## Consult States Counterplan

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### \*\*\*Consult States Shell\*\*\*

#### The United States federal government should enter into a process of prior and binding consultation with the 50 states and relevant territories and propose to [INSERT]. THe united states federal government will continuously advocate the plan but will allow the states propose specific changes to implementation. All state proposals on implementation will be accepted.

#### States want prrior binding implemenation consultation and cooperation from the USFG

Dunlop ‘5

Becky Norton, Vice President of External Relations at the Heritage foundation, specializing in Federalism, environmental regulation, and property rights, “Improve the Environment… Leave it to the states… and the people,” speech given 4/20/05, http://www.heritage.org/Press/Improve-Environment.cfm, accessed 6/28/09

What are some of the environmental challenges that we are looking at today and what do we see happening in Washington D.C.? One of the good things is that the EPA has devolved more authority to the states on environmental issues. They have recognized the fact that there is no “race to the bottom” of the environmental barrel in the states. In every state, people want to have clean air and clean water. So EPA has turned over increasing amounts of authority to state officials. There is another side to the devolution coin, however. Oftentimes, EPA is simply making state officials administrative agents of the federal government. The job of state environmental officials is to look out for their own citizens, to improve the quality of the environment for their particular state or locality. You don’t want them to become the agent of some other entity, which has a point of view with which they disagree. So there are two sides to that coin of sending more “responsibility to the states.” We need to keep working to make certain that Congress takes action to return not only more enforcement responsibility but also more program authority.

#### Courts deferring to cooperative federalism and avoiding preemption—plan engages in preemption but the counterplan maintaining it

Barrington ‘2

Copyright (c) 2002 Whittier Law Review Whittier Law Review Summer, 2002 23 Whittier L. Rev. 1127 LENGTH: 25708 words NOTE AND COMMENT: PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA V. CONCANNON AND MAINE'S PRESCRIPTION DRUG REBATE STATUTE: A TWENTY-FIRST CENTURY SOLUTION TO THE MEDICAID CRISIS NAME: Conrad J. Barrington\* BIO: \* Whittier Law School, Class of 2003.

The court began its analysis by stating that courts are traditionally reluctant to exercise federal preemption of a state law, and that such action is to be considered "strong medicine." n283 In passing, the court also mentioned that this is even more true when the federal program is one of "cooperative federalism," where " "coordinated state and federal efforts exist within a complementary ... framework.' " n284 Though the court delved no further into the idea of "cooperative federalism," the United States Supreme Court case of New York Department of Social Services v. Dublino n285 offers interesting parallels to the Concannon case. In Dublino, a group of public assistance recipients filed suit against New York's welfare department, challenging the constitutionality of a New York Social Welfare Law under the Supremacy Clause. n286 The plaintiffs claimed that the federal law (encompassed within the work incentive program provisions of the 1967 amendments to the Social Security Act) preempted the New York statute. n287 Both statutes benefits provisions for families with dependent children, provided that the parents were employable. n288 The New York law, however, had more stringent work requirements than the federal law, providing the impetus for the lawsuit. n289 [\*1160] Under the terms of the federal law, states were given broad discretion in dispersing their Aid to Families with Dependent Children (AFDC) resources. n290 As in the federal Medicaid program, the states were expected to set their own eligibility requirements and to determine the different levels of benefits. n291 Despite this discretion granted to the states, the plaintiffs argued that New York had nonetheless stepped beyond the boundaries of the federal statute. n292 The Court held that in this sort of "cooperative federalism" relationship between the state and federal government, the standard for a facial challenge to a statute is a high one. n293 According to the Court, "Congress "has given the States broad discretion' [under the AFDC program] ... and "(s)o long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act,' the courts may not void them." n294 The Court also stated that "[it] has repeatedly refused to void state statutory programs, absent congressional intent to pre-empt them." n295 It took special note of the fact that New York's intentions were admirable, and that the state was attempting to correct the major societal problems of rampant unemployment and need. n296 The Court stated that "the problems confronting our society in these areas are severe, and state governments, in cooperation with the Federal Government, must be allowed considerable latitude in attempting their resolution." n297

#### India and models us cooperative federalism

Starobin, 6-13-09.

Author, “Divided We Stand.” http://online.wsj.com/article/SB10001424052970204482304574219813708759806.html

The most hopeful prospect for the USA, should the decentralization impulse prove irresistible, is for Americans to draw on their natural inventiveness and democratic tradition by patenting a formula for getting the job done in a gradual and cooperative way. In so doing, geopolitical history, and perhaps even a path for others, might be made, for the problem of bigness vexes political leviathans everywhere. In India, with its 1.2 billion people, there is an active discussion of whether things might work better if the nation-state was chopped up into 10 or so large city-states with broad writs of autonomy from New Delhi. Devolution may likewise be the future for the European continent—think Catalonia—and for the British Isles. Scotland, a leading source of Enlightenment ideas for America’s founding fathers, now has its own flourishing independence movement. Even China, held together by an aging autocracy, may not be able to resist the drift towards the smaller.

#### Cooperative federalism key to solve kashmir conflict

Devra 2k

Kashmir calls Delhi's bluff on decentralization By Ranjit Devra, June 28, Asia Times

Political analysts noted that Abdullah ignored a last minute appeal by Vajpayee to tone down the autonomy demand in order to regain popularity in the state. ''The people of J&K are unhappy with Farooq Abdullah's performance over the past four years. There has hardly been any development and joblessness, collapsed health and educational infrastructure remain huge problems,'' commented The Times of India on Tuesday. ''This is the only way in which Farooq Abdullah feels he can woo back the disenchanted people. But will this really solve the state's problems? The real issues are still unemployment and lack of development and autonomy does not automatically guarantee solutions.'' However, Abdullah has insisted that these problems cannot be solved without autonomy. ''We did not promise them (the people) employment or anything, just the restoration of autonomy . . . we are bound to fulfil that promise,'' he told the assembly before the autonomy vote. A serious debate on the question of a truly federal structure for India is also a demand of regional parties that have played a key role in forming four Indian governments, including Vajpayee's, in the last four years. ''Autonomy must not be viewed as a dirty word and an autonomous Kashmir could become a model of cooperative federalism,'' said political analyst and Kashmir expert Amitabh Mattoo of the prestigious Jawaharlal Nehru University. Former Prime Minister Inder Kumar Gujral too said that after half-a-century of independence from British colonial rule, it was time for India to adopt the principle of cooperative federalism.

#### Deterrence Will Fail—Only Resolving Kashmir Crisis Can Permanently Build CBMs and Prevent War Nuclear Between India and Pakistan

Kapur 05

S. Paul Kapur is a Visiting Scholar at Stanford University’s Center for International Security and Cooperation and Assistant Professor of Government at Claremont McKenna College. India and Pakistan’s Unstable Peace. International Security, 127, Fall//souders

Just as important as these strategic and technical measures, however, will be energetic diplomatic attempts to ameliorate ongoing territorial disputes. Such efforts can help to reduce a key incentive for aggression by new nuclear states, thereby lowering the potential costs of future nuclear proliferation. In the South Asian case, international political and economic support for the Musharraf government's recent efforts to rein in the Kashmir insurgency, and to forge a more cooperative relationship with India, could be useful. While such support cannot ensure increased regional stability, it can help to reduce the Pakistan government's desire to alter the Kashmiri status quo, and thus may lower the likelihood of Indo-Pakistani conflict despite their nuclear weapons' potentially destabilizing effects. An important means of avoiding nuclear danger may thus have more to do with diplomacy than with nuclear weapons themselves.

### India Models the US Federalism

#### India Models US Federalist structures

#### **Smith ‘6**

Berkeley Journal of International Law 2006 24 Berkeley J. Int'l L. 218 LENGTH: 27297 words Article: Making Itself at HomeUnderstanding Foreign Law in Domestic Jurisprudence: The Indian Case NAME: By Adam M. Smith\* BIO: \* Chayes Fellow, Harvard Law School. Modern India has also been strongly influenced by many states that never ruled its territory. For instance, American influence can be found both in the state's judicial process and its constitutional text. n83 The Indian Constitution's express declaration of fundamental rights coupled with the introduction of judicial review n84 marked a radical departure from the British doctrine of parliamentary supremacy, and thoroughly "Americanized" the system. n85 In addition to judicial review, the framers of the Indian Constitution explicitly used the American Bill of Rights as a starting point in their discussions. n86 Moreover, India even adapted its constitution upon the recommendation of an American jurist. Following the terror of partition and Mahatma Gandhi's assassination, many representatives to the constitutional convention began to argue for carving out a constitutional allowance for preventive detention, placing "citizens' freedom at the disposition of a legislature for the sake of a public peace." n87 As a result, constitutional guarantees to due process were removed from the document, a change supported by (and potentially instigated by) U.S. Supreme Court Justice Felix Frankfurter, who served as an unofficial - though evidently persuasive - legal consultant to the assembly

### Cooperative Federalism Solves Kashmir

#### Cooperation key to solve Indian conflicts

Observer Research Foundation ‘4

REPORTS Co-operative Federalism and Management of Diversity 02 November 2004, http://www.observerindia.com/cms/sites/orfonline/modules/report/ReportDetail.html?cmaid=1258&mmacmaid=1259

As the world comes closer in the wake of information explosion and gobalisation, the idea of 'Cooperative Federalism', which is seen as a tool to resolve conflicts, is gaining increasing relevance and acceptance. Inspired by this development, a two-day International Conference on "Co-operative Federalism and Management of Diversity", has been organized from November 2-3, 2004, under the auspices of Observer research Foundation (ORF) , New Delhi, and Forum of Federation (FoF), Canada. Speakers examined the working of federal models in different countries and deliberated upon possibly suitable alternative(s) for India and other developing societies. Inaugurating the Conference, Mr Manishankar Aiyar, India's Union Minister for Panchayati Raj, drew the attention of foreign as well as Indian participants to the nuances of federalism inherent to India's culture, tradition and ethos. He drew examples from the Mahabharat and the Bhagvat Gita. Mr Aiyar said "India was never a true federation" and attested that "it is a Union State". It was the Union which has created the States and it still holds the powers to redraw the boundaries of any State. He felt that co-operation acquires greater importance between the various States and their respective local governments on the issues of economic development, social justice, equity and efficiency.

#### Cooperative federalism key to solve kashmir war

Observer Research Foundation ‘4

REPORTS Co-operative Federalism and Management of Diversity 02 November 2004, <http://www.observerindia.com/cms/sites/orfonline/modules/report/ReportDetail.html?cmaid=1258&mmacmaid=1259>

Mr R.K.Mishra, Chairman, Observer Research Foundation, in his opening remarks said it was an irony that the Constitution of India which we gave to ourselves has been amended more than 90 times in its short existence of 54 years. He said that the current tensions between the Center and the States could be attributed to faulty arrangements of federal relations in the Constitution which gave overriding powers to the Center and promotesd a situation of competition among States on the one hand, and between the States and the Center, on the other. Citing two major regions of tension in India, the Northeast and the State of Jammu and Kashmir, Mr. Mishra made it clear that the time has come to think in terms of 'creative federalism' based on co-operation and mutual trust than merely adhering to an armed solution which even the mightiest power like the US was finding difficult as a method to resolve conflicts.

### Cooperative Fism Solves Kashmir War

#### Cooperative federalism gives Kashmir enough autonomy to solve war

The Times of India 2k

A Fine Balance, June 13.

First, Kashmir is unique, and must be dealt with specially. Jammu and Kashmir’s uniqueness is obvious for a variety of historical reasons recognized even by the Supreme Court, but its singular importance to the very idea of India is often forgotten. A Muslim majority state that voluntarily acceded to India in 1947 lent tremendous strength to the construction of India as a vibrant, secular and pluralistic state. The battle, therefore, to win back the hearts and minds of the Kashmiri people is critical not just for the recovery of the ideals that inspired Indian nationhood, but central to the war against obscurantism and fundamentalism. In other words, Kashmir must no longer be dealt with the kind of political ineptitude and bureaucratic inertia that has often characterized the Centre’s policies toward many other states over the last decades. Second, autonomy must not be viewed as a dirty word, and an autonomous Kashmir could be become a model of cooperative federalism. It is not often realized that autonomy is synonymous with devolution of decentralization of power. The demand for greater decentralization has been part of the charter of virtually every Indian political party—at one time or another. Even if Article 370 is restored to its pre-1952 shape, it is still possible to strike a harmonious balance between the need to integrate Jammu and Kashmir within the national mainstream, and the state’s demand for autonomous self-governance. If this balance is struck, Jammu and Kashmir could become a model of co-operative federalism,” a special model that could be gradually applied to other states of the Union.

### Consult = Cooperative Federalism

#### Consulting and deferring to states on implementation leads to cooperative federalism

Fischman, 05.

Indiana University School of Law-Bloomington. NYU Environmental Law Research Journal, “Cooperative Federalism and Natural Resources Law,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=824385

**Cooperative federalism describes an arrangement under which a national government induces coordination from** subordinate jurisdictions, such as **states** and tribes, **through incentives rather than requirements**. In environmental law, **cooperative federalism highlights the divide between** pollution control and resource management. This article examines the divide from both sides. Even though almost all of the environmental law commentary on cooperative federalism focuses exclusively on the pollution control side, the basic elements of cooperative federalism can be combined in a wider variety of forms than are recognized by most pollution control programs or scholarship. This article reviews the ways in which **resource management law has brokered the state-federal relationship to expand the otherwise cramped spectrum of arrangements that might fairly be called cooperative federalism**. The narrow, pollution control model **entails the fostering of state administrative programs that can receive authorization to tailor and implement federal standard**s. Natural resources law demonstrates three broader categories of cooperative federalism: place-based collaboration, state favoritism in federal process, and federal deference to state process.

### Binding Consult k/t Cooperative Federalism

#### Cooperative federalism requires geniune power sharing with the states

Scheiber 2k

MacMillan Reference, “Cooperative Federalism” http://www.novelguide.com/a/discover/eamc\_02/eamc\_02\_00628.html

Numerous analysts who celebrate these developments as signifying that **old-style FEDERALISM is "dead," displaced by "intergovernmental relations,**" argue that **the tension, pretensions at autonomy, and the notion of separateness of responsibilities that characterized governance in the pre-New Deal periods of constitutional development no longer form part of the reality of the federal system. Some scholars argue that relative power distribution is no longer a relevant issue**. **Forgotten is the elementary notion that "sharing" does not necessarily mean equality.** Characteristically**, in the modern grant-in-aid programs, the national government has not only raised and distributed the revenues, it has also designed the programs and established the goals, quite apart from overseeing administration**.

#### Cooperative federalism requires binding consultation between the federal government and states

Lawton & Burns ‘96

1996 Albany Law Journal of Science & Technology Albany Law Journal of Science & Technology 1996 6 Alb. L.J. Sci. & Tech. 71 LENGTH: 9326 words SYMPOSIUM: THE STATE ROLE IN TELECOMMUNICATIONS REGULATION: Models of Cooperative Federalism for Telecommunications NAME: Raymond W. Lawton \* and Bob Burns \* Associate Director and Senior Institute Attorney at The National Regulatory Research Institute, Ohio State University, Columbus, Ohio

The third model of federalism is cooperative federalism. Under this model, costs, policies, and powers are shared by state and federal levels of government. n48 Education and highways are two areas where cooperative federalism can be seen. At least one author has identified three common attributes of cooperative efforts: shared costs, shared administration, and shared blame. n49 **The important point is that intergovernmental relations occur between parties that either have common goals or interests, or have otherwise agreed to cooperate. It is important to recognize that coordination and intergovernmental cooperation do not just happen. No state official can force a federal agency to do something; both parties have to agree to act. Dual federalism**, in some sense, never "goes away" because each level of government is sovereign. Even for nominally preempted areas, the transaction costs of federal enforcement may be high enough that the federal government often finds it prudent to be cooperative rather than purely preemptive.

### Dual Federalism Fails

#### Dual federalism fails—increases bureacracy and bankrupts states

Mount, 09.

Steve. The U.S. Constitution Online. “Constitutional Topic: Federalism” http://www.usconstitution.net/consttop\_fedr.html

Some advocate a return to an emphasis on **dual federalism** as a returning of power to a government closer to the people, and hence under better popular control**. There are many problems with this**, however, **as many states found in the Reagan era**. President **Reagan** was a strong advocate of states rights, and **wanted to return many of the powers taken up by the federal government to the states**. But in many cases**, this created more bureaucracy**, aseach of the **50 states had** to establish offices **to administer programs the federal government handed over.** Worse, **the transition was often unfunded, meaning that the costs of the programs were shifted to the states, but federal taxes were not reduced accordingly, leading to a higher tax burden on the people as states raised taxes to fund the programs**. Worse, **when federal taxes were cut, federal aid to the states that did exist was cut as** well. But despite the appeal of cooperative federalism, there is an on-going appeal to a degree of dual federalism. The failure of President Bill Clinton's national health care initiatives is a perfect example of an area of politics that the people feel is best held more closely, in spite of some of the benefits of a national system.

### Land Use Consult

#### Consulting over land use and environmental issues key solves case better and prevents expensive duplication

Fischman, 05.

Indiana University School of Law-Bloomington. NYU Environmental Law Research Journal, “Cooperative Federalism and Natural Resources Law,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=82438

Conversely, **natural resources law can benefit from adaptation of the narrow, pollution control model of the cooperative federalism.** This article applies some of those tools to the Endangered Species Act (ESA) and discusses recent developments that modify my previous work in this area. There is an acute need in the ESA program for **federal coordination with state and local jurisdictions because land use is such an important determinant of habitat quality for biodiversity.** **Federal certification of local programs for the purpose of meeting national standards can spur more effective grass roots conservation while eliminating awkward duplication.** However, the problem of inadequate inducements highlights important limitations. In particular, experimentation with narrow cooperative federalism through ESA's 4(d) rules modifying strict prohibitions on adverse habitat modification illustrates a kind of Gresham's Law of regulatory choice: lax standards drive stringent standards out of circulation.

### Consult Solves Better Than Plan

#### Cooperative federalism solves

Schutze 09.

Professor of Law, Durham University. “From Dual to Cooperative Federalism” http://www.oup.com/us/catalog/general/subject/Law/ConstitutionalLaw/?view=usa&ci=9780199238583

**This transition from dual to cooperative federalism is viewed as a positive development that will benefit both levels of government** - the European Union and the Member States **- since the ideal of structuring the law-making function according to the problem at hand is more flexible and efficient than the idea of mutually exclusive spheres of power. The mechanism of common federal standards supplemented by territorially differentiated national solutions best expresses the idea of unity in diversity**.

#### Allowing states to enforce federal law solves for diversity of federal policies.

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”, page 4. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

Starting most notably with the environmental protection statutes passed in the 1970s,**11 federal regulatory programs increasingly have relied on state agencies to implement federal law.**12 **In enacting such programs, Congress opts for the benefits of diversity in regulatory policy within a federal framework. Rather than preempting the authority of state agencies and supplanting them with federal branch offices, cooperative federalism programs invite state agencies to superintend federal law.**

#### Consulting the states allows them to tailor federal policies for a local fit.

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

**Cooperative federalism programs set forth some uniform federal standards**—as embodied in the statute, federal agency regulations, or both—**but leave state agencies with discretion to implement the federal law, supplement it with more stringent standards**,13 **and, in some cases, receive an exemption from federal requirements.**14 **This power allows states to experiment with different approaches and tailor federal law to local conditions**.15 **When implementing a cooperative federalism statute, the state agency often steps into the shoes of the federal agency and makes federal law**.16 **A state agency thus may have greater authority when implementing the federal act than otherwise available under state law.**

#### Cooperative Federalism solves at a local level while increasing competition and determining the best policy option.

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

Put simply, the cooperative federalism regulatory strategy makes sense where the benefits of allowing for diversity in federal regulatory programs outweigh the benefits of demanding uniformity in all situa- tions.21 Either by contemplating state variances from the minimum federal standards (e.g., environmental regulation) or by encouraging state discretion in implementing federal law (e.g., the Telecom Act), **Congress often prefers cooperative federalism programs to unitary federal administration**.22 In particular, **there are at least three related reasons why the federal government has decided to promote diversity in federal regulatory regimes: (1) to allow states to tailor federal regulatory programs to local conditions; (2) to promote competition within a federal regulatory framework; and (3) to permit experimentation with different approaches that may assist in determining an optimal regulatory strategy**.

#### Cooperative federalism creates a race to the top.

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

**The argument that competition between states can produce optimal results rests upon at least four decades of economic theory and empirical research.** Although there are a number of important contexts where competition between states can have negative results,32 “**a great deal of empirical research appears to support”** the Tiebout hypothesis **that allowing citizens and businesses to choose among competing jurisdictions can help to maximize social welfare**.33 That is**, by adopting a flexible federal regulatory regime, a cooperative federalism program allows for a degree of competition between the states for residents, capital, and economic activity in an increasingly mobile society**.34

#### States create a race to the top for a better policy option.

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

**Through the process of interstate competition, other states and the federal government may move to adopt preferable approaches**.48 In this sense, **a federal regulatory agency**, like the Supreme Court, **can benefit from “percolation” of different approaches before ultimately settling upon a single approach or delineating the scope of acceptable approaches.**

### AT: Perm

#### Binding consulation to critical solvency—ineffective federal implementation crushes the plan and permutation but the counterplan boosts cooperative federalism

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

**The local tailoring ability of cooperative federalism regimes facilitates ambitious regulatory ventures** like the Telecom Act’s attempt to open up local telephone markets to competition**. A cooperative federalism approach recognizes that many regulatory problems “are so complex that they cannot be resolved by one level of government acting alone; rather, they require cooperation among all levels**.”**24 Economists repeatedly have praised this aspect of federalism.25** Professor Richard Stewart calls it a “reconstitutive” approach to regulatory pro- grams, **a strategy which can “afford flexibility to accommodate diverse subsystem conditions and values, broaden decisional responsibility, and reduce costly and dysfunctional centralized decisionmaking.”**26 **The federal government simply does not have the know-how and resources to tailor broad standards to local circumstances**.27 As an important case in point, **modern environmental regulation convincingly demonstrates how “[t]he need to tailor environmental policy to local conditions and the even more important need to use state technical and personnel resources compel Congress to share some of its au- thority.**”28 Notably, when the Federal Environmental Protection Agency (EPA) stepped in for the state of Idaho to administer its air quality regulatory program, it clearly was not up to the task, reportedly spending almost five times as much as the state would have spent to do the same job.29 **As a result of this need for cooperation, both the states and the federal government are well aware that they are tied together in their ability to administer cooperative federalism programs**.30 **The resulting interdependence gives each important influence over the other.**

#### The perm is not cooperative federalism: false consultation is really a federal preemptive mandate

Lawton & Burns ‘96

1996 Albany Law Journal of Science & Technology Albany Law Journal of Science & Technology 1996 6 Alb. L.J. Sci. & Tech. 71 LENGTH: 9326 words SYMPOSIUM: THE STATE ROLE IN TELECOMMUNICATIONS REGULATION: Models of Cooperative Federalism for Telecommunications NAME: Raymond W. Lawton \* and Bob Burns \* Associate Director and Senior Institute Attorney at The National Regulatory Research Institute, Ohio State University, Columbus, Ohio

This paper examines three basic models of federalism. The first model is the preemption model, which entails a clearly dominant role for the federal government. n5 The second model is dual federalism, in which the states and federal government retain supremacy within their respective spheres. n6 The third and most interesting model is cooperative federalism, where power is shared between the states and the federal government. n7 Unfortunately, rhetoric can often confuse reality; many officials claim [\*73] their programs are in the cooperative category when in reality they are not. The sections below briefly examine each model of federalism as it relates to telecommunications as well as other substantive examples used by political scientists. This brief examination is intended to provide telecommunications regulatory policymakers with an objective appraisal of the advantages and disadvantages associated with each model. The cooperative model examines one approach in detail because of its relevance as a way of maximizing federal-state cooperation to develop nationwide telecommunications policies. Two policies that follow the cooperative approach are the Public Utility Regulatory Policies Act of 1978 (PURPA) n8 and the Energy Policy Act of 1992 (EPACT). n9 The proposition presented in this article is that the PURPA approach is directly transferable to telecommunications reform legislation. PURPA's improved energy policies, designed and implemented for electric and natural gas utilities, demonstrate that federal and state governments can cooperate in high stakes regulatory arenas. n10 II. PREEMPTION MODEL OF FEDERALISM The Constitution confers specific, broad, and unstated (or implied) powers to the federal government which include the power to declare war, coin money, and regulate commerce with foreign nations and among the states. n11 State governments retain the right to regulate commerce within a state, ensure public health and safety, and exert powers that the Constitution neither delegated to the federal government, nor prohibited the states from using. n12 Both the states and the federal government share other powers, such as the authority to establish courts and expend funds for the general welfare. In a preemptive model, the federal government implements policy that effectively limits the state's [\*74] role in a particular area, even where both the states and the federal government share the power to control that area. In a preemptive mode, the federal government does not necessarily overstep its authority, rather it acts within its power to mandate compliance, delegate responsibility, promote negotiation, or obtain services from the states. A prominent example of the preemptive mode is this nation's long history of desegregation, integration, and civil rights. One problem related to preemption is what some have called "mandate madness." n13 This term is used to describe the federal government's attempt to mandate that a state or local government comply with or act affirmatively to adopt or implement a federal policy or piece of legislation. n14 The federal government allocates generous sums of money to state and local governments which cannot afford to lose the money by not complying with these "unfunded mandates." n15 A classic example of linking policies to mandates is granting highway construction monies to states that implement a fifty-five mile per hour speed limit. n16 Dependant upon federal highway funds, a state's autonomy is effectively preempted inasmuch as these mandates provide the state with a program it cannot maintain without federal assistance. n17

### Aff Doesn’t Solve

#### States are key laboratories but blanket policies crush aff solvency—prior binding consultation leads boost cooperative federalism and solve the case

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

In perhaps the most memorable defense of **federalism**, Justice Brandeis explained that “[i]t **is one of the happy incidents of the federal system that a single courageous State may, if its citizens so choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country**.”40 Unlike some New Deal programs that left no room for variation between the states,41 **cooperative federalism programs capitalize on these laboratories. When states enjoy significant discretion, they can experiment and learn from one another when performing complex regulatory tasks**— from setting pole attachment rates (Pole Attachment Act of 1978)42 to encouraging the development of alternate sources of electric power (the Public Utilities Regulatory Policy Act (PURPA))43 to making judgments about cost containment in health care reimbursement (Medicaid)44 to setting appropriate water quality benchmarks (Clean Water Act).45 **Resisting the immediate institution of a uniform national rule hedges the federal government’s bet by waiting to pick a single stan- dard. A national standard may ultimately emerge, but avoiding the premature selection of such a standard—or its ineffective administra- tion—leads to better regulatory policy**.46 **The absence of a federal standard in difficult regulatory policy areas can help ensure that the regulatory regime does not “lock in” a suboptimal standard**.

#### Uniform federal policies crush innovation—should give states authority over federal programs via consultation

Weiser 01.

Associate Professor of Law, University of Colorado. “Federalism Common Law, Cooperative Fedearalism, and the Enforcement of the Telecom Act”. lawweb.colorado.edu/profiles/pubpdfs/weiser/CoopFederalism.pdf –

**The development of federal common law for unitary federal regimes**, ranging from the Sherman Antitrust Act, to the Labor Management Relations Act,65 to maritime law, often **rests on the assumption that such uniformity is necessary to effectuate the relevant substantive federal policies in each area**. In fact, **however, courts and commentators have begun to recognize that the aspiration for uniformity**—both before Erie and after it—**often rests on flawed assumptions**.**66 By focusing on achieving uniform legal rules, courts often overlook the potential value of diversity and fail to examine adequately the policies advanced by the federal statute**.67 Consequently**, federal judge-made law and its attendant aspiration to develop a uniform regime impose institutional costs on the lawmaking system by displacing other actors and undermining the benefits of experimentation by state agencies, state courts, and other bodies**.

### Now Key Time

#### The early obamam administration is key: Binding consultation on social services with the state vital to solvency and establing durable cooperative federalism

NGA, 08.

The National Governor’s Association. “States and Localities: Hey, Remember Us?” http://13thfloor.governing.com/2008/09/states-and-loca.html

The federal-state-local partnership is vital to ensuring the general welfare and well-being of our citizens and our country. As a new administration begins, it is important to recognize that the foundation of this partnership must be developed early and continuously nurtured and strengthened. To promote this relationship, the leaders of state and local government ask the next president to follow two main guiding principles. The first is to consult and cooperate with state and local leaders. We are on the frontlines everyday and know the effect of national policies and programs on the delivery of services to our citizens. We ask the next administration to adopt a policy of constructive engagement with state and local government to gather relevant information about existing issues, build on innovative programs already in place at the state and local level and ensure national policies are implemented in the most effective and efficient manner possible. Second, we encourage the next Administration to promote innovation at the state and local level. State and local leaders can respond more quickly and experiment more widely than our federal partners. We urge the new president to strive for federal policy that encourages this innovation by maximizing state and local flexibility as we implement national policies and programs.

#### OBAMA IS SETTING A TREND FOR COOPERATIVE FEDERALISM NOW, BUT IT COULD EITHER WAY

Dinan and Gamkhar ‘9

(John Dinan\* and Shama Gamkhar, John- Associate prof of Political science @ WFU, Shama, Associate Prof of Political Affairs @ University of Texas, The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism, May 14, 2009, Publius,http://publius.oxfordjournals.org/cgi/content/full/pjp012)

Still to be determined is whether Obama will be guided by a general approach to federal-state relations. Although George W. Bush opened his presidency by professing concern for federalism and state interests, he was notably inattentive to federalism considerations in office—supporting expansion of federal authority even on issues where Republicans had traditionally deferred to state authority such as education, prescription drug coverage, driver's licenses, and welfare policy, and rarely perceiving any tension between his policy priorities and state prerogatives or concerns (Conlan and Dinan 2007). It remains to be seen how Obama will handle situations where his policy priorities are in tension with state interests, and whether he will be any more attentive than his predecessor to federalism concerns in these crucial instances. To date, however, Obama has offered several important professions of respect for states’ role in the federal system, most notably in a December 2008 address to governors in Philadelphia and in a February 2009 toast to governors whom he honored by inviting them to the White House for his first presidential state dinner. Moreover, Obama and his cabinet can be expected to be sensitive to the perspective of state and local governments, as a result of the president's experience as an Illinois state legislator and his appointment of current or recent state and local office-holders to head the Departments of Education, Homeland Security, Commerce, and Health and Human Services. These developments suggest at least the possibility of a different approach to federal-state relations (Harkness 2009).

#### Now Key time to set tone for cooperative federalism

**Dinan and Gamkhar 09**

(John Dinan\* and Shama Gamkhar, John- Associate prof of Political science @ WFU, Shama, Associate Prof of Political Affairs @ University of Texas, The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism, May 14, 2009, Publius,http://publius.oxfordjournals.org/cgi/content/full/pjp012)

On other issues, Obama is bound to encounter tensions between his policy preferences and state prerogatives, and it is in his resolution of these conflicts that his approach to federalism questions will be most clearly illuminated and his commitment to honoring state prerogatives most challenged. Such tensions will emerge in various policy areas but may be particularly pressing in climate change policy, where local, state, and regional actors have for several years been the key innovators, and where the president and congress in their deliberations about a proposed federal cap-and-trade policy will have to decide how much regulatory authority sub-national governments will be allowed to continue exercising. On this issue, as on various others, Obama, like his predecessors, will face a tension between pursuing his policy interests and honoring state prerogatives. Most presidents have ended up pursuing their policy preferences in such situations, although some have perceived such a tension and altered their policies to a greater extent than others. Obama will undoubtedly have opportunities as his administration unfolds to resolve these conflicts and in a way that will permit a more conclusive judgment about the long-term consequences of the 2008 election for federalism and the degree to which he might represent a departure from previous presidents in this regard.

### Social Service Links

#### Prior binding consultation on social service policy has happened before

Dinan and Gamkhar 09

(John Dinan\* and Shama Gamkhar, John- Associate prof of Political science @ WFU, Shama, Associate Prof of Political Affairs @ University of Texas, The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism, May 14, 2009, Publius,http://publius.oxfordjournals.org/cgi/content/full/pjp012)

Congress and the Centers for Medicare and Medicaid Services (CMS) granted states more discretion and funding regarding Medicaid on several occasions in 2008–2009. CMS issued numerous Medicaid waivers throughout the Bush presidency (Weissert and Weissert 2008), and in December 2008 approved Rhode Island's request for a Global Consumer Choice Compact Waiver that goes even further than previous state waivers in granting considerable flexibility. The waiver, negotiated by Governor Donald Carcieri (R-RI), is unprecedented—a recent Vermont waiver comes closest in character—in setting an overall cap on federal and state spending on Medicaid over a five-year period (Solomon2008). It also gives Rhode Island officials significant discretionregarding eligibility, coverage, and co-payments (Peoples 2008).Meanwhile, Congress allocated $87 billion more in Medicaid spending over the next two years and extended through June 2009 moratoriums on seven CMS rules that limited federal reimbursements for a range of Medicaid services and were strongly opposed by state officials.

#### Strong model of coooperative federalism in social services now—PLAN DOESN’T FOLLOW IT

Dibadj ‘5

Hofstra Law Review, Winter, 2005 34 Hofstra L. Rev. 469 LENGTH: 29304 words ARTICLE: DELAYERING CORPORATE LAW NAME: Reza Dibadj\*

BIO: \* Associate Professor, University of San Francisco School of Law. J.D. Harvard Law School, M.B.A. Harvard Business School, S.B. Harvard College.

Under the cooperative federalism model, certain choices are removed from the state level to ensure that the state does not compromise - for whatever reason - on issues of national importance. Thus cooperative federalism schemes define the terms of competition between the states so that they do not deviate from basic federal policy goals, underinvest in goods and services that would benefit neighboring states, or engage in a "race to the bottom." n324 Cooperative federalism has been used in a variety of regulatory contexts: environmental law, telecommunications, and social services, to [\*527] name a few. n325 In their usual incarnation, cooperative federalism programs "set forth some uniform federal standards - as embodied in the statute, federal agency regulations, or both - but leave state agencies with discretion to implement the federal law, supplement it with more stringent standards, and, in some cases, receive an exemption from federal requirements." n326 This framework can potentially bring challenging constitutional issues to the fore. In AT&T v. Iowa Utilities Board, n327 which interpreted the 1996 Telecommunications Act, Justice Scalia went out of his way to mention that the Court's opinion assumes the following: [A] scheme in which Congress has broadly extended its law into the field of intrastate telecommunications, but in a few specified areas (ratemaking, interconnection agreements, etc.) has left the policy implications of that extension to be determined by state commissions, which - within the broad range of lawful policymaking left open to administrative agencies - are beyond federal control. Such a scheme is decidedly novel, and the attendant legal questions, such as whether federal courts must defer to state agency interpretations of federal law, are novel as well. n328

#### Courts avoiding federal preemption in favor of cooperative federalism on social services now—plan reverses that

Barrington ‘2

Copyright (c) 2002 Whittier Law Review Whittier Law Review Summer, 2002 23 Whittier L. Rev. 1127 LENGTH: 25708 words NOTE AND COMMENT: PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA V. CONCANNON AND MAINE'S PRESCRIPTION DRUG REBATE STATUTE: A TWENTY-FIRST CENTURY SOLUTION TO THE MEDICAID CRISIS NAME: Conrad J. Barrington\* BIO: \* Whittier Law School, Class of 2003. The Concannon court never used language exactly like this, but the central idea permeates throughout its holding. Maine's health care solution and the Medicaid statute exist in an environment of cooperative federalism. Congress, through the Medicaid statute, has granted the states a good deal of discretion in the formation and operation of their Medicaid programs. n298 The types of discretion granted to the states by Medicaid were similar to those granted to the states under the AFDC in the Dublino case: eligibility requirements and [\*1161] administrative control. n299 As with the AFDC statute, the Medicaid statute granted powers to the state so that the state and federal governments could work together to combat social inequity. n300 It seems that the Dublino standard of "cooperative federalism" should apply to the Maine Act, and that the Concannon court was correct in setting a high standard for PhRMA's challenge of the Maine Rx Program.

### Federalism Down Now

#### Federalism down now because of economic crisis

**Dinan and Gamkhar 09**

(John Dinan\* and Shama Gamkhar, John- Associate prof of Political science @ WFU, Shama, Associate Prof of Political Affairs @ University of Texas, The State of American Federalism 2008–2009: The Presidential Election, the Economic Downturn, and the Consequences for Federalism, May 14, 2009, Publius,http://publius.oxfordjournals.org/cgi/content/full/pjp012)

No constitutional amendments were enacted in 2008–2009,and **the** Supreme Court issued few decisions this past year altering**the** balance **of** federal and **state** power. Ra**the**r, **the main changes in federalism this past year were a result of the economic recession and 2008 election. The former development had the predictable effect of empowering the federal government, with its greater resources and capabilities than state governments, to mount a series of aggressive responses to ameliorate economic conditions. The latter development brought a change in party control of the presidency and led to presidential directives and congressional statutes that put federal power in the service of a different set of policy goals, encouraged state discretion in a different set of areas, and provided more financial assistance to states than in recent years.Both of these developments had clear and immediate implications for federalism.** However, in each case **the** long-term consequencesremain to be determined and will depend to a great degree onchoices and decisions yet to be made by federal, **state**, andlocal **of**ficials and **the** general public.

### Plan is Preemptive Federalism

#### Plan is preemptive federalism which takes a dominant role for the federal government

Lawton & Burns ‘96

1996 Albany Law Journal of Science & Technology Albany Law Journal of Science & Technology 1996 6 Alb. L.J. Sci. & Tech. 71 LENGTH: 9326 words SYMPOSIUM: THE STATE ROLE IN TELECOMMUNICATIONS REGULATION: Models of Cooperative Federalism for Telecommunications NAME: Raymond W. Lawton \* and Bob Burns \* Associate Director and Senior Institute Attorney at The National Regulatory Research Institute, Ohio State University, Columbus, Ohio

The cooperative model examines one approach in detail because of its relevance as a way of maximizing federal-state cooperation to develop nationwide telecommunications policies. Two policies that follow the cooperative approach are the Public Utility Regulatory Policies Act of 1978 (PURPA) n8 and the Energy Policy Act of 1992 (EPACT). n9 The proposition presented in this article is that the PURPA approach is directly transferable to telecommunications reform legislation. PURPA's improved energy policies, designed and implemented for electric and natural gas utilities, demonstrate that federal and state governments can cooperate in high stakes regulatory arenas. n10 II. PREEMPTION MODEL OF FEDERALISM The Constitution confers specific, broad, and unstated (or implied) powers to the federal government which include the power to declare war, coin money, and regulate commerce with foreign nations and among the states. n11 State governments retain the right to regulate commerce within a state, ensure public health and safety, and exert powers that the Constitution neither delegated to the federal government, nor prohibited the states from using. n12 Both the states and the federal government share other powers, such as the authority to establish courts and expend funds for the general welfare. In a preemptive model, the federal government implements policy that effectively limits the state's [\*74] role in a particular area, even where both the states and the federal government share the power to control that area. In a preemptive mode, the federal government does not necessarily overstep its authority, rather it acts within its power to mandate compliance, delegate responsibility, promote negotiation, or obtain services from the states. A prominent example of the preemptive mode is this nation's long history of desegregation, integration, and civil rights. This paper examines three basic models of federalism. The first model is the preemption model, which entails a clearly dominant role for the federal government. n5 The second model is dual federalism, in which the states and federal government retain supremacy within their respective spheres. n6 The third and most interesting model is cooperative federalism, where power is shared between the states and the federal government. n7 Unfortunately, rhetoric can often confuse reality; many officials claim [\*73] their programs are in the cooperative category when in reality they are not. The sections below briefly examine each model of federalism as it relates to telecommunications as well as other substantive examples used by political scientists. This brief examination is intended to provide telecommunications regulatory policymakers with an objective appraisal of the advantages and disadvantages associated with each model.

In contrast to dual federalism, cooperative federalism envisions a sharing of regulatory authority between the federal government and the states that allows states to regulate within a framework delineated by federal law... . Significantly, these programs neither leave state authority unconstrained within its domain, as would a dual federalism program, nor displace such authority entirely with a unitary federal program, as would a preemptive federalism... . By crafting a middle ground solution between the extremes of dual federalism and preemptive federalism, Congress continues to outstrip existing constitutional rhetoric, which envisions a separation that does not exist in practice. n323

While cooperative federalism has yet to be discussed in the context of corporations, the reasons behind its emergence in the regulatory arena offer a striking parallel to the current problems in corporate law:

### India Assymetric Federalism Now

#### India uses Asymmetric federalism now—more autonomy than cooperative federalism

The Hindu ‘4

March 19.

The Bill is part of an extended legal dialogue on the concept of `permanent residence,' which is crucial in understanding the constitutional status of Jammu and Kashmir. There is an excessive constitutional illiteracy in India about the status of the State in the Union of India as well as Article 370 of the Indian Constitution through which this status is defined. In the past, the Bharatiya Janata Party and the Hindu Right have expressed disquiet about Article 370 as an affront to Indian federalism because it gives special status to Jammu and Kashmir. This, by itself, grossly misunderstands the nature of Indian federalism, which is founded on a theory of `unequal federalism' under which all States are not equal and many enjoy a special status. Article 371 contains special provisions for Maharashtra and Gujarat. Then follow a stream of special provisions, including Articles 371A (for Nagaland), 371B (Assam), 371C (Manipur), 371D and E (Andhra Pradesh), 371F (Sikkim), 371G (Mizoram), 371H (Arunachal Pradesh), and 371(I) (Goa). To this may be added the Fifth and Sixth Schedules of the Constitution, which grant special provisions to the Tribal Areas and the Northeastern States. We do not have to emulate American federalism to find answers for India. China has special provisions for Hong Kong, Macao and other autonomous regions. If Sri Lanka is to find a solution within a federal structure, it will have to examine India's `unequal but special' approach to federal governance to find an answer to its problems.

#### Status quo asymmetric federalism key to indian unity

Krumins ‘4

Aaron Krumins is with the Honors College and Department of Economics at Earlham College, where he was also 3rd string QB and TE, playing in four games in three years. Internal Exit in the Indian Federation, online.

It has been noted by many analysts that the central government has systematically offered more concessions and privileges to politically intractable states, rather than cooperative ones. That practice has been termed asymmetric federalism and is not limited solely to the case of India, but crops up in the literature on other federations, particularly Russia (Treisman, 1999). Rao and Singh (2004) have argued that asymmetric federalism may have helped preserve unity of India in the face of secessionist movements and note the uneven allotment of fiscal transfers as one way the recalcitrant states have been able to manifest advantages over the other states.

### Asymmetric Federalism Prevents War

#### Asymmetric federalism prevents internal secession

Galtung ‘3

John Galtung is Professor of Peace Studies and Director of TRANSCEND. “FEDERATION AS PEACE STRUCTURE: THE CASE OF SRI LANKA,” I

I C P W O R K I N G P A P E R

Under symmetric federalism the whole country is divided into Parts with (roughly speaking) the same rights and duties and levels of autonomy relative to the Center. Symmetry, universalism, is attractive because all parts, like all citizens, become equal for the law. The counter-argument, for asymmetry, particularism, is that all parts of the country may not have the same concerns. Under asymmetric federalism some parts of the country are given more autonomy and some other parts less, in the extreme case none at all. Only a part of the country is federalized. A counter- argument is that particularism makes the country difficult to govern. The counter-counter-argument is that without some particularism addressing special, deep-rooted concerns the country may become ungovernable because of violent or nonviolent struggle.

### Cooperative Federalism Fails in India

#### Indian cooperative federalism collapses into unitary government

Rao 2k

K. Madhusudhana Rao is Assistant Professor in the Department of Law at Andhra Universty. The scope of Article 365 of the Constitution (2000). 4 SCC (Jour) 1

The federalism that normally envisages "competitive federalism" in which both the Union and State Government compete with each other for identification and operation in the constitutional structure has given way to "cooperative federalism" which helps the federal system to act in unison by minimising friction and also by promoting cooperation among the various constituent Governments of the Federal Union for the purpose of achieving certain desired national goals29. In the process this cooperative federalism gave way to the development of "organic federalism" wherein the federation and the federating units function as part of one organism to achieve the common governmental purposes that are mentioned in the constitutional document. Therefore what is discernible is that the Indian federalism in its working has been moved from the theoretical framework of cooperative federalism towards an organic federalism to be placed towards the unitary end of the federal spectrum

### No India Modelling

#### India not modelling US federalism

The Hindu ‘1

Federalism at a crossroads? July 17

The essay on India's federal order examines the institutional and structural arrangements in detail and concludes that ``a dictatorial marshalling of the regions was never envisaged by the Constitution makers. The Article which allows a highly interventionist role to the Centre should be reinterpreted in order to allow the spirit of cooperative federalism to emerge.'' In India, federalism increasingly engages the attention of scholars on the use and abuse of Article 356 of the Constitution. Indian scholars have the tendency to always compare Indian federal system with the federal practices in the U.S., and other such federal systems. There is no such thing as an ideal federation for any country to emulate. Neither the U.S. nor Switzerland could be a model for others to follow because each federation has a different history and socio-political and socio- economic diversity. It was the centripetal forces which brought forth the U.S. whereas the centrifugal forces beget the Union of States in India.

### Cooperative Federalism Bad for Demo

#### Cooperative federalism crushes political participation

Greve 2k

Mississippi Law Journal Winter, 2000 70 Miss. L.J. 557 LENGTH: 24431 words ARTICLE: AGAINST COOPERATIVE FEDERALISM NAME: Michael S. Greve \* BIO: \* John G. Searle Scholar, American Enterprise Institute; Ph.D. (Government) Cornell University, 1987. I thank Jonathan Adler, Robert Gasaway and Curt Levey for helpful comments and Kim Kosman and Jinney Smith for their capable research assistance. All errors and misjudgments are mine.

The political consensus on cooperative federalism stands in sharp contrast to the academic debate and literature. The cooperative federalism critique of the 1980s, exemplified by the ACIR Reports cited earlier, n93 has never been seriously contested, never mind rebutted. Even defenders of cooperative arrangements agree that cooperative federalism diffuses political accountability and responsibility. n94 They also agree that cooperative federalism's distributional effects lack rhyme or reason. n95 Good reasons support the ACIR's contention that the [\*585] impenetrability of cooperative federalism contributes to public cynicism and disaffection, that is, to citizens' sense that Washington cannot be trusted and that their votes do not matter. n96 To be sure, many federalism scholars, both in the legal and the political science profession, take cooperative federalism for granted, if for no better reason than its familiarity and pervasiveness. n97 And of course, individual cooperative programs have found defenders. However, no coherent defense of cooperative federalism as a basic political arrangement is available.

#### Cooperative federalism leads to special interest take over

Greve 2k

Mississippi Law Journal Winter, 2000 70 Miss. L.J. 557 LENGTH: 24431 words ARTICLE: AGAINST COOPERATIVE FEDERALISM NAME: Michael S. Greve \* BIO: \* John G. Searle Scholar, American Enterprise Institute; Ph.D. (Government) Cornell University, 1987. I thank Jonathan Adler, Robert Gasaway and Curt Levey for helpful comments and Kim Kosman and Jinney Smith for their capable research assistance. All errors and misjudgments are mine.

In this crucial respect, the academic debate differs from the 1960s, when cooperative federalism sailed under public-spirited banners. Supposedly, intergovernmental cooperation served to prevent interstate externalities, to aid redistribution, to avert a fiscal crisis of the states and to enhance localism and flexibility. All four justifications, however, have proven untenable. Actual cooperative practices fail to correspond to the theoretical justifications. n98 Scholars who are quite sympathetic to [\*586] cooperative federalism's ostensible objectives (notably redistribution) concede and indeed argue that cooperative federalism's growth has little to do with public-spirited objectives and is better understood as an accommodation to political and interest group demands. n99

### Cooperative Federalism Hurts Economy

#### Cooperative federalism hurts economy growth

Greve 2k

Mississippi Law Journal Winter, 2000 70 Miss. L.J. 557 LENGTH: 24431 words ARTICLE: AGAINST COOPERATIVE FEDERALISM NAME: Michael S. Greve \* BIO: \* John G. Searle Scholar, American Enterprise Institute; Ph.D. (Government) Cornell University, 1987. I thank Jonathan Adler, Robert Gasaway and Curt Levey for helpful comments and Kim Kosman and Jinney Smith for their capable research assistance. All errors and misjudgments are mine.

As the intra-governmental conspiracy moves onward and upward, expanding political commitments produce further interdependencies and conflict. The ineluctable tendency is towards a pathology that German scholars and high-brow journalists call Politikverflechtung, meaning a political meshing or entanglement. n33 Political scientists and legal scholars have shown that cooperative federalism produces, first, a loss of transparency and, consequently, rising civic discontent. As government grows and the range of cooperative arrangements expands, transparency, accountability, and responsibility diminish exponentially. Second, cooperative federalism stifles political competition and, consequently, political innovation and economic growth. Germany's Financial Constitution, and in particular the commands to harmonize living conditions and to equalize financial resources across the various states, diminishes every state's incentive to improve its lot by providing a favorable economic climate. It systematically punishes wealthy, successful states, while rewarding the basket cases. n34 Finally, [\*568] cooperative federalism produces political paralysis. Instead of enhancing the states' autonomy, it rewards the most intransigent participant. In the end, every player becomes a holdout, and reform becomes impossible. Scholars, journalists, and leading politicians have tagged cooperative-federalist arrangements as a principal cause of Germany's Reformstau (reform jam, as in "traffic jam")--that is, Germany's inability to adjust its institutions and policies to the demands of a modern, global economy. n35

### Will Say No

#### Some states will say no, that’s a solvency deficit

Washington Post ‘8

December 2, 2008

One voice of dissent in the Philadelphia meeting will likely come from Gov. Mark Sanford (R-S.C.). "We're just putting off the day of reckoning," he said in an interview. "A problem created as a consequence of too much debt probably will not be solved by issuing more debt."

#### Some states will say no To Social service aid

Evans ’9

Desiree Evans on April 1, 2009 12:05 PM, http://www.southernstudies.org/2009/04/louisianas-cao-vacillates-on-obamas-budget-jindal-plans-to-reject-more-stimulus-funds.html

Perhaps Cao is still wobbling due to the bad example being set by Louisiana Governor Bobby Jindal, who made the controversial announcement in February that he was rejecting $98.4 million in federal stimulus money that would expand Louisiana's unemployment compensation program. Some Democrats in the Louisiana legislature have said they will still push for the state to accept all of the stimulus money for which it is eligible. But Tuesday Jindal's administration notified legislative leaders that it plans to reject even more funds - this time turning down federal health-care dollars for the poor and uninsured. Despite the fact that most Southern governors support stimulus spending, a handful of Southern governors and state legislatures continue to make headlines this week as they battle it out over whether or not states will reject portions of the federal stimulus money. In the South - following Jindal's lead - Mark Sanford of South Carolina, Bob Riley of Alabama, Rick Perry of Texas and Haley Barbour of Mississippi have also made announcements that they will not accept funds for expanding eligibility rules for unemployment benefits.

#### Governors will say no

WorldPress.com ‘9

Putting GOP Governors’ Stimulus Antics in Perspective, February 23, 2009, 2:00 pm, http://acandidworld.net/2009/02/23/putting-gop-governors-stimulus-antics-in-perspective/

Jindal and likeminded conservative-Republican governors claim the stimulus bill requires permanent changes to their states’ respective laws concerning unemployment benefits, specfically who is eligible to receive said benefits. [T]he stimulus law would require states to give benefits to people who quit their jobs for “compelling family reasons” … and include other requirements, such as the state staffing an office to help the unemployed find jobs. Apparently, too: Governor Barbour says the Magnolia State will not permanently change [Mississippi] laws to provide unemployment compensation benefits to part-time workers, because we’d have to hike employer taxes $13 million annually once the temporary stimulus money runs out. Based on the media blitz by conservatives this weekend, it appears the stimulus bill delivers an ear boxing to states’ rights and will unilaterally kill all business development by increasing unemployment-insurance rates paid by employers. The truth of Jindal’s “permanent change” claim is unclear. According to Louisiana State Senator Robert Adley (R), the state legislature could revisit its UI policies in the future.

#### Governors will say no

WorldPress.com ‘9

Putting GOP Governors’ Stimulus Antics in Perspective, February 23, 2009, 2:00 pm, http://acandidworld.net/2009/02/23/putting-gop-governors-stimulus-antics-in-perspective/

Bobby Jindal, Republican governor of Louisiana, made a big splash this weekend, saying he was going to refuse approximately $98.4 million in unemployment-insurance funds due his state from the stimulus bill. Mississippi governor, Haley Barbour, followed suit, and the governors of South Carolina, Alaska, Texas, and Idaho are considering a similar move.