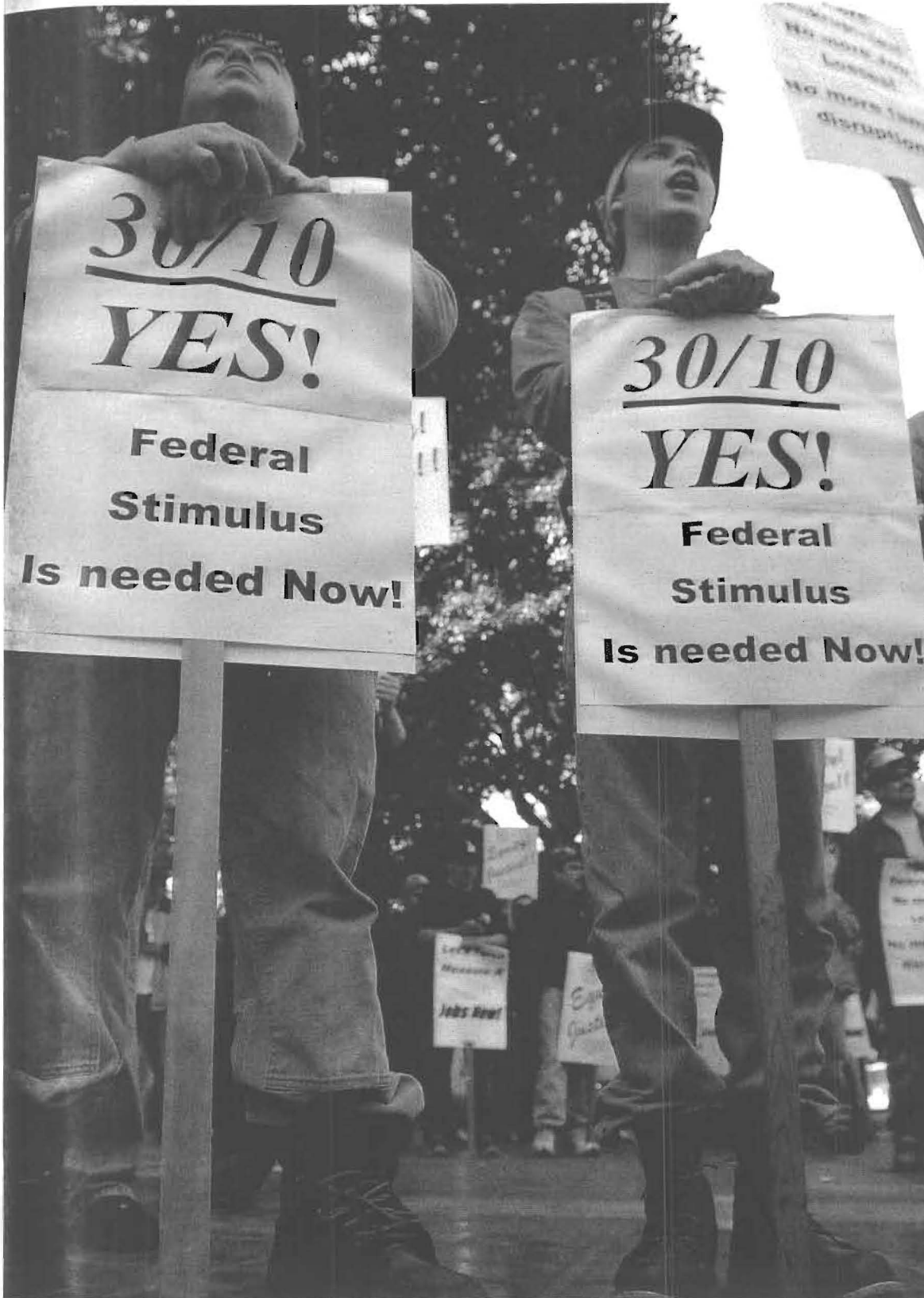


Federalism



LEARNING OBJECTIVES

LO1 Explain what federalism means, how federalism differs from other systems of government, and why it exists in the United States.

LO2 Indicate how the Constitution divides governing powers in our federal system.

LO3 Summarize the evolution of federal-state relationships in the United States over time.

LO4 Describe developments in federalism in recent years.

LO5 Explain what is meant by the term *fiscal federalism*.



AMERICA AT ODDS

Should the States Lower the Drinking Age?

Our political system is a federal one in which power is shared between the states and the federal government. The Tenth Amendment to the U.S. Constitution reserves all powers not delegated to the national government to the states and to the people. Nonetheless, the federal government has been able to exercise power over matters that traditionally have been under the control of state governments, such as the minimum age for drinking alcoholic beverages. The federal government has been able to do so by its ability to give or withhold federal grants. The provision of grants to the states by the federal government is known as *fiscal federalism*, and these grants give the federal government considerable influence over state policies.

In the 1980s, for example, the national government wanted the states to raise the minimum drinking age to twenty-one years. States that refused to do so were threatened with the loss of federal highway construction funds. The threat worked—it was not long before all of the states had changed their minimum-drinking-age laws. In the 1990s, Congress used the same threat to encourage the states to lower their blood-alcohol limits for drunk driving to 0.08 percent by 2004. Again, states that failed to comply faced reductions in federal highway funds.

It's Time to End This Charade— College Students Still Drink

Underage drinking did not disappear when the minimum-drinking-age requirement was raised to twenty-one years. Indeed, the problem got worse. Millions of young people today are, in effect, criminals, because they are breaking the law by drinking. Moreover, the law encourages young people to binge in secret in order to avoid apprehension and prosecution by the local police. The minimum drinking age of twenty-one years has not reduced drunk driving among teenagers, because it is largely unenforceable. Additionally, it has bred contempt for the law in general among teenagers. That is why a group of 135 U.S. college presidents and chancellors endorsed the Amethyst Initiative, a movement calling for the reconsideration of U.S. drinking-age laws. Prohibition did not work in the 1920s, and prohibiting those under twenty-one from drinking will not work in the twenty-first century. Almost no other country has such a high minimum drinking age. It is time to lower the drinking age everywhere in the United States. Responsible drinking can be taught through role modeling by parents and through educational programs.

Keep the Age-Twenty-One Requirement Because It's Working

Mothers Against Drunk Driving (MADD) leads the opposition to lowering the drinking age. That group contends that the current drinking-age laws have saved more than twenty thousand lives. The National Transportation Safety Board, the American Medical Association, and the Insurance Institute for Highway Safety all agree. After all, young persons' brains are not fully developed, so they are more susceptible to alcohol. When the drinking age limit is twenty-one, it helps to protect young people from being pressured to drink. Teenagers who drink are a danger not only to themselves but also to others—particularly when driving. Young people away at college must deal with enough new responsibilities. They don't need drinking as yet another problem. Fatalities involving eighteen- to twenty-year-old drivers have decreased since the laws establishing the minimum drinking age of twenty-one were enacted. These laws are working as planned, so we should keep them.

WHERE DO YOU STAND?

1. Is it appropriate to compare what happened during the era of Prohibition, when *all* drinking was illegal, to what is happening to teenagers today, when the minimum drinking age is twenty-one? Why or why not?
2. "One can join the military at the age of eighteen and die for this country, so it is absurd not to allow those between the ages of eighteen and twenty-one to drink." Analyze this statement.

EXPLORE THIS ISSUE ONLINE

- Professor David Hanson, of the State University of New York at Potsdam, maintains a Web site that explores alcohol-related issues, including the minimum-drinking-age controversy. You can find it at www2.potsdam.edu/hansondj.
- You can find an academic study of college-age drinking by researchers at the Harvard School of Public Health at www.hsph.harvard.edu/cas/Documents/underminimum/DrinkingBehavior.pdf.
- The Mothers Against Drunk Driving (MADD) site is at www.madd.org. You can find a related organization, Students Against Destructive Decisions (SADD), at www.sadd.org.

Why does lowering the drinking age remain controversial?



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totalitarian regimes—have some kind of subnational governmental units. Thus, the existence of national and subnational governmental units by itself does not make a system federal. *For a system to be truly federal, the powers of both the national units and the subnational units must be specified and limited.* Under true federalism, individuals are governed by

federalism A system of shared sovereignty between two levels of government—one national and one subnational—occupying the same geographic region.

unitary system A centralized governmental system in which local or subdivisional governments exercise only those powers given to them by the central government.

confederal system A league of independent sovereign states, joined together by a central government that has only limited powers over them.

two separate governmental authorities (national and state authorities) whose expressly designated powers cannot be altered without changing the fundamental nature of the system—for example, by amending a written constitution. Table 3-1 at right lists some of the countries that the Central Intelligence Agency has classified as having a federal system of government.¹

Federalism in theory is one thing; federalism in practice is another. As you will read shortly, the Constitution sets forth specific powers that can be exercised by the national government and provides that the national government has the implied power to undertake actions necessary to carry out its expressly designated powers. All other powers are “reserved” to the states. The broad language of the Constitution, though, has left much room for debate over the specific nature and scope of certain powers, such as the national government’s implied powers and the powers reserved to the states. Thus, the actual workings of our federal form of government have depended, to a great extent, on the historical application of the broad principles outlined in the Constitution.

To further complicate matters, the term *federal government*, as it is used today, refers to the national, or central, government. When individuals talk of the federal government, they mean the national government based in Washington, D.C. They are *not* referring to the federal *system* of government, which is made up of both the national government and the state governments.

Alternatives to Federalism

Perhaps an easier way to define federalism is to discuss what it is *not*. Most of the nations in the world today have a **unitary system** of government. In such a system, the constitution vests all powers in the national government. If the national government so chooses, it

Table 3-1

Countries That Have a Federal System Today

Country	Population (in Millions)
Argentina	41.3
Australia	21.5
Austria	8.2
Brazil	201.1
Canada	33.8
Ethiopia	88.0
Germany	82.3
India	1,173.1
Malaysia	26.2
Mexico	112.5
Nigeria	152.2
Pakistan	177.3
Switzerland	7.6
United States	310.2
Venezuela	27.2

Source: Central Intelligence Agency, *The World Fact Book*; current edition online at <https://www.cia.gov/library/publications/the-world-factbook>

can delegate certain activities to subnational units. The reverse is also true: the national government can take away, at will, powers delegated to subnational governmental units. In a unitary system, any subnational government is a “creature of the national government.” The governments of Britain, France, Israel, Japan, and the Philippines are examples of unitary systems. In the United States, because the Constitution does not mention local governments (cities and counties), we say that city and county governmental units are “creatures of state government.” That means that state governments can—and do—both give powers to and take powers from local governments.

The Articles of Confederation created a confederal system (see Chapter 2). In a **confederal system**, the national government exists and operates only at the direction of the subnational governments. Few true confederal systems are in existence today, although some people contend that the European Union—a group of twenty-seven European nations that

has established many common institutions—qualifies as such a system.

Federalism—An Optimal Choice for the United States?

The Articles of Confederation failed because they did not allow for a sufficiently strong central government. The framers of the Constitution, however, were fearful of tyranny and a too-powerful central government. The outcome had to be a compromise—a federal system.

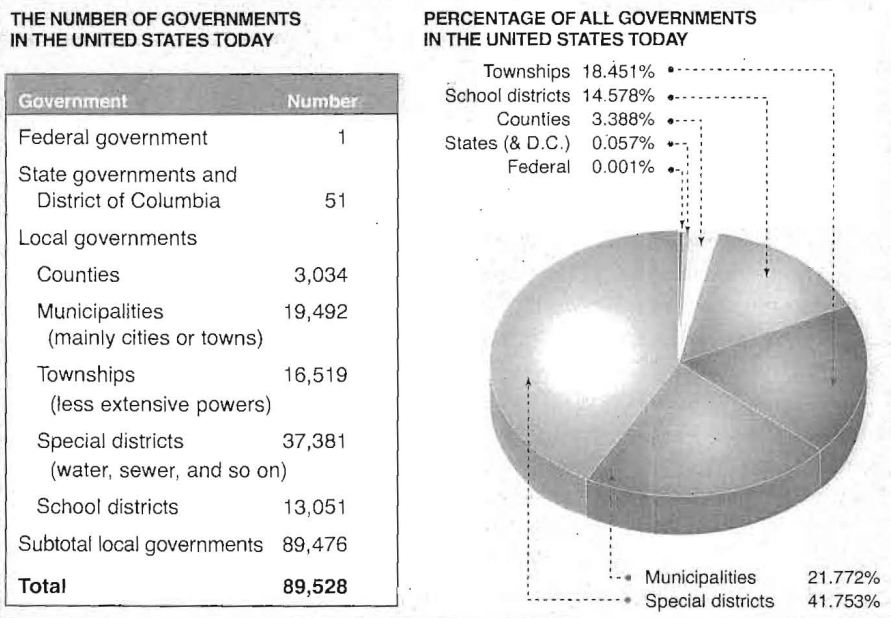
The appeal of federalism was that it retained state powers and local traditions while establishing a strong national government capable of handling common problems, such as national defense. A federal form of government also furthered the goal of creating a division of powers (to be discussed shortly). There are other reasons why the founders opted for a federal system, and a federal structure of government continues to offer many advantages (as well as some disadvantages) for U.S. citizens.

ADVANTAGES OF FEDERALISM One of the reasons a federal form of government is well suited to the United

Figure 3-1

Governmental Units in the United States Today

The most common type of governmental unit in the United States is the special district, which is generally concerned with a specific issue such as solid waste disposal, mass transportation, or fire protection. Often, the jurisdiction of special districts crosses the boundaries of other governmental units, such as cities or counties. Special districts also tend to have fewer restrictions than other local governments as to how much debt they can incur and so are created to finance large building projects.



Source: U.S. Census Bureau.

States is our country's large size. Even in the days when the United States consisted of only thirteen states, its geographic area was larger than that of England or France. In those days, travel was slow and communication was difficult, so people in outlying areas were isolated. The news of any particular political decision could take several weeks to reach everyone. Therefore, even if the framers of the Constitution had wanted a more centralized system (which most of them did not), such a system would have been unworkable.

Look at Figure 3-1 above. As you can see, to a great extent the practical business of governing this country takes place in state and local governmental units. Federalism, by providing a multitude of arenas for decision making, keeps government closer to the people and helps make democracy possible.

The existence of numerous government subunits in the United States also makes it possible to experiment with innovative policies and programs at the state or local level. Many observers, including Supreme Court justice Louis Brandeis (1856-1941), have emphasized that in a

federal system, state governments can act as "laboratories" for public-policy experimentation. For example, many states have adopted minimum wage laws that establish a higher minimum wage than the one set by national legislation. Several states, including Hawaii and Massachusetts, have experimented with health-care programs that extend coverage to most or all of the states' citizens. Depending on the outcome of a specific experiment, other states may (or may not) implement similar programs. State innovations can also serve as models for federal programs. For instance, California was a pioneer in air-pollution control. Many of that state's regulations were later adapted by other states and eventually by the federal government.

We have always been a nation of different political subcultures. The Pilgrims who founded New England were different from the settlers who established the agricultural society of the South.

Both of these groups were different from those who populated the Middle Atlantic states. The groups that founded New England had a religious focus, while those who populated the Middle Atlantic states were more business oriented. Those who settled in the South were more individualistic than the other groups. That is, they were less inclined to act as a collective and more inclined to act independently of each other. A federal system of government allows the political and cultural interests of regional groups to be reflected in the laws governing those groups.

As we noted earlier, nations other than the United States have benefited from the principle of federalism. One of them is Canada, our neighbor to the north. Because federalism permits the expression of varying regional cultures, Canadian federalism naturally differs from the American version, as you will discover in this chapter's *The Rest of the World* feature on the following page.

SOME DRAWBACKS TO FEDERALISM Federalism offers many advantages, but it also has some drawbacks. Consider that although federalism in many ways



Canadian versus American Federalism

Canada has a federal system similar in some ways to that of the United States—but also with some big differences. When the 1867 Constitution Act created modern Canada, the United States had just concluded the Civil War. Canada's founders blamed that war on the weakness of the U.S. central government. Therefore, the Canadian constitution gave far more power to the central government than did the U.S. Constitution.

The Powers of Lower-Level Governments

Our lower levels of government are called states, whereas in Canada they are called provinces. Right there, the powers of the central government are emphasized. The word *state* implies sovereignty. A *province*, however, is never sovereign and is typically set up for the convenience of the central government. The U.S. Constitution limits the powers of the national government to those listed in Article I, Section 8. In the Canadian constitution, it is the powers of the provinces that are limited by a list. The Tenth Amendment to the U.S. Constitution reserves residual powers to the states or to the people. In Canada, residual powers rest with the national government. Under the 1867 Canadian constitution,

the central government could veto any provincial legislation. No such clause appears in the U.S. Constitution.

Changes Over Time


By land area, Canada is the second-largest country in the world. Most people live along the southern edge of the nation, where the climate is the most tolerable. The populated areas of Canada, therefore, are like a ribbon extending from the Atlantic to the Pacific. Physically, the country seems designed for a federal system of government.

Over time, the powers of the U.S. federal government grew at the expense of the states. The opposite happened in Canada. By the end of the nineteenth century, the Canadian government in practice had abandoned the power to veto provincial legislation. The difference between the Canadian and American experiences is well illustrated by the effect of the Great Depression on the federal system. In the United States, the Depression strengthened the federal government. In Canada, it strengthened the provinces.

Two Languages

Another striking difference between Canada and the United States is that

Canada has two national languages. A majority of Canadians speak English, but most of the population of Québec speaks French. The Parti Québécois (PQ), which wants Québec to be a separate country, has gained power in that province twice. Both times, it held referenda on whether Québec should demand “sovereignty-association,” a euphemism for independence. In 1995, the PQ almost obtained a majority vote for its position. The party has promised to hold another referendum if it returns to power. The possibility exists, therefore, that Canada could actually break apart.

 **For Critical Analysis** *The Canadian constitution is based on the principles of “peace, order, and good government.” Contrast that phrase with the Preamble to the U.S. Constitution. How do the statements differ?*

promotes greater self-rule, or democracy, some scholars point out that local self-rule may not always be in society's best interests. These observers argue that the smaller the political unit, the higher the probability that it will be dominated by a single political group, which may or may not be concerned with the welfare of many of the local unit's citizens. For example, entrenched segregationist politicians in southern states denied African Americans their civil rights and voting rights for decades, as we discuss further in Chapter 5.

Powerful state and local interests can block progress and impede national plans. State and local interests

often diverge from those of the national government. For example, several of the states have recently been at odds with the national government over how to address the problem of global warming. Finding acceptable solutions to such conflicts has not always been easy. Indeed, as will be discussed shortly, in the 1860s, war—not politics—decided the outcome of a struggle over states' rights.

Federalism has other drawbacks as well. One of them is the lack of uniformity of state laws, which can complicate business transactions that cross state borders. Another problem is the difficulty of coordinating



government policies at the national, state, and local levels. Additionally, the simultaneous regulation of business by all levels of government creates red tape that imposes substantial costs on the business community.

Finally, in a federal system, there is always the danger that national power will be expanded at the expense of the states. President Ronald Reagan (1981–1989) once said, “The Founding Fathers saw the federalist system as constructed something like a masonry wall. The States are the bricks, the national government is the mortar. . . . Unfortunately, over the years, many people have increasingly come to believe that Washington is the whole wall.”²

LO2 The Constitutional Division of Powers

The founders created a federal form of government by dividing sovereign powers into powers that could be exercised by the national government and powers that were to be reserved to the states. Although there is no systematic explanation of this **division of powers** between the national and state governments, the original Constitution, along with its amendments, provides statements on what the national and state governments can (and cannot) do.

The Powers of the National Government

The Constitution delegates certain powers to the national government. It also prohibits the national government from exercising certain powers.

POWERS DELEGATED TO THE NATIONAL GOVERNMENT The national government possesses three types of powers: expressed powers, implied powers, and inherent powers. Article I, Section 8, of the Constitution expressly enumerates twenty-seven powers that Congress may exercise. Two of these **expressed powers**, or *enumerated powers*, are the power to coin money and the power to regulate interstate commerce. Constitutional amendments have provided for other expressed powers. For example, the Sixteenth Amendment, added in 1913, gives Congress the power to impose a federal income tax. Article II, Section 2, of the Constitution expressly delegates certain powers to the president. These powers include making treaties and appointing certain federal officeholders. Laws enacted by Congress can also have the effect of creating additional expressed presidential powers.

The constitutional basis for the **implied powers** of the national government is found in Article I, Section 8, Clause 18, often called the **necessary and proper clause**. This clause states that Congress has the power to make “all Laws which shall be necessary and proper for carrying into Execution the foregoing [expressed] Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” The necessary and proper clause is often referred to as the *elastic clause*, because it gives elasticity to our constitutional system.

The national government also enjoys certain **inherent powers**—powers that governments must have simply to ensure the nation’s integrity and survival as a political unit. For example, any national government must have the inherent ability to make treaties, regulate immigration, acquire territory, wage war, and make peace. While some inherent powers are also enumerated in the Constitution, such as the power to wage war and make treaties, others are not. For example, the Constitution does not speak of regulating immigration or acquiring new territory. Although the national government’s inherent powers are few, they are important.

POWERS PROHIBITED TO THE NATIONAL GOVERNMENT The Constitution expressly prohibits the national government from undertaking certain actions, such as imposing taxes on exports, and from passing laws restraining certain liberties, such as the freedom of speech or religion. Most of these prohibited powers are listed in Article I, Section 9, and in the first eight amendments to the Constitution. Additionally, the national government is implicitly prohibited from exercising powers, including

division of powers

A basic principle of federalism established by the U.S. Constitution, by which powers are divided between the federal and state governments.

expressed powers

Constitutional or statutory powers that are expressly provided for by the U.S. Constitution.

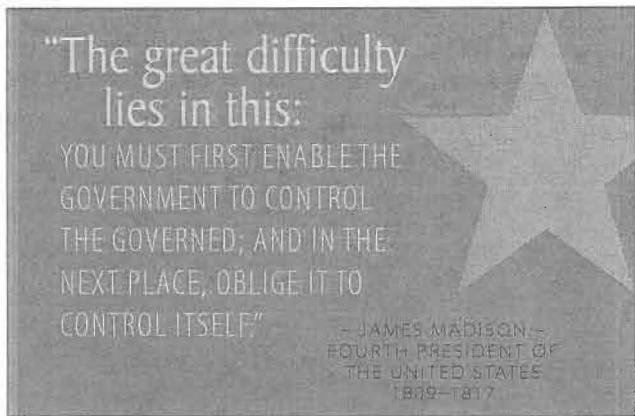
implied powers The powers of the federal government that are implied by the expressed powers in the Constitution, particularly in Article I, Section 8.

necessary and proper clause

Article I, Section 8, Clause 18, of the Constitution, which gives Congress the power to make all laws “necessary and proper” for the federal government to carry out its responsibilities; also called the *elastic clause*.

inherent powers

The powers of the national government that, although not always expressly granted by the Constitution, are necessary to ensure the nation’s integrity and survival as a political unit. Inherent powers include the power to make treaties and the power to wage war or make peace.



the power to create a national public school system, that are not included among its expressed and implied powers.

The Powers of the States

The Tenth Amendment to the Constitution states that powers that are not delegated to the national government by the Constitution, nor prohibited to the states, “are reserved to the States respectively, or to the people.”

POLICE POWERS The Tenth Amendment thus gives numerous powers to the states, including the power to regulate commerce within their borders and the power to maintain a state militia. In principle, each state has the ability to regulate its internal affairs and to enact whatever laws are necessary to protect the health, morals, safety, and welfare of its people. These powers of the states are called **police powers**. The establishment of public schools and the regulation of marriage and divorce have traditionally been considered to be entirely within the purview of state and local governments.

Because the Tenth Amendment does not specify what powers are reserved to the states, these powers have been defined differently at different times in our history. In periods of widespread support for increased regulation by the national government, the Tenth Amendment tends to recede into the background. When the tide turns the other way, the Tenth Amendment is resurrected to justify arguments

police powers The powers of a government body that enable it to create laws for the protection of the health, morals, safety, and welfare of the people. In the United States, most police powers are reserved to the states.

supporting increased states’ rights (see, for example, the discussion of the new federalism later in this chapter). Because the United States Supreme Court is the ultimate arbiter

of the Constitution, the outcome of disputes over the extent of state powers often rests with the Court.

POWERS PROHIBITED TO THE STATES Article I, Section 10, denies certain powers to state governments, such as the power to tax goods that are transported across state lines. States are also prohibited from entering into treaties with other countries. In addition, the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments prohibit certain state actions. (The complete text of these amendments is included in Appendix B.)

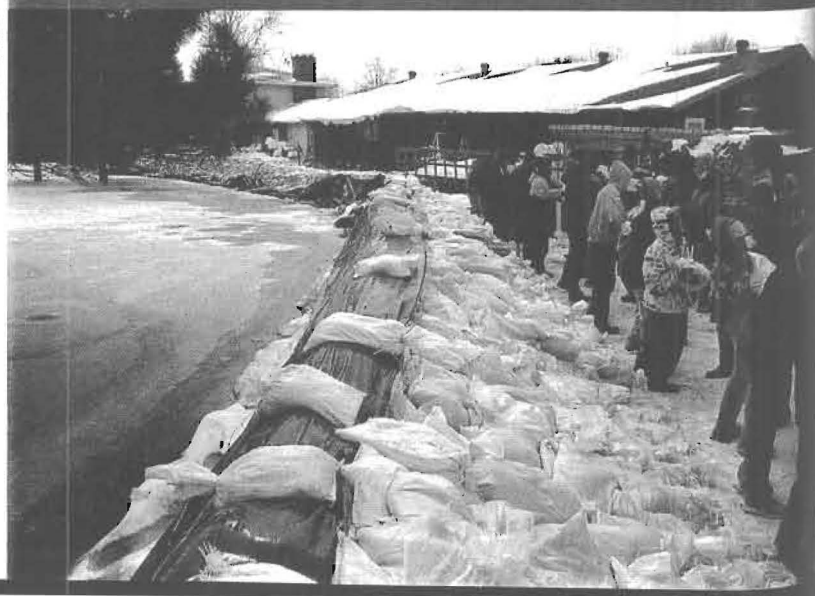
Interstate Relations

The Constitution also contains provisions relating to interstate relations. The states have constant commercial and social interactions among themselves, and these interactions often do not directly involve the national government. The relationships among the states in our federal system of government are sometimes referred to as *horizontal federalism*.

The Constitution outlines a number of rules for interstate relations. For example, the Constitution’s full faith and credit clause requires each state to honor every other state’s public acts, records, and judicial proceedings. The issue of gay marriage, however, has made this constitutional mandate difficult to follow. If a gay couple legally married in Massachusetts moves to a state that bans same-sex marriage, which state’s law takes priority? The federal government attempted to answer that question through the 1996 Defense of Marriage Act (DOMA), which provided that no state

During natural disasters, such as this flooding problem in Fargo, North Dakota, local governments will ask for assistance from other cities, the state, and even the federal government.

DANIEL BARRY/REDUX





Few issues today are as controversial as state-sanctioned gay marriages. A federal judge in California recently ruled that Proposition 8, which nullified such marriages, was unconstitutional.

is *required* to treat a relationship between persons of the same sex as a marriage, even if the relationship is considered a marriage in another state.

A second part of the law barred the national government from recognizing same-sex marriages in states that legalize them. In July 2010, however, a U.S. district court judge threw out this part of DOMA and ruled that the federal government was required to provide marriage-based benefits to Massachusetts residents who are joined in same-sex marriages. This ruling will certainly be appealed, and ultimately, the United States Supreme Court will have to decide this issue.

Horizontal federalism also includes agreements, known as *interstate compacts*, among two or more states to regulate the use or protection of certain resources, such as water or oil and gas. California and Nevada, for example, have formed an interstate compact to regulate the use and protection of Lake Tahoe, which lies on the border between those states.

Concurrent Powers

Concurrent powers can be exercised by both the state governments and the federal government. Generally, a state's concurrent powers apply only within the geographic area of the state and do not include functions that the Constitution delegates exclusively to the national government, such as the coinage of money

and the negotiation of treaties. An example of a concurrent power is the power to tax. Both the states and the national government have the power to impose income taxes—and a variety of other taxes. States, however, are prohibited from imposing tariffs (taxes on imported goods), and as noted, the federal government may not tax articles exported by any state. Figure 3–2 on the following page, which summarizes the powers granted and denied by the Constitution, lists other concurrent powers.

The Supremacy Clause

The Constitution makes it clear that the federal government holds ultimate power. Article VI, Clause 2, known as the **supremacy clause**, states that the U.S. Constitution and the laws of the federal government

“shall be the supreme Law of the Land.” In other words, states cannot use their reserved or concurrent powers to counter national policies. Whenever state or local officers, such as judges or sheriffs, take office, they become bound by an oath to support the U.S. Constitution. National government power always takes precedence over any conflicting state action.³

LO3 The Struggle for Supremacy

Much of the political and legal history of the United States has involved conflicts between the supremacy of the national government and the desire of the states to preserve their sovereignty. The most extreme example of this conflict was the Civil War in the 1860s. Through the years, because of the Civil War and several important Supreme Court decisions, the national government has increased its power.

concurrent powers

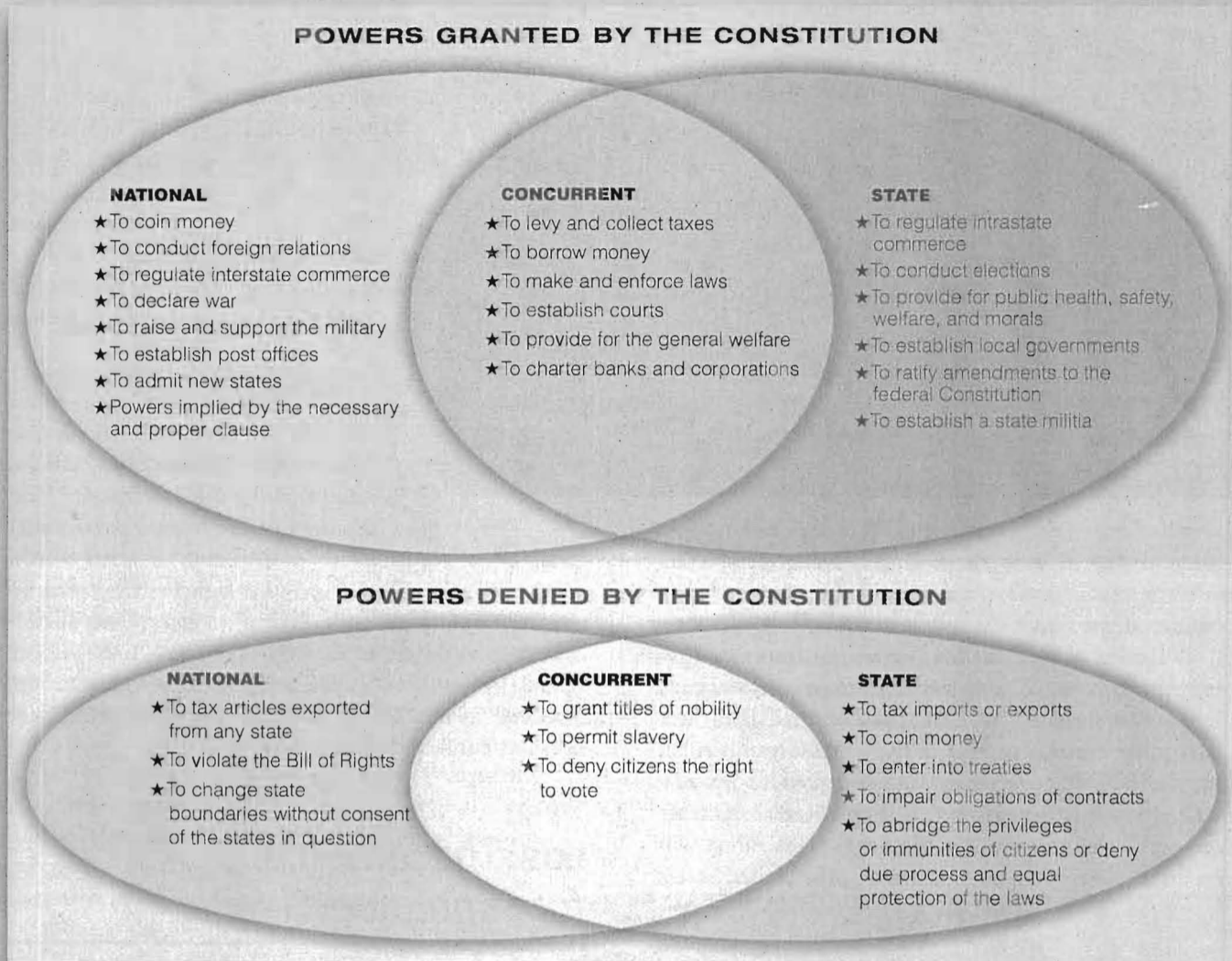
Powers held by both the federal and the state governments in a federal system.

supremacy clause Article VI, Clause 2, of the Constitution, which makes the Constitution and federal laws superior to all conflicting state and local laws.

Figure 3-2

The Constitutional Division of Powers

The Constitution grants certain powers to the national government and certain powers to the state governments, while denying them other powers. Some powers, called *concurrent powers*, can be exercised at either the national or the state level, but generally the states can exercise these powers only within their own borders.



Early U.S. Supreme Court Decisions

Two Supreme Court cases, both of which were decided in the early 1800s, played a key role in establishing the constitutional foundations for the supremacy of the national government. Both decisions were issued while John Marshall was chief justice of the Supreme Court. In his thirty-four years as chief justice (1801–1835), Marshall did much to establish the prestige and the independence of the Court. In *Marbury v. Madison*,⁴ he clearly enunciated the principle of judicial review, which has since become an important part of the checks

and balances in the American system of government. Under his leadership, the Supreme Court also established, through the following cases, the superiority of federal authority under the Constitution.

McCULLOCH V. MARYLAND (1819) The issue in *McCulloch v. Maryland*,⁵ a case decided in 1819, involved both the necessary and proper clause and the supremacy clause. When the state of Maryland imposed a tax on the Baltimore branch of the Second Bank of the United States, the branch's chief cashier, James McCulloch, declined to pay the tax. The state court ruled that McCulloch had

to pay it, and the national government appealed to the United States Supreme Court. The case involved much more than a question of taxes. At issue was whether Congress had the authority under the Constitution's necessary and proper clause to charter and contribute capital to the Second Bank of the United States. A second constitutional issue was also involved: If the bank was constitutional, could a state tax it? In other words, was a state action that conflicted with a national government action invalid under the supremacy clause?

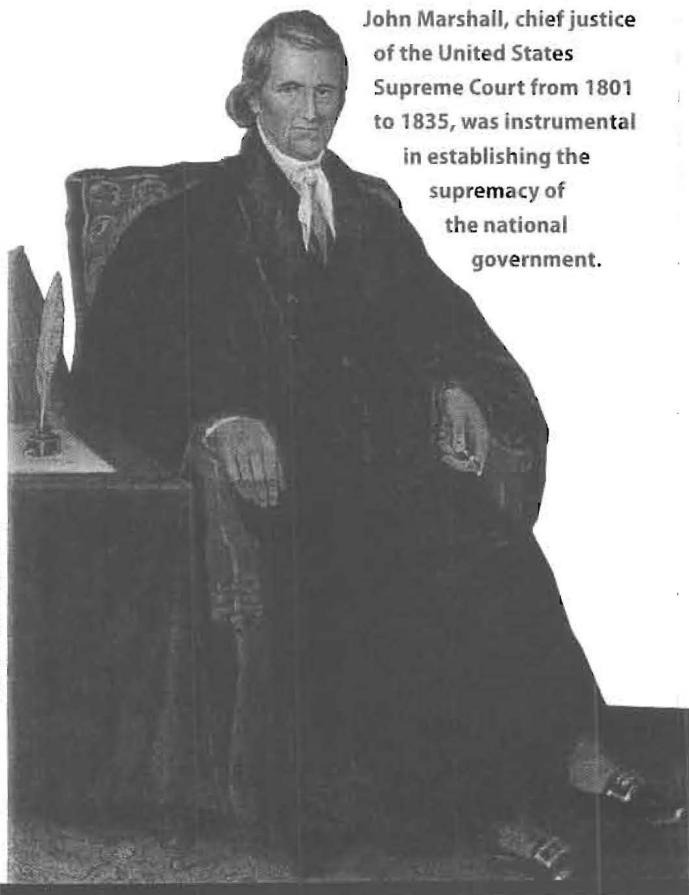
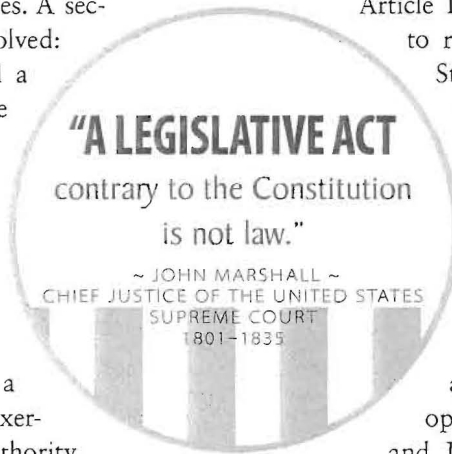
Chief Justice Marshall pointed out that no provision in the Constitution grants the national government the *expressed* power to form a national bank. Nevertheless, if establishing such a bank helps the national government exercise its expressed powers, then the authority to do so could be implied. Marshall also said that the necessary and proper clause included "all means that are appropriate" to carry out "the legitimate ends" of the Constitution.

Having established this doctrine of implied powers, Marshall then answered the other important constitutional question before the Court and established the doctrine of national supremacy. Marshall declared that no state could use its taxing power to tax an arm of the national government. If it could, the Constitution's declaration that the Constitution "shall be the supreme Law

of the Land" would be empty rhetoric without meaning. From that day on, Marshall's decision became the basis for strengthening the national government's power.

GIBBONS V. OGDEN (1824) As Chapter 2 explained, Article I, Section 8, gives Congress the power to regulate commerce "among the several States." But the framers of the Constitution did not define the word *commerce*. At issue in *Gibbons v. Ogden*⁶ was how the *commerce clause* should be defined and whether the national government had the exclusive power to regulate commerce involving more than one state. The New York legislature had given Robert Livingston and Robert Fulton the exclusive right to operate steamboats in New York waters, and Livingston and Fulton licensed Aaron Ogden to operate a ferry between New York and New Jersey. Thomas Gibbons, who had a license from the U.S. government to operate boats in interstate waters, decided to compete with Ogden, but he did so without New York's permission. Ogden sued Gibbons in the New York state courts and won. Gibbons appealed.

Chief Justice Marshall defined *commerce* as including all business dealings, including steamboat travel. Marshall also stated that the power to regulate interstate commerce was an *exclusive* national power and had no limitations other than those specifically found in the Constitution. Since this 1824 decision, the national government has used the commerce clause repeatedly to justify its regulation of virtually all areas of economic activity.



John Marshall, chief justice of the United States Supreme Court from 1801 to 1835, was instrumental in establishing the supremacy of the national government.

The Civil War—The Ultimate Supremacy Battle

The great issue that provoked the Civil War (1861–1865) was the future of slavery. Because people in different sections of the country had radically different beliefs about slavery, the slavery issue took the form of a dispute over states' rights versus national supremacy. The war brought to a bloody climax the ideological debate that had been outlined by the Federalist and Anti-Federalist factions even before the Constitution was ratified.

As just discussed, the Supreme Court headed by John Marshall interpreted the commerce clause in such a way as to increase the power of the national government at the expense of state powers. By the late 1820s, however, a shift back to states' rights had begun, and the question of the regulation of commerce became

one of the major issues in federal-state relations. When the national government, in 1828 and 1832, passed laws imposing tariffs (taxes) on goods imported into the United States, southern states objected, believing that such taxes were against their interests.

One southern state, South Carolina, attempted to *nullify* the tariffs, or to make them void. South Carolina claimed that in conflicts between state governments and the national government, the states should have the ultimate authority to determine the welfare of their citizens. President Andrew Jackson was prepared to use force to uphold national law, but Congress reduced the tariffs. The crisis passed.

Additionally, some Southerners believed that democratic decisions could be made only when all the segments of society affected by those decisions were in agreement. Without such agreement, a decision should not be binding on those whose interests it violates. This view was used to justify the **secession**—withdrawal—of the southern states from the Union in 1860 and 1861.

The defense of slavery and the promotion of states' rights were both important elements in the South's decision to secede, and the two concepts were commingled in the minds of Southerners of that era. Which of these two was the more important remains a matter of controversy even today. Modern defenders of states' rights and those who distrust governmental authority often present southern secession as entirely a matter of states' rights. Liberals and those who champion the rights of African Americans see slavery as the sole cause of the crisis. Economic historians can provide helpful insights into the background to secession, as you will learn in this chapter's

secession The act of formally withdrawing from membership in an alliance; the withdrawal of a state from the federal Union.

dual federalism A system of government in which the federal and the state governments maintain diverse but sovereign powers.

"We here
highly resolve that . . .
**THIS NATION . . . SHALL HAVE
A NEW BIRTH OF FREEDOM;**
and that government of the people,
by the people, for the people, shall
not perish from the earth."

~ ABRAHAM LINCOLN ~
GETTYSBURG ADDRESS
1863

Perception versus Reality feature on the facing page.

When the South was defeated in the war, the idea that a state has a right to secede from the Union was defeated also. Although the Civil War occurred because of the South's desire for increased states' rights, the result was just the opposite—an increase in the political power of the national government.

Dual Federalism—From the Civil War to the 1930s

Scholars have devised various models to describe the relationship between the states and the national government at different times in our history. These models are useful in describing the evolution of federalism after the Civil War.

The model of **dual federalism** assumes that the states and the national government are more or less equals, with each level of government having separate and distinct functions and responsibilities. The states exercise sovereign powers over certain matters, and the national government exercises sovereign powers over others.

The Civil War is known in the South as the War between the States, but the official Union designation was the War of the Rebellion. The first shot of the Civil War was fired on April 12, 1861, at Fort Sumter, South Carolina.



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PERCEPTION VERSUS REALITY

Did the Civil War Destroy the Economy of the South?

The Civil War imposed great destruction on the South. The Union Army burned Atlanta, Columbia, and Richmond. General Philip Sheridan's cavalry famously destroyed the farms and railroads of Virginia's Shenandoah Valley. In addition to the loss of human life, the South lost livestock, houses, barns, railroads, and bridges. In the cities, Union forces destroyed factories, warehouses, and transportation equipment.

The Perception

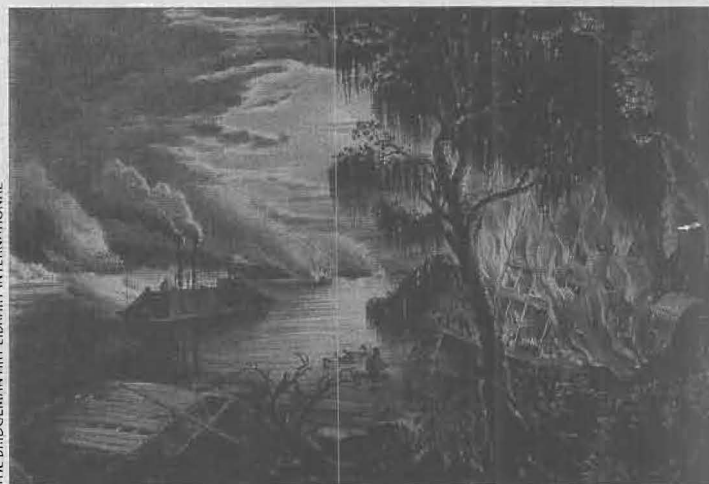
The common perception of the South's condition after the Civil War has been heavily influenced by the suffering depicted in *Gone with the Wind* and other popular works. Many Americans have long believed that the destruction of southern wealth by the war made economic recovery impossible. Furthermore, although it was inevitable and proper that the slaves were freed, the North did not compensate the former slave owners for their losses. This immediately destroyed billions of dollars worth of southern capital.

The Reality

The industrial parts of the South actually recovered quite rapidly. For example, by 1867, the railroads between Washington, D.C., and Charleston, South Carolina, were as good as they had been before the war. By 1869, total manufacturing output and investment exceeded their prewar levels.

The South's problem lay in its cotton-based agriculture. You have heard about the huge bubble in housing prices that helped cause the recent Great Recession. There have been many bubbles in the past as well. In the 1850s, the world experienced a cotton bubble. High prices for cotton led to a bubble in the price of slaves. Slave owners believed that even if Abraham Lincoln swore not to interfere with slavery in the states, his presidency still threatened the price of slaves. Secession would serve as a protection. The North could not possibly risk a "war on cotton," and if it did, cotton-dependent Britain would intervene on the

side of the South. As a southern lady wrote to her daughters, "civil war was foreign to the original plan."⁷



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THE BRIDGEMAN ART LIBRARY INTERNATIONAL

The Mississippi in Time of War, circa 1865, by Currier and Ives.

side of the South. As a southern lady wrote to her daughters, "civil war was foreign to the original plan."⁷

In fact, just before the war, the price of cotton started to fall due to overproduction of cotton textiles. British per-capita consumption of cotton goods did not exceed 1860 levels until after World War I. As a result, after the Civil War, cotton prices fell until almost the end of the century. The Civil War masked the fact that the cotton bubble had burst. Ultra-low cotton prices—with no good economic alternatives for southern farmers—were the true source of the post-Civil War economic distress, not the devastation caused by the Union Army.

Blog On For a vast collection of Civil War materials, see Shotgun's Home of the American Civil War at www.civilwarhome.com. For economic history, try eh.net, a Web site supported by the Economic History Association. One of the site's most popular services lets you convert modern prices into those of any past year, or vice versa.

federal law excluding from interstate commerce the products created through the use of child labor. The law was held unconstitutional because it attempted to regulate a local problem.⁸ The era of dual federalism came to an end in the 1930s, when the United States was in the depths of the greatest economic depression it had ever experienced.

In a 1938 radio broadcast, President Franklin D. Roosevelt called upon the nation's voters to elect New Deal candidates. The Roosevelt administration's New Deal programs were an attempt to mitigate the effects of the Great Depression.



Before the period of cooperative federalism could be truly established, it was necessary to obtain the concurrence of the United States Supreme Court. As mentioned, in the early part of the twentieth century, the Court held a very restrictive view of what the federal government could do under the commerce clause. In the 1930s, the Court ruled again and again that various economic measures were unconstitutional. In 1937, Roosevelt threatened to “pack” the court with up to six new members who presumably would be more favorable to federal action.

This move was widely considered to be an assault on the Constitution, and Congress refused to support it. Clearly, however, the Court got the message: after 1937, it ceased its attempts to limit the scope of the commerce clause.

Cooperative Federalism and the Growth of the National Government

The model of **cooperative federalism**, as the term implies, involves cooperation by all branches of government. This model views the national and state governments as complementary parts of a single governmental mechanism, the purpose of which is to solve the problems facing the entire United States. For example, federal law enforcement agencies, such as the Federal Bureau of Investigation, lend technical expertise to solve local crimes, and local officials cooperate with federal agencies.

Cooperative federalism grew out of the need to solve

cooperative federalism

The theory that the states and the federal government should cooperate in solving problems.

New Deal The policies ushered in by the Roosevelt administration in 1933 in an attempt to bring the United States out of the Great Depression. The New Deal included many government-spending and public-assistance programs, in addition to thousands of regulations governing economic activity.

picket-fence federalism

A model of federalism in which specific policies and programs are administered by all levels of government—national, state, and local.

the pressing national problems caused by the Great Depression, which began in 1929. To help bring the United States out of the Depression, President Franklin D. Roosevelt (1933–1945) launched his **New Deal**, which involved many government-spending and public-assistance programs. Roosevelt's New Deal legislation not only ushered in an era of cooperative federalism, which has more or less continued until the present day, but also marked the real beginning of an era of national supremacy.

COOPERATIVE FEDERALISM AND THE WELFARE STATE The 1960s and 1970s saw an even greater expansion of the national government's role in domestic policy. The Great Society legislation of President Lyndon Johnson's administration (1963–1969) created Medicaid, Medicare, the Job Corps, Operation Head Start, and other programs. The Civil Rights Act of 1964 prohibited discrimination in public accommodations, employment, and other areas on the basis of race, color, national origin, religion, or gender. In the 1970s, national laws protecting consumers, employees, and the environment imposed further regulations on the economy. Today, few activities are beyond the reach of the regulatory arm of the national government.

Nonetheless, the massive social programs undertaken in the 1960s and 1970s also precipitated greater involvement by state and local governments. The national government simply could not implement those programs alone. For example, Head Start, a program that provides preschool services to children of low-income families, is administered by local nonprofit organizations and school systems, although it is funded by federal grants. The model in which every level of government is involved in implementing a policy is sometimes referred to as **picket-fence federalism**. In this model, the policy area is the vertical picket on the fence, while the levels of government are the horizontal support boards. America's welfare system has relied on this



AP PHOTO/GREG WAHL-STEPHENS

During the 1960s and 1970s, the federal government created numerous nationwide programs, such as Head Start, which promotes school readiness for low-income children. State and local governments were called upon to organize and administer these programs, as well as to contribute additional funding. Here, a teacher in a Head Start program in Hillsboro, Oregon, works with preschoolers on an outdoor art project.

model of federalism, although, as you will read, from time to time there have been attempts to give more power to state and local governments.

UNITED STATES SUPREME COURT DECISIONS AND COOPERATIVE FEDERALISM

The two United States Supreme Court decisions discussed earlier, *McCulloch v. Maryland* and *Gibbons v. Ogden*, became the constitutional cornerstone of the regulatory powers that the national government enjoys today. From 1937 on, the Supreme Court consistently upheld Congress's power to regulate domestic policy under the commerce clause. Even activities that occur entirely within a state were rarely considered to be outside the regulatory power of the national government. For example, in 1942 the Supreme Court held that wheat production by an individual farmer intended wholly for consumption on his own farm was subject to federal regulation because the home consumption of wheat reduced the demand for wheat and thus could have an effect on interstate commerce.⁹

In 1980, the Supreme Court acknowledged that the commerce clause had "long been interpreted to extend beyond activities actually in interstate commerce to reach other activities that, while wholly local in nature, nevertheless substantially affect interstate commerce."¹⁰ Today, Congress can regulate almost any kind of economic activity, no matter where it occurs. In recent

years, though, the Supreme Court has, for the first time since the 1930s, occasionally curbed Congress's regulatory powers under the commerce clause. You will read more about this development shortly.

John Marshall's validation of the supremacy clause of the Constitution has also had significant consequences for federalism. One important effect of the supremacy clause today is that the clause allows for federal **preemption** of certain areas in which the national government and the states have concurrent powers. When Congress chooses to act exclusively in an area in which the states and the national government have concurrent powers, Congress is said to have *preempted* the area. In such cases, the courts have held that a valid federal law or regulation takes precedence over a conflicting state or local law or regulation covering the same general activity.

LO4 Federalism Today

By the 1970s, some Americans had begun to question whether the national government had acquired too many powers. Had the national government gotten too big? Had it become, in fact, a threat to the power of the states and the liberties of the people? Should steps be taken to reduce the regulatory power and scope of the national government? Since that time, the model of federalism has evolved in ways that reflect these and other concerns.

The New Federalism— More Power to the States

Starting in the 1970s, several administrations attempted to revitalize the doctrine of dual federalism, which they renamed the "new federalism." The **new federalism** involved a shift from *nation-centered* federalism to *state-centered* federalism. One of the major goals of the new federalism was to return to the states certain powers that had been exercised by the national government since the 1930s. The term

preemption A doctrine rooted in the supremacy clause of the Constitution that provides that national laws or regulations governing a certain area take precedence over conflicting state laws or regulations governing that same area.

new federalism A plan to limit the federal government's role in regulating state governments and to give the states increased power to decide how they should spend government revenues.

devolution—the transfer of powers to political subunits—is often used to describe this process. Although a product of conservative thought and initiated by Republicans, the devolutionary goals of the new federalism were also espoused by the Clinton administration (1993–2001). An example of the new federalism is the welfare reform legislation passed by Congress in 1996, which gave the states more authority over welfare programs.

The Supreme Court and the New Federalism

During and since the 1990s, the Supreme Court has played a significant role in furthering the cause of states' rights. In a landmark 1995 decision, *United States v. Lopez*,¹¹ the Supreme Court held, for the first time in sixty years, that Congress had exceeded its constitutional authority under the commerce clause. The Court concluded that the Gun-Free School Zones Act of 1990, which banned the possession of guns within one thousand feet of any school, was unconstitutional because it attempted to regulate an area that had “nothing to do with commerce.” In a significant 1997 decision, the Court struck down portions of the Brady Handgun Violence Prevention Act of 1993, which obligated state and local law enforcement officers to do background checks on prospective handgun buyers until a national instant check system could be implemented. The Court stated that Congress lacked the power to “dragoon” state employees into federal service through an unfunded **federal mandate** of this kind.¹²

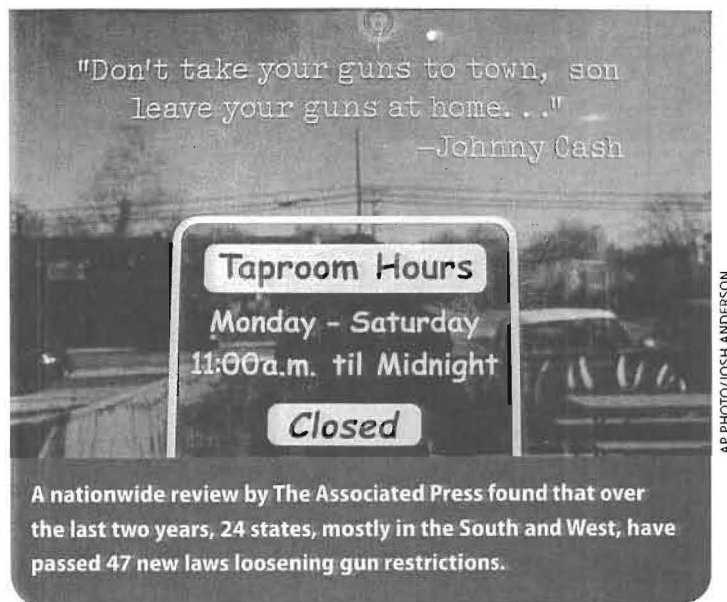
Since then, the Court has continued to limit the national government's regulatory powers. In 2000, for example, the Court invalidated a key provision of the federal Violence Against Women Act of 1994, which allowed women to sue in federal court when they were victims of gender-motivated violence, such as rape. The Court upheld a federal appellate court's ruling that the commerce clause did not justify national regulation of noneconomic, criminal conduct.¹³

In the twenty-first century, the United States Supreme Court has been less noticeably guided by an

devolution The surrender or transfer of powers to local authorities by a central government.

federal mandate A requirement in federal legislation that forces states and municipalities to comply with certain rules. If the federal government does not provide funds to the states to cover the costs of compliance, the mandate is referred to as an *unfunded* mandate.

ideology of states' rights, but some of its decisions have had the effect of enhancing the power of the states. For example, in one case, *Massachusetts v. Environmental Protection Agency*,¹⁴ Massachusetts and several other states sued the Environmental Protection Agency (EPA) for failing to regulate



greenhouse-gas emissions. The states asserted that the agency was required to do so by the Clean Air Act of 1990. The EPA argued that it lacked the authority under the Clean Air Act to regulate greenhouse-gas emissions alleged to promote global warming. The Court ruled for the states, holding that the EPA did have the authority to regulate such emissions and should take steps to do so.

The Shifting Boundary between Federal and State Authority

Clearly, the boundary between federal and state authority has been shifting. Notably, issues relating to the federal structure of our government, which at one time were not at the forefront of the political arena, have in recent years been the subject of heated debate among Americans and their leaders. The federal government and the states seem to be in a constant tug-of-war over federal regulation, federal programs, and federal demands on the states.

THE POLITICS OF FEDERALISM The Republican Party is often viewed as the champion of states' rights. Certainly, the party has claimed such a role. For example, when the Republicans took control of both chambers of Congress in 1995, they promised devolution—which, as already noted, refers to a shifting of power from the national level to the individual states. Smaller central government and a state-centered federalism have long been regarded as the twin pillars of Republican ideology. In contrast, Democrats usually have sought greater centralization of power in Washington, D.C.

Since the Clinton administration, however, the party tables seem to have turned. As mentioned earlier, it was under Clinton that welfare reform legislation giving more responsibility to the states—a goal that had been endorsed by the Republicans for some time—became a reality. Conversely, the No Child Left Behind Act of 2001, passed at the request of Republican president George W. Bush,



JOIN THE DEBATE

Is Obamacare Unconstitutional?

In 2010, President Obama signed into law the most significant legislation in decades concerning health care. Some were elated by passage of the legislation, nicknamed “Obamacare.” Others were aghast. Some who opposed the new law are raising constitutional issues—twenty state attorney generals have joined together in a suit against the federal government. Others, including those who favor Obamacare, are convinced that no constitutional issues are involved.

The Government Can't Force Us to Buy Anything

The reasoning of those who believe Obamacare is unconstitutional runs as follows: It is true that state governments have the right to require, for example, drivers to buy automobile insurance to travel on the public streets. Nothing in the Constitution, in contrast, gives the federal government the right to impose such requirements. The new laws demand that everyone in the United States purchase health-care insurance or be fined. The Internal Revenue Service will enforce this law. While the commerce clause allows the federal government to regulate interstate commerce, it has never been used to *require* citizens to buy any service or good. Another constitutional argument against the reforms is that a requirement to buy insurance violates the Fifth Amendment's right to due process.

Further constitutional challenges are based on states' rights. Some states have passed legislation barring any of their citizens from being required to purchase medical insurance. A suit by Florida claims that the Medicare expansion provided by the law improperly commandeers state officials. The battle between the states and the federal government is not new. Sometimes the Supreme Court has supported states' rights. Sometimes it hasn't.

gave the federal government a much greater role in education and educational funding than ever before. Many Republicans also supported a constitutional amendment that would ban same-sex marriages nationwide. Liberals, recognizing that it was possible to win support for same-sex marriages only in a limited number of states, took a states' rights position on this issue. Finally, consider that the Bush administration made repeated attempts to block California's medical-marijuana initiative and Oregon's physician-assisted suicide law.

OBAMA AND FEDERALISM The position of the Obama administration has been more ambiguous. Obama has certainly championed measures that




AP PHOTO/MARK HUMPHREY

There Is No Constitutional Basis for a Challenge

Proponents of health-care reform argue that the constitutional challenges to the new legislation are smoke and mirrors. Congress has spoken—all Americans will eventually have access to medical care. For this to occur, almost all Americans will need to have health insurance of one form or another. Otherwise, those who do have health insurance will pay higher premiums to make up for the missing premiums of those that don't have insurance. The “requirement” to buy insurance simply amounts to a tax on those who do not buy it. It's assumed that some people will pay the tax and go without insurance. The courts have always held that Congress can place tax incentives in the Internal Revenue Code.

As for states' rights, that's an old argument brought up every time some people don't like new legislation. In fact, the supremacy of national law was established in 1819 by *McCulloch v. Maryland*, and the breadth of the commerce clause was settled in 1824 by *Gibbons v. Ogden*. (See pages 56 and 57.) If constitutional arguments against the new legislation make it all the way to the United States Supreme Court, they will be rejected—probably on a nine-to-zero vote.

 **For Critical Analysis** *Who will gain and who will lose because of the new health-care legislation?*

increase the role of government in society, but the new laws have not necessarily shifted power from the states to the federal government. Obama's opponents, however, have frequently invoked states' rights in opposition to such legislation as the health-care reform bill. Officials in a number of states have filed suits claiming that “Obamacare” is unconstitutional. Do these suits have any chance of succeeding? We examine that question in this chapter's *Join the Debate* feature above.

FEDERALISM AND THE “WAR ON TERRORISM” In modern times, terrorism—the use of violence to intimidate or coerce—has become so large-scale and has claimed so many victims that it is hard to consider it



Presidential candidates John McCain and Barack Obama toss flowers into the reflecting pool at Ground Zero in New York City. They were commemorating the seventh anniversary of the September 11 terrorist attacks on the World Trade Center towers.

ordinary crime. Terrorism has many of the characteristics of war, not just of crime—hence the term *war on terrorism*. Unlike war, however, terrorism involves non-governmental actors. Some authorities suggest thinking of terrorism as a “supercrime.”¹⁵

The U.S. Constitution gives Congress the power and authority to provide for the common defense. Nevertheless, most of the burden of homeland defense falls on state and local governments. These governments are the “first responders” to crises, including terrorist attacks. Additionally, state and local governments are responsible for detecting, preparing for, preventing, and recovering from attacks.

After the terrorist attacks of September 11, 2001, the Bush administration increased demands on state and local governments to participate in homeland security.

As with the implementation of any national policy, the requirements imposed on the states to support homeland security were costly. Firefighting departments needed more equipment and training. Emergency communications equipment had to be purchased. State and local governments were required to secure ports, ensure water safety and airport security, install new bomb-detecting equipment, and take a multitude of other steps. Since 9/11, almost every state law enforcement agency and about a quarter of local agencies (most of them in larger cities) have formed specialized antiterrorism units. Although the federal government has provided funds to the states to cover some of these expenses, much of the cost of homeland security is borne by the states.

The wars in Afghanistan and Iraq also depleted the ranks of state and local police, firefighters, and other emergency personnel. Many individuals working in these areas were also in the National Guard and were called up to active duty.

FEDERALISM AND THE ECONOMIC CRISIS

Unlike the federal government, state governments are required to balance their budgets. This requirement is written into the constitution of every state except Vermont. Such requirements do not, of course, prevent the states from borrowing money, but typically when a state borrows it must follow a strict series of rules laid down in its constitution.

Frequently, a vote of the people is required before a state or local government can go into debt by issuing bonds. In contrast, when the federal government runs a budget deficit, the borrowing that results takes place almost automatically—the U.S. Treasury continually issues new Treasury bonds.

A practical result is that when a major recession occurs, the states are faced with severe budget problems. Because state citizens are earning and spending less, state income and sales taxes fall. At the same time, people who have lost their jobs require more state services. The costs of welfare, unemployment compensation, and Medicaid (health care for low-income persons) all rise. During a recession, state governments may be forced either to reduce spending and lay off staff—or to raise taxes. Either choice helps make the recession worse. State spending patterns tend to make

economic booms more energetic and busts more painful—in a word, they are *procyclical*.

Unlike the states, the federal government has no difficulty in spending more on welfare, unemployment compensation, and Medicaid during a recession. Even though revenue raised through the federal income tax may fall, the federal government often cuts tax rates in a recession to spur the economy. It makes up the difference by going further into debt, an option not available to the states. The federal government even has the power to reduce its debt by issuing new money, as you learned in the *Our Government Faces a Troubled Economy* feature in Chapter 2 on page 40. In a recession, the actions of the federal government are normally *anticyclical*.

One method of dealing with the procyclical nature of state spending is to increase federal grants to the states during a recession. For more details on how that can work, see this chapter's *Our Government Faces a Troubled Economy* feature on the following page.

LOS The Fiscal Side of Federalism

Since the advent of cooperative federalism in the 1930s, the national government and the states have worked hand in hand to implement programs mandated by the national government. Whenever Congress passes a law that preempts a certain area, the states are, of course, obligated to comply with the requirements of that law. As already noted, a requirement that a state provide a service or undertake some activity to meet standards specified by a federal law is called a *federal mandate*. Many federal mandates concern civil rights or environmental protection. Recent federal mandates require the states to provide persons with disabilities with access to public buildings, sidewalks, and other areas; to establish minimum water-purity and air-purity standards; and to extend Medicaid coverage to all poor children.

To help the states pay for some of the costs associated with implementing national policies, the national government gives back some of the tax dollars it collects to the states—in the form of grants. As you will see, the states have come to depend on grants as an important source of revenue. When taxes are collected

"GIVING MONEY AND POWER TO GOVERNMENT

is like giving whiskey and car keys to teenage boys"

~ P.J. O'ROURKE ~
AMERICAN HUMORIST
1947-PRESENT

by one level of government (typically the national government) and spent by another level (typically state or local governments), we call the process **fiscal federalism**.

Federal Grants

Even before the Constitution was adopted, the national government granted lands to the states to finance education. Using the proceeds from the sale of these lands, the states were able to establish elementary schools and, later, *land-grant colleges*. Cash grants started in 1808, when Congress gave money to the states to pay for the state militias. Federal grants were also made available for other purposes, such as building roads and railroads.

Only in the twentieth century, though, did federal grants become an important source of funds to the states. The major growth began in the 1960s, when the dollar amount of grants quadrupled to help pay for the Great Society programs of the Johnson administration. Grants became available for education, pollution control, conservation, recreation, highway construction and maintenance, and other purposes.

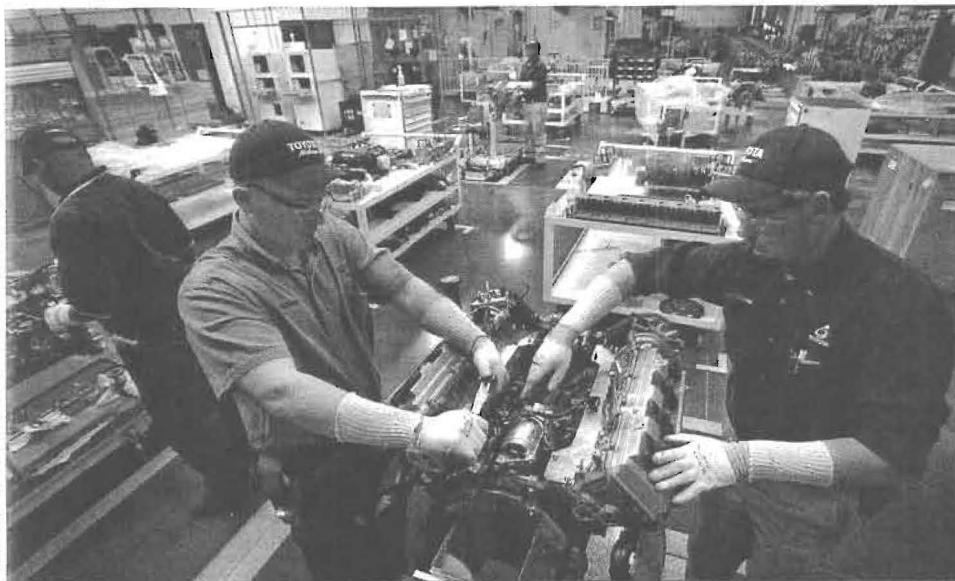
There are two basic types of federal grants: categorical grants and block grants. A **categorical grant** is targeted for a specific purpose as defined by federal law—the federal government defines hundreds of categories of state and local spending. Categorical grants give the national government control over how states use the money by imposing certain conditions. For example, a categorical grant may require that the funds not be used for purposes that discriminate against any group or for construction projects that pay below the local prevailing wage. Depending on the project, the government might require that an environmental impact statement be prepared.

In contrast, a **block grant** is given for a broad area, such as criminal justice or mental-health programs. First issued in 1966, block grants now constitute a growing percentage of all federal aid programs. A block grant gives the states more discretion over how the funds

fiscal federalism The allocation of taxes collected by one level of government (typically the national government) to another level (typically state or local governments).

categorical grant A federal grant targeted for a specific purpose as defined by federal law.

block grant A federal grant given to a state for a broad area, such as criminal justice or mental-health programs.



Competitive federalism includes state tax-reduction incentives, through which states offer lower taxes to manufacturing firms that agree to locate in their states. Such an incentive was one reason Toyota opened a plant in Huntsville, Alabama.

Tenth Amendment reserves all powers not delegated to the national government to the states and to the people. You might well wonder, then, how the federal government has been able to exercise control over matters that traditionally have been under the control of state governments, such as the minimum drinking age. The answer involves the giving or withholding of federal grant dollars.

For example, as noted in the *America at Odds* feature at the beginning of this chapter, the national government forced the states to raise the minimum drinking age to twenty-one by threatening to withhold federal highway funds from states that did not comply. The education reforms embodied in the No Child Left Behind (NCLB) Act also rely on federal funding for their implementation. The states receive block grants for educational purposes and, in return, must meet federally imposed standards for testing and accountability. A common complaint, however, is that the existing NCLB Act is an underfunded federal mandate. Critics argue that the national government does not provide sufficient funds to implement it.

The Cost of Federal Mandates

As mentioned, when the national government passes a law preempting an area in which the states and the national government have concurrent powers, the states must comply with that law in accordance with the supremacy clause of the Constitution. Thus, when such laws require the states to implement certain programs,

the states must comply—but compliance with federal mandates can be costly. The estimated total cost of complying with federal mandates to the states in the 2000s has been calculated as \$29 billion annually. Although Congress passed legislation in 1995 to curb the use of unfunded federal mandates, that legislation was more rhetoric than reality.

Competitive Federalism

The debate over federalism is sometimes reduced to a debate over taxes. Which level of government will raise taxes to pay

for government programs, and which will cut services to avoid raising taxes?

How states answer that question gives citizens an option: they can move to a state with fewer services and lower taxes, or to a state with more services but higher taxes. Political scientist Thomas R. Dye calls this model of federalism **competitive federalism**. State and local governments compete for businesses and citizens. If the state of Ohio offers tax advantages for locating a factory there, for example, a business may be more likely to build its factory in Ohio, providing more jobs for Ohio residents. If Ohio has very strict environmental regulations, however, that same business may choose not to build there, no matter how beneficial the tax advantages, because complying with the regulations would be costly. Although Ohio citizens lose the opportunity for more jobs, they may enjoy better air and water quality than citizens of the state where the new factory is ultimately built.

Some observers consider such competition an advantage: Americans have several variables to consider when they choose a state in which to live. Others consider it a disadvantage: a state that offers more social services or lower taxes may experience an increase in population as people “vote with their feet” to take advantage of that state’s laws. This population

competitive federalism

A model of federalism devised by Thomas R. Dye in which state and local governments compete for businesses and citizens, who in effect “vote with their feet” by moving to jurisdictions that offer a competitive advantage.



OUR GOVERNMENT FACES A TROUBLED ECONOMY

Fighting a Recession with Government Spending



In an attempt to prevent the Great Recession from turning into another Great Depression, President Barack Obama called for massive stimulus legislation in 2009. He and his advisers believed that fiscal policy can have profound effects on the nation's economy. Fiscal policy refers to changes in government taxes and spending.

The logic behind fiscal policy is straightforward. When unemployment is rising and the economy is in a recession, fiscal policy should stimulate economic activity by increasing government spending, decreasing tax rates, or both. When unemployment is falling and prices are rising—when there is inflation—the government should curb excessive economic activity by reducing spending, increasing taxes, or both. In other words, the government's budget deficit should rise in a recession and fall in a boom. This view of fiscal policy is based on the theories of the British economist John Maynard Keynes (1883–1946). It's worth noting, by the way, that not all economists agree with Keynes.

Making Grants to the States

It can take a while for the government to realize that a recession has begun. It takes more time for a bill authorizing a tax cut or spending increase to work its way through Congress. It takes still more time for the change in taxation or spending to have an effect. By the time fiscal policy is actually stimulating the economy, the recession may be over. Obama moved quickly, however. He gave the Democrats in Congress

almost total freedom to come up with a bill, as long as they did it fast. Indeed, Congress came up with a massive stimulus bill, initially valued at \$787 billion, in record time. How could Congress write a bill so quickly?

State and local governments make grant proposals on a continuing basis. Thousands of such proposals from state and local governments were already in hand. Obama therefore promised the American people that the stimulus bill would concentrate on “shovel-ready” projects—state and local projects that were ready to be started immediately upon the receipt of federal funds.

What the Stimulus Really Funded

America has thousands of bridges that need repair, highways that need resurfacing, and other serious infrastructure problems. Of the \$787 billion, however, \$264 billion was devoted to tax cuts (mostly for individuals), and the rest to spending. Infrastructure received less than \$100 billion. Unemployment compensation, food stamps, and other programs totaled more than \$100 billion. Health care received about \$150 billion—most of it paid to the states—and education received roughly another \$100 billion.

Those economists who supported the stimulus believe that it did have a positive effect on the economy. Clearly, however, it did not solve the unemployment problem. By 2010, the unemployment rate was still almost 10 percent. To the extent that the stimulus had an impact on employment, it reduced layoffs rather than creating new jobs. It especially saved the jobs of health-care workers, teachers, and other state government employees. Spending fueled by tax cuts and unemployment compensation presumably saved some jobs as well, but it was impossible to identify who benefited. As a result, the effects of the stimulus were largely invisible. Most voters concluded that the stimulus had no effect.

You Be the Judge Business tax reductions in the stimulus bill amounted to only \$32 billion. Why do you think Obama was reluctant to cut business tax rates further?

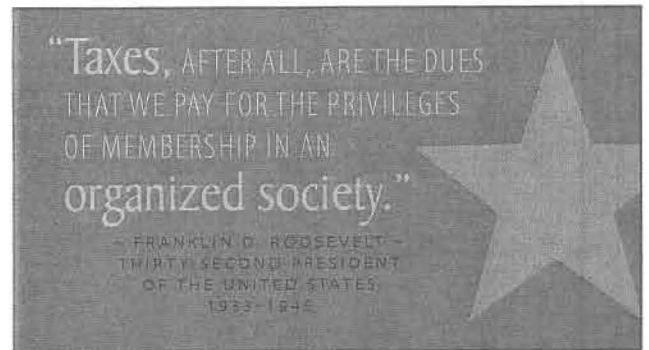
will be spent. Nonetheless, the federal government can exercise control over state decision making through these grants by using *cross-cutting requirements*, or requirements that apply to all federal grants. Title VI of the 1964 Civil Rights Act, for example, bars discrimination in the use of all federal funds, regardless of their source.

Using Federal Grants to Control the States

Grants of funds to the states from the national government are one way that the Tenth Amendment to the U.S. Constitution can be bridged. Remember that the

increase can overwhelm the state's resources and force it to cut social services or raise taxes.

It appears likely, then, that the debate over how our federal system functions, as well as the battle for control between the states and the federal government, will continue. The Supreme Court, which has played umpire in this battle, will also likely continue to issue rulings that influence the balance of power.



AMERICA AT ODDS *Federalism*

The topic of federalism raises one of the most enduring disputes in American history—the relative power of the national government versus the governments of the states. As you read in the last two chapters, Americans have been at odds over the strength of the central government since well before the American Revolution. The issue of centralization versus decentralization has taken a number of specific forms:

- Is it right for the national government to use its financial strength to pressure states into taking actions such as raising the drinking age by threatening to withhold subsidies—or are such pressures an abuse of the federal system?
- Should the national government intervene in the issue of legalizing or banning same-sex marriages—or leave such matters strictly to the states?
- Should the commerce clause be interpreted broadly, granting the federal government much power to regulate the economy—or should it be interpreted as narrowly as possible to keep the government from interfering with the rights of business owners?
- Should the federal government have a role in setting national policies for public education—or should that be left entirely to the states?
- Should the federal government establish a national system for funding health care—or should that, too, be left to the states or to the private sector?

Take Action

Many people believe that it's only possible to have a real impact on the problems we face—the economy, poverty, health care, or the environment—at the national level. You can do a lot to address these issues at the state and local level, however. Consider that an individual or a small group can have much more influence on a state government than on the national one, and can make an even bigger impact on a local government.

As the slogan goes, “Think globally, act locally.” Your local government controls construction and land-use issues, oversees the police or sheriff's department, and can pass all kinds of local ordinances. Will banning the sale of Styrofoam cups lead to a tidier environment—or is it a ridiculous infringement on personal freedoms? There are hundreds of such issues that you and your friends could take up.

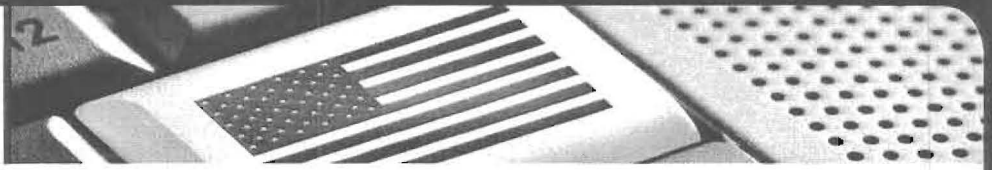
Acting locally does not have to mean political engagement, however. You can also volunteer your services to a cause that

concerns you, such as improving the environment or helping the poor or the elderly. Volunteer activities can be very gratifying, and you could make a big difference in the lives that you touch. Try using VolunteerMatch to find volunteer opportunities in your community. Just enter your ZIP code on its Web site (www.volunteermatch.org). Other organizations that work to meet critical needs include AmeriCorps (www.americorps.gov) and the Corporation for National and Community Service (www.nationalservice.gov).

**Think Globally
Act Locally** 

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POLITICS ON THE WEB



- You can access the *Federalist Papers*, as well as state constitutions, information on the role of the courts in resolving issues relating to federalism, and information on international federations, at the following site: www.constitution.org/cs_feder.htm
- You can find information on state governments, state laws and pending legislation, and state issues and initiatives at www.statescape.com
- Supreme Court opinions, including those discussed in this chapter, can be found at the Court's official Web site. Go to www.supremecourt.gov
- A good source of information on state governments and issues concerning federalism is the Web site of the Council of State Governments. Go to www.csg.org
- The Brookings Institution, the nation's oldest think tank, is a good source for information on emerging policy challenges, including federal-state issues, and for practical recommendations for dealing with those challenges. To access the institution's home page, go to www.brookings.edu
- If you are interested in a libertarian perspective on issues such as federalism, you can visit the Cato Institute's Web site at www.cato.org
- The Web site of the National Governors Association offers information on many issues affecting the nation, ranging from health-care reform, to education, to new and innovative state programs. You can access information on these issues, as well as many key issues relating to federalism, at www.nga.org
- *Governing* magazine, an excellent source of state and local news, can be found online at www.governing.com



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