

# 3

## The Federal System



The Supreme Court is often called upon to resolve conflicts between the national and state government. During its 2012 term, for example, the Court considered whether states have the authority to enact immigration laws that go above and beyond federal statutes. The case arose out of a law passed by the state of Arizona in 2010. The statute was widely considered the most restrictive immigration law in the land.

Intended to discourage the entry and employment of illegal immigrants, the sweeping law authorized a wide range of investigatory powers for local law enforcement. Perhaps most controversially, it permitted police officers to stop and question anyone they suspected to be in the country illegally, and required those who were detained to produce evidence of either citizenship or legal residency.

The cries against the law were loud, even before it was enacted. Hispanic rights advocates, local politicians, and even President Barack Obama spoke out against the legislation. The president's involvement, especially, was unexpected, as the executive branch rarely interferes with state legislative actions. However, President Obama stated that the bill's provisions undermined "basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe."<sup>1</sup> He also directed his Justice Department to sue to stop enforcement of the law.

In 2012, the case of *Arizona v. U.S.* reached the United States Supreme Court. In a controversial and widely discussed decision, the justices decided much of the case in favor of federal power, striking down provisions of the act that made illegal immigration and seeking employment while in the United States unlawfully crimes under state law. They also struck down a third provision authorizing the arrest of suspected illegal immigrants without a warrant. In each of these cases, the Court ruled that the state had come into conflict with existing federal law and, according to the U.S. Constitution, federal law must always be supreme.<sup>2</sup>

However, the Court upheld a fourth provision requiring state and local police to verify the citizenship of illegal immigrants. As a result, many Arizona legislators, as well as Republican Governor Jan Brewer, declared the Court's decision a victory for state powers. Supporters further argued that

### 3.1

Trace the roots of the federal system and the Constitution's allocation of powers between the national and state governments, p. 58.

### 3.2

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Describe the emergence and decline of dual federalism, p. 66.

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Explain how cooperative federalism led to the growth of the national government at the expense of the states, p. 69.

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Describe how the federal budget is used to further influence state and local governments' policies, p. 72.

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Explore the role of the judiciary as arbiter of federal–state conflicts, p. 76.

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Assess the challenges in balancing national and state powers and the consequences for policy making, p. 77.



**IMMIGRATION IS AN INTERGOVERNMENTAL PROBLEM** Public policy on immigration—and balancing an individual’s liberty of movement with the country’s security—requires the cooperation of local, state, national, and international governments. Above, European immigrants are screened for entry at Ellis Island, New York, in the 1890s. Below, Hmong immigrants receive health certifications before immigrating to the United States in the present day.



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**federal system**

System of government in which the national government and state governments share power and derive all authority from the people.

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**confederation**

Type of government in which the national government derives its powers from the states; a league of independent states.

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**unitary system**

System of government in which the local and regional governments derive all authority from a strong national government.

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the experience of local law enforcement makes the state government more equipped to handle modern immigration than the national government. These comments reflected one of the enduring debates in the federal system, and one considered throughout this chapter.

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State and local governments are, to some degree, the lynchpins of the federal system. They have existed since the first settlers arrived at Plymouth and Jamestown and quickly recognized that rules or laws were necessary to keep order even within these small communities. State and local governments thus predate the existence of the national government in every one of the original thirteen colonies.

During the Constitutional Convention, many of the Framers believed that, although a national government was necessary, it should have limited powers. As a result, in the federal system created by the Framers, the states reserved significant powers and authority in a wide array of issues from health to education to administering elections. The national government, in contrast, was given power in areas such as conducting foreign affairs, regulating interstate commerce, and coining money. The governments shared power in other areas, creating a system of checks and balances not only between the executive, legislative, and judicial branches of government, but also between the national government and the states. The Framers further stipulated that the people would be the ultimate source of power for both the national and state governments.

Today, the Constitution ultimately binds a diverse array of governments at the national, state, and local levels. The Constitution lays out the duties, obligations, and powers of national and state governments; states establish and charter local governments. Throughout history, however, crises, historical evolution, public opinion, and judicial interpretation have continually reshaped these relationships. All of these forces have had tremendous influence on policy decisions affecting your daily life. Because there is only one national government, for example, you do not need a passport to travel from Texas to Oklahoma. Only one national currency exists, as does a national minimum wage, although states may set higher hourly wages. But, the laws of various states exhibit many differences. The age at which you may marry is a state issue, as are laws governing divorce, child custody, and criminal justice, including how—or if—the death penalty is applied. Local governments often set liquor or smoking laws. Other policies or programs, such as wars or air traffic regulation, lie solely within the province of the national government. In areas such as education, however, the national, state, and local governments work together in a system of shared powers.

## Roots of the Federal System

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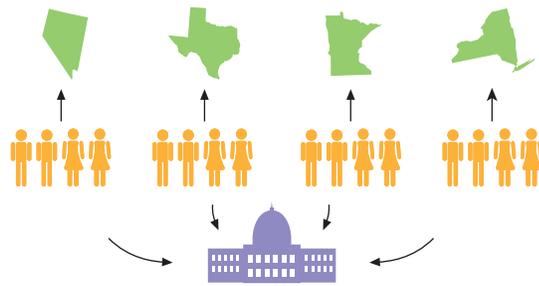
Trace the roots of the federal system and the Constitution's allocation of powers between the national and state governments.

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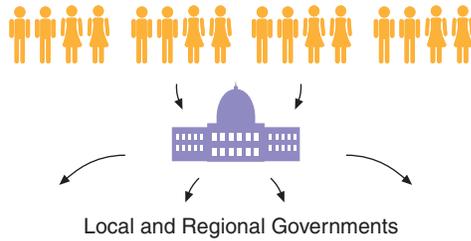
he United States became the first country to adopt a **federal system** of government (although the word “federal” never appears in the U.S. Constitution). The Framers designed this system, wherein the national and state governments share power and derive all authority from the people, to remedy many of the problems experienced under the Articles of Confederation. Under the Articles, the United States was governed as a **confederation**, whereby the national government derived all of its powers from the states. This arrangement led to a weak national government often unable to respond to even localized crises, such as Shays’s Rebellion.

The new system of government also had to be different from the **unitary system** found in Great Britain, where local and regional governments derived all of their power from a strong national government (see Figure 3.1). Having been under the rule of English kings, whom they considered tyrants, the Framers feared centralizing power in one government or institution. Therefore, they made both the state and the federal governments accountable to the people. While the governments shared some powers, each government was supreme in some spheres, as described in the following section.

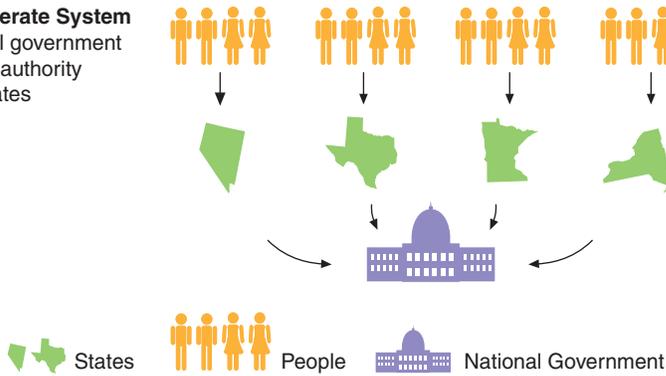
**Federal System**  
National government and states derive authority from the people



**Unitary System**  
Local and regional governments derive authority from the national government



**Confederate System**  
National government derives authority from states



**FIGURE 3.1** WHAT IS THE SOURCE OF GOVERNMENTAL AUTHORITY?

The source of governmental authority varies between federal, unitary, and confederate systems. Having experienced the challenges of both unitary and confederate systems, the Framers of the Constitution chose a federal system, in which the power of both state and national governments derives from the people.

## □ National Powers Under the Constitution

All of the powers specifically stated in Article I, section 8, of the Constitution are called **enumerated powers**. Chief among these exclusive powers of the national government are the authorities to coin money, conduct foreign relations, provide for an army and navy, and declare war. In addition, Article I, section 8, contains the necessary and proper clause (also called the elastic clause), which gives Congress the authority to enact laws “necessary and proper” for exercising any of its enumerated powers. These powers derived from enumerated powers and the necessary and proper clause are known as **implied powers**.

The Constitution also clearly set out the federal government’s right to collect duties and excises. The Framers wanted to avoid the financial problems experienced by the national government under the Articles of Confederation. If they wished to create a strong new national government, they had to make its power to raise revenue unquestionable. Allowing the new national government to collect tariffs, or taxes on imported goods, was one way to assert this power. And, giving the national government the exclusive power to do so eliminated the financial wars between states that had occurred under the Articles.

Article VI of the federal Constitution underscores the notion that the national government is supreme in situations of conflict between state and national law. It declares that the U.S. Constitution, the laws of the United States, and its treaties are “the supreme Law of the Land; and the Judges in every State shall be bound thereby.”

In spite of this explicit language, the courts have consistently been called upon to clarify the meaning of the supremacy clause. In 1920, for example, Missouri sought to prevent a U.S. game warden from enforcing the Migratory Bird Treaty Act of 1918, which

### enumerated powers

The powers of the national government specifically granted to Congress in Article I, section 8 of the Constitution.

### implied powers

The powers of the national government derived from the enumerated powers and the necessary and proper clause.

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#### WHEN DO NATIONAL AND STATE GOVERNMENTS WORK TOGETHER?

Intergovernmental cooperation is required to implement many public policies, such as the recent American Recovery and Reinvestment Act, which was enacted as part of the effort to stimulate the economy and create jobs. Here, work begins on a road construction project jointly funded by the national government and the state of Ohio.

#### Tenth Amendment

The final part of the Bill of Rights that defines the basic principle of American federalism in stating that the powers not delegated to the national government are reserved to the states or to the people.

#### reserved powers

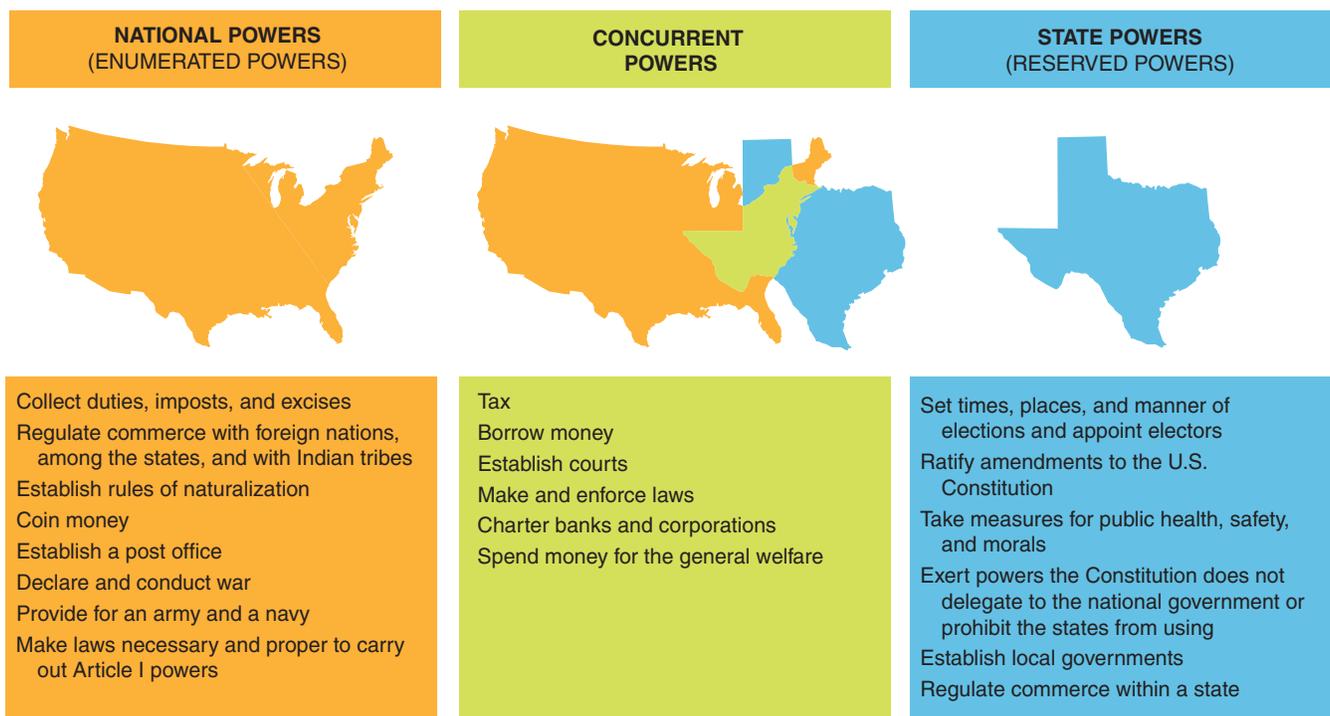
Powers reserved to the states by the Tenth Amendment that lie at the foundation of a state's right to legislate for the public health and welfare of its citizens.

prohibited the killing or capturing of many species of birds as they made their annual migration across the international border from Canada to parts of the United States.<sup>3</sup> Missouri argued that the Tenth Amendment, which reserved a state's powers to legislate for the general welfare of its citizens, allowed Missouri to regulate hunting. But, the Court ruled that since the treaty was legal, it must be considered the supreme law of the land (see the discussion of *McCulloch v. Maryland* [1819] that follows later in this chapter).

#### □ State Powers Under the Constitution

Because states held all the power at the time the Constitution was written, the Framers felt no need, as they did for the new national government, to list and restate all of the powers of the states, although some are specified throughout the Constitution. Article I of the U.S. Constitution not only notes that each state is entitled to two senators; it also leaves to the states the times, places, and manner of elections. Thus, the states may enact their own restrictions on who can and cannot vote. Some states, for example, deny felons the franchise, while other states allow them to retain this right. Article II requires that each state appoint electors to vote for president. And, Article IV guarantees each state a "Republican Form of Government," meaning one that represents the citizens of the state.

Not until the **Tenth Amendment**, the final part of the Bill of Rights, were the states' powers described in greater detail: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." These powers, often called the states' **reserved powers**, include the ability to legislate for the public health, safety, and morals of their citizens. Today, the states' rights to legislate under their reserved powers provide the rationale for many states' restrictions on abortion, for example. Reserved powers also form the basis for state criminal laws, including those concerning the death penalty. As long as the U.S. Supreme Court continues to find the death penalty not in violation of the U.S. Constitution, the states may impose it, whether by lethal injection, gas chamber, electric chair, hanging, or firing squad.



**FIGURE 3.2** HOW IS GOVERNMENTAL POWER DISTRIBUTED IN THE FEDERAL SYSTEM?

The Constitution divides power between the national and state governments. It gives the national government a list of enumerated powers, while many state powers are captured in the reserved powers clause of the Tenth Amendment. The national and state governments also share some powers, known as concurrent powers.

## □ Concurrent Powers Under the Constitution

As revealed in Figure 3.2, national and state powers overlap. The area in which the systems overlap represents **concurrent powers**—powers shared by the national and state governments. States already had the power to tax; the Constitution extended this power to the national government as well. Other important concurrent powers include the rights to borrow money, establish courts, charter banks, and spend money for the general welfare. In illustration of concurrent powers, most individuals must file both state and federal tax returns. States have also allowed local governments to pass a variety of taxation measures, including property taxes for schools and sales taxes on goods such as food and clothing.

## □ Powers Denied Under the Constitution

Article I of the Constitution explicitly denies some powers to the national government or states. Congress, for example, is barred from favoring one state over another in regulating commerce, and it cannot lay duties on items exported from any state. Article I also prohibits the national government from granting titles of nobility, and government employees may not accept salaries or gifts from foreign heads of state.

State governments (as well as the national government) are denied the authority to take arbitrary actions affecting constitutional rights and liberties. Neither national nor state governments may pass a **bill of attainder**, a law declaring an act illegal without a judicial trial. The Constitution also bars national and state governments from passing **ex post facto laws**, those that make an act punishable as a crime even if the action was legal at the time it was committed.

## □ Interstate Relations Under the Constitution

In addition to delineating the relationship between states and the national government, the Constitution provides a mechanism for resolving interstate disputes and facilitating relations among states. To avoid any sense of favoritism, it arranges for disputes between

### concurrent powers

Powers shared by the national and state governments.

### bill of attainder

A law declaring an act illegal without a judicial trial.

### ex post facto law

Law that makes an act punishable as a crime even if the action was legal at the time it was committed.

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# The Living Constitution

*Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. — ARTICLE IV, SECTION 1*

The full faith and credit clause of Article IV of the Constitution rests on principles borrowed from international law that require one country to recognize contracts made in another country, absent a compelling public policy reason to the contrary. In the United States, this principle applies to the relationship between states.

The full faith and credit clause requires a state to recognize public acts and court proceedings of another state. In 1997, the Supreme Court ruled that the full faith and credit clause mandates that state courts always honor the judgments of other state courts, even if it entails going against state public policy or existing state laws. Failure to do so would allow a single state to “rule the world,” said Supreme Court Justice Ruth Bader Ginsburg during oral argument.<sup>a</sup>

In recent years, the full faith and credit clause has been at the center of the debate over the constitutionality of same-sex marriage. In the 1990s and early 2000s, many states passed laws regarding legal recognition of same-sex marriages. The U.S. Congress also passed the Defense of Marriage Act (DOMA) in 1996. This federal law aimed to undercut possible state recognition of same-sex marriages by permitting states to disregard such marriages even if they were legal in other states. DOMA, thus, essentially created an exception to the full faith and credit clause.

For this reason, many constitutional scholars believed DOMA was unconstitutional from the start; the U.S. Constitution does not give Congress the authority to create exceptions to the full faith and credit clause. In 2013, the U.S. Supreme Court agreed, ruling in a 5-4 decision that DOMA was unconstitutional. Writing for the Court was Justice Anthony Kennedy, who reasoned that marriage was a subject best left to the states in our federal system.

Following this decision, through 2014, most federal and state courts have ruled that restrictions on same-sex marriage are constitutional. Justice Ruth Bader Ginsburg has speculated that the Supreme Court will decide the broader constitutionality of restrictions on same-sex marriage by 2016.

## CRITICAL THINKING QUESTIONS

1. How could a same-sex couple married in one state be granted a divorce in a state that does not recognize same-sex marriage?
2. Should states or the federal government be allowed to create public policy exceptions to the full faith and credit clause?

<sup>a</sup>Oral argument in *Baker v. General Motors Corporation*, 522 U.S. 222 (1998), noted in Linda Greenhouse, “Court Weighs Whether One State Must Obey Another’s Courts,” *New York Times* (October 16, 1997): A25.

### full faith and credit clause

Section of Article IV of the Constitution that ensures judicial decrees and contracts made in one state will be binding and enforceable in any other state.

### privileges and immunities clause

Part of Article IV of the Constitution guaranteeing that the citizens of each state are afforded the same rights as citizens of all other states.

### extradition clause

Part of Article IV of the Constitution that requires states to extradite, or return, criminals to states where they have been convicted or are to stand trial.

### interstate compacts

Contracts between states that carry the force of law; generally now used as a tool to address multistate policy concerns.

states to be settled directly by the U.S. Supreme Court under its original jurisdiction as mandated by Article III (see the discussion of the judiciary). Moreover, Article IV requires that each state give “Full Faith and Credit . . . to the public Acts, Records, and judicial Proceedings of every other State.” The **full faith and credit clause** ensures that judicial decrees and contracts made in one state will be binding and enforceable in another, thereby facilitating trade and other commercial relationships. Full faith and credit cases continue to make their way through the judicial system. For example, a state’s refusal to honor same-sex marriage contracts poses interesting constitutional questions.

Article IV also contains the **privileges and immunities clause**, guaranteeing that the citizens of each state have the same rights as citizens of all other states. In addition, Article IV includes the **extradition clause**, which requires states to extradite, or return, criminals to states where they have been convicted or are to stand trial.

To facilitate relations among states, Article I, section 10, clause 3, of the U.S. Constitution sets the legal foundation for interstate cooperation in the form of **interstate compacts**, contracts between states that carry the force of law. Currently, more than 200 interstate compacts exist. While some deal with rudimentary items such as state boundaries, others help states carry out their policy objectives and administrative functions. Although several bistate compacts exist, others have as many as fifty signatories.<sup>4</sup> For example, all fifty states signed the Drivers License Compact to facilitate nationwide recognition of licenses issued in the respective states.

## Local Governments Under the Constitution

Local governments have no express power under the U.S. Constitution. A description of the relationship between states and local governments comes from Judge John F. Dillon, who in 1868 articulated a premise known as **Dillon's Rule**. Dillon's Rule states that all local governments—whether towns, villages, cities, or counties, or some other form—do not have any inherent sovereignty and instead must be authorized by state governments, which can create or abolish them.

Local governments, therefore, need a **charter**—a document that, like a constitution, specifies the basic policies, procedures, and institutions that are acceptable to the state legislature. States issue charters that establish the authority and procedures defining a municipality, and all amendments to these charters require approval by state governments. The responsibilities of local governments described in these charters vary widely and include public health and safety, education, jobs, and economic vitality, zoning land for particular uses, and assistance to those in need. Local governments are of several types, as highlighted in Figure 3.3.

**COUNTIES** **Counties** are the basic administrative units of local government. Every state has counties, although in Louisiana they are called parishes, and in Alaska, boroughs. With few exceptions, counties have very broad responsibilities and are used by state governments for welfare and environmental programs, courts, and the registration of land, births, and deaths.

**MUNICIPALITIES** **Municipalities** are city governments created in response to the emergence of relatively densely populated areas. State governments do not establish them arbitrarily but, instead, municipalities emerge as people locate in a particular place. Some of the most intense struggles among governments within the United States are over the boundaries, scope of authority, and sources of revenue for municipal governments.

County and municipal boundaries may overlap. State actions have merged city and county into a consolidated government in several areas, including San Francisco, California; Denver, Colorado; Honolulu, Hawaii; and Jacksonville, Florida.

**TOWNS** The term is used generally today to refer to smaller communities, often run by a mayor and town council. The definition of a town varies considerably from state to state. In some states, for example, towns and municipalities may be virtually indistinguishable, while other states set specific restrictions on the size of each type of government.

**SPECIAL DISTRICTS** Among forms of government, special districts are the most numerous. A **special district** is a local government restricted to a particular function. These districts exist for services such as libraries, sewage, water, and parks and are governed through a variety of structures. Some have elected heads, and others, appointed. Some of these jurisdictions levy a fee to generate their revenues, whereas others depend on appropriations from a state, city, or county. One reason for the proliferation of special districts is the desire to avoid restrictions on funds faced by municipalities or other jurisdictions. The creation of a special park district, for example, may enable the park to have an independent budget and sources of funding.

School districts, the most common form of special districts, exist to provide free public education to students. They frequently cross town lines for purposes of practicality. They have their own budgets and must persuade those without children in a district to agree to help fund schools and extracurricular programs. Most school districts also receive assistance from states or the federal government for some specialized programs, including free or subsidized school lunches. School boards, whose members are usually elected in nonpartisan elections, administer school districts and supervise the officials who are responsible for the day-to-day operations of the school.

### Dillon's Rule

A premise articulated by Judge John F. Dillon in 1868 which states that local governments do not have any inherent sovereignty and instead must be authorized by state governments that can create or abolish them.

### charter

A document that, like a constitution, specifies the basic policies, procedures, and institutions of local government. Charters for local governments must be approved by state legislatures.

### county

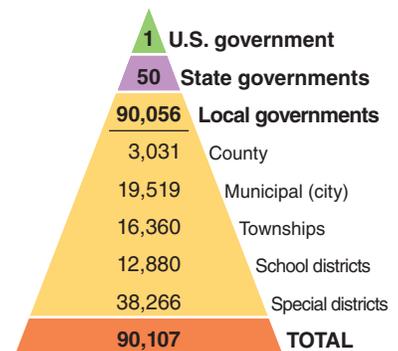
The basic administrative unit of local government.

### municipality

City governments created in response to the emergence of relatively densely populated areas.

### special district

A local government that is restricted to a particular function.



**FIGURE 3.3** HOW MANY GOVERNMENTS EXIST IN THE UNITED STATES?

More than 90,000 governments exist in the United States. Most of these governments are found at the local level, and are divided between municipal governments, towns, and special districts, such as school districts. The most common form of government is the special district.

**SOURCE:** U.S. Census Bureau, [www.census.gov/govs/cog/GovOrgTab033ss.html](http://www.census.gov/govs/cog/GovOrgTab033ss.html)

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# Federalism and the Marshall Court

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## ***McCulloch v. Maryland* (1819)**

The Supreme Court upheld the power of the national government and denied the right of a state to tax the federal bank, using the Constitution's supremacy clause. The Court's broad interpretation of the necessary and proper clause paved the way for later rulings upholding expansive federal powers.

## ***Gibbons v. Ogden* (1824)**

The Supreme Court upheld broad congressional power to regulate interstate commerce. The Court's broad interpretation of the Constitution's commerce clause paved the way for later rulings upholding expansive federal powers.

## 3.2 Determine the impact of the Marshall Court on federalism.



The nature of federalism, including its allocation of power between the national government and the states, has changed dramatically over the past 200 years. Much of this change has resulted from rulings of the U.S. Supreme Court, which has played a major role in defining the nature of the federal system. Few Supreme Courts have had a greater impact on the federal-state relationship than the one headed by Chief Justice John Marshall (1801–1835). In a series of decisions, he and his associates carved out an important role for the Court in defining the balance of power between the national government and the states. Three rulings in the early 1800s, *McCulloch v. Maryland* (1819), *Gibbons v. Ogden* (1824), and *Barron v. Baltimore* (1833), were particularly important.

## □ Defining National Power: *McCulloch v. Maryland* (1819)

*McCulloch v. Maryland* (1819) was the first major Supreme Court decision to define the relationship between the national and state governments. In 1816, Congress chartered the Second Bank of the United States. (The charter of the First Bank had been allowed to expire.) In 1818, the Maryland state legislature levied a tax requiring all banks not chartered by Maryland (that is, the Second Bank of the United States) to: (1) buy stamped paper from the state on which their bank notes were to be issued; (2) pay the state \$15,000 a year; or, (3) go out of business. James McCulloch, the head cashier of the Baltimore branch of the Bank of the United States, refused to pay the tax, and Maryland brought suit against him. After losing in a Maryland state court, McCulloch appealed the decision to the U.S. Supreme Court by order of the U.S. secretary of the treasury. In a unanimous opinion, the Court answered the two central questions presented to it: Did Congress have the authority to charter a bank? And, if it did, could a state tax it?

Chief Justice John Marshall's answer to the first question—whether Congress had the right to establish a bank or another type of corporation—continues to stand as the classic exposition of the doctrine of implied powers and as a statement of the authority of a strong national government. Although the word “bank” does not appear in the Constitution, the Constitution enumerates powers that give Congress the authority to levy and collect taxes, issue a currency, and borrow funds. From these enumerated powers, Marshall found, it was reasonable to imply that Congress had the power to charter a bank, which could be considered “necessary and proper” to the exercise of its aforementioned enumerated powers.

Marshall next addressed whether any state government could tax a federal bank. To Marshall, this was not a difficult question. The national government depended on the people, not the states, for its powers. In addition, Marshall noted, the Constitution specifically called for the national law to be supreme. “The power to tax involves the power to destroy,” wrote the chief justice.<sup>5</sup> Thus, the state tax violated the supremacy clause because individual states cannot interfere with operations of the national government, whose laws are supreme.

The Court's decision in *McCulloch* has far-reaching consequences even today. Lawmakers use the necessary and proper clause to justify federal action in many areas, including social welfare problems. Furthermore, had Marshall allowed the state of Maryland to tax the federal bank, states possibly could have attempted to tax all federal agencies located within their boundaries, a costly proposition that could have driven the federal government into insurmountable debt.<sup>6</sup>

## □ Affirming National Power: *Gibbons v. Ogden* (1824)

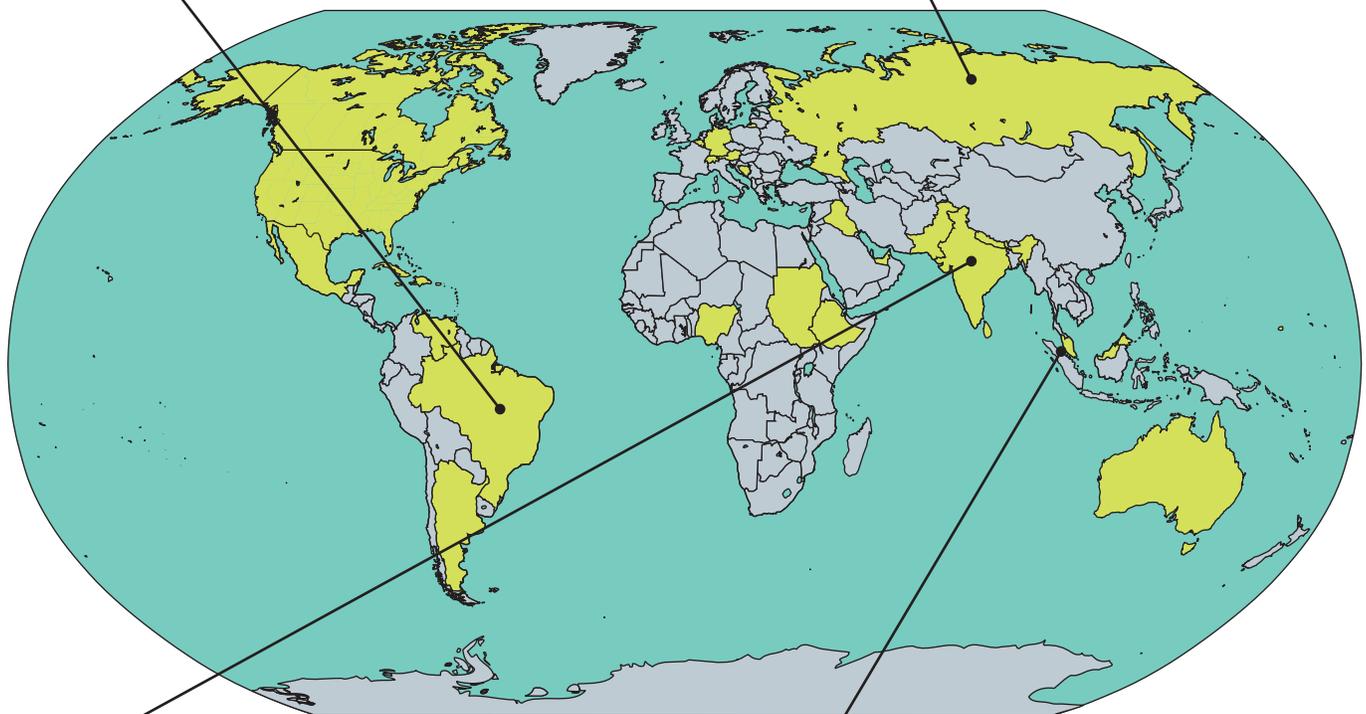
Shortly after *McCulloch*, the Marshall Court had another opportunity to rule in favor of a broad interpretation of the scope of national power. *Gibbons v. Ogden* (1824)

# Explore Your World

The United States has a federal system of government in which national and subnational political units known as states share power. A number of other countries, including Canada, Switzerland, India, and Nigeria, also have federal systems of government. However, most of the world's nations, including Great Britain, France, China, Japan, and Iran, have unitary systems, with authority concentrated in the central government. Although federal systems are relatively few in number, they tend to be large and politically important. This world map illustrates countries with federal systems of government in green. Countries with other systems of government are shown in gray.

Some subnational units in Brazil are based on cultural boundaries that precede Portuguese colonization. Other subnational units have been created for economic or administrative purposes.

Russia, the world's largest country by landmass, has a federal system comprised of 83 subnational units. The government was formed in 1993 after the dissolution of the Soviet Union.



Since India's independence from Great Britain in 1947, its federal system has united citizens speaking thousands of languages and from a variety of diverse religions.

Malaysia has what is known as an asymmetric federation. Some subnational units have more power than others.

## CRITICAL THINKING QUESTIONS

1. Study the map to identify what economic, cultural, and political characteristics the countries with federal systems have in common. Why might these characteristics have led to the adoption of federal systems?
2. Examine countries such as India, Nigeria, and Germany. What challenges might these countries face in maintaining a federal system in a region where most other countries choose a different form of government?
3. What other countries might be likely candidates for adopting federal systems in the future? Why do you think these countries are particularly good candidates?

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***Barron v. Baltimore* (1833)**

The Supreme Court ruled that the due process clause of the Fifth Amendment did not apply to the actions of states. This decision limited the Bill of Rights to the actions of Congress alone.

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**dual federalism**

The belief that having separate and equally powerful levels of government is the best arrangement, often referred to as layer-cake federalism.

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involved a dispute that arose after the New York state legislature granted to Robert Fulton the exclusive right to operate steamboats on the Hudson River.<sup>7</sup> Simultaneously, Congress licensed a ship to sail on the same waters. By the time the case reached the Supreme Court, it was complicated both factually and procedurally. Suffice it to say that both New York and New Jersey wanted to control shipping on the lower Hudson River. But, *Gibbons* actually addressed one simple, very important question: What was the scope of Congress's authority under the commerce clause? The states argued that "commerce," as mentioned in Article I, should be interpreted narrowly to include only direct dealings in products. In *Gibbons*, however, the Supreme Court ruled that Congress's power to regulate interstate commerce included the power to regulate commercial activity as well, and that the commerce power had no limits except those specifically found in the Constitution. Thus, New York had no constitutional authority to grant a monopoly to a single steamboat operator, an action that interfered with interstate commerce.<sup>8</sup>

### □ Limiting the Bill of Rights: *Barron v. Baltimore* (1833)

In 1833, in one of Chief Justice Marshall's last major cases on the federal–state relationship, *Barron v. Baltimore* (1833), the Court addressed the issue of whether the due process clause of the Fifth Amendment applied to actions of the states.<sup>9</sup> John Barron, a Baltimore businessman, ran a successful docking business off the city's wharf. As the city entered a period of extensive construction, dirt was deposited onto Barron's wharf. In addition, sand and silt drifted to his section of the wharf, making it unusable as a harbor for ships. Barron sued the city and state for damages, arguing that the city took his lands "without just compensation," as guaranteed by the Fifth Amendment of the U.S. Constitution. The Marshall Court ruled that Barron had no federal claim because enumerated rights contained in the Bill of Rights bound only the national government.<sup>10</sup>

## Dual Federalism: States' Rights, the Civil War, and Reconstruction

3.3

Describe the emergence and decline of dual federalism.

**I**n the early to mid-1800s, a national crisis began over the division of power between the states and the federal government. One major battleground in this struggle was the issue of slavery, which the pro-states' rights southern states fought to maintain. In contrast, many northern states, where commercial and manufacturing interests were more powerful, favored greater national power. Chief Justice Roger B. Taney (1835–1863), who succeeded John Marshall, saw the Court as an arbiter of those competing state and nationalist views. In a series of cases involving the scope of Congress's power under the commerce clause, the Taney Court further developed the nationalist doctrines first enunciated by Marshall but also emphasized the authority of states to make laws "necessary to their well being and prosperity."<sup>11</sup>

Over time, Chief Justice Taney and the Court also began to articulate further the notions of concurrent power and **dual federalism**. Dual federalism posits that having separate and equally powerful state and national governments is the best constitutional arrangement. Adherents of this theory typically believe that the national government should not exceed its constitutionally enumerated powers, and as stated in the Tenth Amendment, all other powers are, and should be, reserved to the states or to the people.

## □ The States Assert Their Powers: Nullification

While the courts worked to carve out the appropriate roles for each level of government in the federal system, the political debate over states' rights swirled in large part over what is called **nullification**, the right of a state to declare a federal law void. As early as 1798, Congress approved the very unpopular Alien and Sedition Acts, which were passed by the Federalist Congress to prevent criticism of the national government. Thomas Jefferson, James Madison, and others who opposed the acts suggested that states had the right to nullify any federal law that, in the opinion of the states, violated the Constitution. The U.S. Supreme Court, however, never decided the issue, because the Alien and Sedition Acts expired before the Court could hear a challenge to them.

The question of nullification arose again in 1828, when the national government enacted a tariff act, most commonly referred to as the "Tariff of Abominations," that raised duties on raw materials, iron, hemp, and flax and reduced protections against imported woolen goods. John C. Calhoun, who served as vice president from 1825 to 1832 under President Andrew Jackson, broke with Jackson over the tariff bill because it badly affected his home state of South Carolina. Not only did South Carolinians have to pay more for raw materials because of the tariff bill, but it was also becoming increasingly difficult for them to sell their dwindling crops abroad for a profit. Calhoun thus resurrected arguments made by some of the Framers and formulated the theory of nullification to justify South Carolina's refusal to abide by the federal tariff law. Later, he used the same nullification theory in justifying the southern states' resistance to national actions to limit slavery.

Calhoun theorized that the federal government functioned merely as the agent of the states (the people and the individual state governments) and that the Constitution was simply a compact providing instructions on how the agent was to act. Thus, according to Calhoun, the U.S. Supreme Court could not pass judgment on the constitutional validity of acts of Congress. Calhoun posited that if the people of any individual state did not like an act of Congress, they could hold a convention to nullify that act. If a state contested an act, the law would have no force until three-fourths of all the states ratified an amendment expressly giving Congress that power. Then, if the nullifying state still did not wish to be bound by the new provision, it could secede, or withdraw, from the union.

## □ The *Dred Scott* Decision

Debate over nullification only forestalled debate on the inevitable slavery issue. By the 1850s, the country could wait no longer. In cases such as *Dred Scott v. Sandford* (1857), the Court tried to manage the slavery issue by resolving questions of ownership, the status of fugitive slaves, and slavery in the new territories.<sup>12</sup> The Court generally settled these cases in favor of slavery and states' rights within the framework of dual federalism.

Dred Scott, for example, was born into slavery about 1795. In 1833, his original owners sold him to a family in Missouri. Later he tried to buy his freedom. His ability to take this action was questioned, so abolitionists gave money to support a test case seeking Scott's freedom. They believed his prior residence with a family living in free states and the Wisconsin Territory, which prohibited slavery, made Scott a free man, even though he now lived in a slave state, Missouri. In 1857, after many delays, the U.S. Supreme Court ruled 7–2 that Scott was not a citizen of the United States. "Slaves," said the Court, "were never thought of or spoken of except as property." The Court also found that Congress lacked the authority to ban slavery in the territories. In so doing, this decision narrowed the scope of national power, while it enhanced that of the states. Eventually, however, no form of federalism could accommodate the existence of slavery, and the nation marched toward inevitable war with itself.

## □ Reconstruction and the Transformation of Dual Federalism

The Civil War forever changed the nature of federalism. The concepts of nullification and dual federalism, as well as their emphasis on the role of the states, were destroyed

### **nullification**

The right of a state to declare void a federal law.

### ***Dred Scott v. Sandford* (1857)**

The Supreme Court concluded that the U.S. Congress lacked the constitutional authority to bar slavery in the territories. This decision narrowed the scope of national power, while it enhanced that of the states.

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along with the southern states' attempt at a confederacy. In the aftermath of the Civil War and the addition of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, a profound change occurred in the reunited nation's concept of federalism.

The Civil War had an especially profound impact in the South. After the Civil War, former Confederate states were required to “reconstruct,” or adopt new state constitutions approved by the nationalist Congress in Washington, D.C., and endure a range of punishments for their actions. The Reconstruction-era constitutions typically provided former male slaves with considerable power and disenfranchised white men who had been active in the Confederacy. However, because these constitutions divorced political power from economic wealth and social status, and formal authority from informal influence, white communities simply ignored federal rules and governed themselves informally as much as possible. After less than ten years, with the formal end of Reconstruction, whites reasserted political control in the South and rewrote their state constitutions.

The Supreme Court, however, often stepped in to limit state powers in favor of a stronger national government. The Court also recognized the need for national involvement in projects such as railroad construction, canal building, and the development of new technology, such as the telegraph.<sup>13</sup> And, beginning in the 1880s, the Court allowed Congress to regulate many aspects of economic relationships, such as outlawing monopolies, a type of regulation formerly considered to exist exclusively in the realm of the states. By the 1890s, passage of laws such as the Interstate Commerce Act and the Sherman Anti-Trust Act allowed Congress to establish itself as the supreme player in a growing national economy.

Some boundaries to this growing national role did exist, however. In 1895, for example, the United States filed suit against four sugar refiners, alleging that the sale of those four companies would give their buyer control of 98 percent of the U.S. sugar-refining business. The Supreme Court ruled that congressional efforts to control monopolies (through passage of the Sherman Anti-Trust Act) did not grant Congress the authority to prevent the sale of these sugar-refining businesses, because manufacturing was not commerce. Therefore, the Court found the companies and their actions to lie beyond the scope of Congress's regulatory authority.<sup>14</sup> Later that same year, the U.S. Supreme Court declared a congressional effort to tax personal incomes unconstitutional, although an earlier Court had found a similar tax levied during the Civil War constitutional.<sup>15</sup>



#### HOW DID THE RELATIONSHIP BETWEEN STATE AND NATIONAL GOVERNMENTS CHANGE AFTER THE CIVIL WAR?

Construction of coast-to-coast transportation systems, such as the intercontinental railroad, shown here, necessitated a greater role for the national government. These changes also helped to doom the system of dual federalism, which dominated for the first one hundred years of the nation's history.

## □ Amending the National–State Relationship

In response to the Court’s ruling on the income tax, Congress and the state legislatures were moved to ratify the **Sixteenth Amendment**. The Sixteenth Amendment gave Congress the power to levy and collect taxes on incomes without apportioning them among the states. The revenues taken in by the federal government through taxation of personal income “removed a major constraint on the federal government by giving it access to almost unlimited revenues.”<sup>16</sup> If money is power, the income tax and the revenues it generated greatly enhanced the power of the federal government and its ability to enter policy areas in which it formerly had few funds to spend.

The **Seventeenth Amendment**, ratified in 1913, similarly enhanced the power of the national government at the expense of the states. This amendment terminated the state legislatures’ election of senators and placed their election in the hands of the people. With senators no longer directly accountable to the state legislatures, states lost their principal protectors in Congress.

While the ratification of the Sixteenth and Seventeenth Amendments set the stage for expanded national government, the catalyst for dual federalism’s demise was a series of economic events that ended in the cataclysm of the Great Depression:

- Throughout the 1920s, bank failures were common.
- In 1921, the nation experienced a severe slump in agricultural prices.
- In 1926, the construction industry went into decline.
- In the summer of 1929, inventories of consumer goods and automobiles were at an all-time high.
- On October 29, 1929, stock prices, which had risen steadily since 1926, crashed, taking with them the entire national economy.

Despite the severity of these indicators, Presidents Calvin Coolidge and Herbert Hoover took little action, believing that the national depression comprised an amalgamation of state economic crises better dealt with by state and local governments. It would take the election of President Franklin D. Roosevelt in 1932 to both respond to this crisis and forever change the relationship between state and national governments.

## Cooperative Federalism: The Growth of National Government

**3.4** Explain how cooperative federalism led to the growth of the national government at the expense of the states.

**M**ost political scientists likened the federal system before the 1930s to a layer cake: in most policy areas, each level or layer of government—national, state, and local—had clearly defined powers and responsibilities. By contrast, the metaphor of marble-cake federalism refers to what political scientists call **cooperative federalism**, a term that describes the intertwined relations among the national, state, and local governments that began during this period. States began to take a secondary, albeit important, cooperative role in the scheme of governance, as did many cities. One political scientist described the new balance of power as:

⋮ Wherever you slice through it you reveal an inseparable mixture of differently colored ingredients. . . . Vertical and diagonal lines almost obliterate the horizontal ones, and in some places there are unexpected whirls and an imperceptible merging of colors, so that it is difficult to tell where one ends and the other begins.<sup>17</sup>

### Sixteenth Amendment

Amendment to the U.S. Constitution that authorized Congress to enact a national income tax.

### Seventeenth Amendment

Amendment to the U.S. Constitution that made senators directly elected by the people, removing their selection from state legislatures.

### cooperative federalism

The intertwined relationship between the national, state, and local governments that began with the New Deal, often referred to as marble-cake federalism.

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## New Deal

The name given to the program of “Relief, Recovery, Reform” begun by President Franklin D. Roosevelt in 1933 to bring the United States out of the Great Depression.

This landmark legislation that marked the beginning of this new era in national–state relations was a program of relief, recovery, and reform designed to bring the nation out of the Great Depression, known as the **New Deal**.

### □ A Need for National Action Arises: The New Deal

Rampant unemployment (historians estimate it was as high as 40 to 50 percent) was the hallmark of the Great Depression. In 1933, to combat severe problems facing the nation, newly elected President Franklin D. Roosevelt (FDR) proposed a variety of innovative programs, collectively called the New Deal, and ushered in a new era in American politics. FDR used the full power of the presidency, as well as his highly effective communication skills, to sell the American public and Congress on a new level of government intervention intended to stabilize the economy and reduce personal suffering. Most politicians during the New Deal period (1933–1939) agreed that to find national solutions to the Depression, which was affecting citizens of every state in the union, the national government would have to exercise tremendous authority.

In the first few weeks of the legislative session after FDR’s inauguration, Congress passed a series of acts creating new federal agencies and programs proposed by the president. These new agencies, often known by their initials, created what many termed an alphabetocracy. Among the more significant programs were the Federal Housing Administration (FHA), which provided federal financing for new home construction; the Civilian Conservation Corps (CCC), a work relief program for farmers and homeowners; and the Agricultural Adjustment Administration (AAA) and National



#### HOW DID FDR’S PUBLIC ACTIONS CHANGE CONCEPTIONS ABOUT FEDERALISM?

This cartoon illustrates FDR’s difficulties garnering support from the Supreme Court for the economic and social programs he believed were necessary to end the Great Depression. To coerce support from the Court to transform the federal–state relationship, FDR proposed his Court-packing plan, which was met with great opposition. The plan, however, seemed to convince a majority of justices to overturn the Court’s earlier decisions and to support the constitutionality of New Deal programs.

# How Has the Federal-State Relationship Evolved?

The balance of power between the national and state governments has evolved over time. In the early years of the new republic, the nation maintained a system of dual federalism, often referred to as layer cake federalism. This relationship transformed into a marble cake form of federalism known as cooperative federalism during the 1930s with the passage of President Franklin D. Roosevelt's New Deal. This image illustrates the changing national-state relationship, building on the cake metaphor.



## CRITICAL THINKING QUESTIONS

1. What kinds of events appear to be catalysts for changes in the federal system?
2. Consider the progression from layer to layer. Between which layers did the most change occur? Why was this change more definitive than that between the other layers?
3. How have changes to the federal system affected the lives of citizens? How are these changes seen in the everyday functions of government?

Recovery Administration (NRA), which imposed restrictions on production in agriculture and many industries while also providing subsidies to farmers.

New Deal programs forced all levels of government to work cooperatively with one another. Local governments, especially those of cities, were embraced as equal partners in an intergovernmental system for the first time and became players in the national political arena because many members of Congress wanted to bypass state legislatures, where urban interests usually were underrepresented. FDR also relied on big-city Democratic political machines to turn out voters to support his programs.

Those who feared these unprecedented changes in the federal system quickly challenged the constitutionality of the programs in court. And, at least initially, the U.S. Supreme Court often agreed with them. Through the mid-1930s, the Court continued to rule that certain aspects of New Deal programs went beyond the authority of Congress to regulate commerce. A series of decisions ruling various aspects of New Deal programs unconstitutional reflected the Court's *laissez-faire*, or hands-off, attitude toward the economy, which the justices viewed as a state problem.

FDR and Congress were livid. FDR's frustration with the Court prompted him to suggest what ultimately was nicknamed his "Court-packing plan." Knowing that he could do little to change the minds of those already on the Court, FDR suggested enlarging its size from nine to thirteen justices. This plan would have given him the opportunity to pack the Court with a majority of justices predisposed toward the constitutional validity of the New Deal.

Even though Roosevelt was popular, the Court-packing plan was not.<sup>18</sup> Congress and the public expressed outrage over even the suggestion of tampering with an institution of government. Even the Court appeared to respond to this threat. In 1937, it reversed its series of anti-New Deal decisions, concluding that Congress (and therefore the national government) had broad authority to legislate in any area as long as what was regulated affected commerce in any way. The Court also upheld the constitutionality of most of the massive New Deal relief programs, including the National Labor Relations Act of 1935, which authorized collective bargaining between unions and employees;<sup>19</sup> the Fair Labor Standards Act of 1938, which set a national minimum wage; and the Agricultural Adjustment Act of 1938, which provided crop subsidies to farmers.<sup>20</sup> Congress then used these newly recognized powers to legislate in a wide range of areas, including maximum hour laws and regulation of child labor.

## Federal Grants to State and Local Governments

### 3.5

Describe how the federal budget is used to further influence state and local governments' policies.

**P**resident Franklin D. Roosevelt's New Deal programs increased the flow of national dollars to the states for a variety of public works programs, including building and road construction. In the boom times of World War II, when the nation needed most able-bodied Americans to work, even more new federal programs were introduced. These programs often redefined national-state relationships and made the national government a major player in domestic policy. Until the 1960s, however, the national government constructed most federal grant programs in cooperation with the states, with emphasis on assisting the states in fulfilling their traditional responsibilities to protect the health, welfare, and safety of their citizens.

Today, the national government provides grants from its general revenues to states, local governments, nonprofit organizations, and even individuals. These programs range from grants to support state programs aiding needy families to Pell

grants giving students help to fund their educations. These grants are given for a number of purposes including: (1) providing state and local governments with additional funds; (2) setting national standards for national problems, such as clean air and water; and (3) attempting to financially equalize rich and poor states and localities. Federal grants are of several types. These include categorical grants, block grants, and programmatic requests.

## □ Categorical Grants

**Categorical grants** are grants for which Congress appropriates funds for specific purposes. Categorical grants allocate federal dollars by a precise formula, often based on population. They are subject to detailed conditions imposed by the national government. Often they are made available on a matching basis; that is, states must contribute money to match federal funds, although the national government may pay as much as 90 percent of the total. Categorical grants may be used by the national government to alter states' policy priorities or to coerce states to adopt particular policy objectives. With large sums of money at stake, states will often neglect their own wants and needs to follow the leadership of the national government. For example, states allocate about 15 percent of their budgets to Medicaid, a categorical grant aimed at providing health care for low-income and disabled Americans. Other federal categorical grants fund pollution control, economic development, and law enforcement.

These grants became more prominent mechanisms of coercion in 1964, when President Lyndon B. Johnson launched his Great Society program, which included what LBJ called a "War on Poverty." The Great Society program was a broad attempt to combat poverty and discrimination through urban renewal, education reform, and unemployment relief. In a frenzy of activity in Washington not seen since the New Deal, the national government channeled federal funds to states, to local governments, and even to citizen action groups. Funding these nonprofit organizations allowed liberal members of Congress to bypass not only conservative state legislatures but also conservative mayors and councils in the South and in cities such as Chicago, who were perceived as disinclined to help their poor, often African American, constituencies.

## □ Block Grants

In 1980, former California Republican Governor Ronald Reagan became president, pledging to advance what he called **New Federalism** and a return of power to the states. The hallmark of this action was the consolidation of many categorical grants into fewer, less restrictive **block grants**—large amounts of money given to states with only general spending guidelines. Many of these went to education and health care.<sup>21</sup>

Perhaps not surprisingly, these reforms were popular with governors, who urged the consolidation of even more programs into block grants. Calls to revamp the welfare system, in particular, were popular with citizens and governments alike. These reforms were ultimately realized during the mid-1990s, when a Republican-controlled Congress under Speaker of the House Newt Gingrich (R-GA) and President Bill Clinton replaced the existing federal welfare program with a program known as Temporary Assistance for Needy Families (TANF). TANF returned much of the administrative power for welfare programs to the states and became a hallmark of what became known as the "devolution revolution."

## □ Unfunded Mandates

Another component of Congress' efforts to devolve greater authority back to the state governments during the 1990s was the passage of the Unfunded Mandates Reform Act of 1995. This act prevented Congress from passing costly federal programs without debate on how to fund them and addressed a primary concern of state governments, many of which held the view that federal programs were encompassing a growing part of their state budgets and were in violation of their sovereign policy-making

### categorical grant

Grant that appropriates federal funds to states for a specific purpose.

### New Federalism

Federal-state relationship proposed by Reagan administration during the 1980s; hallmark is returning administrative powers to the state governments.

### block grant

A large grant given to a state by the federal government with only general spending guidelines.

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**programmatic request**

Federal funds designated for special projects within a state or congressional district.



**WHO SUPPORTED SCALING BACK THE FEDERAL GOVERNMENT AND INCREASING THE USE OF BLOCK GRANTS?**

The devolution of policy-making authority to state and local governments was a popular policy proposal with Republican leaders during the 1980s and 1990s; many Republicans continue to support these goals today. Here, Newt Gingrich, who served as Speaker of the House during the 1990s and as a Republican presidential candidate in 2012, advocates for these goals in the form of a “Contract with America.” The Contract was a program of government reform supported by most Republican congressional candidates in 1994.

authority. However, the Unfunded Mandates Reform Act has proved notoriously difficult to enforce, and many states charge the national government with continuing to create federal programs with insufficient funding.

One common example is the No Child Left Behind Act (NCLB) of 2001, now part of the amended Elementary and Secondary Education Act of 1965, which imposed a host of federal requirements on everything from class size to accountability testing.<sup>22</sup> Although the federal government set these increased standards, states charge that Congress did not consider the cost of these dramatic adjustments, which were passed on to the states, localities, and people. As a result, many states and localities have attempted to pass legislation opting out of all or some of the provisions of NCLB.

**□ Programmatic Requests**

Informally known as earmarks, **programmatic requests** are federal funds designated for special projects within a state or congressional district that direct specific exemptions from taxes or mandated fees. Federal funds have been provided for special projects since the first Congress. In 1790, money was earmarked to finish a lighthouse at the request of a Massachusetts representative. In 1817, John C. Calhoun suggested monies be used to fund a national highway, but President James Madison said such requests were unconstitutional. In the 1950s, however, President Dwight D. Eisenhower used two earmarks to fund building the massive national highway system.

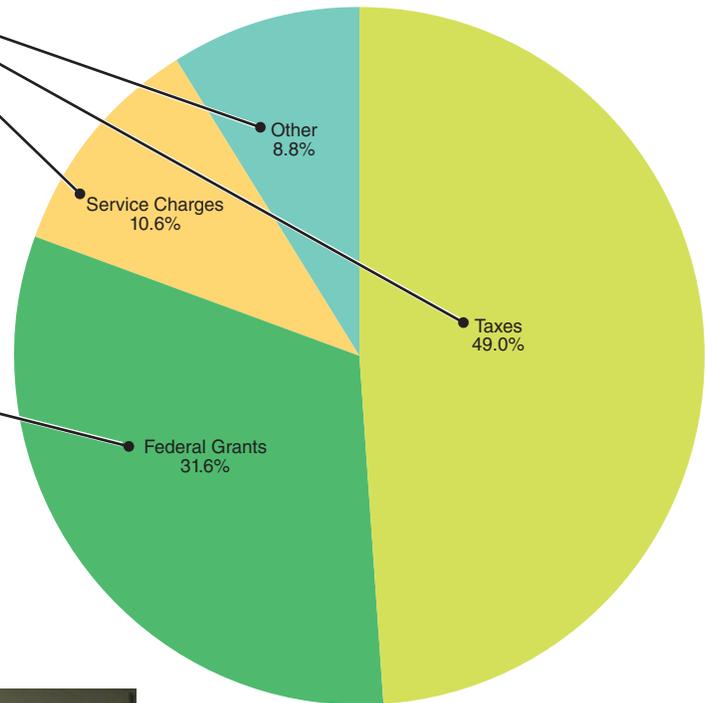
The use of these grants has exploded in the past two decades. The transportation budget, in particular, has benefited from earmarks; from 1996 to 2005, it increased by 1,150 percent. Programmatic requests are not competitively awarded, and have thus become very controversial owing to the use of paid political lobbyists who try to secure federal funds for their clients, be they states, cities, universities, or nonprofit groups. Members of Congress also attempt to secure these funds to bring programs and economic development back to their home districts. During one recent Congress, members requested 40,000 earmarks worth more than \$100 billion directed to their home districts and states for transportation projects alone.<sup>23</sup>

# Take a Closer Look

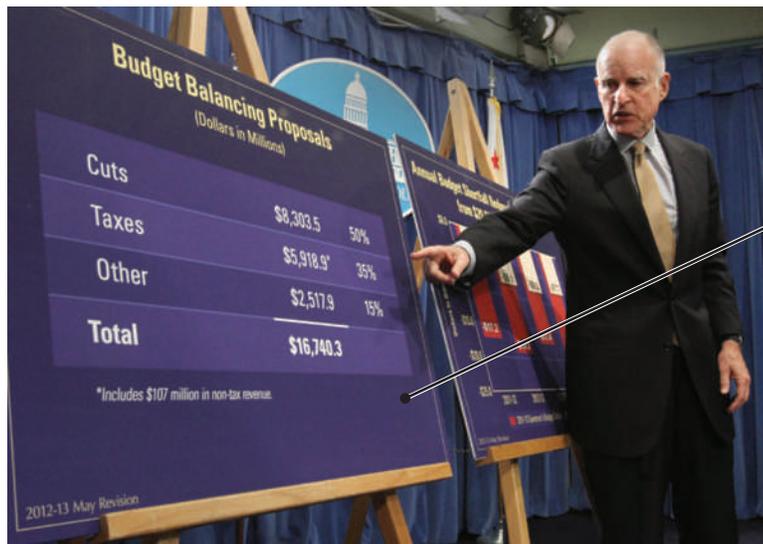
Federal grants have become an increasingly important part of state budgets. While these grant programs may help states to develop new initiatives or implement federal programs, they may also create intergovernmental dependency that can have disastrous consequences. Unlike the national government, most state governments are required to balance their budgets. So, when federal revenues decline, they must often be accompanied by cuts in state government programs and services. To better understand the nature and consequences of this dependency, examine the pie graph and photo below.

As this pie graph from the Census Bureau indicates, about two-thirds of state revenues came from taxes, service charges, and other sources, with the balance between the three varying from state to state.

Sources of State Government Revenue, 2012



States, on average, received roughly one-third, or 31.6% of their revenues from the federal government.



Depending on the federal government for funds can have significant implications for states. When fewer federal dollars flow, states are forced to cut programs. Here, California Governor Jerry Brown (D) discusses a number of ways to address his state's projected \$16 billion budget shortfall in 2012. By 2014, this shortfall had become a multi-billion dollar surplus, owing largely to increased tax revenues and a stronger economy.

## CRITICAL THINKING QUESTIONS

1. Are state governments too dependent on federal dollars? Should they be required to find other ways to raise revenues? What mechanisms seem most equitable?
2. Should federal governments be required to fully fund any mandates they pass along to state governments? What are the pros and cons of such an arrangement?
3. How do you think cuts in federal dollars affect the demands that state governments place on local governments such as municipalities and special districts?

SOURCE: U.S. Census Bureau, 2012 Census of Governments: Finance—Survey of State Government Finances at [www.census.gov/govs/state](http://www.census.gov/govs/state).

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# Judicial Federalism

## 3.6 Explore the role of the judiciary as arbiter of federal–state conflicts.

**T**he U.S. Supreme Court has always played an important role as the umpire of the federal system. When governmental powers, especially those of the state and national governments, come into conflict, it is the Court’s job to determine which government is supreme. As detailed throughout this chapter, the Court has played the role of umpire at many transformational times in American history, including the founding, the Civil War, and during the Great Depression. The modern Supreme Court is no exception.

### □ The Rehnquist Court

From the 1930s until the 1980s, the Court made its federalism decisions largely outside of the public eye. While the Court under Chief Justice Earl Warren in the 1950s and 1960s attracted a great deal of attention, it was largely for the justices’ decisions on civil rights and liberties issues, not the Court’s decisions on the balance of power between the state and national governments. Through the process of incorporation, which bound state governments to the provisions of the U.S. Constitution, however, many of these decisions had the result—intended or not—of expanding federal power at the expense of subnational units.

Beginning in the late 1980s, however, the Court’s willingness to allow Congress to regulate in a variety of areas waned. This revolution was led by a group of new justices appointed by President Ronald Reagan. These judges, including Justices Sandra Day O’Connor, Antonin Scalia, and Anthony Kennedy, were committed to the notion of states’ rights and to rolling back federal intervention in many areas. The leadership of a conservative chief justice William H. Rehnquist, only served to intensify the changing perspective.

According to one observer, the federalism decisions made by the Rehnquist Court in the 1980s and 1990s were “a reexamination of the country’s most basic constitutional arrangements.”<sup>24</sup> The Court’s decisions largely agreed with the Republican states’ rights view evident in the policies of the Reagan administration and the Contract with America Congresses. For example, in *U.S. v. Lopez* (1995), which involved the conviction of a student charged with carrying a concealed handgun onto school property, a five-person majority of the Court ruled that Congress lacked constitutional authority under the commerce clause to regulate guns within 1,000 feet of a school.<sup>25</sup> The majority concluded that, however well-intentioned, gun control laws, even those involving schools, were not substantially related to interstate commerce. Thus, they were a state, not a federal, matter.

### □ The Roberts Court

In 2005, following the death of Chief Justice Rehnquist, President George W. Bush appointed Chief Justice John Roberts to head the Supreme Court. A number of other changes in the composition of the Court, including the appointment of conservative Justice Samuel Alito and liberal Justices Sonia Sotomayor and Elena Kagan (by President Barack Obama) followed soon after.

Initially, the Roberts Court appeared to avoid federalism cases, especially those involving constitutional issues. It did accept a handful of cases involving preemption or long forgotten commerce clause interpretations. However, beginning with its 2011 term, the Court thrust itself into the federalism debate, deciding a series of visible cases. These cases considered issues such as immigration (discussed in the opening vignette), redistricting, and health care.<sup>26</sup> Much to the surprise of many Court-watchers, in both the immigration and health care cases, the Roberts Court appeared

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to side with the power of the national government. More accurately, however, the Roberts Court's decisions are not intended to favor one level of the federal system over the other. Instead, the goal of these rulings appears to be protecting individual liberties above all else.

## Toward Reform: Balancing National and State Power

**3.7** Assess the challenges in balancing national and state powers and the consequences for policy making.

**A**s we have seen throughout this chapter, attempting to find equilibrium between the powers and responsibilities of national and state governments is one of the greatest challenges of a federal system. The roles and relative strengths of the national and state governments in the United States have changed over time and continue to evolve today. Here, we explore the current status of this relationship, and examine its consequences for policy making.

### □ The Price of Federalism

In 1995, political scientist Paul E. Peterson published his seminal exploration of the balance between state and national powers, *The Price of Federalism*.<sup>27</sup> In this book, Peterson considered how governments should best divide policy-making responsibility into two broad issue areas: redistributive and developmental policies. Redistributive policies are those whereby the government collects money (usually through taxation) from one group of citizens to finance a service, such as health care or welfare, for another group of citizens. In contrast, developmental policies are those designed to strengthen a government's economic standing, such as building roads and other infrastructure. The national government's greater financial resources and ability to ensure a uniform standard, Peterson argued, made it better suited to handle redistributive programs. In contrast, developmental programs would be best left to state governments, which are closer to the people and better able to assess and address regional needs.

The problem with this arrangement—and the price of American federalism—is that, historically, the division of power has not followed this pattern. The national government and members of Congress in particular have had reelection incentives to create and fund programs that have a direct impact on constituents. As a result, administration of redistributive policies often fell to the states, perhaps with federal financial assistance.

In more recent years, however, the federal government, while not totally abandoning developmental projects, has begun to take greater responsibility for redistributive policies. One such example is the passage of the No Child Left Behind Act of 2001 (NCLB), the first comprehensive federal education legislation, discussed earlier in this chapter.

States are not entirely satisfied with these steps toward policy efficiency. Under the Tenth Amendment, state and local governments traditionally have controlled education policy. Many states and localities view NCLB as an unprecedented **preemption** of state and local powers.

### □ Progressive Federalism

During his first term, President Barack Obama appeared receptive to a pragmatic movement known as **progressive federalism**. Advocates of progressive federalism view the relationship between the states and the national government as both coercive and cooperative.<sup>28</sup> The form taken by the relationship depends chiefly on the political environment at each level of government. The best and first option is when the federal government is able to reach consensus and establish a national standard.

#### **preemption**

A concept that allows the national government to override state or local actions in certain policy areas.

#### **progressive federalism**

A pragmatic approach to federalism that views relations between national and state governments as both coercive and cooperative.

3.1

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David Sipress / The New Yorker Collection / www.cartoonbank.com



*"Stop! Wait! Government's no longer the problem—it's the solution."*

#### HOW DO VIEWS ON THE ROLE OF GOVERNMENT CHANGE?

Depending on the party in power and the political climate, the national government may be viewed as either a necessary evil or simply evil. Progressive federalism acknowledges both of these viewpoints, taking a pragmatic approach to balancing the authority of state and national governments.

However, failing the national government's ability to enact a particular proposal, national policy makers may embrace states' efforts to address that policy issue, particularly when those in power agree with the outcome of the state policy-making process. This approach allows policy makers to achieve their goals gradually and encourages states to act as what U.S. Supreme Court Justice Louis Brandeis called "laboratories of democracy."

Perhaps the most visible attempt by the Obama administration to create a national mandate was the passage of the 2010 Patient Protection and Affordable Care Act, which established a variety of mechanisms to ensure that nearly all Americans had access to health insurance. Part of this health care reform legislation also included significant changes in the Medicaid program administered by the state governments. Almost immediately after the ink was dry on the president's signature on the act, a group of state governments challenged the constitutionality of the act. They charged that it exceeded the federal government's power to regulate interstate commerce. The Supreme Court, however, upheld the constitutionality of the law, citing the federal government's power to tax as a justification for Congress' authority to enact the health care reform legislation.

In other areas, the Obama administration permitted state governments to take the lead. In 2009, for example, Obama allowed the state of California to impose stricter limits on greenhouse gas emissions from cars and trucks than those established by the Environmental Protection Agency (EPA). This resolved a long-standing conflict between the states and the federal government and opened the door for a number of other states to follow California's lead.

More recently, President Obama has tried to employ progressive federalism to circumvent the inactivity of the national government. For example, he called on governors to act on issues such as immigration that have languished in a Congress marked by partisan divisions. This approach is not without its critics; some commentators claim that the discontinuity between states on issues such as same-sex marriage and medicinal marijuana creates an individualized "free-for-all federalism" that is both confusing and unfair to the American people.

# Review the Chapter

## Roots of the Federal System

- 3.1** Trace the roots of the federal system and the Constitution's allocation of powers between the national and state governments, p. 58.

The national government has both enumerated and implied powers under the Constitution. National and state governments share an additional group of concurrent powers. Other powers are reserved to the states or the people, or expressly denied to both governments. The powers of the national government are ultimately declared supreme. Local governments are not expressly mentioned in the constitution but are formed when state governments delegate their sovereign authority.

## Federalism and the Marshall Court

- 3.2** Determine the impact of the Marshall Court on federalism, p. 64.

The Supreme Court under the leadership of John Marshall played a key role in defining the relationship and powers of the national government through its broad interpretations of the supremacy and commerce clauses.

## Dual Federalism: States' Rights, the Civil War, and Reconstruction

- 3.3** Describe the emergence and decline of dual federalism, p. 66.

Dual federalism was characterized by a system of separate but equally powerful state and national governments. This system was exemplified by states' authority to regulate issues such as slavery, evident in the doctrine of nullification and the Supreme Court's decision in *Dred Scott v. Sandford* (1857). The Civil War changed forever the nature of federalism. A further departure from dual federalism became evident with the ratification of the Sixteenth and Seventeenth Amendments in 1913.

## Cooperative Federalism: The Growth of National Government

- 3.4** Explain how cooperative federalism led to the growth of the national government at the expense of the states, p. 69.

The notion of equally powerful but separate national and state governments met its demise in the wake of the Great Depression. Franklin D. Roosevelt's New Deal ushered in an era of cooperative federalism, in which the powers of the national and state and local governments became more integrated, working together to solve shared problems.

## Federal Grants to State and Local Governments

- 3.5** Describe how the federal budget is used to further influence state and local governments' policies, p. 72.

The federal government provides money to states in a number of ways, including categorical grants, block grants, and programmatic requests. Problems may result when the federal government creates programs without providing sufficient funds. These are called unfunded mandates.

## Judicial Federalism

- 3.6** Explore the role of the judiciary as an arbiter of federal-state conflicts, p. 76.

The Supreme Court has always been an important arbiter of the relationship between national and state governments. While many of the decisions of the Rehnquist Court favored state governments, more recent decisions by the Roberts Court have favored national power in areas such as immigration and health care.

## Toward Reform: Balancing National and State Power

- 3.7** Assess the challenges in balancing national and state powers and the consequences for policy making, p. 77.

The roles and relative strengths of the national and state governments have changed over time. Some political scientists argue that the national government is best suited for redistributive policy and the states for developmental policy. Progressive approaches to federalism combine coercion and cooperation to achieve desired policy objectives.

## Learn the Terms



Study and Review the Flashcards

*Barron v. Baltimore* (1833), p. 66  
bill of attainder, p. 61  
block grant, p. 73  
categorical grant, p. 73  
charter, p. 63  
concurrent powers, p. 61  
confederation, p. 58  
cooperative federalism, p. 69  
county, p. 63  
Dillon's Rule, p. 63  
*Dred Scott v. Sandford* (1857),  
p. 67  
dual federalism, p. 66

enumerated powers, p. 59  
*ex post facto* law, p. 61  
extradition clause, p. 62  
federal system, p. 58  
full faith and credit clause, p. 62  
*Gibbons v. Ogden* (1824), p. 64  
implied powers, p. 59  
interstate compacts, p. 62  
*McCulloch v. Maryland* (1819), p. 64  
municipality, p. 63  
New Deal, p. 70  
New Federalism, p. 73  
nullification, p. 67

preemption, p. 77  
privileges and immunities clause,  
p. 62  
programmatically requests, p. 74  
progressive federalism, p. 77  
reserved powers, p. 60  
Seventeenth Amendment, p. 69  
Sixteenth Amendment, p. 69  
special district, p. 63  
Tenth Amendment, p. 60  
unitary system, p. 58

## Test Yourself



Study and Review the Practice Tests

- Under the Constitution, both the national and state governments
  - are totally autonomous.
  - do not share any powers.
  - are accountable to the people.
  - can regulate interstate commerce.
  - are able to establish local governments.
- The Tenth Amendment provides for
  - states' reserved powers.
  - states' implied powers.
  - concurrent state and federal powers.
  - enumerated federal powers.
  - taking private property for public purposes.
- In *Gibbons v. Ogden*, the U.S. Supreme Court
  - articulated an expansive view of congressional powers.
  - gave Robert Fulton the exclusive right to operate steamships on the Hudson River.
  - concluded that commerce should be given a broad definition.
  - declared that the states had sole authority to regulate commerce.
    - I only
    - II and III
    - I and II
    - III and IV
    - I and III
- The Supreme Court held in *Barron v. Baltimore* that
  - Congress had broad powers to regulate interstate commerce.
  - the Bill of Rights did not apply to state governments.
  - Congress lacked the ability to ban slavery.
  - the city of Baltimore could not nullify laws passed by Congress.
  - states could not tax the federal bank.
- Nullification
  - was used to justify South Carolina's refusal to abide by federal tariff laws.
  - is a political maneuver in which Congress purposefully invalidates state laws by passing national laws.
  - is a principle that allows states to invalidate laws from other states.
  - played no part in the development of the Civil War.
  - was deemed unconstitutional after the Supreme Court invalidated the Alien and Sedition Acts.
- The Great Depression led to
  - a variety of innovative programs to combat terrorism.
  - greater adherence to the philosophy of dual federalism.
  - a growth in national government activity.
  - a provision allowing the election of President Franklin D. Roosevelt for four terms.
  - the increased use of unfunded mandates.

**7.** New Federalism favors \_\_\_\_\_ over \_\_\_\_\_ grants.

- a. block/categorical
- b. categorical/block
- c. funded mandates/categorical
- d. block/unfunded mandates
- e. block/funded mandates

**8.** In general, the Rehnquist Court's federalism decisions empowered

- a. both state and national governments.
- b. the state governments at the expense of the national government.
- c. the national government at the expense of the states.
- d. neither the state nor the national government.
- e. local governments at the expense of the state and national governments.

**9.** The No Child Left Behind Act is an example of

- a. a block grant.
- b. returning power to the states.
- c. a funded mandate.
- d. preemption.
- e. a categorical grant.

**10.** According to the text, which of the following best exemplifies the cooperative aspects of progressive federalism?

- a. Bailing out the failing automobile industry
- b. Health care reform
- c. Allowing states to set emissions standards
- d. Creating of the U.S. Department of Education
- e. Reforming Social Security and Medicare