



Federalism

Chapter Outline

Defining Federalism

The Constitutional Basis of Federalism

Intergovernmental Relations Today

Understanding Federalism

Summary

Alfonso Lopez, Jr. was a senior at Edison High School in San Antonio, Texas. One day he arrived at school carrying a concealed .38 caliber handgun. School authorities, alerted by an anonymous tip, confronted Alfonso, who admitted he was carrying the weapon. He was arrested and charged under Texas law with firearm possession on school premises. The next day, the state charges were dismissed after federal agents charged him with violating the Gun-Free School Zones Act of 1990.

A grand jury then indicted Alfonso for violating federal law. Alfonso's lawyers had an ace up their sleeves, however. They moved to dismiss his federal indictment on the grounds that the Gun-Free School Zones Act was unconstitutional because Congress had no power to legislate control over public schools, which are under state control. Congress had relied on its authority to regulate interstate commerce to pass the law, and, Alfonso's lawyers argued, this case had nothing to do with commerce.



Nevertheless, the trial court found Alfonso guilty of violating the law and sentenced him to six months of imprisonment and two years of supervised release. On appeal, Alfonso's lawyers challenged his conviction based on the claim that the law exceeded federal jurisdiction. The court of appeals agreed and reversed Alfonso's conviction. The case then went to the Supreme Court, which ultimately found in *United States v. Lopez* that the Gun-Free School Zones Act did in fact exceed Congress's authority to regulate commerce among the states.

The issue was not whether it was a good idea to prohibit guns in public schools. Almost everyone agreed with that goal. Instead, the issue was estab-

lishing boundaries between federal and state—an issue over which America has fought a civil war. The fact that it took the Supreme Court to resolve this seemingly straightforward criminal case illustrates how federalism is at the center of important public policy battles. Indeed, the issue of federalism and the delegation of responsibility to different levels of government is a crucial political battleground—policymakers' answers to the questions of how we should be governed (in this case, by the states or by the federal government) and what should be the scope of the national government shape public policies.

It is important to understand American federalism, the complex relationships between different levels

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

The relationships between governments at the local, state, and national levels often confuse Americans. Neighborhood schools are run by locally elected school boards but also receive state and national funds, and with those funds come state and national rules and regulations. Local airports, sewage systems, pollution control systems, and police departments also receive a mix of local, state, and national funds, so they operate under a complex web of rules and regulations imposed by each level of government.

Sometimes this complex system is almost impossible to understand, especially given the size of the country and the large number of governmental units within it. Even the national government has difficulty keeping track of more than \$350 billion in federal aid distributed each year to states and cities.¹ In 1972, when the U.S. Treasury Department first sent revenue-sharing checks to 50 states and 38,000 local governments, some 5,000 checks were returned, marked “addressee unknown,” by the Postal Service. If the Postal Service has trouble keeping up with all the governments in America, it’s no wonder citizens do, too.

Defining Federalism

Federalism is a rather unusual system for governing, with particular consequences for those who live within it. This section explains the federal system and how it affects Americans living in such a system.

What Is Federalism?

federalism

A way of organizing a nation so that two or more levels of government have formal authority over the same land and people. It is a system of shared power between units of government.

Federalism is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people. It is a system of shared power between units of government. For example, the state of California has formal authority over its inhabitants, but the national government can also pass laws and establish policies that affect Californians. We are subject to the formal authority of both the state and the national governments.

Although federalism is not unique to the United States, it is not a common method of governing. Only 11 of the 190 or so nations of the world have federal systems, and these countries, which include Germany, Mexico, Argentina, Canada, Australia, India, and the United States, share little else (see “America in Perspective: Why Federalism?”).

unitary governments

A way of organizing a nation so that all power resides in the central government. Most governments today are unitary governments.

Most governments in the world today are not federal but unitary governments, in which all power resides in the central government. If the French Assembly, for instance, wants to redraw the boundaries of local governments or change their forms of government, it can (and has). However, if the U.S. Congress wants to abolish Alabama or Oregon, it cannot.

American states are unitary governments with respect to their local governments. Local governments get their authority from the states; they can be created or abolished by the states. States also have the power to make rules for their own local governments. They can tell them what their speed limits will be, the way in which they should be organized, how they can tax people, what they can spend money on, and so forth. States, however, receive their authority not from the national government, but *directly* from the Constitution.

There is a third form of governmental structure, a *confederation*. The United States began as such, under the Articles of Confederation. In a confederation, the national government is weak and most or all the power is in the hands of its components—for example, the individual states. Today, confederations are rare except in international organizations such as the United Nations (see Chapter 20). Table 3.1 provides a summary of the authority relations in the three systems of government.

intergovernmental relations

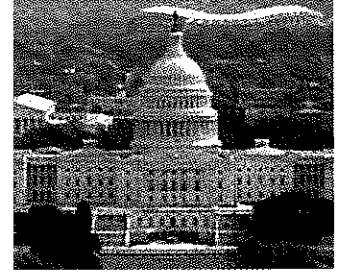
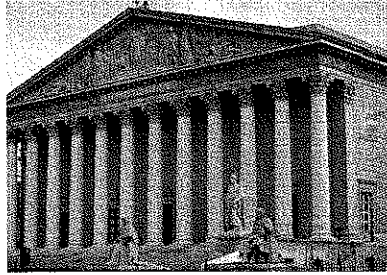
The workings of the federal system—the entire set of interactions among national, state, and local governments.

[The workings of the federal system are sometimes called **intergovernmental relations**. This term refers to the entire set of interactions among national, state, and local governments.]



Table 3.1 Authority Relations in Three Systems of Government

	UNITARY	CONFEDERATE	FEDERAL
Central government	<ul style="list-style-type: none"> holds primary authority regulates activities of states 	<ul style="list-style-type: none"> limited powers to coordinate state activities 	<ul style="list-style-type: none"> shares power with states
State government	<ul style="list-style-type: none"> little or no powers duties regulated by central government 	<ul style="list-style-type: none"> sovereign allocate some duties to central government 	<ul style="list-style-type: none"> shares power with central government
Citizens	<ul style="list-style-type: none"> vote for central government officials 	<ul style="list-style-type: none"> vote for state government officials 	<ul style="list-style-type: none"> vote for both state and central government officials



Why Is Federalism So Important?

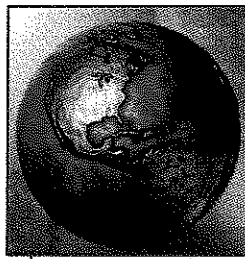
The federal system in America *decentralizes our politics*. Senators are elected as representatives of individual states, not of the entire nation. On election day in November, there are actually 51 presidential elections, one in each state and one in Washington, D.C. (see Chapter 10). It is even possible—as happened in 2000—for a candidate who receives the most popular votes in the country to lose the election because of the way the electoral votes are distributed by state.

The federal system decentralizes our politics in more fundamental ways than our electoral system. With more layers of government, more opportunities exist for political participation. With more people wielding power, there are more points of access in government and more opportunities for interests to have their demands for public policies

don't get now.



National campaigns for the presidency actually take place in the states; candidates must talk about oil prices in Texas, Social Security benefits in Florida, and federal aid to cities in New York. Here, Republican Presidential candidate George W. Bush campaigns before the presidential election.



America in Perspective

Why Federalism?

Only 11 countries have federal systems. Trying to determine why these particular nations chose a federal system is an interesting but difficult task. All three North American nations have federal systems, but the trend does not continue in South America, where only two nations have federal systems. Countries large in size—such as Canada and Australia—or large in both size and population—such as India, the United States, Brazil, and Mexico—tend to have federal systems, which decentralize the administration of governmental services. Nevertheless, China and Indonesia—two large and heavily populated countries—have unitary governments, and tiny Malaysia and Switzerland have federal systems.

A nation's diversity may also play a role in the development of a federal system. Brazil, Canada, India, Malaysia, Switzerland, and the United States have large minority ethnic groups that often speak different languages and practice

NATION	POPULATION	AREA (THOUSAND) SQUARE MILES	DIVERSITY (ETHNIC, LINGUISTIC, AND RELIGIOUS)
Argentina	37,384,816	1,068	Low
Australia	19,357,594	2,968	Low
Austria	8,150,835	32	Low
Brazil	174,468,575	3,286	Medium
Canada	31,592,805	3,852	High
Germany	83,029,536	138	Low
India	1,029,991,145	1,269	High
Malaysia	22,229,040	127	High
Mexico	101,879,171	762	Low
Switzerland	7,283,274	16	Medium
United States	278,058,881	3,718	Medium

Source: Central Intelligence Agency, *The World Factbook*, 2001.

different religions. Many nations with unitary systems, however, ranging from Belgium to most African countries, are also replete with ethnic diversity.

Most federal systems are democracies, although most democracies are not federal systems. Authoritarian regimes generally do not wish to disperse power away from the central government. Both the

former Soviet Union and the former Yugoslavia, perhaps reflecting the extraordinary diversity of their populations, had federal systems—of a sort. In both countries, the central government, until recently, retained ultimate power. As democracy swept through these countries, their national governments dissolved and several smaller nations were formed.

satisfied. With more decisions made in the states, there are fewer sources of conflict at the national level.¹

As we will see, federalism also enhances judicial power. Dividing government power and responsibilities necessitates umpires to resolve disputes between the two levels of government. In the American system, judges serve as the umpires. Thus, when the national government places prohibitions or requirements on the states, inevitably issues arise for the courts to decide.

The federal system not only decentralizes our politics but also *decentralizes our policies*. The history of the federal system demonstrates the tension between the states and the national government about policy: who controls it and what it should be. In the past, people debated whether the states or the national government should regulate the railroads, pass child labor laws, or adopt minimum-wage legislation. Today, people debate whether the states or the national government should regulate abortions, enforce school desegregation, determine speed limits on highways, or tell 18-year-olds they cannot drink alcohol.³

Policies about equality, the economy, the environment, and other matters are subject to both the centralizing force of the national government and the dispersing force of the states. The overlapping powers of the two levels of government mean that most of our public policy debates are also debates about federalism.

States are responsible for most public policies dealing with social, family, and moral issues. The Constitution does not give the national government the power to pass laws that *directly* regulate drinking ages, marriage and divorce, or speed limits. These policy prerogatives belong to the states. They become national issues, however, when aggrieved or angry groups take their cases to Congress or the federal courts in an attempt to use the power of the national government to *influence* states or to get federal courts to find a state's policy unconstitutional. A good example of this process is the federal requirement that states raise their drinking age to 21 in order to receive highway funds (see "Making a Difference: Candy Lightner").

The American states have always been policy innovators.⁴ The states overflow with reforms, new ideas, and new policies. From clean-air legislation to welfare reform, the states constitute a national laboratory to develop and test public policies and share the results with other states and the national government. Almost every policy the national government has adopted had its beginnings in the states. One or more states pioneered child labor laws, minimum-wage legislation, unemployment compensation, antipollution legislation, civil rights protections, and the income tax. More recently, states have been active in reforming health care, education, and welfare—and the national government is paying close attention to their efforts.

Why does it matter?

The Constitution guarantees you many rights. Your state constitution also offers protections for your liberty. Look up your state constitution. Would you feel comfortable if your freedom were only protected by your state constitution?



Making a Difference

Candy Lightner

Candy Lightner was no politician. She was a California real estate broker and, more important, a mother suffering from a tragedy: Her 13-year-old daughter, Cari, was killed by a drunk driver. The agony associated with children's deaths caused by drunk drivers is real. When the drunk driver is a teenager, inexperienced at both drinking and driving, passions heat further. Ms. Lightner was not content to grieve the loss of her child. She decided to do something about it.

Her first step was to form Mothers Against Drunk Driving (MADD). This group was the seed from which sprouted hundreds of local MADD chapters, as well as offshoots like Students Against Drunk Driving (SADD). MADD had no trouble rousing sentiments against the carnage of deaths caused by drunk drivers. No politician wants to be accused of supporting drunks on the road who are

aiming two-ton vehicles at defenseless children. Lightner's lobbyists inundated state capitals to get the drinking age raised. Between 1976 and 1983, 19 states raised their drinking age, typically to age 21.

There were still 31 states that allowed people under 21 to drink, however. Ms. Lightner and her MADD supporters had to become political strategists. They realized that it was much easier to get a national law passed once than to lobby each of 50 state legislatures separately. Therefore, in 1983, at a press conference on the steps of the Capitol, Lightner and Secretary of Transportation Elizabeth Dole, Senator John Danforth (R-MO), Senator Richard Lugar (R-IN), and Senator Frank Lautenberg (D-NJ) announced their intention to support a nationally standard drinking age. Because they could not pass a bill directly setting the drinking age in the states, however, they proposed using federal

highway funds as an incentive for the states to pass their bills.

The legislation stemming from the Lightner-Dole-Danforth-Lautenberg-Lugar press conference was an amendment to the Surface Transportation Act of 1982. The federal government could not legislate drinking ages, so it relied on a carrot-and-stick strategy: Congress would withhold 10 percent of all federal highway aid from states that did not raise their legal drinking age to 21 by 1988. The legislation sailed through Congress (the Senate passed it by a vote of 81 to 16, presumably few Senators wanted their votes construed as tolerating teenage drunken driving). President Reagan—a staunch opponent of federal regulations—signed the legislation in October 1984. By the end of 1988, every state had a legal drinking age of 21. Candy Lightner had made a difference.



How You Can Make A Difference

Drinking Age Laws

Do you agree with Candy Lightner's attempts to use the federal government to force states to raise their drinking ages to 21? Although virtually no one would argue against Ms. Lightner's goal of reducing drunk driving, many college-age men and women disagree with the methods advocated by MADD and SADD. Have you ever asked "If I can vote, drive, die for my country and otherwise be considered a legal adult at 18, then what right does the federal government have to restrict my right to drink alcohol until I'm 21?"

If you've pondered this situation, then perhaps you can make a difference

in finding a new solution to drunk driving. RALLY (Realistic Alcohol Laws for Legal Youth), a nationwide student-run organization founded in 1995, believes that the first step remains lowering the drinking age to 18. At the same time, college-age students should become active in promoting alcohol awareness programs in their dorms, schools, cities, and states. Such programs coupled with an emphasis on strong individual responsibility can have a strong impact on reducing alcohol abuse among 18- to 21-year-olds without relying upon discriminatory laws. If you agree with RALLY, then you should start your own chapter on your college campus. Visit their web site at www.rallyusa.org and get

advice and strategy on how to make a direct impact on your college and state.

Finally, however, perhaps you endorse Ms. Lightner's and the federal government's approach to this serious problem. SADD (www.sadd.org) strongly believes that these laws have saved thousands of lives and averted millions of dollars in property damage. You can also become active in keeping the drinking age at 21 by forming SADD chapters on your own campus or joining existing chapters. SADD and other similar organizations are strongly opposed to RALLY's efforts.

Federalism is an important key to unlocking the secrets of the American political system. Which president is elected, which policy innovations are developed, at what age young men and women can legally drink, and many other issues are profoundly affected by the workings of the federal system.

The Constitutional Basis of Federalism

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

The Division of Power

The Constitution's writers carefully defined the powers of state and national governments (see Table 3.2). Although they favored a stronger national government, the framers still made states vital cogs in the machinery of government. The Constitution guaranteed states equal representation in the Senate (and even made this provision unamendable in Article V). It also made states responsible for both state and national elections—an important power. Further, the Constitution virtually guaranteed the continuation of each state; Congress is forbidden to create new states by chopping up old ones, unless a state's legislature approves (an unlikely event).

Table 3.2 The Constitution's Distribution of Powers**SOME POWERS GRANTED BY THE CONSTITUTION****To the National Government**

Coin money
 Conduct foreign relations
 Regulate commerce with foreign nations and among states
 Provide an army and a navy
 Declare war
 Establish courts inferior to the Supreme Court
 Establish post offices
 Make laws necessary and proper to carry out the foregoing powers

To Both the National and State Governments

Tax
 Borrow money
 Establish courts
 Make and enforce laws
 Charter banks and corporations
 Spend money for the general welfare
 Take private property for public purposes, with just compensation

To the State Governments

Establish local governments
 Regulate commerce within a state
 Conduct elections
 Ratify amendments to the federal Constitution
 Take measures for public health, safety, and morals
 Exert powers the Constitution does not delegate to the national government or prohibit the states from using

SOME POWERS DENIED BY THE CONSTITUTION**To the National Government**

Tax articles exported from one state to another
 Violate the Bill of Rights
 Change state boundaries

To Both the National and State Governments

Grant titles of nobility
 Permit slavery (Thirteenth Amendment)
 Deny citizens the right to vote because of race, color, or previous servitude (Fifteenth Amendment)
 Deny citizens the right to vote because of gender (Nineteenth Amendment)

To the State Governments

Tax imports or exports
 Coin money
 Enter into treaties
 Impair obligations or contracts
 Abridge the privileges or immunities of citizens or deny due process and equal protection of the law (Fourteenth Amendment)

The Constitution also created obligations of the national government toward the states; it is to protect states against violence and invasion, for example. At times, though, the states find the national government deficient in meeting its obligations, as we will discuss later in this chapter.

In Article VI of the Constitution, the framers dealt with what remains a touchy question: In a dispute between the states and the national government, which prevails? The answer that the delegates provided, often referred to as the **supremacy clause**, seems clear enough. They stated that the following three items were the supreme law of the land:

1. the Constitution
2. laws of the national government (when consistent with the Constitution)
3. treaties (which can be made only by the national government)

Judges in every state were specifically told to obey the U.S. Constitution, even if their state constitutions or state laws directly contradicted it. Today, all state executives, legislators, and judges are bound by oath to support the Constitution.

The national government, however, can operate only within its appropriate sphere. It cannot usurp the states' powers. But what are the boundaries of the national government's powers? According to some commentators, the Tenth Amendment provides part of the answer. It states that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." To those advocating states' rights, the amendment clearly

supremacy clause

Article VI of the Constitution, which makes the Constitution, national laws, and treaties supreme over state laws when the national government is acting within its constitutional limits.

Tenth Amendment

The constitutional amendment stating 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."

means that the national government has only those powers specifically assigned to it by the Constitution. The states or people have supreme power over any activity not mentioned there. Despite this interpretation, in 1941 the Supreme Court (in *United States v. Darby*) called the Tenth Amendment a constitutional truism, a mere assertion that the states have independent powers of their own—not a declaration that state powers are superior to those of the national government.

The Court seemed to backtrack on this ruling in favor of national government supremacy in a 1976 case, *National League of Cities v. Usery*, in which it held that extending national minimum-wage and maximum-hours standards to employees of state and local governments was an unconstitutional intrusion of the national government into the domain of the states. In 1985, however (in *Garcia v. San Antonio Metro*), the Court overturned the *National League of Cities* decision. The Court held, in essence, that it was up to Congress, not the courts, to decide which actions of the states should be regulated by the national government. Once again, the Court ruled that the Tenth Amendment did not give states power superior to that of the national government for activities not mentioned in the Constitution.

Occasionally, issues arise in which states challenge the authority of the national government. In the late 1980s, the governors of several states refused to allow their state National Guards to engage in training exercises in Central America. National Guards are state militias, but the Constitution provides that the president can nationalize them. In 1990, the Supreme Court reiterated the power of the national government by siding with the president. Similarly, South Dakota sued the federal government over its efforts to raise states' drinking-age laws and over its efforts to mandate a 55-mph speed limit on highways. The state lost both cases. (In 1995, however, Congress changed the law on speed limits, deciding to leave it up to the states.)

Federal courts can order states to obey the Constitution or federal laws and treaties. However, in deference to the states the *Eleventh Amendment* prohibits individual damage suits against state officials (such as a suit against a police officer for violating one's rights) and protects state governments from being sued against their consent by private parties in federal courts or in state courts, or before federal administrative agencies.⁵ In 2001, the Court voided the application of the Americans with Disabilities Act to the states, finding it a violation of the Eleventh Amendment (*Board of Trustees of University of Alabama, et al v. Garrett, et al*). Cases arising under the Fourteenth Amendment (usually cases regarding racial discrimination) are an exception.⁶ Suits may also be brought by the federal government against states in federal courts, and by individuals against state officials seeking to prohibit future illegal actions.

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

Establishing National Supremacy

Why is it that the federal government has gained power relative to the states? Four key events have largely settled the issue of how national and state powers are related: (1) the elaboration of the doctrine of implied powers, (2) the definition of the commerce clause, (3) the Civil War, and (4) the long struggle for racial equality.]

Implied Powers. As early as 1819, the issue of state versus national power came before the Supreme Court in the case of *McCulloch v. Maryland*. The new American government had moved quickly on many economic policies. In 1791, it created a national bank, a government agency empowered to print money, make loans, and engage in many other banking tasks. A darling of Alexander Hamilton and his allies, the bank was hated by those opposed to strengthening the national government's control of the economy. Those opposed—including Thomas Jefferson, farmers, and state



McCulloch v. Maryland

An 1819 Supreme Court decision that established the supremacy of the national government over state governments. In deciding this case, Chief Justice John Marshall and his colleagues held that Congress had certain implied powers in addition to the enumerated powers found in the Constitution.

legislatures—saw the bank as an instrument of the elite. The First Bank of the United States was allowed to expire, but then the Second Bank was created during the presidency of James Madison, fueling a great national debate.

Railing against the “Monster Bank,” the state of Maryland passed a law in 1818 taxing the national bank’s Baltimore branch \$15,000 a year. The Baltimore branch refused to pay, whereupon the state of Maryland sued the cashier, James McCulloch, for payment. When the state courts upheld Maryland’s law and its tax, the bank appealed to the U.S. Supreme Court. John Marshall was chief justice when two of the country’s most capable lawyers argued the case before the Court.

Daniel Webster, widely regarded as one of the greatest senators in U.S. history, argued for the national bank, and Luther Martin, a delegate to the Constitutional Convention, argued for Maryland. Martin maintained that the Constitution was very clear about the powers of Congress (as outlined in Article I). The power to create a national bank was not among them. Thus, Martin concluded, Congress had exceeded its powers, and Maryland had a right to tax the bank. On behalf of the bank, Webster argued for a broader interpretation of the powers of the national government. The Constitution was not meant to stifle congressional powers, he said, but rather to permit Congress to use all means “necessary and proper” to fulfill its responsibilities.

Marshall, never one to sidestep a big decision, wrote his ruling in favor of the bank before the arguments ended—some said before they even began. He and his colleagues set forth two great constitutional principles in their decision. The first was the *supremacy of the national government over the states*. Marshall wrote that “If any one proposition could command the universal assent of mankind, we might expect it to be this—that the government of the United States, though limited in its power, is supreme within its sphere of action.” As long as the national government behaved in accordance with the Constitution, said the Court, its policies took precedence over state policies. Accordingly, federal laws or regulations, such as many civil rights acts and rules regulating hazardous substances, water quality, and clean air standards, *preempt* state or local laws or regulations and thus preclude their enforcement.

The other key principle of *McCulloch* was that *the national government has certain implied powers that go beyond its enumerated powers*. The Court held that Congress was behaving consistently with the Constitution when it created the national bank. It was true, Marshall admitted, that Congress had certain **enumerated powers**, powers specifically listed in Article I, Section 8 of the Constitution. Congress could coin money, regulate its value, impose taxes, and so forth. Creating a bank was not enumerated. But the Constitution added that Congress has the power to “make all laws necessary and proper for carrying into execution the foregoing powers.” That, said Marshall, gave Congress certain **implied powers**. It could make economic policy consistent with the Constitution in a number of ways.

Today, the notion of implied powers has become like a rubber band that can be stretched without breaking; the “necessary and proper” clause of the Constitution is often referred to as the **elastic clause**. Hundreds of congressional policies involve powers not specifically mentioned in the Constitution, especially in the domain of economic policy. Federal policies to regulate food and drugs, build interstate highways, protect consumers, clean up dirty air and water, and do many other things are all justified as implied powers of Congress.

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

✱ enumerated powers

Powers of the federal government that are specifically addressed in the Constitution; for Congress, these powers are listed in Article I, Section 8, and include the power to coin money, regulate its value, and impose taxes.

✱ implied powers

Powers of the federal government that go beyond those enumerated in the Constitution. The Constitution states that Congress has the power to “make all laws necessary and proper for carrying into execution” the powers enumerated in Article I.

✱ elastic clause

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

✱ *Gibbons v. Ogden*

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

The Supreme Court's decisions establishing the national government's implied powers (*McCulloch v. Maryland*) and a broad definition of interstate commerce (*Gibbons v. Ogden*) created a source of national power as long as Congress employed its power for economic development through subsidies and services for business interests. In the latter part of the nineteenth century, however, Congress sought to use these same powers to regulate the economy rather than to promote it. The Court then interpreted the interstate commerce power as giving Congress no constitutional right to regulate local commercial activities such as establishing safe working conditions for laborers or protecting children from working long hours.

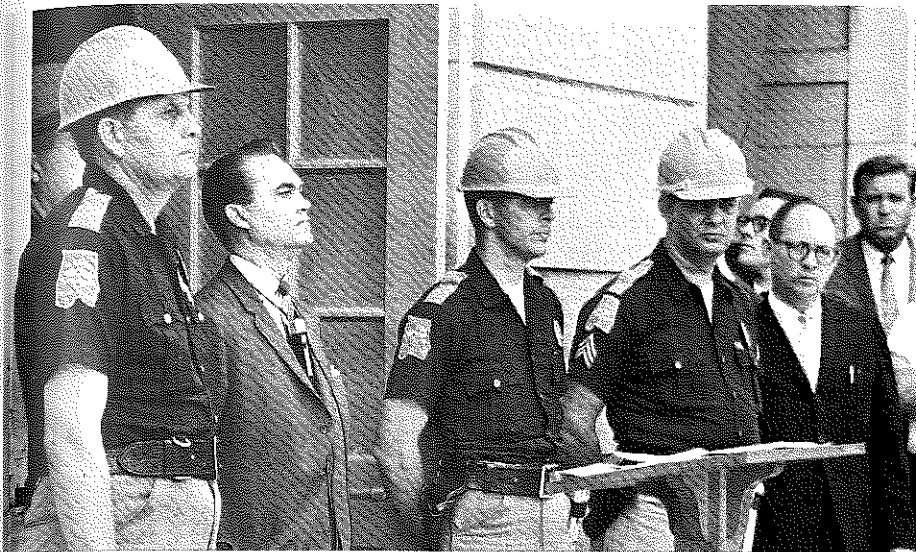
When the Great Depression hit, new demands were placed on the national government. Beginning in 1933, the New Deal of President Franklin D. Roosevelt produced an avalanche of regulatory and social welfare legislation, much of which was voided by the Supreme Court (see Chapter 16). But in 1937 the Court reversed itself and ceased trying to restrict the efforts of the national government to regulate commerce at any level. In 1964, Congress prohibited racial discrimination in places of public accommodation such as restaurants, hotels, and movie theaters on the basis of its power to regulate interstate commerce. (Thus, regulating commerce is one of the national government's most important sources of power.)

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

The Supreme Court announced another limitation on the commerce power in 1996. In *Seminole Tribe of Florida v. Florida*, the Court dealt with the case of a right Congress had given Indian tribes to sue state officials to force good faith negotiations (in this case over a license to run a casino). Contrary to previous decisions, the Court declared the Eleventh Amendment prohibits Congress from using the interstate commerce power to revoke states' immunity from such lawsuits by private parties. The principal effect of the decision will be to limit suits seeking to enforce rights granted by Congress within its authority under the Commerce Clause (which encompasses much of modern federal regulation).

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

The Civil War. What *McCulloch* pronounced constitutionally, the Civil War (1861–1865) settled militarily. The Civil War is often thought of mainly as a struggle over slavery; but it was also, and perhaps more important, a struggle between states and the national government. In fact, Abraham Lincoln announced in his 1861 inaugural address that he would willingly support a constitutional amendment guaranteeing slavery if it would save the Union. Instead, it took a bloody civil war for the national government to assert its power over the Southern states' claim of sovereignty.



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

The Struggle for Racial Equality. A century later, conflict between the states and the national government again erupted over states' rights and national power. In 1954, in *Brown v. Board of Education*, the Supreme Court held that school segregation was unconstitutional. Southern politicians responded with what they called "massive resistance" to the decision. When a federal judge ordered the admission of two African-American students to the University of Alabama in 1963, Governor George Wallace literally blocked the school entrance to prevent federal marshals and the students from entering the admissions office. Despite Wallace's efforts, the students were admitted, and throughout the 1960s the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs. In 1979 (after African Americans began voting in large numbers in Alabama), George Wallace himself said of his stand in the schoolhouse door: "I was wrong. Those days are over and they ought to be over." The conflict between states and the national government over equality issues was decided in favor of the national government. National standards of racial equality prevailed.

The national government is supreme within its sphere, but the sphere for the states remains a large and important one.

States' Obligations to Each Other

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

Full Faith and Credit. Suppose that, like millions of other Americans, a person divorces and then remarries. For each marriage this person purchases a marriage license, which registers the marriage with a state. On the honeymoon for the second marriage, the person travels across the country. Is this person married in each state passed through, even though the marriage license is with only one state? Can the person be arrested for bigamy because the divorce occurred in only one state?

The answer, of course, is that a marriage license and a divorce, like a driver's license and a birth certificate, are valid in all states. Article IV of the Constitution requires that states give **full faith and credit** to the public acts, records, and civil judicial proceedings of every other state. This reciprocity is essential to the functioning of society and the economy. Without the full faith and credit clause, people could avoid their obligations, say, to make payments on automobile loans simply by crossing a state



Federalism over Time

full faith and credit clause

A clause in Article IV, Section 1, of the Constitution requiring each state to recognize the official documents and civil judgments rendered by the courts of other states.

Because of the full faith and credit clause of the Constitution, these babies' birth certificates are valid in every state. They are also entitled to most of the benefits—and subject to most of the obligations—of citizenship in any state they visit, thanks to the privileges and immunities clause.



boundary. In addition, because contracts between business firms can be enforced across state boundaries, firms incorporated in one state can do business in another.]

Usually, the full faith and credit provision in the Constitution poses little controversy. An exception occurred in 1996 when courts in Hawaii recognized same-gender marriages. What would happen in other states that did not recognize Hawaiian marriages between same-gender partners? Congress answered with the Defense of Marriage Act, which permits states to disregard gay marriages, even if they are legal elsewhere in the United States. Hawaii has since overturned recognition of gay marriage, but in 2000 Vermont accorded legal status to gay civil unions. It remains to be seen whether Congress has the power to make exceptions to the full faith and credit clause.

Extradition. What about criminal penalties? Almost all criminal law is state law. If someone robs a store, steals a car, or commits a murder, the chances are that this person is breaking a state, not a federal, law. The Constitution says that states are required to return a person charged with a crime in another state to that state for trial or imprisonment, a practice called extradition. Although there is no way to force states to comply, they usually are happy to do so, not wishing to harbor criminals and hoping that other states will reciprocate. Thus, a lawbreaker is prevented from avoiding punishment by simply escaping to another state.

extradition

A legal process whereby an alleged criminal offender is surrendered by the officials of one state to officials of the state in which the crime is alleged to have been committed.

privileges and immunities

A clause in Article IV, Section 2, of the Constitution according citizens of each state most of the privileges of citizens of other states.

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

There are many exceptions to the privileges and immunities clause, however. Many of you attend public universities. If you reside in the same state as your university, you generally pay a tuition substantially lower than that paid by your fellow students from out of state. Similarly, only residents of a state can vote in state elections. States often attempt to pass the burdens of financing the state government to those outside the state, such as through taxes on minerals mined in the state but consumed elsewhere or special taxes on hotel rooms rented by tourists.

The Supreme Court has never clarified just which privileges a state must make available to all Americans and which privileges can be limited to its own citizens. In general, the more fundamental the rights—such as owning property or receiving police protection—the less likely it is that a state can discriminate against citizens of another state. In 1999, the Supreme Court held in *Saenz v. Roe* that California could not require a new resident to wait a year before becoming eligible for welfare benefits that exceeded those available in the state from which the new resident came.]

Intergovernmental Relations Today

The past two centuries have seen dramatic changes in American federalism. These changes are apparent in two main areas. First, there has been a gradual shift from a dual federalism to a cooperative federalism, which emphasizes power sharing between two levels of government.⁸ The second major change has been the rise of fiscal federalism, the elaborate assortment of federal grants-in-aid to the states and localities.

From Dual to Cooperative Federalism

One way to understand the changes in American federalism over the past 200 years is to contrast two types of federalism. The first type is called dual federalism, in which both the national government and the states remain supreme within their own spheres. The states are responsible for some policies, the national government for others. For example, the national government has exclusive control over foreign and military policy, the postal system, and monetary policy. States are exclusively responsible for schools, law enforcement, and road building. In dual federalism, the powers and policy assignments of the layers of government are distinct, as in a layer cake, and proponents of dual federalism believe that the powers of the national government should be interpreted narrowly.

Most politicians and political scientists today argue that dual federalism is outdated. They are more likely to describe the current American federal system as one of cooperative federalism, where powers and policy assignments are shared between states and the national government.⁹ Instead of a layer cake, they see American federalism as more like a marble cake, with mingled responsibilities and blurred distinctions between the levels of government.

Before the national government began to assert its dominance over state governments, the American federal system leaned toward dual federalism. The American system, however, was never neatly separated into purely state and purely national responsibilities. For example, education was usually thought of as being mainly a state and local responsibility, yet even under the Articles of Confederation, Congress set aside land in the Northwest Territory to be used for schools. During the Civil War, the

* dual federalism (layer cake)

A system of government in which both the states and the national government remain supreme within their own spheres, each responsible for some policies.

There is no mix either state or national power

* cooperative federalism (marble cake)

A system of government in which powers and policy assignments are shared between states and the national government. They may also share costs, administration, and even blame for programs that work poorly.



Cooperative federalism began during the Great Depression of the 1930s. In this photo, Works Progress Administration workers, paid by the federal government, build a local road in New York. In subsequent decades, the entire interstate highway system was constructed with a combination of national and state dollars.

national government adopted a policy to create land grant colleges. Important American universities such as Wisconsin, Texas A&M, Illinois, Ohio State, North Carolina State, and Iowa State owe their origins to this national policy.

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

Today, the federal government's presence is felt in every schoolhouse. Almost all school districts receive some federal assistance. To do so, they must comply with federal rules and regulations. They must, for example, maintain desegregated and nondiscriminatory programs. In addition, as we will see in Chapter 4, federal courts have ordered local schools to implement elaborate desegregation plans and have placed constraints on school prayers.

Highways are another example of the movement toward cooperative federalism. In an earlier era, states and cities were largely responsible for building roads, although the Constitution does authorize Congress to construct "post roads." In 1956, Congress passed an act creating an interstate highway system. Hundreds of red, white, and blue signs were planted at the beginnings of interstate construction projects. The signs announced that the interstate highway program was a joint federal-state project and specified the cost and sharing of funds. In this and many other areas, the federal system has promoted a partnership between the national and state governments.

Cooperative federalism today rests on several standard operating procedures. For hundreds of programs, cooperative federalism involves:

Federal
regulation

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

The cooperation between the national government and state governments is such an established feature of American federalism that it persists even when the two levels of government are in conflict on certain matters. For example, in the 1950s and 1960s, Southern states cooperated well with Washington in building the interstate highway system, while they clashed with the national government over racial integration.

In his first inaugural address, Ronald Reagan argued that the states had primary responsibility for governing in most policy areas, and he promised to "restore the balance between levels of government." Few officials at either the state or the national level agreed with Reagan about ending the national government's role in domestic programs. However, Reagan's opposition to the national government's spending on domestic policies and the huge federal deficits of the 1980s forced a reduction in federal funds for state and local governments, and shifted some responsibility for policy back to the states. Despite Reagan's move toward a more dual federalism, most Americans embrace a pragmatic view of governmental

responsibilities, seeing the national government as more capable of—and thus responsible for—handling some issues, while they view state and local governments as better at managing others (see Table 3.3).

The Republican majorities that captured Congress in 1995 for the first time in four decades have been equally pragmatic in their approach to federalism. The Republicans often referred to a “revolution” in public policy, one aimed primarily at restricting the scope of the national government. They passed bills to give the states more authority over social and environmental programs that have long been in the realm of the national government. An overhaul of welfare policy was designed to allow states to devise innovative ways to lift people out of poverty, while reducing federal spending and cutting some benefits for the poor. Another bill, aimed at making it more difficult to enact new environmental protection legislation, prevented the federal government from imposing requirements on states without providing money to pay for them. Congress also repealed national speed limits and made it more difficult for prisoners to challenge the constitutionality of their sentences in federal court or to appeal to federal officials for relief from poor prison conditions.

At the same time, Republicans found turning to the federal government the most effective way to achieve many of their policy objectives. In an effort to reduce government interference in the marketplace and protect businesses from a patchwork of state requirements more stringent than federal ones, Republicans designated the federal government the sole regulator of products as diverse as mutual funds and agricultural chemicals. They also nullified state laws that had restricted telecommunications competition and set national standards requiring insurers to cover at least 48 hours of hospitalization for mothers and newborns.

To control immigration, Congress required state and local officials to meet new federal antifraud specifications for birth certificates and driver’s licenses. And to combat crime, the legislature extended federal criminal penalties to cover crimes such as stalking, domestic terrorist activities, and rape during carjacking. Congress also threatened to cut off federal grants to states that failed to keep criminals behind bars for about 85 percent of their sentences or to increase arrests of violent criminals.

They want states to control those things which are domestic while the national watches over everything else.



Table 3.3 A Pragmatic Federalism

The public has a pragmatic view of governmental responsibilities, seeing the national government as more capable of—and thus responsible for—handling some issues, while they view state and local government as better at managing others such as crime, welfare, and education. The founders did not give much thought to civil rights, environmental protection, or the health care system. Today, Americans frequently turn to Washington for help in dealing with these and other problems, including maintaining a strong economy. These are the results of a 1995 public opinion poll.

Which level of government should have more responsibility for . . .

	FEDERAL GOVERNMENT	STATE GOVERNMENTS
Protecting civil rights	67%	26%
Strengthening the economy	64	24
Protecting the environment	50	38
Improving the health care system	48	41
Providing assistance to the poor	40	44
Reforming welfare	42	46
Providing job training	31	55
Reducing crime	24	68
Improving public education	22	72

Source: NBC News/Wall Street Journal Polls, December 1994 and January 1995.

In addition, the new welfare bill imposed penalties on states that fail to meet new federal targets for placing welfare recipients in jobs. The states must also meet other requirements, such as creating registries to track child-support orders, or face a considerable loss of federal funds. Similarly, a clean drinking water bill required states to study local drinking water sources, map certain watersheds, and publish annual reports on drinking water violations.

Fiscal Federalism

fiscal federalism

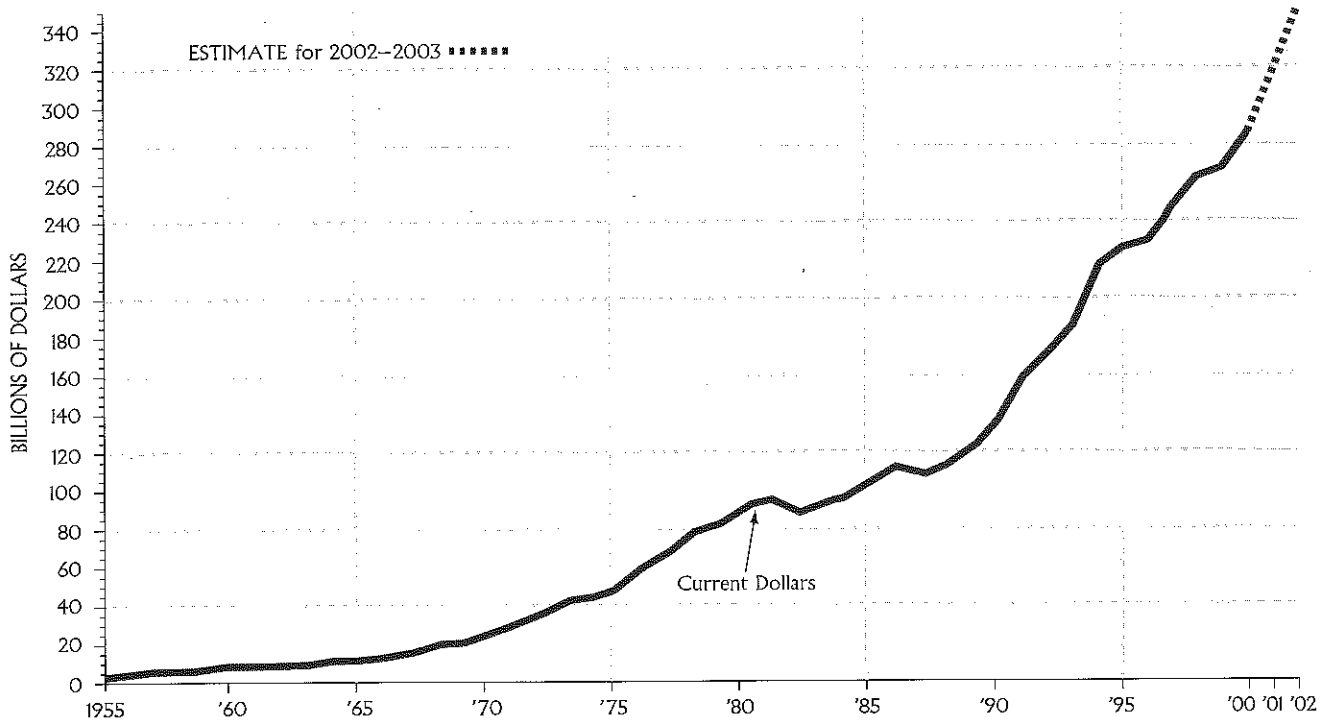
The pattern of spending, taxing, and providing grants in the federal system; it is the cornerstone of the national government's relations with state and local governments.

The cornerstone of the national government's relations with state and local governments is **fiscal federalism**: the pattern of spending, taxing, and providing grants in the federal system. Subnational governments can influence the national government through local elections for national officials, but the national government has a powerful source of influence over the states—money. Grants-in-aid, federal funds appropriated by Congress for distribution to state and local governments, are the main instrument the national government uses for both aiding and influencing states and localities.

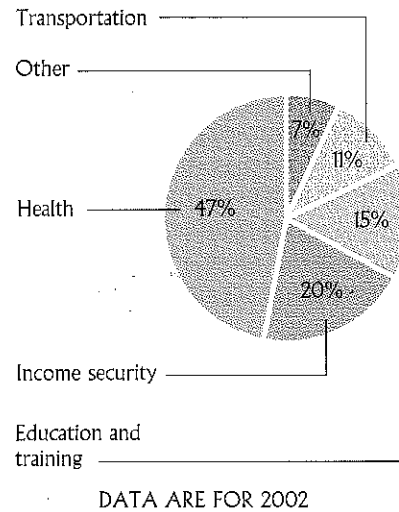
Despite the policy of the Reagan administration to reduce aid to states and cities, federal aid (including loan subsidies) still amounted to about \$350 billion in 2002. Figure 3.1 illustrates the growth in the amount of money spent on federal grants. Federal aid, covering a wide range of policy areas (see Figure 3.2), accounts for about

Figure 3.1 Fiscal Federalism: Federal Grants to State and Local Governments

Federal grants to state and local governments have grown rapidly in recent decades and now amount to more than \$350 billion per year.



Source: Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002: Historical Tables* (Washington, D.C.: U.S. Government Printing Office, 2001), Table 12.2.

Figure 3.2 Functions of Federal Grants

Health care receives the largest percentage of federal grants, followed by income security, education and training, and transportation.

Source: Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002: Historical Tables* (Washington, D.C.: U.S. Government Printing Office, 2001), Table 12.2.



The federal government often uses grants-in-aid as a carrot and stick for the states. For example, aid has been withheld from some cities until police departments have been racially and sexually integrated.

one-fourth of all the funds spent by state and local governments and for about 17 percent of all federal government expenditures.¹⁰

The Grant System: Distributing the Federal Pie. The national government regularly publishes the *Catalogue of Federal Domestic Assistance*, a massive volume listing the federal aid programs available to states, cities, and other local governments. The book lists federal programs that support energy assistance for the elderly poor, housing allowances for the poor, drug abuse services, urban rat control efforts, community arts programs, state disaster preparedness programs, and many more.

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

categorical grants

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

Why does it matter?

The federal system of grants-in-aid takes revenues obtained from federal taxes and sends it to state and local governments. Would you prefer to pay more in state and local taxes—such as property taxes, sales taxes, and income taxes—and perhaps less in federal income taxes to provide public services for your own state and city?

project grants

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

formula grants

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

block grants

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

Because direct orders from the federal government to the states are rare (an exception is the Equal Opportunity Act of 1982, barring job discrimination by state and local governments), most federal regulation is accomplished in a more indirect manner. Instead of issuing edicts that tell citizens or states what they can and cannot do, Congress attaches conditions to the grants that states receive. The federal government has been especially active in appending restrictions to grants since the 1970s.

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

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

Cross-cutting requirements occur when a condition on one federal grant is extended to all activities supported by federal funds, regardless of their source. The grandfather of these requirements is Title VI of the 1964 Civil Rights Act (see Chapter 5), which bars discrimination in the use of federal funds because of race, color, national origin, gender, or physical disability. For example, if a university discriminates illegally in one program—such as athletics—it may lose the federal aid it receives for all its programs. There are also cross-cutting requirements dealing with environmental protection, historic preservation, contract wage rates, access to government information, the care of experimental animals, the treatment of human subjects in research projects, and a host of other policies.

There are two types of categorical grants. The most common type is a **project grant**. A project grant is awarded on the basis of competitive applications. National Science Foundation grants obtained by university professors are examples of project grants.

As their name implies, **formula grants** are distributed according to a formula. These formulas vary from grant to grant and may be computed on the basis of population, per capita income, percentage of rural population, or some other factor. A state or local government does not apply for a formula grant; a grant's formula determines how much money the particular government will receive. As a result, Congress is the site of vigorous political battles over the formulas themselves. The most common formula grants are those for Medicaid, child nutrition programs, sewage treatment plant construction, public housing, community development programs, and training and employment programs.

Applications for categorical grants typically arrive in Washington in boxes, not envelopes. Complaints about the cumbersome paperwork and the many strings attached to categorical grants led to the adoption of the other major type of federal aid, **block grants**. These grants are given more or less automatically to states or communities, which then have discretion within broad areas in deciding how to spend the money. First adopted in 1966, block grants are used to support programs in areas like community development and social services. The percentage of federal aid to state and local governments in the form of block grants began increasing in 1995 as the new Republican majority in Congress passed more federal aid in the form of block grants, including grants for welfare programs.

The Scramble for Federal Dollars. With more than \$350 billion in federal grants at stake, most states and many cities have established full-time staffs in Washington.¹¹ Their task is to keep track of what money is available and to help their state or city get some of it. There are many Washington organizations of governments—the U.S.

Conference of Mayors and the National League of Cities, for example—that act like other interest groups in lobbying Congress. Senators and representatives regularly go to the voters with stories of their influence in securing federal funds for their constituencies. They need continued support at the polls, they say, so that they will rise in seniority and get key posts to help “bring home the bacon.”

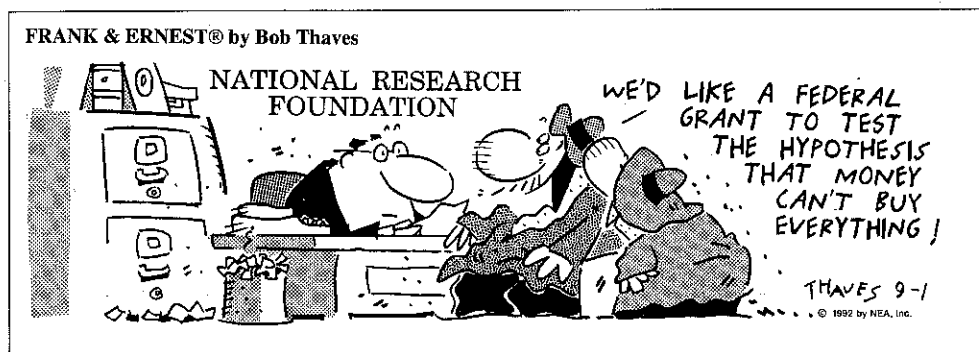
A general rule of federalism is that the more money there is at stake, the more fervently people will argue about its distribution. There are some variations in the amount of money that states give to, and get back from, the national government. On the whole, however, federal grant distribution follows the principle of *universalism*: something for everybody. The vigilance of senators and representatives keeps federal aid reasonably well spread among the states. Indeed, federal aid to states and cities is more equitably distributed than most other things in America, including income; access to education, and taxes.

This equality makes good politics, but it also may undermine public policy. Chapter 1 of the 1965 Elementary and Secondary Education Act is the federal government's principal endeavor to assist public schools. The primary intent of Chapter 1 was to give extra help to poor children. Yet the funds are allocated to 95 percent of all the school districts in the country. President Clinton's proposal to concentrate Chapter 1 funds on the poorest students failed when it ran into predictable opposition in Congress.

The Mandate Blues. States and localities are usually pleased to receive aid from the national government, but there are times when they would just as soon not have it. For example, say Congress decides to extend a program administered by the states and funded, in part, by the national government. It passes a law requiring the states to extend the program if they want to keep receiving aid, which most states do. Requirements that direct states or local governments to comply with federal rules under threat of penalties or as a condition of receipt of a federal grant are called *mandates*. Congress usually (though not always) appropriates some funds to help pay for the new policy, but either way, the states suddenly have to budget more funds for the project just to receive federal grant money.

Medicaid, which provides health care for poor people, is a prime example of a federal grant program that puts states in a difficult situation. Administered by the states, Medicaid receives wide support from both political parties. The national government pays between 50 and 83 percent of the bill, and the states pick up the rest. Since 1984, Congress has moved aggressively to expand Medicaid to specific populations, requiring the states to extend coverage to certain children, pregnant women, and elderly poor. Congress also increased its funding for the program a whopping 146 percent in the 1980s. Increased federal spending for Medicaid meant increased spending for the states as well. In 1989, troubled by the drain on their states' budgets, 49 of the 50 governors called for a two-year moratorium on mandated expansions of Medicaid.

A related problem arises when Congress passes a law creating financial obligations for the states but provides no funds to meet these obligations. For example, in 1990 Congress passed the Americans with Disabilities Act. States were required to make



facilities, such as state colleges and universities, accessible to individuals with disabilities but were allocated no funds to implement such a policy. Similarly, the Clean Air Act of 1970 established national air quality standards but requires states to administer them and to appropriate funds for their implementation.

In 1995, the newly elected Republican majorities in Congress made limiting unfunded and underfunded mandates on state and local governments a high priority. Congress passed, and President Clinton signed, a law that requires both chambers to take a separate, majority vote in order to pass any bill that would impose unfunded mandates of more than \$50 million on state and local governments. The law also requires the Congressional Budget Office to estimate the costs of all bills that impose such mandates. All antidiscrimination legislation and most legislation requiring state and local governments to take various actions in exchange for continued federal funding (such as grants for transportation) are exempt from this procedure.

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

A combination of federal regulations and inadequate resources may also put the states in a bind. The national government requires that a local housing authority build or acquire a new low-income housing facility for each one it demolishes. But for years Congress has provided little money for the construction of public housing. As a result, a provision intended to help the poor by ensuring a stable supply of housing actually hurts them because it discourages local governments from demolishing unsafe and inadequate housing.

The federal government may also unintentionally create financial obligations for the states. In 1994, California, New York, Texas, Florida, and other states sued the federal government for reimbursement for the cost of health care, education, prisons, and other public services that the states provide to illegal residents. The states charged that the federal government's failure to control its borders was the source of huge new demands on their treasuries and that Washington, not the states, should pay for the problem. Although the states did not win their cases, their point is a valid one.



Understanding Federalism

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

Why does it matter?

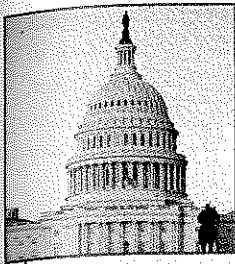
One of the great debates in the United States focuses on the role of the federal government. Does the fact that state and local governments are physically closer to the people they serve make them more responsive to the public? Do you think that the government officials in your state and city are more competent than federal government officials (such as those in the military or the Social Security Administration) in serving citizens?

Federalism and Democracy

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

Advantages for Democracy. The more levels of government, the more opportunities there are for participation in politics. State governments provide thousands of elected offices for which citizens may vote and/or run.

Additional levels of government also contribute to democracy by increasing access to government. Because different citizens and interest groups will have better access to either state-level governments or the national government, the two levels increase the opportunities for government to be responsive to demands for policies. For example, in



You Are the Policymaker

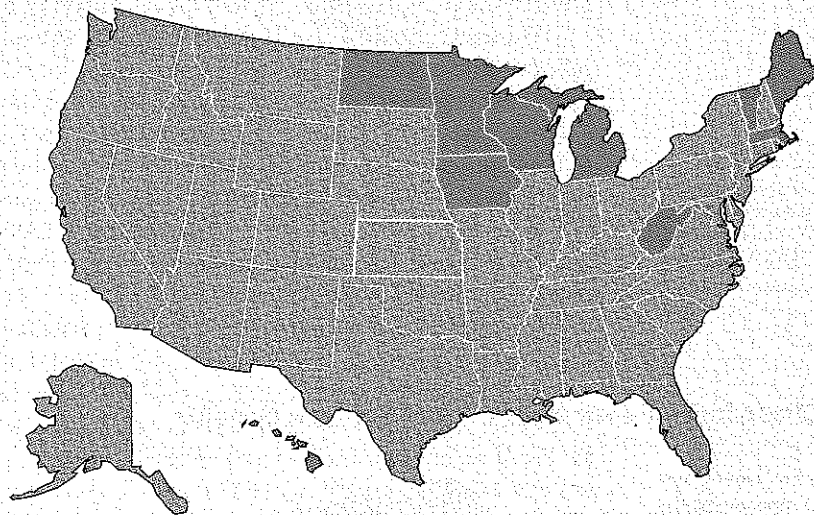
Should *Whether* You Live Depend on *Where* You Live?

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

A conviction for first-degree murder in 38 states may well mean the death penalty for the convicted murderer. In 12 other states, first-degree murderers only spend time behind bars. In Arizona, the minimum age for the death penalty is 14; it is 16 in 11 other states. Eight states have no minimum age at all.

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

- States with no death penalty
- States with death penalty



the 1950s and 1960s when advocates of civil rights found themselves stymied in Southern states, they turned to the national level for help in achieving racial equality. Business interests, on the other hand, have traditionally found state governments to be more responsive to their demands. Organized labor is not well established in some states, but it can usually depend on some sympathetic officials at the national level who will champion its proposals.

Different economic interests are concentrated in different states: oil in Texas, tobacco farming in Virginia, and copper mining in Montana, for example. The federal system allows an interest concentrated in a state to exercise substantial influence in the election of that state's officials, both local and national. In turn, these officials promote policies advantageous to the interest in both Washington and the state capital. This is a pluralism of interests that James Madison, among others, valued within a large republic.

State and local bases have another advantage. Even if a party loses at the national level, it can rebuild in its areas of strength and develop leaders under its banner at the state and local levels. As a result, losing an election becomes more acceptable, and the peaceful transfer of power is more probable. This was especially important in the early years of the nation before our political norms had become firmly established.

Because the federal system assigns states important responsibilities for public policies, it is possible for the diversity of opinion within the country to be reflected in

different public policies among the states. If the citizens of Texas wish to have a death penalty, for example, they can vote for politicians who support it, whereas those in Wisconsin can vote to abolish the death penalty altogether (see "You Are the Policymaker: Should *Whether You Live Depend on Where You Live?*"). Similarly, there are large differences in the amounts that states provide for the poor, ranging from \$923 per month for a family of three in Alaska to \$170 per month in Mississippi (see Figure 3.3).

By handling most disputes over policy at the state and local level, federalism also reduces decision making and conflict at the national level. If every issue had to be resolved in Washington, the national government would be overwhelmed.

Disadvantages for Democracy. Despite its advantages for democracy, relying on states to supply public services has some drawbacks. States differ in the resources they can devote to services like public education. Thus, the quality of education a child receives is heavily dependent on the state in which the child's parents happen to reside. In 1998, New Jersey state and local governments spent an average of \$10,420 for each child in the public schools; in Utah the figure was only \$4,059 (see Figure 3.4).

Diversity in policy can also discourage states from providing services that would otherwise be available. Political scientists have found that generous welfare benefits can strain a state's treasury by attracting poor people from states with lower benefits. As a result, states are deterred from providing generous benefits to those in need. A national program with uniform welfare benefits would provide no incentive for welfare recipients to move to another state in search of higher benefits.¹²

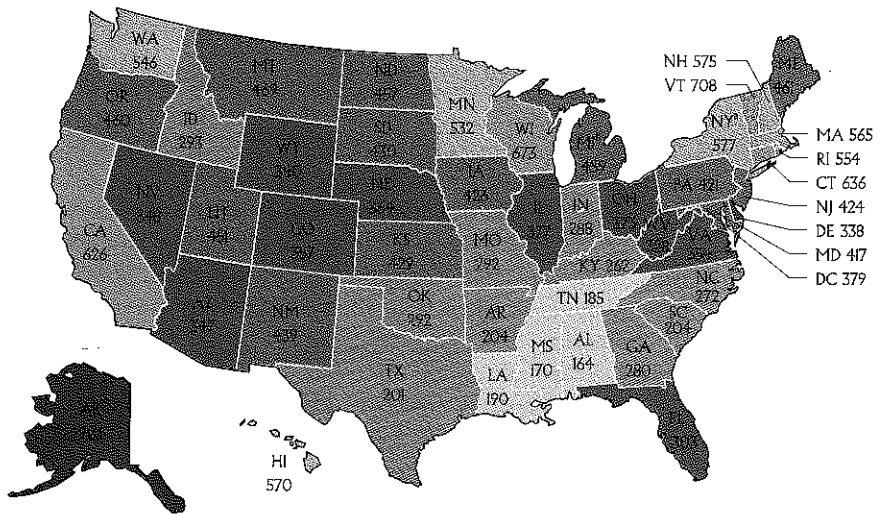
Federalism may also have a negative effect on democracy insofar as local interests are able to thwart national majority support of certain policies. As discussed earlier in this chapter, in the 1960s the states—especially those in the South—became battlegrounds when the national government tried to enforce national civil rights laws and court deci-

Figure 3.3 Diversity in Public Policy: State Welfare Benefits

Because the American federal system allocates major responsibilities for public policy to the states, policies often vary in different locations. This figure shows that for the emotionally charged issue of welfare, different states have adopted quite different policies.

^a Figures are for New York City only.

^b Figures are for Wayne County, which includes Detroit.

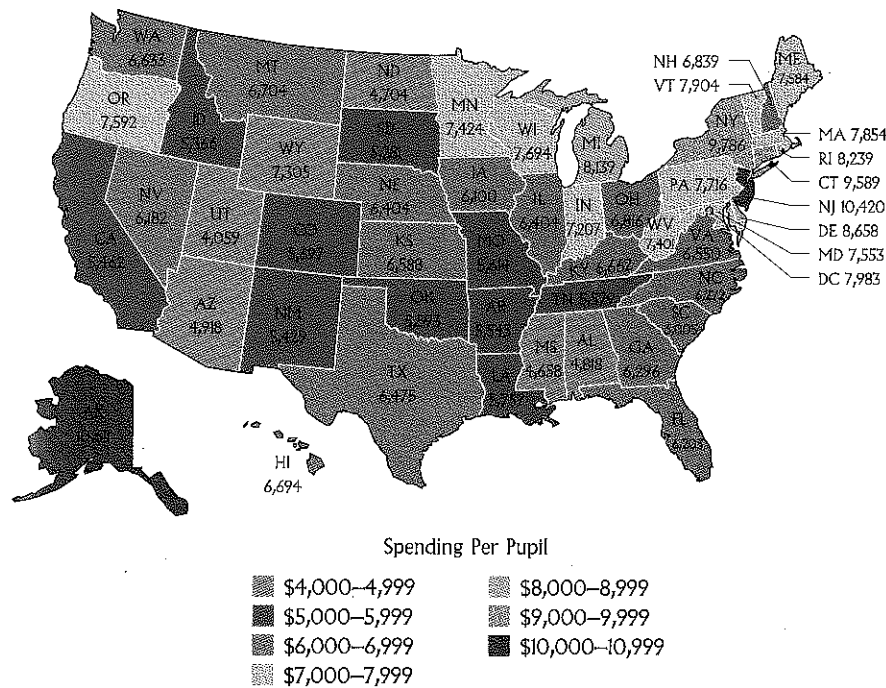


Monthly Welfare Grant for a Family of 3, 2000

- \$100-199
- \$200-299
- \$300-399
- \$400-499
- \$500-599
- \$600-699
- \$700-799
- \$900-999

There is no state in the \$800-899 range.

Source: House Ways and Means Committee; 2000 *Green Book*.

Figure 3.4 The Downside of Diversity: Spending on Public Education

The downside of the public policy diversity fostered by federalism is that states are largely dependent on their own resources for providing public services; these resources vary widely from state to state. This map shows the wide variation among the states in the money spent on each child in the public schools.

1999 Average: \$6,734

Source: U.S. Department of Commerce, *Statistical Abstract of the United States, 2000* (Washington, D.C.: U.S. Government Printing Office, 2001), 172.

sions. Federalism complicated and delayed efforts to end racial discrimination because state and local governments were responsible for public education and voting eligibility, for example, and because they had passed most of the laws supporting racial segregation.

Finally, the sheer number of governments in the United States is, at times, as much a burden as a boon to democracy. Program vendors at baseball games say that "You can't tell the players without a scorecard"; unfortunately, scorecards are not available for local governments, where the players are numerous and sometimes seem to be involved in different games. The U.S. Bureau of the Census counts not only people but also governments. Its latest count revealed an astonishing 87,504 American governments (see Table 3.4).

Certainly, 87,000 governments ought to be enough for any country. Are there too many? Americans speak eloquently about their state and local governments as grassroots

Table 3.4 The Number of Governments in America

NUMBER OF GOVERNMENTS	
U.S. government	1
States	50
Counties	3,043
Municipalities	19,372
Townships or towns	16,629
School districts	13,726
Special districts	34,683
Total	87,504

Source: U.S. Department of Commerce, *Statistical Abstract of the United States, 2000* (Washington, D.C.: U.S. Government Printing Office, 2001), 299.

governments, close to the people. Yet having so many governments makes it difficult to know which governments are doing what. Exercising democratic control over them is even more difficult; voter turnout in local elections is often less than 20 percent.

Federalism and the Scope of the National Government

One of the most persistent questions in American politics has been the scope of the national government relative to that of the states. To understand the relative roles of the two levels of government we must first understand why the national government grew and then ask whether this growth was at the expense of the states or whether it occurred because of the unique capabilities and responsibilities of the national government.

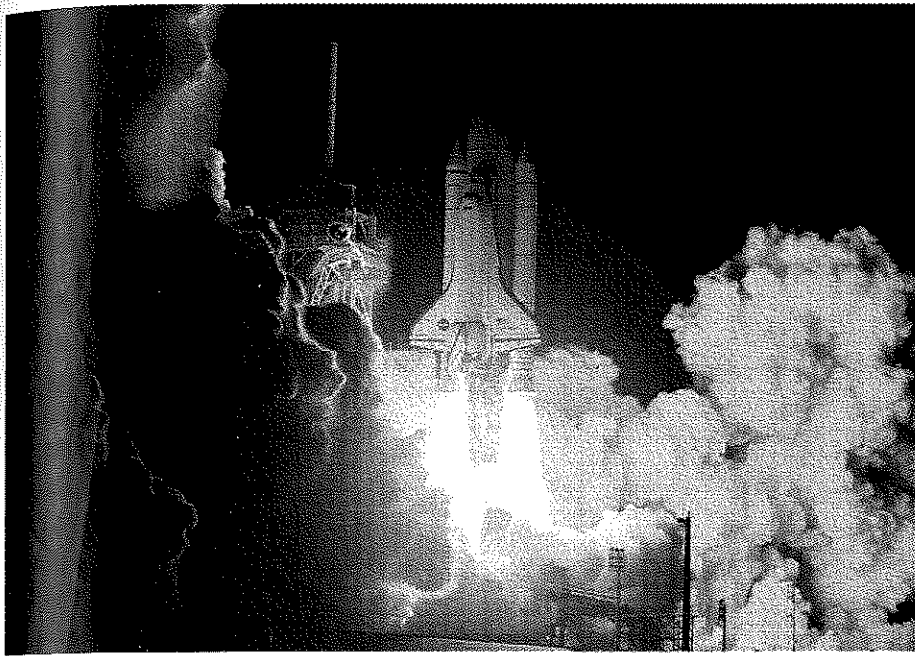
President Ronald Reagan negotiated quotas on imports of Japanese cars in order to give advantages to the American auto industry, raising the price of all automobiles in the process. At the behest of steel companies, President George Bush exercised his authority to continue Reagan's quotas on the amount of steel that could be imported (thereby making steel products more expensive). The first major piece of legislation the Bush administration sent to Congress was a bailout plan for the savings and loan industry, which had gotten into financial trouble through a combination of imprudent loans, declining property values, deregulation of banking, incompetence, and corruption. President Clinton proposed that the Pentagon spend nearly \$600 million to fund the development of a U.S. industry in "flat-panel displays" used for laptop computers, video games, and advanced instruments.

In each of these cases and dozens of others, the national government has involved itself (some might say interfered) in the economic marketplace with quotas and subsidies intended to help American businesses. As Chapter 2 explained, the national government took a direct interest in economic affairs from the very founding of the republic. As the United States changed from an agricultural to an industrial nation, new problems arose and with them new demands for governmental action. The national government responded with a national banking system, subsidies for railroads and airlines, and a host of other policies that dramatically increased its role in the economy.

The industrialization of the country raised other issues as well. With the formation of large corporations in the late nineteenth century—Cornelius Vanderbilt's New York Central Railroad and John D. Rockefeller's Standard Oil Company, for example—came the potential for such abuses as monopoly pricing. If there is only one railroad in town, it can charge farmers inflated prices to ship their grain to market. If a single company distributes most of the gasoline in the country, it can set the price at which gasoline sells. Thus, many interests asked the national government to restrain monopolies and to encourage open competition.

There were additional demands on the national government for new public policies. Farmers sought services such as agricultural research, rural electrification, and price supports. Unions wanted the national government to protect their rights to organize and bargain collectively and to help provide safer working conditions, a minimum wage, and pension protection. Along with other groups, labor unions supported a wide range of social welfare policies, from education to health care. As the country became more urbanized, new problems arose in the areas of housing, welfare, the environment, and transportation. In each case, the relevant interest turned to the national government for help.

Why not turn to the state governments instead? In most cases, the answer is simple: A problem or policy requires the authority and resources of the national government. The Constitution forbids states from having independent defense policies.



Each state could have its own space program, but it is much more efficient for the states to combine their efforts in one national program. The same principle applies to economic security and to a host of other important programs.

And even if it did not, how many states would want to take on a responsibility that represents more than half of the federal work force and about one-sixth of federal expenditures?

It is constitutionally permissible, but not sensible, for the states to handle a wide range of other issues. It makes little sense for Louisiana to pass strict controls on polluting the Mississippi River if most of the river's pollution occurs upstream, where Louisiana has no jurisdiction. Rhode Island has no incentive to create an energy policy because no natural energy reserves are located in the state. Similarly, how effectively can a state regulate an international conglomerate such as General Motors? How can each state, acting individually, manage the nation's money supply?

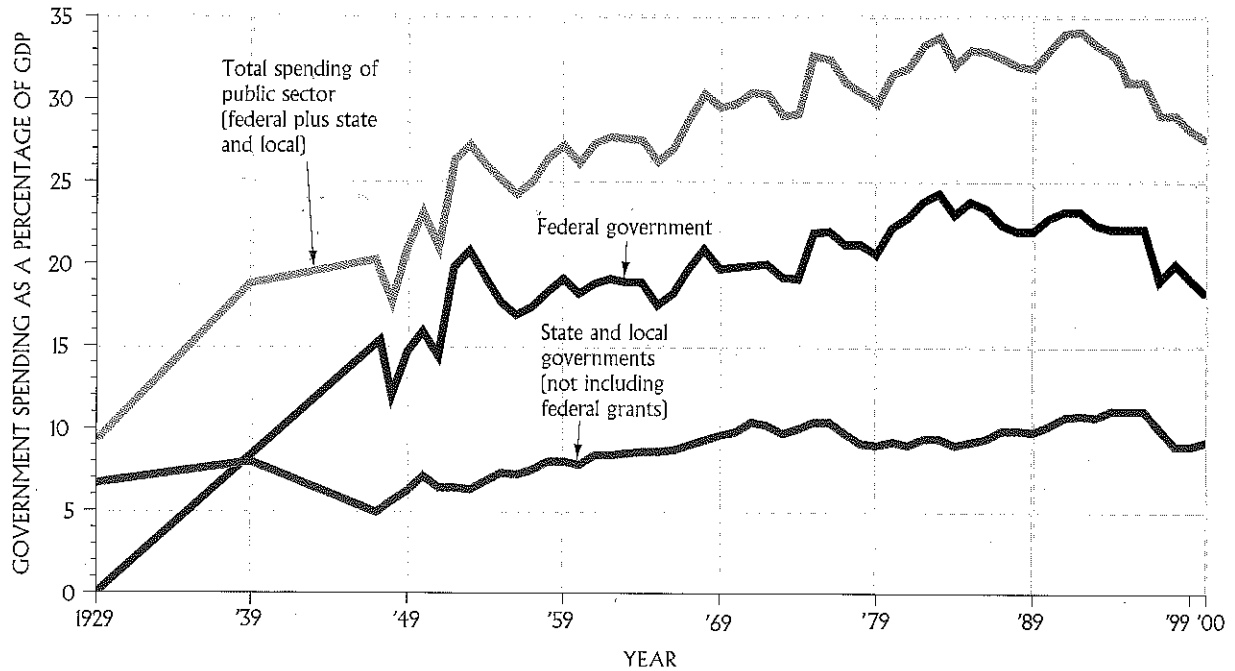
Each state could have its own space program, but it is much more efficient if the states combine their efforts in one national program. The largest category of federal expenditures is that for economic security, including the Social Security program. Although each state could have its own retirement program, how could state governments determine which state should pay for retirees who move to Florida or Arizona? A national program is the only feasible method of ensuring the incomes of the mobile elderly of today's society.

Figure 3.5 shows that the national government's share of American governmental expenditures has grown rapidly since 1929; most of this growth occurred during the Great Depression. At that time, the national government spent an amount equal to only 2.5 percent of the size of the economy, the gross domestic product (GDP); today, it spends about 18 percent of our GDP (this includes grants to states and localities). The proportion of our GDP spent by state and local governments has grown less rapidly than the national government's share. States and localities spent 7.4 percent of our GDP in 1929; they spend about 10 percent today (not including federal grants).¹³

Figure 3.5 demonstrates that the states have not been supplanted by the national government; indeed, they carry out virtually all the functions they always have. Instead, with the support of the American people (see Table 3.3), the national government has taken on new responsibilities. In addition, the national government has added programs to help the states meet their own responsibilities.

Figure 3.5 Fiscal Federalism: The Public Sector and the Federal System

The federal government's spending increased rapidly during the Great Depression and World War II. In recent years, the role of both federal and state governments has declined slightly.



Source: Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2002: Historical Tables* (Washington, D.C.: U.S. Government Printing Office, 2001), Table 15.3.

Summary

Federalism is a governmental system in which power is shared between a central government and other governments. Federalism is much less common than are the unitary governments typical of most parliamentary democracies. American federalism consists of 50 state governments joined in an "indestructible union" (as the Supreme Court once called it) under one national government. Today, federal power over the states is indisputable; the Supreme Court cases *McCulloch v. Maryland* and *Gibbons v. Ogden*, the Civil War, and the struggle for racial equality all helped to determine national supremacy. The federal government often uses its fiscal leverage to influence state and local policies.

The United States has moved from a system of dual federalism to one of cooperative federalism, in which the national and state governments share responsibility for public policies. Fiscal federalism is of great help to states. Even after the Reagan administration reductions, the federal government distributes more than \$350 billion in federal funds to states and cities each year.

Federalism was instituted largely to enhance democracy in America, and it strengthens democratic government in many ways. At the same time, diverse state policies and the sheer number of local governments cause problems as well. Demands for new policies and the necessity for national policy on certain issues have contributed to the growth of national government relative to state governments. Yet the state governments continue to play a central role in governing the lives of Americans.

Although American federalism concerns state power and national power, it is not a concept removed from most Americans' lives. Federalism affects a vast range of social and economic policies. Slavery, school desegregation, abortion, and teenage drinking have all been debated in terms of federalism.

Career Profile

Position: Emergency Management Specialists

Employer: Federal Emergency Management Agency (FEMA)

Starting Salary Range: \$28,000-34,000

Benefits: 401K, life and health insurance, and mentoring programs

Eligibility/Qualifications: Though a bachelor's degree is not required, it is highly recommended unless one has extensive experience in the field. Customer service skills are crucial.



Real People on the Job: Carol Coleman

Carol Coleman, an Emergency Management Specialist and the Human Services Branch Chief for FEMA, is usually one of the first federal employees on a disaster scene after state officials have requested federal assistance and that assistance has been approved. Working out the FEMA Midwest branch headquarters in Kansas City, Mo., Carol has dealt with floods in Missouri and Iowa and tornadoes across the region. She and her teams remain at the site of a disaster anywhere from three weeks to two months at a time.

In the aftermath of an earthquake, tornado, flood, or hurricane, stricken citizens quickly forget debates over

the nuances of federalism and the role of the federal government. At such times, their biggest concerns are finding shelter, food, and medical attention. FEMA strives to ensure that emergency relief efforts run smoothly by coordinating efforts among state, federal, and private organizations to alleviate suffering and devastation.

Perhaps the most exciting aspect of Carol's job remains its ever-changing nature. All floods and tornadoes are not the same, says Carol, because each disaster event has its own character and its own needs. Every flood, hurricane, earthquake, or tornado occurs in a specific neighborhood with different people from different backgrounds requiring a tailored approach for every incident.

Regardless of where a disaster occurs, FEMA's primary goal remains constant: to help people as quickly and efficiently as possible. The people always come first. Although computerization and telecommunication advances have streamlined FEMA's response time, it is still vital to have specialists and operatives on the ground to meet people face to face. If a community seems to be badly shaken in the aftermath of a disaster, Carol and her coworkers establish crisis-counseling centers to help them deal with the shock and loss. On-site inspectors and specialists examine houses and disseminate relief information throughout the community. Thus, FEMA disaster teams function much like a caring, well-organized family during a time of crisis. It is this trait, more than any other, that makes Carol proud to work at FEMA.

If you think you might be interested in making FEMA part of your career future, the organization offers student internships in nearly every office at the FEMA headquarters in Washington, D.C., including the Office of Congressional Affairs. FEMA also needs workers to perform temporary, on-call disaster work for its CORE force (Cadre of Response/Recovery Employees). Similar to many other government agencies, qualified computer programmers and technicians are constantly in demand at FEMA. For information about career opportunities at FEMA, check out its web site at www.fema.org.