



States and the federal government might not always agree, but they need each other to get things done. That means presidents and governors have to work together. Here President Biden talks to New York governor Kathy Hochul about reproductive health care.

NICHOLAS KAMM/AFP/Getty Images

2

FEDERALISM

The Power Plan

CHAPTER OBJECTIVES

After reading this chapter, you will be able to

- Identify the three systems of government and how they divide power.
- Explain what federalism is and why it was chosen as a system for the United States.
- Discuss the advantages and disadvantages of federalism.
- Describe the ways elements in the U.S. Constitution provide a basis for federalism.
- Summarize the different types of federalism that developed over time.
- Discuss the Supreme Court's role in U.S. federalism.

In June 2022 abortion, pretty much overnight, became illegal in Texas, Louisiana, Oklahoma, Mississippi, and Alabama. Meanwhile, in California, Washington, Minnesota, and New York, nothing much changed. In the latter states, abortion access remained not only freely available but perfectly legal. Huh? How can something—especially something that was a constitutionally protected right for a half-century—end up being illegal and legal at the same time? Simple: federalism.

Federalism is a political system in which national and regional governments share powers and are considered independent equals. The upshot of federalism in the United States is that the national government and state governments can have pretty different ideas about what should or should not be allowed. When the U.S. Supreme Court made official its long-anticipated ruling overturning *Roe v. Wade*, it did not technically outlaw abortion. The ruling in *Dobbs v. Jackson* (2022) effectively said that terminating a pregnancy is not a right protected by the U.S. Constitution. But something that is not guaranteed by the federal Constitution can still be guaranteed—or banned completely—by *state* constitutions and *state* laws authorized by those same constitutions. By denying abortion federal constitutional protection, the Supreme Court basically said whether abortion is legal or illegal is up to the states. States, being states, zoomed off in totally different directions following the ruling. Some states had already passed so-called trigger laws, statutes that automatically outlawed abortion as soon as it was constitutionally permissible to do so. Other states not only kept abortion access legal and protected, but began discussing *expanding* abortion rights.¹

Overturning *Roe* thus set off a political uproar that was still going full tilt at the time this textbook was written. It seems reasonable to predict, though, that at least for the foreseeable future, legal access to an abortion is going to vary a great deal across the states. Abortion is far from the only choice whose legality is tied to geography. In some states selling marijuana is a legitimate, regulated, and taxed business. In others selling weed is, by definition and across the board, a criminal activity. Even something as trivial as a maximum speed limit can change abruptly if you are driving on a highway that crosses state lines.

Federalism inevitably means the dividing line between what is and is not legally permissible depends on not just what you do but where you do it. It also pretty much guarantees conflict between state and federal governments. If the federal government wants the nation to go one way on any controversial issue—abortion, environmental regulations, immigration—some states will always want to go in another direction. Clearly, both of these things cannot happen. So, who ultimately has the power and the authority to get their way? The states or the federal government? Finding the answer to this question drives a good deal of political conflict in the United

States. The only way any of that makes sense is if you understand federalism. Indeed, the bottom line is that you cannot understand politics in the United States—and that means national as well as state and local politics—without understanding federalism. This chapter is aimed at providing that basic understanding of federalism, its history and evolution in the United States, and its implications for politics and governance in states and localities.

SYSTEMS OF POWER

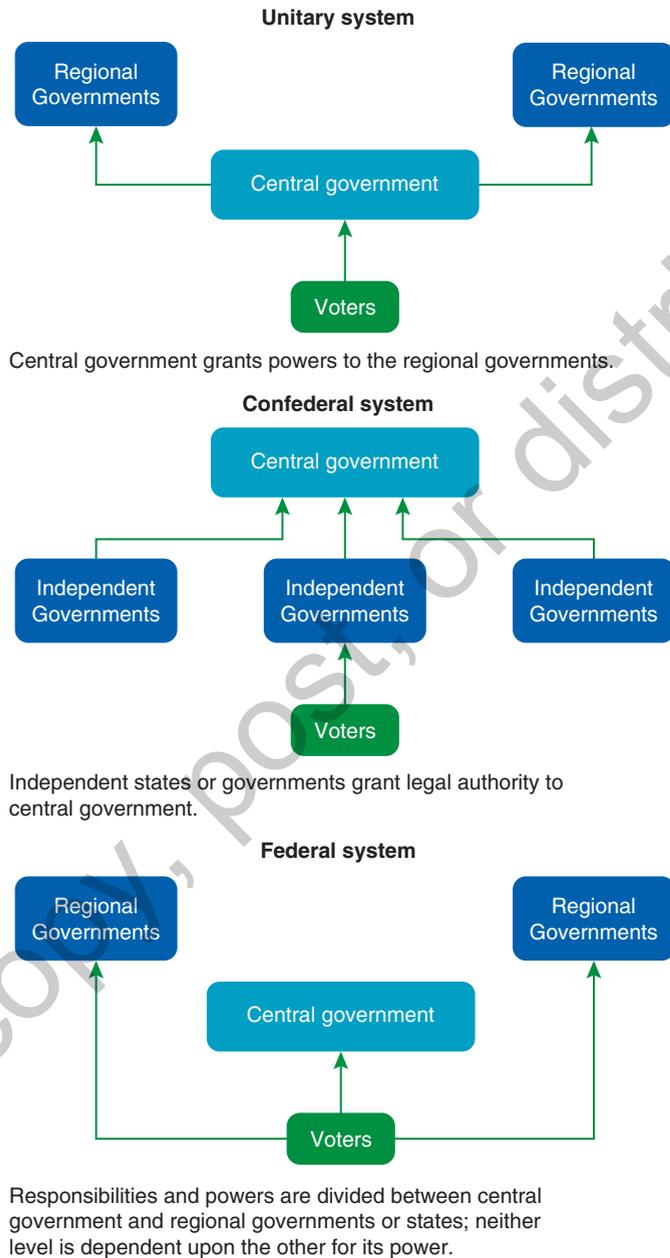
We typically think of a nation as being ruled by a single sovereign government—that is, a government that depends on no other government for its political authority or power. This does not mean that every nation has one government. Power and policy responsibility are distributed throughout any given political system in one of three ways, and all typically involve multiple levels of government. (See Figure 2.1.) The first option is to concentrate power in a single central government. Nations in which legal authority is held exclusively by a central government are known as **unitary systems**. Unitary systems typically have regional and/or local governments, but these can exercise only the powers and responsibilities granted them by the central government. In other words, these governments are not sovereign; how much or how little power they are allowed to wield is up to the central government, not the citizens of the particular localities. For example, the United Kingdom is a unitary system with a strong tradition of local and regional government. Yet power is concentrated in the nation's Parliament—Parliament can expand or contract the powers and responsibilities of these lower governments or even shut them down entirely.

In contrast to unitary systems, confederal systems concentrate power in regional governments. A **confederacy** is defined as a voluntary association of independent, sovereign states or governments. This association stands the power hierarchy of a unitary system on its head. In a confederacy, the central government depends on the regional governments for its legal authority. The United States has experimented with confederal systems twice during its history. The Articles of Confederation was the first constitution of the United States. It organized the U.S. political system as an agreement of union among sovereign states, and that confederal system remained in effect for the first decade or so of the nation's existence. The Articles were replaced by a new constitution drafted at the Constitutional Convention of 1787. The product of that gathering in Philadelphia—the U.S. Constitution—was ratified in 1788 and replaced the Articles of Confederation as the basis of the U.S. political system.² The second experiment with confederacy began in 1861 at the onset of the Civil War. Southern states seeking to secede from the Union organized their political system as a confederacy. All this ended with the South's surrender in 1865 and the return of the seceded states to the Union.

Federal systems operate in a middle range between unitary systems and confederacies. Responsibilities in a federal system are divided between the two levels of government, and each is given the appropriate power and legal authority to fulfill those responsibilities. The system's defining feature is that neither level of government is dependent on the other for its power. Within its defined areas of responsibility, each is considered independent and autonomous. In the United States, the two levels of government considered sovereign are the federal government and state governments. States are legally equal partners with the national government and occupy a central role in the political system. Although required to operate within the rules laid down by the U.S. Constitution, states are considered sovereign because their power and legal authority are drawn not just from the U.S. Constitution but

FIGURE 2.1 ■ How It Works

Systems of government



also from their own citizens as codified in their own state constitutions. Local governments are treated very differently than are states. Within their own borders, states are very much like unitary systems; substate governments such as cities and counties get their power from the state, and they exercise only the policymaking authority the state is willing to grant. The specifics of local governments' powers and policy responsibilities are discussed in more depth in Chapter 11.

WHY FEDERALISM? THE ORIGINS OF THE FEDERAL SYSTEM IN THE UNITED STATES

The United States is a federal system for a number of reasons. Largely because of their experiences with the Articles of Confederation, the framers of the Constitution rejected the possibility of a confederacy. The national government was so weak under the Articles that prominent figures such as James Madison and George Washington feared it doomed the newly independent republic to failure.

These fears were not unfounded. Following the successful conclusion of the Revolutionary War in 1783, the new United States found itself in the grip of an economic recession, and the central government had little power to address the crisis. Indeed, it actually contributed to the problem by constantly threatening to default on its debts. Independence had brought political freedom, but it also meant that American-made products were now in head-to-head competition with cheap, high-quality goods from Great Britain. This made consumers happy but threatened to cripple American businesses. The economic difficulties pitted state against state, farmer against manufacturer, and debtor against banker. The weak central government really did not have the power to attempt a coordinated, nationwide response to the problem. It could do little but stand by and hope for the best.

As internal tensions mounted within the United States, European powers still active in the Americas threatened the nation's very sovereignty. Spain shut down shipping on the Mississippi River. The British refused to withdraw from some military posts until the U.S. government paid off its debts to British creditors. George Washington believed the United States, having won the war, was in real danger of losing the peace. He said that something had to change “to avert the humiliating and contemptible figure we are about to make on the annals of mankind.”³

For a loose coalition of the professional classes who called themselves Federalists, the “something” that needed to change was obviously the central government. Americans, however, were not particularly enthusiastic about handing more power to the central government, an attitude not so different from that held by many today. Most recognized that the Articles had numerous flaws, but few were ready to copy the example of the British and adopt a unitary system.

Two events in fall 1786 allowed the Federalists to overcome this resistance and achieve their goal of creating a more powerful national government. The first was the Annapolis Convention. This meeting in Maryland's capital was convened for the purpose of hammering out an interstate trade agreement. Few states sent delegates, and those who did show up had strong Federalist sympathies. They took advantage of the meeting and petitioned Congress to call for a commission to rewrite the Articles of Confederation.

The second event was Shays's Rebellion, an uprising of Massachusetts farmers who took up arms in protest of state efforts to take their property as payment for taxes and other debts. It was quickly crushed, but with further civil unrest threatening to boil over into civil war and with mounting pressure from powerful elites within the Federalist ranks, the Continental Congress was pushed to call for states to send delegates to Philadelphia in summer 1787. The purpose of the meeting, which came to be known as the Constitutional Convention, was the rewriting of the Articles of Confederation.

Once convened, the group quickly abandoned its mandate to modify the Articles and decided to write an entirely new constitution. In doing so, the Federalists who dominated the convention rejected confederacy as an adequate basis for the American political system. What they wanted was a government capable of dealing effectively with national problems, and this meant a strong central government whose power was independent of the states. Some Federalists, notably

Alexander Hamilton, were attracted to the idea of a unitary government, but such a system was never seriously considered. As the Revolutionary War had been fought in no small part because of the perceived arrogance of and abuse by a central government toward its regional subordinates (the states were originally colonies of the British Crown), this was not surprising. Political realities also argued against a unitary system. To have any legal force, the new constitution would have to be ratified by the states, and it was unlikely the states would voluntarily agree to give up all their powers to a national government. Federalism was thus the only practical option.

Yet a federal system meant more than the political price that had to be paid to achieve a stronger national government. The founders were attempting to construct a new form of **representative government**, in which citizens would exercise power indirectly, on the basis of a paradox. Convention delegates wanted a more powerful national government, but at the same time, they did not want to concentrate power for fear that would lead to tyranny. Their solution to this problem was to create a system of separated powers and checks and balances. They divided their new and stronger national government into three branches—legislative, executive, and judicial—and made each branch partially reliant on the others to carry out its own responsibilities. This made it difficult for any single group to gain the upper hand in all three divisions of government and gave each branch the power to check the excesses of the other branches.

The delegates achieved a similar set of goals by making state and national governments coequal partners. By letting states remain independent decision makers in a wide range of policy arenas, they divided power between the national and subnational levels of government. The national government was made more powerful by the new constitution, but the independence of the states helped set clear limits on this power.

THE ADVANTAGES AND DISADVANTAGES OF FEDERALISM

Federalism solved a political conundrum for the founders and helped achieve their philosophical aims of dispersing and separating power. Yet federalism is not necessarily better than a confederal or a unitary system—it's just different. In the United States, the pros and cons of federalism have benefited and bedeviled the American political system for more than two centuries.

There are four key advantages to the federal system. (See Table 2.1.) First, it keeps government closer to the people. Rather than the federal government's imposing one-size-fits-all policies, states have the freedom and authority to match government decisions to local preferences. This freedom also results in the local variance in laws, institutions, and traditions that characterizes the U.S. political system and provides the comparative method with its explanatory strength.

TABLE 2.1 ■ Advantages and Disadvantages of Federalism

Advantages	Disadvantages
Allows for flexibility among state laws and institutions.	Increases complexity and confusion.
Reduces conflict because states can accommodate citizens' interests.	Sometimes increases conflict when jurisdictional lines are unclear.
Allows for experimentation at the state level.	Duplicates efforts and reduces accountability.
Enables the achievement of national goals.	Makes coordination difficult.
	Creates inequality in services and policies.

Second, federalism allows local differences to be reflected in state and local government policy and thereby reduces conflict. Massachusetts, for example, is more liberal than, say, Alabama. California is more ethnically and culturally diverse than Nebraska. Rather than having the various interests and preferences that spring from state-to-state differences engage in a winner-take-all policy struggle at the federal level, they can be accommodated at the state level. This reduces the friction among interests and lessens conflict.

Third, independent subnational governments allow for flexibility and experimentation. The states, as Supreme Court justice Louis Brandeis famously put it, are “the laboratories of democracy.” Successful policy innovations in one state can be adopted by other states and copied by the federal government. Fourth, the achievement of at least some national goals is made easier by the participation of independent subnational governments. State governments constitute ready-made centralized regulatory bodies geographically distributed across the nation. It thus makes sense for the federal government to use states to help implement a wide range of policies and programs—everything from road construction to health care—rather than create a separate (and expensive) management infrastructure.

Along with its benefits, however, federalism confers a set of disadvantages. First, while allowing local differences does keep government closer to the people, it also creates complexity and confusion. For example, if you own a nationwide business, you have to deal with state *and* federal regulations—51 sets of regulations in all. That means, among other things, 51 tax codes and 51 sets of licensing requirements.

Second, federalism can increase conflict as easily as reduce it. The Constitution is very vague on the exact division of powers between state and federal governments, and it doesn’t mention local governments at all (see the box “Local Focus: Preemption for You, but Not for Me”). This results in a constant struggle—and a lot of litigation—to resolve which level of government has the responsibility and legal authority to take the lead role in a given policy area.

LOCAL FOCUS: PREEMPTION FOR YOU, BUT NOT FOR ME

The supremacy clause of the U.S. Constitution makes clear that the federal Constitution and the laws it authorizes are the “supreme law of the land.” That same Constitution also hints in the Tenth Amendment that the states retain legal supremacy in some areas, even if it is pretty vague about specifics. State governments are notoriously touchy about the federal government using the supremacy clause to impose policy preferences that are not popular among governors and state legislatures. Nothing triggers a rally to Tenth Amendment flags in regional capitols like Congress preempting state laws against the wishes of the states.

When it comes to preempting local laws, though, state governments are pretty shameless about making lower levels of government conform to the wishes of central—that is, the state—government. Local governments are notoriously touchy about that. Unlike state push-back against Washington, D.C., though, local governments have no Tenth Amendment legal defense to hide—or at least harrumph—behind. All they can do is point out the hypocrisy of those who argue policymaking is best done locally, but not actually by local governments. They have plenty examples of such double standards to choose from.

State governments have preempted municipal minimum-wage laws, banned local regulation of ridesharing services like Uber or Lyft, and even stepped in and told cities they cannot put limitations on the use of plastic grocery bags. In recent years a number of states have seriously considered dictating what localities can and cannot do with their public safety

budgets. Florida and Iowa threatened to withhold money to local school districts that were not holding in-person classes because of the pandemic. The politics of masks and social distancing put local health authorities under state government spotlights, which resulted in a number of legislative proposals to limit what those authorities can do to address public health threats.

What's going on here? Why would states, especially states quick to sing the praises of keeping power closer to the people when the federal government is preempting state laws, be so enthusiastic about preempting the powers of local governments? The short answer is politics, or more specifically the political differences between mostly liberal and Democratic big cities located in mostly conservative and Republican states. Those political differences mean cities and states can have very different policy preferences in much the same way that states and federal governments can have very different policy preferences.

The big difference is that states can fight off preemption from the federal government in a way that local governments cannot do with states. The legal doctrine of preemption states that when the laws of two different levels of government conflict, the law of the higher legal authority takes precedent. The Tenth Amendment gives states a fighting chance to claim they are the higher legal authority, at least in some cases. Local governments have no such Tenth Amendment shield, so when their laws clash with the laws of the state, the state inevitably wins.

The upshot is that state governments are very much against *federal* preemption when it also clashes with their partisan policy preferences. But they are much in favor of *state* preemption when those same preferences clash with local governments.

Sources: Alan Greenblatt, "States Pre-empt Cities Almost to the Point of Irrelevance," *Governing*, February 5, 2021, <https://www.governing.com/now/states-preempt-cities-almost-to-the-point-of-irrelevance.html>; Kim Addow, Anthony Gad, and Katy Fleury, "The Growing Shadow of State Interference: Preemption in the 2019 State Legislative Sessions," Local Solutions Support Center, 2019, <https://stateinnovation.org/wp-content/uploads/2020/11/The-Growing-Shadow-of-State-Interference-Preemption-in-the-2019-State-Legislative-Sessions.pdf>.

Third, although federalism promotes flexibility and experimentation, it also promotes duplication and reduces accountability. For example, local, state, and national governments have all taken on law enforcement responsibilities. In some areas, this means there may be municipal police departments, a county sheriff's department, and the state patrol, plus local offices of the Federal Bureau of Investigation and the U.S. Drug Enforcement Administration. The responsibilities and jurisdictions of these organizations overlap, which means taxpayers end up paying twice for some law enforcement activities. Also, when these agencies are unsuccessful or ineffective, it can be very difficult to figure out which is responsible and what needs to change.

Fourth, the federal system can make it hard to coordinate policy efforts nationwide. For example, police and fire departments on opposite sides of a state border, or even within adjacent jurisdictions in the same state, may have different communication systems. It is hard to coordinate a response to a large-scale emergency if the relevant organizations cannot talk to each other, but the federal government cannot force state and local governments to standardize their radio equipment.

Finally, a federal system creates inequality in services and policies. The uneven implementation of Obamacare is an obvious example: Health care options can differ fairly dramatically from state to state. The quality of public schools and welfare services more generally also depends heavily on the choices state and local governments make. This inevitably means that some states offer better educational opportunities and do more for the needy than others do.



Emergency management is a classic example of how different levels of government work together. The Federal Emergency Management Agency plays a critical role in responding to disaster, but FEMA's effectiveness is dependent on its ability to coordinate with state and local agencies.

Anadolu Agency/Getty Images

THE CONSTITUTIONAL BASIS OF FEDERALISM

The ink was barely dry on the newly ratified Constitution before the federal government and the states were squabbling over who had the power and authority in this or that policy area. In writing the Constitution, the founders recognized that the differences between states and the federal government were likely to be a central and lasting feature of the political system. Accordingly, they attempted to head off the worst of the disputes—or at least to provide a basis for resolving them—by making a basic division of powers between the national and state governments.

The Constitution grants the federal government both enumerated and implied powers. **Enumerated powers** are grants of authority explicitly given by the Constitution. Among the most important of these is the **national supremacy clause** contained in Article VI. This states that the Constitution “shall be the supreme law of the land; and the judges in every state shall be bound thereby.” In other words, federal law takes precedence over all other laws. This allows the federal government to preempt, or override, areas regulated by state law. In recent decades, the federal government has aggressively used this power to extend its authority over states in a wide range of policy issues, so much so that **preemption** has been called “the gorilla that swallows state laws”).⁴ Other enumerated powers are laid out in Article I, Section 8. This part of the Constitution details a set of **exclusive powers**—grants of authority that belong solely to the national government. These include the powers to regulate commerce, to declare war, and to raise and maintain an army and navy. Article I, Section 8, also confers a set of **concurrent powers** on the national government. Concurrent powers are those granted to the national government but not denied to the states. Both levels of government are free to exercise these prerogatives. Concurrent powers include the power to tax, borrow, and spend.

Finally, this same section of the Constitution gives the national government **implied powers**. The basic idea behind implied powers is that the authors of the Constitution realized they could not possibly list every specific power that the national government would require to meet the needs of

a developing nation. Accordingly, they gave Congress the flexibility to meet unforeseen challenges by granting the federal government a set of broad and largely undefined powers. These include the **general welfare clause**, which gives the federal government the authority to provide for “the general welfare of the United States,” and the **necessary and proper clause**, which authorizes Congress “to make all laws which shall be necessary and proper” to carry out its responsibilities as defined by the Constitution. (See Table 2.2 for explanations of these and other provisions.)

The Constitution says a good deal about the powers of the federal government but very little about the powers of the states. The original, unamended Constitution spent much more time specifying the obligations of the states than it did defining their power and authority. The list of

TABLE 2.2 ■ The U.S. Constitution’s Provisions for Federalism

What It Is	What It Says	What It Means
Article I, Section 8 (commerce clause)	The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.	Gives Congress the right to regulate interstate commerce. This clause has been broadly interpreted to give Congress a number of implied powers.
Article I, Section 8 (necessary and proper clause)	The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.	An implied power giving Congress the right to pass all laws considered “necessary and proper” to carry out the federal government’s responsibilities as defined by the Constitution.
Article IV, Section 3 (admission of new states)	New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.	Allows the U.S. Congress to admit new states to the union and guarantees each state sovereignty and jurisdiction over its territory.
Article IV, Section 4 (enforcement of republican form of government)	The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.	Ensures that a democratic government exists in each state and protects states against foreign invasion or insurrection.
Article VI (supremacy clause)	This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be 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.	States that federal law takes precedence over all other laws.

What It Is	What It Says	What It Means
Tenth Amendment	The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.	Guarantees that a broad, but undefined, set of powers be reserved for the states and the people, as opposed to the federal government.
Fourteenth Amendment	All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.	Prohibits any state from depriving individuals of the rights and privileges of citizenship, and requires states to provide due process and equal protection guarantees to all citizens.
Sixteenth Amendment	The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.	Enables the federal government to levy a national income tax, which has helped further national policies and programs.
Seventeenth Amendment	The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. . . . When vacancies happen in the representation of any State in the Senate, the executive authority of each State shall issue writs of election to fill such vacancies: <i>Provided</i> , That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.	Provides for direct election of U.S. senators, rather than election by each state's legislature.

obligations includes Article IV, Section 2, better known as the **full faith and credit clause**. The clause requires all states to grant “full faith and credit” to each other’s public acts and records. This means that wills, contracts, and marriages that are valid under one state’s laws are valid under all. Under the **privileges and immunities clause**, states are prohibited from discriminating against citizens from other states. The idea here was to protect people traveling across state boundaries or temporarily residing in a state because of business or personal reasons from becoming the targets of discriminatory regulation or taxation.

The Constitution also sets out an often-criticized system for electing the nation’s president and vice president. The presidency goes not to the candidate who wins the most votes but, rather, to the one who wins the most states. Article II, Section 1, charges the states with appointing electors—one for each of a state’s U.S. senators and representatives—who actually choose the

president based on the winner of the state's popular vote. A presidential candidate needs a majority in the Electoral College, which requires the votes of at least 270 of the 538 state electors, to be named the winner.

Other than these responsibilities and explicitly granting the states the right to enter into compacts, or binding agreements, with each other on matters of regional concern, the Constitution is virtually silent on the powers of the states. This lopsided attention to the powers of the federal government was a contentious issue in the battle to ratify the Constitution. Opponents of the document, collectively known as Anti-Federalists, feared that states would become little more than puppets of the new central government. Supporters of the Constitution sought to calm these fears by arguing that states would remain sovereign and independent and that the powers not specifically granted to the federal government were reserved for the states. As James Madison put it, in writing the Constitution the Federalists were seeking “a middle ground which may at once support due supremacy of the national authority” and also preserve a strong independent role for the states.⁵

Madison and his fellow Federalists offered to put these assurances in writing. In effect, they promised that if the Constitution was ratified, the first order of business for the new Congress would be to draft a set of amendments that would spell out the limits of central government power and specify the independence of the states. Although Anti-Federalist skepticism remained, the Federalists kept their promise. The First Congress formulated a series of changes that eventually became the first 10 amendments to the Constitution, which are collectively known as the **Bill of Rights**.

Most of these amendments set specific limits on government power. The aim was to guarantee certain individual rights and freedoms, and, at least initially, they were directed at the federal government rather than at state governments. The **Tenth Amendment**, however, finally addressed the power of the states. In full, the Tenth Amendment specifies: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This provided no enumerated, or specific, powers to the states, but those implied by the language of the amendment are considerable. The so-called reserved powers encompass all the concurrent powers that allow the states to tax, borrow, and spend; to make laws and enforce them; to regulate trade within their borders; and to practice eminent domain, which is the power to take private property for public use. The reserved powers also have been traditionally understood to mean that states have the primary power to make laws that involve the health, safety, and morals of their citizens. Yet the powers reserved for the states are more implied than explicit, and they all rest in an uneasy tension with the national supremacy clause of Article VI.

After the Tenth Amendment, the **Fourteenth Amendment** is the most important in terms of specifying state powers. Ratified in 1868, the Fourteenth Amendment is one of the so-called Civil War Amendments that came in the immediate wake of the bloody conflict between the North, or the Union, and the South, or the Confederacy. The Fourteenth Amendment prohibits any state from depriving individuals of the rights and privileges of citizenship and requires states to provide due process and equal protection guarantees to all citizens. The Supreme Court has used these guarantees to apply the Bill of Rights to state governments as well as to the federal government and to assert national power over state power in issues ranging from the desegregation of public education to the reapportioning of state legislatures.

The implied powers of the federal government, the limitations set on states by the Fourteenth Amendment, and the undefined “leftovers” given to the states by the Tenth Amendment mean that the scope and authority of both levels of government are, in many cases, dependent on how the Constitution is interpreted. The Constitution, in other words, provides a basic framework for solving the sibling-rivalry squabbles between the states and the federal government. (See Figure 2.2.) It does not, however, provide an unambiguous guide to which level of government has the primary power, responsibility, and authority on a broad range of policy issues. This, as we

will see, means that the U.S. Supreme Court is repeatedly thrust into the role of referee in power disputes between national and state governments.

FIGURE 2.2 ■ Powers of National and State Governments

National Government Powers		State Government Powers
<ul style="list-style-type: none"> Coin money Regulate interstate and foreign commerce Tax imports and exports Make treaties Make all laws “necessary and proper” to fulfill responsibilities Make war Regulate postal system <p>Powers Denied</p> <ul style="list-style-type: none"> Tax state exports Change state boundaries Impose religious tests Pass laws in conflict with the Bill of Rights 	<p>Concurrent Powers</p> <ul style="list-style-type: none"> Tax Borrow money Charter banks and corporations Take property (eminent domain) Make and enforce laws and administer a judiciary 	<ul style="list-style-type: none"> Run elections Regulate intrastate commerce Establish republican forms of state and local government Protect public health, safety, and morals All powers not delegated to the national government or denied to the states by the Constitution <p>Powers Denied</p> <ul style="list-style-type: none"> Tax imports and exports Coin money Enter into treaties Impair obligation of contracts Enter compacts with other states without congressional consent

Source: Adapted from Samuel Kernell, Gary C. Jacobson, and Thad Kousser, *The Logic of American Politics*, 6th ed. (Washington, DC: CQ Press, 2013), Figure 3.2.

THE DEVELOPMENT OF FEDERALISM

Although they clearly establish a federal political system, the provisions of the U.S. Constitution leave considerable room for disagreement about which level of government—federal or state—has the power to do what. Disagreements about the scope and authority of the national government arose almost immediately when the First Congress convened in 1789. The issue of a national bank was one of the most controversial of these early conflicts and the one with the most lasting implications. Alexander Hamilton, secretary of the treasury under President George Washington, believed a central bank was critical to stabilizing the national economy, but there was nothing in the Constitution that specifically granted the federal government the authority to create and regulate such an institution.

Lacking a clear enumerated power, Hamilton justified his proposal for a national bank by using an implied power. He argued that the necessary and proper clause implied the federal government’s power to create a national bank because the bank would help the government manage its finances as it went about its expressly conferred authority to tax and spend. Essentially, Hamilton was interpreting *necessary* as “convenient” or “appropriate.” Secretary of State Thomas Jefferson objected, arguing that if the Constitution was going to establish a government of truly limited powers, the federal government needed to stick to its enumerated powers and interpret its implied powers very narrowly. He thus argued that the *necessary* in the necessary and proper clause should properly be interpreted as “essential” or “indispensable.” Hamilton eventually won the argument, and Congress approved the national bank. Still, the issue simmered as a controversial—and potentially unconstitutional—expansion of the national government’s powers.

The issue was not fully resolved until 1819, when the Supreme Court decided the case of *McCulloch v. Maryland*. This case stemmed from the state of Maryland’s attempts to shut down the national bank, which was taking business from state-chartered banks, by taxing its operations. The chief cashier of the national bank’s Baltimore branch refused to pay the tax, and the parties went to court. The Supreme Court, in essence, backed Hamilton’s interpretation of the

Constitution over Jefferson's. This was important above and beyond the issue of a national bank. It suggested that the Constitution gave the national government a broad set of powers relative to the states. Key to this early affirmation of the federal government's power was U.S. Chief Justice John Marshall, whose backing of a broad interpretation of implied powers laid the foundation for later expansions in the scope and authority of the federal government.

The full impact of *McCulloch v. Maryland*, however, would not be felt for some time. For the most part, the federal government began to feel its way into the gray areas of its constitutional powers pretty cautiously. Federalism went on to develop in four distinct stages—dual federalism, cooperative federalism, centralized federalism, and New Federalism—and the first of these stages leaned toward the more limited role of the federal government favored by Jefferson.

Dual Federalism (1789–1933)

Dual federalism is the idea that state and federal governments have separate jurisdictions and responsibilities. Within these separate spheres of authority, each level of government is sovereign and free to operate without interference from the other. Dual federalism represents something of a middle ground in the initial interpretations of how the Constitution divided power. On one side of the debate were Federalists such as Hamilton, who championed a nation-centered view of federalism. They wanted to interpret the Constitution as broadly as possible to give the national government supremacy over the states. On the other side were fierce **states' rights** advocates such as John Calhoun of South Carolina, who served as vice president in the administrations of John Quincy Adams and Andrew Jackson. Supporters of states' rights wanted the federal government's power limited to the greatest possible extent and saw any expansion of that power as an encroachment on the sovereignty of the states.

In the 1820s and 1830s, Calhoun formulated what became known as the **compact theory** of federalism. The idea was that the Constitution represented an agreement among sovereign states to form a common government. It interpreted the Constitution as essentially an extension of the Articles of Confederation, a perspective that viewed the U.S. political system as more confederal than federal. The compact theory argued that if sovereignty ultimately rested with the states, then the states rather than the Supreme Court had the final say in how the Constitution should be interpreted. The states also had the right to reject federal laws and make them invalid within their own borders. This process was known as **nullification**, and the compact theory took it to an extreme. Calhoun argued that states could reject the entire Constitution and choose to withdraw, or secede, from the Union. In the 1820s, national policies—especially a trade tariff—triggered an economic downturn in the southern states, which created wide support for nullification and **secession** arguments. These extreme states' rights views were not completely resolved until the Union victory in the Civil War ended them for good.

Dual federalism walked the line of moderation between the extremes of **nation-centered federalism** and **state-centered federalism**. Basically, dual federalism looks at the U.S. political system as a layered cake. The state and federal governments represent distinct and separate layers of this cake. To keep them separate, advocates of dual federalism sought to limit the federal government to exercising only a narrow interpretation of its enumerated powers. If the Constitution was to be interpreted broadly, that interpretation should favor the states rather than Congress. This became the central operating philosophy of the U.S. Supreme Court for much of the 19th century and is most closely associated with the tenure of Chief Justice Roger B. Taney, who served from 1836 to 1864. Compared with his immediate predecessor, John Marshall, Taney was much less sympathetic to arguments that interpreted the federal government's powers broadly.

The dual federalism doctrine gave rise to some infamous Supreme Court decisions on the powers and limitations of the federal government. Perhaps the best known is *Scott v. Sandford* (1857). This case dealt with Dred Scott, a slave taken by his master from Missouri, a slave state, to Illinois, a free state, and on into what was then called the Wisconsin Territory, where slavery had been outlawed by the Missouri Compromise of 1820. This federal law stipulated which new states and territories could and could not make slavery legal. After his master's death, Scott sued for his freedom, arguing that his residence in a free territory had legally ended his bondage. Scott's case was tied to the Missouri Compromise, which the Supreme Court subsequently ruled unconstitutional. The justices' justification was that Congress did not have the enumerated, or the implied, power to prohibit slavery in the territories. Thus, Scott remained a slave, although his owners voluntarily gave him his freedom shortly after the Supreme Court decision. He died of tuberculosis in 1858, having spent only 1 of his nearly 60 years as a free man.

Cooperative Federalism (1933–1964)

In theory, dual federalism defines and maintains a clear division between state and national governments and sets a clear standard for doing so. If the federal government has the enumerated power to take a disputed action or make a disputed law, it has supremacy over the states in the particular case; if it does not have the enumerated power, then the Tenth Amendment reserves that power for the states, and state preferences take precedence.

The problem was that dual federalism's clarity in theory rarely matched the complex realities of governance in practice. State and national governments share interests in a wide range of issues, from education to transportation. To divide these interests cleanly into separate spheres of influence was not only difficult; in many cases, it was impractical and not desirable. Even at the height of the dual federalism era, state and federal governments were collaborating as much as they were fighting. The federal government, for example, owned vast tracts of land in the Midwest and West, and it made extensive grants of these lands to the states to help develop transportation and education systems. Many of the nation's best-known state universities got their start this way, as land-grant colleges.

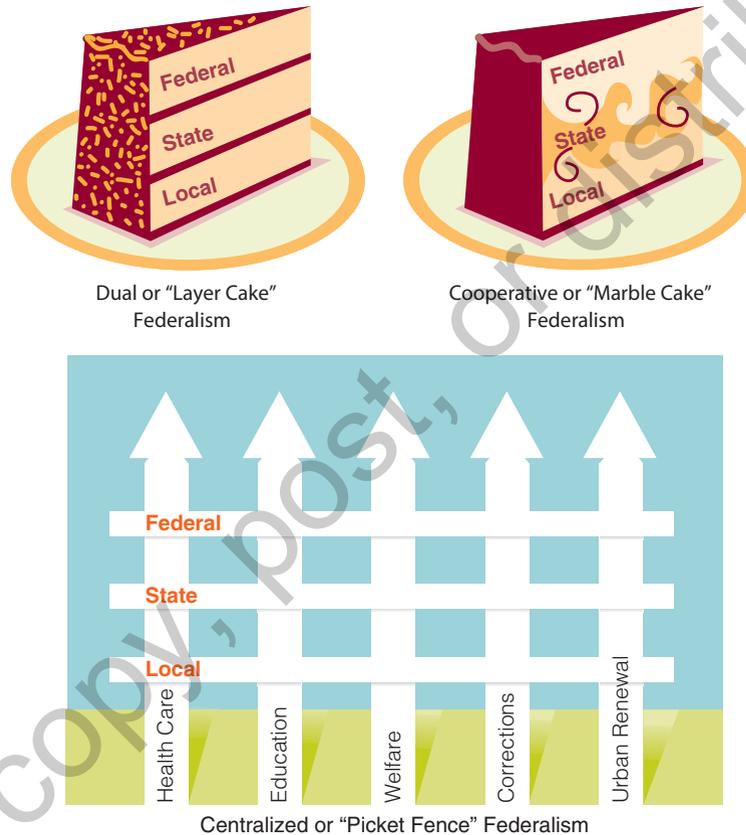
In the 19th century, the federal government also gave out cash grants to support Civil War veterans housed in state institutions, gave money to the states to support agricultural research, and lent federal manpower—primarily U.S. Army engineers—to help state and local development projects.⁶ Rather than a layered cake, some experts believe a more appropriate metaphor for federalism is a marble cake, with the different levels of government so thoroughly mixed with one another that they are impossible to separate. (See Figure 2.3.)

Certainly as the nation became increasingly industrialized and more urban, state and federal interests became increasingly intertwined. As the 19th century drew to a close and the 20th century began, the federal government undertook a significant expansion of its policy responsibilities. In 1887, it began to regulate the railroads, a policy area with enormous significance for the economic development of states and localities. In economic and social terms, this was roughly equivalent to the federal government of today announcing its comprehensive regulation of the internet and software manufacturers. By fits and starts, dual federalism gradually fell out of favor with the Supreme Court. The Court instead began to interpret the powers of the federal government very broadly and to allow the jurisdictions of state and national governments to merge gradually.

Several events accelerated this trend. In 1913, the Sixteenth Amendment was ratified, giving the federal government the ability to levy a nationwide income tax. The new taxing and

spending authority helped further national policies designed during the next decades. World War I (1914–1918) resulted in a significant centralization of power in the federal government. During World War II (1939–1945), that power was centralized even further. The need to fight global conflicts pushed the federal government to assert its authority on a wide range of economic and social issues. Even more important to the long-term relationship between state and national governments was the Great Depression of the 1930s, a social and economic catastrophe that swept aside any remaining vestiges of dual federalism.

FIGURE 2.3 ■ The Varieties of Federalism



The central catalyst for a fundamental change in the nature of state–federal relations was the election of Franklin Delano Roosevelt to the presidency in 1932. In an effort to combat economic and social malaise, Roosevelt aggressively pushed the federal government into taking a lead role in areas traditionally left to the states, and in the 1930s, the federal government became deeply involved in regulating the labor market, creating and managing welfare programs, and providing significant amounts of direct aid to cities. The general approach of Roosevelt’s so-called New Deal agenda defined the central characteristics of **cooperative federalism**—using the federal government to identify a problem, set up the basic outline of a program to address the problem, and make money available to fund that program and then turning over much of the responsibility for implementing and running the program to the states and localities. This arrangement dominated state and federal relations for the next three decades.

Centralized Federalism (1964–1980)

Having all levels of government addressing problems simultaneously and cooperatively paid dividends. It combined the need to attack national problems with the flexibility of the decentralized federal system. Cooperative federalism, however, also signaled a significant shift in power away from the states and toward the federal government. The key to this power shift was money, specifically federal **grants-in-aid**, which are cash appropriations given by the federal government to the states. An ever-increasing proportion of state and local budgets came from federal coffers. At the beginning of the 19th century, federal grants constituted less than 1 percent of state and local government revenues. By the middle of the 1930s, federal grants accounted for close to 20 percent of state and local revenues.⁷

For the next 30 years, the federal government continued to rely on grants to administer programs, including the 1950s construction of the federal highway system that Americans drive on today. The 1960s marked a shift, however. **Centralized federalism**, ushered in with Lyndon Baines Johnson's presidency, further increased the federal government's involvement in policy areas previously left to state and local governments. It is commonly associated with Johnson's Great Society program, which used state and local governments to help implement such national initiatives as the Civil Rights Act and the War on Poverty. This is sometimes called "picket-fence federalism" because in practice the relationships among local, state, and national governments were centered on particular programs and the agencies that managed them. These policy-specific agencies (bureaucracies dealing with education, transportation, welfare, and the like) were laid across the levels of government like pickets on a three-rail fence.

Those initiatives meant more money—and more regulations—for states and localities. The federal government began aggressively attaching strings to this money through **categorical grants**. Federal–state relations evolved into a rough embodiment of the Golden Rule of politics—he who has the gold gets to make the rules.

Richard Nixon's presidential administration took a slightly different tack. It cut some strings but continued to increase the number of grants doled out by the federal government.⁸ In the late 1960s, the administration pioneered the idea of **general revenue sharing grants**, federal funds turned over to the states and localities with essentially no strings attached. Although popular with states and localities—from their perspective it was "free" money—this type of grant-in-aid had a short life span; it was killed by the Ronald Reagan administration in the early 1980s.

Federal grants, strings or no strings, do not sound so bad on the surface. Money is money, and a government can never have too much. The problem was that the grants were not distributed equitably to states and localities, and a central feature of cooperative federalism was the often-fierce competition to control and access these revenues. The politics became complex. One form of conflict arose between the states and the federal government over what types of grants should be used for particular policies or programs. States and localities favored federal grants with fewer strings. Congress and the president often favored putting tight guidelines on federal money because this allowed them to take a greater share of the credit for the benefits of federal spending.

Perhaps the most important dimension of the politics of grants-in-aid, however, was the federal government's increasing desire to use its purse strings to pressure states and localities into adopting particular policies and laws. Beginning in the 1960s and 1970s, cooperative federalism began a new, more coercive era with the rise of ever more stringent grant conditions. These included **crosscutting requirements**, or strings that applied to all federal grants. For example, one requirement a state or locality must meet to receive virtually any federal government grant is an assessment of the environmental impact of the proposed program or policy. Accordingly, most state and local governments began writing—and defending—environmental impact statements for any construction project that involved federal funds.

FIGURE 2.4 ■ Key Dates in the History of American Federalism

Revolutionary War starts	1775	1776	Declaration of Independence adopted
Articles of Confederation ratified	1781	1783	Revolutionary War ends
Annapolis Convention	1786	1786	Shays's Rebellion
Constitutional Convention drafts new constitution	1787	1788	U.S. Constitution ratified
First Congress adopts Bill of Rights	1791		
<i>McCulloch v. Maryland</i> establishes that the federal government has a broad set of powers over the states	1819		
Roger Taney sworn in as chief justice; adopts dual federalism as model for federal–state relations	1836	1832	South Carolina attempts to nullify federal law
		1857	<i>Scott v. Sandford</i> demonstrates the limits of the federal government
Southern states experiment with confederacy as Civil War starts	1861	1860	South Carolina secedes from the Union in December; hostilities between North and South begin a month later
		1865	Civil War ends with Union victory; Thirteenth Amendment abolishes slavery
Fourteenth Amendment passes	1868	1887	Federal government regulates the railroads
Sixteenth Amendment passes	1913		
Great Depression begins	1930	1933	Franklin Delano Roosevelt takes office; era of cooperative federalism begins
Era of centralized federalism begins	1964	1972	Richard Nixon begins revenue sharing
Donald Reagan is elected; New Federalism emerges	1980	1986	William Rehnquist becomes chief justice; Supreme Court begins to look more favorably on states' rights arguments
Supreme Court decides <i>Bush v. Gore</i> ; George W. Bush receives Florida's contested electoral votes and becomes president	2000	2008	Great Recession
		2012	<i>National Federation of Independent Business v. Sebelius</i> expands federal government power by upholding the government's right to mandate that individuals purchase health care coverage; the Court upholds state sovereignty in the case by ruling that the federal government cannot force states to expand Medicaid
		2013	Supreme Court decides <i>Shelby County v. Holder</i> ; states with histories of disenfranchising minority voters no longer have to get voting laws and regulations approved by federal government
		2022	Supreme Court overturns <i>Roe v. Wade</i> and removes constitutional protections for abortion rights, effectively making abortion access a state rather than federal issue

The federal government also began applying **crossover sanctions**. Crossover sanctions are strings that require grant recipients to pass and enforce certain laws or policies as a condition of receiving funds. One example is the drinking age. As a condition of receiving federal highway funds, the federal government requires states to set 21 as the minimum legal age for drinking alcohol.

Increasingly, the strings came even if there were no grants. State and local governments were issued direct orders, essentially were commanded, to adopt certain laws or rules, such as clean-water standards and minimum-wage laws.⁹ These **unfunded mandates** became a particular irritant to state and local governments. Even when there was broad agreement on the substance of a mandate, subnational governments resented the federal government's taking all the credit while leaving the dirty work of finding funds and actually running the programs to the states and localities.

Congress eventually passed a law banning unfunded mandates in the mid-1990s, but it is full of loopholes. For example, the law does not apply to appropriations bills—the laws that actually authorize the government to spend money. The National Conference of State Legislatures estimated that between 2004 and 2008, the federal government shifted \$131 billion in costs to the states in unfunded mandates.¹⁰

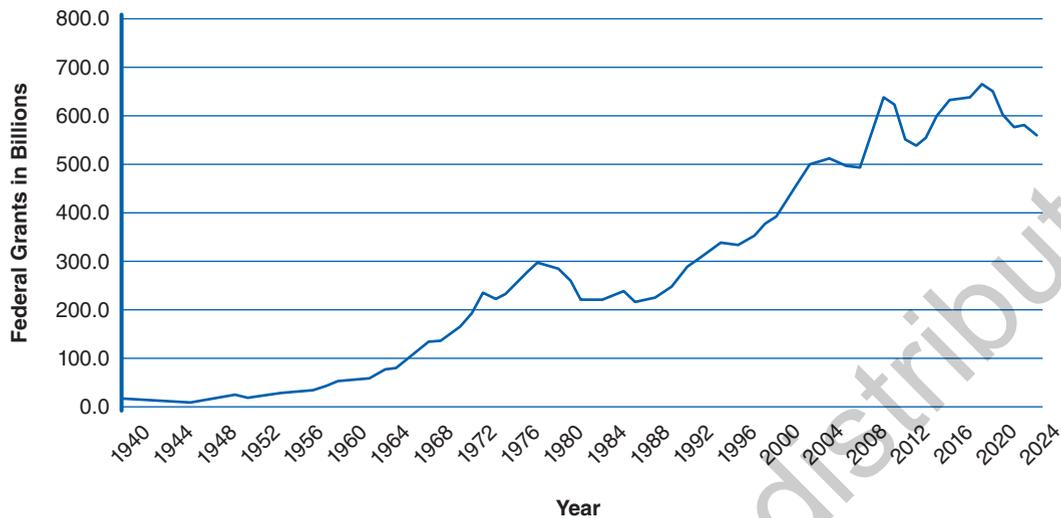
New Federalism (1980–2002)

Centralized federalism's shift of power toward the national government always faced opposition from states' rights advocates, who viewed the growing influence of the national government with alarm. By the end of the 1970s, centralized federalism also was starting to face a practical crisis—the federal government's revenues could not keep up with the demand for grants. With the election of Ronald Reagan in 1980, the practical and ideological combined to create pressure for a fundamental shift in state and federal relations.

Reagan was not the first president to raise concerns about the centralization of power in the national government. A primary reason for Nixon's support of general revenue sharing, for example, was the attraction of giving states more flexibility by cutting the strings attached to federal grants. It was not until Reagan, however, that a sustained attempt was made to reverse the course of centralized federalism. Reagan believed the federal government had overreached its boundaries, and he wanted to return power and flexibility to the states. At the core of his vision of state-centered **New Federalism** was the desire to reduce federal grants-in-aid. In return, states would be given more policymaking leeway with the money they did get through **block grants**.

Reagan's drive to make this vision a reality had mixed success. The massive budget deficits of the 1980s made cutting grants-in-aid a practical necessity. We can see this in Figure 2.5, which shows federal government grants to state and local governments in billions of constant dollars from 1940 through 2018. There was a clear upward trend beginning in the 1960s that peaked in about 1978. After that, federal grants to states stayed relatively constant for about a decade—while the federal government was not really drastically cutting grants in the 1980s, in real terms it did not increase them either. At least for a while, the federal government managed to rein in the grant dollars flowing to states and localities. Reducing the federal government's influence over states and localities turned out to be another matter.

Reagan, like many conservatives, was a modern heir to a states' rights perspective that dated back to the Anti-Federalist movement. This means he believed that government should be as close to the voters as possible—in the city hall or the state capitol—rather than far away in Washington, D.C. Yet believing that government should be closer to the people in the abstract is far different from putting that belief into practice. Taking power from the federal government did advance a core philosophical belief of the Reagan administration, but it also created problems for Reagan supporters, who were not shy about voicing their displeasure.

FIGURE 2.5 ■ Federal Grants to States, 1940–2027 (in billions of constant 2012 dollars)

Source: U.S. Office of Management and Budget, *Budget of the United States*, Historical Tables, Table 12.1, "Summary Comparison of Total Outlays for Grants to State and Local Governments: 1940–2027 (in Current Dollars, as Percentages of Total Outlays, as Percentages of GDP, and in Constant [FY 2012] Dollars)," <https://www.whitehouse.gov/omb/historical-tables/>.

Note: Total outlays include off-budget outlays; however, all grant outlays are from on-budget accounts.

Such core conservative constituencies as business and industry quickly realized that dealing with a single government was much less of a headache than dealing with 50 governments. They almost immediately began to put counterpressure on the movement toward expanded state policymaking authority. The result was something of a push and pull, with the Reagan administration trying to shove power onto the states with one set of legislative priorities and yank it back to the federal government with another. Ultimately, Reagan did succeed in cutting grants-in-aid. He consolidated 57 categorical grants into 9 new block grants. General revenue sharing and another 60 categorical grants were eliminated entirely. This reduced the amount of money sent to the states while increasing the states' ability to act independently.¹¹ Yet Reagan also engaged in a number of fairly aggressive preemption movements and backed a number of unfunded mandates. This reduced the independence of states and forced them to fund programs they did not necessarily support.

The seeds of New Federalism had a hard time taking root at the national level, but the roots sank fast and sank deep at the state and local levels. States were caught between the proverbial rock of a cash-strapped federal government and the hard place of the demand for the programs traditionally supported by federal funds. They slowly and often painfully worked themselves out of this dilemma by becoming less reliant on the federal government. States began aggressively pursuing innovative policy approaches to a wide range of social and economic problems. By the 1990s, as one author puts it, there was "a developing agreement among state and national political elites that states should have greater authority and flexibility in operating public programs."¹²

The effort to take power away from the federal government and give it to the states was broadly supported by public opinion, as polls consistently showed that Americans placed more trust in state and local governments than they did in the federal government.¹³ In the 1990s, the Bill Clinton administration championed the idea of devolution, an extension of New Federalism that sought a systematic transition of power from the federal to the state level in certain policy areas.

Like its parent, New Federalism, the devolution revolution faced strong resistance, often from an old enemy. Conservatives, at least rhetorically, still were the strongest states' rights advocates. Yet when states' rights conflicted with key portions of the conservative political agenda,

conservative groups fought tenaciously for federal supremacy over the states, just as they had during the 1980s. An example of this contradictory behavior is the 1996 Defense of Marriage Act, which was a reaction to states taking the first steps toward legalizing same-sex marriages. Under the full faith and credit clause of the Constitution, a contract—including a marriage contract—made under the laws of one state is legally recognized and binding in all states. This precipitated a strong push from many traditional states' rights advocates for the federal government to, in essence, grant states exceptions from their full faith and credit obligations. The Defense of Marriage Act did this. It also put the federal government into the business of defining what constitutes a marriage, an area traditionally left to the states.¹⁴

Ad Hoc Federalism (2002–Present)

For a variety of reasons, the commitment to New Federalism, at least at the federal level, more or less dissolved entirely by the end of the administration of President George W. Bush. Initially a champion of pushing power away from Washington, D.C., circumstances and policy priorities led Bush to advocate for greater federal authority in a number of policy areas, such as education, traditionally dominated by states.¹⁵ Federal–state relations, however, did not shift from a commitment to devolution to a commitment to centralizing power in Washington, D.C. What happened was that a principled guiding philosophy of state–federal relations—such as dual federalism, cooperative federalism, or New Federalism—was simply abandoned. Instead a new, more partisan or ideologically based approach to state–federal relations came to the fore, an approach described as **ad hoc federalism**.¹⁶ Ad hoc federalism is the process of choosing a state-centered or nation-centered view of federalism on the basis of political or partisan convenience. As one review of federal–state government relations put it, “In practice, federalism in the current political environment is largely a tool used to help justify the maintenance or pursuit of favored policy outcomes.”¹⁷

The rise of ad hoc federalism is explained at least partly by the nationalization of party politics. Historically, national political parties were little more than confederations of state party organizations, and that decentralized party structure meant that Democrats in Texas might have more in common with Republicans in New York than Democrats in California. These days, that's hard to imagine. In the past couple of decades, party polarization has gone national, with Republicans and Democrats at all levels of government aligning themselves with consistent and opposing ideological agendas. As a number of scholars have noted, one result is that it is now not uncommon for members of Congress to vote the interests of their party over the interests of their constituents, and for candidates competing for state and local offices to run on issues aligned with national party positions.¹⁸ The nationalization of party politics, and the sorting of the political parties into opposing ideological camps, has big implications for federalism.

For one thing it makes it hard for the federal government to do anything. Congress gets deadlocked as the party out of power takes advantage of the system's many veto points to make things difficult for the majority party. National policymaking, and federal–state relations generally, becomes increasingly centered on the administrative powers of the presidency. As bitter partisan divisions gridlock Congress, presidents become increasingly reliant on executive orders and their bureaucratic rulemaking authority to advance their domestic agendas. Yet because executive orders and bureaucratic rules are not laws, the policy goals they champion can change drastically depending on who is president. This can create a whiplash effect. For example, faced with congressional inaction Barack Obama pushed the Environmental Protection Agency to use its regulatory powers to fight climate change. Donald Trump pushed the EPA to roll back those same regulations. Trump's successor, Joe Biden, focused on the traditional lawmaking route to advance his policy agenda and, though it took some protracted wrangling, did manage to persuade Congress to act on some of his big legislative priorities. Even so, this did little to slow the

use of the administrative tools Obama and Trump had relied on. Biden issued more executive orders during his first year in office than Trump or Obama.¹⁹ With Congress unable or unwilling to pass laws and thus impose nationwide consistency on key policy questions, states enthusiastically championed or doggedly fought such presidential initiatives based on the ideological and partisan makeup of their governments.²⁰

Having ideologically divided, nationally centered political parties running a highly decentralized federal system thus means that state governments frequently put up strong resistance to the policy preferences of the White House. Underlying those differences is not a genuine philosophical difference over whether the federal or state governments have policy jurisdiction over this or that issue, but ideological and partisan differences between the two levels of government. The end result can be somewhat chaotic as states try to go in different policy directions at the same time. The bareknuckle ideological brawling characteristic of ad hoc federalism certainly makes it more difficult to mount comprehensive and coherent policy responses to big national problems.

A good example is the piecemeal governmental approach to the COVID-19 pandemic that occurred in the United States. State and federal governments repeatedly clashed over what to do and/or what not to do to address the pandemic, disagreements that were often anchored in partisan differences and ended up politicizing a massive public health problem. President Trump openly feuded with governors who complained about inconsistent and ineffective federal action to address the crisis—particularly Democratic governors like Jay Inslee of Washington and Gretchen Whitmer of Michigan, who were pushing for an aggressive response to the pandemic.²¹ More Trump-aligned states like Texas and Florida ended up taking a much less aggressive approach. For example, Texas governor Greg Abbott took action to ban vaccine mandates in his state, which prevented companies from requiring their employees to get a COVID-19 shot.²² The COVID-19 pandemic was arguably the biggest economic, social, and political challenge faced by the United States since World War II, and ad hoc federalism contributed to a response that was disjointed and made less effective partisan divisions. Part of the upshot was that COVID-19 death rates varied enormously across the states in ways that seemed to reflect different governing approaches (see the feature “A Difference That Makes a Difference: Federalism May Be Bad for Your Health”).



The COVID-19 pandemic provided a dramatic example of ad hoc federalism. State and federal governments repeatedly clashed over the best response to the public health crisis, clashes that quickly aligned along partisan lines.

AP Photo/John Rudoff

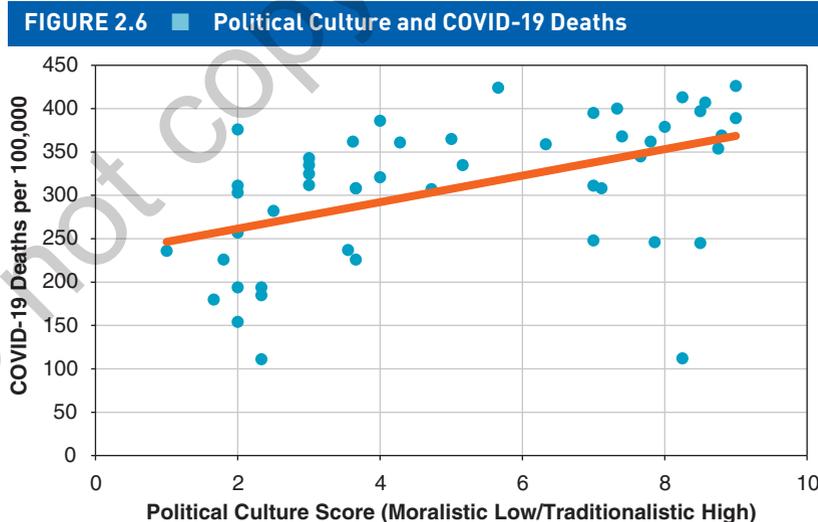
A DIFFERENCE THAT MAKES A DIFFERENCE: FEDERALISM MAY BE BAD FOR YOUR HEALTH

In March 2020 Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, boggled minds by saying that the COVID-19 pandemic could kill as many as 200,000 Americans before it ran its course. In reality, Fauci's forecast turned out to be a wild underestimate. Between the pandemic's onset and August 2022, more than a million Americans died of COVID-19.

Most health experts recognized early that the death toll from COVID-19 was going to be significant. Highly contagious and spreading rapidly—at last count, there were more than 90 million confirmed cases—COVID-19 was a public health threat the likes of which hadn't been seen since the 1918 Spanish flu epidemic. Still, the death rate in the United States was high compared not only to Fauci's initial estimates, but also to the death rate in other industrialized countries. Adjusted for population size, more people died of COVID-19 in the United States compared to places like the United Kingdom or Germany. The United States did not just get unlucky. By one estimate, 40 percent of COVID-19 deaths in the United States were avoidable—that's 400,000 people who could have been saved.

What gives? Why were death rates in the United States five times higher than health experts like Fauci expected, and why were death rates higher there than in comparable democracies? Some of the answer, of course, can be chalked up to the inherent unpredictability of a fast-moving infectious disease rapidly mutating into new variants. Another part of the answer, though, may be anchored in federalism. American response to COVID-19 was, compared to response efforts of other industrialized countries, highly decentralized. Rather than a centralized and coordinated federal approach, states ended up taking much of the lead in responding to the pandemic.

Those responses varied enormously. States like Washington and Oregon were aggressive in pushing mask and vaccine mandates, social distancing, and shutdowns; Texas and Florida not so much. State response, or lack thereof, rapidly became politicized, with some states taking the view that the collective concerns of public health took precedence over individual choice to mask up or get vaccinated. What sort of states would be more or less aggressive in dealing with COVID-19?



Sources: Johns Hopkins University; CNN.

Note: Death rates from coronavirus (COVID-19) in the United States as of August 5, 2022, by state (per 100,000 people).

Well, one difference that might make a difference is culture. Washington and Oregon are moralistic states, places where citizens would expect their government to act decisively on behalf of the collective good. Texas and Florida are traditionalistic states, where citizens would be less enthusiastic about government telling them what to do. Is culture a difference that could, quite literally, make a life and death difference?

Take a look at Figure 2.6. The vertical axis is the number of COVID-19 deaths per 100,000 by state. The horizontal axis is a measure of Elazar's political culture, where 1 is the most moralistic state, 5 is a purely individualistic state, and 9 is the most traditionalistic state. While there is certainly some variation, there is also a clear pattern—moralistic states tended to have fewer COVID-19 deaths and traditionalistic states more. How much more? A statistical analysis suggests that, on average, for every one-step increase on the morality measure, COVID-19 deaths increased by about 15 per 100,000. In a state with a population of 5 million, that is an additional 750 COVID-19 deaths.

What this all suggests is that your chance of succumbing to COVID-19 was dependent on not just whether you got the virus, but where you got it. Federalism can—literally—be hazardous to your health.

Sources: Donald F. Kettl, "How American-Style Federalism Is Hazardous to Our Health," *Governing*, May 26, 2022; Johns Hopkins Coronavirus Resource Center, "Mortality Analyses," <https://coronavirus.jhu.edu/data/mortality>; Centers for Disease Control and Prevention, "COVID Data Tracker," <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>. Statistical analysis conducted by authors using state-level data from John Elflein, "Total Number of U.S. Coronavirus (COVID-19) Cases as of August 5, 2022, by State," Statista, <https://www.statista.com/statistics/1102807/coronavirus-covid19-cases-number-us-americans-by-state/>.

THE SUPREME COURT: THE UMPIRE OF FEDERALISM

Article VI of the Constitution contains the national supremacy clause, which declares that the Constitution, laws passed by Congress, and national treaties are the "supreme law of the land." This does not mean that the states are always subordinate to the national government. Don't forget—the Tenth Amendment also counts as part of that supreme law. However, it does mean that federal courts often have to referee national–state conflicts. Because it has the final say in interpreting the Constitution, the Supreme Court is, in effect, the umpire of federalism. Its rulings ultimately decide the powers and limitations of the different levels of government.

The Rise of Nation-Centered Federalism on the Court

Throughout U.S. history, the Supreme Court has cycled through trends of state-centered and nation-centered philosophies of federalism. As we have already seen, the early Supreme Court under Chief Justice John Marshall pursued a fairly broad interpretation of the federal government's powers in such cases as *McCulloch v. Maryland*. Marshall's successor, Roger Taney, took the Court in a more state-centered direction by establishing dual federalism as the Court's central operating philosophy. The shift from dual federalism to cooperative federalism required a return to a more nation-centered judicial philosophy. Although the Court initially took a more nation-centered direction in its rulings following the Civil War, it was not until the Great Depression and Roosevelt's New Deal that a decisive tilt in the Court's rulings cleared the way for the rise of cooperative federalism and the centralization of power in the national government.

The shift toward a liberal interpretation of the federal government's powers dominated the Supreme Court's operating philosophy for much of the next 60 years and is exemplified by its decision in *United States v. Darby Lumber Co.* (1941). The substantive issue at stake in this case

was whether the federal government had the power to regulate wages. The Supreme Court said yes, but the decision is of more lasting interest because of the majority opinion's dismissive comment on the Tenth Amendment. Once considered the constitutional lockbox of state power, the amendment, according to the Court's ruling, now did little more than state "a truism that all is retained which has not been surrendered." In other words, the Tenth Amendment was simply a basket for the "leftover" powers the federal government had not sought or did not want.

During and after the New Deal era, the Supreme Court also accelerated a trend of broadly interpreting Congress's powers to regulate interstate commerce. It did this through its interpretation of the **interstate commerce clause**. In *Wickard v. Filburn* (1942), the Court ruled that the clause gave Congress the power to regulate what a farmer could feed his chickens. The case involved an Ohio farmer, Roscoe Filburn, who was growing more wheat than allowed under federal production limits. He wasn't selling the excess wheat; he was feeding it to his chickens. The Court reasoned that this reduced the amount of chicken feed Filburn needed to buy on the open market, and because that market was an interstate market, which meant interstate commerce, Congress could regulate what Filburn was doing. In *Heart of Atlanta Motel v. United States* (1964) and *Katzenbach v. McClung* (1964), the justices ruled that this clause gave Congress the power to regulate private acts of racial discrimination. These cases involved the owners of a motel and a restaurant, respectively, who wanted to refuse service to Black people. The Court ruled that these businesses served interstate travelers, and that was interstate commerce, so Congress had the power to force them to obey federal antidiscrimination laws.

A series of such decisions over the course of more than 50 years led some judicial scholars to conclude that the Supreme Court had essentially turned the concept of enumerated and reserved powers on its head. In effect, the assumption now seemed to be that the federal government had the power to do anything the Constitution did not specifically prohibit.²³ The states and localities were drawn ever closer into roles as subordinate satellites in orbit around the federal government. This situation continued until just before the end of the 20th century. At that point, the Court once again began siding with the states over the federal government.

A Tenth Amendment Renaissance or Ad Hoc Federalism?

By the mid-1990s, the Supreme Court was dominated by justices appointed by New Federalists. Reagan, who had campaigned on his intention to nominate federal judges who shared his conservative philosophy, appointed four. He also elevated a fifth, William Rehnquist—originally appointed as an associate justice by Nixon—to the position of chief justice. Reagan's vice president and presidential successor, George H. W. Bush, appointed two more justices. The end result was a mid-1990s Supreme Court chosen largely by conservative Republican presidents who wanted limits set on the federal government's powers and responsibilities. The justices obliged.

In a series of narrow (mostly 5–4) decisions in the 1990s, the Court began to back away from the nation-centered interpretation of the Constitution that had dominated its rulings during the era of cooperative federalism (see Table 2.3). *United States v. Lopez* (1995) was a significant victory for states' rights and a clear break from a half-century of precedent. This case involved the Gun-Free School Zones Act of 1990, which made it a federal crime to possess a firearm within 1,000 feet of a school. Following a good deal of precedent, Congress justified its authority to regulate local law enforcement by using a very liberal interpretation of the interstate commerce clause, the basic argument being that the operation of public schools affected interstate commerce, so the federal government had the constitutional authority to ban guns near schools. The Supreme Court disagreed and argued that the commerce clause granted no such authority.

TABLE 2.3 ■ Key U.S. Supreme Court Rulings Regarding Federalism, 1995–2022

Case	Decision
<i>United States v. Lopez</i> (1995)	Court strikes down a federal law prohibiting possession of firearms near public schools. First time since World War II that Court placed limits on Congress's powers under the interstate commerce clause.
<i>Seminole Tribe of Florida v. Florida</i> (1996)	Court rules Congress cannot allow citizens to sue states in a federal court except for civil rights violations. State claim upheld.
<i>Printz v. United States</i> (1997)	Court strikes down a federal law requiring mandatory background checks for firearms purchases. State claim upheld.
<i>Alden v. Maine</i> (1999)	Court rules that Congress does not have the power to authorize citizens to sue in state court on the basis of federal claims. State claim upheld.
<i>United States v. Morrison</i> (2000)	Court strikes down the federal Violence Against Women Act. State claim upheld.
<i>Reno v. Condon</i> (2000)	Court upholds a federal law preventing states from selling driver's license information. State claim overturned.
<i>Bush v. Gore</i> (2000)	Court overrules a Florida Supreme Court action allowing hand recounts of contested election ballots. State claim overturned.
<i>Alabama v. Garrett</i> (2001)	Court rules that state employees cannot sue their employers in federal court to recover monetary damages under the provisions of the Americans with Disabilities Act. State claim upheld.
<i>Lorillard Tobacco Co. v. Reilly</i> (2001)	Court strikes down Massachusetts laws regulating the advertising of tobacco products. State claim overturned.
<i>Kelo v. City of New London</i> (2005)	Court rules that government can seize private property for public purposes, including economic development. State claim upheld.
<i>Gonzales v. Raich</i> (2005)	Court rules that federal laws outlawing marijuana possession can be upheld by federal law enforcement officers in states where medical marijuana has been legalized. State law enforcement groups, however, do not have to participate in federal efforts to seize marijuana.
<i>Gonzales v. Oregon</i> (2006)	Court rules that the U.S. attorney general overstepped his authority by threatening to eliminate prescription-writing privileges for doctors who follow state law allowing physician-assisted suicide. State claim upheld.
<i>Arizona v. United States</i> (2012)	Court rules that states do not have the authority to enact and enforce immigration laws; however, it allows states to implement "show me your papers" regulations that require law enforcement officers to determine the immigration status of anyone they stop or detain.
<i>National Federation of Independent Business v. Sebelius</i> (2012)	Court rules that the federal government can require individuals to purchase health insurance and that doing so does not violate powers reserved to the states under the Tenth Amendment.
<i>Environmental Protection Agency v. EME Homer City Generation</i> (2014)	Court rules that the Environmental Protection Agency can regulate greenhouse gas emissions over the opposition of state governments.
<i>Rucho v. Common Cause</i> (2019)	Court rules that federal courts cannot review challenges to partisan gerrymandering by states.
<i>Dobbs v. Jackson</i> (2022)	Court overturns constitutional right to abortion access, effectively making the right to choose a matter of state law rather than a constitutionally protected right.

The justices used similar reasoning in *United States v. Morrison* (2000) to strike down the Violence Against Women Act. Congress had passed this law in 1994 out of concern that the states, although having primary responsibility for criminal law, were not adequately dealing with the problem of violence against women. The key provision of the act gave assault victims the right to sue their assailants in federal court. Congress argued that it was authorized to pass such a law because fear of violence prevented women from using public transportation or going out unescorted at night. Such fears, the reasoning went, placed limits on economic opportunities for women. This argument made the connection to commerce and Congress's constitutional authority, but the Supreme Court rejected this broad interpretation of the commerce clause.

At the same time it was narrowly interpreting the Constitution to limit federal power, the Supreme Court after 1990 began to interpret the Constitution broadly to expand state power. Notably, the Court made a series of rulings that broadly interpreted the Eleventh Amendment's guarantee of **sovereign immunity** to the states. Sovereign immunity is essentially "the right of a government to be free from suits brought without its consent."²⁴ In cases such as *Seminole Tribe of Florida v. Florida* (1996) and *Alden v. Maine* (1999), the Supreme Court adopted an interpretation of the Eleventh Amendment that limited the right of citizens to sue states for violations of federal law. These rulings not only lessened the power of the federal government over the states but also arguably gave the states more power over their own citizens.

Although these and other rulings resurrected the Tenth Amendment and underlined the independent power of the states, there has been an element of inconsistency to Supreme Court decisions since 1990. In *Bush v. Gore* (2000), the Court abandoned its commitment to states' rights by overruling the Florida Supreme Court and ordering a halt to the contested recount of presidential ballots. Democratic presidential nominee Al Gore indisputably won the popular vote in 2000, but the outcome of the presidential election was decided by Florida's electoral votes. Gore and Bush ran neck and neck in this state, the decision so close that a series of controversial and hotly contested recounts were undertaken with the approval of the Florida courts. In effect, the U.S. Supreme Court overturned the state court's interpretation of state law—which allowed the recounts—and decided the presidency in favor of George W. Bush. Another decision that favored federal power over state power came in *Lorillard Tobacco Co. v. Reilly* (2001). Here, the Court overturned a Massachusetts law that regulated the advertising of tobacco products. The Court argued that federal law—specifically, the Federal Cigarette Labeling and Advertising Act—legitimately preempts state law on this issue.

The Court also trumped 10 states that had legalized the use of marijuana for medical purposes. In *Gonzales v. Raich* (2005), the Court, led by its more liberal justices, ruled that federal law enforcement officers, prosecutors, and judges can prosecute and punish anyone possessing marijuana. This ruling is interesting because, while it upheld federal laws, it did not overturn state laws and left state and local officials free not to participate in any federal efforts to seize medical marijuana.²⁵ Just six months later, however, the Court upheld a state law related to serious illnesses when it ruled in *Gonzales v. Oregon* (2006) against the federal government's challenge of Oregon's law that allows physician-assisted suicide. In recent years, the Court has reviewed a number of preemptions of state law on everything from banking regulation to labor arbitration, and, for the most part, it has sided with federal authority.²⁶

This was certainly the case in the Court's 2012 landmark ruling in *National Federation of Independent Business v. Sebelius*, which bitterly disappointed many conservatives. This case decided the federal government's power to enact the Patient Protection and Affordable Care Act, in particular the federal government's authority to require individuals to purchase health

insurance. Chief Justice John Roberts, appointed by President George W. Bush and typically seen as a member of the Court's conservative bloc, surprised many by voting with the more liberal justices to affirm that power. Yet in another landmark case decided the same year, the Court put caveats on federal supremacy. In *Arizona v. United States* (2012), the Supreme Court essentially ruled that only the federal government has the power to set immigration policy but affirmed that states have the right to check the immigration status of people within their borders. In other words, the Court sort of split the difference between state and federal claims to power. Similarly, the Court in 2014 ruled in *Environmental Protection Agency v. EME Homer City Generation* that the federal EPA could regulate major producers of greenhouse gas emissions—something opposed by coal-producing states—but then in 2016 issued an order that blocked the Obama administration's attempts to implement such regulations.

More recently, in *Rucho v. Common Cause* (2019) the Court controversially ruled that the federal courts cannot review allegations of partisan gerrymandering, or the process of redrawing political districts to achieve a partisan advantage (see Chapter 7). Every 10 years following the decennial census, states are obligated to redraw the nation's political geography by setting the boundaries of legislative districts for the U.S. House of Representatives and for state legislative seats. This helps ensure districts are equally apportioned—that is, they contain roughly equal numbers of people. Redistricting, though, is also an opportunity to press a partisan advantage. State legislatures do most of the redistricting, and it is always tempting for a majority party to slice and dice boundary lines to favor their candidates. Following 2010 a number of states—including Wisconsin, Texas, and North Carolina—produced maps considered so egregiously gerrymandered they prompted lawsuits claiming that state governments were deliberately seeking to constrain the voting rights of citizens who supported the minority party. It is hard to underestimate the importance of this issue: if states have the power to engage in unbridled gerrymandering, they can influence who wields political power at the national as well as state level. In the *Rucho* ruling, the Supreme Court effectively said that's a state prerogative if they want to pursue it. States can (and do) put their own constraints on such activities, but in essence it's not something the federal government is going to interfere in. Through their redistricting powers states, in short, can seek to deliberately influence the partisan and ideological balance of power at the national as well as state level.

Even more controversial than the *Rucho* ruling was the Supreme Court's explosive 2022 decision to overturn the constitutional right to an abortion established by *Roe v. Wade* (1973). In *Dobbs v. Jackson*, a Supreme Court ideologically tilted to the right ruled that *Roe* was incorrectly decided and that the Constitution conferred no such right. The decision was seen as an enormous victory for antiabortion supporters, who had long pressed Republican presidents to appoint justices skeptical of *Roe*. This decision was (and is) also hugely controversial because, whatever the pros and cons of the judicial reasoning underpinning *Roe*, retracting a constitutional right is not something that can be done without kicking off a political firestorm. And that's pretty much what *Dobbs* did. As discussed in this chapter's introduction, the ruling effectively left the legality of abortion up to the states. In response, states such as California steadfastly maintained legal access to abortion. Other states had laws on the books that outlawed abortion the minute it was constitutionally permitted. In August 2022 Indiana became the first state to pass an antiabortion law post-*Dobbs*. The upshot is that thanks to the Supreme Court legal access to an abortion is now dependent on geography, and states have primary policy authority over one of the most fought-over and contentious issues of the culture wars.

The bottom line is that over the past few decades the Supreme Court has sometimes zigged and sometimes zagged on state–federal relations, sometimes backing states' rights and sometimes backing federal supremacy. Some scholars argue that these sorts of inconsistencies have

always been characteristic of the Supreme Court's federalism rulings and should not be surprising in an era of ad hoc federalism. Ideology—not a firm commitment to a particular vision of state–national relations—is what ultimately decides how a justice rules in a particular case.²⁷ Therefore, a Court dominated by conservative appointees will occasionally depart from the state-centered notion of federalism if a nation-centered view is more ideologically pleasing, whereas a Court dominated by liberal appointees will do the opposite. The Supreme Court, like the president, finds it hard to resist the temptations of ad hoc federalism.

CONCLUSION

The Constitution organizes the United States into a federal political system. This means that the states are powerful independent political actors that dominate important policy areas. Many of these policy areas are those with the most obvious and far-reaching roles in the day-to-day lives of citizens. Education, law enforcement, utility regulation, and road construction are but a handful of examples. The independence states are granted under the federal system allows them broad leeway to go their own way in these and many other policy areas.

The resulting variation has advantages, such as making it easier to match local preferences with government action and allowing states and localities to experiment with innovative programs and policies. There are also disadvantages. These include the complexity and difficulty in coordinating policy at the national level, a disadvantage made glaringly clear by the mixed and sometimes ineffective response to the coronavirus crisis of 2020. Regardless, the bottom line is that the interests of state and national governments overlap in many areas. Because of this and because the Constitution does not clearly resolve the question of who has the power to do what in these arenas of shared interest, conflict is inevitable.

What is the future of federalism? That is a hard question to answer because across the partisan and ideological spectrum there is less commitment to any overarching philosophy of federalism. Dual, cooperative, and centralized federalism are history. New Federalism had largely run its course by the end of the George W. Bush administration. What has emerged since then is ad hoc federalism, with views on which level of government has primacy shifting from policy to policy on the basis of partisan and ideological preferences. Liberals and conservatives champion federal supremacy if doing so advances their political agenda, and they champion states' rights if that better serves those same interests. The era of ad hoc federalism is one of fractured state–federal relations, dominated at the federal level by the administrative powers of the president rather than the lawmaking powers of Congress. It is characterized by partisan and ideological conflict between and within different levels of government. In many cases, these conflicts will likely have to be resolved by the Supreme Court.

THE LATEST RESEARCH

The following are summaries of some of the most recent research on federalism. A constant theme among the latest scholarship continues to be federal–state relations characterized by partisan and ideological differences.

- **Konisky, David, and Paul Nolette.** "The State of American Federalism 2021–22: Federal Courts, State Legislatures and the Conservative Turn in the Law." *Publius: The Journal of Federalism* 52, no. 3 (2022): 353–81.

This is *Publius's* annual survey of the current state of federalism in the United States. Konisky and Nolette report federalism is currently characterized by intense political polarization and policy conflict. According to their survey, a notable feature of this environment is the institutional advantages it provides the Republican Party due to growing GOP (Grand Old Party) dominance in state legislatures and a rightward shift in the ideology of the federal judiciary. Combined, these have weakened the influence of federal agencies and created more space to push for conservative priorities in areas such as abortion, gun rights, and religious practices, and to limit local government attempts to counter those priorities.

- **Conlan, Timothy J.** "The Changing Politics of American Federalism." *State and Local Government Review* 49, no. 3 (2018): 1–14.

Conlan looks at three political trends that have affected intergovernmental relations and policy: nationalization, polarization, and delegitimation. Conlan argues that politics, especially party politics, have increasingly become nationalized, to the point where even state and local races are fought on national issues such as immigration. Concurrent with that nationalization is an ever-growing ideological gap, with the two now largely national political parties planting their flags on opposing sides of an ideological canyon that is increasingly difficult to bridge. At the same time, the national government itself is suffering from delegitimation, a steady erosion of trust and confidence in its ability to represent the public interest and effectively respond to social and economic problems. This creates a volatile situation where the level of government least favored by the public is increasingly setting the terms of policy debates.

- **Grumbach, Jacob.** *Laboratories against Democracy*. Princeton, NJ: Princeton University Press, 2022.

This book examines the impact of nationalized political parties on state politics. Specifically, Grumbach argues that the subnational institutions of state government have increasingly become conduits of national political conflict, mainly because the parties that control those institutions are less focused on regional concerns and more beholden to the political agendas at the heart of partisan conflict at the national level. One consequence of these trends is a widening red state–blue state divide, with states controlled by different partisan teams going in very different directions on a wide range of policy issues. This mismatch between increasingly centralized parties exerting control over a highly decentralized system, Grumbach argues, is potentially dangerous. It means rather than reducing conflict by pushing government closer to the people, states are replicating and exacerbating national divisions.

TOP TEN TAKEAWAYS

1. A unitary political system concentrates power in a single central government. Confederal systems concentrate power in regional governments. In federal systems, power and policy responsibilities are divided between central and regional governments.
2. The framers of the U.S. Constitution chose a federal system for several reasons. Their experience with the confederal system under the Articles of Confederation convinced them of the need for a more powerful central government. Their experience under a unitary system—as colonies of the United Kingdom—made that option unpalatable to many.
3. A federal system also fit with the framers' preferences for division of powers and allowed states to retain sovereign powers.

4. Federalism has advantages and disadvantages. For example, it allows policy experimentation by the states, but it also creates legal and political complexity and confusion.
5. Federal–state division of powers is governed by the U.S. Constitution. While the Constitution provides a number of explicit grants of power to the federal government, powers of the states are vaguer and are derived in large part from the Tenth Amendment.
6. Disagreements about which level of government has the power and authority to do what inevitably lead to conflicts between state and local governments. These conflicts ultimately have to be resolved by the Supreme Court.
7. Relationships between state and federal governments have evolved considerably, being characterized by dual federalism initially and by cooperative and centralized federalism for much of the last century. This evolution generally shifted power toward the federal government.
8. The New Federalism movement of the late 20th century sought to push power away from the federal government and back to the states.
9. Current state–federal government relations are characterized by ad hoc federalism, where political actors favor state power or federal power based on the issue and their own political preferences.
10. After signaling a return to supporting states’ rights in the 1990s, Supreme Court rulings have been inconsistent in the 21st century, favoring state authority in some cases and federal authority in others.

KEY CONCEPTS

Ad hoc federalism	Implied powers
Bill of Rights	Interstate commerce clause
Block grants	National supremacy clause
Categorical grants	Nation-centered federalism
Centralized federalism	Necessary and proper clause
Compact theory	New Federalism
Concurrent powers	Nullification
Confederacy	Preemption
Cooperative federalism	Privileges and immunities clause
Crosscutting requirements	Representative government
Crossover sanctions	Secession
Dual federalism	Sovereign immunity
Enumerated powers	State-centered federalism
Exclusive powers	States’ rights
Federalism	Tenth Amendment
Fourteenth Amendment	Unfunded mandates
Full faith and credit clause	Unitary systems
General revenue sharing grants	
General welfare clause	
Grants-in-aid	

DISCUSSION QUESTIONS

1. Imagine if the political system of the United States was reorganized as a unitary system. What would politics and government look like under this system? How and in what ways would it be different from the current federal system? Would those differences make governance and politics better or worse in the United States? Why or why not?
2. List what you think are the three biggest advantages and three biggest disadvantages of federalism. Do the advantages on your list outweigh the disadvantages, or vice versa? What, specifically, justifies your answer?
3. Consider the various types of federalism that have existed. Pick one of these models to exemplify the best approach to state–federal relations, and pick one of these models as the approach to state–federal relations to avoid if at all possible. How would you try to convince the Supreme Court why your favored choice does a better job of structuring state–federal relations than your least favored choice?

Do not copy, post, or distribute