United States

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

The United States (US) has, for the most part, two regional tiers: states and, in the more populous and older states, counties. Counties fall under the jurisdiction of state governments. We also score two metropolitan governments, The Metropolitan Council in Minnesota since 1976 and Metro in Oregon since 1979. In addition, there are Indian tribes and until 1959 there were also two territories, Alaska and Hawaii. The District of Columbia has a special status as capital district. Puerto Rico is an Associated Free State with the US (*Estado Libre Asociado*, Elazar 1991: 325).[1]

The US constitution contains a list of expressed federal competences, encompassing taxation, the military, currency, commerce with Indian tribes, interstate and foreign commerce, and naturalization (C 1788, Art. 1.8). In addition, an elastic clause gives the federal government authority to pass any law "necessary and proper" for the execution of its express powers (C 1788, Art. 1.8). Competences not delegated to the federal government and not forbidden to the states are reserved to the states (C 1788, Amendment X) but federal law has supremacy over state law (C 1788, Art. 6). States have extensive competences, among them primary responsibility for education, social welfare, regional development, local government, civil and criminal law, and health and hospitals (Dinan 2012; Hueglin and Fenna 2006: 151–156; Schram 2002; Watts 1999*a*, 2008). The federal government has near exclusive authority over citizenship (including naturalization) and immigration (Tarr 2005: 399–400). The power of Congress to admit aliens into the country under conditions it lays down is exclusive of state regulation. Congress, with the help of the courts, has eroded state authority to regulate the conduct of aliens residing in the country.

The fifty states of the US include Alaska and Hawaii, former territories that were granted statehood in 1959 (Law No. 85-508/1958; No. 86-3/1959). As territories, each had an elected legislature, a governor appointed by Washington, and self-governance over a broad range of policies (Law No. 339/1900, Arts. 12–15, 66; No. 384/1912, Arts. 4–5, 9, and 14). Alaska could adopt legislation subject to national congressional veto (Law No. 384/1912, Art. 20)[2] but the Hawaiian legislature could override a gubernatorial veto on territorial legislation with a two-thirds majority (Kinevan 1950; Law No. 339/1900, Arts. 49–51 and 66). We score Alaska 2 until 1959 and Hawaii 3 on institutional depth. The policy scope of the territories was similar to that of states, and Alaska and Hawaii score 3 on policy scope.

Puerto Rico is an Associated Free State not included in the fifty US states. Puerto Rico came under US control during the Spanish–US war, and was in 1898 officially ceded by Spain to the US. The 1917 Jones–Shafroth Act (Law No. 64-368/1917)—also known as the Jones Act of Puerto

[1] The unincorporated organized territories of Guam, the United Mariana Islands, and the Virgin Islands are not included.

[2] The congressional veto was abolished by the Alaska Constitution of 1956 which came into effect with statehood in 1959.

Rico—established limited self-rule. Puerto Ricans obtained full US citizenship, could elect both houses of its legislature, and elect a non-voting representative, the Resident Commissioner, to the US House of Representatives (Law No. 64-368/1917, Arts. 5, 24–25, and 29). However, the governor and the entire executive branch were centrally appointed; legislative acts of the regional legislature could be vetoed by the US president; and major policies including fiscal and economic matters, postal services, immigration, and defense, remained under control of Washington DC (Law No. 64-368/1917, Arts. 7–9, 12–13, and 34). Portions of the Jones Act were superseded in 1949 when the first directly elected governor took the reins, but central control over the administration remained strong. On several occasions, in response to a strong separatist movement, the US government and its local representatives severely curtailed local liberties. A law passed by the Puerto Rican legislature in 1948 made it illegal to display a Puerto Rican flag, sing a patriotic tune, talk of independence, or campaign for separatism (Law No. 53/1948). In 1950, the US government briefly imposed martial law to suppress rebellion. We reflect the strong central hand by scoring 1 on institutional depth and 0 on policy scope for 1950 and 1951 (Rezvani 2014: 174).[β]

In 1950, the US Congress approved a law that granted the right to Puerto Ricans to draft their own constitution (Law No. 81-600/1950). The new Commonwealth constitution went into effect in 1952 after US Congress approval (Elazar 1991: 324; Law No. 82-447/1952). The US Congress and president retain ultimate responsibility for governing Puerto Rico (C 1788, Art. 4.3) so strictly speaking authority is merely delegated.[β] In addition, the constitution can only be changed with the approval of the US Congress (Elazar 1991: 325). However, Puerto Ricans vote for their own governor and assembly (C 1952, Art. 3.1). The regional government has authority over the economy, education and welfare policies, public works, the Puerto Rico National Guard, the organization of the seventy-eight municipal governments, and the institutional set up of the regional government itself (C 1952, Arts. 3.16, 4, 6; Elazar 1991: 326). Immigration and citizenship is a federal responsibility. Given the central government veto and its wide policy competences, we code Puerto Rico 2 on institutional depth and 3 on policy scope for 1952–2010.

In 2010, 566 federally recognized Indian and Alaskan Tribes[3] exercised authority over almost two million citizens (US Department of the Interior 2014).[4] Relations with Indian tribes are an exclusive competence of Congress (C 1788, Art. 1.8).[5] Congress ratified 370 treaties before the treaty making procedure ended in 1871.[6] Subsequently, Indian tribes have been federally

[3] Indian tribes can also be recognized by states. See National Conference of State Legislatures. "Federal and State Recognized Tribes." <http://www.ncsl.org>. Most federally recognized tribes are organized under the Indian Reorganization Act (Law No. 103-454/1994) except for regional and village corporations in Alaska and Indian tribes in Oklahoma which are incorporated by respectively the Alaska Native Claims Settlement Act (Law No. 92-203/1971) and the Oklahoma Indian Welfare Act (Law No. 816-74/1936).

[4] Federal Register. Volume 79, No. 19/Wednesday, January 29, 2014/Notices.

[5] The exclusive competence of Congress can be derived from Art. 1.8 of the constitution which provides that Congress has the exclusive power to "regulate Commerce ... with the Indian tribes" (Papillon 2012*a*).

[6] An overview of treaties and legislation affecting Indian tribes is provided in seven volumes compiled by Charles J. Kappler entitled *Indian Affairs: Laws and Treaties*. <http://digital.library.okstate.edu/Kappler/>.

recognized through acts of Congress, presidential executive orders, federal court decisions and, since 1978, also through a federal acknowledgement process administered by the Bureau of Indian Affairs (BIA) (Kincaid 2010: 368–370). Each tribe has its own constitution and authoritative competences, but there are some broad similarities.[7] Indian tribes possess all powers of self-government that states enjoy including the right “to form their own governments; to make and enforce laws, both civil and criminal; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands.”[8]

However, the authority exercised by Indian tribes falls short of that exercised by states (Law No. 233/1924; No. 90-284/1968; No. 93-638/1975; No. 103-413/1994). The doctrine of plenary power established in the Supreme Court ruling *Lonewolf v. Hitchcock* in 1903 allowed Congress to intervene at will in Indian affairs (Babcock 2005; Papillon 2012*a*). Tribal authority over criminal and civil jurisdiction was limited in 1953 when Congress gave six states full or partial jurisdiction and allowed others to elect to do the same (Law No. 83-280/ 1953).[9] Tribal courts have civil jurisdiction over Indians and non-Indians who reside or do business on Indian reservations but criminal jurisdiction over violations of tribal law extends only to tribal members. Indian self-government is also constrained by administrative and fiscal dependence on the Bureau of Indian Affairs (BIA).[β] Tribal police forces have to contract with the BIA, and the BIA administers and provides funding for education, social services, economic development, natural resources, housing, roads, and bridges (Law No. 93-638/1975).[10] In addition, about 326 Indian land areas covering approximately 56.2 million acres are held in trust by the US.[11] We score Indian tribes 2

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[7] US Department of the Interior. Bureau of Indian Affairs. “Sample Constitution of the Example Tribe.”<http://www.bia.gov/cs> and Tribal Court Clearinghouse. “Tribal Constitutions.”<http://www.tribal-institute.org/lists/constitutions.htm>.

[8] A federally recognized American Indian or Alaskan Native tribe possesses inherent rights of self-government (i.e. tribal sovereignty) and is entitled to receive certain federal benefits and services (Babcock 2005: 469–485; Law No. 73-383/1934). US Department of the Interior. Bureau of Indian Affairs. <http://www.bia.gov/FAQs>.

[9] The states required to assume civil and criminal jurisdiction over federal Indian lands were Alaska (except the Metlakatla Indian Community on the Annette Island Reserve, which maintains criminal jurisdiction), California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin. The states that elected to assume full or partial jurisdiction were Arizona (1967), Florida (1961), Idaho (1963, subject to tribal consent), Iowa (1967), Montana (1963), Nevada (1955), North Dakota (1963, subject to tribal consent), South Dakota (1957–1961), Utah (1971), and Washington (1957–1963). US Department of the Interior. Indian Affairs. <http://www.bia.gov/FAQs/>.

[10] Tribal Court Clearinghouse. “Tribal Law Enforcement.” <http://www.tribal-institute.org/lists/enforcement.html> and US Department of the Interior. Bureau of Indian Affairs. <http://www.bia.gov/WhatWeDo/index.html>

[11] “The federal Indian trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages.” US

on institutional depth and 2 on policy scope.

The constitution originally authorized Congress to govern the District of Columbia (C 1788, Art. 1.8). Congress delegated that power to a centrally appointed governor and an assembly with a majority of directly elected members (Law No. 15/1801; No. 62/1871; McQuade 1968). In 1874, this arrangement was replaced by a three-member Board of Commissioners with two members appointed by the president (after senate approval) and a third member selected from the US army corps of engineers (French 1984; Law No. 18/1874; McQuade 1968). The Board of Commissioners governed the capital district for nearly a century until December 1973 when the District of Columbia Home Rule Act ceded authority to a directly elected district council and mayor (Law No. 93-198/1973, Arts. 302, 401, and 421; Newman and Depuy 1975). Congress has the right to review and overrule local laws and the district's budget (French 1984; Law No. 93-198/1973, Arts. 446 and 601; Schrag 1990). However, the policy scope of Washington DC is comparable to that of states (French 1984; Law No. 93-198/1973, Art. 302; Newman and Depuy 1975: 556–575).[α] Home rule was suspended between 1995 and 2000 when the president appointed an authority to administer the district's finances (Law No. 104-8/1995). In 2001, after a revision of the Home Rule Act, the federal government handed back regional authority to the elected government of the city (DC Inspector General 2001).

Counties are present in each state except in Alaska and Louisiana which have boroughs and parishes, respectively. Rhode Island has counties but these serve as judicial and statistical subdivisions only. Connecticut abolished county government in 1960.[12] Twelve states have an intermediate tier of counties which are both general purpose and have an average population of at least 150,000: Arizona (fifteen counties), California (fifty-eight), Connecticut (eight until 1960), Delaware (three), Florida (sixty-seven), Maryland (twenty-three), Massachusetts (fourteen, but seven since 2000), Nevada (sixteen), New Jersey (twenty-one), New York (fifty-eight), Pennsylvania (sixty-seven), and Washington (thirty-nine).[13] Together, these counties cover around 123 million inhabitants which is about 40 per cent of the total US population.[14] Many states apply "Dillon's Rule" which does not allow county governments to take actions beyond those specified in the state code (National Association of Counties 2010a: 6).[15] Counties play a role in providing

Department of the Interior. <http://www.bia.gov/FAQs/>.

[12] Connecticut replaced counties with regional planning agencies which are voluntarily organizations established by towns within nine (15 before 2015) state-defined planning regions (Connecticut General Assembly 2007; Law No. 127-8/2012, Arts. 8–31A (CT)).

[13] In thirty-five states the average population of counties is below 150,000, and in two states (Alaska and Hawaii) the county is the lowest tier of government (National Association of Counties 2009; US Census Bureau 2013).

[14] We include consolidated city-county government which is a unified jurisdiction that has the powers and responsibilities assigned to cities and counties. We do not include independent cities which do not fall under the jurisdiction of a county. When calculating average population sizes for counties by state we include the population falling under the jurisdiction of consolidated city-county governments but we exclude the population falling under the jurisdiction of independent cities.

[15] Eleven states do not apply Dillon's Rule: Alaska, Iowa, Massachusetts, Mississippi, Montana, New

education, justice, health, environmental planning, and regional development, with variation from state to state (National Association of Counties 2009, 2010a).

Massachusetts abolished eight of fourteen county governments between 1997 and 2000.[16] State legislation (Law No. 34B/1997) allowed abolished counties to reorganize as a "regional council of governments," and two did so. Regional councils of governments have directly elected councils and executives, and their main responsibility lies in education, fire protection, health, housing, sewerage, tourism, transport, and waste disposal (Law No. 34B/1997, Art. 20h; US Census Bureau 2017).[a] Three out of the remaining six county governments are 'statutory counties' which administer jails and county court houses and which maintain agricultural schools and hospitals (National Association of Counties 2009: 45, 2010a: 86–87). Two counties have adopted a home rule charter and one county is a consolidated city-county government and they are responsible for a wider range of tasks. Counties in Massachusetts score 2 on institutional depth and 1 on policy scope. Counties with a home-rule charter (Barnstable since 1988 and Dukes since 1992), regional council of governments (Franklin since 1997 and Hampshire since 1999), and consolidated city-county governments (Nantucket) score 2 on institutional depth and 2 on policy scope.

All states establish special-purpose or single-task bodies such as school boards (13,506 in 2012) and special districts (35,052 in 2012) to provide services such as airports, cemeteries, electricity, fire protection, gas supply, highways, hospitals, libraries, parks, sea and inland ports, sewerage, transport, waste disposal, and water supply (US Census Bureau 2012). Some special-purpose authorities are established by federal law. For example, the Federal-Aid Highway Act of 1962 (later the Federal-Aid Highway Acts) requires states to establish a Metropolitan Planning Organization (MPO) for any urbanized area with a population greater than 50,000 (Law No. 86-866/1962, Art. 9). MPOs are single-purpose government and responsible for developing and adopting a regional transportation plan for the urban region which includes roads, public transport, and, in some cases, air quality and housing (with the purpose to decrease commuting time) (Law No. 23.1/2019, Art. 134).

Some MPO's are equipped with additional competences and tasks through state law or are integrated into metropolitan organizations set up by state law. These metropolitan organizations often take the shape of a council of governments which is a voluntary association between county and municipal governments often equipped with a board or assembly with delegates from city assemblies and county councils.[17] Other metropolitan organizations take the form of a regional

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Jersey, New Mexico, Ohio, Oregon, South Carolina, and Utah (National Association of Counties 2010a: 204–5).

[16] Franklin and Middlesex were abolished in 1997; Hampden, Hampshire, and Worcester in 1998; Essex and Suffolk in 1999; Berkshire in 2000. Source: William Francis Galvin. Secretary of the Commonwealth of Massachusetts. "Historical Data Relating to the Incorporation of and Abolishment of Counties in the Commonwealth of Massachusetts." <http://www.sec.state.ma. us/cis/cisctlist/ctlistcounin.htm>.

[17] An example is the Southern California Association of Governments which comprises six counties and 191 cities and functions as a Metropolitan Planning Organization under federal law and as a Regional Transportation Planning Agency and a Council of Governments under California state law. Its 86 member

planning council which is a staff-dominated organization that lacks an assembly of mayors and city managers to direct the organization's activities. Both types of organizations are voluntary organizations which have no legislative power, have no authority to force local governments to implement metropolitan policy, and have no ability to levy taxes or to borrow money (Ross and Levine 2015: 254–255).[18]

In many states, a group of voters and in some cases cities, municipalities, and/or counties can establish metropolitan districts, utility districts, development authorities, or improvement authorities which are multi-purpose and can be made responsible for a prescribed set of tasks such as electricity, fire-fighting, libraries, roads, sewerage, street lighting, waste disposal, and water supply (Pagano 2009). In many instances, these authorities can also raise taxes and can issue bonds after voter approval. Almost all of these authorities do not meet the population threshold for regional government. In addition to having an average population of at least 150,000 and being responsible for multiple policies, we code metropolitan authorities when they fulfil two conditions. First, they are established by state law which defines membership and competences for the metropolitan government. Second, a metropolitan authority can overrule the decisions and policies of member subnational governments.[19] Out of a total of 35,052 special districts in 2012, two authorities meet these four criteria: The Metropolitan Council in Minnesota and Metro in Oregon (US Census Bureau 1957, 1962, 1967, 1972, 1977, 1982, 1987, 1992, 1997, 2002, 2007, 2012, 2017).

The *Metropolitan Council* was established by the Minnesota legislature in 1967 and state law stipulates the membership of the Metropolitan Council: seven counties, 188 cities—including the 'twin-cities' of Minneapolis and Saint Paul—and 22 special-purpose districts which cover a total of about 2.8 million people (Law No. 473/2019, Art. 121). At the start, services were provided by

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regional council develops a regional planning that covers the environment, housing, and transport but execution and implementation of the mandated tasks is the responsibility of county committees and agencies. The Southern California Association of Governments describes itself as "a Joint Powers Authority under California state law, established as an association of local governments and agencies that voluntarily convene as a forum to address regional issues." SCAG. About SCAG. <http://www.scag.ca.gov/about/Pages/Home.aspx.>

18 Center for the Study of Federalism. Councils of Governments. <http://encyclopedia.federalism.org/index.php/Councils_of_Governments.>

19 Many metropolitan authorities lack the authority to make decisions that bind member sub-state authorities. For example, the Chicago Metropolitan Agency for Planning (CMAP) covers seven counties and 284 municipalities and was established in 2005. The agency is a 'political subdivision' and a 'municipal corporation' and its board—which consists of members appointed by the mayors of the member municipalities and chief elected county officials of the member counties—adopts a comprehensive regional plan for land use and transportation (Law No. 70.1707/2081, Arts. 15 and 45). Decisions on transportation require the approval of local governments and the agency "may review and comment on proposed county and municipal plans" but "Units of local government shall continue to maintain control over land use and zoning decisions" (Law No. 70.1707/2018, Arts. 45, 54, and 60). CMAP. About. <https://www.cmap.illinois.gov/about.>

three separate boards, the Metropolitan Airports Commission, the Metropolitan Transit Commission, and the Metropolitan Sewer Board (which was established in 1969). The member subnational governments introduced a tax-base sharing system in 1971. In 1974, a regional park system and the Metropolitan Housing and Development Authority were established. In 1976 the Metropolitan Council was tasked with developing long-term spatial development plans with regard to housing, parks, transportation, wastewater, and water supply. Local governments within the area have to adjust their spatial plans according to guidelines provided by the Metropolitan Council (Law No. 473/2019, Arts. 851–857).[20] The Metropolitan Council can introduce levies on top of council taxes, it can tax property, and the Metropolitan Council can borrow but for purposes and within boundaries set by state law (Law No. 473/2019, Arts. 13, 46, 140, and 249). The 17 members of Metropolitan Council are required to be residents within the metropolitan area and they are appointed by the governor. The Minnesota senate may confirm or reject appointments (Law No. 473/2019, Art. 123). The powers of the Metropolitan Council are narrowly circumscribed for each purpose and executive power is held by metropolitan agencies with boards that include one non-voting member appointed by the Metropolitan Council (Law No. 473/2019, Arts. 125 and 129). The US Census Bureau classifies the Metropolitan Council as a 'subordinate agency of the state' which has "the power to review and require consistency and compatibility of all comprehensive plans of governments in the seven-county area" (US Census Bureau 2012: 174). We conceive the Metropolitan Council as deconcentrated state government[β] and score it 1 on institutional depth and 0 on all other dimensions from 1976.

Metro in Oregon includes three counties and 23 cities, covers around 1.6 million inhabitants, and was established in 1979. It has three predecessors, the Metropolitan Planning Commission (1957–1966), the Colombia Region Association of Governments (1966–1978), and the Metropolitan Service District (1970–1978). Local governments could decide whether they would be part of the metropolitan region but participation was mandated by state law in 1978. In 1979, regional voters approved the proposal to merge the Colombia Region Association of Governments and the Metropolitan Service District and to introduce a directly elected governing council (Abbot 2018).

In November 1992, voters approved a charter which sets out the competences of Metro. Metro is responsible for environmental protection and waste disposal, coordinates and plans federal and states funds designated for public transport and housing, manages parks and a zoo, as well as several centres such as a convention centre, an expo centre, and centres for the art (Law No. 268/1997, Art. 310; Metro Charter 1992, Arts. 4–9). Local authorities' plans and regulations have to comply with the overall framework set by Metro (Law No. 268/1997, Arts. 380, 385, and 390; Metro Charter 1992, Art. 5.2e).[21] Metro can assume additional competences but only when

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[20] Metropolitan Council. The History of the Council. <https://metrocouncil.org/About-Us/What-We-Do/Metropolitan-Council-History.aspx.> and <https://metrocouncil.org/About-Us/Publications-And-Resources/History-of-the-Council.aspx.>

[21] Metro. Regional leadership. What is Metro? <https://www.oregonmetro.gov/regional-leadership/what-metro#.>

conferred by state law or when approved by voters in a referendum, or when approved by a majority in the Metro Policy Advisory Committee which consists of members appointed by the assemblies of the member counties and cities (Metro Charter 1992, Arts. 4, 7, and 26). Metro scores 2 on institutional depth and 1 on policy scope.

FISCAL AUTONOMY

Taxes are concurrent between the federal government and states (C 1788, Art.1.8 and Amendment XVI). Both levy personal and corporate income taxes along with general and selective sales taxes. States can set the base and rate for these taxes (Chernick and Tennant 2010; Posner 2007; Stotsky and Sunley 1997; Watts 1999*b*, 2008). The most important revenue source for states is usually the sales tax (Laubach 2005; Posner and Conlan 2017: 51; Schroeder 2006). As a territory, Hawaii had the same fiscal authority as states (Law No. 339/1900, Art. 55), but Alaska was restricted to setting the rate of property tax up to 2 percent (Law No. 384/1912, Art. 9). Puerto Rico can levy corporate and personal income tax, as well as other minor taxes including excise taxes on imports, cigarettes, liquor, hotel rooms, cement, vehicles, and lotteries. Federal taxes do not apply in Puerto Rico unless by mutual consent, but Puerto Rico citizens participate in federal social security programs and pay taxes for social security and health care (Elazar 1991: 326).

Each Indian tribe is governed by its own constitution, but there are similarities in fiscal powers. An Indian tribe may set the base and rate of major taxes such as corporate and personal income tax and sales tax for members of the tribe who reside in its territory (Joint Committee on Taxation 2008).[22] Members of a tribe are subject to federal income tax and states may require Indian tribes to collect sales taxes on sales made to non-members of the tribe (Joint Committee on Taxation 2008: 5–6). In general, Indian tribes enjoy tax autonomy to the same extent as states but most tribes impose only a sales and excise tax.[β] Tribes are often unable to levy property taxes because of the trust status of their land, and generally do not levy income taxes.[23]

Before home rule, Washington DC depended on central government grants. Since home rule, it has similar taxation powers to states except that it cannot tax the personal income of non-residents (Law No. 93-198/1973, Arts. 302 and 602; Newman and Depuy 1975: 541–556). A federal control board took over the budget when home rule was suspended from 1995–2000.

The tax powers of counties vary by state. Most counties can set the rate of a property tax and many can impose an excise tax (Laubach 2005; Schroeder 2006).[24] The base of the property tax is

[22] A tribe or a tribal-owned corporation that is incorporated under section 17 of the Indian Reorganization Act (Law No. 73-383/1934) is not subject to federal income tax no matter where the business is located (Joint Committee on Taxation 2008: 3). State income taxes cannot be levied on Indian tribal members who live and work on the reservation (Zimmermann 2005: 7–8).

[23] National Congress of American Indians. <http://www.ncai.org/policy-issues/tribal-governance/taxation>.

[24] C 1780 (MA); C 1864, Art. 10.1 (NV); C 1867, Art. 11.8 (MD); C 1874, Art.13 (AR); C 1889, Art. 11.12 (WA); C 1897, Art. 7.1 (DE); C 1912, Art. 12.7 (AZ); C 1938, Art. 16 (NY); C 1947, Art. 8.1 (NJ); C 1968, Art. 7.9 (FL); C 1968, Art. 9 (PA).

set by the state, which collects the tax prior to transferring some portion to counties. Most counties can also introduce an excise tax on items such as alcohol, tobacco, motor fuel, occupancy, and motor vehicles. In Arizona, California, Florida, Maryland, Nevada, New York, and Washington, counties can set the rate of a sales and use tax, mostly in the form of surtax on the rate set by the state. In Connecticut (until 1960), Delaware, New Jersey, and Pennsylvania, counties cannot set the rate of the sales and use tax. In some states, they receive a share of sales and income taxes collected by the state (National Association of Counties 2008, 2010a).

Regional councils of governments in Massachusetts are dependent on dues, fees, and grants (Law No. 34B/1997, Art. 20a). Counties in Massachusetts may levy taxes if approved by a budget advisory board composed of local government officials (National Association of Counties 2008: 26, 2010a: 86–87).[β] Counties and regional councils of governments in Massachusetts score 0 on fiscal autonomy. Metro in Oregon can set the rate on a property tax which has to be approved by voters (Law No. 268/1997, Arts. 315 and 500; Metro Charter 1992, Art. 11).[25]

BORROWING AUTONOMY

States do not face national restrictions on borrowing, nor does the federal government guarantee state bonds (C 1788, Art. 1.8; Joumard and Kongsrud 2003). Interest payments on state bonds are exempt from federal taxation.

Thirty-nine states have self-imposed constitutional and/or statutory provisions requiring a balanced operating budget and permitting borrowing for capital projects only (Advisory Commission on Intergovernmental Relations 1995: 6; Joumard and Kongsrud 2003; Plekhanov and Singh 2007). The stringency of these state provisions varies and their effectiveness, even when written into the state constitution, is often limited (Stotsky and Sunley 1997). The legislature in all but four states must pass a balanced budget at the beginning of the fiscal year, but only eight states are formally required to balance their operating budget at the end of the year or biennium (Hou and Smith 2006; Schnabel 2017: 95–110; Smith and Hou 2013). A further 26 states have within-year fiscal controls in place to avoid a deficit. Just seven states (Indiana, Maine, New York, Pennsylvania, Vermont, Virginia, and Wyoming) do not have legal limits.[26]

The territorial government of Alaska could borrow only with the prior authorization of the federal government (Law No. 384/1912, Art. 9), while Hawaii could borrow with prior presidential authorization up to 10 percent of the total value of property within the territory for capital investment (Law No. 339/1900, Art. 55). Central government oversight was abolished in 1959 when these territories were granted statehood. Puerto Rico can borrow up to 15 percent of annual revenue and does not need federal authorization (C 1952, Art. 6.2).

[25] Metro. How Metro works. Finances and funding. <https://www.oregonmetro.gov/property-tax-information.>

[26] These states do not have one of the following: a limit on the amount of debt that may be assumed for the purpose of deficit reduction; a balanced budget; controls on supplementary appropriations; within fiscal-year controls to avoid deficit; no deficit may be carried over the next fiscal year or biennium (Hou and Smith 2006).

Indian tribes have the same formal borrowing autonomy as states. They can borrow freely and, as is the case with state bonds, interest payments on Indian tribe bonds are exempt from federal taxation (Joint Committee on Taxation 2008; Law No. 97-473/1982). However, review and approval from the Bureau of Indian Affairs (BIA) is usually necessary when a tribe uses Indian land or funds as collateral (Hyatt et al. 2005). This constraint amounts to prior authorization.[β] In order to facilitate borrowing, a 1974 law provides federal insurance for private loans to tribes (Law No. 93-262/1974).

Under direct congressional rule, Washington DC was not able to borrow.[α] Under home rule, borrowing is limited to capital projects up to 14 percent of total revenue and prior federal authorization is not needed (Law No. 93-198/ 1973, Arts. 463 and 603b; Newman and Depuy 1975: 603–618).

Rules governing county borrowing are determined by the respective state government.[27] County debt is constrained in two ways. First, nearly all states place a limit on bond issues. This is often linked to the county's property tax base. Second, some states require that a majority or supermajority of voters approve long term debt (National Association of Counties 2010a, 2010b; Schroeder 2006).

Counties in Massachusetts can borrow only for infrastructural projects and up to 10 percent of annual revenues (National Association of Counties 2010a: 86). Formally, regional councils in Massachusetts can incur debt up to half of annual revenues, but in practice, regional councils do not borrow (Law No. 34B/1997, Art. 20k).[28] Counties and regional councils of governments in Massachusetts score 0.[β] Metro in Oregon can borrow against future property tax revenue and each bond measure has to be approved by voters (Law No. 268/1997, Arts. 520 and 530; Metro Charter 1992, Art.12).[29]

REPRESENTATION

State lower houses are elected every two years. Most state upper houses and governors are elected every four years.[30] As territories, Alaska and Hawaii had a government-appointed governor and directly elected senate (every four years) and house (every two years) (Law No. 339/1900, Arts. 30, 35, and 66;No. 384/1912, Arts. 4–5 and 14). Since 1959, they both have a directly elected

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[27] C 1780 (MA); C 1864, Art. 8.10 (NV); C 1867, Art. 11.8 (MD); C 1874, Art.11.11 (AR); C 1889, Art. 8.6 (WA); C 1897, Art. 8.8 (DE); C 1912, Art. 9.7 (AZ); C 1938, Art. 8 (NY); C 1947, Art. 8.3 (NJ); C 1968, Art. 7.10 and 7.12 (FL); C 1968, Art. 8.9 (PA).

[28] Franklin Regional Council of Governments. Annual Report 2013. <http://www.whately.org/images/FRCOG/Regional-13-j-post.pdf>; Hampshire Council of Governments. <http://www. hampshirecog.org/content/about-us>.

[29] Metro. How Metro works. Finances and funding. <https://www.oregonmetro.gov/property-tax-information.>

[30] Upper houses in Arizona, Connecticut, Georgia, Hawaii, Idaho, Maine, Massachusetts, New Hampshire, New York, North Carolina, Rhode Island, South Dakota, and Vermont have two-year terms. The term of office for governors in New Hampshire and Vermont is also two years.

governor and assembly. Since 1948, Puerto Rico has a directly elected governor and bicameral legislature (C 1952, Arts. 3.1 and 4.1). Until 1973 Washington DC had a three-member board whose members were appointed by the president (Law No. 18/1874, Art. 2). Since 1974 the capital district has a popularly elected council and mayor, and the council elects its own chair (Law No. 93-198/1973, Arts. 401 and 421; Schrag 1990). When home rule was suspended, the decisions of the mayor could be overridden by a presidentially appointed board, which amounts to a dual executive.[β] Indian tribes are governed by directly elected councils, which appoint a president and vice-president.

Counties have directly elected councils. In some counties an executive is directly elected alongside the council; in others, the council combines legislative and executive tasks (National Association of Counties 2010a). Assessors, clerks, recorders, sheriffs, tax collectors, and treasurers are also often directly elected (National Association of Counties 2010a). Regional councils of governments in Massachusetts consist of directly elected officials from cities and towns from within the region, and the council appoints an executive director.[31] The six councilors and the president of Metro in Oregon are directly elected every four years and the council appoints a chief operating officer who executes and implements council policy (Metro Charter 1992, Art. 16 and 29).[32]

Shared rule

There is no shared rule for Puerto Rico, counties, regional councils of governments, the Metropolitan Council in Minnesota, Metro in Oregon, and Washington DC.

LAW MAKING

Each state has two directly elected senators in the US senate (*L1, L3*). Elections are held every two years nationwide for one-third of the seats (C 1788, Art. 1.3 and Amendment XVII). The two Houses must pass all legislation in exactly the same form, which provides the senate with veto power over all legislation (*L4*) (C 1788, Art. 1.7).

As territories, Alaska and Hawaii had no senators, and since 1906 each territory has one directly elected, non-voting representative in the House of Representatives (Law No. 339/1900, Art. 85 and 384/1912, Art. 17). Puerto Rico has a non-voting Resident Commissioner in the House of Representatives. Washington DC has no representation in the senate, and since 1970 it has been represented by a delegate who can vote in committee but has no voting rights on the House floor (Schrag 1990).[33] Indian tribes have no formal channel for influencing federal law making affecting

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[31] Franklin Regional Council of Governments. Annual Report 2013. <http://www.whately.org>; Hampshire Council of Governments. <http://www.hampshirecog.org>.

[32] Metro. Regional leadership. Metro Council <https://www.oregonmetro.gov/regional-leadership/metro-council.>

[33] Since 1961 residents of the District of Columbia can vote for three presidential electors (C 1788, Amendment XXIII).

their interests.

EXECUTIVE CONTROL

Exclusive policy competences are subject to extensive ‘marble-cake’ federal–state collaboration. Executive control often involves federal financial incentives which states may accept or reject. From the 1960s, these incentives have taken the form of conditional grants (“grants-in-aid”) designed to induce states (and local governments) to implement federal priorities. Implementation of many national laws on concurrent competences hinges on these one-to-one agreements with funding and implementation conditions (Wright 1974, 1988). Once passed into law, grants-in-aid are submitted to the states which decide, one by one, whether to participate (Hueglin and Fenna 2006: 229–234; Posner and Conlan 2017: 59–68). The agreements are bilateral, and once signed, they are legally binding (Bakvis and Brown 2010).[34] This mechanism provides a form of bilateral executive control to states.[β] Lobby organizations provide a channel for informal intergovernmental bargaining. These include the National Governors Association (established in 1908), the National Conference of State Legislatures (1975), and the Council of State Governments (1933). Indian tribes are represented by the National Congress of American Indians (1944), counties by the National Association of Counties (1935), and towns and cities by the National League of Cities (1924), the National Association of Towns and Townships (1976), and the US Conference of Mayors (1932). These organizations do not have formal intergovernmental relations with the federal government, and do not receive a score in executive control (Bolleyer 2006*b*, 2009: 111–132; Pagano 2009: 380; Parker 2015: 173–174).

Interstate compacts are frequently used for (horizontal) interstate cooperation. The constitution specifies three conditions under which interstate compacts can be concluded. Intrastate compacts cannot alter the competence allocation between the federal government and the states, they cannot violate federal prerogatives, and they require the (usually implicit) consent of Congress (C 1788, Art. I, Section 10). State legislatures need to approve intrastate compacts and the federal government can join interstate compacts, but most are concluded without federal involvement. Interstate compacts can set up a compact commission—an administrative agency—with advisory or regulatory competences that are often narrowly defined. (Bolleyer 2009: 111–132; Smith 2015).

An Advisory Commission on Intergovernmental Relations (ACIR) was established in 1959 with representatives from federal, state, and local government (Law No. 86-380/1959).[35] Its remit was to consider common problems, encourage discussion, give advice, and provide technical

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[34] In the 1970s, around one-quarter of state budgets came from conditional federal grants, declining to around 15 percent by the late 1990s, but increasing to about 30 percent in the 2000s. Currently there are more than 200 grant-in-aid programs. No particular law or executive order regulates these agreements. Their legal basis lies in the commerce clause, the Fifth and the Fourteenth Amendment, and in Supreme Court jurisprudence (Christensen and Wise 2009; Wright 1988).

[35] <http://www.library.unt.edu/gpo/acir>. The committee of 26 was a mix of federal representatives, senate and house members, governors, state legislators, county officers, mayors, and private citizens (Law No. 86-380/1959, Art. 2) (McDowell 1997).

assistance. It could also submit recommendations on drafts of federal regulations. The commission's recommendations were heavily directed towards improving the grant-in-aid system and shaping federal regulations (McDowell 1997). However, the federal government was not required to follow the commission's advice and often ignored its recommendations (Kincaid 2011: 185; McDowell 2011: 165). The ACIR was conceived as a "'honest information broker,' collecting, interpreting and disseminating data" (Stenberg 2011: 170). It did not serve as a venue to negotiate policies. The commission was abolished in 1996 (McDowell 1997; Smith 2015). In sum, the ACIR did not provide states (and counties) with multilateral executive control.[α]

Indian tribes are not routinely consulted on executive policy making, though the federal government has become more receptive. In the early 1980s the federal government adopted the principle that federal–tribe interactions should be treated as "government-to-government" relations (Papillon 2012*a*). One implication is that federal agencies should consult regularly with tribal governments on policy that affects them. The policy was strengthened through a presidential executive order in 2000 which instructs federal agencies "to respect Indian tribal self-government" and adopt "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications" (Law No. 65-218/2000, Arts. 3 and 5). Each federal agency must set up its own process, and "the implementation of such principle is still inconsistent from one agency to another" (Papillon 2012*a*: note 9).

FISCAL CONTROL

States or other subnational governments do not have shared rule on the distribution of tax revenues.[36]

BORROWING CONTROL

States or other subnational governments do not have shared rule on borrowing.

CONSTITUTIONAL REFORM

The constitution gives states a veto over constitutional amendments. Two-thirds of both houses of Congress and three-quarters of state legislatures are required to ratify an amendment (C 1788, Art. 5; Dinan 2012; Schram 2002).

Territories did not have a role in reforming their statutes (Law Nos. 339/1900; No. 387/1912). Since 1952, the Puerto Rico legislative assembly may propose amendments to its status as an Associated Free State by a two-thirds majority followed by a referendum, but the US Congress takes the final decision (C 1952, Art. 6.3). Puerto Rico's statute can also be changed unilaterally by Congress.[β] The statute of Washington DC can be changed unilaterally by Congress, and contrary to Puerto Rico, Washington DC cannot initiate a revision of its statute. Puerto Rico scores

[36] States often participate in intergovernmental councils of fiscal policy such as national and regional associations of state budget officers or tax administrators. These horizontal intergovernmental meetings are informal, the federal government does not participate, and the primary aim is to exchange information (Schnabel 2017: 99).

1 on bilateral constitutional reform, while the territories of Alaska and Hawaii, the territory of Puerto Rico before 1952, and Washington DC score 0. None play a role in amending the US constitution.

The constitutional relation with Indian tribes is an exclusive competence of Congress (C 1788, Art. 1.8). Only Congress can terminate a federally recognized Indian tribe (Law No. 103-454/1994, Art. 103). Indian tribes have two channels through which they can initiate constitutional reform. Since 1978, a tribe can instigate federal recognition through an acknowledgement process administered by the Bureau of Indian Affairs.[37] Moreover, an Indian tribe can change its constitution via a tribal referendum, which the Secretary of the Interior is required to hold on the request of the tribal council or upon a petition signed by at least 30 percent of tribal voters. A tribal constitution needs approval by the Secretary of the Interior, and tribal constitutions are subject to federal law. Indian tribes have no role in amending the US constitution.

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[37] US Department of the Interior <http://www.bia.gov>.

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Self-rule in the United States

			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
States	I	1950-2018	3	3	4	3	2	2	**17**
Alaska	I	1950-1958	2	3	1	1	2	0	**9**
Hawai	I	1950-1958	3	3	4	1	2	0	**13**
Puerto Rico	I	1950-1951	1	0	0	0	2	2	**5**
	I	1952-2018	2	3	4	2	2	2	**15**
Indian Tribes	I	1950-2018	2	2	4	1	2	2	**13**
Washington DC	I	1950-1973	1	0	0	0	0	0	**1**
	I	1974-1994	2	3	4	2	2	2	**15**
	I	1995-2000	1	0	0	0	2	1	**4**
	I	2001-2018	2	3	4	2	2	2	**15**
Counties*	I	1950-2018	2	2	2	2	2	2	**12**
Counties**	I	1950-2018	2	2	3	2	2	2	**13**
Massachusetts									
Counties*	II	1950-2018	2	1	0	0	2	2	**7**
Counties**	II	1950-2018	2	2	0	0	2	2	**8**
Minnesota									
Metropolitan Council	II	1976-2018	1	0	0	0	0	0	**1**
Oregon									
Metro	II	1979-2018	2	1	1	3	2	2	**11**

* Counties in Connecticut (until 1960), Delaware, New Jersey, and Pennsylvania.

** Counties in Arizona, California, Florida, Maryland, Nevada, New York, and Washington.

* Counties in Massachusetts: statutory counties.

** Counties in Massachusetts: counties with a home rule charter, consolidated city-county government, and regional council of governments.

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Shared rule in the United States

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
States	1950-2018	0.5	0	0.5	0.5	0	0	0	2	0	0	0	0	4	0	**7.5**
Alaska	1950-1958	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Hawaii	1950-1958	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Puerto Rico	1950-1951	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
	1952-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	1	**1**
Indian tribes	1950-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	2	**2**
Washington DC	1950-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Counties*	1950-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Counties**	1950-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Counties Massachusetts*	1950-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Counties Massachusetts**	1950-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Metropolitan Council	1976-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Metro	1979-2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**

National legislature has: L1 = regional representation; L2 = regional government representation; L3 = majority regional representation; L4 = extensive authority; L5 = bilateral regional consultation; L6 = veto for individual region. Total for shared rule includes the highest score of either multilateral (M) or bilateral (B).

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