strained" consideration of "the limits that the state-federal balance places on Congress's powers," a plain statement rule was all the more necessary. "[I]nasmuch as this Court in *Garcia* has left primarily to the political process the protection of the States against intrusive exercises of Congress's Commerce Clause powers, we must be absolutely certain that Congress intended such an exercise."[70]

The Court's 1992 decision in *New York v. United States*[71] may portend a more direct retreat from *Garcia*. The holding in *New York*, that Congress may not "commandeer" state regulatory processes by ordering states to enact or administer a federal regulatory program, applied a limitation on congressional power previously recognized in dictum[72] and in no way inconsistent with the holding in *Garcia*. Language in the opinion, however, seems more reminiscent of *National League of Cities* than of *Garcia*. First, the Court's opinion by Justice O'Connor declares that it makes no difference whether federalism constraints derive from limitations inherent in the Tenth Amendment, or instead from the absence of power delegated to Congress under Article I; "the Tenth Amendment thus directs us to determine . . . whether an incident of state sovereignty is protected by a limitation on an Article I power."[73] Second, the Court, without reference to *Garcia*, thoroughly repudiated *Garcia's* "structural" approach requiring states to look primarily to the political processes for protection. In rejecting arguments that New York's sovereignty could not have been infringed because its representatives had participated in developing the compromise legislation and had consented to its enactment, the Court declared that "[t]he Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals." Consequently, "State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."[74] The stage appears to be set, therefore, for some relaxation of *Garcia's* obstacles to federalism-based challenges to legislation enacted pursuant to the commerce power.

L. Rev. 1 (1988). *See also* McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484 (1987) (also cited by the Court); and Van Alystyne, *The Second Death of Federalism*, 83 Mich. L. Rev. 1709 (1985).

[70] 501 U.S. at 464.

[71] 505 U.S. 144 (1992).

[72] *See*, *e.g.*, Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264, 288 (1981); FERC v. Mississippi, 456 U.S. 742, 765 (1982); South Carolina v. Baker, 485 U.S. 505, 513–15 (1988).

[73] 505 U.S. at 157. "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States. . . ." Id. at 156 (quoted with approval in Watters v. Wachovia Bank, N.A., 550 U.S. 1, 22 (2007), which held that a national bank's state-chartered subsidiary real estate lending business is subject to federal, not state, law).

[74] 505 U.S. at 181, 182.