rapids and Missouri River Railroad, 24 Iowa 455, 476[1868]). This clearly ended previous notions of imperium in imperio among local governments.

While "Dillon's rule" remains in good standing in a legal sense, it has been modified in practice over the years. Most important has been the states practice of granting of "home rule" or the authorization of broad discretionary authority to petitioning local governments, particularly municipalities. A home rule government can draft its own charter, choose its form of government (there are four main types in the U.S.), organize its administration, tax, regulate and so on, subject to state law and constitutional provisions. Local governments have also been able to expand their discretionary authority from the states through several other means: where state "political cultures" value local governments, through constitutional revision, due to part time and short term state legislative sessions, on the lobbying strength of associations of local governments and of local officials, because of limited state oversight and supervisory efforts, by judicial widening of local authority, and, through the pressure of rapid population

growth which encourages local officials to exercise their authority to the fullest (Zimmerman 1995: 5, 8). In some states, "Dillion's rule" has been effectively reversed by legislative actions that authorize local government to tax, regulate, and deal with matters of local concern unless such matters are prohibited by state statute.

A creeping intergovernmentalization, based on the aforementioned centralization of state powers and more federal government involvement, in effect has tied the states to local governments regardless of legal doctrine. States have become highly involved some locally administered programs, for example, education, law enforcement and criminal law, land use, food regulation and safety, elections administration, regulation and licensing of professions and occupations. In these arenas, local discretion is regularly set aside by act of the legislature, in effect pre-empting local discretion. A good example is that of food regulation and safety. Most local governments operate their own inspection units, but the code of regulations is virtually that of state governments. As a result, local units merely implement state codes. As mentioned, education as well has become increasingly standardized in terms of curriculum, alility examinations, qualifications for graduation, staffing patterns, approved textbooks and in many other areas. At the same time local governments have become federalized, as federal-state programs, e.g. in environmental protection, occupational health and safety, unemployment, highways, mass transportation are extended to local governments. Also Supreme Court rulings in such arenas as franchising and merchandising, hiring practices, wages and hours, accessibility of the handicapped, and tort liability also bring federal decisions to local governments through a different route.

Finally, it should be mentioned that in the U.S. there are many tiers and types of local governments. Basically, county governments (equivalent to comarcas in Spain) are administrative subdivisions of their states and carry out state functions on the local level. But in large urban or metropolitan areas they also carry municipal functions in non-municipal territories. Municipalities hold the status of citizen initiated public corporations, which under their charters provide those services their citizens choose, but they are also subject to state mandated services. Since the U.S. does not use the conventus system of extending municipal boundaries like Spain, townships or towns in most of the country serve the rural areas. They now have very limited functions, such as rural roads, emergency financial relief, rural fire safety and sometimes basic justice. In the New England states, however, towns serve most city and county functions, and are the most important unit of local government.

Then there are numerous "special districts" (equivalent to the mancomunidad in Spain), including school districts, water districts, sewer and sanitation districts, transportation districts and dozens more. These districts are voluntarily created by local officials and citizens. They often (but do not always) cross municipal lines, have taxing authority, and exist for single or for very limited purposes. Because they are voluntarily created, they may not be organized in all parts of a state. They have emerged in the U.S. for three reasons: to remove certain service functions from the politics of local governments; as a means of "sidestepping" or avoiding state-imposed tax limitations on cities; and as a means of creating economies of scale in a service function, both in terms of operational efficiency and to build a sufficient taxation base to operate economically.

At the mid-point of 2002, there were 87,900 governmental units in the United States, of which 87849 were local government jurisdictions. The 50 states include 3034 counties, 19,431 municipalities and 16,036 townships. Special purpose governments number 48,878 of which 13,522 are school districts (U.S. Bureau of the Census 2002). The number of units of local government varies considerably by state, although most states have large numbers of them. The range is from only four in Hawaii to over 11,000 in Illinois (and there is little doubt that this number is climbing). The trend has been a decrease in the number of school districts, due to state encouraged consolidation of small and rural districts, and an increase in all of the other types, primarily due to the pressures of urbanization, the demands of state

standard-setting, and because of tax limitations. Urbanization, of course, leads to increases in municipalities.

In sum, in all but a few states, local government in the U.S. is a maze, different in each state, made complicated by so many different patterns of usage. It is a subject that is no doubt is as confusing to the non-American as is the sport of baseball.

Outward Intergovernmentalism: International Affairs

One emergent arena that is changing the status of power allocation in the U.S. federal system is intermestic or foreign affairs involvement by states and cities. Foreign affairs has proved to be “the last policy domain to become intergovernmentalized” in federal countries (Kincaid 2000). The international involvement of constituent units in the U.S. raises interesting questions about the nature of federalism. Foreign affairs were once thought of as the exclusive province of the general government. Political scientists in the U.S. of an earlier era (including this author) were taught the principles embodied in the important case, Missouri v. Holland (252 U.S. 416[1920]), the migratory bird treaty with Canada that overrode states’ powers in regulating hunting and upholding federal government supremacy under its treaty-making power. Today that case is, of course, far from the last federal word on the subject of foreign affairs powers. While the U.S. federal government engages in a greater number of international treaties and agreements, it also deals with enforcement of foreign agreements made by state and local governments.

Greater state and local involvement in foreign affairs is brought on by such forces as a globalizing economy and the information revolution. It means that subnational governments want more of a role in foreign “policy-making” as constituent units try to maximize use of their own “policy spheres” internationally. They are increasingly asserting their rights to participate in their foreign policy-decision processes at the federal level.

This has generated greater federal government effort in coordination with state and local officials on intermestic issues. For example in the U.S. the National Governor’s Association consults regularly with the Office of U.S. Trade Representative, and since 1988 it has an Intergovernmental Policy Advisory Committee to advise the president on state and local government concerns. Many states cooperate with such federal agencies as the U.S. Small Business Adminsitration.

State and local “diplomacy” can lead to problems of consistency of policy. For example, in relation to matters of trade and development, these multiple relationships often challenge the federal government’s ability to speak with a single national voice on international economic issues. U.S. state and local governments have been in sharp disagreement on commercial connections regarding apartheid era South Africa and with Northern Ireland. Sometimes non-treaty international pacts, agreements, and understandings by subnational governments, e.g. with Chinese provinces, have raised national-state conflicts, as have matters of states providing direct financial subsidies for exporters, which is contrary to U.S. policy. Perhaps the largest arena of federal-state controversy in the U.S. is in that of direct foreign investment. The federal government limits such investments and requires open disclosure of interests, whereas the states want to protect their ability to create and protect jobs and to promote business expansions. Earl Fry (1990: 125) once predicted that state and federal governments could someday be on a collision course in the area of foreign investment.

Upward-Downward Intergovernmentalization: The Legacy of the Welfare State

Despite the skepticism of many social democrats, the U.S. indeed has developed a welfare state, albeit in a less universal fashion than that of many other countries. It reaches back to the post-Civil War period

(Skocpol 1995). Like most other federations, it was built on a multi-tier basis, where both federal and state governments initiated their own policies, and many programs involve the sharing of all levels of government. The overall effect of the welfare state is to reduce compartmentalized government or neat allocations and to increase interdependence. "Policy unites what constitutions divide" (Rose 1985: 21).

Intergovernmentalization has presented tremendous challenges to the autonomy of the levels in the U.S. First, national programming has increased, and the federal government has moved into many areas traditionally thought of as state or state-local. In the attempt to seek nation-wide standards and equity across states, that is to have national programs (which constitute admirable goals), national programming has obviously come at the expense of state and local decision making power. The most obvious case for nationalization of this type would come in regard to health financing and assistance payments programs. While competencies and powers tend to legally remain in subnational governments, the desire for minimum standards and equity across states intergovernmentalizes these programs. States appear to be in regular struggles to maintain "the final say" (as the famous LOAPA Spanish Constitutional Tribunal sentence maintains) over these competencies. While there have been attempts to operate programs on a shared federal-state basis, the policy development venue has definitely shifted upward while implementation venue has moved downward over the past half-century.

Second, of greater threat to power separation is the previously mentioned tendency toward federal preemption of state regulatory programs. Granted that some programs, for example air traffic control, naturally lend themselves central capture. While "The changing times and technology will always generate some instances of competency capture," in vast areas of state government regulatory policy, for example health and safety, telecommunication, and aspects of environmental policy, the federal government has made the states vacate areas that were traditionally in their portfolio of programs (Zimmerman 1993). Thus, federal accretion of programs and program regulations presents considerable threats to state autonomy (Kincaid 1998).

Third, increasing fiscal flows tied to grants and shared programs from the federal to state governments can be threatening to the revenue/expenditure dimension of subnational federal autonomy. For example, by 1978 federal aid accounted for 22 percent (up from 5 percent in 1954) of state and local revenue, largely because of increased social welfare expenditures. This growth, according to Bahl (1984: 22), had the effect of reducing the role of state governments in overall public financing and increased the dependence on the federal government. While these spending ratios have slightly receded over the past two decades, the general trend remains.

A fourth and hidden factor is the increased managerial and transactional costs that are required to maintain and operate a heavily loaded system. Intergovernmental relations in the United States places great emphasis on the actions of administrators as they engage in the games necessary to coordinate programs, and to administer them in the interest of their jurisdictions (Agranoff 1986; 1996b). This managing across boundaries can engulf up to 20 percent of administrators' time, and has developed into rather sophisticated strategies and techniques. Although not every jurisdiction at state and local levels chooses to regularly engage the next highest level of government, those that do sometimes comply, sometimes bargain, and other times advance jurisdiction-based needs and strategies (Agranoff and McGuire 2003). It is an involved game of management across the boundaries of jurisdictions.

Lateral Intergovernmentalization: Governance Networks

The past few decades have brought recognition that a new overlay of governance exists alongside intergovernmentalization. While government refers to the formal institutions or bodies that establish the constitutional order, defend the territory, raise and distribute revenue, establish the laws and regulate the territorial organization of the state, governance represents goverments' attempt to guide, steer, control or

manage the wide range of new nongovernmental actors in civil society, and in the economy, to jointly formulate and implement policies and programs (Hirst 2000). Fredrickson (1999) refers to the increasing disarticulation of the state in the U.S., where there is an increasing gap between jurisdiction and program management. The governance phenomena occurs through networks of actors. In the United States governmental levels are not necessarily supplanted, but nongovernmental organizations involved in the work of government represent lateral concerns at most levels (Agranoff and McGuire 1998; 2003).

Governance networks are new frameworks for policy and program development and implementation, comprised of broader constellations of stakeholders: governmental officials and leaders, public and private nongovernmental organizations, working on public issues (Agranoff and McGuire 2001a). They exist at all levels of government, and do not supplant traditional public functions, but become important elements of a community of public decision and operations (O'Toole 1997). They are similar to the urban "regime" identified by Clarence Stone's (1989) research on Atlanta and explicated into a theory of urban politics by Stoker and Mossberger (1995). Agranoff and McGuire's (2003) study of 237 cities in economic development found that most are involved in extensive policy making, strategic and project partnerships with a variety of private and nonprofit groups, along with other local governments, as well as with state and federal governments. Governance networks differ from corporatism models in many ways, the primary differences being that a variety of interests, often differing, are brought to the decision structure and that government is not the petitioned by a set of closed interests for settlement, but the various interests decide with and implement with government. While the question of just how much power these networks actually possess is open (Agranoff 2003), it is clear that their prevalence represents a clear "outward" complication for just where responsibilities are allocated and exercised in the complex U.S. federal system.

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