CHAPTER ONE

Interstate Comity

An *imperium in imperio* (an empire within an empire) is an apt descriptor of a federal system as sovereign political powers are divided between a national government and constituent state governments.[1] This power division automatically produces national-state relations and interstate relations characterized by competition, cooperation, and/or conflict. This book focuses on interstate comity in the United States that in origin predates the emergence of the federal system and is traceable to the Declaration of Independence of 1776 that necessitated interstate cooperation, similar to an international alliance, for the successful prosecution of the War of Independence.

The literature on national-state relations in the United States is vast in contrast to the scarcity of interstate relations literature. The first comprehensive book on such relations was not published until 1996.[2] This fact is surprising since boundary and trade disputes between sister states were major factors contributing to calls for amendment of the Articles of Confederation and Perpetual Union, and ultimately led to the convening of the Constitutional Convention of 1787 that drafted the U.S. Constitution as a replacement of the articles.

Political scientists generally had relatively little interest in interstate relations in the post-1940 period until the turn of the twenty-first century. The lack of interest is difficult to explain when one considers the wide variety of major economic, political, and social matters involved and the importance of daily interstate cooperative activities. The declining scholarly attention paid to such relations is apparent upon a perusal

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of three special issues of *The Annals of the Academy of Political and Social Science* devoted to federalism and intergovernmental relations.[3] The 1940 issue contained six articles on interstate relations. The number of such articles declined to two in the 1974 issue, and to none in the 1990 issue. Fortunately, there has been increasing scholarly attention to such relations commencing in 1996.

The advantages of a federal system, according to its proponents, are avoidance of overcentralization of political power, national uniformity in policy areas where needed, states controlling their internal affairs and experimenting with new policies that lead to adoption of successful ones by sister states and/or the national legislature, greater opportunities for citizen participation in the policy making and implementation processes, and ability of states to remedy an internal problem without waiting for the national legislature to develop a solution.

A federal system, however, may have four major disadvantages. First, the exercise of concurrent powers by the national legislature and state legislatures may produce conflicts between the two levels of government and/or uneconomical performance of overlapping functions. Second, disharmonious state policies in numerous important areas—such as banking, criminal justice, highway safety, and taxation—create major problems for business firms and citizens who have to ascertain conflicting provisions in the various laws of the fifty states and be alert to frequent changes in many laws. Third, the refusal of a state government to recognize the public acts, judicial proceedings such as divorce, and records of another state generates significant problems. Fourth, serious transboundary problems (air and water pollution are examples) may remain unabated in the absence of national legislative action or interstate cooperation to solve them.

Formal interstate cooperation and informal interstate cooperation are the keystones holding the United States federal system together and contributing to its success, yet they are a largely unexplored area of the federal system. Cooperation is manifested in many forms. Formal cooperation is reflected in interstate compacts, reciprocity statutes, uniform laws, and written interstate administrative agreements for joint action that may be the product of self-interest of sister states and/or congressional promotion as explained in a subsequent section. Whereas compacts and uniform laws usually are intended to be relatively permanent, administrative agreements between sister states may be temporary or permanent and may be verbal or written. Interstate compacts can be located in the consolidated laws of states and, if consent has been granted by Congress, in the United States Statutes at-Large. Unfortunately, there is no central repository in any state holding all written

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interstate administrative agreements entered into by the state. A New York law requires the secretary of state to keep a current compilation of all interstate compacts and administrative agreements, referred to as interstate concordats, entered into by New York and its political subdivisions, yet only three agreements are in the compilation (including one with the Province of Quebec on acid rain).[4]

A notable feature of the contemporary U.S. federal system is the exceptionally large number of informal understandings between administrative officers in various states pertaining to combating organized crime, hot pursuit by police across state boundary lines, mutual assistance in extinguishing forest fires, prevention of environmental pollution, and other matters (see chapter 6). There has been a sharp increase in the number of these agreements during the past six decades with little attendant public visibility and few formal studies.

National and regional associations of state administrative officers play key roles in promoting interstate cooperation. Numerous associations draft model laws and model administrative agreements, and association members promote the models in their home states. Certain national associations of state administrative officers encourage interstate cooperation to solve problems in order to fend off congressional preemption of their regulatory powers.[5] For example, the national association of insurance commissioners initiated action to improve state solvency regulation of property-casualty and life-insurance companies by establishing an accreditation program for states (see chapter 6).[6]

Interstate collaboration is common, but should not blind us to interstate conflicts over water allocation and/or pollution, boundary lines, taxation, and other subjects. Furthermore, interstate economic competition is common as individual states rationally seeking to attract major federal government facilities, industrial firms, service industries, tourists, and in some instances gamblers. Tax abatements, grants, and loans commonly are offered as inducements to firms to locate in a particular state. The U.S. Advisory Commission on Intergovernmental Relations (ACIR) in 1991 identified "competition in the areas of education, public welfare, and public works infrastructure . . . and right-to-work laws and laws regulating workers' compensation insurance."[7] States also compete to obtain certain federal grants-in-aid. Tax exportation is another feature of a federal system with states rich in and exporting natural resources—coal, forest products, natural gas—levying relatively high extractive taxes that are passed on by purchasers in sister states to consumers. New Hampshire is perhaps the outstanding example of a state engaging in another type of tax exportation. The state's low alcoholic beverages and tobacco products excise taxes and lack of a

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sales tax and a bottle deposit act as magnets for shoppers from the other New England states that all levy sales taxes and have higher excise taxes and a bottle deposit act. It is apparent conflicts and competition may hinder interstate cooperation.

Interstate compacts and interstate administrative agreements are the specific foci of this book, and selected ones are assessed in terms of their success in chapter 7. A proper understanding of state interactions necessitates an acquaintance with the origin of the federal system, constitutional distribution of political powers between Congress and the states, congressional promotion of interstate cooperation, and interstate constitutional principles (see chapter 2).

ORIGIN OF THE FEDERAL SYSTEM

English institutions and philosophies of governance influenced greatly the United States governmental system as the colonists brought to the new world concepts of popular sovereignty, natural law, natural rights, rule of law, and separation of powers. They, of course, lived under a centralized unitary system with sovereignty residing in the mother country.

New Hampshire in 1775 revolted against British rule and the Declaration of Independence in 1776 formally instituted the Revolutionary War by the thirteen former colonies against the British Crown. The declaration's immediate result was the establishment of thirteen independent nations with eleven drafting constitutions and Connecticut and Rhode Island converting their royal charters into constitutions. Although no national constitution or government existed, each state sent delegates to the second Continental Congress which directed the war effort, borrowed funds, raised armies, and entered into treaties with other nations. The Congress recognized the need for a national government, but did not seriously consider a unitary system as the colonists had revolted against such a system. Two nations—Switzerland and the United Netherlands—operated under a confederate system that appealed to the newly independent states.

Articles of Confederation and Perpetual Union

The Continental Congress in 1777 drafted the articles and submitted them for ratification to the states with the proviso they would become effective upon the ratification by all states. Maryland, the thirteenth state, did not ratify the articles until 1781. Boundary disputes, attribut-

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able to imprecision in royal-land grants, were responsible for the ratification delay and were overcome when the Continental Congress proposed in 1780 that the title to disputed lands should be transferred to the proposed national Congress to be "disposed of for the common benefit of the United States and be settled and formed into distinct states which shall become members of this Federal Union, . . ."[8] New York, which had few territorial claims, and Virginia with numerous land claims in 1781 ceded their lands to the Congress, and their lead was followed by the other states with such claims.

Provisions

Congress enacted the Northwest Ordinance in 1787 stipulating that sections of the Northwest Territory would be admitted as states when the population in each section reached 50,000.[9] Article XI of the Articles of Confederation and Perpetual Union provided "Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union, but no other colony shall be admitted into the same unless such admission be agreed to by the nine States."

The confederation was "perpetual" in nature according to the articles that did not employ the word *government*. Article III described the governance system as a "firm league of friendship," thereby emphasizing the importance of cooperative interstate relations, and declaring its purposes to be "common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or by any of them, on account of religion, sovereignty, trade, or any other pretence whatever."

The second article made clear the confederate nature of the new governance system: "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the united States in Congress assembled." Note the lower case *u* in "united" denoting the establishment of a league of states by the articles rather than a national government with powers derived from the people.

The unicameral congress had two-to-seven delegates from each state appointed and recallable by their respective state legislatures for a maximum term of three years in any period of six years. Each state had only one vote in Congress which was authorized to appoint a committee of the states, composed of one delegate from each state, to meet during congressional recesses and to appoint a president as presiding officer for a term not exceeding one year during a three-year period. The committee was empowered to borrow funds, declare war, build a

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navy, raise an army, coin money, negotiate treaties, establish a postal system, fix standards of measures and weights, and regulate relations with Indian tribes. The committee also was authorized to exercise additional powers delegated by Congress provided nine states agreed. There were, however, no separate executive branch and no separate judicial branch.

DEFECTS

Experience quickly revealed the articles had five defects:

First, the power of taxation was not granted to Congress, and it was dependent upon individual states sending their contribution quotas of funds and many failed to send their quotas. In consequence, Congress was unable to exercise its delegated powers effectively.

Second, Congress lacked the power to enforce its laws and treaties entered into with foreign nations, and states were under no legal obligation to respect congressional laws and treaties. James Madison in 1787 noted states violated the Peace Treaty of 1783, the Treaty with France, and the Treaty with Holland, and "as yet foreign powers have not been rigorous in animadverting on us."[10]

Third, the lack of power to regulate interstate commerce made it impossible for Congress to counteract the mercantilist practices of states that had erected trade barriers against sister states, thereby bringing interstate commerce to a near standstill. This defect clearly was the most serious one and contributed greatly to the increasing public pressure for the amendment of the articles.

Fourth, Congress possessed the authority to raise and support an army and a navy, but lacked the resources to do so during a period when England controlled Canada, Spain occupied lands to the southwest, and the French monarchy, which had supported the states during the revolutionary war, was in danger of collapse. More importantly, Congress was unable to assist states in suppressing domestic disorders such as Shay's rebellion in western Massachusetts.

Fifth, dissolution of the confederacy was a distinct possibility. Madison commented in 1787 "a breach of any of the Articles of Confederation by any of the parties to it absolves the other parties from their respective obligations, and gives them a right if they choose to exert it of dissolving the Union altogether."[11]

Constitutional Convention

The articles' defects became more apparent with the passage of time. Maryland and Virginia recognized fully the importance of cooperative

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interstate relations, and their representatives in 1785 drafted the Potomac River and Chesapeake Bay Navigation and Trade Agreement. The Maryland General Assembly ratified the compact and proposed Delaware and Pennsylvania be included in negotiations of interstate commercial regulations. The Virginia General Assembly also ratified the agreement and invited all thirteen states to attend a convention in Annapolis, Maryland in 1786 to develop a uniform system of commerce and trade.

Nine states appointed commissioners to attend the convention, but only twelve commissioners from five states participated. The convention approved a resolution requesting Congress to convene a convention in Philadelphia in May 1787 to examine the Articles of Confederation and Perpetual Union and to propose needed amendments. Congress, without enthusiasm, approved on February 21, 1787 a resolution calling a convention, but failed to designate the method of selecting delegates. They were appointed by each state legislature or by the governor under legislative authorization.

Only the State of Rhode Island and the Providence Plantations failed to send delegates to the convention that met from May 25 to September 17, 1787. Rhode Island maintained the articles could be amended only in conformance with Article XIII , requiring the approval of Congress and confirmation "by the legislatures of every state." Although seventy-four delegates were appointed, nineteen delegates did not accept their appointments or did not attend the convention. Fourteen remaining delegates left the convention prior to the completion of the draft constitution.

Governor Edmund Randolph of Virginia sparked convention debate on May 29, 1787, when he introduced fifteen resolutions to serve as the basis of a national government similar to the British government. Debate centered on the question of whether the articles should be amended or replaced. By a vote of six to one, delegates decided to replace them and restructure the governance system in general and interstate relations in particular.

The convention proceedings produced major compromises between large and small states, and northern and southern states. The Connecticut Compromise provided for a senate with two members from each state and a house of representatives based upon population with a stipulation each state is guaranteed a minimum of one representative. The two alternatives were representation in a single house by the population of each state, or each state having a single vote in a single house. Two of the most famous compromises between northern and southern states involved slavery and imposition of import and export duties. The draft constitution allowed slaves to be imported for twenty years

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and authorized Congress to impose a tax of not exceeding ten dollars on each slave imported. Southern states opposed import and export duties. The compromise was a constitutional provision authorizing Congress to levy import duties.

The product of the convention was a new governance system incorporating elements of a confederate system and a unitary system by dividing powers between a national Congress and states, and establishing an executive branch and a judicial branch of government. Fearing their work might be frustrated by a small number of states that would not ratify the proposed constitution, the delegates incorporated a provision in the constitution stipulating it would become effective upon ratification by nine states. This provision conformed with the spirit of Article X of the Articles of Confederation and Perpetual Union, authorizing nine states in Congress assembled to delegate its powers to the committee of the states to execute during congressional recesses. Most delegates also were convinced that the ratification of the fundamental document by nine states would pressure the remaining four states to ratify the document.

Ratification Campaign

The proposed U.S. Constitution was a controversial fundamental law with the strongest objection centering on the lack of a bill of rights, although three civil liberty guarantees—prohibition of enactment of a bill of attainder and a ex post facto law, and suspension of the writ of habeas corpus except during an invasion of rebellion—were included in Section 9 of Article I. Many constitutional provisions not surprisingly were subjects of debate in various states. Critics also faulted the document for its failure to acknowledge God and to require public offices be held by Christians. Fear also was expressed the president as commander-in-chief of the armed forces might become another Oliver Cromwell.

Popular conventions in Delaware, New Jersey, and Pennsylvania quickly ratified the proposed constitution. Connecticut and Georgia ratified the document shortly thereafter, but major objections were raised in Massachusetts, New York, and Virginia.

Alexander Hamilton, John Jay, and James Madison, three prominent federalism supporters, wrote eighty-five letters to editors of New York City newspapers, between late March and May 28, 1788, to persuade the New York convention to ratify the proposed constitution. These letters, published collectively under the title *The Federalist*

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Papers, are the most informative expositions on the constitution as drafted.[12] Each letter focused on a constitutional provision, explained its purpose, and defended its inclusion. The New York convention, by a margin of three votes, ratified the proposed constitution.

The proposed constitution was ratified by the required nine states by the summer of 1788, and New York and Virginia ratified the document shortly thereafter. North Carolina and Rhode Island ratified the constitution in the autumn of 1789 and spring of 1790, respectively. Contributing to the successful ratification campaign was a promise by the constitution's proponents the first order of business of the new Congress would be the proposal of a series of amendments to the U.S. Constitution, which became known as the Bill of Rights.

CONSTITUTIONAL POWER DISTRIBUTION

The U.S. Constitution established the world's first federal system by delegating certain political powers to Congress and reserving all other powers not prohibited to the states and the people. Delegated powers include borrowing and coining money; constructing post roads; establishing post offices, and copyright and patent systems; levying taxes; raising and supporting a army and a navy; regulating commerce with foreign nations, Indian tribes, and among states; and other powers. Several powers, including coinage, are exclusive congressional ones as states are forbidden to exercise them, but it should be noted Congress can not be forced to exercise any delegated power. The scope of the delegated powers is subject to judicial interpretation. It is particularly noteworthy that Congress is limited to providing only one service, the postal service, directly to citizens within states (with the exception of land, such as a military base, owned by the national government). Congress, however, offers conditional grants-in-aid to influence the provision of services by state and local governments.

Implementation of the federal system immediately generated a debate between individuals favoring a loose construction of the delegated powers and individuals favoring a strict construction to protect state rights. The constitution contains in Section 8 of Article I the "elastic" or "coefficient" clause: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department of officer thereof." This clause underlies the judicial doctrine of implied powers, the broad interpretation of which has augmented

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significantly the powers of Congress. The doctrine was developed in *McCulloch v. Maryland* in which the U.S. Supreme Court in 1819 pronounced: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate which are plainly adapted to the end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."[13]

Additional powers are delegated to Congress by eight constitutional amendments. The Thirteenth Amendment grants power to Congress to enforce the prohibition of slavery and involuntary servitude with the exception of persons convicted of crime. Congress is authorized by the Fourteenth Amendment to enforce its guarantees of due process of law, equal protection of the law, and privileges and immunities of citizens of the United States against infringement by states.

The Fifteenth Amendment forbids state denial or abridgment of the right of citizens to vote in elections "on account of race, color, or previous condition of servitude" and authorizes Congress to enforce the amendment. The Sixteenth Amendment allows Congress to levy a graduated income tax. Congress previously was limited to levying only a proportional or flat rate income tax on corporations and individuals. The Nineteenth Amendment grants Congress power to enforce the right of citizens to vote regardless of their sex.

Congress is authorized by the Twenty-Third Amendment to enforce its provision granting the District of Columbia "[a] number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, . . ." The Twenty-Fourth Amendment bans the use of a poll tax as a voting condition and authorizes Congress to enforce the prohibition. And the Twenty-Sixth Amendment lowered the voting age in all elections to eighteen and grants Congress the power to enforce the amendment. The Eighteenth Amendment granted Congress and states concurrent powers to enforce the prohibition of the sale of intoxicating liquors, but the amendment was repealed by the Twenty-First Amendment.

Experience reveals the Fourteenth Amendment and the Fifteenth Amendment significantly increased the power of Congress to protect the rights of citizens, especially Blacks, against infringement by state and local governments. The Sixteenth Amendment, by permitting the federal government to raise large sums of money, enables Congress to employ conditional grants-in-aid and crossover sanctions—conditions attached to one-grant program made applicable to other programs, (see below) to influence greatly the provision of services by and regulatory policies of states.

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The reserved or residual powers of states are not enumerated in the U.S. Constitution, yet are of great importance and include powers inherent in sovereign governments to borrow funds, provide services, regulate persons and property, and tax. Of particular importance is the exceptionally broad and exclusive English common-law police power exercisable by state legislatures to promote public health, safety, welfare, morals, and convenience. Each state legislature initially possessed complete power over local governments, but current home rule constitutional provisions in many states grant general purpose local governments significant discretionary authority.[14]

The enumerated powers of Congress do not preclude state legislatures from exercising the identical powers unless such an exercise is prohibited by the U.S. Constitution or Congress has employed its power of preemption, based on a delegated power and the supremacy of laws clause of Article VI, to remove totally or partially a concurrent regulatory power from a state.[15] Interstate cooperation, as noted, has been promoted in attempts to discourage Congress from employing its power of preemption. Such attempts have not always been successful and even an established interstate compact can be subject to congressional preemption. The Vehicle Equipment Safety Interstate Compact, entered into by forty-one states, in effect was abolished by Congress upon its enactment of the National Traffic and Motor Vehicle Safety Act of 1966 completely preempting responsibility for the regulation of motor vehicle safety with one minor exception.[16]

Articles I, III, and IV of the U.S. Constitution established the legal framework governing relations between sister states—interstate commerce, interstate suits, interstate compacts, full faith and credit, privileges and immunities, and rendition of fugitives from justice. These interstate constitutional principles and the U.S. Supreme Court's decision declaring the legal equality of states are examined in chapter 2. The principles relating to compacts, full faith and credit, rendition, and privileges and immunities in general were borrowed from the Articles of Confederation and Perpetual Union.

State Enactment of Uniform Laws

Section 10 of Article I of the U.S. Constitution authorizes a type of uniform state laws in the form of interstate compacts (see chapters 3–5) within the territorial limits of each compact that may include only parts of two states or all states. The early compacts, with one exception, simply established state boundary lines and did not establish a general uniform law.

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Uniform state laws are the product of interstate cooperation. Industrialization and the growth of interstate commerce and travel subsequent to the Civil War revealed the major and minor problems created by nonuniform state laws and generated fears by a number of state-elected officers Congress might exercise its powers of preemption more frequently to remove regulatory powers from the states as it did by enacting the Interstate Commerce Act of 1887 and the Sherman Anti-Trust Act of 1890. A number of organizations decided to promote the enactment of uniform laws by state legislatures to facilitate interstate commerce and travel, and discourage congressional preemption. The American Bar Association in 1889 approved a resolution dedicating the association to work for the enactment of uniform state laws. The national conference of commissioners on uniform state laws was organized in 1892 when its first conference, attended by representatives of seven states, was held. The commissioners drafted several uniform laws to solve specific nonuniformity problems such as acknowledgements on written instruments and recognition as valid wills probated in sister states. Noting the lack of uniformity in the legal weights of a bushel, the commissioners also prepared a table of weights and measures.

By 1912, all states appointed commissioners, and the District of Columbia, Puerto Rico, and the U.S. Virgin Islands subsequently appointed commissioners. The governor typically is authorized to appoint commissioners. The New York governor, for example, is empowered by statute to appoint five commissioners who "hold office and may be removed at the pleasure of the governor."[17] The approximately three hundred commissioners—attorneys, judges, nonpartisan judges—serve without compensation other than expenses. They draft uniform laws on a wide variety of subjects—fiduciaries (1922), parentage (1973), interstate family support (1992), anatomical gift (2006)—and promote their enactment by their respective state legislatures. In addition, the conference drafts model acts providing guidance to state legislatures where uniformity on a subject is desirable but not essential. Its Model Administrative Procedure Act, for example, has been enacted into law in an amended form by most state legislatures.

In common with interstate compacts, negotiations to reach an agreement by commissioners on a uniform law can be lengthy. Furthermore, persuading all or most state legislatures to enact a uniform law may involve years. The Uniform Commercial Code, drafted in 1951, was enacted by forty-nine state legislatures by 1965, but the Louisiana State Legislature did not enact it until 1991.

A single state can initiate actions to promote the drafting and enactment of uniform laws. The 1890 New York State Legislature, for exam-

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ple, authorized the governor to appoint three commissioners to examine statutes pertaining to marriage and divorce, notarial certificates, insolvency, and other problems, and to recommend methods to encourage all state legislatures to enact uniform laws.[18]

CONGRESSIONAL PROMOTION OF UNIFORM LAWS

The diversity in state laws on various subjects, as noted, creates problems for business firms and citizens. This diversity often encourages individuals to travel to other states to initiate legal actions. Individuals and couples seeking a quick divorce, for example, often journey to Nevada in order to circumvent the divorce laws of their respective home state. A second example involves a California husband and wife who employed in 2000 a facilitator to obtain twin babies born in Missouri. The birth mother told the couple a few weeks later she wanted to spend time with the children and bid them goodbye. The mother, however, gave the babies to a British couple who traveled to Arkansas and used a relative's address to allow them to secure a court order to adopt the babies.[19] California law provides that final adoptions will not be approved unless the adoptive parents are residents of the state. Subsequently, the British government returned the babies to the birth mother, and an Arkansas court invalidated the adoption order.

Congress recognized the diversity of the state-laws problem and initiated several actions to encourage states to enter into interstate compacts and enact uniform state laws. The classic formal mode of sister-state cooperation is enshrined in Section 10 of Article I of the U.S. Constitution, authorizing states to enter into compacts with each other provided Congress grants its consent. To encourage states to negotiate and to enter into particular compacts, Congress in 1911 initiated the practice of granting consent to specified compacts prior to their drafting (see chapter 3).[20] Compacts, except boundary and study commission compacts, establish a uniform law within their respective jurisdictions and, in effect, create a limited type of federation within the larger United States federation.

Congress first attached conditions to grants-in-aid to states in the Hatch Act of 1887, authorizing grants for the establishment of agriculture experiment stations at state colleges of agriculture.[21] Congress similarly employed a crossover sanction to persuade state legislatures to enact a uniform law. In 1974, for example, Congress used such a sanction to encourage state legislatures to lower the maximum highway speed limit to fifty-five miles per hour to conserve gasoline and diesel

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fuel by stipulating a state without such a speed limit would lose 10 percent of its federal highway grants.[22] The following year, Congress enacted a second crossover sanction to promote motor fuel conservation by penalizing states with the loss of federal highway funds if they did not enact a statute allowing motorists stopped at a traffic light to make a right turn on a red signal if no vehicle is approaching the intersection from the left.[23]

Congress in 1984 enacted a third statute threatening states with the loss of highway funds for failure to enact a statute raising the minimum alcoholic beverages purchase age to twenty-one.[24] The U.S. Supreme Court in 1987 upheld the constitutionality of the act and all states enacted compliance statutes.[25] In 1998, Congress employed another crossover sanction to encourage states to enact statutes relative to second and subsequent convictions of persons for driving while intoxicated or driving under the influence of alcohol.[26] To avoid the loss of 10 percent of its federal highway grants, each state legislature was required to enact by October 1, 2000, a statute requiring:

- a minimum one-year driver's license suspension for repeat intoxicated drivers
- impoundment or immobilization of all motor vehicles of repeat intoxicated drivers or installation of ignition interlock systems on such vehicles for a period of time during license suspension
- assessment of repeat intoxicated drivers' degree of alcohol abuse and, when appropriate, referral to treatment
- a mandatory minimum sentence for repeat intoxicated drivers of five-days imprisonment or thirty days of community service for the second offense, ten days of imprisonment or sixty days of community service for the third and subsequent offense.

Growing public concern about the drunk-driving problem impelled Congress in 1998 to employ a fifth crossover sanction threatening states with loss of 2 percent of their federal highway grants-in-aid if they fail to lower the blood alcohol content (BAC) standard for determining drunk driving to 0.08 percent by 2004.[27] The penalty was increased to 8 percent in 2007, with states enacting the standards by that date receiving any grant funds withheld from other states for their failure to comply with the statute. States also have been encouraged by Congress to cooperate with each other and/or enact nationally uniform laws and/or policies by other means. In 1982, Congress decided to facilitate

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interstate cooperation by establishing the National Driver Register (NDR).[28] All states and the District of Columbia voluntarily send to NDR information relative to drivers convicted of major traffic offenses or whose applications for licenses has been denied or whose licenses to operate a motor vehicle have been revoked. States are required by the Commercial Motor Vehicle Safety Act of 1986 to check the register prior to issuing a commercial driver operator license.[29]

A state motor vehicle department electronically can check with NDR prior to issuing an operator's license to determine whether the applicant has been convicted of motor vehicle offenses in sister states. If NDR has a file on the applicant, its problem driver pointer system identifies the sister state(s) holding the driver's substantive data and automatically transfers the data electronically to the inquiring state. Prior to renewing a license or addressing a in-state conviction of a motorist for a traffic violation, a state motor vehicle department also can contact NDR for information on whether the concerned motorist has been convicted of motor vehicle violations in sister states. NDR processes more than forty million file checks annually with approximately five million probable identifications. In 1993, the National Highway Traffic Safety Administration recommended that Congress transfer NDR to the American Association of Motor Vehicle Administrators. Congress in 1998 amended the enabling statute by authorizing the U.S. secretary of transportation "to enter into an agreement with an organization that represents the interests of the States to manage, administer, and operate the National Driver Register's computer timeshare and user assistance function."[30] In consequence, NDR was transferred to the association.

A 1990 congressional statute promotes establishment of a nationally uniform policy by directing each state legislature to enact a law mandating the revocation of the license of a driver of a motor vehicle convicted of a drug-related crime.[31] A section of the act respects state sovereignty by permitting a state legislature to "opt out" of the requirement by enacting a resolution provided the governor posts a letter of concurrence to the U.S. secretary of transportation. This section necessitates initiation of action by a state legislature if it wishes to exclude the state from the requirement. Congress apparently assumed few state legislators would support an exclusion resolution.

Congress responded to the boating-while-intoxicated problem in the Coast Guard Authorization Act of 1984 by directing the U.S. secretary of transportation to develop standards to be employed in determining whether a marine recreational vessel operator is intoxicated.[32] The coast guard, acting under authority of the act, promulgated a rule in 1987 stipulating a state blood-alcohol-content (BAC) standard is the

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national standard within that state.[33] The national standard (.10 BAC) is applicable only in states lacking a state standard and thereby encourages affected state legislatures to enact one. Fifty-four of fifty-six states and territories by January 2001 had enacted BAC standards. Thirty-four had a .10 standard, nineteen had a .08 standard, and South Carolina used a .08 standard when a person has been injured. In consequence, the Coast Guard BAC standard applied only in New Mexico, the Northern Mariana Islands, and in South Carolina when there has been no injury and a state standard is not in effect.[34] The coast guard changed the national standard to .08 effective on March 15, 2001.[35]

The Hotel and Motel Fire Safety Act of 1990 also encourages state legislatures to enact uniform fire-safety standards by stipulating traveling federal government employees may stay only in hotels and motels in conformance with national fire-safety standards.[36] Furthermore, the act restricts the use of federal grant-in-aid funds to pay for a conference, convention, meeting, or training seminar at hotel or motels conforming to the standards.

The Clean Air Act Amendments of 1990 encouraged interstate cooperation by establishing the ozone transport commission composed of representatives of twelve northeastern states and the District of Columbia sharing a common smog problem.[37] In 1994, the commission recommended that the U.S. environmental protection agency (EPA) should require the member states and the District of Columbia to adopt the California low-emission-vehicles program, and EPA implemented the recommendation.[38] The commission also initiated action to reduce nitrogen oxide emissions from large fossil-fuel burning facilities by means of a "cap-and-trade" program under which firms reducing emissions acquire emission credits which may be traded.

AN OVERVIEW

Interstate cooperation has changed dramatically in its nature and importance since the U.S. Constitution became effective in 1789 when the economy was primarily agricultural and interactions between sister states were limited. The frequency of interstate interactions increased greatly after the Civil War with rampant industrialization, new communications and transportation systems, rapid population growth, and urbanization. Intergovernmental and interstate governance principles were incorporated in the U.S. Constitution to facilitate harmonious national-state and interstate relations, and generally have proven to be

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flexible ones allowing the national and state governments to develop new institutions and procedures to solve state, multistate, and national problems.

Chapter 2 examines the six provisions in the U.S. Constitution designed to encourage cooperative interstate relations by ensuring the legal equality of each state; settling interstate suits; allowing states to enter into interstate compacts; creating a national legal system recognizing the statutes, judicial proceedings, and records of every state; promoting interstate citizenship; ensuring the rendition of fugitives from justice; and establishing internal free trade.

The subject of chapter 3 is interstate compacts that may include as members two to fifty states, the District of Columbia, Puerto Rico, U.S. territories, and Canadian provinces. A compact or concordat also can be limited to one town in each of two states. Such concordats, administered by a specially created commission or by departments and agencies of compacting states, did not achieve prominence until second decade of the twentieth century.

Chapter 4 examines the governing bodies created by compacts whose members typically are appointed by the governor of each compacting state subject to state senate or council approval, and also may include ex officio members who serve by virtue of holding specified state offices and representatives of the United States government.

Administration of thirty-three compacts by state departments and agencies is the subject of chapter 5. Compact administrators typically are professionals who are members of the same national and regional professional associations and often personally know their counterparts in sister states. Such personal relationships tend to promote interstate cooperation.

Interstate administrative agreements, the subject of chapter 6, are of great importance and involve all functional areas. Nevertheless, relatively little literature exists on such agreements. These agreements may be written or verbal and also may be permanent or ad hoc in nature. There is no central repository for such agreements in any state.

Chapter 7 draws conclusions relative to the effectiveness of various forms of interstate cooperation in solving transboundary problems. The chapter also contains recommendations to promote more harmonious interstate relations and anticipates the future of sister-state cooperation.

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