The relationship of the national government to the states has been the subject of intense debate since the founding. In 1787, members of what would become the Federalist Party defended the creation of a strong national government. Their rivals, the Anti-Federalists, warned that a strong national government would overshadow the states. The debate over which level of government best represents the people continues to this day.

State governments often complain that the national government is either taking over responsibilities that belong to them under the Constitution’s Tenth Amendment, which reserves to them all powers not given to the national government, or controlling too much of what they do. Yet, in policy areas such as civil rights, educational opportunities for people with disabilities, and handgun control, the states have been slow to respond, and the national government has taken steps to deal with these issues.

At the same time, states retain enormous authority under the Constitution to regulate life within their borders. Working with the local governments they create, states police the streets, fight fires, impose their own taxes, create most of the laws that govern their citizens, define the meaning of marriage, set the rules for elections and register voters, run the public schools, and administer most of the programs to help the poor, even when the money for those programs comes from the national government. This broad scope begs the question, where does the national government end and state government begin?

This question involves a host of questions that involve how far states can go in drafting their own laws and how aggressive they should be in enforcing national laws. Under Article I, for example, the Founders gave Congress the power to set the rules regarding naturalization, which is the process by which immigrants are given U.S. citizenship and the rights that go with it.

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2.1 Interpret the definitions of federalism, and analyze the advantages and disadvantages of the American system of federalism, p. 59.

2.2 Differentiate the powers the Constitution provides to national and state governments, p. 66.

2.3 Assess the role of the national courts in defining the relationship between the national and state governments, and evaluate the positions of decentralists and centralists, p. 72.

2.4 Evaluate the budget as a tool of federalism, and its impact on state and local governments, p. 76.

2.5 Describe the relationship between the national and state governments and the challenges for federalism, p. 81.
Alabama’s tough immigration law requires police, schools, and hospitals to ask citizens for proof of their citizenship, even if the ones providing the proof are in grade school. One of the parents of this Alabama student is a U.S. citizen, while the other is an undocumented immigrant, meaning that one of her parents could soon be deported if the Alabama law remains in force.
So what?
If American government was a type of cake, what cake would it be?
Using marble cake as a metaphor, author Paul C. Light explains the importance of understanding America’s “blended” government so that students can determine which level or branch can best address their concerns.
In recent years, however, many states have passed laws that challenge the national government’s supremacy in setting rules covering undocumented immigrants who reside in the U.S. illegally. With the nation and most states suffering from high unemployment starting in 2008 and continuing to this day, some states have argued that undocumented immigrants are taking jobs that would go to U.S. citizens. They have passed laws that put tight restrictions on state benefits such as public education and college tuition benefits for the children of illegal immigrants. Although some of these laws have been declared unconstitutional by the national courts, states continue to try new ways of reducing illegal immigration. In 2006, 84 immigration bills were enacted by state legislatures and signed into law; by 2010, the number had climbed to 364, with further increases in 2011.

In June 2011, for example, Alabama enacted one of the most restrictive immigration laws in the nation. Under the law, illegal immigrants are considered state criminals who are subject to arrest and possible imprisonment. Most significantly, the law requires that public schools must check the immigration status of all their students. Under the provision, school children were required to reveal the immigration status of their parents. In revealing their own immigration status, students had little choice but to tell school administrators whether their parents were in the United States legally. Although any child born in the United States is automatically deemed a citizen under national law and the Constitution, some Alabama school children were born to illegal immigrants. As a result, many parents kept their children home on October 1 when the law took effect, and some fled the state to avoid the law. The same law also contained a provision that required residents of mobile homes to prove their legal status before renewing their annual home registration tags.

Even as the Alabama law was going into effect, an equally tough Arizona law was moving toward the Supreme Court. After hearing arguments in April, a 5 to 3 majority declared that the national government, not the states, had the “broad, undoubted power over the subject of immigration and the status of aliens.” The national laws were supreme to any state laws, rendering most of Arizona’s law unconstitutional. At the same time, the Court did permit Arizona to implement its “show me your papers” provision, which gives police the authority to ask drivers for their citizenship papers when stopped for other reasons. The Court ruled that the provision was a constitutional exercise of state powers. It is still not clear how much of Alabama’s law will survive further tests based on the Court’s decision. For now, Alabama says it is still in force.

In this chapter, we first define federalism and its advantages and disadvantages. We then look at the constitutional basis for our federal system and how court decisions and political developments have shaped, and continue to shape, federalism in the United States. Throughout, you should think about how you influence the issues you care about, even in your local city council or mayor’s office. The Constitution clearly encourages, and even depends on, you to express your view at all levels of government, which is why action in a single state can start a process that spreads to other states or the national government.

## Defining Federalism

Interpret the definitions of federalism, and assess the advantages and disadvantages of the American system of federalism.

*Federalism* have been fought over what federalism means in part because the term itself is laden with ideological interpretation.

**Federalism**, as we define it in nonpartisan terms, is a form of government in which a constitution distributes authority and powers between a central government and smaller regional governments—usually called states or provinces—giving to both the national and the state governments substantial responsibilities and powers, including the power to collect taxes and to pass and enforce laws.
regulating the conduct of individuals. When we use the term “federalism” or “federal system,” we are referring to this system of national and state governments; when we use the term “federal government” in all other chapters of this book, we are referring to the Congress, presidency, and judiciary created under the U.S. Constitution.

The mere existence of both national and state governments does not make a system federal. What is important is that a constitution divides governmental powers between the national government and state governments, giving clearly defined functions to each. Neither the central nor the regional government receives its powers from the other; both derive them from a common source—the Constitution. No ordinary act of legislation at either the national or the state level can change this constitutional distribution of powers. Both levels of government operate through their own agents and exercise power directly over individuals.

Constitutionally, the federal system of the United States consists of only the national government and the 50 states. “Cities are not,” the Supreme Court reminded us, “sovereign entities.” This does not make for a tidy, efficient, easy-to-understand system; yet, as we shall see, it has its virtues.

There are several different ways that power can be shared in a federal system, and political scientists have devised terms to explain these various, sometimes overlapping, kinds of federalism. At different times in the United States’ history, our system of federalism has shared power based on each of these interpretations:

- **Dual or “layer-cake” federalism** is defined as a strict separation of powers between the national and state governments in which each layer of has its own responsibilities, and reigns supreme within its constitutional realm. Dual federalism was dominant from the 1790s until the 1930s.

- **Cooperative or “marble-cake” federalism** is defined as a flexible relationship between the national and state government in which both work together on a variety of issues and programs. Cooperative federalism was dominant from the 1930s through the 1970s.

- **Competitive federalism** is defined as a way to improve government performance by encouraging state and local governments to compete against each other for residents, businesses, investment, and national funding. Competitive federalism has coexisted with other definitions of federalism since the 1980s.

State and local governments are responsible for policing the streets but not for enforcing federal laws. Still, they often work with national agencies such as the Federal Bureau of Investigation and the Drug Enforcement Administration. This kind of joint action is an example of cooperative federalism.
• **Permissive federalism** is defined as a strong national government that only allows, or permits the states to act when it decides to do so. Although federalism generally assumes that the national and state governments will share power, permissive federalism argues that the power to share belongs to the national government, and national government alone.9 Permissive federalism has been dominant on specific issues such as civil rights since the 1960s.

• **Coercive federalism** is also defined as a strong national government that exerts tight control of the states through orders or mandates—typically without accompanying financial resources. If states want federal grants, they must follow the mandates. Coercive federalism is sometimes called centralized federalism, which focuses on the national government’s strong voice in shaping what states do. Coercive federalism has also been dominant on specific issues such as public education and the environment since the 1960s.

• **New federalism** is defined as a recent effort to reduce the national government’s power by returning, or devolving responsibilities to the states. It is sometimes characterized as part of the devolution revolution discussed later in this chapter. The new federalism has been seen as a modern form of dual federalism based on the Tenth Amendment, and was first introduced by President Richard Nixon in 1969.

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**Alternatives to Federalism**

Among the alternatives to federalism are **unitary systems** of government, in which a constitution vests all governmental power in the central government. The central government, if it so chooses, may delegate authority to constituent units, but what it delegates, it may take away. China, France, the Scandinavian countries, and Israel have unitary governments. In the United States, state constitutions usually create this kind of relationship between the state and its local governments.

At the other extreme from unitary governments are **confederations**, in which sovereign nations, through a constitutional compact, create a central government but carefully limit its authority and do not give it the power to regulate the conduct of individuals directly. The central government makes regulations for the constituent governments, but it exists and operates only at their direction. The 13 states under the Articles of Confederation operated in this manner, as did the southern Confederacy during the Civil War. The closest current example of an operating confederacy in the world is the European Union (EU), which is composed of 27 nations. Although the EU does bind its members to a common currency called the Euro, and does have a European Parliament and European Court of Justice and European Commission, members such as France, Germany, Italy, and Spain retain their own laws and authority. The EU may look like a confederation, but it acts more like a traditional alliance such as the United Nations, or the North Atlantic Treaty Organization.10

Even among all the nations that call themselves federations, there is no single model for dividing authority between the national and state governments. Some countries have no federal system at all, whereas others have different variations of power sharing between the national and state governments. Indeed, even the United States has varied greatly over time in its balance of national–state power.

Britain’s government, for example, is divided into three tiers: national, county, and district governments. County and district governments deliver roughly one-fifth of all government services, including education, housing, and police and fire protection. As a rule, most power is reserved for the central government on the theory that there should be “territorial justice,” which means that all citizens should be governed by the same laws and standards. In recent years, however, Great Britain has devolved substantial authority to Scotland, Wales, and Northern Ireland.
**The Global Community**

**Global Opinion on the Role of Government**

State and local governments are on the front lines of most programs for helping the needy. They provide much of the money and/or administration for unemployment insurance for the jobless, health care clinics and hospitals for the poor, school lunch programs for hungry children, and homeless shelters. Although many U.S. citizens see poverty firsthand as volunteers for local charities such as food pantries, some have doubts about how much government should do to help poor people who cannot take care of themselves. According to the Pew Research Center’s Spring 2007 Global Attitudes Survey, citizens of other nations vary greatly on the question of whether “It is the responsibility of the (state or government) to take care of very poor people who can’t take care of themselves.”

These opinions reflect very different social and economic conditions in each country. Japan has a culture of self-reliance that puts the burden on individuals to help themselves, while Nigeria continues to suffer from some of the highest poverty rates in the world. In this regard, U.S. citizens tend to mirror the Japanese—they want government to help the less fortunate but also want the less fortunate to help themselves. As a general conclusion, citizens of wealthier nations think poor people should take advantage of the opportunities that already exist in their economies, whereas citizens of poor nations believe that government should be more aggressive in providing support.

This does not mean wealthier nations are uncaring toward citizens in need, but it does suggest that they sometimes view poverty as the fault of the poor. In the United States, these opinions reflect the importance of equality of opportunity as a basic social value, meaning that all individuals regardless of race, gender, or circumstance have the same opportunity to participate in politics, self-government, and the economy. Most Americans want to help the less fortunate, but only when they are truly needy, not when they fail because they will not help themselves.

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**CRITICAL THINKING QUESTIONS**

1. What are the advantages and disadvantages of having the government provide services for the poor?
2. Why might more wealthy nations be more likely to believe that individuals ought to take care of themselves and not rely on the state?
3. Which level of government might be most effective in providing services to the poor?

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**Advantages of Federalism**

In 1787, federalism was a compromise between centrist, who supported a strong national government, and those who favored decentralization. Confederation had proved unsuccessful. A unitary system was out of the question because most people were too deeply attached to their state governments to permit subordination to central rule. Many scholars think that federalism is ideally suited to the needs of a diverse people spread throughout a large continent, suspicious of concentrated power, and desiring unity but not uniformity. Yet, even though federalism offers a number of advantages over other forms of government, no system is perfect. Federalism offered, and still offers, both advantages and disadvantages.

**FEDERALISM CHECKS THE GROWTH OF TYRANNY** Federalism has not always prevented tyranny, even in the United States, when Southern states seceded from...
the Union rather than end slavery. Today, however, U.S. citizens tend to associate federalism with freedom. When one political party loses control of the national government, it is still likely to hold office in a number of states and can continue to challenge the party in power at the national level. To the Framers, who feared that a single interest group might capture the national government and suppress the interests of others, this diffusion of power was an advantage. There are now nearly 90,000 governments in the United States, including one national government, 50 state governments, and thousands of county, city, and town governments, as well as school boards and special districts that provide specific functions from managing hospitals or parks to mosquito control. (See Figure 2.1 for the number of governments in the United States.)

**FEDERALISM ALLOWS UNITY WITHOUT UNIFORMITY** National politicians and parties do not have to iron out every difference on every issue that divides us, whether the issue is abortion, same-sex marriage, gun control, capital punishment, welfare financing, or assisted suicide. Instead, these issues are debated in state legislatures, county courthouses, and city halls. Information about state action spreads quickly from government to government, especially during periods when the national government is relatively slow to respond to pressing issues.

**FEDERALISM ENCOURAGES EXPERIMENTATION** As Justice Louis Brandeis once argued, states can be laboratories of democracy. If they adopt programs that fail, the negative effects are limited; if programs succeed, they can be adopted by other states and by the national government. Georgia, for example, was the first state to permit 18-year-olds to vote; Wisconsin was a leader in requiring welfare recipients to work; California moved early on global warming; and Massachusetts created one of the first state programs to provide health insurance to all its citizens.

**FEDERALISM PROVIDES TRAINING AND CREATES OPPORTUNITIES FOR FUTURE NATIONAL LEADERS** Federalism provides a training ground for state
and local politicians to gain experience before moving to the national stage. Presidents Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush previously served as governor of the respective states of Georgia, California, Arkansas, and Texas. All totaled, 20 of the nation’s 44 presidents served as governor at some points before winning the presidency. In addition, three former governors (Jon Huntsman, Rick Perry, and Mitt Romney) ran for the Republican Party nomination for president in 2012, and several were heavily recruited for the campaign but declined.

**FEDERALISM KEEPS GOVERNMENT CLOSER TO THE PEOPLE** By providing numerous arenas for decision making, federalism provides many opportunities for Americans to participate in the process of government and helps keep government closer to the people. Every day, thousands of U.S. adults serve on city councils, school boards, neighborhood associations, and planning commissions. Federalism also builds on the public’s greater trust in government at the state and local levels. The closer the specific level of government is to the people, the more citizens trust the government.

- **Disadvantages of Federalism**

**DIVIDING POWER MAKES IT MUCH MORE DIFFICULT FOR GOVERNMENT TO RESPOND QUICKLY TO NATIONAL PROBLEMS** There was a great demand for stronger and more effective homeland security after the September 11, 2001, terrorist attacks, and the national government created a new Department of Homeland Security in response. However, the department quickly discovered that there would be great difficulty coordinating its efforts with 50 state governments and thousands of local governments already providing fire, police, transportation, immigration, and other governmental services.

**THE DIVISION OF POWER MAKES IT DIFFICULT FOR VOTERS TO HOLD ELECTED OFFICIALS ACCOUNTABLE** When something goes well, who should voters reward? When something goes wrong, who should they punish? When Hurricane Katrina hit New Orleans and the surrounding areas in late August 2005 (and Rita less than a month later near Houston), many thousands of people lost their homes and billions of dollars in damage was done. Who was responsible? Did the national government and agencies like the Federal Emergency Management Agency (FEMA) drop the ball on relief efforts, or was it the state or local government’s responsibility? Did the mayor and/or governor fail to plan adequately for such a crisis, or should the national government have had more supplies on hand in advance?

**THE LACK OF UNIFORMITY CAN LEAD TO CONFLICT** States often disagree on issues such as health care, school reform, and crime control. In January 2008, for example, California joined 15 other states in suing the national government over a ruling issued by the national Environmental Protection Agency (EPA). For decades, the EPA had allowed California to enact tougher air quality restrictions through higher mileage standards than required by the national Clean Air Act (first enacted in 1970). The Bush administration rejected a similar request for permission to raise mileage standards in 2008, only to be reversed by the Obama administration in 2009.
OF the People

Diversity in America

Where Americans Come From and Where They Live

The United States is a nation of immigrants who have arrived from many parts of the world. Throughout the decades, the portrait of immigrants has been changing from mostly white to mostly minority. In 2009, for example, 38.5 million Americans, or 12.5 percent, were foreign born, consisting of 16.8 million naturalized citizens, 10 million long-term visitors, and less than 11 million undocumented immigrants. The number of unauthorized, or illegal, immigrants has fallen somewhat in recent years due to the economic recession, which has depressed employment opportunities.

Many foreign-born residents live in the nation’s largest cities. The New York City-area population includes more than 3 million foreign-born residents, while Los Angeles includes another 1.5 million; Miami, slightly more than 2 million; Chicago, just under 600,000, and San Francisco, 275,000. Although inner cities host a majority of foreign-born residents, there has been recent movement of immigrants to the suburbs and some movement toward certain areas of the country such as the southwest.

The changing face of America brings great diversity in all aspects of life, from schools to farm fields and small businesses. It also enriches the quality of life through the mix of old and new cultures, and can often be a source of innovation in how the economy operates. However, this diversity also provokes complaints about undocumented immigrants. Some groups complain that undocumented immigrants take jobs that should go to U.S. citizens, whereas others worry about the costs associated with high poverty rates.

Governments at all levels must reconcile these pros and cons with our history of welcoming immigrants from all around the world.

QUESTIONS

1. How are foreign-born citizens from different regions of the world different from each other?
2. Why do you think foreign-born citizens tend to live in our nation’s largest cities?
3. How do foreign-born citizens contribute to the nation’s quality of life?

VARIATION IN POLICIES CREATES REDUNDANCIES, INEFFICIENCIES, AND INEQUALITIES

Labor laws, teacher certification rules, gun ownership laws, and even the licensing requirements for optometrists vary throughout the 50 states, and this is on top of many national regulations. Companies seeking to do business across state lines must learn and abide by many different sets of laws, while individuals in licensed professions must consider whether they face recertification if they choose to relocate to another state. Where national laws do not exist, it is tempting for each state to try to undercut others’ regulations to get a competitive advantage in such areas as attracting new industry, regulating environmental concerns, or setting basic eligibility standards for welfare or health benefits.
The Constitutional Structure of American Federalism

The division of powers and responsibilities between the national and state governments has resulted in thousands of court decisions, as well as hundreds of books and endless speeches to explain them—and even then the division lacks precise definition. Nonetheless, it is helpful to have a basic understanding of how the Constitution divides these powers and responsibilities and what obligations it imposes on each level of government.

The constitutional framework of our federal system is relatively simple:

1. The national government has only those powers delegated to it by the Constitution (with the important exception of the inherent power over foreign affairs).
2. Within the scope of its operations, the national government is supreme.
3. The state governments have all of the powers not delegated to the central government except those denied to them by the Constitution and their state constitutions.
4. Some powers are specifically denied to both the national and state governments; others are specifically denied only to the states or to the national government.

Powers of the National Government

The Constitution explicitly gives legislative, executive, and judicial powers to the national government. In addition to these delegated or expressed powers, such as the power to regulate interstate commerce and to appropriate funds, the national government has assumed constitutionally implied powers, such as the power to create banks, which are inferred from delegated powers. The constitutional basis for the implied powers of Congress is the necessary and proper clause (Article I, Section 8, Clause 3). This clause gives Congress the right “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested … in the Government of the United States.” (Powers specifically listed in the Constitution are also called express powers because they are listed expressly.)

In foreign affairs, the national government has inherent powers. The national government has the same authority to deal with other nations as if it were the central government in a unitary system. Such inherent powers do not depend on specific constitutional provisions but exist because of the creation of the national government itself. For example, the government of the United States may acquire territory by purchase or by discovery and occupation, even though no specific clause in the Constitution allows such acquisition.

The national and state governments may have their own lists of powers, but the national government relies on four constitutional pillars for its ultimate authority over the states: (1) the supremacy clause, (2) the war power, (3) the commerce clause, and especially (4) the power to tax and spend for the general welfare. All four of these pillars are discussed individually below.

Together, however, they have permitted a steady expansion of the national government’s functions to the point where some states complain they have lost the power to regulate their own actions. Despite the Supreme Court’s recent declaration that some national laws exceed Congress’s constitutional powers, the national government has, in effect, almost full power to enact any legislation that Congress deems necessary, so long as it does not conflict with provisions of the Constitution designed to protect
individual rights and the powers of the states. In addition, Section 5 of the Fourteenth Amendment, ratified in 1868, gives Congress the power to enact legislation to remedy constitutional violations and the denial of due process or equal protection of the laws.

**THE SUPREMACY CLAUSE** The supremacy clause may be the most important pillar of U.S. federalism. Found in Article VI of the Constitution, the clause is simple and direct: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made...under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” Under the clause, state and local governments may not ignore or create their own substitutes for national laws and regulations. Because national laws and regulations of national agencies are supreme, conflicting state and local regulations are unenforceable. States must abide by the national government’s minimum wage laws, for example, but are allowed to set the minimum wage higher if they wish.

**THE WAR POWER** The national government is responsible for protecting the nation from external aggression, whether from other nations or from international terrorism. The government’s power to maintain national security includes the power to wage war. In today’s world, military strength depends not only on the presence of troops in the field, but also on the ability to mobilize the nation’s industrial might and apply scientific and technological knowledge to the tasks of defense. As Charles Evans Hughes, who became chief justice in 1930, observed: “The power to wage war is the power to wage war successfully.” The national government is free to create “no-fly” zones only for its military aircraft both within and across state borders, for example, and may use any airports it needs during times of war or peace.

**THE POWER TO REGULATE INTERSTATE AND FOREIGN COMMERCE** Congressional authority extends to all commerce that affects more than one state. Commerce includes the production, buying, selling, renting, and transporting of goods, services, and properties. The commerce clause (Article I, Section 8, Clause 1) packs a tremendous constitutional punch; it gives Congress the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” In these few words, the national government has found constitutional justification for regulating a wide range of human activity because few aspects of our economy today affect commerce in only one state, the requirement that would render the activity outside the scope of the national government’s constitutional authority.

The landmark ruling of *Gibbons v. Ogden* in 1824, affirmed the broad authority of Congress over interstate commerce. The case involved a New York state license that gave Aaron Ogden the exclusive right to operate steamboats between New York and New Jersey. Using the license, Ogden asked the New York state courts to stop Thomas Gibbons from running a competing ferry. Although Gibbons countered that his boats were licensed under a 1793 act of Congress governing vessels “in the coasting trade and fisheries,” the New York courts sided with Ogden. Just as the national government and states both have the power to tax, the New York courts said they both had the power to regulate commerce.

Gibbons appealed to the Supreme Court and asked a simple question: Which government had the ultimate power to regulate interstate commerce? The Supreme Court gave an equally simple answer: The national government’s laws were supreme. *Gibbons v. Ogden* was immediately heralded for promoting a national economic common market, in holding that states may not discriminate against interstate transportation and out-of-state commerce. The Supreme Court’s brilliant definition of “commerce” as *intercourse among the states* provided the basis for national regulation of “things in commerce” and an expanding range of economic activities, including the sale of lottery tickets, prostitution, radio and television broadcasts, and telecommunications and the Internet.
THE POWER TO TAX AND SPEND  Congress lacks constitutional authority to pass laws solely on the grounds that they will promote the general welfare, but it may raise taxes and spend money for this purpose. For example, even when the national government lacks the power to regulate education or agriculture directly, it still has the power to appropriate money to support education or to pay farm subsidies. By attaching conditions to its grants of money, the national government creates incentives that affect state action. If states want the money, they must accept the conditions.

When the national government provides the money, it can determine how the money will be spent. By withholding or threatening to withhold funds, the national government can influence or control state operations and regulate individual conduct. For example, the national government has stipulated that national funds should be withdrawn from any program in which any person is denied benefits because of race, color, national origin, sex, or physical handicap. The national government also used its “power of the purse” to force states to raise the drinking age to 21 by tying such a condition to national dollars for building and maintaining highways.

Congress frequently requires states to provide specific programs—for example, services to indigent mothers, and clean air and water. These requirements are called federal mandates. Often the national government does not supply the funds required to carry out “unfunded mandates” (discussed later in the chapter). Its failure to do so has become an important issue as states face growing expenditures with limited resources.

Powers of the States

The Constitution reserves for the states all powers not granted to the national government, subject only to the limitations of the Constitution. Only the states have the reserve powers to create schools and local governments, for example. Both are powers not given exclusively to the national government by the Constitution or judicial interpretation, so that states can exercise these powers as long as they do not conflict with national law.

The national and state governments also share powers. These concurrent powers with the national government include the power to levy taxes and regulate commerce internal to each state.

In general, states may levy taxes on the same items the national government taxes, such as incomes, alcohol, and gasoline, but a state cannot, by a tax, “unduly burden” commerce among the states, interfere with a function of the national government, complicate the operation of a national law, or abridge the terms of a treaty of the United States. However, where the national government has not asserted its supremacy, states may regulate interstate businesses, provided these regulations do not cover matters requiring uniform national treatment or unduly burden interstate commerce.

(See Table 2.1 for the constitutional division of powers.)

Who decides which matters require “uniform national treatment” or what actions might place an “undue burden” on interstate commerce? Congress does, subject to the president’s signature and final review by the Supreme Court. When Congress is silent or does not clearly state its intent, the courts—ultimately, the Supreme Court—decide whether there is a conflict with the national Constitution or whether a state law or regulation has preempted the national government’s authority.

Constitutional Limits and Obligations

To ensure that federalism works, the Constitution imposes restraints on both the national and the state governments. States are prohibited from doing the following:

1. Making treaties with foreign governments
2. Authorizing private citizens or organizations to interfere with the shipping and commerce of other nations
3. Coining money, issuing bills of credit, or making anything but gold and silver coins legal tender in payment of debts
4. Taxing imports or exports
5. Taxing foreign ships
6. Keeping troops or ships of war in time of peace (except for the state militia, now called the National Guard)
7. Engaging in war

In turn, the Constitution requires the national government to refrain from exercising its powers, especially its powers to tax and to regulate interstate commerce, in such a way as to interfere substantially with the states’ abilities to perform their responsibilities. But politicians, judges, and scholars disagree about whether the national political process—specifically the executive and the legislature—or the courts should ultimately define the boundaries between the powers of the national government and the states. Some argue that the states’ protection from intrusions by the national government comes primarily from the political process because senators
You Will Decide

Should Citizens Have the Right to Choose Their Time to Die?

Many Americans suffer great pain as they struggle with cancer and other diseases in the last few months of life. Although modern medicine offers a number of options for easing the pain through hospice and drug therapies, some citizens would prefer to end their lives on their own schedule through what was once mislabeled as “assisted suicide.”

This term often creates images of euthanasia by raising the specter of doctors and government making the decision about when a terminally ill patient should be given the drugs to die. In recent years, however, the term has been replaced by the concept of “end-of-life-choice.” Driven by the “death with dignity” movement, which is led by a public interest group called “Compassion and Choice” (www.compassionandchoice.org), the campaign has won voter approval in Oregon, Washington, Montana, and Hawaii. Under current law in these states, patients, not doctors, are given the option of ending their own lives through drugs that ease them into a life-ending coma, or deep sleep, leading to death within minutes.

These states require at least two doctors to certify that a patient has only six months or less to live. With this certification in hand, the doctors are allowed to give the patient a prescription for the life-ending drugs. Having decided to end his or her life, the patient is asked two questions before taking the drugs: (1) Do you wish to end your life, and (2) Are you able to administer the drugs by your own hand? If the patient answers yes to both questions, he or she is given the drugs to act. Some patients decide to take the drugs, while others do not.

What do you think? Should all states give their citizens the right to end their own lives?


Thinking It Through

These citizen-approved laws have been tested in the national courts to see whether states have the right to allow their citizens to choose their own time of death.

In a landmark 1990 decision, the Supreme Court decided that states could allow their citizens to express their desire to refuse unwanted medical treatment such as food and water at the end of their lives and to appoint someone to speak for them when they could not.” In 1997, however, the Supreme Court ruled that the Constitution did not guarantee a right to die.”

According to these rulings, the U.S. Supreme Court acknowledged a citizen’s right to take control of certain aspects of their death, but also affirmed a state legislature’s right to prohibit anyone from providing help in dying. Also under the rulings, states, not the national government, had the responsibility to pass laws either allowing or prohibiting doctor aid in ending life. Since there is no right to die in the U.S. Constitution, it is also up to state courts to uphold or reject end of life laws under their own constitutions.

The Montana Supreme Court did so on December 31, 2009, when it decided that doctors could provide end of life drugs, provided that the patient was mentally competent and clearly aware of the consequences of his or her action and was able to take the drugs without assistance.” On January 1, 2010, the Montana “Death with Dignity Act” went into effect.

It is not clear whether the movement toward “death with dignity” will spread to other states. Although advocates believe they have a chance in other western states where voters have the right to pass legislation under the initiative power, state legislatures in other states have been reluctant to raise the issue because it is so controversial. Some citizens define the choice as a form of suicide, and in direct violation of their religious beliefs. Other opponents argue that no one can be sure when they will die even when they have a terminal disease. The right to choose one’s time of death may be permitted under state and national constitutions, but is still a choice that citizens and their legislators must allow.

CRITICAL THINKING QUESTIONS
1. Why did the U.S. Supreme Court decide not to reverse state laws regulating the end of life?
2. Why would a state legislature be reluctant to pass end-of-life legislation? Which groups favor such laws and which do not?
3. Is a law needed at all on the end of life issue? Should either the national or state governments get involved in this issue?

On a case-by-case basis, the Court has held that the national government may not command states to enact laws to comply with or order state employees to enforce national laws. In *Printz v. United States*, the Court held that states were not required to conduct instant national background checks prior to selling a handgun. Referring broadly to the concept of dual federalism discussed earlier in this chapter, the Supreme Court said that the national government could not “draft” local police to do its bidding. But as previously discussed, even if the national government cannot force states to enforce certain national laws, it can threaten to withhold its funding if states do not comply with national policies, such as lowering the minimum drinking age or speed limit.

The Constitution also obliges the national government to protect states against *domestic insurrection*. Congress has delegated to the president the authority to dispatch troops to put down such insurrections when the proper state authorities request them.

**Interstate Relationships**

Three clauses in the Constitution, taken from the Articles of Confederation, require states to give full faith and credit to each other’s public acts, records, and judicial proceedings; to extend to each other’s citizens the privileges and immunities of their own citizens; and to return persons who are fleeing from justice.

**FULL FAITH AND CREDIT** The *full faith and credit clause* (Article IV, Section 1), one of the more technical provisions of the Constitution, requires state courts to enforce the civil judgments of the courts of other states and accept their public records and acts as valid. It does not require states to enforce the criminal laws or legislation and administrative acts of other states; in most cases, for one state to enforce the criminal laws of another would raise constitutional issues. The clause applies primarily to enforcing judicial settlements and court awards.

**INTERSTATE PRIVILEGES AND IMMUNITIES** Under Article IV, Section 2, individual states must give citizens of all other states the privileges and immunities they grant to their own citizens, including the protection of the laws, the right to engage in peaceful occupations, access to the courts, and freedom from discriminatory taxes. Because of this clause, states may not impose unreasonable residency requirements, that is, withhold rights to American citizens who have recently moved to the state and thereby have become citizens of that state.

**EXTRADITION** In Article IV, Section 2, the Constitution asserts that, when individuals charged with crimes have fled from one state to another, the state to which they have fled is to deliver them to the proper officials on demand of the executive authority of the state from which they fled. This process is called *extradition*. “The obvious objective of the Extradition Clause,” the courts have claimed, “is that no State should become a safe haven for the fugitives from a sister State’s criminal justice system.” Congress has supplemented this constitutional provision by making the governor of the state to which fugitives have fled responsible for returning them.

**INTERSTATE COMPACTS** The Constitution also requires states to settle disputes with one another without the use of force. States may carry their legal disputes to the Supreme Court, or they may negotiate *interstate compacts*. Interstate compacts often establish interstate agencies to handle problems affecting an entire region. Before most interstate compacts become effective, Congress has to approve them. Then the compact becomes binding on all states that sign it, and the national judiciary can enforce its terms. A typical state may belong to 20 compacts dealing with such subjects as environmental protection, crime control, water rights, and higher education exchanges.
national supremacy

A constitutional doctrine that whenever conflict occurs between the constitutionally authorized actions of the national government and those of a state or local government, the actions of the national government prevail.

The National Courts and Federalism

2.3 Assess the role of the national courts in defining the relationship between the national and state governments, and evaluate the positions of decentralists and centralists.

Although the political process ultimately decides how power will be divided between the national and the state governments, the national court system is often called on to umpire the ongoing debate about which level of government should do what, for whom, and to whom. The nation’s highest court claimed this role in the celebrated case of McCulloch v. Maryland.

McCulloch v. Maryland

In McCulloch v. Maryland (1819), the Supreme Court had the first of many chances to define the division of power between the national and state governments. Congress had established the Bank of the United States, but Maryland opposed any national bank and levied a $10,000 tax on any bank not incorporated in the state. James William McCulloch, the cashier of the bank, refused to pay on the grounds that a state could not tax an instrument of the national government.

Maryland was represented before the Court by some of the country’s most distinguished lawyers, including Luther Martin, who had been a delegate to the Constitutional Convention. Martin said the Constitution did not expressly delegate to the national government the power to create a bank. Martin maintained that the necessary and proper clause gives Congress only the power to choose those means and to pass those laws absolutely essential to the execution of its expressly granted powers. Because a bank is not absolutely necessary to the exercise of its delegated powers, Martin argued, Congress had no authority to establish it.

The national government was represented by equally distinguished lawyers, most notably, Daniel Webster. Webster conceded that the power to create a bank was not one of the express powers of the national government. However, the power to pass laws necessary and proper to carry out Congress’s express powers is specifically delegated to Congress. Webster argued that the Constitution leaves no room for doubt which level of government has the final authority. When national and state laws conflict, Webster argued, the national law must be obeyed.

Speaking for a unanimous Court, Chief Justice John Marshall rejected every one of Maryland’s contentions. He summarized his views on the powers of the national government in these now-famous words: “Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional.”

Having established the presence of implied national powers, Marshall then outlined the concept of national supremacy. No state, he said, can use its taxing powers to tax a national instrument. “The power to tax involves the power to destroy… If the right of the States to tax the means employed by the general government be conceded, the declaration that the Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declamation.” Marshall’s ruling was based on the Constitution’s supremacy clause.

It is difficult to overstate the long-range significance of McCulloch v. Maryland in providing support for the developing forces of nationalism and a unified economy. If the contrary arguments in favor of the states had been accepted, they would have strapped the national government in a constitutional straitjacket and denied it powers needed to deal with the problems of an expanding nation.
National Courts and the Relationship with the States

The authority of national judges to review the activities of state and local governments has expanded dramatically in recent decades because of modern judicial interpretations of the Fourteenth Amendment, which forbids states to deprive any person of life, liberty, or property without due process of the law. States may not deny any person the equal protection of the laws, including congressional legislation enacted to implement the Fourteenth Amendment. Almost every action by state and local officials is now subject to challenge before a national judge as a violation of the Constitution or of national law.

Preemption occurs when a national law or regulation takes precedence over a state or local law or regulation. State and local laws are preempted not only when they conflict directly with national laws and regulations, but also when they touch on a field in which the “federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”

Examples of national preemption include laws regulating hazardous substances, water quality, clean air standards, and many civil rights acts, especially the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Throughout the years, national judges, under the leadership of the Supreme Court, have generally favored the powers of the national government over those of the states. Despite the Supreme Court’s recent bias in favor of state over national authority, few would deny the Supreme Court the power to review and set aside state actions. As Justice Oliver Wendell Holmes of the Supreme Court once remarked, “I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States.”

The Supreme Court and the Role of Congress

From 1937 until the 1990s, the Supreme Court essentially removed national courts from what had been their role of protecting states from acts of Congress. The Supreme Court broadly interpreted the commerce clause to allow Congress to do

States are responsible for registering voters, but the national government is responsible for assuring that state registration rules are constitutional.
whatever Congress thought necessary and proper to promote the common good, even if national laws and regulations infringed on the activities of state and local governments.

In the past 15 years, however, the Supreme Court has signaled that national courts should be more active in resolving federalism issues. The Court declared that a state could not impose term limits on its members of Congress, but it did so by only a 5-to-4 vote. Justice John Paul Stevens, writing for the majority, built his argument on the concept of the federal union as espoused by the great Chief Justice John Marshall, as a compact among the people, with the national government serving as the people's agent.

The Supreme Court also declared that Congress had the power to regulate commerce between states and Native Indian tribes, but not the power to allow national courts to resolve conflicts between the two. Unless states consent to such suits, they enjoy “sovereign immunity” under the Eleventh Amendment. The effect of this decision goes beyond Indian tribes. As a result—except to enforce rights stemming from the Fourteenth Amendment, which the Court explicitly acknowledged to be within Congress's power—Congress may no longer authorize individuals to bring legal actions against states to force their compliance with national law in either national or state courts.

Building on those rulings, the Court continues to press ahead with its “constitutional counterrevolution” and return to an older vision of federalism from the 1930s. Among other recent rulings, in *United States v. Morrison*, the Court struck down portions of the Violence Against Women Act, which had given women who are victims of violence the right to sue their attackers for damages. Congress had found that violence against women annually costs the national economy $3 billion, but a bare majority of the Court held that gender-motivated crimes did not have a substantial impact on interstate commerce and that Congress had thus exceeded its powers in enacting the law and intruded on the powers of the states.

These Supreme Court decisions—most of which split the Court 5 to 4 along ideological lines, with the conservative justices favoring states' rights—have signaled a shift in the Court's interpretation of the constitutional nature of our federal system. It is a shift that has been reinforced with the most recent Supreme Court appointments made by Presidents Bush and Obama. Chief Justice John Roberts and Justice Samuel Alito, each appointed by President George W. Bush, tend to favor the states, while justices Sonia Sotomayor and Elena Kagan, Obama appointees, tend to side with the national government.

**The Continuing Debate Between Centralists and Decentralists**

From the beginning of the Republic, there has been an ongoing debate about the “proper” distribution of powers, functions, and responsibilities between the national government and the states. Did the national government have the authority to outlaw slavery in the territories? Did the states have the authority to operate racially segregated schools? Could Congress regulate labor relations? Does Congress have the power to regulate the sale and use of firearms? Does Congress have the right to tell states how to clean up air and water pollution?

Today, the debate continues between centralists, who favor national action on issues such as environmental protection and gun control, and decentralists, who defend the powers of the states and favor action at the state and local levels on these issues.

**THE CENTRALIST POSITION** The centralist position has been supported by presidents, Congress, and the Supreme Court. Presidents Abraham Lincoln, Theodore Roosevelt, Franklin Roosevelt, and Lyndon Johnson were particularly strong supporters, and the Supreme Court has generally ruled in favor of the centralist position.

Centralists reject the idea of the Constitution as an interstate compact. They view it as a supreme law established by the people. The national government is an agent of
the people, not of the states, because it was the people who drew up the Constitution and created the national government. They intended that the national political process should define the central government’s powers and that the national government be denied authority only when the Constitution clearly prohibits it from acting.

Centralists argue that the national government is a government of all the people, whereas each state speaks for only some of the people. Although the Tenth Amendment clearly reserves powers for the states, it does not deny the national government the authority to exercise all of its powers to the fullest extent. Moreover, the supremacy of the national government restricts the states because governments representing part of the people cannot be allowed to interfere with a government representing all of them.

**THE DECENTRALIST POSITION** Among those favoring the decentralist or states’ rights interpretation were the Anti-Federalists, Thomas Jefferson, the pre–Civil War statesman from South Carolina John C. Calhoun, the Supreme Court from the 1920s to 1937, and, more recently, Presidents Ronald Reagan and George H. W. Bush, the Republican leaders of Congress, former Chief Justice William H. Rehnquist, and current Justices Antonin Scalia and Clarence Thomas.

Most decentralists contend that the Constitution is basically a compact among sovereign states that created the central government and gave it limited authority. Thus the national government is little more than an agent of the states, and every one of its powers should be narrowly defined. Any question about whether the states have given a

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**states’ rights**

Powers expressly or implicitly reserved to the states.

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States have the power to prohibit texting while driving for their citizens, while the federal government has the power to prohibit texting while driving for truck and bus drivers engaged in interstate commerce.
Congress authorizes programs, establishes general rules for how the programs will operate, and decides whether room should be left for state or local discretion and how much. Most important, Congress appropriates the funds for these programs and generally has deeper pockets than even the richest states. National grants are one of Congress’s most potent tools for influencing policy at the state and local levels.

National grants serve four purposes, the most important of which is the fourth:

1. To supply state and local governments with revenue
2. To establish minimum national standards for such things as highways and clean air
3. To equalize resources among the states by taking money from people with high incomes through national taxes and spending it, through grants, in states where the poor live
4. To attack national problems but minimize the growth of national agencies

Types of National Government Grants

National, or federal, grants can be classified on two separate dimensions: (1) how much discretion the national government uses in making the grant decision and, (2) what kinds of requirements the national government puts on how the funding can be spent. There are four types of national grants to the states: (1) project grants, (2) formula grants, (3) categorical grants, and (4) block grants (sometimes called flexible grants). According to the national government’s 2011 tracking reports, states received about $25 billion in...
project grants that year, $485 billion in formula grants, $682 billion in categorical grants, and $9 billion in block grants. (As we shall see below, these grant totals often contain a mix of different kinds of grants—for example, categorical grants often contain formula grants. Thus, the total of all grants to the states in 2010 was $600 billion. By 2016, the president’s budget office estimates that the total will rise by another $100 billion.36)

**PROJECT GRANTS** The national government supports states through project grants for specific activities, such as scientific research, homeland security, and some education programs. Most project grants are awarded through a competitive process following an application process. Project grants are generally restricted to a fixed amount of time and can only be spent within tight guidelines. Many university-based medical schools rely on project grants to support their efforts to cure life-threatening diseases such as cancer and heart disease. In order for a state or local government to receive funding through a project grant, the state or local government must apply for the funding. This gives the grantor the discretion to approve some applications and reject others based typically on the technical requirements of the individual grant program.

**FORMULA GRANTS** Formula grants are distributed to the states based on procedures set out in the granting legislation. The simplest formula is population—each recipient government receives a certain number of dollars for each person who lives in the jurisdiction. More complex formulas might define the target population—for example, the number of people below the poverty line or above the age of 65. Other formulas do not involve people at all, but specific measures of a problem such as the number of boarded-up houses in a state. Early rounds of homeland security funding were based largely on a population formula, while the most recent rounds have taken both population and the risk of a terrorist attack into consideration in granting funds to state and local governments.

**CATEGORICAL GRANTS** Categorical grants are made for specific purposes; hence, the term “categorical.” Categorical grants for specific purposes, such as Medicaid health care for the poor, are tightly monitored to ensure that the money is spent exactly as directed. Categorical grants have the most strings attached—state and local governments need to conform to all aspects of the funding legislation in order to receive the national funds. Although states have leeway in deciding how some categorical grants can be spent for programs such as highway construction, the national government often attaches strings to the overall category. Categorical grants involve the largest amount of federal support, but often require the states to match some percentage of each national dollar.

**BLOCK GRANTS** Block grants are made for more generalized governmental functions such as public assistance, health services, child care, or community development. By definition, these blocks of funding are provided with very few requirements attached. States have great flexibility in deciding how to spend block grant dollars, but unlike programs such as national unemployment insurance that are guaranteed for everyone who qualifies for them, block grants are limited to specific amounts set by the national government.

These four types of grants are occasionally combined within a single program area. Some categorical grants contain formulas, for example, while block grants are generally restricted to a broad issue such as education and assistance to the poor. As the following examples demonstrate, the national government often mixes and matches the grant types to accomplish its goals:

- The National School Lunch Program is both a categorical and formula grant—school districts receive funding for each meal served to a qualified student. To receive the funding the school district must guarantee that the lunches meet U.S. Department of Agriculture nutrition standards.
At first glance, the national government provides only limited assistance to states and localities to support public schools and universities. National grants for education programs such as the No Child Left Behind Act enacted in the George W. Bush administration and still in effect is relatively small compared to total state and local spending, and they often come with significant unfunded mandates.

However, much of the national government’s support for state and local education is hidden from view. In the 1940s and 1950s, for example, the national government gave returning World War II veterans the tuition to earn college degrees through the GI Bill. These tuition grants, not loans, helped thousands of veterans get better jobs, purchase homes, and rebuild the economy, which was suffering from a post-war slump.

Out of 15 million eligible veterans, 8 million went to college or training programs. In 1947 alone, veterans accounted for nearly half of all college enrollment. According to past research by Congress, every dollar invested over the life of the program generated between $5 and $12.50 in tax revenues from veterans whose college education gave them better jobs and higher salaries than they otherwise would have had.*

The GI Bill exists to this day, and covers college tuition for veterans of all recent wars, including the wars in Iraq and Afghanistan.

The national government also provides significant support to help rebuild public schools, encourage educational innovations such as charter schools, and support college students as they work toward their degrees. In 2001, for example, Congress passed the “No Child Left Behind Act,” which set national math and reading standards tied to national funding for public schools. The act remains in effect even though many states have raised objections to the strict standards.

More recently, the Obama administration launched a $4.5 billion national competition called “Race to the Top” to encourage innovative school programs through an annual competition for billions of dollars in federal funds. Of the 48 states that entered the competition, 15 states made the first cut, and Delaware, the District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Rhode Island, and Tennessee won grants from $75 million to $700 million.**

The GI Bill, No Child Left Behind Act, and Race to the Top show how federalism can help all levels of government accomplish broad national goals from homeland security to disaster relief and educational reform. Sometimes the national grants can be very large as in Race to the Top, but even the relatively small amount of funding that actually reach an individual public school can motivate significant changes within our federal system.

QUESTIONS
1. What are some of the advantages of national and local governments working collectively on problems like education? What are the disadvantages?
2. Why might state and local governments want to enter competitions such as Race to the Top even when the amount of funding at stake is so small in comparison to what they spend?
3. What kind of federalism is the GI Bill tuition program? What kind of federalism is Race to the Top?

** Information on the competition is available at http://www2.ed.gov/programs/racetothetop
• The Community Development Block Grant (CDBG) program is both a block and formula grant—states receive funding from the national government based on a formula that includes a number of need-based variables.

• National research grants from agencies such as the National Institutes of Health or National Science Foundation are both project and categorical in nature with strict formulas for allocating the money in making final decisions.

• The Federal Aviation Administration’s (FAA) Airport Improvement Program is both a block and project grant. The FAA takes applications and issues grants for the broad purpose of planning and developing airports in the United States.

The Politics of National Grants

Republicans “have consistently favored fewer strings, less national supervision, and the delegation of spending discretion to the state and local governments.” Democrats have generally been less supportive of broad discretionary block grants, instead favoring more detailed, federally supervised spending. The Republican-controlled Congress in the 1990s gave high priority to creating block grants, but it ran into trouble when it tried to lump together welfare, school lunch and breakfast programs, prenatal nutrition programs, and child protection programs in one block grant.

The battle over national versus state control of spending tends to be cyclical. As one scholar of federalism explains, “Complaints about excessive federal control tend to be followed by proposals to shift more power to state and local governments. Then, when problems arise in state and local administration—and problems inevitably arise when any organization tries to administer anything—demands for closer federal supervision and tighter federal controls follow.”

The Battle for Grants

With so much funding at stake, it is not surprising that state and local government might engage in aggressive lobbying to win their fair share, especially in setting the formulas that dictate funding within many grants. Whether by using their connections...
The national government collects taxes from everyone, but it doesn’t always spend money in the state where it gets it. Instead, the federal government transfers wealth from state to state. Recipient states pay less in federal taxes than they receive, while donor states pay more in taxes than they receive back. In 2007, there were 19 donor states and 31 recipient states. The political explanation for who were donor and recipient states is surprising.

### Which States Win and Lose the Federal Aid Game?

#### Net Donor: Between $1 and $5,000 per person

<table>
<thead>
<tr>
<th>State</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Ohio</td>
<td>$49</td>
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<tr>
<td>Georgia</td>
<td>$434</td>
</tr>
<tr>
<td>Washington</td>
<td>$773</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>$1,000</td>
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#### Net Donor: Over $5,000 Per Person

<table>
<thead>
<tr>
<th>State</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Connecticut</td>
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<tr>
<td>New Jersey</td>
<td>$6,644</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$7,431</td>
</tr>
<tr>
<td>Delaware</td>
<td>$12,285</td>
</tr>
</tbody>
</table>

### Who pays? DELAWARE, MINNESOTA, NEW JERSEY, and CONNECTICUT

All paid at least $6,000 more in federal taxes per person than they received in federal aid. 15 other states were net donors.

#### Who receives? ALASKA took in twice the federal money in 2007 that it paid in taxes. 31 states are recipient states. Of the top six recipient states, four are southern.

<table>
<thead>
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<th>State</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Alaska</td>
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<tr>
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<td>−$5,820</td>
</tr>
<tr>
<td>Alabama</td>
<td>−$5,130</td>
</tr>
</tbody>
</table>

### Recipient states by party

- 18 out of 23 Republican-voting states (78%) are recipient states compared to 8 out of the 19 Democratic-voting states (42%).

### Recipient states by poverty level

- 9 of 13 states with high poverty levels are recipient states (69%), while only 9 of 17 states with low poverty levels are recipient states (53%).

### Investigate Further

#### Concept

How do we determine donor and recipient states? Per person, we subtract the federal aid dollars sent to a state from the federal tax dollars paid in a state. If the result is positive, a state is a donor state, otherwise it’s a recipient state.

#### Connection

What relationship exists between politics and whether a state is a recipient or donor? Recipient states are most often Republican in national politics, while donor states tend to be more Democratic in national politics.

#### Cause

Is there a policy explanation for which states are recipient states? The federal government fights poverty by moving money around the country. Recipient states usually have higher poverty levels and lower average incomes. Therefore, they tend to pay less federal tax than they receive per person.
with members of Congress or the president, or by direct lobbying through their state offices in Washington or their national trade associations, state and local governments often intervene at several points in the funding process.

First, the specific instructions Congress develops in allocating formula grants involves often-intricate negotiation. Small changes in the terms—or the weight that the terms carry—in a given formula can advantage some states and disadvantage others. It is now a simple matter for states to analyze various proposed formulas in new legislation and to calculate how well they will do using each of those the rival formulas. Second, when a grant program is project-oriented, state and local governments often employ professional grant writers who know the inside workings of the national grant-making process and so know how to orient grant applications to make them more attractive to the officials who review the proposals. And third, state officials generally prefer (and lobby Congress for) block grants that have fewer restrictions on how the states can spend the funding to categorical grants that have more restrictions. In tough financial times when the competition for national grants increases, lobbying becomes increasingly more common.

Unfunded Mandates

Fewer national dollars do not necessarily mean fewer national controls. On the contrary, the national government has imposed mandates on states and local governments, often without providing national funds. State and local officials complained about this, and their protests were effective. The Unfunded Mandates Reform Act of 1995 was championed by then-House Republican Speaker Newt Gingrich as part of the GOP’s Contract with America. The act was considered part of what commentators called the “Newt Federalism.”

The law requires Congress to evaluate the impact of unfunded mandates and imposes mild constraints on Congress itself. A congressional committee that approves any legislation containing a national mandate must draw attention to the mandate in its report and describe its cost to state and local governments. If the committee intends any mandate to be partially unfunded, it must explain why it is appropriate for state and local governments to pay for it.

At least during its first 15 years, the Unfunded Mandates Reform Act has been mostly successful in restraining mandates.40 According to the National Conference of State Legislatures, the national government has enacted only 11 laws since 1995 that impose unfunded mandates. Three of these unfunded mandates involved increases in the minimum wage that apply to all state and local employees.40

The Politics of Federalism

Evaluate the current relationship between the national and state governments and the future challenges for federalism.

The formal structures of our federal system have not changed much since 1787, but the political realities, especially during the past half-century, have greatly altered the way federalism works. To understand these changes, we need to look at some of the trends that continue to fuel the debate about the meaning of federalism.

The Growth of National Government

Throughout the past two centuries, power has accrued to the national government. As the Advisory Commission on Intergovernmental Relations observed in a 1981 report, “No one planned the growth, but everyone played a part in it.”41
Governments and other organizations produce enormous amounts of information every year on how states raise and spend money, where people live, and even how they travel, eat, and spend their free time.

However, as the amount of information has expanded rapidly over the decade, new organizations have become engaged in helping citizens “mash-up” the data to reveal trends, ratings, and rankings in how their own states compare with other states. Using what some experts call “data-scraping” computer programs, these organizations allow citizens to track the issues and problems that matter most to them, while exploring possible causes and effects along the way. In doing so, they can keep track of what their governments are doing to encourage or discourage particular behaviors and make informed judgments about how to solve public problems.

Datamasher.org is one of the new Web sites dedicated to helping advance citizen knowledge. With hundreds of information sources to work with, you are free to search for patterns in topics like the number of fast-food restaurants and the level of obesity in your state. The question in this specific mash-up is whether the number of these restaurants somehow relates to obesity.

In some states such as Colorado, the ratio of restaurants to obesity is relatively low, compared with much higher levels in other states such as Kansas. Recognizing that correlation is not causation, the mash-up does not prove that higher obesity leads to more fast-food restaurants, or vice versa. But, mash-up provides an interesting way of thinking about whether some trends are related to each other in your state and suggests questions deserving more rigorous investigation. Simply asked, are there some conditions that lead to a stronger relationship between the two measures in Kansas than its next-door neighbor Colorado?

Datamasher.org also allows you to create your own mash-ups built on specific questions you might have. What is the relationship between the divorce rate and high school graduation rate? What is the relationship between smoking and cancer? What is the relationship between a high SAT score and having a solar panel on your house? These mash-ups produce maps and tables that show what is happening in your state, and suggest many ideas for moving your state up or down the rankings.

QUESTIONS
1. How could keeping track of statistics about your state be a way to hold government accountable for what it does?
2. Is there too much information now available on what governments do and how problems relate to each other? Are rankings of states a good way to improve the way governments operate and make decisions?
3. What are the risks of using data mash-ups to make a case for government action?
This shift occurred for a variety of reasons. One is that many of our problems have become national in scope. Much that was local in 1789, in 1860, or in 1930 is now national, even global. State governments could supervise the relationships between small merchants and their few employees, for instance, but only the national government can supervise relationships between multinational corporations and their thousands of worldwide employees, many of whom are organized in national unions.

As the economy grew rapidly during the early nineteenth century, powerful interests made demands on the national government. Business groups called on the government for aid in the form of tariffs, a national banking system, subsidies to railroads and the merchant marine, and uniform rules on the environment. And companies such as automobile makers that sell their products in all states typically prefer one national set of regulations rather than a different set in every state. Farmers learned that the national government could give more aid than the states, and they too began to demand help. By the beginning of the twentieth century, urban groups in general and organized labor in particular were pressing their claims. Big business, big agriculture, and big labor all added up to big government.

The growth of the national economy and the creation of national transportation and communications networks altered people’s attitudes toward the national government. Before the Civil War, citizens saw the national government as a distant, even foreign, entity. Today, in part because of television and the Internet, most people know more about Washington than they know about their state capitals, and they know more about the president and their national legislators than about their governor, their state legislators, or even the local officials who run their cities and schools. Voter turnout in local elections is generally lower than in state elections and lower in state elections than in presidential elections.

The Great Depression of the 1930s stimulated extensive national action on welfare, unemployment, and farm surpluses. World War II brought federal regulation of wages, prices, and employment, as well as national efforts to allocate resources, train personnel, and support engineering and inventions. After the war, the national government helped veterans obtain college degrees and inaugurated a vast system of support for university research. The United States became the most powerful leader of the free world, maintaining substantial military forces even in times of peace.

Although economic and social conditions created many of the pressures for expanding the national government, so did political claims. Once established, federal programs generate groups with vested interests in promoting, defending, and expanding them. Associations are formed and alliances are made. “In a word, the growth of government has created a constituency of, by, and for government.” The national budget can become a negative issue for Congress and the president if it grows too large, however. In 2011–2012, for example, Congress and the president adopted deep cuts in federal aid to the states in an effort to reduce the federal deficit. The cuts were needed to reassure financial markets that the United States was making progress to reduce its rapidly increasing debt.

The politics of federalism are changing, and Congress is being pressured to reduce the size and scope of national programs, while dealing with the demands for homeland security. Meanwhile, the cost of entitlement programs such as Social Security and Medicare is rising because there are more older people with chronic health conditions, and they are living longer. These programs have widespread public support: to cut them is politically risky. “With all other options disappearing, it is politically tempting to finance tax cuts by turning over to the states many of the social programs…that have become the responsibility of the national government.”

The Future of Federalism

During recent decades, state governments have undergone a major transformation. Most have improved their governmental structures, taken on greater roles in funding education and welfare, launched programs to help distressed cities, expanded their tax
bases by allowing citizens to deduct their state and local taxes from the national income tax, and assumed greater roles in maintaining homeland security and in fighting corporate corruption.

After the civil rights revolution of the 1960s, segregationists feared that national officials would work for racial integration. Thus, they praised local government, emphasized the dangers of centralization, and argued that the protection of civil rights was not a proper function of the national government. As one political scientist observed, “Federalism has a dark history to overcome. For nearly 200 years, states’ rights have been asserted to protect slavery, segregation, and discrimination.”

Today, the politics of federalism, even with respect to civil rights, is more complicated than in the past. The national government is not necessarily more sympathetic to the claims of minorities than state or city governments are. Rulings on same-sex marriages and “civil unions” by state courts interpreting their state constitutions have extended more protection for these rights than has the Supreme Court’s interpretation of the U.S. Constitution. Other states, however, are passing legislation that would eliminate such protections, and opponents are pressing for a constitutional amendment to bar same-sex marriages.

The national government is not likely to retreat to a more passive role. Indeed, international terrorism, the wars in Afghanistan and Iraq, and rising deficits have substantially altered the underlying economic and social conditions that generated the demand for federal action. In addition to such traditional challenges as helping people find jobs and preventing inflation and depressions—which still require national action—combating terrorism and surviving in a global economy based on the information explosion, e-commerce, and advancing technologies have added countless new issues to the national agenda.

Most American citizens have strong attachments to the Constitution’s federal system measured broadly to mean all levels of government. However, they remain highly critical of the politicians who run government and are often angry at the stalemates in their national, state, and local legislatures. Although Americans still trust their state and local governments more than the national government in Washington, D.C., they are increasingly reluctant to give their states and localities a ringing endorsement.

Federalism can be a source of great reward for the nation, especially when it allows states to lead the nation in creating new programs to address problems such as poverty, global warming, and health care access. If the people cannot move the national government toward action, they can always push their state and local governments. By giving them different leverage points to make a difference, the Constitution guarantees that government is by the people.

Federalism can also be a source of enormous frustration, especially when national and state governments disagree on basic issues such as civil rights and liberties. This is when the people need to step forward not as citizens of their states but as citizens of the nation as a whole. Even as they influence their state and local governments, the people must understand they have a national voice that often needs to be heard.
Defining Federalism

2.1 Interpret the definitions of federalism, and assess the advantages and disadvantages of the American system of federalism, p. 59.

A federal system is one in which the constitution divides powers between the central government and lower-level governments such as states or provinces. But, over time, there has been support for different balances between state and government power such as the shift from dual federalism to marble cake federalism. The federal system in the United States does protect us from tyranny, permit local variation in policy, and encourage experimentation, but it comes at the cost of greater complexity, conflict, and difficulty in determining exactly which level of government is responsible for providing which goods and services that citizens might demand.

The Constitutional Structure of American Federalism

2.2 Differentiate the powers the Constitution provides to national and state governments, p. 66.

The Constitution gives three types of powers to the national and state governments: delegated powers to the national government, reserve powers for the states, and concurrent powers that the national and state governments share. Beyond delegated powers, the national government also has implied powers under the necessary and proper clause and inherent powers during periods of war and national crisis.

The national government’s power over the states stems primarily from several constitutional pillars: the national supremacy clause, the war powers, its powers to regulate commerce among the states to tax and spend, and its power to do what Congress thinks is necessary and proper to promote the general welfare and to provide for the common defense. These constitutional pillars have permitted tremendous expansion of the functions of the national government.

The National Courts and Federalism

2.3 Assess the role of the national courts in defining the relationship between the national and state governments, and evaluate the positions of decentralists and centralists, p. 72.

The national courts umpire the division of power between the national and state governments. The Marshall Court, in decisions such as Gibbons v. Ogden and McCulloch v. Maryland, asserted the power of the national government over the states and promoted a national economic common market. These decisions also reinforced the supremacy of the national government over the states.

Today, debates about federalism are less often about its constitutional structure than about whether action should come from the national or the state and local levels. Recent Supreme Court decisions favor a decentralist position and signal shifts in the Court’s interpretation of the constitutional nature of our federal system.

The National Budget as a Tool of Federalism

2.4 Analyze the budget as a tool of federalism, and evaluate its impact on state and local governments, p. 76.

The major instruments of national intervention in state programs have been various kinds of financial grants-in-aid, of which the most prominent are categorical grants, formula grants, project grants, and block grants. The national government also imposes federal mandates and controls activities of state and local governments by other means.

The Politics of Federalism

2.5 Evaluate the current relationship between the national and state governments and the future challenges for federalism, p. 81.

The national government has grown dramatically throughout the past 200 years. Its budget dwarfs many state budgets combined. As it has grown, the national government has asked states to do more on its behalf. States have pressed back against the national government, however, and continue to fight for their authority to use powers that are reserved for them under the Constitution.
Learn the Terms

federalism, p. 59
unitary system, p. 61
confederation, p. 61
deleagted (express) powers, p. 66
implied powers, p. 66
necessary and proper clause, p. 66
inherent powers, p. 66
supremacy clause, p. 67
commerce clause, p. 67
federal mandate, p. 68
reserve powers, p. 68
concurrent powers, p. 68
full faith and credit clause, p. 71
extradition, p. 71
interstate compact, p. 71
national supremacy, p. 72
preemption, p. 73
centralists, p. 74
deaclistration, p. 74
states’ rights, p. 75
devolution revolution, p. 76

Test Yourself

MULThE CHOICE QUESTIONS

2.1 Interpret the definitions of federalism, and assess the advantages and disadvantages of the American system of federalism.

Canada has a central government in Ottawa, the nation’s capital, along with ten provinces and three territories, each of which has its own government. According to Canada’s constitution, both the provinces and the central government have powers to tax and regulate individual citizens. Which type of government best describes Canada?

- A unitary state
- A cooperative federalist state
- A confederation
- A territorial union
- A competitive federalist state

2.2 Differentiate the powers the Constitution provides to national and state governments.

Determine whether the following powers are delegated to the national government, reserved for the states, or shared by both:

- Power to establish courts
- Power to tax citizens and businesses
- Power to regulate interstate commerce
- Power to oversee primary and elementary education
- Power to make war

2.3 Assess the role of the national courts in defining the relationship between the national and state governments, and evaluate the positions of decentralists and centralists.

Which of the following arguments support the decentralist case?

- The Constitution is a compact among sovereign states.
- The national government is an agent of the states.
- The national government should not interfere with activities reserved to the states.
- State governments reflect the people’s wishes more accurately than the national government.
- All of the above

2.4 Analyze the budget as a tool of federalism, and evaluate its impact on state and local governments.

Which of the following are examples of a federal mandate:

- The New York state legislature passes a law requiring all New York school teachers to spend ten hours a year learning new teaching techniques.
- Congress passes a law requiring all coal plants in the United States to reduce their carbon emissions by 30 percent by 2015.
- The Supreme Court upholds a law requiring teenage women to get parental permission before having an abortion.
- The Federal Emergency Management Agency sends funds from the national government to help clean up after a tornado.
- Congress passes an increase in the minimum wage that applies to all state and local employees.

2.5 Evaluate the current relationship between the national and state governments and the future challenges for federalism.

What is a likely future for federalism?

- Congress may reduce the size of national programs.
- Homeland security will be turned over to the states.
- There will be many new issues on the national agenda.
- The national government will become more passive.
- The decentralist position will prevail.

ESSAY QUESTION

In a few sentences, discuss the "constitutional counterrevolution" instigated by Chief Justice William Rehnquist and continued by Chief Justice John Roberts.

Why is preemption such a powerful tool for influencing state governments? Use this answer to write an essay appraising whether the balance of governmental power should lean more toward either the national government or the states.
Explore Further

IN THE LIBRARY


Michael Burgess, *Comparative Federalism Theory and Practice* (Routledge, 2006).

Center For The Study Of Federalism, *The Federalism Report* (published quarterly by Temple University; this publication notes research, books and articles, and scholarly conferences).


ON THE WEB

www.ncsl.org
The top source of information on pending legislative action and policy controversy in the states.

www.nga.org
The primary Web site for the state governors.

www.USASpending.gov
The national government’s summary of all spending activity. Includes charts and graphs on overall spending trends and amounts of funding dedicated to state governments.

www.governing.com
The Web site for the major national magazine on state and local governments.