

**Chapter 7. Federalism: If Everyone Is Responsible, Is No One Responsible?**  
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## **TEXT**

### I. Introduction: The Paradox of Who Is Responsible For What

Let's start with thinking about where you live, or if you live in a college dorm, thinking about your parents' home. What different governments affect your home?

The answer, the same answer to almost any political question, is "it depends." What it depends on is exactly what kind of service or kind of regulation we are talking about. If you live in a municipality, or city, you may get city water, sewer, or other services. You certainly pay city taxes on your property. But you also live in a school district, which is a kind of special purpose government, to which you probably pay property taxes as well. Depending on what state you live in, you may also be under a "township," which can perform similar services to municipalities. Most states have counties as the next level of government, and most people who live in municipalities pay both city and county property taxes and get services from both levels of government. Counties almost always have their own law enforcement agency, usually a sheriff's department. They may have recreational programs, and they are responsible for many roads. They might supply EMS services and engage in economic development, trying to attract businesses. Both counties and cities almost always have building codes and zoning ordinances that affect changes you can make to your property or house. Those codes must be consistent with state codes that mandate minimum standards. You might live in a water conservation district, or perhaps a fire district if you do not have city fire protection.

Many services available to you come from a variety of governments working together. Health services may be housed in a county building and be a county department, but are funded by local, state, and national monies. The same can be said of educational services. While schools have their own separate government with separately elected officials, all levels of government fund them, with local and state government providing most of the money and the national government giving a little under ten percent.

And the list goes on. Hopefully, you get the idea. Many governments share many responsibilities that affect your home and services. Most people are only dimly aware of the vast range of governments that affect them with overlapping services and responsibilities. A major purpose of this chapter is to shed some light on these complex relationships.

Much of this complexity is a product of federalism, the compromise the founders created to satisfy the states that the newly created national government would not be too powerful. As you may remember from your study of the Constitution, creating a federal system was a major compromise between continuing under the Articles of Confederation, which is what is called a **confederal system** where the power is concentrated in the regional governments, which we called states, and a **unitary system** in which all power was concentrated in the central government. The confederal system under the Articles of Confederation provided a central government that was too weak. Great Britain had a unitary government with a powerful central government, and the founders knew that states would certainly not give up all their powers, so that too was unacceptable. So the founders created something new, a **federal system**, a hybrid system in which each level of government had some independent powers and also shared some powers. They tried to create a system with a central government that Goldilocks would say was not too strong and not too weak, but just right.

Making the balance in responsibilities for each level of government “just right” has been a constant political struggle throughout American history. Many groups have struggled to get a balance that favored their particular interests. So the answer of what level of government is responsible for what has been in constant change down through time.

Two dangers arise from sharing responsibilities. First, because all levels of government are responsible, no one may really be responsible. Each may point their fingers at someone else when things go wrong. As we shall see, at times in our history no level of government took responsibility for some problem, so the problem went unaddressed.

Second, different levels may come into conflict as they both try to address a problem in different ways. As we shall see, usually the national government

wins in these conflicts, but only after a great deal of political fighting and expensive legal battles.

Both problems affect our political culture. Because federalism allows governments to legitimately blame other levels of government for failures, voters get confused over whom to blame and hold responsible. Because voters see local, state and the national government in constant ongoing battles over how to address problems, they feel that leaders care more about getting power than solving problems. The end result is the same. Voters get frustrated with politics, get cynical, and begin to drop out of the political process. So federalism has profound consequences on how we as citizens think about government.

I would summarize these two problems as the **paradox of federalism**. Federalism creates an on-going political conflict of who is responsible for doing what.

While this sounds pretty bad, you should remember that federalism was one of the compromises that was absolutely necessary to get the Constitution accepted by the states. The founders had no other workable alternative. So we have been stuck with the problems inherent in paradox of federalism ever since.

In this chapter, we will start as we have started the previous chapters, with the Constitution. While Article IV is entirely devoted to relationships among the states and with the national government, almost all other articles have some implications for federalism.

Then we will go over the history of how we have answered the question of what level of government is responsible for what. You might think of this history as waves coming onto the shore at a beach. We will focus on the waves from a distance, where each one looks distinct. That is, we will try to keep it relatively simple. But as the waves get closer, you see many unique ripples in each wave, so the story is really more complicated. But that more complex story is the stuff of an upper level course in political science—as I said, we will try to keep it simple and just focus on the large waves.

The third thing we will do is take a brief look at state and local governments. Even though the focus of this text is American national government, because state and local governments are so intertwined with the national government, we must talk about them a little. They are also a topic for separate political science courses.

Next we will examine the forces and factors that are at work in shifting the balance in responsibility among the levels of government. One text I have used likens the forces and factors to actors in the political drama of federalism. Not a bad metaphor. Regardless of the metaphor we use, they are many.

In the last section we will evaluate the arguments for and against federalism and revisit the paradox of who is responsible for what. Although we certainly will not end federalism in the U.S., the balance in responsibility is shifting over time with all levels of government playing slightly different roles in dealing with an ever-widening set of problems. The increasing complexity of these relationships increases the danger of citizens not knowing who to hold responsible. In short, the paradox of federalism and its increasing complexity pose dangers for a democratic republic.

## II. The Constitutional Foundations of Federalism

The term “federalism” is not in the Constitution, even though the founders frequently used that term. They employed it regularly in the *Federalist Papers*, which argued that creating a federal republic would have many advantages. Going through the Constitution we can find several places that help define this new kind of hybrid system. Let’s start at the beginning.

Article I gave states responsibility to set rules on who could vote for U.S. Representatives and allowed state legislatures to choose U.S. Senators. The Seventeenth Amendment changed that to direct popular election in 1913. But Article I also places some limits on state powers in Section 10. Among other things, states could not enter treaties with other nations, coin money, pass laws that got in the way of enforcing contracts, grant titles of nobility, tax goods coming in or out of a state (unless Congress consented, as they have in certain areas like excise taxes and severance fees on raw materials), or enter into agreements with other states without the consent of Congress. These interstate agreements are called **interstate compacts**, and always require approval by Congress. You might do a web search to find current examples of interstate compacts.

Perhaps Section 8 is the most important part of Article I. It lists the powers given to Congress, what are called enumerated and implied powers. These are important because if congressional powers are interpreted broadly, states can lose power. We shall get to this shortly.

Articles II gives the states some additional powers over elections by allowing states to decide how electors are chosen in presidential elections. The Constitution does not say that electors are to be chosen by popular vote, nor has it ever been amended to force popular election. But today all states do have popular elections of the electors, though the details of the rules vary from state to state. We shall get to those details in a later chapter.

Article IV deals specifically with state/federal and state/state relations. First, the **full faith and credit clause** in Section 1 says that states must accept “Acts, Records, and judicial Proceedings of every other state.” This implies that

marriage, divorce, child support, and contracts of all kinds created in one state must be honored in all other states. Your driver's license is recognized as you drive from one state to another, for example. However, it does allow Congress to place some limits, so Congress can pass a Defense of Marriage law that does not obligate states to recognize marriage between people of the same sex that take place in other states. Congress can also require certain standards for all drivers' licenses as it did with the Real ID Act of 2005.

In addition, the Supreme Court has created what is called the **public policy exception rule** to full faith and credit. This is another instance where the Constitution does not mean what it seems to say it means. When laws in one state are in conflict with those in another state, the Supreme Court has said that neither state is obligated to substitute the other state's laws for its own in dealing with people within their own borders. Exactly what acts are included under this exception rests on each new Supreme Court opinion. But as of this writing, state laws regarding who can be married are one of the exceptions where each state is allowed to only recognize marriages that its own laws allow. This has obvious implications for the issue of gay marriage.

Section 2 guarantees that each state shall treat citizens of other states with full **privileges and immunities** that their own citizens have. That means that each state must treat citizens from other states the same as their own citizens. In practice states are allowed many exceptions. They sometimes treat citizens of other states quite differently from their own. Out-of-state tuition in public colleges is one such example.

This section also provides that each state must send fugitives back to other states where charges are pending—called **interstate rendition** or in common everyday language, extradition. In certain circumstances states can refuse to do this. For example, if a person is being charged by the state for a crime, they may be tried and imprisoned and not returned to another state while in prison. If a person is not physically in a state where a crime was committed, such as failing to send child support to another state where failure to do so is a crime, the state where the person was located may refuse to send that person back.

The last paragraph in Section 2 presumably obligated states to return fugitive slaves, but that too was ignored as Northern states were influenced by the abolitionist movement before the Civil War. This last paragraph is no longer relevant with the end of enslavement.

Section 3 gives the states protections from being subdivided or combined without their consent. It is silent about exactly how new states are to be created from territories, giving that power to Congress, which also has the power to govern new territory. If the states do not want a new state to be formed, their representation in the Senate and the threat of filibuster is enough to block a

majority of the Senate from creating a new state. That threat has thus far prevented the District of Columbia from getting equal status as a state.

Section 4 creates an obligation for the national government to ensure that “every state in the Union (have) a Republican Form of Government,” to protect the states “against invasion” and protect the states “against domestic Violence.” Lincoln interpreted this broadly to help justify his actions against southern states that attempted to secede from the union.

Article V gives the states a special role in the amendment process. They have the power to call for a constitutional convention (two-thirds of the states may call one) and to ratify amendments (three-fourths of them). As you may remember, we have never had another constitutional convention since the first one. Whenever the number of states came close to the required number, Congress acted to propose an amendment. So in effect, states have forced Congress to propose amendments in order to avoid another constitutional convention.

Article VI contains the **supremacy clause**, an extremely important clause that settles matters when state laws come into conflict with national laws. “This Constitution, and the Laws of the United States...shall be the supreme Law of the Land...” This sounds straightforward and simple. When a state law comes into conflict with a national law, the state law must give way. Nevertheless, southern states disputed this simple understanding for many years with various theories on how national laws did not necessarily apply to them, things like “nullification” and “interposition.” The Civil War settled that matter for the most part. However, states still find ways to oppose the application of national laws by undermining enforcement, challenging their constitutionality, or using other national laws to delay their enforcement.

Article VII gave the states the power to ratify the original Constitution. As you remember, the Constitution went into effect after nine states ratified it. So even though the Constitution starts with the words, “We the people,” the states were given the power to put it into effect.

Several amendments have had a great impact on state-national relations. Perhaps the most important and most vague is the Tenth Amendment, which is often called the states’ rights amendment or reserved powers amendment. It says that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States...” What these powers are depends on what the national government can do. So as the national government was allowed to do more because of shifting interpretations of national government powers, less was left over for the states.

The Fourteenth Amendment, passed after the Civil War, is particularly important. It granted citizenship to the newly freed people tried to force states to

guarantee them the same rights as other citizens along with equal treatment. But rights and equal treatment took a long time. The interpretation of the fourteenth has changed down through history—another story we will get to later.

The same can be said of the Fifteenth Amendment, another amendment passed just after the Civil War. It tried to grant the right to vote to new citizens who had been enslaved. That too took a long time to actually happen—another story for later.

Other amendments limited state powers over voting. The Seventeenth Amendment (1913) forced states to allow for direct popular election of United States Senators. The Nineteenth Amendment (1920), a product of the women's suffrage movement, forced states to allow women to vote. The Twenty-fourth Amendment (1964), a product of the civil rights movement, ended the right of states to place a tax on voting, a poll tax. This had been used as a barrier to voting by minorities, most specifically African Americans. Finally, the Twenty-sixth Amendment (1971), a product of the youth movement during the Vietnam War, forced states to lower the voting age to 18, the same age at which young men were being drafted to fight in that unpopular war. I was a member of that generation. I vividly remember our strong feelings. We felt that we should get to vote for the leaders who were drafting us (I did get drafted) and sending us off to wars to possibly die (I was lucky on this count).

### III. Early Federalism--State-Centered Federalism

In the late 1700s and early 1800s, even though the nation had adopted a new constitution, the national government was still relatively weak compared to the states. The national government deferred to the states in most matters, with the exception of national defense, an area where the states were glad to have the national government's help. But in other areas, states, which had long been used to doing what they wanted, disputed national government action.

#### A. *McCulloch v. Maryland* (1819)--The "Elastic Clause" and National Power

Advocates for a strong national government wanted the central government to play a lead role in promoting commerce. They saw a national banking system as essential for this purpose. In 1791 the Federalists, led by Secretary of the Treasury Alexander Hamilton, created a national bank. Thomas Jefferson, the Secretary of State, opposed the bank. He felt that Congress did not have the power to create a bank because Article I, Section 8, did not list anything about creating a bank as a power of Congress.

Hamilton's counterargument was based on the **necessary and proper clause** in the last part of Section 8. It said that Congress has the power to do

whatever is "necessary and proper for carrying into Execution the foregoing Powers." Because Section 8 clearly gave Congress the power to regulate currency and because Congress felt that a national bank would help it regulate currency, creating a bank was also okay in Hamilton's view.

Differences over this and other issues were critical to Jefferson's split with the Federalists and his starting his own party that opposed a strong national government. Jefferson felt that these kinds of actions favored the wealthy and hurt common citizens.

This argument about the necessary and proper clause's meaning was not really tested until some years later. The charter for the first national bank lasted twenty years, and the bank briefly went out of existence. But in 1816 Congress passed a law creating another national bank, and this time the states actively opposed it. State chartered banks saw a new bank as competition and used their power in state legislatures to try and kill it. The state of Maryland passed a tax on the new bank and tried to collect the tax. McCulloch, who headed the national bank in Maryland, refused to pay the tax, and the case went to court under the name ***McCulloch v. Maryland***.

John Marshall was still chief justice. You should remember that he was a Federalist who favored a strong national government. He now had another case to promote that cause, even though the Federalist Party was dead. Marshall convinced the rest of the Supreme Court to go along with the decision he wrote in the case. The central idea in the decision was to agree with the argument made by Hamilton and other Federalists: Congress by way of the necessary and proper clause did have the power to create a national bank or any other entity to help it carry out explicitly listed powers.

This is why the necessary and proper clause is often called the "elastic clause." It stretches the powers of Congress and the national government to do a wide range of things, things that go way beyond the list in the first part of Section 8. The explicit powers are often called "**enumerated powers**" because they are listed. The powers created by the elastic clause are often called "**implied powers**." Though Congress did not use this power very often until the 1900s, the principle was set.

A second part of the ruling is almost as famous, and also affected the balance of responsibility in federalism. Marshall said that the state did not have the power to tax any national government institution, because "the power to tax involves the power to destroy." The logic was that if states could tax and therefore destroy national governmental entities, the "supremacy clause" that applies to national laws would be violated. How could national law be supreme if states could undo the law by taxing national institutions out of existence?

B. *Gibbons v. Ogden* (1824)

Another part of Article I, Section 8, the commerce clause, has also been critical in determining the balance between state and national responsibility. One of Congress's enumerated powers is the power "To regulate Commerce...among the several States." This is called **interstate commerce**, which originally referred to buying and selling goods across state lines. The question is what kinds of economic activities are included under interstate commerce. If the clause is narrowly interpreted, the national government can do little. If broadly interpreted, the national government can do a lot of things. So interpretation is critical, and you should know by now that the Supreme Court was sure to get involved in the question of interpretation.

New York granted a monopoly to Aaron Ogden to have exclusive rights to operate a steamboat line from New York to New Jersey. Congress had previously given that right to Thomas Gibbons. So Gibbons sued and the case went to the Supreme Court. The case turned on the question of whether a steamboat line fell under interstate commerce. If it did, then only Congress could grant a license. If not, then New York or other states could grant licenses. John Marshall still was Chief Justice. I should not have to tell you which way he and the Supreme Court went. In ***Gibbons v. Ogden*** (1824), the Court ruled in favor of a broad definition of interstate commerce that included navigation and gave exclusive regulatory power to Congress, not to the states.

### C. State Resistance—Interposition and Nullification

When the national government did try to claim authority, the states resisted in a variety of ways. State leaders had elaborate theories about how states could interpose or place themselves between national legislation and a state so as to not allow it to apply to citizens in a state—interposition. Though the Civil War should have ended the debate, Southern states revived this theory in the 1950s as a way to resist school integration. The Supreme Court has never recognized this theory.

The other failed theory was called **nullification**. John C. Calhoun, one of South Carolina's most famous statesmen, who served as Secretary of War, as vice president for two separate presidents, and in both the U.S. House and Senate, is considered to be the father of and most outspoken proponent for the theory of nullification. The basic idea was that if a state felt that a law was unconstitutional, it could nullify the application of that law in the state. The greatest test of this theory concerned the application of the Tariff Act of 1832 in South Carolina. The state declared the law nullified, and prepared to take military action to prevent its enforcement. Congress responded by passing a law that would have sent federal troops into the state. South Carolina backed down, in part because the Tariff Act had already lowered rates and because its bluff had been called. Of course, the ultimate act of nullification was to attempt to nullify

the entire union. This is one way of thinking about the effort of southern states to secede from the Union, which led to the Civil War—our next topic.

#### IV. Secession and Reconstruction: The End of State Centered Federalism?

The ultimate test of the strength of a national union is when members of that union attempt to withdraw from the union—**secession**. Following the election of Abraham Lincoln in 1860, South Carolina, followed closely by other Southern states, refused to accept his election and stated their intentions to quit the union and create their own separate government, the Confederate States of America.

Southerners deliberately chose the term “confederate” to describe the relationship in this new government between the states and the central government. It was to be closer to the old Articles of Confederation, in which state governments held most powers and responsibilities. Southern states feared that northern states were undermining slavery. This is made clear in the Articles of Secession adopted in South Carolina, the first state to declare secession.

*“Non slave-holding States...have assumed the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of societies, whose avowed object is to disturb the peace and to eloign the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.”* (See the complete text at <http://alpha.furman.edu/~benson/docs/decl-sc.htm>.)

Lincoln’s position on enslavement during the 1860 presidential campaign was somewhat unclear. Though he had talked about abolishing enslavement and compensating slave-owners for their economic losses, he also said that he would accept enslavement in the South and even enforce the fugitive slave laws because they were provided for in the Constitution. This confusion was calculated because Lincoln needed support from both abolitionists as well as pro-slavery voters in border states to win the election. Nevertheless, one cannot help but wonder how the history of southern states would have been different had they taken Lincoln at his word or taken him up on his offer rather than declare their independence.

That aside, Lincoln refused to accept southern secession, and declared that the United States could not be dissolved. Cadets from the Citadel, a school created in South Carolina to give military training to young white males so that they could put down slave rebellions, fired upon the federal troops at Ft. Sumter

in Charleston harbor on April 12, 1861, only a few weeks after Lincoln took office. The war was on.

As you know, the southern states lost, and the national government forced them to ratify several amendments to the U.S. Constitution following that loss (Amendments 13, 14 and 15). Congress also passed Reconstruction Laws to protect those who had been enslaved in southern states. Not coincidentally, these laws helped the Republican Party control southern states while they were in effect.

But southern white resistance was so great that eventually, through use of violence, fear, and intimidation, whites regained control of southern state governments. Whites then proceeded to pass laws that greatly restricted equal citizenship rights and protections for African Americans.

Republicans in Congress let this happen for several reasons. First, withdrawal of federal troops necessary to enforce these laws was part of a deal to get Republican Rutherford Hayes elected president in 1876. And second, the financial interests that supported federal intervention turned their interests to the West, seeing the potential for greater profits there than in the South.

Ironically, once this happened, the conservative white Democrats who now controlled the South actually gained political power at the national level because the old three-fifths compromise was that only counted blacks as three-fifths of a person was ended. This gave the South more representation in the House of Representatives than they had before the Civil War. Moreover, the association of the Republican Party with rights for African Americans and Reconstruction ended all white support for Republicans in the South. As a result, no party challenged Democrats for control of southern state governments for almost the next century. Southern states would send the same people to Congress election after election allowing them to build seniority and power in Congress.

Thus southern states, although they lost the Civil War and any right they thought they had to withdraw from the Union, actually gained political clout, though that clout was gradually diluted by the entry of new states in the west. Southern states used this clout to resist national government efforts to interfere with white supremacy laws that created and enforced segregation in the South. The details of that struggle are the story of another chapter.

But now you know why I placed a question mark after the heading for this section of the chapter. Though states were no longer the dominant force in federalism, they still had a lot of political clout. As we shall see in the next section, other forces were also at play.

## V. The Late 1800s: Twilight Zone Federalism When No One Was Responsible, Except the Very Rich

The most important thing happening in the United States following post Civil War Reconstruction was not a revolution among states, but the **industrial revolution**. The movement from an agricultural economy to a manufacturing economy had profound economic, political, and social consequences for the nation and for the states.

Those who gained great and almost unimaginable wealth from the industrial revolution used that wealth to influence the political system for their own benefit—some would say buy rather than influence. If you know anything about American history, you know the names associated with the rise of industry: Ford, Carnegie, Mellon, Morgan, Rockefeller, Vanderbilt, and so on. They built railroads to the West, meat processing plants in Chicago, steel factories, automobile plants across the Midwest and North. In the South, former planters and a small new white elite built textile mills that employed struggling farmers.

If you have read any of the muckraking literature of the era (for example Upton Sinclair's *The Jungle*), you know that life for the average worker in any of these new highly profitable industries or the coal mines that supplied fuel for them was extremely hard and highly hazardous. If you were injured, the company would lay you off. If you asked for higher wages or better working conditions, you were fired. If you tried to form a union to force better wages or conditions, the owners would use police power and state authority to break up the union and possibly even drive you from your homes, which were often owned by the industries.

States usually did nothing to try to help workers or consumers. Powerful economic interests, like cotton-related interests in South Carolina and coal in West Virginia and Kentucky, totally dominated state governments. When states did try to regulate business, the Supreme Court stepped in and ruled that corporations had the same legal rights as people and therefore were protected from regulation under the Fourteenth Amendment. The Court saw state regulation as taking corporation property “without due process of law.”

When the national government tried to regulate business, the Supreme Court again stepped in to block regulation. The court took a very narrow view of interstate commerce, limiting it to only the transportation of goods, not the manufacture of goods that would later be transported. This was certainly judicial activism in a very pro-corporate direction. The end result was little regulation of any kind.

Some observers say the Court created a **twilight zone** for business, putting business in a place where neither states nor the national government could regulate them. Some political scientists describe the views of the Supreme

Court during this period using the term “**dual federalism**.” This idea was that the Court saw the Constitution as clearly separating the powers of state and national governments into two separate areas that did not overlap. What one level of government could do, the other could not (*U.S. v. Cruikshank*, 1876). The problem with the term “dual federalism” is it implies that the different levels of government covered all areas. But as we have just pointed out, the Court exempted the area of business regulation from regulation by either level of government. So I find the term “dual federalism” somewhat misleading. In any case, the Court no longer uses this theory, but while it did, many people suffered and a few got very rich.

## VI. The Growth of Nation-Centered Federalism

### A. Teddy Roosevelt and the Progressives

While the Supreme Court continued to make regulation of business difficult until the 1930s, the government did successfully enact some new laws. The corporations and wealthy went so far in grabbing political power that enough people got disgusted and angry to start a series of political movements. Some of these movements, like the Populist movement of the late 1800s, were not very successful. Others, like the labor union movement, did eventually have success, though that came later after the political atmosphere had changed. The Progressives were more of a middle class movement that had considerable success in the late 1800s and the early 1900s. In some parts of the nation, like the Midwest, the Progressives had their own political party and ran candidates for office. The Progressives also became a faction or wing within the Republican Party.

The most well-known Republican/Progressive was Theodore Roosevelt. Roosevelt had begun his political career in appointed positions fighting corruption in the bureaucracy and then among police in New York City. After becoming famous in his exploits with the “Rough Riders” in the Spanish-American War, he was elected governor of N.Y. His energy in fighting corruption in the political parties led to his nomination for Vice President. This was not because Republican leaders liked what he was doing. The Republican Party bosses wanted Roosevelt out of the state, and figured that he could do much less harm to them as Vice President. They did not count on President McKinley being assassinated, which made Teddy Roosevelt president in 1901.

President Teddy Roosevelt proceeded to use his popularity and energy and zeal for reform to bring lawsuits against corporations, persuade Congress to pass legislation that regulated the railroads, and have government inspect food and drugs. All these things were immensely popular with the public, which was outraged by corporate power and disregard for the public welfare. Teddy was easily reelected in 1904. (By the way, the popular children’s toy, the “Teddy

Bear,” was named after Teddy Roosevelt—if you do not know the story, find it on the Web.)

## B. Franklin Roosevelt and the New Deal

The next great change took place as a result of the Great Depression, which began with the collapse of the stock market in 1929 and the many bank failures that came afterwards. Republican President Herbert Hoover, who sided with the business wing of the Republican Party, argued that private voluntary action through charity was preferable to government action in helping people. He believed that the market would take care of the depression. While Hoover did favor some regulation of business, his actions fell far short of what Franklin D. Roosevelt (FDR) did shortly after winning election in 1932.

The broad range economic regulation in FDR’s **New Deal** was well beyond anything the government had ever done in the United States. New laws and programs passed in the 1930s attempted to stimulate the economy and prevent further problems. They regulated banking and commerce, provided relief and work programs that built national parks and public works projects, created government corporations that brought electrical power to rural parts of the nation, like the Tennessee Valley Authority (TVA), allowed workers to form unions and collectively bargain under government protection, set minimum wages, limited the hours of work each week, and created a Social Security program that would transform what had been the poorest age group in the nation to the age group with the lowest level of poverty. And that is just a short partial list! If you want a more complete list, do a web search for New Deal programs.

States went along with almost all of these programs because states were desperate for economic help and did not have the resources to help the vast numbers of desperate people. About 25% of the workforce was unemployed at the height of the Great Depression. At first the Supreme Court ruled many parts of the New Deal unconstitutional. But then after FDR’s landslide 1936 reelection, his threats to change the size of the Court, and some new Court appointments, the Court began to find in the president’s favor.

In terms of federalism, the end result was a greatly strengthened national government that was running programs all the way down to the local level. People began to look more and more to the national government to take responsibility for a wide range of problems—**nation centered federalism.** The balance in who was responsible for what had clearly shifted.

## C. Civil Rights and Johnson’s Great Society

That shift continued through the Lyndon B. Johnson presidency (1963-1969), though the relationship between the state governments and the national government became more complex. In some areas such as civil rights, the

national government simply overturned state responsibility. One could certainly argue that the national government stepped in for good reason: states had failed so miserably to provide all their citizens with “equal protection of the laws,” as they were supposed to do under the Fourteenth Amendment.

The national government used a broad definition of the commerce powers as the legal foundation for some of these actions. For example, a motel that operated only in Georgia came under the 1964 Civil Rights Act because people staying there might travel across state lines as they engaged in interstate commerce.

In other areas the national government worked with states and local governments by providing them with grants to accomplish national goals. We will talk about grants shortly. These were parts of LBJ’s **Great Society Program**. The national government became involved in a wide range of areas traditionally left mostly to the states: education at all levels, the environment, housing and sanitation, medical care for the old and the poor, nutrition for children and the poor, promotion of the arts, and automobile and highway safety. More legislation created more programs than any other president in history except Franklin Roosevelt. By the end of the Johnson years, the national government was assuming more responsibility for more areas of life than ever in American history. But this too created a political backlash.

## VII. Cooperative Federalism: Shared and Mixed Responsibilities in Grants

The idea of **cooperative federalism** is a relationship in which the national and state governments cooperate in solving problems the nation faces. During the Johnson years the national government was deciding what needed to be done, and the states and their local governments were cooperating to the extent that they wanted grant monies to help them do these—most took the money. At the end of the Johnson years the number of grant programs was in the range of 500. Perhaps this is a good time to talk about the grant programs that greatly defined the relationships among levels of government.

### A. Grants

Most basically, a grant is a program that provides money for some purpose. Federal grants to states and sometimes to local governments come in many varieties. Many of the Great Society Programs were called **categorical grants**. These grants were very specific in how the money could be spent. They required a great deal of reporting and oversight. They had many regulations and requirements attached to them, called **strings**. States usually wanted the money, though they did not like all the strings.

Several different kinds of grants exist. However, even though we can list the different types, most actual programs have features of more than one kind. **Formula grants** gave states certain amounts of money based on certain measurable criteria. For example, federal highway money depends on miles of road, traffic levels, weather conditions, and a lot of other things. As you can imagine, writing the formulas creates political battles in Congress as states and their representatives and senators struggle to get as much as they can.

**Matching grants** provide money up to some limit when states are willing to spend some of their own money. What the exact match is depends on the particular grant. Again using federal highway grants as an example, some have a very favorable match, with the national government providing as much as \$10 for every state dollar provided.

**Competitive grants** (also called project grants) are those that allow state and/or local governments to write an application that is then evaluated in competition with other applications, and those judged best get funded. Community development grants are usually structured this way.

#### B. Reducing the regulations—Revenue Sharing and Block Grants

It is no accident that the two presidents who created most of these programs that shifted responsibility to the national government were Democrats. Democrats had more control over the national government than they did over state and local governments, where Republicans were relatively stronger. Therefore you should not be surprised to learn that Republican presidents preferred to shift power more to the state and local levels, where they had more power. You might keep in mind that a basic question about any political action or policy is “who benefits,” because politics can be seen as being about who gets what.

So when Republican Richard Nixon became president in 1969, he favored a new kind of grant, called **General Revenue Sharing**. The program started in 1972 and lasted until 1987. It gave money directly to state and local governments with almost no strings attached other than audits and non-discrimination requirements. Local governments loved this because they now had a lot of choice in what they did. Some used it to build new facilities, such as parks. Others used it to pay for services and reduce local property taxes, something that is always popular with voters, who could now have the same or better services with lower local taxes. Some municipalities and counties had as much as half of their budget paid for by revenue sharing.

The **block grant** was another innovation. The purpose was the same, to shift power to state and local governments. Block grants combined groups of existing grants into a broader grant with more general purposes thereby giving state and local officials greater flexibility with fewer regulations. Although block

grants actually began during the Johnson administration, Republican presidents greatly expanded them. For example, the Community Development Block Grant program combined many grants-in-aid programs in 1974.

### C. Evaluation

Local governments administered these grant programs quite well, in part because the strings, or regulations, attached to many grants had forced states to improve their capacity and professionalism. Political scientists, who had thought that state and local government was dying, now saw state and local governments becoming stronger and more capable. With increased professional skills, all levels of government began to utilize the grants to cooperatively attack common problems. So the grants did make cooperative federalism a reality.

## VIII. Devolution: Shifting More Responsibilities Back to the States

The Reagan presidency of the 1980s had a profound effect on the balance of responsibility in federalism. Being a Republican and a former governor, Reagan wanted to continue the shift in responsibility to the state level. He wanted to reduce the size and scope of national government involvement generally and particularly in local affairs. So he continued to push for creating more block grants, but now with a new twist. Opponents called his proposals “block and cut,” because after combining programs, the total amount of money was less than it was under the separate grant programs. Though Reagan did not get all he wanted, he did continue the trend in creating block grants, and significant cutting did take place. This movement of responsibility for program decisions and funding back to the state level was called **devolution**.

The Reagan years had a second major impact on federalism, the ending of the General Revenue Sharing program in 1987. Even though General Revenue Sharing was very popular with local government officials, severe budget deficits at the national level forced the national government to seek areas to cut. General Revenue Sharing was the easiest thing to cut, certainly easier than Social Security, supported by nearly all elderly and people hoping to become elderly some day. It was easier to cut than defense, an area in which Reagan had greatly increased spending. Moreover, voters would not blame members of Congress because voters perceived the programs funded by General Revenue Sharing as coming from local governments. So voters would blame local government officials. Ending General Revenue Sharing also fit Reagan’s philosophy of less government. This resulted in more devolution.

While the Clinton years were relatively good for local governments, to some extent because of a strong economy, the trend toward devolution continued. In 1996, Clinton, along with the Republican dominated Congress, ended the traditional welfare program aimed at poor families with children, Aid to

Families with Dependent Children (AFDC). It was a formula grant that grew as the number of poor grew. They replaced it with a block grant called Temporary Assistance to Needy Families (TANF) that did not grow and also shifted much of the responsibility and future cost back to the states—more devolution.

Democratic President Clinton's motivations for supporting this change were political. In early 1994 he had failed to get his national health care proposals passed, proposals that would have increased the power of the national government. In the November 1994 elections the Republicans gained majorities in both houses of Congress, partially because of public dissatisfaction with Clinton. Clinton felt he needed to show that he was not just a pro-national government liberal, and he reasoned that keeping his promise to "end welfare as we know it" by shifting responsibility to the states was one way to do this. He was successful, and this success contributed to his re-election success in 1996.

## IX. State and Local governments

Whenever pollsters ask Americans what level of government they trust the most, the national government does not fare very well. Citizens seem to trust the level of government that is closest to them. The further away the government, the less they tend to trust it.

Yet Americans know far less about the governments close to them than they do about the national government. That's pretty scary, because as little as you may know about the national government, you almost certainly know less about state government and even less about local government. You probably know the name of the Vice President of the United States, but can you name your state's Lt. Governor? Can you name your mayor or any members of the city or county council? As we pointed out at the opening of this chapter, because of the overlapping nature of local government, you may not even know which local governments have jurisdiction over your home.

This reality suggests another paradox about federalism. We as American citizens tend to have the most trust in the levels of government about which we know the least. If we know so little about them, then how can we as voters hold them accountable for their actions?

Okay, let's see if we can expand your knowledge just a little bit about state and local government. We will start with the relationship between state and local governments. It is dramatically different than the relationship between the national and state governments. States are given special status in the U.S. Constitution, guarantees about their territorial integrity, representation in the national government, the ability to even initiate and ratify changes in the Constitution, and so on. Local governments, whether they are counties or municipalities or any other kind of local government, have none of this special

status. Local governments can be created, divided, or even destroyed by simple acts of state legislatures. Whatever influence they have is through whatever political pressure they can exert on state government.

Most state governments follow a similar structure to that of the national government, having three branches and checks and balances among the branches. But many differences exist among the states. For example, Nebraska, unlike other states, has only a single house legislature. States significantly weaken the executive by separately electing officers to perform functions that at the national level cabinet secretaries, nominated by the president, perform. Typical examples would include state school superintendent, state treasurer, secretary of state, attorney general, or agricultural commissioner. Even the lieutenant governor is separately elected in most states. This means that a governor can have a lieutenant governor who is in the other political party. Each state is a little bit different. You might look some of this up for your own state. All the offices are a lot for voters to keep up with! Few do.

Local governments come in two general varieties: general purpose governments and special purposes governments (sometimes called special purpose districts). **General purpose governments** deliver a wide range of services (depending on the state in which you live). The most frequent examples are municipalities (or cities or towns) and counties.

The structures for municipalities and counties have a lot of variation. Both usually have some kind of board or council elected from districts and/or elected at-large over the entire area. These councils often hire a professional administrator or manager to supervise all the services the local government supplies.

Cities usually have a mayor who is independently elected. Some cities have mayors with a great deal of power similar to a governor or president. This is called the “strong mayor” system. In other municipalities the mayor serves to preside over council meetings and votes and serves as a symbolic head for the county, but has no independent executive powers, the “weak mayor” system. Counties rarely have an elected head, but also use councils and some hired administrator or manager to run things on a day to day basis under the policy guidance of the elected council members. Some general purpose governments have partisan elections, and some have non-partisan elections where people cannot run for office under a party label.

As you can see, the separation between executive and legislative power is not nearly as neat in general purpose governments. That is enough detail here. A good exercise might be to search the Web for the general purpose governments where you live and describe their structures.

**Special purpose governments** have even more variation, some having elected heads and/or boards and some having leadership that is appointed, often by the legislature. They generally perform one single function, such as fire protection from volunteer fire departments. Other examples of special purpose governments include water districts, sewer districts, soil conservation districts, recreation districts, or even some airports. We should note that many of these functions in cities are provided through departments in the general purpose municipal government. Political scientists see special purpose governments as “hidden governments” because so few people are even aware of their existence. As long as they do not have major scandal or disasters, voters and legislators usually leave them alone. Of course, this creates more accountability problems where voters do not know who to blame.

School districts are a special kind of special purpose government. School districts differ around the country, but they do get far more attention than a sewage or water district because they have far larger budgets than other special purpose governments. In addition, they deal with something that almost all voters care about very much, their children.

Because of the wide range of governments that exist in most areas of the nation, the national government created a grant program to help coordinate all the activities of these local governments. This was one of the grant programs that came out of Lyndon Johnson’s Great Society Program. States have what are called **Regional Councils of Government**. These councils of government, called COG’s for short, bring together all the leaders of local governments in an area to address common problems, for example developing a common solid waste disposal facility for all local governments to use. I like to think of COGs as mini-United Nations. The local governments are members of their COG. Each pays a small fee based on the number of citizens who live under the jurisdiction of that local government. Federal regulations require COGs to help local governments put together grant proposals that then compete with proposals from other COGs for funding. COGs typically work with local governments on economic development plans, regional transportation plans, and perhaps promoting tourism in the region. In the state where I teach political science, ten COGs exist, covering the entire state. You might search the Web for the COG where you live and see what your COG does. I would bet that if you asked twenty people on the street of your home town, no more than one would even know that a COG exists.

Mandates are one of the most controversial things with which local governments (and to a lesser extent state governments) have to deal. **Mandates** are a requirement by a higher level government that a lower level government provide some service. For example, counties typically have to provide housing for state courts, mandated by laws passed by state legislatures. Many mandates start at the national level and are passed through state governments to local governments. All too often the mandate comes down, but no money comes with

it to actually perform the service. State or local governments then have to somehow find the money to provide the service. These are called **unfunded mandates**. One of the best examples of an unfunded mandate that has had a continuing impact on all levels of state and local government is the **Americans with Disabilities Act** (the ADA). It forced all governments to provide access to services, buildings and employment for people with a wide range of disabilities.

As you might guess, local officials hate mandates. They get no credit from voters for providing the service. Higher level officials take credit for providing the program. But lower level officials get the blame for the taxes that fund the program. While some reforms require that the cost of mandates be calculated when they are created, Congress and state legislatures continue to create mandates.

## X. Forces and Factors that Shape the Balance in Who Is Responsible for What

Because so many programs affect so many people in so many ways and involve so much money, many groups and forces battle to shape the balance in responsibility in our federal system. We will briefly list and discuss the major ones, but the list could be longer.

### A. The Three Branches of the National Government

Each of the three branches of the national government helps shape the balance of responsibility in federalism. You should have already figured this out from the discussion up to this point. Presidents who want to expand the powers of the office inevitably propose programs that step into areas that states and local governments have handled. Presidents who want to reduce national power try and pass responsibilities back to states.

For example, suppose a president wants to combat global warming by reducing the carbon footprint across the nation and decides that national building codes are a good way to do this. Building codes have long been a state and local matter. The president would have to get a program passed by Congress that imposed minimum building codes on such things as insulation and efficiency ratings for heaters, air conditioners, and hot water heaters. Members of Congress would certainly reshape any proposed program to try to fit the needs of their own states, if they passed it at all. If passed, those who might suffer some economic harm from the program might challenge the new national law in the courts. For example, if the law rested on the interstate commerce clause, opponents might argue that building codes are not a part of interstate commerce. So the Supreme Court might get involved. Congress might try to avoid such a question by shaping the program as a regulation in a grant program that supports housing in states rather than as a mandate. If states do not want the program, then they would not have to abide by the regulations. A later president who

opposed this program might not be able to kill it, but might be able to reduce funding.

The Supreme Court plays a special role when disputes arise among states and no federal law clearly settles the dispute. One area of increasing controversy is water rights, which has long been an issue in western states, but recently has created conflict among states east of the Mississippi. As global warming creates more severe weather, including droughts, and as population and development increases in relatively warm areas of the nation where people want to live, people and industry begin to compete for a resource that once was considered practically infinite. That is no longer the case. When a river flows across state lines, to whom does that water belong? What if the upstream state wants to drain out so much that the downstream state no longer has enough to meet its needs? Because these kinds of disputes are among states, the Supreme Court can exercise original jurisdiction and could actually hold the trial there (though the usual practice is for the Supreme Court to appoint a third party to find a settlement and then ratify the settlement, as we noted back in the chapter on the judicial branch).

#### B. State and Local Governments and Government Interest Groups

State and local governments, often individually and always collectively in a variety of organizations, act as interest groups in trying to influence the national government. Virtually every office that exists at the state or local level has some national association or organization that represents it. These include mayors in the U.S. Conference of Mayors, counties in the National Association of Counties (NACO), School Boards in the National School Boards Association (NSBA), governors in the National Governors Association (NGA), state treasurers in the National Association of State Treasurers (NAST), municipalities in the National League of Cities (NLC), and the list goes on and on and on. Each association usually has state affiliates that bring together, for example, all school boards in a single state, to try to influence state policy that affects public schools and how school boards operate. In other words, these associations mirror the federal system in having local, state and national divisions. We might think of these groups as **government interest groups**. They are groups in the public sector that operate as interest groups. We will look at how interest groups operate in another chapter.

#### C. Political Parties

We have already seen that each of the political parties wants to maximize the influence of governments at levels where they have the most power. Of course they justify the positions they take on what level of government should have responsibility on broad philosophical principles, wanting power to be closer to the people or preventing local prejudice or selfishness from subverting national priorities. Regardless, specific policy preferences of each party often override

these principles. Republicans might generally want more local control as a principle, but they want national drug laws to override state laws that allow for the medical usage of marijuana (another issue you can search on the Web). Democrats might generally prefer national control, but they oppose national laws defining marriage and feel that this matter is better left to individual states when it comes to the issue of gay marriage. The party that controls the White House and/or Congress will certainly have the edge in getting the national/state balance of responsibility they want in different policy areas.

#### D. The Economic Environment

As we saw in what happened to the General Revenue Sharing Program in 1987, the national economic picture is a critical factor. Having or not having money determines whether the national government can create programs that affect state and local governments. In bad economic times when the national budget is running deficits, states and local governments are likely to see programs cut and have more responsibility shifted back to them. In good times they are likely to see more grant programs that have the effect of shifting responsibility to the national government.

For example, the most important education program of the George W. Bush presidency, No Child Left Behind, was affected by the economic environment. Crafted with the support of important Democrats in Congress like Democratic Senator Ted Kennedy, the program was supposed to significantly help local schools around the nation improve test scores. But critics charged that while the testing went on as planned, the national government did not come up with the money necessary to help schools actually meet those standards. Funding was not easy. The Iraq War and economic decline increased national budget deficits. Democrats became ever more critical of the program, and the program lost much support in the states.

#### E. Citizen Interest Groups

Interest groups are a fundamental part of the political landscape. Based on the fundamental first amendment rights of association and contacting government about concerns, Americans have always formed groups to try to influence public policy. We will discuss the range of groups and their tactics in a separate chapter on interest groups. Nevertheless, interest groups play a big role in federalism. Unlike the government interest groups that we mentioned earlier, these groups do not represent governments. Rather, they represent private interests. Private groups that concern themselves with federalism issues are called the **intergovernmental lobby**.

Just as was the case in political parties trying to increase the responsibility of the level of government with which the party has the most influence, political interest groups try to get responsibility placed on the level of government with

which they have the best chance of getting policies they want. Political scientists have observed that if a group fails to get what it wants at the state level, it appeals to the national government to impose a policy on state governments.

For example, when southern states failed to protect rights of African Americans, civil rights groups focused their efforts on the national level of government. They sought court rulings and national laws that would force states to change. When coal miners or disabled textile workers were unable to get workers' compensation from breathing coal or cotton dust where they worked, they took their fight to the national level. When environmentalists are unable to get states to adopt laws that protect air and water, they try to get national laws that will force states to enforce some minimal standards.

#### F. Citizens and Public Opinion

The demands we as citizens make on governments are the ultimate driving force behind federalism. If enough of us demand that schools get better or college become more affordable, then elected officials at all levels will try to respond. Public fears about terrorism may cause local officials to crack down on people who are undocumented aliens as Congress tries to tighten border security and presidential candidates promise the same. To enhance security Congress may require some kind of national standards for drivers' licenses that states may resist, and the dispute ends up in the courts (the Real ID Act of 2005). If enough people cry out because they are unable to get affordable health insurance, different states may try to create their own insurance programs while Congress and/or the president considers a national plan. Because citizen demand is such a powerful motivating force, interest groups spend many resources trying to mold opinion and create demand for or resistance against government action. These battles will continue.

### XI. Conclusion

#### A. Arguments For and Against Federalism

Life would certainly be simpler if states were like counties, just the administrative arm of a central government to carry out uniform national policies. You could move from state to state and the laws would be the same, school graduation requirements the same, textbooks the same, election laws the same, driving laws the same, and taxes would likely even be the same. Schools would be more uniform in quality, as would roads and bridges. You probably would not even have to pay state taxes, because states would get revenues they needed to carry out national policies from national taxes. State lines would make more sense than they do now. We would no longer have cities divided by state lines, where have more in common with the people in the state a few miles away than you do with people living on the other side of your own state. For example,

people in upstate New York probably have more in common with people in Vermont and New Hampshire than with people in New York City. We would also have states that are more uniform in population size than we do now.

On the other hand, we can make strong arguments for keeping states not only for historical reasons, but for political and policy reasons as well. States serve as a barrier to a tyrannical national government. If the national government went too far in grabbing power so as to create a danger of tyranny, states could force a change in the Constitution to reduce the national government's power. People in small states can use their equal representation in the Senate and its unique rules that give small minorities extra protection (using the threat of filibuster) to prevent a national majority from forcing things on them. For example, the small population in Nevada has been successful for decades in preventing the national majority from forcing them to accept the long-term storage of nuclear waste at Yucca Mountain. (You might search the Web to see how this fight is going.)

Defenders of federalism often say that states can be viewed as **laboratories of democracy**, where new policies are tried out. If the policies are successful, other states can adopt them. If not, then the harm from a poor policy is limited to a single state. If we had a unitary system with all the power in the national government, then an untested policy that fails would harm the entire nation.

Regardless of the merits of either side of this argument, we will certainly not be ending the role of states. But what states do and what the national government does is constantly changing. And it will continue to change in the future as we struggle with the paradox of figuring out who is responsible for what in our federal system.

#### B. Reconsideration of the paradox of who is responsible for what

If we can see any trend over the long history of federalism, it is that all levels of government—national, state and a dizzying list of local governments--are intertwined in ever more complex relationships dealing with a growing range of problems for which citizens and interest groups demand government action. This is far more complex than just figuring out what level of government is responsible for what.

In fact, the paradox with which we started assumes a simple choice that no longer exists. Reality is an ongoing struggle that has different balances for almost every policy question.

Yet the paradox is still relevant. The complexity of the relationships is hopelessly confusing to almost all citizens. They get the impression that no one is really in charge. This confusion and impression creates a real and growing

danger. Because citizens are confused about who is responsible for what, they become unable to hold officials accountable for policy outcomes. Not knowing who to blame creates cracks in the foundation of a democratic republic. Elections become meaningless exercises in passing the buck and blaming someone else. Citizens throw up their hands in disgust at all levels of government and drop out of the political process.

Can we find a path to some resolution? Clearly the old ideas of dual federalism with simple boundaries will not work because so many problems flow over local and state boundaries. We might start at the local level and try to reduce the numbers of hidden local governments and give more responsibility to general purpose local governments. Of course, the political power of special purpose governments to protect themselves gets in the way. No change is easy in our system.

At the very least, we can try to understand this complexity. That is the modest purpose of this chapter and this course.

## **KEY TERMS AND IDEAS**

confederal system  
unitary system  
federal system  
paradox of federalism  
interstate compacts  
full faith and credit clause  
public policy exception rule  
privileges and immunities  
interstate rendition  
supremacy clause  
necessary and proper clause, or the elastic clause  
*McCulloch v. Maryland* (1819)  
enumerated powers  
implied powers  
interstate commerce  
*Gibbons v. Ogden* (1824)  
interposition and nullification  
secession  
industrial revolution  
twilight zone federalism or dual federalism  
New Deal  
nation centered federalism  
Great Society program  
cooperative federalism  
categorical grants

strings  
formula grants  
matching grants  
competitive grants  
General Revenue Sharing  
block grant  
devolution  
general purpose governments  
special purpose governments  
Regional Councils of Government  
mandates and unfunded mandates  
the Americans with Disabilities Act (ADA)  
government interest groups  
intergovernmental lobby  
laboratories of democracy

### **Possible Internet Exercises**

1. Find the Webpage for a local government where you live (county or possibly municipality). Make a list of the services that this government provides.
2. Looking at that same local government, identify the offices that are filled by election.
3. Find out what the latest Supreme Court decisions are under the “public policy exception” rule with respect to gay marriage.
4. Find the story about the origin of the name “Teddy Bear.”
5. Look up the “constitutional officers” in your own home state, including the lieutenant governor, who are elected state-wide by voters. How do these elections affect the executive powers of your governor to run the executive branch of government in your state?
6. Find the latest news on the nuclear waste storage program at Yucca Mountain in Nevada. While the national government certainly has the power to force the people of Nevada to accept the waste, the state has found many ways to prevent the program from going forward.