6. Außereuropäische Länderberichte
Cooperative State Administration of Coercive Federal Policies in U.S. Federalism

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1. Introduction

The long-term trend in U.S. federalism has been toward centralization. The major centralizing periods were the Progressive era (1890-1920), New Deal era (1933-1939), and Great Society era (1963-1968). The latter introduced coercive federalism. Much of this centralization was induced by economic developments and by social movements, especially, as Alexis de Tocqueville predicted in the 1830s, people’s desire for equality. Hence, as U.S. Senator Carl Levin (D-MI) commented to this author in 1988, “there is no political capital in intergovernmental relations,” that is, in members of Congress catering to the concerns of governors, state legislators, county commissioners, mayors, township supervisors, and the like. Reflecting this centrist orientation is that about 50 percent of senators and 42 percent of congressmen who leave Congress remain in Washington, DC, compared to only about 3 percent who did so near the outset of coercive federalism in 1974.

State and local officials lobby federal officials, but they are rarely partners in federal policy-making, although many are partisan cheerleaders for or opponents of federal policies. State and local officials usually gain no federal policy concessions or only minor concessions on their own. They achieve major federal policy concessions when powerful non-governmental interests align with state and local goals. Elected federal officials, as well as the unelected judges on the federal courts, are highly responsive to electoral coalitions, interest groups, and campaign contributors and correspondingly less responsive to elected state and local officials. These officials have no privileged voice in Congress or the White House as elected representatives of the peoples of the 50 states. They must behave like interest-group lobbyists and compete with all other interest groups in the federal policymaking arena where, frequently, they cannot prevail against powerful interests that bring crucial financial, ideological, and voter rewards and punishments to bear on the electoral fortunes of federal officials. Morton Grodzins’ observation, which was perhaps accurate in 1960, that there is a “comprehensive, day-to-day, even hour-by-hour, impact of local views on national programs” is now mythic.

Nevertheless, compared to most other federal systems, the United States remains significantly decentralized because states retain exclusive authority in a few policy are-

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as, concurrent authority with the federal government in many policy areas, and predominant administrative responsibility for nearly all domestic policies. Furthermore, federal revenue accounts for only 19.6 percent of all state and local government revenues. A World Bank measure ranks the United States as the world’s ninth most decentralized country; Germany is twentieth.

2. Coercive Federalism

American federalism today can be described as coercive, compared to previous eras often termed dual and cooperative. The current era is ‘coercive’ because the period’s predominant political, fiscal, statutory, regulatory, and judicial trends entail impositions of federal policies and rules on state and local governments. This overt face of American federalism marks an era that began in the late 1960s and succeeded a roughly 35-year era of cooperative federalism.

The term “coercive federalism” describes an era in which (a) the federal government is the dominant policymaker, (b) the federal government is able to assert its policy will unilaterally over the state and local governments, (c) elected state and local officials are more often lobbyists than partners in intergovernmental policy-making, (d) interactions between federal officials and elected state and local officials are more often consultations than negotiations, (e) there are few constitutional limits on the exercise of federal power, (f) cooperative policy-making, when it occurs, is most often due to the influence of interest groups operating outside the intergovernmental system than to state and local officials operating inside the intergovernmental system, and (g) all important arenas of state and local decision-making are infused with federal rules.

Coercive federalism has been characterized by (1) a shift of federal policymaking from the interests of places (i.e., state and local governments) to the interests of persons (i.e., voters, social-welfare beneficiaries, and interest groups); (2) increased substantive conditions attached to federal grants-in-aid requiring states to comply with policies that often fall outside of Congress’s constitutional ambit; (3) increased preemptions of state powers (i.e., federal displacements of state laws under the supremacy clause of the U.S. Constitution); (4) increased mandates on state and local governments, including unfunded mandates; (5) restrictions on state and local tax and borrowing powers; nationalization of criminal law; (6) demise of institutions of intergovernmental cooperation; (7) decline of intergovernmental policy-making cooperation; and (8) federal judicial interventions into state and local affairs.

4 The United States does not have a formal program of fiscal equalization, although most federal grants to state and local governments for social welfare have some equalizing components.


For example, from 1970 to 2004, a period of 34 years, Congress enacted some 320 explicit preemptions compared to about 200 preemptions enacted from 1789 to 1969, a period of 180 years. Congress enacted only two major mandates prior to 1964, nine during 1964-69, 25 during the 1970s, and 27 in the 1980s. However, after considerable state and local pressure, as well as desires by the new 1995 Republican majority in Congress to limit government, Congress passed the Unfunded Mandates Reform Act (UMRA) in 1995. This law constitutes one of the few restraints on coercive federalism. UMRA reduced mandate enactments, though it did not eliminate existing mandates and did not address all measures that impose costs on state and local governments. Only 18 intergovernmental mandates having costs above UMRA’s threshold have been enacted since 1996. There are some 4,450 federal criminal offenses compared to 3,000 in 1983 and only four embedded in the federal Constitution; more than half of the federal government’s criminal statutes have been enacted since the mid-1960s. These laws cover a wide range of behavior from terrorism to carjacking and carrying unlicensed dentures across state lines. Generally, federal criminal laws are tougher than comparable state laws, including some 50 federal laws entailing capital punishment.

3. Dual Federalist Revolts Against Coercive Federalism

The federal system is multi-dimensional, however, and soon after the rise of coercive federalism, both liberals and conservatives sought to use state governments to counter federal policies. Given that Republicans controlled the presidency for 28 years from 1968 to 2016, and Democrats for 20 years, and that Congress has seesawed between Democratic and Republican control under coercive federalism, both liberals and conservatives have had incentives to revive states’ rights. As Presidents Richard M. Nixon and Ronald Reagan achieved policy objectives and conservative Supreme Court appointments countered the 36-year era of federal liberalism triggered by Franklin D. Roosevelt’s 1932 election, liberals returned to state action. One of the first liberal reactions was the “new judicial federalism” sparked by Justice William J. Brennan after the U.S. Supreme Court began to restrain the expansion of criminal rights. This judicial federalism is now a thriving manifestation of progressive dual federalism whereby state courts and legislatures recognize higher levels of rights protection under their state constitution’s declaration of rights than does the U.S. Supreme Court under the U.S. Bill of

Rights. For example, the U.S. Supreme Court has ruled that police do not need a warrant to search trash placed outside of one’s home for municipal disposal. However, five state supreme courts have thus far ruled that under their state constitution, state and local police need a warrant to search such trash. Other examples include state legalizations of same-sex marriage (before the U.S. Supreme Court legalized same-sex marriage nationwide) and of medical and recreational marijuana use, as well as Democratic governors and legislatures enacting laws and filing lawsuits aimed at countering conservative federal policies or federal inaction on liberal policy preferences. Katrina vanden Huevel of the leftist magazine, *The Nation*, for example, catalogued then-recent liberal legislation from the states in 2005 and urged liberals to pursue policy goals through the states.

At about the same time as liberals geared up for state action, the U.S. Supreme Court’s 1973 decision legalizing abortion nationwide triggered religious and conservative revolts against the liberal face of coercive federalism. According to the American Life League, “You can do a lot more in the [state] legislatures than on the federal level right now.” Under President Barack Obama, especially, conservatives had strong incentives to capture governorships and legislatures so as to counter liberal federal policies by enacting policies on abortion, marriage, immigration, voter IDs, and many other issues and also filing lawsuits against disagreeable federal policies, such as lawsuits filed against Obama’s most significant legislative accomplishment, the Affordable Care Act of 2010. One such challenge prompted the U.S. Supreme Court for the first time to strike down a condition attached to federal aid because it was too “coercive.”

Although liberal and conservative activism reflects the surviving dual federalist dimension of American federalism, it has not moved federalism into a new era beyond coercive federalism for four reasons. First, this state activism has been triggered by coercive federalism as citizens of both parties turn to state-government forums for possible relief and protest against what they regard as oppressive federal policies. Second, many, perhaps most, state policies aimed at countering federal policies are subject to preemption by Congress or invalidation by the Supreme Court. Once in power in Washington, DC, both Democrats and Republicans, and their interest-group allies, seek federal tranquilization of the opposition party’s hyperactive state policy-making. Third,
both liberal and conservative state activists wish to nationalize their policies and impose them on all 50 states as soon as possible. Pro-life activists want to prohibit abortion nationwide; pro-gay-marriage activists succeeded in convincing the U.S. Supreme Court to legalize same-sex marriage nationwide. In 2016, the Obama administration issued a highly controversial directive requiring all state and local governments to guarantee the right of transgendered persons to use public restrooms of their chosen gender. All federal funds can be denied to non-compliant state or local governments.

President Bill Clinton praised this coercive face of dual federalism, or states-as-laboratories-of-democracy federalism, when he acknowledged, “when we [the federal government] find an answer to a problem” in state action, “very often we don’t have time to wait for every state to agree that that’s the answer. So, we try to jump-start the federalist experience by embodying them in federal legislation.”

The conceit that the federal government knows best and has an obligation to impose the right answer on the states is a key attitudinal characteristic of coercive federalism. Fourth, the combative, partisan character of most liberal and conservative state activism does not foster state-federal cooperation or partnership. The United States is experiencing the highest level of political polarization between Democrats and Republicans since at least 1879.

4. Intergovernmental Administrative Cooperation

In the realm of administration, however, there are fairly consistent patterns of intergovernmental cooperation, the catastrophe of Hurricane Katrina in 2005 notwithstanding. Indeed, the failure of intergovernmental coordination in 2005 sparked almost universal media condemnation because that failure was a shocking violation of long-standing federalism norms. Even so, a majority of Americans responded positively to the following question asked about President Bush in a February 2007 national poll: “Considering President George W. Bush’s response to New York City after 9/11 in 2001, his response to New Orleans after Hurricane Katrina in 2005, and his support for the No Child Left Behind education law, overall, would you say that President Bush’s policies for our state and local governments have been very helpful, somewhat helpful, not very helpful, or not at all helpful?” Fully, 51.7 percent of the respondents termed Bush’s actions very helpful or somewhat helpful to state and local governments; 48.3 percent labeled his policies not very helpful or not at all helpful.

As such, cooperative federalism seems to endure, at least within the system’s administrative interstices. Why? Even while federal, state, and local elected officials are engaged in mortal political combat, federal, state, and local bureaucrats generally cooper-

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19 There was a sharp partisan split: 70.5 percent of Democrats called the president’s intergovernmental actions not very helpful or not helpful at all; 81.2 percent of Republicans termed Bush’s policies very or somewhat helpful (See Ibid).
ate and coordinate when implementing federal policies. The State Administrators Project found a general, though roller-coaster, trend of state administrators reporting increased administrative cooperation and regulatory devolution from 1974 to 2004.\textsuperscript{20} With the exception of the federal courts, federal officials rarely order state and local policy administrators about like subordinates, and state and local bureaucrats rarely obstruct federal objectives even when adapting them to local circumstances. Elected state and local officials are usually cooperative with respect to implementation, as well, although not necessarily when given an entirely voluntary choice, as is the case with the Affordable Care Act’s health-insurance marketplaces. As of May 2016, 13 mostly Democratic states had decided to establish a marketplace, while 27 mostly Republican states elected not to do so, and ten states opted for a hybrid federal-state partnership.\textsuperscript{21} However, consistent with coercive federalism, the federal government itself established marketplaces states that did not do so themselves. There are, of course, conflicts in intergovernmental administrative relations, but bargaining and negotiation are the principal tools of conflict resolution.

Administrative cooperation has deep roots. In \textit{Federalist} 36, Hamilton foresaw federal-state cooperation in taxation, and Albert Gallatin, the fourth secretary of the U.S. treasury, articulated ideas for intergovernmental cooperation in the early nineteenth century.\textsuperscript{22} Intergovernmental cooperation was, as both Morton Grodzins and Daniel J. Elazar contended, prevalent from the start of the federal republic and throughout the nineteenth-century era of so-called dual federalism.\textsuperscript{23} Cooperation accelerated tremendously during the twentieth-century era of cooperative federalism.

Grodzins, especially, attributed this cooperation to the country’s “mildly chaotic” non-centralized party system. Apparently reacting against the American Political Science Association’s 1950 call for more nationalized and disciplined parties,\textsuperscript{24} Grodzins warned that such parties would destroy cooperative federalism.\textsuperscript{25} Grodzins was correct insofar as nationalization of the party system has been a major factor in the rise of coercive federalism, but because of deep institutionalized roots and path dependence, coercive federalism in the policy-making realm has not choked off cooperation in the administrative realm; on the contrary, implementation of many of the policies imposed on

\begin{itemize}
\item \textbf{Grodzins} 1960 (Fn. 3) and \textbf{Elazar, Daniel J.} 1962: The American Partnership: Intergovernmental Co-Operation in the Nineteenth-Century United States, Chicago.
\item \textbf{Grodzins} 1960 (Fn. 3), p. 276 and passim.
\end{itemize}
state and local governments requires intergovernmental cooperation for success. This state-local cooperation with federal coercion may seem paradoxical, but it endures because other forces sustain it.

5. Factors Facilitating Administrative Cooperation

For one, the carrots and sticks of federal aid still play important roles in ensuring cooperation. Federal aid has accounted for sizable portions of state-local budgets since 1969—ranging from about 49 percent of general revenues in Mississippi to 24 percent in Alaska. All 50 states, for example, complied with the federal 18-year-old drinking-age condition attached to surface-transportation aid in 1984 because no state could afford to lose the funds and because there is no mechanism for the states to withhold the federal gas tax collected within their borders. In addition, the salaries of many state and local government employees and resources for the programs they administer rest in part on direct or indirect federal monies. From 1978 to 2004, the proportion of state agencies receiving and managing federal aid ranged from 69 percent in 1988 to 79 percent in 2004. Even if only a small percentage of an employee’s salary or program resources comes from federal aid, loss of that portion can result in a job or program cutback.

Furthermore, many intergovernmental programs are now administered by non-governmental organizations and their employees who depend directly on federal funds delivered to them via state treasuries. For example, legions of non-governmental personnel in addition to state and local government employees implement the federal government’s single largest grant program, Medicaid, which accounts for more than 45 percent of all federal aid. Some non-governmental organizations also have non-governmental sources of income, but many rely almost entirely on government funds. Either way, though, they have strong incentives to welcome federal monies and the regulations that accompany them.

Another federal tool for cooperation is partial preemption, which did not exist during the era of cooperative federalism. Partial preemption allows states to enact their own regulations in a federally preempted field so long as those regulations are equal to or higher than the federal standards. This tool, however, is a one-way federalism. States are free to rise above the federal regulatory floor but are nailed to the floor if they enact policies deemed by the federal government to fall below the floor.

Many federal statutes associated with coercive federalism contain penalties, including, in some cases, civil or criminal penalties, aimed at uncooperative state and local officials. Many federal statutes also enable citizens to sue state and local officials for lack of compliance, insufficient compliance, or biased compliance with federal laws. Nevertheless, federal officials sometimes accommodate state and local officials by extending

27 Brudney, Jeffrey L. and Wright, Deil 2010 (Fn. 20), p. 32.
28 Total federal aid was $667 billion in 2016.
compliance deadlines. Because only 22 states fully comply with REAL ID, the U.S. Department of Homeland Security, for the sixth time since the law was enacted in 2005, extended the compliance deadline, this time to January 2018. These postponements, though, do not stem solely from federal cooperation; they also stemmed from President Obama’s dislike of REAL ID and from resistance by both conservative and liberal interest groups concerned about privacy and government surveillance.

The courts also play roles in intergovernmental relations. Following the period of massive resistance by southern state and local governments to federal-court rulings on racial desegregation in the 1950s and 1960s, state and local officials became generally cooperative with judicial decisions, which are seen as central to the rule of law. The federal courts stand as potential hammers to compel compliance; hence, state and local officials have incentives to cooperate with federal officials. Numerous federal-court consent decrees of long standing, many of which emanated from citizen lawsuits, now govern many aspects of administration in all states and perhaps most local governments. Federal officials, in seeking to foster compliance, ordinarily negotiate and bargain with state and local officials before seeking judicial intervention, but the prospect of such intervention pressures state and local officials to cooperate with federal officials and policy rules.

Additionally, the U.S. federal system is not one of executive federalism whereby states are constitutionally obligated to execute federal framework-legislation. The federal government is expected, for the most part, to carry out its own policies or pay the states to do so. Given its very limited administrative capabilities, the federal government must seek the assistance of state and local officials. Federal administrators, therefore, usually have incentives to work cooperatively with their state and local counterparts. Furthermore, the federal government does not, per se, share revenue with the states or engage in fiscal equalization; thus, it does not need the administrative control and co-decision mechanisms usually required for such policies. Instead, the federal government operates a sprawling grant-in-aid system consisting of more than 1,099 programs, only about 19 of which are block grants. Because most federal-aid money flows through categorical grants, the federal government exercises control through the purposes for which the grants are established, but otherwise works cooperatively on the administration of those grants and usually allows state and local officials discretion in implementing those grants so long as each grant’s purposes are realized, at least approx-

29 This federal law requires all states to issue driver’s licenses that have security features approved by the U.S. Department of Homeland Security.

30 A recent Ninth Circuit decision might mark the start of an attempt to curb the use of consent decrees to set national policy in environmental protection, in: Conservation Northwest v. Sherman, No. 11-35729, 2013 WL 1760807 (9th Cir. Apr. 25, 2013), the court deemed it an abuse of discretion for a federal court to “enter a consent decree that permanently and substantially amends an agency rule that would have otherwise been subject to statutory rulemaking procedures” at p. 12.

imately. Block grants give state and local officials even more discretion, although block grants have never accounted for more than about 18 percent of all federal-aid money.

Since the fall of massive resistance to desegregation in the South, there has been no cultural, ethnic, religious, or linguistic region in the United States having strong incentives to thwart or distort intergovernmental administrative relations. The United States has no Quebec or Catalonia. Similarly, partisanship does not play a major role in intergovernmental administration. A predominantly Democratic state, for example, is not necessarily uncooperative, or less cooperative than a predominantly Republican state, with policies emanating from a Republican Congress and/or White House. In the political arena, there may be vigorous partisan conflict over such huge intergovernmental grant programs as Medicaid and surface transportation and over costly mandates such as environmental regulations, but once federal policies on these matters are enacted into law, there are strong incentives for the bureaucrats to cooperate across party lines so as to administer the programs as effectively and efficiently as possible.

Due to similar civil-service rules and shared professional norms, most federal, state, and local administrators dull the sharp edges of partisanship in order to focus on cooperative task execution under existing rules and budgets. In addition, federal, state, and local administrators within policy fields often share the same education and training pedigrees and interact with each other in the same national and regional professional associations, which are usually more important to them than party affiliations. Federal, state, and local law-enforcement officials, for example, share common training and professional backgrounds as well as a general professional camaraderie that facilitate intergovernmental cooperation.

The intergovernmental policy sector also is much more unionized than it was in 1960. Federal, state, and local public employee unions have similar goals; they support federal program implementation; and they serve as additional forums for intergovernmental communication and cooperation. State and local public employee unions usually welcome federal money and rules, and thereby support expansions of federal power. Those unions, moreover, have been the originators of some of the most landmark U.S. Supreme Court rulings on federalism in litigation over the Fair Labor Standards Act of 1938, which was extended to state and local government employees during the 1960s.

Additionally, state and local administrators frequently advocate expansive actions and higher spending in their policy field and, thus, often welcome federal intervention. State and local environmental officials, for example, are likely to welcome federal rules that set stricter environmental standards and require more state and local spending on environmental protection. It is not uncommon for state and local bureaucrats to lobby for federal policies that are opposed by state and local elected officials who can be pun-

ished at the ballot box for implementing unpopular federal policies or raising taxes in order to pay for state or local implementation of those policies. Over the decades, federal aid and regulations have promoted “constant, consequential, and pervasive” state agency autonomy from gubernatorial and legislative oversight.34

Interest groups play a role, too. After achieving a federal policy objective, they pressure state and local governments to cooperate in implementing that objective. There has been tremendous growth in interest-group activity within the states since the late 1960s; one cause of growth has been the need for interest groups to induce cooperative state and local compliance with national policy objectives supported by the interest groups.

A process of socialization has occurred, as well. The dominance of the federal government in so many policy fields for the past 44 years of coercive federalism became an unquestioned fact of administrative life. Furthermore, many of today’s senior federal, state, and local administrators entered public service in the late 1960s and early 1970s with a common passion for reform. For rank-and-file administrators, the origins of their work dictates are less important to them than their preoccupation with how to implement those dictates and satisfy the citizens who will ultimately vote for or against the elected officials who preside only in a general and distant way over policy implementation.

Grodzins, however, credited congressional interference with federal bureaucrats as another important stimulus for cooperative federalism. “Administrative contacts [are] voluminous, and the whole process of interaction [is] lubricated by constituent-conscious members of Congress.”35 Congressional casework continues to influence the intergovernmental attitudes and actions of federal administrators, although it is doubtful that it has the same effects as observed by Grodzins for three reasons. First, interest groups play much bigger roles in federal programs and intergovernmental administration than they did 53 years ago. Consequently, the proportion of congressional casework conducted on behalf of the interests of state and local governments as compared to interest groups is smaller today. Second, although pork-barrel spending dates back to the founding of the United States, the rise of contemporary earmarking by members of Congress produces outcomes that often ignore or conflict with the preferences of state and local officials. As a Colorado transportation official remarked: “Why do we spend 18 months at public hearings, meetings and planning sessions to put together our statewide plan if Congress is going to earmark projects that displace our priorities?”36 Third, the evidence presented by Grodzins dealt overwhelmingly with non-social-welfare programs, such as highways and other infrastructure (e.g., airport development), agriculture, education, and other public services. Since then, the federal government has enacted massive social welfare programs, such that intergovernmental spending on those programs has skyrocketed. As a proportion of all federal aid to state and local

34 Brudney and Wright 2010 (Fn. 20), p. 33.
35 Grodzins 1960 (Fn. 3), p. 270.
governments, social welfare increased from 35 percent in 1960 to 74 percent in 2016. In constant dollars, intergovernmental social-welfare aid increased by 2,819 percent from 1960 to 2016 while federal aid for the programs that preoccupied Grodzins’ analysis increased by only 306 percent. The policy content of the intergovernmental fiscal landscape is vastly different from 1960.

For these and perhaps other reasons, cooperative federalism endures in the administrative interstices of coercive federalism. Intergovernmental administrative cooperation is likely to endure unless a new generation of administrators infects it with the same partisan and ideological polarization found in the national political arena.

6. Conclusion

Near-term changes in policy will be instituted by new congressional and presidential regimes in Washington, DC, but the long-term trends in federalism will remain largely on course because coercive federalism has been a bipartisan phenomenon and because no significant changes in the alignment of political and socioeconomic forces that propel coercive federalism appear to be on the horizon. At the same time, manifestations of dual federalism will persist as both political parties continue to use levers of state and local power to pummel the other party in power in Washington, DC. State activism will ebb and flow depending on the party composition of the federal government and the policies generated by that composition.

The seemingly paradoxical persistence of intergovernmental administrative cooperation is surely due, in part, to the path dependence produced by a long history of such cooperation. Furthermore, even during the height of cooperative federalism, cooperation was largely defined as the willingness of state and local governments to implement federal policies. The theorists of cooperative federalism said little about reciprocity, namely, federal willingness to cooperate with state and local governments, especially in formulating federal policies, except to argue that the then non-centralized party system served as a conduit for communicating state and local government views to federal officials and for pressing federal officials to accommodate state and local government preferences in their policymaking. The transformation of the party system during the late 1960s, however, virtually eliminated this party conduit, leaving elected state and local officials out in the cold.

Nevertheless, intergovernmental administrative cooperation has not come to an end for a number of reasons. For one, the federal government still uses the classic carrot of cooperative federalism, namely, grants-in-aid. However, the carrot has been counteracted by many more sticks (i.e., conditions) now attached to grants, especially the big grants such as Medicaid, surface transportation, and education, which are politically and fiscally impossible for states to reject. In addition, given the transformation of the composition of grants toward social welfare, state and local budgets are locked into federal policy priorities and constraints more than ever. Second, the tremendous proliferation of grants is more cooperative insofar as states have many more grant choices; however, many of these grants are responses to interest-group preferences, not state and local
government preferences, and state and local governments have only limited discretion to coordinate and focus multiple grants on specific state or local priorities. Third, the federal government’s inability to implement most of its own programs continues to be a motivator for intergovernmental cooperation. Fourth, professional associations and norms continue to pay a cooperative role as they did 50 years ago. Fifth, partial preemption and also the new judicial federalism represent new tools of cooperation, but consistent with coercive federalism, these tools allow state and local governments to go only in one policy direction if they wish to depart from federal policy rules. Sixth, the unionization of federal, state, and local government employees since the 1960s has probably facilitated intergovernmental administrative cooperation, although often at the price of effective oversight by elected state and local officials. Seventh, habituation and socialization of state and local administrators to norms of coercive federalism has likely facilitated cooperation as well. Eighth, the approach taken state to health-insurance marketplaces by the Affordable Care Act represents a new cooperative tool, although one with mixed blessings. Giving states a genuinely voluntary choice about marketplaces was necessitated by the U.S. Supreme Court’s anti-commandeering doctrine, but the price of not volunteering is that the federal government itself establishes a marketplace in the state. This is a significant escalation of federal intrusion into state affairs. In summary, many of the tools of cooperation deployed by the federal government also come with more sticks than in the past.

There also are more coercive approaches to cooperation reflected in the sharp increase of federal court orders and long-running consent decrees, as well as civil and criminal penalties applicable to state and local officials and governments embedded in many federal statutes. Many federal statutes also allow or facilitate citizen and interest-group litigation against state and local governments. Furthermore, interest groups have, in many respects, replaced the intergovernmental role played by the old party system, but interest groups have little concern for the preferences of elected state and local officials, and they often support coercive federal measures against state and local governments.

Finally, intergovernmental administrative cooperation under coercive federalism seems to be associated with the rise of an intergovernmental bureaucratic complex that is lubricated by interest-group activity and substantially more autonomous and free from oversight by elected state and local officials compared to the heyday of cooperative federalism when elected state and local officials had more voice in and influence on all aspects of intergovernmental relations. Hence, the nature of contemporary cooperation is only modestly voluntary and distantly subject to democratic self-government.