In 1955, the Commission on Intergovernmental Relations—the Kestnbaum Commission—embellished the intellectual framework of cooperative federalism and laid out a policy agenda for promoting it. Since then, our intergovernmental system has evolved from a predominantly cooperative federal–state–local system to one characterized by corrosive opportunistic behavior, greater policy prescriptiveness, eroding institutional capacity for intergovernmental analysis, and shifting paradigms of public management. These trends threaten to undermine effective intergovernmental relations and management. Recent developments, however, offer some promise for building new institutions of intergovernmental analysis, more effective paradigms of intergovernmental public management, and greater horizontal cooperation.

On June 20, 1955, the Commission on Intergovernmental Relations—commonly known as the Kestnbaum Commission, after its chairman, Meyer Kestnbaum—transmitted its final report to President Dwight D. Eisenhower. Defying the obscurity that befalls many such projects, the Kestnbaum report made a substantial contribution to American intergovernmental relations during the post–World War II era, providing both political and intellectual justification for the paradigm of cooperative federalism. The commission’s recommendations lent energy to the push to create a permanent Advisory Commission on Intergovernmental Relations (ACIR), brought attention to the issues of intergovernmental coordination and management in the White House and throughout the executive branch of government, supported the development of subcommittees on intergovernmental relations in both the House and Senate, and endorsed continued reliance on and expansion of the system of federal categorical grants-in-aid.

Much has changed in the 51 years since the Kestnbaum Commission issued its report. The ACIR and other national institutions of intergovernmental expertise have come and gone. Several waves of federalism reform have been launched since the 1950s, alternately favoring expansion, restructuring, and contraction of the federal grant system. New, more intrusive, and often costly federal mandates have been developed and widely adopted. The fiscal and managerial competencies of state and local governments have been enhanced and modernized, and new frameworks of governance have emerged. Consequently, the report of the Commission on Intergovernmental Relations—coming as it did near the apex of cooperative federalism—provides a useful baseline from which to gauge subsequent changes in the intergovernmental system and assess their implications for intergovernmental management.

Origins and Objectives of the Commission

When Eisenhower was elected president in 1952, Republicans had not held the White House for 20 years. Many in his party were keenly interested in reexamining the proliferation of federal programs that had been created during the New Deal period and rationalizing or rolling back the expanded domestic role of the national government. Senator Robert Taft (R-OH) urged the creation of a federal commission to reexamine federal–state relations in the new administration, and Eisenhower followed through with a legislative proposal in March 1953 (Colman and Goldberg 1990). The bill was quickly taken up and passed by Congress and signed into law in July 1953.

In its statement of purposes, the legislation melded elements of conservative ideology with the concerns of mainstream public administration. The former was evidenced by an apprehension that “the activity of the Federal Government has been extended into many fields which, under our constitutional system, may be the primary interest and obligation of the several states” (P.L. 83-109, sec. 1). The administrative rationale for the commission was apparent in concerns about “confusion and wasteful duplication of functions and administration” and “the resulting complexity [of] intergovernmental relations.” In language that would presage subsequent efforts to sort out governmental functions under Presidents Eisenhower,
Nixon, and Reagan, the legislation highlighted the need to “study the proper role of the Federal Government in relation to the States and their political subdivisions . . . to the end that these relations may be clearly defined and the functions concerned may be allocated to their proper jurisdiction.”

To carry out these responsibilities, the legislation established a commission composed of 25 members: 15 appointed by the president and five each by the Speaker of the House and the president of the Senate. Together, this membership comprised a distinguished and diverse group that included three cabinet secretaries, six governors, several activist members of Congress, and distinguished educators (including William Anderson and Clark Kerr). The commission also had a remarkable professional staff, employing many of the most distinguished public administrators and intergovernmental scholars of the era, such as George C. S. Benson (who served as director of research), William Colman, W. Brooke Graves, Arthur MacMahon, Harvey Mansfield, Roscoe Martin, and Frederick Mosher.

Themes of the Commission
The commission organized its report—and its research—in two parts. The first part provided a broad overview of the historical evolution of the American federal system, the roles of the states and the federal government within that system, and the fiscal dimensions of American federalism, with a particular focus on grants-in-aid. The second part of the report consisted of 11 separate studies of federal–state relations within specific functional areas, from agriculture to welfare. Overall, the commission report was bound together by a coherent set of themes and recommendations. Major themes included the following:

- **The merits of federalism**: The report strongly endorsed the federal form of government while acknowledging its problems. It praised the institution’s adaptability in crisis, such as during the Great Depression and World War II. Equally important, in light of the struggles with totalitarianism during the early 20th century, it emphasized federalism’s potential to strengthen representative government—by promoting individual freedom, mobilizing the consent of the governed, providing a democratic training ground for citizens and officeholders, and permitting diverse laboratories of policy experimentation. At the same time, the report recognized challenges such as the administrative complexities of federalism, the intergovernmental allocation of functions in a mobile society and dynamic economy, state and local institutional and fiscal weaknesses, and the problems of civil rights and legislative apportionment.

- **Cooperative federalism**: Although President Eisenhower hoped that the commission would provide a road map for reassigning and streamlining the intergovernmental assignment of functions (Eisenhower 1954), the report instead provided a powerful endorsement of cooperative federalism. “The National Government and the States,” it said, “should be regarded not as competitors for authority but as two levels of government cooperating with or complementing each other in meeting the growing demands on both.” The rapidly growing system of grants-in-aid, which greatly concerned Eisenhower, was accepted as a “fully matured device of cooperative government” (120). Thus, several years before Morton Grodzins popularized the “marble cake” model of cooperative federalism, the concept was embraced and elaborated by the Kestnbaum Commission.

- **Federal forbearance**: The commission report accepted the post–New Deal concept of positive government, but it emphasized the need for intergovernmental deference among partners in the system. In particular, the report stressed that the national government had a double duty: to take “vigorous and effective national action” when necessary to fulfill its own responsibilities while also taking care to “protect and promote the national interest in the preservation of the federal system.” This latter duty required a “discriminating sense of when not to act,” and it had implications for the form of federal involvement, “leaving room for facilitating cooperative or independent State action.”

- **State and local modernization**: A healthy federal system was seen as requiring strong partners at all levels of government. In a statement anticipating the subsidiarity principle in the Maastricht Treaty, the commission offered this general rule: “Use the level of government closest to the community for all public functions it can handle; utilize cooperative intergovernmental arrangements where appropriate. . . . reserve National action for residual participation where State and local governments are not fully adequate and for the residual responsibilities that only the National government can undertake.” This principle suggested that the states also bear responsibility for maintaining a healthy federal system, particularly by assuring that they and their political subdivisions have the fiscal and institutional capacity to fulfill their responsibilities. During the 1950s, this prompted a long list of traditional “good government” reforms: constitutional revision, legislative reapportionment, strengthened state executives, interstate cooperation, local government home rule, county modernization, and balanced, adequate revenue systems. Such modernization would, in the commission’s view, encourage more cooperative intergovernmental relations and “relieve much of the pressure for, and generate a strong counter-pressure against, improper expansion of National action.”

- **Institutionalization of intergovernmental coordination and analysis**: Much of the commission’s
report focused on the need for better intergovernmental coordination across program areas and at all levels of government. The commission report called for state and federal encouragement of metropolitan-wide planning districts, better coordination of local planning, and federal and state housing, economic development, and public works programs (52–53).

In a discussion that presaged future partial preemption programs, the commission called for coordinated federal–state regulatory action in areas such as food inspection. Analysis of tax policies brought forth a call for “improved coordination of fiscal policies through greater separation of revenue sources and administrative cooperation,” as well as coordinating tax bases and methods of calculation (106, 117). The latter task would require interstate cooperation as well as federal–state coordination, in the commission’s view. Finally, the complex tasks of coordination and cooperation would require improved information and understanding, “continuing attention” by a permanent center of expertise on interlevel relationships, and multiple sources of advice to policy makers in both the legislative and executive branches.

Commission Recommendations
These themes informed a series of commission recommendations, many of which were rapidly, though sometimes only partially, adopted. One set of recommendations was aimed at enhancing coordination and policy advice in the federal executive branch. The commission called for the appointment of a special assistant in the Executive Office of the President who, “with a small staff,” would serve as the president’s “chief aide and advisor” on intergovernmental relationships, giving his “exclusive attention” to these issues and serving as a “coordinating center” throughout government (87). The Bureau of the Budget was called on to “intensify its concern” with intergovernmental fiscal affairs and to establish “cooperative relations” with the National Association of State Budget Officers. The Bureau of the Budget’s legislative reference division was also urged to “promote sharper attention to problems of intergovernmental relations in the drafting of statutes” by working with the special assistant to the president and the federal agencies and “drafting groups at the State level.” Finally, individual federal agencies were encouraged to create “inter-level coordinating machinery” for particular fields of activity and to designate assistant secretaries to deal with “broad questions of National-State-local” concern (88).

The commission also called for the creation of an Advisory Board on Intergovernmental Relations, to be appointed by the president after consultation with associations representing state and local government officials. The board’s mission would be both consultative and analytical: It would promote intergovernmental consultation and dialogue by convening meetings of officials at all levels of government and study special problems relating to the federal system.

Finally, the commission addressed several recommendations to Congress, urging the appropriation of funds to support its proposals. Congress, like the president, was urged to give more attention to the systemic intergovernmental effects of its future legislation and to systematically involve state and local officials in legislative hearings. Congress was also encouraged to “maintain active subcommittees on intergovernmental relations” in both the House and Senate (89).

Implementing the Commission’s Framework
The commission’s recommendations met with an unusual degree of success. President Eisenhower followed up by appointing Meyer Kestnbaum as special assistant for intergovernmental affairs and Robert Merriam as White House coordinator for intergovernmental matters (Wright 1965, 196–97). An intergovernmental assistant was also established in the Bureau of the Budget, although the management staff there remained small (Colman 1965). In 1959, a permanent Advisory Commission on Intergovernmental Relations was established, after a brief detour. Eisenhower first sought to advance his goal of sorting out functions between the states and the federal government. He appointed a Joint Federal-State Action Committee, composed of governors and federal officials, to develop recommendations for returning domestic functions back to the states, along with revenue sources to accomplish that goal. However, the committee could agree on only two federal programs to turn back, along with the federal telephone tax, and the recommendation was never adopted by Congress. After this failure, legislation was adopted establishing the Advisory Commission on Intergovernmental Relations in 1959. Its structure was more independent of the executive branch than the Kestnbaum Commission had recommended, but it was designed to permit high-level intergovernmental consultation, comprising three members representing the federal executive branch (normally cabinet secretaries), six members of Congress, three private citizens, and 14 state and local elected officials. From the start, it was served by a small but accomplished staff.

In Congress, the House retained a Subcommittee on Intergovernmental Relations as a permanent feature of the House Committee on Government Operations. Its
longtime chairman was Representative L. H. Fountain of North Carolina, who took the leadership role in creating the ACIR. The subcommittee's staff was directed by Delphis Goldberg, who had also served on the staff of the Kestnbaum Commission. The Senate established its own Subcommittee on Intergovernmental Relations in 1963, chaired by Senator Edmund Muskie, former governor of Maine. Its staff director was David B. Walker, who subsequently became the assistant director of the ACIR.

Throughout the 1950s and into the 1960s, the paradigm of cooperative federalism blossomed. Although Eisenhower was attracted to the idea of streamlining the intergovernmental system by sorting out functions, he was not averse to proposing major expansion of the federal grants system. He recommended a massive enlargement and restructuring of federal aid to highways in 1955 and signed legislation establishing the interstate highway system the following year. He supported a program of federal aid for elementary and secondary school construction to alleviate the overcrowding caused by the baby boom. After the Soviet launch of the Sputnik satellite, the Eisenhower administration developed the National Defense Education Act, which provided grants for math, science, and language training at all levels of the system. Throughout the 1950s, the country saw the continued expansion of public health, agriculture, and urban renewal grants. By 1960, there were 132 separate grant-in-aid programs, up from 30 in 1939 and 60 in 1950 (Walker 1995).

Continued expansion of the grant system in the 1960s accelerated efforts to manage burgeoning cooperative relationships. The number of grants grew rapidly throughout the 1960s—more than tripling in number from 132 to more than 400 and in dollar amounts from $7 billion to $24 billion (Walker 1995). Most were project categorical grants with their own eligibility criteria, application and reporting requirements, specific clientele, and allowable objects of spending. This rapid increase in programmatic complexity frayed administrative relationships, raised intergovernmental tensions, and prompted a redoubling of management reforms and coordination efforts. The Johnson administration and the Bureau of the Budget considered major organizational reforms, such as establishing a separate Office of Program Coordination in the Executive Office of the President and distributing bureau staff among the federal regions (Berman 1977).

"Target grant" approaches, such as the Appalachian Regional Commission and the Model Cities Program, were developed to deal with complex, cross-cutting problems such as urban poverty and regional economic distress. Grant consolidation was explored as a means of promoting better coordination of programs at the local level, and Congress passed the Intergovernmental Cooperation Act of 1968 to promote greater involvement by state and local elected officials in the grant process.

This expanded intergovernmental management focus continued under President Nixon. Federal administrative regions were standardized and a system of Federal Regional Councils was established. The Bureau of the Budget was reorganized, becoming part of the Office of Management and Budget (OMB), and intergovernmental management was addressed in a newly developed Program Coordination Division. In the policy realm, general revenue sharing and flexible block grants were placed at the core of the administration's domestic policy approach in order to create a more flexible and decentralized "new federalism." The ACIR reached the height of its size and influence during the 1970s, with an average staff size in the mid-thirties and an average annual budget, in real terms, of approximately $3 million. Finally, under Comptroller General Elmer Staats, the General Accounting Office (GAO; now known as the Government Accountability Office) established an intergovernmental unit to evaluate increasingly complex problems with intergovernmental programs.

Unraveling the Cooperative Paradigm
As the proliferating initiatives suggest, the cooperative framework was fraying. Complexity, conflict, and concerns over performance were growing within the grant-in-aid system, while new forces, new problems, and new policy instruments were driving the intergovernmental system toward a more co-optive and opportunistic model of federalism.

Today, the paradigm of cooperative intergovernmental relations embraced by the Kestnbaum Commission has largely unraveled. The scope of change is apparent in four broad trends that cut across fiscal, managerial, and analytical domains. First, the proliferation of federal mandates, preemptions, and increasingly intrusive grant programs since the 1960s has prompted a shift away from cooperation in vertical relationships within the intergovernmental system. This shift has been only partially mitigated by uneven efforts at devolution. Second, the administrative paradigm in the federal system has been changing from intergovernmental management to performance management, an evolution that holds promise but also carries the risk of further federal co-optation of the policy agenda. Third, there has been an erosion of institutionalized, systemic analysis in the intergovernmental system and a concomitant increase in instrumental advocacy. Finally, federal tax policy making has increasingly departed from a traditional stance of federal deference toward state and local governments to one of federal disregard.

To be sure, these four trends do not mean that all aspects of intergovernmental cooperation have
vanished—far from it. Important vestiges of both dual and cooperative federalism persist in a system as complex and varied as ours. The cooperative extension service has been battered by cuts but is still cooperative; public health programs retain a considerable degree of intergovernmental cooperation, as do other vertical professional relationships throughout the system. A great deal of cooperative federalism exists horizontally as well, as evidenced by metropolitan councils of government and multistate regional ventures such as the streamlined sales tax project. Moreover, contemporary federalism is highly intergovernmentalized, even where relationships are no longer cooperative. But compared to the era of the Kestnbaum Commission, the governing framework for conducting American intergovernmental relations has clearly evolved.

From Cooperation to Opportunism

One of the most profound changes in American federalism since 1955 has been the changing mix of policy instruments employed in federal–state–local relations, moving the system away from an almost total reliance on grants and incentives and toward instruments that impose sanctions on, preempt, or co-opt state and local authority. There was an enormous expansion of federal mandates during the 1960s, 1970s, and 1980s, both in absolute numbers and in the creation of new and more intrusive forms of federal regulation. Of approximately 60 major federal mandates counted by the ACIR in 1993, only two existed when the Kestnbaum Commission issued its report. Similarly, federal preemptions of state and local authority doubled in the 1970s and 1980s. According to Zimmerman (2005), 348 of the 513 federal preemption statutes enacted by Congress since 1790 were adopted after 1965.

These developments have led some to characterize the current era as one of “coercive federalism” (Kincaid 1990). There are indeed costly and intrusive federal mandates, and the federal system today is clearly more coercive than it was during the Kestnbaum Commission era. Yet other aspects of contemporary federalism are more seductive, dismissive, or co-optive than openly coercive. Overall, opportunistic federalism seems better able to capture the range and behavioral dynamics of contemporary intergovernmental behavior.

By opportunistic, I mean a system that allows—and often encourages—actors in the system to pursue their immediate interests with little regard for the institutional or collective consequences. For example, federal mandates, policy preemptions, and highly prescriptive federal grant programs tend to be driven by opportunistic policy makers who seek to achieve their own policy and political goals regardless of traditional norms of behavior or boundaries of institutional responsibility. States often display similar behavior toward local governments, and both state and local governments behave opportunistically when they direct federal grants away from their intended purposes to serve strictly parochial ends. Although such behavior has always existed to some extent, the constraints on it have been greatly relaxed. Dual federalism explicitly limited trespassing on the responsibilities of other governments, backed by legal and political consequences for flouting. Cooperative federalism actively encouraged joint intergovernmental action and emphasized shared goals across the federal system, vertically enhanced by strong professional norms. As the normative framework of shared, cooperative federalism erodes, however, the temptation to adopt opportunistic strategies that place individual political and jurisdictional interests above shared goals tends to increase at all levels of government.

At the national level, the temptation to co-opt and prescribe is not driven by a single party or ideological affiliation. Conservatives have proved as willing to preempt and mandate as liberals, although their policy aims are typically very different (promoting education vouchers rather than bilingual education, for example, or uniform markets rather than labor standards) (Posner 1998). The appeal of such assertive conservatism was evident in the growth of mandates of the Reagan years (Conlan 1986). It was evident in many policies of the Clinton administration as well, such that the political appeal of federal intervention in symbolic issues (such as school uniforms) and local responsibilities (such as funding “100,000 new cops”) overwhelmed the normative constraints of traditional responsibilities. Finally, opportunistic federalism has been abundantly demonstrated in the Bush administration. One would be hard pressed to develop an intergovernmental agenda that was more dismissive of cooperative norms and traditional responsibilities than the recent hallmarks of the current Republican administration and Congress: the rigorous accountability framework of the No Child Left Behind Act; the Help America Vote Act, which mandates standards for provisional voting, identification requirements, and voting system standards for states; and the Real ID Act of 2005, which establishes federal standards and timetables for enhancing the security of state driver’s licenses.

To be sure, recent years have also witnessed several important efforts to enhance flexibility in the intergovernmental system. The adoption of the Unfunded Mandates Reform Act in 1995, welfare reform in 1996, and the expanded use of waivers in Medicaid and other programs are all notable examples. However, it is important to recognize that some of these initiatives—notably, welfare reform—contained highly prescriptive elements in addition to areas of
new flexibility—mandated family caps and stringent job-placement targets, for example. For their part, waivers represent yet another face of opportunistic federalism—an every-state-for-itself, cut-the-best-deal-you-can form of federalism. The overall result has been a complicated and uneven evolution of the intergovernmental system but, on balance, a far more co-optive system than that of the Kestnbaum era.

**From Intergovernmental Management to Performance Management**

Since the 1950s, we have seen many "tides of reform" (Light 1997). In the intergovernmental arena, the focus traditionally has been on grant simplification and improved coordination, which Harold Seidman once called the philosopher’s stone of public administration. As indicated earlier, when grant programs began to proliferate and coordination became increasingly difficult, many different methods of improved coordination were explored. The Budget of the Bureau and the OMB issued management circulars requiring that elected officials receive notification of grants to their jurisdictions and establishing area-wide clearinghouses of grant information. Block grants, increased use of waiver authority, and other initiatives were also explored, typically with mixed results.

A second stream of grant-management reforms focused on standardization and simplification. The Single Audit Act, Circular A-133 (on common auditing standards) and OMB Circular A-87 (on common cost principles) sought to standardize requirements for grant recipients. More recently, information technology has been used to simplify the process of searching for, obtaining, and administering federal grants.

Today, however, the ascendant paradigm—in intergovernmental relations and in public administration generally—is performance management. As Donald Moynihan and Sanjay Pandey (2005) recently observed, “The concept of performance has become increasingly the central goal of public management.” It was one of several elements in President Clinton's reinventing government initiative, and it is the core focus of President George W. Bush's management agenda (OMB 2002). Congress, too, has expressed heightened interest in outcomes and results, most notably in the Government Performance and Results Act of 1993.

Although the performance paradigm can be seen at all levels of government, its embrace at the national level may have important implications for the federal system. Put simply, the techniques of performance management are not intergovernmentally neutral. Although outcome-based accountability has the potential to free grant recipients from rigid process-based systems, opportunistic federalism can interfere with realizing this potential. Indeed, striving for strict performance accountability can have significant centralizing effects in the system. As Beryl Radin has argued, “The federal efforts dealing with performance . . . move against the devolution tide. Efforts to hold federal government agencies accountable for the way that programs are implemented actually assumes that these agencies have legitimate authority to enforce the requirements that are included in performance measures” (Radin, forthcoming).

This tension can be seen in the Bush administration's Performance Assessment Rating Tool (PART) process. Whatever the strengths and weaknesses of this particular tool, grants, as a rule, have not scored well in the process. Their performance to date has averaged well below the mean for all programs, partly because of the complexities of attenuated accountability in third-party governance. Low performance ratings are especially common among broad-based aid, such as block grants (see table 1). This is not surprising, as such programs typically have broad, even contradictory objectives, relaxed reporting requirements, and ambiguous performance standards. But as the administration seeks to connect performance ratings with budgetary consequences, block grants such as the Community Development Block Grants have become targets for reductions or termination. It is ironic that a traditional instrument of grant reform and simplification, which won particular favor from past Republican presidents, has become a problematic form of aid from a performance perspective.

**From Intergovernmental Analysis to Instrumental Advocacy**

Since the 1970s, the network of federal offices and agencies that was established to improve and rationalize intergovernmental management has been diminished, disbanded, or transformed into instruments of advocacy. As a result, the tools and processes of intergovernmental analysis, coordination, and consultation have fallen by the wayside. At the same time, congressional attention to issues of intergovernmental relations and public administration has eroded as intergovernmental subcommittees have diminished in stature.

Organizational changes in the federal executive branch have been particularly striking. The White House Office of Intergovernmental Affairs last exerted substantial policy influence during President Reagan's first term, when Richard Williamson served as assistant to the president. Williamson was instrumental in helping to devise Reagan's 1982 effort to “sort out” responsibilities between the federal government and the states (Williamson 1990). The office lost influence but retained a substantial staff presence in the White House under Williamson's successor, Lee Verstandig, but in 1986, it was merged into the Office of Political and Intergovernmental Affairs under Mitch Daniels. As the name signified, the new office had a much
stronger focus on political strategy and liaison; its staff included future Republican National Committee chairman Haley Barbour, for example. Although a separate office of intergovernmental affairs was reestablished under President George H. W. Bush, it became and would remain a political liaison office for state and local officials. Its role as a major actor in intergovernmental policy—much less a voice in intergovernmental management—largely vanished. Indeed, the office has become virtually invisible in the current Bush White House, having been eclipsed by the president’s faith-based initiative. 7

At the OMB, the management side has traditionally been a weak companion to the budget side, and this has had implications for intergovernmental management. What was once a robust presence in intergovernmental management in the late 1960s and early 1970s dwindled over time until the Office of Intergovernmental Relations in the late 1960s and early 1970s. The ACIR’s final act began with the appointment of President Reagan’s controversial secretary of the interior, James Watt, as chairman. Watt’s appointment began a process of delegitimation that eroded the commission’s reputation as a source of unbiased information and analysis and undermined its ability to play a constructive role in intergovernmental consultation.

Nowhere has the decline in federal intergovernmental expertise been more dramatically revealed than in the elimination of the ACIR in 1996. As the “permanent” successor to the Kentanbaum Commission, the ACIR was once a major source of data, policy analysis, and intergovernmental management expertise in the federal government. It played an important role in the design and creation of a host of intergovernmental policy initiatives, including general revenue sharing, block grants, regional coordinating bodies, property tax circuit breakers, and unfunded mandates reform. It also produced landmark research on public finance, representative taxes, intergovernmental regulation, substate and multistate regionalism, and the grant-in-aid system. Yet a slow period of decline began in the 1980s, starting with the appointment of President Reagan’s controversial secretary of the interior, James Watt, as chairman. Watt’s appointment began a process of delegitimation that eroded the commission’s reputation as a source of unbiased information and analysis and undermined its ability to play a constructive role in intergovernmental consultation.

The ACIR suffered a 50 percent reduction in its funding between 1985 and 1990 and another substantial budget cut in 1993 (McDowell 1997), which together reduced its staff from a high of 37 in the 1970s to just 13 in 1995. 8 The ACIR’s final act began with the election of a Republican Congress in 1994. With an influx of deeply conservative new House members, many with little prior experience in government, an agency that had its roots in the Eisenhower administration and had reached the height of its influence in the Nixon administration was suddenly viewed as part of the “Washington problem,” not its solution. Self-styled Republican “revolutionaries” entered office seeking a broad effort to shrink the federal government’s domestic role, including the elimination of cabinet agencies for education, commerce, and energy. Dozens of smaller agencies such as the ACIR and the Administrative Conference of the United States were targeted as well in an attempt to bulk up the apparent scope of the reform effort. Relatively little thought appears to have gone into the decision to kill many of these agencies, although many had appeared on hit lists of agencies deemed expendable. In the end, the major departments and agencies that were targeted were largely spared, as advocates rallied and opinion polls showed public opposition to revolutionary changes. But support for the ACIR had diminished over the previous decade, and many of its supporters among public interest groups and in Congress had higher priorities in the budget battles of the 104th Congress, leaving it vulnerable. In the end, Congress’s hunger to hang “pelts on the wall”—to show some results for the assault on Washington—was a deciding factor in the agency’s termination, with little recognition or thought given

---

Table 1  Grant Program Ratings, Fiscal Year 2007

<table>
<thead>
<tr>
<th>PART Rating</th>
<th>All Programs</th>
<th>Grant Programs</th>
<th>Block Grant Programs Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective</td>
<td>15%</td>
<td>3%</td>
<td>0%</td>
</tr>
<tr>
<td>Moderately effective</td>
<td>29%</td>
<td>19%</td>
<td>31%</td>
</tr>
<tr>
<td>Adequate</td>
<td>28%</td>
<td>29%</td>
<td>12%</td>
</tr>
<tr>
<td>Ineffective</td>
<td>4%</td>
<td>8%</td>
<td>19%</td>
</tr>
<tr>
<td>Results not demonstrated</td>
<td>24%</td>
<td>41%</td>
<td>38%</td>
</tr>
</tbody>
</table>

to the implications for the effective functioning of the intergovernmental system (Conlan 1998; McDowell 1997).

Such legislative indifference was exhibited in other ways as well. Legislative subcommittees on intergovernmental relations, which had been established in both the House and Senate on the recommendation of the Kestnbaum report, became active centers of legislative initiatives and oversight from the 1960s through the mid-1980s. In 1987, however, the Senate abolished its stand-alone Subcommittee on Intergovernmental Relations, merging it with the former Subcommittee on the District of Columbia to create the ironically named Subcommittee on Governmental Efficiency, Federalism, and the District of Columbia. The subcommittee underwent further name changes and consolidations in subsequent years, and since 1995, there has been no Senate subcommittee with intergovernmental relations in its name. Jurisdiction today resides with the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. In the House, the Subcommittee on Human Resources and Intergovernmental Relations became the Subcommittee on Human Resources in 1997. Intergovernmental relations was not restored to any subcommittee title until 2001. Today, jurisdiction for intergovernmental management rests with the Subcommittee on Federalism and the Census, a body within the Committee on Government Reform.

**From Fiscal Deference to Federal Disregard**

The Kestnbaum Commission recognized the need for intergovernmental tax coordination in our federal system, for both sources of tax revenue and tax base definition and administration. Thus, the commission recognized the value of having different levels of government focus on different sources of tax revenue (income, sales, or property), and it recommended the coordination of tax bases and tax administration where there was overlap. In addition, it endorsed a policy of federal forbearance in taxation, demonstrated by the deductibility of state and local taxes on federal income taxes and the exclusion of interest on state and local bonds.

Such deference has a very long history. Both deductibility and the exclusion of interest on tax-exempt bonds are among the oldest features of the federal tax code. Cooperative federalism was also manifest in efforts to reconcile the valuation of assets for federal and state income tax purposes, state piggybacking of the federal income tax system, and coordination of estate taxes. But, as with other aspects of cooperative federalism, this posture of intergovernmental deference has diminished over time. The deduction for state sales tax was eliminated in 1986 (though it was partially and temporarily restored in 2004); direct and indirect limitations have been placed on the exclusion of interest on state and local bonds; and Congress has preempted some state and local tax sources, such as telecommunication taxes. Today, federal policy makers often do not know or simply do not consider how federal tax policy changes will affect state and local governments. For example, the impact of eliminating the federal estate tax on the states was hardly even considered, even though many states tied their own estate tax directly to the federal tax (Scheppach and Shafroth, forthcoming).

The decline in federal fiscal deference has been aided by the same process of deinstitutionalization examined previously. The U.S. Treasury Department’s Office of State and Local Finance was once an important source of information and expertise on intergovernmental finance, producing influential reports such as the 1985 study *Federal-State-Local Fiscal Relations: A Report to the President and Congress*. Like its counterparts, the office was eliminated in 1988 and never replaced.

**Causes of Change**

What has led to such substantial shifts in the architecture, actors, and approaches to intergovernmental relations and management? The causes are many and complex, but they include significant changes in the nature of our society and the structure of our economy; changes in our political party system, both organizationally and ideologically; and increased polarization in American politics.

The impact of social and economic changes can be clearly seen in the growth of federal mandates and preemptions. A substantial proportion of federal mandates and regulations involve civil rights and environmental protection, such as Title VI of the Civil Rights Act of 1964, the Voting Rights Act, the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Endangered Species Act, and others. Clearly, the civil rights movement of the 1950s and 1960s and the environmental movement of the 1960s and 1970s contributed to the development of such laws and to the more expansive federal role that they entailed. This expanded role, which was a necessary response to the long and sorry legacy of racial discrimination and the problems of cross-border pollution, blazed a trail for a more assertive style of intergovernmental relations across the board.

Similarly, economic changes have contributed to the accretion of federal preemption statutes. The nationalization of the economy has expanded the federal government’s role in regulating economic affairs since the founding of the republic. Today, ongoing globalization of the economy has accelerated this process, increasing support for federal preemption of state
economic regulation by national and international corporations. Large-scale corporations almost always prefer a single, uniform, and preferably less burdensome federal rule to 50 different state rules. Consequently, the business sector has become a strong constituency for increased federal preemption of state regulatory authority, as in the case of telecommunications regulations, various aspects of product liability law, and pesticide labeling, to list only a few (Posner 1998). Though such preemption often makes sense from an economic perspective, it can also give rise to new arenas of intergovernmental conflict.

Although economic and social changes have tended to support more unilateral and regulatory federal policies, developments in the political system have undermined state and local governments’ ability to moderate such federal policies. The erosion of state and local power in electoral politics is one such development. With the full ascendance of the primary system, mayors and governors have lost much of the influence they once had in presidential and congressional nominations—influence that led Morton Grodzins (1968) to argue that “[s]tates and localities, working through the parties . . . are more influential in federal affairs than the federal government is in theirs.” Individualization of the political system has both diminished state and local influence and convinced members of Congress of the need to “make it on their own,” encouraging the proliferation of narrowly targeted categorical grants and the increasing profusion of legislative earmarks (Mayhew 1974). Such political changes are an important driver of opportunistic federalism and a key reason we now have more than 700 separate grant-in-aid programs and 14,000 earmarks (Rauch 2006; Utt 1999).

The political parties have adapted to this altered role, but the energy for party building has come from the national level. Whereas the national party committees were once derided as “politics without power,” they have grown tremendously since the 1980s—financially, technologically, and organizationally. The national party committees are now the senior partners in the system, striving to rebuild the often moribund state and local party organizations (Hershey and Beck 2005; Sabato and Larson 2002). If, as Grodzins (1966) once claimed, “the parties are responsible for both the existence and form of the considerable measure of decentralization that exists in the United States,” this transformation of the party system has tremendous implications for intergovernmental relations.

Another significant political trend with implications for intergovernmental management is the sharp increase in partisan and ideological polarization in American politics since the 1970s. In Congress, this has been expressed as a decline in the number and influence of ideological moderates in both parties and a corresponding rise in the number and influence of ideological partisans (Binder 1996). This polarization is significant administratively because political moderates—Democrats, but especially Republicans—generally have been the strongest advocates of traditional intergovernmental management concerns. They have typically supported positive government while favoring an emphasis on efficiency, decentralization, and cooperation.

In contrast, liberal Democrats since the New Deal have favored a broad and aggressive national policy agenda and typically have been suspicious of state governments (Derthick 2001), although, as Richard Nathan (2006) observes, liberals can rediscover the virtues of state policy activism when they are out of power in Washington. Increasingly, conservative Republicans have also lost interest in both decentralization and intergovernmental reform, becoming more and more enamored of national policy activism. Behind the occasional shroud of states rights rhetoric, both libertarian and social conservatives have proved increasingly willing to sacrifice the traditional conservative’s preference for institutional deference and limited federal role in favor of promoting their own view of the public good on a national scale—through privatization, preemption, or the mandating of conservative social values.

**Implications for Intergovernmental Management: Hopeful Signs and Continuing Challenges**

Despite the advance of opportunistic federalism, a variety of developments hold promise for intergovernmental management. These include progress in rebuilding support for intergovernmental analysis, efforts to meld intergovernmental flexibility with performance management, emerging paradigms of public administration that recognize the centrality of intergovernmental relations, and bottom-up efforts to build new arenas of intergovernmental cooperation. At the same time, the powerful political currents that have contributed to opportunistic federalism have not vanished. National policy makers continue to face strong incentives in favor of co-optive programs but have few incentives to embrace federal forbearance. Moreover, the fiscal environment of the federal system in the years ahead, which will be shaped by the demographics of aging, projected health care cost inflation, and economic globalization, is fraught with risks for greater intergovernmental conflict and co-optation. A challenging future awaits our federal system under the best of circumstances.

**Rebuilding Intergovernmental Analysis**

One hopeful sign for intergovernmental management is the progress that has been made in rebuilding the capacity for systemic analysis. Significantly, given
what some have termed an era of “executive federalism” (Gais and Fossett 2005), it is Congress and its staff agencies rather than the executive branch that have taken the lead here. For example, the Congressional Budget Office formed a State and Local Government Cost Estimates Unit to implement its responsibilities under the Unfunded Mandates Reform Act. This unit of six analysts produces both real-time cost estimates of proposed mandates for Congress and annual reports on overall trends in intergovernmental regulation (CBO 2006). The GAO also reconstituted an intergovernmental issues group in 2000 after allowing a similar unit to lapse in 1990. This unit has recently produced reports on issues such as unfunded mandates, third-party governance, grants management, and Medicaid formulas. Finally, Congress itself has shown occasional signs of renewed interest in intergovernmental relations. The enactment of the Federal Financial Assistance Management Improvement Act of 1999 (P.L. 106-107) has spurred many grant-management initiatives in the executive branch, and a more active agenda has begun to emerge on the core intergovernmental subcommittees. Beyond Capitol Hill, there have been continuing efforts to restore some form of ACIR-type entity. Supplementing efforts by universities, notably the Rockefeller Institute at the State University of New York at Albany, the National Academy of Public Administration established a Center for Intergovernmental Relations in 2003 and has explored avenues for reestablishing a variety of ACIR’s former functions in intergovernmental consultation and research. Still, no organization has yet acquired the funding needed to re-create a permanent ACIR-like entity.

In the Bush administration, there has been only modest interest in bolstering intergovernmental management in the executive branch. The White House has lacked any sustained interest in intergovernmental management, retaining a strong focus on political liaison activities. The OMB’s primary focus has been on the areas of performance and financial management.

One modest bright spot has been the Bush administration’s strong interest in using information technology to enhance the management of the grants-in-aid system, in part to carry out its responsibilities under the Federal Financial Assistance Management Improvement Act. An initiative first dubbed e-grants and now called grants.gov has involved 26 grant-making agencies and departments in efforts to standardize procedures, forms, and processes under the umbrella of an “electronic storefront” for grantees. This initiative has made considerable progress in the grant-search process, but the effort has far to go with the more difficult and important processes of reporting and accountability. Progress here will require additional streamlining and standardizing of scores of different agencies’ grant-management systems. A hitherto dormant grants “line of business” initiative was jump-started in the fiscal year 2007 budget to help tackle these issues (Miller 2006). Moreover, the nascent institutionalization of a modest staff dedicated to these issues, supported by contributions from participating agencies, and commitments of support from the OMB and departmental chief information officers may promote the development of a new center of grant-management expertise.

### Blending Flexibility and Performance

One of the promised benefits of the performance-management movement is the prospect that it could combine accountability with flexibility. Grantees would be held strictly accountable for achieving results but would have a role in negotiating outcome measures and considerable flexibility in how they go about meeting them (Metzenbaum 2002). As experience with the No Child Left Behind Act indicates, however, performance-accountability systems can have intrusive and controversial effects in practice, and efforts to use performance accountability to increase procedural flexibility have had mixed results.

One promising approach is the performance partnership program in environmental protection under the National Environmental Performance Partnership System (NEPPS). The GAO found that NEPPS has allowed a greater focus on state and local priorities and modest reduction in process-related state reporting (GAO 1999). The NEPPS system has also allowed states to experiment with more innovative regulatory approaches and obtain greater flexibility. Environmental performance partnerships are not without problems, however. Transaction costs have been high, and there has been less reduction of federal regulatory oversight and less focus on results in federal reviews than many states had hoped for (GAO 1999).

Program waivers are another increasingly used tool that have the potential, when properly designed, to increase both recipient flexibility and performance accountability. Since the late 1980s, waivers have been used extensively in welfare, Medicaid, education, and elsewhere. They are now so common in so many program areas that they have become a pillar of what Gais and Fossett (2005) term “executive federalism.” In practice, however, most waivers have been used more as an escape valve from rigid federal restraints than as a tool of performance management. Because waivers...
require explicit federal approval of state requests to deviate from normal program requirements, they constitute a form of what Enid Beaumont (2004) has termed “Mother may I” federalism. Regardless, waivers are a useful tool of opportunistic federalism, allowing those with a strong case or political clout to cut their own unique deals.

**New Analytical Frameworks**

Developing frameworks for public administration offer additional cause for optimism. In particular, the perspectives of third-party governance and network management offer new insights into effective management in an intergovernmental environment, and their continuing maturation is a promising development.

The framework of third-party governance reflects an increasingly sophisticated understanding of changes in our system of governance. Even the change in vocabulary from government to governance signifies how much of what government does today is carried out indirectly, through a range of third parties and utilizing a growing array of policy instruments, such as contracts, grants, loans, regulation, and tax expenditures. As Paul Light (1999) has observed, the “true size” of government is far larger than what appears on the public personnel rolls, but its performance and management require different skill sets and administrative instruments than those of hierarchical administration.

These insights are not new. Mosher outlined the changing responsibilities and tools of the federal government in 1980, and Lester Salamon called attention to the growth of third-party government at about the same time (Mosher 1980; Salamon 1981). The federal grant system was in many ways the pioneer of third-party government, and intergovernmental management emerged to deal with a distinctive set of problems in an era when public administration as a whole was focused on internal hierarchies. Today, intergovernmental management fits comfortably within this emerging framework of third-party governance, and both fields should profit from the interplay of the two.

This change is complemented by another developing framework: network management. The move from direct to indirect governance implies a comparable move from hierarchical management to network management, where authority and power are shared and cooperation must be negotiated (Kickert, Klijn, and Koppenjan 1997). Because intergovernmental management is inherently interorganizational—both vertically and often horizontally—the insights provided by network theory hold particular promise in this field. Scholars are beginning to sketch the different types of network arrangements that are prevalent in the intergovernmental arena. To reach its full potential in the context of third-party governance, however, network theory will need to pay increased attention to the interplay between different policy instruments and networked relationships (Agranoff and McGuire 2003).

**Cooperative State Policy Making**

Among the most positive signs of the health of American federalism is the continuing level of policy innovation by state governments. Such innovation has long been recognized within individual states—in policy fields as diverse as health care, welfare reform, and environmental policy—but it is also apparent in patterns of regional and national interstate cooperation.

One such cooperative venture is states’ efforts to forge a common sales tax system for the Internet age. Through a venture called the streamlined sales tax project, dozens of states have collaborated to develop common sales and use tax systems for remote vendors, negotiating uniform definitions of taxable items, common tax rates, and simplified administration. To date, 22 states representing over 20 percent of the U.S. population have enacted implementing legislation, and the Streamlined Sales and Use Tax Agreement became effective in those states as of October 1, 2005.

Similar multistate cooperation has developed around environmental policy issues. States have a long history of regional coordination and cooperation on water-related issues, such as river basin commissions and the Great Lakes Commission. But states have also become increasingly active in regional agreements on clean air standards and global warming initiatives. Most recently, seven northeastern states reached an agreement—the Regional Greenhouse Gas Initiative—to limit greenhouse gas emissions by regional power plants (Jones 2006). Whether these and similar efforts represent a cyclical reaction of state innovation in response to more conservative federal policies (Nathan 2006) or a secular trend of increased state policy sophistication and maturity remains to be seen, but they represent a promising form of horizontal cooperation in the federal system, encouraged by the same dynamic of policy entrepreneurship responsible for less positive features of opportunistic federalism (Rabe 2004).

**Conclusion**

Our intergovernmental system has changed considerably since the days of the Kestnbaum Commission. Vertical relationships have grown more dense, more opportunistic, and less cooperative since the mid-1950s. Despite these trends, we have witnessed a period of relative disinterest and deinstitutionalization in intergovernmental management and analysis at the national level that is only now starting to be addressed. The negative impact of these developments...
on intergovernmental relations was made starkly evident by Hurricane Katrina. Aside from the inherent difficulties posed by the scale of the storm, the miserable response was in large part a failure of intergovernmental management. Cooperative federal–state–local relationships that had been nurtured in previous years were disrupted by the new, nationally focused and assertive Department of Homeland Security. The deinstitutionalization of intergovernmental competence and the politicization of emergency management contributed to the failed response as well.

If allowed to persist, such weaknesses in intergovernmental management will be magnified by challenges that are building on the horizon. Projected public spending commitments, especially for Medicare and Medicaid, threaten to wreak budgetary havoc at all levels of government, crowding out other expenditures and generating intense political conflict. The changing dynamics of our national economy, which is driven by technological change and globalization, pose growing challenges for public sector revenues as well, particularly for state governments. As the service sector of the economy continues to expand and as Internet sales grow, pressure on state and local sales tax revenues will increase. Finally, the political dynamics that have made federal mandates and preemption attractive to federal policy makers are still largely intact, threatening to propel opportunistic federalism into the future.

There is no quick-and-easy recipe for returning to a more cooperative intergovernmental system. It takes time and hard work to build and nurture intergovernmental relationships and to establish trust between different units and levels of government. It also requires the commitment of resources to restore our capacity for intergovernmental analysis, training, and management. And above all, it requires the political will to resist opportunistic politics and to rebuild a culture of intergovernmental comity.

Fortunately, positive developments are beginning to emerge in the paradigms of public management, institutional support for intergovernmental analysis, horizontal federalism, and specific tools of policy design. Moreover, political balance in the federal system is still nourished by the underlying strength of state and local governments. An increasingly hollow federal workforce has become more rather than less reliant on its intergovernmental partners. Such dependency—and the power it conveys over the implementation of federal policy goals—is an important source of strength for the agents of federal policy making. The trust and affection that citizens retain for their state and local governments—which typically outweighs that held for the national government—nourishes a deep foundation of political power and legitimacy at these levels of government (Kincaid and Cole 2005). And the capacity for policy innovation at the state and local levels, exemplified by intergovernmental ventures such as the streamlined sales tax project and by domestic state innovations, all point to the continuing resilience of the American federal system.

Acknowledgments
The concept of opportunistic federalism that is developed in this article benefited greatly from the writings and insights of Paul Posner and Martha Derthick. I would like to thank them, as well as Jonathan Bruel, Bruce McDowell, and Carl Stenberg, for their comments and suggestions on earlier drafts of this article. Needless to say, any errors of omission or commission are mine alone.

Notes
1. Each of these functions was examined by a special study group composed of select commission members and prominent specialists and practitioners in the field. Although the functional studies were intended to inform the general report, they also produced some areas of disagreement. For example, the report’s general recommendations expressed a clear preference for the continued use of categorical grants rather than block grants, although the study committees on federal aid to agriculture and public health reached opposite conclusions. See the Commission on Intergovernmental Relations (1955, 122–23, 132–33, 154, 252).
2. The commission was not the first to develop the idea; however, Jane Perry Clark Carey’s 1938 book, The Rise of a New Federalism, provided a pathbreaking analysis of cooperative federalism.
3. Three House members and three senators were appointed by the Speaker of the House and the vice president, respectively. The president appointed three executive officials and three public members with considerable discretion, but the 14 state and local members were appointed by the president based on lists proposed by relevant public interest groups.
4. Data are derived from the 1970–79 annual reports of the U.S. Advisory Commission on Intergovernmental Relations. These and other ACIR reports can be found at the public documents cybercemetery at the University of North Texas library, http://govinfo.library.unt.edu/.
5. The exact number of federal mandates is difficult to estimate, depending on the definitions used and the treatment of major authorizations and expansions. The ACIR estimates can be taken as conservative, however; the National Conference of State Legislatures put the total estimate at 185 during this same period. See the ACIR (1993, 1994) for more details. Although the ACIR estimates are now 10 years old, few of the regulations involved have been rescinded, relaxed, or terminated since then (the Reauthorization of the
Safe Drinking Water Act in 1996 is an exception). The passage of the Unfunded Mandates Reform Act in 1995 appears to have slowed the rate of adoption of certain kinds of new mandates, but it did not rescind or relax existing ones.

6. For a somewhat comparable assessment, see Posner (1998, chap. 9) and Derthick (2001, chap. 1).

7. The current director of the Office of Intergovernmental Affairs is Ruben Barrales, who is also deputy assistant to the president. The office has far less prominence on the White House Web site than the Office of Faith-Based and Community Initiatives, and it is described on the White House Web site strictly in liaison terms: “Intergovernmental Affairs (IGA) serves as the President’s liaison to state, local, and tribal governments.” See www.whitehouse.gov/government/off-descrp.html.

8. See the ACIR annual reports, various years.


References


Commission on Intergovernmental Relations. 1955. A Report to the President for Transmittal to the Congress. Washington, DC: Commission on Intergovernmental Relations.


Ink, Dwight. 2006. Interview with the author, Washington, DC, April 12.

Jones, Chris. 2006. Landmark Accord Reached by Seven Northeastern States to Address Global Warming, ECOStates, Winter, 9–11.


From Cooperative to Opportunistic Federalism 675


