

Federalism

“The true ‘essence’ of federalism is that the States as States have legitimate interests which the National Government is bound to respect even though its laws are supreme.”

—Justice Sandra Day O’Connor (1985)

The federal system divides power between the National Government and the States. In this way, federalism ensures that the National Government is strong enough to meet the nation’s needs. At the same time, federalism preserves the strength and uniqueness of the individual States.



Standards Preview

H-SS 12.1.5 Describe the systems of separated and shared powers, the role of organized interests (*Federalist Paper Number 10*), checks and balances (*Federalist Paper Number 51*), the importance of an independent judiciary (*Federalist Paper Number 78*), enumerated powers, rule of law, federalism, and civilian control of the military.

H-SS 12.2.1 Discuss the meaning and importance of each of the rights guaranteed under the Bill of rights and how each is secured (e.g., freedom of religion, speech, press, assembly, petition, privacy).

H-SS 12.7.1 Explain how conflicts between levels of government and branches of government are resolved.

H-SS 12.7.2 Identify the major responsibilities and sources of revenue for state and local governments.

H-SS 12.7.3 Discuss reserved powers and concurrent powers of state governments.

H-SS 12.7.4 Discuss the Ninth and Tenth Amendments and interpretations of the extent of the federal government's power.

H-SS 12.10 Students formulate questions about and defend their analyses of tensions within our constitutional democracy and the importance of maintaining a balance between the following concepts: majority rule and individual rights; liberty and equality; state and national authority in a federal system; civil disobedience and the rule of law; freedom of the press and the right to a fair trial; the relationship of religion and government.

Chapter 4 in Brief

SECTION 1

Federalism: The Division of Power (pp. 88–95)

- ★ The Framers sought to create a central government strong enough to meet the nation's needs and still preserve the strength of the States.
- ★ The National Government has only those powers delegated to it by the Constitution.
- ★ The States are governments of reserved powers—powers that the Constitution does not grant to the National Government or deny to the States.
- ★ Most of the powers of the National Government are exercised by the National Government alone.
- ★ The concurrent powers are possessed by both the National Government and the States.
- ★ Local governments exist only as parts of their parent State.
- ★ The Constitution stands above all other forms of law in the United States.

SECTION 2

The National Government and the 50 States (pp. 97–103)

- ★ The National Government guarantees the States a representative form of government, protection against invasion and internal disorder, and respect for their territorial integrity.
- ★ Congress has the power to admit new States.
- ★ The American federal system involves a broad range of powers shared between the National Government and the States.

SECTION 3

Interstate Relations (pp. 105–108)

- ★ The States can make interstate compacts that enable them to cooperate on matters of mutual concern.
- ★ The Constitution requires each State to respect the laws, official records, and court actions of other States.
- ★ The Constitution requires each State to return fugitives to the State from which they fled.
- ★ No State can draw unreasonable distinctions between its own residents and residents of other States.

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1

Federalism: The Division of Power

Section Preview

OBJECTIVES

1. **Define** federalism and explain why the Framers chose this system of government.
2. **Identify** powers delegated to and denied to the National Government, and powers reserved for and denied to the States.
3. **Understand** that the National Government holds exclusive powers; it also holds concurrent powers with the States.
4. **Explain** the place of local governments in the federal system.
5. **Examine** how the Constitution functions as “the supreme Law of the Land.”

WHY IT MATTERS

The federal system divides government power in order to prevent its abuse. There are two basic levels of government in the federal system—National and State. The Supreme Court settles disputes between the two.

POLITICAL DICTIONARY

- ★ **federalism**
- ★ **division of powers**
- ★ **delegated powers**
- ★ **expressed powers**
- ★ **implied powers**
- ★ **inherent powers**
- ★ **reserved powers**
- ★ **exclusive powers**
- ★ **concurrent powers**

You know that federal law requires young men to register for military service at age 18; that most employers must pay their workers at least \$5.15 an hour and time-and-a-half for overtime; and that no person can be denied a job on the basis of his or her race or ethnicity.

You also know that State law says that you must have a driver’s license in order to drive a car; that it is illegal for anyone under 21 to buy alcoholic beverages, or for anyone under 18 to buy cigarettes or other tobacco products; and that only those persons who can satisfy certain requirements can buy or own firearms.

These examples illustrate a very complex system: the division of governmental power in the United States between National and State governments. This section will help you better understand that complicated arrangement.

could they possibly create a new central government that would be strong enough to meet the nation’s needs and, at the same time, preserve the strength of the existing States?

Few of the Framers favored a strong central government based on the British model; and all of them knew that the Revolution had been fought in the name of self-government. Yet they also knew that the government under the Articles of Confederation had proved too weak to deal with the nation’s many problems.

Remember, most of the Framers were dedicated to the concept of limited government. They were convinced (1) that governmental power poses a threat to individual liberty, (2) that therefore the exercise of governmental power must be restrained, and (3) that to divide governmental power, as federalism does, is to curb it and so prevent its abuse.

Federalism Defined

Federalism is a system of government in which a written constitution divides the powers of government on a territorial basis between a central, or national, government and several regional governments, usually called states or provinces. Each of these levels of government has its own



▲ State laws forbid the sale of cigarettes to minors.

Why Federalism?

When the Framers of the Constitution met at Philadelphia in 1787, they faced a number of difficult issues. Not the least of them: How

substantial set of powers. Neither level, acting alone, can change the basic division of powers the constitution has created. In addition, each level of government operates through its own agencies and acts directly through its own officials and laws.

The American system of government stands as a prime example of federalism. The basic design of this system is set out in the Constitution. This document provides for a **division of powers** between the National Government and the States. That is, it assigns certain powers to the National Government and certain powers to the States. This division of powers was implied in the original Constitution and then spelled out in the Bill of Rights:

**FROM THE
Constitution**

“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.”

—10th Amendment

In effect, federalism produces a dual system of government. That is, it provides for two basic levels of government, each with its own area of authority. Each operates over the same people and the same territory at the same time.

Federalism’s major strength is that it allows local action in matters of local concern, and national action in matters of wider concern. Local traditions, needs, and desires vary from one State to another, and federalism allows for this very significant fact.

Illustrations of this point are nearly endless. For example, a third of the States are directly involved in the liquor business, operating it as a public monopoly; elsewhere private enterprise is the rule. In 48 States many gas stations are self-service; in New Jersey and Oregon, the law forbids motorists to pump their own gas. Only one State—North Dakota—does not require voters to register in order to cast their ballots. Only Nebraska has a unicameral (one-house) legislature. Oregon is the only State that has legalized physician-assisted suicide. Only five States—Alaska, Delaware, New Hampshire, Montana, and Oregon—do not impose a general sales tax.

While federalism allows individual States to handle State and local matters, it also provides for the strength that comes from union.



▲ The National Government provides protection from harm for the entire country. State governments provide protection from harm within State borders. **Critical Thinking** How do these photos illustrate the federal system?



National defense and foreign affairs offer useful illustrations of this point. So, too, do domestic affairs. Take, for example, a natural disaster. When a flood, drought, winter storm, or other catastrophe hits a particular State, the resources of the National Government and all of the other States may be mobilized to aid the stricken area.

Powers of the National Government

The National Government is a government of **delegated powers**. That is, it has only those powers delegated (granted) to it in the Constitution. There are three distinct types of delegated powers: expressed, implied, and inherent.

The Expressed Powers

The **expressed powers** are delegated to the National Government in so many words—spelled out, expressly, in the Constitution. These powers are also sometimes called the “enumerated powers.”

You can find most of the expressed powers in Article I, Section 8. There, in 18 clauses, the Constitution expressly gives 27 powers to Congress. They include the power to lay and collect taxes, to coin money, to regulate foreign



Expressed Power



Implied Power



Inherent Power

▲ The powers delegated to the National Government include the power to coin money, to prohibit race-based discrimination, and to conduct foreign relations. In 1971, Richard Nixon (right) became the first American President to visit China; his historic trip led to United States recognition of the government of the People's Republic of China. **Critical Thinking** Why is establishing diplomatic relations considered an inherent power?

and interstate commerce, to raise and maintain armed forces, to declare war, to fix standards of weights and measures, to grant patents and copyrights, and to do many other things.

Several other expressed powers are set out elsewhere in the Constitution. Article II, Section 2 gives several powers to the President. They include the power to act as commander in chief of the armed forces, to grant reprieves and pardons, to make treaties, and to appoint major federal officials. Article III grants “the judicial Power of the United States” to the Supreme Court and other courts in the federal judiciary. Finally, several expressed powers are found in various amendments to the Constitution; thus, the 16th Amendment gives Congress the power to levy an income tax.

The Implied Powers

The **implied powers** are not expressly stated in the Constitution but are reasonably suggested—implied—by the expressed powers. The constitutional basis for the implied powers is found in one of the expressed powers. Article I, Section 8, Clause 18 gives Congress the “necessary and proper power.” The Necessary and Proper Clause says that Congress has the power

FROM THE
Constitution

“to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

—Article I, Section 8, Clause 18

Through congressional and court interpretation, the words *necessary and proper* have come to mean, in effect, “convenient and useful.” Indeed, the Necessary and Proper Clause is sometimes called the Elastic Clause, because, over time, it has been stretched to cover so many situations.

Here are but a few of the thousands of examples of the exercise of implied powers. Congress has provided for the regulation of labor-management relations, the building of hydroelectric power dams, and the building of the 42,000-mile interstate highway system. It has made federal crimes of such acts as moving stolen goods, gambling devices, and kidnapped persons across State lines. It has prohibited racial discrimination in granting access to such places as restaurants, theaters, hotels, and motels.

Congress has taken these actions, and many more, because the power to do so is reasonably implied by just one of the expressed powers: the power to regulate interstate commerce.¹

The Inherent Powers

The **inherent powers** belong to the National Government because it is the national government of a sovereign state in the world community. Although the Constitution does not expressly provide for them, they are powers that, over time, all national governments have possessed. It stands to reason that the Framers of the Constitution intended the National Government they created to hold these powers.

The inherent powers are few in number. The major ones include the power to regulate immigration, to deport undocumented aliens, to acquire territory, to grant diplomatic recognition to other states, and to protect the nation against rebellion or other attempts to overthrow the government by force or violence.

One can argue that most of the inherent powers are implied by one or more of the expressed powers. For example, the power to regulate immigration is suggested by the expressed power to regulate foreign trade. The power to acquire territory can be drawn from the treaty-making power and the several war powers. But the doctrine of inherent powers holds that it is not necessary to go to these lengths to find these powers in the Constitution. In short, these powers exist because the United States exists.

Powers Denied to the National Government

Although the Constitution delegates certain powers to the National Government, it also denies the National Government certain powers. It does so in three distinct ways.

First, the Constitution denies some powers to the National Government in so many words—expressly.² Among them are the powers to levy duties on exports; to prohibit freedom of reli-

¹Article I, Section 8, Clause 3. The doctrine of implied powers is treated in greater detail in Chapter 11.

²Most of the expressed denials of power are found in Article I, Section 9 and in the 1st through the 8th amendments.

Voices on Government

President Ronald Reagan (1911–2004) was 69 years old when he took office in 1981. During his two terms, President Reagan made it a priority to give power back to the States. The excerpt below comes from his first inaugural address.



“It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people. All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.”

Evaluating the Quotation

What does President Reagan mean when he notes that “the Federal Government did not create the States; the States created the Federal Government”?

gion, speech, press, or assembly; to conduct illegal searches or seizures; and to deny to any person accused of a crime a speedy and public trial or a trial by jury.

Second, several powers are denied to the National Government because of the silence of the Constitution. Recall that the National Government is a government of delegated powers; it has only those powers the Constitution gives to it.

Among the many powers not granted to the National Government are the powers to create a public school system for the nation, to enact uniform marriage and divorce laws, and to set up units of local government. The Constitution says nothing about these matters. It says nothing that would give the National Government the power to do any of these things, expressly, implicitly, or inherently. In short, the lack of any such provision—the silence of the Constitution—denies power to the National Government.

Third, some powers are denied to the National Government because of the federal system itself.

Clearly the Constitution does not intend that the National Government should have any power to take action that would threaten the existence of that system. For example, in the exercise of its power to tax, Congress cannot tax any of the States or their local units in the carrying out of their governmental functions. If it could, it would have the power to destroy—tax out of existence—one or more, or all, of the States.³

The States

The 50 States are the other half of the very complicated equation we call federalism. Their role in the American federal system is no less important than the role of the National Government.

Powers Reserved to the States

As you recall, the 10th Amendment declares that the States are governments of reserved powers. (See page 89.) The **reserved powers** are those powers that the Constitution does not grant to the National Government and does not, at the same time, deny to the States.

Thus, any State can forbid persons under 18 to marry without parental consent, or those under 21 to buy liquor. It can ban the sale of pornography, outlaw prostitution, and permit some forms of gambling and prohibit others. A State can require that doctors, lawyers, hairdressers, and plumbers be licensed in order to

practice in the State. It can confiscate automobiles and other property used in connection with such illicit activities as illegal drug trafficking or prostitution. It can establish public schools, enact land use laws, regulate the services and restrict the profits of such public utilities as natural gas, oil, electric power, and telephone companies, and do much, much more.

In short, the sphere of powers held by each State—the scope of the reserved powers—is huge. The States can do all of those things just mentioned, and much more, because (1) the Constitution does not give the National Government the power to take these actions and (2) it does not deny the States the power to take them.

How broad the reserved powers really are can be understood from this fact: Most of what government does in this country today is done by the States (and their local governments), not by the National Government. The point can also be seen from this fact: The reserved powers include the vitally important police power—the power of a State to protect and promote the public health, the public morals, the public safety, and the general welfare.

The Constitution does not grant expressed powers to the States, with one exception. Section 2 of the 21st Amendment gives the States a virtually unlimited power to regulate the manufacture, sale, and consumption of alcoholic beverages.

Powers Denied to the States

Just as the Constitution denies many powers to the National Government, it also denies many powers to the States. Some of these powers are denied to the States in so many words.⁴ For example, no State can enter into any treaty, alliance, or confederation. Nor can a State print or coin money or deprive any person of life, liberty, or property without due process of law.

Some powers are denied to the States inherently—that is, by the existence of the federal system. Thus, no State (and no local government)

³But note that when a State, or one of its local units, performs a so-called nongovernmental function—for example, maintains liquor stores, runs a bus system, or operates a farmers market—it is liable to federal taxation. We shall come back to this point later, in Chapter 25.

⁴Most of these expressed prohibitions of power to the States (and so, too, to their local governments) are found in Article I, Section 10 and in the 13th, 14th, 15th, 19th, 24th, and 26th Amendments.



▲ **Land Use** Enacting land use laws in order to preserve open spaces is one of many powers reserved to the States. **H-SS 12.7.3**

can tax any of the agencies or functions of the National Government. Remember, too, each State has its own constitution. That document also denies many powers to the State.⁵

The Exclusive and the Concurrent Powers

Most of the powers that the Constitution delegates to the National Government are **exclusive powers**. These powers can be exercised by the National Government alone. They cannot be exercised by the States under any circumstances.

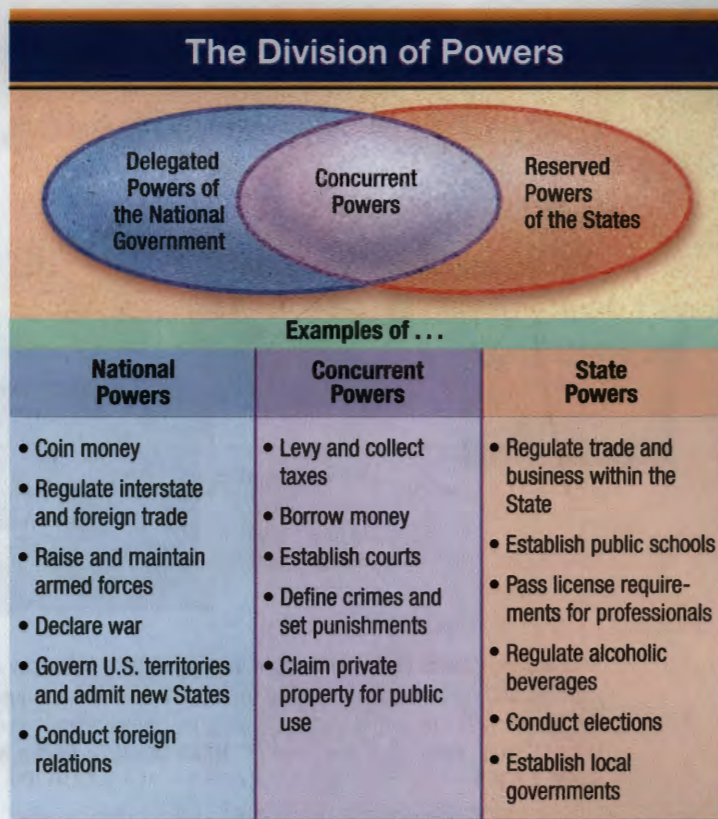
Some of these powers are expressly denied to the States. Examples include the power to coin money, to make treaties with foreign states, and to lay duties (taxes) on imports. Some powers are not expressly denied to the States but are, nonetheless, among the exclusive powers of the Federal Government because of the nature of the particular power involved. The power to regulate interstate commerce is a leading example of this point. If the States could exercise that power, trade between and among the States would be at best chaotic and at worst impossible.⁶

Some of the powers delegated to the National Government are **concurrent powers**. The concurrent powers are those powers that both the National Government and the States possess and exercise. They include, for example, the power to levy and collect taxes, to define crimes and set punishments for them, and to condemn (take) private property for public use.

The concurrent powers are held and exercised separately and simultaneously by the two basic levels of government. That is, the concurrent powers are those powers that the Constitution does not grant exclusively to the National Government and that, at the same

⁵Study your own State's constitution on the powers denied to the States. As you do, note the significance of the words "or to the people" in the 10th Amendment in the Federal Constitution. We shall look at State constitutions later, and in more detail, in Chapter 24.

⁶The States cannot regulate interstate commerce as such, but they can and do affect it. For example, in regulating highway speeds, the States regulate vehicles not only operating wholly within the State, but also those operating from State to State. Generally, the States can affect interstate commerce, but they may not impose an unreasonable burden on it.



Interpreting Tables The federal system determines the way that powers are divided and shared between the National and the State governments. **Name one national, one State, and one concurrent power.**

time, does not deny to the States. The concurrent powers, in short, are those powers that make it possible for a federal system of government to function.

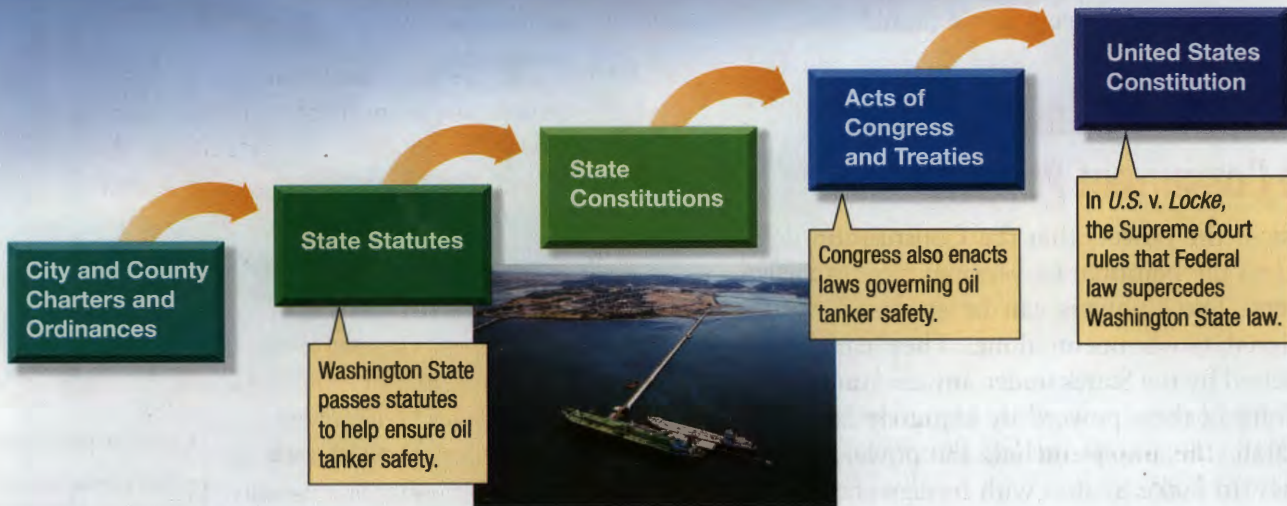
The Federal System and Local Governments

Government in the United States is often discussed in terms of three levels: national, State, and local. However convenient this view may be, it is at best misleading. Recall that there are only two basic levels in the federal system: the National Government and the State governments.

Governments do exist at the local level all across the country, of course. In fact, there are more than 87,000 units of local government in the United States today. You will take a look at them later in this book. For now, keep this important point in mind: All of these thousands of local governments are parts—subunits—of the various State governments.

Each of these local units is located within one of the 50 States. In its constitution and in its laws,

The Supremacy Clause



Interpreting Charts The Supremacy Clause creates a hierarchy of laws. Local law (city and county charters and ordinances) must yield to State law. State law must yield to federal law. At the top of the hierarchy is the United States Constitution, which stands above all other forms of law in the United States. **How does the case of *United States v. Locke* illustrate this hierarchy of laws?**

H-SS 12.7.1

each State has created these units. None exists apart from its parent State. Local government can provide services, regulate activities, collect taxes, and do many other things. It can do these things, however, only because the State has established and given it the power to do so. In short, when local governments exercise their powers, they are actually exercising State powers.

Another way of putting all of this is to remind you of a point that was first made in Chapter 1. Each of the 50 States has a unitary form of government—a central government that creates local units of government for its own convenience.

The Supreme Law of the Land

As you have just seen, the division of powers in the American federal system produces a dual system of government, one in which two basic levels of government operate over the same territory and the same people at the same time.

⁷Acts of Congress and treaties stand on equal planes with one another. Neither can conflict with any provision in the Constitution. In the rare case of conflict between the provisions of an act and those of a treaty, the one more recently adopted takes precedence—as the latest expression of the sovereign people’s will. The Supreme Court has regularly held to that position from the first cases it decided on the point, *The Head Money Cases*, 1884.

Such an arrangement is bound to result in conflicts between national law and State law.

The Supremacy Clause

The Framers anticipated these conflicts—and so they wrote the Supremacy Clause into the Constitution. That provision declares that

FROM THE Constitution

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.”

—Article VI, Section 2

As you can see from the chart above, the Constitution and the laws and treaties of the United States are “the supreme Law of the Land.” This means that the Constitution stands above all other forms of law in the United States. Acts of Congress and treaties stand immediately beneath the Constitution.⁷

The Supremacy Clause has been called the “linchpin of the Constitution” because it joins the National Government and the States into a

single governmental unit, a federal government. In other words, the Supremacy Clause holds together the complex structure that is the American federal system.

The Supreme Court and Federalism

The Supreme Court is the umpire in the federal system. One of its chief duties is to apply the Supremacy Clause to the conflicts that the dual system of government inevitably produces.

The Court was first called to settle a clash between a national and a State law in 1819. The case, *McCulloch v. Maryland*, involved the controversial Second Bank of the United States. The bank had been chartered by Congress in 1816. In 1818, the Maryland legislature, hoping to cripple the bank, placed a tax on all notes issued by its Baltimore branch. James McCulloch, the branch cashier, refused to pay the tax, and the Maryland courts convicted him for that refusal.

The Supreme Court unanimously reversed the Maryland courts. Speaking for the Court, Chief Justice John Marshall based the decision squarely on the Constitution's Supremacy Clause:

PRIMARY Sources “ [If] any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action [T]he states have no power . . . to retard, impede,

burden, or in any manner control, the operations of the constitutional laws enacted by Congress. . . .”⁸

—*McCulloch v. Maryland*, Opinion of the Court

Since this landmark case, it has been impossible to overstate the significance of the Court's function as the umpire of the federal system. Had the Court not taken this role, the federal system and probably the United States itself could not have survived its early years. Justice Oliver Wendell Holmes once made the point in these words:

PRIMARY Sources “ I do not think the United States would come to an end if we [the Court] lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States.”

—Collected Legal Papers⁹

⁸The case is also critically important in the development of the constitutional system because in deciding it, the Court for the first time upheld the doctrine of implied powers. It also held the National Government to be immune from any form of State taxation.

⁹The Supreme Court first held a State law unconstitutional in a case from Georgia, *Fletcher v. Peck*, 1810. The Court found that a Georgia law of 1795 making a grant of land to John Peck amounted to a contract between the State and Peck. It ruled that the legislature's later repeal of that law violated the Constitution's Contract Clause (Article I, Section 10, Clause 1). Since then, the Court has found more than 1,100 State laws unconstitutional (and has upheld the constitutionality of thousands of others).

Section 1 Assessment

Key Terms and Main Ideas

1. Why did the Framers settle on **federalism** as the system of government for the new nation?
2. Explain each of the following: **expressed powers**, **implied powers**, and **inherent powers**.
3. Do local governments have powers other than those granted to them by their State? Explain your answer.
4. What is the significance of *McCulloch v. Maryland* in the development of the federal system?

Critical Thinking

5. **Drawing Conclusions** Identify several public issues in your community that you think are best handled locally, not by the Federal Government.



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6. **Determining Relevance** In *Texas v. White*, 1869, Chief Justice Salmon P. Chase declared: “The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.” Identify three specific provisions in the Constitution that indicate “an indestructible Union” and three that point to “indestructible States.”

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More Power to the States



Analysis Skills HR4, HI3

Linda Chavez is the president of the Center for Equal Opportunity in Washington, D.C. She served as White House Director of Public Liaison in the Reagan administration. Here, Ms. Chavez argues that shifting responsibility for many social programs back to the States keeps power closer to the people.

One of the things the Founders of our nation most feared was centralized government power. Indeed, our Constitution and our Bill of Rights were written explicitly to ensure that power rested with the people and that no single branch of government—whether the executive, legislative, or judicial—gains a monopoly of power.

The Tenth Amendment to the Constitution also guaranteed that powers not specifically delegated to the federal government or prohibited to the states by the Constitution be retained by the states or the people.

Despite the intent of the founders, the history of our government, particularly in the last half of the twentieth century, has been one of growing federal power. Some of this has been accomplished directly by the government taking over certain functions; some has come indirectly, especially by the “power of the purse strings.”

Whenever the federal government gives money to the states or to local governments or agencies, certain obligations or rules follow. . . . [T]he federal government gives billions of dollars a year to support public elementary and secondary schools, and along with the money comes federal dictates about exactly how the money can be spent. . . .

For a limited number of functions—national defense being the most obvious—the federal government is clearly the only institution that can properly manage and fund the necessary programs. . . . But many other functions that the



The United States flag and the Wisconsin State flag fly at Wisconsin's State capitol in Madison.

federal government performs, and taxes citizens to pay for, would be better decided on and funded at the local or state level, where people can keep track of what is being done and how much it costs. . . .

Efficiency and accountability are two reasons why state and local governments are better equipped to undertake certain tasks, but another . . . is flexibility. Some social problems are particularly difficult to solve, and what may work in one community may not be appropriate for another. . . .

Unfortunately, the federal government's involvement sometimes makes matters worse. It takes the decision making out of the hands of elected officials closest to the people and puts it in the hands of unelected bureaucrats in Washington. The founders of our nation anticipated the problems of centralized power and established constitutional guarantees to safeguard against it, but the people must make sure those guarantees are enforced.

Analyzing Primary Sources

1. According to Chavez, how has the Federal Government extended its power over the States?
2. Why is Chavez concerned about the growing power of the Federal Government?
3. Why does Chavez believe States are better able to handle local problems?

2

The National Government and the 50 States

Section Preview

OBJECTIVES

1. **Summarize** the obligations that the Constitution places on the nation for the benefit of the States.
2. **Explain** the process for admitting new States to the Union.
3. **Examine** the many and growing areas of cooperative federalism.

WHY IT MATTERS

In this country, the power to govern is shared by the National Government and each of the 50 States (including their thousands of local governments). Given this fact, conflicts are inevitable—and cooperation is absolutely necessary.

POLITICAL

DICTIONARY

- ★ enabling act
- ★ act of admission
- ★ grants-in-aid program
- ★ revenue sharing
- ★ categorical grant
- ★ block grant
- ★ project grant

Have you ever really focused on the words *United States*? The United States is a union of States, the several States joined together, the States united.

The Constitution created and is intended to preserve that union. To that end, the Constitution (1) requires the National Government to guarantee certain things to the States and (2) makes it possible for the National Government to do certain things for the States.

The Nation's Obligations to the States

The Constitution places several obligations on the National Government for the benefit of the States. Most of them are found in Article IV.

Republican Form of Government

The Constitution requires the National Government to “guarantee to every State in this

Union a Republican Form of Government.”¹⁰ The Constitution does not define “Republican Form of Government,” and the Supreme Court has regularly refused to do so. The term is generally understood to mean a “representative government.”

The Supreme Court has held that the question of whether a State has a republican form of government is a political question. That is, it is one to be decided by the political branches of the government—the President and Congress—and not by the courts.¹¹



▲ After the Civil War, the “Republican Form of Government” figured prominently as laws were broadened to help recognize African American voting rights.

¹⁰Article IV, Section 4.

¹¹The leading case here is *Luther v. Borden*, 1849. This case grew out of Dorr's Rebellion, a revolt led by Thomas W. Dorr against the State of Rhode Island in 1841–1842. Dorr and his followers had written and proclaimed a new constitution for the State. When they tried to put the new document into operation, however, the governor in office under the original constitution declared martial law, or temporary rule by military authorities. The governor also called on the Federal Government for help. President John Tyler took steps to put down the revolt, and it quickly collapsed. Although the question of which of the competing governments was the legitimate one was a major issue in *Luther v. Borden*, the Supreme Court refused to decide the matter.



Interpreting Tables The Federal Emergency Management Agency (FEMA) helps State and local governments in the case of a natural disaster such as a hurricane. Coast Guard helicopters (above) rescued civilians trapped by flooding following Hurricane Katrina in 2005. **Explain the steps that lead to a community receiving federal disaster aid. How does this process illustrate federalism?**
H-SS 12.1.5

The Major Disaster Process	
STEP 1	Local Government Responds. If overwhelmed, turns to the State for assistance.
STEP 2	The State Responds with State resources, such as the National Guard and State agencies.
STEP 3	Damage Assessment by local, State, Federal, and volunteer organizations.
STEP 4	A Major Disaster Declaration is requested by the governor, based on damage assessment.
STEP 5	FEMA Evaluates the request and recommends action to the White House.
STEP 6	The President Approves the request or FEMA informs the governor it has been denied.

SOURCE: Federal Emergency Management Agency

The only extensive use ever made of the republican-form guarantee came in the years immediately following the Civil War. Congress declared that several southern States did not have governments of a republican form. It refused to admit senators and representatives from those States until the States had ratified the 13th, 14th, and 15th amendments and broadened their laws to recognize the voting and other rights of African Americans.

Invasion and Internal Disorder

The Constitution states that the National Government must also

FROM THE Constitution “protect each of them [States] against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”

—Article IV, Section 4

Today it is clear that an invasion of any one of the 50 States would be met as an attack on the United States itself. This constitutional guarantee is therefore now of little, if any, significance.

That was not the case in the late 1780s. During that time, it was not at all certain that all 13 States

would stand together if a foreign power attacked one of them. So, before the 13 States agreed to give up their war-making powers, each demanded an ironclad pledge that an attack on any single State would be met as an attack on all States.

The federal system assumes that each of the 50 States will keep the peace within its own borders. Thus, the primary responsibility for curbing insurrection, riot, or other internal disorder rests with the individual States. However, the Constitution does accept that a State might not be able to control some situations. It therefore guarantees protection against internal disorder, or what the Constitution calls “domestic Violence,” in each of them.

The use of federal force to restore order within a State has historically been a rare event. Several instances did occur in the 1960s, however. When racial unrest exploded into violence in Detroit during the “long, hot summer” of 1967, President Lyndon Johnson ordered units of the United States Army into the city. He acted at the request of the governor of Michigan, George Romney, and only after Detroit’s police and firefighters, supported by State Police and National Guard units, could not control riots, arson, and looting

in the city. In 1968, again at the request of the governors involved, federal troops were sent into Chicago and Baltimore to help put down the violence that erupted following the assassination of Martin Luther King, Jr.

Normally, a President has sent troops into a State only in answer to a request from its governor or legislature. If national laws are being broken, national functions interfered with, or national property endangered, however, a President does not need to wait for such a plea.¹²

The ravages of nature—storms, floods, drought, forest fires, and such—can be more destructive than human violence. Here, too, acting to protect the States against “domestic Violence,” the Federal Government stands ready to aid stricken areas.

Respect for Territorial Integrity

The National Government is constitutionally bound to respect the territorial integrity of each of the States. That is, the National Government must recognize the legal existence and the physical boundaries of each State.

The basic scheme of the Constitution imposes this obligation. Several of its provisions do so, as well. For example, Congress must include, in both of its houses, members chosen in each one of the States.¹³ Recall, too, that Article V of the Constitution declares that no State can be deprived of its equal representation in the United States Senate without its own consent.

Admitting New States

Only Congress has the power to admit new States to the Union. As part of the National Government’s guarantee of respect for each State’s territorial integrity, the Constitution places only

¹²President Grover Cleveland ordered federal troops to put an end to rioting in the Chicago rail yard during the Pullman Strike in 1894 despite the objections of Governor William Altgeld of Illinois. The Supreme Court upheld his actions in *In re Debs*, 1895. The Court found that rioters had threatened federal property and impeded the flow of the mails and interstate commerce. Thus, more than “domestic Violence” was involved. Since then, several Presidents have acted without a request from the State involved. Most recently, President Dwight Eisenhower did so at Little Rock, Arkansas, in 1957, and President John Kennedy did so at the University of Mississippi in 1962 and at the University of Alabama in 1963. In each of those instances, the President acted to halt the unlawful obstruction of school integration orders issued by the federal courts.



California became the 31st State on September 9, 1850, two years after being ceded by Mexico.

one restriction on that power. A new State cannot be created by taking territory from one or more of the existing States without the consent of the legislature(s) of the State(s) involved.¹⁴

Congress has admitted 37 States since the original 13 formed the Union, as the map on the next page shows. Five States (Vermont, Kentucky, Tennessee, Maine, and West Virginia) were created from parts of already existing States. Texas was an independent republic before admission. California was admitted shortly after being ceded to the United States by Mexico. Each of the other 30 States entered the Union only after a longer period of time, frequently more than 15 years, as an organized territory.

Admission Procedure

The process of admission to the Union is usually fairly simple. The area desiring Statehood first asks Congress for admission. If and when Congress chooses, it passes an **enabling act**, an act directing the people of the territory to frame a proposed State constitution. A convention prepares the constitution, which is then put to a popular vote in the proposed State. If the voters

¹³In the House, Article I, Section 2, Clause 1; in the Senate, Article I, Section 3, Clause 1 and the 17th Amendment.

¹⁴Article IV, Section 3, Clause 1. Some argue that this provision was violated with West Virginia’s admission in 1863. That State was formed from the 40 western counties that had broken away from Virginia over the issue of secession from the Union. The consent required by the Constitution was given by a minority of the members of the Virginia legislature—those who represented the 40 western counties. Congress accepted their action, holding that they were the only group legally capable of acting as the Virginia legislature at the time.

approve the constitution, it is submitted to Congress for its consideration. If Congress still agrees to Statehood after reviewing the document, it passes an **act of admission**, an act creating the new State. If the President signs the act, the new State enters the Union.

The two newest States, Alaska and Hawaii, shortened the usual process of gaining admission to the Union. Each adopted a proposed constitution without waiting for an enabling act, Hawaii in 1950 and Alaska in 1956. Both became States in 1959.

Conditions for Admission

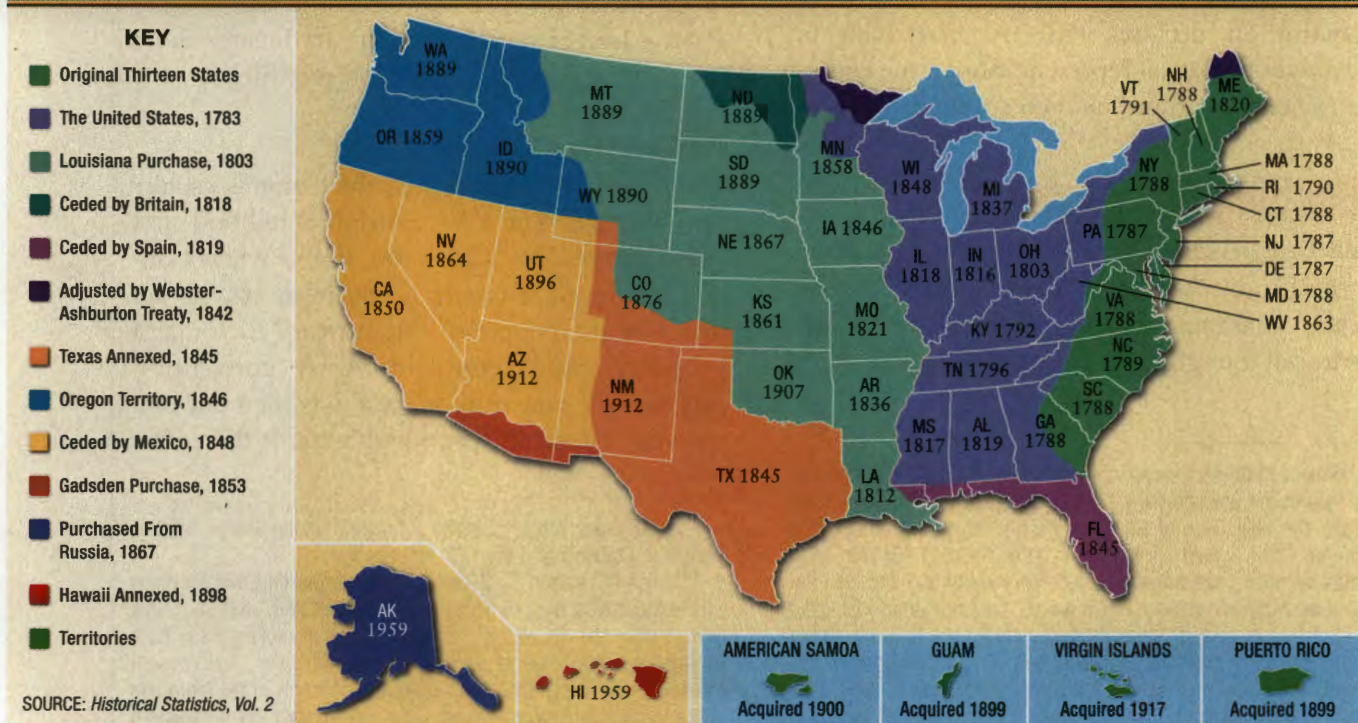
Before finally admitting a new State, Congress has often set certain conditions. For example, in 1896, Utah was admitted on condition that its constitution outlaw polygamy, the practice of having more than one spouse at a time. In the act admitting Alaska to the Union as the 49th State, Congress forever prohibited that State from claiming title to any lands legally held by any Native American.

Each State enters the Union on an equal footing with each of the other States. Thus,

although Congress can set certain conditions like those just described, it cannot impose conditions of a political nature on the States. For example, when Oklahoma was admitted to the Union in 1907, Congress said the State could not remove its capital from Guthrie to any other place before 1913. In 1910, however, the Oklahoma legislature moved the State's capital to Oklahoma City. When this step was challenged, the United States Supreme Court held, in *Coyle v. Smith*, 1911, that Congress can set conditions for a prospective State's admission. But the Court also held that the conditions cannot be enforced when they compromise the independence of a State to manage its own internal affairs.

Consider one more example: President William Howard Taft vetoed a resolution to admit Arizona to the Union in 1911. He did so because Arizona's proposed constitution provided that members of the State's judiciary could be recalled (removed from office) by popular vote. This provision meant, said Taft, that a judge would have to keep one eye on the law and the other on public opinion. In

Territorial Expansion of the United States



Interpreting Maps Thirty-seven States have joined the original 13. *When did your State join the Union? How much of the nation's present area did the United States cover at that time?*

response to Taft's concern, Arizona removed the recall section from the document. In 1912 Congress passed, and the President signed, another act of admission for Arizona. Almost immediately after admission, however, the new State amended its new constitution to provide for the recall of judges. That provision remains a valid part of Arizona's constitution today.

Cooperative Federalism

Remember, federalism produces a dual system of government, one in which two basic levels operate over the same people and the same territory at the same time. As a result of this complex arrangement, competition, tensions, and conflict are a regular and ongoing part of American federalism. In short, the American governmental system is much like a tug-of-war, a continuing power struggle between the National Government and the several States.

The American federal system also involves a broad area of *shared* powers. That is, in addition to the two separate spheres of power held and exercised by the two basic levels of government, there are large and growing areas of cooperation between them. These areas include the funds that the Federal Government grants to the States as well as the various services that the States perform for the Federal Government.

Federal Grants-in-Aid

Perhaps the best-known examples of this inter-governmental cooperation are the many federal **grants-in-aid programs**—grants of federal money or other resources to the States and/or their cities, counties, and other local units. Many of these governments are regularly strapped for funds; these grants often help them perform a large share of their everyday functions.

The history of grants-in-aid programs goes back more than 200 years, to the period before the Constitution. In the Northwest Ordinance of 1787, the Congress under the Articles of Confederation provided for the government of the territory beyond the Ohio River. Looking forward to the existence of new States on that frontier, the Congress set aside sections of land for the support of public education in those future States. On



The Massachusetts Central Artery project, known as the "Big Dig," was the largest, most complex, and technologically challenging public works project to date in American history. **Critical Thinking** How does this project illustrate cooperative federalism?
H-SS 12.1.5

Federal funding
58.5%

State and local funding
41.5%

through the nineteenth century, States received grants of federal lands for a number of purposes: schools and colleges, roads and canals, flood control work, and several others. A large number of the major State universities, for example, were founded as land-grant colleges. These schools were built with money obtained from the sale of public lands given to the States by the Morrill Act of 1862.

Congress began to make grants of federal money quite early, too. In 1808, it gave the States \$200,000 to support the militia. Cash grants did not come to play a large role, however, until the Depression years of the 1930s. Many of the New Deal programs aimed at bringing the nation out of its economic crisis were built around grants of money.

Since then, Congress has set up hundreds of grants-in-aid programs. In fact, more than 500 are now in operation. Dozens of programs function in a variety of areas: in education, mass transit, highway construction, health care, on-the-job training, and many others.



▲ Federal monies help fund school lunch programs in schools across the country.
Critical Thinking What examples of cooperative federalism affect your own life?

Grants-in-aid are based on the National Government's taxing power. The Constitution gives Congress that power in order

FROM THE Constitution "to pay the Debts and provide for the common Defense and general Welfare of the United States. . . ."

—Article I, Section 8, Clause 1

Today, these grants total some \$275 billion, and account for about 25 percent of all State and local government spending each year.

In effect, grants-in-aid blur the division of powers line in the federal system. They make it possible for the Federal Government to operate in many policy areas in which it would otherwise have no constitutional authority—for example, in such fields as education, low-income housing, local law enforcement, and mental health.

Critics of grants-in-aid have long made this point. They also argue that the grants often give Washington a major—and they say an unwarranted—voice in making public policy at the State and local levels.

Revenue Sharing

A quite different form of federal monetary aid, known as **revenue sharing**, was in place from 1972 to 1987. Under this program, Congress gave an annual share of the huge federal tax revenue to the States and their cities, counties, and townships. Altogether, those "shared revenues" amounted to more than \$83 billion over the years the program was in force.

Virtually no strings were attached to this money. In fact, Congress placed only one major restriction on the use of the funds. The money could not be spent for any program in which discrimination on the basis of race, sex, national origin, age, religious belief, or physical disability was evident. Otherwise, the "shared revenues" could be used very largely as the States and their local units chose to spend them.

Needless to say, revenue sharing was quite popular with and strongly supported by many governors, mayors, and other State and local officials. It was opposed by the Reagan Administration, however, and fell victim to the financial needs of the deficit-ridden National Government. Various efforts to revive revenue sharing to help today's cash-strapped State and local governments have not won significant support in Congress, at least to this point in time.

Types of Federal Grants

Today, Congress appropriates money for three types of grants-in-aid. These include categorical grants, block grants, and project grants.

Over time, most grants have been categorical. **Categorical grants** are made for some specific, closely defined purpose: for school lunches or for the construction of airports or wastewater treatment plants, for example. Categorical grants are usually made with conditions attached. These "strings" require the State to (1) use the federal monies only for the specific purpose involved, (2) make its own monetary contribution, often a matching amount but sometimes much less, (3) provide an agency to administer the grant,

and (4) obey a set of guidelines tailored to the particular purpose for which the monies are given.

Block grants have come into wide use over the last several years. They are made for much more broadly defined purposes than are categorical grants, such as health care, social services, or welfare. They are also made with fewer strings attached, so State and local governments have much greater freedom in deciding just how and on what to spend block grant dollars. Beginning in the Reagan years, from the 1980s on, many programs once supported by separate and fragmented categorical grants have been merged into broader block grants.

Congress also provides money for **project grants**. These are grants made to States, localities, and sometimes private agencies that apply for them. The Department of Health and Human Services makes many project grants—through its National Institutes of Health, for example, to support scientists engaged in research on cancer, diabetes, neurological disease, and other medical issues. Many State and local governments also apply for these grants to fund their job training and employment programs.

Other Forms of Federal Aid

The National Government aids the States in several other important ways. For example, the FBI gives extensive help to State and local police.

The army and the air force equip and train each State's National Guard units. The Census Bureau's data are essential to State and local school, housing, and transportation officials as they plan for the future.

Many other forms of aid are not nearly so visible. "Lulu payments," for example, are federal monies that go to local governments in those areas in which there are large federal landholdings. These direct payments are made in lieu of—to take the place of—the property taxes that those local governments cannot collect from the National Government.

State Aid to the National Government

Intergovernmental cooperation is a two-way street. That is, the States and their local units of government also aid the National Government in many ways.

Thus, State and local election officials conduct national elections in each State. These elections are financed with State and local funds, and they are regulated largely by State laws. The legal process by which aliens can become citizens, called naturalization, takes place most often in State, not federal, courts. Those who commit federal crimes and are sought by the FBI and other federal law enforcement agencies are often picked up by State and local police officers and then held in local jails. And the examples go on and on.

Section 2 Assessment

Key Terms and Main Ideas

1. What are three obligations that the Constitution places on the National Government for the benefit of the States?
2. Explain the difference between an **enabling act** and an **act of admission**.
3. (a) What is a **block grant**?
(b) How do block grants reflect cooperative federalism?
4. In what ways do the States aid the National Government?

Critical Thinking

5. **Recognizing Ideologies** If the Framers had been alive, how do you think they might have reacted when, only a few years ago, several States had to raise the legal drinking age to avoid losing a substantial portion of their federal grants for highway construction? Explain your answer.



Standards Monitoring Online

For: Self-quiz with vocabulary practice
Web Code: mqa-1042

6. **Making Comparisons** Suppose your State is to receive increased federal funding for a program to provide day care for the children of some working parents. Would this funding likely come as a categorical grant, a block grant, or a project grant? Why?
7. **Expressing Problems Clearly** In what type of situation would your State be most likely to need federal protection against "domestic violence?" Explain your answer.

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Face the Issues

Public Lands

Background In early 2001, President Bill Clinton issued an executive order prohibiting road-building on 58.8 million acres of national forest lands. The area involved, most of it in the West, contains nearly all of the nation's remaining old-growth forests. In 2005, President George W. Bush rewrote the Clinton order. Now each State's governor can petition the Secretary of Agriculture, designating the forest lands he or she thinks should be opened or remain closed to new road construction.



Logging in Alaska's
Tongass National Forest



Analysis Skill HI5

Federalism in Action

The Bush policy is rooted in federalism. It gives the States a major role in deciding whether—and, if so, which—federal forest lands are to be developed. The Secretary of Agriculture has the final word, but a governor's recommendation will carry great weight.

Opening selected areas to logging, mining, and other commercial endeavors can provide jobs and spur local economies throughout the West. Modern-day road-building, logging, and mining techniques mean that environmental damage will be minimal.

John Bennet, who heads a major timber company in Idaho, says: "It is a step in the right direction to identify those lands that are suitable [for logging] . . . instead of putting a big lock on them." Barry Russell, president of the Independent Petroleum Association of America, agrees. The Bush approach, he says, helps "eliminate government obstacles and regulatory [barriers] so that our natural resources can be produced and provide the enormous amounts of energy" this nation needs.

Block the New Rule

The Bush administration has gutted the original rule, with a new policy that will do major and irreversible damage to national lands. The Clinton rule was the product of years of study and more than 600 public hearings. As one environmental group put it, the Clinton policy "protected untouched lands and cold, pure rivers that give many Americans their cleanest sources of drinking water, and preserved much of the little that remains of the old-growth forests that once blanketed this country."

Officials in California, New Mexico, and Oregon have filed a lawsuit to block the new rule. Several governors complain that they do not have the staff or money for the petition process, which requires mapping, estimates of effects on wildlife and public safety, and assessments of the likelihood of forest fires.

California's attorney general Bill Lockyer says the new policy "simply paves the way for logging, mining, and other kinds of mineral extraction" on public lands.

Exploring the Issues

1. Identify three major goals that you think should guide the management of the nation's public lands?
2. Why do you think federal officials often weigh environmental and economic costs differently than local officials do?

For more information
on state and federal
disputes, view
"Public Lands."



Section Preview

OBJECTIVES

1. **Explain** why States make interstate compacts.
2. **Understand** the purpose of the Full Faith and Credit Clause.
3. **Define** *extradition* and explain its purpose.
4. **Discuss** the purpose of the Privileges and Immunities Clause.

WHY IT MATTERS

What if Texas citizens were not allowed to travel into Oklahoma, or needed a special passport to do so? What if your North Carolina driver's license were not valid when you drove through Ohio? Fortunately, several key provisions in the Constitution promote cooperation between and among the States.

POLITICAL DICTIONARY

- ★ **interstate compact**
- ★ **Full Faith and Credit Clause**
- ★ **extradition**
- ★ **Privileges and Immunities Clause**

As you know, conflict among the States was a major reason for the writing and adoption of the Constitution. The fact that the new document strengthened the hand of the National Government, especially regarding commerce, lessened many of those frictions. So, too, did several of the Constitution's provisions that deal directly with the States' relationships with one another. This section is concerned with those provisions.

Interstate Compacts

No State can enter into any treaty, alliance, or confederation. However, the States may, with the consent of Congress, enter into **interstate compacts**—agreements among themselves and with foreign states.¹⁵

By 1920, the States had made only 26 compacts. Since then, the number of interstate compacts has been growing. New York and New Jersey led the way in 1921 with a compact creating what is now the Port Authority of New York and New Jersey to manage and develop the harbor facilities bordering both States. More than 200 compacts are now in force, and many

involve several States. In fact, all 50 States have joined in two of them: the Compact for the Supervision of Parolees and Probationers and the Compact on Juveniles. These two compacts enable States to share important law-enforcement data. Other agreements cover a widening range of subjects. They include, for example, compacts designed to coordinate the development and conservation of such resources as water, oil, wildlife, and fish; prevent forest fires; combat stream and harbor pollution; provide for tax collections; promote motor vehicle safety; facilitate the licensing of drivers; and encourage the cooperative use of public universities.



▲ Seven western States belong to the Colorado River Compact, which apportions the waters of the Colorado River Basin. **H-SS 12.7.2**

¹⁵Article I, Section 10, Clause 3. The Supreme Court has held that Congressional consent is not needed for compacts that do not tend to increase the political power of the States, *Virginia v. Tennessee*, 1893. But it is often difficult to decide whether an agreement is political or nonpolitical. So, most interstate agreements are submitted to Congress as a matter of course.

Full Faith and Credit

The Constitution commands that

FROM THE
Constitution

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”

—Article IV, Section 1

The term *public acts* refers to the laws of a State. *Records* refers to such documents as birth certificates, marriage licenses, deeds to property, car registrations, and the like. The words *judicial proceedings* relate to the outcome of court actions: damage awards, the probating (proving) of wills, divorce decrees, and so forth.

The **Full Faith and Credit Clause** most often comes into play in court matters. Take this example: Allen sues Bill in Florida, and the Florida court awards Allen \$50,000 in damages. Bill cannot escape payment of the damages by moving to Georgia, because Allen could simply ask the Georgia courts to enforce the damage award. Neither would the case have to be retried in Georgia. Instead, the Georgia courts would have to give full faith and credit to—recognize and respect the validity of—the judgment made by the Florida court.



▲ **Full Faith and Credit** The Full Faith and Credit Clause ensures that records such as birth certificates and marriage licenses are recognized in all 50 States. **H-SS 12.7.1**

In a similar vein, a person can prove age, place of birth, marital status, title to property, and similar facts by securing the necessary documents from the State where the record was made. The validity of these documents will be recognized in each of the 50 States.

Exceptions

The Full Faith and Credit Clause is regularly observed and usually operates routinely between and among the States. This rule has two exceptions, however. First, it applies only to civil, not criminal, matters. One State cannot enforce another State's criminal law. Second, full faith and credit need not be given to certain divorces granted by one State to residents of another State.

On the second exception, the key question is always this: Was the person who obtained the divorce in fact a resident of the State that granted it? If so, the divorce will be accorded full faith and credit in other States. If not, then the State granting the divorce did not have the authority to do so, and another State can refuse to recognize it.

Williams v. North Carolina

The matter of interstate “quickie” divorces has been troublesome for years, especially since the Supreme Court's decision in a 1945 case, *Williams v. North Carolina*. In that case, a man and a woman had traveled to Nevada, where each wanted to obtain a divorce so they could marry each other. They lived in Las Vegas for six weeks, the minimum period of State residence required by Nevada's divorce law. The couple received their divorces, were married, and soon after returned to North Carolina. Problems arose when that State's authorities refused to recognize their Nevada divorces. North Carolina brought the couple to trial and a jury convicted each of them of the crime of bigamous cohabitation (marrying and living together while a previous marriage is still legally in effect).

On appeal, the Supreme Court upheld North Carolina's denial of full faith and credit to the Nevada divorces. It ruled that the couple had not in fact established bona fide—good faith, valid—residence in Nevada. Rather, the Court held that



▲ Each State requires that those who operate motor vehicles be licensed to do so. **Critical Thinking** Why is it possible to drive across the country without having to obtain a driver's license in each State along the way?

the couple had remained legal residents of North Carolina. In short, it found that Nevada lacked the authority to grant their divorces.

A divorce granted by a State court to a *bona fide* resident of that State must be given full faith and credit in all other States. To become a legal resident of a State, a person must intend to reside there permanently, or at least indefinitely. Clearly, the Williamses had not intended to do so.

The *Williams* case, and later ones like it, cast dark clouds of doubt over the validity of thousands of other interstate divorces. The later marriages of people involved in these divorces, and the frequently tangled estate problems produced by their deaths, suggest the confused and serious nature of the matter.¹⁶

Extradition

According to the Constitution

FROM THE Constitution “A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.”

— Article IV, Section 2, Clause 2

This clause refers to **extradition**, the legal process by which a fugitive from justice in one State can be returned to that State. Extradition is designed to prevent a person from escaping justice by fleeing a State.

The return of a fugitive from justice is usually a routine matter; governors regularly approve the extradition requests they receive from other States' chief executives. Some of those requests, however, are contested. This is especially true in cases with strong racial or political overtones, and in cases of parental kidnapping of children involved in custody disputes.

Until the 1980s, governors could, and on occasion did, refuse to return fugitives. In *Kentucky v. Dennison*, 1861, the Supreme Court held that the Constitution did not give the Federal Government any power with which to compel a governor to act in an extradition case. So, for more than a century, the Constitution's word *shall* in the Extradition Clause had to be read as “may.”

The Court overturned this ruling in 1987, however. In *Puerto Rico v. Branstad*, a unanimous Court held that the federal courts can indeed order an unwilling governor to extradite a fugitive.

Privileges and Immunities

The Constitution also provides that

FROM THE Constitution “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

—Article IV, Section 2, Clause 1¹⁷

This clause, known as the **Privileges and Immunities Clause**, means that no State can draw unreasonable distinctions between its own residents and those persons who happen to live in other States.

Each State must recognize the right of any American to travel in or become a resident of that State. It must also allow any citizen, no matter where he or she lives, to use its courts and make contracts; buy, own, rent, or sell property; or marry within its borders.

¹⁶The Defense of Marriage Act, passed in 1996, declares that no State is required to recognize a same-sex marriage performed in another State. Its constitutionality has not been resolved in court.

¹⁷The provision is reinforced in the 14th Amendment.



Under the Privileges and Immunities Clause, public colleges and universities often charge higher rates for nonresidents than residents. The University of California, Los Angeles, for example, charged residents tuition and fees of \$7,062 and nonresidents \$24,882 in 2005–2006.

Critical Thinking Do you think that this practice is justified? Explain your answer.

At the same time, a State cannot do such things as try to relieve its unemployment problems by requiring employers to give a hiring preference to in-State residents. Thus, the Supreme Court struck down a law in which the State of Alaska directed employers to prefer Alaskans in the hiring of workers to construct that State's oil and gas pipelines, *Hicklin v. Orbeck*, 1978. And the Court has overturned a California law that set the welfare benefits paid to newly arrived residents at a lower level than those paid to long-term residents, *Saenz v. Roe*, 1999.

However, the Privileges and Immunities Clause does allow States to draw reasonable distinctions between its own residents and those of other States. Thus, any State can require that a

person live within the State for some time before he or she can vote or hold public office. It also can require some period of residence before one can be licensed to practice law, medicine, dentistry, and so on.

In another example, the wild fish and game in a State are considered to be the common property of the people of that State. So, a State can require nonresidents to pay higher fees for fishing or hunting licenses than those paid by residents—who pay taxes to provide fish hatcheries, enforce game laws, and so on. By the same token, State colleges and universities regularly set higher tuition rates for students from out-of-State than those they charge residents of the State.

Section 3 Assessment

Key Terms and Main Ideas

1. What agreements does the Constitution prohibit the States from making?
2. What is the meaning of the **Full Faith and Credit Clause**?
3. What is the purpose of **extradition**?
4. (a) Give at least two examples of actions protected under the **Privileges and Immunities Clause**. (b) What types of actions are not protected by this clause?

Critical Thinking

5. **Predicting Consequences** What difficulties might result if each State were not required to give full faith and credit to the public acts, records, and judicial proceedings of other States? Provide at least two examples to support your conclusion.



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6. **Drawing Inferences** Provide at least two examples of how the Privileges and Immunities Clause has affected your life or might do so in the future.

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For: An activity on interstate compacts

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Should States Be Required to Enforce Federal Laws?



Analysis Skills HR4,
HI3, HI4

States are required to obey the federal Constitution and federal laws and treaties. Can Congress require State officials to help enforce federal laws and regulations?

Printz v. United States (1997)

The Gun Control Act of 1968 outlined rules for the distribution of firearms. Dealers were prohibited from selling guns to persons under 21, out-of-state residents, and convicted felons and fugitives. The Brady Act, a 1993 amendment to that law, required the attorney general to establish by 1998 a national system for conducting instant background checks on prospective handgun buyers.

The Brady Act also created a temporary background check system. Before selling a handgun, a firearms dealer was required to obtain identification from the purchaser, and to forward that information to the “chief law enforcement officer” (CLEO) of the purchaser’s residence. The Brady Act required CLEOs to make a reasonable effort to determine within the five business days whether the purchaser may lawfully possess a gun.

Jay Printz and Richard Mack, sheriffs serving as CLEOs in counties in Montana and Arizona, respectively, challenged the Brady Act in federal district court. They argued that the provisions requiring them to perform federal functions and execute federal laws were unconstitutional. The district court agreed with their argument, but the court of appeals found the entire Act constitutional, and the case went to the Supreme Court for review.

Arguments for Printz

1. The balance of power between Federal and State governments would be disrupted if the Federal Government could force the States to implement federal laws, especially if the States had to pay the implementation costs.
2. Under the Constitution, executing the laws of the United States is the function of the President.

The Brady Act would transfer part of this function to State and local officials, over whom the President has no meaningful control.

3. The Framers of the Constitution rejected the idea of having the central government act through the States in favor of a federal system of government.

Arguments for the United States

1. Congress has the expressed power to regulate commerce among the States. The Brady Act provisions are “necessary and proper” to carry out this power and thus are a lawful exercise of the power.
2. The burden imposed by the Brady Act on State or local officials is small, and therefore does not threaten the balance of power between States and the Federal Government.
3. Congress found that there is an “epidemic” of gun violence, and it can lawfully require State and local officials to help deal with emergency situations on a temporary basis.

Decide for Yourself

1. Review the constitutional grounds on which each side based its arguments and the specific arguments each side presented.
2. Debate the opposing viewpoints presented in this case. Which viewpoint do you favor?
3. Predict the impact of the Court’s decision on federal programs that require local enforcement. (To read a summary of the Court’s decision, turn to pages 799–806.)

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Political Dictionary

federalism (p. 88), **division of powers** (p. 89), **delegated powers** (p. 89), **expressed powers** (p. 89), **implied powers** (p. 90), **inherent powers** (p. 91), **reserved powers** (p. 92), **exclusive powers** (p. 93), **concurrent powers** (p. 93), **enabling act** (p. 99), **act of admission** (p. 100), **grants-in-aid program** (p. 101), **revenue sharing** (p. 102), **categorical grant** (p. 102), **block grant** (p. 103), **project grant** (p. 103), **interstate compact** (p. 105), **Full Faith and Credit Clause** (p. 106), **extradition** (p. 107), **Privileges and Immunities Clause** (p. 107)

Standards Review

H-SS 12.1.5 Describe the systems of separated and shared powers, the role of organized interests (*Federalist Paper Number 10*), checks and balances (*Federalist Paper Number 51*), the importance of an independent judiciary (*Federalist Paper Number 78*), enumerated powers, rule of law, federalism, and civilian control of the military.

H-SS 12.2.1 Discuss the meaning and importance of each of the rights guaranteed under the Bill of rights and how each is secured (e.g., freedom of religion, speech, press, assembly, petition, privacy).

H-SS 12.7.1 Explain how conflicts between levels of government and branches of government are resolved.

H-SS 12.7.3 Discuss reserved powers and concurrent powers of state governments.

H-SS 12.7.2 Identify the major responsibilities and sources of revenue for state and local governments.

H-SS 12.7.4 Discuss the Ninth and Tenth Amendments and interpretations of the extent of the federal government's power.

H-SS 12.10 Students formulate questions about and defend their analyses of tensions within our constitutional democracy and the importance of maintaining a balance between the following concepts: majority rule and individual rights; liberty and equality; state and national authority in a federal system; civil disobedience and the rule of law; freedom of the press and the right to a fair trial; the relationship of religion and government.

Practicing the Vocabulary

Matching Choose a term from the list above that best matches each description.

- The powers that the Constitution grants to the National Government in so many words
- Congressional measure admitting a United States territory into the Union as a State
- A type of federal grant-in-aid that is used for a specific, narrowly defined purpose
- A system of government in which a constitution divides the powers of government between a National Government and several regional governments
- Agreements made by the States among themselves and with foreign powers

Fill in the Blank Choose a term from the list above that best completes the sentence.

- _____ are those powers held by the States in the federal system.
- _____ are those powers granted to the National Government in the Constitution.
- Some people have questioned whether the _____ gives the National Government too much say in matters of State and local concern.
- Congress directs a territory desiring Statehood to frame a proposed State constitution in a(n) _____.
- Those powers that can only be exercised by the National Government are called _____.

Reviewing Main Ideas

Section 1

- How did the principle of federalism enable the Framers to solve the problems they faced in 1787?
- Briefly describe the powers the Constitution gives to the National Government.
- (a) In what three ways does the Constitution deny powers to the National Government? (b) Give at least one example of each.
- How does the Constitution provide for the powers of the States in the federal system?
- What is the role of the Supreme Court in the federal system?

Section 2

- According to the Constitution, what are the National Government's obligations to the States?
- Outline the steps Congress has usually taken in admitting new States to the Union.

- What is cooperative federalism?
- Give at least three examples of cooperative federalism at work.
- (a) What is a block grant? (b) Give an example of a program that a State might fund using block grant money.

Section 3

- List at least three examples of the kinds of interstate compacts that exist today.
- Under what circumstances can a State deny full faith and credit to a law, a public record, or the outcome of a court case in another State?
- Explain the purpose of the Privileges and Immunities Clause.
- What is the significance of the Supreme Court's decision in *Williams v. North Carolina*?
- Can governors refuse to return fugitives from justice to the State from which they fled? Explain your answer.

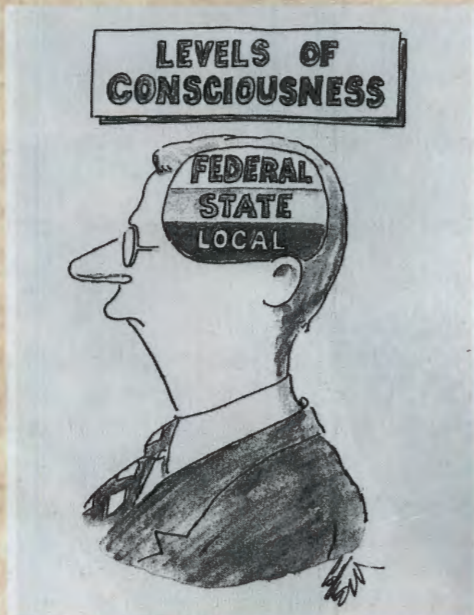
Critical Thinking Skills

Analysis Skills HR4, HI1, HI5

26. **Applying the Chapter Skill** In your opinion, who should have final say over lands currently under federal control, the States or the Federal Government? Explain your reasoning.
27. **Drawing Conclusions** Why might a governor be reluctant to call for federal troops to combat domestic violence in a city in his or her State?
28. **Expressing Problems Clearly** Why did the Framers create a government that is federal rather than unitary?
29. **Drawing Conclusions** Why do you think the Framers thought it necessary to include the Supremacy Clause in the Constitution? Why was the 10th Amendment added?

Analyzing Political Cartoons

Using your knowledge of American government and this cartoon, answer the questions below.



30. What does the cartoon suggest about the relative importance of local government?
31. The cartoon portrays three levels of government—Federal, State, and local. From what you have read about the federal system, is this portrayal entirely accurate? Explain your answer.



You Can Make a Difference

What impact do federal grants-in-aid have on your community? On its schools, streets and highways, hospitals and other care facilities, and elsewhere? You should be able to answer that question by contacting local officials—including school administrators, the mayor or city manager or chief financial officer of your city, and/or their counterparts in your county. The district office of your representative in Congress can also provide relevant data. Organize your findings, then report them to the class.

Participation Activities

Analysis Skills CS1, HR4, HI1

32. **Current Events Watch** Find three to five examples in the news that illustrate a power of the National Government, such as sending troops abroad or regulating immigration. Do the same for powers reserved to the States, such as establishing and regulating public schools. Prepare an oral presentation explaining how the State and national powers that you have chosen affect you and your community.
33. **Time Line Activity** Research how your State (or another State of your choosing) became a State. Then create a time line in which you explain your findings. Illustrate main events in your time line with drawings or copies of photos. Be sure to point out anything unique about the process by which your selected State entered the Union.
34. **It's Your Turn** When a person moves from one State to another, he or she must do such things as obtain a new driver's license and change his or her automobile and voter registrations. Create a newsletter to advise persons moving to your State how they can accomplish these tasks. (**Writing a Newsletter**)



Standards Monitoring Online

For: Chapter 4 Self-Test **Visit:** PHSchool.com

Web Code: mqa-1044

As a final review, take the Magruder's Chapter 4 Self-Test and receive immediate feedback on your answers. The test consists of 20 multiple-choice questions designed to test your understanding of the chapter content.