Governance Concerns and Government Capacity: The Case of Shale Gas

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A Charge from Aristotle on Governance

• Three seemingly simple questions:

1) Who governs?

2) How do they govern?

3) What are the results of their governance?
# Governance Options in a Federal System

<table>
<thead>
<tr>
<th>State</th>
<th>Federal</th>
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<tbody>
<tr>
<td>High</td>
<td>Contested Federalism</td>
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<tr>
<td>Low</td>
<td>Federal Domination</td>
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Federal and State Shale Gas Policy Engagement

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<td><strong>High</strong></td>
<td><strong>State Domination</strong>&lt;br&gt;28-36 States largely on their own&lt;br&gt;• Legacy policies&lt;br&gt;• Proliferation of new statutes?</td>
</tr>
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</tbody>
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- Contested Federalism
  - What is federal role?
  - Statutory exemptions
  - New statute? (BREATHE, FRESH...)
  - Revisit existing law?

- Federal
  - Symbolic
  - High
  - Low

- State
  - High
  - Low
Consequences of Decentralized Governance

• What are the results if governance remains largely devolved to individual states and localities—as opposed to a federal set of rules and regulations?

• One View: Would states race to the bottom?
  • Resource extraction trumps environmental protection: export problems, out-bid neighbors, create as cozy a governance setting as possible
  • Captured institutions/processes
Another view: Would States Race to the Top?

• The “Next Generation,” the “3rd Epoch,” the “Resurgence of the States”.

• States on the frontier of innovative governance:
  • Cross-media integration
  • Transparency and public engagement
  • Performance metrics
  • Policy tool innovations: Markets, voluntarism
  • Cross-state collaboration (regionalism)
  • Cross-agency collaboration
  • Local government engagement/collaboration
So which view prevails for shale?

• 1) Current Context: Capacity of State and Local Governments in the 2010s
• 2) Shifting Trends in Partisan Control of State Governments
• 3) Expanding Role of State Legislatures in Fashioning New Shale-Focused Statutes
• 4) Diffusion vs. Heterogeneity in Policy Development for Shale Gas
State/Local Capacity

• “Steepest drop in the last 50 years”: Rockefeller
Decline in Shared Partisan Control of States

- States Divided
- GOP
- Democratic
Enter the Legislatures

*Through July

Source: National Conference of State Legislatures
Diffusion vs. Heterogeneity

Tale of Two States and Mega-Legislation

2012 Pennsylvania Unconventional Gas Well Impact Fee Act

2013 Illinois Hydraulic Fracturing Regulatory Act
Looking Ahead

• Does this diversity reflect geological tailoring—or other factors?
• How do we define governance “best practice”? 
• Are all states “world-class” or, at least, “above average” (with apologies to Garrison Keillor)?
• How do we address cross-border issues?
• Borrowing from Aristotle. . .What will be the results of this emerging approach to shale gas governance?