

**THE CHALLENGE OF WORKING ACROSS LEVELS OF
GOVERNMENT AND SECTORS**

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Abstract

Over the past few decades, the traditional boundaries of regulation and governance have blurred. The United States federal government has expanded not only to vertically across different levels of the government but also horizontally across the different private and non-profit actors. These developments are a paradigmatic shift from the traditional command and control regulations of the late 1960s and early 1970s. Moreover, they are being increasingly used in the light of complex policy problems. However, they are not devoid of challenges. Using the literature intergovernmental relations and collaborative governance and a case study in the area of environmental policy, the essay highlights the various political, economic, and social challenges of these partnerships. Recognizing some of the key challenges of working across different levels of government and sectors is an important step towards devising creative policies to solve our current and future complex policy problems.

Keywords: U.S. intergovernmental relations, collaborative governance, environmental policy, complex policy problems

Introduction

President Obama's 2013 Climate Action Plan calls for a strong federal role to address climate change. The report emphasizes, however, that this cannot be accomplished without the support of state and local governments, partnerships with private and non-profit actors, and engagement with communities.

-Executive Office of the President, 2013

It has been over four decades since the 1970 Earth Day and establishment of the U.S. Environmental Protection Agency (EPA)—and the regulatory landscape has changed since then. Command and control was the dominant regulatory strategy used in the iconic federal statutes passed within the few years of the establishment of the EPA, namely, the Clean Air Act (1970), the Clean Water Act (1972). The top-down approach was based on the assumption that the environment and economy were fundamentally at odds, and that the potential for market-failures increased in the absence of direct regulation. Owing to the conflicting interests between the public and private sector, the government kept industry at arms' length.ⁱ As a way to nationalize environmental policy, the EPA delegated authority to states that displayed institutional capacity for policy implementation, while maintaining strong federal oversight and enforcement.ⁱⁱ

Undoubtedly, the top-down environmental regulations have effectively solved the first generation environmental problems; however, by the late 1970's, the top-down regulations were increasingly criticized for being inflexible, inefficient, and expensive.ⁱⁱⁱ (Durant, 2004). As a response to this, periodic efforts to reform existing regulations were undertaken. For instance, the "new federalism" of the Reagan administration aimed at deregulation and devolution of

responsibilities to state governments.^{iv} And, the Clinton Administration's "reinventing government" encouraged participation of private and non-governmental sector for public service delivery.^v

These reform efforts reflected a paradigmatic shift from the traditional command and control to the use of market incentives and increased role of partnerships across different levels of governments and sectors.^{vi} They have, however, sparked some normative and practical concerns about the meaning for American bureaucracy and democratic values.^{vii} The essay focuses on the challenges of intergovernmental relations, i.e. cross federal, state, local governments and of collaborative governance, i.e. across the public, private and non-profit sectors.

Challenges in Intergovernmental Relations and Collaborative Governance

Intergovernmental relations (IGR) literature identifies certain obstacles that prevent an IGR from being a success.^{viii} Buntz and Radin (1983) claim that conflict is inherent in IGR, owing to a tripartite system of divided powers. Radin and Ponsler (2010) identify the challenge of balancing competing values of managerial efficiency and the values of equity, accountability, and representativeness.^{ix} Further, no matter how much the discretion granted by the federal government, Scheberle (2004) argues that the states will always have a secondary role to play from a legal and constitutional perspective. The Supreme Court, for example, seldom finds any national legislation unconstitutional, therefore national environmental laws can override what previously had exclusively been state domain.^x

The other challenge lies in the appropriate combination of formal and informal tools and mandates used by the federal government, in order induce the local and state government to reach programmatic objectives and for performance measurement. The use of formal enforcement tools, such as audits on one hand may actually lead to fulfilling required objectives,

but on the other, their excessive use is known to drive out collaboration because it reflects the command and control system and to an extent, only contributes to “bean counting,” i.e. preoccupation with excessive enforcements and audits to get federal grant money, without actually attaining policy outcomes.^{xi}

The multiple and complex principal-agent relationships of intergovernmental management can be an obstacle to attain policy objectives. For instance, each state administrator has multiple principals, which can make management more complicated, but also can also be exploited by agency officials for their own benefits. Extending this argument, these relationships more often reflect “picket-fence federalism” i.e. when highly cohesive members of like-minded professional and programmatic networks become unified in pressing their particular interests against the elected officials. This is especially problematic because it leads to pork-barrel policies, incremental policy changes, and money trickled down to the policy area of dominating political preferences.^{xii}

The state and local support for substantive program goals is not always certain. It is contingent on the local and state governments’ political willingness, economic resources, and administrative capacity to adopt an autonomous policy programs. Lester’s (1986) points to two factors that reflect state willingness to pursue environmental policies despite unfunded mandates—the level of commitment of the states towards environmental protection and the extent of their reliance on federal funding. The varying levels of commitment across the US states is particularly challenging when solving a policy problem such as climate change, which is complex and transcends geographical boundaries.^{xiii}

Just as there are certain impediments that prevent intergovernmental relations from being a success; collaborative governance across sectors also has its set of challenges. When viewed purely from a cost-effectiveness perspective, collaboration across sectors may actually increase

transaction costs associated bargaining, monitoring and enforcement; dealing with market disruption; ensuring contractor accountability; and mobilization of relevant stakeholders, among many others.^{xiv xv}

Another challenge lies in garnering the right combination of resources with elements of effective governance. Often in government contracting, money is merely thrown at problems, which may not solve the problem. In the same vein, having elements of effective governance in place, but drastically cutting funds is not an effective strategy. Alluding to this challenge, Milward and Provan (2000) use the metaphor of a “hollow state,” referring to a situation wherein of erosion of government expertise due to the increasing third-party government for public service delivery.^{xvi}

Consensus building in a collaborative partnership requires that stakeholders must agree on a set of policy actions. In an ideal scenario, this approach can lead to democratic accountability and provide legitimacy to the process of decision-making. However, due to multiple interests on the table, getting a consensus on a policy decision may be time consuming and often end in an impasse. Partnership actors often come to a compromise and agree to lower levels of compliance or standards; thereby creating a lowest-common denominator problem.^{xvii} See Table 1 in Appendix I for a summary of challenges of intergovernmental relations and collaborative governance.

Case Study: The Common Sense Initiative (1994-1998)

The Common Sense Initiative (CSI) was the first major reinvention initiative taken by the Clinton Administration in 1994. Under the CSI, EPA took a novel sector-to-sector approach and worked with stakeholders across six different industry sectors, including computers and electronics, automobile, iron and steel, printing, metal, and petroleum, to achieve “cleaner cheaper smarter” approaches to environmental pollution control.^{xviii} Each of the participating

sectors was paired with multiple stakeholders, including the industry, local and state agencies, and environmental NGOs, and labor groups.

According to some industry experts, CSI was a success in terms of attaining tangible partnership objectives. Yet, a former EPA official labeled the partnership as an “outright failure.” He explained that while mobilizing multiple stakeholders across different sectors was an unprecedented approach, however, it went beyond EPA’s institutional capacity and resources.^{xix} The official also attributed the unsatisfactory performance to the vague and open-ended partnership goals. For instance, one of the projects with the electronics sector aimed at creating zero wastewater discharge systems. However, the project was hindered by a lack of clarity on how those fit into the existing larger legal framework. Despite its shortcomings, some policy and industry experts viewed CSI to be a significant effort of the EPA to reinvent regulation, reduce conflict, and build social capital.^{xx} These challenges also point to several policy lessons learned: first, the importance of a strong implementation strategy and clear statement of goals, objectives, and responsibilities.^{xxi} Refer to Table 2 in Appendix II for a comprehensive list of the challenges of the Common Sense Initiative

Conclusion

A regulatory reform movement that escalated during the Reagan administration and reemerged in the Clinton Administration has continued to hold firm as of today. Further, the sustained interest in working across different levels of government and sectors can be attributed to the shortcomings of the command and control regulations as well as to the increasing complexity of today’s policy problems. However, as evident from the essay these approaches are hamstrung by the challenges that are often the interplay of various political, economic, and social factors. Being cognizant of the challenges is one major step towards creating effective and successful partnerships across levels of governments and sectors. For instance, the Common Sense

Initiative highlighted the challenges of working across different sectors and levels of government. However, a careful study of the case pointed to important lessons learned. Both academics and practitioners alike can benefit from an analytical study of these challenges, as they seek answers to solve today's most complex policy problems faced by the United States and the larger global community.

End Notes

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^{xix} Personal communication, November 2012

^{xx} United States Environmental Protection Agency, [US EPA] (1998). *The Common Sense Initiative: Lessons Learned: About protecting the environment in common sense, cost effective ways.* Washington DC: Office of Reinvention.

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Appendix I
Table 1: Challenges of working across levels of governments and sectors

<i>Forms of working across government and sectors</i>	<i>Types of challenges</i>
Intergovernmental relations	(i) Divided powers granting limited state authority and discretion (ii) Inappropriate use of formal and informal tools (iii) Multiple and complex principal-agent relationships (iv) Varying levels of state support for unfunded mandates
Collaborative governance	(i) High transaction costs (ii) “Hollowed-out” government (iii) Lowest-common denominator

Appendix II

Table 2: Key programmatic objectives and results of the Common Sense Initiative

<i>Program objectives</i>	<i>Participants</i>	<i>Achievements</i>	<i>Challenges</i>
(i) Create comprehensive and consistent environmental strategies (ii) Develop efficient permitting process and enforcement by the EPA (iii) Provide industry incentives for pollution prevention technologies (iv) Invite stakeholder participation	Six industry sectors: Automobile Manufacturing, Iron and Steel, Metal Finishing, Computers and Electronics, Printing, and Petroleum Refining. Local and state agencies, ENGOs, and labor groups	(i) Unprecedented effort towards conflict mitigation and resolution from multiple partners with diverse values and interests (ii) Reduced waste going to landfill by increased recycling (iii) Increased voluntary industry reporting (iv) Streamlined EPA record keeping	(i) Problem of goal-displacement due to vague and open-ended goals and procedural rules (ii) Failure of downstream implementation due to a lack of institutional capacity to steer six working groups and lack of resources for participants

Sources: Personal interview with an industry member and document analysis of memorandum of understanding (MOUs) between the EPA and partnership participants