

EDITION

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Essentials



CHAPTER 03

Federalism

Chapter Goals

- Describe how the Constitution structures the relationship among the national, state and local government.
- Explain how the relationship between the federal and state governments has evolved over time.
- Analyze what difference federalism makes for politics and government.

Federalism: Overview

Federalism: is a constitutional arrangement in which power is distributed between a central government and sub-divisional governments, called states in the United States.

- Both units exercise direct authority over individuals.
- Sub-divisional governments are the 50 states.
- Local governments is composed of the thousands of counties, municipalities, townships, school districts and special districts.
- The United States Constitution divides power between the federal and state governments.

Federalism: Overview

A Practical Constitutional Solution

- Benefits for the United States
 - Allows for local control while having a strong national government capable of handling big problems.
 - Allows for a division of labor across the levels of government.
 - Allows policy experimentation and innovation at the state level.
 - Encourages competition among states and localities to attract individuals and businesses to maximize the efficiency of government services.
 - Makes intergovernmental relations possible by allowing the different levels of government to negotiate and compromise over policy responsibility.

Federalism: Overview

Why Federalism?

- The original states already existed at the time of the Revolution.
- The states created the federal government, not the other way around.
- The former colonists distrusted strong, central governments.

Federalism: Political Ramifications

A Practical Constitutional Solution

- Allowance for Many Political Subcultures
 - Rural v. Urban issues
 - Political parties and philosophies
- Arguments against Federalism
 - Powerful state and local interests may block progress and impede national plans.
 - Federalism not only affects political power but has policy implications as well.

Federalism: The Powers of the National Government

The Constitution grants two types of powers to Congress: **Expressed** and **Implied**.

- **Expressed powers:** These are specific powers in the Constitution that are granted to the Federal Government.
 - There are 17 expressed powers, which are found in **Article 1, Section 8**.
- **Implied powers:** These powers are not specifically expressed but are implied through expansive interpretation of delegated powers.
 - These powers are derived from the **necessary and proper clause**.
 - This clause provides Congress with the authority to make all laws “necessary and proper” to carry out its expressed powers.

Federalism: The Supremacy Clause

- Article 6 states that the Constitution and the laws enacted Congress shall be “*the supreme Law of the Land*”.
- Known as the “*supremacy clause*,” this means that when a federal and state law collide, the federal one will dominate
- All state office holders are bound to support the U.S. constitution.
- States cannot use their reserve or concurrent powers to prevent or undermine national policies.
- Prevents religious test as a qualification for holding office.

Federalism: The Powers of State Government

States have significant powers, too.

- Reserved Powers under the Tenth Amendment
- Police powers
- Concurrent powers

Federalism: Reserve Powers

Tenth Amendment: also known as the reserved powers amendment.

“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 Tenth Amendment allows states to pursue policies that are attuned with their political culture and public preferences. Policies that may be very popular in one state may be entirely unappealing in another.

Ex Guns, Gay marriage.

Federalism: Police Powers

Police powers

- Powers reserved to state government to regulate the health, safety, and morals of its citizens.
- Maintaining public order and safety.
- States also protect and regulate private property.

Federalism: Concurrent Powers

Some authority is possessed by both the state and national governments.

- This authority is referred to as **concurrent powers**, meaning that the states share some powers with the national government.
- Example:
 - States retain and share some power to regulate commerce.
 - Establish court system and police force.
 - Levy taxes.
 - They can grant or deny licenses for business or professionals.
 - They can regulate the conditions of labor.

Devolution: For Whose Benefit?

Prohibited Powers

- States cannot enter foreign treaties or alliances, coin money, pass bill of attainders, etc.
- States cannot impose taxes on the goods sold across state line.

Vertical and Horizontal Checks and Balances

- Horizontal control-separation of power between equal level of government.
- Vertical control- power sharing relationships

Federalism: States' Obligations to One Another

Full faith and credit clause comes from **Article IV, Section 1** of the Constitution.

States are expected to honor public acts, records, and judicial decisions that take place in another state.

- Birth certificate
- Marriage record
- Driver's license
- Criminal record

Federalism: The Comity Clause

The “comity clause” comes from **Article 4, Section 2** of the U.S. Constitution.

- This is also known as the **privileges and immunities clause**.
 - It guarantees that citizens enjoying the “privileges and immunities” of one state should be entitled to similar treatment in other states.
- A state cannot discriminate against someone from another state or give privileges to its own residents only.
- The comity clause also regulates criminal justice among the states by requiring states to return fugitives to the states from which they have fled.

Local Government and the Constitution

Local government has no status in the Constitution.

- Local governments are subject to control by the states.

However, most states give their larger cities *home rule*.

- **Home rule** refers to powers delegated by the state to a local unit of government to manage its own affairs.
- In recent years, however, some local governments have passed laws only to have state legislatures preempt, or remove, that authority.

Governments in the United States

TABLE 3.1 | Governments in the United States

TYPE	NUMBER
National	1
State	50
County	3,031
Municipal	19,495
Townships	16,253
School districts	12,754
Other special districts	38,542

SOURCE: U.S. Census Bureau, 2017 Census of Governments, Table 2, www.census.gov/data/tables/2017/econ/gus/2017-governments.html (accessed 1/21/2020).

Federalism: National and State Powers Have Shifted over Time

At the time of the Founding, the states far surpassed the federal government in their power to influence the lives of ordinary Americans.

- In the system of shared powers, the states played a much more active role in economic and social regulation than the federal government.
- It was not until the New Deal of the 1930s that the national government gained vast new powers.
- Since then, the states have asserted themselves at certain times and in certain policy areas, sometimes aided by the courts.
- But at other moments a crisis shifts power toward the national government again.

Federalism under the Traditional System

Dual federalism the system of government that prevailed in the United States from 1789 to 1937.

- Dual federalism refers the sharing of governmental powers between the federal and state governments.

Under dual federalism, the federal government was small.

- It dealt primarily with assisting commerce, such as building roads or protecting domestic industries with tariffs on imported goods.
- The emphasis in the early republic was in dealing with foreign affairs and commerce.

Governmental Functions in the Traditional System

TABLE 3.2 Governmental Functions in the Traditional Federal System, 1789–1937		
NATIONAL GOVERNMENT POLICIES (DOMESTIC)	STATE GOVERNMENT POLICIES	LOCAL GOVERNMENT POLICIES
Internal improvements Subsidies Tariffs Public land disposal Patents Currency	Property, estate, and inheritance laws Commerce and banking laws Corporate, occupations and professions, and insurance laws Family, morality, public health, and education laws Penal and criminal laws Eminent domain, construction, land use, water, and mineral laws Local government, election, and civil service laws	Adaptation of state laws to local conditions Public works Contracts for public works Licensing of public accommodation Zoning and other land-use regulation Basic public services

Dual Federalism: States' Governing Powers

States performed the majority of governing over citizens' day-to-day lives.

- Property law
- Civil law (marriage, divorce, adoption)
- Criminal law
- Economic regulations.

Dual federalism allowed states to experiment with policies.

- Very different sets of rights from state to state. *Ex: some states have generous levels of social spending and some states do not.*

Dual Federalism: Commerce Clause

Article 1, Section 8, known as the **commerce clause**, enumerates the powers of Congress.

- The commerce clause gives Congress the power to tax, raise an army, declare war, and “establish post offices.”
- It also gives Congress the power to “regulate commerce with foreign nations, and among the several States and with the Indian tribes.”
- Though its scope initially was unclear, this commerce clause would later form the basis for expanding federal government control over the economy.
- Federal government interpretation of the commerce clause has allowed it to interfere with the activities of the state governments.

Dual Federalism: Early Supreme Court Decisions

It took more than 150 years for the federal government to extend its power over the domestic sphere.

Over time the Supreme Court interpretation of dual federalism meant that the federal government could intervene in state activity through grants and subsidies, but bar the regulation of activities that was purely considered a local concern.

Dual Federalism: Early Supreme Court Decisions

Early Court decisions interpreted the commerce clause in favor of the national government.

McCulloch v. Maryland (1819)

- The Constitutional Questions:
 - Does Congress have the constitutional authority to create a national bank.
 - Can a state with its own bank impose a tax on a national bank.
- Court's Decision:
 - Congress does have the authority under the necessary and proper clause.
 - But no state may use its taxing power to tax an arm of the national government.

Dual Federalism: Early Supreme Court Decisions

Early Court decisions interpreted the commerce clause in favor of the national government.

Gibbons v. Ogden (1824)

- The Commerce Clause:
 - Congress has the authority to regulate commerce with foreign nations, among the state and with Indian tribes.
- The Background of the Case:
 - Centered around the operation of steamships between New York and New Jersey. The issue is what does commerce means, can the national government regulate commerce within the state and weather the regulation of commerce was a concurrent power or an exclusive power of the national government.
- Court's Ruling- ruled the power to regulate commerce is an exclusive national power even if it's exercised in state jurisdiction. Became the basis for the federal government regulations of all national activities.

Dual Federalism: States' Rights

Later in the nineteenth century, the national government tried to regulate commerce in areas such as fraud, product quality, and child labor.

- The Court declared these regulations to be unconstitutional.
- The Court ruled the federal government was entering local areas and regulating goods that had not yet passed into interstate commerce.
- To enter local workplaces was to exercise police power—a power reserved to the states.

Dual Federalism: States' Rights

No one questioned the power of the national government to regulate businesses that by their nature crossed state lines.

- However, the Supreme Court used the concept of interstate commerce as a barrier against most efforts by Congress to regulate local conditions.
- Thus, the Supreme Court for 70 years after the Civil War, enabled business to enjoy the benefits of national policies promoting commerce.
- At the same time, the Courts shielded business from policies that regulated commerce by protecting consumers and workers.

The New Deal: New Roles for Government

The New Deal (1930s) marked a major change in how the courts interpreted national power.

State and local governments struggled to handle the demands brought on by the Great Depression.

- In 1932, 25 percent of the workforce was unemployed.

Franklin Roosevelt became president in 1933.

- He pledged to develop a more activist federal government to address these problems through his “New Deal.”

The New Deal: New Roles for Government

The New Deal and Cooperative Federalism

- The “New Deal”
 - Major laws regulating economic activity
 - Expansion of national power diminishes the old paradigm of dual federalism.
- The End of Dual Federalism
 - After 1937, the Court ceased attempts to limit national government’s powers.
- Cooperative Federalism
 - Cooperation between state and national governments replaces dual federalism.

Cooperative Federalism

Cooperative Federalism

- A type of federalism in which the various levels of government work together to solve policy problems, often with the federal government providing some portion of the funding, which is spent by the states or localities.
- Cooperative federalism existing since the New Deal era in which grants-in-aid have been used strategically to encourage states and localities to pursue nationally defined goals.
- Cooperative federalism as marble cake

The New Deal: New Roles for Government

The New Deal and Cooperative Federalism

- Since the New Deal, the federal government has been able to use the Commerce Clause to regulate large swaths of domestic activities.

Example is Wicker v. Filburn 1942 – which found that a farmer growing wheat for his own use on his own land was subject to federal regulations because it affected interstate commerce. Had Filburn not grown his own wheat he would have to buy it from another state

- Congress can also influence the states to enact laws by promising them federal funds to do so, or to threat to withdraw funds if they do not.

The New Deal: The Works Progress Administration



The New Deal: Grants-in-Aid

New national programs that President Roosevelt developed came through grants-in-aid

Grants-in-aid

- Funding from the federal government given to state and local governments
 - Funding is provided on the condition the funds be employed for purposes defined by federal government
- The New Deal expanded grants-in-aid to include:
 - Social programs
 - Later expanded to school lunches; highway construction

The New Deal: Types of Grants-in-Aid

Types of federal grants-in-aid:

Categorical grants

- These are congressional grants given to states and localities on the condition that expenditures be limited to a problem or group specified by law.

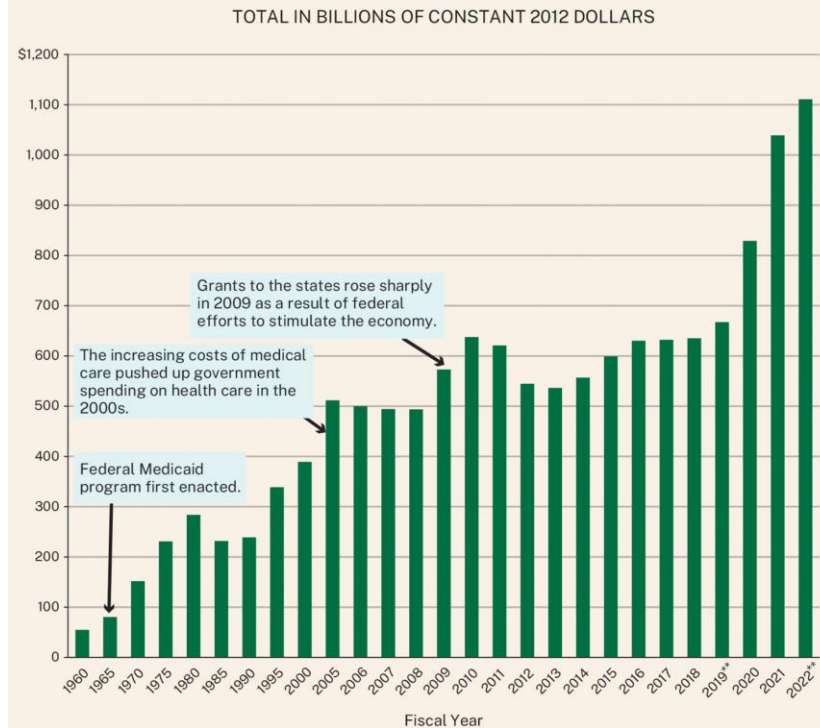
Categorical grants have increased dramatically.

- The value of categorical grants has risen from \$54.8 billion in 1960 to an estimated \$1,111 billion in 2022.

Federal Grants-in-Aid,* 1960–2021

FIGURE 3.1 | Federal Grants-in-Aid,* 1960–2021

Federal spending on grants to state and local governments has grown dramatically since 1980. Today, most state and local governments are heavily dependent upon such grants to implement their policy goals. How might such dependence affect the autonomy of state governments and the character of American federalism?



*Excludes outlays for national defense, international affairs, and net interest. Data in constant (fiscal year 2012) dollars.

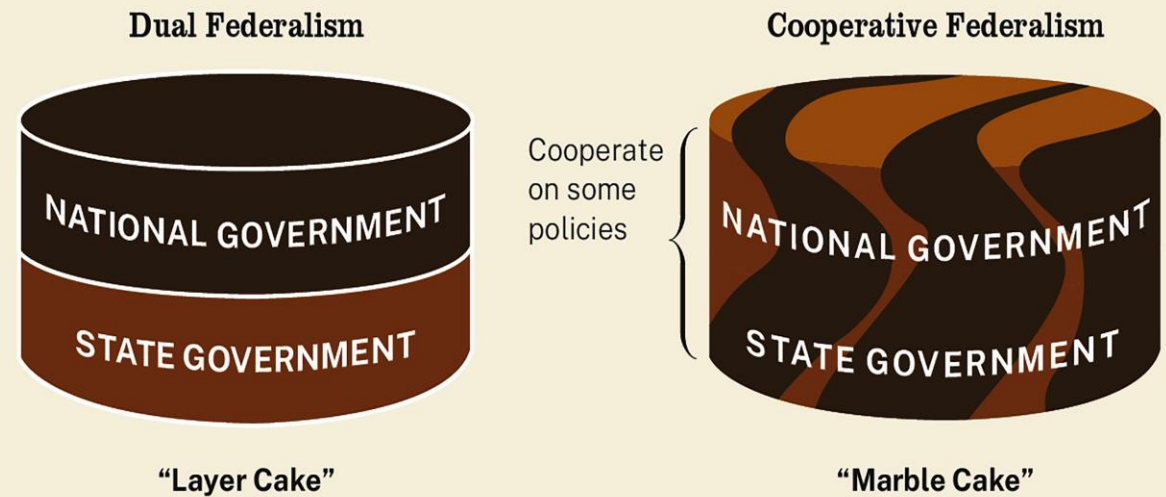
**Estimate.

SOURCE: Office of Management and Budget, U.S. Budget for Fiscal Year 2020, "Historical Tables: Table 12.1," www.whitehouse.gov/omb/historical-tables/ (accessed 1/21/2020); White House, "Aid to State and Local Governments," https://www.whitehouse.gov/wp-content/uploads/2021/05/ap_11_state_and_local_fy22.pdf.

Dual versus Cooperative Federalism

FIGURE 3.2 | Dual versus Cooperative Federalism

In layer-cake (dual) federalism, the responsibilities of the national government and state governments are clearly separated. In marble-cake (cooperative) federalism, national policies, state policies, and local policies overlap in many areas.



Cooperative Federalism: Preemption

National standards require the federal government to take over areas of regulation.

Preemption is the principle that allows national government to override state and local actions in certain policy areas.

- Preemption occurs when state or local actions do not agree with national requirements.
- State and local governments often contest federal preemption (e.g., in 2019, California and 22 other states sued to keep their ability to set stricter vehicle emission regulations in place).

Regulated Federalism and the Rise of National Standards

In the 1970s, there was a move toward **regulated federalism**.

- Regulated federalism is a form of federalism in which Congress imposes legislation on states and localities, requiring them to meet national standards.

With increased federal funding:

- Federal government often demands higher standards and stricter uses for funds.

State Control over National Policies: Devolution

Since the 1970s, **devolution** has been an increasingly popular idea.

- Devolution of authority from national government to the states created a new federalism.
- Congress created a series of sweeping block grants that replaced hundreds of previous categorical grants. The block grants provide federal funds for a certain purpose, but with few rules as to how that purpose is to be achieved.
- Proponents of devolution argue that it allows states to be innovators and experimenters of policy.

Devolution in the 1980s and 1990s

Proponents of greater state power have looked to block grants.

Block grants are federal grants-in-aid that allow states considerable discretion in how the funds are spent.

- President Nixon pushed for more block grants in the 1970s as part of his **New Federalism** (the returning of power to the states through block grants) approach.

Congress also provided a new form of assistance to state and local government through **general revenue sharing**.

- General revenue sharing refers to instances in which one unit of government yields a portion of tax income to another unit of government.

Innovation and Diffusion

Those who argue for more state government control argue that states can be a source of innovation and diffusion.

- *Innovation*: Minnesota first created charter schools in 1991; now 44 states and the District of Columbia permit them.
- *Diffusion*: The Massachusetts health care reform of 2006 became the template for the federal Affordable Care Act of 2010.

- States often complain about **unfunded mandates**—requirements on states imposed by the national government without accompanying funding.
- For example, a 1973 federal law prohibiting discrimination against the disabled required state and local governments to make public transit accessible; but the legislation provided no funding.

States' Rights

In the 1990s, there was revival of interest in the Tenth Amendment.

- Since the 1990 the Supreme court gradually reining In the Commerce Power of congress
 - Rejected congress claim that acts pertaining to gun violence, assault and health care did not constitute a regulation of commerce.
- The Tenth Amendment Issues
 - The federal government cannot issue directives requiring the states to address particular issues, nor command a states officers to administer of enforce federal regulatory program.

Federal-State Tensions: Immigration Policy

- One source of controversy concerns whether states and localities have to enforce federal immigration laws.
- President Trump signed an executive order to expand the types of immigrants considered a priority for deportation.
 - This included those convicted of felonies or multiple misdemeanors (as under Obama) to those accused or convicted of minor crimes as well.

Several cities, counties, and states declared themselves “sanctuaries” to limit their cooperation with federal immigration enforcement.

- Trump, in turn, pledged to withhold federal grants from these jurisdictions.
- President Biden has promised a thorough overhaul of immigration policies and has ended several Trump-era programs.

Federal-State Tensions: Marijuana Policy

Federal authority on marijuana policy has been upheld by the courts.

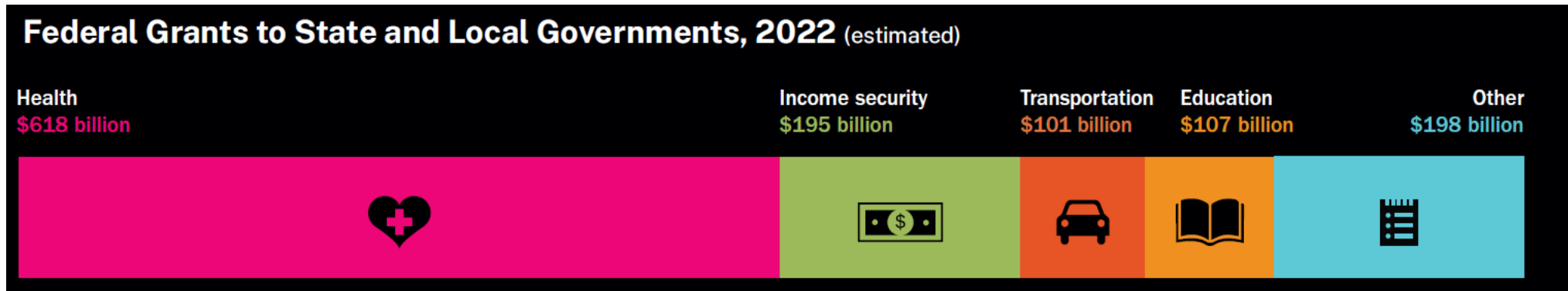
- In 2005, the Supreme Court upheld the right of Congress to ban medical marijuana, even though 11 states had legalized its use.

The commerce clause gave the federal government the power to regulate use of all marijuana.

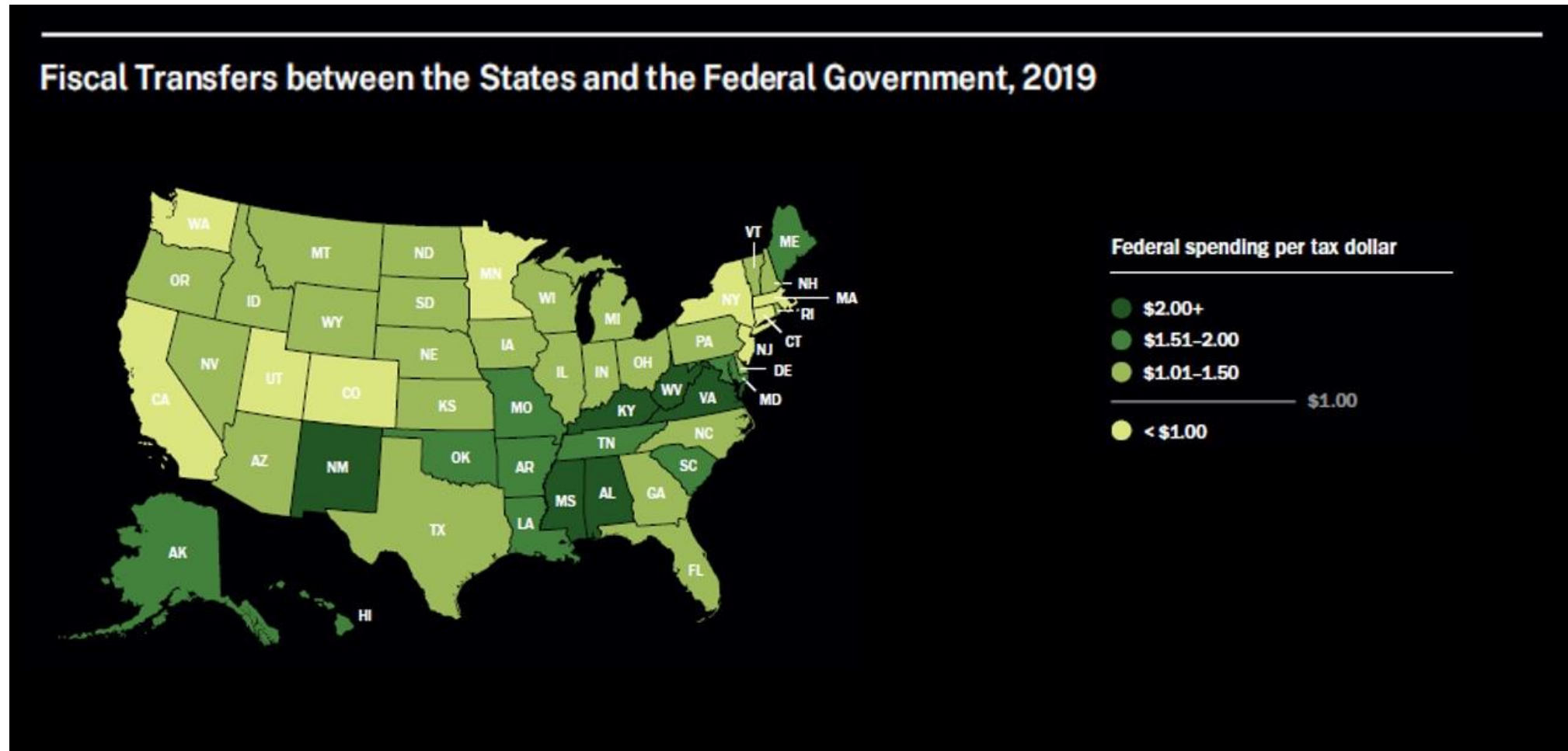
- Nonetheless, by 2020, 35 states and the District of Columbia had legalized medical marijuana.

Amid this legal confusion, a medical marijuana industry began to flourish, and a number of states went further by legalizing recreational marijuana.

Who Are Americans?: Who Benefits from Federal Spending, Part 1



Who Are Americans?: Who Benefits from Federal Spending, Part 2

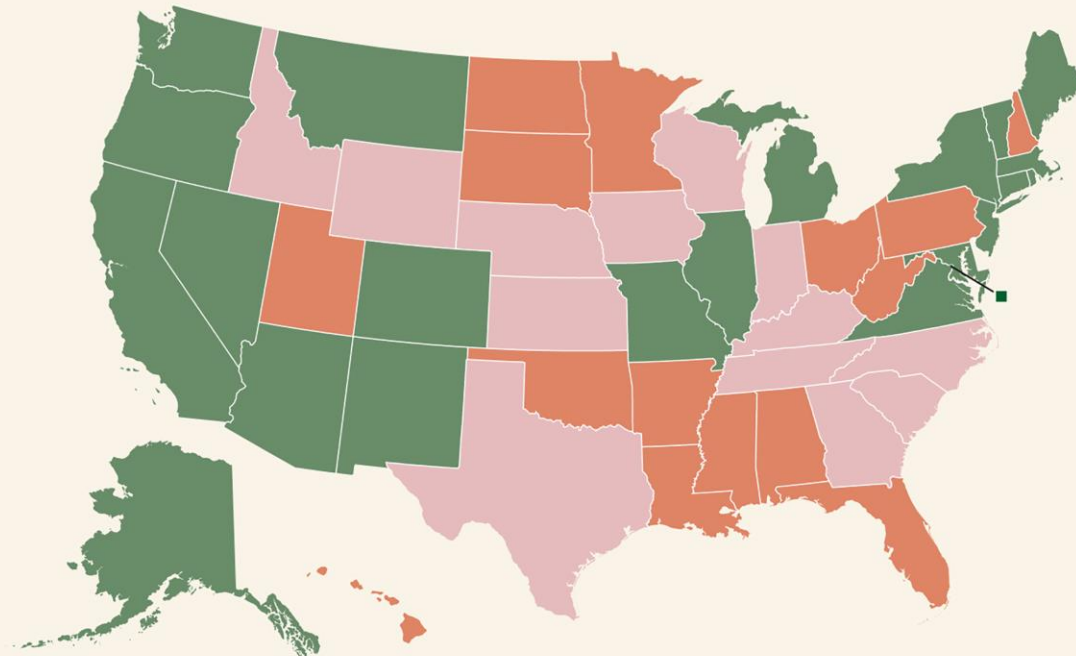


Marijuana Laws across the States

FIGURE 3.3 | Marijuana Laws across the States

While buying, selling, and possessing marijuana remain federal crimes, states have adopted policies that conflict with federal laws. Should this be allowed?

- Marijuana legalized for recreational and medical use
- Marijuana legalized only for medical use
- No broad laws legalizing marijuana



SOURCE: "State Medical Cannabis Laws," National Conference of State Legislatures, www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (accessed 11/9/22).

State-Local Tensions

Another notable development in the recent politics of federalism has been the willingness of state governments to preempt local policy.

In recent years some cities have:

- set higher minimum wages than are in effect elsewhere in the state
- required employers to provide paid sick leave
- regulated the “sharing economy” of car- and home-sharing
- prohibited gender-based discrimination in public facilities such as bathrooms
- attempted to establish public broadband services.

In each of these areas, some state legislatures have responded with laws preempting (limiting or prohibiting) municipal law or authority.

State Preemption of Local Government Policy

Some cities have acted to set policies but have been preempted by state government.

- 25 states preempt local minimum-wage ordinances, 23 prohibit local paid-leave ordinances, and 10 ban local regulation of e-cigarettes.
- Other examples:
 - Michigan bans cities from banning plastic bags.
 - Texas bans cities from banning fracking.
 - Twenty states prohibit localities from establishing municipal broadband service.
 - And three—most famously North Carolina—preempt local antidiscrimination ordinances.

Readings from Faculty Website

- *The meaning of the commerce clause*
- *What is Federalism?*
- *Federalist No. 39 Republican Principles*
- *Federalist No. 45 Powers of the Government*
- *McCulloch vs. Maryland Case Brief*
- *Gibbons vs. Ogden Case Brief*

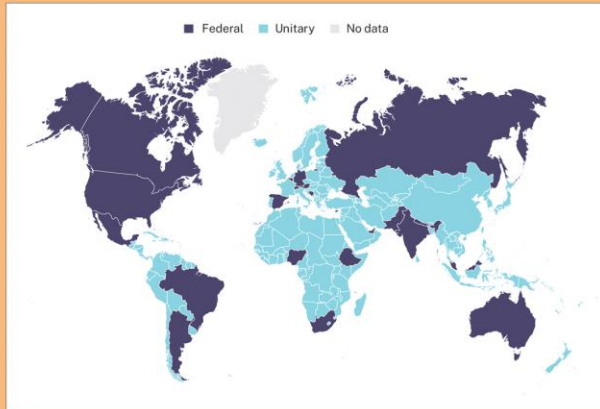
Federal and Unitary Countries

AMERICA | SIDE BY SIDE

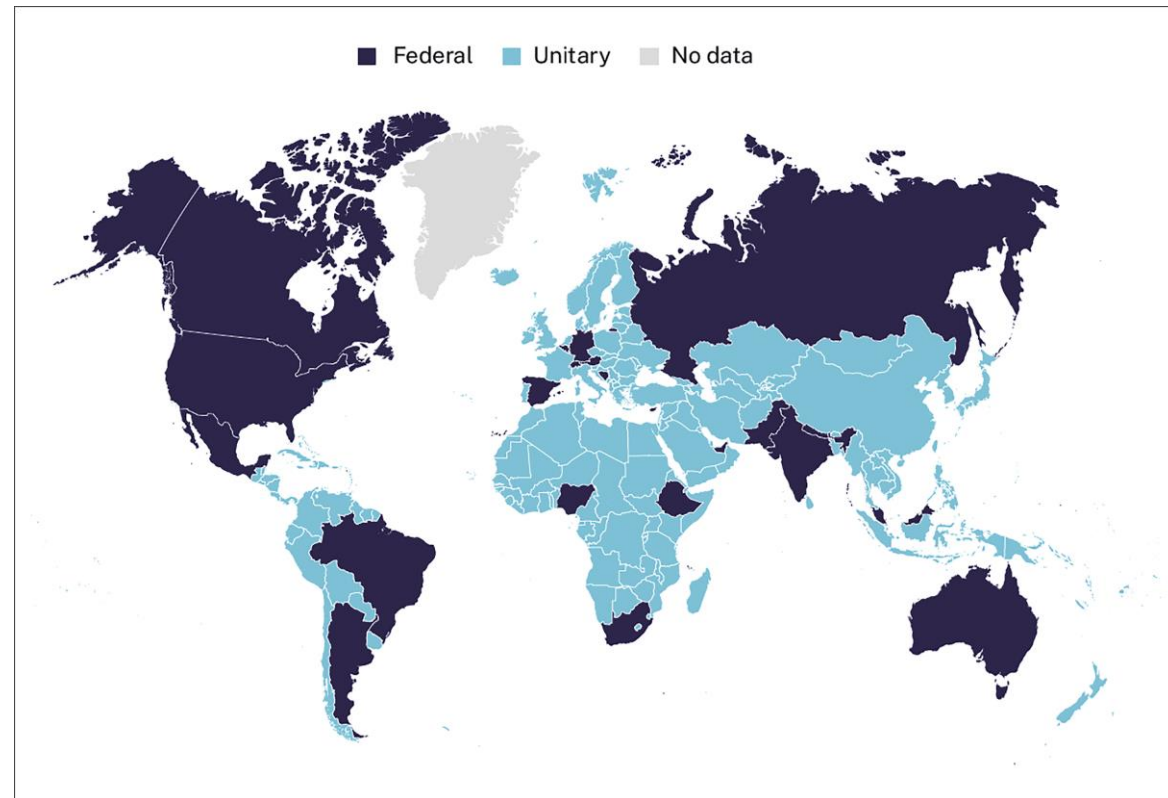
Federal and Unitary Countries

Worldwide, unitary systems of government are much more common than federal systems. Geographically they may appear to be roughly even on this map, but that is because larger countries such as the United States and Russia often use federal systems. In fact, fewer than 15 percent of the world's countries use federal systems. Each type of system brings its own strengths and drawbacks: unitary systems can be more efficient, but federal systems can allow for more regional autonomy and policy innovation.

1. What explains why a country might use a federal or a unitary system? Why would a country with a large amount of territory to govern, such as Canada or Brazil, prefer a federal arrangement? Are there any geographic or regional patterns that you see? What might lead to countries on a continent being more likely to have similar government arrangements?
2. What are some of the other advantages to having a unitary system? In what ways might a federal system be more responsive? If you were designing your own country, which would you prefer and why?



SOURCE: A. Griffiths, R. Chattopadhyay, J. Light, and C. Stieren, "The Forum of Federations Handbook of Federal Countries 2020," Wikipedia, https://en.wikipedia.org/wiki/Unitary_state (accessed 10/5/21).



Federalism in the United States

