



## VIEWPOINT

# Unfunded mandates in the U.S. and fend-for-yourself federalism

BY CHRISTOPHER HOENE

**Ask** a local or state government official in the United States what the role of the central or federal government should be, and the answer you are most likely to receive is “to leave us alone.” Ask why the person feels this way and the overwhelming response will be “unfunded mandates.”

No two words provoke more anger and consternation among local and state government officials than “unfunded mandates” — federal actions to require local and state government activity that are not accompanied by funding to cover the costs of the activity.

Some of the rhetoric surrounding local and state animosity toward unfunded mandates is just that — rhetoric. U.S. organizations like the National League of Cities and other local and state associations specialize in drumming up strong rhetoric to be used by their constituencies in fending off the long arm and heavy hand of the federal government.

But political strategy explains only a small part of why local and state officials feel strongly about unfunded mandates. Most of their opposition is fueled by the fact that the last three to four decades witnessed a dramatic rise in unfunded mandates in the United States, and related types of federal actions, that were imposed on local and state governments.

The result has been a move away from what U.S. federalism scholars characterized as a collaborative style of federalism, whereby orders of government are intertwined, to what today might be called “fend-for-yourself federalism,” a term coined by John Shannon, an American political writer.

### Three new trends

Three trends illustrate the emergence of fend-for-yourself federalism.

The first trend is the increase in unfunded mandates themselves. The National Conference of State Legislatures in the U.S. says that since 1945, unfunded mandates on state and local governments increased from less than five to more than 100. One example of a recent unfunded mandate is in the arena of what the U.S. federal government calls Homeland Security, or its anti-terrorism efforts.

The Department of Homeland Security, in response to the terrorist attacks of Sept. 11, 2001, instituted a colour-coded alert system to be used widely to inform local and state governments, as well as the general public, about terrorism alert levels. This system calls for local and state authorities to take various steps to protect their communities when the

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The Medicare bus with U.S. Representative Lucille Roybal-Allard of California. When Washington cut back on some Medicare programs for retirees, many states had to pick them up.

alert level (colour) is raised. Local and state authorities have increasingly considered this an unfunded mandate because a federal action causes them to deploy resources and spend public funds, usually without evidence of whether their community or region is at risk.

The second trend is an increase in federal pre-emption of state and local government authority and activities. Federal pre-emption refers specifically to laws and actions by the federal government that pre-empt the ability of local and state governments to take action or generate policies on their own. A recent study by the U.S. Government Accountability Office, an independent research and analysis arm of Congress, estimated that the number of federal pre-emptions increased from less than 30 before 1900 to about 120 pre-emptions today.

One recent example is that the federal government has on multiple occasions pre-empted the ability of state and local governments to levy taxes on purchases made over the Internet. The federal government's rationale for this policy is that it is protecting the development of a fledgling industry by exempting it from taxation. At this point, Internet commerce seems to have expanded well beyond fledgling status and the federal pre-emption of state and local authority is viewed as a result of federal officials caving in to industry pressure.

### Unfunded mandates put pressure on states

Local and state officials might view this marked expansion of unfunded federal mandates and pre-emptions in a less negative light if not for a third trend, that of federal aid and support levels decreasing in recent decades. The federal-city relationship provides a useful example of this. According to the U.S. Census of Governments, the federal government provided 15 per cent of all city revenues in the U.S. in 1977.

By 1997, the federal share of city revenues had dropped to five per cent. Most of this decline occurred in the 1980s when the federal government under President Ronald Reagan eliminated the General Revenue Sharing program. Started under President Richard Nixon in the early 1970s, the program provided state and local governments with federal funding, with few strings attached. The program was viewed skeptically by many federal officials and was subsequently phased out, with initial cuts beginning in the late 1970s, followed by the complete elimination of the program by 1986.



Graphic: Department of Homeland Security

*Orange alert, red alert: the different levels of terrorism alerts from the U.S. Department of Homeland Security. The federal government required states to take action when alert levels were raised.*

rights to people of colour and women. It is worth remembering that the federal government's toolbox consists essentially of two sets of tools — "carrots" (funding and incentives) and "sticks" (mandates, pre-emptions and other regulations). If the carrots are not working, it is reasonable to assume that federal officials will use sticks, whether state and local officials like it or not.

Looking at these three trends, it should not be surprising that a common assessment of the federal role with respect to local and state governments is: "less money, more regulations." Or, as I have referred to it here: fend-for-yourself federalism.

As federal governments have moved out of the business of funding local and state governments, and increasingly into the business of regulating and pre-empting their activities, local and state officials increasingly prefer to go it alone. Relying on federal largesse is viewed as a recipe for failure, or as one local official noted when asked about federal grants: "We should all look that gift horse in the mouth and think hard about saying 'no, thanks.' "

### **Not all unfunded mandates are bad**

Of course, not all unfunded mandates are bad and the rise of federal regulatory activities, at least with respect to the government sector, has coincided with the longer-term expansion of the U.S. economy, the development of the welfare state, and the provision of social and civic programs previously unseen in the nation's history. Most of the federal government's civil rights-era mandates, for example, were used to change the behaviour of state and local governments that were lagging behind in providing equal

However, in examining trends in federal funding, pre-emptions and unfunded mandates, it seems quite obvious that a more reasoned balance between funding and regulations is needed. But with the federal government running budget deficits in the hundreds of billions of dollars, and neither the Democrats or Republicans at the national level willing to show much fiscal restraint, it is clear to local and state officials that more funding is not on the way, at least not anytime soon. As a result, they resort to their "leave us alone" refrain, pleading for less interference and preferring a go-it-alone, fend-for-yourself approach to U.S. federalism.

It is worth remembering that, at the city level, one hears similar views expressed in regard to state governments. City governments in the U.S. are corporations of state governments, and their powers and authorities are determined by their state governments, much to the chagrin of many city officials. This point is raised to illustrate that the nature of the relationships among orders of government are fraught with tension, finger-pointing and plenty of blame to go around. In the end, perhaps the real problem for cities is that there is no order of government below them on the federalism food chain to which they can pass the buck — or the mandate. (6)

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### **Nigeria's federal system threatened by revolts**

After the civil war from 1967 to 1970, in which the Eastern Region attempted to secede as the "Republic of Biafra," the military regimes that ruled Nigeria maintained a federal façade but implemented policies that fostered Nigeria's transformation into a unitary state. They continuously gave more power to the central government while systematically weakening the constituent states. Armed with constitutional decrees such as those of 1966 and 1975, they took for themselves the unrestricted and unchecked power to pursue far-reaching structural reforms.

As power gravitated towards the centre, the military rulers broke down the former regions into an ever increasing number of states: from the initial 12 in 1967, to 19 in 1976, 21 in 1987, 30 in 1991 and 36 in 1996. This

subdividing was rationalized as a process to give more autonomy to ethnic and sub-ethnic nationalities and to bring government nearer to the people. In reality, however, it was a design to dilute regional power and so quash any remaining secessionist rumblings. The proliferation of states was accompanied by cuts in the revenue allocated by the central government to each one. The result was smaller and weaker federal units, some of which were not economically viable. Nevertheless, the military's objective of weakening the unity of the larger ethnic groups, and thus their ability to challenge the central government and destabilize the federation, has not been achieved. For example, the Ijaws in the Niger Delta, who are arguably the fourth largest ethnic group and are divided among five coastal states, have maintained a loose ethno-nationalist agenda that enables them to join forces across state lines. (6)