American Federalism, Past, Present, and Future
By Ellis Katz

Since its inception more than 200 years ago, American federalism has undergone tremendous change. Today, all governments -- federal, state and local -- play a greater role in the lives of their citizens, expectations about what kind of services and rights people want from government have changed, and relations among the federal, state and local governments have become infinitely more complex. In this brief essay, Ellis Katz, professor of political science and a fellow of the Center for the Study of Federalism at Temple University, explores the origins and development of American federalism, its contemporary practice and problems, and the forces that seem to be moving it in new directions.

When the 13 North American colonies declared their independence from Great Britain on July 4, 1776, they recognized the need to coordinate their efforts in the war and to cooperate with each other generally. To these ends, they adopted the Articles of Confederation, a constitution which created a league of sovereign states which committed the states to cooperate with each other in military affairs, foreign policy and other important areas. The Articles were barely sufficient to hold the states together through the war against England and, at the successful conclusion of that war, fell apart completely as the states pursued their own interests rather than the national interest of the new United States.

The Origin and Development of American Federalism

To remedy the defects of the Articles (or, in the words of the Constitution of 1787, "to create a more perfect union"), George Washington, Alexander Hamilton, James Madison, and other nationalist leaders called upon the states to send delegates to a constitutional convention to meet in the city of Philadelphia in May 1787. It was, of course, that convention that produced the Constitution of the United States.

The framers of the Constitution rejected both confederal and unitary models of government. Instead, they based the new American government on an entirely new theory: federalism. In a confederation, the member states make up the union. Sovereignty remains with the states and individuals are citizens of their respective states, not of the national government. In a unitary system, on the other hand, the national government is sovereign and the states, if they exist at all, are mere administrative arms of the central government. In the American federal system, the people retain their basic sovereignty and they delegate some powers to the national government and reserve other powers to the states. Individuals are citizens of both the general government and their respective states.

This brief history is important for two reasons. First, the American federal system is not simply a decentralized hierarchy. The states are not administrative units that exist only to implement policies made by some central government. The states are fully functioning constitutional polities in their own right, empowered by the American people to make a wide range of policies for their own citizens.
Second, the framers expected that the states would be the principal policymakers in the federal system. The powers granted to the federal government are relatively few in number and deal mainly with foreign and military affairs and national economic issues, such as the free flow of commerce across state lines. Most domestic policy issues were left to the states to resolve in keeping with their own histories, needs and cultures.

The first 75 years of American development (1790-1865) were marked by constitutional and political conflicts about the nature of American federalism. Almost immediately George Washington, Alexander Hamilton, John Marshall and their Federalist colleagues argued for an expansive interpretation of federal authority, while Thomas Jefferson, James Madison, Spencer Roane and their partisan allies maintained that the American union was little more than a confederation in which power and sovereignty remained with the states. By the 1850s, the debate focused on whether slavery was a matter for national or state policy.

The American Civil War (1860-1865) did much to resolve these federalism questions. The northern victory and the subsequent adoption of the 13th, 14th and 15th amendments to the Constitution ended slavery, defined national citizenship, limited the power of the states in the areas of civil rights and liberties, and, generally, established the supremacy of the national Constitution and laws over the states. Federalism issues continued of course, and during the first third of this century, the U.S. Supreme Court often cited federalism considerations to limit federal authority over the economy. Two developments, however, led to the expansion of federal authority, and, according to some critics, brought about an imbalance in American federalism.

First, under the New Deal programs of President Franklin D. Roosevelt, the functions of the federal government expanded enormously. It was the New Deal that gave rise to Social Security, unemployment compensation, federal welfare programs, price stabilization programs in industry and agriculture, and collective bargaining for labor unions. Many of these programs, while funded by the federal government, were administered by the states, giving rise to the federal grant-in-aid system. The U.S. Supreme Court legitimated this expanded federal role, and since 1937 has pretty much allowed the national government to define the reach of its authority for itself.

Second, during the 1950s and 1960s, the national government became viewed as the principal promoter and defender of civil rights and liberties. In a series of very important decisions, the U.S. Supreme Court struck down state-supported racial segregation, state laws that discriminated against women, and state criminal proceedings that violated the due process of law provision of the 14th Amendment. Thus, people looked to the institutions of the national government (especially to the U.S. Supreme Court) to defend them against their own state governments.

These two developments required a reconceptualization of federalism. Until the New Deal, the prevailing concept of federalism was "dual federalism," a system in which the national government and the states have totally separate sets of responsibilities. Thus foreign affairs and national defense were the business of the federal government alone,
while education and family law were matters for the states exclusively. The New Deal broke this artificial distinction and gave rise to the notion of "cooperative federalism," a system by which the national and state governments may cooperate with each other to deal with a wide range of social and economic problems.

Cooperative federalism characterized American intergovernmental relations through the 1950s and into the 1960s. The principal tool of cooperative federalism was the grant-in-aid, a system by which the federal government uses its greater financial resources to give money to the states to pursue mutually agreed-upon goals. The building of the interstate highway system in the United States during the 1950s and 1960s is usually cited as an example of cooperative federalism working at its best. The federal government provided up to 90 percent of the cost of highway construction, gave technical assistance to the states in building the highways, and, generally, set standards for the new roads. The highways were actually built and maintained by the states.

Three points about this sort of cooperative federalism need to be made clear. First, the federal government and the states agreed on the goals; both wanted the roads built. Second, only the federal government and the states were involved in the programs. Cities and other units of local government were not full partners in the cooperative federalism of the 1950s and early 1960s. Third, the grant-in-aid programs affected only a small number of policy areas; most of the funding went for highways, airport construction, and housing and urban development. As late as 1963, the total funding for all federal grants-in-aid was only about $9 billion.

But this sort of cooperative federalism ended by the mid-1960s. Under President Lyndon B. Johnson's Great Society, the federal government sometimes enacted grant-in-aid programs in which the states had little interest, or to which they were actually opposed. Second, federal funds were now often given directly to units of local government -- counties, cities, small towns, and school and other special districts. Third, while previous grant-in-aid programs were limited to a few areas on which the federal government and the states agreed, the Great Society reached almost every policy area -- education, police and fire protection, historic preservation, public libraries, infant health care, urban renewal, public parks and recreation, sewage and water systems and public transit.

The consequence of all this was two-fold. First, the number of players in the intergovernmental system increased tremendously, from 51 (the states and the federal government) to the 80,000 or so units of local government that existed at the time. Second, federal grants-in-aid, which affected only a few policy areas previously, now affected almost all areas of public life. This led to a number of managerial and political problems (coordination, accountability, priorities, micro-management, etc.) that political scientist David Walker has summed up with the phrase "the hyperintergovernmentalization" of American public policy.

President Richard M. Nixon tried to fix all of this by the consolidation of small categorical grant programs into larger bloc grant programs in which the states would have more discretion. By and large, however, his efforts failed. By the time he left office, there
were more grant programs (over 600) than when he started. The presidency of Ronald Reagan seemed to promise a solution. While Reagan supported many of Nixon's proposed solutions, his real impact was on federal spending, which has caused Americans to re-think not only federalism, but the role of government itself.

Wanting a smaller role for government, especially for the federal government, Reagan successfully fought for increased defense spending, tax cuts and increased (or at least maintained) levels of Social Security payments. The result was that there was less and less money available for federal domestic grant-in-aid programs. While federal grant-in-aid spending crept upwards during the Bush administration, and has remained fairly stable during the Clinton administration (over $225 thousand-million in 1996), Reagan's strategy, by and large, has worked -- although it has created a new set of problems for state and local government.

American Federalism Today and Tomorrow

American federalism was never merely a set of static institutional arrangements, frozen in time by the U.S. Constitution. Rather, American federalism is a dynamic, multi-dimensional process that has economic, administrative, and political aspects as well as constitutional ones. This is perhaps more true today than it ever has been. Let me suggest six crucial issues that Americans face today:

Unfunded Mandates. With the shortage of federal money to support federal priorities, Congress, using its constitutional authority to "regulate commerce among the states," imposed direct regulations upon the states. Since these regulations require the states to act but do not provide any funding to finance these activities, they are called "unfunded mandates." Many of these regulations deal with environmental protection, historic preservation and the protection of individual rights, but they all carry with them substantial costs to the states. The states rebelled against these federal requirements and, in response, Congress enacted the Unfunded Mandates Act of 1995, which (with certain threshold requirements) prohibits the federal government from placing new requirements on state and local government without providing the necessary finding. It remains to be seen whether this law will effectively limit the range of federal activity, especially given how broadly the U.S. Supreme Court has interpreted Congress' authority.

Constitutional Issues. Since 1937, the U.S. Supreme Court has interpreted Congress' power to spend money for the general welfare and its authority to regulate commerce among the states so broadly that the national government can reach almost any economic, social, or even cultural activity it wishes. Thus, national laws reach such traditionally local matters as crime, fire protection, land use, education, and even marriage and divorce. In its 1995 decision in United States v. Lopez, however, the Court unexpectedly held that the national government had exceeded its constitutional authority by enacting a law prohibiting the possession of hand guns near public school buildings. The Court held that the federal government had not demonstrated any connection between the possession of guns near school buildings and Congress' power to regulate interstate commerce. It was the first time in 60 years that the Court had seriously questioned a congressional
exercise of its commerce power. At this time, we do not know whether the Court's *Lopez* decision will simply be the exception to an otherwise unrestrained expansion of the constitutional authority of the federal government, or the beginning of a new jurisprudence which seeks to restore limits on federal authority.

**Public Finance.** If more policymaking and implementation responsibility is left to state and local governments, then it is likely that we will encounter a mismatch between program responsibility and fiscal capacity. During the late 1960s and early 1970s, cities received very substantial federal funding to implement the Great Society social programs. While federal funding has slowed, and in some cases even stopped, citizen demand for programs continues and even grows. Cities and other units of local government still much provide such traditional services as public education, trash disposal, crime and fire protection, and street repair and maintenance. In addition, they must satisfy largely unfunded federal and state mandates in such areas as environmental protection, race and gender-equal opportunity programs, education of the handicapped, and land-use planning. Increasingly, the demand for local services grows while the capacity to support them diminishes. This dilemma has forced local governments to become much more innovative in how such services are provided.

**Reinventing Government.** Caught in this dilemma of rising expectations and decreasing financial capacity, local governments have been forced to "reinvent" the way they deliver and finance services. Reinvention takes many forms. Cities across the country have experimented with greater administrative decentralization, entering into markets and competing with private service providers, redefining clients as customers and attempting to hold government agencies accountable to them. Perhaps, most interesting of all, privatization has taken many forms, ranging from contracting with private firms to providing meal service at a public school, to turning over waste disposal or even the operation of an entire prison to a private agency. In addition, cities have been forced to become less dependent on both federal aid and local property taxes and have turned to charging realistic fees for services. Creative financing and ways of delivering services appear to result in substantial cost savings with no decline in quality. It is early in the process, however, and we will need to wait to fully evaluate the full impact of "reinventing government" on public life.

**International Trade.** There also is a new international dimension to American federalism. Agreements such as GATT and NAFTA will have a profound impact upon federalism. Most observers suggest that the authority of the states will be further eroded as state policies on such matters as economic development, environmental protection and professional licensing will be subject to the terms of these international agreements, as well as to the strictures of the U.S. Constitution. These observers are right, but there is another aspect to these international agreements that might enhance state authority. Under NAFTA, for example, the American states are guaranteed at least a consultative role in implementing the agreement. It will be interesting to see how the states that make up the American, Canadian and Mexican federations will be affected by this emerging "federation of federations."
The States As Laboratories. Many years ago, U.S. Supreme Court Justice Louis D. Brandeis wrote that the states were "social laboratories" in which we could experiment with a variety of solutions to social and economic problems without putting the whole nation at risk. This view of federalism is more true today than ever before. If the United States is to develop innovative and effective solutions to such problems as crime, education, welfare and urban blight, they will be forged by state governments working hand-in-hand with their local communities.

How effectively we Americans meet these challenges and use these opportunities will shape the future of American federalism.