

# The United States of America

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For most of the twentieth century, “international relations” were viewed by many scholars as interactions among the leaders of national governments, with the ultimate goal being to protect and enhance the interests of the nation-state. Scholars such as Richard Neustadt and Graham Allison, however, were among the first to illustrate that this leadership actually consists of many parts (e.g., executive, bureaucratic, legislative, and judicial) and that each part may have differing priorities in the formulation and implementation of a nation’s foreign policy.<sup>1</sup> Robert Keohane and Joseph Nye went even further and questioned whether international relations should even be considered the exclusive domain of national governments. They began to refer to official exchanges between representatives of national governments as “interstate interactions” and differentiated this activity from “transgovernmental interactions,” which link subunits of different governments, and from “transnational interactions,” which involve cross-border activities wherein at least one actor is not an agent of a government.<sup>2</sup>

Within this context, a country’s “foreign policy” will be defined here as embracing “the goals that the nation’s officials seek to attain abroad, the values that give rise to those objectives, and the means or instruments used to pursue them,” while admitting that the national government consists of many parts that may or may not be united in ascertaining what official priorities should be pursued internationally.<sup>3</sup> The cross-border activities sponsored by officials in constituent governments such as states and cities in federations, which may be considered a hybrid of Keohane and Nye’s transgovernmental and transnational interactions, will be referred to as “foreign affairs” or “foreign relations.”

Over the past quarter-century, there has been a sharp acceleration in the foreign relations of US state and municipal governments. This trend toward greater international involvement is likely to continue as state and municipal leaders act to protect the interests of their local populations in an era of expanding globalization and rapid technology change. However,

this accelerated engagement abroad will be hampered at times by the low priority often accorded such programs, periodic budget crises, the lack of institutionalization in many of these programs, and tenuous intergovernmental cooperation within the US federal system. The population of the United States of America was 303.6 million in early 2008. The United States ranks as the world's third-largest nation-state in population and is the fourth-largest in territory. Only the rudimentary elements of its federal system are readily understood by its own population, namely a rather vague division of government authority between one national government and fifty state governments.<sup>4</sup> In reality, in 2002 there were 87,576 distinct governmental units within the US federal system, including 3,034 county and 19,429 municipal governments.

In political terms, only the state governments can formally share authority with Washington, DC, because the Tenth Amendment to the Constitution stipulates that all power not explicitly delegated to the national government is "reserved" to the states and the people. From its beginnings as a relatively small nation with thirteen states sequestered along the Atlantic seaboard, the United States grew immensely in territory through wise expenditures such as the Louisiana and Alaska purchases, through exploration and claiming of new lands to the west, and at times through the threatened or actual use of military force, such as stripping Mexico of half its land and then annexing it into the United States. Many people are unaware that the "fruits" of Manifest Destiny<sup>5</sup> have also left Washington with authority over Puerto Rico, the US Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and a few other overseas possessions, such as the controversial Guantanamo Bay in Cuba. In most instances, the 4.4 million residents of these commonwealths or territories or possessions are either citizens or nationals of the United States. Puerto Rico, the US Virgin Islands, and Guam each elect a delegate to the US House of Representatives, but they have no formal vote in Congress, giving them the same status as the delegate elected from the District of Columbia, home to the nation's capital. This vast assemblage of states, commonwealths, and territories stretches more than 9,400 miles from the US Virgin Islands in the East to Guam in the West.

The US federal system is complicated even further by the presence of 562 federally recognized tribal governments, each exercising some degree of sovereignty and autonomy and many being formally recognized as "domestic dependent nations."<sup>6</sup> As Erich Steinman asserts, "tribal governments are now visible and active as a category of government within the boundaries of the United States," even though "tribes have long been anomalies within American governance."<sup>7</sup> The sovereignty of Native American tribal governments is also linked to foreign relations because the Jay Treaty of 1794, signed between the United States and Great Britain, provides Native groups

near the border with what is now Canada the free right of passage across the boundary line established by Europeans who had settled in the New World and encroached on Native lands. Some tribal units, such as the Mohawks on the Akwesasne reserve near Montreal, Quebec, actually straddle the current Canada-US border, and they insist on the right not only to cross the border freely but also to transport goods for personal and community use without undue interference from Canadian or US authorities. On the southern border, the Tohono O'odham occupy the second-biggest reservation in the United States, larger than the state of Connecticut, and its boundaries straddle the international border that was established with Mexico in 1853. Recently, the way of life of this tribal group has been adversely affected by illegal immigration and drug trafficking, which have sparked cross-border frictions between the United States and Mexico.

Contemporary federalism rarely generates headlines in the United States, unlike the situation in Canada, Spain, and several other federal or quasi-federal nations. Nevertheless, the US system continues to evolve, and intergovernmental tensions arise from time to time, in part because state and even municipal governments are now exercising what they consider their constitutional right to be engaged not only in domestic activities but also increasingly in international affairs.<sup>8</sup> This chapter highlights what these constituent governments are doing and analyzes the overall implications of these activities on the US system of government. In effect, state and local governments have significant leeway to engage in a wide array of international activities, but some of these activities, combined with contentious policies enacted by the national government, exacerbate intergovernmental relations and challenge the overall effectiveness of the US federal system.

#### US FEDERALISM IN PERSPECTIVE

Is US federalism exceptional? To a certain extent it is, as emphasized by Samuel Krislov: "American federalism emerges as exceptional, and not only in its inception, inventiveness, and derivation. It has also been truly exceptional in its emergent qualities, its ability to maintain itself, and to transform and recreate itself as a system both legally and in fact."<sup>9</sup>

Most exceptionally, the United States was the first nation-state to adopt a federal system of government in 1787, even though confederations have roots in ancient Greece and what today constitutes Switzerland. During the period when the American revolutionaries were fighting the British for independence, the Articles of Confederation of 1781 was adopted as the country's original constitutional document. The new state governments granted most authority to themselves, leaving the national government extremely weak and consisting of a unicameral legislature without functioning

executive or judicial branches or the ability to raise most revenues without the prior permission of the states. The Articles of Confederation was effective enough to carry the country through the Revolutionary War, but then its decentralizing tendencies began to fragment the new nation into its constituent parts, and unity was badly frayed. A sense of urgency over this fragmentation prompted many political leaders to gather in Philadelphia in the late spring of 1787. Behind closed doors in Independence Hall, these delegates from the states made the momentous decision to tear up the Articles of Confederation and begin anew. From late May until mid-September, the delegates pieced together a new constitution and then sent it to the states for formal ratification by popularly elected conventions. The document went into effect in March 1789 and succeeded in preserving the very fragile union. The hallmarks of the new constitution were scrapping the confederal system in favour of a federal system dividing authority between the national and state governments, a viable national government divided into three branches with separation of powers and checks and balances in place to ensure that no one branch would become predominant, and the establishment of a national economic system that frowned upon protectionism by the state and local jurisdictions.

The Constitution of 1787 and the federal system it created suffered through numerous tribulations as the decades passed. The War of 1812 was a miserable experience for the country, and only British magnanimity allowed the United States to preserve its territory. The war was fought in part because many members of Congress, backed by some officials in state governments, wanted to bring British North America under US control. US troops and state militias invaded what is now Canada, and the British retaliated by occupying Washington, DC, in August 1814, forcing President James Madison to vacate the White House and run for his life.

A much more serious challenge to US unity and federalism occurred in the late 1850s and early 1860s. Southern states were unhappy with developments in the north of the country and wanted to preserve their largely agrarian system based on slavery. They proclaimed that states' rights were being trampled by Washington and decided to secede from the Union, an action vehemently rejected by President Abraham Lincoln. The international dimension was important to the confederacy because the British were initially supportive of its goals, in part because they wanted continued access to cheap raw materials provided by the southern states for British textile mills, and in part because they perceived that a weakened and divided United States would be in their own best interests. The North and the South engaged in the bloodiest conflict in US history, with almost a million soldiers and civilians killed during the Civil War period of 1861–65.

States' rights would continue to be a major federalist issue through the 1960s, especially in the arena of civil and voting rights. Many proponents of

states' rights also worried that President Franklin D. Roosevelt's New Deal regime from 1933 to 1945 spelled the beginning of the end for true federalism, insisting that Washington had taken control of most important government functions and that federalism was beginning to exist in name only. Decades later, in 1995, two moderate governors, Republican Michael Leavitt of Utah and Democrat Ben Nelson of Nebraska, attempted to organize a Conference of the States that would demand the strengthening of the Tenth Amendment and push for a transfer of authority away from Washington and toward the state capitals. The meeting was to be convened in Philadelphia with each state represented by its governor and four legislators. This meeting would have been the first full conference of the states to discuss constitutional issues since the historic 1787 meeting in Philadelphia. Initially, momentum seemed to be on the side of these governors because many leaders in the states and even some in Washington were advocating a "devolution revolution." However, both the left and the right on the political spectrum began to have second thoughts after the announcement of the Philadelphia meeting, and eventually the organizers had to scale back their expectations and agree to a watered-down States' Federalism Summit that met in Cincinnati in the autumn of 1995.<sup>10</sup> Critics worried that the proposed Philadelphia meeting, which would bring together the fifty constituent state governments, could be transformed into a constitutional convention resulting in major changes to the Constitution, much as had occurred in 1787 when the Articles of Confederation was replaced by an entirely new document. Municipal government representatives were also unhappy because they were not invited to join the proceedings.

Today, most governors and state legislative leaders would agree with the premise that Washington has usurped too much authority that should rightfully belong to the states in education, health care, the environment, regulation, control over the National Guard, and several other areas.<sup>11</sup> They also continue to complain about the periodic preemption of state laws and unfunded mandates in which Washington orders the state governments to do something without sufficient financial compensation to carry out the mandates. In addition, they argue that the explosive issue of illegal immigration is a federal responsibility but that state and local governments are being saddled with most of the financial burden of educating and providing medical care and other services to the estimated 12 million undocumented immigrants residing in the country. One of the most vitriolic rebukes by state officials of federal attempts to strip the states of constitutional powers occurred during the summer of 2006 when a clause was added at the last moment to the National Defense Authorization Act, subsequently passed by the US Congress. This clause gave the president the authority to control the National Guard in case of "a serious natural or manmade disaster, accident, or catastrophe that occurs in the United

States, its territories and possessions, or Puerto Rico.” This legislation prompted a unanimous response from all fifty governors and the governor of Puerto Rico condemning the clause and demanding it be removed. However, even in the face of the united opposition of the governors, the controversial legislation became law.

One final area of growing disagreement relates to what role state and local governments can play in the domain of US foreign relations in an increasingly complex and interdependent global setting.

#### THE REGIONAL AND GLOBAL PRESENCE OF THE UNITED STATES

Since the end of the Cold War, the United States has been widely perceived as the world’s only superpower. In the aftermath of national government policies enacted after the horrific events of 11 September 2001, the perception that many other nations have of the United States has become more negative than at any other time over the past half-century. The Pew Global Attitudes Project, which conducts periodic surveys in sixteen nations, has found that residents of most countries have far more negative attitudes than positive ones toward the United States. This growing anti-Americanism reflects not just an antipathy toward the US government but also a growing disenchantment with the American people themselves.

Over the past two centuries, American power has been used wisely and unwisely at home and abroad, and the nation’s power base still remains very formidable. In 2006 the US gross domestic product (GDP), representing the sum of the goods and services produced each year, reached US\$13.1 trillion, almost 2.5 times the size of the second-largest national economy, Japan, and roughly equal to the output of the twenty-seven-nation European Union.

The global presence of the United States is more pervasive than at any time since the zenith of the British Empire. It is also complicated and controversial. Naturally, the US government will quickly defend from an external threat its own constituent parts from the US Virgin Islands to Guam. However, treaty obligations also commit it to defending from external threat many nations in Europe, the Middle East, Asia, Oceania, and North and South America to the same extent that it would defend its own territory. This is referred to as a forward-defence obligation and is very costly in money and personnel.

Regionally, the United States has entered into a free trade arrangement with the two other major nations of North America: Canada and Mexico. The North American Free Trade Agreement (NAFTA) represents the largest free trade area in the world and brings together not only three national governments but also approximately 100 states, provinces, districts, and

territories in countries that all have federal systems. The United States is also a recent signatory to the Central American Free Trade Area (CAFTA) and a prime supporter of the Free Trade Area of the Americas (FTAA), which, if ever enacted, would comprise all the nations in the Western Hemisphere except for Cuba.

As will be discussed in greater detail later, officials in state and local governments do not always agree with administrations in Washington over regional and global policy initiatives. Several constituent governments have pledged to uphold Kyoto Protocol standards even though the federal government has rejected this treaty. Scores of local governments have passed resolutions opposed to US policies in Iraq and elsewhere in the world. Some state and local governments are also implementing their own sanctions against other nations, with the most recent cases targeted against Sudan. Others now oppose certain parts of NAFTA and have concerns about CAFTA. Constituent governments perceive at times that they suffer the repercussions of a national government that is so actively involved globally, and now they also want the right to be engaged internationally, a pursuit that causes some dismay among officials in the nation's capital. These frictions involve the intersection of the global with the local, as well as differing perceptions concerning the distribution of authority within the contemporary US federal system and how one should differentiate between "foreign policy" and "foreign affairs."

#### THE CONSTITUTIONAL SETTING

At first glance, the commerce and supremacy clauses in the US Constitution appear to grant all important foreign policy and foreign relations functions to the national government. Article 1, Section 8, stipulates that Congress "shall regulate commerce with foreign nations ...; declare war ...; make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Section 10 adds that "No state should, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

In Article 6, the supremacy clause was designed to permit the federal government to act within its areas of jurisdiction without undue state government interference: "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." This clause was not widely used until the twentieth century, but in

recent decades, bolstered by federal court decisions, it has been used by the national government to strengthen federal control and to preempt certain state laws.

Twentieth-century interpretations of the Constitution by federal courts have also reinforced national government control of foreign policy. *Missouri v. Holland* (1920), *Zschernig v. Miller* (1968), and the Massachusetts-Vietnam War controversy of 1970 are among the court cases that have strengthened Washington's control over major foreign and defence policy initiatives.<sup>12</sup>

In the current decade, the US Supreme Court ruled in *Crosby v. National Foreign Trade Council* (2000) that the 1996 Burma law, passed by Massachusetts, was unconstitutional. This law limited access to state procurement contracts for any company that did business in Burma (Myanmar). The law was patterned after several state and local government sanctions placed on South Africa during the 1980s and was also similar to earlier sanctions imposed by a few state and local governments on Nigeria, Indonesia, Cuba, and Northern Ireland. The Supreme Court ruled that the federal government had already implemented economic sanctions against Burma and, therefore, that the supremacy clause rendered the Massachusetts law null and void.

The *Crosby* decision does leave some manoeuvring room for state and local governments. In the earlier *Barclays Bank PLC v. Franchise Tax Board* (1994) case, the Supreme Court ruled that states could impose their own unitary tax formula on companies doing business in the United States as well as other countries, so long as the national government was "silent" on the issue.<sup>13</sup> This implies that if the Bill Clinton administration (1993–2001) had not moved to place restrictions on new investment activity in Burma by US companies, perhaps the Massachusetts law might have been constitutional. In addition, various constituent governments, including Illinois, have or are in the process of placing sanctions on Sudan, arguing that Washington has been "silent" on the issue or that their actions are different from what Massachusetts had done toward companies doing business in Burma.<sup>14</sup> Inevitably, the Supreme Court will be asked to decide cases involving what actions can be taken by state and local governments that have a direct effect on international relations.

Since 1994 the United States has entered into several international accords or agreements and has joined the World Trade Organization (WTO), NAFTA, CAFTA, and a variety of other international or regional trade organizations. Many state attorneys general have argued that federalism is being watered down by these US treaty or "pact" obligations and that authority exercised by state and local governments is being eroded because Washington can always invoke either the commerce clause or supremacy clause to preempt activities by constituent governments.<sup>15</sup> For example, Chapter 11 in NAFTA provides companies in Canada, the United States, and Mexico with right of establishment and national treatment guarantees

in all three member countries. Methanex, a Canadian corporation, sued the United States for US\$970 million under Chapter 11 because California banned the use of its product MTBE. This product, a fuel component of gasoline, was phased out in California in 1999 and banned outright in 2004. California authorities claimed that MTBE was a suspected cause of cancer and also that it contaminated ground waters. Methanex claimed that California was discriminating against Canadian products because it banned methanol that contained MTBE but did not ban ethanol, which was primarily fabricated from US farm products. A NAFTA binational panel finally ruled in August 2005 against Methanex and ordered it to reimburse the United States US\$4 million for legal fees. Various other challenges to state and provincial government actions in the three member countries are now pending before NAFTA panels, and their policymaking latitude in a variety of domains is now subject to scrutiny by these international panels.

Many state and local governments are also convinced that the WTO ignores the division of powers within federal systems and is eroding their ability to govern. In a case initiated in 2003, the nation of Antigua and Barbuda, with a population of 69,000 people, sought redress against the United States before a WTO tribunal because Utah and Hawaii do not allow any form of gambling. Antigua and Barbuda argued that this ban discriminates against its companies, which run Internet gambling operations, and that under the General Agreement on Trade in Services (GATS), Washington must force its state governments to comply. The final WTO panel ruling recommended that Washington permit, at a minimum, electronic betting on horse races, an action in clear violation of state regulations in Utah and Hawaii. In reaction to the GATS decision, twenty-nine state attorneys general sent a letter to the Office of the US Trade Representative (USTR) in May 2005. It stated: "The prospect of [future] WTO challenges to [state-level gambling] prohibitions should alone be sufficient to give U.S. negotiators enormous motivation to use the current GATS negotiations to secure a rule change that makes explicit the right of a WTO signatory to ban undesirable activity in a GATS covered sector."<sup>16</sup>

In effect, state and local government leaders fear that international agreements entered into by the US government may eventually inhibit anything they do that might be construed as restricting or distorting trade and investment activity. This might include environmental regulations, labour laws, preferences given to local contractors, and a host of other functions. They insist that this may cripple the federal system and violates protections provided to the states in the Tenth Amendment. Federal officials are usually sensitive to these concerns, but when push comes to shove, they can preempt state and local government actions by invoking the supremacy and commerce clauses, and the federal courts have usually supported the national government's authority to do so.

In terms of the constitutional division of authority, as the world becomes more globalized, the United States may become less federalized. The late Daniel J. Elazar warned over two decades ago about the dangers of globalization for US state governments: "The threat to the states is not simply a question of dramatics or imagery. It may be that, as the United States becomes more deeply entangled with the world, it is less likely to have the time or the energy to exercise the self-restraint needed to maintain a domestic system of noncentralization that requires a certain amount of time-consuming bargaining and negotiation to make it function."<sup>17</sup> With this in mind, the president of the National Conference of State Legislatures warned at that organization's 2005 annual meeting: "There is an effort within the halls of Congress to centralize public policy decision-making within the Washington Beltway. When Congress imposes a one-size-fits-all approach to a policy problem, they fail to recognize the individualism and uniqueness of each state, threatening the collective strength of the states."<sup>18</sup> However, with state and some municipal governments becoming more engaged internationally as a result of globalization, it is possible that these activities could strengthen some aspects of federalism as all governments increasingly recognize the need to collaborate in order to maintain America's competitiveness. Nonetheless, there remains a strong temptation in Washington to strengthen centralized policy control in the face of escalating international challenges.

#### INTERGOVERNMENTAL RELATIONS AND US FOREIGN RELATIONS

Intergovernmental cooperation and coordination in foreign relations have been sporadic among national, state, and local governments, even though a number of intergovernmental groups exist to foster dialogue within the US federal system. For example, the Office of the US Trade Representative is the lead agency for the national government in its interaction with states over trade policy, and it does meet with state officials infrequently through the Intergovernmental Policy Advisory Committee (IGPAC), which was established by Congress in 1974. In his examination of IGPAC, Robert Stumberg concluded that it was not viable, and officials at the USTR generally ignored or did not act on the issues of major concern to state representatives.<sup>19</sup> The USTR also has an Office of Intergovernmental Affairs and Public Liaison, which theoretically interacts with single points of contact in each state government when pertinent issues arise. However, federal officials rarely contact these people, and as administrations change within states, the designees often leave government or are assigned to new duties that have little to do with intergovernmental relations. From the national government's standpoint, whether under Democratic or Republican administrations, Washington

is ascendant in all aspects of foreign policy and will ultimately make the final decision. If state governments are unhappy with an action or pending decision, they are welcome to express their objections but preferably through their states' elected members in the US House of Representatives and the US Senate.

State governments do coordinate at times with some of their own local governments in an effort to set up programs that encourage small businesses to export, to convince business leaders to participate in international trade missions, and to facilitate the attraction of foreign direct investment (FDI). The attraction of FDI, however, is a very difficult issue in terms both of state and local government cooperation and of cooperation among state governments. State governments often walk on egg shells in the FDI arena because they do not want to be perceived as favouring one municipality in their state over others. As for state-to-state cooperation in attracting FDI, it rarely occurs because FDI is perceived as a zero-sum game with only one winner. Consequently, each state goes it alone in an effort to attract direct investment from abroad, and this spawns bidding wars among the states and even local communities, helping major foreign auto companies in particular to reap hundreds of millions of dollars in incentives. In one case, the executives of a German auto company and the German chancellor actually requested that governors from south-eastern states travel to Germany and, while there, present their final incentive packages to the German automaker.<sup>20</sup> This is a very serious game because the United States has been the recipient of US\$2.1 trillion in FDI, and foreign investors control over US\$16.3 trillion in US assets.<sup>21</sup> More than 6 million Americans also work for foreign-controlled companies on US soil, and these subsidiaries of foreign corporations are much more likely to export than are their American-owned counterparts and to pay higher hourly wages. State and local governments distribute roughly US\$50 billion in incentives to domestic and foreign-owned companies each year, and their right to do so was upheld in a Supreme Court decision rendered in May 2006.<sup>22</sup> Although the decision was a victory for states' rights, it is regrettable that so many incentives are handed out by these constituent governments because (1) in almost all cases, FDI will come to the United States without any incentives so that foreign businesses can secure or expand their positions in the world's largest national market, (2) incentives invariably favour one company over other companies in the same or related business sectors, (3) incentives are given at the expense of taxpayers and public-sponsored programs such as education, and (4) government incentives clearly distort the market system, which most Americans consider to be the hallmark of the US economy.

Those who work on state and municipal foreign relations programs are able to gather occasionally in meetings sponsored by the National

Governors' Association, the Council of State Governments, the National Conference of State Legislatures, the State International Development Organization, the National Association of Counties, the National League of Cities, the US Conference of Mayors, and a few other organizations. Some of these associations also have specialists who coordinate projects related to international affairs and even sign contracts with foreign governments to foster cross-border exchanges among constituent units. Most of these programs are economic in nature, and these associations have provided much-needed continuity, which compensates somewhat for the rapid turnover in personnel in individual states and municipalities. Some of these state and municipal associations also attract the active participation of officials from US overseas commonwealths and territories. For example, the Western Governors' Association consists of eighteen states plus American Samoa, Guam, and the Northern Mariana Islands, and the Southern Governors' Association includes fifteen states plus Puerto Rico and the US Virgin Islands. A few of these associations also permit some of the Canadian provinces to be associate members in an effort to spur greater cross-border cooperation among constituent governments. The annual meeting of the Council of State Governments was actually held in Quebec City in 1999, with the Quebec government providing significant financial and logistical support for the conference.

In foreign relations, intergovernmental cooperation and coordination among national and constituent units has been modest at best and has simply not been a major priority of most government leaders. Without any doubt, state governments are increasingly frustrated with Washington because international treaty or pact obligations are perceived as limiting the exercise of state and local authority. Yet even in this contentious policy area, the intergovernmental dialogue has been far from robust.

#### THE DOMESTIC AND INTERNATIONAL MANIFESTATIONS OF STATE AND LOCAL GOVERNMENT FOREIGN RELATIONS

Under the Articles of Confederation, several state governments engaged in their own international diplomacy and maintained their own representation abroad. When the founders gathered in Philadelphia in 1787, they began the process of transformation from a confederation to a federation and put an end to almost all state forays abroad.

However, we now fast-forward 221 years and find that most state governments and even some larger municipal governments are once again actively engaged in the international arena and claiming "competence" in foreign relations.<sup>23</sup> State governments currently operate approximately 230 offices abroad, and most governors lead state delegations abroad every

year.<sup>24</sup> In contrast, only four states had opened international offices in 1980 and none prior to the late 1960s.<sup>25</sup> Perhaps the first governor to lead an international mission in the post-Second World War period was Luther Hodges of North Carolina, who directed such a mission to Europe in 1959 in search of FDI. A decade later, Virginia stationed a representative in Brussels, hoping to cash in on the major economic revival under way in western Europe. At the time, the US Department of Commerce had only one person assigned to work full time on attracting inward FDI, and this was considered insufficient by some state officials. As governor of Georgia from 1971 to 1975, Jimmy Carter became perhaps the most active state chief executive in foreign relations. He estimates that he spent nearly one-fourth of his time as governor recruiting new direct investment and promoting Georgia's exports. He also visited about a dozen foreign countries and directed the opening of state offices overseas.<sup>26</sup>

The initial thrust of states was to attract FDI. Attention then shifted gradually to export promotion. Export activity expanded dramatically from the mid-1980s to the mid-1990s, with most states doubling their export volume. Governor Tommy Thompson of Wisconsin proclaimed that governors had become "the trade ambassadors of the United States," adding that "the world has become smaller, so governors' economic development strategies have become more far-reaching. Now that economic opportunities are more international in scope, governors' efforts must extend beyond state and national boundaries."<sup>27</sup> Thompson also observed that "the federal government is so big it often does not get the job done on the issues of trade, and governors need to be involved in expanding trade relationships with other countries."<sup>28</sup> He listed the basic tools governors can use in promoting economic development at home and abroad as trade and investment promotion, education and workforce training, innovation, and infrastructure development and modernization.<sup>29</sup>

States are potentially powerful actors in the global economy, especially in terms of facilitating the efforts of their resident companies to engage in international commerce and in attracting hundreds of billions of dollars in investment from around the world. In 2005 the World Bank provided annual GDP estimates for 183 nations. In terms of the individual US states, three would have ranked in 2005 among the 10 largest nations measured by GDP, 14 among the top 25, 38 among the top 55, and all 50 states among the largest 77 national economies in the world.

The growth in their own economic capacities is only one reason why many state governments have decided to become so much more actively engaged internationally over the past quarter-century. Traditionally, state officials have viewed their purpose as enhancing and safeguarding the interests of the people they represent. This effort, however, has become much more complicated as a result of globalization and what the economist Joseph

Schumpeter referred to as “creative destruction.” With reference to globalization, approximately 18 million US jobs are now tied to exporting, inward FDI, and visits by foreign tourists, representing over 12% of employment in the civilian sector. Each state wants its share of these jobs and desires that its own business community will be globally competitive. State leaders also perceive that value-added benefits are derived from setting up their own offices abroad and sponsoring periodic international economic missions, rather than being satisfied with allowing the more than 240 US embassies, consulates, and diplomatic missions scattered around the world to promote the states’ collective interests. In addition, many state and local leaders perceive that Washington has botched opportunities to enhance international economic linkages; thus they must take matters into their own hands. As an example, 51 million foreign residents visited the United States in 2000. In 2003, 10 million fewer visitors came, even at a time when world tourism in general had recovered from the traumas of 11 September 2001.<sup>30</sup> Finally, in 2006 the number of foreign visitors equalled the levels of 2000, but in the interim the US share of total international tourism revenues had fallen from 17.1% to 12.0%, a difference equating to roughly US\$35 billion in lost revenue in 2006 alone.<sup>31</sup> Leaders in states and cities reliant on foreign tourism for a healthy share of their revenues have blamed Washington for instituting onerous visa policies and giving the perception that the welcome mat has been removed for visitors residing outside the United States. Some states and cities have reacted by advertising internationally and setting up special programs catering to overseas visitors.

States and communities along the 49th parallel also marshalled their resources in an effort to convince Washington not to impose new passport requirements on both Canadians and Americans beginning in 2008. With 100 million two-way crossings each year along the Canada-US border, and only two-fifths of Canadians and one-fifth of Americans holding passports, border communities could lose hundreds of millions of dollars in revenue annually if the passport requirement is implemented as planned under provisions in the Western Hemisphere Travel Initiative (WHTI).<sup>32</sup> The same passport requirement for land travel between the United States and Mexico will have a negative effect on San Diego, El Paso, and other cities scattered along the 2,000-mile southern border.<sup>33</sup> Sarcastically, some local officials hint that the US Department of Homeland Security’s “war on terror” has now been extended to include a “war on tourism,” with border cities and states bearing the brunt of the financial consequences.

State governments also want to be on the right side of creative destruction. Each year in the United States, almost 600,000 new businesses are created, but almost as many close their doors.<sup>34</sup> In 2005, 55 million Americans, or 40% of the workforce, either lost or left their jobs, but because it was a relatively good year economically, 57 million found jobs.<sup>35</sup>

Silicon Valley can do exceedingly well in the era of creative destruction, but Detroit, Newark, St Louis, and several other communities have struggled to keep up. States understand that both domestic and global conditions can affect how they will fare economically, and they have reacted accordingly by becoming more involved internationally.

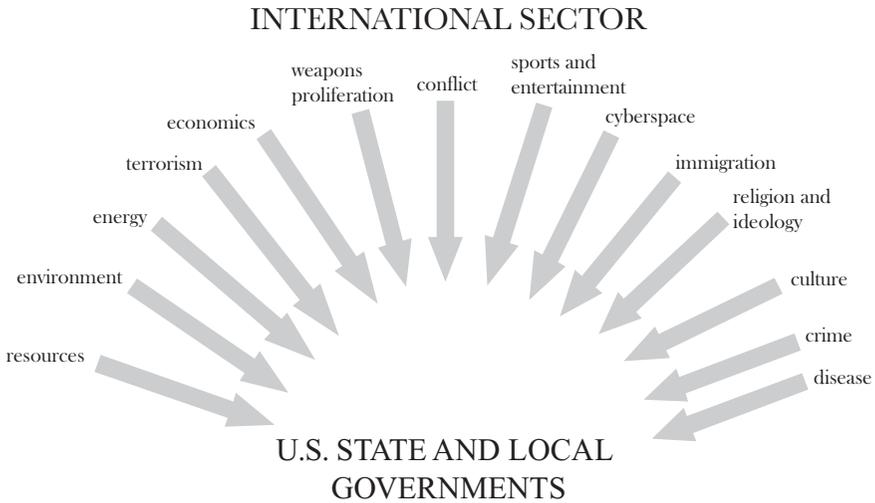
In 2002 state governments spent a record \$190 million on their international programs and assigned approximately 1,000 employees to work in these programs, although both numbers represent a very small proportion of overall government spending and employment.<sup>36</sup> Typical programs include the sponsorship of “how to export” seminars for small businesses, arranging international economic missions heavily laden with local business leaders, hosting foreign missions and visiting dignitaries, overseeing international offices or coordinating with foreign nationals hired to represent the state in various countries, and attracting FDI. Some states take advantage of their geographic positions to emphasize relations with constituent governments in neighbouring countries. Texas has significant ties with some of the states of Mexico, exemplified by George W. Bush’s relationship with Vicente Fox when they were respectively governors of Texas and Guanajuato.<sup>37</sup> New York and Quebec officials have met annually over the past several years to discuss border challenges and other issues of mutual interest. Some national and regional organizations also emphasize cross-border cooperation with Mexico and Canada such as the Border Governors’ Conference, the Border Legislative Conference, the Council of Great Lakes Governors, the Conference of New England Governors and Eastern Canadian Premiers, and the Pacific NorthWest Economic Region. Issues commonly discussed by these groups include regional trade, investment, tourism, the environment, energy, infrastructure development, and security.

The challenges of globalization depicted in figure 12.1 indicate the intersection of the local with the global and show why state and even local governments are involved in what John Kincaid calls “constituent diplomacy,” even when they are simply fulfilling their traditional role of protecting and enhancing the interests of the people whom they represent.<sup>38</sup> During the 2001–02 legislative year, 886 bills and resolutions linked to some aspect of foreign relations were introduced in state legislatures, and 306 were adopted. This type of activity is up dramatically from the beginning of the 1990s.<sup>39</sup>

Governors may also be actively engaged abroad, meeting not only with their counterparts in other countries but even occasionally with leaders of national governments. In May 2006 President Vicente Fox came to the United States for formal visits with governors in California, Washington, and Utah. His visit with Governor Jon Huntsman Jr in sparsely populated Utah was prompted by Huntsman’s meeting with Fox in Mexico City a year earlier and by Huntsman’s willingness to sponsor a resolution passed by

Figure 12.1

International decisions and events affecting governance in us states and cities



the Western Governors' Association that supports a guest-worker program with Mexico. Utah is also one of several states that allow undocumented residents to attend public colleges and universities at in-state tuition rates and that have issued special permits authorizing them to drive motor vehicles. Governor Arnold Schwarzenegger of California has expressed reservations about Washington's proposal to beef up US security along the southern border by deploying National Guard troops, echoing Fox's own line of thinking. Mexico's national government also recognizes that some state governments are potential allies in convincing Washington to endorse more pro-Mexico policies, especially in the area of immigration and guest workers. This rationale helps to explain why Mexico operates forty-seven consulates spread around the United States, far more than any other nation. Not only do these consular officials serve the needs of the more than 10 million Mexican citizens who live in the United States and send US\$20 billion in remittances back to their home country annually, but they also lobby US state and local government officials on behalf of the Mexican national government. In a similar vein, other foreign governments have almost 1,500 consular offices or honorary consuls to represent their interests outside of Washington, DC, and their duties include maintaining close contacts with state and local governments.<sup>49</sup>

Some of the foreign relations issues discussed by state legislatures during the current decade are focused on this rapid rise of immigrants in the United States. This issue, above all, illustrates why, in an age of globalization,

state and local officials must be involved in foreign relations whether they like it or not. The US Bureau of the Census estimates that at the end of 2004, 34.2 million residents of the United States were foreign-born, representing 12% of the US population. The peak level occurred in 1910, when 14.7% of residents came from other countries. This then began a steady decline to reach 4.8% in 1970, only to reverse and climb again to 8.7% in 1994 and to 12% a decade later. The most contentious issue is illegal immigration, with most coming from Latin America, especially from Mexico. Currently, it is estimated that 10% of Mexico's population resides in the United States, including roughly 15% of Mexico's overall labour force.<sup>41</sup> Many of these people are undocumented, and their number doubled during the 1990s. State and local leaders want help from Washington to defray the significant health, education, infrastructure, and other costs associated with this dramatic rise in undocumented immigrants, pointing out that immigration is exclusively in the domain of the national government and that Washington should ultimately bear the financial burden.

#### FEDERALISM AND US FOREIGN RELATIONS: A FOCUS ON THE MAJOR CHALLENGES

Various challenges now confront federalism as it relates to US foreign affairs. The first challenge is differentiating between foreign policy and foreign relations. Washington has not been overly concerned about states engaging in the international economy, establishing special relationships with other constituent governments abroad and signing international accords, or even solidifying international ties that go beyond the economic dimension. However, the national government wants the states and cities to stay out of foreign policy as defined at the beginning of this chapter. Incidents of foreign policy include the unilateral sanctions brought by Massachusetts against Burma and the current sanctions of Illinois against Sudan.

The growing *mélange* of international and domestic issues also provokes intergovernmental tensions, such as when cities instruct their officials not to assist federal officials in tracking down undocumented immigrants, even though the Illegal Immigration Reform and Immigration Responsibility Act of 1996 mandates such cooperation. More than 120 cities have enacted a type of sanctuary policy that negates cooperation with federal authorities, including New York City, Chicago, Miami, Los Angeles, Houston, and San Francisco.<sup>42</sup> Maywood, California, is one of these sanctuary cities for undocumented immigrants. Maywood is a suburb of Los Angeles with 45,000 residents; 96% are Latino, over 50% are foreign-born, and roughly 35% are purportedly undocumented.<sup>43</sup> The city councils of San Francisco and Berkeley (California), Madison (Wisconsin), and Burlington (Vermont) have historically passed numerous resolutions that approve city sanctions

against other countries, declare themselves nuclear-free zones, and oppose various policies supported by administrations in Washington.<sup>44</sup>

Most of these resolutions are relatively innocuous, except when they attempt to limit certain activities, such as a prohibition on any vehicle entering city limits with nuclear-related material on board or any ship visiting their ports that is equipped with nuclear weapons. In these rare cases, Washington acts swiftly and requests federal court judges to nullify these policies, almost always successfully. Various constituent governments have also been actively involved in opposing US policy in Iraq and in voting to support Kyoto Protocol objectives. In a ballot measure presented to San Francisco's voters in November 2004, two-thirds supported bringing US troops home from Iraq. In early 2006, forty-six Vermont towns passed resolutions demanding the same thing, and they have been joined by numerous other cities and towns across the nation.<sup>45</sup> At the 2005 annual meeting of the US Conference of Mayors, 168 mayors from cities in thirty-seven states committed their cities to upholding Kyoto Protocol environmental standards. In a historic meeting at the Port of Long Beach on the last day of July 2006, Governor Schwarzenegger of California signed a bilateral environmental accord with Prime Minister Tony Blair of Britain aimed at curbing emissions of greenhouse gases within their two jurisdictions. Schwarzenegger complained that the Republican administration in Washington "lacked leadership" on protecting the environment and said that it was time for California, the world's twelfth-largest source of greenhouse gases in 2005, to act to protect its own interests.<sup>46</sup> A month later, the California legislature imposed the most stringent controls on carbon dioxide emissions in the United States, pledging to cut such emissions by one-quarter by 2020. In August 2007 the Western Climate Initiative was formalized, which commits six US western states and the Canadian provinces of British Columbia and Manitoba to cutting greenhouse gas emissions to 15% below 2005 levels by no later than 2020.<sup>47</sup> This international accord involving federated units in the United States and Canada differs dramatically from the environmental policy positions of the George W. Bush administration in Washington and the Stephen Harper government in Ottawa.

The White House, of course, argues that foreign policy remains constitutionally in the exclusive domain of the national government and that the nation must speak with a unified voice on key foreign policy issues, even though such unity is usually more of a myth than a reality in the institutions of power within Washington's celebrated Beltway.<sup>48</sup> Some state and local governments, citing what they consider to be the success of their sanctions on companies doing business with South Africa during the apartheid period, beg to differ. However, most business associations are squarely on the side of Washington on this issue, claiming that both national and constituent-government sanctions and related activities hinder the market

system at home and abroad and end up hurting US companies and workers more than the targeted countries. The National Foreign Trade Council and its affiliate, USA Engage, have been the focal point for major companies to express their displeasure with any state or local government intrusion into the realm of foreign policy.

To place this issue in proper perspective, only a distinct minority of state and local governments have actively engaged in foreign policy, whereas most engage in foreign relations and use international engagement primarily as a means to improve economic development within their state or municipal boundaries. At the municipal level, many partner through Sister Cities International or other groups or mechanisms to establish an international voice.<sup>49</sup> Sister Cities International, which was inspired by the vision of President Dwight D. Eisenhower in 1956 and split off from the National League of Cities in 1967, now helps to coordinate ties between almost 700 US municipalities and 1,750 foreign communities located in 134 countries.<sup>50</sup> It remains a good entry point for many towns and cities that are just getting their feet wet in terms of international engagement. Other cities or groups of neighbouring cities provide even more ambitious models for pursuing foreign affairs. The city of San Antonio, Texas, has operated an international affairs department for a quarter-century and has maintained an office in Japan for more than two decades. Its Casa San Antonio Program has also established close working relations with constituent government units in Mexico. The Greater Seattle Alliance is a public-private sector partnership encouraging export and investment activity and sponsoring periodic trade and investment missions abroad. The Kansas City Gateway project is another public-private sector program that works to build midcontinent commercial and transportation ties from Canada to Mexico, with Kansas City serving as a US hub for North American exchanges. Both the National League of Cities and the US Conference of Mayors have a variety of targeted programs to encourage these types of international activities on the part of municipal governments.<sup>51</sup> On the whole, however, in a nation where four of every five people live in urban settings, most US municipalities are not actively engaged in foreign affairs, and even the largest cities are only modestly engaged.<sup>52</sup>

For the most part, the vast majority of constituent governments will be able to find common ground on what constitutes foreign policy versus foreign relations, and state and local governments will continue to have tremendous discretionary latitude within the realm of foreign affairs. For the very few areas of disagreement that must still be resolved, either Congress or the federal courts will act as the final arbiter, and they will overwhelmingly tilt in favour of the national government's position.

The second challenge is the perceived erosion of state powers as a result of US international treaty and international accord obligations. As discussed

previously, various state officials have argued that US commitments to the WTO, NAFTA, CAFTA, and other groupings of nations have stripped the states of some of the authority guaranteed to them by the US Constitution. This is especially the case in Chapter 11 of NAFTA, which may limit what state governments can do to protect the environment and the health of their citizens if such actions are construed by binational NAFTA panels as inhibiting or distorting North American trade and investment flows.

The third challenge is the dearth of intergovernmental cooperation in coping with the effects of globalization and creative destruction. State government representatives complain that they need good data on export and import activity at the local level but that Washington is actually cutting back on data gathering instead of expanding it. The same officials add that there is no effective dialogue with Washington over such issues as NAFTA's Chapter 11 and that inadequate consultation occurs with the states before the national government commits itself to international treaties or accords. State leaders, who actively seek grants-in-aid and other financial inducements from the national government, are beginning to think that their states are treated as any other interest group that lobbies in Washington rather than as constituent units deemed to be co-equal with the national government in the US Constitution.<sup>53</sup>

The fourth challenge is for all orders of government to engage in more effective public-private sector collaboration. The United States is a major underachiever in the export field, and most companies do not ship their products abroad. State and municipal governments are best equipped to work with small and medium-sized businesses locally and to establish world-class infrastructures, including vastly improved public education systems, that would assist these businesses in producing globally competitive goods and services and then in beginning to export their production overseas.

The fifth challenge is common to all federal systems. Is federalism a plus or a minus in coping with the exigencies of globalization and unprecedented technology change? Are unitary systems better equipped to react quickly and uniformly to international conditions? In the United States some states still engage in local protectionist practices that may alienate foreign investors. These investors would also prefer to see one set of laws governing business activity instead of fifty different state laws and one national law. States may also have widely different positions on key international issues. For example, some state governments might want price controls on gasoline and more federal spending on alternative energy sources. In contrast, major oil and gas producers such as Alaska and Texas would oppose some of these actions. In a country with 304 million people spread across the fourth-largest territorial expanse in the world, would an enhanced role for state and municipal governments in foreign relations actually benefit the individual American citizen in the long run?

The final challenge is for state governments to stop vacillating and finally decide what level of commitment they are willing to provide to their international programs beyond the next budgetary cycle. It is impressive that states now operate 230 offices abroad, compared to 4 in 1980. However, in 2002 states operated 243 offices in thirty different countries. During the administration of Governor Gray Davis, the predecessor to Arnold Schwarzenegger, all twelve state offices overseas were closed, and even the California Technology, Trade and Commerce Agency was disbanded. One governor may be enthusiastic about international programs, whereas his or her successor could care less about such involvement. Moreover, staffing levels and funding for programs falling within the realm of foreign affairs are insignificant in terms of overall state employment and expenditures. Even more ominously, staff assigned to international programs often perceive that they are the last hired and the first fired when states face periodic budgetary problems. Most state programs have also failed to engage in any serious long-range planning or to produce strategic papers focusing on their individual state's relationship to the regional and international economies, a situation that stands in stark contrast to the planning undertaken by the major provincial governments in Canada. Most states also lack sophisticated evaluation processes to ascertain the relative success or failure of their international pursuits. Even the term "foreign office" is somewhat of a misnomer because many states simply hire on a part-time or commission basis a contractor in another country to represent their interests. Many of these local contractors have full-time jobs elsewhere and work only occasionally to promote state activities. Frankly, state governments may give lip service to the notion of "thinking globally and acting locally," but their journey into the realm of US foreign relations has thus far been sporadic and largely devoid of long-term vision and institutional continuity.

#### CONCLUDING OBSERVATIONS

Elazar argued that "the virtue of the federal system lies in its ability to develop and maintain mechanisms vital to the perpetuation of the unique combination of governmental strength, political flexibility, and individual liberty that is the central concern of American politics."<sup>54</sup> This "virtue" will be tested significantly in the decades ahead. Already, the phenomenon known as "intermestic politics" is a fact of life in the United States. The term refers to the growing overlap of the domestic and international, with many policy decisions consisting of both dimensions.<sup>55</sup> Furthermore, globalization and unprecedented technology change have contributed to the acceleration of creative destruction and to a proliferation of intermestic issues. This rather volatile combination of forces means that governance in states and municipalities is more difficult than ever.

Globalization is here to stay and will intensify in the decades ahead. If it does not, this will probably be due to some horrible war or other cataclysmic event or due to a return to 1930s-style rampant protectionism, all of which would have dire consequences much worse than entrenched globalization. State and local government leaders must adjust to the changing circumstances and be cognizant of the fact that all nations, including a superpower, will be increasingly effected by decisions made and actions that occur beyond the frontiers of their nation-state.

For their own sakes and for the long-term vitality of the nation, both state and local governments should refrain from engaging in foreign policy, even though the number of times they have done so in the past has been very limited. They have every right to object to the policies of Washington, and this can be trumpeted through resolutions or initiatives. They should also act boldly to convince officials elected from their states to the US House of Representatives and the US Senate to overturn misguided national policies and laws. Nevertheless, the nation does need to speak at times with at least a somewhat unified voice on important issues in a very complicated world, and this should be the prerogative of national government leaders and institutions. In particular, the imposition of unilateral sanctions on foreign countries, whether put into effect by national or constituent governments, is rarely effective and tends to hurt the US business community and workers more than the targeted country.

Even so, state and local government involvement in a wide range of foreign relations activities should be encouraged and will undoubtedly accelerate in the future. As nations become more vulnerable to what transpires outside their frontiers, all orders of government will have to prepare to act and react. For states and municipalities, the world outside the United States contains almost 96% of global consumers and 75% of the global production of goods and services. This must be the target for local private companies, which provide most of the jobs in the United States and which must produce globally competitive goods and services to maintain or expand their operations. Constituent governments should assist the efforts of the private sector by providing a world-class infrastructure, a reasonable regulatory environment, a high quality of life, and top-ranked primary, secondary, and postsecondary education institutions and research laboratories. Helping to attract direct investment domestically and internationally, without resorting to market-distorting incentives, is another worthy activity for constituent governments. Providing basic information on how small companies can begin to export, arranging periodic trade and investment missions abroad, maintaining selective overseas offices or hiring contractors abroad, and other related activities are also worthwhile endeavours.

State and local governments desiring to be engaged internationally must commit themselves to long-range programs providing institutional

continuity that will successfully bridge changes in elected leadership. They should also take better advantage of the expertise available through their regional or national organizations such as the National Governors' Association, the Council of State Governments, the National League of Cities, and the US Conference of Mayors. There are many areas where state and local offices can work together and across state lines, with only the attraction of FDI remaining a widely perceived zero-sum game. Intergovernmental cooperation can be improved substantially, and public-private sector collaboration must also be strengthened.

US constituent governments spent US\$1.5 trillion from their own sources in 2006 and also received transfers from the national government of US\$434 billion. Figuratively, only a few pennies of expenditures were devoted to international activities. Quebec, Ontario, Alberta, and to a lesser extent British Columbia spend far more on their international programs, devote many more people to these operations, and are far more sophisticated in planning and strategizing than are their counterparts in the United States. Of course, almost 40% of Canada's GDP is linked to international trade and investment activity, with more than 80% of all exports destined for only one foreign market, the United States. America's dependence on the outside world for growth in GDP and for jobs is only a fraction of Canada's, which helps to explain, up to a point, why the international programs of the US states are less developed. However, this reliance on the international economy to enhance the well-being of the citizens that the states represent will continue to grow, and state and local governments must be better prepared in the future to think globally, act locally, and stand up for the integrity and vitality of the US system of federalism.

#### NOTES

- 1 Richard Neustadt, *Alliance Politics* (New York: Columbia University Press, 1970); and Graham Allison, *Essence of Decision* (Boston: Little, Brown, 1971).
- 2 Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977).
- 3 Eugene R. Wittkopf, Charles W. Kegley Jr, and James M. Scott, *American Foreign Policy*, 6th ed. (Belmont, CA: Thomson Wadsworth, 2003), 14.
- 4 For more background on the United States, see G. Alan Tarr, "United States of America," in John Kincaid and G. Alan Tarr, eds, *Constitutional Origins, Structure, and Change in Federal Countries*, 381–408 (Montreal and Kingston: McGill-Queen's University Press, 2005); Ellis Katz, "United States of America," in Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, eds, *Distribution of Powers and Responsibilities in Federal Countries*, 295–321 (Montreal and Kingston: McGill-Queen's

- University Press, 2006); John Dinan, "United States of America," in Katy Le Roy and Cheryl Saunders, eds, *Legislative, Executive, and Judicial Governance in Federal Countries*, 316–43 (Montreal and Kingston: McGill-Queen's University Press, 2006); and William Fox, "United States of America," in Anwar Shah, ed., *The Practice of Fiscal Federalism: Comparative Perspectives*, 344–69 (Montreal and Kingston: McGill-Queen's University Press, 2007).
- 5 Manifest Destiny refers to a nineteenth-century belief held by many Americans that the United States was naturally destined to expand its territory from the Atlantic Ocean to the Pacific Ocean.
  - 6 Ann O'M. Bowman, "American Federalism on the Horizon," *Publius: The Journal of Federalism* 32 (Spring 2002): 3–22, at 20.
  - 7 Erich Steinman, "American Federalism and Intergovernmental Innovation in State-Tribal Relations," *Publius: The Journal of Federalism* 34 (Spring 2004): 95–114, at 113–14. Within the court system, *Cherokee Nation v. Georgia*, 30 US 1 (1831) provides significant insights on future intergovernmental relations involving tribes.
  - 8 The title of the following article sums up some of the uncertainty among scholars of US federalism: Dale Krane and Heidi Koenig, "The State of American Federalism, 2004: Is Federalism Still a Core Value?" *Publius: The Journal of Federalism* 35 (Winter 2005): 1–41. To examine the issue in comparative perspective, consult Hans J. Michelmann and Panayotis Soldatos, eds, *Federalism and International Relations: The Role of Subnational Units* (New York: Oxford University Press, 1990); and Raoul Blindenbacher and Arnold Koller, eds, *Federalism in a Changing World* (Montreal and Kingston: McGill-Queen's University Press, 2003).
  - 9 Samuel Krislov, "American Federalism as American Exceptionalism," *Publius: The Journal of Federalism* 31 (Winter 2001): 9–26, at 26.
  - 10 The results of the Cincinnati meeting are detailed in Council of State Governments, *Restoring Balance to the American Federal System* (Lexington, KY: Council of State Governments, 1996).
  - 11 A recent discussion of the Tenth Amendment is found in Mark R. Killenbeck, ed., *The Tenth Amendment and State Sovereignty: Constitutional History and Contemporary Issues* (Lanham, MD: Rowman and Littlefield, 2002).
  - 12 In *Missouri v. Holland*, 252 US 416 (1920), the US Supreme Court decided that the national government's right to enter into treaties is supreme, even if such treaties interfere with the exercise of state authority. In *Zschernig v. Miller*, 289 US 429 (1968), the court threw out an Oregon probate statute that denied inheritance rights to residents of certain foreign countries. In *Massachusetts v. Laird*, 400 US 886 (1970), the Court nullified a Massachusetts law which stated that no resident of the state who was a member of the armed forces could be forced to fight in a hostile environment abroad (i.e., Vietnam) unless Congress first issued a formal declaration of war as outlined in Article 1, Section 8, Clause 11, of the US Constitution.
  - 13 The unitary taxation formula was used by certain states to tax multinational corporations on the basis not only of their business activity within the affected state but

also of their entire activity around the world. The rationale for this formula was to prevent corporations from using accounting legerdemain to show a profit outside of the state but little or no profit in terms of their specific business pursuits within the state.

- 14 The Illinois law requires state pension funds to divest from companies doing business in Sudan. This prohibited list includes such companies as Eastman Kodak, Toyota, and Verizon Communications.
- 15 A thorough legal treatise on this issue is provided by Peter J. Spiro, "Globalization and the (Foreign Affairs) Constitution," *Ohio State Law Journal* 63, no. 2 (2002): 649–730. The federal courts have done little to differentiate between US treaties and what might be termed international pacts or accords. A treaty is negotiated by the executive branch and must be ratified by at least a two-thirds vote in the US Senate. Under fast-track or trade-promotion authority, which has been in effect for most, but not all, of the years since the presidency of Gerald Ford (1974–77), a pact or accord such as NAFTA or the WTO requires a majority vote in both the House of Representatives and the Senate. Thus far, these pacts or accords have been treated as functional equivalents to treaties in making the federal action supreme over any state laws or practices that run counter to provisions in these pacts or accords.
- 16 This letter is quoted in the testimony of Georgetown University law professor Robert Stumberg before the US Senate's Subcommittee on Federal Financial Management, Government Information, and International Security, 15 July 2005.
- 17 Daniel J. Elazar, *American Federalism: A View from the States*, 3rd ed. (New York: Harper and Row, 1984), 255.
- 18 "Federal Preemption of State Authority a Disturbing Trend," *NCSL News* (Denver), 16 August 2005.
- 19 Stumberg's testimony before US Senate, as cited at note 16.
- 20 Earl H. Fry, *The Expanding Role of State and Local Governments in U.S. Foreign Affairs* (New York: Council on Foreign Relations Press, 1998), 117.
- 21 These figures are for the end of 2004 and were compiled by the Bureau of Economic Analysis in the US Department of Commerce.
- 22 Peter Fisher and Alan Peters, "The Failure of Economic Development Incentives," *Journal of the American Planning Association* 70, no. 1 (2004): 27–38; and Dennis Cauchon, "Business Incentives Lose Luster for States," *USA Today*, 22 August 2007. In *DaimlerChrysler Corp. v. Cuno and Wilkins (Ohio Tax Comm.) v. Cuno*, 547 US (2006), the US Supreme Court ruled 9-0 that Ohio taxpayers had no right to challenge the state government's granting of US\$300 million in tax breaks to entice DaimlerChrysler to build a new assembly plant in Toledo.
- 23 John Kincaid, "The International Competence of U.S. States and Their Local Governments," *Regional and Federal Studies* 9 (Spring 1999): 111–30.
- 24 State International Development Organization, *SIDO Survey 2006: Emerging Trends in State International Business Development* (Washington, DC: State International Development Organization, 2006); and Adrienne T. Edisis, "Global Activities by U.S. States: Findings of a Survey of State Government International Activities," paper

prepared for the Elliott School of International Affairs, George Washington University, July 2003.

- 25 Fry, *Expanding Role*, ch. 4; and John M. Kline, "The International Economic Interests of U.S. States," *Publius: The Journal of Federalism* 14 (Fall 1984): 81–94.
- 26 Fry, *Expanding Role*, 67–8. See also, John Kincaid, "The American Governors in International Affairs," *Publius: The Journal of Federalism* 14 (Fall 1984): 95–114.
- 27 Tommy G. Thompson, "Governors Are the Trade Ambassadors of the United States," *Governors' Bulletin*, 22 July 1996, 6; and Tommy G. Thompson, "Going Global: A Governor's Perspective," *Intergovernmental Perspective* 16 (Spring 1990): 15–17, at 15.
- 28 National Governors' Association, *Governors' Bulletin*, 8 July 1996, 1–2.
- 29 Thompson, "Going Global," 15–16.
- 30 us Department of Commerce, International Trade Administration, Office of Travel and Tourism Industries. See <http://tinet.ita.doc.gov>.
- 31 us Department of Commerce, International Trade Administration, Office of Travel and Tourism Industries, "Historical U.S. Travel and Tourism Statistics," [http://tinet.ita.doc.gov/outreachpages/inbound\\_historic\\_visitation\\_2007.html](http://tinet.ita.doc.gov/outreachpages/inbound_historic_visitation_2007.html) (accessed 7 July 2008).
- 32 The us Council of State Governments, Eastern Regional Conference, uses data collected by the Conference Board of Canada and estimates that the United States would lose us\$785 million in revenues because of fewer cross-border visits by Canadians. See the Council of State Governments, Eastern Regional Conference, "A Resolution Regarding the Western Hemisphere Travel Initiative," Halifax, Nova Scotia, 22 October 2005.
- 33 The San Diego Association of Governments estimates that fewer border crossings from Mexico, combined with the slow movement of tourism and commercial traffic at the border, results in us\$1.3 billion in lost revenues annually in the San Diego region. See Brady McCombs, "Squeezing Border Business," *Arizona Daily Star*, 24 September 2006.
- 34 In 2004, 581,000 businesses or "employer firms" were created, and 576,000 were terminated. See us Small Business Administration, *The Small Business Economy: A Report to the President* (Washington, DC: US Government Printing Office, 2005), 7.
- 35 Data from Job Openings and Labor Turnover Survey (JOLTS), us Bureau of Labor Statistics, quoted in Robert M. Kimmitt, deputy secretary of the us Treasury, "Why Job Churn Is Good," *Washington Post*, 23 January 2007.
- 36 Edisis, "Global Activities"; Council of State Governments, *The Book of the States*, 2006 ed. (Lexington, KY: Council of State Governments, 2006), 353, 443. Spending on international programs represented 0.02% of total state expenditures, and employees engaged in international activities represented 0.04% of total state workers in noneducation sectors.
- 37 A detailed examination of the complex Texas-Mexico relationship is presented in Julia Melissa Blase, "Has Globalization Changed U.S. Federalism? The Increasing Role of U.S. States in Foreign Affairs: Texas-Mexico Relations" (PhD diss., University of Texas at Austin, 2003).

- 38 John Kincaid, "Constituent Diplomacy: U.S. State Roles in Foreign Affairs," in Daniel J. Elazar, ed., *Constitutional Design and Power-Sharing in the Post-Modern Epoch*, 107–42 (Lanham, MD: Jerusalem Center for Public Affairs and University Press of America, 1991).
- 39 Timothy J. Conlan, Robert J. Dudley, and Joel F. Clark, "Taking on the World: The International Activities of American State Legislatures," *Publius: The Journal of Federalism* 34 (Fall 2004): 183–201.
- 40 US Department of State, *Consular Offices in the United States* (Washington, DC: Government Printing Office, 2006). This list was compiled in August 2006.
- 41 Carolyn Lochhead, "Give and Take across the Border," *San Francisco Chronicle*, 21 May 2006.
- 42 "Sanctuary City, USA," <http://www.ojjpac.org/sanctuary.asp> (accessed 8 January 2008). Some city officials may argue that they do cooperate to a certain extent with federal officers and have set limits only on the degree of cooperation.
- 43 *Los Angeles Times*, 21 March 2006, A1, A18.
- 44 Heidi H. Hobbs, *City Hall Goes Abroad: The Foreign Policy of Local Politics* (Thousand Oaks, CA: Sage, 1994). These cities are exceptional in their stances on foreign policy. For example, only a handful of US cities have actually declared themselves nuclear-free zones. See also, John Kincaid, *American Cities in the Global Economy: A Survey of Municipalities on Activities and Attitudes* (Washington, DC: National League of Cities, 1997).
- 45 Consult <http://www.citiesforpeace.org>.
- 46 Edwin Garcia and Paul Rogers, "Governor, Blair Sign Warming Accord," *San Jose Mercury News*, 1 August 2006.
- 47 The six states are California, Oregon, Washington, Arizona, New Mexico, and Utah.
- 48 Michelle Sager, *One Voice or Many? Federalism and International Trade* (New York: LFB Scholarly Publishing, 2002).
- 49 A discussion of involvement by local authorities internationally is found in Chadwick F. Alger, "Searching for Democratic Potential in Emerging Global Governance," in Bruce Morrison, ed., *Transnational Democracy in Critical and Comparative Perspective*, 87–106 (Aldershot, UK: Ashgate, 2003), esp. 96–103.
- 50 See the Sister Cities International website: <http://www.sister-cities.org>.
- 51 The National League of Cities has an International Council composed of local elected officials who guide the development of international programs. The US Conference of Mayors has an International Affairs Committee that carries out similar functions.
- 52 Peter Karl Kresl and Earl H. Fry, *The Urban Response to Internationalization* (Cheltenham, UK: Edward Elgar, 2005), ch. 3.
- 53 The Sixteenth Amendment to the US Constitution, ratified in 1913 and authorizing income taxation, has greatly strengthened Washington's role in fiscal issues, to the disadvantage of state and local governments. The Seventeenth Amendment, also ratified in 1913, provides for the direct election of the two senators from each

state. Previously, senators were selected by the state legislatures. Although this amendment strengthened democracy, it has resulted in senators being less inclined to follow the policy recommendations of governors and state legislative leaders in dealing with the national government.

54 Elazar, *American Federalism*, 257.

55 The term “intermestic” was coined by Bayless Manning, “The Congress, the Executive and Intermestic Affairs: Three Proposals,” *Foreign Affairs* 55 (January 1977): 306–24.