

Federalism, Homeland Security and National Preparedness: A Case Study in the Development of Public policy

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INTRODUCTION

The purpose of this article is to describe an ongoing research project that explores the relationship between federalism and homeland security national preparedness. The challenges associated with this area of public policy require solutions for which the existing structures and paradigms must be changed to ensure the greatest level of preparedness possible.

There is a great deal to say on the subject of the policy environment of homeland security. Fundamental to any discussion should be a strong foundation in federalism and the activities associated with the intergovernmental relations found in the homeland security arena. In the aftermath of the tragic events of September 11, 2001, the government of the United States launched one of the largest reorganization efforts since the passing of the National Security Act of 1947. In a single piece of legislation, twenty-two separate organizations were brought together to form the Department of Homeland Security (DHS). As with any new organization, the growth, maturity, and evolution of the department have been anything but smooth. Nonetheless, the Department was charged with preventing, protecting against, responding to, and recovering from acts of terrorism visited on the United States and its citizens.¹ The department, only three years old, has been challenged on a number of fronts, not the least of which has been the development of a national preparedness system. National preparedness, as outlined in Homeland Security Presidential Directive-8 (HSPD-8), is to be enhanced through a series of policies that will allow federal, state, local, and tribal governments to collectively and comprehensively address catastrophic events, especially those that are the result of acts of terrorism.² Thus, HSPD-8 has been a foundation document, spawning a series of other directives, guidelines and reference documents focused on developing a national preparedness system. As identified by Keith Bea of the Congressional Research Service, the key references for homeland security national preparedness are:³

- The National Planning Scenarios, 2004;
- The National Response Plan (NRP), 2004;
- The National Incident Management System (NIMS), 2004;
- The Universal Task List (UTL), 2005;
- The Interim National Preparedness Goal (The Goal), 2005;
- The Target Capabilities List (TCL), 2005.

A broader context for homeland security national preparedness is provided through:

- The *National Homeland Security Strategy*;⁴

- Homeland Security Presidential Directive-5, *Management of Domestic Incidents* (HSPD-5);⁵
- The transcript of a speech given by then-Secretary Tom Ridge to the National Association of Counties in March of 2004.

In Secretary Ridge's speech, and in each of these documents, specific reference is made to federalism as the guiding principle in meeting the national demand for preparedness or to the need for extensive coordination with state and local governments to arrive at the best possible levels of preparedness for the nation.

Though HSPD-8 was issued in late 2003, only during the summer of 2005 was the complete list of documents finally available for review and comment. Subsequently, though the public policy development process was begun in early 2004, only with the issuance of the National Preparedness Goal did the process begin in earnest.

After first becoming involved in research related to homeland security in 2003, I became immersed in the policy arena in the spring of 2004.⁶ In order to fully prepare for advising both clients and employers on policy matters for homeland security, I examined foundational documents issued by the national government and the nascent academic literature related to the topic. What became immediately apparent was the fact that, for the first time in decades, the nation's essential philosophy of government needed to be reexamined. From the first issuance of the *National Strategy for Homeland Security*, it became clear that a common understanding of federalism on the part of all levels and institutions of government is the guiding principle for whatever lies ahead.⁷ However, as has become apparent over time, the national government – both the legislative and executive branches – has a different perspective on federalism than do other levels of government in the nation's federal system.

In the second part of this article, I discuss three contemporary theories of federalism, each found in today's public policy arena. The importance of discussing these theories is that, although one form of federalism seems to dominate the current environment, the other forms uneasily coexist. These confront policy makers, decision makers, and practitioners with challenges related to acknowledging perspectives that might differ significantly from their own.

The third part of this article outlines the current homeland security national preparedness environment. This environment is populated by innumerable stakeholders whose perspectives on homeland security are found most often to conflict at the most fundamental level. As the goal of the national preparedness public policy is to gain the highest level of capability with the resources available, the discussion must include federal grants-in-aid in general and homeland security grants-in-aid in particular. Part four discusses proposed measures, based on the results of qualitative research and analysis, which may provide comprehensive methods for assessing national preparedness and formulae for distributing scarce federal grants-in-aid available for enhancing homeland security national preparedness.⁸

Research Methodology

The foundation of this research effort is an extensive and on-going literature review of the theories of federalism unique to the American experience, economic theories that lend themselves to the study of both federalism theory and intergovernmental relations, and informal interviews with homeland security professionals, government bureaucrats, academics, practitioners, special interest group representatives, and, where possible, elected representatives of the people. As I broadened the literature base for this research effort, three dominant theories of federalism emerged: Cooperative Federalism, Coercive Federalism, and Competitive Federalism. Descriptions of these theories will be presented in the next section, but one in particular deserves mention as having influence on the methodology used here. In the study of Competitive Federalism, one must examine the Public Choice theory of economics.⁹ This theory of economics provides an excellent base from which one can more accurately assess state and local intergovernmental behaviors.

CONTEMPORARY THEORIES OF FEDERALISM: POSITIVE AND NORMATIVE PERSPECTIVES

What follows is a brief review of the history of the evolution of American federalism and the development of operational theories associated with Collaborative Federalism, Coercive Federalism, and Competitive Federalism. These theories are dominant in contemporary American history and, because of the way in which each theory manifests, they are in conflict. The following paragraphs identify the characteristics of each theory and present those characteristics as postulates from which to make comparisons when analyzing intergovernmental relations found in the current homeland security public policy arena.

A Brief History

Andreas Follesdal highlighted the contributions of Johannes Althusius in suggesting that two levels of government have sovereignty over the same people in the same territory.¹⁰ This notion of *federalism*, a concession on the part of those ruled to be ruled coincidentally, is based on striking a *covenant* to be so ruled. *Foedus*, the root word from which federalism is drawn, means just that – a covenant. This covenant may manifest itself in any number of arrangements from a confederal arrangement of states – which relies less on a strong central government and more on the individual activities of each member state – to a fully unitary arrangement where the states and local jurisdictions are but extensions of a strong central government.¹¹ The American experience, after suffering a confederal arrangement that did not work, struck out to find a balance that became the foundation of the American federal experience, arranged through the covenant found in the Constitution. The Constitution – the covenant – arranged for a shared governance of the same people in the same territory. This dual-sovereignty manifested itself in what became known as dual federalism,

where each jurisdictional entity provided those public goods and services accorded to that level.

The arrangements found in the Constitution are specific and ambiguous at the same time. In Article I, Section 8 the enumerated powers (specific) are left to the legislative branch of the national government and in the Tenth Amendment the reserved powers (ambiguous) are left to the states and the people. The tensions between the states and the central government were at the heart of the Connecticut Compromise and the very essence of the debate played out in the Federalist and Anti-Federalist papers supporting and denouncing ratification of the Constitution, respectively. Any conflicts arising between the states and the central government are to be adjudicated by the Supreme Court. The Marshall court did just that in *McCulloch vs. Maryland*, establishing the supremacy of the Constitution, and hence the laws of national government, to those of the various states.

The major tensions in the past, continuing to present times, have been related to the struggle for power between the states and central government. In the history of the nation, however, major historical events with potential for cataclysmic outcomes have inevitably allowed for more centralization of power in the national government.¹² The first real example in the country's history was the Civil War, where the very causes for which each side fought were preservation of the union on the part of the North and states' rights in the South. How the nation was to deal with the institution of slavery may have been the most visible reason for the war, but union and nullification were fundamental. The centralization of war powers in the central government of the North ultimately contributed to that side prevailing. Subsequently, the passing of the 13th, 14th, and 15th Amendments to the Constitution further institutionalized the movement toward centralization.¹³

In the years between the Civil War and the Great Depression, Congress began exercising its power through application of the commerce clause in the Constitution. Perhaps the single greatest event to influence the struggle for power between the central government and the states was the adoption of the 16th Amendment to the Constitution, allowing the national government to impose an income tax on its citizens to support the activities of the government. Though the income taxes and methods of collection found in the country in 1914 would be hardly recognizable today, the inevitable swing of the pendulum of power between the states and the central government moved decidedly toward the central government, with virtually no chance of returning to anything resembling the dual federalism existing before the institution of a national personal income tax. Over time, the broadening of the base of taxation and the exponential increase in revenues collected allowed the national government to support more and more programs, providing more and more of the public goods and services seemingly demanded by a wealthier citizenry. With adoption of the 17th Amendment, allowing direct election of senators by the voting populace, state governments arguably lost their last source of leverage in the national legislature. One can reasonably conclude that passage of the 16th and 17th Amendments changed American federalism forever.

The next potentially cataclysmic event was the Great Depression. To combat the effects of the economic and social crises brought on by this event, President Franklin Delano Roosevelt championed the New Deal. The New Deal was comprised of massive public spending programs designed literally to make government the major force in the economy of the nation. Following the economic teachings of John Maynard Keynes, the national government, through these spending programs, stretched out its arms and gathered more power away from the states. Through the creation of grants-in-aid, returning collected taxes back to state and local governments, the national government began to preempt state and local governance prerogatives. As the national government created more and more programs, the Congress authorized the establishment of regulatory agencies to oversee these programs. As the states could not possibly deal with the persistent economic malaise on their own, the national government was acting in the national interest to do whatever necessary to bring the country out of its economic doldrums. What was clear was that private enterprise and laissez faire economic policies were not going to move the country forward.¹⁴

Another element of this perfect storm of centralizing tendencies was the capitulation of the federal courts to the legislative branch. For the first time in American history, the Supreme Court began to consistently side with the national legislature as the Congress pressed harder to exercise power under the commerce clause.¹⁵ By 1937, Congress had fully established itself as being the main force in American governance. Thus, with a strong executive in President Roosevelt and a very strong Democrat majority in Congress, the nation headed into the Second World War with the central government very much in control of American governance.

At the end of World War II, the tax base in America had expanded to include some eighty-six percent of the workforce.¹⁶ The nation was wealthy and gaining a social conscience relative to civil and individual rights. Again, the best way to ensure that “national priorities” received national attention was through the exercise of power on the part of Congress. Having gained traction during the depression years, federal grants-in-aid became a major mechanism for ensuring these national priorities were accomplished. To fully implement these social programs, however, Congress required the cooperation of state and local governments. This governance arrangement, fully documented by Martin Grodzins and Daniel Elazar, became known as Cooperative Federalism.¹⁷ The principal assumption of Cooperative Federalism was that the role of each level of government was agreed upon through a negotiation process. Grodzins’ notion – that American federalism was never a layer cake (dual federalism) but rather a marble cake where all levels of government are required to cooperate on all matters of national interest – seemed appropriate. Elazar, in advancing the theory of Cooperative Federalism, articulated the virtues of such arrangements, particularly for solving the issues of the time.

With the ushering in of the Great Society by Lyndon Johnson and the new generation Democrat-controlled Congress of the 1960s, the nation witnessed the mutation of Cooperative Federalism into Creative Federalism, where federal grants-in-aid programs exploded and funding no longer went to places (like state and local governments) but began to be disbursed to individuals through various

social programs.¹⁸ The promulgation of grant programs led to the inevitable expansion of the national government through the creation of more regulatory agencies to oversee the new programs. Of particular note was that nearly all the federal grants-in-aid programs were categorical grants, where funds were reallocated to achieve specific purposes through compliance with specific instructions. More pernicious, however, was that many of these grants involved direct preemption of state and local prerogatives (at best) or full circumvention of these levels of government (at worst).¹⁹ As nearly all of the Great Society programs still exist, the apparatus and mechanisms for the mutated Cooperative Federalism are still in place and functioning today.

In the mid-1970s, American voters became irritable over ever-increasing tax burdens and the lack of perceived benefit received from tax contributions to the various levels of government. Subsequently, tax payers became more sensitive to high marginal tax rates and began demanding accountability from elected representatives for the money sent to the treasury. Though Ronald Reagan was the Galahad riding to the rescue, the tax cuts of the 1980s did not stop the Congress from continuing to exercise its power. Categorical grant programs continued to be characterized by stringent compliance coming at the end of strengthened regulatory control, thus allowing the national government to coerce needed behaviors through the power of redistribution of funds. State and local governments had become dependent on federal funding, so compliance was the best possible political arrangement.

Many of the programs, however, were funded for only a short period of time or were under-funded from the start, thus creating a financial burden for the states and local governments and requiring them to expend own-source revenues to keep programs alive.²⁰ In order to provide not only the national programs, but those preferred by the citizens of the states and local governments as well, taxes and fees had to be raised to cover the costs of all the goods and services provided by those governments. As a result, state and local taxes doubled from 1960 to the late 1990s.²¹ Further, the courts continued to support the usurpation of state and local power by stressing that the states had recourse “through the political process” rather than reigning in an ever-expanding central government. This brand of federalism, labeled Coercive Federalism by Kincaid, is still prevalent, in spite of such legislative remedies as the Unfunded Mandate Reform Act of 1995, passed by the 104th Congress.²² The proliferation of categorical grants remains unabated.

At the state and local level, however, governments compete for citizens so that tax revenues remain strong and citizens can enjoy the desired level of public goods and services provided by the local or state jurisdictions. The competition is manifested in economic development actions, public education, infrastructure, and revenue schemes that provide an acceptable balance between the taxes required and the goods and services provided to the consumer-voter. Consumer-voters express their preferences by electing officials who act on those preferences. If the tax burden becomes too onerous, or the goods and services do not meet the expectations of the consumer-voter, then the consumer-voter may leave the jurisdiction for one where his or her preferences are better met with an appropriate and acceptable tax burden to support those goods and services

demanded.²³ If the “exit” option is not convenient, then the consumer-voter still has a “voice” in the political process, voting for or against representatives who do, or do not, represent the preferences of the individual consumer-voter.²⁴ As one moves from local government to higher levels, the exit option becomes more expensive in terms of transaction and opportunity costs. The exit option at the national level, though more feasible in the current global environment, is still an unlikely option, allowing the national government to continue its monopolistic behaviors relevant to the provision of public goods and services. State and local governments are compelled to compete with each other and must tolerate or mitigate the monopolistic behaviors of the central government.

The above description of competitive interaction among governments is that of Competitive Federalism. Based on the idea of “public choice” introduced by Charles Tiebout in 1956 and expanded upon by such noted economists as James Buchanan and Gordon Tullock, Competitive Federalism resonates strongly with state and local governments across the nation. The idea that the political processes at the state and local level are roughly analogous with competitive market behaviors is not only intriguing but also compelling. As state and local governments have become more professional and capable, competitive influences play a larger and larger role in influencing legislative and executive behaviors at the state and local level.

Now that one can appreciate the historical evolution of these three theories of federalism, what then are the postulates or tenets of the three theories analyzed later in this article? For Cooperative Federalism, a survey of the literature suggests the following conclusions about the relevant tenets of this theory. Cooperative Federalism is characterized by:

- A “first principle” being the national government would use its superior resources to initiate and support national programs, principally administered by state and local governments.²⁵
- The states are well-integrated parts of the overall American civil societies in their own right with their own political systems.
- The states have preserved their integrity not through a sharp separation of political systems from the national government but within an intricate framework of cooperative relationships that preserve the states’ structural integrity while tying all levels of government together functionally in the common task of serving the American people.
- *These cooperative arrangements are negotiated between the levels of government (emphasis added).*²⁶
- Each level of government possesses certain autonomous powers that may be exercised cooperatively.
- No level of government may coerce any other to action.
- The roles of Congress in Cooperative Federalism are facilitation and leadership.

- Congress uses its power to regulate interstate commerce to assist states by prohibiting the use of such commerce in violation of state laws.²⁷

Cooperative Federalism seems to work best when national priorities are managed through negotiated arrangements among the various levels and entities of government.

What, then, are the postulates and characteristics of Coercive Federalism? Coercive Federalism can be characterized by:

- An activist Congress with tendencies to nationalize all issues.
- The proliferation of federal grants-in-aid programs with stronger and tighter conditions and more preemption of state prerogatives.
- The shifting of federal grants-in-aid from places (state and local governments) to individuals.
- Increased Congressional pressure on state and local tax and borrowing options.
- The decreased willingness, at all levels, to cooperate in such federal programs as Medicaid and transportation programs.
- The federalization of criminal law.
- Increasing interference in the business of state and local governments by the federal judiciary.
- Increased use of under- or unfunded mandates by Congress to coerce action and impose taxes on constituents, thus blurring responsibility and accountability for levels of taxation.²⁸

Subsequent sections of this article will demonstrate the direct application of these tenets to the current federal grants-in-aid programs, including those related to homeland security.

What, then, are the tenets of Competitive Federalism? Competitive Federalism is characterized by:

- Citizens cooperating through the exchange of goods and services in organized markets; such cooperation implies mutual gain. Two or more states may find it mutually advantageous to join forces to accomplish certain common purposes. They exchange inputs in securing the commonly shared output.²⁹
- Through the exercise of exit options or through voice, preferences concerning bundles of goods and services and the taxes needed to support procuring those goods and services, are revealed by the consumer-voter to elected representatives.
- The more homogeneous the constituency, the clearer the preferences.³⁰
- The decentralization of power – to that level where the tax base equals the geography of services provided – leads to the most efficient use of resources in the public domain (Principle of Subsidiarity).

- Each level of government finances its assigned and chosen tasks with the funds it raises itself (Principle of Fiscal Equivalence).
- Each level of government has exclusive, clear, and assigned tasks, supporting the revealed preferences of its citizens (Principle of Exclusivity).
- The condition that, if a good or service produced in one jurisdiction is satisfactory, the good or service ought to be acceptable across all levels of government (Principle of the Rule of Origin).³¹

As state and local governments are the governments closest to the people, one can easily see the compelling adherence between Public Choice theory and Competitive Federalism.

Each theory is likewise characterized by both positive and negative attributes, manifested in the institutional behaviors which, depending on perspective, lead to tensions among different levels and entities of government. In the next section, these tenets will be applied to the current environment of public policy related to homeland security. Through analysis of intergovernmental relations, I will identify those favorable characteristics of each theory which should be applied to form a new theory of federalism based on the concept of collaboration.

THE CURRENT ENVIRONMENT OF HOMELAND SECURITY— POLICIES, PRACTICES, AND TRENDS

This section examines the current homeland security public policy environment. The topics addressed are the Legislative (Congress) and Executive (agencies and departments) branches of the national government, state governments, local governments, federal grants-in-aid writ large, and homeland security grant programs in particular. Subsequently, after descriptions are completed and the environment analyzed, the theories of federalism described in the previous section will be applied to ascertain the varying levels of influence the dominant theories might have on the current environment. Based on the findings and conclusions of the analysis of the current environment, an alternative theory of federalism that is better suited to the current environment will be advanced. The alternative theory and subsequent behaviors required by the various actors will be addressed in the final section.

The attacks of 9/11 represented another event of potentially cataclysmic consequences for the nation. As has been true in the past, such events typically lead to a movement in the federalism power pendulum toward centralization of power in the national government. Within days of the event, the Congress passed the controversial USA PATRIOT Act, placing extraordinary strains on civil liberties in the country; in 2002 it passed the Homeland Security Act to create the Department of Homeland Security. Similarly, emergency funds were appropriated and allocated to all levels of government to “combat terrorism.” The nation reeled from the enormity of the attacks but was not long in attempting to return to normal. The return to “normal” did not seem to be as difficult for the citizens of the country as it was for the political institutions of the nation.

Congress, to this day, continues to provide more oversight to homeland security (a department with a budget of some forty billion dollars a year) than it does for the Department of Defense which has a budget ten times larger. Today, all 100 Senators and 412 of the 435 Representatives, on some sixty-six committees or subcommittees, have assignments with oversight of the Department of Homeland Security. No other department enjoys as much supervision. Though the initial appropriations for homeland security were substantial, in each subsequent year since the attacks homeland security federal grants-in-aid have declined.³²

There may be many reasons for this hyperactivity and conflicting behavior, but much of the literature points to federal grants-in-aid funding focused more on representatives “doing well” as opposed to “doing good.” Such has become the behavior of elected representatives at the national level. Special interests, regulatory agencies, and the elected representatives have formed the proverbial “Iron Triangle,” which tends to exclude the preferences of consumer-voters from being the primary influence on elected officials. Other evidence indicates that more homogeneous constituencies, higher margins of victory, and lower voter turn-out have loosened constraints of representative behavior. Homeland security grants-in-aid funding is no different. It is no accident that each congressional district in the country has received some form of homeland security grants-in-aid funding. Unfortunately, the homeland security grant funding represents more “talking the talk” than “walking the walk.” Although homeland security seems to be on the tongue of every representative, less than one percent of the total redistribution of funds to state and local governments is found in homeland security grants. No fewer than eleven different executive branch departments distribute more funds to state and local governments than does DHS.³³

On a larger scale, Congress has continued to rely on categorical grants as the principal means of preempting state and local prerogatives, influencing state and local behaviors and nationalizing issues that may affect most or all the states in the union without being national in nature. Congress and their Executive Branch agency accomplices force state and local governments to comply with more and more conditions, increase the requirements for reporting, and diminish the accountability of the national government through the persistent pressure to increase taxes at the state and local level to accommodate administration of these programs. The level of redistribution of funds as a portion of total state and local revenue has remained stable for the past twenty years, while state and local revenues as a percentage of total governmental revenues have doubled during the same period.³⁴ Today, Congress funds (or doesn't fund, depending on one's perspective) more than 660 programs through categorical grants. In fiscal year 2004, Congress appropriated more than \$460 billion for these programs.³⁵ State and local governments would prefer that the Congress and agencies distribute funds through a block grant system. This would allow sub-national governments the flexibility to meet the preferences of the citizen-voters and to observe broader guidelines or standards, rather than adhering to strict, narrow items of compliance for programs that are inherently inefficient.³⁶

Unlike all but one state in the union, the national government is not compelled to balance its annual budget, thus allowing further erosion of its accountability

for spending and revenues. Deficit spending has been the norm for all but five of the last seventy-five annual national budgets.³⁷ Control of Congress by one party or the other does not seem to make a difference.

The environment at the state and local level is quite different. First, the sub-state levels of government are typically sanctioned or chartered by the respective state legislatures. Second, the sheer number of governmental units below the national level is compelling on its own. When all types of governmental units are considered, including special-use districts like water, fire, and school districts, there are some 89,000 jurisdictions below the national level.³⁸ Of the 89,000 or so jurisdictions, some 39,000 are what would be considered general-purpose jurisdictions that provide public goods and services, are funded through some form of tax or fee structure, and are administered by elected officials. These jurisdictions are the units of government closest to the people. In all but one state (Vermont), and in nearly every chartered sub-state governmental entity, a balanced annual or biennial budget is required to meet the preferences of the citizens in the respective jurisdictions. Similarly, forty-six of the fifty states have budget cycles that are opened and closed at times out of alignment with the federal budget cycle, with most states on a July to June cycle.³⁹ The necessity to balance budgets and to pay as one goes is a direct reflection of the competitive influences at the sub-national governmental levels. Rather than state and local governments being allowed to collude and become price searchers, governments below the national level must become price takers and compete for citizens from which to extract the price of providing public goods and services.

Although there are decided advantages to forcing state and local governments to operate with balanced budgets, these same levels of government become susceptible to fluctuations in the national economy. For example, if the country enters a general recession, the impact of higher unemployment and subsequent reduced tax revenues affects sub-national governments more than the national government. However, when the national economy begins to turn around, individual states tend to recover faster than the nation as a whole. Witness the data on post-9/11 state revenues: over half the states showed surpluses in state budgets within two years of the attacks and nearly every state showed a surplus by fiscal year 2005.⁴⁰ The behavior of the states, however, when surpluses begin to appear again, is influenced by competitive forces. Typically, states put more money in “rainy day” funds, lower taxes, or increase public goods and services, making themselves more appealing to consumer-voters.

State and local governments also depend on federal grants-in-aid to maintain programs that may or may not be preferred by consumer-voters. The bargain to be made is whether or not to accept the money and the subsequent costs of managing these categorical grants, or to turn down the funds, thus allowing state contributions to the national treasury through personal income taxes to be spent in other states rather than in their own. The pernicious nature of the categorical grants is that benefits are often concentrated to serve particularized clientele with costs dispersed across the nation. When states make the decision to expend own-source revenues on categorical grant administration, state and local elected officials must decide on what own-source programs to cut, what taxes to increase, or what combination of the two will be best tolerated by the consumer-voters.

Estimates are that state and local governments will spend some \$220 billion in own-source revenues to administer the distribution of some \$460+ billion in federal grants-in-aid. For programs like the infamous No Child Left Behind, some states estimate having to spend seven dollars for each dollar received in aid.⁴¹

Some of the federal grants-in-aid programs have been in existence for decades, allowing state and local governments some predictability in projecting the funding levels required for administration. Sub-national level governments have built the appropriate mechanisms to deal with these long-standing programs. State and local executives and representatives have priorities generally reflected in the level of distribution of federal grants-in-aid. Typically, health care, income security, education, transportation, and economic development take up some ninety-one percent of the federal grants-in-aid redistributions and are part of established administration.⁴² However, the situation relating to homeland security grants is a bit more complex.

Since the State Homeland Security Grant Program was established, Congress and DHS have come under considerable criticism for the slow pace of deploying funds to state and local governments. The grant application process, the conditions of compliance, the reporting requirements, and the asymmetries of budget cycles and cash reimbursements reflect insensitivity to the operating conditions of state and local governments seldom revealed in other programs. Over the past three years, the number of pages of instructions for applying for homeland security grants has increased from forty plus pages for fiscal year 2004 to over 200 pages for fiscal year 2006. The steps for receiving grants are as follows:

1. Funds are appropriated for homeland security purposes as part of the national government budget cycle, with the fiscal year commencing on October 1 but with funds typically not available until November or later.
2. States and their sub-state general purpose jurisdictions apply for grants, indicating efforts to comply with required conditions such as NIMS compliance or homeland security planning. Conditions for expenditure of funds are closely controlled. Each state aggregates individual grants and submits them to the department.
3. Once plans are approved, state and local governments must then purchase according to the plans submitted, paying for purchases out of own-source revenues. Once purchases are made, receipts are turned in to the state and then passed along to DHS for reimbursement.

One can see immediate problems with this approach. First, there are asymmetries in state and local budget cycles as related to the federal cycle. States are typically well into their respective fiscal years when the federal government appropriates the funds for that year's homeland security grants. States have no way of predicting or accounting for funds that might be available. Second, state and local governments are required to have balanced budgets, so any purchases based on the current homeland security grant program funding must come from available discretionary funds. Similarly, most state and local governments, to allow transparency of expenditures, must competitively bid all procurements.

Again, these requirements further delay the purchases. Typically, state and local governments do not get reimbursed (if they get reimbursed at all) until late in their own fiscal years or at some point in the next fiscal year – a totally unacceptable situation for consumer-voters in those state and local jurisdictions.

In any situation where scarce resources are to be allocated, some form of rationing is required. Rationing is done through price, lottery, need, first-come-first-served, or through force. With homeland security federal grants-in-aid, more and more jurisdictions are finding the “price” for applying to get funding too high. Jurisdictions without the staff and time to pursue discretionary budget excursions are opting out of the program. Millions of dollars are left in the treasury every year. Subsequently, communities without the tax base and revenue streams to support full-time homeland security or emergency management staff are opting out of the homeland security grant system. Though the data are sparse concerning at exactly what level full-time personnel are found, one can extrapolate that most jurisdictions with fewer than 50,000 citizens do not have full-time emergency management personnel who can pursue funding as part of their day-to-day duties. As a result, those jurisdictions without full-time emergency management personnel may be the ones most likely to opt out of the homeland security grant program. This phenomenon is an unintended consequence of the Congress and the department seeking “accountability” through stringent compliance measures and reporting requirements. Further, the requirements for acceptable compliance in current homeland security grant programs indicate a complete lack of awareness of – and sensitivity to – the operational activities of state and local governments.

Looking at the tenets or characteristics of the various federalism theories and applying them to the current homeland security public policy arena, it appears that all three theories have application. The current homeland security grant program is narrowly focused, preempts state and local prerogatives, is insensitive to the operational activities of state and local governments, and has associated costs which further limit distribution of funds to communities. One can easily make the argument that the current homeland security grant program qualifies as a manifestation of Coercive Federalism.

State and local governments, along with the federal level of government, agree that homeland security is a national issue requiring national, though not one-size-fits-all, solutions. Sub-national jurisdictions would be more than happy to administer national programs if those programs could be shaped to local, state, and regional preferences and requirements. Further, any program must be revenue neutral, as is preferred by most consumer-voters.⁴³ Long established grants-in-aid programs have administrative bureaucracies already in place, reflecting a negotiated arrangement to administer nationally-funded programs for the national government. Such arrangements are reflective of the tenets of Cooperative Federalism. In the homeland security arena, agencies such as the Federal Emergency Management Agency (FEMA) and the Centers for Disease Control and Prevention (CDC) have long-standing arrangements with state and local emergency management and public health officials. These arrangements also qualify as being compliant with the characteristics of Cooperative Federalism.

State and local governments do compete and concerns over free-riders (who did not contribute to paying the price for goods and services) benefiting from public goods and services being provided to consumer-voters is still clearly a barrier to be overcome. The provision of a secure jurisdiction is an additional service to be considered in the bundle of goods and services provided by that jurisdiction. In today's environment, however, the amount of public safety, homeland security, or emergency management being provided by a particular jurisdiction is by definition what is preferred by the consumer-voters in that jurisdiction. If more of that good or service were preferred, more would be purchased and provided. *Thus, state and local jurisdictions are providing exactly what consumer-voters require.* To ask them to provide more than what is preferred of a good or service is inappropriate. In relation to homeland security, local consumer-voters do not perceive the need for greater levels of public safety. Even though they may have concerns nationally, they do not have those same concerns locally. Contrary to Don Kettl's notion that every citizen deserves a certain level of homeland security,⁴⁴ there is little evidence to support the idea that citizens want more "homeland security," particularly if they have to pay extra for it.⁴⁵ Today's homeland security environment, particularly at the local level, meets the tenets of Competitive Federalism with opportunities to "compete" through the addition of services to provide for safer, more secure communities as an addition to the bundle of goods and services sought by rational consumer-voters.

Another important aspect of today's homeland security public policy arena to consider is that no single jurisdiction has the wherewithal to deal with major catastrophic events. Though all emergencies begin and end at the local level, if communities, states, and the nation are to cope with major incidents, some form of aggregation of capabilities needs to be accomplished so each level of government has the opportunity to marshal the resources needed to prevent, protect against, respond to, and recover from major disasters. There clearly is not enough money to "buy" the capabilities necessary, so how does the nation go about building national preparedness to meet homeland security mission requirements? The next section examines normative proposed approaches to meeting the need for a comprehensive level of national preparedness.

ALTERNATIVES TO CURRENT POLICIES AND PRACTICES

*Lord, grant me the Serenity to accept the things I cannot change,
The Courage to change the things I can,
And the Wisdom to know the difference.*
Alcoholics Anonymous

Based on the topics discussed in the previous section and looking at what can, or should, be changed, the appropriate solution sets are obvious. There are policies and practices in the Congress, the executive agencies, the states, and local government that ought to be addressed. Unfortunately, some of the practices are not likely to be given appropriate scrutiny; but the opportunity for all actors in this arena to respond responsibly without incurring high costs is certainly

available. We should first examine those areas not likely to change, and then suggest actions more easily adopted.

The Congress of the United States is not likely to change its oversight regime of the Department of Homeland Security, at least not right away. Representatives and senators are reluctant to relinquish prerogatives. Power in many committees is measured by the number of government workers impacted by committee decisions or the amount of money flowing through the committee to the agencies and back to constituents. The incentives to maintain the current oversight regime are far greater than the incentives to change. Though much could be learned from the Department of Defense model of congressional oversight, modifications to homeland security oversight will be slow in coming.

Another issue facing Congress is the amount of money flowing through grants-in-aid for homeland security purposes. As has been the case over the past three years, less and less money is being made available to the State Homeland Security Grant Program. What is not known to many, however, is that there are an additional fifteen grant programs directly related to homeland security not administered as part of the State Homeland Security Grant Program. These federal grants-in-aid total some \$3.3 billion for fiscal year 2006, more than the funding available through the current state grant program. These grants are sponsored by DHS, the Department of Health and Human Services, the Department of Justice, the Department of Agriculture, and the Department of Transportation. Some of these programs pre-date the events of 9/11, but are included in homeland security grant funds writ large. As several of these programs reflect disbursement schedules to fund particular professional activities such as fire fighting and law enforcement, it is clear special interests have influenced the creation of these grant programs to benefit particular professions rather than to build overall homeland security capability and preparedness. Again, Congress may be seen as “doing well” as opposed to “doing good.” These earmarked programs are not likely to change without strong voice from consumer-voters or in the absence of another major attack within the United States that might force congressional leaders to seek more economically efficient distribution schemes.

At the state and local level, we are not likely to see any particular weaning of jurisdictions from the seductive flow of revenue from the federal government. With consumer-voter resistance to increased taxes high, and enthusiasm for change low, state and local governments are compelled to continue to accept the handouts. Also, special interests work at the state level as well as the national.

Unless a major education and socialization effort occurs, federal agencies are not likely to change their perceptions of state and local governments or their approaches to operationalizing federal grants-in-aid distributions. Agencies will likely continue to stress conditions, compliance, reporting, and “one size fits all” solutions. Agencies are unlikely to change their ways unless Congress insists on different approaches to program administration.

What, then, can be changed? Much can be changed with relatively little cost to stakeholders, but the changes must be done in the spirit of collaboration, which incorporates the positive notion of cooperation, eliminates most of the negative aspects of coercion, and takes advantage of organizational models which

encourage competitive spirits while building aggregate capabilities. Is there a solution set for building national preparedness within the constraints of available resources? I would suggest there is.

What can be changed on the part of Congress relative to homeland security is the bundling of the twenty preparedness-related grant programs into various hybrid block grant programs. The flexibility of block grants could be enjoyed by state and local governments to meet consumer-voter preferences while at the same time establishing guidance and milestones for accomplishing program objectives. There are some natural combinations for these grants that would provide streamlined administration and would allow delivery of funds to the appropriate level of government, in a timely manner, where those who know best what is needed can then spend the funds meeting those requirements.

A second action on the part of Congress would be to fund the grant programs for multiple years, allowing state and local governments to plan appropriately for consistent and predictable revenue streams. Again, the inherent flexibility found in some form of block grant seems most conducive to gaining eager and constructive participation on the part of sub-national governments to build national preparedness.

There are many actions state and local governments can take. First must be an “as is” assessment of where each jurisdiction – and subsequently the nation – stands relative to capabilities and preparedness. A proposed methodology for this process is found in an approach designed by the Homeland Security Institute which allows jurisdictions to make an “apples to apples” comparison of capabilities and preparedness. The basic approach is to first identify those jurisdictions that provide professional skills and services that fall under the rubric of homeland security “necessary services.” These services include such areas as fire fighting, law enforcement, emergency medical capabilities, public works, etc.⁴⁶ Special districts typically do not provide these services, but general purpose jurisdictions do. Those jurisdictions providing their consumer-voters two or more of these services qualify as homeland security jurisdictions (HSJs). These jurisdictions are then asked to evaluate their capabilities either against the national planning scenarios or against thresholds at which their own-source services might be overwhelmed. When those thresholds are broached, the jurisdiction must seek outside assistance to meet the contingencies of the emergency. Seeking outside help can come in the form of both vertical (another level of government) or horizontal (same level of government) aggregation of capabilities. Jurisdictions go from being capability centers to being part of capability clusters. If capabilities still cannot be met through immediate mutual aid arrangements, then help must be sought from larger, more capable sources. Now the local jurisdiction has become part of a chain of capability clusters forming a capability contour, typically arrayed along major highway systems or other lines of communication.

This first step allows jurisdictions to gain situational awareness of the capabilities available from all other homeland security jurisdictions. But what about those jurisdictions that might report having law enforcement capability, but the capability is a single part-time officer with a single patrol car? Now the target capabilities must be mapped to the professional skills and services so

jurisdictions, through the collaborative aggregation of capabilities, can finally arrive at an assessment of capabilities resident in provided services that assures some level of preparedness. This approach will ensure levels of preparedness greater than levels possible from individual jurisdictions, but that cost nothing but the time to make the mutual aid arrangements. Such a model can be found in collaborative economic development activities among sub-national jurisdictions. The benefits of collaboration (e.g., gaining from industry coming to the region) are greater than those of standing alone (i.e., hoping for a windfall in landing a new business entity in one's particular community). Free-rider concerns are mitigated in collaboration, as jurisdictions provide what they can and understand that if the tables were turned they would be receiving assistance from other capability centers, clusters, and contours.

The aggregation methodology does not stop at the state level. States, in order to meet regional needs, can seek mutual support agreements that provide solutions more appropriate to the consumer-voters. As aggregation calculations continue to the national level, DHS and Congress will finally have an as-is picture of capabilities and national preparedness, with identified shortfalls and gaps, that in turn would lead to optimum allocation of scarce resources.

This first step of assessing own-source capabilities and building upon mutual aid opportunities allows state and local governments to cool the heat of competition while allowing jurisdictions to maintain sovereignty. The sub-national jurisdictions will provide services to the level preferred by their consumer-voters and build capabilities beyond own-source availability. This approach also raises citizen awareness of homeland security activities – something desired by the American people.⁴⁷ By raising homeland security awareness among a jurisdiction's citizens, we will likely witness positive changes in homeland security preferences. Those preferences will be expressed to elected officials and a new array of public goods and services will be provided.

What type of governance will be most conducive to these required actions on the part of Congress, federal departments, and state and local governments? The system of governance will have to be one based on collaboration. Can one then develop postulates for a new compound theory of federalism? Perhaps building a new theory for the overall governance of the country might be a bit much, but building a theory for homeland security certainly seems plausible. To that end, I would propose the following characteristics of Collaborative Federalism for Homeland Security:

- Homeland security is a national issue requiring national solutions. Therefore, the role of Congress and its executive agent DHS, is that of facilitation and leadership, providing guidelines, milestones, and enough funding to make a difference.
- State and local governments have maximum flexibility in implementing homeland security programs to gain greater efficiency and better situational awareness. This is facilitated by funding provided through some form of block grants.

- Agencies, as agents of the Congress, must also be agents for the sub-national levels of government. The agencies should be staffed with individuals with state and local experience and should focus on facilitation as well as administration.
- State and local governments should collaborate with jurisdictions both vertically and horizontally to gain situational awareness of own-source and out-source capabilities and levels of awareness.
- State and local jurisdictions should collaborate with other jurisdictions to gain from aggregated capabilities without risking sovereignty or raising the costs of homeland security beyond the levels preferred by consumer-voters.

The “bumper stickers” for a new mutation of federalism are readily apparent. *Collaborate to Aggregate* (gain situational awareness and take advantage of aggregate capabilities beyond those provide through own-source capabilities). *Collaborate to Coordinate* (seek out and develop mutual aid arrangements that will provide reassurances of being able to meet the initial surge of activities in the event a jurisdiction faces a major catastrophic event). *Collaborate to Integrate* (jurisdictions at all levels of government, including the federal level, will have the mechanisms in place to assess and build capabilities and national preparedness). *Collaborate to Isolate* (those jurisdictions that will not or cannot collaborate will be quickly isolated and will suffer from the isolation imposed by others who seek partners with whom to collaborate). Only through collaboration at all levels of government will the country achieve the best possible level of preparedness. Anything else will lead to inefficiencies and, worse, a nation unnecessarily at risk.

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¹ The White House, *National Homeland Security Strategy* (Washington, D.C.: GPO, 2002).

² The White House, *Homeland Security Presidential Directive-8* (Washington, D.C.: GPO, 2003).

³ Keith Bea, “The National Preparedness System: Issues in the 109th Congress,” in *Congressional Research Service Report to Congress*, RL 32803 (Washington, D.C.: Congressional Research Service, 2005).

⁴ *National Homeland Security Strategy*.

⁵ President's Homeland Security Advisory Council, *Statewide Template Initiative* (Washington, D.C.: The White House, 2003).

⁶ One is not often given the opportunity to participate in the development of public policy in a new area of government and governance. Such has been the case for the author, as over the past two years he has been directly involved in developing, shaping and implementing public policy related to homeland security national preparedness. The journey has been relatively short but intense.

⁷ *National Homeland Security Strategy*.

⁸ In the summer of 2004, the author led a research team assigned the task of assessing trends found in documented lessons learned from actual or simulated catastrophic events. Under the sponsorship of the Senior Scientific Advisor to the Undersecretary for Science and Technology in DHS, the team examined some 2000 documents in the electronic repositories of ten federal agencies and the Memorial Institute for the Prevention of Terrorism. The documents were classified by type of event and type/level of jurisdiction providing the report. The lessons learned found in the documents were further categorized into twelve distinct areas of concern, such as planning, interoperable communications, unity of command, etc. After all the documents were examined and categorized, qualitative analysis yielded some remarkable results. The key findings were:

- The concept of what, and who, the responder community is needed to be expanded dramatically to account for all stakeholders and potential immediate contributors to dealing with catastrophic events.
- In nearly 50% of all reports, and by a ratio of 5 to 1, insufficient planning was identified as the single most significant shortfall in addressing catastrophic events.
- Multi-jurisdictional cooperation (mutual aid) appeared to be a necessary condition for success in planning for the prevention of, protection against, response to, and recovery from catastrophic events (Clovis, Dunleavy & Bernard, note 46).

Though these results in retrospect seem to be obvious and intuitive, they were at the time the first academic analysis addressing current trends in homeland security activities. During the course of research for previous and subsequent projects, the author arrived at the conclusion that a major research project was necessary. The objectives of the larger project are to provide government operatives, practitioners and those with academic interests in public policy related to homeland security a document that would outline:

- An explanation of the dominant contemporary theories of federalism and the conflicts arising from the respective applications found through the study of intergovernmental relations.
- The evolution of intergovernmental relations based on those theories, again focusing on the homeland security arena.
- A description of the current environment where intergovernmental relations reflect the tensions and conflicts found through analysis of the different theories of federalism.
- The highlights of manifestations of these theories and the resulting effects on contemporary intergovernmental relations, allowing for the formation of a "new" compound theory of federalism whose tenets are distilled from the analysis.
- An application of the resultant theory to suggest realistic, normative behaviors on the part of each level of government so the nation may achieve the highest possible level of homeland security preparedness within the confines of the current or foreseeable environment.

⁹ Charles Tiebout (see note 23) advanced the thought that market influences have effect in political processes the same as in the market place. The theory, further developed by Nobel Prize Winner in Economics James Buchanan, provides substantive arguments explaining the behavior of consumer-voters and their elected representatives. The application of Public Choice theory, even with caveats, is compelling in the study of public policy related to homeland security. As such, the economic dimensions of political processes plays an important role in the development of positive theories of federalism.

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¹⁵ Timothy Conlan and F. DeChantal, "The Rehnquist court and contemporary American federalism," *Political Science Quarterly* 116, no. 2 (2001): 253-275; John Ferejohn and Barry R. Weingast, *The New Federalism: Can the States Be Trusted* (Palo Alto, CA: Hoover Press, 1997); Grodzins, *American System*.

¹⁶ Gerald Scully, *What is the optimal size of government in the United States?* NCPA Policy Report No. 188 (Washington, D.C.: National Center for Policy Analysis, 1994).

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²⁶ Elazar, *American federalism*.

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