Abstract: This paper examines the persistence of cooperative federalism in intergovernmental administrative relations despite the rise of coercive federalism and the transformation of the party system since the late 1960s and seeks to explain the persistence of that cooperation. This persistence is due partly to deep path dependence and also to the multi-dimensionality of the federal system in which coercion in the policy-making realm of elected officials coexists with continued cooperation in the administrative realm and dualism within the realms of policy-making still available for state action. Some traditional tools of cooperation, especially the carrots of grants-in-aid continue today, although more sticks are now wielded by the federal government than in the past.

In a recent comparative study of five modern federal theorists—Daniel J. Elazar, Carl J. Friedrich, William S. Livingston, William H. Riker, and K. C. Wheare—Michael Burgess abstracted from these theorists eight federal values: (1) human dignity, (2) equality, (3) liberty, (4) justice, (5) empathy, (6) toleration, (7) recognition, and (8) respect. He also abstracted eight federal principles paired with those values respectively: (1) autonomy, (2) partnership, (3) self-determination, (4) comity, (5) loyalty (Bundestreue), (6) unity in diversity, (7) contractual entrenchment, and (8) reciprocity or mutuality.

These values and principles are wonderfully noble; yet, in an era of high political polarization, low public trust and confidence in governments, especially the federal government, and coercive federalism, they evoke, in the United States, nostalgia for the days of bipartisanship, high levels of public trust and confidence in governments, and cooperative federalism that seemed to prevail when all five theorists produced most of their work on American and comparative federalism. Four of the theorists were American, and all wrote major works during the heyday of what was commonly called “cooperative federalism.”

Today, the eight federal values have been substantially nationalized, perhaps mainly because, as Alexis de Tocqueville predicted, the people’s desire for equality would drive
government toward centralization. The federal principles set forth by these theorists, especially partnership, comity, and reciprocity, hark back to the bygone days when the U.S. Advisory Commission on Intergovernmental Relations and state advisory commissions on intergovernmental relations were pinnacle institutional expressions of cooperative federalism. Those institutions are gone, as are the days of the American partnership so beloved by Dan Elazar. Instead, as U.S. Senator Carl Levin (D-MI) commented to me in 1988, “there is no political capital in intergovernmental relations,” that is, in catering to the concerns of governors, state legislators, county commissioners, mayors, township supervisors, and the like. Reflecting this centrist orientation is in the fact 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 continue to lobby federal officials, but they are rarely partners in federal policy-making, although many are now partisan cheerleaders for and boo hurlers against federal policy developments. State and local officials usually gain no federal policy concessions or only minor concessions on their own. They ordinarily garner major federal policy concessions only when powerful non-governmental interests are aligned 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 government officials. These officials have no privileged voice in Congress or the White House as elected representatives of the peoples of the 50 states; instead, they must behave like interest-group lobbyists and compete with all the 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” now reads like mythic history.¹¹

**Coercive Federalism**

American federalism today can be described as coercive, compared to previous eras often termed dual and cooperative federalism. 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.¹²

Coercive federalism has been characterized by 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); increased substantive conditions attached to federal grants-in-aid requiring states to comply with policies that often fall outside of Congress’s constitutional ambit; increased preemptions of state powers; increased mandates on state and local governments; restrictions on state and local tax and borrowing powers; nationalization of criminal law; demise of intergovernmental institutions; decline of intergovernmental policy-making cooperation; and federal judicial interventions into state and local affairs.

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. Put differently, 62 percent of all explicit preemptions in U.S. history have been enacted during the past 15 percent of years of U.S. history. 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 cut mandate enactments, though it did not eliminate existing mandates and did not address all measures that impose costs on state and local governments. Only 13 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 criminal statutes have been enacted since the mid-1960s. These laws cover a wide range of behavior from terrorism to carjacking, disrupting a rodeo, impersonating a 4-H Club member, 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.
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 have controlled the presidency for 28 years 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 Supreme Court appointments that 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 well-established and thriving manifestation of progressive dual federalism. There are numerous examples, including most recently state legalizations of same-sex marriage and marijuana use, of 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 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 have 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 the lawsuits filed against the Affordable Care Act of 2010.

Although this 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 want to legalize same-sex marriage nationwide.

President Bill Clinton praised this coercive face of dual federalism, or states-as-laboratories-of-democracy federalism, when he acknowledged that “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.

**Intergovernmental Administrative Cooperation**
Leaving behind political and judicial policymaking to enter the realm of administration, however, one finds 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 cooperate 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. 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 exchanges. As of May 2013, 16 mostly Democratic states had decided to establish an exchange, while 27 mostly Republican states elected not to do so, and seven states opted for a federal-state partnership exchange. However, consistent with coercive federalism, the federal government itself will establish exchanges in those states that do 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 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. Intergovernmental cooperation was, as both Morton Grodzins and Daniel Elazar contended, prevalent from the start of the federal republic and throughout the nineteenth-century era of so-called dual federalism. 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 APSA’s 1950 call for more nationalized and disciplined parties, Grodzins warned that such parties would destroy cooperative federalism. 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 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.

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 today from 49 percent of general revenues in Mississippi to 24 percent in Alaska. All 50 states, for example, complied with the federal 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 45 percent of all federal aid. Some non-governmental organizations also have non-governmental sources of income, but many rely almost entirely on governmental 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 hammered 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 compliance deadlines. Because only 19 states fully comply with REAL ID, the U.S. Department of Homeland Security, for the fourth time since the law was enacted in 2005, extended the compliance deadline, this time to July 2013. These deadline extensions, though, do not stem solely from federal cooperation; they also stem from President Barack Obama’s dislike of REAL ID and 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 the federal courts 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 has a sobering effect on state and local cooperation with federal officials and policy rules.33

Additionally, the U.S. federal system is not one of executive federalism (e.g., Germany) 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 1,000 programs, only about 17 of which are block grants. Given that 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 approximately. Block grants afford state and local officials even more discretion, although block grants have never accounted for more than about 18 percent of all federal aid.

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. 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 so as 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. Indeed, 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 punished at the ballot box for implementing unpopular federal policies or raising taxes in order to pay for state or local implementation of those policies. The State Administrators Project found over the decades that federal aid and regulations promoted “constant, consequential, and pervasive” state agency autonomy from gubernatorial and legislative oversight.

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.” 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 opposed to interest groups is smaller today. Second, although pork-barrel spending dates back to the founding, 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?” 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 governments, social welfare increased from 35 percent in 1960 to 68 percent in 2013. In constant dollars, intergovernmental social-welfare aid increased by 2,307 percent from 1960 to 2013 while federal aid for the programs that preoccupied Grodzins’ analysis increased by only 338 percent. Hence, 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.

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 are likely to 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 the formulation of 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, this 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 exchanges by the Affordable Care Act represents a new cooperative tool, although one with mixed blessings. Giving states a genuinely voluntary choice about exchanges 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 an exchange within 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, and quite importantly, 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.
23 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. Ibid.
31 Brudney and Wright, “The ‘Revolt in Dullsville’ Revisited,” p. 32.
32 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.
36 Brudney and Wright, “The ‘Revolt in Dullsville’ Revisited,” p.33.