

**The redesign is coming.
We've got you covered.**





Dear AP[®] U.S. Government Teacher:

As you well know, teaching AP[®] U.S. Government and Politics is simultaneously fun, rewarding, and intimidating. Stories about politics fill the 24-hour news cycle. Government officials sometimes make surprising decisions with uncertain consequences. Electoral outcomes are difficult to predict and interpret. This means that you and I, and our students, are frequently studying a moving target.

The redesigned AP[®] U.S. Government course presents an exciting opportunity for us to provide students with the knowledge, skills, and reasoning practices to enable them to understand and participate in government and politics throughout their lives. The new AP[®] exam focuses on disciplinary practices and reasoning processes that require our students to think like political scientists, and apply those skills to real world scenarios. This text, *American Government: Stories of a Nation for the AP[®] Course*, was crafted specifically for this new course and thoroughly supports this new approach.

Each chapter in *American Government: Stories of a Nation for the AP[®] Course* begins with a story illustrating the relationship between citizens and the government. Here, our students engage with the subject matter by learning about real people who have made a difference through political action. These stories create a context that helps kids better understand the content.

The redesigned course also includes nine foundational documents and fifteen required Supreme Court cases. This book examines each of the required readings and enables students to understand their nuances, in language kids can understand, without overly simplifying the meaning of these important documents and cases. AP[®] Tips throughout the book will also help our students navigate the new exam.

To further support the redesigned course, this book program provides all of the resources you will need (either in the book, or in the extensive print and digital resources) to teach concepts, skills, and reasoning processes. Each chapter contains two AP[®] Political Science Practices features to help students apply the content in new ways and begin thinking like political scientists. The supplements are written by AP[®] workshop leaders, former test development committee members, and veteran teachers who have first-hand familiarity with the redesign. These supporting materials are geared toward making your transition to the redesigned course as smooth as possible.

I invite you to delve into this sample chapter and explore how *American Government: Stories of a Nation for the AP[®] Course* can help you and your students. From the text itself to its superior supplements, I am proud of this book and believe it can help you and your students achieve success on the AP[®] exam. More importantly, I believe this book will encourage our students to become citizens who are actively engaged in their communities and nation.

Sincerely,
Karen Waples

Co-Author of *American Government:
Stories of a Nation for the AP[®] Course*
Teacher, Holy Family High School, Colorado



American Government

Stories of a Nation for the AP® Course

Scott F. Abernathy, *University of Minnesota*

Karen Waples, *Holy Family High School (CO)*

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This new offering from AP® teacher Karen Waples and college professor Scott Abernathy is tailor-made to help you and your students transition to the redesigned AP® U. S. Government and Politics course. Carefully aligned to the course framework, this brief book is loaded with instructional tools to help you meet the demands of the new course, such as integrated skills instruction, coverage of required cases and documents, public policy threaded throughout the book, and AP® practice after every chapter and unit, all in a simple organization that will ease your course planning and save you time.

WE'VE GOT YOU COVERED!

- With a program specifically tailored for the new AP® framework and exam.
- With a brief student edition that students will read and enjoy.
- With pedagogy and features that prepare students for the AP® exam like no other book on the market.
- With a teacher's edition and resources that save you time in gearing up for the new course.
- With professional development to help you transition your instruction.

"This text is very comprehensive, complete, and aligned perfectly with the new course and exam. The text covers the necessary content for students to do well on the AP® Exam. The chapter review questions are excellent and so is the unit review."

— Michael A. Vieira,
Bishop Connolly High School, MA

For your review copy, contact your BFW High School representative, email us at highschool@bfpub.com, or visit highschool.bfpub.com/APUSGov1e.



Meticulously Aligned to the REDESIGNED AP[®] U.S. Government and Politics Course

From the Big Ideas to the Essential Knowledge statements, this book has been painstakingly aligned to the concepts of the course. Each book unit corresponds to the same unit in the AP[®] course framework. We've kept the coverage brief and targeted to make the book and thus the course more manageable for you and your students.

UNIT 1 - Democracy and the Constitution

UNIT 2 - The Branches of the Federal Government

UNIT 3 - Civil Rights and Civil Liberties

UNIT 4 - American Political Ideologies and Beliefs

UNIT 5 - Political Participation

Simple Modular Organization

Pacing your AP[®] U.S. Government and Politics course can be very challenging with so many concepts and skills to teach, usually in only a single semester. To help, we have segmented chapters into 78 sections guided by learning targets. Each section serves as a discrete instructional module—just enough for a single day's lesson to deliver content, skills, assignments, and assessments in a brief easy-to-use “chunk.” Whether you are a novice or veteran teacher, these modules will save you hours of planning time.

Section Review

3.3 Describe the development of American federalism over time.

REMEMBER

- The boundaries between the authority of national and state governments have changed over time.
- Many of these changes have come about as a result of Supreme Court decisions in interpreting the Constitution.
- The New Deal fundamentally reshaped American federalism.

KNOW

- *Thirteenth Amendment*: constitutional amendment that outlaws slavery. (p. 11)
- *Fourteenth Amendment*: constitutional amendment that asserts that persons born in the United States are citizens and prohibits states from denying persons due process or equal protection under the law. (p. 11)
- *Fifteenth Amendment*: constitutional amendment that gave African American males the right to vote. (p. 11)
- *dual federalism*: a form of American federalism in which the states and the nation operate independently in their own areas of public policy. (p. 12)
- *selective incorporation*: the process through which the Supreme Court applies fundamental rights in the Bill of Rights to the states on a case-by-case basis. (p. 13)
- *cooperative federalism*: a form of American federalism in which the states and the national government work together to shape public policy. (p. 14)

THINK

- How has American federalism changed and developed? What factors have helped to drive this change?
- How did nineteenth-century interpretations of American federalism serve to deny some Americans their fundamental rights?
- What are the legacies of the New Deal? In what ways did the New Deal fail to achieve full inclusion of Americans with diverse lived experiences?
- Given the dynamic nature of federalism, what kinds of events might cause federalism to change in the future?

3.3 Review Question: Free-Response

In *Schechter Poultry v. United States* (1935), the Supreme Court overturned a New Deal regulation regulating the slaughter and sale of chickens. The regulation was challenged by the Schechter Poultry Company, which was based solely in Brooklyn, New York.

In a unanimous opinion, the Court sided with the poultry slaughterhouse, stating that “the authority of the federal government may not be pushed to such an extreme as to destroy the distinction . . . between commerce ‘among the Several states’ and the internal concerns of a State.”

- A. Identify the constitutional provision that is common to both *Gibbons v. Ogden* (1824) and *Schechter Poultry v. United States* (1935).
- B. Based on the constitutional provision identified in part A, explain how the facts of *Schechter Poultry v. United States* led to a different holding than in *Gibbons v. Ogden*.
- C. Identify another clause of the Constitution that supports the Supreme Court's ruling in *Schechter Poultry v. United States*.

Integrated AP® Political Science Practices Features

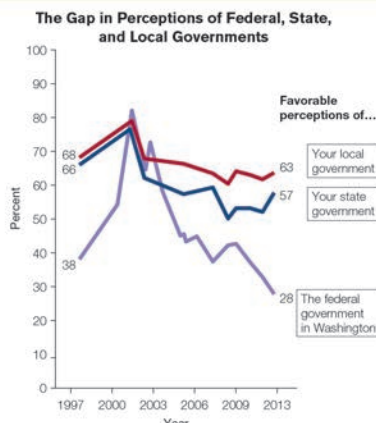
Each chapter includes 2-3 special features to enhance students' mastery of the course's Political Science Practices and Reasoning Processes. Each includes instruction, modeling, and practice in the AP® style.

AP® Political Science PRACTICES

Interpreting Graphs and Charts: Perceptions of Federal, State, and Local Governments

The Pew Research Center is a nonpartisan organization that conducts and analyzes public opinion through surveys and other tools. In 2013, researchers asked a series of questions about individuals' views on how favorably they viewed the federal government, their state governments, as well as their local governments. Those who answer these kinds of surveys are called *respondents*.

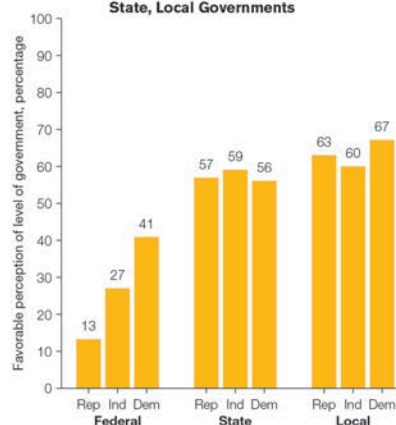
This was not the first time Pew researchers had asked the question. They had data going back to the 1990s. The researchers presented the collection of their findings over time with a *line graph* (sometimes called a line chart). A line graph presents data as a set of points connected by lines:



Data from Pew Research Center www.people-press.org/2013/04/15/state-governments-viewed-favorably-as-federal-rating-hits-new-low/

These kinds of graphs can be useful in presenting trends over time, in this case a widening gap between the favorability ratings that Americans who responded to the surveys (a group that changed with each survey) gave to the federal government, their state governments, and their local governments. According to these data,

Less Partisan Perceptions of State, Local Governments



Data from Pew Research Center www.people-press.org/2013/04/15/state-governments-viewed-favorably-as-federal-rating-hits-new-low/

These data came from one administration of the survey, in 2013. Note that differences in favorability ratings of the federal government appear to be more strongly associated with, or *correlated* with, political party affiliations (Republican, Independent, and Democratic) than views of state and local governments.

After studying these two presentations of data, consider and answer the following questions:

1. What do the numbers in the first figure represent?
2. What does the height of each bar in the second figure represent?
3. Which favorability rating of federal, state, and local government seems to be more connected to the political party that a respondent affiliates with?

Federalism and Public Policy: Education

In 1965, as part of Lyndon Johnson's Great Society, the Elementary and Secondary Education Act was passed in an effort to provide equal educational opportunities, particularly for students living in low-income areas.⁵¹ The Act provided federal grant money for the states to create programs that would reduce dropout rates and improve schools. The ESEA Act was reauthorized in 2002, with the passage of the No Child Left Behind Act (NCLB).⁵² This controversial law provided states with grant money, if they agreed to give standardized assessment tests to students at certain grade levels. The wave of testing that followed was often criticized by school districts, teachers, parents, and, of course, students. In 2015, NCLB was replaced with the Every Student Succeeds Act (ESSA).⁵³ ESSA gave states more latitude in setting educational standards but retained mandatory standardized testing.

Advocates of state control over education argue that the federal government has overstepped its bounds in asserting control over what has traditionally been a state issue. On the other hand, advocates for federal education policy argue that students should not be educationally disadvantaged based on the state in which they live. See Figure 3.5 on page 21 for differences in funding of schools. In the meantime, teachers, parents, and students are caught in the middle as education policy continues to evolve.

Integrated Public Policy Coverage

Most traditional books relegate public policy to separate chapters in the back of the book, but the new AP® course integrates policy throughout. As you might expect from a book created specifically for the new course, *American Government: Stories of a Nation for the AP® Course* incorporates public policy. This approach emphasizes how public policy functions as the application of principles taught in each chapter and how public policies actually are implemented.

Meaningful, Focused Work on the Required Court Cases

The College Board chose fifteen required U.S. Supreme Court cases to highlight the role of the U.S. Supreme Court in interpreting the Constitution and Bill of Rights. In *American Government: Stories of a Nation for the AP® Course*, chapters that align with particular cases introduce a deep reading of the case, point out the importance of the case to the AP® course, and assess students' knowledge. Argumentation questions introduce pertinent cases and ask students to articulate a thesis, use the cases as evidence, and write an essay.

Integrated AP® Exam Practice

At the end of every section, chapter, and unit, you will find AP®-style practice items—multiple choice questions, free response questions, and argumentation questions—that conform to the rewritten AP® exam. These questions were written and vetted by AP® teachers deeply familiar with the format of the new exam.

Deeper Understanding of the Foundational Documents

The revised course focuses on foundational documents like the Declaration of Independence and the U.S. Constitution. This book leads students carefully through those foundational documents, quoting them extensively, and summarizing their arguments. In addition to multiple choice and free-response practice, your students will also learn how to use the foundational documents as evidence in the model argumentation questions where they get practice writing an essay in the style of the revised AP® Exam.

A **supplemental document reader** supporting the study of the required foundational documents and court cases is also available.

AP® Political Science PRACTICES

Studying Supreme Court Cases

In this book and in your course, you will be asked to interpret, analyze, and apply key U.S. Supreme Court cases. To do so, it will be important to become familiar with the format and components of Supreme Court decisions, as well as how to study them.

General Tips In Approaching These Key Cases

- Reading cases takes time, especially at first, because a legal decision is a specific kind of writing. Be sure to give yourself plenty of time.
- Supreme Court cases are usually organized using a four-part formula:
 - **First, the Court gives an overview of the facts of the case.** Become familiar with what happened in the case—who was involved, and how the case rose through the court system.
 - **Second, the Court explains the issue it was asked to resolve.** In the fifteen required Supreme Court cases, the fundamental issue always involves the Constitution. Therefore, be sure that you understand the particular clause or amendment that the Supreme Court is being asked to interpret.
 - **Third, the Court announces who won the case.** This is simply a decision about which party will prevail.
 - **Fourth, and most important, the Court explains the reasons for its decision.** Sometimes, the Court will have several reasons for its decision, and these are usually explained in separate sections or paragraphs.

Make sure you understand each reason for the Court's decision and the logic behind it.

- Try to gain a deeper understanding of the context of the case, which may include the larger political climate in which the case was decided.
- Generally, do not worry too much about details. Think about the big picture, especially the implications of the decision for constitutional law and public policy. Consider how the case sets a precedent to be applied in future cases.
- Be sure to practice comparing different cases. Sometimes, one decision will build on others. Sometimes, a decision may be overturned.

Key Terms and Concepts in Reading Supreme Court Decisions

- **Majority Opinion:** The decision and legal reasoning of the majority of justices. A majority opinion may be unanimous.
- **Concurring Opinion (concurrence):** There may be no concurrences, or many. These are opinions written by justices who voted with the majority but have different or additional reasons for their decision. Concurring opinions do not serve as precedent for future cases, although they may contain reasoning that the Supreme Court might use in the future.
- **Dissenting Opinion (dissent):** There may be no dissents or several. These are opinions written by justices who voted with the minority. Though they do not serve as precedent for future cases, they may lay down the logic of the other side should the Court decide to reevaluate precedent in future cases.

AP® EXAM PRACTICE and Critical Thinking Project

MULTIPLE-CHOICE QUESTIONS

1. Which of the following pair of statements correctly describes both federal and unitary systems?

Federal	Unitary
A. Powers of the states are expressly defined in the Constitution.	The vague language of the constitution limits the power of the national government.
B. Most of the power is given to the state governments.	The national government shares power with state governments.
C. The national government has most of the power.	The national government has all of the power, and there are no state governments.
D. Power is constitutionally shared between the national and state governments.	The national government may grant certain powers to the states.

2. Which of the following statements best describes the impact of the Supreme Court's decision in *McCulloch v. Maryland*?

- A. The Court ruled that states have authority over commercial activity within their borders, weakening national power.
- B. The Court ruled that the necessary and proper clause allows the national government to

AP® REQUIRED DOCUMENTS

In chapter 1, you have just met the Declaration of Independence. By this point in chapter 2, you should know the two other major "foundational" documents that established the U.S. Government as well as the three essays for and against adoption of the Constitution.

Document	Scope
Articles of Confederation	Even though the Articles of Confederation are no longer in force, you should read them. The document is not that long. Note how they are divided into thirteen articles.
Constitution of the United States	<ul style="list-style-type: none">• Focus here on the original part of the Constitution as well as on the Bill of Rights (see Section 2.4.) Make sure that you understand the differences among the articles of the Constitution and the branches of government that each relates to.
<i>Federalist</i> No. 51	<ul style="list-style-type: none">• "If men were angels no government would be necessary."• The government must control the governed and must control itself.• Checks and balances will prevent one branch from becoming too powerful and taking away liberty.
<i>Federalist</i> No. 10	<ul style="list-style-type: none">• Factions are self-interested groups that would harm the community.

Critical Thinking Projects to Extend Learning

To add some fun and interesting ideas for taking your class beyond the exam, this book includes Critical Thinking Projects at the end of each chapter and unit to prompt students to engage with the course concepts in novel and creative ways.

CRITICAL THINKING PROJECT

Writing a Letter to the Editor on a Controversial Issue

Read the following excerpt from a news article.

Supreme Court denies Oklahoma and Nebraska challenge to Colorado pot

By JOHN INGOLD | jingold@denverpost.com and

RICARDO BACA | rbaca@denverpost.com | The Denver Post

PUBLISHED: March 21, 2016 at 2:34 am | UPDATED: October 2, 2016 at 4:08 pm

The U.S. Supreme Court on Monday declined to hear Nebraska and Oklahoma's proposed lawsuit against Colorado's legal marijuana laws.

The 6-2 vote means the nation's high-

marijuana continues to flow into Oklahoma, in direct violation of federal and state law. Colorado should do the right thing and stop refusing to take reasonable steps to prevent the flow of marijuana across its borders.

by increasing the amount of pot coming across their borders.

Because the matter involves a dispute between states, it was filed directly to the Supreme Court. The first step in the lawsuit was for the justices to decide whether they even wanted to consider it. When the Supreme Court does accept such cases, the subsequent litigation can

Engaging Stories That Bring Abstract Concepts to Life

American Government: Stories of a Nation for the AP® Course puts an emphasis on practical applications by framing each chapter with a story from the real world showing how the principles of government have real effects that impact real people. For example, to understand political participation and socialization, we follow the story of an AP® U.S. Government student in Colorado who volunteered for a Republican congressional campaign and became increasingly involved in electoral politics.

3

Federalism

Dividing Power between the National Government and the States



Under the Articles of Confederation, most of the people's authority had been placed in state governments, which left the Congress constantly struggling to secure cooperation from the states. That changed with the ratification of the Constitution, but the issue was not settled once and for all. The new system of government divided authority between two levels of government—the national government and the states. As we will explore later in this chapter, some powers, like those related to defense, national security, and the economy, are exclusive to the federal government. Some powers, such as police powers,

Angel McClary Raich and Diane Monson, who consider themselves law-abiding citizens. Under federal law, the sale, use and distribution of marijuana is illegal, but the State of California legalized the marijuana used by Raich and Monson for medical purposes. Raich and Monson ended up in a conflict between the federal and state laws. Here they are outside the Supreme Court of the United States, which settled the issue.

J. SCOTT APPLEWHITE/AP Images

Complete Package to Support Your Instruction



This book comes with a wrap-around **Teacher's Edition**, written by veteran AP® teachers and College Board® consultants who know the course and know the students. Full of creative and insightful ideas into teaching, pacing, and planning this redesigned course, this Teacher's Edition is an indispensable tool for new and experienced teachers alike.

The **Teacher's Resource Materials** include everything you need to support your teaching and your students' learning. From handouts to lesson plans, you'll find it all in the TRM (available as a flash drive, or as resources in the e-book).

American Government: Stories of a Nation for the AP® Course is available in a range of e-book platforms, including our fully interactive **LaunchPad e-book**. In LaunchPad, every question in the book is assignable. This means that students can respond directly in the e-book and have their work report to your gradebook. It includes integrated Teacher's Resource Materials and LearningCurve adaptive quizzing, and it works on any device. To find the e-book that's right for you, contact your Bedford, Freeman & Worth sales representative.



Our **LearningCurve** adaptive quizzing engine will guide students to mastery of the course content. This first-ever LearningCurve for AP® U.S. Government is specifically designed to build understanding of the revised AP® course concepts.



The **ExamView®** Assessment Suite includes more than a thousand AP®-style multiple choice, free-response, and argumentation questions to help students prepare for the AP® Exam. The ExamView Test Generator lets you quickly create paper, Internet, and LAN-based tests. Tests can be created in minutes, and the platform is fully customizable, allowing you to enter your own questions, edit existing questions, set time limits, and incorporate multimedia. To discourage plagiarism and cheating, the test bank can scramble answers and change the order of questions. Detailed results feed into a gradebook.



Foundational Documents and Court Cases Reader



The **Foundational Documents and Court Cases Reader** covers all of the documents and cases required by the College Board®, as well as some frequently taught works that go beyond the course framework. Each document is accompanied by reading support, commentary, and guided questions to help students understand these complex texts. The court cases are put into context, and provide key excerpts from the decisions to give students firsthand experience with the language and reasoning without overwhelming them.

"American Government: Stories of a Nation is well-organized and designed to help cover a broad swath of content in an efficient manner. It both covers the basic material and provides teachers with ample resources to help students understand the content. In addition, the embedded section reviews and the end-of-unit reviews will go a long way towards preparing students for the redesigned AP® exam."

— Robert Fenster, Hillsborough High School, NJ

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UNIT 2 REVIEW

"This textbook is accessible to high school students—students will find themselves engaged in the topics due to the provocative examples used to illustrate the various points. The updated nature of both the examples and modern political interpretation of the Constitution keep the textbook connected to the student perspective/experience. The AP® questions and included focus materials will help prepare students for success on the AP® exam. The updated AP® review materials not only provide questions but also tips on how to successfully respond."

— Bonnie Monteleone,
Brecksville-Broadview Heights
High School, OH

"The text is a user-friendly educational tool that combines multiple components of the AP® course into one place. The chapters and sections are easily navigable. The case studies to open a chapter serve as a good jumping-off point that can be utilized to spark genuine and in-depth conversation with students, serving as an aid to build connections to the material. The review exercises are in-line with the College Board's line of questioning on the AP® Exam, as well as the new initiatives being introduced as part of the course redesign."

— Edward Williams,
Austin Preparatory School, MA

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UNIT 5 REVIEW

About the Authors



Scott F. Abernathy,
University of Minnesota

After working as an on-street counselor for homeless adolescents in Boston, Scott received a master's degree in curriculum and instruction before teaching fourth and seventh grades

in Wisconsin public schools. Hoping to learn more about the underlying systems that drove educational outcomes, Scott completed an M.P.A. in Domestic Policy and then a Ph.D. in Politics from Princeton University.

Scott is now an associate professor of political science and a University Distinguished Teaching Professor at the University of Minnesota. He is also the author of *School Choice and the Future of American Democracy* and *No Child Left Behind and the Public Schools*, both from University of Michigan Press.



Karen Waples,
Holy Family High School, Colorado

Formerly a trial attorney, Karen Waples has taught since 1999 and currently teaches AP® Comparative Government and College Prep Government at Holy

Family High School in Broomfield, Colorado. Karen has served as a reader for the AP® U.S. Government and Politics and AP® U.S. History exams, and she was the 2018 exam leader for the AP® Comparative Government and Politics exam. She is an endorsed consultant for the College Board® and conducts AP® U. S. Government and Politics workshops throughout the country. Karen was the chair of the College Board® Social Science Academic Advisory Committee and was a member of the Curriculum Redesign Committee for AP® U.S. Government and Politics. She received the Colorado Governor's Award for Excellence in Education in 1997 and was recognized as a Cherry Creek High School Teacher of the Year in 2002.

3

Federalism

Dividing Power between the National Government and the States



Under the Articles of Confederation, most of the people's authority had been placed in state governments, which left the Congress constantly struggling to secure cooperation from the states. That changed with the ratification of the Constitution, but the issue was not settled once and for all. The new system of government divided authority between two levels of government—the national government and the states. As we will explore later in this chapter, some powers, like those related to defense, national security, and the economy, are exclusive to the federal government. Some powers, such as police powers,

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J. SCOTT APPLEWHITE/AP Images

federalism

a system that divides power between the national and state governments.

are under the authority of the states. Some powers, like the power of taxation, are shared, and some powers, like those that would take away the rights of citizens, are denied to both levels. This system is called **federalism**.

The Constitution created a basic framework for our federal system but did not define the boundaries sharply between the specific powers of the national and state governments. Many of the most important and controversial issues in our representative democracy involve difficult questions of American federalism.

In this chapter, we will explore federalism through the stories of Angel Raich and Diane Monson, who use medical marijuana. In doing so, we will explore the tensions inherent in American federalism, how federalism has changed over time, and where it stands now.

LEARNING TARGETS

After reading this chapter, you will be able to

- 3.1 Explain the tension in American federalism between state and federal laws.
- 3.2 Describe how the Constitution divides power between the national and state governments.
- 3.3 Describe the development of American federalism over time.
- 3.4 Explain how federalism changed in the twentieth and twenty-first centuries.
- 3.5 Discuss the current status of American federalism and how it might continue to evolve.

3.1 Conflict over Medical Marijuana

In 2002, Angel McClary Raich and Diane Monson filed law suits in a California federal court against the U.S. government. They argued that their use of medical marijuana, which was legal under the laws of California but illegal under federal law, was protected by the laws of their state and by the Constitution of the United States.

“I am not a criminal,” Raich declared. “I do not deserve to be behind bars.”¹ Both women were trying to cope with significant health issues and they wanted to use cannabis as part of their treatment. Raich described her illnesses as an “inoperable brain tumor, seizures, endometriosis, scoliosis and a wasting disorder. She [weighed] only 97 pounds and claimed that without marijuana she’d starve to death.”² Diane Monson used marijuana as part of her treatment for chronic back pain and spasms and grew her own plants.

Both women were using marijuana under the supervision of their doctors and in compliance with a California state law, the Compassionate Use Act of 1996. This act made the use and cultivation of marijuana for medical purposes legal if undertaken under the supervision of a licensed physician and in accordance with state regulations. However, Raich and Monson feared that the federal government might restrict their access to medical marijuana. The use, cultivation, or possession of marijuana is illegal under a federal law, the

Controlled Substances Act of 1970 (CSA).³ Under that law, marijuana is classified as a Schedule I drug, among the most dangerous substances, such as heroin and LSD. The Controlled Substances Act of 1970 was enacted under Congress's constitutional authority to regulate interstate commerce. Raich and Monson were caught between the laws of their state and those of the nation. They found themselves front and center in one of the most enduring debates in American political life—that of federalism.

In August 2002, county deputy sheriffs and agents from the federal Drug Enforcement Administration (DEA) came to Monson's home. The county officials concluded that her cultivation and use of marijuana were permitted under California law. After a three-hour standoff, though, the federal agents seized and destroyed the six marijuana plants that she was growing. Monson alleged that the DEA's actions violated her civil rights and her rights under California law.

The two women filed suit, and an appeals court ruled in their favor. U.S. Attorney General Alberto Gonzales appealed, and the Supreme Court agreed to hear the case. Raich and Monson based their claims upon the laws of California and the Constitution of the United States. The Attorney General and the DEA countered that they were rightfully upholding federal law and federal authority. "Everything we're doing is according to the law," said Richard Meyer, a San Francisco-based DEA spokesman.⁴ By enforcing federal law, however, the DEA agents were restricting actions that were legal under California state laws. The Supreme Court was asked to decide whether the Controlled Substances Act prevailed over the California law that legalized medical marijuana.⁵

Raich and Monson's legal challenge centered on a question fundamental to our system of government: Where is the boundary between the powers of the federal government and those of the states?



Many states have lessened penalties for use of marijuana. Several states have legalized medical and/or recreational use. The changes made by the states have produced dispensaries and retail outlets for marijuana, along the lines of another controlled substance, alcohol. How do sales at this store in California create tension with the power of the Congress to regulate interstate commerce?

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Section Review

This chapter's main ideas are reflected in the Learning Targets. By reviewing after each section, you should be able to

- Remember** the key points,
- Know** terms that are central to the topic, and
- Think** critically about these questions.

3.1 Explain the tension in American federalism between state and federal laws.

REMEMBER Political authority is divided between two levels of government: the national government and the states.

KNOW *federalism*: a system that divides power between the national and state governments. (p. 64)

THINK Explain how the conflict between California's Compassionate Use Act and the federal Controlled Substances Act reflects tensions between the national and state governments.

3.1 Review Question: Free Response

Twenty-nine states and the District of Columbia currently have laws broadly legalizing marijuana in some form. Nine states and the District of Columbia have adopted the most expansive laws legalizing marijuana for recreational use. Recently, California, Massachusetts, Maine, and Nevada legalized recreational marijuana. California's recently passed Proposition 64 measure allows adults twenty-one and older to possess up to one ounce of marijuana and grow up to six plants in their homes. Other tax and licensing provisions of the law will not take effect until January 2018.

After reading the passage, use your knowledge of U.S. Government and Politics to respond to parts A, B, and C.

- A. Define federalism.
- B. Describe one way in which the Controlled Substances Act of 1970 impacts the situation described in the scenario.
- C. In the context of the scenario, explain how federalism causes tension between the national and state governments.

3.2 Federalism and the Constitution

The conflict between California's marijuana law and the Controlled Substances Act demonstrates tensions within our federal system of government.

Systems of Government

There are three ways of dividing power between the national government and the states. (See Figure 3.1.) In **unitary systems**, one central government exercises authority over the subnational governments (such as states). The national government may delegate (devolve) certain powers to subnational governments, but it has the authority to take back any powers it delegates. The United Kingdom, China, and Iran are unitary systems. The United Kingdom has devolved some of the powers of the national government to regional assemblies in Scotland, Northern Ireland, and Wales. However, Parliament still has the final authority over policy making. Most countries have a unitary system. Strong central governments often are hesitant to disperse power.

At the opposite end of the spectrum are **confederal systems** in which the subnational governments, such as states, have more power than the national government. In confederal systems, national governments are heavily dependent upon the states to carry out

unitary system

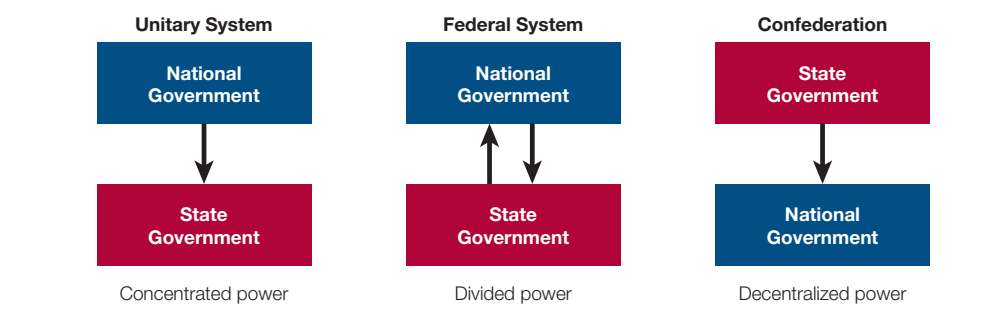
a system where the central government has all of the power over subnational governments.

confederal system

a system where the subnational governments have most of the power.

FIGURE 3.1

The Division of Power under Different Systems of Government



and pay for public policies. The United States under the Articles of Confederation was an example of a confederal system. Switzerland is organized as a confederal system.

Federalism is one of the most important innovations of the Constitution. In **federal systems**, power is divided between the states and the national government. Each level of government retains some exclusive powers and has some powers denied to it. Federal systems have constitutional protections for each level against encroachment on its powers by the other levels. The United States, Mexico, Nigeria, and Russia are examples of countries with federal systems.

National and State Powers

In general, the powers of the national government are explicitly listed and described by the Constitution. **Enumerated or expressed powers** refer to those powers granted to the national government in the Constitution, and especially to Congress. These include the **exclusive powers** that only the national government may exercise, such as the power to coin money, declare war, raise and support an army and navy, make treaties, provide for the naturalization of American citizens, and regulate interstate and foreign commerce. Most of the enumerated powers in the Constitution are granted to the legislative branch in Article I, Section 8.

Implied powers are not specifically granted to the federal government. Under the necessary and proper clause, in Article I, Section 8, however, Congress can make laws to carry out its enumerated powers. For example, the Constitution does not give the national government the authority to create an air force (though the first hot-air balloon had taken flight in 1783, before the drafting of the Constitution, and some may have anticipated combat in the air). That authority, however, is a necessary part of its power to raise and support a military.

Besides describing the enumerated and implied powers, the Constitution denies certain powers to the national government. Although the original Constitution did not protect many civil liberties, the federal government was prohibited from violating some rights. The Constitution prohibits bills of attainder, when the legislature declares someone guilty without a trial. Congress may not pass ex post facto laws, which punish actions that were legal when they occurred. Finally, the national government may not suspend the writ of habeas corpus, giving defendants the right to be informed of the charges and evidence against them. The national government may not admit new states to the union, nor can it change state boundaries without the consent of the state's citizens. It also cannot impose taxes on goods and services exported and imported between states. (Refer back to chapter 2 for more information on powers denied to the national government.)

The Commerce, Necessary and Proper, and Supremacy Clauses

The Constitution contains a set of provisions—the commerce, necessary and proper, and supremacy clauses and the Tenth Amendment—that shape the relative authority of the state and national governments. At the same time, however, it does not outline just how the system of federalism would work.

federal system

a system where power is divided between the national and state governments.

enumerated or expressed powers

powers explicitly granted to the national government through the Constitution; also called expressed powers.

exclusive powers

powers only the national government may exercise.

implied powers

powers not granted specifically to the national government but considered necessary to carry out the enumerated powers.



Graduation celebrations at the United States Air Force Academy in 2015. The Constitution gives the national government the implied power to create the U.S. Air Force as part of its power to raise and support a military. The U.S. Air Force became a separate uniformed service in 1947. What expressed powers do the president and Congress have over the armed forces?

RJ Sangosti/Getty Images

commerce clause
grants Congress the authority to regulate interstate business and commercial activity.

necessary and proper clause
grants the federal government the authority to pass laws required to carry out its enumerated powers. Also called the elastic clause.

supremacy clause
establishes the Constitution and the laws of the federal government passed under its authority as the highest laws of the land.

Tenth Amendment
reserves powers not delegated to the national government to the states and the people; the basis of federalism.

reserved powers
powers not given to the national government, which are retained by the states and the people.

concurrent powers
powers granted to both states and the federal government in the Constitution.

The **commerce clause** strongly influences modern American federalism. It grants Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”⁶ By using the commerce clause—in combination with the necessary and proper and supremacy clauses—Congress has claimed the authority to define nearly any productive activity as commerce. For example, even though Diane Monson’s homegrown marijuana was never sold and did not leave her home state, the federal government claimed the authority to regulate it as interstate commerce.

The **necessary and proper clause** gives Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution . . . Powers vested by this Constitution in the Government of the United States.”⁷ Also called the elastic clause, the necessary and proper clause is a critical source of power for the national government, granting Congress the authority to legislate as necessary for carrying out its constitutionally granted powers.

One of the Constitution’s most important statements about the power of the national government is the **supremacy clause**, which reads, “This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.”⁸ The supremacy clause means that the states must abide by the laws passed by Congress, even if state constitutional provisions conflict with them. States must abide by national treaties, and state courts must follow the Constitution.

Powers of the State Governments

The Constitution does not specifically use the word *federalism* and is much less specific about powers allocated to the states. Much of the protection for state authority comes from the **Tenth Amendment**, which states, “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.”⁹ Those who advocate for more state authority argue that the Tenth Amendment limits the federal government to the power enumerated in the Constitution and that the states and the people have superior power over all remaining issues. However in *United States v. Darby* (1941), the Supreme Court labeled that interpretation of the Tenth Amendment as a “truism,” meaning that it was not supposed to give the states and people powers that supersede those of the national government.¹⁰ The Supreme Court’s decision in *Garcia v. San Antonio Metropolitan Transit Authority* (1985)¹¹ involved whether or not the San Antonio Metropolitan Transit Authority had to comply with the Fair Labor Standards Act in paying its workers. The Supreme Court ruled, in effect, that Congress could decide when to regulate activities by state and local governments.¹²

Reserved powers were not given to the national government and are, therefore, retained by the states. Among the most important of these are police powers, which state governments use to protect residents and provide for their safety, health, and general welfare. States are also authorized to conduct elections, including those for national office.¹³ States have the power to establish local, town, county, and regional governmental bodies. Article V gives states the final say about whether an amendment will become part of the Constitution. The Constitution cannot be amended without the consent of three-fourths of the states, either by their legislatures or by ratification conventions in the states.¹⁴

Finally, both the national government and states are given the authority to act in certain areas of public policy. These **concurrent powers** allow national and state authority to overlap. The power to tax is shared by the national and state governments. Both levels are allowed to borrow money, although many states place more restrictions on their ability to go into debt than does the federal government. Both may pass and enforce laws, create and operate a system of courts, and charter banks and corporations (see Figure 3.2).

FIGURE 3.2**Enumerated, Concurrent, and Reserved Powers in American Federalism****Regional and Local Governments Rely on the States**

The Constitution does not describe the powers of the levels of government below the states—cities, towns, counties, and districts. Generally, relationships between states and local governments are unitary, with the authority of the smaller units dependent upon and subordinate to the power and authority of the state. States can disband local governments because their power and sovereignty depend on the state. States can also set rules that local governments must follow. For example, state governments can set rules governing public utilities or change the boundaries of school districts or combine two school districts into one larger one.

Therefore, while we often talk about three levels of government in the United States—national, state, and local—from the point of view of American federalism there are only two—national and state. Dependence upon state authority is often a source of frustration for mayors, school board members, and other local officials.

Relationships between States Federalism does not just involve the relationship between the national government and the states. States also interact with each other. Article IV of the Constitution outlines the obligations between states. The **full faith and credit clause** requires states to recognize the public acts, records, and civil court proceedings from

full faith and credit clause
constitutional clause
requiring states to recognize
the public acts, records, and
civil court proceedings from
another state.

another state. This means that a couple married in Vermont is still married when their family relocates to South Carolina, even though the requirements for getting a marriage license may differ between states. When a couple divorces, a child-support order issued in one state is enforceable in another state.

There are limits to the full faith and credit clause. If you drive through Missouri on your way to college, Missouri must recognize your driver's license. But if you move to Missouri, the state can compel you to obtain a new driver's license.¹⁵

Someone who commits a crime in one state may flee to another state in an attempt to avoid prosecution. **Extradition** is the requirement that officials in one state return a defendant to another state where a crime was allegedly committed. Most states are happy to comply with extradition because they don't want to harbor criminals.

The **privileges and immunities clause** prevents states from discriminating against people from out of state. For example, Florida cannot charge a higher sales tax for tourists at Disney World, or anywhere else in the state, than it charges for in-state residents.¹⁶ You might wonder why state-funded universities can charge more for out-of-state than in-state college students. As a taxpayer of the state in which you live, you and your parents have already subsidized your state's colleges. As a general rule, the more fundamental the right, the more it is protected from discrimination under the privileges and immunities clause.

extradition

the requirement that officials in one state return a defendant to another state where a crime was committed.

privileges and immunities clause

constitutional clause that prevents states from discriminating against people from out of state.

Section Review

3.2 Describe how the Constitution divides power between the national and state governments.

REMEMBER The Constitution lays out much of the framework of American federalism. The supremacy, necessary and proper, and commerce clauses define federal powers.

KNOW

- *unitary system*: a system where the central government has all of the power over subnational governments. (p. 66)
- *confederal system*: a system where the subnational governments have most of the power. (p. 66)
- *federal system*: a system where power is divided between the national and state governments. (p. 67)
- *enumerated or expressed powers*: powers explicitly granted to the national government through the Constitution; (p. 67)
- *exclusive powers*: powers only the national government may exercise. (p. 67)
- *implied powers*: powers not granted specifically to the national government but considered necessary to carry out the enumerated powers. (p. 67)
- *commerce clause*: grants Congress the authority to regulate interstate business and commercial activity. (p. 68)
- *necessary and proper clause*: grants the federal government the authority to pass laws required to carry out its enumerated powers. Also called the elastic clause. (p. 68)
- *supremacy clause*: establishes the Constitution and the laws of the federal government passed under its authority as the highest laws of the land. (p. 68)
- *Tenth Amendment*: reserves powers not delegated to the national government to the states and the people; the basis of federalism. (p. 68)
- *reserved powers*: powers not given to the national government, which are retained by the states and the people. (p. 68)
- *concurrent powers*: powers granted to both states and the federal government in the Constitution. (p. 68)
- *full faith and credit clause*: constitutional clause requiring states to recognize the public acts, records, and civil court proceedings from another state. (p. 69)
- *extradition*: the requirement that officials in one state return a defendant to another state where a crime was committed. (p. 70)
- *privileges and immunities clause*: constitutional clause that prevents states from discriminating against people from out of state. (p. 70)

THINK

How does federalism create tensions between the states and the national government?

3.2 Review Question: Free Response

In *Texas v. Johnson* (1989), the Supreme Court overturned a Texas state law banning flag burning as a violation of the First Amendment's protection of free speech. According to an article by the *Washington Post*,

Polls show that most Americans want flag desecration outlawed . . . They said that burning a U.S. flag in public—while rare these days—is a reprehensible insult to the nation's founders and a dishonor to the Americans who died fighting tyranny.

—Charles Babington, “Senate Rejects Flag Desecration Amendment,” *Washington Post*, June 28, 2006

After reading the scenario, use your knowledge of U.S. Government and Politics to respond to parts A, B, and C.

- A. In the context of the scenario, explain why federalism makes it difficult for states to address an issue like flag burning, even though most Americans want flag desecration outlawed.
- B. Explain how the process for amending the Constitution reflects federalism.
- C. Explain why it was difficult to pass a constitutional amendment banning flag burning, even though most Americans wanted to outlaw flag desecration.

3.3 The Dynamic Nature of Federalism

Federalism changes over time. Defining the relative power of the national and state governments happens through a dynamic political process. In this section, we will look at federalism through the early twentieth century. Perhaps the most important figure in shaping federalism after the ratification of the Constitution was John Marshall, chief justice of the Supreme Court from 1801 to 1835, and the longest-serving chief justice in American history. During his tenure, Marshall issued several of the most important decisions that define American federalism.

The Marshall Court: Expanding National Power

The first of the major federalism case decided by the Marshall Court was *McCulloch v. Maryland* (1819).¹⁷ The case centered on the Second Bank of the United States, a national bank chartered by Congress, whose charter had been left to expire amid a “debate about its constitutionality.”¹⁸ Many questioned if Congress had the authority to charter a national bank.

Several states, including Maryland, passed laws to tax the Second Bank of the United States. Bank officials in Maryland refused to pay the state tax, and the dispute went to the U.S. Supreme Court.

The case centered on two questions: Did Congress have the authority to establish the bank in the first place? And did individual states have the authority to tax its branches operating within their borders? Chief Justice John Marshall's opinion on both questions, speaking for a unanimous Supreme Court, came down firmly on the side of the authority of the national government. The decision emphasizes that the states and people ceded some of their sovereignty to the national government in ratifying the Constitution. The decision states,

The assent of the States in their sovereign capacity is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their act was final. It required not the affirmance, and could not be negated, by the State Governments. The Constitution, when thus adopted, was of complete obligation, and bound the State sovereignties.¹⁹

AP® TIP

Students are required to be familiar with fifteen required Supreme Court cases on the AP® exam. Other Supreme Court cases may appear on the exam, and students will be given enough information about those cases to analyze them.

Analyzing Supreme Court Cases

In this book and in your course, you will be asked to interpret, analyze, and apply key U.S. Supreme Court cases. To do so, it will be important to become familiar with the format and components of Supreme Court decisions, as well as how to study them.

General Tips in Approaching These Key Cases

- Reading cases takes time, especially at first, because a legal decision is a specific kind of writing. Be sure to give yourself plenty of time.
- Supreme Court cases are usually organized using a four-part formula:
 - **First, the Court gives an overview of the facts of the case.** Become familiar with what happened in the case—who was involved, and how the case rose through the court system.
 - **Second, the Court explains the issue it was asked to resolve.** In the fifteen required Supreme Court cases, the fundamental issue always involves the Constitution. Therefore, be sure that you understand the particular clause or amendment that the Supreme Court is being asked to interpret.
 - **Third, the Court announces who won the case.** This is simply a decision about which party won.
 - **Fourth, and most important, the Court explains the reasons for its decision.** Sometimes, the Court will have several reasons for its decision, and these are usually explained in separate sections or paragraphs.

Make sure you understand each reason for the Court's decision and the logic behind it.

- Try to gain a deeper understanding of the *context* of the case, which may include the larger political climate in which the case was decided.
- Generally, do not worry too much about details. Think about the big picture, especially the implications of the decision for constitutional law and public policy. Consider how the case sets a precedent to be applied in future cases.
- Be sure to practice comparing different cases. Sometimes, one decision will build on others. Sometimes, a previous decision may be overturned.

Key Terms and Concepts in Reading Supreme Court Decisions

- **Majority Opinion:** The decision and legal reasoning of the majority of justices. A majority opinion may be unanimous.
- **Concurring Opinion (concurrence):** There may be no concurrences, or many. These are opinions written by justices who voted with the majority but have different or additional reasons for their decision. Concurring opinions do not serve as precedent for future cases, although they may contain reasoning that the Supreme Court might use in the future.
- **Dissenting Opinion (dissent):** There may be no dissents or several. These are opinions written by justices who voted with the minority. Though they do not serve as precedent for future cases, they may lay down the logic of the other side should the Court decide to reevaluate precedent in future cases.

Citing the necessary and proper clause of the Constitution, Marshall affirmed the right of Congress to establish the bank, arguing, “Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional.”²⁰ Marshall argues against a strict, literal view of the Constitution in stating,

The subject is the execution of those great powers on which the welfare of a Nation essentially depends. It must have been the intention of those who gave these powers to insure, so far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end.²¹

A constitution, he argued, cannot contain the “prolixity of a legal code. Its nature, therefore, requires that only its great outlines should be marked.”²² The right to establish the bank was, according to Marshall’s logic, a valid *implied power* of Congress, even though the right to

create a national bank is not explicitly given in the text of the Constitution. The opinion states, “Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the Articles of Confederation, excludes incidental or implied powers and which requires that everything granted shall be expressly and minutely described.”²³

This means that Congress is not limited by its expressed powers. Under the necessary and proper clause, it has the implied authority to take actions needed to carry out its expressed powers.

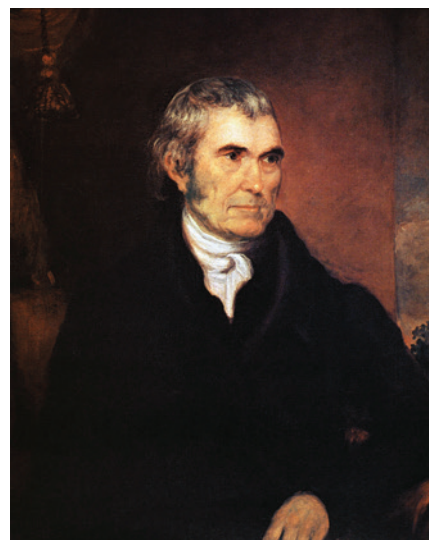
On the second question—of the authority of individual states to tax the branches of the Second Bank—Marshall and the Court also came down on the side of the national government. Maryland and other states did not have the authority to tax the bank’s state branches. Arguing “the power to tax involves the power to destroy,” the Court ruled, “State governments have no right to tax any of the constitutional means employed by the Government of the Union to execute its constitutional powers.”²⁴

Having reaffirmed the constitutionality of *implied powers* under the *necessary and proper clause* in *McCulloch v. Maryland*, the Marshall Court next turned its attention to other sources of national power.

In *Gibbons v. Ogden* (1824), the Marshall Court weighed in on the powers of Congress under the commerce clause of the Constitution.²⁵ As with the *McCulloch* decision, the Court in *Gibbons* affirmed national power. Known as the “steamboat monopoly case,” *Gibbons v. Ogden* arose from a battle between two powerful businessmen in the steamboat business in New York and New Jersey. Aaron Ogden had been granted a monopoly by a New York state law that protected his routes within New York and between New York and New Jersey. Thomas Gibbons was a steamboat operator who had been granted a license by the federal government to operate on the same route. Gibbons filed suit to block the monopoly that the State of New York had granted Ogden.

Marshall’s decision in the case reaffirmed national power using a different part of the Constitution. While *McCulloch* involved the necessary and proper clause, *Gibbons* focused on the power of Congress to regulate trade “among the several States” as part of its authority under the commerce clause. Marshall also cited the power of the national government under the supremacy clause. The Court, again unanimously, struck down the steamboat monopoly between the two states and the part of the New York law that had made the monopoly possible. In doing so, Marshall affirmed the exclusive authority of Congress to regulate interstate commerce, defining commerce “among the several States” as including “the deep streams which penetrate our country in every direction [and] pass through the interior of almost every state in the Union.”²⁶

Lurking in the background during this time were the interconnected and unresolved problems of slavery, states’ rights, and American federalism.



Even today, Chief Justice John Marshall’s decisions are among the most important in shaping the powers and limits in U.S. federalism. Robert Sully painted this portrait in 1830, when Marshall was in his seventies, near the end of his long career in politics and as the fourth chief justice of the Supreme Court.

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The Thirteenth, Fourteenth, and Fifteenth Amendments

Following the Civil War, three amendments were ratified that reduced the power of the states. The **Thirteenth Amendment** outlawed slavery. The **Fourteenth Amendment** contains several clauses that place limits on state actions. The first section of the Fourteenth Amendment provides that all persons born in the United States are citizens. The effect of this section meant that Southern states could not deny citizenship to former slaves. Under the Equal Protection

Thirteenth Amendment
constitutional amendment that outlaws slavery.

Fourteenth Amendment
constitutional amendment that provides that persons born in the United States are citizens and prohibits states from denying persons due process or equal protection under the law.

Fifteenth Amendment
constitutional amendment
that gave African American
males the right to vote.

Clause, states may not deny persons equal protection under the laws. The Due Process Clause prevents states from denying persons due process under the law. The **Fifteenth Amendment** gave African Americans the right to vote. These three amendments were passed to limit the ability of states to discriminate against their citizens. We will study these amendments in more depth in chapter 5.

Following the Civil War, the Supreme Court did not strongly support African American civil rights, a move that would have provided uniform protection for African Americans at the national level. Instead, it affirmed a vision of federalism that recognized state authority, even if that authority was used to restrict the rights of citizens based only on their racial identity.

Plessy v. Ferguson (1896) was a landmark case in restricting the rights of African Americans following the Civil War and asserting states' rights. In this case, the Supreme Court upheld the constitutionality of legalized racial segregation (the separation of individuals based on their racial identity) and the ability of states to pass such laws.²⁷ *Plessy* was a test case, organized by the African American community in New Orleans to challenge Louisiana's segregation laws. Homer Plessy, "a light-skinned man who described himself as 'seven-eighths Caucasian,'" had been arrested and fined for violating a state law requiring separate railroad facilities for whites and African Americans.²⁸

In the decision in *Plessy*, Justice Henry Billings Brown declared that Louisiana's law did not violate the Fourteenth Amendment. Arguing that "[s]ocial prejudices cannot be overcome by legislation," Brown upheld Plessy's conviction and declared that "separate but equal" did not violate the Constitution.

Justice John Marshall Harlan, the lone dissenter on the Court, countered, "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." Harlan, correctly, as it would turn out, saw *Plessy* as a dangerous and damaging ruling. Brown's majority opinion, however, set policy. The ruling that racial segregation could be constitutionally permissible endured for almost sixty years. We will explore the efforts—first in the states, later in the Supreme Court—of individuals to overturn this doctrine in detail in chapter 9.

Shifting from Dual to Cooperative Federalism

For much of the history of the American republic, the model of the relationship between states and nation was one of **dual federalism**, which presumes a distinct, though not complete, separation between the federal and state governments, as if both operate side by side with relatively little interaction between the two. Dual federalism, according to an observer of American government in 1888, "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 set doing its own work without touching or hampering the other."²⁹ (See Figure 3.3.)

The Supreme Court drew a similar image of two separate systems in the nineteenth century: "The government of the United States and the government of a state are distinct and independent of each other within their respective spheres of action, although existing and exercising their powers within the same territorial limits. Neither government can intrude within the jurisdiction, or authorize any interference therein by its judicial officers with the action of the other."³⁰ In fact, however, the division of authority between states and national government has never been clean and neat. Even in areas of public policy that have

dual federalism
a form of American
federalism in which the
states and the nation operate
independently in their own
areas of public policy.

FIGURE 3.3

Dual Federalism



Erik Anderson @MrAndersonGov · 3 Feb 2017
Federalism cake day today in #APGov! Great (and tasty) examples of cooperative and dual federalism! #vmsgov

Erik Anderson

For much of the history of the American republic, state and federal governments operated under an arrangement of dual federalism. In this model, federal and state governments have distinct powers and function independently of one another, addressing their own areas of policy, something like separate layers of the same cake. Here, a red-white-and-blue layer cake depicting dual federalism was made by students in Minnesota to celebrate federalism.

been traditionally handled by the states, such as education, the federal government has been involved.³¹

As America industrialized, the states and the national government attempted to regulate wages, working conditions, and the right to unionize. However, the Supreme Court struck down many of these efforts, including initial efforts to regulate child labor. The Court ruled that such efforts violated the Constitution's protection of the liberty of contract. Some legal scholars have labeled this time as the *Lochner* Era after the case *Lochner v. New York* (1905),³² in which the state tried to limit the working hours of bakers to 60 hours per week.

In 1925, the Supreme Court weighed in on the rights states must provide their citizens. As will be discussed in chapter 4, *Gitlow v. New York*³³ began the process of **selective incorporation**, by which fundamental liberties in the Bill of Rights are applied to the states on a case-by-case basis. This is done through Section 1 of the Fourteenth Amendment, which provides, “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

In the *Gitlow* case, the Court ruled that freedom of speech and the press are fundamental liberties protected by the due process clause from violations by the states. This limited states' actions in taking away the personal freedoms guaranteed in the First Amendment. Over time, on a case-by-case basis, the Supreme Court has applied the Fourteenth Amendment to prevent states from taking away most of the liberties provided in the Bill of Rights.

During the latter part of the nineteenth century and the early decades of the twentieth, states and the national government moved away from dual federalism toward a system of **cooperative federalism**, in which both levels work together in the same areas of public policy. Under this type of federalism, the two levels do not generally play the same roles.

selective incorporation
the process through which the Supreme Court applies fundamental rights in the Bill of Rights to the states on a case-by-case basis.

cooperative federalism
a form of American federalism in which the states and the national government work together to shape public policy.

FIGURE 3.4

Cooperative Federalism

Beginning in the late nineteenth century and extending into the early twentieth, state and federal governments forged a relationship of cooperative federalism in which they worked together to shape public policy. Marble cake is often used to show the mixing in the new relationship—this cake was enjoyed by students at Centerville High School in Fairfax, Virginia. Notice that in cooperative federalism the colors (and functions) are less distinct.



Catherine Ruffing



Instead, the national government tends to be “responsible for raising revenues and setting standards,” while state and local governments remain “primarily responsible for administering the programs.”³⁴ (See Figure 3.4.)

The Great Depression and Changes in American Federalism

The Great Depression, and the inability of state governments to cope with the crisis, increased the power of the national government and changed the nature of federalism. The crisis of the Great Depression strained American federalism. During the boom times of the 1920s, states increased their spending, especially to expand the highways for the nation’s growing fleet of automobiles. To do so, states borrowed large amounts of money. When the economic crisis took hold, many state governments faced shortfalls and were unable to respond to their residents’ needs. Local governments also were overwhelmed, unable

Franklin Delano Roosevelt’s inaugural address, March 4, 1933. In the address, President Roosevelt asserted, “This great Nation will endure as it has endured, will revive and will prosper. So, first of all, let me assert my firm belief that the only thing we have to fear is fear itself—nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance.” How did Roosevelt’s response to the Great Depression re-shape federalism?

Franklin D. Roosevelt Presidential Library & Museum

to care for millions of unemployed workers. Faced with challenges that they could not meet and citizens whose needs they could not assist, state and local governments appealed to the national government for help.

Roosevelt Greatly Expanded the Role of the National Government At his inaugural address in 1933, President Franklin Delano Roosevelt made it clear that he was prepared to bring the full power of the executive branch to bear on the Great Depression. Should Congress not take proper action to assist, he said “I shall ask Congress for . . . broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.”³⁵

Roosevelt was a savvy politician who, as a former governor, exerted a powerful influence on the country in a short span of time. Roosevelt knew that state governments did not have the resources to handle the urgent problems they faced. They were in no position to refuse the big sums of federal aid that Roosevelt offered, even if accepting financial aid meant trading away some state authority. This dynamic fundamentally changed the relationship between the states and the national government, dramatically strengthening the role of the national government in the economy.

The expansion of national power under Roosevelt’s New Deal—especially Congress’s authority to regulate interstate commerce—permanently altered the relationship between the states and the national government. Cooperative federalism, in which both levels of government are involved in setting policy, firmly replaced earlier models of dual federalism and made the national government at least a coequal in many areas of public policy traditionally handled by the states.

Many programs that define modern cooperative federalism originated in Roosevelt’s New Deal. For example, the Social Security Act of 1935 created a set of programs to support vulnerable groups of Americans.³⁶ It established unemployment insurance for American workers. It set up old-age insurance and old-age assistance programs, later supplemented with disability insurance. The Works Progress Administration (WPA) was the largest of the New Deal public works programs.³⁷ It was created to provide jobs for the thousands of people who were unemployed during Great Depression. By 1943, the WPA had brought 8.5 million Americans into the workforce.³⁸ The WPA projects built infrastructure projects to benefit the public, such as bridges, airports, schools, parks, and utilities.³⁹ In addition, the program supported theater, music, and visual arts projects. Other programs funded research, historic preservation, and public libraries.⁴⁰

The revolution in federalism was made possible by the severe economic crisis facing the nation and the inability of states to handle its fallout. States were desperate for help in handling the impact of the Great Depression, and the Roosevelt administration drastically increased the role of the federal government as a result.



A poster from 1935 informing Americans aged sixty-five and older of their benefits under the Social Security program and how to obtain them.

GraphicaArtis/Getty Images

Section Review

3.3 Describe the development of American federalism over time.

- REMEMBER**
- The boundaries between the authority of national and state governments have changed over time.
 - Many of these changes have come about as a result of Supreme Court decisions in interpreting the Constitution.
 - The New Deal fundamentally reshaped American federalism.
-
- KNOW**
- *Thirteenth Amendment*: constitutional amendment that outlaws slavery. (p. 73)
 - *Fourteenth Amendment*: constitutional amendment that provides that persons born in the United States are citizens and prohibits states from denying persons due process or equal protection under the law. (p. 73)
 - *Fifteenth Amendment*: constitutional amendment that gave African Americans the right to vote. (p. 74)
 - *dual federalism*: a form of American federalism in which the states and the national government operate independently in their own areas of public policy. (p. 74)
 - *selective incorporation*: the process through which the Supreme Court applies fundamental rights in the Bill of Rights to the states on a case-by-case basis. (p. 75)
 - *cooperative federalism*: a form of American federalism in which the states and the national government work together to shape public policy. (p. 75)
-
- THINK**
- How has American federalism changed and developed? What factors have helped to drive this change?
 - How did nineteenth-century interpretations of American federalism deny some Americans their fundamental rights?
 - How did the New Deal impact the relationship between the national government and the states?
 - Given the dynamic nature of federalism, what kinds of events might cause federalism to change in the future?

3.3 Review Question: Free Response

Carol Ann Bond learned that her husband was having an affair with her friend, Myrlinda Haynes, who became pregnant. Bond stole and purchased chemicals, which she put on Haynes's door-knobs and car handle, causing burns. Bond was charged with violating the Chemical Weapons Convention Implementation Act of 1998, a federal law, which makes it a crime to use certain chemicals with the intent to harm others.

In *Bond v. United States* (572 U.S. ____ (2014)), the Supreme Court ruled that Congress exceeded its authority in passing the Chemical Weapons Convention Implementation Act because the law infringed on the traditional police powers of the states.

After reading the scenario, use your knowledge of U.S. Government and Politics to respond to parts A, B, and C.

- Identify the constitutional provision that is common to both *McCulloch v. Maryland* (1819) and *Bond v. United States*.
- Based on the constitutional provision identified in part A, explain how the facts of *Bond v. United States* lead to a different holding than in *McCulloch v. Maryland*.
- Explain how another clause of the Constitution supports the ruling in *Bond v. United States*.

3.4 Modern American Federalism

During the second half of the twentieth century, the federal government expanded its role in the economy. Many federal agencies created during the New Deal stayed in place, and some grew larger. The dual federalism of the nineteenth and early twentieth centuries was long gone. Cooperative federalism remained the dominant model.

Grants-in-Aid and the Expansion of Cooperative Federalism

One of the primary tools that the federal government has used to achieve its policy objectives within the states is **grants-in-aid**, money provided to states by the federal government to carry out a policy that the national government has decided is important. This is known as **fiscal federalism**.

Categorical grants provide money to states or to local or regional governments for specific policy objectives and with certain conditions attached to receiving or spending the funds. These conditions may involve the requirement that the state, local, or regional authority provide matching funds to receive the federal monies. They may also include specific instructions on how the grant funds are to be used. Sometimes categorical grants are awarded based on formulas that allocate federal money according to factors such as population, income, and need.

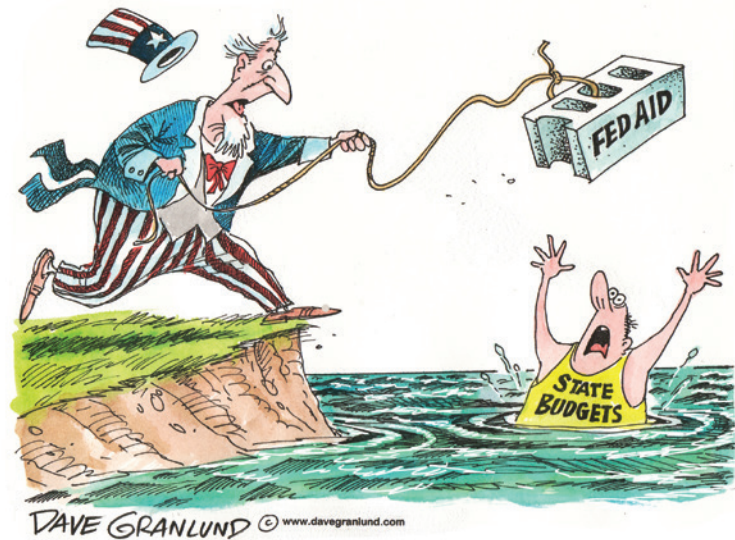
Categorical grants-in-aid are an important source of national power. Though state, local, and regional governmental authorities are often not required to accept these funds, once they do so, they accept the national regulation that goes along with taking the money. Once a state establishes a program based on the receipt of a categorical grant-in-aid, it depends on the continued provision of those funds by the national government to avoid disruption of the provision of services to its citizens and residents.

Categorical grants act as both a carrot—to encourage states to carry out national policy objectives—and as a stick—to threaten states with the withholding of funds if they fail to carry out the federal government’s policy objectives. According to critics of expanded national power, categorical grants pose several problems for the states. They may act as “bribes to induce subnational governments to execute national policies” at the expense of their own authority.⁴¹ For example, most states raised the drinking age to twenty-one as a result of the National Minimum Age Drinking Act, a condition of a block grant that provided transportation funds from the national government to the states. Officials and citizens of wealthier states worry that their taxes are used to subsidize states that spend less money.⁴² The uncertainty surrounding the continued provision of the grants can make it harder for states to plan their own budgets. Finally, the administration of these programs requires a further expansion of the size of both national and state governments.

Sometimes, the federal government requires states to pay for programs without providing funds. Such requirements are called **unfunded mandates**. The Americans with Disabilities Act of 1990 is an example. It required states to change existing public buildings to make them accessible to those with disabilities.⁴³ In passing this law, Congress championed the rights of disabled individuals. It did so, however, at a cost to state budgets.

Those who favor the use of categorical grants as a tool of national policymaking emphasize that redistributing money between states can reduce inequality among the states. Also, these monies can help state, local, and regional governments improve the lives of their citizens in ways that may not be possible without the help of the federal government.⁴⁴

Social welfare involves health, safety, education, and opportunities for citizens. Under the old system of dual federalism, social welfare policies were mostly under state control.



A political cartoon depicts the politically perilous relationship between state governments and the federal government with regard to grants. States need federal aid, often urgently, but they don’t care for the increased weight of federal authority that comes with the funds.

Dave Granlund/Cagle Cartoons

grants-in-aid
federal money provided to states to implement public policy objectives.

fiscal federalism
the federal government’s use of grants-in-aid to influence policies in the states.

categorical grants
grants-in-aid provided to states with specific provisions on their use.

unfunded mandate
federal requirements that states must follow without being provided with funding.

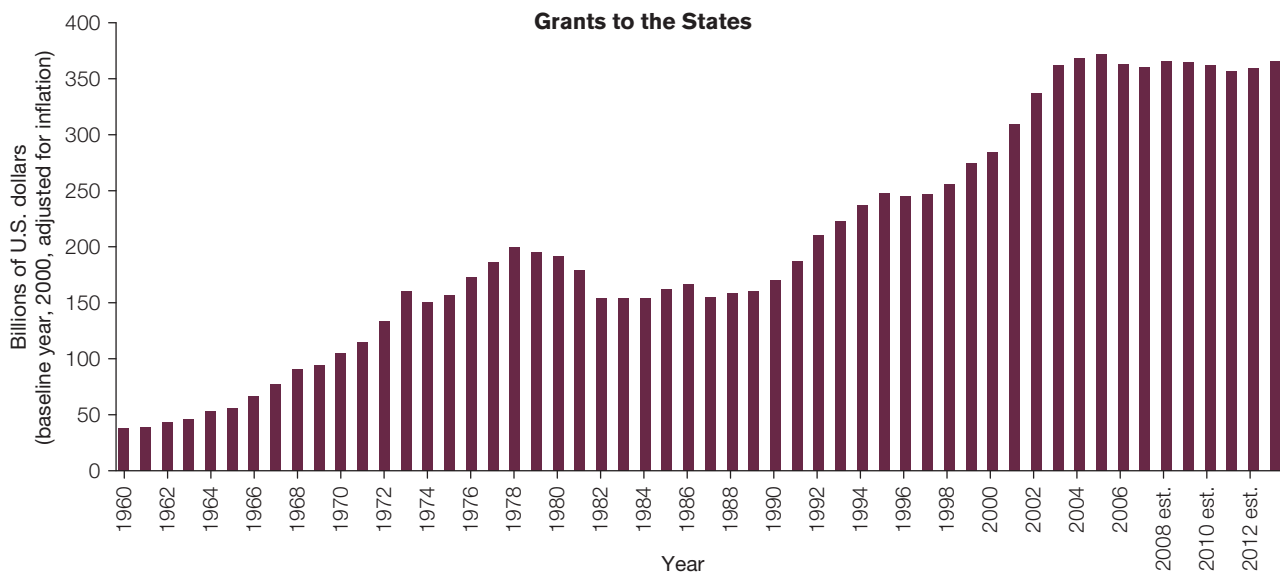
Analyzing Patterns in Data

Political scientists use data to explain patterns. A trend is a pattern of data that appears over time, demonstrating that a topic being measured is moving in a certain direction. Trends can be short-term, appearing over a period of days, or months. Long-term trends can appear over several years.

1. Describe what the graph measures.
2. Identify two trends shown in the graph. Use specific years and data points in your response. For example, your

response might state, "From [year] to [year] the [describe the data being measured] went from [numerical value] to [numerical value]."

3. Explain one reason for a trend you identified in part 2.
4. Explain one reason why it is difficult to draw conclusions about the reasons for a trend using only the data.



Data from Office of Management and Budget

Lyndon Johnson's Great Society program in the mid-1960s expanded the federal government's role in social welfare policy in part to ensure that states used these funds as intended and did not discriminate against minorities.

The Medicaid program (1965) provided health-care assistance to low-income individuals receiving other forms of aid as well as to those "who were medically indigent but not on welfare."⁴⁵ As with many Great Society programs, Medicaid was funded partly by the federal government and partly by the states. The Elementary and Secondary Education Act of 1965 (ESEA) "provided for the first time, general federal support for public elementary and secondary education."⁴⁶ Title I of the ESEA provided federal assistance to children from low-income families in both public and private schools.

Devolution and Block Grants

block grant

a type of grant-in-aid that gives state officials more authority in the disbursement of federal funds.

When Richard Nixon was elected president in 1968, he promised to roll back the expansion of national authority and return at least some of the power to the states. One of Nixon's main tactics to reduce national authority was the **block grant**. Though they are still a type of grant-in-aid, block grants provide federal money for public policies in a way

that tries to increase state, local, and regional authority in how that money is spent and lessen federal influence.

Efforts to restore more authority to the states continued under the presidency of Ronald Reagan, who, in his speech accepting the Republican Party's nomination in 1980, promised, "Everything that can be run more effectively by state and local government we shall turn over to state and local government, along with the funding sources to pay for it."⁴⁷ As part of his program, Reagan increased the use of block grants for social welfare programs. Block grants help fund a variety of programs.⁴⁸ The Department of Health and Human Services provides block grants to set up programs to treat those with drug and alcohol addictions. Another block grant provides assistance to those struggling with mental illness. The U.S. Department of Energy provides block grants to help state and local government reduce energy use, rely less on oil and gas, and improve energy efficiency.

Revenue sharing occurs when the federal government apportions tax money to the states with no strings attached. States can use these federal funds for any governmental purpose. Federal revenue sharing ended in 1986.⁴⁹ Mounting federal deficits will likely prevent revenue sharing in the near future.

Devolution returns authority for federal programs to the states. Devolution increases states' autonomy in economic and social policy by decentralizing control and administration of programs. One of the most important of these efforts focused on social welfare policies. Democratic president Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which devolved social welfare programs to the states.⁵⁰ PRWORA replaced Aid to Families with Dependent Children (AFDC)—a legacy of Roosevelt's New Deal—with Temporary Assistance for Needy Families (TANF), which placed time limits on receipt of welfare assistance and added work requirements. Block grants gave states more authority in setting and enforcing the rules of welfare programs.

Federalism and Public Policy: Education

In 1965, as part of Lyndon Johnson's Great Society, the Elementary and Secondary Education Act was passed in an effort to provide equal educational opportunities, particularly for students living in low-income areas.⁵¹ The Act provided federal grant money for the states to create programs that would reduce dropout rates and improve schools. The ESEA Act was reauthorized in 2002, with the passage of the No Child Left Behind Act (NCLB).⁵² This controversial law provided states with grant money, if they agreed to give standardized assessment tests to students at certain grade levels. The wave of testing that followed was often criticized by school districts, teachers, parents, and, of course, students. In 2015, NCLB was replaced with the Every Student Succeeds Act (ESSA).⁵³ ESSA gave states more latitude in setting educational standards but retained mandatory standardized testing.

Advocates of state control over education argue that the federal government has overstepped its bounds in asserting control over what has traditionally been a state issue. On the other hand, advocates for federal education policy argue that students should not be



Pediatrician Lanre Falusi examining an infant patient in a Maryland community health clinic in 2015. With powerful lobbying efforts behind them, members of the American Medical Association pressured Congress to revamp physician reimbursement under Medicare.

Andrew Harrer/Bloomberg/Getty Images

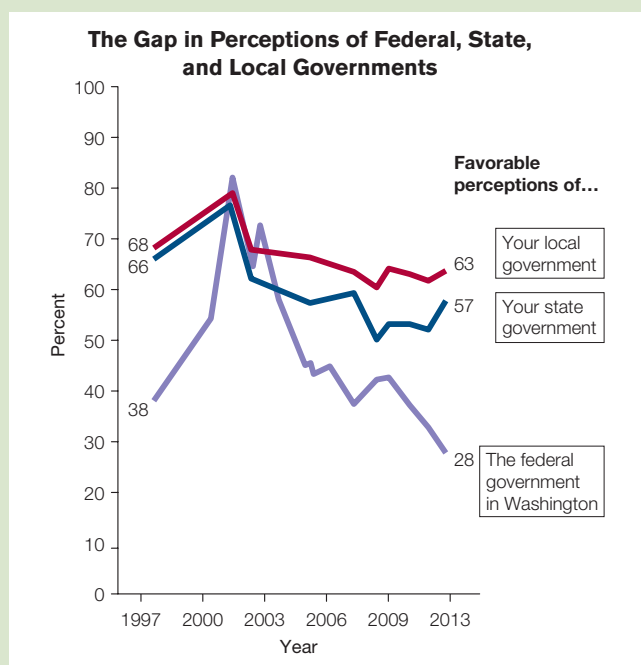
revenue sharing
when the federal government apportions tax money to the states with no strings attached.

devolution
returning more authority to state or local governments.

Analyzing Graphs and Charts: Perceptions of Federal, State, and Local Governments

The Pew Research Center is a nonpartisan organization that conducts and analyzes public opinion through surveys and other tools. In 2013, researchers asked a series of questions about individuals' views on how *favorably* they viewed the federal government, their state governments, as well as their local governments. Those who answer these kinds of surveys are called *respondents*.

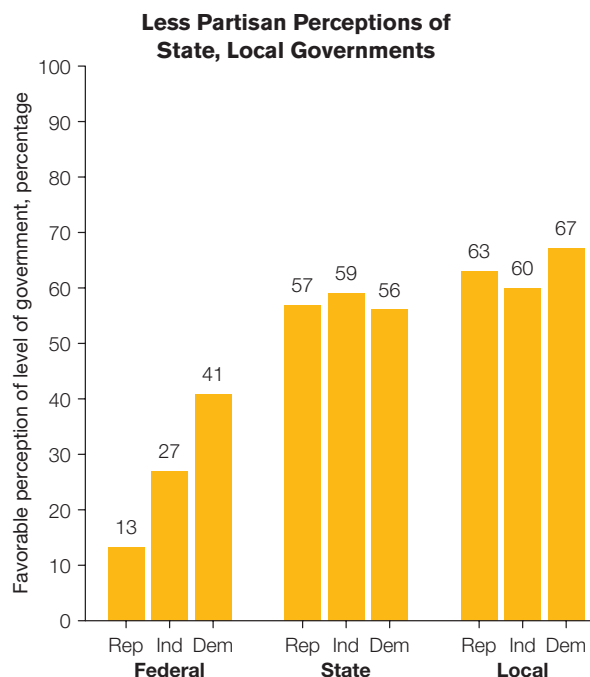
This was not the first time Pew researchers had asked the question. They had data going back to the 1990s. The researchers presented the collection of their findings over time with a *line graph* (sometimes called a line chart). A line graph presents data as a set of points connected by lines:



Data from Pew Research Center

These kinds of graphs can be useful in presenting trends over time, in this case a widening gap between the favorability ratings that Americans who responded to the surveys (a group that changed with each survey) gave to the federal government, their state governments, and their local governments. According to these data, there seems to be a notable decline in Americans' favorable views of the federal government in recent years. The researchers also found that differences in favorability views of government might be connected to the political party with which the individual answering the survey affiliated, but not for every level of government.

Another way to present results of a survey is a *bar chart*, which represents data with rectangles of different sizes. The bars can be either horizontal or vertical.



Data from Pew Research Center

These data came from one administration of the survey, in 2013. Note that differences in favorability ratings of the federal government appear to be more strongly associated with, or *correlated* with, political party affiliations (Republican, Independent, and Democratic) than views of state and local governments.

After studying these two presentations of data, consider and answer the following questions:

1. Describe what the numbers in the first figure represent.
2. Describe what the height of each bar in the second figure represents.
3. Explain one way in which the favorability rating of federal, state, and local government is more connected to the political party that a respondent affiliates with.
4. Pew Research is a respected organization, but let's say that it were not. Instead, consider how a research organization might shape the *surveys* to advance an argument. Explain how the wording of the questions might shape the results presented (a topic to which we will return later in the book).

Per-Pupil Spending in Public Elementary-Secondary School Systems, by State: Fiscal Year 2013

educationally disadvantaged based on the state in which they live. See Figure 3.5 for differences in funding of schools. In the meantime, teachers, parents, and students are caught in the middle as education policy continues to evolve.

3.4 Explain how federalism changed in the twentieth and twenty-first centuries.

- The federal government influences state policies through grants-in-aid.
- Ronald Reagan favored devolution, which returns some policymaking authority to the states.

- *grants-in-aid*: federal money provided to states to implement public policy objectives. (p. 79)
- *fiscal federalism*: the federal government's use of grants-in-aid to influence policies in the states. (p. 79)
- *categorical grants*: grant-in-aid provided to states with specific provisions on their use. (p. 79)
- *unfunded mandate*: federal requirements the states must follow, without being provided with funding. (p. 79)
- *block grant*: a type of grant-in-aid that gives state officials more authority in the disbursement of the federal funds. (p. 80)
- *revenue sharing*: when the federal government apportions tax money to the states with no strings attached. (p. 81)
- *devolution*: returning more authority to state or local governments. (p. 81)

Under what circumstances should the national government transfer more authority in policymaking back to the states and local governments?

3.4 Review Question: Free Response

Everything that can be run more effectively by state and local government we shall turn over to state and local government, along with the funding sources to pay for it. We are going to put an end to the money merry-go-round where our money becomes Washington's money, to be spent by the states and cities exactly the way the federal bureaucrats tell them to.⁵⁴ —Ronald Reagan, Presidential Nomination Acceptance Speech

After reading the passage, use your knowledge of U.S. Government and Politics to respond to parts A, B, and C.

- A. Describe the argument about federalism given in the quote.
- B. Explain one way in which block grants devolve power from the national government to the states.
- C. Explain one way in which the national government uses grants-in-aid to control state policies.

3.5 The Supreme Court and Modern Federalism

While Supreme Court cases, such as *McCulloch v. Maryland*, have been used to expand the power of the national government, the Supreme Court has also protected states from further encroachment on their power. The Tenth Amendment has become a more prominent tool in asserting state authority in recent decades.

United States v. Lopez: Preserving States' Authority

On March 10, 1992, Alfonso Lopez Jr. began yet another day of his senior year at Edison High School in San Antonio, Texas. However, this day he entered his high school with an unloaded .38 special revolver and five cartridges he kept in his pocket. He planned to deliver the revolver and ammunition to another student, in exchange for \$44. Through anonymous sources, school authorities were made aware that Lopez was carrying an unloaded revolver and confronted Lopez about these accusations. After admitting that he was carrying a firearm and ammunition, Lopez was charged under a Texas state law, which prohibited firearms in schools. The state charges were dropped, and Lopez was then charged with violating the federal Gun-Free School Zones Act of 1990.⁵⁵

Lopez moved to dismiss the charges, claiming that the act was unconstitutional because Congress did not have the power to regulate public schools. The trial court denied the motion, claiming that the Gun-Free School Zones Act was within the powers enumerated to Congress under the Constitution, because activities within elementary, middle, and high schools are related to interstate commerce.

After being tried and convicted, Lopez appealed to the U.S. Court of Appeals for the Fifth Circuit, in hopes of reversing the decision by the trial court. Lopez and his lawyers thought that Congress overstepped the enumerated powers granted in the commerce clause in passing the Gun-Free School Zones Act. The Fifth Circuit agreed and the conviction was reversed. The United States appealed the Fifth Circuit's ruling, and the Supreme Court agreed to hear the case. The U.S. government was required to prove that the Gun-Free School Zones Act was constitutional under the commerce clause and that the law regulated an activity that was substantially related to interstate commerce.

The question presented to the Supreme Court was, “Is the 1990 Gun-Free School Zones Act, forbidding individuals from knowingly carrying a gun in a school zone, unconstitutional because it exceeds the power of Congress to legislate under the Commerce Clause?”⁵⁶

The federal government argued that guns in schools increase violent crime, which impacts the national economy. The government argued that crime is expensive, and insurance spreads the cost of crime throughout the nation. The government also argued that businesses would not want to relocate to high crime areas, which impacts interstate commerce.

In a 5–4 decision, the Supreme Court upheld the ruling of the Fifth Circuit, finding, “The possession of a gun in a local school zone is in no sense an economic activity that might . . . substantially affect any sort of interstate commerce.”⁵⁷ Chief Justice William Rehnquist delivered the majority opinion, with concurring opinions delivered by Justice Anthony Kennedy and Justice Clarence Thomas. The majority opinion used a “slippery slope” argument, stating that according to the government’s argument, “any activity could be looked upon as commercial.”

According to the majority opinion, if the Court were to rule that bringing a gun to a local high school is interstate commerce,

Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents . . . it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government’s arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.⁵⁸

Under the government’s argument, the Court said, everything would be commerce, and nothing would be left to the states.⁵⁹

The Court reaffirmed that the Tenth Amendment creates a federal system, which protects state power. In the concluding paragraph of the opinion, the Supreme Court stated,

To uphold the Government’s contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States . . . and that there never will be a distinction between what is truly national and what is truly local . . . This we are unwilling to do.⁶⁰

Justice Stephen Breyer delivered the main dissenting opinion in which he concluded that gun violence could influence interstate commerce and education. He reasoned that a court should not examine a lone isolated case of regulation but rather the overarching effect of firearms on education. He described the problem of gun violence as “widespread and serious,” using statistics to demonstrate that thousands of children are impacted by violence in or near their schools nationwide. Justice Breyer concluded that Congress could have reasonably concluded that guns in schools undermine educational opportunities, impairing commerce nationwide. Although education is more than economics, Justice Breyer asserted that education “has long been inextricably intertwined with the Nation’s economy.”

The Supreme Court’s decision in *United States v. Lopez* is important because it reverses the trend toward expanding national power and reaffirms state police powers under the Tenth Amendment. In 1997, in *Printz v. United States*, the Court again cited the Tenth Amendment when it struck down portions of a federal law that required local law enforcement officers to perform background checks on prospective handgun purchasers.⁶¹ These court decisions reversed a trend of broadening the power of the national government and reasserted states’ authority.

AP® REQUIRED CASES

By this point in chapter 3, you have met the first two of the required cases in the U.S. Government and Politics course. Keep in mind that you have to know the facts of each case, the question the Supreme Court was asked to decide, who won, the reasoning used by the Supreme Court in reaching the majority decision, and the logic put forth in the dissenting opinion. It's also important to be able to explain how the decision affects the interpretation of the U.S. Constitution.

Document	Scope
<i>McCulloch v. Maryland</i>	The <i>McCulloch</i> case established that Congress has the implied power to charter a bank under the necessary and proper clause, and states may not tax the federal government.
<i>United States v. Lopez</i>	The <i>Lopez</i> case involves the Tenth Amendment. It limits the federal government's ability to pass legislation under the commerce clause and gives more power to the states.

Same-Sex Marriage

States issue marriage licenses, and they have traditionally set the requirements for getting married. However, marriage also involves civil rights. For example, in *Loving v. Virginia* (1967),⁶² the Supreme Court overturned a Virginia law prohibiting interracial marriage. Similar to the issue of interracial marriage in the 1960s, the more recent issue of same-sex marriage highlighted the tension between states' rights under the system of federalism and the national protection of civil rights. In 2009, Edith Windsor's wife, Thea C. Spyer, passed away. They were married in Canada two years before, and their same-sex marriage had been recognized as valid by New York, their state of residence at the time of Spyer's death.

Windsor and Spyer's marriage, however, was not considered legal under federal law. After her wife died, Windsor was not entitled to the same federal tax provisions granted to surviving spouses in opposite-sex marriages. Windsor had to pay more than \$350,000 in federal estate taxes. With help, especially from the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community Center in New York City, she sued the federal government, claiming her right to have her marriage recognized as legal under federal law and

to "the equal protection principles that the Court has found in the Fifth Amendment's Due Process clause."⁶³

Windsor's case challenged the constitutionality of the Defense of Marriage Act (DOMA), passed by Congress during the presidency of Bill Clinton in 1996 by proponents of traditional marriage. DOMA had two substantive sections. One section stated that for purposes of federal law, marriage meant a legal union between a man and a woman: "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means

The same-sex marriage of Thea Spyer, left, and Edie Windsor, right, was legally recognized by the State of New York but not by the federal government. After the death of her wife, Windsor successfully fought to overturn a portion of a federal law that defined marriage as only between opposite-sex couples.

Neville Elder/Corbis via Getty Images



only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”⁶⁴

Another section reaffirmed the power of the states to make their own decisions about marriage: “No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”⁶⁵ This section of DOMA made clear that same-sex marriage did not fall under the protection of the full faith and credit clause, which states, “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”⁶⁶ Under the full faith and credit clause, a state is required to recognize and honor the public laws of other states unless those laws are contrary to the strong public policy of that state. Full faith and credit is why, for example, you only have to obtain a driver’s license from one state.

In a 5–4 decision in *United States v. Windsor* (2013), the Supreme Court ruled that the section of DOMA classifying only opposite-sex marriages as legal under federal law was unconstitutional.⁶⁷ In his majority opinion, Justice Anthony Kennedy denounced the intent of DOMA, stating, “The history of DOMA’s enactment and its own text demonstrate that interference with the equal dignity of same-sex marriages, a dignity conferred by the States in the exercise of their sovereign power, was more than an incidental effect of the federal statute. It was its essence.”⁶⁸ In his dissent, Justice Samuel Alito, joined in part by Justice Clarence Thomas, challenged the foundations of the majority’s logic, claiming, “Same-sex marriage presents a highly emotional and important question of public policy—but not a difficult question of constitutional law. The Constitution does not guarantee the right to enter into a same-sex marriage.”⁶⁹

While the Supreme Court in *Windsor* validated state-recognized same-sex marriages for *federal* purposes, it did not strike down the other substantive clause of DOMA, which allowed states to reject same-sex marriage licenses from other states. Same-sex marriage was legal in some states but not in others.

Windsor’s victory in court spurred James Obergefell and John Arthur to action. In July 2013, after a decades-long commitment to each other, Obergefell married Arthur on the tarmac of a Maryland airport. The two men lived in Ohio, which did not recognize same-sex marriage, so they flew to Maryland, which did. Arthur was struggling with amyotrophic lateral sclerosis (ALS), a progressive neurological degenerative disease. The disease has no known cure.⁷⁰

The two men had flown to Maryland in a medical transport plane, seeking to get married while they still could. In an interview with BuzzFeed News a few months before the Court’s decision in his case, Obergefell described their ceremony: “We landed at Baltimore, sat on the tarmac for a little bit, said ‘I do,’ and 10 minutes later were in the air on the way home.”⁷¹ John Arthur died in October 2013, three months after their wedding.

Ohio law did not permit Obergefell to be listed as the surviving spouse on Arthur’s death certificate. Rather than accept Ohio’s refusal to recognize their marriage, Obergefell sued. “This case,” he said, “was another way to take care of him and to respect him and to respect our relationship.”⁷²

In 2015, in its decision in *Obergefell v. Hodges*, the Supreme Court affirmed the legality of Obergefell and Arthur’s marriage and guaranteed the right of all couples to marry in yet another 5–4 vote. Citing constitutional protections of fundamental civil liberties



James Obergefell in 2015, two and a half months before the Supreme Court decision that would guarantee marriage equality for all Americans.

Maddie McGarvey/The Washington Post/Getty Images

and the right to privacy, Justice Kennedy, in his majority opinion, affirmed that “the right to marry is a fundamental right inherent in the liberty of the person.”⁷³ The *Obergefell* case legalized same-sex marriage nationwide.

Reflecting on his case in an interview with *USA Today* two months before the Court’s decision, Obergefell recalled how he felt about having to fly, given his husband’s serious medical issues, to another state just to get married: “All I thought was, ‘This isn’t right . . .’”⁷⁴

Gonzales v. Raich: The Supreme Court Decides

As Angel Raich and Diane Monson pursued their claims for the use of medical marijuana through the American legal system, they did so against a politically murky background. The boundaries between state power and national power were not definitively settled. Local governments were caught in the middle because the laws in their states conflicted with federal law.

In 2004, the U.S. Supreme Court took up the case of Angel Raich and Diane Monson. The issue was whether the power of the federal government to ban marijuana under the Controlled Substances Act superseded California’s legalization of medical marijuana.

In skeptical questioning of the women’s attorneys, Justice Antonin Scalia, a conservative, challenged their assertion that growing and distributing cannabis—even if it stayed within California’s borders—would not contribute to the national market for marijuana. Justice Breyer, considered one of the liberal members of the Court, suggested that a better course of action for medical cannabis advocates was to change federal law itself.

In *Gonzales v. Raich* (2005), the Court ruled against Raich and Monson by a 6–3 vote. The Court sided with the authority of the federal government—and that of Congress under the commerce and supremacy clauses of the Constitution. The Supreme Court distinguished this situation from the *Lopez* case by stating, “the CSA regulates quintessentially economic activities: the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market.”⁷⁵ The Supreme Court determined that it did not matter whether Raich and Monson were personally involved in interstate commerce because Congress had a rational basis for concluding that the market for marijuana as a whole substantially impacted interstate commerce.

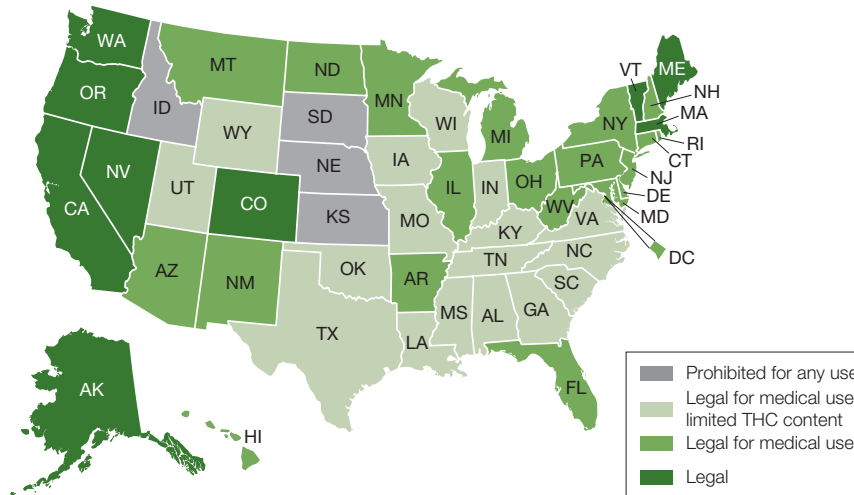
If marijuana grown at home for private use can be considered interstate commerce, then what *can’t* be? In the debates over American federalism, defining the proper limits of the commerce clause remains a hotly contested issue.

Today, the landscape has changed from the time of *Gonzales v. Raich*. More than half of the states have passed laws allowing the use of marijuana for certain medical conditions. Others have decriminalized the possession of small amounts of marijuana, substituting civil fines for criminal penalties. In addition, nine states and the District of Columbia have legalized marijuana for recreational use. (See Figure 3.6.) Federal law, however, has not changed, and marijuana is still illegal under federal law.

State laws allowing marijuana use have put recent presidential administrations in a tight spot. During President Barack Obama’s term in office, fully enforcing the Controlled Substances Act in the states had become very difficult. In December 2015, in a federal suit brought by neighboring states against Colorado (one of the four states in which recreational

FIGURE 3.6**Marijuana Legalization Today**

State law related to marijuana varies, as this map shows. Some recent changes to state laws are still being phased in.



Data from and map created with information from NORML

use had been made legal), Obama’s solicitor general argued in a brief presented to the Supreme Court that it should not decide to hear the case. To some observers, the administration’s position implied “that marijuana should be federally legalized—even for recreational use.”⁷⁶ The Justice Department, under the president’s direction, however, retained authority to prosecute under the CSA, though it was to focus on drug trafficking and not on prosecuting “individuals who were in ‘unambiguous compliance with existing state laws.’”⁷⁷

The boundary between state and federal laws governing medical and recreational marijuana use remains unsettled. According to the Office of National Drug Control Policy, “It is important to recognize that these state marijuana laws do not change the fact that using marijuana continues to be an offense under federal law.”⁷⁸

By 2016, it had become harder for the federal government to enforce the Controlled Substances Act because strict enforcement would have meant putting more than a million, perhaps millions, of state-law-abiding citizens in federal prison, not to mention the political fallout from fully executing the law.⁷⁹ In a 2013 memo, the Department of Justice under President Obama affirmed the legality and supremacy of the Act but also acknowledged the impossibility of complete enforcement of the law in the states. The memo stated, “The Department is also committed to using its limited investigative and executorial resources to address the most significant threats in the most effective, consistent and rational way.”⁸⁰ In the memo, the Justice Department declared that instead it would focus on preventing access to marijuana by youth, transport of marijuana from a state in which it is legal to states in which it is not, and the use of firearms in connection with the production or distribution of marijuana.

With the election of Republican Donald Trump as president in 2016, many observers thought that federal policy might shift toward letting the states regulate medical and recreational marijuana use, possibly reclassifying or even removing marijuana from the list of controlled substances under the federal law. With the confirmation of Jefferson

Sessions as Attorney General, however, that possibility became unlikely because Sessions expressed strong opposition to relaxing federal enforcement. In a letter written by Attorney General Sessions on July 24, 2017, he responded to concerns expressed by the Governor of Washington Jay Inslee and the state attorney general. Attorney General Sessions stated: “Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a crime. The ‘recreational licensed’ marijuana market is also incompletely regulated . . . Since legalization in 2012, Washington State marijuana has been found to have been destined for 43 different states.”⁸¹ In 2018, Sessions announced that he was withdrawing federal guidelines that limited federal prosecutions, leaving it to each individual U.S. Attorney whether to prosecute or not.⁸² This decision exposed the conflict between federal and state marijuana laws.

How to deal with the fact that an individual may comply with the laws of her or his state but at the same time break federal law is a fundamental question of federalism that is still unanswered. American federalism has always been loosely defined. In the twenty-first century, it remains as hotly contested as it has been for most of the nation’s history.

Section Review

3.5 Discuss the current status of American federalism and how it might continue to evolve.

REMEMBER • In *United States v. Lopez*, the Supreme Court reaffirmed states’ rights under the Tenth Amendment.

THINK • What issues are likely to challenge the balance of power between the national and state governments in the rest of the twenty-first century?
• Will the power of the national government grow or will states successfully reassert their powers in the twenty-first century?

3.5 Review Question: Argumentation

Under the Every Student Succeeds Act (ESSA) of 2015, states are required to test students in reading and mathematics once a year in grades 3 through 8, as well as once in high school. They must also test kids once in science in grade school, middle school, and high school. States that fail to comply with the ESSA lose federal educational funds.

Make an argument that the ESSA is either constitutional or unconstitutional.

In your essay:

- Articulate a claim or thesis that responds to the prompt, and use a line of reasoning to defend it.
- Use at least TWO pieces of relevant and accurate evidence to support your claim.
- At least ONE piece of evidence must be from one of the listed foundational documents:
Constitution of the United States
Federalist No. 10
- Use a second piece of evidence from another foundational document from the list or from your study of federalism.
- Use reasoning to explain why the evidence you provided supports your claim or thesis.
- Use refutation, concession, or rebuttal to respond to an opposing or alternative perspective.

Chapter 3 Review

AP® KEY CONCEPTS

- *federalism* (p. 64)
- *unitary system* (p. 66)
- *confederal system* (p. 66)
- *federal system* (p. 67)
- *enumerated or expressed powers* (p. 67)
- *exclusive powers* (p. 67)
- *implied powers* (p. 67)
- *commerce clause* (p. 68)
- *necessary and proper clause* (p. 68)
- *supremacy clause* (p. 68)
- *Tenth Amendment* (p. 68)
- *reserved powers* (p. 68)
- *concurrent powers* (p. 68)
- *full faith and credit clause* (p. 69)
- *extradition* (p. 70)
- *privileges and immunities clause* (p. 70)
- *Thirteenth Amendment* (p. 73)
- *Fourteenth Amendment* (p. 73)
- *Fifteenth Amendment* (p. 74)
- *dual federalism* (p. 74)
- *selective incorporation* (p. 75)
- *cooperative federalism* (p. 75)
- *grants-in-aid* (p. 79)
- *fiscal federalism* (p. 79)
- *categorical grants* (p. 79)
- *unfunded mandate* (p. 79)
- *block grant* (p. 80)
- *revenue sharing* (p. 81)
- *devolution* (p. 81)

AP® EXAM PRACTICE and Critical Thinking Project

MULTIPLE-CHOICE QUESTIONS

1. Which of the following pairs of statements correctly describes both federal and unitary systems?

Federal	Unitary
A. Powers of the states are expressly defined in the Constitution.	The vague language of the constitution limits the power of the national government.
B. Most of the power is given to the state governments.	The national government shares power with state governments.
C. The national government has most of the power.	The national government has all of the power, and there are no state governments.
D. Power is constitutionally shared between the national and state governments.	The national government may grant certain powers to the states.

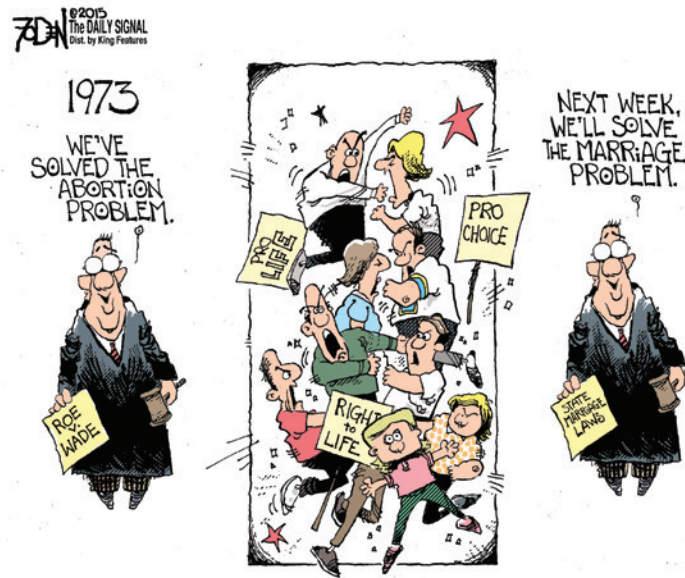
2. Which of the following statements best describes the impact of the Supreme Court's decision in *McCulloch v. Maryland*?

- A. The Court ruled that states have authority over commercial activity within their borders, weakening national power.
- B. The Court ruled that the necessary and proper clause allows the national government to create banks, strengthening national power.
- C. The Court upheld a division of power between the states and the national government by allowing states to tax national banks within their borders.
- D. The Court ruled that creating a national bank fell within the national government's enumerated powers, confirming national power.

3. By holding that Congress may regulate activity that is neither interstate nor commerce under the Interstate Commerce Clause, the Court abandons any attempt to enforce the Constitution's limits on federal power . . . —Justice Clarence Thomas, dissenting opinion, *Gonzales v. Raich*

Which of the following statements best describes the viewpoint conveyed in the quotation?

- A. The federal government's authority under the commerce clause applies to interstate and commercial activity.
 - B. The commerce clause allows the federal government to regulate commercial activity within each state.
 - C. The Tenth Amendment established a federal system of government where powers are reserved to the states.
 - D. The system of federalism is threatened by the national government's expansion of power under the commerce clause.
4. Federal nutrition guidelines require public schools to serve healthy lunches to students and limit the amount of "junk food" available in vending machines. A state seeking to challenge these nutrition rules should cite which of the following cases?
- A. *McCulloch v. Maryland*
 - B. *United States v. Lopez*
 - C. *Gibbons v. Ogden*
 - D. None of these cases could serve as precedent.

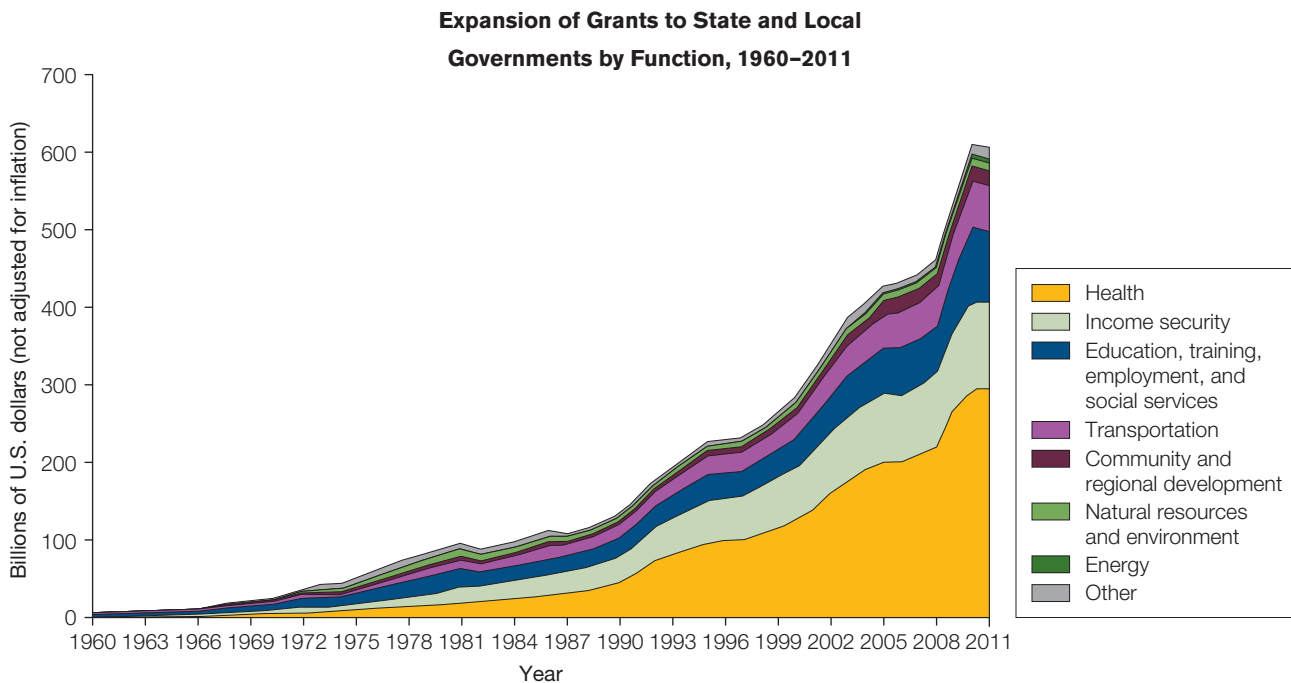


Glenn Foden/The Daily Signal

5. Which of the following statements best describes the viewpoint expressed in the political cartoon?
- A. States should have the authority to make policy over moral issues, such as abortion and gay marriage.
 - B. The Supreme Court makes controversial decisions.
 - C. Supreme Court decisions do not resolve long-standing disagreements over social policy issues.
 - D. The Supreme Court should not make decisions involving the division of power between the national government and the states.

6. In 1993, Congress enacted the Brady Handgun Violence Prevention Act,⁸³ mandating that anyone seeking to buy a firearm must first undergo a federal background check. One provision in that act required state law enforcement officials to conduct those background checks. In *Printz v. United States* (1997),⁸⁴ the Supreme Court declared that portion of the act to be unconstitutional, reasoning, “The Federal Government may not compel the States to enact or administer a federal regulatory program.” Which constitutional provision most logically and directly supports the Court’s conclusion in the quoted language?
- Supremacy clause
 - Necessary and proper clause
 - Second Amendment
 - Tenth Amendment

Questions 7 and 8 refer to the graph.



Data from Office of Management and Budget

- Which inference is most clearly drawn from the graph?
 - More federal grant money goes to “Other” than to all specifically identified categories combined.
 - During the period 2000–2010, “Transportation” funding grew by a greater percentage than “Income security” funding.
 - The category receiving the largest federal funding has shifted over time from “Education, training, employment, and social services” in 1975 to “Health” in 2011.
 - The same amount of funding has been allocated to “Community and regional development” each year since 1978.
- What is the significance of the data on the graph, and how do the data relate to American government and politics?
 - For over fifty years, the federal government has become increasingly involved in state and local governmental affairs.
 - The federal government has forced the states to devote a larger share of their budgets to health and income security.
 - Federal spending on items such as defense and border security has decreased since 1960.
 - The federal government is no longer subject to the checks and balances that were established in the original Constitution.

Questions 9 and 10 refer to the passage.

The idea of a [unitary] government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. . . . In [that] case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In [a federal system], the [regional] authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere.

—James Madison, *Federalist* No. 39

- | | |
|--|---|
| <p>9. Which of the following statements best describes the author's perspective and reasoning?</p> <ul style="list-style-type: none">A. The U.S. Constitution should be ratified because a unitary government is preferable to the Articles of Confederation.B. The powers that the Constitution would grant to the national government will not intrude upon the power of state governments.C. The supremacy clause will subordinate state governments to the federal sphere.D. Lawful government has the authority to make any laws it deems necessary and proper for effectuating a peaceful society. | <p>10. Which constitutional concept is best reflected in the passage?</p> <ul style="list-style-type: none">A. Cooperative federalismB. Constitutional supremacyC. Dual federalismD. Separation of powers |
|--|---|

FREE-RESPONSE QUESTIONS

- 1.** On September 3, 2015, the *New York Times* reported the following, in an article entitled “Clerk in Kentucky Chooses Jail Over Deal on Same-Sex Marriage”: “A Kentucky county clerk who has become a symbol of religious opposition to same-sex marriage was jailed Thursday after defying a federal court order to issue licenses to gay couples. The clerk, Kim Davis of Rowan County, Ky., was [jailed] for contempt of court. . . .”⁸⁵

After reading the passage, use your knowledge of AP® U.S. Government and Politics to respond to parts A, B, and C.

- A.** Identify the constitutional provision that empowers the federal judge to jail Ms. Davis under this scenario for her failure to follow the Supreme Court's ruling.
- B.** Explain how the constitutional provision you identified in part A relates to the concept of federalism.
- C.** Explain how the federal and state governments both play a role in policymaking regarding marriage.

2. Use the information in the table to answer parts A, B, and C.

Federal Versus State Share of Medicaid Spending, 1960–2010

Spending in billions of dollars (and percentage share borne by each government)

	1960	1970	1980	1990	2000	2010
Total Medicaid spending	0	5.3	26.0	73.7	200.3	397.2
Federal government's share of total Medicaid spending	0	2.8 (53%)	14.5 (56%)	42.6 (58%)	116.8 (58%)	266.4 (67%)
State governments' share of total Medicaid spending	0	2.5 (47%)	11.5 (44%)	31.1 (42%)	83.5 (42%)	130.9 (33%)

Data from Centers for Medicare and Medicaid Services

- Describe two trends that can be seen from the chart over the period 1960–2010.
- Explain how the principles of dual and cooperative federalism differ from one another.
- Explain how the principles of dual and cooperative federalism can be inferred from the data in the chart.

ARGUMENTATION QUESTION

During the ratification debate, Federalists and Antifederalists disagreed over the scope and meaning of the necessary and proper clause appearing in Article I, Section 8, Clause 18 of the Constitution. In particular, the two sides debated whether that clause would lead either to eliminating state governments entirely or at least rendering them powerless. Does the past 230 years of constitutional history prove the arguments of the Federalists? Or does it prove the arguments of the Antifederalists?

In your essay:

- Articulate a claim or thesis that responds to the prompt, and use a line of reasoning to defend it.
- Use at least TWO pieces of relevant and accurate evidence to support your claim.
- At least ONE piece of evidence must be from one of the listed foundational documents:
 - Articles of Confederation
 - Constitution of the United States
 - Brutus No. 1
 - Federalist No. 51
- Use a second piece of evidence from another foundational document from the list or from your study of federalism.
- Use reasoning to explain why the evidence you provided supports your claim or thesis.
- Use refutation, concession, or rebuttal to respond to an opposing or alternative perspective.

CRITICAL THINKING PROJECT

Writing a Letter to the Editor on a Controversial Issue

Read the following excerpt from a news article.

Supreme Court denies Oklahoma and Nebraska challenge to Colorado pot

By **JOHN INGOLD** | jingold@denverpost.com and

RICARDO BACA | rbaca@denverpost.com | The Denver Post

PUBLISHED: March 21, 2016 at 2:34 am | UPDATED: October 2, 2016 at 4:08 pm

The U.S. Supreme Court on Monday declined to hear Nebraska and Oklahoma's proposed lawsuit against Colorado's legal marijuana laws.

The 6-2 vote means the nation's highest court will not rule on the interstate dispute, and Colorado's legal cannabis market is safe — for now.

"Since Colorado voters overwhelmingly passed legal recreational marijuana in 2012, we have worked diligently to put in place a regulatory framework — the first in the world — that allows this new industry to operate while protecting public health and safety," Colorado Gov. John Hickenlooper said in a statement Monday. "With today's Supreme Court ruling, the work we've completed so far remains intact." . . .

Nebraska Attorney General Doug Peterson said he was disappointed, but that he is working with partners in Oklahoma "and other states" to figure out their next steps "toward vindicating the rule of law," according to a statement. "Today, the Supreme Court has not held that Colorado's unconstitutional facilitation of marijuana industrialization is legal," Peterson said in the statement, "and the Court's decision does not bar additional challenges to Colorado's scheme in federal district court."

Oklahoma Attorney General Scott Pruitt added: "The fact remains — Colorado marijuana continues to flow into Oklahoma, in direct violation of federal and state law. Colorado should do the right thing and stop refusing to take reasonable steps to prevent the flow of marijuana outside of its border. And the Obama administration should do its job under the Constitution and enforce the Controlled Substances Act. Until they do, Oklahoma will continue to utilize every law enforcement tool available to it to ensure that the flow of illegal drugs into our state is stopped."

Colorado Attorney General Cynthia H. Coffman celebrated the victory but also acknowledged that Nebraska and Oklahoma's concerns won't disappear with the court's ruling.

"Although we've had victories in several federal lawsuits over the last month, the legal questions surrounding Amendment 64 still require stronger leadership from Washington," Coffman said in the statement.

While the attorneys general were all hoping for more federal guidance, legal experts aren't surprised they got so little. Nebraska and Oklahoma filed the proposed lawsuit more than a year ago, and it specifically challenges Colorado's ability to license and regulate marijuana businesses. The two states say Colorado's

system impermissibly conflicts with federal law and creates burdens for them by increasing the amount of pot coming across their borders.

Because the matter involves a dispute between states, it was filed directly to the Supreme Court. The first step in the lawsuit was for the justices to decide whether they even wanted to consider it. When the Supreme Court does accept such cases, the subsequent litigation can go on for years or even decades.

Attorneys for both the state of Colorado and the Obama administration had urged the court not to take up the lawsuit, while a group of former leaders of the Drug Enforcement Administration sided with Nebraska and Oklahoma and asked the court to accept the case.

In 2012, Colorado voters legalized possession of small amounts of marijuana and also authorized the creation of state-administered rules that would allow stores to sell marijuana to anyone over 21 years old. Those stores opened in 2014, and since then, Nebraska and Oklahoma say they have seen an increased number of people bringing marijuana into their states, in violation of both their state laws and federal law.

The Supreme Court justices spent more than a year pondering whether to take the case. The proposed lawsuit was scheduled and rescheduled five times for a closed-door conference, where the justices would debate the merits of taking the case.

Write a letter to the editor of the *Denver Post* taking a position on the Supreme Court's decision not to take the case brought by Nebraska and Oklahoma.

1. Your letter should articulate a clear, defensible claim.
2. Support your letter with evidence from this chapter.
3. Refute, concede, or rebut the opposing perspective.
4. Focus on the principles of federalism, and not on the perceived benefits or harms associated with legalizing marijuana.
5. Limit your letter to a single, double-spaced page.

Source: From "Supreme Court Denies Oklahoma and Nebraska Challenge to Colorado Pot," by John Ingold and Ricardo Baca, *Denver Post*, October 2, 2016.

UNIT 1 REVIEW

AP® EXAM PRACTICE and Critical Thinking Project

MULTIPLE-CHOICE QUESTIONS

1. Tax protest groups have been organized throughout the United States. Some of these groups claim the tax system unfairly benefits the wealthy. Others oppose local property taxes. Some groups want a flat tax, in which everyone would pay the same percentage of income. These groups are an example of:
- A. American political culture
 - B. Republicanism
 - C. Civil society
 - D. Popular sovereignty

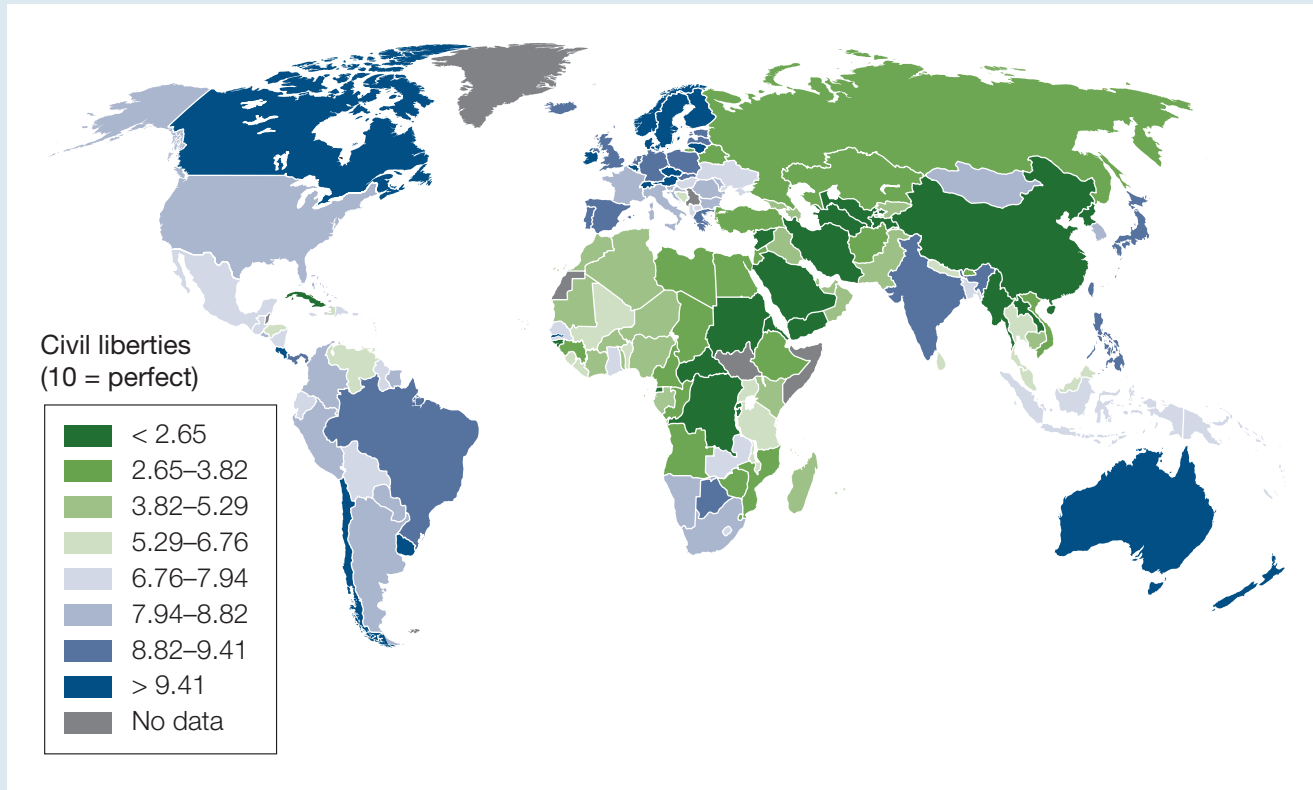
Questions 2 and 3 are based on the political cartoon.



Polyp.org

2. The cartoon best represents which theory of American democracy?
- A. Elitism
 - B. Pluralism
 - C. Participatory democracy
 - D. Republicanism
3. The protests shown in the cartoon are an example of
- A. Elite democracy
 - B. Republican government
 - C. Pluralist democracy
 - D. Popular sovereignty

Question 4 is based on the map of civil liberties throughout the world.



Data from Economist Intelligence Unit

4. Which of the following conclusions is supported by the map?
- The United States is the most democratic country in the world.
 - The United States has a comparatively high level of civil liberties.
 - Civil liberties are increasing worldwide.
 - North America is more democratic than Western Europe.
-
5. Why did Shays's Rebellion cause concern about the effectiveness of the Articles of Confederation?
- It demonstrated the weakness of state legislatures.
 - It demonstrated the financial insecurity of the national government.
 - It raised fears about tyranny of the minority.
 - It raised fears about tyranny of the majority.

Questions 6–8 are based on the quotation.

He has the power of receiving ambassadors from, and a great influence on their appointments to foreign courts; as also to make treaties, leagues, and alliances with foreign states, assisted by the Senate, which when made becomes the supreme law of land. He is a constituent part of the legislative power, for every bill which shall pass the House of Representatives and Senate is to be presented to him for approbation. If he approves of it he is to sign it, if he disapproves he is to return it with objections, which in many cases will amount to a complete negative; and in this view he will have a great share in the power of making peace, coining money, etc., and all the various objects of legislation, expressed or implied in this Constitution.

—Antifederalist Paper 67

6. Which of the following statements summarizes the argument made in Antifederalist Paper 67?
- A. The Constitution creates an executive with too much power.
 - B. Checks and balances make it too difficult to pass laws.
 - C. Treaties will become the supreme law of the land.
 - D. The Constitution makes the president a member of the legislature.
7. Which of the following constitutional provisions best supports the arguments made in Antifederalist Paper 67?
- A. Article I, Section 8
 - B. Article II, Section 1
 - C. Article III
 - D. The supremacy clause
-
8. Which of the following statements in *Federalist* No. 51 directly addresses the arguments made in Antifederalist Paper 67?
- A. "A dependence on the People is, no doubt, the primary control on the government."
 - B. "Different interests necessarily exist in different classes of citizens."
 - C. "Each department should have a will of its own."
 - D. "The society itself will be broken into so many parts . . . that the rights of individuals . . . will be in little danger."
9. How do separation of powers and federalism impact civil society?
- A. The reserved powers of the states protect the rights of assembly and free speech, ensuring a lively civil society.
 - B. The Constitution prevents the formation of civil society groups that operate as factions.
 - C. Wealthy groups have more access to policymakers.
 - D. There are multiple access points for civil society groups to influence policymaking.



Bradford Veley/Cartoonstock

10. Which of the following best describes the viewpoint in the cartoon?
- A. The Constitution creates a republican form of government.
 - B. The Constitution is a living document that changes with the times.
 - C. Checks and balances prevent one branch of government from becoming too powerful.
 - D. The Tenth Amendment protects states' rights.
-
11. Which of the following best describes the impact of the Three-Fifths Compromise?
- A. Southern states received more representation in the House of Representatives.
 - B. Southern states received more representation in the Senate.
 - C. It expanded the rights of African Americans.
 - D. It increased the political power of state governments in the South.

12. Which of the following best describes the argument made in *Federalist* No. 10?
- Factions can be eliminated through a system of checks and balances.
 - Factions are healthy because they represent different political viewpoints.
 - Factions are inevitable, but republican government can control them.
 - Factions are necessary to protect the minority from tyranny of the majority.

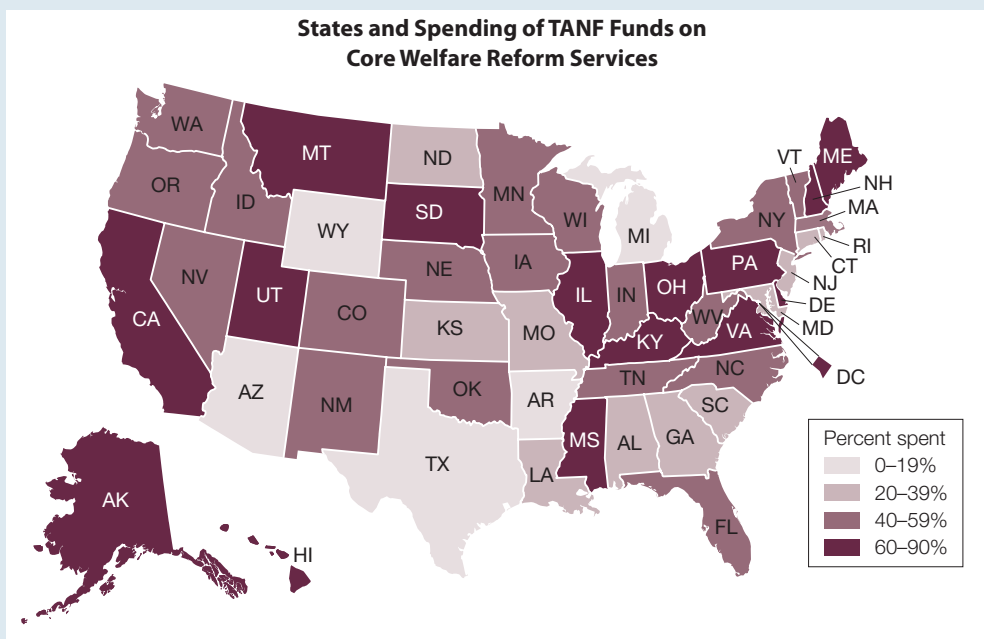
Questions 13 and 14 are based on the quotation.

In *United States v. Morrison* (2000),¹ the Supreme Court struck down the Violence Against Women Act of 1994, stating:

Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity. While we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.

13. Which of the following cases best serves as precedent for the decision in *United States v. Morrison*?
- Marbury v. Madison* (1803)
 - United States v. Lopez* (1994)
 - Gibbons v. Ogden* (1824)
 - McCulloch v. Maryland* (1819)
14. Which of the following cases would best support an argument that Congress did not exceed its authority in passing the *Violence Against Women Act*?
- Gonzales v. Raich* (2005)
 - McCulloch v. Maryland* (1819)
 - United States v. Lopez* (1994)
 - Marbury v. Madison* (1803)

Questions 15 and 16 are based on the map.



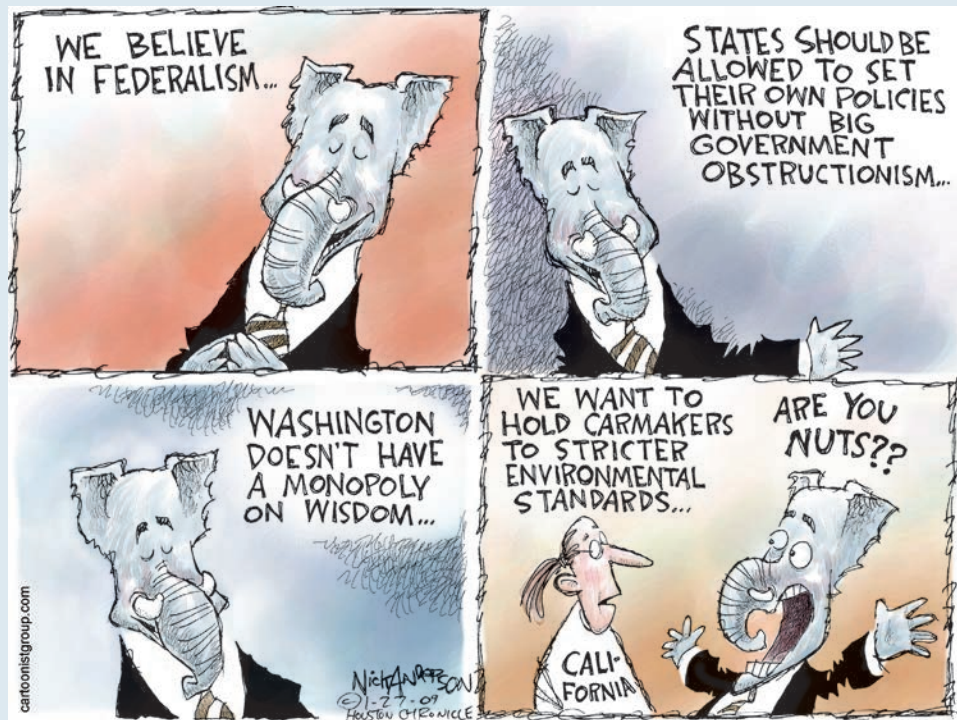
Data from Department of Health and Human Services, 2015 TANF funding

15. The map supports which of the following statements?
- Welfare spending has increased in some states by 60–90 percent.
 - The amount of welfare money each state receives from the national government varies.
 - States in the South are more likely to spend TANF funds on core welfare reform services than states in the North.
 - States have discretion in how to spend welfare funds they receive from the federal government.
16. Which of the following type of grants-in-aid is most likely to lead to the result shown in the map?
- Block grants
 - Categorical grants
 - Unfunded mandates
 - Formula grants

Questions 17 and 18 are based on the quotation.

Schools won't have to cut the salt in meals just yet and they can serve kids fewer whole grains, under changes to federal nutrition standards announced Monday. The move by the Trump administration rolls back rules championed by former first lady Michelle Obama as part of her healthy eating initiative. —U.S. News and World Report, May 2, 2017

17. Which of the following best describes the trend explained in the passage?
- A. Devolution of power
 - B. The use of grants-in-aid to influence state policies
 - C. Executive oversight
 - D. Congressional authority under the commerce clause
18. Which part of the Constitution would states use to challenge federal nutrition guidelines?
- A. The Tenth Amendment
 - B. The necessary and proper clause
 - C. The enumerated powers in Article I, Section 8
 - D. The supremacy clause
19. What was the trend in the decisions of the Supreme Court under Chief Justice John Marshall?
- A. The commerce clause was restricted to cases involving trade between states.
 - B. The Tenth Amendment was used to expand the power of state governments.
 - C. The national government gained power in comparison to the states.
 - D. The necessary and proper clause was used to expand the power of the executive.

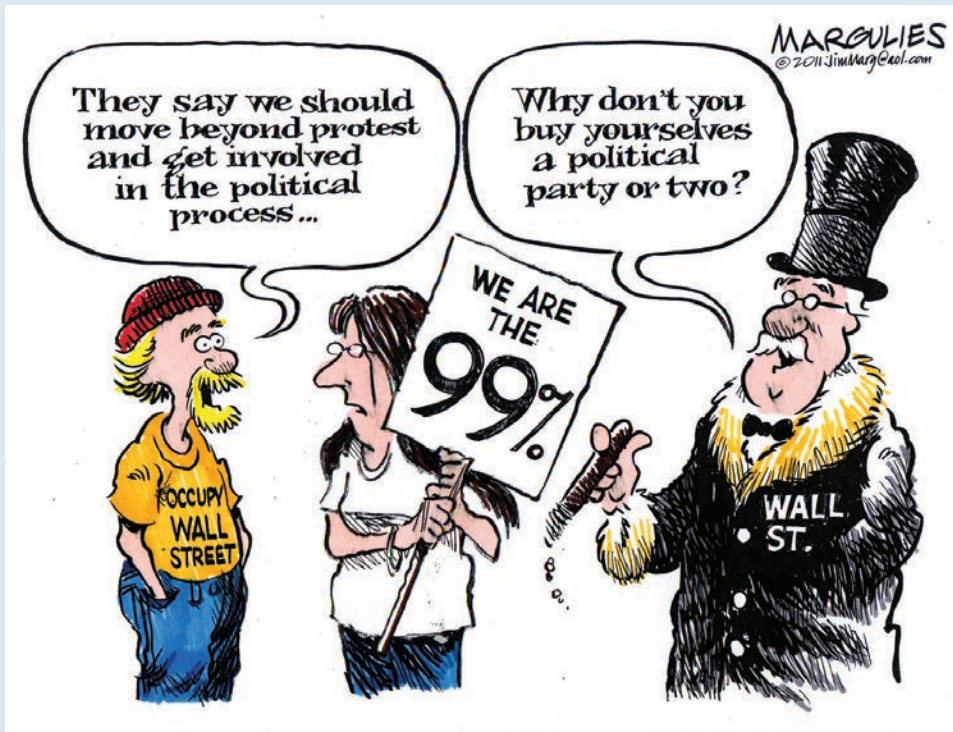


Nick Anderson / Cartoonist Group

20. Choose the pair that best represents the concepts illustrated in the cartoon.

A. Popular sovereignty	Federalism
B. Natural rights	Separation of powers
C. Civil liberties	Supremacy clause
D. Republicanism	Civil liberties

FREE-RESPONSE QUESTIONS



Jimmy Margulies/Cagle Cartoons, Inc.

1. Use the cartoon and your knowledge of U.S. Government and Politics to answer the questions.
 - A. Identify the viewpoint expressed in the cartoon.
 - B. Describe whether the cartoon represents participatory, pluralist, or elitist democracy.
 - C. Explain how the cartoon relates to American political culture.

When Democrats couldn't pass their carbon cap-and-trade plan, the Obama administration instituted a power plan that outstripped the legal authority Congress had afforded the Environmental Protection Agency. If Trump is successful in rescinding these onerous regulations, he will be reinstituting boundaries on the regulatory state. If your goal is inhibiting energy production, then elect members of Congress to pass legislation that does so.²

—David Harsanyi

2. Use the excerpt and your knowledge of U.S. Government and Politics to answer the questions.
 - A. Describe the viewpoint expressed in the excerpt.
 - B. Describe two ways in which the Constitution prevents one branch of government from becoming too powerful.
 - C. Explain two reasons why the founding fathers created a system of checks and balances.

ARGUMENTATION QUESTION

The Brady Handgun Violence Prevention Act, enacted in 1993, required a national system to instantly run a background check on people who wanted to purchase handguns. Montana and Arizona challenged the part of the law that required state officials to conduct the background checks.³

Construct an argument that the provision of the Brady Act requiring state officials to conduct background checks is constitutional or unconstitutional. Defend your position using evidence from at least one required document from the list below, as well as your knowledge of federalism and the Constitution. Identify at least one argument that would be made by an opponent of your argument and explain why that argument is less convincing.

- U.S. Constitution
- *United States v. Lopez* (1994)
- *McCulloch v. Maryland* (1819)

In your response, be sure to:

- Articulate a defensible claim or thesis that responds to the question
- Support your claim with at least two pieces of accurate and relevant evidence
- Use reasoning to organize and analyze your evidence
- Respond to an opposing or alternative perspective using refutation, concession, or rebuttal

CRITICAL THINKING PROJECT

Constitution Art Project

This project takes you beyond the AP® Exam to think critically and creatively about the Constitution and federalism. Create an artistic analogy that represents the U.S. system of government and label the following parts:

- | | | |
|---|---|---------------------|
| • Citizens | • The President | • The Supreme Court |
| • The Congress | • At least one of the following powers | • Judicial review |
| • At least one of the following powers | • Veto of laws | • The bureaucracy |
| • Makes laws | • Commander-in-chief | • Implements laws |
| • Overrides presidential vetoes | • Appointment power | • The states |
| • Budgetary authority | • Signs treaties | • Local governments |
| • Senate confirms appointments | | • Police powers |
| • Senate ratifies treaties | | |

Use poster paper, and make your artwork colorful. Your artwork can be drawn by hand, or you can create a collage. Your goal is to illustrate how the institutions and levels of government work together.

Example:

In an American Government League baseball game, the constitution is the home plate. The pitcher represents Congress, and the baseball represents a law. When a law misses the home plate, the umpire, representing the Supreme Court, calls an out. When the batter, representing the president, hits a home run, he scores. The bureaucracy carries out its task of putting the run on the scoreboard, as the citizens cheer.

An umpire calls Chase Hedley out at the plate. In the analogy, this resembles the Supreme Court exercising the power of judicial review.

Denis Poroy/Getty Images



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INSIDE: Preview of Chapter 3: Federalism and the Unit 1 Review

"This text has several strengths that I appreciated, and I think that my students will as well. One of the main aspects of the text that I enjoyed was the clear and straightforward way that the complex concepts of federalism were explained. Often, texts can be hard for students to read and to follow. However, this text clearly explains topics and includes plenty of stories and anecdotes that are on topic and interesting for a high school student."

— Matthew Desjarlais, Allatoona High School, GA

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