CHAPTER 3

Federalism

LEARNING OBJECTIVES

3-1 Discuss the historical origins of federalism, and explain how it has evolved over time.

3-2 Summarize the pros and cons of federalism in the United States.

3-3 Describe how funding underlies federal–state interactions and how this relationship has changed over time.

3-4 Discuss whether the devolution of programs to the states beginning in the 1980s really constitutes a revolution in federal–state relations.

THEN

When the Framers drafted the Constitution, the Antifederalists opposed it primarily on the grounds that it gave too much power to national government. The Antifederalists recognized the limitations of the Articles of Confederation, but they feared that the Constitution sacrificed liberty and civic responsibility with its expansion of the power of the national government.

NOW

The Federalists prevailed over the Antifederalists with the ratification of the Constitution. Amended only 27 times in more than 225 years, the Constitution is still the law of the land today. However, much as the Antifederalists predicted, the federal government has taken on responsibilities that traditionally were the province of state governments, such as social welfare policy, education, health care, and a minimum wage. States have some flexibility in implementing policies, but the national government sets the direction in many more policy areas today than it did originally; and, as the Antifederalists feared, we now have a large standing army and powerful federal courts.

These changes between then and now do not mean that the Constitution was wrong (if we were forced to take sides, we would have sided with the Federalists—would you?). But there is no denying that the federal government has grown far beyond anything that even the most ardent Federalists had envisioned. Much of that growth has occurred in just the last half-century or so. In 2010, the federal government spent roughly $4 trillion (and has continued to spend at roughly that level since then). Adjusted for inflation, that was more than five times what it spent in 1960.

But that is only about half of the story. Over the last half-century, state and local government spending has risen steeply, too. In 2010, state and local governments spent a combined total of nearly $2.5 trillion (and since then, the amounts have continued to rise). Adjusted for inflation, that was nearly six times what they spent in 1960.

No less telling, virtually all of the post-1960 growth in government employees has been concentrated not in Washington, but in state capitals and city halls: the federal government's full-time civilian (nonmilitary) workforce numbers about 2 million (about the same number as in 1960), whereas state and local governments employ a combined total of about 12 million full-time workers (more than double the number they employed in 1960).

Back when the Federalists and the Antifederalists debated the Constitution, neither side anticipated that what today we call "big government" would encompass all three levels of government: federal, state, and local. Then, they fussed and fought over how vast the federal government might someday become. Now the reality is that, apart from military affairs and international diplomacy, most "national" laws, policies, and programs are shaped, administered, or funded in whole or in part through a complex, and often contentious, system of federal–state relations.

3-1 Why Federalism Matters

The heated controversies that surrounded the enactment of the federal health reform law in 2010, and the ensuing legal challenge to that law, are in large part battles over how the federal government should relate to the states. To be sure, not all of the debate over Obamacare (also known as the Patient Protection and Affordable Care Act) centers on federal–state relations: For example, there was a contentious debate over the individual mandate, which requires everyone to have health insurance or pay a penalty. But much of the ongoing controversy over the law centers on federal–state relations. For instance, states had to expand Medicaid or risk losing funding for the program. (Medicaid assists low-income women, children, families, and the disabled in obtaining medical care; we discuss this program more in Chapter 17.)

Many federal–state conflicts have ended up before the U.S. Supreme Court (for a short list, see the Landmark Cases feature on page 58), and this one did, too. In *National Federation of Business v. Sebelius* (2012), the Court, by a five-to-four majority led by Chief Justice John Roberts, held that the individual mandate was constitutional because it could be construed as a "tax" that was clearly within the power of Congress to levy taxes. But the Court also held the law's Medicaid expansion—which forced states to expand Medicaid or lose *all* of their Medicaid funding—was overly coercive and unconstitutional. Since then, some states have chosen to expand Medicaid under the Affordable Care Act, while others have not.

In 2015, the Supreme Court once again took up how the states and federal government relate to one another under the Affordable Care Act. In *King v. Burwell* (2015), the court ruled on whether the federal government could issue subsidies only for health insurance purchased on state-run exchanges, or whether it could also provide them for the federally run exchange as well. Because all citizens have to have health insurance due to the individual mandate, the federal government authorized states to set up exchanges where citizens could go to purchase health insurance. Furthermore, the federal government provides subsidies to individuals purchasing insurance through these exchanges (to make insurance more affordable for lower- and middle-income Americans). Fourteen states opted to set up their own exchanges, but for citizens in the other 36 states, the federal government fully or partially runs an exchange for them. As written, the Affordable Care Act only allows the government to provide subsidies to

the state-level exchanges, and the plaintiffs in the case argued that providing the subsidies to those using the federally run exchanges is illegal. The Court decided that the government could provide subsidies to those using either type of exchange. Citizens using either a federal or a state exchange could continue to receive support from the government to purchase health care. These are just two of the most recent of a series of cases stretching back to the start of the republic in which the Court, in effect, refereed disputes relating to "federalism."

Federalism can be defined as a political system in which the national government shares power with local governments (state governments in the case of the United States, but other subnational governments in the case of federal systems including Australia, India, and Switzerland). Constitutionally, in America's federal system, state governments have a specially protected existence and the authority to make final decisions over many governmental activities. Even today, despite considerable expansion of federal authority over time, state and local governments are not mere junior partners in deciding important public policy matters. The national government can pass laws to protect the environment, store nuclear waste, expand low-income housing, guarantee the right to an abortion, provide special services for the handicapped, or toughen public-school graduation standards. But whether and how such federal laws are followed or funded often involves decisions by diverse state and local government officials, both elected and appointed. Policy passed in Washington, D.C. must be implemented in state capitals—and local governments—across the country.

federalism Government authority shared by national and local governments.

Federalism or federal–state relations may seem like an arcane or boring subject until you realize that it is behind many things that matter to many people: how much you pay in certain taxes, whether you can drive above 55 miles per hour on certain roadways, whether or where you can buy liquor, how strictly pollution is regulated, how much money gets spent on schools, whether all or most children have health insurance coverage, and much more. For instance, as summarized in the Constitutional Connections feature on page 52, federalism is at the heart of many of the controversies surrounding the Affordable Care Act. By the same token, federalism affects almost every aspect of crime and punishment in America: persons convicted of murder are subject to the death penalty in some states but not in others; penalties for illegal drug sales vary widely from state to state; and, as you can explore in the Policy Dynamics: Inside/Outside the Box on page 71, there is an unresolved conflict between national law and certain states' laws regarding the use of marijuana. Perhaps most importantly, federalism is critical to how certain civil liberties (Chapter 5) and civil rights (Chapter 6) are defined and protected: for instance, some state constitutions mention God, and some state laws specifically prohibit funding for religious schools.

Federalism matters, but how it matters has changed over time. In 1908, Woodrow Wilson observed that the

Bill Clark/CQ Roll Call/Getty Images

After the passage of the 2010 health care law, critics declared that it would require thousands of pages of rules and regulations for implementation.

CONSTITUTIONAL CONNECTIONS

Obamacare, the Individual Mandate, and Medicaid Expansion

The Patient Protection and Affordable Care Act (Obamacare) is one of the most fundamental transformations of American health care in recent decades. But it is also one of the most controversial policies in recent years and has generated several key constitutional rulings from the Supreme Court.

For example, in *National Federation of Business v. Sebelius* (2012), the Court ruled that Congress did not have the power to impose the individual mandate under the commerce clause, but did have that power under the constitution's tax and spending clause (the first clause of Article 1, Section 8). Because Congress has the power to tax under the Constitution, the Court argued, it has the power to force people to buy insurance or pay a tax (the heart of the individual mandate).

However, in that same decision, the Court ruled that the federal government did not have the power to force states to expand Medicaid. Under Obamacare, the states had to expand Medicaid (the federal–state joint program to provide health care to the poor and disabled) or lose *all* of their Medicaid funds. The Court held this was not constitutional. The Court argued (based on previous decisions) that the same spending clause of the Constitution gives Congress the power to attach conditions to the receipt of federal funds. But it also held that such conditions must not be coercive, and it argued that this condition—expand Medicaid or lose all Medicaid funds—was coercive (and hence prohibited). The court did not, however, establish a clear standard for what constitutes coercive, it merely held that this law was coercive.

In *King v. Burwell* (2015), the Court held that citizens using both the state-level and the federally-run exchanges were eligible to receive subsidies. While this ruling left the insurance subsidies in place, it did not settle the debate over the Affordable Care Act. The debate over the Act, and how best to provide health care, will continue into the future, as we discuss in later chapters.

relationship between the national government and the states "is the cardinal question of our constitutional system," a question that cannot be settled by "one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question."[1]

Since the adoption of the Constitution in 1787, the single most persistent source of political conflict has been the relations between the national and state governments. The political conflict over slavery, for example, was intensified because some state governments condoned or supported slavery, while others took action to discourage it. The proponents and opponents of slavery were thus given territorial power centers from which to carry on the dispute. Other issues, such as the regulation of business and the provision of social welfare programs, were in large part fought out, for well over a century, in terms of "national interests" versus "states' rights." While other nations, such as Great Britain, were debating the question of whether the national government *ought* to provide old-age pensions or regulate the railroads, the United States debated a different question—whether the national government *had the right* to do these things.

The Founding

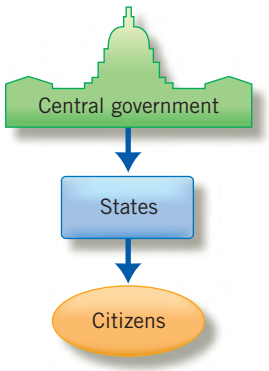
The goal of the Founders seems clear: Federalism was one device whereby personal liberty was to be protected. (The separation of powers was another.) The Founders feared that placing final political authority in any one set of hands, even in the hands of persons popularly elected, would so concentrate power as to risk tyranny. But they had seen what happened when independent states tried to form a compact, as under the Articles of Confederation; what the states put together, they could also take apart. The alliance among the states that existed from 1776 to 1787 was a confederation, that is, a system of government in which the people create state governments, which in turn create and operate a national government (see Figure 3.1). Since the national government in a confederation derives its powers from the states, it is dependent on their continued cooperation for its survival. By 1786, that cooperation was barely forthcoming.

A Bold, New Plan

A federation—or a "federal republic," as the Founders called it—derives its powers directly from the people, as do the state governments. As the Founders envisioned it, both levels of government, the national and the state, would have certain powers, but neither would have supreme authority over the other. James Madison, writing in *Federalist* No. 46, said that both the state and federal governments "are in fact but different agents and trustees of the people, constituted with different powers."

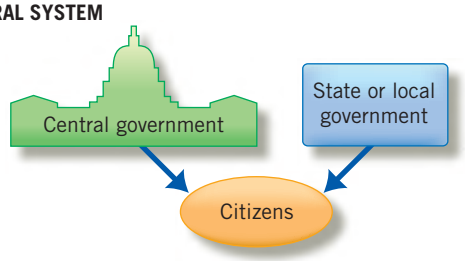
FIGURE 3.1 Lines of Power in Three Systems of Government

UNITARY SYSTEM



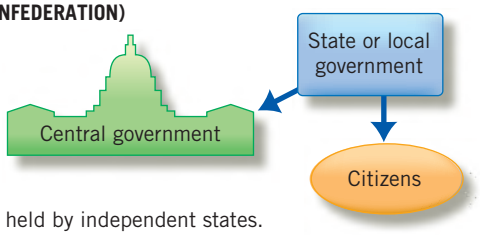
Power centralized.
State or regional governments derive authority from central government. Examples: United Kingdom, France.

FEDERAL SYSTEM



Power divided between central and state or local governments.
Both the government and constituent governments act directly upon the citizens.
Both must agree to constitutional change.
Examples: Canada, United States since adoption of Constitution.

CONFEDERAL SYSTEM (or CONFEDERATION)



Power held by independent states.
Central government is a creature of the constituent governments.
Example: United States under the Articles of Confederation.

In *Federalist* No. 28, Alexander Hamilton explained how he thought the system would work: The people could shift their support between state and federal levels of government as needed to keep the two in balance. "If their rights are invaded by either, they can make use of the other as the instrument of redress."

It was an entirely new plan, for which no historical precedent existed. Nobody came to the Philadelphia Convention with a clear idea of what a federal (as opposed to a unitary or a confederal) system would look like, and there was not much discussion at Philadelphia of how the system would work in practice. Few delegates then used the word *federalism* in the sense in which we now employ it (it was originally used as a synonym for *confederation* and only later came to stand for something different).[2] The Constitution does not spell out the powers that the states are to have, and until the Tenth Amendment was added at the insistence of various states, there was not even a clause in it saying (as did the amendment) 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." The Founders assumed from the outset that the federal government would have only those powers given to it by the Constitution; the Tenth Amendment was an afterthought, added to make that assumption explicit and allay fears that something else was intended.[3]

The Tenth Amendment has rarely had much practical significance, however. From time to time, the Supreme Court has tried to interpret that amendment as putting certain state activities beyond the reach of the federal government, but usually the Court has later changed its mind and allowed Washington to regulate such matters. For example, while the Court initially ruled that the federal government could not regulate the hours worked by employees of a city-owned mass transit system, it later reversed course and decided that the federal government could do that. The Court reasoned that running such a transportation system was not one of the powers "reserved to the states," and hence could be regulated by the federal government.[4] But, as we explain later in this chapter, the Court has begun to give new life to the Tenth Amendment and the doctrine of state sovereignty in recent years.

Elastic Language

The need to reconcile the competing interests of various factions at the convention—large versus small states, southern versus northern states—was difficult enough without trying to spell out the exact relationship between the state and national governments. For example, Congress was given the power to regulate commerce "among the several states." The Philadelphia Convention would have gone on for four years rather than four months if the Founders had decided that it was necessary to describe, in clear language, how one was to tell where commerce *among* the states ended and commerce wholly *within* a single state began. The Supreme Court, as we shall see, devoted more than a century to that task before giving up.

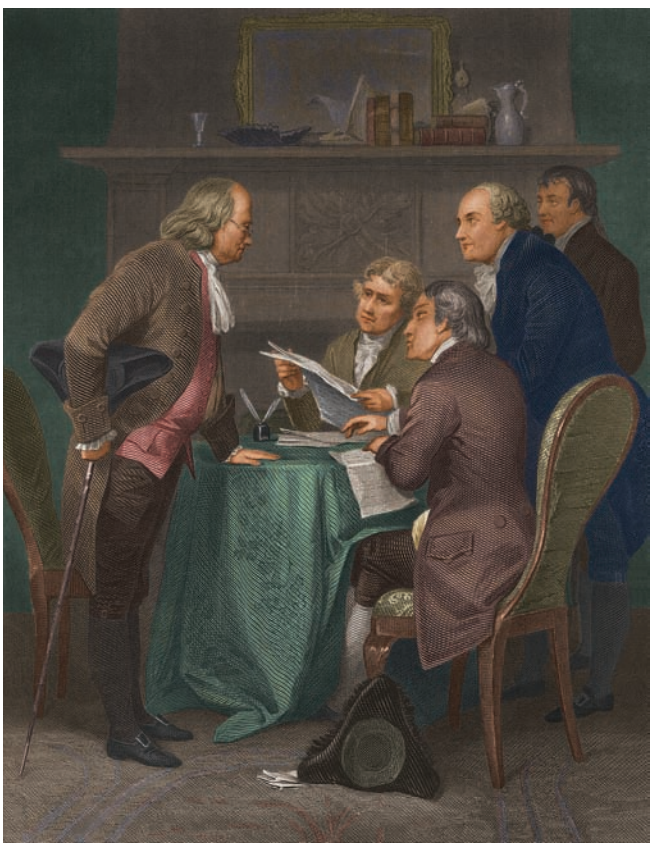
Though some clauses bearing on federal–state relations were reasonably clear (see the box on page 56), other clauses were quite vague. The Founders realized, correctly, that they could not make an exact and exhaustive list of everything the federal government was empowered to do—circumstances would change, and new exigencies would arise. Thus they added the following elastic language to Article I: Congress shall have the power to "make all laws which

shall be necessary and proper for carrying into execution the foregoing powers."

The Founders themselves carried away from Philadelphia different views of what federalism meant. One view was championed by Hamilton. Since the people had created the national government, since the laws and treaties made pursuant to the Constitution were "the supreme law of the land" (Article VI), and since the most pressing needs were the development of a national economy and the conduct of foreign affairs, Hamilton thought that the national government was the superior and leading force in political affairs and that its powers ought to be broadly defined and liberally construed.

The other view, championed by Thomas Jefferson, was that the federal government, though important, was the product of an agreement among the states; and though "the people" were the ultimate sovereigns, the principal threat to their liberties was likely to come from the national government. (Madison, a strong supporter of national supremacy at the convention, later became a champion of states' rights.) Thus the powers of the federal government should be narrowly construed and strictly limited. As Madison put it in *Federalist* No. 45, in language that probably made Hamilton wince, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."

Hamilton argued for national supremacy, Jefferson for states' rights. Though their differences were greater in theory than in practice (as we shall see in Chapter 14, Jefferson while president sometimes acted in a positively Hamiltonian manner), the differing interpretations they offered of the Constitution continue to shape political debate even today.



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Benjamin Franklin, Thomas Jefferson, Livingston Adams, and Roger Sherman writing the Declaration of Independence.

The Debate on the Meaning of Federalism

Since Hamilton and Jefferson fought over states' rights more than two centuries ago, this question of state versus federal supremacy has remained at the core of American politics. Indeed, the Civil War was fought, in part, over this question. That bloody conflict, however, only settled one part of the federalism question: the national government was supreme, its sovereignty derived directly from the people, and thus the states could not lawfully secede from the Union. Virtually every other aspect of the national-supremacy issue has continued to be contested throughout time. As we will see below, the Courts have generally given the federal government more power over time, but they have also begun to place some important restrictions on federal power in recent years as well.

The Supreme Court Speaks

As arbiter of what the Constitution means, the Supreme Court became the focal point of the debate over whether state or national power should reign supreme. In Chapter 16, we shall see in some detail how the Court made its decisions. For now it is enough to know that during the formative years of the new Republic, the Supreme Court was led by a staunch and brilliant advocate of Hamilton's position, Chief Justice John Marshall. In a series of decisions, he and the Court powerfully defended the national-supremacy view of the newly formed federal government.

The box on page 58 lists some landmark cases in the history of federal–state relations. Perhaps the most important decision was in a case, seemingly trivial in its origins, which arose when James McCulloch, the cashier of the Baltimore branch of the Bank of the United States—which had been created by Congress—refused to pay a tax levied on that bank by the state of Maryland. He was hauled into state court and convicted of failing to pay the tax. In 1819, McCulloch appealed all the way to the Supreme Court in a case known as *McCulloch v. Maryland*. The Court, in a unanimous opinion, answered two questions in ways that expanded the powers of

Congress and confirmed the supremacy of the federal government in the exercise of those powers.

The first question was whether Congress had the right to set up a bank, or any other corporation, since such a right is nowhere explicitly mentioned in the Constitution. Marshall said that, though the federal government possessed only those powers enumerated in the Constitution, the "extent"—that is, the meaning—of those powers required interpretation. Though the word *bank* is not in that document, one finds there the power to manage money: to lay and collect taxes, issue a currency, and borrow funds. To carry out these powers, Congress may reasonably decide that chartering a national bank is "necessary and proper." Marshall's words were carefully chosen to endow the **"necessary and proper" clause** with the widest possible sweep:

> *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.*[5]

The second question was whether a federal bank could lawfully be taxed by a state. To answer it, Marshall went back to first principles. The government of the United States was not established by the states, but by the people, and thus the federal government was supreme in the exercise of those powers conferred upon it. Having already concluded that chartering a bank was within the powers of Congress, Marshall then argued that the only way for such powers to be supreme was for their use to be immune from state challenge and for the products of their use to be protected against state destruction. Since "the power to tax involves the power to destroy," and since the power to destroy a federal agency would confer upon the states supremacy over the federal government, the states may not tax any federal instrument. Hence the Maryland law was unconstitutional.

McCulloch won, and so did the federal government. Half a century later, the Court decided that what was sauce for the goose was sauce for the gander. It held that just as state governments could not tax federal bonds, the federal government could not tax the interest people earn on state and municipal bonds. In 1988, the Supreme Court reversed course and decided that Congress was now free, if it wished, to tax the interest on such state and local bonds.[6] Municipal bonds, which for nearly a century were a tax-exempt investment protected (so their holders thought) by the Constitution, were now protected only by politics. So far, Congress hasn't tried to tax them.

Nullification

The Supreme Court can decide a case without settling the issue. The struggle over states' rights versus national supremacy continued to rage in Congress, during presidential elections, and ultimately on the battlefield. The issue came to center on the doctrine of **nullification**. When Congress passed laws (in 1798) to punish newspaper editors who published stories critical of the federal government, James Madison and Thomas Jefferson opposed the laws, suggesting (in statements known as the Virginia and Kentucky Resolutions) that the states had the right to "nullify" (i.e., declare null and void) a federal law that, in the states' opinion, violated the Constitution. The laws expired before the claim of nullification could be settled in the courts.

"necessary and proper" clause Section of the Constitution allowing Congress to pass all laws "necessary and proper" to its duties, and that has permitted Congress to exercise powers not specifically given to it (enumerated) by the Constitution.

nullification The doctrine that a state can declare null and void a federal law that, in the state's opinion, violates the Constitution.

dual federalism Doctrine holding that the national government is supreme in its sphere, the states are supreme in theirs, and the two spheres should be kept separate.

Later, John C. Calhoun of South Carolina revived the doctrine of nullification, first in opposition to a tariff enacted by the federal government and later in opposition to federal efforts to restrict slavery. Calhoun argued that if Washington attempted to ban slavery, the states had the right to declare such acts unconstitutional and thus null and void. This time the issue was settled—by war. The northern victory in the Civil War determined once and for all that the federal union is indissoluble and that states cannot declare acts of Congress unconstitutional, a view later confirmed by the Supreme Court.[7]

Dual to Cooperative Federalism

After the Civil War, the debate about the meaning of federalism focused on the interpretation of the commerce clause of the Constitution. Out of this debate emerged the doctrine of **dual federalism**, which held that though the national government was supreme in its sphere, the states were equally supreme in theirs, and that these two spheres of action should and could be kept separate. Applied to commerce, the concept of dual federalism implied that there were such things as *inter*state commerce, which Congress could regulate, and *intra*state commerce, which only the states could regulate, and that the Court could determine which was which.

HOW THINGS WORK

The States and the Constitution

The Framers made some attempt to define the relations between the states and the federal government and how the states were to relate to one another. The following points were made in the original Constitution—before the Bill of Rights was added.

Restrictions on Powers of the States

States may not make treaties with foreign nations, coin money, issue paper currency, grant titles of nobility, pass a bill of attainder or an ex post facto law, or, without the consent of Congress, levy any taxes on imports or exports, keep troops and ships in time of peace, or enter into an agreement with another state or with a foreign power.

[Art. I, sec. 10]

Guarantees by the Federal Government to the States

The national government guarantees to every state a "republican form of government" and protection against foreign invasion and (provided the states request it) protection against domestic insurrection.

[Art. IV, sec. 4]

An existing state will not be broken up into two or more states or merged with all or part of another state without that state's consent.

[Art. IV, sec. 3]

Congress may admit new states into the Union.

[Art. IV, sec. 3]

Taxes levied by Congress must be uniform throughout the United States: they may not be levied on some states but not others.

[Art. I, sec. 8]

The Constitution may not be amended to give states unequal representation in the Senate.

[Art. V]

Rules Governing How States Deal with Each Other

"Full faith and credit" shall be given by each state to the laws, records, and court decisions of other states. (For example, a civil case settled in the courts of one state cannot be retried in the courts of another.)

[Art. IV, sec. 1]

The citizens of each state shall have the "privileges and immunities" of the citizens of every other state. (No one is quite sure what this is supposed to mean.)

[Art. IV, sec. 2]

If a person charged with a crime by one state flees to another, he or she is subjected to extradition—that is, the governor of the state that finds the fugitive is obliged to return the person to the governor of the state where he or she is wanted.

[Art. IV, sec. 2]

For a long period the Court tried to decide what was interstate commerce based on the kind of business that was conducted. Transporting things between states was obviously interstate commerce, and so subject to federal regulation. Thus federal laws affecting the interstate shipment of lottery tickets,[8] prostitutes,[9] liquor,[10] and harmful foods and drugs[11] were upheld. On the other hand, manufacturing,[12] insurance,[13] and farming[14] were in the past considered *intra*state commerce, and so only the state governments were allowed to regulate them.

Such product-based distinctions turned out to be hard to sustain. For example, if you ship a case of whiskey from Kentucky to Kansas, how long is it in interstate commerce (and thus subject to federal law), and when does it enter intrastate commerce and become subject only to state law? For a while, the Court's answer was that the whiskey was in interstate commerce so long as it was in its "original package,"[15] but that only precipitated long quarrels as to what was the original package and how one is to treat things, like gas and grain, which may not be shipped in packages at all. And how could one distinguish between manufacturing and transportation when one company did both or when a single manufacturing corporation owned factories in different states? And if an insurance company sold policies to customers both inside and outside a given state, were there to be different laws regulating identical policies that happened to be purchased from the same company by persons in different states?

In time, the effort to find some clear principles that distinguished interstate from intrastate commerce was pretty much abandoned. Commerce was like a stream

flowing through the country, drawing to itself contributions from thousands of scattered enterprises and depositing its products in millions of individual homes. The Court began to permit the federal government to regulate almost anything that affected this stream, so that by the 1940s not only had farming and manufacturing been redefined as part of interstate commerce,[16] but even the janitors and window washers in buildings that housed companies engaged in interstate commerce were now said to be part of that stream.[17]

More generally, over time, the power of the federal government expanded and intruded on areas once thought solely to be the province of the states. Today, unlike in the 19th century, it is more difficult to define many areas of clearly national or state dominance. The example of interstate commerce discussed above is one, but other areas, such as school policy or highways, also illustrate the point. For example, at one time, highways were the responsibility of state governments, but with the establishment of the interstate highway system in the 1950s, the federal government took on a large role in transportation policy. Likewise, while education has long been considered primarily a state and local government concern, over time the federal government has become more involved through the Elementary and Secondary Education Act, the No Child Left Behind Act, and President Barack Obama's Race to the Top Initiative. Today, some speak of a program of **cooperative federalism**, where the national and state governments share responsibilities in most policy areas. If dual federalism is a layer cake with the state and federal governments have separate spheres of sovereignty (hence separate layers), cooperative federalism is a marble cake where the two blend together.

cooperative federalism
Idea that the federal and state governments share power in many policy areas.

State Sovereignty

It would be a mistake to think that the doctrine of dual federalism is entirely dead, however. Until recently, Congress, provided that it had a good reason, could pass a law regulating almost any kind of economic activity anywhere in the country, and the Supreme Court would call it constitutional. But in *United States v. Lopez* (1995), the Court held that Congress had exceeded its commerce clause power by prohibiting guns in a school zone. This marked the first in a series of decisions in which the court began to reassert a greater role for state (as opposed to national) power.

The Court reaffirmed the view that the commerce clause does not justify any federal action when, in May 2000, it overturned the Violence Against Women Act of 1994. This law allowed women who were the victims of a crime of violence motivated by gender to sue the guilty party in federal court. In *United States v. Morrison*, the Court, in a five-to-four decision, said that attacks against women are not, and do not substantially affect, interstate commerce, and hence Congress cannot constitutionally pass such a law. Chief Justice William Rehnquist said that "the Constitution requires a distinction between what is truly national and what is truly local." The states, of course, can pass such laws, and many have.

The Court has moved to strengthen states' rights on other grounds as well. In *Printz v. United States* (1997), the Court invalidated a federal law that required local police to conduct background checks on all gun purchasers. The Court ruled that the law violated the Tenth Amendment by commanding state governments to carry out a federal regulatory program. Writing for the five-to-four majority, Justice Antonin Scalia declared, "The Federal government may neither issue directives requiring the states to address particular problems, nor command the states' officers, or those of their political subdivisions, to administer or enforce a Federal regulatory program. . . . Such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

The Court has also given new life to the Eleventh Amendment, which protects states from lawsuits by citizens of other states or foreign nations. In 1999, the Court shielded states from suits by copyright owners who claimed infringement of copyrights issued by state agencies and immunized states from lawsuits by people who argued that state regulations create unfair economic competition. In *Alden v. Maine* (1999), the Court held that state employees could not sue to force state compliance with federal fair-labor laws. In the Court's five-to-four majority opinion, Justice Anthony M. Kennedy stated, "Although the Constitution grants broad powers to Congress, our federalism requires that Congress treat the states in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the nation." A few years later, in *Federal Maritime Commission v. South Carolina Ports Authority* (2002), the Court further expanded states' sovereign immunity from private lawsuits. Writing for the five-to-four majority, Justice Clarence Thomas declared that dual sovereignty "is a defining feature of our nation's constitutional blueprint," adding that the states "did not consent to become mere appendages of the federal government" when they ratified the Constitution.

Not all Court decisions, however, support greater state sovereignty. In 1999 in *Saenz v. Roe*, for example, the Court ruled seven to two that state welfare programs may not restrict new residents to the welfare benefits they would have received in the states from which they moved. Likewise, in *Gonzales v. Raich* (2005), the Court ruled that Congress can criminalize marijuana even in states where it is approved for medicinal purposes. Furthermore, in 2012

LANDMARK CASES

Federal–State Relations

- ***McCulloch v. Maryland* (1819):** The Constitution's "necessary and proper" clause permits Congress to take actions (in this case, to create a national bank) when it is essential to a power that Congress has (in this case, managing the currency).
- ***Gibbons v. Ogden* (1824):** The Constitution's commerce clause gives the national government exclusive power to regulate interstate commerce.
- ***Wabash, St. Louis and Pacific Railroad v. Illinois* (1886):** The states may not regulate interstate commerce.
- ***United States v. Lopez* (1995):** The national government's power under the commerce clause does not permit it to regulate matters not directly related to interstate commerce (in this case, banning firearms in a school zone).
- ***Printz v. United States* (1997):** The national government's authority to require state officials to administer or enforce a federal regulation is limited.
- ***Alden v. Maine* (1999):** Congress may not act to subject nonconsenting states to lawsuits in state courts.
- ***Reno v. Condon* (2000):** The national government's authority to regulate interstate commerce extends to restrictions on how states gather, circulate, or sell certain information about citizens.
- ***U.S. v. Morrison* (2000):** The national government's power to regulate interstate commerce does not extend to giving female victims of violence the right to sue perpetrators in federal court.
- ***Federal Maritime Commission v. South Carolina Ports Authority* (2002):** Expanded states' sovereign immunity from private lawsuits and declared that the states "did not consent to become mere appendages of the federal government" when they ratified the Constitution.
- ***Kelo v. City of New London* (2005):** The Constitution allows a local government to seize property, not only for "public use" such as building highways, but also to "promote economic development" in a "distressed" community.
- ***National Federation of Independent Busness v. Sebelius* (2010):** The national government's authority to "alter" or "amend" programs that it jointly funds and administers with the states is limited.
- ***Arizona v. United States* (2012):** Only the federal government may regulate immigration laws and enforcement
- ***King v. Burwell* (2015):** Individuals using both the state-run and federally-run health insurance exchanges may receive health insurance subsidies from the federal government.
- ***Obergefell v. Hodges* (2015):** There is a constitutional right to same-sex marriage in the United States.

in *Arizona v. United States*, the Court held that only the federal government—and not state governments—had the right to regulate immigration laws and enforcement. More generally, to empower states is not to disempower Congress, which, as it has done since the late 1930s, can still make federal laws regarding almost anything as long as it does not go too far in "commandeering" state resources or gutting states' rights.

The Court's recent ruling on gay marriage offers another illustration of federal law trumping state ones. Traditionally, marriage has been a state matter, not a federal one. As gays and lesbians began to push for greater equality, including the right to marry (see Chapter 6), many states responded by banning same-sex marriage. In 2015, the Court ruled in *Obergefell v. Hodges* that such bans were unconstitutional, and established a right to marriage for gay and lesbian couples under the Constitution. While marriage laws are generally a state matter, such laws cannot contravene the Constitution.

This ongoing debate about state versus national sovereignty calls to mind President Wilson's quote from earlier in the chapter: Federalism really is at the heart of American politics, and cannot be resolved definitively, but rather is recontested again and again. Over time, the spheres of activity of the state and national governments have shifted, and will continue to do so moving forward.

Finally, we would note that it is not just the Court that shapes federalism. As we discuss in later chapters, American national institutions have become more characterized by gridlock and the inability to produce new policies in recent years. In response, many interest groups and activists have turned to state houses to press their agendas. As a result, policy debates that once raged in the halls of Congress—on issues such as abortion, gun control, environmental protection, and so forth—are now largely fought at the state level.[18] This ensures that federalism will remain a relevant topic in the years to come.

3-2 Governmental Structure

Federalism refers to a political system in which there are local (territorial, regional, provincial, state, or municipal) units of government, as well as a national government, that can make final decisions with respect to at least some governmental activities and whose existence is specially protected. Almost every nation in the world has local units of government of some kind, if for no other reason than to decentralize the administrative burdens of governing. But these governments are not federal unless the local units exist independent of the preferences of the national government and can make decisions on at least some matters without regard to those preferences.

The United States, Canada, Australia, India, Germany, and Switzerland are federal systems, as are a few other nations. France, Great Britain, Italy, and Sweden are not; they are unitary systems because such local governments as they possess can be altered or even abolished by the national government and cannot plausibly claim to have final authority over any significant governmental activities.

The special protection that subnational governments enjoy in a federal system derives in part from the constitution of the country, but also from the habits, preferences, and dispositions of the citizens and the actual distribution of political power in society. The constitution of the former Soviet Union in theory created a federal system, as claimed by that country's full name—the Union of Soviet Socialist Republics—but for most of their history, none of these "socialist republics" were in the slightest degree independent of the central government. Were the American Constitution the only guarantee of the independence of the American states, they would long since have become mere administrative subunits of the government in Washington. Their independence results in large measure from the commitment of Americans to the idea of local self-government and from the fact that Congress consists of people who are selected by and responsive to local constituencies.

"The basic political fact of federalism," writes David B. Truman, "is that it creates separate, self sustaining centers of power, prestige, and profit."[19] Political power is locally acquired by people whose careers depend for the most part on satisfying local interests. As a result, though the national government has come to have vast powers, it exercises many of those powers through state governments. What many of us forget when we think about "the government in Washington" is that it spends much of its money and enforces most of its rules not directly on citizens, but on other, local units of government. A large part of the welfare system, all of the interstate highway system, virtually every aspect of programs to improve cities, the largest part of the effort to supply jobs to the unemployed, the entire program to clean up our water, and even much of our military manpower (in the form of the National Guard) are enterprises in which the national government does not govern so much as it seeks, by regulation, grant, plan, argument, and cajolery, to get the states to govern in accordance with nationally (though often vaguely) defined goals.

HOW THINGS WORK

Sovereignty, Federalism, and the Constitution

Sovereignty means supreme or ultimate political authority: A sovereign government is one that is legally and politically independent of any other government.

A **unitary system** is one in which sovereignty is wholly in the hands of the national government, so that the states and localities are dependent on its will.

A **confederation or confederal system** is one in which the states are sovereign and the national government is allowed to do only that which the states permit.

A **federal system** is one in which sovereignty is shared, so that in some matters the national government is supreme and in other matters the states are supreme.

The Founding Fathers often took *confederal* and *federal* to mean much the same thing. Rather than establishing a government in which there was a clear division of sovereign authority between the national and state governments, they saw themselves as creating a government that combined some characteristics of a unitary regime with some of a confederal one. Or, as James Madison expressed the idea in *Federalist* No. 39, the Constitution "is, in strictness, neither a national nor a federal Constitution, but a composition of both." Where sovereignty is located in this system is a matter that the Founders did not clearly answer.

In this text, a **federal regime** is defined in the simplest possible terms—as one in which local units of government have a specially protected existence and can make some final decisions over some governmental activities.

In France, welfare, highways, education, the police, and the use of land are all matters that are directed nationally. In the United States, highways and some welfare programs are largely state functions (though they make use of federal money), while education, policing, and land-use controls are primarily local (city, county, or special-district) functions.

Sometimes, however, confusion or controversy about which government is responsible for which functions surfaces at the worst possible moment and lingers long after attempts have been made to sort it all out. Sadly, in our day, that is largely what "federalism" has meant in practice to citizens from New Orleans and the Gulf Coast region impacted by Hurricane Katrina in 2005.

Before, during, and after Hurricanes Katrina and Rita struck in 2005, federal, state, and local officials could be found fighting among themselves over everything from who was supposed to maintain and repair the levees to who should lead disaster-relief initiatives. In the weeks after the hurricanes hit, it was widely reported that the main first-responders and disaster-relief workers came not from government, but from myriad religious and other charitable organizations. Not only that, but government agencies, such as the Federal Emergency Management Agency (FEMA), often acted in ways that made it harder, not easier, for these volunteers and groups to deliver help when and where it was most badly needed.

Federalism needs to be viewed dispassionately through a historical lens wide enough to encompass both its worst legacies (for instance, state and local laws that once legalized racial discrimination against African Americans) and its best (for instance, African Americans winning mayors' offices and seats in state legislatures when there were very few African Americans in Congress).

Federalism, it is fair to say, has the virtues of its vices and the vices of its virtues. To some, federalism means allowing states to block action, prevent progress, upset national plans, protect powerful local interests, and cater to the self-interest of hack politicians. Harold Laski, a British observer, described American states as "parasitic and poisonous,"[20] and William H. Riker, an American political scientist, argued that "the main effect of federalism since the Civil War has been to perpetuate racism."[21] By contrast, another political scientist, Daniel J. Elazar, argued that the "virtue of the federal system lies in its ability to develop and maintain mechanisms vital to the perpetuation of the unique combination of governmental strength, political flexibility, and individual liberty, which has been the central concern of American politics."[22]

So diametrically opposed are the Riker and Elazar views that one wonders whether they are talking about the same subject. They are, of course, but they are stressing different aspects of the same phenomenon. Whenever the opportunity to exercise political power is widely available (as among the 50 states, 3,000 counties, and many thousands of municipalities in the United States), it is obvious that in different places different people will make use of that power for different purposes. There is no question that allowing states and cities to make autonomous, binding political decisions will allow some people in some places to make those decisions in ways that maintain racial segregation, protect vested interests, and facilitate corruption. It is equally true, however, that this arrangement also enables other people in other places to pass laws that attack segregation,

HOW WE COMPARE

American-Style Federalism

The United States has always had a federal form of government. By contrast, most of the nearly 200 nations in existence today have never had a federal form of government. Depending on the stringency of the criteria used to delineate federal from unitary systems, the United States is one of a dozen to two dozen nations that now have federal forms of government: America, Australia, Belgium, Brazil, Canada, Ethiopia, Germany, India, Malaysia, Mexico, Nigeria, Pakistan, Russia, South Africa, Spain, and Switzerland are on nearly every expert's list of federal nations.

But some of these nations (for instance, Belgium, Spain, and South Africa) once had unitary systems, and many nations that have federal forms of government are multiparty parliamentary democracies. By contrast, American-style federalism has shaped and been shaped by the country's separation-of-powers system (see Chapter 2) and its two-party electoral system (see Chapter 9).

In some federal nations, public opinion favors the national government over subnational governments: People in these countries tend to trust their national governments as much or more than they trust other levels of government. In contrast, Americans tend to trust their state and local governments more than they trust Washington.

Sources: "Trust in Government Remains Low," Gallup Organization, September 2008; Richard Cole and John Kincaid, "Public Opinion on U.S. Federal and Intergovernmental Issues," *Publius: The Journal of Federalism* 36 (Summer 2006): 443–459; John Kincaid and G. Alan Tarr, eds., *Constitutional Origins, Structure, and Change in Federal Countries* (Montreal: McGill-Queens Press, 2005); Pradeep Chhibber and Ken Kollman, *The Formation of National Party Systems: Federalism and Party Competition in Canada, Great Britain, India, and the United States* (Princeton, N.J.: Princeton University Press, 2004).

regulate harmful economic practices, and purify politics, often long before these ideas gain national support or become national policy.

The existence of independent state and local governments means that different political groups pursuing different political purposes will come to power in different places. The smaller the political unit, the more likely it is to be dominated by a single political faction. James Madison understood this fact perfectly and used it to argue (in *Federalist* No. 10) that it would be in a large (or "extended") republic, such as the United States as a whole, that one would find the greatest opportunity for all relevant interests to be heard. When William Riker condemns federalism, he is thinking of the fact that in some places the ruling factions in cities and states have opposed granting equal rights to African Americans. When Daniel Elazar praises federalism, he is recalling that, in other states and cities, the ruling factions have taken the lead (long in advance of the federal government) in developing measures to protect the environment, extend civil rights, and improve social conditions. If you live in California, whether you like federalism depends in part on whether you like the fact that California has, independent of the federal government, cut property taxes, strictly controlled coastal land use, heavily regulated electric utilities, and increased (at one time) and decreased (at another time) its welfare rolls.

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Federalism has permitted experimentation. Women were able to vote in the Wyoming Territory in 1888, long before they could do so in most states.

Increased Political Activity

Federalism has many effects, but its most obvious effect has been to facilitate the mobilization of political activity. Unlike Don Quixote, the average citizen does not tilt at windmills. He or she is more likely to become involved in organized political activity if he or she feels a reasonable chance exists of producing a practical effect. The chances of having such an effect are greater where there are many elected officials and independent governmental bodies, each with a relatively small constituency, than where there are few elected officials, most of whom have the nation as a whole for a constituency. In short, a federal system, by virtue of the decentralization of authority, lowers the cost of organized political activity; a unitary system, because of the centralization of authority, raises the cost. We may disagree about the purposes of organized political activity, but the fact of widespread organized activity can scarcely be doubted—or if you do doubt it, that is only because you have not yet read Chapters 8 and 11.

It is impossible to say whether the Founders, when they wrote the Constitution, planned to produce such widespread opportunities for political participation. Unfortunately, they were not very clear (at least in writing) about how the federal system was supposed to work, and thus most of the interesting questions about the jurisdiction and powers of our national and state governments had to be settled by a century and a half of protracted and often bitter conflict.

laboratories of democracy
Idea that different states can implement different policies, and the successful ones will spread.

Different States, Different Policies

The states play a key role in many, if not most, policy areas, such as social welfare, public education, law enforcement, criminal justice, health care and hospitals, roads and highways, and managing water supplies. On these and many other matters, state constitutions and laws are far more detailed and sometimes confer more rights than the federal one. For example, the California constitution includes an explicit right to privacy, says that noncitizens have the same property rights as citizens, and requires the state to use "all suitable means" to support public education.

This diversity is a benefit of federalism: that different states can construct different policies that better fit with their local needs. This is the classic idea of "**laboratories of democracy**": States can try out different policies, and if they are successful, others states can copy them.[23] This is indeed a benefit to

initiative Process that permits voters to put legislative measures directly on the ballot.

referendum Procedure enabling voters to reject a measure passed by the legislature.

recall Procedure whereby voters can remove an elected official from office.

federalism: Many successful policies are first adopted in one place (such as health care reforms, welfare reforms, and so forth), and then copied in other states (or even in the federal government) when they prove to be successful.[24]

But this sort of experimentation generates a cost as well. Because different states have different policies, different citizens will be treated differently depending on their state of residence. For example, as we explained in the Constitutional Connections box, part of Obamacare called for states to expand Medicare to provide health insurance to the working poor. Some states have chosen to expand Medicaid under Obamacare (such as California, North Dakota, and West Virginia), while others (such as Texas, Oklahoma, and Florida) have not. So a low-income resident of one state would qualify for benefits in some states, but not others. Likewise, in some states, those convicted of crimes are subject to the death penalty, but not in others. The benefit of policy differences means that we pay a price in terms of equality.

More generally, this variation in federalism highlights the two competing values at stake here: equality and participation. On the one hand, federalism, by allowing states to design different policies for health care, education, criminal justice, and so forth, means that citizens in different jurisdictions will be treated differently (and hence pay a cost in terms of equality). But at the same time, federalism allows for participatory input: for more say in how schools are governed, where roads are built, how criminal justice policies are set, and so forth. Indeed, the differences in policy discussed above are largely (though not completely) a function of the differences in participation. So we cannot have more equality without having less participation, and vice versa. Having the benefit of "laboratories of democracy" means that not all citizens will be treated equally.

Why do these various policies differ so much across states? The most fundamental answer is that participation is different: Different people, with different preferences, participate in the decision-making process in different states. But they can also differ because different states have different institutions as well, especially differences in terms of direct democracy. As we saw in Chapter 2, the federal Constitution is based on a republican, not a democratic, principle: Laws are to be made by the representatives of citizens, not by the citizens directly. But many state constitutions open one or more of three doors to direct democracy. About half of the states provide for some form of legislation by initiative. The **initiative** allows voters to place legislative measures (and sometimes constitutional amendments) directly on the ballot by getting enough signatures (usually between 5 and 15 percent of those who voted in the last election) on a petition. About half of the states permit the **referendum**, a procedure that enables voters to reject a measure adopted by the legislature. Sometimes the state constitution specifies that certain kinds of legislation (e.g., tax increases) must be subject to a referendum whether the legislature wishes it or not. The **recall** is a procedure, in effect in more than 20 states, whereby voters can remove an elected official from office. If enough signatures are gathered on a petition, the official must go before voters, who can vote to leave the person in office, remove the person from office, or remove the person and replace him or her with someone else. In 2003, California voters recalled then governor Gray Davis and replaced him with Arnold Schwarzenegger, and in 2012, Wisconsin governor Scott Walker faced a recall election, but survived and remained in office.

The existence of the states is guaranteed by the federal Constitution: no state can be divided without its consent, each state must have two representatives in the Senate (the only provision of the Constitution that may not be amended), every state is assured of a republican form of government, and the powers not granted to Congress are reserved for the states. By contrast, cities, towns, and counties enjoy no such protection; they exist at the pleasure of the states. Indeed, states have frequently abolished certain kinds of local governments, such as independent school districts.

This explains why there is no debate about city sovereignty comparable to the debate about state sovereignty. The constitutional division of power between them is settled: The state is supreme. But federal–state relations can be complicated because the Constitution invites elected leaders to struggle over sovereignty. Which level of government has the ultimate power to decide where nuclear waste gets stored, how much welfare beneficiaries are paid, what rights prisoners enjoy, or whether supersonic jets can land at local airports? American federalism answers such questions, but on a case-by-case basis through intergovernmental politics and court decisions.

HOW THINGS WORK

Government Powers: Federal, State, and Both

Federal Government Powers

- Subject to Article V of the Constitution, deciding on the process by which amendments to the Constitution are to be proposed and ratified
- Declaring war
- Maintaining and deploying military forces
- Making foreign policy, international treaties, and trade deals
- Printing money
- Regulating interstate commerce
- Maintaining postal offices and services

State Government Powers

- Ratifying amendments to the Constitution through state legislatures or ratifying conventions
- Conducting elections for public offices, initiatives, and referenda
- Establishing local governments
- Regulating intrastate commerce
- Licensing occupations and land uses
- Enacting laws to promote public safety, health, and morals (the "police power")

Powers Exercised by Both the Federal Government and State Governments

- Taxing citizens and businesses
- Chartering banks and corporations
- Building and maintaining roads
- Borrowing money and managing public debts
- Administering criminal justice institutions
- Regulating Native American gaming (casino) businesses

3-3 Federal Money, State Programs

As we discussed above, over time, we have gone to a system where both the national and state governments contribute to most policy areas. One key way this occurs is via various federal grant programs, where the federal government provides the money—and accompanying rules—for programs implemented at the state level. To understand contemporary federalism, we need to understand how national monies help to shape policy at all levels of government.

Grants-In-Aid

Perhaps the oldest example of national funds being used at the state level is federal **grants-in-aid**. The first of these programs began even before the Constitution was adopted, in the form of land grants made by the national government to the states in order to finance education. (State universities all over the country were built with the proceeds from the sale of these land grants; hence the name *land-grant colleges*.) Land grants were also made to support the building of wagon roads, canals, railroads, and flood-control projects. These measures were hotly debated in Congress (President Madison thought some were unconstitutional), even though the use to which the grants were put was left almost entirely to the states.

grants-in-aid Money given by the national government to the states.

Cash grants-in-aid began almost as early. In 1808, Congress gave $200,000 to the states to pay for their militias, with the states in charge of the size, deployment, and command of these troops. However, grant-in-aid programs remained few in number and small in price until the 20th century, when scores of new ones came into being. Today, federal grants go to hundreds of programs, including such giant federal–state programs as Medicaid (see Table 3.1). Overall, in fiscal year 2014 (the most recent data available), the federal government spent $577 billion on federal grants-in-aid, representing 16.5 percent of federal outlays in that year.[25]

The grants-in-aid system, once under way, grew rapidly because it helped state and local officials resolve a dilemma. On the one hand, they wanted access to the superior taxing power of the federal government. On the other hand, prevailing constitutional interpretation, at least until the late 1930s, held that the federal government

Johnny Stockshooter/Alamy

Some of the nation's top academic institutions, such as Penn State, began as land-grant colleges.

could not spend money for purposes not authorized by the Constitution. The solution was obviously to have federal money put into state hands: Washington would pay the bills; the states would run the programs.

To state officials, federal money seemed so attractive for several reasons. First, the money was there. Thanks to the high-tariff policies of the Republicans, Washington in the 1880s had huge budget surpluses. Second, in the 1920s, as those surpluses dwindled, Washington inaugurated the federal income tax. It automatically brought in more money as economic activity (and thus personal income) grew. Third, the federal government, unlike the states, managed the currency and could print more at will. (Technically, it borrowed this money, but it was under no obligation to pay it all back because, as a practical matter, it had borrowed from itself.) States could not do this; if they borrowed money (and many could not), they had to pay it back, in full.

These three economic reasons for the appeal of federal grants were probably not as important as a fourth reason:

TABLE 3.1 **Federal Grants to State and Local Governments (2014)**

The federal government spent more than $577 billion on grants to states in 2014.	
Among the biggest items:	
Health care (including Medicaid)	$320 billion
Income security	$100.9 billion
Transportation	$62.3 billion
Education, training, employment, and social services	$60.5 billion
Community and regional development	$13.2 billion

Source: Office of Management and Budget, FY2016 Budget, Table 15-1, "Trends in Federal Grants to State and Local Governments," p. 267.

politics. Federal money seemed to a state official to be "free" money. Governors did not have to propose, collect, or take responsibility for federal taxes. Instead, a governor could denounce the federal government for being profligate in its use of the people's money. Meanwhile, he or she could claim credit for a new public works or other project funded by Washington and, until recent decades, expect little or no federal supervision in the bargain.[26]

That every state had an incentive to ask for federal money to pay for local programs meant, of course, that it would be very difficult for one state to get money for a given program without every state getting it. The senator from Alabama who votes for the project to improve navigation on the Tombigbee will have to vote in favor of projects improving navigation on every other river in the country if the senator expects his or her Senate colleagues to support such a request. Federalism as practiced in the United States means that when Washington wants to send money to one state or congressional district, it must send money to many states and districts.

Shortly after September 11, 2001, for example, President George W. Bush and congressional leaders in both parties pledged new federal funds to increase public safety payrolls, purchase the latest equipment to detect bioterror attacks, and so on. Since then, New York City and other big cities have received tens of millions of federal dollars for such purposes, but so have scores of smaller cities and towns. The grants allocated by the Department of Homeland Security were based on so-called fair-share formulas mandated by Congress, which are basically the same formulas the federal government uses to allocate certain highway and other funds among the states. These funding formulas not only spread money around but also generally skew funding toward states and cities with low populations. Thus, Wyoming received seven times as much federal homeland security funding per capita as New York State did, and Grand Forks County, North Dakota (population 70,000), received $1.5 million to purchase biochemical suits, a semi-armored van, decontamination tents, and other equipment to deal with weapons of mass destruction.[27]

Grand Forks County was not the only recipient of such programs: thousands of state and local police departments were. For example, the St. Louis Area Regional Response System (which administers these grants for the St. Louis area) has spent $9.4 million on equipment for area police departments since 2003, including a Bearcat armored truck, two helicopters, night-vision goggles, and body armor. Such equipment was used in the clashes between police and protesters in 2014 following the death of Michael Brown in Ferguson, Missouri (a suburb of St. Louis).[28] In the wake of Brown's death, such programs were put under the spotlight with calls for tighter regulation on the provision of military-grade equipment to

Scott Olson/Getty Images

Police armed with military gear clashed with protesters following the death of Michael Brown in 2014. The military gear was provided to police departments by federal grants.

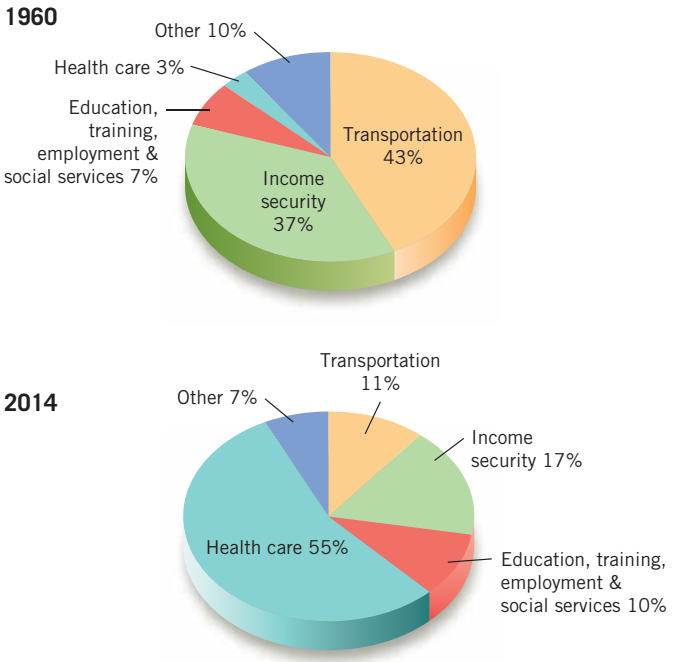
local police forces. The White House did impose some limits, but stopped short of cutting off such grant programs altogether.[29]

Meeting National Needs

Until the 1960s, most federal grants-in-aid were conceived by or in cooperation with the states and were designed to serve essentially state purposes. Large blocs of voters and a variety of organized interests would press for grants to help farmers, build highways, or support vocational education. During the 1960s, however, an important change occurred: the federal government began devising grant programs based less on what states were demanding and more on what federal officials perceived to be important *national* needs (see Figure 3.2). Federal officials, not state and local ones, were the principal proponents of grant programs to aid the urban poor, combat crime, reduce pollution, and deal with drug abuse.

The rise in federal activism in setting goals and the occasional efforts, during some periods, to bypass state officials by providing money directly to cities or even local citizen groups had at least two separate but related effects: one effect was to increase federal grants to state and local governments, and the other was to change the purposes to which those monies were put. Whereas federal aid amounted to less than 2 percent of state general revenue in 1927, by 2013 federal aid accounted for about one-third of state general revenue.[30] In 1960, about 3 percent of federal grants to state and local governments were for health care. Today, however, one federal–state health care program alone, Medicaid, accounts for nearly half of all federal grants (and overall grants for health care account for 55 percent of federal grants to states). And whereas in 1960 more than 40 percent of all federal grants to state and local governments went

FIGURE 3.2 The Changing Purpose of Federal Grants to State and Local Governments, 1960–2014



Source: Office of Management and Budget, FY2016 Budget, Table 15-1, "Trends in Federal Grants to State and Local Governments," p. 267.

to transportation (including highways), today only about 10 percent is used for that purpose (see Figure 3.2).

These trends have important consequences for how we think about the size of government. While the overall level of federal spending has skyrocketed (increasing about five times in real dollars since 1960), the size of the federal workforce has stayed roughly constant over the past 60 years. Meanwhile, the state and local workforce has tripled over that same time span.[31] When we think of "big government," it is largely big federal money implemented by a big state and local government workforce. That makes understanding these sorts of federal grants all the more important.

The Intergovernmental Lobby

State and local officials, both elected and appointed, began to form an important new lobby—the "intergovernmental lobby," made up of mayors, governors, superintendents of schools, state directors of public health, county highway commissioners, local police chiefs, and others who had come to depend on federal funds.[32] Today, federal agencies responsible for health care, criminal justice, environmental protection, and other programs have people on staff who specialize in providing information, technical assistance, and financial support to state and local organizations, including the "Big 7": the U.S. Conference of Mayors; the National Governors

categorical grants Federal grants for specific purposes, such as building an airport.

Association; the National Association of Counties; the National League of Cities; the Council of State Governments; the International City/County Management Association; and the National Conference of State Legislatures. Reports by these groups and publications like *Governing* magazine are read routinely by many federal officials to keep a handle on issues and trends in state and local government.

National organizations of governors or mayors press for more federal money, but not for increased funding for any particular city or state. Thus most states, dozens of counties, and more than a hundred cities have their own offices in Washington, D.C. These groups also spend big on lobbying the federal government: according to the Center for Responsive Politics, in 2014, territory, state, and local governments collectively spent $71 million lobbying Congress, with Los Angeles County alone spending almost $1 million (and many other states and localities spending nearly as much).[33] Back home, state and local governments have created new positions, or redefined old ones, in response to new or changed federal funding opportunities.

The purpose of the intergovernmental lobby has been the same as that of any private lobby—to obtain more federal money with fewer strings attached. For a while, the cities and states did in fact get more money, but since the early 1980s their success in obtaining federal grants has been more checkered, though this has not stopped their lobbying efforts.

Categorical Grants

The effort to loosen the strings took the form of shifting, as much as possible, the federal aid from **categorical grants** to block grants. A categorical grant is one for a specific purpose defined by federal law: to build an airport or a college dormitory, for example, or to make welfare payments to low-income mothers. Such grants usually require that the state or locality put up money to "match" some part of the federal grant, though the amount of matching funds can be quite small (sometimes only 10 percent or less). Governors and mayors complained about these categorical grants because their purposes were often so narrow that it was impossible for a state to adapt federal grants to local needs. A mayor seeking federal money to build parks might have discovered that the city could get money only if it launched an urban-renewal program that entailed bulldozing several blocks of housing or small businesses.

One response to this problem was to consolidate several categorical or project grant programs into a single block grant devoted to some general purpose and with fewer restrictions on its use. Block grants began in the mid-1960s, when such a grant was created to fund health care programs. Though many block grants were proposed between 1966 and 1980, only five were enacted. Of the three largest, one consolidated various categorical grant programs aimed at cities (Community Development Block Grants), another created a program to aid local law enforcement (Law Enforcement Assistance Act), and a third authorized new kinds of locally managed programs for the unemployed (CETA, or the Comprehensive Employment and Training Act).

In theory, block grants and revenue sharing were supposed to give the states and cities considerable freedom in deciding how to spend the money while helping to relieve their tax burdens. To some extent they did. However, for four reasons, neither the goal of "no strings" nor the one of fiscal relief was really attained. First, the amount of money available from block grants and revenue sharing did not grow as fast as the states had hoped nor as quickly as did the money available through categorical grants.

Second, the federal government steadily increased the number of strings attached to the spending of this supposedly "unrestricted" money.

Third, block grants grew more slowly than categorical grants because of the different kinds of political coalitions supporting each. Congress and the federal bureaucracy liked categorical grants for the same reason the states disliked them—the specificity of these programs enhanced federal control over how the money was to be used. Federal officials, joined by liberal interest groups and organized labor, tended to distrust state governments. Whenever Congress wanted to address some national problem, its natural inclination was to create a categorical grant program so that it, and not the states, would decide how the money would be spent.

Fourth, even though governors and mayors like block grants, these programs cover such a broad range of activities that no single interest group has a vital stake in pressing for their enlargement. Categorical grants, on the other hand, often are a matter of life and death for many agencies—state departments of welfare, of highways, and of health, for example, are utterly dependent on federal aid. Accordingly, the administrators in charge of these programs will press strenuously for their expansion. Moreover, categorical programs are supervised by special committees of Congress, and as we shall see in Chapter 13, many of these committees have an interest in seeing their programs grow.

Rivalry Among the States

The more important federal money becomes to the states, the more likely the states are to compete among themselves for the largest share of it. For a century or better, the growth of the United States—in population, business, and income—was concentrated in the

JEWEL SAMAD/AFP/Getty Images

New Jersey Governor Chris Christie greets President Barack Obama, who visits the state to see the devastation caused by superstorm Sandy in October 2012.

industrial Northeast. In recent decades, however, that growth—at least in population and employment, if not in income—has shifted to the South, Southwest, and Far West. This change has precipitated an intense debate over whether the federal government, by the way it distributes its funds and awards its contracts, is unfairly helping some regions and states at the expense of others. Journalists and politicians have dubbed the struggle as one between Snowbelt (or Frostbelt) and Sunbelt states.

Whether in fact there is anything worth arguing about is far from clear: The federal government has had great difficulty in figuring out where it ultimately spends what funds for what purposes. For example, a $1 billion defense contract may go to a company with headquarters in California, but much of the money may actually be spent in Connecticut or New York, as the prime contractor in California buys from subcontractors in the other states. It is even less clear whether federal funds actually affect the growth rate of the regions. The uncertainty about the facts has not prevented a debate about the issue, however. That debate focuses on the formulas written into federal laws by which block grants are allocated. These formulas take into account such factors as a county's or city's population, personal income in the area, and housing quality. A slight change in a formula can shift millions of dollars in grants in ways that favor either the older, declining cities of the Northeast or the newer, still-growing cities of the Southwest.

With the advent of grants based on distributional formulas (as opposed to grants for a particular project), the results of the census, taken every 10 years, assume monumental importance. A city or state shown to be losing population may, as a result, forfeit millions of dollars in federal aid. Senators and representatives now have access to computers that can tell them instantly the effect on their states and districts of even minor changes in a formula by which federal aid is distributed. These formulas rely on objective measures, but the exact measure is selected with an eye to its political consequences. There is nothing wrong with this in principle, since any political system must provide some benefits for everybody if it is to stay together. Given the competition among states in a federal system, however, the struggle over allocation formulas becomes especially acute.

Federal Aid and Federal Control

So important has federal aid become for state and local governments that mayors and governors, along with others, began to fear that Washington was well on its way to controlling other levels of government. "He who pays the piper calls the tune," they muttered. In this view, the constitutional protection of state government to be found in the Tenth Amendment was in jeopardy as a result of the strings attached to the grants-in-aid on which the states were increasingly dependent.

Block grants were an effort to reverse this trend by allowing the states and localities freedom to spend money

conditions of aid Terms set by the national government that states must meet if they are to receive certain federal funds.

mandates Terms set by the national government that states must meet whether or not they accept federal grants.

waiver A decision by an administrative agency granting some other part permission to violate a law or rule that would otherwise apply to it.

as they wished. But as we have seen, the new device did not in fact reverse the trend. Categorical grants—those with strings attached—continued to grow even faster.

There are two kinds of federal controls on state governmental activities. The traditional control tells the state government what it must do if it wants to get some grant money. These strings often are called **conditions of aid**. The newer form of control tells the state government what it must do, period. These rules are called **mandates**. Most mandates have little or nothing to do with federal aid—they apply to all state governments whether or not they accept grants.

Mandates

Most mandates concern civil rights and environmental protection. States may not discriminate in the operation of their programs, no matter who pays for them. Initially the antidiscrimination rules applied chiefly to distinctions based on race, sex, age, and ethnicity, but of late they have broadened to include physical and mental disabilities as well. Various pollution control laws require the states to comply with federal standards for clean air, pure drinking water, and sewage treatment.[34]

Stated in general terms, these mandates seem reasonable enough. It is hard to imagine anyone arguing that state governments should be free to discriminate against people because of their race or national origin. In practice, however, some mandates create administrative and financial problems, especially when the mandates are written in vague language, thereby giving federal administrative agencies the power to decide for themselves what state and local governments are supposed to do.

But not all areas of public law and policy are equally affected by mandates. Federal–state disputes about who governs on such controversial matters as minors' access to abortion, same-sex marriage, and medical uses for banned narcotics make headlines. It is mandates that fuel everyday friction in federal–state relations, particularly those levied by Washington but paid for by the states. One study concluded that "the number of unfunded federal mandates is high in environmental policy, low in education policy, and moderate in health policy."[35] But why?

Some think that how much Washington spends in a given policy area is linked to how common federal mandates, funded or not, are in that same area. There is some evidence for that view. For instance, in recent years, annual federal grants to state and local governments for a policy area where unfunded mandates are pervasive—environmental protection— were about $4 billion, while federal grants for health care—an area where unfunded mandates have been less pervasive—amounted to about $200 billion. The implication is that when Washington itself spends less on something it wants done, it squeezes the states to spend more for that purpose. Washington is more likely to grant state and local governments waivers in some areas than in others. A **waiver** is a decision by an administrative agency granting some other party permission to violate a law or administrative rule that would otherwise apply to it. Generally, for instance, education waivers have been easy for state and local governments to get, but environmental protection waivers have proven almost impossible to acquire.[36]

However, caution is in order. Often, the more one knows about federal–state relations in any given area, the harder it becomes to generalize about present-day federalism's fiscal, administrative, and regulatory character, the conditions under which "permissive federalism" prevails, or whether new laws or court decisions will considerably tighten or further loosen Washington's control over the states.

Mandates are not the only way in which the federal government imposes costs on state and local governments. Certain federal tax and regulatory policies make it difficult or expensive for state and local governments to raise revenues, borrow funds, or privatize public functions. Other federal laws expose state and local governments to financial liability, and numerous federal court decisions and administrative regulations require state and local governments to do or not do various things, either by statute or through an implied constitutional obligation.[37]

It is clear that the federal courts have helped fuel the growth of mandates. As interpreted by the U.S. Supreme Court, the Tenth Amendment provides state and local officials no protection against the march of mandates. Indeed, many of the more controversial mandates result not from congressional action but from court decisions. For example, many state prison systems have been, at one time or another, under the control of federal judges who required major changes in prison construction and management in order to meet standards the judges derived from their reading of the Constitution.

The Supreme Court has made it much easier of late for citizens to control the behavior of local officials. A federal law, passed in the 1870s to protect newly freed slaves, makes it possible for a citizen to sue any state

or local official who deprives that citizen of any "rights, privileges, or immunities secured by the Constitution and laws" of the United States. A century later, the Court decided that this law permitted a citizen to sue a local official if the official deprived the citizen of *anything* to which the citizen was entitled under federal law (and not just those federal laws protecting civil rights). For example, a citizen can now use the federal courts to obtain from a state welfare office a payment to which he or she may be entitled under federal law.

Conditions of Aid

By far the most important federal restrictions on state action are the conditions attached to the grants the states receive. In theory, accepting these conditions is voluntary—if you don't want the strings, don't take the money. But when the typical state depends for a quarter or more of its budget on federal grants, many of which it has received for years and on which many of its citizens depend for their livelihoods, it is not clear exactly how "voluntary" such acceptance is. During the 1960s, some strings were added, the most important of which had to do with civil rights. But beginning in the 1970s, the number of conditions began to proliferate and has expanded in each subsequent decade to the present.

Some conditions are specific to particular programs, but most are not. For instance, if a state builds something with federal money, it must first conduct an environmental impact study, it must pay construction workers the "prevailing wage" in the area, it often must provide an opportunity for citizen participation in some aspects of the design or location of the project, and it must ensure that the contractors who build the project have nondiscriminatory hiring policies. The states and the federal government, not surprisingly, disagree about the costs and benefits of such rules. Members of Congress and federal officials feel they have an obligation to develop uniform national policies with respect to important matters and to prevent states and cities from misspending federal tax dollars. State officials, on the other hand, feel these national rules fail to take into account diverse local conditions, require the states to do things that the states must then pay for, and create serious inefficiencies.

What state and local officials discovered, in short, was that "free" federal money was not quite free after all. In the 1960s, federal aid seemed entirely beneficial; what mayor or governor would not want such money? But just as local officials found it attractive to do things that another level of government then paid for, in time federal officials learned the same thing. Passing laws to meet the concerns of national constituencies—leaving the cities and states to pay the bills and manage the problems—began to seem attractive to Congress.

Because they face different demands, federal and local officials find themselves in a bargaining situation in which each side is trying to get some benefit (solving a problem, satisfying a pressure group) while passing on to the other side most of the costs (taxes, administrative problems). The bargains struck in this process used to favor the local officials, because members of Congress were essentially servants of local interests: they were elected by local political parties, they were part of local political organizations, and they supported local autonomy. Beginning in the 1960s, however, changes in American politics that will be described in later chapters shifted the orientation of many in Congress toward favoring Washington's needs over local needs.

devolution The transfer of power from the national government to state and local governments.

3-4 A Devolution Revolution?

In 1981, President Ronald Reagan tried to reverse this trend. He asked Congress to consolidate scores of categorical grants into just six large block grants. Congress obliged. Soon state and local governments started getting less federal money, but with fewer strings attached to such grants. During the 1980s and into the early 1990s, however, many states also started spending more of their own money and replacing federal rules on programs with state ones.

With the election of Republican majorities in the House and Senate in 1994, a renewed effort was led by Congress to cut total government spending, roll back federal regulations, and shift important functions back to the states. The first key issue was welfare—that is, Aid to Families with Dependent Children (AFDC). Since 1935, there had been a federal guarantee of cash assistance to states that offered support to low-income, unmarried mothers and their children. In 1996, President Bill Clinton signed a new federal welfare law that ended any federal guarantee of support and, subject to certain rules, turned the management of the program entirely over to the states, aided by federal block grants.

These and other Republican initiatives were part of a new effort called **devolution**, which aimed to pass on to the states many federal functions. It is an old idea, but one that actually acquired new vitality because Congress, rather than the president, was leading the effort. Members of Congress traditionally liked voting for federal programs and categorical grants; that way they could take credit for what they were doing for particular constituencies. Under its new conservative leadership, Congress, especially the House, was looking for ways to scale back the size of the national government. President Clinton seemed to agree when, in his 1996 State of the

John Moore/Getty Images

The U.S. Border Patrol works with local ranchers on the U.S.–Mexico border to address issues such as drug smuggling and illegal immigration.

Union address, he proclaimed that the era of big national government was over.

But was it over? No. By 2010, the federal government was spending about $30,000 per year per household, which, adjusted for inflation, was its highest annual per-household spending level since World War II.[38] Federal revenues represented almost 30 percent of gross domestic product, close to the late 1970s annual average, and inflation-adjusted federal debt totals hit new highs. Adjusted for inflation, total spending by state and local governments has also increased rapidly in recent years as well, reaching about $3.2 trillion in 2012, with revenues of approximately $3 trillion.[39]

Devolution did not become a revolution. AFDC was ended and replaced by a block grant program called Temporary Assistance for Needy Families (TANF). But far larger federal–state programs, most notably Medicaid, were not turned into block grant programs. Moreover, both federal and state spending on most programs, including the block-granted programs, increased after 1996. Although by no means the only new or significant block grant, TANF now looked like the big exception that proved the rule. The devolution revolution was curtailed by public opinion. Today, as in 1996, most Americans favor "shifting responsibility to the states," but not if that also means cuts in government programs that benefit most citizens (not just low-income families), uncertainty about who is eligible to receive benefits, or new hassles associated with receiving them.

Devolution seems to have resulted in more, not fewer, government rules and regulations. In response to the federal effort to devolve responsibility to state and local governments, states have not only enacted new rules and regulations of their own, but also prompted Washington to issue new rules and regulations on environmental protection and other matters.[40] For example, several states and cities successfully sued the Environmental Protection Agency to force it to regulate carbon dioxide and other greenhouse gases as pollutants.[41]

Still, where devolution did occur, it has had some significant consequences. The devolution of welfare policy has been associated with dramatic decreases in welfare rolls. Scholars disagree about how much the drops were due to the changes in law and how much they were caused by economic conditions and other factors. There is also substantial debate over whether new benefits are adequate, or whether the jobs welfare-to-work programs have gotten most recipients are adequate.[42] But few now doubt that welfare devolution has made a measurable difference in how many people receive benefits and for how long.

Subject to state discretion, scores of local governments are now designing and administering welfare programs (job placement, child care, and others) through for-profit firms and a wide variety of nonprofit organizations, including local religious congregations. In some big cities, more than a quarter of welfare-to-work programs have been administered through public–private partnerships that have included various local community-based organizations as grantees.[43]

A major challenge that states face in assuming more responsibilities for public programs is funding. Today, most states have budget shortfalls and face mounting debts for the foreseeable future. While this was due in part to the 2008 financial crisis, a longer-term factor was the role of public sector unions, especially their pensions.[44] Many such pensions are severely underfunded, and

Wendy Maeda/The Boston Globe/Getty Images

Federal, state, and local law enforcement officials work together to investigate the bombing of the 2013 Boston Marathon.

could pose serious limits to states' future spending levels unless changes are made.[45] Consequently, several states (most notably Wisconsin) limited collective bargaining rights for public employees, though it remains to be seen how widely such proposals will spread or how states will manage these challenges more generally.

As states look to reduce costs, they need to consider which responsibilities are theirs to shoulder and which ones the federal government must bear. A 2011 study by the Government Accountability Office found extensive duplication of services both across federal government agencies and between the federal government and the states.[46] Areas of overlap include economic development, food regulation, and counterterrorism. But identifying bureaucratic overlap is easier than eliminating it (as we will see in Chapter 15), and federal public officials typically have very different views than their state counterparts about what qualifies as "wasteful" spending.

POLICY DYNAMICS: INSIDE/OUTSIDE THE BOX

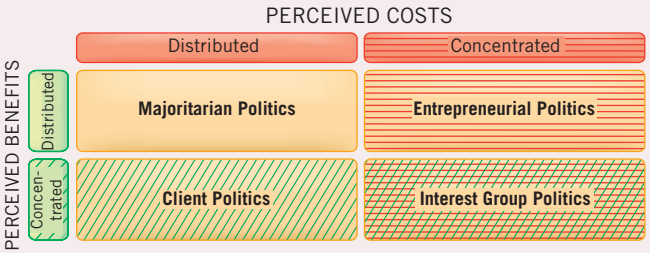
Marijuana Legalization: Entrepreneurial, Not Majoritarian, Politics

In 1996, California citizens passed Proposition 215, a ballot measure permitting the "compassionate use" of marijuana for medicinal purposes. Since then, other states have allowed various forms of legalized marijuana. Four states—Colorado, Washington, Oregon, and Alaska—and the District of Columbia have legalized recreational marijuana (all via ballot measures), and a further 19 have legalized some form of medicinal marijuana (and others have decriminalized the possession of small amounts of marijuana). Despite these steps, marijuana remains illegal under the federal law (the Controlled Substances Act of 1970), setting up a conflict between state and federal authorities.

On the surface, marijuana legalization seems to be an example of majoritarian politics—the costs and the benefits are both widely distributed. By this logic, the debate should be over which side has the most compelling argument. For example, over time, support for marijuana legalization has grown considerably, from less than 20 percent in 1970 to nearly 60 percent today—with 69 percent of millennials supporting legalization. Much of this growth in support likely comes from recognition that many of the fears of legalization opponents have not come to pass where medicinal and/or recreational marijuana has been legalized, thereby suggesting that legalization proponents have the stronger argument.

But this shift in popular support has not translated into broader action for marijuana legalization in many states or at the federal level. Why? It is because powerful interests oppose legalization, and hence this issue is better categorized as entrepreneurial politics. Police departments receive millions of dollars annually to fight the war on drugs, and some of that money would likely evaporate if marijuana were legalized. Prison guards—and private prison companies—also have a vested interest in ensuring that drug users are imprisoned. Furthermore, the federal government itself can act to complicate state-level legalization, by, for example, forcing banks to not accept money from legalized marijuana (the federal government could charge banks under federal drug-trafficking laws), by imposing stiff federal taxes on marijuana dispensaries, or by enforcing federal laws (the Supreme Court ruled that federal authorities could enforce federal laws banning marijuana even where states have legalized it). These are significant hurdles for legalization supporters to overcome.

As is typically the case for entrepreneurial politics, supporters need to find an entrepreneur to help them overcome these hurdles, and finding one nationally has been difficult. Some liberal and libertarian politicians may well be sympathetic to the cause, but they have chosen to invest their energies on other issues they see as more pressing, such as bank regulation or criminal justice reform. The other path to broader passage would be for the issue to be more salient, but while the issue has majority support, it is a very low priority for most voters, suggesting that this is not likely to become a particularly salient issue absent some significant shift.



Sources: George Gow, "63 Percent of Republican Millenials Favor Marijuana Legalization," *Pew Think Tank: News in the Numbers,* February 27, 2015; Kendell Benson, "Money, Not Morals, Drives Marijuana Prohibition Movement, *OpenSecrets Blog*, August 5, 2014; German Lopez, "How Marijuana Legalization Became a Majority Movement," *Vox*, October 1, 2014; "The Trouble with Marijuana Legalization: Banks," *Governing*, January 5, 2015; Jack Healy, "Legal Marijuana Faces Another Federal Hurdle: Taxes," *New York Times*, 9 May 2015.

Consequently, how states will address their long-term debt, and the implications for further devolution in policymaking, remains to be seen. And, as noted in a 2013 study by the Congressional Budget Office, intergovernmental programs involve administrative costs at multiple levels of government; any major cost-cutting efforts have to be coordinated between Washington and the states, and that never proves easy.[47]

Congress and Federalism

Just as it remains to be seen whether the Supreme Court will continue to revive the doctrine of state sovereignty, so it is not yet clear whether the devolution movement will regain momentum, stall, or be reversed. But whatever the movement's fate, the United States will not become a wholly centralized nation. There remains more political and policy diversity in America than one is likely to find in any other large industrialized nation. The reason is not only that state and local governments have retained certain constitutional protections but also that members of Congress continue to think of themselves as the representatives of localities *to* Washington and not as the representatives *of* Washington to the localities. As we shall see in Chapter 13, American politics, even at the national level, remains local in its orientation.

But if this is true, why do these same members of Congress pass laws that create so many problems for—and stimulate so many complaints from—mayors, governors, and other state and local officials? Members of Congress represent different constituencies from the same localities. For example, one member of Congress from Los Angeles may think of the city as a collection of businesspeople, homeowners, and taxpayers, while another may think of it as a group of African Americans, Hispanics, and nature lovers. If Washington wants to simply send money to Los Angeles, these two representatives could be expected to vote together. But if Washington wants to impose mandates or restrictions on the city, these representatives might very well vote on opposite sides, each voting as his or her constituents would most likely prefer.

When somebody tries to speak "for" a city or state in Washington, that person has little claim to any real authority. The mayor of Philadelphia may favor one program, the governor of Pennsylvania may favor another,

Brian Cahn/ZUMA Press, Inc./Alamy

A marijuana dispensary in Colorado. While legal in some states, marijuana remains illegal under federal law.

and individual local and state officials—school superintendents, the insurance commissioner, public health administrators—may favor still others. In bidding for federal aid, those parts of the state or city that are best organized often do the best, and increasingly these groups are not the political parties but rather specialized occupational groups such as doctors or schoolteachers. If one is to ask, therefore, why a member of Congress does not listen to his or her state anymore, the answer is, "What do you mean by *the state?* Which official, which occupational group, which party leader speaks for the state?"

Finally, Americans differ in the extent to which we prefer federal as opposed to local decisions. When people are asked which level of government gives them the most for their money, relatively poor citizens are likely to mention the federal government first, whereas relatively well-to-do citizens are more likely to mention local government. If we add to income other measures of social diversity—race, religion, and region—there emerge even sharper differences of opinion about which level of government works best. It is this social diversity—and the fact that it is represented not only by state and local leaders but also by members of Congress—that keeps federalism alive and makes it so important. Americans simply do not agree on enough things, or even on which level of government ought to decide on those things, to make possible a unitary system.

What Would You Do?

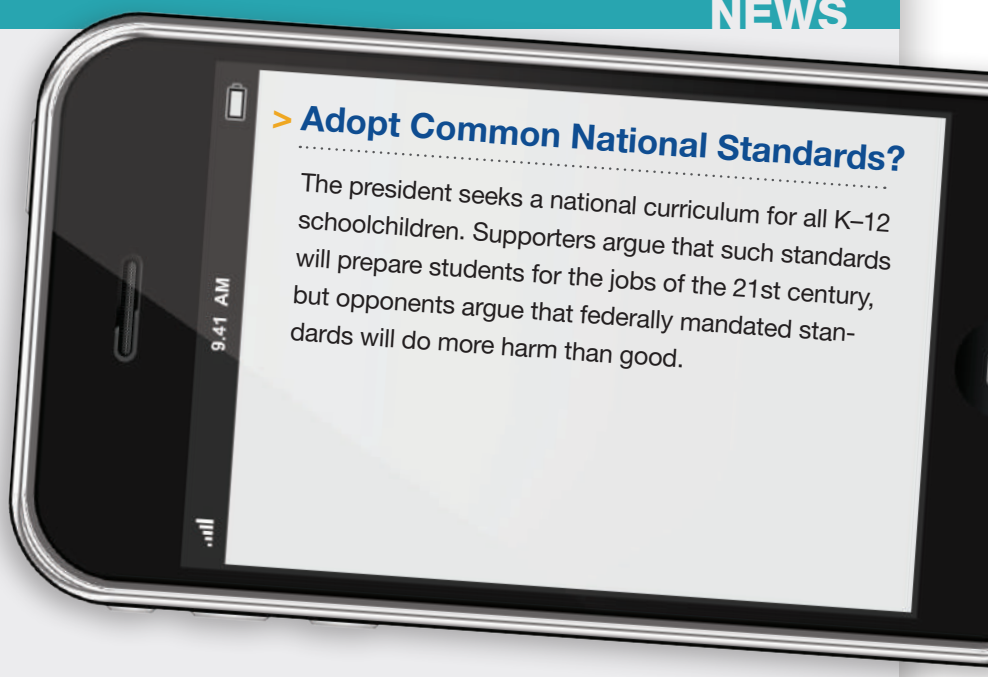
Memorandum

To: *Secretary of Education Julie Dew*

From: *White House Special Assistant Jack Patrick*

Subject: *National curricular standards for elementary and secondary schools*

In recent years, there has been increasing discussion about whether states should adopt a common set of standards for what students should know to be prepared for college and the workforce in the 21st century. The president is making a push for national standards, and the major arguments for and against this proposal follow. Will you present the initiative and address states' concerns at the National Governors Association meeting next week?



Arguments for:

1. American jobs in the 21st century will require advanced skills in literacy, mathematics, and information technology that all schools must teach.
2. Variations in state curriculum standards leave students ill-prepared for high-paying jobs and for college.
3. If the national government does not invest in creating a uniform school curriculum now, then increased funding will be needed for remedial instruction later.

Arguments against:

1. States are better able to determine educational standards that will prepare their diverse populations for the workforce than the federal government.
2. Imposing a national curriculum will stifle state and local creativity in education, and will be so basic that it will make little difference in college preparation.
3. The national government has a history of imposing educational mandates on states with insufficient funding, and governors are skeptical of receiving sufficient funding to successfully implement a national curriculum for students with varying needs.

Your decision ○ **Support bill** ○ **Oppose bill**

LEARNING OBJECTIVES

3-1 Discuss the historical origins of federalism, and explain how it has evolved over time.

The Framers of the Constitution created a federal system of government for the United States because they wanted to balance the power of the central government with states that would exercise independent influence over most areas of people's lives, outside of national concerns such as defense, coining money, and so forth. Since the Founding, the balance of power between the national government and the states has shifted over time. Overall, the federal government's power and responsibilities have increased, particularly with the expansion of programs in the 20th and 21st centuries. Still, states exercise broad latitude in implementing policies, and they frequently provide models for the federal government to consider in creating national policies.

3-2 Summarize the pros and cons of federalism in the United States.

Debates over federalism come down to debates over equality versus participation. Federalism means that citizens living in different parts of the country will be treated differently, not only in spending programs, such as welfare, but also in legal systems that assign in different places different penalties to similar offenses or that differentially enforce civil rights laws. But federalism also means that more opportunities exist for participation in making decisions—in influencing what is taught in the schools and in deciding where highways and government projects are to be built. Indeed, differences in public policy—that is, unequal treatment—are in large part the result of participation in decision making. It is difficult, perhaps impossible, to have more of one of these values without having less of the other.

3-3 Describe how funding underlies federal–state interactions and how this relationship has changed over time.

Funding is perhaps the key link between federal and state governments: In fiscal year 2014, the federal government provided approximately $577 billion in grants to state and local governments. Many of these grants fund programs designed in Washington but implemented at the state level. Such programs can be contentious because of the mandates and requirements imposed by the federal governments on the states.

3-4 Discuss whether the devolution of programs to the states beginning in the 1980s really constitutes a revolution in federal–state relations.

Devolution was not a revolution, but it did generate important changes in programs like welfare. More generally, it continued the shift toward federal programs administered by states.

TO LEARN MORE

State news: **www.stateline.org**

Council of State Governments: **www.csg.org**

National Governors Association: **www.nga.org**

Supreme Court decisions: **www.findlaw.com/casecode/supreme.html**

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