

CIVICS PRIMER: FEDERALISM

INTRODUCTION

The relationships among the federal, state, and local governments often confuse people, yet federalism is at the heart of critical battles over the nature and scope of public policy in the United States. For example, neighborhood schools are run by locally elected school boards but also receive state and national funds, and with those funds come state and national rules and regulations. Understanding the scope and nature of local, state, and national governments is thus critical to learning about the development of public policy in the United States.

DEFINING FEDERALISM

We generally speak of three forms of governmental structures—federalism, unitary government, and confederation. **Federalism** is a way of organizing a nation so that two or more levels of government have formal authority over the same area and people. This primer explores the complex relationships between different levels of government in the United States. It describes the ways that the federal system has changed over two centuries of American government and why American federalism is at the center of important battles over policy. Federalism is not the typical way by which nations organize their governments; there are only 11 countries with federal systems. Most governments in the world today are **unitary governments**, in which all power resides in the central government. Although American government operates under a federal system at the national level, the states are unitary governments with respect to their local governments. In the United States, local governments are legally “creatures of the states”: they are created by the states and can be changed (or even abolished) by the states. In a **confederation**, the national government is weak and most or all of the power is in the hands of its components (such as states). The United States was organized as a confederacy after the American Revolution, with the Articles of Confederation as the governing document. Confederations are rare today except in international organizations. The concept of **intergovernmental relations** refers to the entire set of interactions among national, state, and local governments in a federal system. The American federal system decentralizes our politics. For example, senators are elected as representatives of individual states and not of the nation. Moreover, with more layers of government, more opportunities exist for political participation; there are more points of access in government and more opportunities for interests to be heard and to have their demands for public policies satisfied. The federal system not only decentralizes our politics, it also decentralizes our policies. The history of the federal system demonstrates the tensions that exist between the states and the national government about who controls policy and what it should be. Because of the overlapping powers of the two levels of government, most of our public policy debates are also debates about federalism. The American states have always been policy innovators. Most policies that the national government has adopted had their beginnings in the states. In many ways, the states constitute a “national laboratory” to develop and test public policies.

THE CONSTITUTIONAL BASIS OF FEDERALISM

The Constitution does not refer directly to federalism, and little was said about it at the Constitutional Convention. However, the framers carefully defined the powers of state and national governments. The framers also dealt with a question that still evokes debate: Which level of government should prevail in a dispute between the states and the national government? Advocates of strong national powers generally emphasize the supremacy clause. In Article VI (**the “supremacy clause”**), three items are listed as the supreme law of the land: the Constitution; laws of the national government (when consistent with the Constitution); and treaties. However, the national government can only operate within its appropriate sphere and cannot usurp powers of the states. By contrast, advocates of states’ rights believe that the **Tenth Amendment** means that the national government has only those powers specifically assigned by the Constitution. Federal courts can order states to obey the Constitution or federal laws and treaties. However, in deference to the states, the Eleventh Amendment prohibits individual damage suits against state officials (such as a suit against a police officer for violating one’s rights) and protects state governments from being sued against their consent by private parties in federal courts or in state courts or before federal administrative

agencies. Several key events have played a major role leading to the growth of federal powers relative to the states. In *McCulloch v. Maryland* (1819), the Supreme Court ruled that Congress has certain implied powers and that national policies take precedence over state policies. These two principles have been used to expand the national government's sphere of influence. Chief Justice John Marshall wrote that, "the government of the United States, though limited in its power, is supreme within its sphere of action." The "**necessary and proper**" clause (*sometimes called the elastic clause*) was interpreted to give Congress certain **implied powers** that go beyond its **enumerated powers** (those explicitly written in the Constitution.).

The **commerce clause** of the Constitution allows the federal government the power to regulate commerce (trade) amongst the states. National powers expanded after the Supreme Court defined commerce very broadly, encompassing virtually every form of commercial activity (*Gibbons v. Ogden, 1824*).

The "tug of war" between The Civil War was a struggle over slavery, but it was also (and perhaps more importantly) a struggle between states and the national government. A century later, conflict erupted once again over states' rights and national power. In *Brown v. Board of Education (1954)*, the Supreme Court held that school segregation was unconstitutional. Southern politicians responded with "massive resistance" to the decision. Throughout the 1960s the federal government enacted laws and policies to end segregation in schools, housing, public accommodations, voting, and jobs. Federalism also involves relationships among the states. The Constitution outlines certain *obligations that each state has to every other state*. The Constitution requires states to give **full faith and credit** (the must honor) to the public acts, records, and civil judicial proceedings of every other state; states are required to return a person charged with a crime in another state for trial or imprisonment (**extradition**); and citizens of each state are entitled to all the **privileges and immunities** of any state in which they are located. The goal of the privileges and immunities clause is to prohibit states from discriminating against citizens of other states, but numerous exceptions have been made to this clause (such as higher tuition for out-of-state residents at state universities).

INTERGOVERNMENTAL RELATIONS TODAY

This section focuses on three important features: first, the gradual change from dual federalism to cooperative federalism; second, federal grants-in-aid as the cornerstone of the relationship between the national government and state governments; and third, the relative growth of the national government and state governments.

One way to understand the changes in American federalism is to contrast dual federalism with cooperative federalism. Before the national government began to assume a position of dominance, the American system leaned toward **dual federalism**, a system under which states and the national government each remain supreme within their own spheres. The analogy of *layer cake* federalism is often used to describe dual federalism because the powers and policy assignments of the layers of government are distinct (as in a layer cake), and proponents of dual federalism believe that the powers of the national government should be interpreted narrowly. The national government took a direct interest in economic affairs from the very founding of the republic. As the United States changed from an agricultural to an industrial nation, new problems arose and with them new demands for governmental action.

The United States moved from a system of dual federalism to one of **cooperative federalism**, in which the national and state governments share responsibility for public policies. Using the analogy of *marble cake* federalism, American federalism is portrayed as a system with mingled responsibilities and blurred distinctions between the levels of government. Cooperative federalism—which may be seen as a partnership between the national and state governments—began in earnest with the transformation of public attitudes toward the role of the national government during the Great Depression of the 1930s. For hundreds of programs, cooperative federalism involves shared costs, federal guidelines, and shared administration.

Fiscal federalism involves the pattern of spending, taxing, and providing grants in the federal system. **Grants-in-aid** are the main instrument the national government uses to both aid and influence states and localities. Federal aid amounted to about \$484 billion in 2010. Categorical grants can be used only for specific purposes (or categories) of

state and local spending. State and local agencies can obtain categorical grants only by meeting certain qualifications and by applying for the grants. Much federal regulation is accomplished by “strings” that are attached to categorical grants, such as nondiscrimination provisions. The most common type of categorical grant is a project grant, awarded on the basis of competitive applications. Formula grants are distributed according to a formula based on factors such as population, per capita income, and percentage of rural population. Complaints about the cumbersome paperwork and numerous federal requirements attached to categorical grants led to the adoption of block grants. Congress implemented block grants to support broad programs in areas such as community development and social services. Block grants provide more flexibility since states and communities have discretion in deciding how to spend the money. The percentage of federal aid to state and local governments in the form of block grants began increasing in 1995 as the new Republican majority in Congress passed more federal aid in the form of block grants, including grants for welfare programs. In recent years states have been burdened by underfunded mandates and unfunded mandates. These require states to spend money to comply with a law of Congress (or, in some cases, a federal court order).

UNDERSTANDING FEDERALISM (How the system effects us)

Federalism was instituted largely to enhance democracy in America, and it strengthens democratic government in many ways. Different levels of government provide more opportunities for participation in politics and increase access to government. Since different citizens and interest groups will have access to the different levels, federalism also increases the opportunities for government to be responsive to demands for policies. Moreover, it is possible for the diversity of opinion within the country to be reflected in different public policies among the states. Different economic interests are concentrated in different states, and the federal system ensures that each state can establish a power base to promote its interests. By handling most disputes over policy at the state and local level, federalism also reduces decision making and conflict at the national level. Conversely, diverse state policies and the large number of local governments also create some impediments to democracy. Since the states differ in the resources they devote to services like public education, the quality of such services varies greatly from one state to another. Diversity in policy can also discourage states from providing services that would otherwise be available—states are deterred from providing generous benefits to those in need when benefits attract poor people from states with lower benefits. Federalism may have a negative effect on democracy when local interests are able to thwart national majority support of certain policies, and having so many governments makes it difficult for many Americans to know which government is responsible for certain functions. While the national government has grown in scope relative to state governments, it has not done so at the expense of state governments. The latter continue to carry out all the functions they have typically performed. The national government has instead grown as it has taken on new responsibilities viewed as important by the public.