



## *Intergovernmental Relations*

RUSSELL L. HANSON

In 2016, presidential candidates in both major parties campaigned on the urgent need for radical changes to a political system that was dysfunctional, or in common parlance, “broken.” Wildly different remedies received support from various segments of the electorate, however, raising questions about what Americans truly want or expect from their system of governance. A relevant survey supplies clues on that score. Americans say they prefer a system in which each level of government has discrete responsibilities. National defense and foreign relations are the preserve of national government. Domestically, the public believes the national government should champion civil rights, provide Social Security and health care for the elderly, and protect the environment. State governments should promote economic development, build roads and other public works, and oversee education. Local governments should concentrate on public safety and urban development (Schneider, Jacoby, and Lewis 2011).

This tidy image of responsibilities is sharply at odds with existing arrangements. Most public goods and services in the United States are provided through partnerships involving multiple levels of government. Even public education, once the exclusive preserve of local school boards, is now delivered within a framework of state regulations and subject to evaluation in terms of national performance standards. A similar pattern of “intergovernmentalization” is evident in many other policies covered in this volume. The precise division of labor varies by policy area, as does the level of cooperation among national, state, and local agencies, but interdependence is pervasive.

Most voters know little about the intricacies of intergovernmental policy making. But even if they were better informed, voters would be hard-pressed to assign responsibility for policy outcomes (Wlezian and Soroka 2011). When programs succeed, each of the governing partners is quick to claim full credit for their combined efforts. When policies fail, each blames the others entirely for the outcome. While this is convenient for elected officials, it is an obstacle to voters who prefer a system with clear lines of accountability (Nicholson-Crotty and Theobald 2011).

Issues of accountability notwithstanding, there are some advantages to intergovernmental policy making. Today's social and economic problems span local, state, and national boundaries, defying solution by any single level of government. Such problems cannot be ameliorated by one-size-fits-all policies implemented from above. Nor can they be solved at the local level without significant financial, technical, and legal assistance from the top. Intergovernmental systems of governance offer flexibility in meeting complex challenges insofar as they produce general policies that can be adapted to fit local circumstances, assuming governments cooperate.

The political dynamics of intergovernmental relations in the United States are the subject of this chapter. **Federalism** is the most obvious feature of the U.S. system of governance; it refers to the division of responsibility between the national government in Washington, D.C., and state governments. It also describes the relation between the national government and tribal governments on Native American reservations. Although different, both types of relations involve the division of authority that is characteristic of multilevel systems of governance.

Relations between states are not federal. They are **confederal**, to use an older terminology that is still useful in conveying the importance of sovereignty in these interactions. As constitutionally recognized entities, states are on equal footing; none has a higher status than any other in the Union. To be sure, there are differences in political power and influence, but the symmetry of constitutional standing means that state governments must negotiate their differences or rely on national agencies, such as the Supreme Court of the United States, to resolve them.

Relations between states and their local units of government are **unitary**. Localities do not enjoy sovereignty; they are creatures of state government. This asymmetry of constitutional power is seldom displayed openly. Rather, it forms the backdrop for political relations that are much more balanced. The states vary tremendously in the powers they delegate to different units of local government, so this dimension of intergovernmental relations is further distinguished by diversity across states—and within them.

States also manage communications between national and local governments, carrying the goals and concerns of one to the other while adding the preferences of governors and legislators to the mix. Similarly, states increasingly regulate interactions among local governments, adjudicating conflicts and creating regional agencies to coordinate the actions of neighboring localities. Thus, state governments are at the center of an elaborate web of **intergovernmental relations** that is developing in ways that American citizens may not fully understand or appreciate.

The behavior of government agencies is shaped by the system of governance in which they operate, and state governments are no exception. Their central location exposes them to pressures from above, below, and even from the side (as a result of interacting with other states and foreign actors). But that same location permits states to influence all prospective partners, and groups of states even have the capacity to reshape the system in which they operate. That is what makes them critical for the success of the U.S. political system in a rapidly changing and increasingly global environment.

### CONFEDERALISM

States were sovereign under the Articles of Confederation (1781–1788), and in certain respects, they still behave like sovereigns under the Constitution. State governments frequently interact with other nations and play an important role in making and implementing American foreign policy (McMillan 2012). For example, under the Great Lakes–St. Lawrence River Water Resources Compact, eight American states and two Canadian provinces manage the world's largest surface freshwater system. Along the Rio Grande, U.S. and Mexican states jointly monitor the spread of tuberculosis across the border, regulate the international trucking industry, and allocate water resources (Garrick, Schlager, and Villamayor-Tomas 2016).

States also develop economic ties with other countries. Indeed, every state now devotes considerable attention to foreign trade. States actively promote overseas markets, providing information and technical assistance to exporting firms and capitalizing their activities. At least forty states now maintain trade offices abroad, for reasons outlined in Chapter 16 of this volume.

States interact with each other as well (Zimmerman 2011). Conflicts arise over river boundaries that shift over time or when a state is harmed by pollution or some externality generated elsewhere. Competition occurs when states bid against each other for businesses seeking subsidies or exemptions from taxes and environmental regulations. There is also competition to shed people who depend on state services. In the past, some states gave free bus tickets to welfare recipients willing to relocate to states with more generous benefits.

To promote cooperation, regulate competition, and resolve conflicts, states enter into **interstate compacts**, which are like treaties between states. Before 1920, only three dozen compacts were signed by states and approved by Congress. Most were bilateral agreements involving the location of boundaries. Since then, more than 179 compacts have been established—the bulk of them since World War II (National Center for Interstate Compacts 2016). The average state is now a member of twenty-five compacts, reflecting a belief that states can often achieve more in combination with others, instead of going it alone or competing against each other (Nicholson-Crotty et al. 2014).

Modern compacts cover a host of issues: conservation and resource management, power transmission, pollution control, transportation, navigation on interstate waterways, law enforcement, and emergency assistance, to name a few. Some compacts include agencies of the national government as parties to the agreement, but most do not. The Colorado River Compact is an instance in which states make regional allocations of water without federal direction. In fact, upper-basin states the Colorado River agreement have their own compact

within a compact to allocate water from the Colorado River, an increasingly contentious task in a time of drought and long-term climate change (Fleck 2016).

Formal compacts are not the only means of ensuring interstate cooperation. Ten states have pioneered a Regional Greenhouse Gas Initiative to reduce emissions in the Northeast. The states agreed to a regional cap on CO<sub>2</sub> emissions from power plants and now require power plants to obtain an allowance for each ton of CO<sub>2</sub> they emit. A limited number of allowances are bought and sold in certain markets. Some tout this cap-and-trade scheme as a model for the nation in the time-honored tradition of states functioning as “laboratories of democracy”.

Many states have reciprocity agreements with other states. A state’s public universities may offer in-state tuition to residents of adjacent states in exchange for similar discounts in their schools. Licensure of teachers, real-estate agents, and other professions may be covered by reciprocal agreements. All states now permit individuals to carry concealed weapons, and these permits are generally recognized by other states.

States also cooperate routinely in less formal ways. In recent years, states have joined forces in challenging powerful corporations. For example, state officials sought relief and damages for homeowners victimized by mortgage lenders and foreclosure agents during the 2009 recession and the ensuing slow recovery. States formed cooperatives to buy and distribute pharmaceuticals in order to reduce the costs of Medicaid and other public-health programs.

State officials communicate with each other, monitoring issues and political developments in Washington. Associations of state officials lobby on behalf of subnational governments. The National Governors Association, National Conference of State Legislatures, National League of Cities, U.S. Conference of Mayors, and National Association of Counties zealously oppose national encroachments on states’ rights and local autonomy. Such complaints make Congress more attentive to the concerns of state politicians and occasionally lead to the defeat of regulations that states find objectionable.

### **FEDERALISM**

In the United States, the formal allocation of power between state and national governments is prescribed in the Constitution, which delegates some powers primarily or exclusively to the national government. Other powers are reserved to the states or the people under the Tenth and Ninth Amendments, respectively. Then, there are powers concurrently exercised by national and state governments, including the authority to tax, borrow money, and make laws and enforce them. Within this group of concurrent powers are some that must be exercised jointly—the power to conduct federal elections and amend the Constitution, for instance.

The allocation of specific powers is imprecise and subject to change over time. All politicians want to control policies of vital interest to their constituencies. Frequently, this leads to a tug of war between state and national officials, each of whom wants to dictate policy and claim credit for the results. The ensuing political contest is refereed by the Supreme Court, which plays a critical role in defining relations between national and state governments.

*National Power and States' Rights*

During the nineteenth century, the doctrine of **dual federalism** prescribed a sharp division of responsibilities between governments. Defense and foreign policy, regulation of currency, and, to a lesser extent, interstate trade were the responsibility of the national government. Property laws, civil rights, and basic services were the province of the state governments and, through them, local communities. The two spheres of responsibility were considered distinct, and conflicts between governments over the right to make policy in specific instances were decided in favor of one or the other by the Supreme Court.

By the middle of the twentieth century, however, power was gravitating toward the national level. This shift occurred with the blessing of the Supreme Court, which expanded both the power of Congress to regulate interstate transactions, particularly those related to commerce, and the domestic powers of the president. The Supreme Court even allowed some degree of national control over local affairs, especially in matters pertaining to civil rights and public employment.

The trend moderated in the 1990s, when Chief Justice William H. Rehnquist delivered several opinions upholding states' rights. *United States v. Lopez* (1995) overturned a federal law outlawing possession of a firearm within a thousand feet of a school, limiting Congress's power to regulate interstate commerce for the first time since 1937. Two years later, the Court challenged the expansion of congressional power under the necessary-and-proper clause of the Constitution. In *Printz v. United States* (1997), a majority ruled that Congress could not require state and local police to check the background of prospective handgun buyers as an act mandated. The Rehnquist Court also respected the **sovereign immunity** of states, saying they could not be sued in other states' courts for violations of federal law.

Under Chief Justice John G. Roberts Jr., the Supreme Court has generally declined to overturn state laws that conflict with federal statutes, unless those statutes expressly preempt state action, or a state egregiously violates a person's civil rights or liberties. Thus, in *Chamber of Commerce v. Whiting* (2011), the Court upheld an Arizona law punishing employers who hire undocumented workers because such laws were not preempted by the Immigration Reform and Control Act. But *Arizona v. United States* (2012) struck down a state law that required aliens to carry registration papers at all times, allowed state and local police to arrest without warrants individuals who were suspected of being in the country illegally, and barred unauthorized aliens from seeking or obtaining employment in Arizona. Only Congress had the authority to enact such restrictions, said the Court.

The Roberts Court has also protected some civil rights, even in areas traditionally reserved to the states. In *United States v. Windsor* (2013), a five-member majority declared Section 3 of the federal Defense of Marriage Act unconstitutional, saying that national agencies were obliged to recognize the Canadian marriage of Edie Windsor to Thea Spyer for tax purposes. The decision was reinforced by *Hollingsworth v. Perry* (2013), another 5–4 decision in which the Court declined to overrule a lower court's decision invalidating a ban on same-sex marriage in California. This pair of rulings set the stage for *Obergefell v. Hodges* (2015), a landmark decision that determined all states must recognize same-sex marriage under the equal-protection and due-process clauses of the Fourteenth Amendment.

With respect to entitlements, the Court recently addressed two major challenges by states to the 2010 Patient Protection and Affordable Care Act (ACA). *National Federation of Independent Business v. Sebelius* (2012) upheld the authority of Congress to penalize individuals who fail to obtain health insurance but struck down a provision of the ACA allowing the national government to withdraw all funds for Medicaid from states that declined to expand coverage to adults under sixty-five years of age with annual incomes at or below 138% of the federal poverty level (which was \$16,242 in 2016).

In *King v. Burwell* (2015), a majority of the Supreme Court ruled that individuals who obtained health insurance from a nationally organized marketplace or exchange were eligible for subsidies in the form of tax credits, as were those who purchased insurance from exchanges formed in the District of Columbia and seventeen states. Had the Court decided otherwise, D.C. and 33 states would have had to create their own exchanges in order to preserve subsidies for their residents. Not all would have done so; there is fierce opposition to “Obamacare” in several state capitals.

Health care for poor women is on the agenda of state policy makers, too. This includes access to abortion, one of the most contentious issues in American politics. The extent to which states may restrict access to abortion without proscribing it entirely was resolved in *Whole Woman's Health v. Hellerstedt* (2016), which refined the test outlined in *Planned Parenthood v. Casey* (1992). In that decision, the Court barred states from imposing “undue burdens” on women’s right to seek an abortion prior to the point of fetal viability. State laws requiring women to reflect on their decision for a period of time after receiving information about the consequences of abortion and alternatives to it were not an undue burden, according to the Court. More recently, Texas and other states have imposed requirements on abortion providers, requiring them to have admitting privileges at nearby hospitals, for instance. Such laws are said to be necessary for protecting the health of pregnant women, though the risk of complications from abortion are lower than for other, quite common, unregulated procedures. In *Whole Woman's Health*, a majority of justices declared that Texas’s new requirements unduly burdened women’s choice by compelling clinics that are not surgical centers to close and doctors to stop performing abortions because they lack local hospital privileges.

Not all Supreme Court decisions have such dramatic policy implications; some concern political processes in the states. After every census, states must redraw congressional districts, making them equal in population (and adjusting for changes in the number of representatives apportioned to each state). Redistricting tends to be highly partisan, so some states have shifted control from legislatures to independent commissions. *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015) denied the state legislature’s bid to recover control over redistricting stripped from it by a ballot initiative in 2000.

On the other hand, *Perry v. Perez* (2012) directed a federal district court judge to defer to the Lone Star legislature in devising an interim map for the 2012 election while guarding against racial discrimination in the drawing of district lines. The case arose because the legislature’s redistricting plan was still under review by the U.S. Department of Justice as the election approached. Under the Voting Rights Act of 1965, political jurisdictions with a history of

discriminatory voting rules are required to obtain preclearance before implementing new rules. The formal requirement of preclearance was left standing by *Shelby County v. Holder* (2013) but rendered inoperative because the formula for identifying units covered by the requirement was obsolete, in the judgment of the Court's majority. As a result of this decision, ten states (mostly in the South) no longer need prior approval to alter voting rules, although that could change if Congress decides to update the coverage formula.

### *Fiscal Federalism*

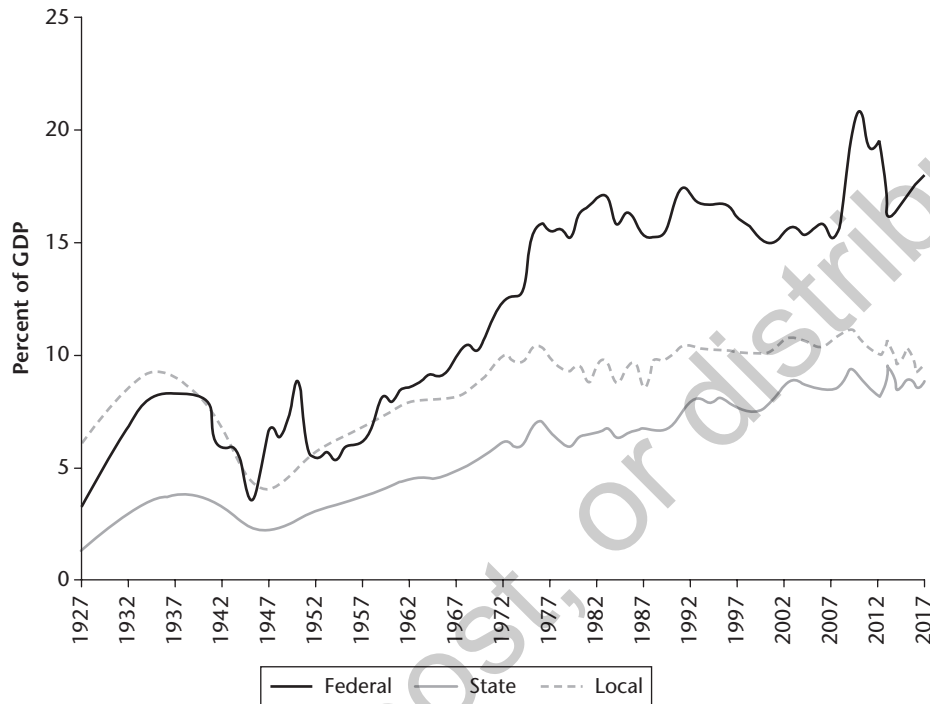
In policy areas where it is constitutionally supreme, the national government can mandate compliance with its objectives. More often, it secures the cooperation of state and local governments by offering grants-in-aid for programs that benefit citizens. Participation in such programs is voluntary, but the goals are popular, and the amount of assistance is sufficient to induce widespread involvement by subnational governments. Cho and Wright (2007) report that three-quarters of all state agencies receive grants from national agencies, and more than a quarter depend on those grants for more than half of their revenues.

Figure 2-1 shows domestic spending as a proportion of gross domestic product (GDP) by national, state, and local governments in selected years from 1927 to 2017. Before 1927, local governments spent more on public goods and services than the state and national governments combined. During the Great Depression, spending by the national government accelerated rapidly. Social Security, unemployment insurance, and public assistance were established at that time. Massive public-works projects were undertaken, with the national government subsidizing the construction of roads, dams, and public buildings by state and local governments.

The intergovernmental partnership deepened after World War II, as veterans' benefits were added to income security programs and new public works, such as the interstate highway system, were constructed. The 1960s war on poverty was a period of "creative federalism", with many new grant programs stimulating action by state and local governments. Since then, the national government has outspent state and local governments. Even the presidency of Republican Ronald Reagan, characterized by reductions in the scope of federal regulation, saw a burst of spending unmatched by any corresponding increase in the pace of spending by state and local governments. Still another sharp upturn occurred in 1990, when a "peace dividend" was used to finance new programs in health and education after the Cold War ended.

National spending surged in 2008 with passage of the Toxic Assets Relief Program (TARP) to stabilize the financial industry. The "bank bailout" was quickly followed by adoption of the American Recovery and Reinvestment Act (ARRA), more familiarly known as the stimulus package, which injected more than \$814 billion into the economy over a two-year period. Domestic spending by the national government now is nearly equal to the combined direct spending of state and local governments.

The stimulating effect of more than 1,100 federal grants on state and local spending is apparent in Figure 2-1, with subnational governments laying out matching funds to qualify for new grants. At least a dozen were created by the stimulus package alone, which included an additional \$87 billion subsidy for Medicaid, the single largest item in most state budgets;

**Figure 2-1** Direct Domestic Spending by Level of Government, 1927–2017

SOURCES: Author's calculations based on data from U.S. Bureau of Economic Analysis; *Bicentennial Edition of the U.S. Statistical Abstract*; U.S. Bureau of the Census, *State and Local Government Finances* (annual); and Executive Office of the President, *Budget of the United States Government: Historical Tables, Fiscal Year 2016*.

NOTE: State and local spending after 2013 is estimated, as is federal spending for 2017. To facilitate comparison with state and local spending, only spending on domestic programs by the national government is included. It is calculated by subtracting outlays for defense and foreign aid. Only direct spending by state and local governments is shown, to avoid double counting of national grants passed by states to local units.

\$80 billion for unemployment benefits and other assistance programs; \$54 billion for education via a new State Fiscal Stabilization Fund; and \$48 billion for transportation improvements. Overall, a third of the stimulus funds flowed to or through state governments. (Tax breaks for individuals and corporations accounted for another third.)

Federal grants did not fully offset a \$430 billion decline in state tax revenues during the recession. The remaining budget shortfalls led state and local governments to lay off 500,000 workers between March 2008 and March 2011, including at least 100,000 teachers. In the absence of the stimulus, much bigger layoffs would have been required. Hiring in the public sector has not rebounded very quickly. As of May 2016, state and local government employment remained below prerecession levels. Currently, 14.2 million full-time-equivalent civilian employees work for local governments in the United States; another 5.1 million work for state governments, and a mere 2.8 million work for national agencies. Most public goods and services are still provided by state and local employees, though the national government subsidizes much of their work.



*Politics of Grants-in-Aid*

Grants encourage state governments to enact programs and policies designed to achieve national objectives. Typically, they are the product of so-called **vertical coalitions**, geographically dispersed individuals and groups who form political alliances to gain a favorable hearing in Congress. The coalitions succeed by sublimating policy differences under general goals, leaving details of program design and implementation to the discretion of state and local policy makers. Once formed, these grant programs are highly resistant to attack; the clients who receive services, government employees who provide them, administrators who oversee programs, and politicians who claim credit for action lobby to continue grants. Even in the face of rising deficits—created, in part, by the successes of many vertical coalitions—Congress and the president are reluctant to eliminate grant programs.

National policy makers prefer categorical project grants because they maximize control over state and local governments. Categorical grants may be used only for narrow purposes approved by Congress. Project grants are awarded on a competitive basis to governmental units that submit proposals for review and funding by an agency of the national government. A categorical project grant, then, allows a national agency to determine which governments will receive money and for which purposes.

State and local policy makers prefer block formula grants, which come with fewer strings attached. Block grants permit recipients to determine how grants are used, within broad limits. Formula grants are awarded on the basis of population, need, or some other objective consideration; conditions—not agencies in Washington—dictate which applicants will receive funds. When block grants are awarded according to a congressionally approved formula, national influence is minimized, and state and local discretion is correspondingly enhanced.

The national government annually funds almost \$700 billion worth of grants-in-aid to state and local governments, about the same as it budgets for defense. More than half of the grant money is for medical care, social services, cash assistance, food stamps, and housing subsidies for disadvantaged populations. The remainder is for agriculture, education, transportation, law enforcement, and homeland security.

Federal grants-in-aid represent one-fifth of all state governments' combined general revenue, but some states are more dependent on these grants than others. Less than 20 percent of North Dakota's revenue is from national grants, but Louisiana receives more than 40 percent of its general revenue from Washington. States pass most of this money to local governments for distribution, adding matching funds, as required by Congress. States also provide their own grants-in-aid to local governments to maintain roads, equalize school funding, and meet other goals of state legislators and governors. All told, local governments receive more than one-third of their revenue from higher levels of government, although in some states, the level of local financial dependency exceeds 50 percent.

The proliferation of grants-in-aid results in policy fragmentation at the national level. It gives rise to "picket fence federalism", with each grant program representing a vertical tie between local, state, and national agencies. State and local officeholders are often frustrated by these bureaucratic systems because they make it harder to control their own employees, who fall under the sway of financial patrons in national agencies (Cho and Wright 2007).

*Distribution and Impact of Grants*

The grant-in-aid system is not geographically neutral. It diverts more resources to states and localities with great needs but few resources of their own, as determined by legislative formulae. Under these formulae, some states reap especially large shares of financial assistance from the national government while other states receive smaller shares. Redistribution also occurs when the national government spends more for its own purposes—for example, Social Security and defense—in some states than it does in others.

The extent of redistribution by the national government for 2014 is shown in Figure 2-2. The length of each state's bar represents the amount of national spending in that state for every dollar of national tax collected there. Thus, for every national tax dollar collected in South Carolina, the national government spent \$3.50, making the Palmetto State a big winner in the exchange. Twenty-seven states received less than their taxpayers gave, although the number would have been higher except for deficit spending by Congress.

Generally speaking, vulnerable populations in poor rural states benefited from redistribution. States with extensive military bases (or defense contractors) and large numbers of retirees also benefited. Ironically, many political leaders from these states are staunch defenders of states' rights and sharp critics of spending by the national government. Some advocate a balanced-budget amendment to the U.S. Constitution; if enacted, the amendment would require substantially higher taxes or massive reductions in grants to states and smaller national payments to individuals.

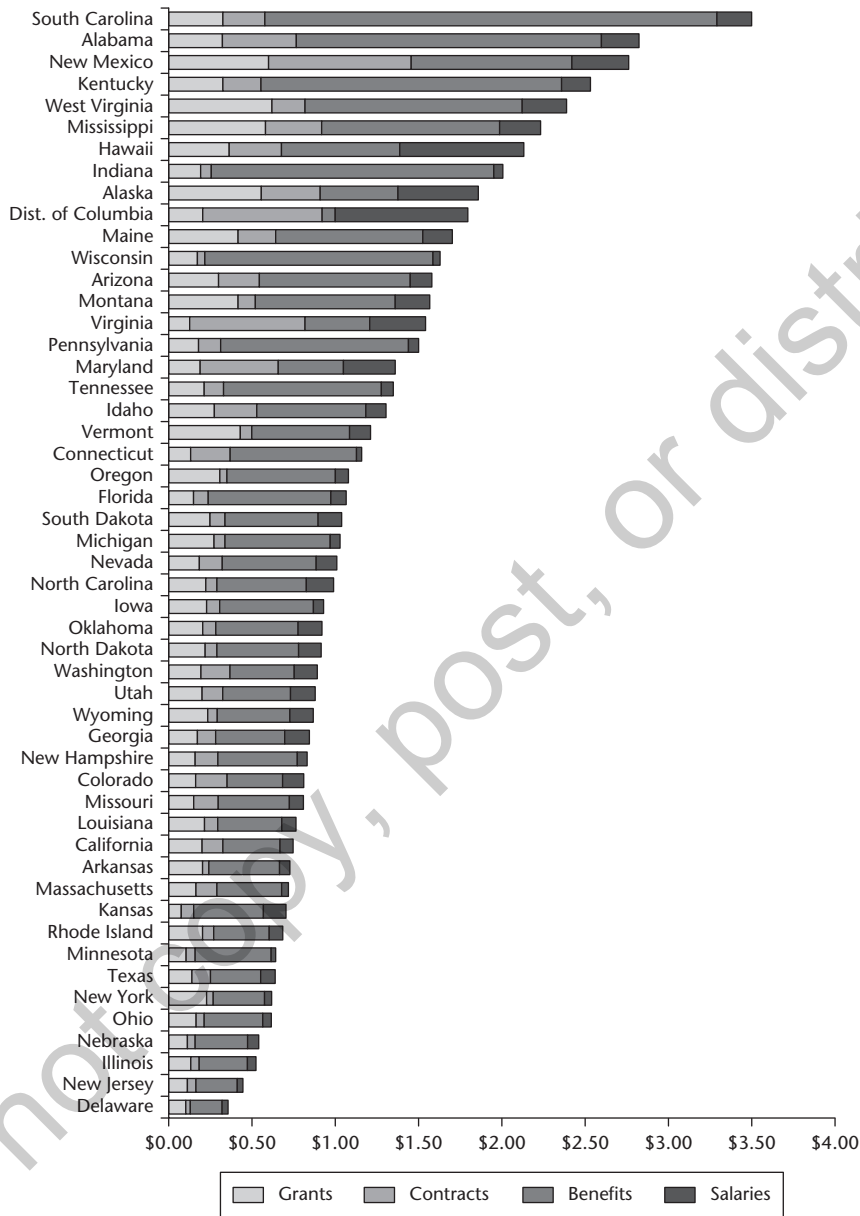
Most of the redistribution results from national spending in the form of payments to individuals, health care vendors, and corporations. But there are clear differences in states' success in obtaining grants-in-aid (light portion of the bars). Some states—for example, Alaska, New Mexico, and Mississippi—qualify for more grants than others, whereas states such as Delaware, Minnesota, and New Jersey prefer to remain independent (and are financially able to do so).

Given the scale of redistribution, it is hardly surprising that donor states complain (Kincaid and Cole 2016). This unhappiness gives rise to pitched battles over formulae for distributing aid. Representatives from states with divergent interests, each supplied with statistical analyses of the estimated impact of alternative formulas, must then resolve their differences. Even the U.S. Census Bureau's methods for estimating population at the state level are a matter of contention in Congress because different statistical techniques yield different population estimates and, therefore, different grant allocations.

The budgetary impact of grants-in-aid does not always depend on their size; even small reductions make a big difference at the margin of agency budgets. Most grants require matching funds from states, and depending on the stringency of these requirements, states may have to commit a substantial portion of their own revenues to purposes served by the grants. The reverse is also true: When states cut spending in order to balance budgets, they may forfeit federal funds, doubling or tripling the impact of the reduction.

This is what Congress intends, but grant programs skew the priorities of state policy makers who concentrate on obtaining grants with low matching-fund requirements (Cho and Wright 2007). In addition, clever state officials sometimes attempt to substitute national

**Figure 2-2** Federal Expenditures per Dollar of Federal Tax Collected, by State, FY 2014



SOURCES: Award data are from [usaspending.gov](http://usaspending.gov), excluding Medicare and Medicaid payments processed in one state for distribution in others. FY 2013 data on federal-salary outlays are from *Federal Spending in the States, 2004–2013* (Pew Charitable Trusts 2014). Tax data are from *IRS Data Book 2014* (Washington, D.C.: U.S. Government Printing Office).

NOTE: Combined federal expenditures in a state are divided by total federal tax collections, yielding the return per dollar of federal tax collected. This return is apportioned across types of spending by the ratio of each type of spending to total spending.

dollars for their own or those of local governments in order to avoid tax increases. Maintenance-of-effort provisions are Congress's response; new grant programs often require state and local governments to continue spending at existing levels in order to qualify for assistance from the national government.

### *Regulatory Federalism*

In some policy areas, Congress is able to impose its will on subnational governments. **Mandates** are the chief mechanism of this "coercion," as some call it. States resist mandates, especially if they are unfunded, whereas they are more receptive of monetary incentives provided under grant programs. That is why Congress has established so many grant programs; members of the House and Senate want to please elected officials and constituents in the states they represent.

Different kinds of mandates have been employed by Congress (and the executive branch). A direct order may be issued in policy areas where national power is well established under the supremacy clause of the Constitution. Subnational governments must abide by the Equal Employment Opportunity Act and the Occupational Safety and Health Act, for example, and they risk civil and criminal sanctions if they do not respond to orders of compliance.

Crosscutting regulations affect all or most federal-assistance programs. They prohibit the use of funds from any national source in programs that discriminate on the basis of race, ethnicity, gender, or religious practice, for example. Another familiar crosscutting regulation requires the preparation of an environmental-impact statement for any construction project involving national funds. State and local governments must provide evidence of compliance with these regulations, and they incur administrative costs for preparing the necessary scientific and technical reports.

National officials may terminate or reduce assistance in one program if state and local officials do not comply with the requirements of another grant-in-aid program. This is a crossover sanction. National highway funds are often used in this way to pressure states into adopting policies preferred by Congress. A recent act required states to adopt 0.08 blood alcohol content laws to combat drunk driving or lose 2 percent of their national highway funds each year, up to a maximum of 8 percent.

Subnational government officials strongly resent mandates. They gained some relief after passage of the Unfunded Mandates Reform Act in 1995. The law did not rescind any previous mandates, but it did modify subsequent mandates, which are less sweeping, less expensive, and less heavy-handed than before (U.S. Congressional Budget Office 2015). Passage of the act also deterred lawmakers from proposing mandates that are popular only with some interest groups and congressional constituencies.

Mandates compel states to perform acts prescribed in national laws and regulations. **Preemption** does the opposite. Complete preemption bars states from enacting new laws and sets aside existing laws when they conflict with national policy. Partial preemption limits what states can do in matters of concern to national policy makers. Both types of preemption rest on the supremacy clause of Article VI, which resolves conflicts between

national and state laws in favor of Congress so long as it is exercising a constitutionally delegated power.

Once uncommon, preemption became popular in Congress after 1965. Democrats especially favored this approach to policy making, but Republican Congresses continued the practice after 1994, albeit less intensively. Republicans were responding to pressure from business organizations, which preferred uniform regulations to the patchwork of regulations in the fifty states (Zimmerman 2005). Automakers, for example, favored national standards of fuel efficiency, which are set by the Environmental Protection Agency (EPA). Under President George W. Bush, the EPA preempted California laws requiring new cars to meet more stringent standards. By contrast, President Barack Obama pressed Congress and the EPA to permit states to exceed the national standards, overcoming the objections of automakers. Obama pursued a policy of partial preemption in a wide range of agencies, indicating his desire to pursue national goals in cooperation with states (Conlan and Posner 2011).

Much depends on the inclination of Congress and president to preempt state laws under the supremacy clause. President Obama's predecessors objected to state laws permitting the use of marijuana for medicinal purposes, arguing that it was prohibited under a national law giving Congress sole authority over the regulation of pharmaceutical products. The Obama administration struck a different posture; it encouraged the Department of Justice not to prosecute those who dispense marijuana for medical purposes in accordance with state law. Twenty-five states and the District of Columbia now have laws regulating the production, distribution, and consumption of marijuana for medical purposes. Moreover, the Department of Justice has not challenged laws in Washington and Colorado that go beyond medicinal uses of marijuana to permit recreational usage. More states are likely to follow, as long as national authorities relent.

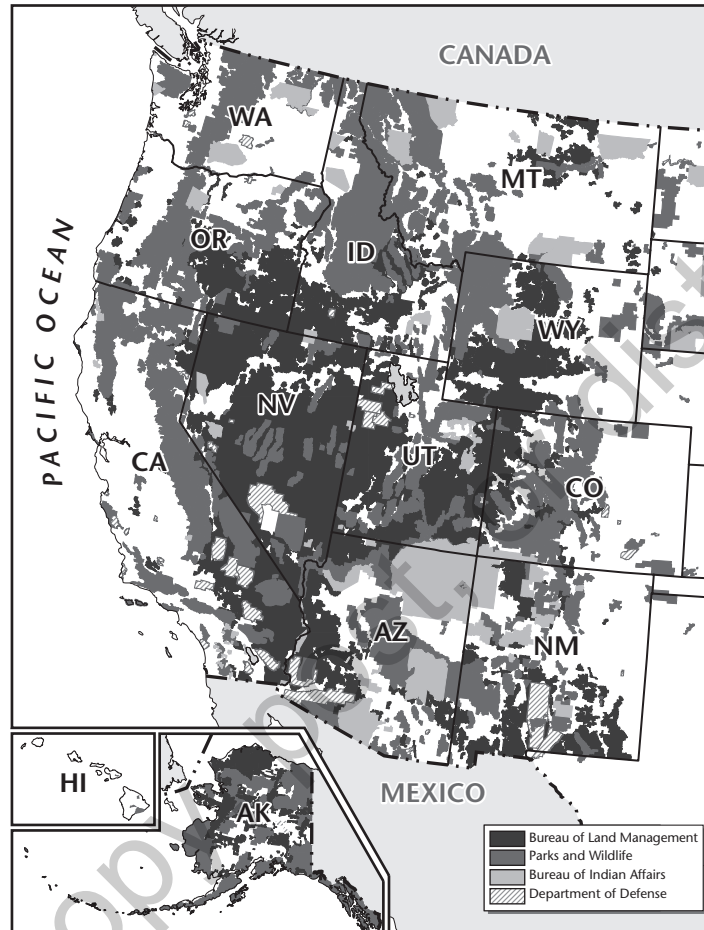
#### FEDERAL LANDS

Relations between state and national governments dominate federalism but do not exhaust this field of intergovernmental relations. The national government controls vast tracts of land in the United States, and control of that land is routinely challenged by states and Native American tribal governments. These conflicts over land use raise questions of sovereignty and are an important, though often overlooked, aspect of American federalism.

##### *The Public Domain*

The United States originally consisted of thirteen states. During the next 170 years, Congress admitted thirty-seven states, each created from territory claimed by the nation or ceded to it. Some of the territory was retained in trust for the American people, as a condition for admitting territories to statehood. The cumulative amount of land reserved for the public domain now exceeds 650 million acres, roughly twice the land area of Alaska, which is by far the largest state in the United States.

Figure 2-3 shows the distribution of public lands, which are heavily concentrated in western states. The Department of the Interior's Bureau of Land Management controls more

**Figure 2-3** Federal Lands in Western States

SOURCE: Adapted from "Federal Lands and Indian Reservations," in *National Atlas of the United States of America* (Washington, D.C.: U.S. Department of the Interior), <http://www.nationalatlas.gov/printable/images/pdf/fedlands/fedlands3.pdf>.

than a quarter-million acres, most of which are leased to mining companies, ranchers, and farmers. The Department of Agriculture's Forest Service manages national forests and park lands. The Department of Defense operates military bases and testing ranges while Native American tribes control reservations with oversight by the Bureau of Indian Affairs.

More than half of the land within the states of Alaska, Nevada, Utah, Idaho, and Oregon is in the public domain and not subject to control by state government. The same is true for one-third to one-half of the land in California, Arizona, New Mexico, Colorado, and Wyoming. Only negligible proportions of federal land in states east of the Mississippi River are in the public domain, and it is reserved for the use of Native tribes.

National agencies' control over vast acreage in western states is politically contentious. Residents of those states, historically accustomed to unfettered access, chafe under land use restrictions imposed by "bureaucrats in Washington." The latter, in turn, are pressured by environmental organizations seeking to preserve the public domain. The conflict exploded during the late 1970s and early 1980s, when resentment over national regulation of public lands peaked in the western states. The Sagebrush Rebellion, as it was known, culminated in Ronald Reagan's appointment of Colorado's James Watt as secretary of the Interior. Since then, every secretary of the Department of the Interior has come from a western state, and national policy has been more responsive to state and local sentiments.

Federal regulation of western lands was the principal complaint of those involved in the Sagebrush Rebellion. A successor movement for Wise Use advocated the privatization of western lands, so as to allow more extensive mining and grazing on former public lands. When this movement stalled, some ranchers openly defied national regulators, refusing to pay grazing fees to the Bureau of Land Management and ignoring regulations of the U.S. Fish and Wildlife Service aimed at protecting endangered species. This ultimately led to an armed standoff with national officers at the Nevada ranch of Cliven Bundy in 2014 and the Bundys' later occupation of the Malheur National Wildlife Refuge near Burns, Oregon, in 2016.

The subsequent prosecution of the Bundys and other occupiers will not quell demands for local management of federal lands. Policy makers from eight western states convened a 2015 summit to consider strategies for persuading the national government to transfer lands to the states, on the grounds that locals know better how to manage lands and that western states are being unfairly deprived of opportunities to promote economic development (and collect taxes) on land that is under federal control. Environmentalists counter with warnings about the consequences of permitting more intensive exploitation of natural resources rightfully belonging to the American people.

### *Tribal Governments*

In *Cherokee Nation v. Georgia* (1831), Chief Justice John Marshall characterized Native American tribes as "dependent domestic nations." The tribes are "nations" insofar as they were once sovereign, "domestic" insofar as they have been absorbed into the Union, and "dependent" insofar as the U.S. government is entrusted with the protection of indigenous peoples and their ways of life. In practice, this means that tribes are semisovereign entities, subject to the will of Congress but relatively independent of governments in the states where reservations are located.

The national government officially recognizes 567 of the more than 600 tribes in the United States, many of them in the upper Midwest and western states. Most recognized tribes operate under written constitutions delineating the powers, responsibilities, structure, and composition of tribal governments. These governments pass civil and criminal laws, which are enforced by tribal police and adjudicated in tribal courts. To finance these activities, tribal governments impose taxes on Indians and non-Indians living or doing business

on reservation lands. People on the reservation are not subject to most state laws or regulations, however, nor do they pay state taxes on property, sales, or income earned from activities conducted on the reservation.

States have little control over reservation affairs, but the states are well represented in Congress—and Congress exercises plenary power over tribal governments. At the behest of states, Congress previously used its power to abrogate treaties, dilute tribal ownership of lands, and regulate tribal governance. More recently, Congress limited the jurisdiction of tribal courts in criminal matters. Non-Indians accused of committing crimes on reservation lands can be prosecuted only under state or federal laws based on *Oliphant v. Suquamish Indian Tribe* (1978). Major crimes committed by Indians on reservations are tried in U.S. courts, and Indians tried in tribal courts for lesser crimes are protected by the Indian Civil Rights Act, which affords guarantees similar to those in the Bill of Rights and Fourteenth Amendment.

The pattern is different in civil matters, where tribal governments enjoy sovereign immunity. Tribal governments may not be sued by states or their citizens for breaching state laws. Nor are tribal members subject to state regulations, such as those governing the use and operation of motor vehicles on the reservation. In fact, tribes may impose their own regulations, with one important limitation. In *Montana v. United States* (1981), the Supreme Court ruled that in the absence of any congressional authorization, Indian tribes lack authority over the conduct of non-Indians on privately owned land within a reservation, unless non-members have entered into consensual agreements with a tribe or their conduct threatens the tribe's political integrity, economic security, or welfare.

State governments are sometimes frustrated by the autonomy of tribal governments. Until states rescinded laws against gambling, only reservations could offer Class II gambling, including bingo, lotto, and pull tabs. But the stakes were raised in 1988 when Congress passed the Indian Gaming Regulatory Act, which preserved tribes' right to offer Class II games on reservations and opened the door for Class III gaming (slot machines, casino gambling, and pari-mutuel betting). States that did not explicitly prohibit Class III games were required to enter into good-faith negotiations with tribes seeking to expand their operations by offering Class III games.

The negotiations produced compacts between state and tribal governments defining the conditions under which Class III gaming may be offered and specifying the state's share of the proceeds from such gambling. Tribes view compacts as an infringement on their sovereignty and resent having to share profits from an industry they developed—and it is an industry. There are now 449 Class II or III tribal-gaming operations in twenty-eight states. These operations employ more than 400,000 people (a quarter of whom are Indians) and gross over \$28 billion annually, or more than one-third of all legal gaming revenues in the United States (National Indian Gaming Commission 2016).

The Seneca Nation entered into one such compact with the state of New York in 2002, sharing 25 percent of the revenue from its slot machines in exchange for exclusive rights to slot machine gambling in western New York. As gaming became more lucrative, state



lawmakers decided to enter the business themselves, allowing upstate racetracks to install video lottery terminals. Seneca Nation suspended its revenue sharing, arguing that New York was violating exclusivity provisions of its compact with them. The dispute was resolved in 2013, when New York affirmed its recognition of exclusivity zones, and tribes acceded to the licensing of seven nontribal casinos. Only three private casinos have been licensed so far, but one of them will compete directly with a nearby Oneida Nation casino, as well as a state racetrack with video lottery terminals. Unsurprisingly, tribes are again charging that revenue-hungry state officials are violating exclusivity agreements reaffirmed in 2013.

For their part, state officials complain about lost tax revenues from the sale of cigarettes in tribal casinos and other stores on tribal lands. Smokers can save \$4.35 (or \$5.85 if they live in New York City) per pack by purchasing cigarettes from tribes, which do not collect sales tax. But wholesale distributors supplying brand-name cigarettes to vendors on tribal lands are subject to New York law, which now compels them to prepay the tax. Distributors cover this cost by raising the price of cigarettes they sell to Indian vendors, thereby equalizing the price of cigarettes sold on or off tribal lands.

The Seneca Nation responded by investing profits from its casinos in factories on tribal lands that produce Native brands of cigarettes, which are exempt from sales taxes and can be sold at lower prices. The tribe also began marketing Native brands over the Internet and hiring private delivery services after the United States Postal Service, FedEx, and UPS declined to transport Native cigarettes. The state answered by suing delivery companies for violating state laws. Meanwhile, “butt-leggers” from Virginia and other nearby states with lower taxes on cigarettes have created a sizable black market, in competition with tribes and in defiance of state tax laws.

Rivalries between tribes are part of the business equation, too. Tribes that are officially recognized by the United States often oppose recognition for tribes who might become competitors in the gaming business, sale of cigarettes, or development of energy resources on lands held in trust for recognized tribes. The battle over recognition is played out in Congress, where efforts to overcome a Supreme Court decision limiting the recognition of tribal trust lands have been thwarted by defenders of tribes that have already been recognized.

#### STATE CONSTITUTIONS AND LOCAL GOVERNMENTS

Except on tribal reservations and national lands, state governments wield power in accordance with their constitutions. Each state constitution identifies the rights of persons residing in that state, including privileges and immunities beyond those guaranteed in the U.S. Constitution. (The right to an equal public education is a common example.) Each state constitution also prescribes the structure of state government, the terms and qualifications for holding various state offices, and suffrage requirements. Some state constitutions establish local governments or processes for creating different types of local government; others leave such matters to the legislature.

Many state constitutions include policy pronouncements. Several preserve traditional fishing, hunting, and trapping privileges. Dominant interests also may be protected in a state constitution—for example, the South Dakota state legislature is required to provide

farmers with hail insurance. Traditional values inform recent amendments to ban same-sex marriage, abortion, affirmative action, union organization, and gun control. In fact, Alabama's current constitution—its sixth—has been amended 892 times; it is now thirty times longer than the U.S. Constitution with its twenty-seven amendments. That is exceptional, however; the typical state constitution is merely four times the length of the U.S. Constitution.

State constitutions may be amended in a variety of ways (Dinan 2009). Delaware's constitution may be altered by supermajorities in two sessions of the legislature separated by a general election. Everywhere else, voters must approve amendments. Proposals may be presented to voters by a constitutional convention summoned by the legislature or called in a popular referendum. Fourteen states actually present the option of a convention to voters at mandatory intervals, and several others allow the people to issue a call at will. A somewhat easier method is available in eighteen states that permit citizens to vote on ballot initiatives to amend their constitution. But most amendments originate in state legislatures, albeit in different ways, as shown in Table 2-1.

Table 2-1 lists states according to the procedural difficulty of enacting amendments. The process is particularly daunting in states near the bottom of the table; they require approval by a sequence of supermajorities in the legislature before the people are consulted. It is unusually difficult to obtain two-thirds majorities in state legislatures, especially if the legislatures are large, and no party dominates. States near the top of the table permit legislative majorities to propose and approve amendments and provide the people with direct avenues for altering their constitution. The success rate of initiated amendments is generally higher, particularly where simple majorities determine the result.

Of course, success depends on the ripeness of constitutions for amendment, which is a function of their age and complexity, as well as issues specific to time and place. An example from Indiana illustrates this. In 1986, the state's General Assembly enacted a statute declaring marriage to be the union of one man and one woman. It was not very controversial at the time, but conservative Hoosiers worried that activist judges in state courts might overturn the ban. Following the example of two dozen other states, they sought to "constitutionalize" the ban on same-sex marriage.

Thus, Republican supermajorities elected to the General Assembly in 2010 proposed an amendment denying legal recognition of same-sex marriage, civil unions, and domestic partnerships. Approval by the General Assembly elected in 2012 was needed to present it to voters for consideration. Opposition was building in the business community, however, and civil rights organizations were mobilizing. When the Assembly took up the proposal again in 2014, the house unexpectedly softened the ban, and the senate concurred. The newly revised proposal would have to be approved by the assembly elected in 2016 before the question was put to the electorate.

In the interim, *Obergefell v. Hodges* legalized same-sex marriage in all fifty states (though not on tribal lands, owing to the sovereign status of "domestic nations" in civil matters). The landmark decision did not end the political debate, however, nor did it prevent rearguard action by states. Individuals and organizations opposed to same-sex marriage rallied to the

**Table 2-1** State Constitutional Amendment Procedures and Success Rates, as of January 1, 2016

State	Origin of proposal			Legislature	Consideration by two sessions? <sup>c</sup>	Vote Required <sup>d</sup>	Ratification vote required <sup>d</sup>	Overall success, all routes		Approval rate
	Conventioneer <sup>a</sup>	Initiative <sup>b</sup>	Legislature					No. submitted <sup>e</sup>	No. adopted <sup>e</sup>	
Arkansas	No	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	202	102	0.50
Missouri	Yes	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	186	120	0.65
Nebraska	Yes	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	354	230	0.65
North Dakota	No	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	277	156	0.56
Oklahoma	Yes	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	363	196	0.54
South Dakota	Yes	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	234	118	0.50
Mississippi	No	Yes	2/3	No	No	Majority vote on amendment	Majority vote on amendment	162	126	0.78
Montana	Yes	Yes	2/3	No	No	Majority vote on amendment	Majority vote on amendment	57	31	0.54
California	Yes	Yes	2/3	No	No	Majority vote on amendment	Majority vote on amendment	896	529	0.59
Colorado	Yes	Yes	2/3	No	No	Majority vote on amendment	Majority vote on amendment	342	158	0.46
Michigan	Yes	Yes	2/3	No	No	Majority vote on amendment	Majority vote on amendment	73	30	0.41
Florida	Yes	Yes	3/5	No	No	3/5 vote on amendment	Majority vote on amendment	168	122	0.73
Illinois	Yes	Yes	3/5	No	No	Majority vote on amendment	Majority vote on amendment	21	14	0.67
Ohio	Yes	Yes	3/5	No	No	Majority vote on amendment	Majority vote on amendment	288	173	0.60
Oregon	Yes	Yes	c	No	No	Majority vote on amendment	Majority vote on amendment	498	255	0.51
Massachusetts	No	Yes	Majority	No	No	Majority vote on amendment	Majority vote on amendment	148	120	0.81
Nevada	Yes	Yes	Majority	Yes	Yes	Majority vote on amendment	Majority vote on amendment	235	138	0.59
Minnesota	Yes	No	Majority	No	No	Majority vote in election	Majority vote in election	217	120	0.55
New Mexico	Yes	No	Majority	No	No	Majority vote on amendment	Majority vote on amendment	303	169	0.56
Rhode Island	Yes	No	Majority	No	No	Majority vote on amendment	Majority vote on amendment	16	13	0.81
Maine	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	205	172	0.84
Alaska	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	42	29	0.69
Georgia	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	98	71	0.72
Idaho	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	213	125	0.59
Kansas	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	127	97	0.76
Louisiana	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	262	182	0.69
Texas	No	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	662	484	0.73
Utah	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	172	118	0.69
Washington	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	180	106	0.59
West Virginia	Yes	No	2/3	No	No	Majority vote on amendment	Majority vote on amendment	123	72	0.59
Wyoming	Yes	No	2/3	No	No	Majority vote in election	Majority vote in election	129	100	0.78
Alabama	Yes	No	3/5	No	No	Majority vote on amendment	Majority vote on amendment	1,221	892	0.73
Kentucky	Yes	No	3/5	No	No	Majority vote on amendment	Majority vote on amendment	76	42	0.55

Table 2-1 (Continued)

State	Origin of proposal			Consideration by two sessions? <sup>c</sup>	Ratification vote required <sup>d</sup>	Overall success, all routes		
	Convention <sup>a</sup>	Initiative <sup>b</sup>	Legislature			No. submitted <sup>e</sup>	No. adopted <sup>e</sup>	Approval rate
Maryland	Yes	No	3/5	No	Majority vote on amendment	266	230	0.86
New Hampshire	Yes	No	3/5	No	2/3 vote on amendment	289	145	0.50
North Carolina	Yes	No	3/5	No	Majority vote on amendment	39	32	0.82
Indiana	No	No	Majority	Yes	Majority vote on amendment	79	47	0.59
Iowa	Yes	No	Majority	Yes	Majority vote on amendment	59	54	0.92
New York	Yes	No	Majority	Yes	Majority vote on amendment	303	227	0.75
Pennsylvania	No	No	Majority	Yes	Majority vote on amendment	36	30	0.83
Virginia	Yes	No	Majority	Yes	Majority vote on amendment	57	49	0.86
Wisconsin	Yes	No	Majority	Yes	Majority vote on amendment	195	146	0.75
Tennessee	Yes	No	c	Yes	Majority vote in election	66	43	0.65
Vermont	No	No	c	Yes	Majority vote on amendment	212	54	0.25
South Carolina	Yes	No	2/3	Yes	Majority vote on amendment	689	500	0.73
Delaware	Yes	No	2/3	Yes	Not required	n/a	145	n/a
Connecticut	Yes	No	c	c	Majority vote on amendment	32	30	0.94
Hawaii	Yes	No	c	c	Majority vote on amendment	138	113	0.82
New Jersey	No	No	c	c	Majority vote on amendment	85	70	0.82
Arizona	Yes	Yes	Majority	No	Majority vote on amendment	275	152	0.55

SOURCE: John Dinan and the Council of State Governments, with research assistance from Wake Forest students Bradley Harper and Alex Papovich.

## NOTES:

- Consult Table 1.4 in *The Book of the States 2016* for detailed descriptions of individual states' procedures.
- Consult Table 1.3 in *The Book of the States 2016* for detailed descriptions of individual states' procedures.
- Consult Table 1.2 in *The Book of the States 2016* for detailed descriptions of individual states' procedures.
- Consult Table 1.2 in *The Book of the States 2016* for detailed descriptions of individual states' procedures.
- Consult Table 1.1 in *The Book of the States 2016* for histories of state constitutions and amendments.

defense of wedding planners, florists, photographers, and cake bakers who claimed that religious convictions forbade them from serving LGBT customers.

In the spring of 2015, the Indiana General Assembly notoriously approved SB101, which declared that any person, organization, or business entity refusing service to an LGBT person or couple could invoke religious freedom as a legal defense if charged with discrimination under state laws or municipal ordinances. State or local prosecutors would then have to prove that requiring service to LGBT individuals was the least restrictive means of combating discrimination, a compelling government interest. Otherwise, those charged with discrimination might prevail on the basis of their First Amendment right to the free exercise of their religion.

SB101 was signed into law by Republican governor Mike Pence in a private ceremony attended by religious leaders and opponents of gay marriage. There was an immediate backlash, with the Republican mayor of Indianapolis joining corporate leaders and civil rights activists in demanding repeal of the law. National organizations planning to convene in Indianapolis vowed to go elsewhere, and the National Collegiate Athletic Association threatened to move its headquarters out of state. Some governors and big-city mayors banned their employees from traveling to Indiana on official business, and prominent corporate leaders (e.g., Apple's Tim Cook) condemned the legislation.

Intense public pressure forced Governor Pence to ask the General Assembly to pass a companion measure strengthening protections against discrimination on the basis of sexual orientation. It did, but the measure stopped short of comprehensive bans on discrimination that most other states have enacted. Hence, the battle resumed at the next session of the General Assembly, in January 2016. A coalition of civil rights activists and large corporations concerned about recruiting employees pressed for strong statewide protections for LGBT persons. Those hoping to bolster religious freedom countered with a proposal offering additional protections for LGBT individuals, but these statewide guarantees would preempt even stronger protections at the municipal level in cities with more liberal voters. Ultimately, the General Assembly decided not to act at this time, sparing legislators from taking controversial stands just months before the next election to the statehouse.

### *Constitutional Status of Local Governments*

State governments are often viewed as smaller versions of the national government in the United States, but there is an important constitutional difference. The authority of the national government is defined positively; Congress and the president can only exercise powers conferred upon them under the Constitution. State governments, by contrast, enjoy **plenary powers**, which are negatively expressed: States have the power to enact laws and promulgate policy unless their constitutions prohibit it.

The point is essential for understanding relations between state and local governments. Constitutionally speaking, local governments are creatures of the state; their terms of existence are spelled out in laws or the state constitution itself. The structure, powers, and responsibilities of local governments may be modified by the legislature in the course of

exercising its plenary powers. In states where constitutions provide for local governments, amendments may alter the very terms of their existence.

There are 90,056 independent local governments in the United States. More than half are special districts responsible for providing a single service: libraries, schools, hospitals, mass transit, fire protection, water and sewer services, and the like. Township, municipal, and county governments account for the remainder; they are general-purpose governments, providing a variety of public goods and services to residents. General- and **special-purpose governments** have overlapping boundaries, so the average citizen is subject to the authority of several local governments at once.

The number of local governments varies across the states, and the differences are not merely a reflection of the size of a state or its population. Florida, with a population twice that of Minnesota, has less than half as many local governments as the North Star state. Higher numbers mean that states devote more time, energy, and resources to interactions with the local governments subject to their control. This requires some capacity to manage relations with subordinate entities and an ability to withstand pressure from a large number of local officials pleading their cases to the legislature.

Perhaps more importantly, states must coordinate relations among the numerous units of local government (Krueger and Bernick 2010). Much of the activity consists of refereeing disputes, or setting rules for the incorporation of new governments, annexation of unorganized areas, consolidation of existing governments, or creation of legal frameworks for service contracts between local governments. Then, there are the rules for shrinking governments: separation of an area from an existing unit of government, voluntary disincorporation of a previously organized entity, and the abolition of superfluous local units. Immediately after World War II, many state governments eliminated small schools in rural areas and transferred their students to consolidated districts in order to provide education more efficiently. The number of school districts nationwide fell from 67,355 in 1952 to 12,880 in 2012, even though two new states were added to the Union, and the number of children enrolled in public elementary and secondary schools increased by 87 percent over the same period. Today, a declining rural population could trigger another round of school consolidation in some sparsely settled states.

#### *Political Relations between State and Local Governments*

The constitutional dependence of local governments is mitigated by political considerations. The same forces that make Congress attentive to states also make states responsive to local government. Representation in the legislature is by locale, and elected representatives often have prior experience in local affairs. They are sensitive to the desire of local policy makers for autonomy, and they learn of opposition to pending legislation from lobbyists employed by individual local governments, not to mention associations of local governments, mayors, law enforcement officers, and school superintendents. These associations are formidable lobbies in the state capital. They routinely defend local governments from unwanted legislation and occasionally succeed in obtaining laws advocated by local governments.

The major political consideration, therefore, is not whether states will be responsive to local governments but rather to which set of local governments they will be most responsive. Historically, the malapportionment of state legislatures gave rural counties a disproportionate say in state policy making. Reapportionment strengthened the representation of urban areas in state legislatures in the 1970s and 1980s. Now suburbs and exurbs are growing faster than cities; their representation is swelling in state legislatures, and big cities are losing influence.

Certain locales enjoy greater independence from state government. Municipal governments in forty-eight states qualify for **home rule** charters offering some degree of self-determination. County governments do, too, in thirty-seven states. The degree of autonomy under home rule varies from state to state and is subject to change by legislatures (Krane, Rigos, and Hill 2000). In most cases, though, general-purpose governments operating under home rule choose their form of government from options defined by the state. They also enjoy independent taxing and spending powers.

Another area of discretion involves the range of functions local units may undertake. The greatest discretion exists in states that devolve authority to local governments, which enjoy powers not specifically denied to them by the legislature or the constitution. At the other extreme are **Dillon's Rule** states, which enumerate the powers and functions of local governments; powers not explicitly given are denied, although the legal understanding of granted powers may be fairly liberal. More subtle ways of affecting the level and kind of services provided by local governments are restricting revenues, earmarking the use of funds, and establishing performance standards.

Although garbage collection, fire protection, and even elementary education can be provided through contractual arrangements with private concerns, they are most often supplied by public employees, and the conditions of employment by local government are stipulated in detail by state government. The most important requirements concern the extent to which merit informs hiring, promoting, and firing decisions. States may also establish training, licensing, and certification standards for employees; define collective-bargaining rights and compulsory-arbitration rules; control hours of employment and working conditions; regulate disability benefits; and mandate retirement programs. Since 2011, several newly elected Republican governors and legislatures have sought reductions in the benefits and collective-bargaining rights of public employees, including local teachers, public-safety officers, inspectors, and other municipal and county workers.

The exercise of local discretion may be limited by fiscal regulations (Berman 2010). Cities in Arizona, Illinois, Maine, and Texas have substantial latitude in fiscal matters, but local units elsewhere do not. In most states, the constitution or legislature determines which taxes may be levied by local units, which methods of assessment must be employed, and what sorts of exemptions must be granted. In addition, the magnitude of local tax increases is often restricted by constitutional amendments enacted in response to "taxpayer revolts." Local borrowing is tightly regulated in most states; overall debt loads are limited; and the type of debts that may be incurred, as well as the interest rates that may be paid on bonds, are typically controlled by the legislature. Similar restrictions affect spending practices, and

in New Mexico, cities and counties must submit their entire budgets to an agency of the state government for approval.

State governments routinely audit local finances, and they occasionally take over cities and schools. In fact, nineteen states (mostly in the Rust Belt) and the District of Columbia now permit governors to assert control over insolvent governments, or those that are failing to provide vital services (e.g., adequate education). In such cases, emergency managers appointed by the governor make policy decisions that would ordinarily be made by mayors, city councils, or school boards elected by local voters. The range of powers assigned to managers varies from state to state, as does the length of their appointments.

In Michigan, for example, Detroit Public Schools have been under emergency management since 2009, owing to financial difficulties, as well as concern over low graduation rates (i.e., “academic bankruptcy”). After a corruption scandal, the Motor City itself was taken over in 2013, before returning to self-governance in December 2014. An adjacent city, Flint, was placed under an emergency manager who sought to control costs by shifting to a new water supply, the Flint River. Use of water from that river was followed by a fatal outbreak of Legionnaire’s disease. Then, it was discovered that the city’s drinking water was contaminated by lead leaching from old pipes corroded by Flint River water, which contains high concentrations of chloride. It will be years before the ensuing health crisis subsides, and it will take hundreds of millions of dollars to rebuild the water system.

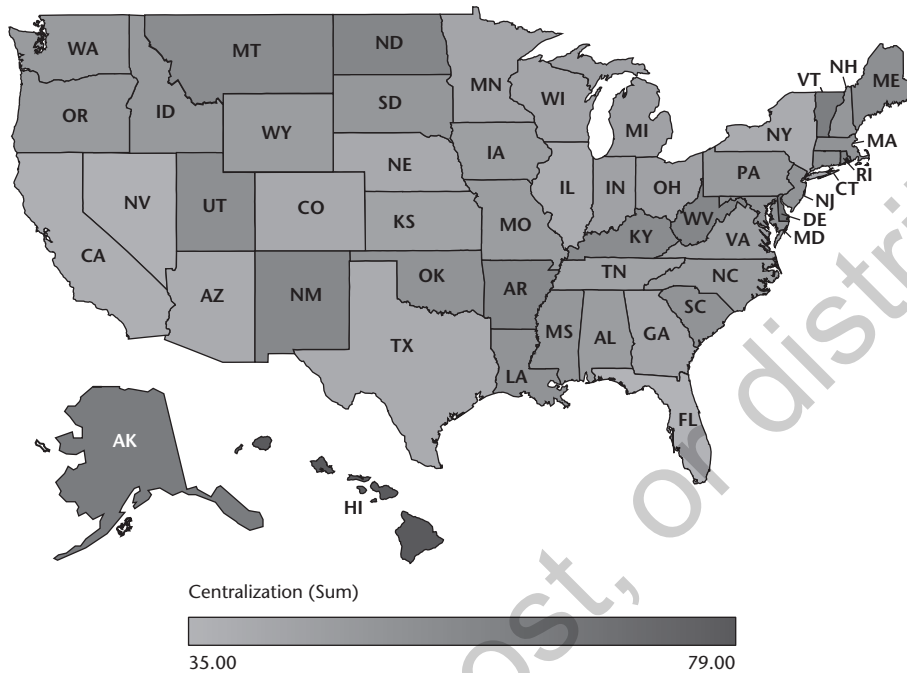
Mindful of the accountability that goes with being in charge, as well as the local resentment it generates, states are cautious about asserting control. There are other limits on state control, too. The political culture of a state shapes beliefs about the most appropriate relation between state and local government. The length of legislative sessions and the number of local governments in a state have an effect as well. Legislatures cannot closely supervise a large number of local units when state representatives meet infrequently and for short periods of time. For that matter, executive agencies vary in their administrative capacity to regulate local governments, especially when the latter have political allies in the state capital.

#### *Fiscal Relations between State and Local Governments*

Although their discretionary powers have increased in recent years, many local governments lack the resources to promote economic development, finance infrastructural improvements, protect the environment, and upgrade public services, including education. To meet the needs of constituents and to comply with mandates from higher levels of government, local leaders lobby state leaders for assistance. As a result, policy making is becoming more centralized at the subnational level.

The degree of policy centralization varies from state to state. It also varies over time, but Figure 2-4 shows the relative position of states to each other in 2008 on a scale that runs from 0 to 100. The scale combines measures of centralization in ten distinct policy areas, taking into account financial responsibility and two aspects of service provision: procurement and delivery. Thus, a score of 0 indicates complete local responsibility for providing a type of service, and a score of 100 signifies that state government has sole responsibility for services.



**Figure 2-4** Centralization of Service Provision in the American States

SOURCE: Adapted from a measure created by Ann O'M. Bowman and Richard C. Kearney, "Second-Order Devolution: Data and Doubt," *Publius: The Journal of Federalism* 41, no. 4 (2011): 563–85.

Generally speaking, services are more centralized in geographically compact states, whose small size lends itself to centralized provision of goods and services. A regional concentration of such states in the Northeast is evident in Figure 2-4. But centralization is also common in sparsely settled states, even large ones like Alaska. This reflects economies of scale; localized provision is prohibitively expensive where small populations are widely scattered. On the other hand, large, populous states need to rely more heavily on local governments to deliver goods and services and share in the expense of doing so.

The degree of centralization varies across policy areas. States generally take the lead in constructing highways, maintaining correctional institutions and mental-health hospitals, and regulating the use of land and natural resources, including wetlands, shorelines, and wildlife. States also organize health and welfare services, although some devolve responsibility for them to counties now that national controls over public assistance have been relaxed. Municipal governments typically provide public safety, sanitation, and sewage disposal, and school districts manage educational services. Yet even these locally provided services are heavily influenced by state actions, insofar as many state governments provide huge sums of money to the responsible local units.

From 1980 to 2013, total state aid to local governments increased from \$82.8 billion to \$470 billion—about twice the rate of inflation over the same period. States became the principal financiers of many public services, even those provided by local governments. In the process, new legal requirements and general policy guidelines were imposed by state officials seeking greater accountability from local governments. State governments now control or strongly influence areas of policy making long dominated by local governments, education being the most prominent example.

State aid is politically important in large states such as California, Michigan, and New York. In simple terms, it represents a determination to work through local governments in providing basic services. In part, this approach reflects the fact that local governments are powerful enough to persuade legislatures in these states to assist them financially. But many of these governments are also capable policy makers, with long histories of service provision and relatively high levels of citizen satisfaction with local government. The idea of a partnership between state and local governments is particularly strong in such states.

#### *State Mandates and Preemptions*

Aid is the carrot used by state officials to influence local decision making. Mandates are the stick. States resent mandates from Congress, and they have the capacity to resist national policy makers who depend on them for policy implementation. But local governments are administrative conveniences of the state, and they are vulnerable to state officials who insist on having their way. Consequently, local governments labor under hundreds or even thousands of mandates from state governments, much to their political consternation and financial distress.

Local opposition to state mandating is intense, and it is expressed in the legislature, where localities are well represented. All states require fiscal notes, or estimates of the cost of mandates imposed by states on local units of government. Some states have statutes prohibiting mandates unless the state legislature provides funding for the activity in question, reimburses local governments for the cost of mandates, or provides them with a new source of funding to cover the costs. In California, Proposition 1A permits local governments to stop providing a mandated service if the state does not reimburse localities in a timely manner. Maine has a much stronger protection for local governments. A 1992 constitutional amendment requires the state to pay 90 percent of the estimated costs of mandates. There is an escape clause, however: The payment may be set aside by a two-thirds vote in each chamber of the legislature.

States routinely preempt local ordinances. Several states recently enacted laws that either prohibit antismoking ordinances altogether or establish statewide regulations much weaker than those preferred by some municipal and county policy makers. The National Rifle Association lobbied state legislatures to limit local gun controls and bar localities from suing firearms manufacturers that market handguns used in crimes. Many states passed limitations on local powers of eminent domain after the widely criticized U.S. Supreme Court decision *Kelo v. City of New London* (2005), which allowed a Connecticut city to compel a homeowner to sell property needed for redevelopment. In all of these instances, state policy

makers exercised sovereignty over local governments, just as Congress exercises its powers over states.

A partisan dimension to preemption has emerged recently, with Republican legislatures passing laws to prevent Democratic cities from requiring local businesses to pay higher wages, offer paid sick leave, and abandon the use of plastic bags in retail stores. The American Legislative Exchange Council, a conservative think tank, promotes preemption as a way to minimize the impact of such regulations on business, even as liberal organizations press local leaders to improve living conditions for city dwellers under home rule.

### CHALLENGES TO INTERGOVERNMENTAL RELATIONS

One hundred years ago, national, state, and local governments had separate and distinct responsibilities in the United States. Now, they interact extensively in most areas of domestic policy and service provision. Local governments are the providers of public education, but they operate under mandates from state governments responding to national legislation. State governments are the principal regulators of social conduct and economic behavior, but they do so under constraints imposed by the U.S. Supreme Court, and they rely on local authorities to enforce state laws. Even the national government now depends on state and local governments to implement its policies in exchange for grants-in-aid.

Because of its financial resources, the national government's role in domestic policy making expanded during the economic recession that ended in 2009 and the sluggish recovery that followed. It may subside as a result of a conservative being elected president in 2016, although the political durability of grant-in-aid programs points toward a greater reliance on block grants, not the elimination of programs. The shift would give states more leeway in spending decisions, which would lead to more diverse policies.

In fact, state policies are likely to become more diverse for other, more powerful, reasons. States' independence in matters of policy depends on their ability to raise revenue. This is partly a matter of political will, but primarily a function of economic vitality. Here, states differ: About two dozen are emerging from the recession in relatively good shape; the remainder are not. Declining prices for oil have had a devastating effect on Louisiana and, to a lesser extent, North Dakota. Even Texas has felt that tremor. So have iron ore-mining operations in Minnesota, Michigan, and Wisconsin and mills in Indiana, Ohio, and Pennsylvania as the global demand for steel collapsed.

More ominously, there are structural mismatches between some state economies and national or international markets. Some states are heavily invested in producing goods and services for which demand is declining over the long term or for which there are more efficient competitors in other countries. The iPhone is assembled in China; automobiles once "made in America" have been supplanted by vehicles produced in Japan, South Korea, Canada, Germany, France, and Italy. These jobs will not return to the United States, so several states are facing the economically painful and politically perilous task of reinventing themselves.

States whose economies recover quickly will be able to reassert their independence. Others will have to decide which programs they want to maintain at their own expense. Some states will continue to spend heavily and tax accordingly. Others will tax lightly and

provide fewer goods and services. The range of variation in policies is likely to expand, overwhelming the redistributive effect of the current grant system. Differences in capacity will then play a larger role in determining a state's policies than they do now, and voters will know whom to reward or punish.

#### KEY TERMS

confederal, 29	mandate, 39
Dillon's Rule, 50	plenary power, 48
dual federalism, 32	preemption, 39
federalism, 29	sovereign immunity, 32
home rule, 50	special-purpose governments, 49
intergovernmental relations, 29	unitary, 29
interstate compact, 30	vertical coalitions, 36

#### REFERENCES

- Arizona v. United States*. 2012. 567 U.S. \_\_\_\_.
- Arizona State Legislature v. Arizona Independent Redistricting Commission*. 2015. 576 U.S. \_\_\_\_.
- Berman, David R. 2010. "State-Local Relations: Authority and Finances." *Municipal Yearbook* 77: 41-59.
- Chamber of Commerce v. Whiting*. 2011. 563 U.S. \_\_\_\_.
- Cherokee Nation v. Georgia*. 1831. 30 U.S. (5 Pet.) 1.
- Cho, Chung-Lae, and Deil S. Wright. 2007. "Perceptions of Federal Aid Impacts on State Agencies: Patterns, Trends, and Variations Across the 20th Century." *Publius: The Journal of Federalism* 37 (Winter): 103-30.
- Conlan, Timothy J., and Paul L. Posner. 2011. "Inflection Point? Federalism and the Obama Administration." *Publius: The Journal of Federalism* 41 (Summer): 421-46.
- Dinan, John J. 2009. *The American State Constitutional Tradition*. Lawrence: University Press of Kansas.
- Fleck, John. 2016. "What Seven States Can Agree to Do: Deal-Making on the Colorado River." Stanford Rural West Initiative. <http://web.stanford.edu/group/ruralwest/cgi-bin/drupal/content/what-seven-states-can-agree-do-deal-making-colorado-river>.
- Garrick, Dustin, Edella Schlager, and Sergio Villamayor-Tomas. 2016. "Governing an International Transboundary River: Opportunism, Safeguards, and Drought Adaptation in the Rio Grande." *Publius: The Journal of Federalism* 46 (Spring): 170-98.
- Hollingsworth v. Perry*. 2013. 570 U.S. \_\_\_\_.
- Kelo v. City of New London*. 2005. 545 U.S. 469.
- Kincaid, John, and Richard L. Cole. 2016. "Citizen Evaluations of Federalism and the Importance of Trust in the Federation Government for Opinions on Regional Equity and Subordination in Four Countries." *Publius: The Journal of Federalism* 46 (Winter): 51-76.
- King v. Burwell*. 2015. 576 U.S. \_\_\_\_.
- Krane, Dale, Platon N. Rigos, and Melvin Hill. 2000. *Home Rule in America: A Fifty-State Handbook*. Washington, D.C.: CQ Press.
- Krueger, Skip, and Ethan M. Bernick. 2010. "State Rules and Local Governance Choices." *Publius: The Journal of Federalism* 40 (Spring): 697-718.
- McMillan, Samuel L. 2012. *The Involvement of State Governments in U.S. Foreign Relations*. New York: Palgrave Macmillan.
- Montana v. United States*. 1981. 450 U.S. 544.
- National Center for Interstate Compacts. 2016. "Top Five Issues for 2016." <http://knowledgecenter.csg.org/kc/content/top-5-issues-2016-interstate-compacts>.
- National Federation of Independent Business v. Sebelius*. 2012. 567 U.S. \_\_\_\_.

- National Indian Gaming Commission. 2016. FAQ. <http://www.nigc.gov/commission/faqs>.
- Nicholson-Crotty, Sean, and Nick Theobald. 2011. "Claiming Credit in the U.S. Federal System: Testing a Model of Competitive Federalism." *Publius: The Journal of Federalism* 41 (Spring): 231–56.
- Nicholson-Crotty, Sean C., Neal D. Woods, Ann O'M. Bowman, and Andrew Karch. 2014. "Policy Innovativeness and Interstate Compacts." *Policy Studies Journal* 42 (May): 305–24.
- Obergefell v. Hodges*. 2015. 576 U.S. \_\_\_\_.
- Oliphant v. Suquamish Indian Tribe*. 1978. 435 U.S. 191.
- Perry v. Perez*. 2012. 565 U.S. \_\_\_\_.
- Planned Parenthood v. Casey*. 1992. 505 U.S. 833.
- Printz v. United States*. 1997. 521 U.S. 98.
- Schneider, Sandra K., William G. Jacoby, and Daniel C. Lewis. 2011. "Public Opinion Toward Intergovernmental Policy Responsibilities." *Publius: The Journal of Federalism* 41 (Winter): 1–30.
- Shelby County v. Holder*. 2013. 570 U.S. \_\_\_\_.
- United States v. Lopez*. 1995. 514 U.S. 549.
- United States v. Windsor*. 2013. 570 U.S. \_\_\_\_.
- U.S. Congressional Budget Office. 2015. "A Review of CBO's Activities in 2014 Under the Unfunded Mandates Reform Act." <https://www.cbo.gov/publication/50051>.
- Whole Woman's Health v. Hellerstedt*. 2016. 579 U.S. \_\_\_\_.
- Wlezien, Christopher, and Stuart N. Soroka. 2011. "Federalism and Public Responsiveness to Policy." *Publius: The Journal of Federalism* 41 (Winter): 31–52.
- Zimmerman, Joseph F. 2005. *Congressional Preemption: Regulatory Federalism*. Albany: State University of New York Press.
- . 2011. *Horizontal Federalism: Interstate Relations*. Albany: State University of New York Press.

### SUGGESTED READINGS

#### Print

- The Book of the States*. Lexington, KY: Council of State Governments. This annual publication contains a wealth of comparative data and information about state governments.
- Conlan, Timothy J., and Paul Posner, eds. 2008. *Intergovernmental Management for the 21st Century*. Washington, D.C.: Brookings Institution Press. Expert commentary on intergovernmental challenges and best practices for meeting them.
- Publius: The Journal of Federalism*. A quarterly journal devoted to research on federalism, with a special issue each year on the current state of American federalism.

#### Internet

- Council of State Governments. [www.csg.org](http://www.csg.org). Reports on trends and policy concerns of state officials.
- The Pew Charitable Trusts Fiscal Federalism Initiative. [www.pewtrusts.org/en/projects/fiscal-federalism-initiative](http://www.pewtrusts.org/en/projects/fiscal-federalism-initiative). Along with [www.usaspending.gov](http://www.usaspending.gov), a valuable source of information, now that federal statistical reporting has been curtailed by sequestration.
- Rockefeller Institute of Government. [www.rockinst.org](http://www.rockinst.org). Publishes the latest research on intergovernmental policy making, with a focus on state governments.