

FEDERALISM

CHAPTER OUTLINE AND LEARNING OBJECTIVES

DEFINING FEDERALISM

- 3.1** Define federalism and contrast it with alternative ways of organizing a nation.

WHY FEDERALISM?

- 3.2** Characterize the types of nations typically associated with federalism.

THE CONSTITUTIONAL BASIS OF FEDERALISM

- 3.3** Outline the constitutional basis for the division of power between national and state governments, the establishment of national supremacy, and states' obligations to each other.

INTERGOVERNMENTAL RELATIONS

- 3.4** Characterize the shift from dual to cooperative federalism and the role of fiscal federalism in intergovernmental relations today.

DIVERSITY IN POLICY

- 3.5** Explain the consequences of federalism for diversity in public policies among the states.

UNDERSTANDING FEDERALISM

- 3.6** Assess the impact of federalism on democratic government and the scope of government.

Politics in Action

CONFLICT BETWEEN LEVELS OF GOVERNMENT

The Controlled Substances Act of 1970 prohibits the possession, use, or sale of marijuana. In 1996, California voters passed the Compassionate Use Act, legalizing the medical use of marijuana. Twenty-two other states and Washington, D.C., have followed California's lead in legalizing medical marijuana. In 2013, Colorado and Washington states decriminalized personal recreational use of small amounts of marijuana. Alaska, Oregon, and Washington, D.C. soon followed, as did more states in 2016. National and many state laws are clearly in conflict.

In California there emerged a thriving industry of marijuana growers and storefront dispensaries that paid substantial sums in state and local taxes, but national drug officials saw them as largely

illegal. Operating under the principle that national law preempts state law, the Drug Enforcement Administration routinely arrested medical marijuana patients and seized the business assets of growers and dispensaries. The Internal Revenue Service also began a crackdown, denying some sellers the right to deduct marijuana-related business expenses.

Medical marijuana users argued the national law exceeded the power granted to Congress by the Constitution to regulate interstate commerce, because the marijuana they used was grown, transported, and consumed entirely within the state in which they lived and thus did not implicate interstate commerce. In *Gonzales v. Raich* (2005), however, the U.S. Supreme Court disagreed. It ruled that under the Constitution's commerce clause, Congress may criminalize the production and use of marijuana even if these activities occur within states that have approved its use for medicinal purposes. Marijuana grown for medical purposes is indistinguishable from illicit marijuana, the Court reasoned, and local use affected supply and demand in the national marijuana market, making the regulation of within-state use essential to regulating the drug's national market.

National prosecutors and drug agents say much of California's burgeoning marijuana industry hides behind the mask of meeting medical needs while engaging in large-scale illegal sales. Although the Department of Justice has issued guidelines making it a low priority to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, it has nonetheless cracked down on growers and on dispensaries and their landlords. State and national laws remain in conflict, creating ongoing issues and illustrating the importance of understanding American federalism, the complex relationships between different levels of government in the United States.

In exploring American federalism, we will be especially attentive to our themes of democracy and the scope of government. Does federalism, the vertical division of power, enhance democracy in the United States? Does the additional layer of policymakers at the state level make government more responsive to public opinion or merely more complicated? Does it enhance the prospects that a majority of Americans will have their way in public policy? And what are the implications of federalism for the scope of the national government's activities? Why has the national government grown so much relative to state governments, and has this growth been at the expense of the states?

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DEFINING FEDERALISM

3.1 Define federalism and contrast it with alternative ways of organizing a nation.

Federalism is a way of organizing a nation so that two or more levels of government share formal authority over the same area and people. For example, the state of Texas has formal authority over its inhabitants, but the national government (often referred to as the *federal* government) can also pass laws and establish policies, such as Social Security, Medicare, and aid to college students, that affect Texans. Americans are subject to the formal authority of both state and national governments.

Although federalism is not unique to the United States, it is not a common method of governing. Most nations instead have a **unitary government**, in which supreme power resides in the central government. If the French Assembly, for instance, wants to redraw the boundaries of local governments or change their forms of government, it can, and in fact, it has. The U.S. Congress, by contrast, cannot, say, abolish California or redraw its boundary with Nevada.

American states are unitary governments with respect to their local governments. That is, local governments derive their authority from the states, which can create or abolish local governments and can make rules for them, for example, by telling them how they will be organized, how they can tax people, on what they can spend money, and even what their speed limits will be. In contrast, states receive their authority not from the national government but *directly* from the Constitution.

federalism

A way of organizing a nation so that two or more levels of government share formal authority over the same area and people.

unitary government

A central government that holds supreme power in a nation. Most national governments today are unitary governments.

TABLE 3.1 AUTHORITY RELATIONS IN THREE SYSTEMS OF GOVERNMENT

	Unitary	Confederate	Federal
<i>Central government</i>	Holds primary authority Regulates activities of states	Limited powers to coordinate state activities	Shares power with states
<i>State government</i>	Few or no powers Duties regulated by central government	Sovereign Allocates some duties to central government	Shares power with central government
<i>Citizens</i>	Vote for central government officials	Vote for state government officials	Vote for both state and central government officials

intergovernmental relations

The entire set of interactions among national, state, and local governments—including regulations, transfers of funds, and the sharing of information—that constitute the workings of the federal system.

The workings of the federal system are sometimes called **intergovernmental relations**. This term refers to the entire set of interactions among national, state, and local governments, including regulations, the transfers of funds, and the sharing of information.

There is a third form of governmental structure, a *confederation*. The United States began as a confederation under the Articles of Confederation. In a confederation, the national government is weak, and most or all power is in the hands of the country's components—for example, the individual states. Today, confederations are rare and mainly take the form of international organizations such as the United Nations. Table 3.1 summarizes the authority relations in the three systems of government.

WHY FEDERALISM?

3.2 Characterize the type of nation typically associated with federalism.

Only 11 of the 190 or so nations of the world have federal systems (see Table 3.2), and these countries—including, for example, Germany, Mexico, Argentina, Canada, Australia, and India—share little else as a group. All three North American nations have federal systems, but the trend does not continue in South America, where only two nations have federal systems.

Countries large in size—such as Canada and Australia—or large in both size and population—such as India, the United States, Brazil, and Mexico—tend to have federal systems, which decentralize the administration of governmental services.

TABLE 3.2 COUNTRIES WITH FEDERAL SYSTEMS

Why might a federal system be useful for a country with a large area or population or for a country with large ethnic minority groups? How might the United States be different if it had a unitary system rather than a federal system?

Nation	Population	Area (in Thousands of Square Miles)	Diversity (Ethnic, Linguistic, and Religious)	Democracy?
Argentina	43,431,886	1,068	Low	Yes
Australia	22,751,014	2,968	Low	Yes
Austria	8,665,550	32	Low	Yes
Brazil	204,259,812	3,286	Medium	Yes
Canada	35,099,836	3,852	High	Yes
Germany	80,854,408	138	Low	Yes
India	1,251,695,584	1,269	High	Yes
Malaysia	30,513,848	127	High	Yes
Mexico	121,736,809	762	Low	Yes
Switzerland	8,121,830	16	Medium	Yes
United States	321,368,864	3,718	Medium	Yes

SOURCE: Central Intelligence Agency, *The World Factbook*, 2016.

Nevertheless, China and Indonesia—two large and populous countries—have unitary governments, and tiny Malaysia and Switzerland have federal systems.

A nation's diversity may also play a role in the development of a federal system. Brazil, Canada, India, Malaysia, Switzerland, and the United States have large minority ethnic groups, often distinct in language and religion. Many nations with unitary systems, however, ranging from Belgium to most African countries, are also replete with ethnic diversity.

All countries with federal systems are democracies, although most democracies are not federal systems. Authoritarian regimes generally do not wish to disperse power away from the central government. However, both the former Soviet Union and the former Yugoslavia, perhaps reflecting the extraordinary diversity of their populations, had federal systems—of a sort: in both countries, the central government retained ultimate power. As democracy swept through these countries, their national governments dissolved, and multiple smaller nations were formed.

THE CONSTITUTIONAL BASIS OF FEDERALISM

3.3 Outline the constitutional basis for the division of power between national and state governments, the establishment of national supremacy, and states' obligations to each other.

The word *federalism* does not occur in the Constitution. Not much was said about federalism at the Constitutional Convention. Eighteenth-century Americans had little experience in thinking of themselves as Americans first and state citizens second. In fact, loyalty to state governments was so strong that the Constitution would have been resoundingly defeated had it tried to abolish them. In addition, a central government, working alone, would have had difficulty trying to govern eighteenth-century Americans. The people were too widely dispersed and the country's transportation and communication systems too primitive to allow governing from a central location. There was no other practical choice in 1787 but to create a federal system of government.

The Division of Power

Although they favored a stronger national government, the Framers still made states vital components in the machinery of government. Indeed, as a result of the necessity of relying on the states to provide public services, the Constitution does not carefully define the powers of state governments. In general, states have responsibility for a wide range of policies and may largely organize themselves and their local governments as they wish. The Constitution makes states responsible for both state and national elections—an important power—and it also gives the states the power to ratify constitutional amendments.

The Constitution guarantees states equal representation in the Senate, and in Article V even makes this provision unamendable. Furthermore, the Constitution virtually guarantees the continuation of each state; Congress is forbidden to create new states by dividing up old ones, unless a state's legislature approves (an unlikely event). Congress is also forbidden to tax articles exported from one state to another.

The Constitution also creates obligations of the national government toward the states. For example, the national government is to protect states against violence and invasion.

The Constitution is more specific about the powers that states do *not* possess than about those they do. As you can see in Table 3.3, limits on the states focus on foreign policy, economic matters, and basic rights, including voting rights. The limitations related to basic rights are the results of constitutional amendments that also restrict the national government.

TABLE 3.3 SOME POWERS DENIED TO STATES BY THE CONSTITUTION

Economic	Individual Rights	Foreign Affairs
Tax imports or exports	Grant titles of nobility	Enter into treaties
Coin money or issue paper money	Pass bills of attainder	Declare war
Impair obligations of contract	Pass ex post facto laws	Raise or maintain military forces
	Permit slavery	
	Abridge citizens' privileges or immunities	
	Deny due process of law	
	Deny equal protection of law	
	Impose poll taxes	
	Deny right to vote because of race, gender, or age	

WHY IT MATTERS TODAY

Protecting Rights

State constitutions guarantee many basic rights. However, few Americans would feel comfortable with only state protections for their liberties. The Bill of Rights in the U.S. Constitution is the ultimate legal defense of freedom.

The states and the national government have overlapping responsibilities for important matters, such as establishing courts, maintaining law and order, protecting citizens' health and safety, and regulating financial institutions. Both levels of government can raise revenues through taxes, borrow money, and spend for the general welfare of their citizens. They may even take private property for public purposes, with just compensation to the owners.

National Supremacy

Shared power and responsibilities to govern between states and the national government inevitably lead to disputes between them. In the past, people debated whether the states or the national government should regulate the railroads, pass child labor laws, or adopt minimum-wage legislation. Today, people debate whether the states or the national government should regulate abortions, set standards for public schools, determine speed limits on highways, protect the environment, or provide health care for the poor. Many of our policy debates are debates about federalism.

When the national government places prohibitions or requirements on the states—whether through acts of Congress or agency regulations—inevitably issues arise for the courts to decide. In a dispute between the states and the national government, which prevails? The second paragraph of Article VI of the Constitution, often referred to as the **supremacy clause**, provides the answer. It states that the following three items are the supreme law of the land:

1. The Constitution
2. Laws of the national government, as long as they are consistent with the Constitution
3. Treaties (which can be made only by the national government)

Emphasizing the supremacy of the Constitution, the Framers mandated that all state executives, legislators, and judges are bound by oath to support the Constitution, even if their state constitutions or state laws directly contradict it.

Occasionally, issues arise in which states challenge the authority of the national government. In 1798 Kentucky's and Virginia's legislatures passed laws "nullifying"

supremacy clause

The clause in Article VI of the Constitution that makes the Constitution, national laws, and treaties supreme over state laws as long as the national government is acting within its constitutional limits.

the Alien and Sedition Acts. In 1832 South Carolina tried to nullify national tariffs. More recently, several states challenged federal education regulations resulting from the 2002 No Child Left Behind Act. Similarly, some states challenged the requirement in the 2010 Affordable Care Act that every American purchase health insurance. In cases where states challenge the federal government, the federal government usually wins.

Over the years, the federal government has gained power relative to the states. The Civil War and the struggle for racial equality were key events in settling the issue of how national and state powers are related. Equally important were the Supreme Court's interpretation of the Tenth and Eleventh Amendments, implied powers, and the commerce clause.

THE CIVIL WAR We typically think of the Civil War (1861–1865) as mainly a struggle over slavery, but it was also a struggle between states and the national government. (In fact, Abraham Lincoln announced in his 1861 inaugural address that he would support a constitutional amendment guaranteeing slavery if it would save the Union.) As a result of the North's victory, the national government asserted its power over the Southern states' claim of sovereignty.

THE STRUGGLE FOR RACIAL EQUALITY A century later, conflict between the states and the national government again erupted over states' rights and national power. In 1954, in *Brown v. Board of Education*, the Supreme Court held that school segregation was unconstitutional. Southern politicians responded with what they called "massive resistance" to the decision. When a federal judge ordered the admission of two African American students to the University of Alabama in 1963, Governor George Wallace literally blocked the school entrance to prevent federal marshals and the students from entering the admissions office; the students were nonetheless admitted. And throughout the 1960s the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs. The conflict between states and the national government over racial equality was decided in favor of the national government. National standards of racial equality prevailed.

THE TENTH AMENDMENT Although supreme, the national government can operate only within its appropriate sphere. It cannot usurp the states' powers. But what are the boundaries of the national government's powers?



In 1963, Alabama governor George Wallace made a dramatic stand at the University of Alabama to resist integration of the all-white school. Federal marshals won this confrontation, and since then the federal government in general has been able to impose national standards of equal opportunity on the states.

Tenth Amendment

The constitutional amendment stating, "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."

According to some commentators, the **Tenth Amendment** provides part of the answer. It 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." To those advocating *states' rights*, the amendment clearly means that the national government has only those powers that the Constitution explicitly assigns to it. The states or people have supreme power over any activity not mentioned there. Despite this interpretation, in 1941 the Supreme Court (in *United States v. Darby*) called the Tenth Amendment a constitutional truism—that is, a mere assertion that the states have independent powers of their own, and not a declaration that state powers are superior to those of the national government.

The Court seemed to backtrack on this ruling in a 1976 case, *National League of Cities v. Usery*, in which it held that extending national minimum-wage and maximum-hours standards to employees of state and local governments was an unconstitutional intrusion of the national government into the domain of the states. In 1985, however, in *Garcia v. San Antonio Metro*, the Court overturned the *National League of Cities* decision. The Court held, in essence, that it was up to Congress to decide which actions of the states should be regulated by the national government. Thus, once again, the Court ruled that the Tenth Amendment did not give states power superior to that of the national government for activities not mentioned in the Constitution. Nevertheless, in *Bond v. United States* (2011), the Court held that a person indicted under a federal statute may challenge the statute on the Tenth Amendment grounds that, in enacting the statute, the federal government invaded state powers under the Constitution.

THE ELEVENTH AMENDMENT There is a more specific constraint on the national government. Federal courts can order states to obey the Constitution or federal laws and treaties.¹ However, in deference to the states, the Eleventh Amendment gives them immunity from certain prosecution: it prohibits federal courts, state courts,² or federal administrative agencies from hearing cases in which a private party names a state as a defendant or seeks monetary relief from a state officer in his or her official capacity (for example, a police officer for violating one's rights) unless the state gives its consent to the hearing. That is why, for example, the Supreme Court voided a provision of the Americans with Disabilities Act that allowed citizens to sue states for damages: the provision violated state immunity as established by the Eleventh Amendment.³

There are limits to state immunity. Federal courts do have the jurisdiction to hear cases in which a private party names a state officer acting in an official capacity as a defendant when what is at issue are basic constitutional rights. In these circumstances the courts may grant injunctive relief; that is, require the officer to do or refrain from doing certain acts. Cases arising under the Fourteenth Amendment (usually cases involving racial discrimination) also make for exceptions to the provisions regarding state immunity.⁴ Congress may deny states immunity from suits that concern bankruptcy cases.⁵ Moreover, unlike private parties, both the federal government and other states may sue a state in federal court. In 2011, the Supreme Court held that it was permissible for an independent state agency to sue a state in federal court in order to enforce federal law.⁶

The Supreme Court has also made it easier for citizens to control the behavior of local officials. The Court ruled that an 1871 federal law passed to protect newly freed slaves permits individuals to sue local governments for damages or seek injunctions against any local official acting in an official capacity whom they believe has deprived them of any right secured by the Constitution or by federal law.⁷ Such suits are now common in the federal courts.

IMPLIED POWERS As early as 1819, the issue of state versus national power came before the Supreme Court. The case that landed it there was *McCulloch v. Maryland*, which involved the Second Bank of the United States.

McCulloch v. Maryland

An 1819 Supreme Court decision that established the supremacy of the national government over state governments. The Court, led by Chief Justice John Marshall, held that Congress had certain implied powers in addition to the powers enumerated in the Constitution.

The new American government had moved quickly on many economic policies. In 1791, it had created a national bank, a government agency empowered to print money, make loans, and engage in many other banking tasks. A darling of Alexander Hamilton and his allies, the bank had numerous opponents—including Thomas Jefferson, farmers, and state legislatures—who opposed strengthening the national government's role in the economy and who saw the bank as an instrument of the elite. Congress allowed the First Bank of the United States to expire. However, during James Madison's presidency it created the Second Bank, and so fueled a great national debate.

Railing against the "Monster Bank," the state of Maryland passed a law in 1818 taxing the national bank's Baltimore branch \$15,000 a year. The Baltimore branch refused to pay, whereupon the state of Maryland sued the cashier, James McCulloch, for payment. When the state courts upheld Maryland's law and its tax, the bank appealed to the U.S. Supreme Court. John Marshall was chief justice, and two of the country's most capable lawyers argued the case before the Court: Daniel Webster, widely regarded as one of the greatest senators in U.S. history, argued for the national bank, and Luther Martin, a delegate to the Constitutional Convention, argued for Maryland.

Martin maintained that the Constitution was very clear about the powers of Congress (outlined in its Article I). The power to create a national bank was not among them. Thus, Martin concluded, Congress had exceeded its powers, and Maryland had a right to tax the bank. On behalf of the bank, Webster argued for a broader interpretation of the powers of the national government. The Constitution was not meant to stifle congressional powers, he said, but rather to permit Congress to use all means "necessary and proper" to fulfill its responsibilities.

In their decision, Marshall and his colleagues set forth two great constitutional principles. The first was the *supremacy of the national government over the states*. Marshall wrote, "The government of the United States, though limited in its power, is supreme within its sphere of action." As long as the national government behaved in accordance with the Constitution, its policies took precedence over state policies, as the Constitution's supremacy clause said. Because of this principle, federal laws or regulations—for example, civil rights acts, rules regulating hazardous substances, water quality, and clean-air standards—*preempt* state or local laws or regulations and thus preclude their enforcement.

For example, in *Arizona et al. v. United States* (2012) the Court held that federal law preempted the state of Arizona from making it a crime for immigrants to fail to register under a federal law or for illegal immigrants to work or to try find work; federal law also preempted the state from allowing police to arrest people without warrants simply because they believed people had done things that would make them deportable under federal law. However, the Court did uphold the state requirement that state law enforcement officials determine the immigration status of anyone they stop or arrest if there is reason to suspect that the individual is an illegal immigrant.

The other key principle of *McCulloch* is that *the national government has certain implied powers that go beyond its enumerated powers*. For this reason, the Court held that Congress was behaving consistently with the Constitution when it created the national bank. Congress had certain **enumerated powers**, powers *specifically* listed in Article I of the Constitution. These included coining money and regulating its value, imposing taxes, and so forth. The Constitution did not enumerate creating a bank, but Article I, Section 8, concludes by stating that Congress has the power to "make all laws necessary and proper for carrying into execution the foregoing powers." That final clause, said Marshall, gave Congress certain **implied powers**, which it can exercise as long as it does so in terms consistent with the Constitution.

Commentators often refer to the "necessary and proper" clause of the Constitution as the **elastic clause**. Hundreds of congressional policies, especially in the economic domain, involve powers not specifically mentioned in the Constitution. Federal policies to regulate food and drugs, build interstate highways, protect consumers, clean up dirty air and water, and do many other things are all justified as implied powers of Congress.

enumerated powers

Powers of the federal government that are listed explicitly in the Constitution. For example, Article I, Section 8, specifically gives Congress the power to coin money and regulate its value and impose taxes.

implied powers

Powers of the federal government that go beyond those enumerated in the Constitution, in accordance with the statement in the Constitution that Congress has the power to "make all laws necessary and proper for carrying into execution" the powers enumerated in Article I.

elastic clause

The final paragraph of Article I, Section 8, of the Constitution, which authorizes Congress to pass all laws "necessary and proper" to carry out the enumerated powers.

The supremacy clause allows the national government to preempt state laws if it is acting within its legal sphere. Immigration policy is one example. In this photograph, undocumented immigrants are being repatriated to their home country by U.S. Immigration and Customs Enforcement, a federal agency.



Gibbons v. Ogden

A landmark case decided in 1824 in which the Supreme Court interpreted very broadly the clause in Article I, Section 8, of the Constitution and defined the power of Congress to regulate interstate commerce as encompassing virtually every form of commercial activity.

COMMERCE POWER The Constitution gives Congress the power to regulate interstate and international commerce. American courts have spent many years trying to define “commerce.” In 1824, the Supreme Court, in deciding the case of *Gibbons v. Ogden*, defined commerce very broadly to encompass virtually every form of commercial activity. Today, commerce covers not only the movement of goods but also radio signals, electricity, telephone messages, the Internet, insurance transactions, and much more.

The Supreme Court’s decisions establishing the national government’s implied powers (*McCulloch v. Maryland*) and a broad definition of interstate commerce (*Gibbons v. Ogden*) established the power of Congress to *promote economic development* through subsidies and services for business interests. In the latter part of the nineteenth century, however, Congress sought in addition to use its interstate commerce power to *regulate the economy*, for example, by requiring safer working conditions for laborers and protecting children from working long hours. The Court then ruled that the interstate commerce power did not give Congress the right to regulate local commercial activities.

The Great Depression placed new demands on the national government. Beginning in 1933, the New Deal of President Franklin D. Roosevelt produced an avalanche of regulatory and social welfare legislation. Although initially the Supreme Court voided much of this legislation, after 1937 the Court began to loosen restrictions on the national government’s regulation of commerce. In 1964, when Congress prohibited racial discrimination in places of public accommodation, it did so on the basis of its power to regulate interstate commerce. Thus, regulating commerce became one of the national government’s most important sources of power, used by Congress for policies ranging from protecting the environment to providing health care for the elderly.

WHY IT MATTERS TODAY

Commerce Power

The power to regulate interstate commerce is a critical one. Without it, Congress could not pass policies ranging from protecting the environment and civil rights to providing health care for the elderly and less fortunate.

In recent years, however, the Supreme Court has scrutinized some uses of the commerce power with a skeptical eye. In 1995, the Court held in *United States v. Lopez* that the federal Gun-Free School Zones Act of 1990, which forbade the possession of firearms in public schools, exceeded Congress's constitutional authority to regulate commerce. Guns in a school zone, the majority said, have nothing to do with commerce. Similarly, in 2000, the Court ruled in *United States v. Morrison* that the power to regulate interstate commerce did not give Congress the authority to enact the 1994 Violence Against Women Act, which provided a federal civil remedy for the victims of gender-motivated violence. Gender-motivated crimes of violence are not, the Court said, in any sense economic activity.

Several other recent cases have had important implications for federalism. In *Printz v. United States* (1997) and *Mack v. United States* (1997), the Supreme Court voided the congressional mandate in the Brady Handgun Violence Prevention Act that the chief law enforcement officer in each local community conduct background checks on prospective gun purchasers. According to the Court, "The federal government may neither issue directives requiring the states to address particular problems, nor commend the states' officers, or those of their political subdivision, to administer or enforce a federal regulatory program."

In 2012, the Supreme Court heard challenges to the Affordable Care Act, which Congress passed in 2010. Critics contended that the mandate that everyone purchase health insurance exceeded the reach of the commerce clause and was thus unconstitutional. The Supreme Court agreed about the commerce power but nevertheless upheld the mandate on the basis of Congress's tax power.⁸

States' Obligations to Each Other

Federalism involves more than relationships between the national government and state and local governments. The states must deal with each other as well, and the Constitution outlines certain obligations that each state has to every other state.

FULL FAITH AND CREDIT Suppose that, like millions of other Americans, a person divorces and then remarries. This person purchases a marriage license, which registers the marriage with a state. On the honeymoon, the person travels across the country. Is this person married in each state he or she passes through, even though the marriage license is with only one state? Can the person be arrested for bigamy because the divorce occurred in only one state?

The answer, of course, is that a marriage license and a divorce, like a driver's license and a birth certificate, are valid in all states. Article IV of the Constitution requires that states give **full faith and credit** to the public acts, records, and civil judicial proceedings of every other state. This reciprocity is essential to the functioning of society and the economy. Without the full faith and credit clause, people could avoid their obligations, say, to make payments on automobile loans simply by crossing a state boundary. In addition, because courts can enforce contracts between business firms across state boundaries, firms incorporated in one state can do business in another.

EXTRADITION What about criminal penalties? Almost all criminal law is state law. If someone robs a store, steals a car, or commits a murder, the chances are that this person is breaking a state, not a federal, law. The Constitution says that states are required to return a person charged with a crime in another state to that state for trial or imprisonment, a legal

full faith and credit

A clause in Article IV of the Constitution requiring each state to recognize the public acts, records, and judicial proceedings of all other states.

Because of the full faith and credit clause of the Constitution, drivers' licenses issued by one state are valid in every state. People are also entitled to most of the benefits—and subject to most of the obligations—of citizenship in any state they visit, thanks to the privileges and immunities clause.



extradition

A legal process whereby a state surrenders a person charged with a crime to the state in which the crime is alleged to have been committed.

privileges and immunities

The provision of the Constitution according citizens of each state the privileges of citizens of any state in which they happen to be.

process called **extradition**. There is no way to force states to comply, but they usually are happy to do so, not wishing to harbor criminals and hoping that other states will reciprocate. Thus, a lawbreaker cannot avoid punishment by simply escaping to another state.

PRIVILEGES AND IMMUNITIES The most complicated obligation among the states is the requirement that citizens receive all the **privileges and immunities** of any state in which they happen to be. The goal of this constitutional provision is to prohibit states from discriminating against citizens of other states. If, for example, a New Yorker visits Florida, the New Yorker will pay the same sales tax and receive the same police protection as residents of Florida.

There are many exceptions to the privileges and immunities clause, however. For example, consider tuition at public universities. If you reside in the state in which your university is located, you generally pay a tuition substantially lower than that paid by your fellow students from out of state. Only residents of a state can vote in state elections. States often attempt to pass some of the burdens of financing the state government to those outside the state, for example, through taxes on minerals mined in the state but consumed elsewhere or special taxes on hotel rooms rented by tourists.

The Supreme Court has never clarified just which privileges a state must make available to all Americans except that the clause only applies to activities that bear "on the vitality of the Nation as a single entity."⁹ In general, the more fundamental the right, the less likely it is that a state can discriminate against citizens of another state. Relying on the privileges and immunities clause of the Fourteenth Amendment (which prohibits states from denying the privileges and immunities of citizens of the United States), in 1999 the Supreme Court held that California could not require a new resident to wait a year before becoming eligible for welfare.¹⁰

INTERGOVERNMENTAL RELATIONS

3.4 Characterize the shift from dual to cooperative federalism and the role of fiscal federalism in intergovernmental relations today.

Intergovernmental relations reflect two major changes in American federalism, both related to the shift toward national dominance discussed earlier. The first major change has been a gradual shift in the nature of power sharing between the national and state governments.¹¹ The second has been the rise of *fiscal federalism*, an elaborate array of federal grants-in-aid to the states and localities.

From Dual to Cooperative Federalism

One way to understand the changes in American federalism is to contrast two types of federalism, dual and cooperative federalism. Each type represents a different way of dividing power and responsibility between the national and state governments.

In **dual federalism**, the national government and the states remain supreme within their own spheres. The national government is responsible for some policies, the states for others. For example, the national government has exclusive control over foreign and military policy, the postal system, and monetary policy. States have exclusive control over schools, law enforcement, and road building. In dual federalism, then, the powers and policy assignments of the two layers of government are distinct, as in a layer cake. Proponents of dual federalism generally believe that the powers of the national government should be interpreted narrowly.

In **cooperative federalism**, the national government and the states share powers and policy assignments.¹² This type of federalism is like a marble cake,

dual federalism

A system of government in which the states and the national government each remain supreme within their own spheres, each with different powers and policy responsibilities.

cooperative federalism

A system of government in which states and the national government share powers and policy assignments.

with responsibilities of the two levels of government mingled and clear distinctions between them blurred. Thus, for example, after the terrorist attacks on September 11, 2001, the national government asked state and local governments to investigate suspected terrorists, and both national and state public health officials dealt with the threat caused by anthrax in the mail in Florida, New York, and Washington, D.C.

Initially, before the national government began to assert its dominance, the U.S. federal system leaned toward dual federalism. Today, however, most politicians and political scientists would describe the system as one of cooperative federalism.

From the beginning a neat separation into purely state and purely national responsibilities did not characterize American federalism. A look at the area of education, which is usually thought of as being mainly a state and local responsibility, illustrates this point and also shows the movement toward cooperative federalism.

Governing under the Articles of Confederation, Congress set aside land in the Northwest Territory to be used for public schools. During the Civil War, the national government adopted a policy to create land grant colleges. (Important American universities such as Wisconsin, Texas A&M, Illinois, Ohio State, North Carolina State, and Iowa State owe their origins to this nineteenth-century policy.)

In the 1950s and 1960s, the national government began supporting public elementary and secondary education. In 1958, Congress passed the National Defense Education Act, largely in response to Soviet success in the space race. The act provided federal grants and loans for college students as well as financial support for elementary and secondary education in science and foreign languages. In 1965, Congress passed the Elementary and Secondary Education Act, which provided federal aid to numerous schools. Although these policies expanded the national government's role in education, they were not a sharp break with the past.

Today, the federal government's presence is felt in every schoolhouse. Federal courts have ordered local schools to implement elaborate desegregation plans and have placed constraints on school prayers. Almost all school districts receive some federal assistance. To do so, they must comply with federal rules and regulations; for example, they must maintain desegregated and nondiscriminatory programs. The No Child Left Behind Act of 2001 established standards of performance along with sanctions, including loss of federal aid, for schools failing to meet its standards. This law was replaced by the Every Student Succeeds Act of 2015, which modified but did not eliminate provisions relating to standardized tests and shifted accountability to the states.

The federal government also plays a crucial role in higher education. First, it is the primary source of financial aid, providing about \$170 billion in financial assistance (including grants, loans, and work-study assistance) to more than 50 million postsecondary students each year. Nearly three-fourths of full-time undergraduates receive some form of financial aid from the federal government. The federal government also provides several billion dollars of direct grants to colleges and universities across the nation. Billions more in federal funds support research and training in certain areas, especially science and engineering—which receive about \$52 billion a year. The libraries, laboratories, and the buildings in most colleges and universities have benefitted from federal government grants.¹³

Highways are another example of the movement toward cooperative federalism. In an earlier era, states and cities were largely responsible for building roads, although the Constitution does authorize Congress to construct "post roads." In 1956, Congress initiated the building of the interstate highway system, a joint federal-state project, and specified how the costs and the funds to pay for them would be shared. In this and many other areas, the federal system has promoted a partnership between the national and state governments.

The principal basis for cooperative federalism is shared programs such as education¹⁴ and transportation that are mainly state responsibilities. For hundreds of programs, cooperative federalism involves the following:

- *Shared costs.* Cities and states can receive federal money for airport construction, sewage treatment plants, youth programs, and many other programs, but only if they pay part of the bill.
- *Federal guidelines.* Most federal grants to states and cities come with strings attached. For example, Congress spends billions of dollars to support state highway construction, but to get their share, states must adopt and enforce limits on the legal drinking age.
- *Shared administration.* State and local officials implement federal policies, but they have administrative powers of their own. The U.S. Department of Labor, for example, gives billions of dollars to states for implementing job training, but states administer the money and have considerable latitude in spending it.

The cooperation between the national government and state governments is such an established feature of American federalism that it persists even when the two levels of government are in conflict on certain matters. For example, officials in a number of states challenged in court the health care bill Congress passed in 2010. Nevertheless, most implemented the act and cooperated well with Washington on other policies.

States are responsible for most public policies dealing with social, family, and moral issues. The Constitution does not give the national government the power to pass laws that *directly* regulate drinking ages, marriage and divorce, or speed limits. These policy prerogatives belong to the states. They become national issues, however, when aggrieved or angry groups take their cases to Congress or the federal courts in an attempt to use the power of the national government to *influence* states or to convince federal courts to find a state's policy unconstitutional.

A good example of this process is the federal requirement that states raise their drinking age to 21 in order to receive highway funds. Candy Lightner, a Californian whose 13-year-old daughter was killed by a drunk driver, formed Mothers Against Drunk Driving (MADD) in 1980. After an intense lobbying campaign by MADD, Congress passed a law withholding federal highway funds from any state that did not raise its drinking age to 21. Today, 21 is the legal drinking age in every state.

Cooperative federalism began during the Great Depression of the 1930s and continues into the twenty-first century. The federal government provides much of the funding for interstate highways, for example, but also attaches requirements that states must meet.



Devolution?

The shift toward greater power and responsibility for the national government has not gone unchallenged. Political party goals have played a role in the debate.

For most of the twentieth century, Democrats supported increasing the power of the federal government in order to advance national policies in areas ranging from child labor laws and education to Social Security and health care. Republicans, in contrast, generally opposed these policies and favored states taking responsibility for such issues. They often articulated their opposition to increased federal power in terms of a defense of state authority in a federal system. However, when Republican Ronald Reagan tried to reduce the role of the national government in domestic programs and return responsibility to the states, few officials at either the state or national levels agreed with him. Despite their objections, Reagan's opposition to federal spending on domestic programs, together with the huge federal deficits of the 1980s, forced Congress to reduce federal funds for state and local governments.

In the 1994 elections, Republicans captured Congress, the first time in 40 years that they had majorities in both houses. Their rhetoric centered on **devolution**, the transferring of responsibility for policies from the federal government to state and local governments. They followed their rhetoric with action by, for example, repealing federal speed limits, allowing states more latitude in dealing with welfare policy, and making it more difficult for state prisoners to seek relief in federal courts.

Soon, however, Republicans became less concerned with abstract principles of devolution and more concerned with adopting a pragmatic approach to federalism in achieving their goals. They found turning to the federal government—and *restricting* state power—the most effective way to achieve a wide range of policy objectives, including loosening economic and environmental regulations, controlling immigration, setting health insurance standards, restricting the expansion of government-financed health care coverage, stiffening penalties for criminals, extending federal criminal penalties, and tracking child-support violators.¹⁵

Continuing with this more practical approach, during the presidency of George W. Bush, Republicans passed a law removing most class-action lawsuits from state courts. Most significantly, they passed the No Child Left Behind Act (2001), the largest expansion of the federal role in education since Lyndon Johnson's Great Society and a policy that has allowed more federal intrusion into a state domain than almost any other in U.S. history. Many states have complained loudly about the problems and the cost of implementing the legislation.

In this decade, some political leaders, especially those associated with the Tea Party movement, have called not only for a smaller national government in general but also for devolving the principal responsibility for policies such as health care and income security to the states. Most Americans, however, embrace a pragmatic view of governmental responsibilities: they see the national government as more capable than the states in handling some matters—for example, in managing the economy, in ensuring access to health care and the safety of food and drugs, in preserving the environment, and in providing income security for the elderly. They see state and local governments as better at handling matters like crime and education.¹⁶ In any event, both levels of government are, of necessity, involved in most policy areas.

Fiscal Federalism

As you have already seen, shared program costs are a key element of cooperative federalism. Indeed, the second major change in American federalism has been the rise of **fiscal federalism**, in which *grants-in-aid*, federal funds appropriated by Congress for distribution to state and local governments, serve as instruments through which the national government both aids and influences states and localities.

devolution

Transferring responsibility for policies from the federal government to state and local governments.

fiscal federalism

The pattern of spending, taxing, and providing grants in the federal system; it is the cornerstone of the national government's relations with state and local governments.

WHY IT MATTERS TODAY

Grants-in-Aid

The federal system of grants-in-aid sends revenues derived from federal taxes to state and local governments. This spending transfers the burden of paying for services from those who pay state and local taxes, such as taxes on sales and property, to those who pay national taxes, especially the federal income tax.

The amount of money spent on federal grants has grown rapidly since the 1960s and especially since the 1990s, as you can see in Figure 3.1. For 2017, federal grants-in-aid (including loan subsidies, such as cases in which the federal government pays the interest on student loans until a student graduates) totals more than \$694 billion. Federal aid, covering a wide range of policy areas, accounts for about one-fourth of all the funds spent by state and local governments and for about 16 percent of all federal government expenditures.¹⁷

THE GRANT SYSTEM There are two major types of federal grants-in-aid for states and localities: *categorical grants* and *block grants*. **Categorical grants** are the main source of federal aid to state and local governments. These grants can be used only for specific purposes, or categories, of state and local spending.

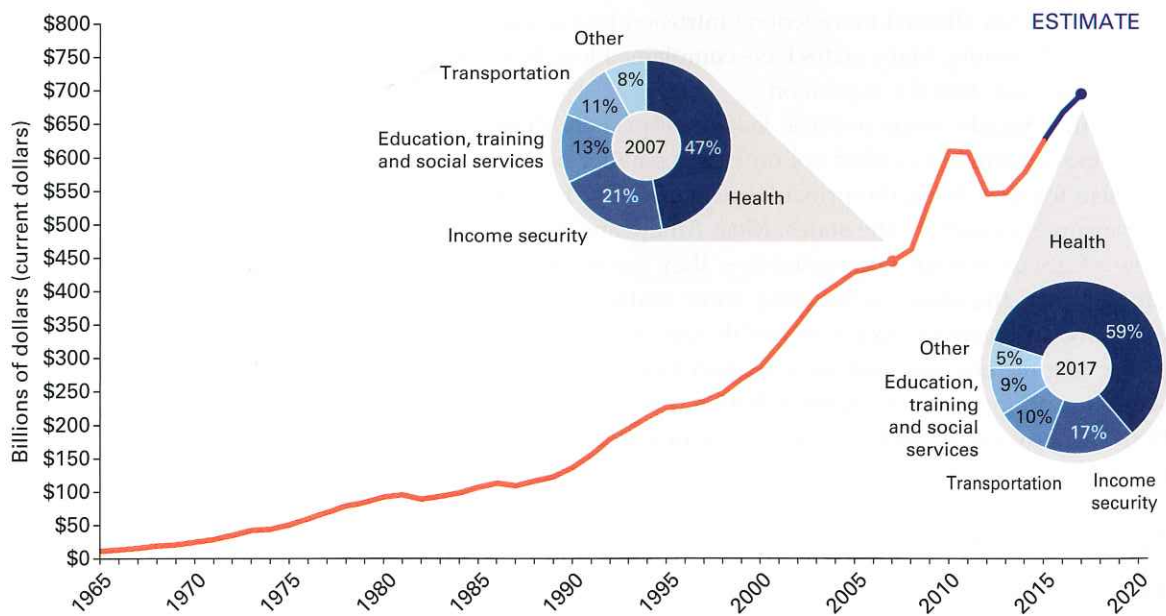
Because direct orders from the federal government to the states are rare (an exception is the Equal Opportunity Act of 1982, which bars job discrimination by state and local governments), most federal regulation is accomplished in a more indirect manner: as you have already seen, Congress attaches conditions to the grants that states receive. Such restrictions on grants have been especially common since the 1970s.

categorical grants

Federal grants that can be used only for specific purposes, or categories, of state and local spending. They come with strings attached, such as nondiscrimination provisions.

FIGURE 3.1 FISCAL FEDERALISM: FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS

Federal grants to state and local governments have grown rapidly in recent decades and now amount to more than \$694 billion per year. The sharp increase in grants for 2010 and 2011 was the result of the stimulus package designed to counter the country's financial crisis. The distribution of grants is not static. The percentage of grants devoted to health care, especially Medicaid, has increased substantially, mostly at the expense of income security programs.



SOURCE: Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2017: Historical Tables* (Washington, DC: U.S. Government Printing Office, 2016), Tables 12.1 and 12.2.

One string commonly attached to categorical and other federal grants is a nondiscrimination provision, stating that aid may not be used for purposes that discriminate against minorities, women, or other groups. Other restrictions may require an environmental impact statement for a federally supported construction project or provisions for community involvement in the planning of the project.

The federal government may also employ *crossover sanctions*—using federal dollars in one program to influence state and local policy in another. Crossover sanctions are applied when, for example, funds for highway construction are withheld unless states raise the drinking age to 21 or establish highway beautification programs.

Crosscutting requirements occur when a condition on one federal grant is extended to all activities supported by federal funds, regardless of their source. The grandfather of these requirements is Title VI of the 1964 Civil Rights Act, which bars discrimination in the use of federal funds on account of race, color, national origin, gender, or physical disability. For example, if a university discriminates illegally in one program—such as athletics—it may lose the federal aid it receives for all of its programs. There are also crosscutting requirements dealing with environmental protection, historic preservation, contract wage rates, access to government information, the care of experimental animals, the treatment of human subjects in research projects, and a host of other policies.

Categorical grants are of two types:

- **Project grants**, the more common type, are awarded on the basis of competitive applications. National Science Foundation grants obtained by university professors are an example.
- **Formula grants**, as their name implies, are distributed according to formulas. These formulas vary from grant to grant and may be computed on the basis of population, per capita income, percentage of rural population, or some other factor. A state or local government does not apply for a formula grant; a formula determines how much money the particular government will receive. Vigorous political battles are fought in Congress over formulas. The most common formula grants are those for Medicaid, child nutrition programs, sewage treatment plant construction, public housing, community development programs, and training and employment programs.

Complaints about the cumbersome paperwork and the many strings attached to categorical grants led to the adoption of the second major type of federal aid, **block grants**. These grants are given more or less automatically to states or communities, which then have discretion within broad areas in deciding how to spend the money. First adopted in 1966, block grants support programs in areas like community development that can be used for programs like housing and expanding employment opportunities for persons with lower incomes.

THE SCRAMBLE FOR FEDERAL DOLLARS With \$694 billion in federal grants at stake, most states and many cities have established full-time staffs in Washington.¹⁸ Their task is to identify what federal funds are available and to help their state or city obtain some of it. There are many Washington organizations of governments—the U.S. Conference of Mayors and the National League of Cities, for example—that act like other interest groups in lobbying Congress. Senators and representatives regularly go to the voters with stories of their influence in securing federal funds for their constituencies. They need continued support at the polls, they say, so that they will rise in seniority and get key posts to help “bring home the bacon.”

Despite some variations, on the whole federal grant distribution follows the principle of *universalism*: something for everybody. The vigilance of senators and representatives keeps federal aid reasonably well spread among the states. This rough parity makes good politics, but it also may undermine public policy. Title I of the 1965

project grants

Federal categorical grants given for specific purposes and awarded on the basis of the merits of applications.

formula grants

Federal categorical grants distributed according to a formula specified in legislation or in administrative regulations.

block grants

Federal grants given more or less automatically to states or communities to support broad programs in areas such as community development and social services.

Elementary and Secondary Education Act is the federal government's principal endeavor to assist public schools. The primary intent of Title I was to give extra help to poor children. Yet the funds are allocated to 95 percent of all the school districts in the country. President Bill Clinton's proposal to concentrate Title I funds on the poorest students failed when it ran into predictable opposition in Congress.

THE MANDATE BLUES States and localities are usually pleased to receive aid from the national government, but there are times when they would just as soon not have it. For example, say Congress decides to expand a program administered by the states and funded, in part, by the national government. It passes a law requiring the states to expand the program if they want to keep receiving aid, which most states do. Requirements that direct states or local governments to provide additional services under threat of penalties or as a condition of receiving a federal grant are a type of *mandate*. Congress usually appropriates some funds to help pay for the new policy, but whether it does or does not, the states suddenly have to budget more funds for the program just to receive federal grant money.

Point to Ponder

"In Two Words, Yes And No"



A 1949 Herblock Cartoon, © The Herb Block Foundation

States usually are pleased to accept federal funds, revenue they do not have to raise themselves. The states are not always happy with the strings that come attached with federal funds, however.

WHAT DO YOU THINK?

Would it be better if states raised their own funds rather than depending on federal aid? Are there obstacles to states raising their own revenues?

Medicaid, which provides health care for poor people, is a prime example of a federal grant program that puts states in a difficult situation. Administered by the states, Medicaid receives wide support from both political parties. The national government pays the majority of the bill, and the states pick up the rest. In the past two decades, Congress has moved aggressively to expand Medicaid to specific populations, requiring the states to extend coverage to children, pregnant women, and elderly poor under certain income levels. Congress has also increased its funding for the program, but the new requirements have meant huge new demands on state budgets. In effect, Congress has set priorities for the states. In 2012, the Supreme Court held that the Affordable Care Act of 2010 had gone too far in requiring the states to further expand Medicaid. Congress can offer money to the states to expand Medicaid and can attach conditions to such grants, but it cannot penalize states that choose not to participate in the new program by reducing their existing Medicaid funding.¹⁹

A related problem of federal mandates arises when Congress passes a law creating financial obligations for the states but provides no funds to meet these obligations. For example, in 1990 Congress passed the Americans with Disabilities Act, requiring states to make facilities, such as state colleges and universities, accessible to individuals with disabilities, but it did not allocate funds to implement this policy. Similarly, the Clean Air Act of 1970 established national air quality standards but required states to implement them and to appropriate funds for that purpose.

In an attempt to deal with this problem, in 1995, Congress passed a law requiring the Congressional Budget Office to estimate the costs of all bills that impose such mandates. This requirement does not apply to antidiscrimination legislation or to most legislation requiring state and local governments to take various actions in exchange for continued federal funding (such as grants for transportation). The law also ordered federal agencies to design new processes to allow for greater input by state and local officials into the development of regulations imposing mandates.

Mandates coupled with insufficient federal funds continue to pose problems for state and local governments. Such governments are the first responders in most emergencies: their police forces provide most of the nation's internal security, they maintain most of the country's transportation infrastructure, and they are responsible for protecting the public's health and providing emergency health care. The heightened concern for homeland security since September 11, 2001, led Congress to impose sizable new mandates on the states to increase their ability to deal with acts of terrorism, but Congress has not provided all the resources necessary to increase state and local capabilities. Similarly, as we saw, the No Child Left Behind Act threatened school systems with the loss of federal funds if their schools did not improve student performance, but many local officials complained that the federal government did not provide a sufficient increase in funding to help their school systems bring about required improvements.

Federal courts, too, create unfunded mandates for the states. In recent years, federal judges have issued states orders in areas such as prison construction and management, school desegregation, and facilities in mental health hospitals. These court orders often require states to spend funds to meet standards imposed by a judge.

A combination of federal regulations and inadequate resources may also put the states in a bind. The national government requires that a local housing authority build or acquire a new low-income housing facility for each one it demolishes. But for years Congress has provided little money for the construction of public housing. As a result, a provision intended to help the poor by ensuring a stable supply of housing actually hurts them because it discourages local governments from demolishing unsafe and inadequate housing. Similarly, a few states have recently rejected some short-term federal aid for unemployment benefits because they did not want to accept the requirements to maintain the benefits in the long term.

The federal government may also unintentionally create financial obligations for the states. California, New York, Texas, Florida, and other states have sued the federal

Policies of the federal government may have major impacts on core policies of state and local governments, like elementary and secondary education, and determine how much is spent on these policies.



government for reimbursement for the cost of health care, education, prisons, and other public services that the states provide to illegal residents. The states charged that the federal government's failure to control its borders was the source of huge new demands on their treasuries and that Washington, not the states, should pay for the problem. Although the states have not won their cases, their point is a valid one.

DIVERSITY IN POLICY

3.5 Explain the consequences of federalism for diversity in public policies among the states.

As you have seen, the federal system assigns states important responsibilities for public policies. An important effect is diversity in policy among the states.

One implication is that it is possible for the diversity of opinion within the country to be reflected in different public policies among the states. If the citizens of Texas wish to have a death penalty, for example, they can vote for politicians who support it, even if other states move to abolish the death penalty. Should *whether* you live depend on *where* you live? Enter the "You Are the Policymaker" debate, which follows on the next page, and decide for yourself.

Another effect of the federal system is facilitating policy innovation. The American states have always been policy innovators.²⁰ They overflow with reforms. From clean-air legislation to health care, the states constitute a national laboratory to develop and test public policies, and they share the results with other states and the national government. Almost every policy that the national government has adopted had its beginnings in the states. One or more states pioneered child labor laws, minimum-wage legislation, unemployment compensation, antipollution legislation, civil rights protections, and the income tax. More recently, states have been active in reforming health care, education, and welfare—and the national government has been paying close attention to their efforts.

States may also take initiatives on what most people view as national policies when the federal government acts contrary to the views of people within those states. Many states raised the minimum wage when Congress did not. Some states funded stem cell research after George W. Bush severely restricted it on the federal level. Similarly, many states have taken the lead in raising the standards for environmental

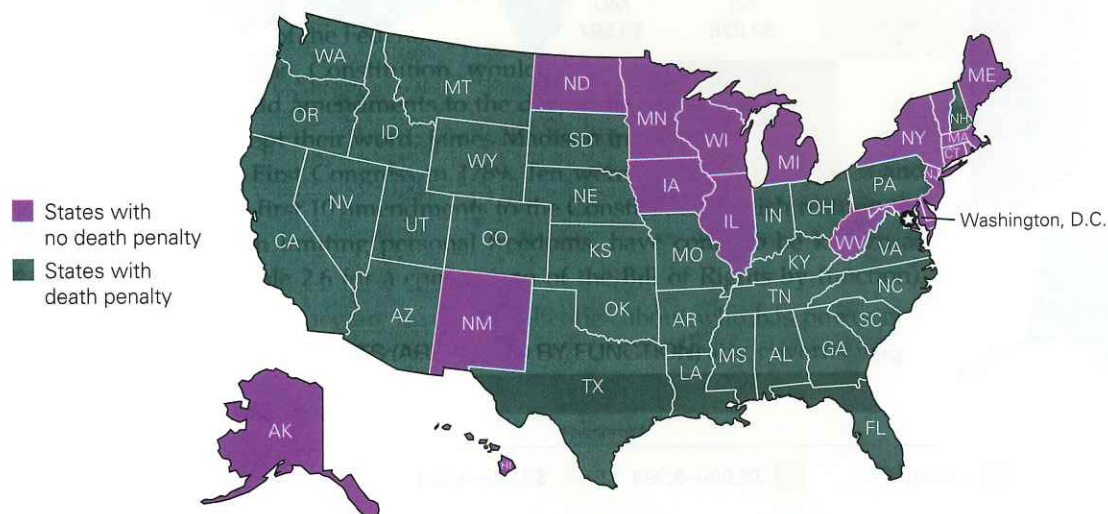
You Are the Policymaker

SHOULD *WHETHER* YOU LIVE DEPEND ON *WHERE* YOU LIVE?

Because the federal system allocates major responsibilities for public policy to the states, policies among the states often vary, in keeping with the views of the citizens of the states. The differences among public policies on the criminal justice system are especially dramatic.

In 32 states, a conviction for first-degree murder may well mean the death penalty for the convicted murderer. In 18 other states and the District of Columbia, first-degree murderers are subject to a maximum penalty of life behind bars.

EXPLORE THE DATA SHOULD *WHETHER* YOU LIVE DEPEND ON *WHERE* YOU LIVE?



SOURCES: U.S. Electoral College, 2012 Presidential Election, Electoral College Results; 2012 National Exit Poll; Death Penalty Information Center, "Murder Rates Nationally and By State," April 2016.

Moreover, whether or not a state has the death penalty on its books appears to have as much to do with the partisan make-up of its citizenry as it does with the challenges it faces in combating violent crime. As can be seen in the figure above, states that have banned the death penalty are primarily located in New England and the upper Midwest, nearly all of which lean Democratic. In these states, just 41 percent of residents, on average, voted for the Republican nominee in the 2012 presidential election. In the remaining states that allow for the death penalty, by contrast, an average of 53 percent of residents voted Republican.

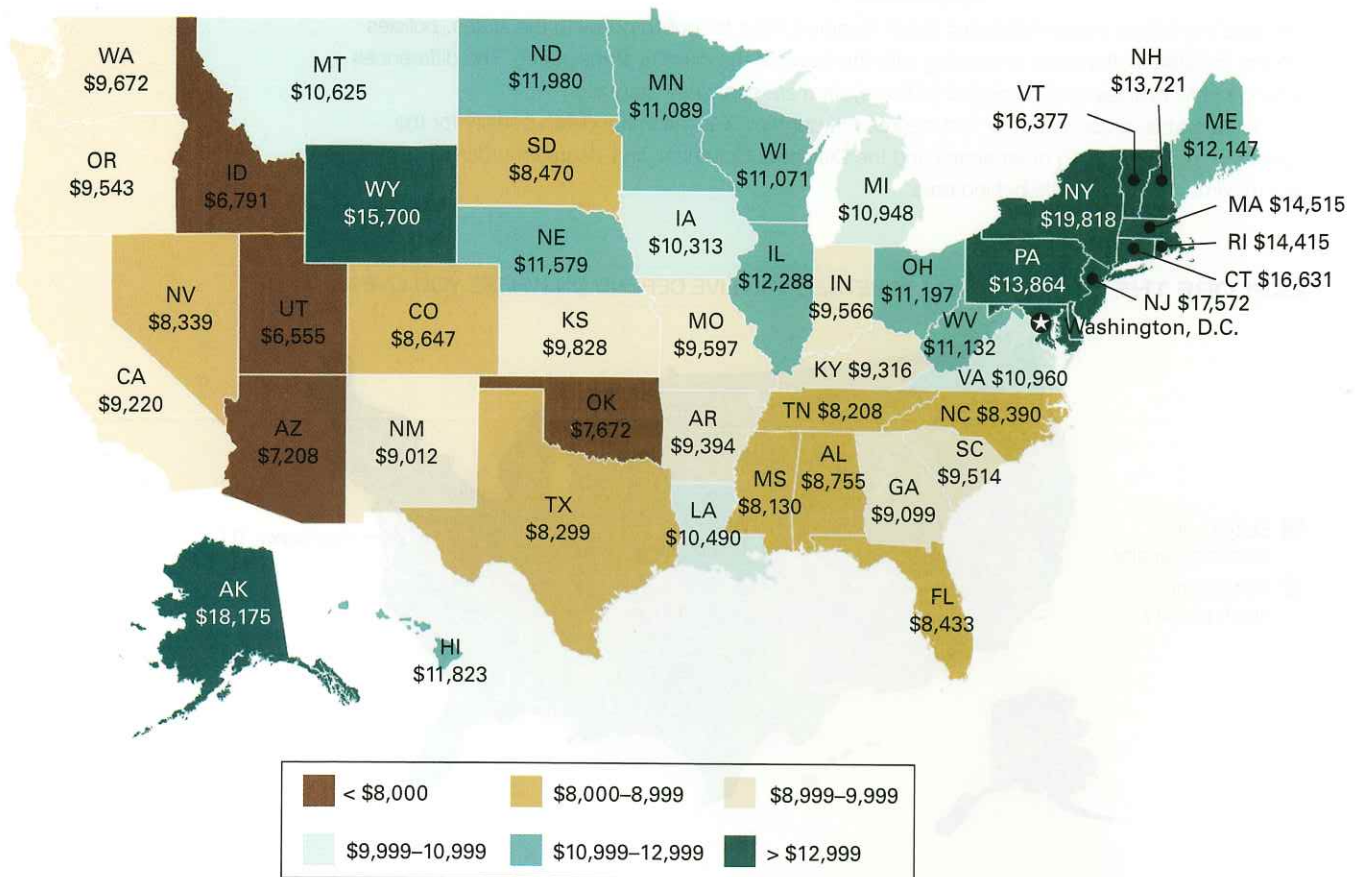
The differences in murder rates between states with and without the death penalty, meanwhile, are not nearly so large. Whereas an average of 4.6 out of 100,000 residents were murdered in states with the death penalty in 2012, 4.0 residents for every 100,000 were murdered in states without it. Of course, on the basis of these statistics alone, it is impossible to say anything definitive about the causal impact of the death penalty on crime rates. One thing, though, appears reasonably clear: the willingness of states to adopt policies—in this instance, policies about crime—reflects at least as much the ideological leanings of the people who reside in those states as it does the problems that these policies are meant to solve.

WHAT DO YOU THINK?

Some people see diversity in public policy as one of the advantages of federalism. Others argue that citizens of the same country ought to be subject to uniform penalties. Should *whether* you live depend on *where* you live?

FIGURE 3.2 STATE AND LOCAL SPENDING ON PUBLIC EDUCATION

A downside of the public policy diversity fostered by federalism is that the resources for public services vary widely from state to state. This map shows the great variation among the states in the money spent on children in the public schools.



SOURCE: U.S. Department of Commerce, United States Census Bureau, Public Education Finances: 2013. The data are for 2013.

protection after they concluded that the national government was too lenient. Other states have enacted strict immigration laws to deter illegal immigration.

Yet another implication of diversity is that states, responsible for supplying public services, differ in the resources they can or will devote to services like public education. Thus, the quality of education a child receives is heavily influenced by the state in which the child's parents happen to reside. In 2013 New York spent \$19,818 per student while Utah spent only \$6,555 (see Figure 3.2).

Diversity in policy can also discourage states from providing services that they might otherwise provide. Political scientists have found that generous welfare benefits can strain a state's treasury by attracting poor people from states with lower benefits. As a result, states may be deterred from providing generous benefits to those in need. A national program with uniform welfare benefits would provide no incentive for welfare recipients to move from one state to another in search of higher benefits.²¹

UNDERSTANDING FEDERALISM

3.6 Assess the impact of federalism on democratic government and the scope of government.

The federal system is central to politics, government, and policy in America. The division of powers and responsibilities between the states and the national government has implications for the themes of both democracy and the scope of government.

Federalism and Democracy

One of the reasons that the Framers established a federal system was to allay the fears of those who believed that a powerful and distant central government would tyrannize the states and limit their voice in government. By decentralizing the political system, federalism was designed to contribute to democracy—or at least to the limited form of democracy supported by the Framers.

Has the federal system in fact contributed to democracy? In many ways, the answer appears to be yes.

The federal system in America decentralizes our politics. Voters elect senators as representatives of individual states, not of the entire nation. Different interests are concentrated in different states: energy in Texas, citrus growing in Florida and California, and copper mining in Montana, for example. The federal system allows an interest concentrated in a state to exercise substantial influence in the election of that state's officials, both local and national. In turn, these officials promote policies advantageous to the interest in both the state capital and Washington. This is a pluralism of interests that James Madison, among others, valued within a large republic.

Moreover, by ensuring that most disputes over policy are handled at the state and local levels, federalism reduces conflict at the national level, making democracy more effective. If every issue had to be resolved in Washington, the national government would be overwhelmed.

In providing for decision making at the state level, federalism allows for a diversity of policy choices among the states. Thus states can better reflect the preferences of majorities of their citizens. If the citizens of Texas wish to have a death penalty, for example, they can vote for politicians who support it, even if other states move to abolish the death penalty.

In addition, the more levels of government, the more opportunities there are for people to participate in politics. State and local governments provide thousands of elected offices for which citizens may vote and/or run.

Additional levels of government also contribute to democracy by increasing access to government. Some citizens and interest groups are likely to have better access to state-level governments and others to the national government, so the two levels increase the opportunities for government to be responsive to demands for policies.²² For example, in the 1950s and 1960s, when advocates of civil rights found themselves stymied in Southern states, they turned to the national government for help in achieving racial equality. Business interests, on the other hand, have traditionally found state governments to be more responsive than the national government to their demands. Organized labor is not well established in some states, but it can usually depend on some sympathetic officials at the national level to champion its proposals.

Another advantage of federalism for democracy is that even if a party loses at the national level, it can rebuild in its areas of strength and develop leaders under its banner at the state and local levels. As a result, losing an election becomes more acceptable, and the peaceful transfer of power is more probable. The ability to rebuild politically at the state and local level was especially important in the early years of the nation before our political norms had become firmly established.

Despite these advantages, sometimes the decentralization of politics can be a detriment to democracy. Even the presidential election, choosing a leader for the national government, is actually 51 presidential elections, one in each state and one in Washington, D.C. It is possible—as happened in 2000—for a candidate who receives the most popular votes in the country to lose the election because of the way in which the Constitution distributes electoral votes by state. Such a result is a questionable contribution to democracy.²³

TABLE 3.4 THE NUMBER OF GOVERNMENTS IN AMERICA

Government Levels	Number of Governments
U.S. government	1
States	50
Counties	3,031
Municipalities	19,519
Townships or towns	16,360
School districts	12,880
Special districts	38,266
Total	89,055

SOURCE: U.S. Department of Commerce, U.S. Census Bureau, *Census of Governments*, 2014.

Federalism may also have a negative effect on democracy insofar as local interests are able to thwart national majority support of certain policies. As we discussed earlier in this chapter, in the 1960s, the states—especially those in the South—became battlegrounds when the national government tried to enforce national civil rights laws and court decisions. Federalism complicated and delayed efforts to end racial discrimination because state and local governments were responsible for public education and voting eligibility, for example, and because they had passed most of the laws supporting racial segregation.

At last count there were an astonishing 89,055 American governments (see Table 3.4). The sheer number of governments in the United States is, at times, as much a burden as a boon to democracy. The relationships between governments at the local, state, and national levels often confuse Americans. These confusions stem from the complexities of the relationships. Locally elected school boards run neighborhood schools, but the schools also receive state and national funds, and with those funds come state and national rules and regulations. Local airports, sewage systems, pollution control systems, and police departments also receive a mix of local, state, and national funds, so they operate under a complex web of rules and regulations imposed by each level of government.

Americans often speak eloquently about their state and local governments as grassroots governments, close to the people. Yet having so many governments makes it difficult to know which levels are doing what. Exercising democratic control over them is even more difficult; voter turnout in local elections is often less than 20 percent.

Federalism and the Scope of the National Government

In establishing a federal republic, the Founders “left a legacy of unending struggle between the central government and the state governments.”²⁴ To address the question of the appropriate scope of the national government, we must first understand why it grew and then ask whether this growth was at the expense of the states or occurred because of the unique capabilities and responsibilities of the national government.

Consider first the economic domain, and a few examples of the national government’s interventions to help American businesses. Ronald Reagan negotiated quotas on imports of Japanese cars in order to give advantages to the American auto industry. He placed quotas on the amount of steel that could be imported. After airplanes were grounded because of the terrorist attacks of September 11, 2001, Congress approved \$15 billion in subsidies and loan guarantees to the faltering airlines. In 2008, with the onset of the Great Recession, George W. Bush obtained extensive authority for the federal government to intervene in and subsidize financial institutions and automakers—policies Barack Obama continued.

In each of these cases and dozens of others, the national government has involved itself (some might say interfered) in the economic marketplace with quotas, subsidies, and regulations intended to help American businesses. From the very founding of the republic, the national government took a direct interest in economic affairs. As the United States industrialized, new problems arose and, with them, new demands for governmental action. The national government responded with a national banking system, subsidies for railroads and airlines, and a host of other policies that dramatically increased its role in the economy.

The industrialization of the country raised other issues as well. For example, with the formation of large corporations in the late nineteenth century came the potential for such abuses as monopoly pricing. If there is only one railroad in town, it can charge farmers inflated prices to ship their grain to market. If a single company distributes most of the gasoline in the country, it can set the price at which gasoline sells. Thus many interests asked the national government to restrain monopolies and to encourage open competition.

There were additional demands on the national government for new public policies. Farmers sought services such as agricultural research, rural electrification, and price supports. Unions wanted the national government to protect their rights to organize and bargain collectively and to help provide safer working conditions, a minimum wage, and pension protection. Together with other groups, they pushed for a wide range of social welfare policies, from education to health care, that would benefit the average worker. And urbanization brought new problems in the areas of housing, welfare, the environment, and transportation. In each case, the relevant interests turned to the national government for help.

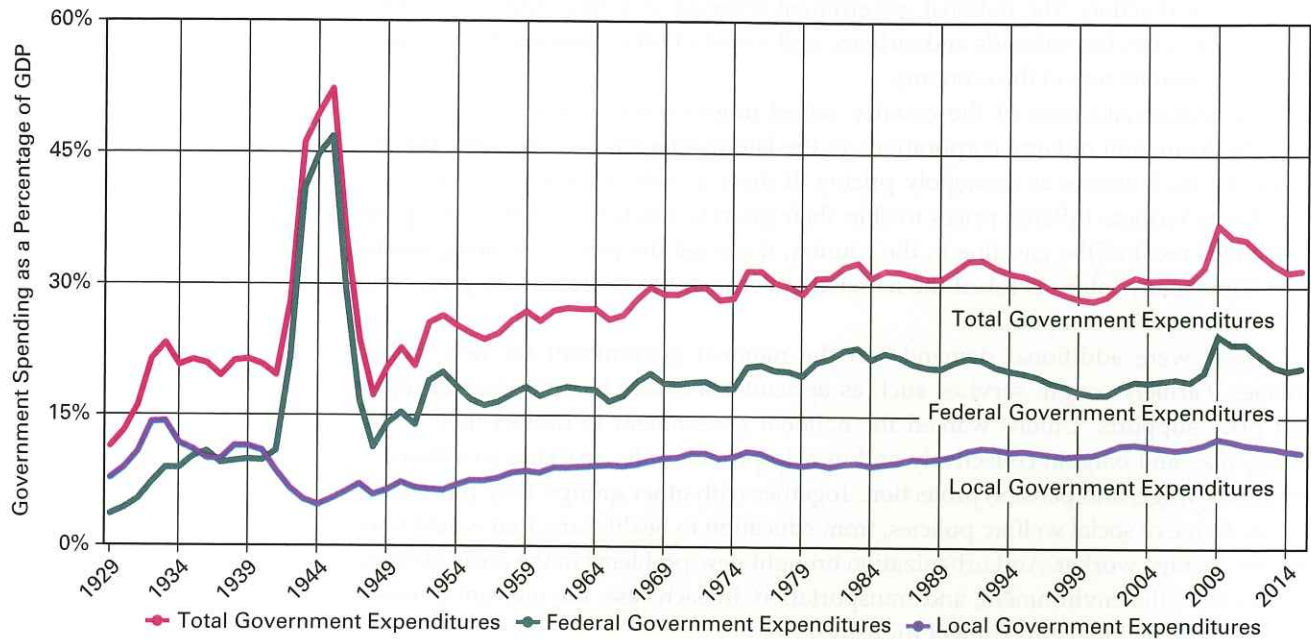
Why not turn to the state governments instead? The answer in most cases is simple: a problem or policy requires the authority and resources of the national government; to deal with it otherwise would be at best inefficient. The Constitution forbids states from having independent defense policies, but even if it did not, how many states would want to take on a responsibility that represents more than half the federal workforce and about one-fifth of federal expenditures? It would not be sensible for the states to handle a wide range of other issues. It would make little sense for Louisiana to pass strict controls on polluting the Mississippi River if most of the river's pollution occurs upstream, where Louisiana has no jurisdiction. Rhode Island has no incentive to create an energy policy because it has no natural energy reserves.

Similarly, how effectively can any state regulate an international conglomerate such as General Motors? How can each state, acting individually, manage the nation's money supply? Although states could in theory have their own space programs, it is much more efficient to have one national program. The largest category of federal expenditures is that for economic security, including the Social Security program. If each state had its own retirement program, would retirees who moved to Florida or Arizona be paid by their new state or the state they moved from? A national program is the only feasible method of ensuring the incomes of the mobile elderly of today's society.

Figure 3.3 shows that the national government's share of American governmental expenditures has grown considerably since 1929. The period of rapid growth was the 1930s and 1940s, a period that included the Great Depression and World War II. Before that time, the national government spent an amount equal to only 2.5 percent of the size of the economy, the gross domestic product (GDP). Today, it spends about a fifth of our GDP, if we include grants to states and localities. The proportion of our GDP spent by state and local governments has grown far less. States and localities spent 7.7 percent of our GDP in 1929; they spend about 11 percent today, not including federal grants.²⁵

FIGURE 3.3 FISCAL FEDERALISM: THE SIZE OF THE PUBLIC SECTOR

The federal government's spending as a percentage of GDP has increased steadily since the end of World War II. Recent decades have not seen much increase in spending as a percentage of GDP on the part of either the federal government or state governments. In 2009, however, federal spending increased substantially in response to the economic crisis.



SOURCE: Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2017: Historical Tables* (Washington, DC: U.S. Government Printing Office, 2016), Table 14.3.

To return to our initial question, Figure 3.3 strongly suggests that the federal government has not supplanted the states. The states carry out virtually all the functions they always have. What has occurred instead is that, with the support of the American people, the national government, possessing unique capacities, has taken on new responsibilities. In addition, the national government has added programs to help the states meet their own responsibilities.

REVIEW THE CHAPTER

DEFINING FEDERALISM

- 3.1** Define federalism and contrast it with alternative ways of organizing a nation.

Federalism is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people. Federal systems are more decentralized than unitary systems but less so than confederations.

WHY FEDERALISM?

- 3.2** Characterize the types of nations typically associated with federalism.

Nations that have federal systems are few in number. The 11 countries of the world that are, like the United States, federations share only one common characteristic: All are democracies. In terms of the size and diversity of their populations, some of world's 11 federations have large and diverse populations; some do not. Some are geographically large, but others are quite small.

THE CONSTITUTIONAL BASIS OF FEDERALISM

- 3.3** Outline the constitutional basis for the division of power between national and state governments, the establishment of national supremacy, and states' obligations to each other.

The Constitution divides power between the national (federal) government and state governments and makes the national government supreme within its sphere. The national government has implied as well as enumerated powers, as *McCulloch v. Maryland* made clear. The Civil War also helped establish the preeminence of the national government, and over the years the Supreme Court has interpreted these powers—particularly Congress's power to regulate interstate commerce—broadly, as Washington has taken on more responsibilities to deal with matters such as the economy and civil rights. States have obligations to give full faith and credit to the public acts, records, and civil judicial proceedings of other states, return a person charged with a crime in another state to that state, and accord citizens of other states the privileges and immunities enjoyed by their own citizens.

INTERGOVERNMENTAL RELATIONS

- 3.4** Characterize the shift from dual to cooperative federalism and the role of fiscal federalism in intergovernmental relations today.

States no longer have exclusive responsibility for government functions within their sphere but instead share these responsibilities with the federal government. Through categorical and block grants, the federal government provides state and local governments with substantial portions of their budgets, and it uses this leverage to influence policy by attaching conditions to receiving the grants. Sometimes Washington mandates state policy without providing the resources to implement the policy.

DIVERSITY IN POLICY

- 3.5** Explain the consequences of federalism for diversity in public policies among the states.

Federalism allows for considerable diversity among the states in their policies. This constitutional arrangement facilitates state innovations in policy, and it allows states to move beyond the limits of national policy. However, federalism also leaves states dependent upon the resources within their borders to finance public services, and it may discourage states from providing some services.

UNDERSTANDING FEDERALISM

- 3.6** Assess the impact of federalism on democratic government and the scope of government.

On the positive side, federalism provides for effective representation of local interests, reduces conflict at the national level, encourages politicians and political parties to peacefully accept losing elections, and increases the opportunities for citizens to participate in government and see their policy preferences reflected in law.

On the negative side, federalism increases the opportunities for local interests to thwart national policy, can result in the election of a president not favored by a majority of the public, and complicates efforts to make government responsive.

The national government has grown in response to the demands of Americans for public services it can best provide, but it has not in any way supplanted the states.