

Federalism: National, State, and Local Powers

■ 6.1 Introduction

You might not expect the gray wolf to be involved in a power struggle between the national government and state wildlife agencies. Under our federal system of government, states traditionally exercised control over wildlife within their borders. Wolves were universally viewed as threats to people and livestock. In fact, many states paid residents a bounty, or reward, for every wolf they killed. As a result, by the mid-1900s, wolves had all but disappeared from every state except Alaska.

Concern over the dwindling population of once-common animals such as the gray wolf led Congress to pass the Endangered Species Act in 1973. This law gave control of endangered animals to the U.S. Fish and Wildlife Service. Once the gray wolf came under federal protection, state bounties were banned and the hunting of wolves was outlawed in most areas. A person found guilty of killing a wolf could be punished with a fine of \$100,000 and a year in jail.

The Fish and Wildlife Service also worked to restore endangered species to habitats where they had once flourished. As part of this effort, federal officials reintroduced gray wolves to Yellowstone National Park in 1995. No wolves had been seen in the park, which includes parts of Idaho, Montana, and Wyoming, since 1939.

National and state control of borders and wildlife

Speaking of Politics

expressed powers

The powers given specifically to the national government by the U.S. Constitution. These are also known as enumerated or delegated powers.

interstate commerce

Trade that takes place between two states or among several states.

intrastate commerce

Trade that takes place within the borders of a state.

unfunded mandate

A regulation or policy imposed by the federal government on state and local governments without adequate federal funds to carry out the policy.

devolution

The transfer of power from a central government to a regional or local government. In the United States, the term usually refers to the delegation of power from the national to the state governments.

apportionment

The distribution of seats in a legislature according to law. The U.S. Constitution requires that seats in the House of Representatives be apportioned according to the population of each state.

gerrymandering

Drawing the boundaries of a legislative district with the intent of giving one party or group a significant advantage.

redistricting

The process of redrawing the geographic boundaries of legislative districts after a census to reflect population changes.

The reintroduction of the gray wolf in Idaho, Montana, and Wyoming has caused tension among ranchers, state officials, and the U.S. Fish and Wildlife Service.

At the same time, the wolves have boosted tourism in the region. These vacationers are hoping to spot wolves in Yellowstone National Park.



The return of wolves to Yellowstone Park triggered a storm of protest from nearby sheep and cattle ranchers. Fearing wolf raids on their livestock, they urged state officials to wrest control of the growing wolf population away from the federal government. Fish and Wildlife Service officials resisted these efforts, fearing that handing over wolf management to the states could lead to overhunting and even extinction.

By early 2007, the wolf population in Idaho and Montana had grown to the point at which the Fish and Wildlife Service agreed to return management of wolves back to state agencies. Wyoming, however, had not yet developed a management plan that both state and federal officials found acceptable.

This long and often-heated debate over who should manage the gray wolf is an example of the kinds of conflicts that can arise in a federal system of government. This chapter will trace the evolution of federalism in the United States over the past two centuries, including the important role of state and local governments within our federal system of government.

■ 6.2 The Establishment of a Federal System

The United States was the first nation-state founded with a federalist system of government. The adoption of such a system by the framers of the Constitution was not so much a choice as a necessity. The delegates

attending the Constitutional Convention in 1787 knew full well that the 13 states would be reluctant to give up any real power to a national government. As a result, the framers were careful to spell out how power should be divided among the national government and state governments.

The Constitutional Division of Powers

The U.S. Constitution divides powers into three categories: expressed, concurrent, and reserved. The diagram on the opposite page shows how these powers are distributed between the national and state governments.

Expressed powers are powers specifically granted to the national government. The Constitution lists only 17 of these specific powers. Some, such as the power to coin money or to make treaties with other countries, are delegated exclusively to the national government. Others, such as the power to levy taxes, are concurrent powers shared by the national and state governments.

The Constitution says little about the powers reserved by states. But it does place some requirements on state governments. The Full Faith and Credit Clause, for example, insists that states recognize, honor, and enforce one another's public actions. Because of this clause, a driver's license issued by your home state is recognized as legal in any other state.

In addition, the Privileges and Immunities Clause says a state cannot discriminate against residents of

other states or give its own residents special privileges. This means that if you move to a new state, you will enjoy all of the rights given to any other citizen of that state.

The Tenth Amendment further clarifies the constitutional division of powers by declaring that powers not specifically delegated to the national government are reserved for the states. These reserved powers include overseeing public schools, regulating businesses, and protecting state resources. The states also reserve the power to establish and regulate local governments.

The Benefits of a Federal System

While the framers had little choice but to create a federal system of government, they could see several benefits of federalism. Four of the most important are listed below.

Federalism protects against tyranny of the majority.

By dividing power among several units of government, federalism makes it difficult for a misguided majority to trample the rights of a minority. If a minority group feels abused in one state, its members can move to a state where their rights are more likely to be respected.

Jonah Goldberg, an editor with the *National Review*, compared the states to housing dorms on a hypothetical college campus to describe how this protection benefits a diverse population. On this campus, roughly half of the students like to have loud parties every night, while the other half like to have peace and quiet for studying. He wrote,

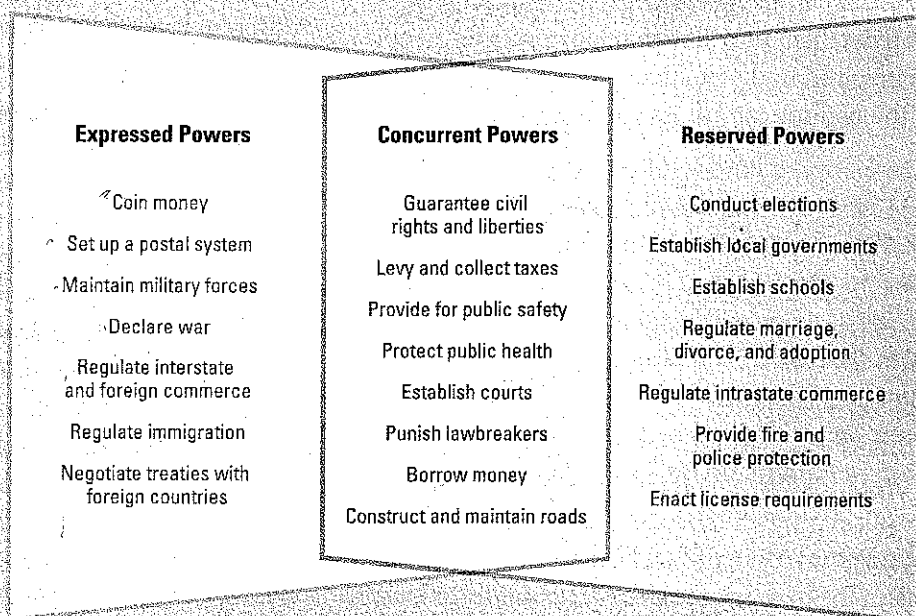
A purely democratic system where all students get to decide dorm policy could result in the tyranny of 51 percent of the students over 49 percent of the students. The party-hardy crowd could pass a policy permitting loud music and . . . parties at all hours of the night. Or if the more academically rigorous coalition won, they could ban "fun" of any kind, ever . . .

But, if you allowed each individual dorm to vote for its own policies, you could have a system where some dorms operate like scholarly monasteries and other dorms are more fun than a pool party . . . Theoretically, 100 percent of the students could live the way they want. Maximized human happiness!

—Jonah Goldberg, "United States of Happiness," *National Review Online*, 2004

The Federal System

This Venn diagram shows how powers are divided and shared in our federal system of government. There are relatively few expressed powers, or powers delegated exclusively to the national government. A larger number are either concurrent powers shared by both the states and the national government or powers reserved for the states.



Federalism promotes unity without imposing uniformity. As Goldberg's example suggests, federalism allows groups with different values and different ways of life to live together in peace. Likewise, federalism allows states to pass laws that reflect the needs and goals of their citizens while still remaining part of the union of states. All states, for example, support public education for young people. But how schools are funded and regulated differs from state to state, depending on local preferences.

Federalism creates "laboratories" for policy experiments. The flexibility of federalism allows states to act as testing grounds for innovative solutions to common problems. U.S. Supreme Court Justice Louis Brandeis once noted,

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.

—Justice Louis Brandeis, dissent in
New State Ice Co. v. Liebermann, 1932

If a state tries a new idea and succeeds, other states will follow suit. On the other hand, if an experimental policy fails, the problems that result are limited to one state. In some cases, a failure may provide lessons to others about better ways to implement policies.

Federalism encourages political participation. Finally, federalism provides an opportunity for people to be involved in the political process closer to home than the nation's capital. As Goldberg observed,

The more you push . . . decisions down to the level where people actually have to live with their consequences, the more likely it is they [the people] will be a) involved and interested in the decision-making process, and b) happy with the result. Federalism . . . requires the consent of the governed at the most basic level. Sure, your side can lose an argument, but it's easier to change things locally than nationally.

The Drawbacks of a Federal System

For all of the benefits, there are drawbacks to a federal system. One is the lack of consistency of laws and

policies from state to state. This can create problems when people move from state to state. Drivers who cross state lines, for example, may not be aware that the speed limits and traffic laws of one state may not apply to the next. Teachers and other professionals often face hurdles when they move from state to state. A teaching credential valid in one state may not allow a teacher to teach in another state without additional testing or coursework.

Another drawback of our federal system is the tension it sometimes creates between state and federal officials. The Constitution does not always draw a clear dividing line between national and state powers. For example, it does not specify whether control of wildlife should be a federal or a state responsibility. The same can be said for other issues, such as regulating air quality and providing health care to the poor. When questions arise over who is in charge, it is often left to the Supreme Court to draw the line between the state and federal authority.

6.3 The Evolution of Federalism

There are approximately 88,000 national, state, and local units of government in the United States. The diagram on the opposite page shows how that total breaks down into a pyramid of governments. Not surprisingly, with so many different units of government at work in this country, relations among the different levels have evolved and changed over time.

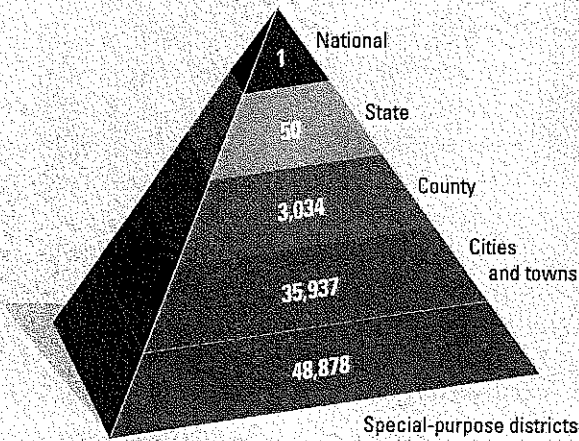
Dual Federalism: A Layer Cake of Divided Powers

The framers of the Constitution disagreed among themselves about the ideal balance of power among the different levels of government. But they did agree, as James Madison wrote in *The Federalist* No. 45, that the powers of the national government were "few and defined" and the powers of the states "numerous and indefinite."

From 1790 to 1933, national and state governments maintained a fairly strict division of powers. Political scientists sometimes refer to this system as **dual federalism**, or "layer cake" federalism. In such a system, the two levels of government are part of the whole, but each has its own clearly delineated responsibilities.

Units of Government in the United States, 2006

The number of governments in the United States has grown over time as new states were added to the Union and new towns and cities were established. In the last few decades, the number of special-purpose districts has soared. These districts govern everything from schools to mass transit to cemeteries.



Source: U.S. Census Bureau.

During the era of dual federalism, the Supreme Court sometimes played the role of referee between the states and the national government. In the case of *McCulloch v. Maryland* (1819), which was discussed in Chapter 4, the Court made it clear that federal laws took precedent over state laws when the two came into conflict.

A few years later, the Court further clarified the roles of the state and national governments, this time in the regulation of commerce. The case of *Gibbons v. Ogden* (1824) arose when the New York State legislature granted Aaron Ogden a monopoly on steamboat operations between New York and New Jersey. Ogden went to court in New York to force a rival steamboat operator, Thomas Gibbons, off the river. When the state court ruled in Ogden's favor, Gibbons appealed the decision to the Supreme Court.

Lawyers for Gibbons argued that New York had no authority to limit commerce on waterways between states. The Supreme Court agreed. Chief Justice John Marshall concluded that the Constitution clearly gives control of trade among the states to the national government. As a result, New York's grant of

a monopoly to Ogden was unconstitutional.

The Gibbons decision drew a sharp line between state and federal power. The national government controls **interstate commerce**, or trade among the states. The states control **intrastate commerce**, or trade within their borders. This clear division of power was typical of how federalism worked during the dual federalism era.

Cooperative Federalism: A Marble Cake of Mixed Powers

The Great Depression of the 1930s led to a very different conception of federalism. As the Depression deepened, the efforts of state governments to feed the hungry and revive the economy proved inadequate. In desperation, Americans turned to the national government for help.

On taking office in 1933, President Franklin Roosevelt launched a flurry of legislation known as the New Deal. These New Deal programs ushered in a new era of shared power among national, state, and local governments. Unlike in the past, when officials at different levels had viewed each other with suspicion, they now worked together as allies to ease human suffering.

Political scientists refer to this new era as one of **cooperative federalism**, or "marble cake" federalism. Political scientist Morton Grodzins wrote of the federalist system during this period,

When you slice through it you reveal an inseparable mixture of differently colored ingredients . . . so that it is difficult to tell where one ends and the other begins. So it is with the federal, state, and local responsibilities in the chaotic marble cake of American government.

—"The Federal System," 1960

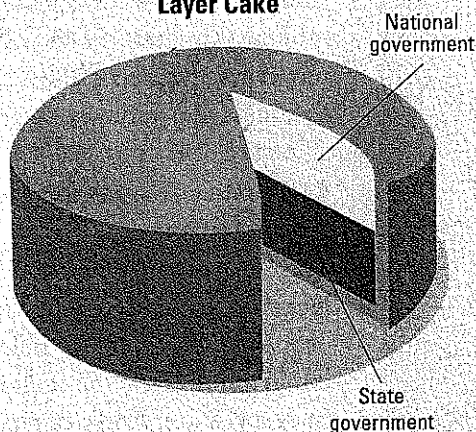
The diagram on the next page illustrates the differences between dual (layer cake) and cooperative (marble cake) federalism.

A key ingredient in marble cake federalism was a mix of federal **grants-in-aid** programs. Grants-in-aid are funds given by the federal government to state and local governments for specific programs, such as aid to the unemployed. Such grants had long been used by the national government, but only for very narrow purposes. Roosevelt greatly expanded the

Dual Versus Cooperative Federalism

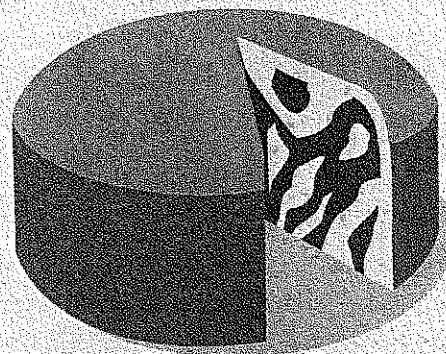
During the era of dual federalism, the national and state governments usually operated independently of one another. The two levels have often been compared to a layer cake. The shift to cooperative federalism led to more sharing of responsibilities. The result was a mingling of federal and state powers, like the swirls in a marble cake.

**Dual Federalism:
Layer Cake**



National and state governments operate independently of each other.

**Cooperative Federalism:
Marble Cake**



National and state governments share some responsibilities.

use of grants-in-aid to get help to the needy. In 1927, shortly before the Depression began, federal funds made up less than 2 percent of state and local government revenues. This figure jumped to just over 13 percent early in the New Deal and remained near there until 1960.

Regulated Federalism: More Money with More Strings Attached

A generation later, President Lyndon Johnson set out to expand on the New Deal by creating what he called the Great Society. The Great Society was a set of programs designed to end poverty, eliminate racial injustice, and improve the environment.

Like Roosevelt, Johnson looked to state and local governments to carry out many of his new programs. As during the New Deal, the federal government provided funding in the form of grants. But unlike earlier grants-in-aid, Great Society grants often came with strict regulations as to how the money could be spent. Johnson called his partnership with state and local governments creative federalism. Political scientists, however, prefer the more descriptive term **regulated federalism**.

Johnson's Great Society legislation led to a huge increase in federal involvement in state and local

governments. Political scientist Timothy Conlan observed that by the end of the 1960s,

The federal government became more involved in virtually all existing fields of governmental activity—including many that had been highly local in character (for example, elementary and secondary education, local law enforcement, libraries, and fire protection). In addition, new public functions were established, such as adult employment training, air pollution control, health planning, and community antipoverty programs.

—Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform*, 1998

Although state and local governments welcomed the new influx of federal funds, they were not happy about the federal regulations that came with the money. They were even less happy about the rapid growth of **unfunded mandates** that began in the 1960s. These are programs and regulations imposed on state and local governments by Congress without adequate funding, if any, attached to them.

Unfunded mandates were attractive to members of Congress, since members could declare that they were solving problems without having to raise taxes

to fund the solutions. Instead, the mandates put the burden of paying for those solutions on state and local governments. In effect, Congress provided the recipe for solving problems but required state and local governments to provide the ingredients—both money and people—to make those solutions work.

New Federalism: Returning Power to the States

The rapid expansion of federal power in the 1960s alarmed people who valued state and local control. While running for president in 1968, Richard Nixon promised voters that he would restore “true” federalism by reigning in federal power. Nixon called his pledge to return power to the states the **new federalism**. Political scientists call these more recent efforts to return power to the states **devolution**.

Devolution began slowly in the 1970s and 1980s, first under President Nixon and later under President Ronald Reagan. Both presidents tried to shift power

back to the states by encouraging them to write their own “recipes” for solving problems. The national government’s role was reduced to providing ingredients, mostly in the form of federal funds.

Devolution picked up speed in 1994, when Republicans gained control of Congress for the first time in 40 years. Once in power, the new Republican majority enacted the Unfunded Mandates Reform Act. The purpose of this 1995 law was to stop Congress from burdening states with responsibilities without providing adequate funding.

A year later, Congress pushed devolution still further when it overhauled the nation’s welfare system. In the past, federal officials had closely regulated how states gave out welfare payments to needy families. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act, more commonly known as the Welfare Reform Act, returned control of welfare systems to state governments.

Regulated Versus New Federalism

Over the years, the national government has devised different “recipes” for federalism. During the period of regulated federalism, the national government greatly expanded its power over the states. Congress often mandated programs for state and local governments with strict regulations but inadequate funding. Supporters of new federalism sought to restore the balance between the two levels of government. This was done by returning control over many programs to the states.

Recipe for Regulated Federalism

Ingredients



Federal programs and unfunded mandates



Federal grants-in-aid, state and local tax dollars



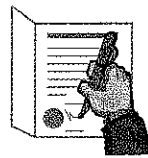
State and local officials

Directions

Mix together as required by federal rules and regulations.

Recipe for the New Federalism

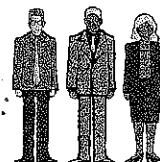
Ingredients



State programs and policies



Federal block grants, state and local tax dollars



State and local officials

Directions

Mix together as directed by state laws and policies.

The federal government continued to provide “ingredients” in the form of **block grants** to the states. But unlike the highly regulated grants-in-aid that funded Great Society programs, block grants left states free to decide how best to spend the money they received. One of the requirements imposed on state welfare programs was that they limit the time a person could receive federally funded welfare payments to five years.

Support for Devolution from the Supreme Court

In recent years, the Supreme Court has contributed to devolution in a series of decisions limiting federal power. One of the first involved the Gun-Free School Zones Act of 1990, a law passed by Congress to create “gun free” zones around public schools. Soon after the law’s passage, Alfonso Lopez Jr., a high school student in Texas, was convicted of violating the law by taking a gun to school. Lopez appealed his conviction on the grounds that Congress lacked the power to regulate gun possession in schools.

United States v. Lopez reached the Supreme Court in 1994. The government argued that possession of a firearm in a school zone could lead to violent crime. Such criminal activity, in turn, could discourage travel in the area. Therefore, the law was a legitimate use of Congress’s power to control interstate commerce.

The Court did not agree. It struck down the 1990 act as an unconstitutional expansion of federal power. In his decision, Chief Justice William Rehnquist wrote,

To uphold the Government’s contentions here, we would have to pile inference upon inference in a manner that would . . . convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road . . . but we decline here to proceed any further. To do so would require us to conclude that . . . there never will be a distinction between what is truly national and what is truly local . . . This we are unwilling to do.

If the past is any guide, federalism will continue to evolve in the future. Devolution may continue to shift power back to the states in some areas, such

as gun control. In other areas, such as dealing with terrorism, the national government may expand its power. What is certain is that the debate over how power should be shared will continue.

6.4 State Governments in a Federal System

Strange things were going on in Texas in 2003. State troopers were scouring the state looking for lost legislators. The missing lawmakers were not in any danger. Instead, they were hiding out in Ardmore, Oklahoma, and later in Albuquerque, New Mexico, in an effort to stall a vote in their state legislature. The activities of state governments do not usually get much coverage in the news. But the case of the runaway Texas lawmakers made headlines across the nation.

State Constitutions: Long and Much Amended

The missing Texas lawmakers were using a provision in their state constitution to keep the legislature from voting on a bill they opposed. The constitution of Texas, like that of most states, requires a **quorum** to be present for the legislature to vote on bills. A quorum is a fixed number of people, often a majority, who must be present for an organization to conduct business. The purpose of a quorum is to prevent an unrepresentative minority from taking action in the name of the full organization.

The U.S. Constitution requires every state constitution to support “a republican form of government.” Beyond that stipulation, each state is free to organize its government as its citizens choose. Nebraska, for instance, is the only state with a unicameral state legislature. Alabama, unlike other states, allows for “local amendments” to its constitution. These amendments apply only to the local areas that approve them.

In contrast to the U.S. Constitution, state constitutions tend to change frequently. Most states have adopted entirely new constitutions at least once, if not several times. Today, only five states still rely on constitutions written before 1850. The map on the opposite page shows when each state’s present-day constitution was adopted.