

Editor's Note

Introduction to the *Publius* Virtual Issue: U.S. Federalism and Environmental Policy

5 Should the responsibility to provide environmental protection rest with national or
subnational governments? This is a central question for all nations that rely in some
measure on federalism, and it has been at the center of a more than century-long
debate about the institutional design of environmental policy in the United States.
Of course, debates over the balance of power between federal, state, and local
10 governments are not unique to environmental policy; they are just as prominent in
other policy areas ranging from healthcare and same-sex marriage to social
assistance and education. The set of issues and contentious politics around
federalism and policy responsibility are also not unique to the United States.
Canada, Germany, Brazil and other federalist countries confront similar challenges.

15 Environmental protection was primarily a state issue in the United States until
the 1970s, when the federal government forcefully intervened in response to new
scientific revelations about threats to human and ecological health, growing citizen
demand for policy action, and an emerging consensus that state governments were
unwilling to assume responsibility. Congress enacted major pieces of legislation
20 such as the 1970 Clean Air Act (CAA), the 1972 Clean Water Act (CWA), and the
1973 Endangered Species Act (ESA) that shifted the balance of power from the state
to the national level, and the federal government was reorganized to create a new
agency—the Environmental Protection Agency (EPA)—to lead the implementation
of the new environmental protection regime.

25 An important rationale for this federal intervention was that many state
governments could not be relied upon to either effectively address pollution problems
or adequately manage natural and biological resources. Chief among the concerns was
that states did not have sufficient incentive to address interstate pollution spillovers and
that they were too reluctant to impose costly regulatory burdens on industry due to
30 concerns that it would disadvantage them economically. Exacerbating matters was a
belief that, in most states, business interest groups had disproportionate influence on
government policy relative to environmental public interest groups, and that states
lacked the institutional capacity—technical, financial, and administrative—to manage
environmental problems.

In the decades since the federal intervention, states have reestablished a firm role in U.S. environmental policy, using discretion delegated to them by the EPA to implement federal programs and by assuming authority in policy domains left vacant by the federal government. Among the key arguments supporting further policy devolution is that states (and similarly some local governments) now have the institutional capacity to manage environmental problems, and that giving them discretion to do so will allow them to innovate and tailor policy to local needs and preferences. Even in cases where problems transcend state borders, states often contend that there are mechanisms for addressing these problems that do not require a strong federal role. Underpinning many of these calls for a return to state preeminence in environmental policy is a normative argument that state governments are closer to their citizens, and therefore are democratically more legitimate.

I have selected six articles published in *Publius* during the past decade that address these and other closely related issues.

The authors of these articles thoughtfully engage with critical questions in the U.S. environmental federalism literature, and they do so with theoretical and empirical rigor. The scope of problem areas covered is broad, including climate change, air and water pollution, water supply, and safe drinking water, illustrating that federalism issues are pervasive throughout environmental policy.

Neal Woods (2006) examines the issue of primacy, which directly speaks to the desire of many state governments to regain some of the responsibility for pollution control lost to the federal government during the early 1970s. The CAA, the CWA, and other major environmental statutes are partial preemption programs. The federal government can elect to delegate implementation responsibilities to willing states, as long as these state governments enact laws that achieve federal goals. In such cases, states take the lead in implementation, with the EPA retaining the authority to revoke this grant of primacy if it determines that states are performing inadequately. Early work in the environmental federalism literature posited that the assumption of primacy was an indicator of state environmentalism—that is, states more committed to protecting the environment were the ones to seek out primacy. Woods finds instead that states seeking primacy of the CAA and CWA are not distinguished by their commitment to providing environmental protection, and that instead this process is related to other political and economic factors that vary across air and water policy areas.

The focus of Woods' study is the identification of the factors associated with states' decisions to gain implementation discretion. Daley, Mullin, and Rubado (2014) study how state governments use this type of discretion once granted. Specifically, they leverage variation in institutional environments and problem conditions to investigate the factors associated with state drinking water investment decisions. The empirical focus of their study is the Drinking Water State Revolving Fund (DWSRF), which, created by Congress in the 1996 amendments to the federal

Safe Drinking Water Act, is a program that provides capitalization grants to states, who in turn use these funds to provide low- or no-interest loans to local communities to improve drinking water infrastructure. This program is an example of the multilevel governance common in U.S. environmental policy—in this case, the EPA sets drinking water standards, and then provides states with resources to help achieve them, which in the case of the DWSRF, they then reallocate to local communities who ultimately manage the system that delivers the drinking water. Daley, Mullin, and Rubado find that the patterns of allocation decisions made in the DWSRF program are a function of an agency's functional focus (environmental, public health, or finance), but that the importance of this focus diminishes with problem severity.

Woods (2006) and Daley, Mullin, and Rubado (2014) examine the implementation decisions of state governments under national laws. Schlager, Heikkila, and Case (2012) examine how states can coordinate activities to manage interstate resources outside of federal policy control. The authors study interstate river compacts, which are constitutionally sanctioned agreements between two or more states to allocate and manage rivers that flow across state boundaries. Specifically, they examine the compliance costs associated with the resolution of disputes over interstate river compacts, finding that costs tend to be equally shared among states when disputes are settled in voluntary conflict resolution venues as opposed to compulsory venues. Moreover, their study shows that how states administer compacts also shapes the pattern of compliance costs. In states with centralized structures, the costs are borne by state water agencies directly, whereas in states with polycentric structures, costs are generally shared between governments and water users. Schlager, Heikkila, and Case's findings offer important lessons for understanding how states implement their obligations under interstate river compacts, as well as potentially compliance with other types of interstate agreements.

Other important environmental policy research published in *Publius* emphasizes the ebb and flow of policy action among levels of government, and the varying degree to which intergovernmental competition and collaboration materializes as a consequence. Scheberle (2005) and Rabe (2011) each discuss the evolving nature of state-federal policy actions and interactions through in-depth analyses of environmental policy over long periods of time.

Scheberle's (2005) study of intergovernmental relationships emphasizes the antagonistic relationship that existed between many states and the EPA during the George W. Bush Administration. In a reversal from the 1970s, when the federal government intervened in environmental policy in response to recalcitrance among many states, Scheberle notes that during the 2000s, it was state governments that took action in the face of what they viewed to be EPA intransigence. In several disputes regarding the CAA, state attorneys general sued the EPA, arguing that the

EPA was either failing to take action (as was the case with regulating carbon dioxide and other greenhouse gases) or was improperly carrying out provisions of the law (as was the case with the EPA's revised New Source Review regulations). These lawsuits, however, did not solely define intergovernmental relationships during this period. In the midst of this litigation, the EPA and states were also engaged in a process to reshape policy implementation through what Scheberle termed a "collaborative federalism" model. At the core of this effort is the National Environmental Performance Partnership System, which was designed to give states more flexibility in implementing federal programs, with greater autonomy awarded to states achieving better environmental results. Scheberle's analysis suggests that the early results of the new initiative were mixed. The study overall illustrates the complicated nature of intergovernmental relationships in environmental policy, and how the tension between competition and collaboration can simultaneously push and pull federal and state government agencies.

Rabe (2011) revisits some of the events analyzed in Scheberle (2005) as part of a detailed analysis of the evolution of intergovernmental roles in American climate policy. Rabe's historical account divides U.S. climate policy development into three distinct periods: (i) a period of mostly federal initiative (1975–1997) which produced mostly symbolic policy; (ii) a period of state domination (1998–2007) where climate policies such as renewable portfolio standards and regional cap and trade programs were designed and implemented at the state level; and (iii) a period of what Rabe calls "contested federalism" (2008–2011) where the federal government and states competed on the same policy ground. Looking forward, Rabe speculated as to the direction of climate policy, noting that federalism was going to be a major factor in shaping policy. The key question he raised was about the form that federalism would take, and he argued that one model was "collaborative federalism" in which, in ways similar to described by Scheberle (2005), the EPA might cooperatively work with states to craft a policy response. Although the hyper-partisan politics of contemporary climate change policy may suggest otherwise, the EPA's proposed Clean Power Plan to curtail greenhouse gas emissions from power plants is largely consistent with this model of collaborative federalism.

Rabe's analysis of the evolution of climate policy highlights the shifting nature of environmental federalism, and illustrates that policy responsibility can fluctuate, sometimes in unexpected ways, among different levels of government. Moreover, his analysis indicates that governments may end up competing for authority, each claiming that it can produce more effective policy. In an article I wrote in 2011, I examine this question of policy assignment from the perspective of the public. Specifically, I examined whether people's environmental policy preferences have a federalism dimension. In this way, the study connects the political, technical, and normative reasoning for assigning policy responsibility to the national, state, and

local level to public opinion. The study, analyzing original survey data from the 2007 Cooperative Congressional Election Study, finds that the American public generally prefers the federal government to take the lead in addressing most environmental issues, particularly those that relate to pollution and those that are
5 of a national or global scale. In addition, the analysis shows that some people do want to match the assignment of policy responsibility to the geographic scale of the problem, which suggests that some Americans have distinct federalism preferences in the area of environmental policy.

The scholarly literature on U.S. environmental federalism addresses a number of
10 interesting and complicated policy and political questions. As the authors of the articles included in this virtual issue of *Publius* illustrate, federalism shapes the policy response to traditional problems such as air pollution, water pollution, and drinking water, in addition to issues such as climate change. As the United States continues to grapple with difficult environmental challenges, understanding the
15 role of federalism will continue to be important, and an area ripe for additional theoretical and empirical inquiry.

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