INTERSTATE AGREEMENTS IN THE AMERICAN FEDERAL SYSTEM

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By focusing almost exclusively on that species of interstate agreement designated by the term "compact," scholars of American federalism have obscured the vast network of agreements between states outside of the compact area. In this article, an attempt is made to provide a more comprehensive view of the place of interstate agreements in the American federal system. By reference to statutes, case law, uniform laws and interstate compact and organizational activity, the authors survey a broad range of functional collaborations and agreements of varying degrees of formality. In the process, they develop a heuristic model which should prove useful to both lawyers and political scientists in analyzing the contours of the American pattern of allocation of decision competence in interstate agreements.

I. THE FEDERAL PROCESS: A COMPARATIVE MODEL

Every political process may be viewed as the interactions—in patterns of collaboration and conflict—of smaller groups, varying in inclusivity, duration and power. A "federal" system is distinctive in that a transgroup central institution has been established, and the normative code of interrelations between the component groups and the center

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1. This study draws on more general theories developed in McDougal, Lasswell & Reisman, The World Constitutive Process of Authoritative Decision (pts. 1-2), 19 J. LEGAL ED. 253, 403 (1967), reprinted in 1 BLACK & FALK, THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 73 (1969) [hereinafter cited as McDougal, Lasswell & Reisman]. The theories are located in the broader flow of jurisprudence in that work. Theories about International Law: Prologue to a Configurative Jurisprudence, 8 VA. J. INT'L LAW 188 (1968). All the work in this article, including the appendices and the adaptation of categorizations made elsewhere, has been prepared by the authors.
2. For a particularly useful formulation of this perspective, see Pospisil, Legal Levels and Multiplicity of Legal Systems in Human Societies, 11 J. CONFLICT RESOLUTION 2 (1967), republished in revised form in Pospisil, Anthropology of Law: A Comparative Theory 97-127 (1971).
3. So understood, a federal system need not be territorial, being comprised, instead, of a collection of non-territorial communities or a mixture of territorial and non-territorial communities. Nor need a federal system be necessarily suffused with democracy or notions of equality and pluralism, as Proudhon apparently believed; on the contrary, it can be used by an elite as a technique for retarding the vigorous growth and flowering of diverse group identities, as seems to have been the case in the early Soviet experience. Aspaturian, The Theory and Practice of Soviet Federalism,
is to a minimum extent formulated. The political scientist and legal scholar who study comparative federalization are primarily concerned with the authoritative code regarding allocation of power for decision-making. Schematically, the scholar asks himself the following question: Who among the competing groups in the process under investigation is authorized by the formal code as well as the unformulated but operational code to make which decisions in which sectors of the common social process? By operational code, we mean the demands and related expectations actually held by politically relevant strata within the process about who is authorized to make decisions.

We distinguish the operational code from the “myth system.” The myth system comprises those official ideas and concepts which participants within a system use to describe and perhaps actually believe

12 Journal of Politics 20 (1950). We are extremely skeptical about arguments such as those of Professor Elazar, holding that certain values are inherent in federalism or that certain racial, ethnic or cultural groups have some sort of predilection for federal systems. Elazar, Federalism, 5 Int'l Ency. Soc. Sci. 353 (1968).

4. Any other aggregate of interacting groups may be studied cumulatively in terms of (1) a functional center created by voluntary coalitions or de facto disparities in power, and (2) a largely unformulated code for the interrelations between the componen tent groups inter se and the center. In this respect, all group interactions may be studied in terms of degree of, or trends toward or away from, “federalization.” Indeed, many calls for federalization, on the global, regional or national level prove, on analysis, to be demands not for creations ex nihilo, but for variations in and express formulations of complex patterns of group interaction. In comparatively few cases is the demand to innovate group interrelations which were virtually nonexistent before.

There may, however, be demands to change the basic style of interactions. As Georg Simmel has observed, stable interactions need not be reciprocally amiable. Simmel, The Sociology of Georg Simmel (Wolff ed. 1950). Indeed, functional federalisms may be quite hostile. Hence some federal innovations may seek primarily to restructure interactions from a predominantly competitive character to a predominantly cooperative character. A prime example of this phenomenon is found in Jean Monnet’s efforts toward a restructuring of European interaction. On the other hand, a demand to establish more intense interaction and a defined center between, let us say, Canada, or perhaps Quebec and a number of Caribbean states would be extremely innovative federalism.

5. The term “operational code” seems first to have been used by Nathan Leites in The Operational Code of the Politburo (1951) and in his more expanded work A Study of Bolshevism (1953). Leites used the term in a sense quite different from the one we propose to use and culled his data from only one component of behavior. Anxious to study “the spirit of a ruling group,” he chose conceptions of political “strategy” and analyzed them by scrutiny of “the entire recorded verbal production of Lenin and Stalin.” By operational code we mean the demands and related expectations actually held by politically relevant strata. Because of the fact that the elites about whose subjectivities we must make inferences are extremely sophisticated in the manipulation of signs and symbols, and because psychological self-censoring methods are known to be most effective in controlling overt expression, we are reluctant, as a matter of theory or practice, to rely solely on the manifest content of overt communication as a technique for inferring actual demands and expectations. In addition to manifest content, we urge that latent content also be studied, e.g., by content analysis. Most important, all inferences about operational normative codes should be gained and tested by references to practices actually undertaken. It is worth emphasizing that people may act on the basis of a code of which they are not consciously aware.
to be relevant to decision, but which the comparative observer concludes have only a mythic function.\textsuperscript{6} We also distinguish the operational code from pretended or semantic law, \textit{i.e.}, from prescriptions which are formulated in their cultural context as law and which may have been intended to be law but which have no controlling base and are not widely expected to acquire such a base.\textsuperscript{7}

Part of the operational code is "formulated" law, those prescribed expectations of which participants are comparatively aware. Formulated law may be produced in the formally expected legislative procedures of the process under consideration, but it will also include expectations which have been reached informally and perhaps in ways and by criteria dissonant with semantic law or myth system. The bulk of law in any process is "unformulated." It is comprised of complex shared expectations, most of which have been generated or reinforced in social interaction or have been transmitted as part of the general code in which all group-members are enculturated.\textsuperscript{8} The word "custom" has been used in the literature to refer to both formulated but non-legislated law as well as to the unformulated component of prescription.\textsuperscript{9}

The lawyer distinguishes between sectors in which decisions are supervised and policed by the community with significant degrees of coercion and sectors which the community leaves to the private arrangements of the parties themselves. The former sector can be called the "public order," the latter the "civic order."\textsuperscript{10} The line between them shifts in response to other events. Public order may expand in times of high crisis. It may, for example, invade what is otherwise a "free" market or a family. While the student of comparative law is always concerned with where the line is drawn, he generally conce

\textsuperscript{6} The myth system may, for example, record that it is the Oracle that makes decisions for the confederation of Hellenic city-states. The observer concludes, however, that the decisions are made by the elite of each city-state in a fluid but roughly coarchical system. The myth system may proclaim that all states in the international system are "sovereign and equal" and are bound only by those prescriptions to which they freely consent. The observer concludes, however, that significant parts of international lawmaking are a superpower prerogative with comparatively little consultation of less powerful communities. Whatever its self-description, myth system is not the whole of law.

\textsuperscript{7} \textsc{Lasswell & Kaplan}, \textit{Power and Society} 137 \textit{et seq.} (1950) [hereinafter cited as \textsc{Lasswell & Kaplan}].

\textsuperscript{8} McDougal, \textsc{Lasswell & Reisman}, \textit{supra }note 1. See also \textsc{Goffman}, \textit{Behavior in Public Places: Notes on the Social Organization of Gatherings} 13 \textit{et seq.} (1963).


\textsuperscript{10} For discussion of the conceptions of public and civic order, see \textsc{Arens & Lasswell}, \textit{In Defense of Public Order: The Emerging Field of Sanction Law} (1961); \textsc{Reisman}, \textit{Nullity and Revision: The Review and Enforcement of International Judgments and Awards} 252-58 (1971).
trates on the content of the operational code of the public order.

The operational authoritative code of any group or aggregate of groups is, then, those formulated and unformulated expectations about, *inter alia*, the allocation of decision competence in the public order.

Because the comparatist deals with a diversity of cultural, legal and political phenomena, he cannot adopt the descriptive or mythic language of any single system without distorting perceptions in different cultural settings. His investigation must follow a transcultural model in which dissimilar institutions which are functional equivalents and similar institutions which are functional disequivalents can be meaningfully compared.11 We propose the following model.

By “decision” we will refer to choices about the production and allocation of values within a process. An “authoritative decision” is one made in conformity with the formulated or unformulated operational code or sets of expectations held by politically relevant strata about who is endowed with decision-making competence and what criteria ought to be applied.

A decision is comprised of seven component functions which may be sequential:12

- the intelligence function—the gathering, processing and disseminating of information relevant to the social choices in all other decision functions,13
- the promotion function—agitation for the adoption of certain preferred policies as “prescriptions” or as law,
- the prescription function—the adoption of policies as authoritative or as law,
- the invocation function—the assertion that a prescription has or is being violated and the provisional characterization of such deviation,
- the application function—the authoritative specification of a violation or deviation from prescriptions and the designation and implementation of a sanction program,
- the termination function—the abrogation of existing prescriptions and the designation and implementation of ameliorative programs,
- the appraisal function—the assessment of the aggregate performance of the decision process in terms of its goals and the ascription of personal or structural responsibility for goal discrepancies or for brilliant goal achievements.

Decision competence is always allocated for a social purpose. We distinguish between allocations for power and other decisions. The most critical power decisions are those of constitutive magnitude, those

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11. This aphorism is Yale Law School Professor Leon Lipson’s *viva voce*.
which innovate, maintain or terminate fundamental institutionalized
power or authority relations in the community.\textsuperscript{14} Hence, of funda-
mental import will be the code for allocation of constitutive com-
petence.

Other decision sectors may be described by reference to community
value processes: wealth, enlightenment, skill, affection, health and
well-being, respect and rectitude.\textsuperscript{15} Thus, the proposed heuristic
program for the comparative scholar of federalism provides a method
for determining who in the system is authorized by the operational
code to prescribe, for example, for wealth matters and market and
commercial relations, for enlightenment matters such as the content
and quality of education, and for the development and regulation of
occupational and professional skills.

In a federal system, an authoritative code prescribes the conditions
of participation in each of these functions. The code itself is estab-
lished and maintained by a constitutive process which draws on au-
thority and effective power in order to establish and maintain the funda-
mental institutions of authoritative decision-making.

A written constitution, a prominent documentary formality in a fed-
eral system, is a product of the constitutive process. Since it is usually
formulated with certain problems paramount in the minds of its fram-
ers and is subject to all the cultural influences of the milieu, it ignores
many major fundamental issues. Those which are so ignored become
prescriptions of the unformulated code, often held at levels of con-
sciousness so deep that those who are decisively influenced by them
are quite unaware of their operation.

The American system is a case in point. At a rather high level
of generality, the framers established an allocation of competence be-
tween the center and peripheries.\textsuperscript{16} But influenced by Hooker and
Smith and the Montesquieu constitutional tradition,\textsuperscript{17} the formulation
was a primarily negative one, constituting a limitation of powers. Much
was left out and was established or confirmed thereafter in a complex
code manifesting varying degrees of formulation. This code can be
reconstructed by the comparative scholar by examination of document-
ary evidence and, to a great extent, by inferences of expectations from
behavior.

II. AGREEMENT FUNCTIONS IN A FEDERAL SYSTEM

While the making of agreements by component groups in a federal

\textsuperscript{14} See generally McDougal, Lasswell & Reisman, supra note 1, at 253, 256-59.
\textsuperscript{15} Lasswell & Kaplan, supra note 7, at 55 \textit{et seq}.
\textsuperscript{16} See text accompanying notes 20-24 infra.
\textsuperscript{17} The slow development of this focus is summarized in McLwain, Constitution-

system assimilates virtually all decision functions, it principally involves intelligence, promotion and actual prescription. Hence the operational code can be reconstructed in terms of the allocation of competence to (1) gather intelligence relevant to agreements for the diverse social value sectors of the community process; (2) promote alternative policy choices for agreement for the diverse social value sectors; and, (3) prescribe authoritative policy for diverse social value sectors. For each of these activities, the inquirer is concerned with who has been authorized to perform these decision functions with regard to the making of agreements between states of a federal system.

One should not, we would add, expect homogeneity. It is quite likely, for example, that the operational code of the American system will permit states to collaborate in gathering information and even in promoting a particular program which they wish. The prescription, however, will be reserved for the federal center. Alternatively, research in certain sensitive areas may be restricted to the center which will, at a moment convenient to it, publish the findings for possible interstate promotion and prescription.

Schematically, our investigation thus far is represented by Figure One.

The formal model inquires into two types of interstate activity. The first is "cooperation," i.e., activities in which the officials of different states agree and do work together with varying degrees of institutional integration; the second is "coordination," i.e., activities in which the officials of different states do not work together but perform complementary actions with awareness of coordination. Thus, the establishment of a joint port-authority between adjacent states would involve cooperation, whereas the separate actions of port authorities in adjacent states trying to follow each other because of an interest in uniformity would be characterized as coordination. In a strict sense, coordination does not involve agreements or the making of compacts but, since functionally it achieves the same result, we include it here.

The formal model considers only the allocation of competence between the federal center and the separate states. Although this has some salience in the American context, it is an artificial cutoff. The comparative scholar will note that many other groups and individuals in the American constitutive process may, under the operational code, have a degree of competence to make agreements inter se which are part of the aggregate of community prescription. Groups such as trade associations, religious groups in different states, professional and

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18. Coordination is most common when (1) without actual consultation the judges in different states attempt to secure uniform treatment of certain cases because they deem it within their common interest, or (2) state legislatures enact nearly identical statutes in a social value sector.
For each function, inquiry into the federal public order can be further summarized as follows:

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skill groups, may all promote and make agreements across state lines. Where the federalizing process is studied in a non-territorial context, these groups become extremely prominent.

III. FORMAL CONSTITUTIONAL ALLOCATIONS OF PRESCRIPTIVE COMPETENCE

The framers of the American Constitution did not formulate an explicit or comprehensive system for allocating decision competence between center and periphery. They did, however, provide some guidelines as well as a general framework for allocating in the future. The tenth amendment\(^\text{19}\) expresses the informing principle: the government is empowered to act only as specified in the papers of its creation, the Constitution. Powers not enumerated are withheld by “the people” for themselves\(^\text{20}\) or conferred by them on their state governments. But the tenth amendment does not make specific allocations. Its circularity, so characteristic of legal formulation, virtually precludes allocating decisions. Since the so-called enumerated powers\(^\text{21}\) draw their form \textit{ab initio} from the words of the Constitution, their boundaries are necessarily plastic and are shaped by legal craft and the exigencies of power.\(^\text{22}\) Indeed, the framers consciously omitted the word “expressly” before “delegated” in the amendment, plainly unwilling to limit the central government’s powers to those \textit{expressly} enumerated.\(^\text{23}\)

The result is an allocating process in which the center invokes “ancillary” and “necessary power” arguments against state demands for

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19. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” \textit{U.S. Const. amend. X.}


21. The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce; with which last, the power of taxation will for the most part be connected. The powers reserved to the Several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement and prosperity of the State.

\textit{The Federalist} No. 45, at 313 (Cooke ed. 1961) (Madison).

22. Degree of generality or ambiguity in communications is often a strategic device. The contention is that the vagueness in meaning in the Constitution is not all unintentional, since the framers drafted the Constitution to be an organic document adaptable within broad limits to the changing needs of the times. \textit{See}, e.g., Olmstead v. United States, 277 U.S. 438, 472-79 (1928) (Brandeis, J., dissenting). \textit{Cf.} Katz v. United States, 389 U.S. 347 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965).

23. The Articles of Confederation, specifically Article II, limited the central government’s powers to those “expressly delegated.” As a result, Congress was forced, for want of authority, to forbear from taking essential actions or to act \textit{ultra vires}. \textit{See} 2 \textit{Story, Commentaries on the Constitution of the United States} § 1907, at 652-53 (5th ed. 1891) [hereinafter cited as 2 \textit{Story}].
power sharing. The fundamental importance of the tenth amendment is, thus, that it establishes the principle of allocation of competence between the center and the periphery. 24

The Constitution contains provisions explicitly regulating agreements between the states inter se. These include the article I, section 10 prohibition against treaties, alliances and confederations, among two or more states or between states and a foreign nation. With the unsuccessful Confederation experience in the background, the obvious interest in limiting such state activity was to prevent the emergence of one or more factions that would rival the central authority and render ineffective its efforts to harmonize the interests of the various states and to preserve the Union. 25 Hamilton, more an advocate for the center than a disengaged scholar, may have exaggerated the fear shared by many of the drafters:

It will always be far more easy for the State Governments to encroach upon the national authorities than for the National Government to encroach upon the State authorities. The proof of this proposition turns upon the greater degree of influence which the State Governments, if they administer their affairs with uprightness and prudence, will generally possess over the people. 26

Despite the fear of state encroachment on federal authority, the framers did not prohibit all contracts between states or between states and a foreign power. In article I, section 10, they authorized states to enter into congressionally-approved compacts and agreements. They obviously recognized the advantages of the continued 27 use of such compacts in settling border disputes and adjusting other differences.

24. Despite these ambiguities in the implied powers doctrine and in the wording of the enumerated powers, the tenth amendment can still be read to convey a mood, to enunciate the principle of a central authority with limited powers. Thus, although the tenth amendment does not prescribe with any precision the allocation of decision competence in the federal structure, it does render suspect any attempt to find elsewhere in the Constitution a grant of limitless decision competence to the central government. A small minority of commentators have purported to find just such a grant in art. I, § 8: "The Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and provide for the common Defence and general Welfare of the United States . . . ." See, e.g., 2 ELLIOT, DEBATES ON THE FEDERAL CONSTITUTION 327-28 (2d ed. 1836). The generally accepted view, however, is to maintain a political balance by harmonizing this clause with the enumerated powers doctrine, reading the "to" preceding "pay the debts" as "in order to" and thereby limiting the import of the clause to the taxing and spending power. 1 STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 905, at 662-63 (5th ed. 1891) [hereinafter cited as 1 STORY].


27. For a compilation of compacts made prior to 1789, see Frankfurter & Landis, A Study in Interstate Adjustments, 34 YALE L. J. 685, 730-34 (1925) [hereinafter cited as Frankfurter & Landis].
On the other hand, the framers looked to Congress to disapprove compacts that threatened to take on the feared qualities of the prohibited "treaties, alliances and confederations." With the effective consolidation of the Union, this formal mechanism for the approval of compacts receded in importance. In practice, congressional approval has been almost uniformly automatic. Moreover, the formal approval mechanism tends to allocate to the periphery the far more significant and copious body of law, formulated and unformulated, governing relations between states and not reviewed, in this manner, by Congress.

Article III, section 2, establishes original jurisdiction in the Supreme Court over disputes between the states. The Court thus retains decision competence where differences under a compact arise or where other interstate mechanisms fail to function harmoniously. This allocation is of minimal significance, however, as states, rather than subject their differences to ad hoc judicial resolution, often press toward voluntary agreements (whether in the form of compacts or as less formal and formulated law). On the other hand, the Supreme Court may prescribe substantive law "interstitially" through the device of precedent.

In this respect, the fourteenth amendment is a significant basis of central competence. It authorizes the federal judiciary to appraise state and interstate exercises of decision competence for conformity to the requirements of the due process, equal protection, and privileges and immunities clauses. The full faith and credit clause, article IV, section 1, constitutes a significant force governing interstate relations. Essentially it obligates each state to accord great deference to the public acts, records and judgments of other states when called upon to enforce them.

But even here the operational code is not absolute. For example,

28. 2 Story, supra note 23, at § 1403, at 276.
29. Ridgeway, Interstate Compacts: A Question of Federalism 20-24 (1971). As the author notes, however, there has been a trend in recent years toward greater circumstances on the part of Congress. Id. at 22.
30. "The judicial Power shall extend ... to controversies between two or more states ..." U.S. Const. art. III, § 2.
31. Frankfurter & Landis, supra note 27, at 705-09.
32. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV, § 1.
33. They [the framers] intended to give, not only faith and credit to the public acts, records and judicial proceedings of each of the States, such as belonged to those of all foreign nations and tribunals; but to give to them full faith and credit; that is, to attribute to them positive and absolute verity, so that they cannot be contradicted, or the truth of them be denied, any more than in the State where they originated.
2 Story, supra note 23, at § 1310, at 191 (footnote omitted).
article IV, section 2, addresses the issue of interstate rendition. Despite its ostensibly mandatory language—a fugitive from justice "shall," upon request of the authorities of the state from which he has fled, be returned to that state—the rendition clause has not been construed to command a governor to deliver up a now-resident fugitive to the state demanding his return.\textsuperscript{34} The clause is thus merely precatory in nature; binding procedures must come from national legislation or interstate agreement.\textsuperscript{35}

Although both the center and the peripheral units participate in the process of formal amendment to the Constitution, the decisive role is reserved to the States.\textsuperscript{36} Whether they or the two Houses of Congress have initiated the amendment process, amendments require ratification by three-fourths of either the state legislatures or of specially convened Conventions of the states. Formal amendment is, of course, only the tip of the iceberg; the federal apparatus, as we shall see, is constantly involved in fundamental but informal amendments to the Constitution.

The commerce clause\textsuperscript{37} has emerged as the primary instrument for expanding the central authority's decision-making powers. Whatever the framers may have intended, Congress, with the approval or at least the acquiescence of the Supreme Court, has increasingly employed the clause as a vehicle both for intervention into seemingly local transactions and for regulation of interstate activities of an arguably non-commercial nature.\textsuperscript{38} Such increased intervention into so many ostensibly intrastate affairs has resulted in the diminution to near invisibility of the zone of intrastate transactions immune to the exercise of federal power.\textsuperscript{39} Moreover, concomitant with increased federal intervention

\textsuperscript{34} See New Jersey v. New York, 30 U.S. (5 Pet.) 284 (1831).

\textsuperscript{35} The Fugitive Felon Act of 1934 § 408(e), 18 U.S.C. § 1073 (1970), has settled this matter.

\textsuperscript{36} The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress . . . . U.S. Const., art. V. Madison was perhaps overformalistic when he assumed that article V would restrain changes with "extreme facility"; the federal apparatus quickly developed myriad ways of changing the constitution in the course of decision. But he was quite accurate in noting that it "moreover equally, enables the general, and the state gov'ts, to originate the amendment of errors, as they may be pointed out by the experience on one side or on the other." The Federalist No. 43, at 296 (Cooke ed. 1961) (Madison).

\textsuperscript{37} "The Congress shall have Power . . . [to] regulate Commerce with foreign Nations, and among the several States . . . ." U.S. Const., art. I, § 8.

\textsuperscript{38} See text accompanying notes 101-04, 110-11, 124-26, 133-35 infra.

has been the emergence of a zone of interstate transactions beyond the regulatory competence of any state whether or not Congress has entered the field.\textsuperscript{40} In a middle zone between these two, the state retains decision competence over issues not yet preempted by Congress\textsuperscript{41}—one example of the operation of the supremacy clause in allocating decision competence. The regulation of noncommercial matters has amounted to a congressional appropriation to itself of a general police power prescriptive in itself and supervisory of interstate and intrastate prescriptions.\textsuperscript{42}

IV. TRENDS IN INTERSTATE AGREEMENTS

For purposes of our present inquiry, we assume that interstate agreements manifest themselves in formal compacts, continuous associations and uniform state laws.\textsuperscript{43} A compact involves formal interstate activity and the center may participate by approving the compact or, a recent development, by becoming an actual party to it.\textsuperscript{44} Compact activity may result in all three decision functions or only the intelligence function. In other words, parties may either bind one another to act uniformly or do no more than agree to discuss a mutual concern and to conduct joint inquiry.

Interstate associations, groups drawing a substantial part of their


\textsuperscript{42} See, e.g., Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); United States v. Darby, 312 U.S. 100 (1941); Brooks v. United States, 267 U.S. 432 (1925); Champion v. Ames, 188 U.S. 321 (1903).

\textsuperscript{43} There are, of course, many other ways in which agreements may be concluded between both territorial and non-territorial units of a federal system. In particular, tacit agreements, established in an earlier phase through claims asserted by behavior and deferred to by behavior and thereafter transmitted as "the way things are done" probably constitute a complex filagree of agreements between different levels of the apparatuses of state and local governments in the United States. Where, for example, a state line divides two townships which are, in fact, integrated into a single functional community, evidence of agreements allocating competence between the police departments in each township may be found in internal memoranda dealing with contingencies for entering the other "state" or deferring to entries by the out-of-state police. Plainly research into this web of agreements, the real fabric of the American federal system, presents formidable field problems, whose solution is beyond the scope and the resources available for the present study. As a move in what we believe to be the right direction, we have extended the scope of compacts to include uniform laws, interstate associational activity which performs the functions of agreement making, and patterns of coordination. The data we have used is comprised of the available statistics and records of the activities of interstate associations.

membership from state officials, conduct informal cooperative activities that may or may not include federal participation.\(^{45}\) Each such association operates according to its scope of ambition. This may range from a mere forum for interchange of ideas (intelligence) to a serious attempt to bring its participants to policy agreements (promotion and prescription). The precise decision functions performed will be determined both by scope of ambition and the decision competence and effective power of the individual participants. Thus, if its members may prescribe (e.g., its members are officials who issue regulations), the association may perform an interstate prescriptive function and probably does perform at least a promotional function. On the other hand, if its members are once-removed from formal prescriptive activities (e.g., administrative or legislative officials whose suggestions will not be rubber-stamped by the legislature), the association will rarely do more than promote. This is, we hypothesize, because the level of agitation necessary for effective promotion must generally increase in direct proportion to the social distance between promoter and prescriber.

Uniform laws are often the product of informal interstate cooperation without federal participation. One example is the National Conference of Commissioners on Uniform State Laws. This conference, composed of lawyers appointed by the governors of their respective states, primarily performs an intelligence function. The number of "recommended" uniform laws is constantly corrected. The National Conference will declare obsolete or superseded laws it had formerly approved. These laws will then be withdrawn from the recommended list.\(^ {46}\) Hence activity in the corrected list is a concise indicator of the intensity of this intelligence activity. The number of jurisdictions adopting the uniform laws is a coordinate index for trends in informal interstate promotion and prescription. The Council of State Governments, an amalgam of 50 state commissions with central and regional secretariats,\(^ {47}\) is the principal promotional arm of the National Conference. Yet, more focused agitation is practiced by other interstate associations, state officials acting together cooperatively and coordinately below the associational level, and private interest groups. Hence, the enactment statistics for uniform laws tentatively reflect broadly on interstate promotion in general rather than on the promotional competence of the Council.\(^ {48}\)

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\(^{45}\) For specific examples, see App., Table B1.

\(^{46}\) For a list of acts withdrawn because obsolete or superseded, see NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM STATE LAWS 363-66 (1970).

\(^{47}\) For a summary of the history and structure of the Council of State Governments, see REPORT OF THE CONNECTICUT COMMISSION ON INTERGOVERNMENTAL COOPERATION (1941).

\(^{48}\) This judgment is, however, subject to modification if empirical studies reveal
INTERSTATE AGREEMENTS

Tables A, B and C summarize the results of our research into these three species of interstate agreement activities. The discussion to follow will expand on and explain these compilations.

A. Health and Well-being

1. Intelligence

The Crime Control Act of 1934, with its consent-in-advance to the formation of interstate compacts to abate criminal activity, gave initial impetus to formal activity in this value sector. The compact activity in the last two decades is approximately three times that of greater Council influence than assumed. Similarly, these statistics are felt to reflect trends in informal coordinative prescription, but empirical research may reveal that the Council’s promotional competence amounts to prescription (hence, cooperative prescription). Although ten legislators customarily sit on each state commission, see note 47 supra, we assume that a commission recommendation lacks prescriptive force in the state legislature.

49. The principal sources for this data are: THE COUNCIL OF STATE GOVERNMENTS, INTERSTATE COMPACTS, 1783-1970: A COMPILATION (1971) [hereinafter cited as C.S.G.]; the texts of the individual compacts (cited to the statutes or session laws of a signatory state); NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM STATE LAWS (1970); UNIFORM LAWS ANNOTATED [hereinafter cited as U.L.A.]; ENCYCLOPEDIA OF ASSOCIATIONS (ed. M. Fisk, 7th ed. 1972) [hereinafter cited as ENCY. OF ASSOC.]; GRAVES, UNIFORM STATE ACTION (1934) [hereinafter cited as GRAVES]. Since the Encyclopedia does not specify the specific function or functions which each organization performs, we have tentatively classified organizations according to decision function on the basis of the information provided in the Encyclopedia and in other available collections. Further work in this area will require an extensive field research operation to confirm our provisional conclusions about the specific functions performed by each organization as well as the intensity with which different functions are pursued.

50. It should be noted that informal activity of possibly great magnitude (not brought to light by currently available resources) lurks below our threshold of description. This activity includes, for example, prescriptive agreements reached between individual members of an association which is thought to perform only an intelligence function. Perhaps most easily overlooked in this regard is coordinative intelligence. The following account of international espionage maneuvering colorfully illustrates the low visibility of such activities:

... the Pentagon Papers had revealed that in February, 1967, Premier Aleksei N. Kosygin, at a summit conference in London, had his telephone tapped when he called from the Soviet Embassy to the Kremlin to report to Leonid I. Brezhnev, the Communist party chairman.

Reading what Mr. Kosygin said on the telephone to Mr. Brezhnev, an intelligence analyst "would speculate that he desired to be heard," Dr. Whiting said. "This is not an unusual way [in the intelligence community] of one Government getting information to another. This is one way of communicating."

Thus, he said, he would conclude that the Kosygin-Brezhnev telephone conversation was "a deliberate act" because the Russians knew the phones were tapped and wanted the information contained in their conversation to be unofficially communicated to the British and United States Governments.

N.Y. Times, March 15, 1973, at 6, col. 1 (city ed.).

the 1930-50 period.\textsuperscript{52} In addition, there has been a sudden emergence of compacts lacking congressional imprimatur.\textsuperscript{53} Exemplary of those few compacts in this sector limited to the intelligence function are the Vehicle Equipment Safety Compact\textsuperscript{54} and the Northern New England Medical Needs Compact.\textsuperscript{55}

The number of active associations and recommended uniform laws gives some indication of trends in informal, cooperative intelligence agreements. Twice the number of uniform laws regulating matters in this value sector are recommended today than were recommended 40 years ago. The data on associations shows:

\textsuperscript{52} We adjust for two compacts for which consent was given in 1930 but to which no state adhered for 25 years: (1) the New England Interstate Corrections Compact, CONN. GEN. STAT. ANN. § 18-102 (1968); C.S.G. supra note 49, at 16; and (2) the Western Interstate Corrections Compact, CAL. GEN. LAWS ANN. § 1190 (Deering 1971); C.S.G., supra note 49, at 17. For future reference, the reader should note that the citation immediately subsequent to the compact name locates the text of the compact in the statutes or session laws of one of the signatory states; the second citation, to C.S.G., directs the reader to information regarding which and how many states are party to the compact, when they became party to it, and whether or not the compact has received congressional consent.

\textsuperscript{53} The latter development appears to change the express prohibition of the Compact Clause—\textit{i.e.}, that "[n]o State shall without the Consent of Congress enter into any Agreement or Compact with another State, or with a foreign Power." In Holmes v. Jennison, 39 U.S. (14 Pet.) 540 (1840), the Court strictly construed this clause. In Virginia v. Tennessee, 148 U.S. 503 (1893), the Court withdrew from the position staked out by the dicta in Holmes (essentially a prohibition against \textit{any} interstate agreements lacking congressional approval) and upheld the lawfulness of a boundary compact lacking formal congressional consent by the device of an alleged "indirect" approval by Congress.

Encouraged, no doubt, by this later ratiocination, legal scholars have developed theories to legitimate other types of unapproved compacts. See, \textit{e.g.}, ZIMMERMAN & WENDELL, supra note 51, at 32-41; Comment, \textit{Some Legal and Practical Problems of the Interstate Compact}, 45 YALE L.J. 324 (1935). In the absence of a more explicit statement by the Court on this matter, any theory remains largely conjecture. One fairly secure source of reference, however, is the framers' intent in drafting the Compact Clause—\textit{i.e.}, to prevent accretions in power in one section of the country that would disadvantage other sections or the whole or limit the effective power of the center. Accordingly, perhaps the approval requirement only applies to those compacts intruding into the realm of activities for which regulation by a single state would be disruptive to the welfare of other states or the nation as a whole. Essentially, then, we would dovetail the approval requirement within the realm of exclusive federal activity carved out by the Court in construing the commerce clause. \textit{See note 40 supra} and accompanying text.

\textsuperscript{54} CONN. GEN. STAT. ANN. § 14-369 \textit{et seq.} (1968), (consented to by Congress in Act of Aug. 20, 1958, Pub. L. No. 85-684, 72 Stat. 635); C.S.G., supra note 49, at 25. This compact establishes a commission to \textit{study} the problem of vehicle equipment safety and to \textit{report} to the member states its proposals to deal with the problem.

\textsuperscript{55} N.H. REV. STAT. ANN. § 125-A:1-5 (1968); C.S.G., supra note 49, at 22. The New England Medical Needs Compact establishes an agency to \textit{suggest} cooperative programs in research and planning. Were this compact to authorize the agency to coordinate and administer interstate programs (as the New England Health Services and Facilities Compact does, R.I. GEN. LAWS ANN. § 23-40-1 \textit{et seq.} (1968); C.S.G., supra note 49, at 22), it would amount to an allocation of promotional and prescriptive competence.
(i) a doubling since 1932 of the number of extant associations engaged in intelligence activity;

(ii) the retention of an approximate 1:1 ratio of associations with and without federal participants; and

(iii) a low mortality rate among the older associations (though name changes are rife).\(^{56}\)

Typifying associations limited to intelligence are the American Warden Association,\(^{57}\) composed of administrators individually competent to prescribe but apparently content collectively to simply air their views, and the National Council of Forestry Association Executives,\(^{58}\) composed of officials forced to rely on legislative action, and apparently inconsequential as a lobbying force.

2. Promotion

Formal agreements to promote in this sector mirror the trends in intelligence compacts. Since formal activity often tends to be either promotional and prescriptive or neither,\(^{59}\) these trends for formal promotional activity persist for prescription.

Associational promotion follows approximately the same pattern as associational intelligence. An exception, notable for its almost exclusive emphasis on promotion, is the National Association of State Militia,\(^{60}\) essentially a lobbying force relying upon other sources for intelligence input.

The statistics for enactment of uniform laws, a rather derivative indicator of promotional trends, are ambiguous. On the one hand, the ratio of jurisdictions adopting uniform laws for health and well-being to the number of such laws has declined slightly from the 1932 figure. On the other, two acts, the Anatomical Gift Act\(^{61}\) and the Narcotic Drug Act,\(^{62}\) boast 48 and 46 adoptions, respectively—far better showings than those made by any uniform law in this sector in 1932.

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56. See App., Table B2.
57. GRAVES, supra note 49, at 258-59; ENCY. OF ASSOC., supra note 49, at 658. Although this latter resource provides information regarding the association’s date of founding, headquarters, membership, regional groups and purposes and activities, more specific information such as the group’s constitution and by-laws can be obtained only by writing to the association itself (as was in fact done with laudatory persistence by Professor Graves in providing the factual basis for his Uniform State Action, supra note 49).
58. ENCY. OF ASSOC., supra note 49, at 289.
59. See text accompanying notes 44-45 supra.
60. ENCY. OF ASSOC., supra note 49, at 348.
3. Prescription

The variety possible in formal prescriptive agreements is rather wide. The compact may delegate prescriptive competence to an interstate agency or retain it in the member states without intermediary. Further, the exercise of prescriptive competence may coincide in time with the formation of the compact or may be postponed to a future date.

Data on adoption of uniform laws generates the same ambiguous results for trends in informal interstate agreements to prescribe by coordination as it does retrospectively for trends in promotion.

B. Wealth

1. Intelligence

Formal intelligence activity in this value sector dates back to two navigation agreements made in 1787-88. In the last 40 years, there has been a marked acceleration in the rate of compact formation here. The total number of agreements as of 1930, 1950 and 1970 are in a ratio of 1:2:4. Congressional approval has been obtained almost uniformly and two compacts include the center as a member party.

The number of recommended uniform laws in the wealth sector has, as in the health and well-being sector, approximately doubled since 1932. Wealth matters continue to remain the subject of more

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66. E.g., the Interstate Compact on Corrections, which establishes legal competence for prison administrators from different states to enter into contracts with one another. Vt. Stat. Ann. tit. 28, § 1401 (1969); C.S.G., supra note 49, at 15. This type of compact serves a facilitative role, creating competence and opening legal channels that may or may not be used.
than half of the uniform laws. Associational intelligence activity manifests an already familiar 2:1 ratio of present organizations to those extant in 1934. Federal participation in these associations is somewhat less frequent now than in 1934 but is still quite common.  

2. Promotion  

Formal promotional activity reveals essentially the same trends as formal intelligence activity: a 100% increase over 40 years with a low mortality rate among the older associations. The pitch of agitational activity qualifying as promotion ranges from intense lobbying by associations with members once-removed from prescription to pressure toward a consensus among participants having prescriptive competence.

The more inferential indicator of promotional competence, the statistics on adoption of uniform laws, tends to confirm our impression of greatly enhanced informal activity. The ratio of laws enacted by 20 or more states in 1932 and in 1970 strongly supports this view. Of the seven such laws in 1932, five became the Uniform Commercial code—one of the 15 laws with 20 or more enactments in 1970. Hence, the ratio of 7:15 is more appropriately seen as closer to 1:3. Also notable is the dramatic increase from 1932 to 1970 in the number of jurisdictions adopting two of the very few uniform laws alive in 1932 and not since superseded or declared obsolete by the National Conference.

3. Prescription

Informal coordinative prescription, as we have seen, has been extremely effective in securing uniform law enactments. Such informal prescription, however, does not always result in uniform laws. The recent upsurge in prescription of no-fault auto insurance laws unde-

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70. Nathaniel Goldstein points to one common cooperative intelligence agreement between states made below the association level: the exchange of information on tax returns. Goldstein, Interstate Enforcement of the Tax Laws of Sister States, 25 STATE GOV'T 147, 161 (1952). (STATE GOVERNMENT is the organ of the Council of State Governments.)

71. E.g., the National Association of Marketing Officials. GRAVES, supra note 49, at 105-09; ENCY. OF ASSOC., supra note 49, at 301.


73. See the first five acts listed in note 72 supra.


Of the 46 uniform laws recommended for state enactment in 1932, 19 have been withdrawn as obsolete and 15 as superseded,
lines the extent of coordinative prescription not encapsulated in uniform laws.75 In any case, associational activity has more than tripled, and this points to a dramatic increase in informal cooperative prescription.76

C. Skill

1. Intelligence

To date, compact activity in gathering information for decision-making in the skill sector is miniscule. Nor is the uniform law movement vigorous in this value sector. But associational activity generates statistics sufficient to indicate trends in interstate intelligence activity in skill matters. Once again, the statistics show a doubling in informal cooperative activity over the last 40 years,77 but in contrast to other sectors, the center does not appear to be a significant participant. This suggests a greater allocation of decision competence to the states in this sector than in the two sectors just considered—an inference to be explored more carefully in the subsequent section.

2. Promotion

Compact activity here is virtually nonexistent; the adoption by 12 jurisdictions of two uniform laws, since withdrawn, indicates little promotional activity in this sector. But associational activity replicates the familiar doubling trend and retains in promotion the predominantly center-free character observed in intelligence.78

75. The fairly regionalized nature of no-fault prescription raises a question for empirical researchers: the significance of state geographic contiguity to coordinative prescription.

76. These associations with prescriptive competence include two, the National Association of Insurance Commissioners and the Association of Unclaimed Property Administrators, whose promotional potency is such as to practically assure legislative conformity to its preferred policies. These associations are discussed, respectively, in Graves, supra note 49, at 202-14; EnCY. of Assoc., supra note 49, at 329. The Interstate Conference of Employment Security Agencies has been cited as a particularly effective source of interstate administrative cooperation (in processing unemployment compensation claims). Caldwell, Perfecting State Administration, 1940-46, 7 Pub. Adm. Rev. 25, 33 (1947). See also EnCY. of Assoc., supra note 49, at 325.

77. Typical of associations in this sector limited to an intelligence function is the National Association of License Law Officials, which, in 1934, could be described as follows:

Its purpose, as stated in its constitution, is to meet annually at the same time and place as the National Association of Real Estate Boards, for the discussion of problems of mutual interest. Although the group is a quarter of a century old, a careful examination of the mimeographed proceedings of two annual meetings fails to disclose more than one faint hint that the ideas of reciprocity and uniform conditions of licensure have ever occurred to them.

Graves, supra note 49, at 239. See also EnCY. of Assoc., supra note 49, at 357 (sub. nom National Association of Real Estate License Law Officials).

78. Notable among associations limited in competence to promotion is the National
3. Prescription

Although neither compact activity nor the uniform law movement offers any indication of interstate vitality in this sector, the abundance of reciprocal laws for skill matters attests to considerable informal activity, cooperative and coordinative. Associational activity throws light upon the trends in cooperation, but similar documentation is presently lacking for trends in coordination. In regard to cooperation, one is struck by the domination of the present-day scene by older associations, some of which are so potent in agitation that the operational code views their nominally promotional activities as prescription.\(^79\) In prescription, as in the other two decision functions, the center intrudes relatively little into interstate agreements in this sector.

D. Enlightenment

1. Intelligence

Formal intelligence activity in enlightenment matters is a development of the last 25 years, with peak activity in the last decade.\(^80\) The statistics seem to reveal confusion among the states as to the necessity for congressional approval of compacts in this sector.

The uniform laws, with their emphasis on other matters, give little indication of trends in informal cooperation in this sector. Interstate associations, however, are again a fruitful source of information. The doubling trend is somewhat exceeded. Additionally, the number of associations with and without participation by the center remains, for the 40 years surveyed, a fairly constant ratio, suggesting here a relative disengagement of the center.

2. Promotion

As with intelligence, promotion via compacts exists on a small but demonstrably accelerating level. A curiosity is the Compact on Educa-

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\(^79\) E.g., the National Association of Boards of Pharmacy. Graves, supra note 49, at 231-32; Ency. of Assoc., supra note 49, at 775.

tion, which establishes an Educational Commission of the States to recommend educational policies to the states. Although it claims to have no power to bind the member states to its recommendations,\textsuperscript{81} the compact seems to promise to be a promotional device whose outcomes may often amount to prescription.\textsuperscript{82}

The trend in informal cooperative promotion by associations evidences an increasing interest among the states to secure more uniformity in this sector. The older associations performing this function continue to flourish and the new ones add dramatically to their numbers. Federal participation in these associations was, and remains, rare.

Since enlightenment matters are, with a single exception, outside the scope of the uniform law movement, enactment statistics provide no basis for drawing inferences with regard to promotional activity.

3. Prescription

Prescriptive trends in this sector essentially duplicate those for promotion. Again, however, coordinative activity (other than that made visible by adoptions of uniform laws) remains largely an unknown quantity. More documentation of similarity in laws and administrative practices is needed to make a fuller assessment of trends in informal agreements.

E. Affection

1. Intelligence

No formal compacts appear to deal with affection matters and our data on associations indicates little informal interstate cooperation. Of the nine associations gathering information for decision-making in this sector, only one, the National Conference on Uniform Reciprocal Enforcement of Support, is not an association spanning all the value sectors. The uniform laws, numbering eight in this sector, indicate at least some interest among states in uniform legislation and administration for affection matters. Nevertheless, no trend toward greater inter-

\textsuperscript{81} Presumably, this disclaimer is motivated by the member states’ reluctance to seek congressional approval for the compact. They apparently assume that such approval is required only with an allocation of prescriptive competence.

\textsuperscript{82} While these descriptive comments [of the compact by the Council of State Governments] suggest a strictly service role for the new interstate educational agency, unrelated to regulation and control of education and without power to “impose a moral obligation on a party state” to enact legislation in conformity with the compact agency’s recommendations, the scope of its interests—comprising the entire range of American public education—would give to it an authority which would be well-nigh irresistible to state legislators and congressmen.

Ridgeway, supra note 51, at 43.
state intelligence activity in this sector emerges from the available data taken as a whole.

2. Promotion

Compacts and interstate associations actively promoting affection policies are virtually nonexistent. Data on adoption of uniform laws, however, indicate moderately active exercise of interstate promotional competence in this value sector. By 1932, 19 jurisdictions had adopted the Desertion and Non-Support Act;\(^8\) this number increased so dramatically that by 1970, 52 jurisdictions had adopted the Reciprocal Enforcement of Support Act (the successor act).\(^4\)

3. Prescription

The absence of any evidence of formal or cooperative informal prescriptive activity directed our inquiry to informal coordinative activity. The Reciprocal Enforcement of Support Act and, to a lesser extent, the Act on Blood Tests to Encourage Paternity,\(^5\) may promise some increase in such activity, but in the context of the diverse state requirements regarding marriage, divorce and custody of minors, the promise seems unlikely to be fulfilled.

F. Respect

1. Intelligence

There appears to be no compact activity in matters of respect. Associational intelligence in this sector exists only on a limited scale. The statistics (after discounting for the nine associations performing this function in all the sectors) suggest negatively persistent interstate inactivity in civil liberties matters. Uniform laws, only one of which deals with respect matters, offer no indication of increasing state interest in homogeneity in this sector.

2. Promotion

Neither compacts nor associations engage in significant interstate promotion of respect matters. Uniform law adoptions also tend to confirm the conclusion that there is no surge of interstate interest in,

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84. 9 C U.L.A., supra note 49, at 13-63 (West Supp. 1967). These statistics may, however, be misleading. Since two distinct acts are being compared, the difference in number of enactments may reflect only the difference in states' receptivity to two different drafts of a law establishing uniformity in a matter which the states have long been convinced demands uniformity.
and agitation for, more uniform protection of fundamental human rights.

3. Prescription

Since the available data discloses neither formal nor cooperative informal interstate prescription, the inquiry must focus on informal coordinative activity. The two adoptions of the single uniform law in the respect sector do nothing to dispel the impression of interstate inaction there. On the other hand, documentation of similarities among the states in legislative and judicial decision-making in this sector may indicate some tacit or private coordinations in many cases to secure uniform respect protections or deprivations. The increasing activism of the center here belies interstate interest in, and movement toward, prescriptive uniformity. 68

G. Rectitude

The available data indictate virtually no interstate decision-making in rectitude matters. This result is not surprising, however, in view of the first amendment’s establishment and free exercise clauses, applicable to the states via the fourteenth amendment’s due process clause. The “purpose and primary effect” test laid down by the Supreme Court for enforcing the establishment clause countenances state action supportive of a particular religion or religion in general only if the purpose and primary effect of that action is secular. 67 Although this test may leave room for the state, in fact, to give the prohibited support, 68 it does seem to force these decisions to be made in a variety of disguises—hence the unavailability of any data from our three indicators of interstate activity. On the other hand, there may well be substantial coordinative activity. 69

Under the supervision of the Supreme Court, the first amendment has also been used to disallow state interference with an individual’s right to free exercise of the religion of his or her choice. Like the establishment clause, the free exercise clause is not strictly construed. The counterpart of the establishment clause’s purpose and primary

66. Evidence of coordinative promotion of policies would, of course, be subject to the same caveat. See generally, Note, Toward A Uniform Valuation of the Religion Guarantees, 80 Yale L.J. 77 (1970).
69. For example, the courts of one state may embrace the secular rationale developed by another state’s judiciary to justify removing a child from the custody of an atheist parent.
effect test is the free exercise clause's "compelling state interest" test. The presence of what is judicially deemed to be a compelling state interest in regulating the exercise of religion validates the regulatory measure.\textsuperscript{90} Thus, explicit curtailment of free exercise, unlike explicit establishment, is licit. Nevertheless, given the "preferred position"\textsuperscript{91} accorded first amendment rights, the absence of compacts, uniform laws and interstate associations designed to circumscribe this right should not have been unexpected. This should not obscure, however, the possibility of coordinative prescription by the courts in this sector.\textsuperscript{92}

H. Power

1. Intelligence

The statistics generated by formal interstate intelligence activity in this sector are somewhat deceptive. The 34 compacts formulated prior to 1930 are all boundary and water apportionment agreements between states. The compacts formed since 1930 slightly exceed in number those made prior but, more importantly, deal with a far greater diversity of power matters. They include the first compacts with foreign states,\textsuperscript{93} including those that explicitly authorize states to adhere to them;\textsuperscript{94} two compacts create expeditious judicial procedures.\textsuperscript{95} Although seven pre-1930 boundary compacts never received express congressional approval,\textsuperscript{96} judicial doctrines would seem to uphold their lawfulness. The three post-1930 compacts without congressional consent probably cannot rely on this doctrine (applied thus far only to


\textsuperscript{92} For example, a court in one state may follow the lead of a court in another state in finding that a compelling state interest against the use of peyote prohibits its use even in tribal ceremonies. See, e.g., State v. Big Sheep, 75 Mont. 219, 243 P. 1067 (1926). Cf. Leary v. United States, 383 F.2d 851 (5th Cir. 1967).


\textsuperscript{96} On implied consent, see Virginia v. Tennessee, 148 U.S. 503 (1893) and note 53 supra.
boundary compacts) and may—in particular the compact including a foreign state—become the focus of future litigation.

The uniform acts indicate a dramatic increase in interstate intelligence activities in power matters. The number of recommended laws has more than quadrupled in 40 years and constitutes a serious and extended attempt to increase the uniformity of the structures of the judicial and administrative processes of the individual states.

Interstate associations provide a further index of significant increases in interstate activity and, in particular, in informal cooperative activity in this value sector. Although foreign state membership in associations performing an intelligence function account for most of this growth, a significant portion is due to the increase of associations serving as fora for state officials to explore improvements in state decision-making institutions.

2. Promotion

Almost without exception, formal promotional activity in power matters accompanies formal intelligence activity. Hence, the trends in intelligence elucidated above are essentially duplicated for this decision function.

As a result of the inclusion of foreign state agreements in power matters, the statistics for associational promotion obscure what little promotion is actually performed by associations organized to consider


98. In Holmes v. Jennison, 39 U.S. (14 Pet.) 540 (1840), a divided Court failed to render any judgment, but a majority of the Court seemed to agree—and the Vermont Supreme Court on remand found them to so agree, Ex parte Holmes, 12 Vt. 631 (1840)—that the governor of Vermont lacked the power to deliver up to Canada a fugitive from Canadian justice. In an opinion joined by three other justices, Chief Justice Taney found the governor's warrant to amount to an agreement with a foreign state invalid prima facie for lack of congressional approval. Justice Catron, on the other hand, while affirming that any agreement between Vermont and Canada to deliver up a fugitive would run afoul of the Constitution, did not join the Taney opinion because Canada had made no demand to surrender Holmes and thus the governor's warrant evidenced, for Catron, only one party's intent to surrender and not an agreement. Although Virginia v. Tennesee, 148 U.S. 503 (1893), disapproved the broad dicta in Holmes, see note 53 supra, Holmes would still seem to be prescriptive with respect to compacts with a foreign state. The question thus remains: if an agreement between a state and a contiguous foreign state dealt with matters deemed to be the exclusive concern of the state, would it be upheld, Holmes notwithstanding?

99. The National Association of State Departments of Agriculture exemplifies this orientation. GRAVES, supra note 49, at 98-99; ENCY. OF ASSOC., supra note 49, at 268. The association concerns itself not with agricultural policies as such (wealth matters) but rather with the problems of the administrative structure and functioning of state agricultural agencies.
structural and procedural changes in decision-making. These matters appear to be ones which states are willing to discuss informally but are far less willing to agree upon. On the other hand, the contrastingly vigorous trends in uniform law enactments in this sector may mean that reticence in explicit associational promotion is a prelude to coordinative interstate prescription. Indeed, the number of jurisdictions adopting uniform laws in this sector indicates considerable interstate promotion. The number of total enactments has quadrupled over 40 years; the three uniform laws in this sector now boasting 40 or more adoptions saw respectively, one, seven and 18 enactments in 1932.100

3. Prescription

The increases visible in formal and coordinative prescriptive activity do not necessarily minimize the importance of informal cooperative prescription in power matters. More documentation of the organization of the various states' decision-making institutions is required before a conclusion can be reached.

V. TRENDS IN ALLOCATION OF DECISION COMPETENCE BETWEEN THE CENTER AND THE STATES

The significance of the role of interstate agreements in the federal system can only be gauged against the broader trends in the system's allocation of decision competence for various value sectors. Detailed examination of these trends would require extensive empirical research, far beyond the scope of this article. Nonetheless, apparently fundamental patterns in allocation of decision competence can be detected. We summarize them here both to provide a provisional perspective to this study and to direct others to complementary studies.

A. Health and Well-being

Drawing on power and wealth resources greater than those of state units and responding to popular demands for improvements in the "quality" of life, the center has arrogated a wider prescriptive compe-

tence in the well-being area. The authoritative device for this extension has been the application of the commerce clause to regulate non-commercial matters.

In assuming greater decision competence in matters of health and well-being, however, the federal government has not entirely displaced state competence. The allocation of decision competence established by the Occupational Safety and Health Act of 1970 is typical. After wresting the field from state competence, the center conditioned a return of a secondary prescriptive and primary applicative competence upon the individual state’s presenting an enforcement plan meeting minimum criteria set by the center. If its plan is approved, the state may then prescribe and apply safety and health standards and enforcement procedures strict or more detailed than the federal ones. But because the state continues to rely heavily on the center’s superior research facilities for its own prescription and application, the center is the primary actor. It performs all three decision functions with the state playing a peripheral role.

The center’s considerable wealth resources prove to be a critical base for the acquisition of decision competence. Even in matters in which the center enjoys no explicit competence, it may, if only by virtue of its well-funded intelligence competence, be a powerful promoter, and, perhaps, effectively a prescriber. The center often seems to parlay its spending power into prescriptive competence by rewarding state adoption of center-preferred policies and by sanctioning state failure to adopt these policies. The latter is achieved by withholding


105. In addition to NIOSH, supra note 104, these intelligence-performing agencies include the National Institute of Mental Health, Center for Disease Control, National Institute of Health, and Public Health Service. 42 U.S.C. §§ 202, 203, 290 (1970).

106. It is dubious that the abandonment of the categorical grant programs in favor of general and special revenue sharing, N.Y. Times, March 19, 1973, at 1, col. 5 (city ed.), will amount to a relinquishment by the center of this spending-derived competence. In this analysis, we view these much-touted “decentralizations” as a technique by political elites on the federal level to recruit to their camp participants in the lesser communities for national political purposes. Over time, about the same amount
otherwise available funds\textsuperscript{107} or by simply not rewarding (a most effective lever once a dependency upon such rewards has developed\textsuperscript{108}).

B. Wealth

The commerce clause again figures importantly as the authoritative device for arrogating decision competence to the center. The federal judiciary has expanded the semantic reference to "commerce" by explosively extensive interpretation. \textit{Wickard v. Fillburn}\textsuperscript{109} planted the seed of total decay in the concept of "local" commercial activity, activity within the exclusive competence of the states. Although the center has not chosen to exercise to the fullest its virtually limitless decision competence in wealth matters, it has shown itself ready to act when the states prove inept or unwilling to deal with business practices deemed by the center to be inimical to general economic prosperity.\textsuperscript{110}

The center's taxing power, extended in 1913 to include taxation of income without apportionment among the states,\textsuperscript{111} is a potent promotional and, often, prescriptive device. It enables the center to shape the behavior of private parties in accordance with preferred wealth policies. Since the supremacy clause is construed as requiring the states to exercise their taxing powers within the framework of concurrent federal exercise of that power,\textsuperscript{112} the center's exercise of expansive powers has necessarily relegated the states to a peripheral role. Accordingly, the center, more than any state, may exploit the promotional and prescriptive competence accruing from taxation.

C. Skills

The center has recently prescribed a few spending statutes\textsuperscript{113} to

\begin{footnotes}
\textsuperscript{107} E.g., the Highway Safety Act of 1966, 23 U.S.C. §§ 401 et seq. (1970), punishes a state's failure to come forward with a state plan for highway safety by reducing the state's share of highway building funds by 10%.

\textsuperscript{108} As Florida Governor Askew recently observed in connection with revenue-sharing proposals, "If we [the states] start on-going programs we will be obligated to continue them if Congress in the future decides to terminate general revenue sharing." N.Y. Times, March 19, 1973, at 28, col. 2 (city ed.).

\textsuperscript{109} 317 U.S. 111 (1942).


\textsuperscript{111} U.S. Const. amend. XVI.

\textsuperscript{112} 1 Story, supra note 24, at 692-95.

\textsuperscript{113} E.g., Health Professions Educational Assistance Act of 1963, 42 U.S.C. §§
\end{footnotes}
encourage the initial training and improvement of practitioners of various skills, but appears, for the most part, to have left skill matters to the states. Whether the center is deemed, in terms of operational expectations, competent to prescribe for this sector is unclear.

D.  Enlightenment

The center's decision competence in enlightenment matters is based primarily on its spending power. Spending statutes in this sector typically require the state, as a precondition to receiving matching grants, to submit a state plan detailing the uses to which it will put such grants.114 The Office of Education, explicitly vested with only intelligence and promotional competence,115 can in fact prescribe by linking the distribution of funds to state adherence to enlightenment policies preferred by the center.116 Since these categorical spending statutes are largely a phenomenon of the last 15 years, their enactment marks a recent trend, shifting competence from the states toward the center.

E.  Affection

In the past, issues of marriage, divorce, child custody, and so forth, have been almost uniformly in the state's competence. However, the center seems to be slowly intruding in parts of this sector. The National Center for Family Planning Services, for example, performs intelligence and promotional functions. Although the question of Congress' competence to prescribe formal legislation binding on the states in affection matters has been doctrinally discussed,117 the federal judiciary has prescribed in this sector with some vigor. The Court has enunciated a standard for state recognition of divorces decreed by other states,118 limited state intrusion (legislative and administrative) into marital privacy,119 disallowed state restrictions upon who may marry

116. 20 U.S.C. § 1232a (1970), would appear to be "myth system" rather than law. It provides that no federal education act
shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.
whom based on racial classifications, and required states to afford the poor the same access as the wealthy to the state's processes for obtaining a divorce. In general, the states remain the principal decision-makers for affection matters, but the fairly recent phenomenon of central judicial activity in this sector indicates a moderate trend toward the centralization of some decision.

F. Respect

The last 20 years manifest an unmistakable shift in the allocation of decision competence for respect matters from the states to the center. In *Brown v. Board of Education*, the Court embraced a far-reaching construction of the equal protection clause that enabled it to spearhead an attack on racial discrimination before Congress awoke to the task. When Congress belatedly entered the field, the Court proved only too willing to uphold Congress' prescriptive competence in respect matters. In enacting and affirming the validity of the Civil Rights Act of 1964, Congress and the Court respectively collaborated to put the commerce clause to yet another noncommercial use. In the center's two-pronged attack on racial (and, less centrally, religious and sexual) discrimination, the Court confirmed that innovative legislation "fit" within the constitutional allocations, resurrected and finally implemented moribund legislation, and continued to wield its "new" equal protection. States seem to retain competence in a manner consistent with the center's preferred policies. Nevertheless, the center has plainly, and in a relatively short time, assumed primary competence to decide such matters.

G. Rectitude

The Constitution's establishment and free exercise clauses formally

129. The question remains: does the present Administration's support of a busing amendment and the Court's reluctance to apply the new equal protection of *Brown v. Board of Education* to classifications other than those based on race, nationality or alienage, signal a retreat by the center?
deny both Congress and the state legislatures decision competence in religious matters. The center exercises the effective decision competence in such matters with the federal judiciary reviewing state and federal decisions to ensure conformity with its construction of these first amendment prohibitions. Since these prohibitions mean only what the courts say they mean, the center is effectively making law.

States decide many rectitude matters of a nonreligious nature. Wielding the apparently limitlessly applicable commerce clause, the center has also entered some of the alleys of the moral health of society business. It has attempted to obstruct prostitution by outlawing the transportation of women across state lines for immoral purposes, to discourage gambling by prohibiting interstate movement of lottery tickets, and to circumscribe what is judicially determined to be obscenity by making criminal the use of the mails to transport or advertise obscene materials. The Supreme Court has assumed a primary competence in the moral health area by policing the line between protected speech and obscenity, and, most recently, in abortion matters. In exercising their equity jurisdiction, state and federal courts have denied relief to a plaintiff largely because they consider him guilty of unethical, albeit not strictly illegal, conduct.

Uniform trends toward centralization of decision competence for rectitude matters do not emerge. The center's legislative forays into this sector, though highly dramatic, have been few. The difficulties and frequent failures encountered in trying to legislate the morality of a vast, pluralistic community may be responsible for the reluctance to become active here. Aside from religious matters, most decision competence for rectitude matters would thus appear to reside in the

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130. These clauses are not construed strictly, as absolute prohibitions. See notes 86, 89 supra and accompanying text.
131. Two examples are withholding licenses from these of bad moral character and prohibiting certain sexual conduct. Illustrative of the first example is that 43 states require barbers to be of "good moral character"; 38 require this of dental hygienists and 49 of morticians. Wicker, Ex-Inmates Sing the Blues, N.Y. Times, March 20, 1973, at 39, col. 1.
137. For a sampling of cases in which this "clean hands" doctrine is relied upon, see 2 Pomeroy, EQUITY JURISPRUDENCE § 400 (5th ed. 1941). On the proposition that this doctrine "is by no means confined to equity," see CHAFFEE, SOME PROBLEMS OF EQUITY 2, 12-15, 25-51 (1950).
states. Nevertheless, the ill-defined area of obscenity has received much attention from the center. Congress enacted 20 obscenity laws from 1842 to 1956\textsuperscript{138} and the Supreme Court had become increasingly active in this sector. This seemed to indicate a shift toward reallocation of decision competence. The recent decision in \textit{Miller v. California}\textsuperscript{139} however, allows local standards to determine whether particular forms of expression are obscene. This may signal the end of a shift of decision competence to the center—at least where the Court is concerned.

\section*{H. Power}

Competence to make decisions to which a foreign state is party resides principally in the center. Although the states do enter into agreements with foreign states (largely informal ones), state activity in such power matters pales in comparison to that of the center. Armed with a constitutional mandate to manage the foreign affairs of the nation\textsuperscript{140} and shielded with the prohibitions against state entanglements with foreign nations,\textsuperscript{141} the center can be expected to monopolize decision-making in this sector.

Competence for decisions about the decision-making process is allocated more evenly between the center and the states, but a trend toward concentration in the center has emerged. Federal courts have construed the fourteenth amendment’s due process clause to embrace numerous rights guaranteed to an accused in a federal criminal proceeding.\textsuperscript{142} Hence state courts must, for example, now apply the exclusionary rules developed for federal courts,\textsuperscript{143} assign counsel to any defendant whom the state may wish to incarcerate if his guilt is proven,\textsuperscript{144} and grant a jury trial to one charged with a non-petty offense punishable by imprisonment of six months or more.\textsuperscript{145} As federal courts have increased the amount of process due individuals adversely affected by a quasi-judicial decision of the center, they have

\begin{itemize}
  \item \textsuperscript{138} Enumerated in Roth v. United States, 354 U.S. 476, 485 n.17 (1957).
  \item \textsuperscript{139} 93 S. Ct. 2607 (1973).
  \item \textsuperscript{140} U.S. Const. art. I, § 8; \textit{Id.} at art. II, § 2.
  \item \textsuperscript{141} \textit{Id.} at art. I, § 10.
  \item \textsuperscript{142} Baxstrom v. Herold, 383 U.S. 107 (1966), indicates a possible direction for the future—testing state procedures for their satisfaction of the equal protection clause. Thus far, the application of the potentially far-reaching rule in \textit{Baxstrom} has been limited to the civil commitment area. \textit{See} Jackson v. Indiana, 406 U.S. 715, 723-30 (1972).
  \item \textsuperscript{144} Argersinger v. Hamlin, 407 U.S. 25 (1972); Gideon v. Wainwright, 372 U.S. 335 (1963).
\end{itemize}
demanded that states give more process to those who stand to be harmed by its administrative decisions.\textsuperscript{146} The center has not deprived the states of all competence to decide how their courts and agencies will make decisions, but a shift toward the center in competence to perform all three decision functions for this category of power matters is patent.

Movement of decision competence toward the center has been dramatic in other matters. An 1871 statute,\textsuperscript{147} which gives one deprived of "any rights, privileges, or immunities secured by the Constitution and laws" under color of state or local law a federal right to legal and equitable relief, has been refashioned into a potent instrument for central control over state legislators and administrators.\textsuperscript{148} It takes on increasing importance as federal courts periodically add to the list of personal freedoms protected against state interference.\textsuperscript{149} The state cannot, for example, authorize unreasonable searches and seizures,\textsuperscript{150} nor can it compel individuals to testify against themselves in a criminal proceeding.\textsuperscript{151} The center would strike down any such laws and entertain actions for damages or injunctive relief against those administering them.

The center early subjected state laws regulating freedom of expression to the same scrutiny it gave such laws promulgated by the center.\textsuperscript{152} In the last 20 years, the Supreme Court has taken a more expansive view of freedom of expression: in its apparent abandonment of the "clear and present danger" test,\textsuperscript{153} in its readiness to find overbreadth,\textsuperscript{154} and in its general affirmation of symbolic expression.\textsuperscript{155}

\textsuperscript{146} Goldberg v. Kelly, 397 U.S. 254 (1970) (asserts a broad and overriding competence on the part of the center in such matters).
\textsuperscript{148} As stated by the Court in McNeese v. Board of Educ.:
The purposes [of this statute] were several fold—to override certain kinds of state laws, to provide a remedy where state law was inadequate, "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice," and to provide a remedy in the federal courts supplementary to any remedy any State might have.
\textsuperscript{150} The first ten amendments to the Constitution are addressed to the federal government, not to the states. E.g., Barron v. The Mayor & City Council of Baltimore, 32 U.S. (7 Pet.) 243 (1833). Some of these rights, however, have been held to be incorporated in the 14th Amendment's Due Process Clause. See cases cited notes 143-45 supra, notes 150-51 infra.
\textsuperscript{152} Malloy v. Hogan, 378 U.S. 1 (1964).
VI. CONDITIONING FACTORS AND PROJECTIONS

The fundamental condition for a federal process is the existence of discrete but interacting groups. This condition presupposes a sufficient physical and social distance to permit local elites to consolidate control and, with tension, a sufficient promise in exchanges to encourage elites to organize interactions with others. Often a wealth or other nonpower elite will provide the stimulus to local power groups to federalize. Given these factors, a federal process will involve the coordination of elites of discrete but not necessarily territorial units in the establishment of an authority center and the allocation of decision competences between the center and the units and between the units inter se.

Precisely because a federal process is a continuously tenuous balance of effective elites in different groups, facilitation and restriction of agreements between the units themselves are extremely important. There must be agreements between units, for agreements are a prerequisite to and an inevitable product of social interaction. But certain types of agreements, though increasing the effectiveness of several units, may deprive the others and threaten the viability of the federal process. Hence agreements between the units are a prominent target for supervision in the establishment and operation of a federal process. By testing correlations and deviations in trends regarding agreement competences against the formal and express code of a federation, as we have done here, significant indicators of unrecorded changes in power and authority structures may be bared.

There is no inexorable pattern to a federal process, nor is there a predetermined dynamic of change.\footnote{156} Units may establish and maintain a comparatively weak center or a strong center or a single unit may establish itself as the center and subordinate others under the guise of federalism. The effective competence of a strong center may diminish over time or a comparatively weak center may arrogate increasing competence at the expense of the units in the system. Inter-

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156. If there is a latent cultural predilection for unity—monism—or the extirpation of differences and the incorporation of all into an indistinguishable one, federalism will always be characterized as an imperfect status, which is resolved by transformation into a unity. And, indeed, for a longer period, federalism was so viewed. Professor Elazar, on the basis of empirical data, concludes that there is no such tendency. Elazar \textit{supra} note 3, at 365. If, on the other hand, one assumes that differentiation and increasing complexity is a natural tendency of social organizations, then federalism's "imperfection" will be resolved by transformation into a purely coarchical confederation. We have rejected presumptions of any natural dynamic in a federal process in favor of studying changes within any process contextually. That methodology is presented in more detail in Reisman, \textit{Private Armies in A Global War System: Prologue to Decision}, 14 VA. J. INT'L L. 1 (1973).
elite agreements within the system may initiate changes and/or be symptomatic of changes.

Although prior authority expectations are a salient factor, we assume that the federal process is established and maintained by effective power elites with bases in groups discrete but interacting. Power changes within this elite should occasion changes in the federal process and vice versa. The factors accounting for changes in the agreement process of a federal system should, then, reflect changes in the aggregate social and effective power processes of the encompassing system. Having briefly considered the question of what changes have taken place in the American federation, we may now consider why these changes have occurred.

At the time of the formation of the American federation, effective power elites were primarily state-based. Establishing an effective center was innovative and the founders, particularly those with mercantilist interests, were concerned with limiting certain power aggrandizing tendencies of the state units. Specifically, they sought to circumscribe those tendencies threatening to so weaken the center that it could not perform functions deemed, in light of the recent confederal experience, indispensable. But the conditions on which their formula was premised changed rapidly. A cluster of dramatic changes in the 19th and 20th centuries obsoleted the salience and effectiveness of state control over activities in many value sectors formerly assumed to fall "naturally" within state competence. A predominantly agrarian system shifted suddenly to an industrial economy requiring a national, and then quickly an international, market for raw materials and consumers of finished products. This necessarily shrunk the plausibility of state control over scattered sequences of larger productive processes. American entry into an increasingly crowded world market involved expansion of military capacity to protect and sometimes to open the way for foreign commerce; operations on this scale could not be carried out solely by corporate private armies, state militias or the issuing of state letters of marque to privateers. With the advent of a postindustrial civilization of advanced technics, security of whatever sort became the prerogative of an increasingly powerful center.

Industrialization generated a tremendous demand for manpower and unprecedented mass migrations imposed local educational and integrative operations which required aid from the center. These changes, in turn, accelerated politicization of many strata whose value demands often exceeded the resources of state units. In addition, the growth of communications technology permitted central elites to reach the local scene directly by dissolving distance; communications obsolesced one of the critical barriers protecting the power bases of state elites. It is thus not surprising that the worldwide economic dislocations of
the late ’20’s and early ’30’s of this century were marked, in virtually all federalizing processes, by sharp increases in the intensity and scope of central activities.

Our provisional data shows that the increase of central activity has been paced, in the past 40 years, by at least a doubling of interstate agreement activity. This demonstrates that the same conditions which encouraged the growth of the center acted to obsolesce many of the formal political boundaries dividing the states within the American federal system. Use of value-sector categories suggests that the apparatus of individual states was steadily being integrated into larger “functional” communities, necessary to perform social and political functions deemed indispensable. We anticipate that the continuing integration of many value sectors and the appearance of mega-problems such as environmental maintenance and amelioration will further accelerate this trend and that more active institutionalized interstate arrangements will appear, but with central participation and aid. Forty years ago, Professor Graves concluded an excellent empirical study of interstate agreements by suggesting that the increased number and complexity of problems of common interest might lead to a growth of uniform state laws establishing a stable interstate milieu and facilitating the movement of people, goods and services across state lines. 157 Events have not borne out this plausible hypothesis. We believe that uniform laws will play a minor part in the ensemble of modalities of interstate cooperation and coordination.

Interstate agreements have never been a major federal concern of the congressional or judicial branch. The rather lax supervision is probably attributable to the fact that the original fear about this species of agreement—that it would weaken the center and force a regression to what had been an inadequate confederation—proved early in the history of the Republic to be unfounded.

There are constructs of the future in which the basic conditions which have generated the particular constellation of trends in the American system change dramatically. A radical diminution of the production and distribution costs of energy units—for example through local harvesting of solar energy—would make autarchy feasible and change the global market and the world power process. But even hypothesizing such a change, we do not believe that the current trend in the American federal process would be halted or reversed. The integration of value sectors has proceeded too far and the growth of technology has shrivelled physical and social distance—the fundamental conditions for a federal system. We would anticipate layers of effective communities, increasing in degree of integration, growing

over the original state systems, with complex, multidimensional competence allocations and agreement patterns between these different communities. The center will probably be an increasingly prominent participant in these newer communities. In the longer run, many groups and individuals which are not territorially-based may emerge as formally recognized federal participants. We anticipate that a new pattern of agreement-making with a new allocation of competence between the center and the periphery will be established.
### APPENDIX

#### TABLE A

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*Interstate Compacts (number of compacts during indicated years)*

### TABLE B

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<td>Without</td>
<td>1934</td>
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<td>Federal Participation 1973</td>
<td>17 (5)</td>
<td>14 (2)</td>
<td>8 (6)</td>
<td>11 (4)</td>
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<td>0</td>
<td>0</td>
<td>7 (3)</td>
<td></td>
</tr>
</tbody>
</table>

*Interstate Associations

*Number in existence as of indicated year.

**Number of included associations originating before 1934.*
Table B1—ASSOCIATIONS BY VALUE

Key to symbols:

- F = without federal participation
- NF = without federal participation
- I = intelligence
- R = recommendation or promotion
- P = prescription
- N = name changed since 1934
- D = defunct presently

(year in parenthesis is date of formation)

**HEALTH AND WELL-BEING: 1934**

1. Association of Dairy, Food and Drug Officials of the United States (1897)—F/I,R,P
2. American Association of Medical Milk Commissions (1906)—NF/I,R
3. International Association of Dairy and Milk Inspectors (1911)—F/I,R,P/N
4. Association of Official Agricultural Chemists (1884)—NF/I,N
5. National Plant Quarantine Boards (1919)—NF/I,R
6. United States Live Stock Sanitary Association (1897)—F/I,R,P/N
7. Association of State Foresters (1920)—NF/I,R,P/N
8. National Conference on State Parks (1921)—NF/I,R/N
9. International Association of Game, Fish and Conservation Commissioners (1902)—NF/I
10. International Pacific Salmon Federation (1925)—F/I,R,P
11. National Shellfisheries Association (1909)—F/I
12. Oil States Advisory Committee (1930)—NF/I
14. Association of Western State Engineers (1927)—F/I,R,P
15. Fire Marshal's Section, National Fire Protective Association (1896)—NF/I,R
16. Conference of State and Provincial Health Authorities of North America (1884)—F/I
17. Conference of State and Territorial Health Officers (1902)—F/I,R,P
18. Society of State Directors of Physical and Health Education (1926)—F/I,R/N
19. International Society of Medical Health Officers (1928)—NF/I,D
20. Mississippi Valley Association of Public Health Workers—NF/I,D
21. Conference of State Sanitary Engineers (1920)—F/I,R,P
22. Ohio River Board of Engineers—NF/I,R,P/D
23. Conference of State and Provincial Public Health Laboratory Directors—NF/I,D
24. National Conference on Street and Highway Safety (1924)—F/I,R
25. American Conference of Motor Vehicle Administrators (1933)—
26. National Association of State Attorneys General (1906)—NF/I/N
27. International Association of Chiefs of Police (1893)—F/I
28. Grand Jurors Federation of America (1932)—NF/I/D
29. Association of Governmental Officials in Industry in the United States and Canada (1914)—F/I,R
30. International Association of Industrial Accident Boards and Commissions (1914)—NF/I,R
32. Federation of State Medical Boards of the United States (1911)—NF/I,R,P
33. National Board of Medical Examiners (1915)—F/I,R,P
34. National Association of Dental Examiners (1883)—NF/I
35. National Association of Boards of Pharmacy (1904)—NF/I,R,P
36. Conference of Pharmaceutical Law Enforcement Officials (1929)—NF/I,D
37. American Prison Association (1870)—F/I,N
38. American Wardens Association (1870)—F/I
40. Building Officials Conference of America (1914)—F/I,R
41. International Association of Electrical Inspectors (1928)—F/I,R,P
42. Mine Inspectors Institute of America (1908)—F/I
43. National Board of Boiler and Pressure Vessel Inspectors (1919)—NF/I,R,P
44. National Drainage, Conservation and Flood Control Congress (1911)—NF/I,D
45. American Public Welfare Association (1930)—NF/I,R,P
46. American Association of Workers for the Blind (1906)—F/I
47. Conference of Executives of American Schools for the Deaf, Inc. (1868)—NF/I
48. American Printing House for the Blind, Inc. (1858)—NF/I
49. National Association of Housing Officials (1933)—F/I,N
50. Committee on Uniform Crime Records (1930)—F/I
51. American Association for Vital Records and Public Health Statistics (1933)—NF/I
52. Conference of Governors (1908)—F/I
53. National Association of Secretaries of State (1918)—NF/I
54. American Legislators Association (1925)—NF/R/N

HEALTH AND WELL-BEING: Presently (those formed since 1934 and still in existence)

1. Association of Bedding and Furniture Law Officials—NF/I
3. Association of State Maternal and Child Health and Crippled Children’s Directors (1944)—NF/I,R
4. Association of State and Territorial Chronic Disease Program Directors (1959)—NF/I,R
5. National Association of State Civil Defense Directors (1950)—NF/I
9. Confederation of State and Territorial Epidemiologists (1951)—NF/I,R,P
14. Joint Committee of the States to Study Alcoholic Beverage Laws—NF/I,R
15. National Conference of State Liquor Administrators (1934)—NF/I
17. National Association of State Militia (1954)—NF/R
18. Association of Paroling Authorities (1960)—F/I,R
21. International Conference of Police Associations (1953)—F/I,R
23. National Conference of State Social Security Administrators (1951)—NF/I
24. National Association of State Directors of Veterans Affairs (1946)—NF/I
25. Association of State and Interstate Water Pollution Control Administrators (1960)—NF/I,R,P
27. American Association for Conservation Information (1938)—NF/I
28. Forestry, Conservation Communications Association (1944)—NF/I,R,P
29. Southeastern Association of Game and Fish Commissioners (1947)—NF/I,R
32. National Assembly of Chief Livestock Health Officials—NF/I
33. National Organization to Insure a Sound-Controlled Environment (1969)—F/R
34. Manforce (1970)—F/I,R,P
37. National Jail Association (1939)—NF/I
38. American Association of Criminology (1953)—F/I
40. National Association of Coordinators of State Programs for the Mentally Retarded (1963)—NF/I
43. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (1966)—F/I,R
44. National Council of State Agencies for the Blind—NF/I
45. Association of State Maternal and Child Health and Crippled Children's Directors (1944)—NF/I,R
46. Association of State and Territorial Chronic Disease Program Directors (1959)—NF/I,R
47. American Academy of Health Administration (1949)—NF/I
48. Association of State and Territorial Directors of Local Health Services (1947)—NF/I
49. Association of State and Territorial Health Officers (1942)—F/I,R,P
50. American Conference of Governmental Industrial Hygienists (1938)—F/I,R
51. Interstate Clearing House on Mental Health (1954)—NF/I,R,P
52. National Association of State Mental Health Program Directors (1963)—NF/I,R,P
53. Conference of State and Territorial Directors of Public Health Education (1946)—NF/I,R,P
55. Universal Detective Association (1969)—F/I
56. American Correctional Food Service Association (1969)—F/I,R,P
57. Industrial Relations Research Association (1947)—F/I
60. Industrial Medical Administrators’ Association (1959)—F/I,R
61. Project Newgate (1968)—F/I,R,P
62. Assembly of Regional Health Planning Organizations (1969)—NF/I,R
64. National Conference of State Legislative Leaders (1959)—NF/I,R
65. National Legislative Conference (1947)—NF/I
66. National Order of Women Legislators (1938)—NF/I,R
67. National Society of State Legislators (1965)—NF/I
68. National Conference of Lieutenant Governors (1962)—NF/I

**WEALTH:** 1934

1. National Association of Marketing Officials (1919)—NF/I,R
2. Association of American Feed Control Officials (1907)—F/I,R,P
4. International Association of Fairs and Expositions (1889)—NF/I
5. National Association of Supervisors of State Banks (1902)—NF/I,R/N
6. National Association of Securities Commissioners (1917)—NF/I,R/N
7. United States Building and Loan League, State Supervisors’ Division (1892)—NF/I/D
8. Association of States on Bank Taxation (1928)—NF/I/D
10. National Association of State Aviation Officials (1931)—F/I,R
11. National Shellfisheries Association (1909)—F/I
12. Oil States Advisory Committee (1930)—NF/I
13. Fire Marshal’s Section, National Fire Protective Association (1890)—NF/I,R
15. American Association of State Highway Officials (1914)—NF/I,R,P
16. American Conference of Motor Vehicle Administrators (1933)—NF/I,R
17. National Convention of Insurance Commissioners (1878)—NF/I,R,P
18. National Association of State Attorneys General (1906)—F/I/N
19. Association of Governmental Officials in Industry in the United States and Canada (1914)—F/I,R
20. International Association of Industrial Accident Boards and Commissions (1914)—F/I,R
22. Eastern Interstate Conference on Labor Legislation (1931)—NF/I,R/D
23. National Association of License Law Officials (1929)—NF/I,N
26. Building Officials Conference of America (1914)—F/I,R/N
27. National Association of Railroad and Utilities Commissioners (1889)—F/I,R,P/N
28. Conference of State Utility Commission Engineers (1923)—F/I,R
29. National Tax Association (1906)—F/I,R
30. National Association of State Tax Officials (1933)—NF/I,R
32. Conference of Administrators of Tobacco Tax Laws (1927)—NF/I
33. National Association of State Auditors, Comptrollers and Treasurers (1915)—NF/I
34. Governmental Purchasing Group, National Association of Purchasing Agents, Inc. (1915)—NF/I,N
35. National Conference of Referees in Bankruptcy (1926)—NF/I,R
36. International Bridge, Tunnel and Turnpike Association (1932)—F/I
37. American Road Builders Association (1902)—F/I
38. International Association of Plumbing and Mechanical Officials (1929)—NF/I,R
39. Conference of Governors (1908)—F/I
40. National Association of Secretaries of State (1918)—NF/I
41. American Legislators Association (1925)—NF/R/N

WEALTH: Presently

1. National Committee on Governmental Accounting (1934)—NF/I,R,P
2. National Association of State Budget Officers (1945)—NF/I
5. International Association of Governmental Fair Agencies (1966)—NF/I,R,P
7. Association of Labor Mediation Agencies (1952)—NF/I,R
9. Joint Committee of the States to Study Alcoholic Beverage Laws—NF/I,R
10. National Conference of State Liquor Administrators (1934)—NF/I
12. Association of State Planning and Development Agencies (1945)—F/I
13. American Public Power Association (1940)—NF/I
15. National Institute of Governmental Purchasing (1944)—F/I,R,P
17. Association of American Seed Control Officials (1956)—F/I,R,P
18. National Conference of State Social Security Administrators (1951)—NF/I
23. Great Plains Agricultural Council (1946)—NF/I,R,P
26. Agricultural Board (1944)—F/I
28. Atomic Industrial Forum (1953)—F/I
32. American Society of Construction Inspectors (1961)—F/I
34. Industrial Relations Research Association (1947)—F/I
35. National Council of State Self-Insurers’ Association (1945)—NF/I
36. National Notary Association (1957)—NF/I
37. American Association for Public Opinion Research (1947)—F/I
38. International Association of Ports and Harbors (1952)—F/I
39. Discover America Travel Organizations (1969)—NF/I,R,P
41. National Conference of State Legislative Leaders (1959)—NF/I,R
42. National Legislative Conference (1947)—NF/I
43. National Order of Women Legislators (1938)—NF/I,R
44. National Society of State Legislators (1965)—NF/I
45. National Conference of Lieutenant Governors (1962)—NF/I

**SKILLS:** 1934

1. The Civil Service Assembly of the United States and Canada (1906)—F/I/N
2. Federation of State Medical Boards of the United States (1911)—NF/I,R,P
3. National Board of Medical Examiners (1915)—F/I,R,P
4. National Association of Dental Examiners (1883)—NF/I/N
10. National Association of License Law Officials (1929)—NF/I/N
12. International Association of Plumbing and Mechanical Officials (1929)—NF/I,R
13. Conference of Governors (1908)—F/I
14. National Association of Secretaries of State (1918)—NF/I
15. American Legislators Association (1925)—NF/R/N

**SKILLS:** Presently

1. National Interstate Council of State Boards of Cosmetology (1936)—NF/I,R
8. Industrial Medical Administrators Association (1959)—F/I,R
10. National Conference of State Legislative Leaders (1959)—NF/I,R
11. National Legislative Conference (1947)—NF/I
ENLIGHTENMENT: 1934

1. National Council of State Superintendents and Commissioners of Education—F/I
4. Society of State Directors of Physical and Health Education (1926) —F/I,R,N
5. National Association of State Directors of Educational Research (1927) —NF/I,N
6. National Association of Public School Business Officials (1910)—NF/I,D
7. National Association of State Universities (1895)—NF/I,D
8. State Universities Association (1912)—NF/I,D
9. Association of Governing Boards of State Universities and Allied Institutions (1920)—NF/I,N
10. Association of College and University Broadcasting Stations (1925)—NF/I,N
11. Association of Land-Grant Colleges and Universities (1887)—NF/I,N
13. League of Library Commissions (1904)—NF/I
15. American Printing Houses for the Blind, Inc. (1858)—NF/I,R,P
16. Conference of Governors (1908)—F/I
17. National Association of Secretaries of State (1918)—NF/I
18. American Legislators Association (1925)—NF/R/N

ENLIGHTENMENT: Presently

1. National Association of State Text Book Directors—NF/I,R,P
5. National Conference for State Consultants in Elementary Education (1939)—F/I
7. Office of Research and Information (1958)—NF/I
10. American Council on the Teaching of Foreign Languages (1966)—NF/I
11. National Council of State Supervisors of Foreign Languages (1960)—NF/I
15. American Association of School Personnel Administrators (1940)—NF/I,R
16. National School Boards Association (1940)—NF/I
17. National Association of State Directors of Special Education (1938)—NF/I
18. American Association of State Colleges and Universities (1961)—NF/I
19. National Assessment of Educational Progress (1964)—NF/I
22. International Society for Educational Planners (1970)—F/I
23. Project Newgate (1968)—F/I,R,P
25. National Conference of State Legislative Leaders (1959)—NF/I,R
27. National Order of Women Legislators (1938)—NF/I,R

**AFFECTION:** 1934

1. Conference of Governors (1908)—F/I
2. National Association of Secretaries of State (1918)—NF/I
3. American Legislators Association (1925)—NF/R/N

**AFFECTION:** Presently

2. National Conference of State Legislative Leaders (1959)—NF/I,R
3. National Legislative Conference (1947)—NF/I
5. National Society of State Legislators (1965)—NF/I

**RESPECT:** 1934

1. National Association of State Attorneys General (1906)—NF/I,N
2. Building Officials Conference of America (1914)—F/I,R/N
3. Conference of Governors (1908)—F/I
4. National Association of Secretaries of State (1918)—NF/I
5. American Legislators Association (1925)—NF/R/N

**RESPECT:** Presently

2. National District Attorneys Association (1950)—NF/I
4. National Conference of State Legislative Leaders (1959)—NF/I,R
5. National Legislative Conference (1947)—NF/I
7. National Society of State Legislators (1965)—NF/I

RECTITUDE: 1934

1. Conference of Governors (1908)—F/I
2. National Association of Secretaries of State (1918)—NF/I

RECTITUDE: Presently

1. National Association of Human Rights Workers (1947)—F/I
3. National Conference of State Legislative Leaders (1959)—NF/I,R
4. National Legislative Conference (1947)—NF/I
5. National Order of Women Legislators (1938)—NF/I,R

POWER: 1934

1. National Association of Commissioners, Secretaries and Departments of Agriculture (1916)—NF/I,R,P/N
2. International Pacific Salmon Federation (1925)—F/I,R,P
3. Conference of State and Provincial Health Authorities of North America (1885)—NF/I
4. National Association of State Attorneys General (1906)—NF/I/N
5. National Conference of Judicial Councils (1929)—NF/I
6. American Judicature Society (1913)—NF/I
7. Grand Jurors Federation of America (1932)—NF/I/D
8. Association of Governmental Officials in Industry of the United States and Canada (1914)—F/I,R
10. American Wardens Association (1870)—F/I
11. National Board of Boiler and Pressure Vessel Inspectors (1919)—NF/I,R,P
12. Conference of State Utility Commission Engineers (1923)—F/I,R
14. Conference of Governors (1908)—F/I
15. National Association of Secretaries of State (1918)—NF/I
16. American Legislators Association (1925)—NF/R/N
17. The Civil Service Assembly of the United States and Canada (1906)—F/I/N
19. International Association of Industrial Accident Boards and Commissions (1914)—F/I,R
20. International Association of Public Employment Services (1913)—F/I,R,P/N
21. International Bridge, Tunnel and Turnpike Association (1932)—F/I
22. International Association of Dairy and Milk Inspectors (1911)—F/I,R,P/N
23. United States Livestock Sanitary Association (1897)—F/I,R,P/N
24. International Association of Game, Fish and Conservation Commissioners (1902)—NF/I
25. International Society of Medical Health Officers (1928)—NF/I,D
26. Conference of State and Provincial Public Health Laboratory Directors—NF/I,D
27. International Association of Chiefs of Police (1893)—F/I
28. Association of American Feed Control Officials (1908)—F/I,R,P
29. American Conference of Motor Vehicle Administrators (1933)—NF/I,R
30. Mine Inspectors Institute of America (1908)—F/I

**POWER:** Presently

2. Conference of Chief Justices (1949)—NF/I
5. National Legislative Conference (1947)—NF/I
7. National District Attorneys Association (1950)—NF/I
8. Association of Paroling Authorities (1960)—F/I,R
10. American Academy of Health Administration (1949)—NF/I
11. International Association of Ports and Harbors (1952)—F/I
13. National Records Management Council (1948)—F/I
17. National Order of Women Legislators (1938)—NF/I,R
18. National Society of State Legislators (1965)—NF/I
22. International Conference of Police Associations (1953)—F/I,R
27. International Society for Educational Planners (1970)—F/I
30. American Association for Conservation Information (1938)—NF/I

**TABLE B2**

*NAME CHANGES* (for associations formed as of 1934)

<table>
<thead>
<tr>
<th>Association Changed</th>
<th>New Association</th>
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<tbody>
<tr>
<td>1. National Association of Commissioners, Secretaries and Departments of Agriculture</td>
<td>National Association of State Departments of Agriculture</td>
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<tr>
<td>2. International Association of Dairy and Milk Inspectors</td>
<td>International Association of Milk, Food and Environment Sanitarians</td>
</tr>
<tr>
<td>3. Association of Official Agricultural Chemists</td>
<td>Association of Official Analytical Chemists</td>
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<tr>
<td>4. United States Livestock Sanitary Association</td>
<td>United States Animal Health Association</td>
</tr>
<tr>
<td>5. National Association of Supervisors of State Banks</td>
<td>Conference of State Bank Supervisors</td>
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<tr>
<td>7. The Civil Service Assembly of the United States and Canada</td>
<td>Public Personnel Association</td>
</tr>
<tr>
<td>8. Association of State Foresters</td>
<td>National Association of State Foresters</td>
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<tr>
<td>10. Society of State Directors of Physical and Health Education</td>
<td>Society of State Directors of Health, Physical Education and Recreation</td>
</tr>
<tr>
<td>12. National Council of Teachers’ Retirement Systems</td>
<td>National Council of Teachers’ Retirement</td>
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<tr>
<td>14. Association of Land-Grant Colleges and Universities</td>
<td>National Association of State Universities and Land-Grant Colleges</td>
</tr>
<tr>
<td>15. Association of College and University Broadcasting Stations</td>
<td>National Association of Educational Broadcasters</td>
</tr>
<tr>
<td>17. National Convention of Insurance Commissioners</td>
<td>National Association of Insurance Commissioners</td>
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<tr>
<td>18. National Association of State Attorneys General</td>
<td>National Association of Attorneys General</td>
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<tr>
<td>19. International Association of Public Employment Services</td>
<td>International Association of Personnel on Employment</td>
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</tbody>
</table>
23. National Association of License Law Officials—National Association of Real Estate License Law
25. Building Officials Conference of America—Building Officials and Code Administrators International
26. National Association of Railroad and Utilities Commissioners—National Association of Regulatory Utilities Commissioners
27. Governmental Purchasing Group, National Association of Purchasing Agents—Governmental Purchasing Group, National Association of Purchasing Management
28. National Association of Housing Officials—National Association of Housing and Redevelopment Officials
29. American Legislators Association—Council of State Governments

TABLE B3

CROSS-SECTIONAL: PRE-1934

1. Conference of Governors (1908)
2. National Association of Secretaries of State (1918)
3. American Legislators Association (1925) [listed under all headings except “rectitude”]

CROSS SECTIONAL: Presently

2. National Conference of State Legislative Leaders (1959)
3. National Legislative Conference (1947)
4. National Order of Women Legislators (1938)
5. National Society of State Legislators (1965)

<table>
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<tr>
<th>TABLE C</th>
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<tbody>
<tr>
<td>Number of Uniform Laws Recommended 1932 1970</td>
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<tr>
<td>Number of Jurisdictions Enacting Recommended Laws 1932 1970</td>
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*Number of uniform laws enacted by 20 or more jurisdictions.
### TABLE C1

**Uniform State Laws—1932**

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<tbody>
<tr>
<td>1. Arbitration Act</td>
<td>1925</td>
<td>5</td>
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<tr>
<td>2. Act Regulating Traffic on Highways</td>
<td>1926</td>
<td>18</td>
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<tr>
<td>3. Flag Act</td>
<td>1917</td>
<td>10</td>
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<tr>
<td>5. Child Labor Act</td>
<td>1911</td>
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<td>6. Workmen's Compensation Act</td>
<td>1914</td>
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<tr>
<td>7. Firearms Act</td>
<td>1930</td>
<td>8</td>
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<td>8. Fraudulent Conveyance Act</td>
<td>1918</td>
<td>16</td>
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<tr>
<td>9. Veterans' Guardianship Act</td>
<td>1928</td>
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<tbody>
<tr>
<td>1. Arbitration Act</td>
<td>1925</td>
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<tr>
<td>2. Bills of Lading Act</td>
<td>1909</td>
<td>29</td>
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<tr>
<td>3. Conditional Sales Act</td>
<td>1918</td>
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<td>4. Limited Partnership Act</td>
<td>1916</td>
<td>20</td>
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<td>5. Partnership Act</td>
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<td>19</td>
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<tr>
<td>6. Sale of Securities Act</td>
<td>1930</td>
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<td>7. Sales Act</td>
<td>1906</td>
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<td>8. Warehouse Receipts Act</td>
<td>1906</td>
<td>48</td>
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<td>9. Acknowledgments Act</td>
<td>1892</td>
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<td>10. Acknowledgments Act, Foreign</td>
<td>1914</td>
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<td>11. Joint Obligations Act</td>
<td>1925</td>
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<tr>
<td>12. Negotiable Instruments Act</td>
<td>1896</td>
<td>53</td>
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<tr>
<td>13. Real Estate Mortgage Act</td>
<td>1927</td>
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<tr>
<td>14. Stock Transfer Act</td>
<td>1909</td>
<td>23</td>
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<tr>
<td>15. Aeronautics Act</td>
<td>1922</td>
<td>21</td>
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<tr>
<td>16. Land Registration Act</td>
<td>1916</td>
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<tr>
<td>17. Motor Vehicle Registration Act</td>
<td>1926</td>
<td>7</td>
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<tr>
<td>18. Reciprocal Transfer Tax Act</td>
<td>1928</td>
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<tr>
<td>19. Child Labor Act</td>
<td>1911</td>
<td>1</td>
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<tr>
<td>20. Workmen's Compensation Act</td>
<td>1914</td>
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<td>22. Fraudulent Conveyance Act</td>
<td>1918</td>
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<td>23. Federal Tax Lien Registration Act</td>
<td>1926</td>
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<td>24. Fiduciaries Act</td>
<td>1922</td>
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<td>25. Interparty Agreement Act</td>
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<td>26. Wills Act—Foreign Executed</td>
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<td>27. Wills Act—Foreign Probated</td>
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<td>28. Written Obligations Act</td>
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<td>1. Air Licensing Act</td>
<td>1930</td>
<td>5</td>
</tr>
</tbody>
</table>

IV. Affection
1. Desertion and Non-support Act 1910 19
2. Divorce Jurisdiction Act 1930 1
3. Illegitimacy Act 1922 7
4. Marriage and Marriage License Act 1911 2
5. Marriage Evasion Act 1912 5

V. Power
1. Act to Secure the Attendance of Witness from Without the State 1931 1
2. Criminal Extradition Act 1926 7
3. Declaratory Judgments Act 1922 18
4. Extradition of Persons of Unsound Mind Act 1916 9
5. Proof of Statutes Act 1920 23
6. Foreign Depositions Act 1920 11

Uniform State Laws—1970

I. Health and Well-being

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Adoption Act, Revised</td>
<td>1969</td>
</tr>
<tr>
<td>2.</td>
<td>Anatomical Gift Act</td>
<td>1968</td>
</tr>
<tr>
<td>3.</td>
<td>Arbitration Act</td>
<td>1956</td>
</tr>
<tr>
<td>4.</td>
<td>Controlled Substances Act</td>
<td>1970</td>
</tr>
<tr>
<td>5.</td>
<td>Motor Vehicle Certificate of Title and Anti-theft Act</td>
<td>1955</td>
</tr>
<tr>
<td>6.</td>
<td>Narcotic Drug Act</td>
<td>1932</td>
</tr>
<tr>
<td>7.</td>
<td>Post-Conviction Procedure Act, (as Revised)</td>
<td>1966</td>
</tr>
<tr>
<td>10.</td>
<td>Veterans’ Guardianship Act</td>
<td>1942</td>
</tr>
<tr>
<td>11.</td>
<td>Anti-Gambling Act</td>
<td>1952</td>
</tr>
<tr>
<td>12.</td>
<td>Crime Investigating Commission Act</td>
<td>1952</td>
</tr>
<tr>
<td>14.</td>
<td>Perjury, Act on</td>
<td>1952</td>
</tr>
<tr>
<td>15.</td>
<td>Police Council Act</td>
<td>1952</td>
</tr>
<tr>
<td>17.</td>
<td>Unauthorized Practice of Law, Act Providing Remedies for</td>
<td>1960</td>
</tr>
<tr>
<td>18.</td>
<td>Water Use Act</td>
<td>1958</td>
</tr>
</tbody>
</table>

II. Wealth

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Acknowledgment Act as Amended</td>
<td>1960</td>
</tr>
<tr>
<td></td>
<td>Title</td>
<td>Year</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>3.</td>
<td>Ancillary Administration of Estates Act as Amended</td>
<td>1953</td>
</tr>
<tr>
<td>4.</td>
<td>Arbitration Act</td>
<td>1956</td>
</tr>
<tr>
<td>5.</td>
<td>Civil Liability for Support Act</td>
<td>1954</td>
</tr>
<tr>
<td>6.</td>
<td>Commercial Code as Revised</td>
<td>1962</td>
</tr>
<tr>
<td>7.</td>
<td>Common Trust Fund Act</td>
<td>1938</td>
</tr>
<tr>
<td>8.</td>
<td>Consumer Credit Code</td>
<td>1968</td>
</tr>
<tr>
<td>10.</td>
<td>Contribution Among Tortfeasors Act (as Revised)</td>
<td>1955</td>
</tr>
<tr>
<td>11.</td>
<td>Deceptive Trade Practices Act (as Revised)</td>
<td>1966</td>
</tr>
<tr>
<td>13.</td>
<td>Division of Income for Tax Purposes Act</td>
<td>1957</td>
</tr>
<tr>
<td>15.</td>
<td>Federal Tax Lien Registration Act, Revised</td>
<td>1966</td>
</tr>
<tr>
<td>16.</td>
<td>Fiduciaries Act</td>
<td>1922</td>
</tr>
<tr>
<td>18.</td>
<td>Fraudulent Conveyance Act</td>
<td>1918</td>
</tr>
<tr>
<td>19.</td>
<td>Gifts to Minors Act</td>
<td>1956</td>
</tr>
<tr>
<td>20.</td>
<td>Interstate Arbitration of Death Taxes Act</td>
<td>1943</td>
</tr>
<tr>
<td>21.</td>
<td>Interstate Compromise of Death Taxes Act</td>
<td>1943</td>
</tr>
<tr>
<td>22.</td>
<td>Limited Partnership Act</td>
<td>1916</td>
</tr>
<tr>
<td>23.</td>
<td>Partnership Act</td>
<td>1914</td>
</tr>
<tr>
<td>24.</td>
<td>Principal and Income Act</td>
<td>1931</td>
</tr>
<tr>
<td>26.</td>
<td>Probate of Foreign Wills Act</td>
<td>1950</td>
</tr>
<tr>
<td>27.</td>
<td>Recognition of Acknowledgements Act</td>
<td>1968</td>
</tr>
<tr>
<td>28.</td>
<td>Securities Act</td>
<td>1958</td>
</tr>
<tr>
<td>29.</td>
<td>Simplification of Fiduciary Security Transfers, Act on</td>
<td>1958</td>
</tr>
<tr>
<td>30.</td>
<td>Simultaneous Death Act</td>
<td>1940</td>
</tr>
<tr>
<td>31.</td>
<td>Single Publication Act</td>
<td>1952</td>
</tr>
<tr>
<td>32.</td>
<td>Supervision of Trustees for Charitable Purposes Act</td>
<td>1954</td>
</tr>
<tr>
<td>33.</td>
<td>Testamentary Additions to Trusts Act</td>
<td>1960</td>
</tr>
<tr>
<td>34.</td>
<td>Trustees' Powers Act</td>
<td>1964</td>
</tr>
<tr>
<td>35.</td>
<td>Anti-Gambling Act</td>
<td>1952</td>
</tr>
<tr>
<td>37.</td>
<td>Foreign Bank Loan Act</td>
<td>1959</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>38.</td>
<td>Land Sales Practices Act</td>
<td>1966</td>
</tr>
<tr>
<td>40.</td>
<td>Small Estates Act</td>
<td>1951</td>
</tr>
<tr>
<td>41.</td>
<td>Special Power of Attorney for Small Property Interests Act</td>
<td>1964</td>
</tr>
<tr>
<td>42.</td>
<td>Absence as Evidence of Death and Absentees' Property Act</td>
<td>1939</td>
</tr>
<tr>
<td>43.</td>
<td>Cy-Pres Act</td>
<td>1944</td>
</tr>
<tr>
<td>44.</td>
<td>Death Tax Credit Act</td>
<td>1961</td>
</tr>
<tr>
<td>45.</td>
<td>Estates Act</td>
<td>1938</td>
</tr>
<tr>
<td>46.</td>
<td>Execution of Wills Act</td>
<td>1940</td>
</tr>
<tr>
<td>47.</td>
<td>Insurer's Liquidation Act</td>
<td>1939</td>
</tr>
<tr>
<td>48.</td>
<td>Interparty Agreement Act</td>
<td>1925</td>
</tr>
<tr>
<td>49.</td>
<td>Joint Obligations Act</td>
<td>1925</td>
</tr>
<tr>
<td>51.</td>
<td>Powers of Foreign Representatives Act</td>
<td>1944</td>
</tr>
<tr>
<td>52.</td>
<td>Power of Sale Mortgage Foreclosure Act</td>
<td>1940</td>
</tr>
<tr>
<td>53.</td>
<td>Preservation of Private Business Records Act</td>
<td>1954</td>
</tr>
<tr>
<td>54.</td>
<td>Reciprocal Transfer Tax Act</td>
<td>1928</td>
</tr>
<tr>
<td>55.</td>
<td>Resale Price Control Act</td>
<td>1940</td>
</tr>
<tr>
<td>56.</td>
<td>Reverter of Realty Act</td>
<td>1944</td>
</tr>
<tr>
<td>57.</td>
<td>Rule Against Perpetuities Act</td>
<td>1944</td>
</tr>
<tr>
<td>58.</td>
<td>Trusts Act</td>
<td>1937</td>
</tr>
<tr>
<td>59.</td>
<td>Vendor and Purchaser Risk Act</td>
<td>1935</td>
</tr>
<tr>
<td>60.</td>
<td>War Service Validation Act</td>
<td>1944</td>
</tr>
<tr>
<td>61.</td>
<td>Written Obligations Act</td>
<td>1925</td>
</tr>
</tbody>
</table>

III. Enlightenment

| 1. | Minor Student Capacity to Borrow Act              | 1969      | 1          |

IV. Affection

| 1. | Adoption Act, Revised                            | 1969      | —          |
| 2. | Child Custody Jurisdiction Act                   | 1968      | 1          |
| 3. | Civil Liability for Support Act                  | 1954      | 5          |
| 4. | Divorce Recognition Act                          | 1947      | 10         |
| 5. | Marriage and Divorce Act                         | 1970      | —          |
| 6. | Paternity, Act on                                | 1960      | 4          |
| 7. | Reciprocal Enforcement of Support Act            | 1952      | 52         |
| 8. | Blood Tests to Determine Paternity, Act on       | 1952      | 8          |

V. Respect

| 1. | Anti-Discrimination Act                           | 1966      | 2          |
|-----------|-----------|------------|
| 1. Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings | 1936 | 40 |
| 2. Certification of Questions of Law Act | 1967 | 2 |
| 3. Criminal Extradition Act | 1936 | 46 |
| 5. Declaratory Judgments Act | 1922 | 42 |
| 6. Enforcement of Foreign Judgments Act | 1948 | 8 |
| 7. Evidence, Uniform Rules of | 1953 | 4 |
| 9. Interstate and International Procedure Act | 1962 | 6 |
| 11. Juvenile Court Act | 1968 | 1 |
| 12. Mandatory Disposition of Detainers Act | 1958 | 7 |
| 14. Perpetuation of Testimony Act | 1959 | 1 |
| 15. Photographic Copies of Business and Public Records as Evidence Act | 1949 | 38 |
| 16. Rendition of Accused Persons Act | 1967 | 4 |
| 17. Rendition of Prisoners as Witnesses in Criminal Proceedings Act | 1957 | 11 |
| 18. Statutory Construction Act | 1965 | 1 |
| 19. Act to Provide for the Appointment of Commissioners | 1944 | 15 |
| 22. State Witness Immunity Act | 1952 | 1 |
| 24. Court Administrator Act | 1948 | 3 |
| 25. Department of Justice Act | 1952 | — |
| 26. Perjury, Act on | 1952 | 3 |
| 27. Rules Governing Procedures in Traffic Cases | 1957 | 5 |
| 28. State Administrative Procedure Act, as Revised | 1961 | 9 |
| 29. State Tax Court Act | 1957 | — |
| 30. Composite Reports as Evidence Act | 1936 | 3 |
| 31. Expert Testimony Act | 1937 | 2 |
| 32. Statute of Limitations on Foreign Claims Act | 1957 | 3 |
| 33. Criminal Statistics Act | 1946 | 1 |
| 34. Federal Services Absentee Ballot Act | 1962 | — |