

## ALTERNATIVE PERSPECTIVES ON INTERGOVERNMENTAL RELATIONS

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In telecommunications, as in many other policy domains, responsibility for key policy decisions is shared by the federal government and the states. The relationship between the states and the federal government is complex, messy, fluid, and controversial. There are a number of ways to characterize the current situation. Perhaps the simplest is to say that we live in an era of “regulatory federalism” in which the federal government imposes significant restrictions on state and local governments. These restrictions are evident in the FCC’s imposition of a flat rate subscriber line charge despite objections from state governments. They are also evident in a wide variety of policy areas.

### THE RISE OF REGULATORY FEDERALISM

The triumph of regulatory federalism in the 1980s is ironic for two reasons. First, the Reagan administration repeatedly stressed the virtue of states’ rights, the advantages of state discretion, and the limitations of federal bureaucracies. Despite that rhetoric, the Reagan administration imposed numerous restrictions on state governments when it proved ideologically convenient to do so. In addition, the federal government reduced federal aid substantially, inviting Mario Cuomo to refer to a new era of “fend-for-yourself federalism.”

The second irony of regulatory federalism is that the states have become more professional, more capable, and more responsible at precisely the same time that the federal government has placed new restrictions on them (Bowman & Kearney,

1986). State legislatures have become full time, with well-educated professional staffs. Governors' staffs have expanded and chief executives have launched new efforts to achieve administrative integration through reorganization. State bureaucracies have become more professional and the merit system has displaced patronage as the principal mechanism for hiring and promotion. Despite these advantages, federal intrusions continue.

There are, of course, good reasons for federal controls of states. Without federal prodding, the states might stint on welfare payments (Peterson & Rom, 1990). Without federal prodding, the states might stint on environmental protection (Gormley, 1987). In energy, the federal government has a role to play in facilitating energy conservation (a national goal) and in regulating interstate power transactions. In telecommunications, the federal government has a role to play in ensuring uniform technical standards. But where should the federal role stop and the state role begin?

### EFFICIENCY AS A CRITERION

In thinking about intergovernmental relations, an economist is likely to begin and end with the criterion of economic efficiency, as defined by Pareto optimality. It is found in numerous treatises on regulatory policy (for example, Kahn, 1970). Some, such as Egan and Wenders, believe that the federal government is more likely than state governments to promote the goal of economic efficiency through deregulation.

I am not convinced that economic efficiency should be the sole litmus test for public policy or for the design of our political institutions. If we lived in a society with a strong welfare state, a guaranteed annual income, and considerable economic equality, one could argue in favor of market solutions, with minimum government interference. If we lived in a society in which there were no subsidies or tax breaks for favored firms, one could make the same argument with a straight face. But we do not.

Thus, in my view it is at least arguable that efficiency should be tempered by other considerations, such as fairness or equity. In telecommunications these issues arise when lifeline rates are being discussed and when the relative burden of residential and business ratepayers is under review. They also arise when the interests of competing firms collide. If economic efficiency were our sole criterion, the way to resolve these controversies would be relatively clear and the case for federal preemption would be equally clear. But in my view other values may also be worth pursuing, such as redistribution, responsiveness, and fairness. The fact that efficiency is more easily operationalized than other values does not mean that efficiency is the superior value!

Another reservation is that federal jurisdiction does not guarantee that economic efficiency will be pursued, even if that were the essential goal. Importunate

legislators and meddlesome judges frequently thwart the best bureaucratic efforts to achieve efficiency in regulation. Federal control is not tantamount to policy-making by the FCC. Rather it means decision making by a constellation of actors, including key congressional subcommittee chairs, federal judges, and industry lobbyists. These are not quite the “iron triangles” of legendary fame. But there is no guarantee that their combined “wisdom” will yield an efficient solution.

## STATE POLITICS

As we choose between a stronger or weaker federal role in telecommunications, it is important to recognize that regulation is inevitably—and perhaps even appropriately—political. Politics can not, and should not, be banished from the policymaking process. However, there is reason to believe that regulatory politics will differ at the federal and state levels.

At both the federal and state levels there will be pressure to ensure that regulators are accountable for their actions. At the federal level, politics has often taken the form of “upward accountability.” Federal regulators have been accountable to politicians and judges. In telecommunications, there is considerable evidence that the FCC has been accountable to the judiciary in recent years, most notably Judge Harold Greene (Stone, 1989). A careful analysis of congressional-bureaucratic interactions would probably reveal considerable accountability to congressional overseers as well (for a model and case study in telecommunications see Ferejohn & Shipan, 1989).

The pattern at the state level, I believe, is rather different. In particular, there is in place an extensive network of “grassroots advocates” and “proxy advocates” who regularly intervene in public utility commission proceedings on behalf of residential consumers. When I studied these intervenors a decade ago, I found that they were very active in three fourths of the states (Gormley, 1983). I also found that they were rather active in telecommunications cases, even though energy cases attracted more media attention at that time.

In my view, the states’ greater reliance on grass roots advocates and proxy advocates (downward accountability) has certain advantages over the federal government’s greater dependence on judges and politicians (upward accountability). In particular, “catalytic controls” from below preserve a certain discretion for regulators. In contrast, controls from above tend to be more coercive, depriving regulators of precious flexibility (Gormley, 1989).

Of course, there is no guarantee that grassroots advocates and proxy advocates will be either representative, responsive, or responsible. However, regulators can pick and choose, responding to responsible suggestions and deflecting less responsible suggestions. Studies of the impact of public intervenors are at least consistent with this proposition. When I studied grass roots advocates and proxy advocates in the late 1970s I found that they were effective in some areas but

not others (Gormley, 1983). Although Teske found no evidence of effective interventions by grassroots advocates in telecommunications cases in the 1980s (possibly because of data limitations), he also found that proxy advocates were effective in some areas but not others (Teske, 1990). Another way of putting this is that public utility commissioners have been selective in responding to interventions by public intervenors, which is probably as it should be.

## OTHER CRITERIA FOR CHOICE

In deciding on the proper division of labor between the federal government and the states, it would be mistaken to argue that the same rough division of labor makes sense in all policy domains. There are policy domains where a strong federal role makes sense and policy domains where a strong state role makes sense. Obviously, externalities and economies of scale must be taken into account, as most economists would agree. What are some other appropriate criteria and how might they apply to telecommunications?

One criterion is technical or scientific certainty. What are the consequences of deregulation for competition? And what are the consequences of competition for different types of consumers? Will rates go up? How steeply? If so, will other ratepayers assume a larger portion of the burden? The greater the uncertainty, the weaker the case for federal preemption.

A second criterion is political consensus. Do we agree on the appropriate burden of large businesses, small businesses, and residential consumers? Do we agree on the appropriate role of government in enabling the poor to meet some minimal telecommunications needs, or the "universal service" definition of the future? Do we agree on the appropriate level of subsidies for rural ratepayers? The greater the degree of consensus, the stronger the case for federal preemption.

A third criterion is industry robustness. Are the affected companies large enough to handle a certain amount of regulatory overlap and confusion? Are they adaptable enough to be able to handle significant regulatory change? Are they large enough to lobby effectively in a variety of forums? A strong and vital industry should be able to withstand a certain amount of regulatory diversity.

A fourth criterion is bureaucratic professionalism. Are federal and state bureaucracies both capable of innovation? Are federal and state bureaucracies both capable of identifying efficient solutions, if that is indeed the course they choose to pursue? In answering these questions, it is important to consider not just the size of the regulatory bureaucracy or even how many staff members have advanced degrees. One also needs to know which professions are represented in what numbers and whether economists in particular have a meaningful role to play.

My view, based on these criteria, is that a considerable degree of state discretion is justified in telecommunications. We have not yet reached a consensus, either on questions of value (politics) or on questions of fact (science). Telecom-

munications companies are better able to handle overlapping and changing regulations than smaller companies subject to environmental and occupational safety regulations that have caused such controversy. And state bureaucracies, for the most part, are capable of professionalism and innovation, as Cole illustrated in an earlier chapter. Economists, for example, are now well represented on both commissions and commission staffs. Indeed, that has been true for some period of time (Gormley, 1983).

There have been numerous state innovations in telecommunications policy. California adopted a lifeline plan in telecommunications long before the FCC adopted a similar plan. Recent FCC interconnection policies have been guided by the success of state-level policy in New York and elsewhere. The innovative capacity of the states has not yet been exhausted in telecommunications. For all of these reasons, there is much to be said for continuing state discretion.