Following passage of the 2010 Affordable Care Act (ACA), 26 states sued the national government over the new law. Intended to provide health care coverage to more than 30 million uninsured Americans, the law seemed to these states to be an unconstitutional overreach of federal power: "the individual mandate exceeds Congress's enumerated powers, the Medicaid expansions are unconstitutionally coercive, and the employer mandates impermissibly interfere with state sovereignty." This is the federalism triteact, hitting on all three major themes concerning the balance of power among levels of government: (1) Congress's power to enact broad national legislation under the Constitution's commerce clause, (2) Congress's power to compel states to act through "coercive federalism," and (3) states' sovereign powers under the Tenth and Eleventh Amendments.

Supporters of the law argued that standardizing these provisions across all 50 states was crucial to ensuring health care for all Americans because otherwise millions of Americans would be unable to get health insurance. At present some states do an excellent job of providing access to health care, but others do not. As President Obama explained when signing the legislation, "we have now just enshrined—as soon as I sign this bill—the core principle that everybody should have some basic security when it comes to their health care." Furthermore, the national law eliminates state-based insurance monopolies that drive up health care costs; competition across state lines through the health insurance exchanges mandated by the ACA will help keep health care costs lower.

Should the government require all Americans to have health insurance? While individual Americans disagreed about this question, the states and the federal government also disagreed about whether Congress could force the states to implement the Affordable Care Act.
The Obama administration and other supporters of the law have rebutted each of the challenges to its constitutionality. The strongest legal challenge to the law is whether Congress can force individuals to buy health insurance under the commerce clause of the Constitution. Opponents say that the decision to not buy insurance is not economic activity (but rather is “inactivity”) and therefore cannot be regulated by Congress. Supporters point out that everyone participates in the health care system at some point: people who do not buy insurance drive up health care costs for those who do have insurance because the uninsured use emergency rooms when they get sick or injured (which is much more expensive than normal care). Therefore, supporters say, the decision not to buy insurance does have an impact on economic activity.

Opponents’ objection regarding “coercive federalism” concerns the national government’s expanding of Medicaid eligibility while shifting more of the costs of Medicaid onto the states. Supporters say that states could opt out by not accepting the federal money, in which case they would not be forced to do anything. Finally, proponents argue that the Tenth and Eleventh Amendments do not restrain Congress from enacting laws that are “necessary and proper” under their Article I powers. The Supreme Court largely upheld the ACA, but there were two parts of the decision that accepted the critics’ view and have important implications for federalism. First, the basis for upholding the controversial individual mandate was Congress’s taxing power, rather than the commerce clause. The Court agreed with critics of the law who argued that Congress’s power to regulate interstate commerce does not apply to penalizing economic inactivity (that is, failing to buy health insurance). Second, the Court ruled that the expansion of Medicaid, which would provide health care for an additional 17 million low-income Americans, was unconstitutionally coercive in requiring states to expand Medicaid or lose all their federal funding for the existing Medicaid program. States could still choose to accept the federal funds to expand Medicaid, but they would not lose their other Medicaid funding if they opted out of the expansion (as of this writing, ten states have indicated that they may opt out).

The battles over the ACA illustrate our central theme that politics is about conflict and compromise. Our system of federalism is bound to produce conflict as the national and state governments disagree over the best direction for any specific policy. Sometimes disputes are resolved by the national government imposing its views on the states. In that instance, there may appear to be little compromise. However, even in the case of health care reform, the states still have a significant impact on the policy’s implementation.

Federalism also illustrates our other two themes. By dividing power across the levels of government, federalism highlights the importance of the political process. While the U.S. Congress wrote the ACA law, the 50 states will be implementing it, which means that the political process of each state will come into play. Federalism also shows that politics is everywhere: decentralizing power across levels of government provides a much broader range of individual-level choices than a unitary system does. For example, a retiree trying to decide where to live could choose between low-tax, low-service states such as Texas and high-tax, high-service states such as New York. Business owners often decide where to locate a new facility by considering the “business climate”—the corporate tax structure, environmental laws, regulatory policy, and levels of education and unionization of the workforce. States differ in regard to these factors because our federal system gives them autonomy to choose policies that meet their residents’ needs.
WHAT IS FEDERALISM AND WHY DOES IT MATTER?

Federalism can be defined as a form of government that divides sovereign power across at least two political units. Dividing sovereign power means that each unit of government (in the U.S. context, the national and state governments) has some degree of authority and autonomy. As discussed in Chapter 2, this division of power across levels of government is central to the system of separated powers in the United States. The concept of dividing power across levels of government seems simple, but as we will see later in this chapter, the political battles over how that power is divided have been intense.

In practical terms, federalism is about intergovernmental relations: how the different levels of government interact, and how power is divided. But even that may seem a little abstract. Why does federalism matter? On a broad range of issues, the level of government that dictates policy can make a real difference. The conflict over health care reform is an obvious example, but other recent issues include whether the national government should be able to prevent states from allowing marijuana use for medical purposes or allowing assisted suicides, or be able to compel states to ban guns within or around public schools or set a uniform speed limit on federal highways. These questions involve defining the disputed boundaries between what the states and national government are allowed to do. Much of U.S. history has been rooted in this struggle to define American federalism.

Another important point concerns the politics of federalism: while the states’ rights perspective of federalism has traditionally been associated with conservative political causes (most prominently, opposition to civil rights and racial integration in the South in the 1950s and 1960s, and more recently opposition to health care reform), the division of power across the local, state, and national governments suggests a more complex reality.

federalism  The division of power across the local, state, and national governments.

sovereign power  The national and state government each have some degree of authority and autonomy.

THE RELATIONSHIP BETWEEN THE

national government and the states also involves cooperation. After a series of devastating

tornadoes hit the Midwest and the South in 2011, President Obama and federal agencies worked with

the states to provide emergency relief funds and services. Here, President Obama visits Joplin,

Missouri, with Governor Jay Nixon.
care reform and gun control), on many issues such as environmental policy and gay rights the states have been pushing for more progressive policies than the federal government sets.

Thus federalism influences both the direction of policy outcomes and the politics of the process, but with evolving roles for the national and state governments. Before we consider the changing balance of intergovernmental power in American federalism, however, we will take a closer look in this section at what federalism means.

LEVELS OF GOVERNMENT AND THEIR DEGREES OF AUTONOMY

A distinguishing feature of federalism is that each level of government has some degree of autonomy from the other levels; that is, each level can carry out some policies that the others may not prefer. In the United States, this means that the national and state governments have distinct powers and responsibilities. The national government, for example, is responsible for national defense and foreign policy. State and local governments have primary responsibility for conducting elections and promoting public safety, or police powers. In other areas, such as transportation, the different levels of government share responsibilities in the concurrent powers (see Nuts and Bolts 3.1). The national government also has additional responsibilities through implied powers that are inferred from the powers explicitly granted in the Constitution (see later discussion in this chapter).

Local governments—cities, towns, school districts, and counties—are not autonomous units of government. State governments create them and control the types of activities they can engage in, by specifying in the state charter either what they can do or only what they cannot do (that is, they are allowed to do anything not prohibited in the charter). Despite this lack of autonomy, local governments play an important role in providing public education, police and fire departments, and land use policies. They also raise money through property taxes, user fees, and in some cases local sales taxes. But overall, local governments do not directly share power within our federal system with the state and national governments because of their lack of autonomy.

A COMPARATIVE PERSPECTIVE

It is useful to compare U.S. federalism to forms of government in other countries. In some countries, power is centralized within the national government. This system is known as a unitary government. Unitary governments are the most common in the modern world (about 80 percent); examples include the United Kingdom, Israel, Italy, France, Japan, and Sweden. In these countries, the states or subunit governments are not autonomous; they cannot carry out policies if the national government opposes them. At the opposite end of the spectrum is a confederal government, in which the states have most of the power and often can veto the actions of the central government. This was the first type of government in the United States under the Articles of Confederation. Because there
## National and State Responsibilities

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Print money</td>
<td>Issue licenses</td>
<td>Collect taxes</td>
</tr>
<tr>
<td>Regulate interstate commerce and international trade</td>
<td>Regulate intrastate [within the state] businesses</td>
<td>Build roads</td>
</tr>
<tr>
<td>Make treaties and conduct foreign policy</td>
<td>Conduct elections</td>
<td>Borrow money</td>
</tr>
<tr>
<td>Declare war</td>
<td>Establish local governments</td>
<td>Establish courts</td>
</tr>
<tr>
<td>Provide an army and navy</td>
<td>Ratify amendments to the Constitution</td>
<td>Make and enforce laws</td>
</tr>
<tr>
<td>Establish post offices</td>
<td>Promote public health and safety</td>
<td>Charter banks and corporations</td>
</tr>
<tr>
<td>Make laws necessary and proper to carry out these powers</td>
<td>May exert powers the Constitution does not delegate to the national government or does not prohibit the states from using</td>
<td>Spend money for the general welfare; take private property for public purposes, with just compensation</td>
</tr>
</tbody>
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### Powers Denied to the National Government

- May not violate the Bill of Rights
- May not impose export taxes among states
- May not use money from the Treasury without an appropriation from Congress
- May not change state boundaries

### Powers Denied to State Governments

- May not enter into treaties with other countries
- May not print money
- May not tax imports or exports
- May not interfere with contracts
- May not suspend a person’s rights without due process


There are many problems associated with having such a weak national government (see Chapter 2), few successful modern examples exist. The Commonwealth of Independent States (CIS), which formed in 1991 after the breakup of the Soviet Union, was initially successful as a confederal structure, but rifts among the member states today are making it largely ineffective.⁶

Although true confederations are rare, **intergovernmental organizations** have proliferated in recent decades. More than 1,200 multilateral organizations have been created by member nations seeking to coordinate their policies on, for example, economic activity, security, or environmental protection. The United Nations (UN), the International Monetary Fund (IMF), and the North Atlantic **intergovernmental organizations** Organizations that seek to coordinate policy across member nations.
Treaty Organization (NATO) are important examples. The European Union is an intergovernmental organization that began as a loose confederation, but it is becoming more federalist in its decision-making process and structure.

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**BALANCING NATIONAL AND STATE POWER IN THE CONSTITUTION**

Although our nation's Founders wanted a national government that was stronger than it had been under the Articles of Confederation, they also wanted to preserve the states' autonomy. These goals are reflected in different parts of the Constitution, which provides ample evidence for advocates of both state-centered and nation-centered federalism. The nation-centered position appears in the document's preamble, which begins, "We the People of the United States," compared to the Articles of Confederation, which began, "We the undersigned delegates of the States." The Constitution's phrasing emphasizes the nation as a whole over the separate states.

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**A STRONG NATIONAL GOVERNMENT**

Other aspects of the Constitution also support the nation-centered perspective. These reflect the Founders' desire for a strong national government to provide national security and a healthy, efficient economy.

In terms of national security, Congress was granted the power to raise and support armies, declare war, and "suppress Insurrections and repel Invasion," while the president, as commander in chief of the armed forces, would oversee the conduct of war. Congress's power to regulate interstate commerce promoted economic efficiency and centralized an important economic power at the national level, and many restrictions on state power had similar effects. States were prohibited from entering into "any Treaty, Alliance, or Confederation" or keeping troops or "Ships of War" during peacetime. They also could not coin money or impose duties on imports or exports (see Article I, Section 10). These provisions ensured that states would not interfere with the smooth operation of interstate commerce or create problems for national defense. Imagine, for example, that Oklahoma had the power to tax oil produced in other states or that California decided to create its own army. This would create inefficiencies and potential danger for the rest of the country.

The necessary and proper clause (Article I, Section 8) was another broad grant of power to the national government: it gave Congress the power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." Similarly, the national supremacy clause (Article VI) says that the Constitution and all laws and treaties that are made under the Constitution shall be the "supreme Law of the Land" and that "the Judges in every State shall be bound
thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” This is perhaps the clearest statement of the nation-centered focus of the Constitution. If any state law or state constitution conflicts with national law or the Constitution, the national perspective wins. Thus, the laws passed by states to limit implementation of the ACA will have no effect now that the Supreme Court upheld the central parts of the national law.

STATE POWERS AND LIMITS ON NATIONAL POWER

Despite the Founders’ nation-centered bias, many parts of the Constitution also address state powers and limits on national power. Article II gives the states the power to choose electors for the electoral college, and Article V grants the states a central role in the process of amending the Constitution. Three-fourths of the states must ratify any constitutional amendment (either through conventions or the state legislatures, as specified by Congress), but the states can also bypass Congress in proposing amendments if two-thirds of the states call for a convention. This route to amending the Constitution has never been used, but the Founders clearly wanted to provide an additional check on national power.

Article I of the Constitution enumerates many powers for Congress, but the list of state powers is much shorter. One could interpret this as more evidence for the nation-centered perspective, but at the time of the Founding the default position was to keep most power at the state level. Therefore, the federal powers that were exceptions to this rule had to be clearly specified, while state governments received authority over all other matters. The Tenth Amendment supports this view, saying, “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.”

The Eleventh Amendment, the first one passed after the Bill of Rights, was another important affirmation of state sovereignty. Antifederalists were concerned that the part of Article III that gave the Supreme Court authority over cases involving a “State and Citizens of another State” would undermine state sovereignty by giving the Court too much power over state laws. Federalists assured them this would not happen, but the Supreme Court ruled in Chisholm v. Georgia (1793) that citizens of one state could sue the government of another state. The majority opinion ridiculed the “haughty notions of state independence, state sovereignty, and state supremacy.” The states struck back by adopting the Eleventh Amendment, which made such lawsuits unconstitutional. While the Supreme Court lost this skirmish over state power, it continued to serve as the umpire in disputes between the national and state governments.

CLAUSES THAT FAVOR BOTH PERSPECTIVES

Article IV of the Constitution has elements that favor both the state-centered and the nation-centered perspectives. For example, its full faith and credit clause specifies that states must respect one another’s laws, granting citizens the “Full Faith and Credit” of their home state’s laws if they go to another state. At the same time, though, the article’s privileges and immunities clause says

full faith and credit clause Part of Article IV of the Constitution requiring that each state’s laws be honored by the other states. For example, a legal marriage in one state must be recognized across state lines.

privileges and immunities clause Part of Article IV of the Constitution requiring that states must treat nonstate residents within their borders as they would treat their own residents. This was meant to promote commerce and travel between states.
that citizens of each state are "entitled to all Privileges and Immunities" of citizens in the other states, which means that states must treat visitors from other states the same as their own residents. This part of the Constitution favors a nation-centered perspective because it was intended to promote free travel and economic activity among the states.

There are many examples of the full faith and credit clause at work today. If you have a New York driver's license and are traveling to California, you do not need to stop at every state line to get a new license; each state will honor your New York license. Similarly, a legal marriage in one state must be honored by another state, a provision that has fueled the ongoing controversy over same-sex marriage. In 1996, after Hawaii courts gave homosexual marriages most of the same legal rights as heterosexual marriages, many states passed laws saying they would not have to honor those marriages. Similarly, Congress passed the Defense of Marriage Act, which said that states would not have to recognize same-sex marriages. Hawaii courts have since overturned the decision to recognize same-sex marriages, but as of late 2012 nine states allow gay marriages and five states recognize civil unions between homosexual partners, but not marriage. However, current law holds that the full faith and credit clause does not apply to gay marriage because of the "policy exception."

We can also cite examples of the privileges and immunities clause at work in a modern context. For example, Michigan cannot charge the owner of a lake cabin different property taxes based on whether she lives in Michigan or in another state. Also, states may not deny welfare benefits to new residents or deny police protection to visitors even though they do not pay state taxes. However, states are allowed to make some distinctions between residents and nonresidents. For example, states do not have to permit nonresidents to vote in state elections, and public colleges and universities may charge out-of-state residents higher tuition than in-state residents. Therefore, the privileges and immunities clause cuts both ways on the question of the balance of power: it allows the states to determine and uphold these laws autonomously, but it also emphasizes that national citizenship is more important than state citizenship.

The Constitution sets the boundaries for the battles over federalism. For example, no state can decide to print its own currency, and the U.S. government cannot take over any public school district in the country. But within those broad boundaries, the balance between national and state power at any given point in history is a political decision, the product of choices made by elected leaders and the courts. Decisions by the Supreme Court have figured prominently in this evolution.
THE EVOLVING CONCEPT OF FEDERALISM

The nature of federalism has changed as the relative positions of the national and state governments have evolved. In the first century of our nation's history, the national government played a relatively limited role and the boundaries among the levels of government were distinct. As the national government took on more power in the twentieth century, intergovernmental relations became more cooperative and the boundaries less distinct. Even within this more cooperative framework, federalism remains a source of conflict within our political system as the levels of government share law-making authority (as the health care example that opened the chapter illustrates).

THE EARLY YEARS

As the United States gained its footing, clashes between the advocates of state-centered and nation-centered federalism evolved into a partisan struggle. The Federalists (the party of George Washington, John Adams, and Alexander Hamilton) controlled the new government for its first twelve years and favored strong national power. Their opponents, the Democratic-Republicans (led by Thomas Jefferson and James Madison), favored state power.

ESTABLISHING NATIONAL SUPREMACY

The first confrontation came when the Federalists established a national bank in 1791, over Jefferson's objections. This controversy did not come to a head until Congress chartered the second national bank in 1816. At that time the state of Maryland, which was controlled by the Democratic-Republicans, tried to tax the National Bank's Baltimore branch out of existence, but the head cashier of the bank refused to pay the tax and the case eventually ended up at the Supreme Court. The Court had to decide whether Congress had the power to create the bank, and if it did, whether Maryland had the right to tax the bank.

In the landmark decision McCulloch v. Maryland (1819), the Court ruled in favor of the national government on both counts. In deciding whether Congress could create the bank, the Court held that even though the word bank does not appear in the Constitution, Congress's power to create one is implied through its enumerated powers—such as the power to coin money, levy taxes, and borrow money. The Court also ruled that Maryland did not have the right to tax the bank because of the Constitution's national supremacy clause. Both the concept of implied powers and the validation of national supremacy were critical for establishing the centrality of the national government.

A few years later, the Supreme Court decided another case that cemented Congress's power to act based on the commerce clause. In Gibbons v. Ogden (1824), the Supreme Court held that Congress has broad power to regulate interstate commerce and struck down a New York law that had granted a monopoly to a private company operating steamboats on the Hudson River between New York and
In the early 1800s, the Supreme Court confirmed the national government's right to regulate commerce between the states. The state of New York granted a monopoly to a ferry company serving ports in New York and New Jersey, but this was found to interfere with interstate commerce and was therefore subject to federal intervention.

New Jersey. By granting this monopoly, the ruling stated, New York was interfering with interstate commerce.

Pressing for States' Rights

Despite such Court rulings in favor of national government, the following decades saw a push for broader states' rights, as when the southern states challenged federalism on issues such as tariffs and slavery. John Calhoun, a South Carolina senator, used the term nullification to refer to the same principle, urging South Carolina to ignore a tariff law passed by Congress in 1832. The states' rights perspective was at the center of the dispute between southern and northern states over slavery, which ultimately led to the secession of the Confederate states and, subsequently, the Civil War. The stakes were enormous in the battles over federalism: about 528,000 people died in that bloodiest of American wars. As Abraham Lincoln forcefully argued, concepts such as nullification and states' rights, when taken to their logical extremes, were too divisive to be allowed to stand. If states were allowed to ignore national laws, the basis of the United States would fall apart.

Dual Federalism

The ideas of states' rights and nullification did not produce the Civil War by themselves. They had some help from the Supreme Court's infamous Dred Scott decision. In this section we will discuss the significance of that case as well as the broader system of dual federalism, which defined intergovernmental relations for nearly the first 150 years of our nation's history.

For nearly three decades during the mid-1800s, the Supreme Court was able to limit the reach of the national government through Chief Justice Roger Taney's
vision of federalism, which is known as dual federalism (see Table 3.1). Under dual federalism the national and state governments were viewed as distinct, with little overlap in their activities or the services they provided. In this view the national government’s activities are confined to powers strictly enumerated in the Constitution, despite the necessary and proper clause and the implied powers endorsed in McCulloch v. Maryland. Within this framework of distinct national and state powers, the Taney Court expanded the power of the states over commerce in ways that would not be accepted today. For example, this Court gave the mayor of New York City the right to control immigration by requiring shipmasters to post bonds for foreign passengers who might later go on welfare, and it allowed the city of Philadelphia to require ships to use local captains when entering the harbor. Today these areas of commerce are regulated by Congress, not by local governments.

**DRED SCOTT AND CIVIL WAR**

The state-centered views of the Taney Court also produced a tragic decision, Dred Scott v. Sandford (1857). Dred Scott was a slave who had lived for many years with his owner in the free Wisconsin Territory but was living in Missouri, a slave state, when his master died. Scott petitioned for his freedom under the Missouri Compromise, which said that slavery was illegal in any free state. The Taney Court’s decision held that slaves were not citizens but private property, and that therefore the Missouri Compromise violated the Fifth Amendment because it deprived people (slave owners) of property without the due process of law. This unfortunate decision contributed to the Civil War, which started four years later.
AFTER THE SUPREME COURT STRUCK down the 1875 Civil Rights Act, southern states were free to impose Jim Crow laws. These state and local laws led to complete racial segregation, even for public drinking fountains.

years later, because it indicated that there could not be a political solution to the problem of slavery.

Ultimately the Civil War ended the dispute over slavery, but it did not resolve basic questions about the balance of power between the national and state systems. Right after the Civil War, the Constitution was amended to ensure that the Union's views on states' rights were the law of the land. The Civil War amendments banned slavery (the Thirteenth), prohibited states from denying citizens due process or equal protection of the laws (Fourteenth), and gave newly freed male slaves the right to vote (Fifteenth). The Fourteenth Amendment was the most important in terms of federalism because it served as the constitutional basis for many of the civil rights laws passed by Congress during Reconstruction.

THE SUPREME COURT AND LIMITED NATIONAL GOVERNMENT

However, the Supreme Court soon stepped in again to limit the power of the national government. In 1873 the Court reinforced the notion of dual federalism, ruling that the Fourteenth Amendment did not change the balance of power between the national and state governments despite its clear language aimed at state action. Moreover, the Court ruled that the Fourteenth Amendment right to due process and equal treatment under the law only applied to individuals' rights as citizens of the United States, not to their state citizenship. By extension, freedom of speech, freedom of the press, and the other liberties protected in the Bill of Rights only applied to laws passed by Congress, not to state laws. This distinction between state and national citizenship sounds odd today, partly because the Fourteenth Amendment has long been viewed as the basis for ensuring that states do not violate basic rights.

Ten years later, the Court overturned the 1875 Civil Rights Act, which guaranteed equal treatment in public accommodations. The Court argued that the Fourteenth Amendment did not give Congress the power to regulate private
conduct, such as whether a white restaurant owner had to serve a black customer, but only the conduct of state governments. This narrow view of the Fourteenth Amendment left the national government powerless to prevent southern states from implementing state and local laws that led to complete segregation of blacks and whites in the South (called Jim Crow laws) and the denial of many basic rights to blacks after northern troops left the South at the end of Reconstruction.

The other area in which the Supreme Court limited the reach of the national government concerned Congress’s power to regulate the economy through its commerce clause powers. In several cases in the late nineteenth and early twentieth centuries, the Supreme Court endorsed a view of laissez-faire capitalism—French for “leave alone”—aimed at protecting business from regulation by the national government. To this end, the Court defined clear boundaries between interstate and intrastate commerce, ruling that Congress could not regulate any economic activity that occurred within a state (intrastate).

On similar grounds the Court also struck down attempts by Congress to regulate child labor. In some instances, the Court’s laissez-faire perspective even led the justices to strike down state laws, as in one case that ruled unconstitutional a New York law limiting the working hours of bakers to no more than 60 hours a week or 10 hours a day. Therefore, the limits that the Court placed on Congress during this antiregulation phase did not necessarily tip the balance to the state governments. Rather, big business was the clear winner over both national and state government.

**COOPERATIVE FEDERALISM**

The Progressive Era policies of the early twentieth century and the New Deal policies of the 1930s ushered in a new period of American federalism. Now the national government became much more involved in activities that were formerly reserved for the states, such as education, transportation, civil rights, agriculture, social welfare, and management–labor relations. Starting in 1937 with the landmark ruling National Labor Relations Board v. Jones and Laughlin Steel Corporation, the Supreme Court gave Congress far more latitude in shaping economic and social policy for the nation.

**SHIFTING NATIONAL–STATE RELATIONS**

The type of federalism that emerged in the Progressive Era and blossomed in the late 1930s is called cooperative federalism, or “marble cake” federalism, as opposed to the “layer cake” model of dual federalism. As the image of a marble cake suggests, the boundaries of state and national responsibilities are not as well defined under cooperative federalism as under dual federalism. With the increasing industrialization and urbanization of the late 1930s and the 1940s, more complex problems arose that could not be solved at one level of government. Cooperative federalism adopted a more practical focus on intergovernmental relations and how to efficiently provide services. State and local governments maintained some influence as the implementers of national programs, but the national government played an enhanced role as the initiator of key policies.
Cooperative federalism accurately describes this important shift in national-state relations in the first half of the twentieth century, but it does not capture the complexity of modern federalism. The marble cake metaphor falls short in one important way: the lines of authority and patterns of cooperation are not as messy as implied by the swirly flow of chocolate through white cake. Instead, the 1960s metaphor of **picket fence federalism** is a better description of cooperative federalism in action. As the “How It Works” box shows, each picket of the fence represents a different policy area, and the horizontal boards that hold the pickets together represent the different levels of government. This is a much more orderly image than the marble cake, and it has important implications about how policy is made across levels of government.

The most important point is that activity within the cooperative federal system occurs within pickets of the fence—that is, within policy areas. Policy makers within a given policy area will have more in common with others in that area at different levels of government than with people at the same level of government who work on different issues. For example, someone working in a state’s education department will have more contact with people working in local school districts and in the national Department of Education than with people who also work at the state level but who focus on, say, transportation policy. Overall, this version of federalism provides good opportunities for coordination and the sharing of expertise within policy areas.

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**FEDERALISM TODAY**

Federalism today is a complex mix of all the elements our nation’s political system has experienced in the past. Our current system is predominantly characterized by cooperative federalism, but it has retained strong elements of national supremacy, dual federalism, and states’ rights. Therefore, rather than categorizing types of federalism into neat time periods, the following discussion characterizes the dominant tendency within each period, keeping in mind that competing versions of federalism have always been just below the surface (see Nuts and Bolts 3.2). In the past twenty years, the competing versions are so evident that this period could be considered the “era of balanced federalism.”

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**COOPERATIVE FEDERALISM LIVES ON:**

**FISCAL FEDERALISM**

The cooperative relationship between the national and state governments is rooted in the system of transfer payments, or grants from the national government to lower levels of government. This is called **fiscal federalism**. However, just because money flows from Washington does not mean that cooperation by the recipients follows. Depending on how the money is transferred, the national government can either help the local and state governments to achieve their own goals or use its centralized fiscal power to impose its will.
1. Which of the following best describes the system in the United States in the 1800s?
   a. layer cake federalism
   b. marble cake federalism
   c. picket fence federalism
   d. coercive federalism
   e. none of the above

2. Requiring all states to comply with the Motor Voter Act is an example of which version of federalism?
   a. layer cake federalism
   b. marble cake federalism
   c. picket fence federalism
   d. coercive federalism
   e. none of the above
### THE EVOLUTION OF FEDERALISM

<table>
<thead>
<tr>
<th>Type of Federalism</th>
<th>Period</th>
<th>Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dual federalism (layer cake)</td>
<td>1789–1937</td>
<td>The national and state governments were viewed as very distinct with little overlap in their activities or the services they provided. Within this period, federalism could have been state-centered or nation-centered, but relations between levels of government were limited.</td>
</tr>
<tr>
<td>Cooperative federalism (marble cake)</td>
<td>1937–present</td>
<td>This indicates greater cooperation and collaboration between the levels of government.</td>
</tr>
<tr>
<td>Picket fence federalism</td>
<td>1961–present</td>
<td>This version of cooperative federalism emphasizes that policy makers within a given policy area have more in common with others in their area at different levels of government than with people at the same level of government who work on different issues.</td>
</tr>
<tr>
<td>Fiscal federalism</td>
<td>1937–present</td>
<td>This system of transfer payments or grants from the national government to lower-level governments involves varying degrees of national control over how the money is spent: categorical grants give the national government a great deal of control while block grants involve less national control.</td>
</tr>
<tr>
<td>New federalism</td>
<td>1969–present</td>
<td>New federalism attempts to shift power to the states by consolidating categorical grants into block grants and giving the states authority over programs such as welfare.</td>
</tr>
<tr>
<td>Coercive federalism</td>
<td>1970s–present</td>
<td>This involves federal preemptions of state and local authority and unfunded mandates on state and local governments to force the states to change their policies to match national goals or policies established by Congress.</td>
</tr>
</tbody>
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**categorical grants** Federal aid to state or local governments that is provided for a specific purpose, such as a mass transit program within the transportation budget or a school lunch program within the education budget.

**block grants** Federal aid provided to a state government to be spent within a certain policy area, but the state can decide how to spend the money within that area.

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**GRANTS IN AID**

Today most federal aid to the states comes in one of two forms. **Categorical grants** are for specific purposes—they have strings attached, and therefore we discuss them in the section on coercive federalism below. **Block grants** are financial aid to states for use within a specific policy area, but within that area the states have discretion on how to spend the money. For example, Community Development Block Grants were started in 1974 to help state and local governments revitalize their communities; such grants may support ongoing programs or help with large capital expenditures, such as building a waste treatment plant or a highway. Since the 1970s, grants to the states as a proportion of the size of the national economy (gross domestic product, or GDP) has been relatively constant, while the rate of state and local spending has inched up (see Figure 3.1).

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**NEW FEDERALISM**

New Federalism, which shifted some important powers back to the states, was introduced in a limited form by Richard Nixon in the early 1970s and was revived
Since the early 1950s, federal spending as a percentage of the overall size of the economy has been flat, while the share of state and local spending has nearly tripled. What does this say about the debates between nation-centered and state-centered federalism?

Source: 2012 Statistical Abstract of the United States, Table 4.31, and the Bureau of Economic Analysis, Table 3.2 and Table 3.3 (accessed 8/16/12).

during Ronald Reagan’s presidency in the 1980s. In his inaugural address, Reagan emphasized, “All of us need to be reminded that the federal government did not create the states. The states created the federal government.” This classic statement of the states’ rights position is similar to the Antifederalists’ position at the Constitutional Convention.

Reagan’s goal of returning more power to the states involved consolidating seventy-seven categorical grants into nine general block grants that gave local politicians more control over how money was spent. This change reflected the belief that because state and local politicians were closer to the people, they would know better how to spend the money. However, the increase in state control came with a 25 percent cut in the amount of federal money granted to the states.

The next phase of New Federalism came when Republicans won control of Congress in 1994. Working with President Clinton, a moderate Democrat, Republicans passed several pieces of significant legislation that shifted power toward the states. For example, in 1996 the Personal Responsibility and Work Opportunity Act reformed welfare by creating a block grant to the states, Temporary Assistance to Needy Families (TANF), to replace the largest nationally administered welfare program. Another piece of legislation, the Unfunded Mandate
Reform Act of 1995, made it more difficult for Congress to impose **unfunded mandates** on the states.

The shift from categorical grants to block grants has not substantially affected the balance of power between the national and state governments. In fact, the amount of money going to the states through block grants has been surpassed by categorical grants since 1982. We will explore the reason for this below: Congress prefers categorical grants because they allow more control over how the money is spent.

**THE RISE OF COERCIVE FEDERALISM**

Despite the overall shift toward cooperative federalism, strong overtones of national government supremacy remain. Three important characteristics of American politics in the past forty years have reinforced the role of the national government: (1) reliance on the national government in times of crisis and war, (2) the “rights revolution” of the 1950s and 1960s, as well as the Great Society programs of the 1960s, and (3) the rise of coercive federalism.

**CRISIS AND WAR**

Even in the 1800s, during the period of dual federalism and strong state power, the national government’s decisive actions were needed during the Civil War to hold the nation together. More recently, following the September 11, 2001, terrorist attacks, most Americans expected the national government to improve national security and retaliate for the attacks. Even Republicans, who normally oppose increasing the size of government, largely supported President Bush’s proposal to create a cabinet-level Department of Homeland Security and the USA PATRIOT Act. Other major crises that occurred during the twentieth century (the Great Depression’s New Deal policies, the massive mobilization for World War II, and the response to the banking meltdown of 2008–09) also dramatically shifted the balance of power toward Washington.

**THE “RIGHTS REVOLUTION” AND GREAT SOCIETY PROGRAMS**

During the mid-twentieth century, the “rights revolution” created by the Supreme Court, as well as Lyndon Johnson’s Great Society programs, contributed to more national control over state policies. Landmark Court decisions thrust the national government into policy areas that had typically been reserved to the states. In the school desegregation and busing cases of the 1950s and 1960s, for example, the Court upheld the national goal of promoting racial equality and fighting discrimination over the earlier norm of local control of school districts. The rights revolution also applied to police powers, another area of traditional state control, including protection against self-incrimination and preventing illegally obtained evidence from being used in a criminal trial.

These Court actions were paralleled by a burst of legislation that tackled civil rights, education, the environment, medical care for the poor, and housing. These so-called Great Society policies gave the national government much more leverage over policy areas previously controlled by state and local governments.
For example, under the 1965 Voting Rights Act federal marshals were sent to the South to ensure that African Americans were allowed to vote. Another part of this act required local governments to submit changes in their electoral practices, including the boundaries of voting districts, to the Justice Department to make sure they did not have a discriminatory impact.

During this period, the national government also expanded its reach through an explosion in categorical grants, which the states sorely needed even though the monies came with strings attached. For example, the 1964 Civil Rights Act required nondiscrimination as a condition for receiving any kind of federal grants.

**Other Shifts Toward National Supremacy**

Categorical grants aimed at a broad national goal have also reinforced national supremacy in recent decades—for example, requiring a state drinking age of twenty-one before granting federal highway funds. This policy direction from Washington is part of a trend known as *coercive federalism*. The practice involves the use of federal regulations, mandates, or conditions to force or entice the states to change their policies to match national goals or policies established by Congress. The Clean Air and Water Acts, the Americans with Disabilities Act (which promotes handicapped access to public buildings and commercial facilities), and the “Motor Voter Act” (which requires states to provide voter registration services at motor vehicle departments) are all laws that forced states to change their policies. The laws most objectionable to the states are unfunded mandates, which require states to do certain things but force them to come up with the money on their own.

Along with these mandates, federal preemption is another method of coercive federalism. Derived from the Constitution’s national supremacy clause, *federal preemptions* involve the imposition of national priorities on the states. Many preemptions also include unfunded mandates, making the state and local governments pick up the tab for policies that the national government wants them to implement. The presidency of George W. Bush provided strong evidence of this shift toward national power. Beyond the apparent centralization of power associated with fighting terrorism, Bush pushed the national government into more areas that previously had been dominated by the states—including significant mandates and preemptions in education testing, sales tax collection, emergency management, infrastructure, and election administration.  

President Obama continued the shift toward national power with one of the most active domestic policy agendas since the New Deal of the 1930s. A $787 billion economic stimulus package of tax cuts and spending designed to address the financial collapse of 2008–09, a $938 billion health care reform law, cap-and-trade legislation, efforts to prop up and stimulate the battered housing industry, strengthened regulations of finance and banking, and an expanded jobs program all were on the agenda in Obama’s first term. Health care reform was especially controversial with state governments, many of which saw the law as an unwarranted expansion of federal power (recall this chapter’s opening discussion). This view was supported by the Supreme Court’s ruling that states could not be coerced by the federal government into expanding their Medicaid coverage. This Court decision means that there are limits on the scope of coercive federalism. While the overall impact of national health care reform is to centralize more power at the national level, states remain very important in this period of “balanced federalism,” as the next section demonstrates.
THE STATES FIGHT BACK

Most Americans support the national policies that have been imposed on the states: racial equality, clean air and water, a fair legal process, safer highways, and equal access to the voting booth. At the same time, there has always been strong support for state and local governments. In most national surveys, Americans typically say that they trust state and local government more than the national government. Indeed, the shift in public opinion toward favoring national power after the terrorist attacks of September 11 was temporary, and it appears that state and local governments quickly reasserted their position as the more trusted level of government.

States appear to be reversing their traditional role of resisting change and protecting the status quo. Lately, for example, they have taken the lead on environmental policy. Many policies to address climate change—including the development of renewable energy sources, carbon emissions limits, and carbon cap-and-trade programs—have been advocated at the state level. States have also taken a lead role on health care policy, immigration, gay marriage, and stem cell research. However, this willingness to fight back in recent years has not always been for progressive causes. Indeed, with the Republican gains in the 2010 midterm elections and the influence of the Tea Party movement, many states have been attempting to curb national power and protect their more conservative policies in a broad range of areas, including land use, gun control, immigration, and health care. For example, Alabama, Tennessee, and Washington are considering legislation that would assert local police powers over federal authority, even on federal lands. “There’s a tsunami of interest in states’ rights and resistance to an overbearing federal government; that’s what all these measures indicate,” said Gary Marbut, a states’ rights activist from Montana.

To complicate the ideological picture even more, one of the recent moves by states to resist national power cuts in the liberal direction: Vermont, Rhode Island, and Wisconsin have introduced legislation to require their governors to recall or take control of National Guard troops, arguing that the use of the National Guard by the federal government is unconstitutional (because Article I of the Constitution says that the “militia”—today’s National Guard—should only be used for defensive
purposes). Many of the state laws mentioned in this discussion will not stand up in federal court, but they are clearly a reflection of state frustration with assertions of federal power.

States have one important advantage over the national government when it comes to experimenting with new policies: their numbers. The fact that there are 50 states potentially trying a mix of different policies is another argument cited by advocates of state-centered federalism. In this view, such a mix of policies produces competitive federalism—competition among states to provide the best policies to attract businesses, create jobs, and maintain a healthy social fabric.\textsuperscript{24}

But competitive federalism can also create a “race to the bottom” as states compete in a negative way. For example, when states compete for businesses and jobs, they may do so by eliminating more environmental or occupational regulations than would be desirable. Likewise, a priority to keep taxes low may lead to cuts in benefits to those who can least afford it, such as welfare or Medicaid recipients.\textsuperscript{25} Thus while competitive federalism provides citizens with a broad range of choices about the type of government they prefer, it also can be a source of political conflict over the national direction of policy.

**FIGHTING FOR STATES’ RIGHTS: THE ROLE OF THE MODERN SUPREME COURT**

Just as the Supreme Court played a central role in defining the boundaries of dual federalism in the nineteenth and early twentieth centuries and in introducing a more nation-centered cooperative federalism in the late 1930s, today’s Court is once again reshaping federalism. But this time the move is decidedly in the direction of state power.

**THE TENTH AMENDMENT**

The Tenth Amendment ensures that all powers not delegated to the national government are reserved to the states or to the people. Interestingly, the amendment has had little significance except during the early 1930s and in the recent era.

Thirty-five years ago, a leading text on the Constitution said that the Tenth Amendment “does not alter the distribution of power between the national and state governments. It adds nothing to the Constitution.”\textsuperscript{26} To understand why, consider the following example. State and local governments have always controlled their own public schools. Thus public education is a power reserved to the states under the Tenth Amendment. However, a state law concerning public education is void if it conflicts with the Constitution or with a national law based on an enumerated power. For example, a state could not compel an 18-year-old to attend school if the student had been drafted to serve in the army. Under the Tenth Amendment, the constitutionally enumerated national power to “raise and support armies” would trump the reserved state power to support public education. This view supporting the primacy of national government power was validated as recently as 1985 when the Supreme Court ruled that Congress had the power to impose a national minimum wage law on state governments, even if this was an area of traditional state power.\textsuperscript{27}

But times change. With the appointment of three conservative justices in the 1980s who favored a stronger role for the states, the Court started to limit competitive federalism A form of federalism in which states compete to attract businesses and jobs through the policies they adopt.