

The reintroduction of the gray wolf in Idaho, Montana, and Wyoming caused tension among ranchers, state officials, and the U.S. Fish and Wildlife Service. At the same time, the wolves boosted tourism in the region. These vacationers are hoping to spot wolves in Yellowstone National Park.



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

By 2007, Idaho and Montana's wolf population had grown to the point at which the Fish and Wildlife Service agreed to return management of wolves to state agencies. However, environmentalists contested this decision. After much debate, Idaho and Montana regained management of wolves in 2011. In 2012, Wyoming also regained this authority.

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

6.2 The Establishment of a Federal System

The United States was the first nation-state founded with a federalist system of government. This system contributes to both a national and federal identity, making Americans proud of both their country and their state.

The framers of the Constitution formed a federalist system of government out of necessity. The delegates attending the Constitutional Convention in 1787 knew that the 13 states would be reluctant to give up any real power to a national government. As a result, the framers carefully configured how power should be divided among the national government and state governments.

The Constitutional Division of Powers

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

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

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

In addition, the Privileges and Immunities Clause says a state cannot discriminate against residents of other states or give its own residents special privileges. This means that if you move to a new state, you will enjoy all of the rights given to any other citizen of that state.

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

The Benefits of a Federal System

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

Federalism protects against tyranny of the majority.

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

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

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

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

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

The Federal System

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

Expressed Powers

- Coin money
- Set up a postal system
- Maintain military forces
- Declare war
- Regulate interstate and foreign commerce
- Regulate immigration
- Negotiate treaties with foreign countries

Concurrent Powers

- Guarantee civil rights and liberties
- Levy and collect taxes
- Provide for public safety
- Protect public health
- Establish courts
- Punish lawbreakers
- Borrow money
- Construct and maintain roads

Reserved Powers

- Conduct elections
- Establish local governments
- Establish schools
- Regulate marriage, divorce, and adoption
- Regulate intrastate commerce
- Provide fire and police protection
- Enact license requirements

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

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

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

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

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

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

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

The Drawbacks of a Federal System

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

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

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

6.3 The Evolution of Federalism

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

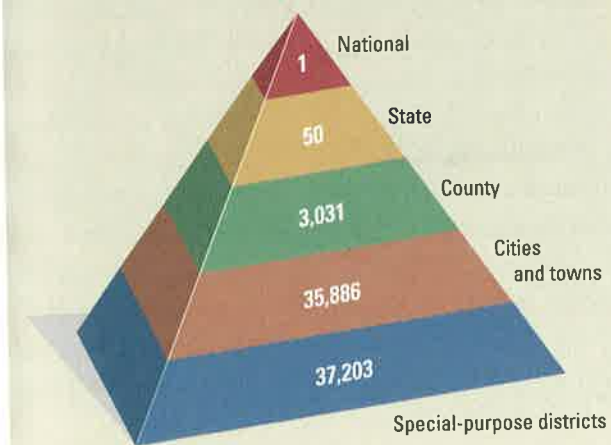
Dual Federalism: A Layer Cake of Divided Powers

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

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

Units of Government in the United States, 2012

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



Source: U.S. Census Bureau.

During the era of dual federalism, the Supreme Court sometimes played the role of referee between the states and the national government. For example, in *McCulloch v. Maryland* (1819), a case involving the creation of a national bank, the Court made it clear that federal laws took precedent over state laws when the two came into conflict.

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

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

grant of a monopoly to Ogden was unconstitutional.

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

Cooperative Federalism: A Marble Cake of Mixed Powers

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

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

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

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

—"The Federal System," 1960

The diagram "Dual Versus Cooperative Federalism" illustrates the differences between dual (layer cake) and cooperative (marble cake) federalism.

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