

# Intergovernmental Relations

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## KEYNOTE: The Intergovernmental Problem of Marijuana

For many generations the topic of marijuana has been a mainstay of discussions on America's college campuses. This is obvious by the distinctive smell found in the proximity of the nation's institutions of higher education. As students examine their personal freedoms and the limits that may be placed on them by the law, conversations regularly turn to the rules that govern their access to one of the most controversial substances in the United States. It is not unusual to hear a student

ask why marijuana, or cannabis as it is more formally known, often remains beyond their legal reach, while alcohol—a substance with a long history of destructive consequences—is legal and readily available to anyone 21 or older.

While the debates regarding marijuana use tend to focus primarily on questions of freedoms and liberties, this substance and its place in contemporary society provides a familiar case study in the complexities and tensions that are inherent in the intergovernmental nature of American federalism.

Marijuana has had a long history of use in the United States. The hemp plant, used in making rope and canvas for sailing ships, from which marijuana is also derived, was a common part of colonial-era agriculture. Proponents of marijuana legalization often point to the fact that George Washington ordered his slaves to cultivate hemp on his Virginia plantation during his years as a gentleman farmer. Indeed, Virginia's original English settlement, Jamestown colony, actually required farmers to plant hemp as one of their crops.

While hemp has been grown for its use in many products (both food and fiber) ever since the colonial period, marijuana's use as an intoxicant in America became prevalent in the late nineteenth and early twentieth centuries. The substance found growing popularity within the expanding Latin American communities of the Southwest and in the African American communities in America's urban areas in the years in and around the turn of the twentieth century. With this growth in use of cannabis in the United States came some real problems, but even more manufactured concerns regarding marijuana's role in American culture.

Marijuana, like many intoxicating substances, can be misused. Excessive use of marijuana by some, during the early twentieth century, did result in incidents where individuals engaged in behaviors that were harmful to themselves or others. However, any real problems associated with its use paled in comparison with the portrayal of marijuana's dangers within the American media. Films such as the 1936 propaganda movie *Reefer Madness* comically (the comedy was inadvertent) dramatized how marijuana use leads to sexual promiscuity, the murder of one's parents, and a liking for jazz music. This was complemented by highly negative stories in William Randolph Hearst's chain of newspapers, which printed sensational and highly questionable stories designed to fuel public fear about marijuana's threat to American society. Many of these so-called threats were crafted as to play on a variety of the nation's worst racial prejudices and fears, including scenarios where minorities perpetrated crimes on whites while under the influence of this poisonous weed.

As the twentieth century began, public fears served to encourage government action on the nation's "marijuana problem." In the earliest stages of the campaign against cannabis, the federal government attempted to tighten regulations on the sale of marijuana throughout the nation. In 1906 Congress passed the Pure Food and Drug Act which, among other things, required the labeling of marijuana when sold without a prescription.

As regulation of marijuana was emerging out of Washington, D.C., the states took the lead in banning marijuana completely. Beginning in California in 1907 and continuing with dozens of other states until the 1930s, marijuana was deemed an illegal substance, with possession and production of the intoxicant ruled as criminal offenses, punishable by fines and jail time.

The patchwork of marijuana laws throughout the nation in the first quarter of the twentieth century and growing public concern with all forms of intoxicants during an age of prohibition helped lead Congress to work on establishing more consistent rules on the sale and trafficking of cannabis. With some states banning marijuana and others taking more of a *laissez faire* approach, Congress created model legislation for marijuana and other substances under the Uniform Narcotic Act (UNA). At first few states signed on to the voluntary standards of the UNA, but the efforts of the President Franklin D. Roosevelt administration and an impressive propaganda effort on the radio resulted in every state signing on to the standards by 1935.

Even with the adoption of uniform regulations by all states, there was continued pressure in Washington for the federal government to be more aggressive in fighting cannabis use. At the forefront of this campaign for a stronger federal presence was the head of the Federal Bureau of Narcotics (FBN; now merged in the Drug Enforcement Administration), Harry Anslinger (1892–1975). As the first director of the FBN, Anslinger became a crusader for tougher federal narcotics laws. Anslinger, who would serve as the head of the FBN for over three decades (1930–1962), maintained an almost religious zeal for outlawing cannabis, and successfully rallied support from a variety of political and economic sources for his cause. However, without constitutional authority to establish an outright ban of marijuana, Anslinger was forced to find alternative methods to rid the nation of the problem.

As is often the case with federal efforts to change behaviors, the power of taxation was selected as the tool by which the feds could attack marijuana use in America. In 1937 Congress passed the Marijuana Tax Act, which placed taxes on anyone dealing commercially in cannabis and established heavy fines and jail sentences on individuals not in compliance with the act. This act did not criminalize the possession or use of cannabis, but the impact of the law was nonetheless enormous in terms of limiting access to marijuana throughout the nation. Anslinger was a very successful bureaucrat. By expanding his mandate with this new law, he also expanded his agency and his budget—mainly at the expense of minorities and jazz musicians who had little political influence.

States responded to the federal insertion into marijuana matters not with shouts of protest against usurpation of power, but instead cracked down on marijuana even more through their own laws over the following three decades. Anslinger and his allies in the nation's capital had successfully created an environment where any state going against the federal position on cannabis was seen as putting the interests of decadent, drug, induced minorities against the protection of decent, law-abiding white Americans.

It wasn't until the 1960s that both the wisdom and legality of federal marijuana policy began to be challenged in mainstream venues. In the changing American culture of the era it became more fashionable to question the legitimacy of federal incursions into areas of individual freedoms. It was also becoming more apparent that the costs of implementing prohibition of marijuana were rising as the substance grew in popularity during the "hippie" decade.

The federal government under President Richard M. Nixon even reconsidered its hard-line stance on cannabis through a well-publicized commission on drug policy. While Nixon and the federal government opted to continue the hard line against marijuana despite the commission's recommendations to consider other paths, the states began a process of reasserting their control over this policy area.

In 1973 Oregon became the first state to decriminalize marijuana. By decriminalizing consumption and possession of small amounts of cannabis, Oregon made most marijuana use the legal equivalent of speeding. In other words, it was not legal to smoke pot, but doing so would not lead to jail time and a criminal record. By 1978 eight other states had followed Oregon's lead. These states' actions directly contradicted federal policies that identified marijuana as an illegal narcotic. Simply put, the federal government did not recognize the decriminalization efforts and held that federal public administrators, such as those in the Drug Enforcement Agency (DEA), would follow federal standards even if state laws differed. This meant that even if the locals wouldn't arrest you for smoking pot, the feds still might.

The strained relationship between states and the federal government regarding marijuana was exacerbated in the late 1990s when California became the first state to legalize the use of marijuana for medical purposes. Unlike decriminalization, legalization means that the state permits the use of cannabis as long as a prescription for the substance has been obtained. A number of other states quickly followed California's lead, with more than a dozen states providing legal protection for medical marijuana by 2011.

While legalized medical marijuana became popular in the states, the federal government refused to yield on its stance that marijuana has no medical properties and that therefore state laws legalizing the use of cannabis for medical purposes would not be recognized. As is often the case when there is a showdown between the federal government and states, the conflict ended up in the courts.

**TABLE 4.1**

**STATES THAT HAVE “decriminalized” marijuana by treating first-time possession of a small amount for personal use much like a traffic citation**

ALABAMA	MISSISSIPPI
CALIFORNIA	NEBRASKA
COLORADO	NEVADA
CONNECTICUT	NEW YORK
MAINE	NORTH CAROLINA
MASSACHUSETTS	OHIO
MINNESOTA	OREGON

Source: National Organization for the Reform of Marijuana Laws.

When federal DEA officials destroyed a number of marijuana plants that were owned by a Californian growing the plant for medicinal purposes under a prescription from a physician, the battle between the states and feds was thrown into the courts.

In the 2005 case of *Gonzales v. Raich*, the U.S. Supreme Court held that Congress may ban the use of marijuana even in cases where states have legalized its use for medical purposes. The Court's decision in this case rested on the position that the federal government's constitutionally delegated power to regulate commerce trumped California's policy on medical marijuana, thus allowing DEA officials the ability to act in the interest of federal laws even if those actions went against state medical marijuana laws.

What is perhaps most interesting about the aftermath of the *Gonzales* case was that the decision did not seem to slow the growth of medical marijuana use in California and other states. In fact the medical marijuana business is booming. Since 2005 more Californians than ever have taken advantage of the state's lax rules on attaining marijuana for medical purposes. It has become almost laughable how easy it is to obtain a prescription for marijuana in the Golden State. Doctors in California have dispensed prescriptions for marijuana by the tens of thousands and pot has become a common sight in storefronts from San Diego to San Francisco.

After California Governor Arnold Schwarzenegger, whose youthful pot smoking was enthusiastically displayed in a 1976 documentary (*Pumping Iron*), signed a 2010 law effectively decriminalizing marijuana, he went on *The Tonight Show* and told Jay Leno and all other citizens of California: "No one cares if you smoke a joint or not" (November 8, 2010). But it is in the nature of the American federal system that governors and criminal justice officials in many other states do care. So beware!

**TABLE 4.2**

**STATES WITH ACTIVE MEDICAL MARIJUANA PROGRAMS: Generally, in these states marijuana can be legally bought and used with a doctor's prescription**

ALABAMA	MICHIGAN
ARIZONA	MONTANA
CALIFORNIA	NEVADA
COLORADO	NEW JERSEY
DELAWARE	NEW MEXICO
DISTRICT OF COLUMBIA	OREGON
HAWAII	RHODE ISLAND
MAINE	VERMONT
MARYLAND	WASHINGTON

Source: National Organization for the Reform of Marijuana Laws.

With medical marijuana proliferating in California and beyond, the federal government has been faced with a dilemma. Should DEA agents ramp up their efforts to crack down on the expanding medical marijuana market, or do they turn a blind eye and give their attention to other matters?

In 2009 the answer to this question came in an announcement from U.S. Attorney General Eric Holder that the DEA will no longer raid medical marijuana retail outlets. In effect, the federal government had called a temporary truce with states on this matter. The laws had not changed and the feds continued to have the authority to crack down on medical marijuana use. The desire to do so had simply dissipated with the arrival of the Obama administration.

Although the truce on medical marijuana seems to be holding firm, intergovernmental relations on this matter are far from resolved. With states facing unprecedented fiscal crises, the pressure to legalize and tax marijuana grows. If states turn to pot as a cure for their financial woes, the feds will have to reconsider their marijuana policy. Of course the weight of the federal government's own fiscal troubles may lead future leaders in Washington, D.C., to consider taxation of legalized marijuana as a key to balanced budgets. After all, the estimated number of marijuana users is so large that potential tax revenues would be enormous. While it may be hard to predict the course of federal-state relations in upcoming years, it is fairly certain that those debates on college campuses regarding marijuana will continue on for years to come.

The debate also continues in prisons, where tens of thousands of mostly young men, disproportionately minority, rot because they were caught in possession of minor amounts of marijuana—not for sale but for personal use. They got sucked up by the drug-law enforcement complex. Powerful interest groups wanted the current marijuana legal situation continued. Prison guards want more prisoners. Police officers want to maintain or expand the budgets for drug enforcement. Distillers and brewers who often turn people into alcoholics don't want competition from another legal drug. These manufacturers and law enforcement unions all make major financial contributions to politicians to maintain the status quo. The pot smokers, so often poor, disorganized, and disoriented, have only the slightest political clout.

Ironically, one of these pot-smoking minority young men at loose ends with life got his act together, so to speak, and became president of the United States. Barack Obama, in his bestselling memoir *Dreams from My Father* (2004), confesses to extensive “reefer” experience: “I had discovered that it didn't make any difference whether you smoked reefer in the white classmate's sparkling new van, or in the dorm room of some brother you'd met down at the gym, or on the beach with a couple of Hawaiian kids. . . .” He wrote that the high he got from smoking reefer “could at least help you laugh at the world's ongoing folly and see through all the hypocrisy and bullshit and cheap moralism.”

Now he is not only the commander in chief but the chief dispenser of the “hypocrisy and bullshit,” not to mention “cheap moralism,” concerning marijuana policy. Thousands of young people are having their lives ruined by what he knows

to be ill-advised policies that he could change for the better in major ways with the stroke of a pen. Yet, despite the fact that, early in his political career, he called for the decriminalization of marijuana, today he sits atop a bureaucratic criminal justice machine that would have swept him up and thrown him in jail save for the grace of God. Now he has the power to play God in this matter and show grace to so many others. Yet he allows these socially destructive policies to continue. One can only wonder why!

There may be hope on the horizon, not from the executive branch but from the Congress. Appalled at the cruelty and wastefulness of current federal marijuana policy, two leaders in the Congress, one from the far right, Ron Paul, a Republican from Texas, and one from the far left, Barney Frank, a Democrat from Massachusetts, have sponsored a bill in 2011 that could get the federal government out of the marijuana punishment business altogether. The problem would simply be turned back to the states to allow or criminalize marijuana use as they wish. That's one of the nice things about American federalism: the national government can always just dump an intractable problem back on the states. Then it's their problem, and equally important, it is none of the federal government's business.

**For Discussion:** *Why has the federal government's marijuana policy been treated as a criminal justice problem as opposed to a public health problem as it is in Australia and many European nations? How likely is it that the Obama administration will seek significant reforms if it obtains a second term of office?*

### Important Disclaimer

The authors of this text are totally opposed to the use of illegal drugs of any kind because anyone who does so is risking their health, their career, and possibly their personal freedom. For those who feel an urgent need for recreational drugs, we recommend ample portions of dark chocolate, the darker the better, and preferably containing almonds, cashews, or raisins. Then the only thing you risk is the often cited "chocolate high," or getting too fat.

## THE EVOLUTION OF FEDERAL SYSTEMS

History indicates clearly that the principal factor in the formation of federal systems of government has been a common external threat. Tribes, villages, cities, colonies, or states have joined together in voluntary unions to defend themselves. However, not all systems so formed have been federal. A true federal system such as that in the United States must have the following features:

1. A written constitution that divides government powers between the central government and the constituent governments, giving substantial powers to each
2. Levels of government, through their own instrumentalities, exercising power directly over citizens (unlike a confederation, in which only subnational units

act directly on citizens while the central government acts only on the subnational governments)

3. A constitutional distribution of powers that cannot be changed unilaterally by any level of government or by the ordinary process of legislation

## Alliances and Confederations

In the beginning there was the alliance—a coalition of states agreeing to help each other in the event of war or crises. Alliances do not only involve cooperation and aggregation of capabilities; they are generally directed toward an actual or potential enemy and the actual or potential use of force. The agreement on which an alliance is based is often embodied formally in a treaty, but it can also be based on a tacit or informal understanding. Alliances can exist between states that are relatively equal in power and involve mutual security guarantees, or they can be between unequal states—in which case the more powerful state generally extends a unilateral guarantee to the less powerful one. This is always a dangerous situation for the weaker state. Too often a willingness to protect and preserve has turned into a desire to take over and annex.

Then came the confederation, a group of independent states that delegate powers on selected issues to a central government. In a confederation, the central government is deliberately limited, designed to be inherently weak, and has few independent powers. The United States was a confederation from 1781 to 1789. But the central government was so ineffectual in dealing with problems such as **Shays' Rebellion** and interstate commerce that the Constitutional Convention of 1787 was called to discuss the inadequacies of confederation government. To the great surprise of many who sent them to the convention, the delegates recommended not improvements in the confederation—which was expected—but a whole new form of national government.

## Defining Intergovernmental Relations

Finally, when there was a need for even stronger bonding among governments, along came federalism, a system of governance in which a national, overarching government shares power with subnational or state governments. Intergovernmental relations represent federalism in action. It is the complex network of day-to-day interrelationships among the governments within a federal system. It is the political, fiscal, programmatic, and administrative processes by which higher units of government share revenues and other resources with lower units of government, generally accompanied by special conditions that the lower units must satisfy as prerequisites to receiving the assistance.

In essence, intergovernmental relations are the sets of policies and mechanisms by which the interplay between different levels of government serving a common geographical area is managed. Such relations reflect the basic constitutional framework that links the levels of government, as well as dynamic contemporary

### Shays' Rebellion ■

A futile armed revolt (1786–1787) led by Daniel Shays (1747–1825), a Revolutionary War officer, in New England to protest the discontent of small farmers over debts and taxes. The rebellion was never a serious military threat, but it raised concern over the inadequacy of the Articles of Confederation to handle internal disorders and thus helped to create support for a stronger national government.

### William Pitt (1708–1778) ■

The First Earl of Chatham, known as the Great Commoner for his leadership in the House of Commons. The City of Pittsburgh is named in his honor. Historians call him “the elder” because his son with the same name was later prime minister.

### Assassination ■

The deliberate murder of someone, especially of a politically prominent personage, for political motives. The original assassins were thirteenth-century Muslims whose main goal was the murder of Christian Crusaders and other political rivals. Assassination is a time-honored though dishonorable way of removing people from public office. Presidents Lincoln, Garfield, McKinley, and Kennedy were assassinated; Presidents Theodore Roosevelt, Franklin Roosevelt, Truman, Ford, and Reagan all narrowly escaped death in various attempted assassinations.

factors including relative power, financial strengths, ethnic divisions, geographical factors, and so on. The essence of this constitutional framework is well captured by this famous 1763 statement by **William Pitt**, the elder, in the British House of Lords:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter—the rain may enter—but the King of England cannot enter!—all his force dares not cross the threshold of the ruined tenement!

In the United States today, the “crown”—the federal government—may not interfere unless this “poorest man” commits the proverbial “federal offense” and federal officials obtain a search or arrest warrant. And only local officials can obtain warrants for local crimes. This is why the investigation of President John F. Kennedy’s 1963 **assassination** was undertaken by the local police in Dallas, Texas. In the eyes of the law, Kennedy was just the victim of a local murder. In 1963 it was a federal crime to rob a bank if it was insured, as most are, by a federal agency, but it was not a federal crime to murder a president. (It is now!) After the local police so botched the investigation that they inadvertently spawned a conspiracy theory industry, Congress made it a federal offense to threaten or attack a president, vice president, or his or her immediate family. The point here is that within a federal system, different levels of government often perform similar functions, law enforcement in this case, that are constitutionally separate. Each level has constitutional limitations.

An understanding of intergovernmental relations is essential for every public administrator, because this area defines the scope and territory of the administrative world in which he or she lives. It is not just a question of territorial boundaries, though the boundaries of all political units are established by laws, constitutions, and accords, the study of which is central to intergovernmental relations. It is equally a question of functional allocations, because most countries have found it necessary to distinguish among national, regional, and local issues and to allocate them in various ways to different levels of government. This allocation, the question of who does what and with what resources, is the essential core of intergovernmental relations.

## THE FUNDAMENTAL SETTLEMENT

The most critical dimension of intergovernmental relations, that which forms and shapes the context of every government, is the fundamental settlement or accord by which the government was created. Such accords can never ultimately be unilateral—they must always involve a settlement between a plurality of communities. Federalism, like most institutional forms, is a solution of, or an attempt to solve, a certain kind of problem of political organization. Viable federal systems accommodate regional or subsystem diversity, thereby enhancing the strength of the greater federation. Both the United States and the European Community offer

illustrations of settlements whose terms determine the nature, scope, and powers of the governments involved.

## The Constitution

The 1789 Constitution of the United States is the oldest written constitution continuously in force and an enduring example to the rest of the world of the benefits and effectiveness of such a well-crafted document. Its famous beginning, “We the people,” asserts that the source of its authority is the people as opposed to the states. It then assigns powers to the various branches of government and in doing so structures the government. It limits the powers that any branch may have and allows each branch to check and balance the others. Most significantly, it denies certain powers to the national government, reserving them for the states and the people. But aside from its legal force as law and its physical existence as a piece of fading parchment in the National Archives, the U.S. Constitution is the national icon, the premier symbol of American freedom and governance; above all, it represents the collective political will of the American people over two centuries to maintain their republican form of government. Nevertheless, because of the nature of judicial review, the Constitution is ultimately, as New York Governor Charles Evans Hughes asserted in 1907, “what the judges [of the Supreme Court] say it is.” It is as Thomas Jefferson angrily wrote in a September 6, 1819, letter to Judge Spencer Roane, “a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.”

The 85 essays in *The Federalist*, published in 1787–1788, are the classic commentary on the U.S. Constitution and the theories behind it. They are considered by many political scientists to be the most important work of political theory written in the United States—the one product of the American mind counted among the classics of political philosophy. The papers were originally newspaper articles written by Alexander Hamilton, James Madison, and John Jay (all under the pseudonym **Publius**) to encourage New York to ratify the new Constitution.

Jay wrote only a few of the Federalist papers, but he was the first chief justice of the United States—a job he considered so insignificant that he resigned to become governor of New York. His resignation had the beneficial effect of making room for a later chief justice, John Marshall, a Revolutionary War soldier who became the third chief justice of the Supreme Court and, by almost universal agreement, did the most to establish the independent authority of the Court. From 1801 to 1835, he led the struggle for the Court to be the final arbiter of the Constitution and, by sheer force of will and legal cunning, made the federal judiciary a true check on the power of the other two branches.

Marshall, in a wide-ranging series of decisions, helped to create the American style of federalism. For example, in 1819 in *McCulloch v. Maryland* the Court upheld the implied powers granted to the Congress by the **necessary and proper clause** of the Constitution, upheld the supremacy of the national government in carrying out functions assigned to it by the Constitution, and established the doctrine of intergovernmental tax immunity. In stating that “the power to tax is the power to destroy,” the Court held that the Bank of the United States was not

### Publius ■

An ancient Roman who was famous for his devotion to republican government. It was common in the late eighteenth century for political writers to use a pseudonym of ancient lineage that reflected their political leanings.

### Necessary and proper clause ■

That portion of Article I, Section 8, of the U.S. Constitution (sometimes called the elastic clause) that makes it possible for Congress to enact all “necessary and proper” laws to carry out its responsibilities.

subject to taxation by the State of Maryland. And “destroy” is exactly what the Maryland State Legislature wanted to do to the bank. It viewed the “Monster Bank” so much as the tool of the privileged elite and the still-hated British interests that it specifically passed a law taxing the bank’s operations in Maryland in the hopes of crippling it.

## The European Union

Sometimes the fundamental settlement occurs all at once, as it did with the creation of the American federal system by the U.S. Constitution. Sometimes it evolves over a series of accords, as it has with the European Union, which is still evolving. It may eventually become a “sort of United States of Europe,” as Winston Churchill envisioned in 1946; or it could fracture into warring (either hot or cold) camps as it did so often in the twentieth century. Remember, the U.S. experience with federalism was not a ride in a continuous direction. The Civil War was a major setback. Of course, after the war the Union was stronger than ever. Historian James M. McPherson reminds us in his *Battle Cry of Freedom* (1988) that “before 1861 the two words ‘United States’ were generally rendered as a plural noun: ‘the United States *are* a republic.’ The war marked a transition of the United States to a singular noun.” Only after the Civil War were we “one nation under God, indivisible,” as it says in the Pledge of Allegiance. The war had decided once and forever the issue of divisibility.

## THE AMERICAN FEDERAL SYSTEM

The U.S. Constitution is the fundamental settlement defining federalism and also defining the permanent features of intergovernmental relations in the United States. Like the constitutions of many countries, the U.S. Constitution is capable both of amendment as to its formal terms and evolution as to its meaning as a result of such things as Supreme Court judgments. Yet, in essence, it represents a relatively unchanging element of the framework within which intergovernmental relations are conducted.

The most fundamental aspects include the Constitution’s provisions in three areas:

1. Its creation of a federal system—that is, one in which there is both a national government and state governments
2. Its allocation of certain functions to the national government
3. Its embodiment of certain principles, particularly through the interpretation of the Constitution and the **Bill of Rights**, which provide scope for Supreme Court judgments that can profoundly alter the respective powers and functions of the national and state governments over time

If we grow up within a federal system and are used to belonging to a state as well as a nation, it is difficult to imagine what it would be like to live in a country without states. Yet this is the case in countries such as France and New Zealand, which have unitary governments, with all significant decisions being made at the national level.

### Bill of Rights ■

The first ten amendments to the U.S. Constitution. Only a few individual rights were specified in the Constitution that was ratified in 1789. Shortly after its adoption, however, ten amendments—called the Bill of Rights—were added to the Constitution to guarantee basic individual liberties.

TABLE 4.3

## Types of Governments

Type	Examples	
<b>Unitary Governments</b> There are no state governments; all important power lies with the national government.	Denmark France	Japan New Zealand
<b>Federal Governments</b> There is a national government and a number of state governments; power is shared between them.	Australia Brazil Canada Germany	India Mexico Switzerland United States
<b>Confederations</b> Power rests with “sovereign” state governments, and an overarching government has some defined powers.	European Union Commonwealth of Independent States (former USSR)	

**Accountability** ■

The extent to which one must answer to higher authority—legal or organizational—for one’s actions in society at large or within one’s particular organizational position. Elected public officials are theoretically accountable to the political sovereignty of the voters. In this sense, appointed officials—from file clerks to cabinet secretaries—are less accountable than elected officials. The former are accountable mainly to their organizational supervisors, while the latter must answer to their constituents.

**Buck** ■

Responsibility. To avoid a problem or a responsibility is to *pass the buck*. President Truman was famous for having a sign on his desk that read “The Buck Stops Here.” *Buck*, a term from poker, refers to the marker put in front of the player who next had to deal. Bureaucrats in many jurisdictions refer to the form memos that they use to direct paper from one to another as buck slips.

**Three Categories of Governments**

There are three main categories into which we can allocate nations: unitary governments, federal governments, and confederations (see Table 4.3). Each has certain strengths and weaknesses, and it is interesting to consider the effects of altering the system from one of these to another, as New Zealand did in 1879 when it abolished its federal system and moved to unitary government. In Australia today, a significant minority would like to abandon federalism, abolish state governments, and perhaps introduce a new level of less costly, more numerous regional administrations.

Sometimes the reform impetus goes in the other direction. For example, Great Britain, formally the United Kingdom, is on the verge of moving from a unitary government to a federal structure now that Scotland and Wales will have their own legislatures with broad powers.

**Unitary Government Advantages** Unitary governments do have some significant strengths. The following are the four key advantages they usually have over a federal system or a confederation:

1. National direction is clear; policies can be made by a single government without the need for negotiation or conflict with subnational states.
2. There can be no confusion as to **accountability**. It is clear to voters which level of government is responsible for a particular problem or function. (Legislators who wish to spend money must raise it; it is not possible for legislators to seek to pass the **buck** for failure to another level of government.)

3. Duplication of legislatures, bureaucracies, and programs is avoided with significant savings in direct costs—and the more subtle but no less real costs of needless duplication.
4. Issues of fairness in raising and spending money between levels of government (vertical fiscal imbalance) simply do not arise.

**Federal Government Advantages** Unitary governments also have major drawbacks, which in turn correspond to the major strengths of federal systems. These include the following:

1. A federal system has greater scope for diversity and experimentation in policy.
2. The need to debate issues rather than enact them instantly may provide a more considered and viable policy outcome. This tendency toward incrementalism is seen as integral to democracy.
3. A federal system must consider the different ethnic or cultural groupings that may predominate in a particular state and wish to pursue a distinct cultural or social policy—such as the French Canadians in Quebec. (As the cases of Quebec and Bosnia show, membership in a federation may still fail to fulfill the nationalist aspirations of many people.)
4. The danger always exists in a large country that a unitary government may be too remote for appropriate democratic participation by regional centers located away from the capital; a federal system encourages—indeed demands—regional participation in governance.
5. The danger exists in a unitary government that the stronger regions, the larger racial groups, or more powerful interests will provide insufficient allowance for the needs of minorities or weaker groups.

In *The Federalist*, No. 10, James Madison discusses the problem of such factions and the danger they pose to a political system. Madison feared that the interests of parties and pressure groups could destabilize a government, but he believed that an overarching representative government, with a functional as well as a territorial separation of powers, could prevent this.

**Confederations** Confederate systems are inherently weak as central governments. The United States was originally a confederate system. The Articles of Confederation were the original framework for the government of the new United States; they went into effect in 1781 and were superseded by the U.S. Constitution in 1789. The Articles said that the states were entering into a “firm league of friendship” and a “perpetual union for the common defense, the security of their liberties, and their mutual and general welfare.” The Articles provided for a weak central government, which could not compel states to respect treaties, could not regulate interstate and foreign commerce, could neither collect taxes directly from the people nor compel the states to pay for the costs of the national government, and could not create a sense of national unity and national purpose. Such absence of central power directly contributed to problems such as a devalued national currency, trade wars between states, and an ineffectual foreign policy. It nonetheless

provided the experience of state cooperation out of which the consciousness of the need for a stronger union could emerge.

All confederations such as the present European Union and the Commonwealth of Independent States (the former Soviet Union) pose the same question: Which way are they going? Will they evolve, as the United States did, into a strong federal system? Or will they follow the route of the **Confederate States of America** or the **Confederation of the Rhine** and simply disintegrate, to be replaced by new governing structures?

## THE STRUCTURE OF INTERGOVERNMENTAL RELATIONS

There are eternal questions concerning the structure of intergovernmental relations: Which level of government will have overall responsibility for what functions? When functions are shared between levels of government, how will each function be divided among national, state, and local governments? Should the taxes needed to finance local government be raised by the government that is to spend them or by the higher level of government most successful at tax-raising? Should a national government have an objective of redistributing revenues to reduce the differential between the richest and poorest regions of a nation?

As we said earlier, the Constitution itself is the best place to go for answers to these questions. For example, Article I, Section 8, of the Constitution gives the national government the authority to regulate trade “among the several states.” Similarly, the Constitution makes explicit the limits of federal intervention in state matters, including restrictions on the federal government’s ability to tax interstate commerce (Article I, Section 9). Such direction provides a framework for what governments can and cannot do in relation to each other.

While the Constitution does provide a framework for intergovernmental relations, the document does not provide all the details on how governments should relate to each other. In fact, the Constitution can be particularly vague in laying out the balance of power between the levels of government. Nowhere is this more obvious than in the Tenth Amendment. In this last amendment of the Bill of Rights we are told that “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.” This amendment, commonly known as the reserved powers clause, has been at the heart of numerous debates on the balance of power between the national and state governments.

Intergovernmental relations structures are almost always designed to accommodate differing communities of interest—social, ethnic, and political—as the boundaries of governments often possess, or soon acquire, symbolic meanings for communities that identify with them. This applies whether we are speaking of what it means to be a European or an American, a Luxemburger or a Texan, a Londoner or a San Franciscan. For example, localities in the United States often create fire, library, and school districts that for obvious reasons of **economies of scale** serve the citizens of small general-purpose jurisdictions, such as boroughs or

### Confederate States of America ■

The short-lived confederation formed by the 11 states that sought to secede from the Union. That they could not do so was decided by the Civil War of 1861 to 1865. Those states, in alphabetical order, were Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

### Confederation of the Rhine ■

The 1806–1813 union of the smaller German-speaking states in the Rhine River region.

### Economies of scale ■

Cost savings realized by doing things in larger rather than smaller units. This decreases the overall average cost.

towns. These communities may develop a strong sense of identity that is focused on volunteer fire companies or high school sports teams.

### The Effects of Pluralism

Sometimes a community is so dominated by one ethnic group that this impacts its relations—its intergovernmental relations—with other levels of government. Thus the people of Quebec, because of their strong French cultural identity, have been able to get special advantages from the Canadian national government. Alternatively, ethnically dominated communities in other countries have complained that they get fewer resources from their national governments because of their minority status. Sometimes national policies even encourage political ghettoization. For example, the United States has long practiced the art of gerrymandering, the reshaping of an electoral district to enhance the political fortunes of the party in power, as opposed to creating a district with geographic compactness. The term first arose in 1811, when Massachusetts Governor Elbridge Gerry reluctantly signed a redistricting bill, creating a district shaped like a salamander.

In 1986 the Supreme Court ruled in *Davis v. Bandemer* that partisan gerrymandering is unconstitutional “when the electoral system is arranged in a manner that will consistently degrade a voter’s or a group of voters’ influence on the political process as a whole.” This encouraged a spate of affirmative gerrymandering, redistricting to consolidate minority votes so that a minority group member will most likely win the next election. This has resulted in more minorities, especially African Americans, being elected to the U.S. Congress than ever before. The effect of this is to give them representation in numbers that approximate their percentage of the population. Just like all other members, they fight the political wars to bring resources to the myriad governments within their legislative districts. However, in the 1995 case of *Louisiana v. Hays*, the Supreme Court seemed to put severe inhibitions on this when it ruled that congressional district lines are unconstitutional if race is the “predominant factor” in drawing them. Nevertheless, the Court did not say that race could not be a factor at all.

### The Marble-Cake Metaphor

People who have not worked in or studied public administration are often unaware of the complicated nature of intergovernmental relations. It is not simply a question of dividing the work between the levels—of assigning local issues to local government, and national issues to federal government. The majority of issues have national, regional, and local implications. The popular image of the federal system as a layer cake, with each layer of government neatly on top of the other, is deceptive. The reality is more like a marble cake. This metaphor holds that the cooperative relations among the varying levels of government result in an intermingling of activities; this is in contrast to the more traditional view of layer-cake federalism, which holds that the three levels of government are totally or almost totally separate. Marble-cake federalism is usually associated with **Morton Grodzins**, who made a famous example out of the case of rural county health officials called sanitarians. Sanitarians are appointed by the state government under

**Morton Grodzins**  
(1917–1964) ■

A University of  
Chicago political  
scientist.

merit standards established by the federal government, and while their base salaries come from state and federal funds, the county provides them with offices and office amenities and pays a portion of their expenses.

According to Grodzins: “It is impossible from moment to moment to tell under which government the sanitarian operates. His work of inspecting the purity of food is carried out under federal standards; but he is enforcing state laws when inspecting commodities that have not been in interstate commerce. . . .”

The essential story of the sanitarian could be told of hundreds of other public sector jobs. Bus drivers, police officers, and teachers are all caught up in the intergovernmental maze. Consequently, mass transit, law enforcement, and education policies, for example, must be subjects of attention at all levels of government. It takes wise legislators at each level to comprehend how their legislation will fit in with that being developed at other levels—and officials working at each level may find it a major task to see that their work is compatible with that of people working on similar topics in other levels of government.

## DYNAMIC FEDERALISM

The formal structure of powers, roles, and relationships underlying the intergovernmental relations of a federal system is rather like the trunk and branches of an old tree. It sways in the wind, leaves come and go, and sometimes entire branches are lost in a storm. The more rigid the tree, the greater the possibility that a major storm (such as a civil war) may uproot it entirely. If the tree is more supple, it will adapt and change to withstand the storm—and may be all the stronger for the experience.

Some federations have collapsed entirely in recent political history. The Union of Soviet Socialist Republics and Yugoslavia are leading examples. Others, such as Malaysia, have lost a major branch (Singapore) but survived. Still others, such as Canada, have been close several times to losing a very major branch (Quebec).

In the United States, there has been a series of major phases of intergovernmental relations.

### Dual Federalism

This was the nineteenth-century concept, now no longer operational, that the functions and responsibilities of the federal and state governments were theoretically distinguished and functionally separate from each other. With this philosophy—which existed during the nineteenth century, when each level of the government could and did pretend the other level did not exist—rival lawmen rode through the Old West. In the absence of cooperation between jurisdictions, an outlaw could evade capture simply by “crossing the state line.”

Some analysts suggest that this kind of federalism, which went out when the New Deal of 1933 came in, is what the Reagan administration sought, at least rhetorically, to eventually get back to. The basic idea of dual federalism was expressed succinctly in 1891 in *The American Commonwealth* by British historian

James Bryce, who visited the United States in the 1880s to observe its political system:

The characteristic feature and special interest of the American Union is that it shows us two governments covering the same ground yet distinct and separate in their action. It is like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, yet each doing its own work without touching or hampering the other.

Dual federalism has never really died out. It has just been extensively modified by two centuries of federal legislation and judicial precedents. Indeed, as recently as 1997 the Supreme Court in *Printz v. United States* held that “it is incontestable that the Constitution established a system of ‘dual sovereignty.’”

#### **Pump priming** ■

Government spending to stimulate an economy during a time of economic decline.

#### **John Maynard Keynes (1883–1946)** ■

The English economist who wrote the most influential book on economics of the last century, *The General Theory of Employment, Interest, and Money* (1936). Keynes founded a school of thought known as Keynesian economics, which called for using a government’s fiscal and monetary policies to positively influence a capitalistic economy and developed the framework of modern macroeconomic theory.

#### **Interstate compacts** ■

Formal arrangements entered into by two or more states, generally with the approval of the U.S. Congress, to operate joint programs.

#### **Extradition** ■

The surrender by one nation or state to another of a person accused or convicted of an offense in the second nation or state.

## **Cooperative Federalism**

This is the notion that the national, state, and local governments are cooperating, interacting agents, working jointly to solve common problems, rather than conflicting, sometimes hostile competitors pursuing similar or, more likely, conflicting ends. While some cooperation has always been evident in spite of the conflict, competition, and complexity of intergovernmental relations, cooperation was most prominent between the 1930s and the 1950s. The emergency funding arrangements of the Depression years, known collectively as the New Deal, and the cooperation among federal, state, and local authorities during World War II to administer civilian defense, rationing, and other wartime programs, are noteworthy examples of cooperative federalism in the United States.

The New Deal’s scheme of economic reconstruction involved many new federal grants to the states aimed at providing jobs. During this time, the concept of using federal spending to create demand—**pump priming**—led to an entirely new position for federal government as the shaper of programs in the states. This was the economic prescription of the British economist **John Maynard Keynes**, which called for stimulating the economy during a time of economic decline by borrowing money to spend on public works, defense, welfare, and so on. In theory, the prosperity generated by such expenditures would increase tax revenues, which in turn would pay for the borrowing.

Cooperative federalism also has a horizontal dimension: state-to-state interactions and relations. Such interstate relations take many forms, including **interstate compacts** and commissions established for specific purposes: river basin management, transportation, **extradition** of criminals, conservation of forests and wildlife, and administration of parks and recreation. Horizontal relations between local governments also are numerous. Cities frequently contract for services from various neighboring local governments (and even from private providers). The Lakewood plan, established in southern California in 1954, is the best-known example of local contracting for services in the United States. Under this plan, the city of Lakewood contracted for a rather comprehensive package of services from Los Angeles County, where Lakewood is located.

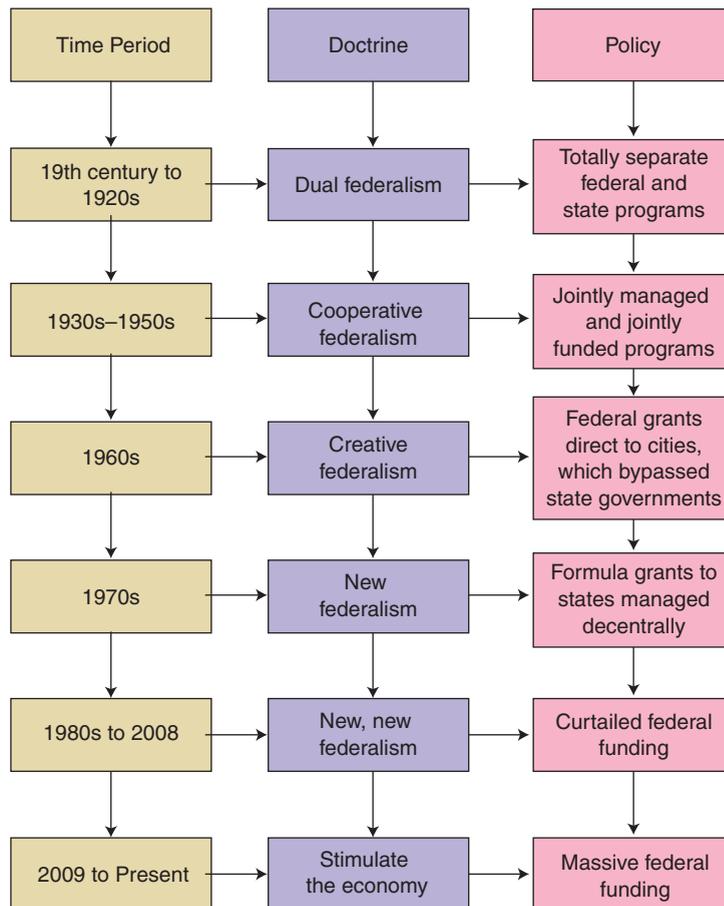
### Creative Federalism

This was the Lyndon B. Johnson administration’s term for its approach to inter-governmental relations, which was characterized by joint planning and decision making among all levels of government (as well as the private sector) in the management of intergovernmental programs. Many new programs of this period had an urban-metropolitan focus, and much attention was given to antipoverty issues. Creative federalism sought to foster the development of a singular **Great Society** by integrating the poor into mainstream America. Its expansive efforts were marked by the rapid development of categorical grant programs to state and local governments and direct federal grants to cities, frequently bypassing state governments entirely. Great Society programs such as **Head Start** and the **War on Poverty** were all based on the concept of federal grants shaping activities and directions at the state and local levels. However, the idea that all wisdom rested in Washington

**Great Society** ■ The label for the 1960s domestic policies of the Johnson administration, which were premised on the belief that social and economic problems could be solved by new federal programs. This was Johnson’s effort to revive the federal reform presence in social change represented in the Progressive movement, the New Deal, and the Fair Deal.

**Head Start** ■ The federal program designed to provide early education opportunities for poor children prior to kindergarten. Head Start centers exist nationwide and offer not only preacademic instruction but also health, social, nutritional, and psychological services.

**War on Poverty** ■ The phrase used by the Johnson administration for those 1960s Great Society programs designed to eliminate the causes and effects of poverty in the United States.



**FIGURE 4.1**  
Evolution of intergovernmental relations doctrine

was not always well received in state capitals or city halls. The Nixon administration's new federalism sought to alter this balance.

### New Federalism

This was President Richard Nixon's attempt to return autonomy to the states while maintaining significant levels of federal funding. From 1972 onward, new federalism entailed establishing aggregate grant levels by formula, but allowing state and local governments substantial latitude in applying the funds in their own area. The term has its origins in the liberal Republican effort to find an alternative to the centralized state perceived as having been set up by the New Deal but an alternative that nonetheless recognized the need for effective national government. During the Nixon administration, new federalism referred to the style of decentralized management at the federal level symbolized by such programs as general revenue sharing (see the next section) and the decentralization of federal regional management to ten coterminous regions, each with a common regional center.

New federalism as developed by the Reagan administration disregarded the Nixon approach of decentralized federal regional management and turned to development of direct relations between the federal government and the state governments. The intent was to return power and responsibility to the states and to dramatically reduce the role of the federal government in domestic programs, ranging from community mental health to crime prevention. This was reminiscent of the dual federalism that prevailed in the United States in the nineteenth century.

### New, New Federalism

The Reagan administration imposed new policy objectives on intergovernmental arrangements. This was also called—in Nixon fashion—"new federalism." This made sense, however, in that it was basically an extension of the Nixon initiatives. Reagan and his advisers viewed much activity by the national government, especially many expenditures on social programs, as wasteful and unnecessary. Thus they turned their attention to cutting federal grants, attempting to transfer functions "back" to the states and away from Washington. In 1986 the Reaganites also destroyed general revenue sharing, the unrestricted distribution of a portion of federal tax revenues to state governments.

Because Reagan succeeded in making such large cuts in the funds available from Washington to state and local governments, the subnational jurisdictions had no choice but to curtail or close facilities and programs, or to look for energetic ways of funding those they wished to retain. In some respects, the entrepreneurship in state and local government documented by Osborne and Gaebler in *Reinventing Government* (1992) was the inventiveness mothered by the financial necessity imposed on them by Reagan administration policies. While the policy directions of the Reagan and Bush administrations, through their cuts in state and local aid, heavily impacted the poor in the United States, they failed to address the perception of **malaise** in Washington. Thus the Clinton administration began with public confidence in government at record low levels—especially with regard to intergovernmental issues such as welfare and crime.

#### Malaise ■

The medical term for a vague feeling of illness that is used in other contexts to express a lassitude or ineffectiveness not traceable to a specific source and not exhibiting a specific set of symptoms. "Malaise" was President Jimmy Carter's word for the political uneasiness he found in America.

Then history, as is its wont, repeated itself. The Republican Congress, elected in 1994, declared in 1995 that it was determined to create—what else?—a new federalism. But according to political journalist Alan Ehrenhalt, “It would be more accurate to describe it as the New New New Federalism—the 1995 revival of the Reagan revival of the Nixon revival of some ideas that Dwight D. Eisenhower placed before the country almost 40 years ago.” Ehrenhalt views the 1995 Republican version of federalism as “the fourth modern incarnation of the simple-enough notion that Washington ought to be doing less governing and the states ought to be doing more.” You may well be thinking by now, “The more things change, the more they stay the same.” (This now trite observation was first credited to Alphonse Karr, the nineteenth-century French journalist, in a January 1849 issue of *Les Guêpes*, a satirical review of intergovernmental relations in Paris.)

## INTERGOVERNMENTAL MANAGEMENT

We cannot usually “see” intergovernmental relations, just as we cannot see other aspects of government machinery. But there are times when intergovernmental management bubbles to the surface and becomes visible. Unfortunately, these times usually involve great tragedies such as a major earthquake in California, the terrorist attack on the World Trade Center in New York, or the bombing of the federal building in Oklahoma City. In each case, the various levels are literally on the scene. First to arrive are local police and fire personnel. They are backed up by appropriate state agencies such as the **National Guard**. The federal government is represented by the FBI (when a crime is suspected, as in a bombing) and the Federal Emergency Management Agency (FEMA), which plans for and coordinates emergency preparedness and response for all levels of government and for all kinds of emergencies—both civilian and military. FEMA is the organization that decides what the various governments should be doing after such a catastrophe.

The political dialogue in American politics is always full of intergovernmental management issues. Politicians running for president or Congress love nothing better than telling the voters what they are going to do about crime or education once elected. But these are only marginal concerns of the federal government. State and local police are responsible for law enforcement. The FBI, while highly visible in the public’s crime-fighting imagery, is minuscule in comparison. State and local governments employ more than half a million uniformed police officers. The FBI has only about 13,000 special agents. Education is the province of local school boards. The bottom line is that aside from minor funding for special programs, there is practically nothing the federal government can do about these issues—nothing but talk. But federal officials, and would-be federal officials, spend so much time talking about such hot-button issues that the public often thinks there is something, usually something simple such as mandating more homework for third-graders or telling teenagers not to become sexually active before marriage, that the federal government can do that will make a real difference. While politicians may think the public naive, there are no simple answers to the complex questions of intergovernmental management.

### **National Guard ■**

The military forces of the states, which often are used for civil emergencies, such as major fires or floods. Normally, under the command of each state’s governor, any or all of the states’ individual guard units may be called (by the U.S. Congress) into federal service at any time. Once a guard unit is called into federal service, it is no longer subject to state control. The National Guard was organized in 1916. Until that time, each state had a volunteer militia.

### Picket Fence Federalism

The human body depends on the interplay of a variety of comprehensive systems—from the cardiovascular system to the respiratory system to the nervous system—each one as critical as the next. It is similarly true that a federal system of government is built around several pervasive systems—systems a lot less predictable than those serving the human body but just as pervasive and critical. Picket fence federalism is the metaphor most commonly used for this systemic process. This concept implies that bureaucratic specialists at the various levels of government (along with clientele groups) exercise considerable power over the nature of intergovernmental programs. Bureaucratic or program specialists at national, state, and local government levels for such fields as public housing, vocational education, health and hospitals, and higher education represent the pickets in the picket fence. They communicate with each other in daily work, belong to the same professional organizations, and have similar professional training. They are likely to be in conflict with general-purpose government officials (mayors, governors, the president), who attempt to coordinate the vertical power structures, or pickets. The general-purpose officials are the crosspieces of the fence. The metaphor is credited to Terry Sanford, when he was governor of the state of North Carolina. It was initially presented in his book *Storm over the States*.

### Councils of Governments and Intergovernmental Agreements

Any multijurisdictional cooperative arrangement to permit a regional approach to planning, development, transportation, environment, and other problems that affect a region as a whole tends to be known as a council of government (COG), even if the word *council* is not part of its formal title. COGs are typically sub-state regional planning agencies established by states. They are usually responsible for area-wide reviews of projects applying for federal funds and for development of regional plans and other area-wide special-purpose arrangements. They are composed of designated policymaking representatives from each participating government within the region. Some COGs have assumed a more enterprising role beginning in the 1980s by acting as contractors for, and service providers to, their local governments. For example, the COG for Lee and Russell counties in Alabama helped form a waste management authority to negotiate a single landfill contract with the private company that owns the landfills they use. According to journalist Eileen Shanahan, there is a tendency for COGs to be “transformed into regional entities that amount to multipurpose special districts, with real powers.”

The value of councils of government and other cooperative agreements between local governments is becoming particularly noticeable in the area of land-use management. As suburban sprawl has emerged as a significant challenge in many parts of the country, there has been a move on the part of state governments to use incentives to bring counties and municipalities into partnerships to manage growth. For example, local governments in Wisconsin are entitled to state grants for planning only if they enter into intergovernmental agreements with their neighbors. While the best way to effectively manage sprawl-related problems might be to simply merge local governments or shift land-use management completely to the county level, such options are generally a political nonstarter. Thus states will

likely continue to rely more on nudging local governments to join forces rather than shoving them together.

Finally, even if states can coax municipalities into councils of government, the voluntary nature of the partnerships makes them only advisory in nature. They have few, if any, independent sources of revenue. Professor Bernard H. Ross has compared them to the General Assembly of the United Nations in that both institutions “can debate, discuss, and suggest, but they cannot enforce action” on any of their members.

### Mandate Mania

The key word in the new American thrust toward devolution is *mandate*. Normally this word refers to the perceived popular or electoral support for a public program, political party, or a particular politician. U.S. presidents who win elections by overwhelming majorities may rightly feel the vote was a “mandate” to carry out their proposed policies. But mandate has another equally important meaning: It is one level of government requiring another to offer—or pay for—a program as a matter of law or as a prerequisite to partial or full funding for either the program in question or other programs. It is the federal government ordering, by means of passing a law, state governments to reduce air pollution. Or it is a state government ordering, by means of passing a law, municipal governments to recycle trash collections. Mandates are orders, pure and simple. And the movement toward devolution is spurred on by jurisdictions and constituencies that increasingly resent taking such orders. In the United States these jurisdictions cite the “fact” that they are sovereign states and shouldn’t have to put up with this administrative tyranny.

Hypocrisy is what makes it possible for the states to demand federal action and funding on this or that program while complaining that federal regulations on their use of federal funds insult their sovereignty. It is like a grown child demanding his or her parents are obligated to pay for this and that, while at the same time insisting that he or she be treated like an independent adult. Neither the states nor such children can have it both ways. As Shakespeare’s King Lear reluctantly learned, “How sharper than a serpent’s tooth it is to have a thankless child.” But who is the child here? The federal government is the creature (if not the child) of the states. Yet the states, like old King Lear, gave up their sovereign pretensions to “form a more perfect union.” Now they complain when things are not perfect enough. But that was not the agreement. The deal made at the 1787 Constitutional Convention was “more perfect”—not perfect. Those who might say to the states, “Quit your whining and act your age” miss the point. The whining, the complaining, and the hypocrisy are an inherent and beneficial part of a never-ending process of intergovernmental give and take. Besides, the complaining often leads to useful change.

Nothing sours intergovernmental relations faster than mandates. It is difficult even to determine how many mandates impact any given jurisdiction. For example, according to journalist Eric Pooley, the New York State Governor’s Office of Mandate Relief counted 1,700 state and federal mandates in 1992. But in 1994 the *New York Times* discovered that there were 3,200 from the state alone that

affected local government. There is obviously a major problem of definition here. Different things were being counted.

The only way to comprehend the full scope of the mandates problem is to look at their different categories. First, are they direct orders (which imply civil or criminal penalties for disobeying) or merely conditions for receiving aid? If they are the latter, they may not be considered mandates at all, because they do not have any effect unless you want the aid. Then you must also take the strings—the mandates—that come with it. Second, are they programmatic or procedural? Programmatic mandates state the type and quality of program to be implemented—a school lunch program must meet specified national standards for nutrition. A procedural mandate requires jurisdictions to do what they were going to do anyway, but, according to new requirements, personnel must be hired according to equal opportunity provisions; formal meetings and records must be open to the public. While programmatic mandates may cost a great deal, many procedural mandates may cost little or nothing, or have a one-time-only cost.

Some mandates merely constrain. But the constraints can hurt, as they do when state laws specify the kinds of government, religious, and nonprofit organization property that is exempt from local property taxes or when states put limits on property taxes or tax increases for veterans or retired citizens.

Some mandates involve not one but large numbers of programs at once. These so-called crosscutting mandates are found in virtually all state and federal aid programs. For example, if you accept federal funds, you are subject to the Anti-Kickback Act of 1934 (the Copeland Act), which should inhibit you from extorting money from employees or contractors.

While it is possible to classify mandates, they are so integral to all of public policy and administration that it is virtually impossible to accurately count them—without first creating a classification scheme that defines what you mean by a mandate. There is no **czar** of mandates statistics. There are only countless studies by countless groups, such as the U.S. Conference of Mayors and the **Advisory Commission on Intergovernmental Relations**, that all essentially conclude that there are more mandates than you can shake a stick at!

### Mandates and the War on Terrorism

The war on terrorism that started on September 11, 2001, has caused mandates to explode at the same time that state and local governments have had their revenues curtailed because of a poorly performing economy. The Transportation Security Agency, created in 2001, regularly tells airports to raise their security status. However, it hasn't been able to tell the airports where to find the funding to pay for overtime payments to local police. Dale Russakoff and Rene Sanchez reported in the *Washington Post* that when the Department of Homeland Security elevated the terror threat in early 2003, the city of Los Angeles, already spending \$1 million a week on extra security and running a high deficit, sought to avoid the additional expense by asking its state to send National Guard troops to the airport. California, already suffering staggering deficits, sent 50 National Guard soldiers to the airport. While the city avoided the expense, the state was stuck with “\$100,000 a week more to cut elsewhere.”

#### Czar ■

A former Russian absolute monarch; a nickname for any high-ranking administrator who is given great authority over something—for example, an energy czar, a housing czar.

#### Advisory Commission on Intergovernmental Relations ■

A national, bipartisan organization created by the U.S. Congress in 1959. The commission sought to address itself to improve cooperation among the levels of government and the function of the federal system. Nevertheless, it became a victim of the budget wars in Congress. It was phased out and shut down by the end of 1996.

In order to address this problem, at least symbolically, Congress passed the Unfunded Mandate Reform Act of 1995. This law holds that any future **bill** might be out of order if it imposes a financial mandate of more than \$50 million on any one state, local, or Native American tribal government. But this requirement could always be rescinded by a majority vote. The law did nothing to end current unfunded mandates. It was basically designed to force Congress to be more aware of the implications of possible future mandates.

#### Bill ■

A legislative proposal formally introduced for consideration; unfinished legislation. After a bill is passed and signed into law, it becomes an act.

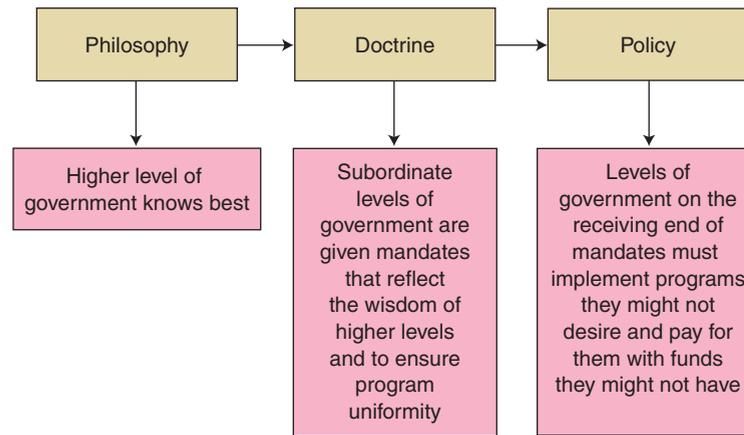
### BOX 4.1 | Cyber Sales and Intergovernmental Relations

If you are like a growing number of college students, there is a good chance that you bought this book through an Internet company such as Amazon.com. According to the U.S. Department of Commerce, total Internet sales for 2010 were estimated at \$165.4 billion, an increase of nearly 10 percent from 2009 and nearly double the level from 2004. While only amounting to about 4.2 percent of all sales in the nation, the Internet is clearly becoming a cornerstone of the nation's economy. But what about Internet sales as a source of government revenue? When you purchase products or services in most states, you are charged a sales tax. However, when you make Internet purchases, you most likely pay no sales taxes at all. That's because the U.S. Supreme Court ruled in 1992 that online retailers did not need to collect taxes for sales to states where they did not have a physical presence. Thus, if a company doesn't have a store or shipping center in your state, your purchase online should be tax-free. While this scenario is good for you, it places a strain on most states' revenue streams. As of 2008, all but five states (Alaska, Oregon, Montana, New Hampshire and Delaware) collected some form of sales tax. According to the National Governors Association and National Conference of State Legislatures, state and local governments lost approximately 23 billion in 2003 from untaxed Internet sales. Not surprisingly, states have been anxious to find a way to get their money back. However, the states' road to riches must travel through Washington, D.C. That's because the Constitution gives the federal government control over interstate commerce. Without congressional

action, or a change of heart by the federal judiciary, states cannot collect taxes on online sales. In 2000 and 2003 Congress considered legislation to allow state and local governments to tax Internet purchases, but the bills died before ever reaching the Senate or House floors.

Since 2005, 23 states joined together in a consortium under the Streamlined Sales Tax project. Under this initiative the states have been using their numerical strength to try to persuade online retailers to voluntarily collect sales taxes. In October 2005 a large number of Internet vendors began collecting sales taxes based on the rates in effect in the buyer's home states and then remitting the revenue to the states. In return, the e-businesses were to receive a one-year amnesty for taxes they may have owed on past online sales. While the states benefited from the revenue generated from the new system, the project had a broader goal of pressuring Congress to create legislation that allows the states to directly tax online sales. By 2010 this pressure appeared to be bearing some fruit. With fiscal conditions in the states in crisis condition, a bill entitled the Main Street Fairness Act was introduced into both houses of Congress to allow states to collect sales taxes from online purchases, with optimism among the sponsors that the time may have finally arrived for states to have this power. ▀

Source: Adapted from data found in <http://www.streamlinedsalestax.org> and "The State of the Internet Sales Tax," from *BusinessWeek* online at [www.businessweek.com/the\\_thread/techbeat/archives/2009/04/the\\_state\\_of\\_in.html](http://www.businessweek.com/the_thread/techbeat/archives/2009/04/the_state_of_in.html) and from "Is an Internet Sales Tax Coming" by Yan Q. Mui of the *Washington Post* at [http://voices.washingtonpost.com/political-economy/2010/07/by\\_ylan\\_q\\_mui\\_a.html](http://voices.washingtonpost.com/political-economy/2010/07/by_ylan_q_mui_a.html).



**FIGURE 4.2**  
Doctrine of mandates

### The Transformation of Governance

In 1999, the National Academy of Public Administration (NAPA) established a Priority Issues Task Force to identify the key issues in public administration that would face the nation in the first years of the twenty-first century. What the task force found was that governance throughout the United States and around the world was “undergoing a fundamental transformation” that had huge implications for public administrators. In particular, the NAPA group suggested that public administrators would face (1) a growing complexity of relationships between government and society; (2) the shifting of national responsibilities both in the direction of international bodies and systems and in the direction of states, localities, and community-based institutions; and (3) the need for greater capacity to manage these relationships. According to Don Kettl, a leading scholar on the subject, “government at all levels has found itself with new responsibilities but without the capacity to manage them effectively.” While government remains the only player in society that has formal authority to act in the name of the “people,” it has seen its responsibility distributed to both nonprofit and profit-driven enterprises. Given the increasing importance of public-private partnerships, the already complex nature of intergovernmental relations becomes even more stressed. Not only must a local public administrator work with officials at the state and federal level, but he or she must also coordinate programs with nongovernmental organizations such as private contractors and nonprofit groups. Inevitably, such multidimensional relationships raise questions of accountability and responsiveness, with public administrators receiving blame and credit for actions they really do not have control of.

### FISCAL FEDERALISM—FOLLOWING THE MONEY

In the infancy of federalism in the eighteenth century, it may have been grandiose to think of the policy arrangements in national and state government as a system. Geographic separation, painfully slow systems of communication, and a relatively

clear differentiation of functions gave each level of government a role that could be carried out with only limited interaction with other levels of government.

Several factors permanently changed this picture during the twentieth century. First, the galvanizing effect of the world wars and the Cold War saw national direction and planning emerge more thoroughly than had ever been necessary before. Second, a revolution occurred in transport and communications that has permanently ended the possibility for states to behave with the completely unilateral autonomy they once had. Third, there emerged with the 1930s New Deal, and with the 1960s civil rights and antipoverty programs, legislation embodying national values that needed to be uniformly implemented across the entire country. The cumulative effect of these fundamental changes gave rise to a concept of national policymaking and state policy implementation overlaid on the traditional and continuing functions of national and state government.

How could a national government bring about actions at the state level that state governments, left to themselves, might find neither palatable nor affordable? Certainly, at times, the federal courts have ordered state governments to adopt policies and actions based on judicial interpretations of the meaning of federal legislation or the Constitution. For example, the courts have ordered states to integrate schools (by **busing** if necessary) and to relieve prison overcrowding if it amounts to **cruel and unusual punishment**. However, the federal government, under the Tenth Amendment to the Constitution, does not have a general power to give directions to the states in their primary areas of power. Consequently, more often than not, financial inducement, through grants of money tied to a particular policy objective, has been the preferred instrument for achieving federal purposes. Financial arrangements have been the predominant vehicle within intergovernmental relations by which national policies have been implemented by and through the states.

## The Theory of Fiscal Federalism

Fiscal federalism refers to the fiscal (financial) relationships that exist between and among units of government in a federal system (see Table 4.4). The theory of fiscal federalism, or multiunit governmental finance, addresses the question of the optimal design of governments in a multilevel (or federal) governmental system.

The public sector has three principal economic problems to solve:

1. The attainment of the most equitable distribution of income
2. The maintenance of high employment with stable prices
3. The establishment of an efficient pattern of resource allocation

The theory of fiscal federalism postulates that a federal form of government can be especially effective in solving these problems because of the flexibility it has in dealing with some problems at the national or central level and some at the local or regional levels. It argues that, for a variety of reasons, the first two problems, equitable distribution of income and maintenance of high employment with stable prices, are problems that the national level of government is best equipped to handle. However, according to the theory, the decentralized regional or local units of government can more efficiently deal with the third problem, allocation

### Busing ■

The transporting of children by bus to schools at a greater distance than those the children would otherwise attend to achieve racial desegregation. Busing has often been mandated by the federal courts as a remedy for past practices of discrimination. It has been heartily objected to by parents who want their children to attend neighborhood schools and has, in consequence, been a major factor in “white flight” from central cities. Busing is often used as an example of government by the judiciary, because busing, one of the most controversial domestic policies in the history of the United States, has never been specifically sanctioned by the Congress.

### Cruel and unusual punishment ■

The criminal penalty prohibited by the Eighth Amendment, which not only bars government from imposing punishment that is barbarous but, as the U.S. Supreme Court has announced, forbids punishment that society’s “evolving standards of decency” would mark as excessive.

TABLE 4.4

## Federal Aid to State and Local Governments

Year	Total (in millions of dollars)	As a Percentage of Federal Outlays
1980	91,385	15.5%
1985	105,852	11.2
1990	135,325	10.8
1995	224,991	14.8
2000	284,659	15.9
2001	317,250	17.0
2002	351,550	16.9
2003	387,281	17.9
2004	406,330	17.7
2005	426,243	17.2
2006	434,099	16.3
2007	443,797	16.3
2008	466,568	15.9
2009	552,108	15.7

Source: United States Bureau of the Census, <http://www.census.gov/prod/2010pubs/fas-09.pdf>.

of resources, because such units of government are more familiar than the central or national government with local needs and the desires of citizens for public services. Even so, grants-in-aid from the national level of government to local levels may be needed to stimulate local government spending for national purposes, to provide for uniform or minimum service levels (as in education), or to compensate citizens of one area for benefits from services they finance that spill over to residents of another area. Spillover benefits are especially frequent in such programs as clean water and air pollution control, health, and education.

In theory, an accountable government should involve representatives only voting for programs for which they have voted the taxes. The representatives would be accountable to the voters, who could directly assess whether the “purchase” of services and programs they had made at election time was what they wanted, and whether they got good value for their tax money. But in a large nation, need for services can vary greatly between communities, and the capacity to pay taxes also varies greatly among the categories of those who are taxed. This issue focuses attention on several of the central problems of the federal concept: the difficult notion of two or more governments overlaid on the same geographical territory; the difficulty of persuading voters that they need to pay their taxes twice (or more) to different levels of taxing authority; and the difficulty of persuading taxpayers that it is fair that some of their taxes should produce no direct benefit to them but be used to assist some other community or some ill-defined goal dear to an official in a remote office in another city.

TABLE 4.5

**The Politics of Fiscal Federalism: The Case of Federal Stimulus Funds**

Who wins and who loses in the game of fiscal federalism is often decided by raw politics. With the passage of the American Recovery and Reinvestment Act of 2009, the federal government sent hundreds of billions of dollars to state and local governments. These two lists illustrate the role of raw politics in this distribution.

<b>Overall Funding (top ten states)</b>	<b>Per Capita Funding (top ten states)</b>
1. California	1. Utah
2. Texas	2. Alaska
3. New York	3. Mississippi
4. Florida	4. North Dakota
5. Illinois	5. Louisiana
6. Pennsylvania	6. California
7. Ohio	7. Michigan
8. Michigan	8. New Mexico
9. Georgia	9. Texas
10. North Carolina	10. Kansas

Note that while the big states get the most money, the small ones get more per person. Why? Is it because they need it more? Not necessarily. While states such as California and Michigan, which were devastated by the recession, received above average per capita stimulus funds, states such as Utah and North Dakota, with the lowest unemployment rates in the nation, got even more funds on a per capita basis. Undoubtedly, other factors such as the political clout and skills of congressional delegations must matter.

Source: U.S. Census Bureau, Congressional Research Service, and U.S. Department of Labor Estimates via the House Appropriations Committee.

Attitudes toward these issues illustrate the level of confidence citizens have in a democratic federation. If confidence is high, and a sense of common national purpose is high—as it was during a “popular” war such as World War II, or during the early days of the Great Society programs, citizens are more prepared to trust politicians and bureaucrats to redistribute taxes to promote national goals elsewhere. If, however, confidence in politicians and the bureaucracy is low, citizens may well take some convincing that spending programs are fair and necessary. A confident, successful federal democracy that has confidence in its political leaders and has honest and efficient bureaucrats and well-articulated national aspirations will be one in which there is more room for redistributive programs—an admirable goal to strive for—or perhaps not!

All too often the same central question of fiscal federalism is asked in countless congressional and presidential elections: Why can't the citizens of the states just keep their money (meaning, have their federal taxes reduced) rather than paying it to the federal government so they can return it in grants and services? The answer is deceptively simple: Not all states are fiscally equal. If there are more poor people in one state, federal welfare funds from other states will in effect subsidize them. Would Delaware and Connecticut, for example, otherwise transfer

**Pentagon ■**

The building that has become the symbol of the U.S. Department of Defense.

tax dollars from their citizens to the overall poorer citizens of Mississippi and Alabama? Federal spending for military bases, while concentrated in more southern states for reasons of climate, benefits the entire nation—even if it benefits the local economy of Georgia more. While bases and ports may be concentrated in the South, defense contractors are widely distributed. Indeed, to gain support for many defense systems, the **Pentagon** quite consciously procures goods and services from companies in as many congressional districts as possible. Even NASA once boasted, in order to drum up congressional support, that the parts for the space shuttle were built in most of the 50 states.

Lobbying by defense contractors aside, the federal government justifies taking its measure of taxes from the states and distributing it in an uneven fashion because this furthers national policies for welfare, for defense, for conservation, for environmental protection, and so on. In this process, some states are winners and some losers. And while no one would deny that any given program could not be better managed or more economically operated, these redistribution programs all exist because lawmakers representing all the citizens thought them to be in the public interest. The members of Congress cannot have it both ways—they cannot argue that the federal government is too full of pork-barrel programs for the congressional districts while at the same time kicking and clawing to bring home the bacon for their constituents. Fortunately this is becoming, though only gradually, a truth more universally acknowledged than before.

### Grant Programs

Grants by formula or category are the most significant means by which federal moneys are transmitted to the states. A grant is simply an intergovernmental transfer of funds (or other assets). Since the New Deal, state and local governments have become increasingly dependent on federal grants for an almost infinite variety of programs. From almost the beginning of the republic to the present, a grant by the federal government has been a continuing means of providing states, localities, public (and private) educational or research institutions, and individuals with funds to support projects the national government considered useful for a wide range of purposes. In recent years, grants have been made to support the arts as well as the sciences. All such grants are capable of generating debate over what the public as a whole, acting through the grant-making agencies of the federal government, considers useful and in the national interest.

A “grant-in-aid” is the term used for federal or state payments to local governments for specified purposes and usually subject to supervision and review by the granting government or agency in accordance with prescribed standards and requirements. One function of a federal grant-in-aid is to direct state or local funding to a purpose considered nationally useful by providing federal money on the condition that the jurisdiction receiving it match a certain percentage of it. The federal government actively monitors the grantee’s spending of the funds to ensure compliance with the spirit and letter of federal intent. Grants-in-aid have other public policy implications as well, because a jurisdiction that accepts federal money must also accept the federal “strings,” or guidelines, that come with it. All federal grantees must comply with federal standards on equal employment opportunity in the selection of personnel and contractors, for example.

Historically, the most common grants have been “categorical”—those that can be used only for specified purposes. But there has been a trend, ever since the Nixon administration, to move toward block grants that give the states more discretion over the funds. This trend decidedly accelerated in the mid-1990s as the Republican-controlled Congress sought to reduce the size and role of the federal bureaucracy by reducing congressional oversight of grant programs—and at the same time permanently removing the federal employees who performed many of the oversight functions. For the public administrator, fiscal federalism refers, first and foremost, to the politics and administration of complex intergovernmental grant-in-aid systems.

The federal government distributes money to the states through hundreds of grant programs, of which about half are related to **Medicaid**. Some 20 percent are for infrastructure, such as transportation, water, or sewage treatment, and the remainder relate to various social and labor market programs. During the 1970s, the Nixon administration introduced less-specific block grants to counter the criticism that overly restricting the ways federal moneys could be spent tended to reduce state governments to an extremely mechanical role not consistent with their status as governments in their own right. A block grant is distributed in accordance with a statutory formula for use in a variety of activities within a broad functional area, largely at the recipient’s discretion. For example, the community development block grant program, administered by the Department of Housing and Urban Development, funds community and economic development programs in cities, counties, Indian reservations, and U.S. territories. The nature of the block grant allows these jurisdictions to allocate the funds to supplement other resources in ways they choose. The

#### **Medicaid ■**

The federally aided, state-operated, and state-administered program that provides medical benefits for certain low-income people in need of health and medical care. Authorized by 1965 amendments to the Social Security Act, it covers only members of one of the categories of people who can be covered under the welfare cash payment programs—the aged, the blind, the disabled, and members of families with dependent children where one parent is absent, incapacitated, or unemployed.

### **BOX 4.2 | Stimulating the States**

In February 2009, President Barack Obama signed a \$780 billion stimulus package designed to give a boost to the struggling U.S. economy. As the nation faced the greatest economic downturn in generations, the president and Congress leveraged the financial powers of the federal government to pump more than three-quarters of a trillion dollars into the American economy. While the sheer volume of the government outlays caused considerable debate in the nation’s capital, the destinations for all that stimulus cash initiated rancorous arguments among the members of Congress. One of the greatest sticking points in the negotiations involved the transfer of federal money to state governments that were feeling the full force of the recession on their budgets. In 2009 state budgets were being battered by the combination

of dramatically reduced tax revenue and state constitutional requirements that prevented them from running deficits. Unlike the federal government, which more often than not spends more than it takes in, the states must balance their budgets each year because their varied constitutions force them to do so. These conditions forced states to quickly find other sources of revenue and/or cut spending to bring their budgets into balance. Under these pressures, states did make many cuts to programs and services while also coming up with new or enhanced revenue sources to help bring their budgets in line. But even with significant changes to both revenue and spending policies, the absence of federal stimulus dollars in 2011 had left states with some of their deepest deficits ever and more difficult decisions to make. ■

problem with block grants is that Washington loses control and the money may be spent even less wisely than it would if more federal strings were attached.

## THE DEVOLUTION REVOLUTION

The dilemmas of intergovernmental relations illustrated so clearly by the problem of federal–state financial relationships have always been critical issues in democratic federations. The only certainty here is that the states have become addicted to intergovernmental funding. The question remains whether their political leaders will gradually wean them from it or feed their habit. On this front there is good news and bad news. The good news is that many state governments seem genuinely caught up in the devolution revolution. In late 1994, all of the Republican governors and governors-elect met in Williamsburg, Virginia—the colonial capital of that state. Representing a clear majority of the states (30) with an overwhelming majority of the population (70 percent), they issued the “Williamsburg Resolve,” which called for reversing the power that had been going to Washington since the New Deal. They said grandiose things appropriate to the place where Patrick Henry said in 1775, “Give me liberty or give me death!” California Governor Pete Wilson said that the “states are not colonies of the federal government.” Governor Tommy Thompson of Wisconsin said they should no longer have to go to Washington “on bended knee to kiss the ring.”

The bad news is that this is somewhat hypocritical. After all, what their “resolve” essentially calls for is the federal money without the federal strings. But these “strings” have important public policy implications—like ensuring the relatively equal treatment of all citizens no matter in which state they may reside. The current movement toward devolution is similar to the Sagebrush Rebellion. This term, first heard in the 1980s, covers any number of dissatisfactions—hardly a rebellion—that some people in the states of the American West have with the federal government’s management and use of the federal lands within their borders. In general, they feel that the states should have more control over the lands and how they are used. The counterargument is that such lands are national trusts and can only legitimately be dealt with by representatives of the national government. According to historian Robert Hughes in *The Culture of Complaint*, the American West “is archetypally the place where Big Government is distrusted, the land of the independent man going it alone. Yet much of it—states such as Arizona, for instance—has depended, not marginally or occasionally but always and totally, on federal money from Washington for its economic existence.” Consequently, “the Southwestern states could never have been settled at their present human density without immense expenditure of government funds on water-engineering. They are less the John Wayne than the Welfare Queen of American development.”

Yet these western states, mostly Republican at that, do not like to be reminded of the role that Washington played in creating and economically developing them. The federal lands within them belong just as much to the rest of the nation. While the political leaders of these western states are quick to assert their “rights” over federal lands, other citizens of other states are just as quick to note that these lands were paid for, indeed fought for, by the entire country.

The latest wrinkle in this Sagebrush Rebellion is to resurrect **Gifford Pinchot's** definition of conservation as the “wise use” of resources. But this modern wise-use movement is not traditional conservation but a cover for those who advocate greater economic development of public lands. By asserting the legitimacy of multiple uses of public lands, they seek to roll back environmental protections now extant. One legal technique to achieve this rollback is to assert county supremacy by means of local land-use ordinances. This has engendered considerable conflict between local officials and federal land managers. The only certainty here is that as one contemplates the vast expanses of federal land in the West, much litigation can be seen on the horizon.

The web of intergovernmental relations is such a tangled one that there are no easy solutions to the understandable desire for devolution. Even a national administration completely sympathetic to the devolutionist will find it difficult to return powers and lands back to the states. It will take far more than a Williamsburg Resolve and a Sagebrush Rebellion to simply locate, let alone repeal, two centuries' worth of centralizing legislation. In fact, in some cases it may be the states themselves that spearhead campaigns against the weakening of central authority. In an interesting reversal of the dynamic of the Williamsburg Resolve and Sagebrush Rebellion, many state governments in the northeastern United States have joined together not to protest federal intervention but to instead fight against the lack of federal effort in the area of environmental protection. According to the *Christian Science Monitor*, New York, New Jersey, Pennsylvania, and Massachusetts, angered by the EPA's March 2005 mercury emission standards, brought suit against the federal government on the grounds that the new federal rules are not strong enough to meet the intent of the Clean Air Act. Just two years earlier, nine northeastern states banded together to challenge EPA rules that would exempt thousands of industrial air pollution sources, including coal-fired power plants, from the new Clean Air Act standards for emission. In these two instances the states joined forces to encourage the national government to increase its regulation of activities at the state and local levels.

**Gifford Pinchot (1865–1946) ■**

America's first professional forester, who is credited with coining the term *conservation*. Twice governor of Pennsylvania (1923–1927; 1931–1935), he became internationally famous as President Theodore Roosevelt's partner in making conservation a national issue.

### The Public-Choice Solution

The Reagan Revolution of the 1980s, which was continued by the 1990s Republican Congress, coincided with public administration's increasing embrace of public-choice theory. This theory rejected the concept of welfare economics that emerged out of the New Deal: that when private markets failed, the government had to step in to effectively carry out the public interest, and the governmental level best suited to do this was the federal one.

Public-choice theory seriously questioned whether such governmental decisions really represented the wishes of the majority of citizens. More emphatically, public choice denounced governments as being basically inefficient and completely lacking in incentives to perform well unless the expansion of their own programs and the increase of their budgets were involved. The better solution, public-choice advocates argued, was to place governmental action (and expenditures) at the lowest possible levels—that is, at the local government level. The feeling here was that local governments would provide more experimentation, true competition,

## IN THE NEWS | Intergovernmental Relations That Work!

As you might have discovered by reading this chapter, there are numerous breakdowns that plague the federalist system of government in the United States. Such is the reality of living in a nation with a highly decentralized political structure. While there are no shortages of problems associated with intergovernmental relations in America, there are also a number of examples when the stars align and the multiple players in the system work efficiently together. This was the case in 2007 when the U.S. State Department and varied state government agencies combined together to deliver assistance to children throughout the nation.

An unfortunate reality of contemporary American life is that many dads, and a few moms, fail to pay financial support to their children. Each and every year hundreds of millions of dollars of court-ordered payments are withheld by “deadbeat” parents who refuse to meet a financial obligation to their children. To force parents to pay their child support payments the states regularly withhold money from individuals’ paychecks, but this method cannot fully extract all money due to children. Thus other measures are necessary, and one intergovernmental arrangement paid dividends for the nation’s children.

For many years the State Department and state agencies have cooperated on efforts to get delinquent child support payments made. Under the Passport Denial Program (PDP) state governments provided the State Department lists of parents who owed \$5,000 or more in child support. This list was then matched up against a list of individuals applying for passports or passport renewals. If a match was

found, the passport seeker would have to pay off all overdue child support before he or she could travel abroad. Over the years, the PDP provided a steady but unspectacular amount of back support to children in all 50 states.

But then the State Department decided that Americans would need passports to travel to North American destinations such as Canada and the Caribbean Islands. The new passport rule reflected national security concerns in the post-9/11 global environment. As thousands of Americans began to seek passports in order to honeymoon in the Bahamas or weekend in Montreal, it became clear to State Department officials that some unexpected benefits could be gained from the new rules. In particular, the high volume of people getting passports for the first time provided a windfall of support payments for children throughout the nation. In the first half of 2007 alone the PDP produced almost \$25 million in back child support, and some very large one-time payments. For example, a man paid \$45,849 in support payments to get his passport for a trip to the Dominican Republic, while a musician paid \$46,000 to be allowed to play overseas; then a boxer from Nevada paid \$39,000 in back support to get his passport, only to lose it and pay another \$8,900 in new child support debts. In the end even the clumsy intergovernmental arrangement of the United States could still find a way to land a pretty good blow against even the meanest of the deadbeat dads and even a few deadbeat moms. ▀

Source: Numerical data from the Associated Press, “Passport Rules Snag Child Support Cash,” August 14, 2007.

and innovation. At the local level, citizens could “vote with their feet”—that is, if the citizens had access to appropriate information, they would be able to readily compare the levels of taxation to the quality of services they received. They could then reject inefficient or unresponsive governments by voting down budgets, by voting out big spenders, or even by moving elsewhere—or not moving in at all. Thus the solution to devolution offered by the public-choice advocates is to increase the discretion in the hands of the individual voter by maximizing

“user-pay systems” (whether for trash collection or through fees at state park camping grounds) and by placing vouchers (for schools or housing) for spending in the hands of recipients rather than compelling them to use particular government services or institutions.

### Welfare Reform

Perhaps the best example of the give-and-take aspect of the federal system is that if a government function is not working at one level, it can be shifted onto another level to see if it can be done any better. A good example of a program that has bounced between the intergovernmental levels is welfare. When the Social Security Act was passed in 1935, it included a small program to help widows and orphans. This was the origin of Aid to Families with Dependent Children (AFDC), the program by which the federal government matched state spending on welfare. AFDC provided federal funds, administered by the states, for children living with a parent or a relative who met state standards of need. The program was controversial because of charges that it not only promoted illegitimacy but also encouraged fathers to abandon their families so they could become eligible for AFDC. In 1995 more than 13 million people were receiving AFDC, up from just over 2 million in 1955 (see Table 4.6).

Claiming that the system had produced “welfare queens”—women conceiving children out of wedlock to qualify for AFDC benefits—and a cycle of generational poverty encouraged by the welfare system, the Republican-controlled Congress in 1995 decided to act. It would change the system by giving the problem back to the states. Welfare was a local problem to begin with. The tradition of the county poor farm or workhouse can be traced back to sixteenth-century England. The money spent on AFDC would be converted to block grants with which the states in their 50 varieties of wisdom would decide who was worthy of the new-style welfare and under what conditions. In essence most of the federal strings would be removed, and the states would overall get less than before, but they would have far greater discretion on how to spend it. Thus a comprehensive welfare reform bill was passed by the Congress in 1996. This repealed the entitlement aspect of AFDC and was signed into law by President Clinton. The states—with the encouragement of the federal government—got busy simultaneously reinventing welfare programs while seeking to discourage the expansion of the welfare rolls by holding fathers more responsible for supporting their children. Simply put, the problem has proved so difficult that Congress is giving up on it and seeking to dump it back on the states. Ah, federalism!

Even without reform we would expect welfare rolls to decrease when jobs are plentiful. But other, more lasting factors are at work as well—factors that suggest that the rolls will not “automatically” go up with a modest economic downturn. First, devolution means that welfare isn’t what it used to be; most importantly, it is no longer an entitlement. According to journalists Barbara Vobejda and Judith Havemann, in at least three dozen states welfare managers actively seek to prevent applicants from getting welfare once they apply. “Welfare offices are urging applicants to ask for help from relatives instead of signing up for government assistance, writing one-time emergency checks in place of monthly benefits, or



This 1937 picture, with its juxtaposition of rich and poor, has long symbolized welfare in a land of plenty. But the photo, taken in Louisville, Kentucky, is triply misleading. First, it is not about traditional welfare at all; the people waiting in the bread line were the victims of flooding. Second, it implies that most welfare recipients are black, when almost twice as many welfare recipients are white. This was as true in 1937 as it is today. According to the U.S. Census Bureau figures, about twice as many whites receive welfare as blacks do. However, just about one-third of all blacks receive welfare, while only about 10 percent of whites do (*Charlotte Observer*, September 11, 1997). Finally, the United States does not have the “world’s highest standard of living” when judged by overall social indicators such as infant mortality. A United Nations report ranked the United States 4th in overall quality of life (behind Canada, France, and Norway) and 17th in poverty levels behind almost all of the major industrialized states, despite the fact that the United States has the highest per capita income. It is just that this income isn’t as evenly distributed as in the 16 other countries with lower poverty rates (*Pittsburgh Post Gazette*, September 9, 1998).

requiring applicants to spend weeks searching for work before they receive their first welfare payment.” This raises questions “of whether they have found jobs on their own, never truly needed them in the first place, or have been scared off or intimidated from applying for help that their children genuinely require.”

Such diversion tactics are now commonplace. California, Kansas, Florida, Oregon, and New York, among other states, all seek to direct applicants into jobs or one-time cash payments (they cannot then reapply for a prescribed period). This leads to the second major new factor. The traditional welfare office is evolving into a new administrative animal. According to Rachel L. Swarns, in New York City “job centers are replacing welfare offices. Financial planners are replacing case-workers. And the entire bureaucracy is morphing into the Family Independence Administration. In truth the same workers still do business in the same buildings,

TABLE 4.6

## Welfare Recipients (in millions) in the United States (1980 to 2006)

Year	Families on Welfare	Individuals on Welfare
1980	3,712	10,774
1990	4,057	11,695
1995	4,791	13,418
1996	4,434	12,321
1997	3,740	10,376
1998	3,050	8,347
1999	2,554	6,828
2000	2,219	5,790
2001	2,110	5,420
2002	2,048	5,069
2003	2,048	4,932
2004	1,978	4,748
2005	1,894	4,471
2006	1,781	4,166
2007	1,730	4,076
2008	1,700	4,001
2009	1,838	4,367
2010	1,909	4,569

Source: The Department of Health and Human Services (2007), [http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/caseload\\_current.htm](http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/caseload_current.htm).

but the city has been infected by a name-changing frenzy that has been sweeping the country. Massachusetts' Department of Public Welfare is now the Department of Transitional Assistance. Florida's welfare program is now the Work and Gain Economic Self-Sufficiency Program." Indicative of this major change in terminology is the 1998 decision of the American Public Welfare Association (which represents social service agencies) to change its name after 66 years to the American Public Human Services Association. Devolution may not yet have killed welfare in fact, but it has certainly killed it in name.

Welfare is just one example of how the age of devolution is bringing us back to the first principles of the age of revolution. Alexander Hamilton, the high priest of an energetic national government among the founding fathers, felt strongly that essentially local issues, as he wrote in *The Federalist*, No. 17 (1787), "can never be desirable cares of a general jurisdiction." Hamilton believed it "improbable that there should exist a disposition in the federal councils to usurp the [local] powers . . . because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government." Will a rollback of the welfare state contribute to the "dignity" and "splendor" of the federal government? That depends if it is your welfare that is being rolled

back! According to political analyst Gareth G. Cook, at least one thing is certain: “Devolution is the theme that runs through nearly all of the Republicans’ high-profile domestic initiatives. . . . Whether it’s cops on the street, environmental protection, or school lunches for poor kids, the Republican solution is to devolve it.”

But with the election of Barack Obama, a Democrat, to the presidency, all Republican efforts at devolution came to a screeching halt. In a reversal of policy that is as stealthy as it seeks to be comprehensive, welfare reform itself is being reformed with little-noticed additions to economic stimulus laws and revised regulations. The only certainties here are that welfare will increase, that this will be paid for with borrowed money, and that the political drama over the role of welfare rolls will play seemingly forever.

### The Race to the Bottom

The ultimate devolution, of course, is to get government out of a particular activity altogether. Certainly, privatization, as discussed in Chapter 3, has a major role to play here. But those who would privatize many aspects of the welfare system are relying on private charitable giving to make up the difference between reduced government spending and the actual life-sustaining needs of the poor. But the very welfare programs that are being criticized were created in the first place because private charity proved insufficient.

Charity notwithstanding, the real issue in the devolution of welfare programs is that of a “race to the bottom.” In this race states and their counties increasingly lower their welfare benefits to discourage the out-of-state poor from moving in to collect more generous aid than was possible where they were. “Generous” states increasingly resent the fact that “stingy” states are effectively exporting their poor. But as Minnesota Governor Arne Carlson said, “We do not want to be in the importing business. We will devise a range of policies to make sure we take care of Minnesotans, but we’re not in the business of subsidizing Gary, Indiana.” This is the crux of the intergovernmental welfare dilemma. A state designs a responsible welfare system to take care of its own only to become a welfare magnet to outsiders. But by “racing to the bottom” in terms of benefits, states discourage the out-of-state poor from moving in. Senator Daniel Patrick Moynihan offered this explanation: “The hidden agenda of the Devolution Revolution is a large-scale withdrawal of support for social welfare, no matter how well conceived. The result would be a race to the bottom, as states, deprived of federal matching funds, compete with one another to reduce spending by depriving their own dependent population of help.”

There is already a major differential among the states. The block granting of federal welfare funding that withdraws the federal matching requirement (which was, in effect, an entitlement to the states) may make that differential far worse. Now that welfare eligibility is state (as opposed to nationally) determined, the differential in benefits can vastly increase. Many states now offer a low level of benefits. Conversely, some states have maintained fairly substantial benefits but have dramatically reduced the amount of time one can receive government support. The block grant reforms now allow them to offer no benefits. As this problem shows, the core issues of intergovernmental relations can be reduced to stark realities. It comes down to this: Intergovernmental fiscal arrangements ultimately determine—for a large class of citizens—who eats and who goes hungry.

## Why Illegal Immigration Is an Intergovernmental Mess and Will Remain So

### A CASE STUDY |

If you would like to get into a heated debate with someone, illegal immigration would be a good topic. In the United States today there are few issues that draw more emotional reactions than the government's policies for dealing with illegal immigrants. From border security to the provision of social services to illegal residents, there seem to be a countless number of elements to this polarizing issue. And as the nation struggles over the illegal immigration quandary, the issue has become a perennial point of contention within the federal system of government. With the national, state, and local governments all playing key roles in the management of illegal immigration issues, it is inevitable that this topic will illustrate the complexity of intergovernmental relations in the United States today.

As with so many other aspects of public administration, the U.S. Constitution says very little about the subject of immigration. While never mentioning the word "immigration," the Constitution addresses naturalization of citizens in two places: Article I, Section 8, authorizes Congress to "establish a uniform Rule of Naturalization," and the Fourteenth Amendment declares "All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside." With such scant direction from the highest law in the land it has fallen on generations of public officials to manage the process by which foreign-born individuals enter into citizenship.

While the process of becoming a citizen has been under the federal government's auspices, the management of the flow and treatment of those illegally entering the United States has been much more fragmented. Ports of entry, border-crossing patrols, and customs operations are run by the federal government, with penalties such as incarceration carried out by federal authorities. Although the issue of border security and the prevention of illegal residents from entering the country are the domain of the feds, there is very little satisfaction with the way the powers in Washington, D.C., have dealt with the issue. According to the Pew Hispanic Center, there were approximately 11 million illegal immigrants living in the United States in 2007, with almost 6 in 10 coming from Mexico. But other estimates go as high as 20 million. The situation is so out of control that no one can provide any numbers with certainty.

To deal with this vast population of illegal immigrants, state and local governments have struggled to provide support services. From schools to medical care, illegal immigrants require many of the same services needed by legal immigrants and citizens. However, illegals are likely to have paid less in taxes than citizens because of "under the table" employment options, which often allow them to work for undocumented and untaxed cash as part of the nation's already vast underground tax-evading economy. In addition, their often poor economic conditions, lack of health insurance, and language barriers require more public social services than those needed by average

*(continued)*

**A CASE STUDY | Continued**

Americans. The failure of the federal government to stop the influx of these illegal aliens or to adequately compensate state and local governments for the costs entailed in providing social services for them has led to many initiatives emerging from state capitals, counties, and even cities.

The gut issue here is not so much the immigrants themselves, who tend to be an overall plus for the economy, but the costs of servicing their needs. To the extent that the federal government fails to control its international borders, it is forcing—mandating—state and local governments to provide billions of dollars in educational, medical, and other social services to the illegal immigrants without reimbursement. This is why illegal immigration is the mother of all unfunded mandates.

According to the National Conference of State Legislatures, at least 1,100 immigration bills were submitted by state lawmakers during 2007, a mark that doubled the previous record set in 2006. This flurry of bills came as a major federal immigration overhaul bill that was supported by President Bush failed to emerge from Congress. In the void left by the federal government's inactivity, the state bills have tended to be punitive to illegal immigrants. Among the approaches most commonly employed by states have been policies that deny illegal immigrants access to government programs and laws that penalize employers for hiring undocumented workers. In some cases states have passed laws that strip government funding to charitable organizations if they use the money to provide services to illegal immigrants.

The complexity of this issue can be illustrated by the problem of in-state state university tuition rates for illegal aliens. Out-of-state tuition is often twice as much. But illegal aliens who graduate from local high schools with grades that make them eligible for the less expensive in-state tuition rate say they should be allowed to enroll at that rate. Critics contend that they should not be allowed to enroll at all. Indeed—the critics continue—as they are now adults (being over 18), they no longer need to reside with their parents, and, in consequence, should be immediately deported—as well as their parents, if illegal. Besides, if a state allows the lower tuition rate for illegals, how can the state deny it to perfectly legal citizens of other U.S. states? And if it does, isn't this a violation of Article IV, Section 2, of the Constitution, which states that: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"?

While the states have thrown themselves headlong into the fracas, the most contentious battles in the immigration tempest seem to be occurring at the municipal level. Surprisingly, many of the most controversial actions are not occurring in major cities or communities on the Mexican border, but in smaller towns far away from the highest concentrations of illegal residents. For example, the small Pennsylvania city of Hazelton drew national attention when it adopted an ordinance that fined businesses and landlords who employ

or house illegal immigrants. A recent surge of Hispanic residents to the formerly homogenous city pushed the issue onto the public agenda in Hazelton, but as can be expected in a federal system, Hazelton's laws would not be left to the city's residents to decide. Instead, the Hazelton laws are being challenged in federal court largely on the grounds that municipalities have no right to preempt federal authority on immigration issues, and that the Hazelton laws clash with federal antidiscrimination and fair-housing laws.

While the federal courts did find Hazelton's law unconstitutional in July of 2007, it seems clear that the outcome of the case did not end the intergovernmental mess that engulfs this issue. In 2008 and 2009 several states, including Oklahoma, Colorado, and Virginia, decided to curtail medical care, mortgage loans, and other benefits for illegal immigrants as the national economy soured. And back on the West Coast there were renewed efforts in California to place a question on the ballot that would end public benefits for illegal immigrants, cut off welfare benefits for their children, and impose new rules for birth certificates. It is clear the combination of immense political and economic pressures, changing demographics, and large gray areas within the realm of American federalism will keep intergovernmental relations in the area of immigration very tense for years to come.

**For Discussion:** *Why have state and local governments become more active in regulating illegal immigrants during recent years? How does the design of American federalism lead to the types of intergovernmental conflicts found in the area of immigration?* ▲

## SUMMARY

The process of intergovernmental relations is federalism in action. It is the complex network of day-to-day interrelationships among the governments within a federal system. It is the political, fiscal, programmatic, and administrative processes by which higher units of government share revenues and other resources with lower units of government, generally accompanied by special conditions that the lower units must satisfy as prerequisites to receiving the assistance.

The U.S. Constitution created the permanent features of intergovernmental relations in the United States. The popular image of the federal system as a layer cake, with each layer of government neatly on top of the other, is deceptive. The reality is more like a marble cake, in which the cooperative relations among the varying levels of government result in an intermingling—not a layering—of activities.

The key word in the new American thrust toward decentralization or devolution is mandate: One level of government requires another to offer—or pay for—a program as a matter of law or as a prerequisite to partial or full funding for either the program in question or other programs. Mandates are orders. The movement toward devolution is spurred on by jurisdictions and constituencies that increasingly resent taking such orders.

Fiscal federalism refers to the financial relationships that exist between units of government in a federal system. A central question is frequently asked about fiscal federalism: Why can't the citizens of the states just keep their money (meaning have their federal taxes reduced) rather than paying it to the federal government so that it can be returned in grants and services? The only certainty here is that the states have become addicted to intergovernmental funding. The question remains whether their political leaders will gradually wean them from it or feed their habit.

## REVIEW QUESTIONS

1. What are the advantages and disadvantages of a federal system of government?
2. Why is the American federal system considered to be more like a marble cake than a layer cake?
3. Why are mandates such a cause of friction in intergovernmental relations?
4. Why are federal grant programs so important to state and local governments?
5. Is the movement toward devolution more of a threat or an opportunity for national governments in a federal system?

## KEY CONCEPTS

**Block grant** A grant distributed in accordance with a statutory formula for use in a variety of activities within a broad functional area, largely at the recipient's discretion.

**Categorical grant** A grant that can be used only for specific, narrowly defined activities—for example, to construct an interstate highway.

**Council of government (COG)** An organization of cooperating local governments seeking a regional approach to planning, development, transportation, environment, and other issues.

**Devolution** The transfer of power from a central to a local authority.

**Federalism** A system of governance in which a national, overarching government shares power with subnational or state governments.

**Federalism, cooperative** The notion that the national, state, and local governments are cooperating, interacting agents jointly working to solve common problems, rather than conflicting, sometimes hostile competitors, pursuing similar or possibly conflicting ends.

**Federalism, dual** The nineteenth-century concept, now no longer operational, that the functions and responsibilities of the federal and state governments were theoretically distinguished and functionally separate from each other.

**Federalism, marble-cake** The concept that the cooperative relations among the varying levels of government result in an intermingling of activities; in contrast to the more traditional view of layer-cake federalism, which holds that the three levels of government are totally or almost totally separate.

**Federalism, new** The Republican efforts begun during the Nixon administration to decentralize governmental functions by returning power and responsibility to the states. This trend was continued in the 1980s by the Reagan administration and culminated in the 1990s movement toward devolution.

**Federalism, picket fence** The concept that bureaucratic specialists at the various levels of government (along with clientele groups) exercise considerable power over the nature of intergovernmental programs.

**Fiscal federalism** The financial relations between and among units of government in a federal system. The theory of fiscal federalism, or multiunit government finance, is one part of the branch of applied economics known as public finance.

**Grant** An intergovernmental transfer of funds (or other assets). Since the New Deal, state and local governments have become increasingly dependent on federal grants for an almost infinite variety of programs.

**Intergovernmental relations** The complex network of interrelationships among governments; the political, fiscal, programmatic, and administrative processes by which higher units of government share revenues and other resources with lower units of government, generally accompanied by special conditions that the lower units must satisfy as prerequisites to receiving the assistance.

**Mandating** One level of government requiring another to offer—and/or pay for—a program as a matter of law or as a prerequisite to partial or full funding for either the program in question or other programs.

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National Association of Counties

This site presents information from the only national organization that represents county governments. Among the content areas are sections about legislative initiatives at the county level, conferences, and ways for the public to better utilize the resources provided by county governments.

**[www.narc.org](http://www.narc.org)**

National Association of Regional Councils (NARC)

The NARC promotes regionalism as the most effective way to provide services and address problems facing local communities. The organization's Web site is a platform for its views and policies and presents legislation that will enhance cooperation between municipal and county governments throughout the United States.

**[www.ncsl.org](http://www.ncsl.org)**

National Conference of State Legislatures (NCSL)

The most comprehensive collection of information regarding state laws and policies, The NCSL site provides comparative data on state policies in a number of areas, including budgetary processes, federal-state and local relations, and regulatory tools. The site also includes many publications provided by the NCSL.

**[www.nga.org](http://www.nga.org)**

National Governors Association (NGA)

The organization is a public policy group that represents the nation's governors. The site gives information about the governors as well as current news that deals with their offices. Among the features of the NGA's site is a comprehensive list of the association's positions on major issues related to federal policies toward the states.

**[www.oxfordjournals.org/our\\_journals/pubjof/index.html](http://www.oxfordjournals.org/our_journals/pubjof/index.html)**

Publius: The Journal of Federalism

The site allows online access for *Publius*, considered to be the foremost journal on federalism. *Publius* is published quarterly and contains articles exploring all aspects of federalism, both in the United States and around the world.