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Source: *Public Administration Review*, Vol. 62, Special Issue: Democratic Governance in the Aftermath of September 11, 2001 (Sep., 2002), pp. 181-192

Published by: Blackwell Publishing on behalf of the American Society for Public Administration

Stable URL: <http://www.jstor.org/stable/3110189>

Accessed: 21/11/2009 10:05

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Issues of Federalism in Response to Terrorism

The terrorist attacks of September 11, 2001, provoked, among other reactions, considerable commentary about the future of American federalism, particularly predictions of administrative centralization. To assess the potential impact of terrorism on U.S. intergovernmental relations and the ways the federal system should respond, members of the American Political Science Association's Section on Federalism and Intergovernmental Relations were surveyed in late 2001. Generally, these federalism scholars believe the September 11 terrorism will have little effect on intergovernmental relations or on the U.S. Supreme Court's state-friendly jurisprudence, and the surge in public trust and confidence in the federal government will be short-lived. The scholars tend to support a highly federalized response to terrorism, but with intergovernmental cooperation. Partisan differences among the scholars on policy options, however, mirror the party differences in Congress and the resurgence of "politics as usual" less than a year after September 11, 2001.

The terrorism of September 11 provoked alarm and grief across the United States. The terrorist attacks also seemed to presage major, even fundamental changes in American life and governance. Given the intergovernmental and interjurisdictional responses necessitated by the attacks, it became evident that terrorism is laden with implications for federalism. Newspapers carried headlines such as "States Lack Power to Enforce Airport Guard Rules" (McGraw 2001), "Congress Agrees to U.S. Takeover for Air Security" (Pear 2001), and "Cities and States Say Confusion and Cost Hamper Security Drive" (Belluck and Egan 2001). David Gergen urged "the government" to "launch an urgent and, yes, highly federalized offensive to protect its citizens ..." (2001). Linda Greenhouse, critiquing the U.S. Supreme Court's federalism jurisprudence, declared, "The era of states' rights decisions, a luxury of tranquil times, now seems like a vestige of a bygone era" (2001). The mass media seemed to conclude that terrorism would, and perhaps should, kill federalism.

Death or Revitalization of Federalism?

Outside the daily newsrooms, many observers felt that (1) the federal system responded remarkably well to the horrific shocks of September 11; (2) the responses of local officials, as well as the civil and heroic behavior of citizens, vindicated the values of local self-government in a

federal democracy; and (3) counterterrorism might require more, not less, federalism (Kincaid 2001c; Locke 2001). Jonathan Walters (2001) worried that "there has been far too little talk about preserving the essential roles of local, state, and federal government and getting back to the basics of playing those roles." Donald F. Kettl (2001) concluded that, unlike previous crises such as World War II, which "centralized federalism, this one all but requires ... a new breed of collaborative federalism." The war on terrorism, moreover, is being led by former governors: President George W. Bush of Texas, Homeland Security Director Tom Ridge of Pennsylvania, U.S. Attorney General John Ashcroft of Missouri, and Secretary of Health and Human Services Tommy G. Thompson of Wisconsin. In short, counterterrorism should revitalize federalism.

The White House and Congress responded quickly with aid, especially for New York City, and with promises of more cooperation; yet, regulatory or coercive federalism returned to normalcy rather quickly. Many state and local officials soon complained of a bunker mentality and heavy-

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handedness by the Office of Homeland Security, insufficient federal responsiveness to fiscal burdens created by new homeland security needs, and too little information sharing by such agencies as the FBI, the Federal Emergency Management Agency, and the Office of National Preparedness (AP 2001b; Peirce 2001a). A bipartisan group of U.S. senators, with White House sympathy, shocked the states by proposing that Congress decree a 10-day national sales tax holiday beginning the day after Thanksgiving (AP 2001a). In the midst of a recession, and during an era in which states' sales tax bases are eroding, Congress reauthorized the Internet Tax Freedom Act. The *Economist* opined, "Alas, few in Washington seem to care about state finances" (2001). In November 2001, Attorney General Ashcroft sought to nullify Oregon's Death with Dignity law by authorizing the Drug Enforcement Administration to revoke the drug licenses of physicians who assist patient suicides (Eggen and Connolly 2001). These and other federal actions prompted one columnist to resound a familiar critique of the "Republican Revolution" of 1994, the "chief mission" of which "was to disempower the federal government as much as possible and to devolve power to the states." But once they had gained control of Congress, the Republican "devolutionists ... changed their stripes. They now appear to be complete saps for federal power, loving every jot and tittle of regulation and law" (Mathis 2001; Kincaid 2001a; Cole et al. 2001). In short, terrorism seemed to have no impact on Washington-centered federalism. Long-term centralization trends before September 11 proceeded apace after September 11.

What, then, are the implications of terrorism? Is post-September 11 federalism dead, irrelevant, more relevant, or steady on its current course? To gauge possible implications against evolving events, and with the hope of gaining policy insights, this research surveyed members of the American Political Science Association's (APSA) Organized Section on Federalism and Intergovernmental Relations, which includes the nation's leading students of federalism in both political science and public administration.

Survey Methodology

Because the systemic implications of unprecedented events become most fully evident only over years and decades, it was difficult to formulate questions. Initially, we informally polled members of the editorial advisory board of *Publius: The Journal of Federalism* for ideas. Their responses were helpful. We also monitored news reports and statements by public officials to tap relevant issues. We then formulated a survey focusing on (1) overall and specific implications of the terrorist attacks for federalism and intergovernmental relations; (2) grant-in-aid implications; (3) possible local, state, and federal policy initiatives; (4)

loci of responsibility for various terrorism responses; (5) impact on the U.S. Supreme Court's state-friendly jurisprudence; and (6) changes in public confidence in the federal, state, and local governments. The survey instrument can be obtained from either author of this article.

In November and December 2001, a survey—dispatched and returned by email—was conducted among 295 U.S. members of APSA's Federalism Section for whom usable email addresses were available from APSA's roster of 399 members. Of the 399, 46 were international and were not included in the survey. Twenty-nine members had no listed email address; another 29 surveys were undeliverable. We received 158 usable responses, for a response rate of 53.6 percent, representing 44.8 percent of the 353 U.S. members of the Federalism Section. An examination of the characteristics of nonresponding section members found no systematic response biases. Of the respondents, 81.7 percent were employed by a university or college: 15.4 percent assistant professors, 16.9 percent associate professors, and 46.9 percent professors. Fully 72.9 percent were located in a political science department; 18.6 percent were in a department of public administration. Many of the latter, and some of the former, also belong to the Section on Intergovernmental Administration and Management of the American Society for Public Administration.

Responses were analyzed by gender, region of residence, community size, and political party identification. Other potentially relevant control variables, such as place or sector of employment and departmental affiliation, were not significant. The measure of association reported is the contingency coefficient; the measure of significance is the chi-square test.

Overall Intergovernmental Implications

APSA's federalism scholars do not believe the terrorist attacks will have a significant impact on U.S. federalism and intergovernmental relations. Two-thirds expect intergovernmental relations to change marginally, while 11.5 percent anticipate little or no change (see table 1). Only 21.7 percent foresee intergovernmental relations changing significantly. Women scholars (34.9 percent) expected, more often than men (17.3 percent), that the attacks will cause significant change. Scholars (31.7 percent) from the country's largest cities (more than one million people) were more likely than those from smaller cities to expect significant change, while scholars from the West (13.6 percent) were far less likely to foresee significant change than were respondents from other regions. Hence, the majority believe the federal system will remain fairly steady on its pre-September 11 course.

Regarding more specific intergovernmental implications, 84.6 percent of the scholars expressed the view that,

as a result of September 11, the nation will probably “see more effective cooperation and exchange of information between federal, state, and local officials in the areas of disaster relief and emergency preparedness than otherwise would be the case” (see table 1). Only 10.3 percent said probably not; 5.1 percent were unsure. Similarly (though less proportionately), 73.7 percent anticipated “more effective cooperation and exchange of information between federal, state, and local officials in other policy areas, such as law enforcement and public health than otherwise would be the case.”

These questions were asked because problems of intergovernmental coordination became evident during responses to the September 11 attacks. The U.S. General Accounting Office (2001) and national commissions reported poor interagency coordination within the federal government and inadequate and top-down federal/state/local cooperation accompanying the buildup of federal counterterrorism spending and activity after the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. Many local officials even reported being wary of federal cooperation because they often felt “like canaries in a coal mine. That’s because federal plans for domestic terrorism always presumed that the first responders on the scene would be killed or seriously injured,” and the types of deaths and injuries they experienced would iden-

tify the presence of particular chemical, biological, radiological, or other weapons (Coburn 1998, 22).

Perhaps the scholars’ expectation of greater intergovernmental cooperation in emergency-preparedness and disaster-relief reflects, in part, the imperative for such cooperation if the terrible loss of first-responder lives on September 11, 2001, is to be prevented in the future. Although most scholars also expected increased intergovernmental cooperation in such related fields as law enforcement and public health, fewer expected this outcome, suggesting that enhanced cooperation in the core areas of counterterrorism might not spill over into peripheral policy fields.

At the same time, 62.8 percent of the scholars believed Congress will probably “use this period of national emergency as an opportunity to achieve greater preemption of state regulations and authority in areas like disaster relief, emergency preparedness, and law enforcement” (see table 1). Similarly, though less proportionately, 50.6 percent of the respondents agreed that Congress will seek “greater preemption of state regulations and authority in other areas, such as public health, transportation, and commerce.” More than a third (38.6 percent) believed Congress will probably not do so, while 10.8 percent were unsure. These responses are generally consistent with trends of regulatory or coercive federalism since 1968. These trends have

Table 1 Overall Intergovernmental Implications of September 11, 2001

Questions	Percent responses	Party ID	Significant Control Variables ¹		
			Region	Size of community	Gender
Will events of September 11, 2001 and their aftermath mark a significant change in U.S. intergovernmental relations?					
A. Yes, significant change	21.7	NS	.32**	.28*	.24**
B. Yes, marginal change	66.9				
C. No or very little change	11.5				
Should the federal government undertake a highly <i>federalized</i> effort to protect U.S. citizens from terrorism?					
A. Agree strongly/somewhat	63.9	NS	NS	.33*	NS
B. Disagree strongly/somewhat	36.1				
Should the federal government undertake a highly <i>intergovernmental</i> effort to protect U.S. citizens?					
A. Agree strongly/somewhat	85.3	NS	NS	.35**	.21*
B. Disagree strongly/somewhat	14.7				
Will Congress use this period of national emergency as an opportunity to achieve greater preemption of state regulations in areas such as disaster relief, emergency preparedness, and law enforcement?					
A. Probably yes	62.8	NS	NS	NS	NS
B. Probably no	26.3				
C. Not sure	10.9				
Will we see more effective federal, state, local cooperation in such areas as disaster relief and emergency preparedness?					
A. Probably yes	84.6	NS	NS	NS	NS
B. Probably no	10.3				
C. Not sure	5.1				

Note: In all tables, * < .10; ** < .05. The coefficient of association (measuring strength of relationship) shown is the contingency coefficient.

¹Here and throughout, “Party ID” was coded as Democrat, Republican, or other; “region” was coded as New England or Mid-Atlantic, Midwest, South or Southwest, or West; “size of community” was coded as less than 50,000, 50,000–250,000, 250,000–500,000, 500,000–1,000,000, and over 1,000,000.

included unprecedented levels of federal preemptions of state powers, mandates on state and local governments, crossover conditions of federal aid, and other regulatory measures to ensure state and local compliance with federal policies (Kincaid 1993). Again, most of the scholars see no major change in the federal system's current preemption-prone course, except that terrorism might provide a new rationale for federal preemption.

When asked, however, if the "federal government should undertake a highly federalized offensive to protect U.S. citizens from terrorism," 10.8 percent agreed strongly and 53.1 percent agreed somewhat, echoing David Gergen's advocacy of a highly federalized offensive (see table 1). Yet, when also asked if the "federal government should undertake a highly intergovernmentalized (that is, federal/state/local) offensive to protect U.S. citizens from terrorism," 37.8 percent agreed strongly and 47.5 percent agreed somewhat—an overwhelming majority of 85.3 percent. Only 12.2 percent disagreed somewhat, and 2.5 percent disagreed strongly. Scholars from the largest cities (78.0 percent) were considerably more likely to opt for a highly federalized offensive and less likely (72.5 percent) to support a highly intergovernmentalized approach than were respondents from other localities. A weaker difference appeared along gender lines, with 90.5 percent of women supporting a highly intergovernmentalized offensive compared to 82.7 percent of men.

Although it is clear that some respondents distinguished between federalized and intergovernmentalized offensives, approximately two-thirds of the scholars appear to support a highly federalized, intergovernmental effort to protect citizens against terrorism. These scholars appear to support an effort—led and even dominated by the federal government—that relies necessarily and extensively on intergovernmental cooperation and coordination. All terrorism is local, and local governments primarily, and state governments secondarily, possess the lion's share of first-response responsibility, though rarely the capacity to act alone. These responses may also reflect the fact that, although the federal government's first-response capacity is inherently limited, its pre-attack ability to alert citizens of possible attacks and to prevent terrorism through surveillance, intelligence gathering, domestic apprehension of suspected terrorists, and overseas military action extends far beyond the reach of state and local governments.

A large proportion of the scholars (72.1 percent) agreed that "the federal government should ensure that state Army and Air Guard units are adequately funded and equipped to protect U.S. airspace from terrorist attacks while regular U.S. Armed Forces should concentrate on overseas missions." Only 23.4 percent disagreed somewhat, and 4.5 percent disagreed strongly. The predominant responses are consistent with the historic division of labor between the

domestic functions of the National Guard, especially responses to disasters and civil disorders, and the international mission of regular U.S. armed forces. The question was asked, in part, because of longstanding gubernatorial complaints about insufficient federal support for the National Guard, depletions of Guard personnel by federal call-ups, and post-September 11 debates about the costs of increased Air Guard patrols of U.S. airspace.

Similarly, though less proportionately, 58.9 percent of the scholars said that "in terrorist situations such as those occurring on September 11, state Army and Air Guard units should be federalized," compared to 41.2 percent who responded probably or definitely not. Although a majority of the scholars supported federalizing National Guard units in terrorist situations, this option drew less support and more opposition than did federal aid, perhaps because September 11 presented no compelling reasons for federalization, at least on the ground. Governors, however, might be amenable to federalization because it has federal fiscal benefits for the states, especially when units are deployed for long periods. Federalization also might be sensible for massive terrorist events requiring multistate National Guard coordination.

We also asked about the federalization versus privatization of certain public services because of the debate occurring in the fall of 2001 over airport security. In this debate, most congressional Democrats supported federalization; most congressional Republicans and President Bush supported private-sector options. Debate had also emerged in a number of localities and states about the wisdom, in the face of terrorism, of privatizing certain public services such as municipal water systems, mass transit, and security for infrastructure and vulnerable facilities such as nuclear power plants. Concern was expressed, too, about whether privatized services owned by non-U.S. corporations would jeopardize security.

Here, 57.6 percent of the federalism scholars supported "greater *federalization* of some domestic services now performed largely by state and local governments and/or by private enterprise, such as airport security, community health, law enforcement, and public safety." Opposed were 27.8 percent who said "probably no" and 14.6 percent who responded "definitely no." On a counterpart question, only 11.0 percent endorsed increased *privatization* of these kinds of domestic services. Fully 44.8 percent said probably not, and 44.2 percent said definitely not. Hence, a majority of the federalism scholars support federalizing certain domestic functions, while a resounding majority oppose privatization.

Statistically significant partisan differences were found on these questions, even though APSA's Federalism Section is overwhelmingly Democratic (39.2 percent strong Democrats and 24.3 percent leaning Democratic). Fully

76.7 percent of the strongly Democratic scholars supported federalization of the above domestic services, compared to only 11.8 percent of the strong Republicans. A mere 3.4 percent of the strong Democrats supported privatization of such services, compared to 38.9 percent of the strong Republicans. In addition, women (13.9 percent) were more likely than men (2.3 percent) to endorse greater privatization of such domestic services as airport security, community health, law enforcement, and public safety.

In summary, most of the federalism scholars foresee no major changes in the federal system arising from the terrorism experienced so far, though they support a highly federalized—but still intergovernmentalized—response to terrorism, and they generally oppose privatizing most public services relevant to terrorism.

Grants-in-Aid Implications

Slightly more than half the scholars expected the “events of September 11 and their aftermath will set off a new round of major federal grants-in-aid for state and local governments,” though only 5.8 percent said “definitely yes,” while 50.3 percent said “probably yes” (see table 2). Another 43.9 percent said probably or definitely not. These split results are consistent with the political and fiscal uncertainties associated with grants-in-aid today.

The need for more federal aid for counterterrorism appears to be undeniable, and additional aid has been approved by Congress and the White House. President Bush’s FY 2003 budget requested \$38 billion for homeland security, of which 9.2 percent (\$3.5 billion) would pass through FEMA primarily to local firefighters, police, and emergency personnel. Other monies, such as \$5.9 billion to combat bioterrorism, \$722 million to enhance information sharing and technology, and \$4.8 billion to fund the Transportation Security Administration, would be spent mostly by federal agencies, but with administrative and communications coordination with state and local governments. The remaining \$22.8 billion (60 percent) would be spent almost entirely by federal agencies on federal programs, such as border security and federal-agency security. Thus, the president’s budget contemplates limited aid for state and local first-response capacity building compared to other dimensions of homeland security.

Increased direct federal aid to state and local governments for homeland security is also likely to be limited because, while federal aid has increased since 1987, it has shifted decisively from places to persons (Kincaid 1999). In FY 2002, approximately 64 percent of federal aid was dedicated to payments to individuals (for example, welfare and Medicaid). Hence, place-oriented aid, such as highways, education, economic development, and emergency preparedness, has atrophied relative to aid for persons, such

as Medicaid, which alone accounts for more than 40 percent of all aid to states and localities. Because the states receive most of the aid-for-persons grants, local governments—the most crucial for terrorism preparedness—have experienced a precipitous decline in direct federal aid since 1987. The reappearance of federal budget deficits and the squeeze on federal domestic discretionary spending also make major new aid for counterterrorism unlikely, unless a massive terrorist event compels a drastic alteration of federal priorities away from social welfare and tax reductions. Consequently, President Bush’s proposed \$3.5 billion in homeland security aid would amount to less than 1 percent of all estimated federal aid to state and local governments in FY 2003 (although several billion dollars in terrorism-relevant aid will flow through some other federal programs). In addition, Bush has vowed to balance increased spending on counterterrorism with “slower spending in the rest of government” (quoted in Parks and Dalrymple 2002, 1066). Thus, homeland security aid could reduce other federal aid funding.

If new federal aid flows to states and localities for terrorism-related activities, 51.7 percent of the federalism scholars believe such aid should be delivered through categorical grants, while 48.3 percent believe it should take the form of block grants (see table 2). Although state and local officials usually prefer block grants, and block grants are generally regarded as more devolutionary, it appears that the majority of APSA’s federalism scholars are not devolutionists, a finding consistent with the scholars’ support for federalization on previous questions. Here, too, there were significant partisan differences. Some 60.0 percent of the Democratic scholars supported categorical grants, compared to 35.5 percent of the Republicans—a difference that parallels party differences in Congress.

The scholars had more disparate views about where grant monies should go. Some 40.7 percent believed that “regardless of type of grant, any increased federal aid for terrorism preparedness” should be allocated “to the states, with each state deciding how to use and allocate the funds among its local governments.” Nearly one-third (31.3 percent) said that at least 50 percent of such aid should go to local governments. Ten percent believed that at least 75 percent of such funds should go to local governments, while 18.0 percent said that at least 25 percent of such monies should be awarded to local governments. Thus, a majority of the federalism scholars (59.3 percent) say that some portion of federal grants pertinent to terrorism should bypass state capitals and go directly to local governments. These views are coherent with the scholars’ tendency to support categorical grants and a highly federalized, intergovernmental offensive against terrorism. Categorical grants aim to ensure more specific state and local compliance with federal priorities and provide less state and local flexibility than block

Table 2 Implications for Federal Grants-in-Aid and Other State, Local, and Federal Initiatives

Questions	Percent responses	Party ID	Significant Control Variables		
			Region	Size of community	Gender
Will events of September 11, 2001 set off a new round of major federal grants-in-aid for state and local governments?					
A. Definitely/probably yes	56.1	NS	NS	NS	NS
B. Definitely/probably no	43.9				
Should any new grants be primarily categorical or block grants?					
A. Mostly categorical	51.7	.22*	NS	NS	NS
B. Mostly block	48.3				
Should any new grants include in the distribution formula a factor accounting for the likelihood that a state or locality will be the target of attack (such as location of nuclear plants, major dams, and reservoirs, etc.)?					
A. Definitely/probably yes	82.8	.34*	NS	.35**	NS
B. Definitely/probably no	17.2				
Should federal, state, and local governments shift resources from the war on drugs to homeland security?					
A. Definitely/probably yes	63.8	NS	NS	NS	.23
B. Definitely/probably no	36.2				
Should each state create a cabinet-level department modeled after the federal Office of Homeland Security?					
A. Yes, definitely	4.6	NS	NS	NS	NS
B. Yes, probably	33.1				
C. No	62.3				

grants. Categorical grants also are likely to prevail because (1) they allow members of Congress to target aid to constituents and claim credit for it; (2) there has been a proliferation of suitors for homeland security money; and (3) state and local agencies are repackaging many old aid requests as homeland security necessities.

There was more consensus, though, on one aspect of targeting aid. Fully 82.8 percent of the scholars reported that "it would be appropriate to include in the distribution formula" for such aid "a factor accounting for the likelihood that a state or locality will be the target of attack (such as the Sears Tower in Chicago, location of nuclear plants, major dams and reservoirs, and so forth)." Some 26.5 percent of the respondents said "definitely yes," while 56.3 percent said "probably yes" (see table 2). Again, there was a significant partisan difference, with 87.0 percent of Democrats concurring with this formula, compared to 65.0 percent of Republicans.

Much disagreement was found, however, as to whether "it would be appropriate to include in the distribution formula a factor accounting for the value of each state's or locality's economic base to the national economy." Only 41.5 percent supported an economic-base factor, while 58.5 percent said probably or definitely not. No significant partisan differences appeared, but there was an interesting regional difference. Scholars from the South and Southwest (56.8 percent) and from the West (42.8 percent) endorsed such an economic-base factor more often than did scholars from the presumably more target-rich New England or Mid-Atlantic (31.5 percent) and Midwest (33.3 percent) regions.

In summary, most of the scholars anticipate some increases in federal aid for state and local governments for counterterrorism. By a slight majority, they believe such aid should be categorical, that half or more of the aid should go to local governments, and that grant formulas should include terrorism-vulnerability factors but not necessarily economic-base factors.

Possible Local, State, and Federal Initiatives

In the wake of the terrorist attacks, the state of New York enacted new antiterrorism laws, and the federal Centers for Disease Control and Prevention proposed a draconian Model State Health Powers Act (Copeland 2001). Fully 89.4 percent of the scholars agreed that other states should "follow New York's lead by enacting new laws to combat terrorism through such means as increased criminal penalties, new means to deny sanctuary and financial support for terrorists, improved surveillance, and enhanced cooperation with other jurisdictions." Some 21.2 percent said "yes, completely," and 68.2 percent said "yes, partially." A lonely 10.6 percent responded "no, not at all." Again, there were significant partisan differences: Republicans were considerably more likely than Democrats to agree that states should follow New York's lead.

Although the federalism scholars support state measures to get tough on terrorists, they are not enthusiastic about states creating "a cabinet-level department modeled after the Office of Homeland Security." Nearly two-thirds regarded this as unnecessary, while 33.1 percent

said “yes, probably” and 4.6 percent said “yes, definitely” (see table 2).

A public debate also has developed over whether resources should be shifted away from certain crime-fighting areas, especially the war on drugs, to enhance counterterrorism (AP 2001c; Peirce 2001b). Among the federalism scholars, 63.8 percent generally agreed that federal, state, and local governments should “now shift intelligence and law-enforcement resources from the war on drugs to homeland security” (see table 2). Another 36.2 percent said probably or definitely not. On this question, women (73.1 percent) were more likely to support shifting resources from the war on drugs to homeland security than were men (60.1 percent). There was more division, though, on the proportion of resources to be shifted from the war on drugs. Some 23.0 percent supported a shift of 100 percent–75 percent; 37.0 percent endorsed a shift of 75 percent–50 percent; 30.0 percent supported a shift of 50 percent–25 percent; and 10.0 percent supported a shift of less than 25 percent. Hence, 60.0 percent of the scholars endorsed shifting at least half the drug-war resources to homeland security.

Another debate is whether federal agencies should relinquish certain functions to state and local governments, especially in law enforcement, in order to focus more resources on terrorism. The scholars split almost evenly on whether “Given the allocation of substantial FBI and other federal law-enforcement resources to terrorism, federal law-enforcement agencies should relinquish many domestic law-enforcement tasks now performed by federal agents to state and local law-enforcement officials.” A total of 44.8 percent supported such devolution. In contrast, 46.7 percent said “probably not” and 8.6 percent said “definitely not,” for a total of 55.3 percent not supporting devolution. As might be expected, Republicans were far more likely than Democrats to support devolution. In reality, it appears the FBI will reduce its street-level crime-fighting significantly, but it will not abandon the streets because state and local officials have urged the FBI to stay engaged against bank robberies, drug trafficking, organized crime, civil rights, corruption, and the like. Although Congress authorized the FBI to hire 966 new agents in FY 2002, partly to maintain street-level activity, Congress also reduced the FBI’s drug-fighting budget by 35 percent (Ragavan 2002).

A comparable split occurred in responses to the following statement: “In light of the federal government’s need to focus more on terrorism, Congress should halt the federalization of criminal law that is unrelated to terrorism.” One-quarter (25.0 percent) said “definitely yes,” and 30.3 percent said “probably yes.” Hence, a bare majority endorsed such a halt. Meanwhile, 44.7 percent opposed halting the federalization of criminal law unrelated to terror-

ism. Not surprisingly, Republicans were much more likely than Democrats to endorse a halt.

This question was asked partly because a massive federalization of traditionally state criminal law has occurred since 1968. There are now more than 3,100 federal criminal offenses and more than 50 offenses subject to capital punishment, including those in the Anti-Terrorism and Effective Death Penalty Act of 1996 and the Defense against Weapons of Mass Destruction Act of 1996. During the 1990s, the Republican Congress and the Clinton White House, along with congressional Democrats, seemed to vie for the electoral rewards of being the toughest on crime. Much of the legislation has been little more than symbolic, though, because of the federal government’s limited capacity to combat so many crimes and because of the backlog of criminal cases (such as drug cases) in the federal courts that previously had remained in state courts.

Because of the federal government’s focus on terrorism and its limited force of about 75,000 law enforcement personnel (compared to some 748,000 state and local police), questions can be raised about the efficiency and effectiveness of federal homeland security efforts if federal agencies do not share some terrorism-relevant duties with states and localities and relinquish some other law enforcement functions to state and local police. Civil liberties concerns have been raised as well, not only about new statutes such as the USA PATRIOT Act of 2001, but also about expanding federal law enforcement, especially at the expense of local law enforcement (Stuntz 2002). However, the radical grassroots foundation Resist contends that suppressions of civil liberties are quite intergovernmentally cooperative. “Local police departments, often in cooperation with the FBI or other branches of the federal government, are using a heavier hand to deal with organizations wanting to take dissent to the streets” (Boghossian 2002, 1). This “heavier hand,” though, is the result of post-September 11 fears, as well as the violence that has occurred in recent years during antiglobalization and anti-abortion protests.

To date, there appears to be no massive centralization of federalism with respect to civil liberties. The persons detained secretly by the federal government have been held on immigration charges, a historic and exclusive federal power. There has been no comparable detainment of U.S. citizens. Many observers have pointed to grave threats to civil liberties embedded in federal antiterrorism statutes enacted since 1995; however, those threats are consistent with the bipartisan federalization of criminal law—another centralizing characteristic of coercive federalism since 1968. Most federal criminal statutes either nationalize punitive state laws or permit more punitive punishment than equivalent state laws. The federal

courts, moreover, have been curbing criminal rights for more than two decades. Whether September 11 will accelerate that trend is unknown.

In addition, the kinds of intergovernmentally cooperative assaults on civil liberties reported by Resist may reflect public opinion. Post-September 11 polls have shown that as many as seven in 10 Americans are willing to sacrifice some civil liberties to enhance homeland security. This public sentiment is also reflected in state antiterrorism legislation, which will maintain state footholds in homeland security. At the same time, however, there are no hints from the U.S. Supreme Court that it will overturn the new judicial federalism, whereby some state high courts grant more rights under their state constitutions' declarations of rights than the U.S. Supreme Court grants under the U.S. Bill of Rights. Many state high courts have expanded civil liberties and criminal rights. This area could experience centralization, though. Even if the U.S. Supreme Court sustains the new judicial federalism, federal officials could circumvent and subvert it because they are not controlled by state laws and courts. Thus far, then, civil liberties developments have reflected more continuity than change in American federalism.

In an effort to gauge the extent to which federalism scholars support or oppose federal entry into areas of traditional state and local authority, we asked about the following proposal: "As a result of the September 11 terrorism, Senator Tom Daschle has introduced an amendment to a health and labor appropriations bill that would guarantee collective bargaining rights to firefighters and police officers nationwide." Some 20.7 percent of the scholars agreed strongly, while 32.7 percent agreed somewhat, for a total of 53.4 percent supporting federal imposition of unionization of police and firefighters on all state and local governments. One-quarter (25.3 percent) disagreed somewhat; 21.3 percent disagreed strongly. Again, these results are consistent with the scholars' support for federalization and federal power on most survey items, although there were sharp gender and party differences. Daschle's proposal was endorsed by 72.5 percent of women, compared to 45.8 percent of men. Fully 93.8 percent of the Republicans opposed the proposal, while 68.5 percent of Democrats endorsed it. Recently, many congressional Democrats have proposed to federalize and/or unionize public and private workers deemed relevant to terrorism (for instance, Edward J. Markey's [D-MA] proposal to federalize nuclear-reactor security staff). In contrast, President Bush issued an executive order banning union representation in the offices of U.S. attorneys and four other agencies in the Department of Justice, "out of concern that union contracts could restrict the ability of workers in the Justice Department to protect Americans and national security" (S. Greenhouse 2002).

In summary, majorities of the scholars support state legislation to get tough on terrorists, but they see no need for state cabinet-level offices comparable to the federal Office of Homeland Security. They support a shift of half or more of drug-war resources to counterterrorism, a halt to the federalization of criminal law (though no devolution of federal law enforcement), and federally induced unionization of police and firefighters nationwide.

Appropriate Loci of Responsibility

The federalism scholars generally favored federal agencies when considering responsibility for such matters as airport security and the appropriate agency to contact when a local hospital concludes that a patient might have a communicable illness possibly caused by a terrorist act.

More than half (59.1 percent) of the scholars reported "that airport security with regard to screening passengers and their baggage should be done by employees" of the federal government. Only 9.7 percent believed that these tasks should be performed by employees of a private company, while 16.9 percent said they should be done by local airport authorities. Another 12.3 percent said they should be performed by the relevant state government, and 1.3 percent said they should be done by the relevant county or municipal government. Democrats (75 percent) were far more likely than Republicans (22 percent) to say that federal employees should administer airport security, while Republicans (39 percent) were much more likely than Democrats (2 percent) to say that employees of private companies should screen passengers and their baggage. In addition, scholars from larger cities more often supported federal responsibility for such airport security; respondents from smaller cities supported private companies more often.

Among those endorsing private companies, 31.8 percent said these companies should be under contract with the federal government; 31.8 percent said they should be under contract with local airport authorities; 27.3 percent said the Federal Aviation Administration; 4.5 percent said state governments; and 4.5 percent picked the airlines.

The scholars also were asked, "If a local hospital concludes that a patient might have anthrax, smallpox, or another illness possibly caused by a yet unknown terrorist act, whom should the hospital call first?" More than half (52.6 percent) said the hospital should first call the federal Centers for Disease Control and Prevention. Only 23.4 percent picked the state health department for the first call; 12.4 percent selected the relevant county health department; and 11.7 percent chose the relevant municipal health department.

Another area that has become a great concern to state legislators since September 11 is the authority to quaran-

tine citizens (and animals) in the event of contagions. Therefore, we asked, “If a municipal or local hospital concludes that a patient might have a contagious illness possibly caused by a yet unknown terrorist act, who should most appropriately be assigned the authority to quarantine the relevant neighborhood or entire municipality, thereby preventing movement into or out of the area?” The scholars’ responses were highly disparate, with 22.6 percent choosing the federal Centers for Disease Control and Prevention and 22.6 percent selecting the relevant state health department. Some 19.2 percent selected the governor; 15.8 percent picked the relevant county health department; 8.9 percent chose the relevant municipal health department; 6.8 percent selected the city’s mayor or equivalent elected official; 3.4 percent chose the city’s manager, if there is one; 0.7 percent said that the president of the United States should make the quarantine decision; and none picked elected county officials.

Judicial Federalism

A prominent feature of the U.S. Supreme Court since 1990 has been the role of “The Federalism Five”—Chief Justice William H. Rehnquist and Associate Justices Anthony Kennedy, Sandra Day O’Connor, Antonin Scalia, and Clarence Thomas—in forging a new federalism jurisprudence that is highly friendly to the states compared to the eras of Chief Justices Earl Warren (1953–69) and Warren E. Burger (1969–86). This jurisprudence has become controversial, especially for such decisions as *United States v. Morrison* (529 U.S. 598), which struck down the state court civil-remedy provision of the Violence Against Women Act as an overreaching of Congress’s commerce power. Indeed, 38 state attorneys general filed *amicus* briefs supporting the act. Consequently, the future composition of the Court was a significant issue underlying the 2000 presidential election (Kincaid 2001b).

Nineteen days after September 11, Linda Greenhouse published an editorial in the *New York Times* (2001) that quoted six “experts” who asserted that terrorism has doomed the Court’s federalism jurisprudence. Four of the experts criticized this jurisprudence harshly, with one labeling it “dangerous” in the aftermath of September 11. Another commentator argued that “the Court’s near-obsession with the ‘dignitary’ interests of states and their officials suddenly seems peculiarly misplaced. However much we may revel in quaint notions of federalism during quiet times, in crisis, as history shows, we expect and demand a national, federal response to problems of national scope” (Lazarus 2001). However, no commentator cited a specific state-friendly Court ruling that could conceivably hamper the country’s ability to combat terrorism.

Therefore, we asked, “In a number of recent decisions (such as *New York v. U.S.*, 1992; *U.S. v. Lopez*, 1995; and *Alexander v. Sandoval*, 2001), the Supreme Court reached decisions ‘friendly’ to state governments. If the Court had ruled on these cases and others like them after the terrorist attacks of September 11, do you believe that for most of these, the Court should still rule for the states, as it did earlier, or should the Court now rule for the federal government?” In a marked reversal from their responses to previous questions, 59.2 percent said the Supreme Court should still rule for the states. However, 31.2 percent responded they were “not sure,” while only 9.6 percent believed the Court should reverse course and now rule for the federal government. Here also, there were significant party differences. Only 46.9 percent of Democrats believed the Court should still rule for the states, compared to 93.8 percent of Republicans.

When asked if they believed the Supreme Court will discontinue its state-friendly decisions and return to more federal-friendly decisions, however, two-thirds said “probably not.” Only 11.5 percent said “probably yes,” while another 22.3 percent said they were unsure (see table 3). It did not take long for the respondents’ predictions on this point to be proven accurate. In its first important federalism case after the September 2001 attacks, the Supreme Court issued a ruling on May 28, 2002, that significantly expanded the Eleventh Amendment protections granting states immunity from private lawsuits to include protections from actions initiated by private parties brought before agencies of the executive branch (*Federal Maritime Commission v. South Carolina Ports Authority*).

We then asked, “Do you believe that the Supreme Court now should discontinue its state-friendly decisions and return to an era of more federal-friendly decisions?” Here, we did not provide a “not sure” response. As a result, 26.6 percent of the scholars said “definitely not” and 39.6 percent said “probably not.” Only 9.7 percent said “definitely yes,” and 24.0 percent said “probably yes” (see table 3). Again, party differences were significant. More than half (52.5 percent) of strong Democrats believed the Court should discontinue its state-friendly rulings, compared to 5.6 percent of strong Republicans. Additionally, scholars from New England and the Mid-Atlantic were somewhat more likely than scholars from other regions to say the Court should discontinue its state-friendly rulings.

Considering expectations that Congress would federalize airport security, we asked whether “federal courts will reverse recent decisions stating that federal requirements for airport guards and security training must supersede state requirements, even in those instances where state requirements are more stringent.” Only 25.5 percent said “probably yes,” while 50.3 percent said “probably no.” Another 24.2 percent were not sure. When asked if the federal courts

Table 3 Implications for Judicial Federalism and Public Trust and Confidence

Questions	Percent responses	Party ID	Significant Control Variables		
			Region	Size of community	Gender
<i>Will the Supreme Court now discontinue its trend toward state-friendly decisions and return to an era of more federally-friendly decisions?</i>					
A. Probably yes	11.5	NS	NS	NS	.30**
B. Probably no	66.2				
C. Not sure	22.3				
<i>Should the Supreme Court now discontinue its state-friendly decisions and return to an era of more federally-friendly decisions?</i>					
A. Definitely/probably yes	33.7	.50**	.32*	NS	NS
B. Definitely/probably no	66.2				
Do the high proportions of Americans who say that, following the September 11 attacks, they trust the national government to do "what is right" represent:					
A. Probably a long term shift, lasting for a year or more	31.8	NS	NS	NS	NS
B. Probably a short term trend, lasting for a year or less	68.2				
Will the events of September 11 probably:					
A. Cause a decline in the public's trust and confidence in state and local governments?	4.5	NS	NS	NS	NS
B. Cause an increase in the public's trust and confidence in state and local governments?	47.1				
C. Have no effect on the public's trust and confidence in state and local governments	48.4				

"should reverse those decisions and give more authority to state governments," 58.6 percent said no, 19.7 percent said yes, and 21.7 percent were not sure.

Thus, a majority of the scholars believe the terrorism of September 11 should not induce the U.S. Supreme Court to reverse its state-friendly jurisprudence. Two-thirds of the scholars believe the Court will not do so anyway. Again, they expect more continuity than disruption in American federalism.

Public Trust and Confidence in Governments

The post-September 11 surge in public trust and confidence in the federal government "to do what is right" to levels not seen since 1968 (Stille 2001) led us to ask whether the surge will be long or short in duration. More than two-thirds of the scholars said that the surge of confidence will probably be "a short-term trend, lasting for a year or less" (see table 3). Less than a third concluded that it likely will be "long-term, lasting for a year or more." The scholars' views of public opinion are consistent with longstanding findings about the initial "rally around the flag" effects of major wars and crises, effects that usually erode over time (Mueller 1973). Indeed, by May 2002, various polls indicated that public trust and confidence in the federal government and in President Bush had ebbed somewhat. The public, moreover, has long expressed more confidence in the federal government to do what is right in national security and defense than in domestic social policy. Former President George Bush learned this lesson when the after-

glow of the Gulf War was dimmed by the public's domestic economic concerns during the 1992 election.

In light of the post-1970s trend toward greater public confidence in state and local governments relative to the federal government (Cole and Kincaid 2000), we asked about the anticipated impact of the terrorist incidents on trust in states and localities. Here, the scholars offered more closely divided responses. Nearly half said the events of September 11 "will probably have no effect on the public's trust and confidence in state and local governments," while 47.1 percent believed the events "will probably cause an increase in" such trust and confidence. Only 4.4 percent predicted a probable decline in trust and confidence in state and local governments (see table 3). Thus, in the view of most federalism scholars, the post-September 11 surge of confidence in the federal government, which they believe will be short-lived, has not come at the expense of confidence in state and local governments. Perhaps instead, because of the heroic behavior of police officers, firefighters, and other local public servants, as well as the leadership of New York City mayor Rudolph Giuliani, nearly half the respondents believed the terrorist events will probably boost the public's trust and confidence in state and local governments.

Conclusions

Contrary to the responses of the mass media and many media scholars to the tragic events of September 11, 2001, most members of APSA's Section on Federalism and Intergovernmental Relations do not believe the terrorist at-

References

tacks will or should significantly alter intergovernmental relations in the United States or reverse the U.S. Supreme Court's state-friendly jurisprudence. For these scholars, terrorism has not killed federalism or rendered it a quaint luxury of quiet times; instead, "continuity in crisis" perhaps best summarizes their overall views.

Generally, the scholars endorse a more federalized than devolutionized approach to counterterrorism, though with substantial intergovernmental cooperation and coordination. At the same time, the disparate responses to many specific policy choices do not offer clear-cut guidance to federal, state, and local policy makers. Perhaps like the real-world situation of the fall of 2001, the scholars were also not sure whom they should call first in the event of a terrorist attack.

This survey also revealed partisan differences on many policy issues. In principle, one would not expect to find many, if any, significant demographic differences among scholars engaged in objective social science. Yet, partisanship was the single most significant variable distinguishing the scholars' responses, especially on policy choices. The scholars' views parallel the real-world political debates and developments that have followed September 11, and they highlight some of the key issues being addressed nationwide by federal, state, and local officials, as well as by citizens and the media.

But the survey results also indicate that the scholars do not share the hysteria that often characterized the media and media-prominent scholars after the terrorist attacks. The results parallel those of most reputable post-September 11 polls, which indicate that the general public, while shocked, angered, and grieved by the terrorism, responded with a "mature and nuanced view" (Langer 2002, 15) of the crisis. The public has not rushed to embrace draconian antiterrorism measures or to demonize the Islamic world and Arabs and Muslims resident in the United States. These poll results are similar to findings during the 2000 presidential election controversy that, despite many media claims of a constitutional crisis, the general public never regarded the controversy as a constitutional crisis. Perhaps a bedrock calmness and stability in public and scholarly opinion in the face of crises accounts for the durability of American federal democracy and its ability to respond rather effectively, to date, to many different kinds of crises.

Acknowledgments

The authors appreciate the technical assistance of Ms. Patricia Nickel, doctoral student in the School of Urban and Public Affairs, University of Texas at Arlington, in preparation of this article.

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