

Chapter 02

Federalism: States in the Union

In This Chapter

- 2.1 The Idea of Federalism
- 2.2 States in the Constitutional System
- 2.3 Government Relationships in the Federal System
- 2.4 Federalism Today





(Shutterstock)

Chapter Objectives

The Constitution established a national government with power dispersed among separate branches. The document also created a second kind of power diffusion: the sharing of power between the national government and individual states. This sharing of power is the principal characteristic of a “federal” system. At its root, federalism is the product and symbol of the continuing struggle between the value of unity and the value of diversity as they compete for dominance in the political system.

This chapter considers the meaning of federalism and why comprehending it is crucial to a full understanding of American government. Continuing tension between national and state governments requires a look at the place of state governments in the Constitution and their role in American politics. The chapter discusses the legal, fiscal, and political relationships among national, state, and local governments.

The national government has progressively become more dominant, but the chapter concludes by reviewing federalism as a complex, adaptable system of relationships in which states have begun to assume a more energetic and vigorous role in domestic policy.

2.1 The Idea of Federalism

Federalism is a system of government in which the national government *and* state governments share governmental power within the same political system. As the terrorist attacks on the World Trade Center and Pentagon in 2001, the devastation of Hurricane Katrina in 2005, the recent crises in the financial sector, the BP oil spill of 2010, and concerns about illegal immigration have all demonstrated, a single event may trigger action by officials at both levels of government.

In a federal system, both the national and state governments have jurisdiction over individuals. For example, in preparation for the tax-filing deadline each year, individual citizens perform tasks resulting directly from the existence of a federal system. Taxpayers must file returns with the national government; and in most states (those that choose to have income taxes), they must file returns with state governments as well. The duty of filing national and state tax returns illustrates an important point about federalism: Individuals receive services both from Washington and their state capitals, and they must consequently send money to two different levels of government.

The federal system is a compromise between a strong central government and a league of separate states. Because the states ultimately had to approve any change to the new constitution being created in 1787, the challenge for the framers was clear: How could a stronger national government be created without, at the same time, instilling so much fear in the states that the proposed new structure would be rejected? The states, after all, were already in place. The framers pressed for change, but not so much change that their efforts would fail. The result was a federal system.

2.1a Confederate, Unitary, and Federal Forms of Government

As Figure 2.1 illustrates, the powers of states and the powers of a central or national government can assume different combinations in different political systems. A **confederation** is a loose collection of states in which principal power lies at the level of the individual state rather than at the level of the central or national government. Individual states, not the central government, have jurisdiction over individuals. As discussed in Chapter 1, the Articles of Confederation made up such a system when they were in force during the decade before the Philadelphia Convention of 1787. Under the Articles, the states retained many important powers.

In contrast to a confederation, a **unitary system** of government is one in which principal power within the political system lies at the level of a national or central government rather than at the level of some smaller unit, such as a state or province. Individual citizens have direct allegiance to the national or central government, which possesses ultimate power to make all political choices and determine public policy. The government of France is an example of a unitary system. The fifty American states are themselves unitary governments with respect to their own local governments. As later discussion in this chapter will make clear, principal power *within* each state lies with the state government rather than with local governments.

Confederations are founded on the political idea of diversity and local control. Such structures allow individual states to pursue diverse approaches to policy matters. On the matter of voting rights, for example, one state might allow every citizen over the age of eighteen to vote, another might require that voters own property, and a third might make the right to vote contingent on passing a literacy test. According

federalism

A system of government in which both the national and state governments share power within the same political system

confederation

A loose association of states in which dominant political power lies with the member states and not with the central government

unitary system

A system of government in which principal power lies at the level of a national or central government rather than at the level of some smaller unit (a state or a province) within the political system

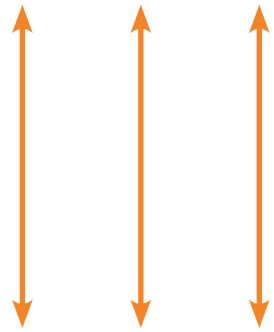
Figure 2.1 | Unitary, Federal, and Confederate

The central government has jurisdiction over individuals in a unitary government. If states or provinces exist, they are symbolic or administrative units with no real power. In a confederation, states are dominant and have jurisdiction over individuals. In a federal system, the central and state governments both have jurisdiction over individuals.

Unitary Government

Dominance of central government; unity valued

Strong Central Government

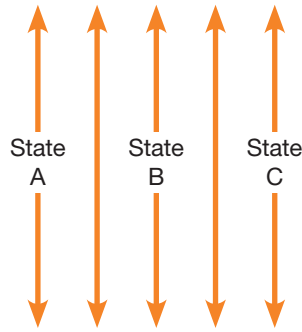


Individuals

Federal System

Balance between central and state governments and between unity and diversity

Central Government

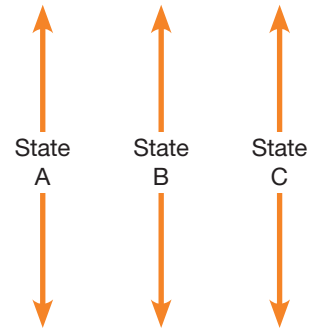


Individuals

Confederation

Dominance of states; diversity valued

Weak Central Government



Individuals

to the idea of diversity, individual states know best their own people and their own needs. Consequently, individual states ought to have their own powers to pursue individual approaches to the problems they face. On the issue of voter eligibility, consider this: The state of North Dakota does not require its citizens to register to vote. The government of that state has determined that this system is effective at encouraging residents to vote without creating any unintended problems. This is possible, in part, due to a relatively sparse population that allows for very small voting precincts. The much more populous state of New York, on the other hand, has determined that registration twenty-five days before an election is necessary to avoid potential problems with voter fraud. The federal nature of American government allows for such diversity.

Unitary structures rest on the value of unity. Such structures assume that there is a national interest in meeting needs and problems in a particular way. Individuals are citizens of the nation (not of separate states); procedures and approaches to policy problems ought to be uniform rather than individualized and disparate. In the voting rights example, voter qualifications would be determined at the central level in the interest of a unified voting rights policy for all citizens of the nation.

In creating a federal system, the framers of the Constitution sought to change the political structure of a loose collection of states so that the value of unity might be more easily achieved. Although they were moved by a mix of considerations in the move to a national government, the most important were probably the economy, foreign policy, and the military.¹ Foreign and military policies are areas in which centralized approaches are essential to success. Diverse approaches in these areas (e.g., if North Carolina and Massachusetts were to conduct their own foreign policies) would surely make any kind of union among the states impossible. Indeed, this was a major fault of the Articles of Confederation. The weak central government provided by the Articles had no real way to prevent the states from going in separate directions. At the same time, the framers had to acknowledge the continuing existence of diverse states—and their diverse approaches to some areas of public policy.

2.1b Unity and Diversity in the Federal System

Diversity among the states can be measured in numerous dimensions. States differ in historical traditions, unemployment rates, economic development, ethnic composition, social welfare spending, federal funding, age distributions, religious affiliations, voter turnout rates, degrees of political party competitiveness, and even physical environments.² That states differ in physical size and population is readily evident. For example, Rhode Island is a state of just over 1,000 square miles; Alaska, by far the largest state, comprises more than 570,000 square miles. About 541 Rhode Islands could fit into Alaska. California, a state with 38 million people, has about sixty-six times the number of people living in Wyoming.

Per capita income is another measure of state differences. For example, Connecticut in 2013 had a per capita income that was almost double the per capita income of Mississippi.³ Such basic factors of wealth help to determine how much individual states can tax and how much they can spend on programs such as education and public assistance.

To what degree should physical, economic, and social differences among the states allow diverse public policies, and when should national values prevail? The minimum drinking age and marijuana laws are contemporary issues that illustrate the search for an appropriate balance between state and national approaches to public

policy—more than two centuries after the framers originally wrestled with the problem. The repeal of Prohibition in 1933 granted to the states the power to regulate alcohol in whatever ways they saw fit. States had various minimum drinking ages ranging from eighteen to twenty-one. By the early 1980s, the problem of drunk driving had received national attention. People under age twenty-one were found to be responsible for a disproportionate number of alcohol-related traffic fatalities and injuries. In response to growing pressure from groups such as Mothers Against Drunk Driving (MADD), Congress enacted a measure withholding a portion of national highway funds from



MADD's then-president Millie Webb holds an image of her late nineteen-month-old nephew Mitchell Pewitt as she speaks during MADD's twentieth-anniversary rally. (AP World Wide Photo)

individual states unless the states raised their minimum drinking age to twenty-one. Whether there should be a national drinking age or whether the individual states ought to decide their own minimum drinking age is a classic example of the types of debates that arise in a federal system. Is the value of unity (a national approach) more or less important than the value of diversity (individual state approaches) in a matter that has been the states' own prerogative for more than half a century?

Debate over the decriminalization or legalization of marijuana for medicinal or recreational use illustrates the same question. Although national laws prohibiting the use of certain narcotics have existed since 1914, it was not until the early 1970s that the national "War on Drugs" took its present form, with the establishment of a comprehensive drug policy and creation of the federal Drug Enforcement Administration. Concerns about high enforcement and incarceration costs, lack of effective prevention efforts, and questions surrounding the costs and benefits of marijuana for some medicinal uses led several states to balk at the federal policy. In 1996, California voters passed a law making it legal—under state law—for residents to possess marijuana for personal medicinal use. Since then twenty other states and the District of Columbia have passed similar laws, creating an awkward situation where medical marijuana use is a violation of federal law, but not state law, in over one-third of the country. The states of Washington and Colorado have approved marijuana for recreational use as well as medical use. The Supreme Court has upheld the federal government's authority to regulate marijuana, but the tension between federal and state law has made marijuana decriminalization a hot political issue in the twenty-first century. Should there be a uniform national law on marijuana use, or should states decide for themselves the acceptable use of this drug within their borders?

2.1c A Comparative Perspective on Federalism

Federalism is not unique to the United States. Other countries that have federal constitutional systems include Australia, Brazil, India, Malaysia, Nigeria, Pakistan, Switzerland, and Venezuela. Although such countries may differ in size, wealth, and military power, what is common among them is their attempt to pull together disparate groups while at the same time acknowledging the groups' separate identities. The search for the appropriate balance in power between the states and the national government in the United States resonates in other federal systems as well.

Daniel Elazar, the renowned federalism scholar, wrote that "[f]ederalism has to do with the need of people and politics to unite for

common purposes yet remain separate to preserve their respective integrities. It is rather like wanting to have one's cake and eat it too."⁴ Groups in federal systems might be cultural or language minorities, people living in geographical units whose history predates the creation of the federal system, or different religious denominations in which no single one is dominant. Federal systems have pulled together, or tried to, French and English speakers, Lithuanians and Ukrainians, and Pennsylvanians and New Yorkers. Such groups get together for purposes such as a common defense or a common currency, but they retain their separate identities for other purposes, such as education or law enforcement.

The relative power of the central government and constituent groups will vary among countries, but federal systems generally have a dynamic quality in which there

Despite their name, the Antifederalists actually favored federalism. A collection of their views on the need for strong government can be found at this site.

<http://www.bvtlab.com/78q88>

is a continuing search for the appropriate balance between national purposes and group needs. Some of the world's great political conflicts are essentially struggles to define this balance. For example, debate over the political status of French-speaking Quebec—the only one of Canada's ten provinces with a French majority—has strained Canadian politics for years. Whether Quebec can, or will, go it alone remains a troubling issue for Canada.

The dissolution of the Soviet Union is an illustration of how changes in a federal system can have momentous implications for world politics. The Soviet Union, a military superpower, was comprised of fifteen republics held together by the Communist Party and backed by the threat of military force. Unchallenged central control made the system federal in name only. Worsening economic conditions, the emergence of ethnic demands, and attempts at liberal reforms showed cracks in the system. After an attempted coup by Communist Party hard-liners failed in 1991, the central government's power over the fifteen Soviet republics dwindled sharply. Individual republics declared their independence, and what was left of the Soviet Union quickly unraveled. The Soviet government officially disbanded several months after the failed coup and was replaced by the Commonwealth of Independent States in which the republics retained their independent status.⁵ Today, the former Soviet republics are largely autonomous states, allying themselves when appropriate via international treaties and organizations, but displaying few traces of the once forced federal relationship.

2.2 States in the Constitutional System

That there are fifty states is a historical accident. If wars had been lost instead of won, if treaties and land purchases had not been made, if rivers coursed through different areas, the number, names, and sizes of states would be different. States are integral parts of our social and political consciousness. State boundaries are superimposed on satellite pictures of weather patterns. State universities enjoy great attention through the exploits of their athletic teams, and children in elementary schools throughout the land spend time trying to memorize the names of state capitals. The existence of states is a ubiquitous part of American life.

States play a crucial role in the American political system. They administer social welfare policies, grapple with regional problems, amend the Constitution, and shape electoral contests at the national level. States act in some measure as administrative units to help carry out national social welfare programs substantially funded by Congress, such as the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and Temporary Assistance for Needy Families (TANF). Through the device of the **interstate compact**, states can enter into formal agreements with other states to deal with policy problems that cross state lines. An example is the agreement between New York and New Jersey to establish the New York Port Authority to regulate transportation in the New York City area. States also play a role in the process of formally amending the Constitution. Although controversy between states has raged over a variety of proposed amendments—involving issues like abortion, flag burning, and a balanced budget—no formal change to the Constitution can be made without the states considering, debating, and voting on the issue.

interstate compact

A formal agreement between states designed to solve a problem faced by more than one state when such an agreement is necessary because political problems are not limited by geographic boundaries

With the exception of the president and vice president of the United States, every elected official in the country is chosen either by all the voters in a particular state (the governor or a U.S. senator) or by voters in part of a state (U.S. representatives or state legislators). Every elected official, except for the president and vice president, has a geographic constituency that is either a state or part of a state, such as a county or a congressional district. This simple but crucial fact helps to explain much legislative behavior at the national level, such as when members of Congress press for national legislation that helps industries in their home states or oppose the closing of military bases in their districts.

The **Electoral College**, a political institution that—following the mandate in the Constitution—determines the winner in presidential elections, is another illustration of the role of the states. Presidents are elected not by a plurality (the highest number) of votes cast by voters throughout the United States, but by a majority of Electoral College votes. Each state has a number of electoral votes equal to the number of its members in the House and Senate combined. Because the number of representatives is determined by population, the states with larger numbers of people have a larger number of electoral votes. California, for example, has fifty-five electoral votes, whereas Delaware has only three. In every state but two, the presidential candidate receiving the largest number of popular votes in that state receives all of that state’s electoral votes.⁶

In effect, on the day of the presidential election, fifty-one separate elections are taking place (in the fifty states and the District of Columbia). Voters choose among slates of electors committed to one or another of the candidates. When the popular votes in each state are counted, state-by-state Electoral College vote totals are combined to determine the presidential victor. After the election, victorious electors officially cast their presidential votes in their respective state capitals. From the perspective of federalism, the important point is that *states as states* play a crucial role in electing the person who holds the most important political office in the land. Presidential candidates must appeal not to an amorphous mass of citizens but to Texans, North Carolinians, Californians, and Virginians.

The center of the U.S. population changes as more and more people follow the sun and move to the South and the West. Florida, California, and Texas have gained population, while New York, Ohio, Pennsylvania, Illinois, and Michigan have suffered relative losses. Such population changes have implications for power shifts in the U.S. House and in the Electoral College. Table 2.1 shows the shifts in regional power between 1950 and 2015. Since the 2010 census, more than one in four members of the U.S. House come from California, Texas, or Florida, and the presidential candidate winning California receives 20 percent of the electoral votes needed to win the presidency.



State governments act as administrators to carry out national social welfare policies such as welfare benefits, SNAP, EBT (Electronic Benefit Transfer), Medicaid, and TANF programs. (AP World Wide Photo)

Electoral College

Institution established by the Constitution for electing the president and vice president and whose members—electors chosen by the voters—actually elect the president and vice president

table 2.1 | Shifts in Regional Power: 1950 and 2015, as Measured by the Size of State Delegations in the U.S. House of Representatives

Shifts and changes in population between 1950 and 2015 meant that over the past sixty-five years parts of the East and the Midwest have lost seats in the House of Representatives, while the West and South have gained seats. The apportionment of the 435 House seats is calculated for each state following the census every ten years. A state may increase its population but lose a seat if the rate of gain in other states is much greater.

Region/State	1950	2015	Region/State	1950	2015
Mountains and Plains	29	36	Midwest	117	85
Montana	2	1	Minnesota	9	8
Wyoming	1	1	Wisconsin	10	8
North Dakota	2	1	Michigan	17	14
South Dakota	2	1	Iowa	8	4
Nebraska	4	3	Illinois	26	18
Kansas	6	4	Indiana	11	9
New Mexico	2	3	Ohio	23	16
Arizona	2	9	Missouri	13	8
Utah	2	4	East	127	87
Idaho	2	2	Maine	3	2
Colorado	4	7	New Hampshire	2	2
South	128	152	Vermont	1	1
West Virginia	6	3	Massachusetts	14	9
Virginia	9	11	Connecticut	6	5
Oklahoma	8	5	Rhode Island	2	2
Arkansas	7	4	New York	45	27
Kentucky	9	6	Pennsylvania	33	18
North Carolina	12	13	New Jersey	14	12
Tennessee	10	9	Maryland	6	8
South Carolina	6	7	Delaware	1	1
Texas	21	36	West	34	75
Louisiana	8	6	Washington	6	10
Mississippi	7	4	Oregon	4	5
Alabama	9	7	California	23	53
Georgia	10	14	Nevada	1	4
Florida	6	27	Arkansas	N/A	4
			Hawaii	N/A	2

N/A = not applicable

2.2a The Rise of the National Government

As Chapter 1 made clear, the states were clearly dominant under the Articles of Confederation. The national government quite literally started out from nothing; yet we have today a national government whose actions—from delivering Social Security checks to regulating the safety of toys and power plants—pervade the daily lives of citizens. How did this change come about? Massive technological, communication, and economic changes have transformed the nation over the past two centuries. War and depression have made their own contributions to the shift in focus of demands and expectations.

The conflict between unity and diversity, which gave birth to the federal system, also shaped the relationships between the national and state governments in the early decades of the new nation. The national government cooperated with the states in a variety of areas. Because economic development was among the highest of priorities for the new nation, the national government provided funds and technical assistance to the states for construction of roads and canals. Land grants to states in the West for educational purposes signaled greater cooperation between the national government and the states to come.⁷

Despite the cooperation, however, sharp conflicts also occurred between the national government and the states in the early decades of the Republic. The Kentucky and Virginia Resolutions, adopted by the legislatures of those states in 1798, held that the Constitution created a compact among the states and that the power of the national government was sharply limited by the states. In 1819 the state of Maryland contested the right of the national government to establish a national bank (leading to the Supreme Court case *McCulloch v. Maryland*, discussed in the following section), and in 1832 the South Carolina legislature declared a national tariff law null and void. The very existence of national power was at issue in these instances of nation/state conflict.

The federal system was ultimately tested in war. The early skirmishes between the national government and the states paled in significance compared to the Civil War. At one level, the war was about the question of slavery; at another level, the war was about the question of federalism. Could a state (or several states) leave the Union and, in effect, unravel the work of the Constitutional Convention of 1787? From the perspective of federalism, the most important consequence of the war was preservation of the Union. President Lincoln is best known as emancipator of the slaves, but his sharp and unyielding refusal to allow dissolution of the Union was crucial in the evolution of federalism. The significance of Lincoln's stance cannot be overstated. Lincoln, the chief executive in a national government that had not even existed a century earlier, used *national* resources in a major war effort to resist by brute force the claims of the seceding states—four of which predated the national government itself.

The end of the Civil War marked the beginning of a rapid change in the character of the nation's economy. Transcontinental railroads pulled the nation together and brought farmers, producers, and sellers closer to buyers and consumers. Major new industries—such as steel, oil, and, later, the automobile—began to emerge. With them came new forms of economic organization. Corporations crossed state boundaries in their activities and their effects. Control and regulation of economic matters increasingly eluded the grasp of any single state, resulting in political demands by the states that the national government confront the problems that economic monopolies left in their trail.



A twenty-two-year-old mother with her children camped in a resettlement camp for migrants during the Great Depression. (Library of Congress)

Later, in the twentieth century, the economy plunged into the Great Depression of the 1930s. Farm and industrial prices collapsed, factories closed, banks failed, homes were foreclosed, and unemployment rates rose dramatically. State and local governments were overwhelmed by the needs and demands of millions of Americans

who clearly needed help to survive. National problems seemed to require national solutions. As never before, the national government embarked on a series of social welfare policies—known as the New Deal—that both improved the economic conditions of many and generated expectations that the national government could solve a variety of social problems in the future. Today many domestic programs administered by the states or their localities are funded by the national government.

Finally, the national government is responsible for national security and relations with other nations. In the twentieth century, the Cold War and the increasing interdependence of the world economy combined to make the national government's conduct of foreign affairs important on a continuing basis.

Although the Cold War has ended, demands for a revitalized military establishment remain strong; and the need for national government policies to enhance the nation's competitiveness in the global economy have become more acute.

The seemingly inexorable rise in the power of the national government has been accompanied by political demands that state and local governments assume a larger presence in the making of policy decisions affecting them. For example, **New Federalism**—a term most closely associated with the Republican administrations of Richard Nixon (1969–1974) and Ronald Reagan (1981–1989)—calls for state and local governments to assume a much greater role than they traditionally had during the explosions of national policy initiatives that took place during the Democratic administrations of Franklin Roosevelt (1933–1945) (the New Deal) and Lyndon Johnson (1963–1969) (the Great Society).⁸ New Federalism took on a new life during the George W. Bush (2001–2009) administration, this time in the form of calling for state self-reliance during crises and scaling back federal environmental regulations. New Federalism holds that not only should state and local governments be entrusted with greater responsibilities but that they should also be allowed to follow their own best judgment in making decisions. Giving state and local governments more discretion in how they spend national grant money is an illustration. This view of federalism dovetails with the traditional Republican Party “grassroots” philosophy that the government in the best position to make good policy choices is the government “closest” to the people. Whether nationally defined policy goals, such as the amelioration of poverty, can (or should) accommodate state and local policies that may diverge from those goals is an old question in federalism.

New Federalism

A view of federalism that posits an expanded role for state and local governments and holds that state and local governments should be entrusted with greater responsibilities

2.2b Express and Implied Powers

The search for the right balance between state and national power remains an enduring issue in the federal system. What powers do the states have in their relationships to each other and to the national government? What powers does the national government have over the states? The Republic has struggled with these questions since 1787. The Constitution prohibits the exercise of some powers by

one or both levels of national and state governments; for example, states may not coin money. In addition, national and state governments share some *concurrent* powers, such as the power each has to tax the same individual's income. However, the most important point about national and state powers is the distinction between *delegated* and *reserved* powers.

In accepting the Constitution, the people in the states—through the ratification process—delegated important powers to the new national government. The statement of these powers is contained in Article I, Section 8, of the Constitution (see the Appendix). **Delegated powers** are ordinarily divided into two types: express powers and implied powers. **Express powers** are specifically enumerated as belonging to Congress. Among these are the powers to levy and collect taxes, to borrow money, to regulate interstate commerce, to coin money, to declare war, and to raise and support armies.

However, the last statement of power listed in Article I, Section 8, also delegates to the national government **implied powers**, which by their very nature have been subject to intense dispute. As discussed in Chapter 1,

this provision is also known as the elastic or necessary and proper clause and delegates to Congress the power “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” Obviously, what is “necessary and proper” in a particular circumstance is a matter open to varying interpretations. A narrow interpretation would constrict the powers of the national government, whereas a broad interpretation would enlarge them.

The first time the clause was specifically interpreted was in *McCulloch v. Maryland*, one of the most famous and consequential Supreme Court decisions ever made.⁹ The case represented an ideological division over the powers of the national government and the place of the states in the Union. Conflicting political objectives were sought in terms of opposing theories of federalism. Congress had chartered a national bank. Some states opposed the bank because it competed with state-chartered banks. Hoping to put the national bank out of business, Maryland imposed a tax on the new bank. McCulloch, its cashier, refused to pay. As part of its case, Maryland argued not only that a state could tax a nationally chartered bank but also that Congress had no authority to charter a bank in the first place because banking was not a power delegated to Congress. Instead, Maryland claimed, banking was a power the Constitution reserved for the states.

Contrary to Maryland's claims, Chief Justice John Marshall (1801–1835) declared that Congress possessed ample constitutional authority to charter a bank, even though such a power was not expressly listed in the Constitution. In Marshall's view, the power to establish a bank was implied in the express powers, such as the powers to tax and to coin money. A bank was a means to achieving the ends spelled out in the Constitution. Marshall's interpretation of the necessary and proper clause clearly allowed expansive power to the national government. In his memorable words,

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional.

Kee up-to-date on the latest developments in state politics at the Council of State Governments website.

<http://www.bvtlab.com/727EB>

delegated powers

Legal authority that the people in the states granted to the national government for certain purposes by ratifying the Constitution; can be either express or implied

express powers

Powers specifically enumerated in the Constitution as belonging to the national government

implied powers

Powers of national government that are not specifically cited in the Constitution but that are implicit in powers expressly granted by the Constitution

McCulloch v. Maryland

Supreme Court case in 1819 that established the constitutionality of a national bank and solidified national power by confirming that the federal government can exercise implied powers to carry out legitimate and otherwise constitutional ends

Furthermore, Marshall held that Maryland could not tax the bank because it was an instrument of the national government. In a conflict between an act of Congress and a state law, the former would prevail. No single part of the political community could be allowed to subvert a policy undertaken by the whole community represented in Congress.

Because of the brevity of the Constitution, many of its clauses and phrases are ambiguous and give little or no direction as to what is “legitimate” in a particular circumstance. The framers could not address every problem or clarify every uncertainty. According to Marshall’s decision in *McCulloch*, the Constitution created a stronger national government by delegating to it express and implied powers. Exactly how strong it was to be or how it would evolve was left for later generations to decide.

2.2c Reserved Powers: What Do the States Do?

If the new government was to be more powerful and the states were, nonetheless, to continue to exist, what powers were left to the states? Although simpler in theory than in practice, the principle is that states can do all things not specifically prohibited to them and not delegated exclusively to the national government. These remaining powers are known as **reserved powers**. State and local governments are responsible for delivering the vast majority of public services. About 2.7 million civilian employees work for the national government, a number that has decreased slightly since a peak of 3.1 million in 1990. However, growth in government employment has occurred at the state and local levels. The most recently reported figures, in 2012, indicate that state and local governments employ just over 19.2 million people—about seven times the number of civilian employees working for the national government.¹⁰ This number of employees indicates that states and localities play a large role in providing public services.

The **Tenth Amendment** states that “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.” Politicians and groups whose political ideas are served by advocating “states’ rights” have frequently pointed to the Tenth Amendment as support for their claims. However, that amendment, unlike the Articles of Confederation, does not contain the word *expressly* in citing powers delegated to the national government. Such delegated powers therefore include the implied powers cited by Chief Justice Marshall in *McCulloch v. Maryland*.

Among powers reserved for the states are “police” responsibilities for the health, safety, and welfare of citizens. For civilized life to be possible, people must be able to carry on their day-to-day activities with the reasonable assurance that physical threats to their health and well-being are kept to an absolute minimum. For example, among the health responsibilities of states are those such as dealing with outbreaks of contagious diseases, the disposal of wastes, cleanliness in public eating establishments, and the administration of networks of state hospitals and mental institutions.

In one of their most visible roles, the states also have primary responsibility for preventing and prosecuting criminal activities. Most of this work occurs at the level of local governments whose organization, powers, and functions are constitutionally subject to control by state governments. Some crimes, such as airline hijacking, kidnapping, tampering with U.S. mail, and counterfeiting money, are violations of national law enforced by the national government. However, most law enforcement officers in the country are state agents and local personnel who act as agents of the state. From state police officers to county sheriffs who track down suspected criminals

reserved powers

Powers not specifically prohibited to the states and not delegated to the national government by the Constitution

Tenth Amendment

Amendment ratified in 1791 that reserves to the states powers not prohibited to them and not delegated to the national government by the Constitution

to the local police who deal with matters such as burglary and domestic violence, most law enforcement responsibilities lie at the state and local levels. Most suspected rapists, murderers, thieves, burglars, muggers, and assorted swindlers are pursued only by state and local law enforcement personnel, prosecuted only in state courts, and incarcerated only in state prisons.

Sometimes these state police powers and national policy interests come into conflict. The Constitution grants the national government control over immigration via the power to “establish a uniform Rule of Naturalization” in Article I, Section 8. Despite a thorough set of federal immigration laws, some states, frustrated by increases in illegal immigration, have enacted their own statutes. In 2010 Arizona passed a law making it a state crime to be in the country illegally, banning undocumented immigrants from working in the state, authorizing police to arrest individuals they suspect of having committed a deportable offense upon probable cause, and requiring police to check the immigration status of everyone they detain. In the 2012 case *Arizona v. United States*, the Supreme Court held the first three of these provisions to be unconstitutional because they are preempted by federal laws and sent the fourth back for further review by the lower courts.¹¹

Most individuals encounter state power in a direct and personal way many times in their lives. A variety of inoculations and vaccinations may be required by the state before entrance into the elementary school system. To drive a car, you must apply for a state driver’s license and pass a driver’s test administered by a state officer. Individuals who wish to marry must apply for a state marriage license, and the ceremony is performed either by a state public official (such as a justice of the peace) or by an individual (often a religious leader, like a minister, priest, or rabbi) who acts as an agent of the state in performing the ceremony. In divorce, the contesting parties must go through some state judicial proceeding to legally dissolve the relationship; and when the custody of children is at issue, state courts are called on to make the decision.

States also play a regulatory role in a variety of matters having to do with business and commerce within the state. From laws on safety to zoning practices to requirements for filing periodic tax and information reports—practically no enterprise can escape the touch of the state. Entrance into many professions is controlled by state licensing boards, which set rules, regulations, and standards that are supposed to ensure the quality of services delivered to citizens, but which also serve to limit entry into the profession. Such licensing procedures touch barbers, lawyers, medical specialists, dietitians, cosmetologists, real estate agents, and even taxidermists.

Perhaps the most visible and pervasive role of the state is in the area of public education. State policies of universal education have emerged from a belief in the importance of schools for improving literacy, inculcating civic and cultural values, and generally enhancing the capabilities of citizens. In administering educational systems, local school districts are agencies of the state. Curricula, certification of teachers, length of the school year, and policy on truancy are all matters of state power and



State officers, such as police and sheriffs, track down suspected criminals—rapists, murderers, thieves, burglars, muggers, and assorted swindlers. These suspects are tried and prosecuted primarily in state courts and incarcerated primarily in state prisons. (Shutterstock)

Handling a Hurricane: Federalism and Disaster Relief

In August 2005 a Category 5 hurricane formed in the Atlantic Ocean. Dubbed Hurricane Katrina, the storm caused severe damage all along the Gulf Coast, affecting Florida, Mississippi, and especially the city of New Orleans, Louisiana. According to a report from the National Hurricane Center, at least 1,833 people died as a result of the storm, many thousands more lost their homes and/or businesses, and the financial damages were in excess of \$81 billion.¹ Several years after Katrina struck, many of those affected remained without adequate housing; and many communities, particularly in New Orleans, had not been rebuilt.

The emergency response to Katrina involved dozens of government agencies. Due to our federal system of government, agencies at all three levels—national,

state, and local—were involved in the rescue efforts. Initially a matter of local responsibility, the scope of this disaster quickly led the federal government to declare a national emergency and to instruct the Federal Emergency Management Agency (FEMA) to take the lead. An agency within the Department of Homeland Security, FEMA has as its mission “to lead the effort to prepare the nation for all hazards and effectively manage federal response and recovery efforts following any national incident.”² In this case, that responsibility included coordinating the efforts of numerous agencies, such as the U.S. Army Corps of Engineers, as well as cooperating with state and local agencies like the Louisiana Department of Health and Hospitals, and nongovernmental agencies like the American Red Cross.

The difficulty of coordinating all of these agencies—each with its own goals, training, and procedures—led to inefficiencies, redundancies, and criticism. At the heart of the matter was whether or not FEMA had mishandled the relief efforts, in effect making the situation worse than it should have been. Politicians and media pundits accused FEMA Director Michael Brown of incompetence, and the director soon resigned under pressure. However Brown claimed that the disaster agency had itself been a disaster even before he

had taken control. Polls conducted in the weeks following the hurricane suggested that a majority of Americans thought state and local officials and the residents of New Orleans, as well as President Bush and FEMA, had failed to respond well.³ Whoever was to blame, the American public was left with the impression that their government, at many levels, had let them down.

What is the proper balance of responsibility between federal, state, and local levels of government in disaster relief? Should the federal government’s superior financial resources supersede concerns about over-centralization? Should the federal government foot the bill but then defer to the potentially greater expertise of state and local agencies when it comes to implementation? How did the public react to the government’s failure to respond promptly to this emergency? A majority of the New Orleans population is African American. This fact, combined with an inadequate government response, led 60 percent of African Americans (but only 12 percent of whites) to conclude that race was a factor in the government’s slow response.⁴ What factors point to support, or lack of support, for this claim? With the benefit of hindsight, was the government’s response to Hurricane Katrina appropriate or inappropriate? Why?



(iStock)

1 Richard D. Knabb, Jaime R. Rhone, and Daniel P. Brown, National Hurricane Center, “Tropical Cyclone Report: Hurricane Katrina,” August 10, 2006, http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf (October 5, 2006).

2 “About FEMA,” August 3, 2006, <http://www.fema.gov/about/index.shtm> (October 5, 2006).

3 The Gallup Poll, “Blacks Blast Bush for Katrina Response,” September 14, 2005, <http://www.galluppoll.com/content/?ci=18526&pg=1>, (October 6, 2006).

4 Ibid.

concern. Some of the great policy debates of the past generation have focused on the role of the states in education. Should prayers be said aloud in the schools, or should a moment of silence for “meditation” be allowed at the beginning of each school day? Should schools be desegregated, and if so, how? Should the busing of schoolchildren be required to achieve integration? Should states be required to equalize expenditures among wealthier and poorer school districts? The *national* government can pursue *national* approaches, but its stress on unity can limit or threaten diversity among the states. Educational policy debates illustrate the vitality of the federal system. When should the national government have its way, and when should the states be allowed to go their separate ways? In recent years, the federal No Child Left Behind law has challenged traditional answers to these questions.

2.2d Local Government: A Political Landscape of Contrasts

One of the reserved powers of the states is their control over the structure and powers of local governments. The Constitution makes no mention of city or other local governments, only of the nation’s capital, the “Seat of Government.” This fact makes local governments “creatures of the state.” The relationships between state legislatures (traditionally with a rural bias) and local governments, especially those of larger cities, have frequently been stormy. Through much of the nineteenth century, state legislatures kept local governments on a tight leash by determining with great specificity their powers, functions, and procedures. In the late nineteenth century and the first half of the twentieth century, however, many local governments—particularly those of larger cities—were granted **home rule**: the power to determine, within broad limits, their own powers and functions. In the 1960s local governments (again, those of larger cities, in particular) increasingly developed relationships—generally created by flows of cash—directly with the national government. Nonetheless, all local governments are, according to the Constitution, agents of the state, performing what are constitutionally state functions.

As shown in Table 2.2, more than ninety thousand local governments exist in the United States. These local governments perform many of the unglamorous services essential to civilized life, such as collecting trash, pursuing criminals, putting out fires, and providing drinking water. Local governments range in size from huge cities like New York with more than eight million people (more than in forty entire states) to small villages and hamlets with fewer than one hundred inhabitants. Governments at the local level differ in their structure. Some have a **mayor-council** form of government, which mirrors the executive-legislative structure at the state and national levels. Others have a **council-manager** form in which appointed managers look after the day-to-day operations of the government. Still others have a commission form of government in which power is diffused, and no single individual is in charge. Some local governments are “general purpose”—that is, they are responsible for a wide variety of functions including police protection, housing, social services, and parks administration. School districts and special districts overlap these general-purpose governments and are limited to a single function, such as education, mosquito control, fire protection, or transportation.

Although residents do not usually pay much attention to local government, they can and do get intensely interested during a local crisis or controversy. For example, when the water supply becomes polluted with toxic waste, citizens get involved. School board meetings can be drab affairs, but they can become arenas of excitement and drama when matters such as sex education programs or higher taxes to fund a new school are at stake. Similarly, most local zoning board hearings are routine and

home rule

A legal status in which local governments, especially large cities, can determine for themselves within broad parameters their own powers and functions without interference from the state government

mayor-council

A form of government at the local level that mirrors the executive-legislative structure at the state and national levels where the mayor has executive powers and the council has legislative powers

council-manager

A form of government at the local level where an elected council exercises legislative powers and hires a city manager to perform executive and administrative duties

table 2.2 | Governmental Units in the Federal System

The federal system contains many governments, but they do not all do the same things. The national government, all state governments, and many local governments are general-purpose governments; that is, they perform a wide variety of functions. A city government, for example, will typically provide police protection and numerous social services. School districts and special districts geographically overlap with general-purpose governments and perform only a single function, such as education, water distribution, fire protection, or sewage treatment. The largest growth in number of governmental units in recent years has occurred in special districts, due to the fact that they enable local areas to collectively provide services that they could not afford individually. Moreover, the particular tasks of special districts often stretch beyond the boundaries of local general-purpose governments. Finally, some local governments, such as towns or townships, have not been given power by their state constitutions and governments to perform such functions.

1	National government
50	State governments
90,056	Local governments
3,031	Counties (called parishes in Louisiana)
16,360	Towns and townships
19,519	Municipal governments
12,880	School districts
38,266	Special districts

SOURCE: U.S. Census Bureau, 2012 Census of Governments, September 2013.

sparsely attended, but proposals such as a hamburger chain seeking to locate near a predominantly residential area, or the efforts of a chemical company to place a toxic waste facility in or near a town, are issues that practically guarantee action by affected residents. In terms of size, structure, function, and degree of citizen interest, local governments are a mosaic of contrasts.

2.3 Government Relationships in the Federal System

The existence of different levels of government within a federal system means that federalism is about *relationships* among governments.¹² Because these governmental relationships are intangible and constantly shifting and changing, trying to understand them is not an easy task. Unlike the presidency, for example, federalism is not an institution with a physical place where its work is done; however, one way to understand federalism is to picture it as a series of *legal*, *fiscal*, and *political* relationships among levels of government.

2.3a Models of Federalism

The federal system can at first appear to be a jumble of intangible relationships without obvious order or meaning. The effort to create models is an attempt to create pictures or portraits that bring some order to the complexity and chaos. Two models are particularly important.

The first is **dual federalism**, a model positing the view that national and state governments are separate and independent from each other, with each level exercising its own powers in its own jurisdiction. This model, supporting the rights of the states, was important as a judicial theory of federalism in the nineteenth and early twentieth centuries. In *Hammer v. Dagenhart*¹³ (a decision the justices later overturned) the Supreme Court ruled that Congress could not ban shipment across state lines of products made with child labor because labor regulation was a state power only.

Dual federalism was never a completely realistic description of the relationship between the nation and the states. For example, in the nineteenth century the national government gave land to the states to use for educational purposes. Indeed, some of the nation's great universities today are among the "land grant" institutions that resulted from this policy. The model does reflect, however, the fact that the state and national governments in much of the nineteenth and early twentieth centuries did not interact with each other with the regularity taken for granted today. Dual federalism is also known as the "layer cake" model because the separate levels of government in the model are likened to distinct layers of a cake.

The second model is **cooperative federalism**. In this model, national and state governments share a number of tasks that had previously been the exclusive domain of only one level of government. Cooperative federalism is sometimes called "marble cake" federalism because it is a view of federalism that likens the intertwining relationships between the national and state and local governments to the intertwining flavors in a marble cake.¹⁴ Cooperative federalism best describes the system that developed as a result of the expansion of national government roles in the twentieth century, particularly after implementation of the New Deal and Great Society programs. Across a wide range of public policies, despite occasional conflict, all levels of government work closely with one another. Minnesotans and Georgians are also Americans, and that fact helps to explain the intermingling of governmental functions. Interstate highways are largely funded by federal grants, but the highways are built and patrolled by the states. National and state governments jointly fund medical care for the poor. National, state, and local law enforcement authorities regularly combine forces in pursuit of criminals such as drug smugglers, bank robbers, and suspected murderers whose escape routes take them across state lines. State and local health authorities call on the expert services of the national Centers for Disease Control and prevention when outbreaks of contagious or mysterious diseases threaten communities. State environmental and health agencies work with national units, such as the Environmental Protection Agency or the Nuclear Regulatory Commission, when problems with toxic or radioactive waste arise.

The relationships are not always smooth and free of conflict. State and local officials criticize the national government for cuts in funding; FBI agents may run up against local police policies that, in the agents' view, hinder efficient law enforcement work; state and local officials may confront national regulations that they see as either pointless or unnecessarily encumbering. In recent years, tensions between local, state,

dual federalism

A model of federalism in which national and state governments are separate and independent from each other, with each level exercising its own powers in its own jurisdiction

cooperative federalism

A model of federalism that features intertwining relationships and shared areas of responsibility between the national and state and local governments

and national approaches to tightened airport security and other homeland security measures have been emblematic of this ongoing struggle. Nonetheless, cooperative federalism is a portrait of the federal system in which officials from different levels of government work together regularly.

2.3b Legal Relationships

One consequence of having different levels of government in the same political system is the potential for conflict over who has the power to do what. Legal conflicts between the national and state governments have both a rich past and a continuing vibrancy. The Supreme Court has played a major role in answering the questions that such conflicts raise.

The Court has interpreted the Constitution to mean that utilizing diverse approaches among the states in some matters is constitutionally unacceptable. It has generally supported the national government and national constitutional values in conflicts with the states. Its interpretation of the interstate commerce clause is a good example. The “regulation of interstate commerce” is one of the most important powers that the Constitution grants to Congress. This provision has allowed Congress to shape national economic and even social policy. States do have a role to play. They can enact legislation affecting commerce to protect the health and safety of citizens. States can also act in the absence of congressional action or when not prohibited by Congress. When Congress does act, the Supreme Court has generally allowed wide latitude to national legislation that limits state power in interstate commerce. For example, upholding the reach of congressional power in the Civil Rights Act of 1964, the Court held that hotels and local restaurants could not discriminate on the basis of race in their services because travelers and food served were part of inter-

state commerce.¹⁵ More recently, however, the Court has indicated a willingness to restrict the definition of interstate commerce, thereby limiting congressional power to create gun-free school zones, for example, or to limit violence against women.¹⁶ In 2012, the Court refused to accept the national government’s argument that the commerce clause gave Congress the power to require individuals to purchase health insurance, though the Court majority concluded that the Patient Protection and Affordable Care Act (see discussion in Chapter 12) was constitutional as a result of Congress’s taxing powers.¹⁷

Through its interpretation of the due process clause of the Fourteenth Amendment, the Court has also applied most of the limitations on the power of the national government contained in the first eight amendments to the activities of the states themselves. These amendments were added

to the Constitution in the early years of the new government to assuage fears that the new national government might be a powerful threat to individual liberties. Ironically, the Court has applied these limitations to the states as well. For example, states must now provide counsel for people accused of crimes and may not sponsor prayer in the public schools.¹⁸

The Court’s interpretation of the Fourteenth Amendment’s equal protection clause has also limited state power. For example the Court’s reapportionment decision,



(iStock)

which required equal populations in state legislative districts, shifted political power from rural to urban areas.¹⁹ The Court has even shaped the structure of local government. As an example, the Court found New York City's Board of Estimate—a local government body with substantial powers over land use, the city's budget, and other matters—in violation of its “one person, one vote” rulings.²⁰ The five boroughs of New York had equal representation on the board, despite great population differences among the boroughs. The Court's decision was the impetus behind the elimination of the Board of Estimate and a major restructuring of New York City's government.

Using the equal protection clause, the Court has also held that the states cannot exclusively determine for and by themselves the shape of their own school systems—even though public education has been traditionally among the reserved powers of the states. In *Brown v. Board of Education*,²¹ the Court unanimously declared that racially segregated school systems are unconstitutional. Thus, some constitutional values have been deemed so important that they must be nationally determined and, if necessary, enforced by national power.

Despite the support the Court has generally given to the national government, the constitutional power of the states in conflicts with the national government is not a predetermined issue. In some recent cases the Court has weakened the power of the states and slighted the principle of federalism; in others the Court has asserted a constitutional role for the states, protecting them from incursions of congressional power. The issue of who should set minimum wages and maximum hours for the employees of state governments and their political subdivisions is an example of a case that has gone back and forth with regard to who has jurisdiction. Although the Court upheld that private employers could set wages and hours a half-century ago, it declared in 1976 that states were immune to such requirements. The Court reversed itself, however, in 1985 by ruling in *Garcia v. San Antonio Metropolitan Transit Authority* that Congress may apply minimum-wage and maximum-hour legislation to state employees.²² Three years later, in *South Carolina v. Baker*, the Court ruled that Congress could tax state and local government bearer bonds,²³ a decision that limits the tax immunity of state and local governments. The *Garcia* and *South Carolina* decisions made state and local officials wonder whether the Court had “abandoned” Tenth Amendment protection of state powers.²⁴

However, assuaging such fears, the Court ruled in 1991 that a congressional statute banning age discrimination does not overrule a provision in the Missouri Constitution requiring state judges to retire at age seventy. In other words, the state of Missouri can reasonably determine for itself mandatory retirement policies for state officials.²⁵ The Court also ruled, in 1992, that Congress cannot require a state to “take title” to radioactive waste produced within its borders if the state does not make provision for its disposal.²⁶ Additionally, in 1997 the Court struck down a congressional attempt to require local law enforcement officials to perform background checks on handgun purchasers and, in 2000, ruled unconstitutional Congress's effort to prevent states from disclosing a driver's personal information without the driver's consent.²⁷

Looming on the forefront of federalism is the issue of same-sex marriage—a legal arrangement that some state supreme courts have ruled must be permitted under their constitutions. Though marriage is currently in the domain of state law, the national attention this issue has gained in recent years has led some groups on both sides of the debate to push for national uniformity. The Court's decisions on this issue in 2013, while striking down a federal law that defined marriage as only a union between a man and a woman, maintained that marriage rules are properly an area of



Some state supreme courts have ruled that same-sex marriages are constitutional. Marriage is currently in the domain of state law, but the strong attention the issue has gained in recent years has led many interest groups to push for national uniformity. (Shutterstock)

state law. These cases indicate that states continue to draw on powers reserved for them in the Constitution.²⁸ The search for the proper legal balance between state and national power continues to be a point of contention; the line between them has not disappeared.

2.3c Fiscal Relationships

Federalism is about more than just legal relationships. Cooperative fiscal relationships have become the single most important characteristic of federalism in the twentieth and twenty-first centuries, with money acting as a kind of glue that binds the different levels of government together. It is now commonplace

to cite the ratification of the **Sixteenth Amendment** in 1913, which granted Congress the power to tax incomes, as a significant event contributing to the national government's unparalleled capacity to raise revenue. This capacity to raise funds reinforced the unprecedented emergence of public expectations for national government action in the Great Depression. The national government was cast in the role of banker, doling out money to deal with social and economic ills that states had either ignored or found too large for local solutions.

Terms and conditions vary enormously from one program to another, but cash grants from the national government to state and local governments are usually divided into two groups: categorical grants-in-aid and block grants. A **categorical grant-in-aid**, the predominant form of national aid, is a transfer of cash from the national government to state or local governments for some specific purpose—usually with the accompanying requirement that state and local governments match the national money with some funds of their own. The purposes of these grants are determined by the national government, and state and local governments have little or no discretion or flexibility in how the funds can be spent. If the money is given for highways, it cannot be spent on libraries or airports. Some of these grants are given to state and local governments on the basis of formulas that take into account factors such as population, poverty, and income levels. Others distribute money for specific projects in response to applications from state or local governments.

Categorical grants are available in practically every policy area, including highways, health, education, and nutrition. The *Catalog of Federal Domestic Assistance* reports that there are 2,284 grant programs;²⁹ however, a small number of grants make up a large proportion of total grant dollars. The grants for health programs, including Medicaid (medical benefits for the poor), and income security programs (such as welfare payments) will make up almost 73 percent of the grant total in 2015.³⁰

A **block grant** is a transfer of cash from the national government to state and local governments that allows the recipients greater discretion in its use. Instead of defining with great specificity how the money must be spent, the national government permits expenditures in some broad policy area, such as community development, social services, or criminal justice. An increase in this type of grant has been a major federalism priority of Republican administrations because block grants allow greater discretion at the state and local levels. State and local governments prefer the

Sixteenth Amendment

Amendment to the Constitution, ratified in 1913, that gave Congress the power to tax incomes and thereby massively increase the potential revenue available to the national government

categorical grant-in-aid

Transfers of cash from the national to state and/or local governments for some specific purpose, usually with the accompanying requirement that state and local governments match the national money with some funds of their own

block grant

Transfers of cash from the national to state and local governments in which state and local officials are allowed discretion in spending the money within some broad policy area, such as community development or social services

Changing State Constitutions

In contrast to the U.S. Constitution, state constitutions are newer, longer, and more frequently changed. Of the forty-five states admitted to the union before 1900, thirteen adopted one or more constitutions in the twentieth century. Of the fifty states, thirty-one have adopted two or more constitutions, with Louisiana having approved its eleventh in 1975. Among the most recent is the Georgia constitution (the state's tenth) adopted in 1983. Only one state constitution still in force—Massachusetts's, adopted in 1780—predates the U.S. Constitution.

With about 8,300 words, only Vermont's constitution is nearly as short as the U.S. Constitution. Alabama's has 350,000 words, Texas's over 100,000, and Oklahoma's about 94,000. Much of the length of state constitutions is due to amendments. The length of state constitutions means that they are usually far more detailed than the U.S. Constitution. The abundant detail is explained by a fundamental difference in the way Americans view their national and state constitutions. The former has been largely concerned with the structure, operation, and

powers of the government. Since the early nineteenth century the latter have reflected battles within the states over economic and social issues—matters of less interest to the national government before 1890. State constitutions also reflect struggles over legislative apportionment and the franchise. Since constitutions were more permanent than statutes, contending political groups attempted to write their preferred policies into a state's higher law. Moreover, state courts could not invalidate a constitutional provision as being in conflict with the state's constitution. This is why many state constitutions today read more like statutes.

The detail in state constitutions also means that they are changed frequently. The California constitution has been amended over five hundred times, and even the new Georgia constitution has had eighteen amendments added within six years of its adoption. Since 1776, some 232 constitutional conventions have been held by the states to propose new constitutions or major alterations to existing ones. Between 1900 and 1997, forty-three of the fifty states took some kind of official action to amend their constitutions, resulting in the adoption of 644 constitutional amendments—an average of nearly 13 per state. Approximately one-sixth of the 644 were "local" amendments that affected only part of a state, but the remaining amendments had statewide applications. In both categories, the

amendments typically involved finance, taxation, and debt.

States vary in the way constitutional amendments are proposed, although each state makes proposing an amendment a separate step from ratifying it. While all allow the legislature (like Congress) to propose amendments, eighteen permit a constitutional initiative. This allows voters to begin the process of constitutional change by collecting the required number of signatures on a petition. Some states, however, restrict the kind of amendment that may be proposed by an initiative. Amendments may also be proposed by convention. Indeed, the constitutions of fourteen states now require the periodic submission to the voters of the question of whether a constitutional convention should be held. By whatever means proposed, ratification of amendments in almost all states occurs following a majority vote by the electorate.

This chapter explains that much of the change in the national constitution has come about not through formal amendment but by judicial interpretation. Should Americans prefer more frequent change of the national Constitution by amendment, as is now done in the states? Should the people vote directly on changes to the national Constitution as they routinely do on changes to state constitutions?

flexibility allowed by block grants to the more rigid procedural requirements that accompany categorical grants.

In 1922, the national government granted to the states the relatively paltry sum of \$122 million, the major proportion of which was spent on highway construction.³¹ Figure 2.2 shows the sharp increase in such aid over the past several decades. Reflecting the explosion of Great Society grant programs in the 1960s, national aid in current dollars almost quintupled between 1965 and 1975, from \$11 billion to \$50 billion, and it almost tripled again in the decade and a half after 1975.

Figure 2.2 | National Aid to State and Local Governments since 1960, in Current and Constant Dollars, in Billions

National aid to state and local governments rose sharply after 1960 to a high point in 1980 of \$264.7 billion in constant 2009 dollars and then fell in constant dollars through the 1980s. In the early 1990s, aid began to rise again, in both current and constant dollars. In 2015, the amount in constant dollars is estimated at eleven times the amount of aid in 1960.

SOURCE: Office of Management and Budget.

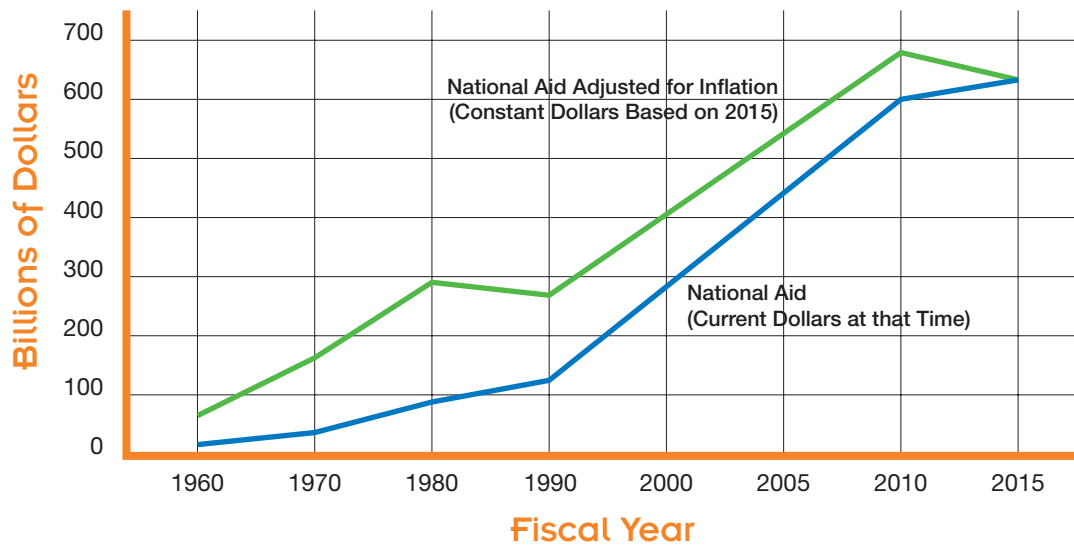


Figure 2.2 shows that national aid has continued to rise in the 2000s; however, the growth area in national government dollars is in programs providing payments for individuals, such as Medicaid. In 1960, 35 percent of federal grant dollars were spent on payments for individuals.

By 2015 that proportion increased to about 71 percent.³² The proportional drop in grant programs that allow state and local governments to spend money, such as funding for capital projects, forced those governments to depend increasingly on their own resources to support programs that had previously been aided by Congress.

2.3d Political Relationships

The federal system can be viewed as a series of legal and fiscal relationships. However, a third way to look at the federal system is to see it as an arena for political relationships among officials at all levels of government who lobby and cajole one another and who bargain and negotiate with one another. The cast of political players includes members of Congress representing states and local districts, the president, governors, state legislators, mayors, county and township commissioners, and national, state, and local bureaucrats. These officials band together into groups such as the National Governors Association, the National Conference

of State Legislatures, and the United States Conference of Mayors—all of which participate in federal system politics.

The range and variety of political relationships are enormous because officials at all levels in the federal system press for their own interests as they see them. Scarce resources, the search for the appropriate balance between state and national power, and social and economic differences among the states all drive these political relationships. Sometimes local or state officeholders will make demands on the national government as a group. In the competition for dollars, for example, mayors want more federal money. In the battle over which level of government has the power to do what, governors want fewer federal regulations and more state flexibility in deciding regulatory policy.

Many of the political relationships in the federal system derive from economic differences between regions and states and their localities as they compete with each other to press their individual interests. Economic development and the creation of new jobs are always among the highest priorities of state officials. New businesses and jobs can bolster tax collections, help political incumbents keep their posts, and make the state more attractive to outsiders. Understandably, states are in constant competition with each other to attract new industry and to retain the industry they have. Domestic and foreign corporations that are planning new plant sites are wooed by governors, economic development staffs, and local officials, all of whom cite favorable tax provisions, excellent physical facilities, and a skilled and dependable workforce as reasons the new plant should be located in their state.

State officials lobby to get what they see as their fair share of the huge budget expenditures of the national government. Associations of state and city officials and organizations such as the Northeast-Midwest Institute promote the economic interests of the regions they represent. Members of Congress want for their states and districts the “plums” of national policy, such as military contracts, but not the undesirable consequences of national policy, such as nuclear waste dumps. Competition among the states for national defense dollars is especially keen. Military installations and work on new weapons systems may bring millions of dollars into a state each year, and efforts to close facilities or cut weapons development meet with predictable opposition from state officials and congressional representatives. Understandably, Mississippi’s members of Congress think that naval ships built in Mississippi are better than ships built in Virginia.

Other policy examples—beyond the struggle for money—also illustrate the conflicts between states, and between states and the national government. The long history of slavery and discrimination against blacks in the South created epic battles between the Southern states and the national government. Fights over school integration over the past generation illustrate the durability of the struggle. The issue did not reach the same intensity in states with different traditions and different avenues of economic development. Some of the great battles in Congress over environmental policy are conflicts between members of Congress trying to represent the interests



Members of Congress come into conflict over many issues, including environmental policy. These policies affect protected areas of the United States such as Yellowstone National Park. (Shutterstock)

of their states. Californians want stricter auto emissions standards to ameliorate their problem of dirty air, but autoworkers in Michigan fear the economic consequences of stricter standards for their industry. As these illustrations suggest, political relationships in the federal system shape many public policies.

The Supreme Court created a political hot potato for all three levels of government in 2005 when it clarified and, by doing so, expanded the governmental power of eminent domain in the case *Kelo v. City of New London*.³³ The takings clause of the Fifth Amendment has long been interpreted to provide governments the power to seize private property for public use in exchange for just compensation. In the *Kelo* case, however, the Court presented a very broad interpretation of “public use” that enables governments to take private property and resell it to other private entities as long as there is a “public purpose.” Fearing this decision would lead cities to condemn private homes in favor of shopping malls (which produce more tax revenue), citizens of many states and localities demanded that their governments pass laws or ordinances to limit the use of this broad power.

2.4 Federalism Today

In the second decade of the twenty-first century, the federal system appears to be a curious blend of contrasts, as each level of government asserts its role. The states are now innovators in a variety of public policy areas, including education, welfare, and the environment. Policy innovation is not a new role for the states. States had, in the past, experimented with new ideas that were later accepted as national policy. For example, a variety of states enacted old-age pension laws several years before Congress mandated Social Security as a national policy in 1935. Similarly, the state of Wisconsin had a program of unemployment compensation that predated national policy on the matter.³⁴

Some states are now experimenting with market-like approaches in public education by allowing parents to choose the schools their children will attend; other state courts are mandating more equal educational expenditures across school districts. The latest round of welfare reform (requiring welfare recipients to work) was actually presaged by states that had already begun to experiment with such programs.³⁵ Across a range of environmental policies—including auto and power plant emissions, recycling, and water quality—some states have set more stringent standards than the national government. Federal budget cuts help to explain this increased vigor of the states. As the national government has wrestled with its own budget deficit, the states have expanded their policy role.

During the early 1990s, tensions grew between the national and state and local governments. The national government cut funding going to state and local governments, while, at the same time, it increased the number of regulations applied to state and local governments. Critics of this strategy called the national actions “unfunded mandates.” Examples of these regulations, which result in higher costs that state and local governments must pay, include the federal mandate that local school districts remove asbestos materials from school buildings and the requirement that municipalities monitor a large list of pollutants in drinking water.³⁶ Protecting water supplies and the health of schoolchildren are worthwhile objectives, but which level of government should pay to meet the costs of national policy mandates?³⁷ States were being

asked to do more to achieve policy objectives set by the national government—but with fewer federal resources. By 1995, however, the national government seemed to have gotten the message. Congress passed the Unfunded Mandates Reform Act that year; though not a panacea, the legislation led to the review of over 350 inter-governmental mandates during its first five years of operation. The Congressional Budget Office reports that the number of mandates that could be defined as unfunded declined steadily over that time period.³⁸

Governors, state legislators, and mayors are more active than they used to be; many of them believe, however, that the national government is curtailing their powers and responsibilities and denying them sufficient resources to perform the tasks they are asked to do. The national government has increasingly preempted state and local action in a variety of areas. For example, the national government has told the states to stay out of the economic regulation of buses, trucks, and airlines. The rise in federal demands and the scarcity of dollars at all levels have increased tensions among governments in the federal system. State and local governments have assumed a prominent role in policy making; yet the lively debate over which level of government should have the power to do what, whether national or state action is more appropriate, and who should pay the costs in light of budget deficits illustrates the continuing vitality of the federal system.

CHAPTER REVIEW

1. Federalism is a system of government in which a central or national government and regional or state governments exercise governmental power within the same political system. Federalism is a compromise between a confederation, in which states hold principal power, and a unitary form of government, in which a central government is dominant. Countries throughout the world have federal systems, and some of the most bitter and consequential conflicts in other countries are battles to redefine the shape of federal systems.
2. In policy, the amendment process, and elections, states play an important role; but the national government has become more dominant in the federal system over the past two centuries. The Constitution delegates express powers to the national government, and the Supreme Court has given expansive interpretation to the implied powers clause in the document. Powers not delegated to the national government are reserved for the states and include police powers, ensuring the health, safety, and education of citizens. Also among state powers is control over local governments, which vary greatly in size, structure, and functions.
3. Two models of the federal system are dual federalism and cooperative federalism. The federal system can be seen as a series of legal, fiscal, and political relationships among governments. Through its interpretation of the Constitution, the Supreme Court has generally supported national constitutional values and the national government. At the expense of support for capital and other programs, an increasingly greater proportion of national aid to state and local governments goes to payments for individuals. Officials at all levels press for the interests of their governments in political relationships with other officials in the federal system.
4. States are now vigorous policy innovators, but budget deficits and the rise in national regulations have increased tensions in the federal system.

KEY TERMS

block grant	.62	home rule	.57
categorical grant-in-aid	.62	implied powers	.53
confederation	.44	interstate compact	.48
cooperative federalism	.59	mayor-council	.57
council-manager	.57	<i>McCulloch v. Maryland</i>	.53
delegated powers	.53	New Federalism	.52
dual federalism	.59	reserved powers	.54
Electoral College	.49	Sixteenth Amendment	.62
express powers	.53	Tenth Amendment	.54
federalism	.44	unitary system	.44

Readings for Further Study

Laurence J. O'Toole and Robert K. Christensen, eds., *American Intergovernmental Relations: Foundations, Perspectives, and Issues*, 5th ed. (Washington, D.C.: CQ Press, 2012) offers a contemporary view of federalism.

The Council of State Governments (Lexington, Kentucky) publishes biennially *The Book of the States*, a compendium of demographic, structural, and policy data about the states.

Articles describing and analyzing state and local governments in the federal system can be found in the journals *Publius* and *National Civic Review* and in the magazine *Governing*.

Iwan W. Morgan and Philip J. Davies, eds., offer a comparative perspective on federalism during the George W. Bush administration in *The Federal Nation: Perspectives on American Federalism* (New York: Palgrave, 2009).

David Osborne provides case studies of policy vigor in the states in *Laboratories of Democracy: A New Breed of Governor Creates Models for National Growth* (New York: McGraw-Hill, 1990).

Osbourne and Ted Gaebler's *Reinventing Government* (New York: Plume, 1993) presents an entrepreneurial approach to state and local governance that has been successful in providing policy makers with workable approaches in contemporary federalism.

Politics in the American States: A Comparative Analysis, 10th ed. (Los Angeles: Sage/CQ Press, 2013), edited by Virginia Gray, Russell L. Hanson, and Thad Kousser, is one of the best scholarly comparisons of state policy.

Alice Rivlin's *Reviving the American Dream: The Economy, the States, and the Federal Government* (Washington, D.C.: The Brookings Institution, 1993) presents provocative proposals to reorder policy responsibilities between the national and state governments.

Robert F. Nagel's *The Implosion of American Federalism* (New York: Oxford University Press, 2002) offers a critical look at contemporary American federalism.

Notes

1. John P. Roche, "The Founding Fathers: A Reform Caucus in Action," *American Political Science Review* 55 (1961): 804; William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964).
2. For a seminal discussion of different political cultures among the states, see Daniel J. Elazar's *American Federalism: A View from the States*, 3rd ed. (New York: Harper & Row, 1984), pp. 114–142.
3. Bureau of Economic Analysis, U.S. Department of Commerce, Interactive Data, <http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=3> (July 16, 2014).
4. Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987), p. 33.
5. See Gregory Gleason's *Federalism and Nationalism: The Struggle for Republican Rights in the USSR* (Boulder, CO: Westview Press, 1990) for discussion of Soviet federalism prior to the creation of the Commonwealth of Independent States.
6. The two exceptions are Maine and Nebraska, which allocate electoral votes on the basis of candidate victories in congressional districts.
7. See Daniel J. Elazar's "Federal-State Cooperation in the Nineteenth-Century United States," *Political Science Quarterly* 79 (1964): 248–265.
8. For an examination on the differences between the Nixon and Reagan approaches to New Federalism, see Timothy Conlan's *New Federalism: Intergovernmental Reform from Nixon to Reagan* (Washington: Brookings Institution, 1988).
9. 17 U.S. (4 Wheaton) 316 (1819).
10. U.S. Census Bureau, <http://www2.census.gov/govs/apes/12stlus.txt> (July 16, 2014).
11. 567 U.S. ____ (2012).
12. For a comprehensive view of government relationships in the federal system on which this section draws, see Laurence J. O'Toole and Robert K. Christensen, eds., *American Intergovernmental Relations: Foundations, Perspectives, and Issues*, 5th ed. (Washington: CQ Press, 2012).
13. 247 U.S. 251 (1918).
14. The classic statement of the model can be found in Morton Grodzins, "The Federal System," in *President's Commission on National Goals, Goals for Americans* (Englewood Cliffs, NJ: Prentice-Hall, 1960), pp. 265–282.
15. See *Heart of Atlanta Motel v. United States*, 379 U.S. 274 (1964), and *Katzenbach v. McClung*, 379 U.S. 294 (1964).
16. See *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), respectively.
17. *National Federation of Independent Businesses v. Sebelius*, 567 U.S. ____ (2012).
18. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).
19. *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).
20. *Morris v. Board of Estimate*, 489 U.S. 103 (1989).
21. 347 U.S. 483 (1954).
22. *National League of Cities v. Usery*, 426 U.S. 833 (1976); *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).
23. 485 U.S. 505 (1988).
24. See, for example, David E. Nething, "States Must Regain Their Powers," *State Government* 63 (January–March 1990): 6–7.
25. *Gregory v. Ashcroft*, 59 U.S.L.W. 4687 (1991).
26. *New York v. United States*, 60 U.S.L.W. 4603 (1992).
27. See *Printz v. United States*, 521 U.S. 898 (1997), and *Reno v. Condon*, 528 U.S. 141 (2000).
28. See Charles Wise and Rosemary O'Leary, "Is Federalism Dead or Alive in the Supreme Court? Implications for Public Administrators," *Public Administration Review* 52 (November–December 1992): 559–572.
29. Catalog of Federal Domestic Assistance, <https://www.cfda.gov/> (July 17, 2014).
30. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2015*, http://www.whitehouse.gov/omb/budget/Analytical_Perspectives/ (July 17, 2014).
31. Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design* (Washington: Government Printing Office, 1978), p. 16.
32. Office of Management and Budget, *Analytical Perspectives, Fiscal Year 2015*, p. 245.
33. 545 U.S. 469 (2005).
34. Arthur M. Schlesinger Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1965), pp. 301–303.
35. Elaine Stuart, "Roaring Forward," *State Government News* (January/February 1999): 10–14.
36. *Ibid.*, 28–29.
37. Timothy J. Conlon, "And the Beat Goes On: Intergovernmental Mandates and Preemption in an Era of Deregulation," *Publius* 21 (Summer 1991): 50–53.
38. Congressional Budget Office, *CBO's Activities Under the Unfunded Mandates Reform Act, 1996–2000* (May 2001).

POP QUIZ

1. The fifty American states are themselves _____ governments because the principal power within each state lies with the state government.
2. The Supreme Court case of _____ v. _____ interpreted the necessary and proper clause as allowing expansive power to the national government.
3. A model of federalism that views national and state governments as separate and independent from each other is called _____.
4. The most predominant form of national aid to the states takes the form of _____.
5. The federal system is a compromise between a strong central government and a league of separate states. T F
6. States act in some measure as administrative units to carry out national social welfare programs. T F
7. Among the powers reserved for the states is the responsibility for preventing and prosecuting criminal activities. T F
8. Studies have shown that citizen interest in the affairs of local government is almost nonexistent. T F
9. Through a process of cooperative agreements, the states have the power to regulate interstate commerce. T F
10. Federalism is the product and symbol of the continuing ideological struggle between the values of _____ and _____.
 A) freedom, equality
 B) unity, diversity
 C) justice, protection
 D) individualism, nationalism
11. The government of France is a _____ system.
 A) confederate
 B) unitary
 C) federal
 D) decentralized
12. Federal systems are found in _____.
 A) Africa
 B) South Asia
 C) North America
 D) All of the above
13. The states play a crucial role in all except which of the following activities?
 A) administering social welfare policies
 B) regulating interstate commerce
 C) amending the Constitution
 D) shaping electoral contests at the national level
14. The Supreme Court case of *McCulloch v. Maryland* confirmed the national government's _____ powers.
 A) delegated
 B) express
 C) implied
 D) reserved
15. According to the text, the most visible and pervasive role of the state is in the area of _____.
 A) interstate commerce
 B) education
 C) health
 D) business regulation

Answers:

1. unitary
2. *McCulloch v. Maryland*
3. dual federalism
4. categorical grants-in-aid
5. T
6. T
7. T
8. F
9. F
10. B
11. B
12. D
13. B
14. C
15. B