

CHAPTER 2

Federalism and the States

▣ LEARNING OBJECTIVES

- To familiarize yourself with the history and evolution of American federalism from the writings of the Framers and the growth of national power to the contemporary time.
- To understand the changing balance of formal and informal power and responsibility between the national government and the states.
- To be able to describe the principal models of federalism that attempt to explain the nature of federal-state-local relationships.
- To develop comprehension of the complex nature and tools of intergovernmental financial relations.
- To understand the sources of friction and conflict between the three levels of government.

▣ SUMMARY OVERVIEW

The U.S. system of federalism can be described as an ongoing experiment in government. It is a complex governmental arrangement in which power is divided among national and state and local governments. In the constitutional arrangement, each enforces its own laws directly on its citizens. As there are overlapping jurisdictions and confusion about which level of government has the power to act in individual cases, there is a considerable amount of conflict among the levels of government. For example, recent attempts by some states to pass immigration laws have led to jurisdictional disputes with the national government.

The Founders adopted federalism because they needed to compromise state rights with a powerful national government. They were aware that a unitary system like that found in England would not provide a practical solution for the United States. They were also unhappy with the confederacy system because it did not allow for enough national governmental power. The authors of the Constitution saw other advantages to federalism, such as an ability to preserve states' rights and prevent tyranny.

The historical struggle between the national government and the states has led to actions by the courts, Congress, and the executive that have favored the national government. Over time, the trend has generally been in the direction of a stronger national government. However, beginning in the early 1980s, there was a resurgence of state and local governments as political and policy actors. This has led to a more important role of state and local governments in domestic policy making in such areas as education, health and welfare, and public safety.

Local governments are not mentioned in the U.S. Constitution. Legally, they are considered creatures of their own states. This means they have no independent power or status. However, in recent years, most state governments have granted many local governments home rule; that is, the ability to pass their own laws without state approval as long as they do not violate either the state or the national constitutions. This has helped to create an even more complex system of

federalism in which all three levels (national, state, and local) can claim some sovereignty and power over domestic issues. It is no wonder, then, that when the United States faces problems such as Katrina, terrorist attacks, or illegal immigration, it is extremely difficult to fix governmental responsibility. This can lead to governmental responses that are disjointed, uncoordinated, and altogether inept. A good example of this is what happened during Hurricane Katrina.

There are numerous models to describe the relationships of governments in our federal system. The model described in the Constitution with separate and distinct roles is known as dual federalism. When federalism took on more of a joint effort in the 1960s, it was described as cooperative federalism. More recently, the evolution of federalism has led to descriptive models such as creative, coercive, and new federalism. Each provides an attempt to explain some change that takes place in the relationship between the national government and its nonnational counterparts. For example, new federalism was a term used in the 1980s to describe President Reagan's attempt to increase state power and reduce national participation in some domestic programs, such as welfare.

For revenue transfers from national governments to nonnational governments, the primary mechanisms have been grants-in-aid systems. Two major variables in these grants are the amount of discretion given the recipient and the conditions under which the grant is awarded. Revenue sharing affords the most discretion and permits nonnational government to use it for any purpose; categorical grants afford the least discretion. Located somewhere between the two are block grants, which are limited in use to specific functional areas. Grants often require that matching funds be provided by the grant recipient as proof of commitment. Today, categorical grants constitute about 90 percent of the total grant funding. Early in 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA). Better known as the Federal Stimulus Act, it provided tens of billions of dollars in much needed financial assistance to state and local governments and was the largest one-time federal transfer payment law in the nation's history.

The American federal system has never been static, and the pendulum has swung back and forth over the lifetime of the Republic from domination by the states to domination by the national government. Despite the focus on international matters and a struggling economy with massive federal budget deficits, the pendulum seems to be shifting somewhat back toward less federal government intervention. As this shift occurs, cooperative federalism is the operative model today, under a variant known as New Federalism. The fact remains that the states have become, and will continue to be, very important actors in solving the nation's domestic problems, with one large caveat: *if they can find the financial resources to do so*. The collapse of the financial markets, the decline in housing prices, and the sharp rise in unemployment have severely slashed state and local government tax revenues, putting real strain on their capability to deliver services. Simultaneously, the federal government continues to enact new laws and regulations mandating state and local governments to provide or enhance various programs or services without often providing financial grants or shared revenues to do so.

CHAPTER OUTLINE

I. THE CONCEPT OF FEDERALISM

★ Controversies in States and Localities: Restricting Illegal Immigration

A. Unitary, Confederate, and Federal Systems

- **Unitary system:** All government authority is derived from one centralized government.

- **Confederacy:** A league of sovereign states in which a limited central government exercises few independent powers.
- **Federal System:** A means of dividing the power and functions of government between a central government and a specified number of geographically defined regional jurisdictions.

B. The Advantages and Disadvantages of Federalism

- A federal system helps manage social and political conflict.
- Federalism promotes administrative efficiency.
- Federalism encourages innovation.
- A federal system maximizes political participation in government.

II. THE HISTORY OF U.S. FEDERALISM

A. Early History

- Followers of Thomas Hobbes
- Committed to controlling factions

B. The Move Toward Federalism

1. The Articles of Confederation

- Federal government was unable to carry out responsibilities.
- National government could not regulate commerce.
- Anarchy and warfare between states was a concern.

2. The Constitutional Convention

- Federalism with features of both unitary and confederate governments
- Willing to compromise that led to federalism
- Developed a system of **enumerated (delegated) powers** and **concurrent powers**

C. State-Centered Federalism

- Early years of nations **state-centered federalism**
 - **Reserved powers** of Tenth Amendment
 - **Compact theory**
- Developed over time into **nation-centered federalism**

D. The Growth of National Power Through the Constitution and the Judiciary

1. The National Supremacy Clause

- **National Supremacy Clause:** National laws superior to state laws.

2. The Necessary and Proper Clause

- **Necessary and Proper Clause:** Gives Congress the power to enact all laws necessary and proper to carry out its responsibilities.
- **Implied Powers:** Not expressly granted by the Constitution, but inferred

3. The Commerce Clause

- **Commerce Clause:** Gives Congress the power to regulate trade with foreign countries and among states.

4. The General Welfare Clause

- **General Welfare Clause:** Provides for the general welfare of the United States.

5. The Fourteenth Amendment

- **The Fourteenth Amendment:** This amendment contains citizenship rights, due process, and equal protection provisions that states must apply to all citizens.

E. The Growth of National Power through Congress

1. Taxing and Spending Power

- **Sixteenth Amendment**

2. Federal Pre-emption

- **Federal pre-emption:** Principle that national laws that precedence over state laws.

3. Smothering (Then Resuscitating) the Tenth Amendment

4. Federalism and the Courts Today

III. MODELS OF FEDERALISM

A. Dual Federalism (1787–1932)

- **Dual federalism:** Model in which the responsibilities and activities of the national and state governments are separate and distinct.

B. Cooperative Federalism (1933–1964)

- **Cooperative federalism:** A model of federalism that stresses the linkages and joint arrangements among the three levels of government.

C. Contemporary Variations on Cooperative Federalism (Since 1964)

- **Creative federalism:** A model of cooperative federalism in which many new grants-in-aid, including direct national-local financial arrangements, were made.
- **New federalism:** A model that represents a return of powers and responsibilities to the states.
- **Devolution:** The delegating of power and programs from the federal government to state and local governments.
- **Coercive federalism:** A form of federalism in which the national government uses regulations, mandates, conditions, pre-emptions, and other actions to impose national priorities on the states.

IV. INTERGOVERNMENTAL RELATIONS

A. Tribal Governments

B. Interstate Cooperation

1. Cooperation under the Constitution

- The full faith and credit clause
- The interstate rendition clause
- The privileges and immunities clause
- Interstate compact clause

2. Informal Cooperation among the States

C. Intergovernmental Financial Relations

1. Discretion of Recipients

- **Categorical grants:** A form of financial aid from one level of government to another to be used for a narrowly defined purpose.
- **Block grants:** A form of financial aid from one level of government to another for use in a broad, functional area.

2. Conditions for Grants

- **Formula grant:** A funding mechanism that automatically allocates monies based on conditions in the recipient government
- **Project grant:** A funding mechanism that awards monies based on the strength of an applicant government's proposal.

V. FEDERAL PURSE STRINGS

A. The Importance of Federal Funds

- Federal grants are an important component of state and local revenue.
- States battle each other for national money.

B. Here's the Check and Here's What You Must Do with It: Mandates and Pre-emptions

- **Federal mandate:** A requirement that a state or local government undertake a specific activity or provide a particular service as a condition of funding.
- Set Asides

VI. THE FUTURE OF FEDERALISM

- Increased State Role
 - Innovation
 - Development
 - Implementing

★ Governing in Tough Times: Medical Marijuana for Fiscal Relief?

▣ CRITICAL THINKING QUESTIONS

1. Why does the United States have a federal system?
2. How does federalism differ from unitary government and confederacy?
3. What are the primary weaknesses of a federal system?
4. Why is federalism a difficult system for citizens to understand?

▣ LECTURE LAUNCHERS

1. Discuss the confusion that was created by Katrina and the failure of government response. You can start by reading the bipartisan committee report: *A Failure of Initiative* at (www.katrina.house.gov). It points to a number of problems including: incomplete preparation, a failure in evacuation, lack of federal preparation, lack of coordination, and a failure of information. Discuss with your students how to go about apportioning blame to national, state, and local governments for what happened.
2. In the federal grant-in-aid system it is said that money does not come without strings attached. Lead a discussion about what this really means for state and local governments. You can point out that no state is required to accept grants but that it is very difficult for any state or local government to turn down federal money because almost all non-national governments are in need of money from the national government to conduct their business. Talk about the differences between categorical and block grants and why state and local governments prefer the flexibility of the block grant system. You should also discuss the role of grantsmanship and how that can favor rich over poor states.

3. One of the models of federalism is *coercive federalism*. Give a lecture about how coercive federalism works. Talk about how the national government pressures the states to change their policies by using regulations, mandates, and conditions, oftentimes even threats to withdraw federal funding. This has been done most often by restricting interstate highway money. A good example of this form of federalism took place during the Bush Administration to acquire state acceptance of educational reform. Check out, “The Politics of Coercive Federalism in the Bush Era,” *Publius*, 2007, 37 (3): 390–412.

IN-CLASS ACTIVITIES

1. Divide the class into two groups and conduct a debate on the pros and cons of federalism. You may want to have some students talk on behalf of each of the three forms of government discussed in the text: unitary government, confederacy, and federal system. The pros and cons of each of these forms can also be part of the discussion.
2. Assign each student a state and ask students to research the role of that state with regard to Homeland Security. Students should address: (a) grants the state has received, (2) participation in sponsored Homeland Security programs, and (3) state plans in the case of a terrorist attack, including training that has been done for first responders and what equipment has been purchased? Students should also check out FEMA’s Homeland Security Grant Program for 2012 at (<http://www.fema.gov/government/grant/hsgp/>). Another good website that list programs by individual states is from Homeland Security at: (http://www.dhs.gov/files/resources/editorial_0306.shtm).
3. Create a number of groups among students to research and debate the appropriateness of state-centered federalism versus nation-centered federalism. Assign groups to each side of the argument. Ask the students to consider various functions that should or should not be devolved to the states. Students could be assigned an article and case study on federalism, such as John Kincaid’s “The Devolution Tortoise and the Centralization Hare” and Paul Posner’s case study, “The Role of Home in Homeland Security.” Both are included in Chapter 3 of Richard Clucas’s *Readings and Cases in State and Local Politics* (Boston: Houghton Mifflin, 2006).
4. The Supreme Court has used its role as arbiter of the federal system to expand national power over the states. Have your students research some cases that are examples of this political action. For example, they can review: *Marbury v. Madison*, *Brown v. Board of Education*, *Bush v. Gore*, and *Montana v. Wyoming*. Talk about how the United States has experienced a dramatic expansion of federal jurisdictional power over both state and local issues. At one time the Supreme Court focused only on diversity of citizenship cases but now extends the power of the national government to almost every area of state and local public policy.

KEY TERMS

block grants A form of financial aid from one level of government to another for use in a broad, functional area.

categorical grants A form of financial aid from one level of government to another to be used for a narrowly defined purpose.

coercive federalism A form of federalism in which the national government uses regulations, mandates, conditions, pre-emptions, and other actions to impose national priorities on the states.

commerce clause Part of Article I, Section 8, of the U.S. Constitution, which gives Congress the power to regulate trade with foreign countries and among the states.

compact theory A theory of federalism that became the foundation for states' rights arguments.

concurrent powers Those granted by the Constitution to both the national and the state governments.

confederacy A league of sovereign states in which a limited central government exercises few independent powers.

cooperative federalism A model of federalism that stresses the linkages and joint arrangements among the three levels of government.

creative federalism A model of cooperative federalism in which many new grants-in-aid, including direct national-local financial arrangements, were made.

devolution The delegating of power and programs from the federal government to state and local governments.

dual federalism Model in which the responsibilities and activities of the national and state governments are separate and distinct.

enumerated (delegated) powers Those expressly given to the national government, primarily in Article I, Section 8, of the Constitution.

federal mandate A requirement that a state or local government undertake a specific activity or provide a particular service as a condition of funding.

federal pre-emption The principle that national laws take precedence over state laws.

federal system A means of dividing the power and functions of government between a central government and a specified number of geographically defined regional jurisdictions.

formula grant A funding mechanism that automatically allocates monies based on conditions in the recipient government.

Fourteenth Amendment Enacted in 1868, this amendment contains citizenship rights, due process, and equal protection provisions that states must apply to all citizens.

general welfare clause The portion of Article I, Section 8, of the Constitution that provides for the general welfare of the United States.

grant-in-aid An intergovernmental transfer of funds or other assets, subject to conditions.

implied powers Those that are not expressly granted by the Constitution but that are inferred from the enumerated powers.

nation-centered federalism Theory holding that the national government is dominant over the states.

national supremacy clause Article VI of the Constitution, which makes national laws superior to state laws.

necessary and proper clause Portion of Article I, Section 8, of the Constitution that authorizes Congress to enact all laws "necessary and proper" to carry out its responsibilities.

new federalism A model that represents a return of powers and responsibilities to the states.

project grant A funding mechanism that awards monies based on the strength of an applicant government's proposal.

reserved powers Those powers residing with the states by virtue of the Tenth Amendment.

Sixteenth Amendment Enacted in 1913, this amendment grants the national government the power to levy income taxes.

state-centered federalism Theory holding that the national government represents a voluntary compact or agreement between the states, which retain a dominant position.

Tenth Amendment The amendment to the Constitution, ratified in 1791, reserving powers to the states.

unitary system One in which all government authority is derived from a central government.

■ WEB LINKS

Examples of unfunded mandates are found on a Heritage Foundation webpage at: (www.regulation.org/states.html). Costs of unfunded mandates are tracked by the NCSL in their "mandate monitor" at: (<http://www.ncsl.org/state-federal-committees/schudg/mandate-monitor-overview.aspx>).

Federalism decisions by the U.S. Supreme Court may be reviewed at the Council of State Governments' website at: (www.statenews.org) or (www.csg.org). For other sites with federalism content, see: (www.governing.com) and (www.stateline.org).

For current information on relationships among the three levels of government, see: (www.governing.com).

The website (www.census.gov) has comparative data on the states and localities, particularly state and local finances. It is not particularly user-friendly; you'll have to dig around for what you seek.

Information on tribal governments and politics may be acquired at: (www.tribal-institute.org) and (www.narf.org).

There is a blog devoted to federalism at: (www.federalistblog.us/). It contains discussions of court cases, concepts and amendments, and some valuable links to constitutional issues that involve federalism.

■ INSTRUCTOR RESOURCES

Readings

For an assortment of articles on federalism, one should examine *Publius: The Journal of Federalism*. The journal is published quarterly and is solely dedicated to the study of federalism. Each year *Publius* publishes "The State of American Federalism," which examines the current issues and trends in federalism.

Anton, Thomas J. *American Federalism and Public Policy: How the System Works*. New York: Random House, 1989.

Conlan, Timothy. *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform*. Washington, DC: Brookings Institution Press, 1998.

Ostrom, Vincent. *The Meaning of Federalism: Constituting a Self-Governing Society*. San Francisco, CA: Institute for Contemporary Studies Press, 1994.

O'Toole, Laurence, J. Jr., ed. *American Intergovernmental Relations*, 4th ed. Washington, DC: CQ Press, 2006.

Peterson, Paul E. *What Price Federalism?* Washington, DC: The Brookings Institution, 1995.

Paul E. Peterson. *When Federalism Works*. Washington, DC: Brookings Institution Press, 2000.

Walker, David B. *The Rebirth of Federalism: Slouching Toward Washington*, 2nd ed. Washington, DC: CQ Press, 1999.

Films or Videos

Gibbons v. Ogden. (1824) (35 min.) Indiana University, Audio-Visual Center, Bloomington, IN 47401. A reenactment of the arguments over the authority to regulate commerce.

Marbury v. Madison. (1803) (33 min.) Indiana University, Audio-Visual Center, Bloomington, IN 47401. A reenactment of the case that decided the Supreme Court had the power to determine the constitutionality of acts of Congress.

McCulloch v. Maryland. (1819) (35 min.) Indiana University, Audio-Visual Center, Bloomington, IN 47401. A reenactment of the case that decided that states could not tax national government entities.

The films are available from Films for the Humanities & Sciences, PO Box 2053, Princeton, NJ 08543-2053.

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