

this distinction between different sovereignties becomes murkier because many decisions were supposed to be shared by different levels of government. Evacuation, for instance, was a responsibility shared by both the state and federal authorities. Ideology—the belief in maintaining strict controls on the powers of the national government—cast a shadow on the catastrophe. Generally, conservatives tend to be more reluctant to exercise national power in matters such as public health, safety, and welfare.

Sovereignty also affects political leadership. A governor may not be a president's political equal, but governors have their own sovereignty

apart from the national government. Regarding the political response to the damage caused by Hurricane Katrina, the national government blamed the state government for failing to request the specific help needed or to give up command and control. The state government underlined the inability of FEMA to deal with the necessities of the displaced population.³ And local officials stressed the fact that national and state authorities seemed preoccupied with the press. Unfortunately, for the people of New Orleans who were left behind in this tragedy, the same questions will keep on resonating in their heads: "Is anybody out there listening? Does anybody out there care?"⁴ ★

In this chapter, we examine American federalism in theory and in practice. Is the division of power between the nation and states a matter of constitutional principle or practical politics? How does the balance of power between the nation and states relate to the conflicts between freedom and order and between freedom and equality? Does the growth of federalism abroad affect us here at home? Does federalism reflect the pluralist or the majoritarian model of democracy?

IN OUR OWN WORDS

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★ Theories and Metaphors

The delegates who met in Philadelphia in 1787 were supposed to repair weaknesses in the Articles of Confederation. Instead, they tackled the problem of making one nation out of thirteen independent states by doing something much more radical: they wrote a new constitution and invented a new political form—federal government—that combined features of a confederacy with features of unitary government (see Chapter 3). Under the principle of **federalism**, two or more governments exercise power and authority over the same people and the same territory.

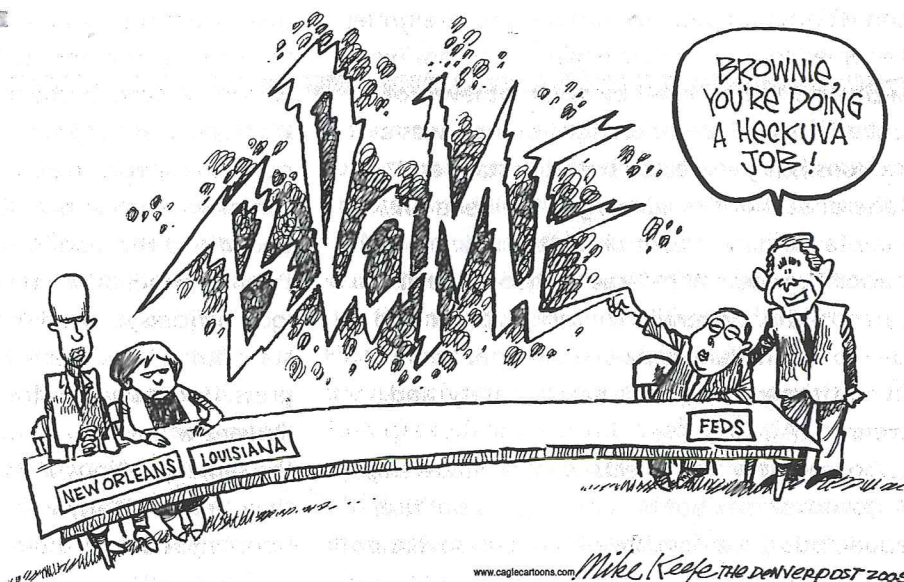
For example, the governments of the United States and Pennsylvania share certain powers (the power to tax, for instance), but other powers belong exclusively to one or the other. As James Madison wrote in *Federalist* No. 10, "The federal Constitution forms a happy combination . . . [of] the great and aggregate interests being referred to the national, and the local and particular to state governments." So the power to coin money belongs to the national government, but the power to grant divorces remains a state prerogative. By contrast, authority over state militias may sometimes belong to the national government and sometimes to the states. The history of American federalism

sovereignty The quality of being supreme in power or authority.

federalism The division of power between a central government and regional governments.

Blame Game

FEMA head Mike Brown won undeserved praise from President Bush in the immediate aftermath of Hurricane Katrina. New Orleans mayor Ray Nagin and Louisiana governor Kathleen Babineaux Blanco accused Brown of incompetence. He in turn blamed state and local officials for inadequate disaster preparation. Within days, Brown resigned. Subsequent investigations cast blame in all directions but a large share rested with Brown's failure of leadership. (Mike Keefe/The Denver Post, © 2005)



Federalist No. 10 is available on the

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reveals that it has not always been easy to draw a line between what is “great and aggregate” and what is “local and particular.”*

Nevertheless, federalism offered a solution to the problem of diversity in America. Citizens feared that without a federal system of government, majorities with different interests and values from different regions would rule them. Federalism also provided a new political model.

The history of American federalism is full of attempts to capture its true meaning in an adjective or metaphor. By one reckoning, scholars have generated nearly five hundred ways to describe federalism.⁵ Perhaps this is not surprising given one scholar's view that the American federal system “is a highly protean form, subject to constant reinterpretation. It is long on change and confusion and very low on fixed, generally accepted principles.”⁶ Still, before complicating the picture too much, it will be useful to focus on two common representations of the system: dual federalism and cooperative federalism.

Dual Federalism

The term **dual federalism** sums up a theory about the proper relationship between the national government and the states. The theory has four essential parts. First, the national government rules by enumerated powers only. Second, the national government has a limited set of constitutional purposes. Third, each government unit—nation and state—is sovereign within its sphere. And fourth, the relationship between nation and states is best characterized by tension rather than cooperation.⁷

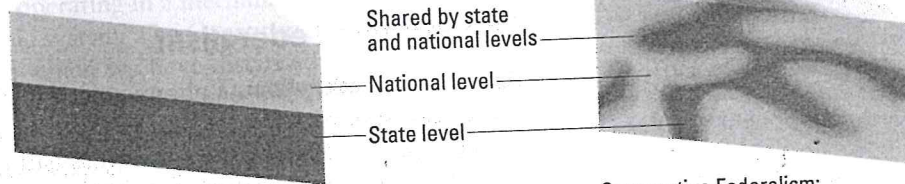
Dual federalism portrays the states as powerful components of the federal system—in some ways, the equals of the national government. Under dual federalism, the functions and responsibilities of the national and state govern-

dual federalism A view that holds that the Constitution is a compact among sovereign states, so that the powers of the national government and the states are clearly differentiated.

*The phrase Americans commonly use to refer to their central government—*federal government*—muddies the waters even more. Technically, we have a federal system of government, which encompasses both the national and state governments. To avoid confusion from here on, we use the term *national government* rather than *federal government* when we are talking about the central government.

FIGURE 4.1 Metaphors for Federalism

The two views of federalism can be represented graphically.



Dual Federalism:
The Layer-Cake Metaphor

Citizens cutting into the political system will find clear differences between state and national powers, functions, and responsibilities.

Cooperative Federalism:
The Marble-Cake Metaphor

Citizens cutting into the political system at any point will find national and state powers, functions, and responsibilities mixed and mingled.

ments are theoretically different and practically separate from each other. Of primary importance in dual federalism are **states' rights**, which reserve to the states all rights not specifically conferred on the national government by the Constitution. According to the theory of dual federalism, a rigid wall separates the nation and the states. After all, if the states created the nation, by implication they can set limits on the activities of the national government. Proponents of states' rights believe that the powers of the national government should be interpreted narrowly.

Debates over states' rights often emerge over differing interpretations of a given national government policy or proposed policy. Whether the Constitution has delegated to the national government the power to make such policy or whether it remains with the states or the people is often an open and difficult question to answer. States' rights supporters insist that the activities of Congress should be confined to the enumerated powers. They support their view by quoting the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Conversely, those people favoring national action frequently point to the Constitution's elastic clause, which gives Congress the **implied powers** needed to execute its enumerated powers.

Regardless of whether one favors national action or states' rights, political scientists use a metaphor to describe the idea of dual federalism. They call it *layer-cake federalism* (see Figure 4.1) in which the powers and functions of the national and state governments are as separate as the layers of a cake. Each government is supreme in its own layer, its own sphere of action. The two layers are distinct, and the dimensions of each layer are fixed by the Constitution.

Dual federalism has been challenged on historical grounds. Some critics argue that if the national government is really a creation of the states, it is a creation of only thirteen states—those that ratified the Constitution. The other thirty-seven states were admitted after the national government came into being and were created by that government out of land it had acquired. Another challenge has to do with the ratification process. Remember that special

states' rights The idea that all rights not specifically conferred on the national government by the U.S. Constitution are reserved to the states.

implied powers Those powers that Congress needs to execute its enumerated powers.

conventions in the original thirteen states, not the states' legislatures, ratified the Constitution. Ratification, then, was an act of the people, not the states. Moreover, the preamble to the Constitution begins, "We the People of the United States," not "We the States." The question of just where the people fit into the federal system is not handled well by dual federalism.

Cooperative Federalism

Cooperative federalism, a phrase coined in the 1930s, is a different theory of the relationship between the national and state governments. It acknowledges the increasing overlap between state and national functions and rejects the idea of separate spheres, or layers, for the states and the national government. Cooperative federalism has three elements. First, national and state agencies typically undertake government functions jointly rather than exclusively. Second, the nation and states routinely share power. And third, power is not concentrated at any government level or in any agency; the fragmentation of responsibilities gives people and groups access to many venues of influence.

The bakery metaphor used to describe this type of federalism is a *marble cake* (see Figure 4.1).^{*} The national and state governments do not act in separate spheres; they are intermingled in vertical and diagonal strands and swirls. In short, their functions are mixed in the American federal system. Critical to cooperative federalism is an expansive view of the Constitution's supremacy clause (Article VI), which specifically subordinates state law to national law and charges every government official with disregarding state laws that are inconsistent with the Constitution, national laws, or treaties.

Some scholars argue that the layer-cake metaphor has never accurately described the American political structure.⁸ The national and state governments have many common objectives and have often cooperated to achieve them. In the nineteenth century, for example, cooperation, not separation, made it possible to develop transportation systems, such as canals, and to establish state land-grant colleges. Overall, then, the layer cake might be a good model of what dual federalists think the relationship between national and state governments *should* be, but several examples reveal how it does not square all that well with recent or even distant American history.

A critical difference between the theories of dual and cooperative federalism is the way they interpret two sections of the Constitution that define the relationship between the national and state governments. Article I, Section 8, lists the enumerated powers of Congress and then concludes with the **elastic clause**, which gives Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers" (see Chapter 3). The Tenth Amendment reserves for the states or the people powers not assigned to the national government or denied to the states by the Constitution. Dual federalism postulates an inflexible elastic clause and a capacious Tenth Amendment. Cooperative federalism postulates suppleness in the elastic clause and confines the Tenth Amendment to a self-evident, obvious truth.

Can you explain why . . .
the Tenth Amendment and the necessary and proper clause of Article I might contradict one another?

cooperative federalism A view that holds that the Constitution is an agreement among people who are citizens of both state and nation, so there is much overlap between state powers and national powers.

elastic clause The last clause in Section 8 of Article I of the Constitution, which gives Congress the means to execute its enumerated powers. This clause is the basis for Congress's implied powers. Also called the *necessary and proper clause*.

^{*}A marble cake is a rough mixture of yellow and chocolate cake batter resembling marble stone. If you've never seen or eaten a slice of marble cake, imagine mixing a swirl of vanilla and chocolate soft freeze ice cream at Dairy Queen.

★ Federalism's Dynamics

Although the Constitution establishes a kind of federalism, the actual and proper balance of power between the nation and states has always been more a matter of debate than of formal theory. Three broad principles help to underscore why. First, rather than operating in a mechanical fashion, American federalism is a flexible and dynamic system. The Constitution's inherent ambiguities about federalism, some of which we have discussed already, generate constraints but also opportunities for politicians, citizens, and interest groups to push ideas that they care about. Second, because of this flexibility, both elected and appointed officials across levels of government often make policy decisions based on pragmatic considerations without regard to theories of what American federalism should look like. In sum, politics and policy goals rather than pure theoretical or ideological commitments about federalism tend to dominate decision making. Third, there is a growing recognition among public officials and citizens that public problems (such as questions involving trade-offs between freedom, order, and equality) cut across governmental boundaries. This section develops the first claim, and we explore the other two in later sections of this chapter.

The overall point these three claims illustrate is that to understand American federalism, one must know more than simply the powers that the Constitution assigns the different levels of government. Real understanding stems from recognizing the forces that can prompt changes in relationships between the national government and the states. In this section, we focus on four specific forces: national crises and demands, judicial interpretations, the expansion of grants-in-aid, and the professionalization of state governments.

National Crises and Demands

The elastic clause of the Constitution gives Congress the power to make all laws that are "necessary and proper" to carry out its responsibilities. By using this power in combination with its enumerated powers, Congress has been able to increase the scope of the national government tremendously during the previous two centuries. The greatest change has come about in times of crisis and national emergencies, such as the Civil War, the world wars, the Great Depression, and the aftermath of September 11, 2001. As an example, consider the Great Depression.

The Great Depression placed dual federalism in repose. The problems of the Depression proved too extensive for either state governments or private businesses to handle, so the national government assumed a heavy share of responsibility for providing relief and pursuing economic recovery. Under the New Deal, President Franklin D. Roosevelt's response to the Depression, Congress enacted various emergency relief programs designed to stimulate economic activity and help the unemployed. Many measures required the cooperation of the national and state governments. For example, the national government offered money to support state relief efforts; however, to receive these funds, states were usually required to provide administrative supervision or contribute some money of their own. Relief efforts were thus wrested from the hands of local bodies and centralized. Through the regulations it attached to funds, the national government extended its power and control over the states.⁹

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