Center for the Study of Federalism

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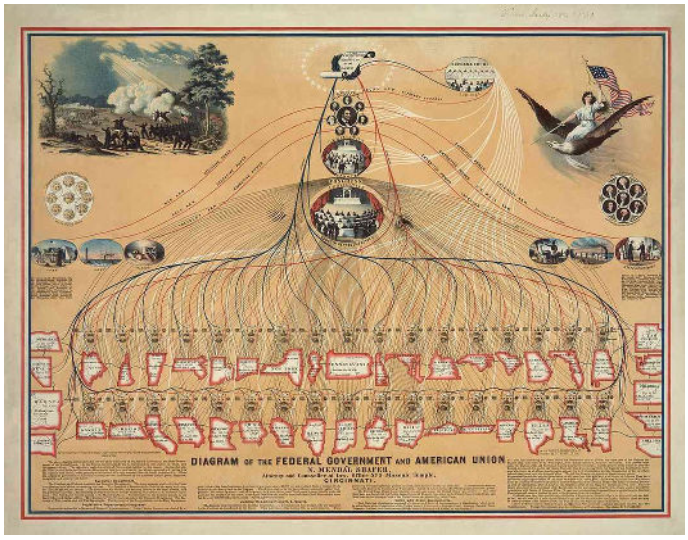
What is Federalism? A Cultural Perspective

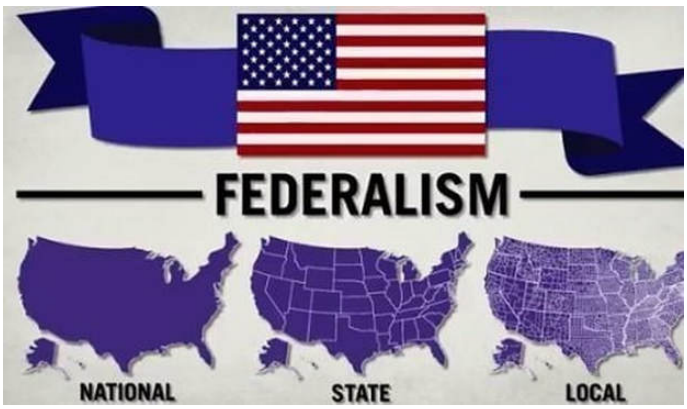
Stephen L. Schechter and Thomas S. Vontz



Federalism permeates U.S. history and civics in much the same way as constitutionalism. Each is a political principle as well as a cultural norm that guides the beliefs, deliberations, and actions of individuals and their institutions. Constitutionalism is the belief that power, even constitutionally granted power, must be limited by the rule of law – that no one is above the law and that all are equal before the law. But how? Federalism supplies one answer: to limit power by constitutionally distributing it and sharing it in several hands with the goal that everyone has the powers they need to govern, no one has too much power, and the forces of unity and diversity are balanced. How does federalism accomplish such important goals?

Constitutionally, federalism provides for the distribution and sharing of constitutional powers to empower the system, namely, the federal and state governments. There are exclusive powers to the federal government in the name of unity such as foreign policymaking. There are exclusive state powers that satisfy the need for diversity such as control over their local governments. Most powers, however, are shared, reflecting the American belief that most public policies contain an element of unity and an element of diversity and that both can be balanced by federal-state relations. For example, the U.S. Supreme Court ruled that public education is a state and not a federal right (*San Antonio Independent School District v. Rodriguez, 1973*). Still, the federal government can enter an educational field by creating a grant program with strings tantamount to policy or creating education policy tied to continued federal funding such as it did in passing the Equal Access Act of 1984.

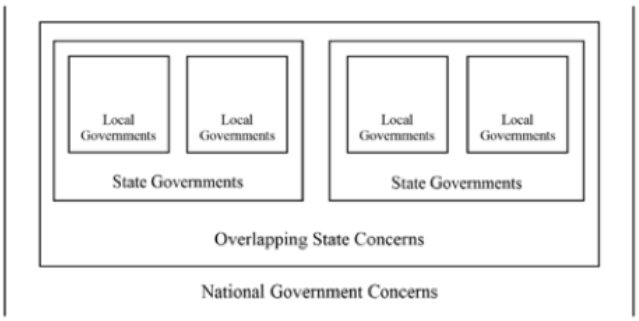
As a cultural norm, federalism has not only constitutional safeguards but also political and cultural safeguards. First among these is the political and organizational principle of *noncentralization*, which is a nonhierarchical way of thinking about federalism developed by one of the leading federalism thinkers, Daniel J. Elazar. In a federal system, the federal and state governments are co-equal constitutional partners. Elected officials and citizens alike have been misled into thinking the federal government is constitutionally superior because of the U.S. Constitution's Supremacy Clause and/or because the federal government spends more money than the states.



Each is sovereign within its own constitutional domain. Where there is no exclusive domain, there is constant maneuvering. So the American federal system has no center; it is polycentric. There is no centralization or de-centralization except for specific intergovernmental programs in which both the federal and state governments agree, or the courts issue a preemption ruling that the federal government "occupies" a field. But the mere presence of conflicting state and federal claims under the Supremacy Clause does not mean that state claims must *automatically* fall. Most such conflicts are negotiated or ignored. In those that go to court, some are decided for the states such as *Dobbs v. Jackson Women's Health Organization (2022)*. In those decided for the federal government, such as *McCulloch v. Maryland (1819)*, the result may be total or partial preemption of state authority. Some court decisions set a floor that state legislation may exceed; others set a ceiling.

This federalism perspective offers teachers and their students an engaging and historically accurate way of seeing and discussing the federal system and hence the American system as a whole. Both imagery and language change dramatically and together. The old-view picture in most textbooks is a hierarchical pyramid with three "levels" – that is, differences become "higher" or "lower" based on status or power – with the federal government on top, the states in the middle, and local governments on the stuck in the "grassroots" bottom. The system is "centralized." Or the pyramid is turned upside down to achieve the look of decentralization.

Such is the way most Americans perceive federalism – at least since 1932. To most Americans, the federal system is a pyramid with the "national" hence "important" questions decided on top by the federal government. But a federalism or federalist view utilizes the imagery of a matrix in which the federal system looks like a system of boxes or arenas in which differences among governments are wider and narrower not higher and lower. The width reflects differences in scope, not status or responsibility. This view is more realistic, as in the case of a disaster when no one stops to ask whether state and local disaster teams on the ground are more or less important than the FEMA aid people receive. This view can also be more practical in setting up more flexible, cooperative, networked responses to challenges that face the country.

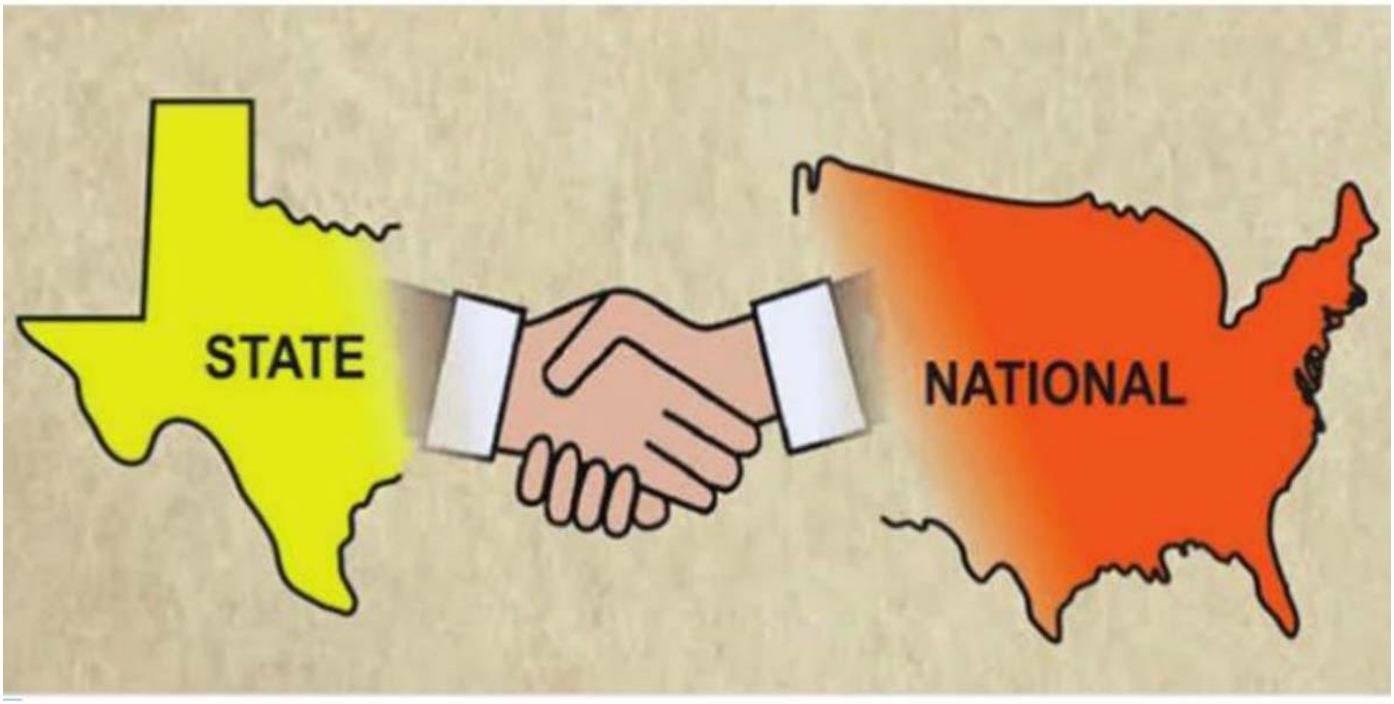


Those differences in scope are also a reminder that federalism is designed to balance unity and diversity. That is, the federal and state governments are both constitutional governments representing "polities" or full political systems with their own constitutions, institutions, economies, and cultures. These polities and their governments have a measure of independence, but they are nested within a common union government. States cooperate and compete—both with each other and with the federal government.

Federalism, then, respects the individual and collective identities of states and of the United States through self-rule and shared rule. As sovereign entities, states enjoy autonomous self-rule on many issues, especially police powers to regulate health, safety, and welfare. However, states band together in shared rule through the instruments of the U.S. Constitution to deliberate and act on collective issues such as national defense, foreign policy, and the regulation of commerce.

The Framers believed that territory and geography—not class or ethnicity—was the key to resolving differences. Territorially based states would require people with class and ethnic differences to work together in the political process.

In many public policy areas, state governments are free to innovate. Today, for example, a diversity of ideas about teaching race in K-12 schools are being tested in 50 "laboratories of democracy." Some states, for example, can teach with pride a history of complete abolition



of slavery long before federal abolition in 1865, while other states must teach with candor what non-abolition meant to both free and enslaved people in their states.

A federal system also provides for both choice and consent. Through the U.S. Constitution, Americans consent to federalism's system of dual sovereignty. Such a system provides for more opportunity for political participation and access to decision makers; possible appeals to multiple governments for public policy resolutions; and citizen choice to move where government policies are more in line with their own.

The values of federalism—unity and diversity, cooperation and competition, shared rule and self-rule, and choice and consent—create a unique political culture in and of itself. A federal political culture recognizes the importance of acting as one on some issues (e.g., declaring war) while respecting a diversity of ideas on others (e.g., reproductive rights); helps to balance sometimes conflicting constitutional values (e.g., liberty and order); and can serve as a safety valve where Americans remain deadlocked on a controversial issue (e.g., the right to die).

Federalism is a form of government, a philosophical idea, and perennial issue, but it is also a set of cultural norms. Wise teachers of U.S. history, civics, and government should help their students understand the broader meanings of federalism. For more information on the cultural norms of federalism, go to the Center for the Study of Federalism.

About the Author

Stephen L. Schechter was a Fellow at the Center for the Study of Federalism and Professor Emeritus of Political Science at Russell Sage College. Professor Schechter wrote or edited more than 20 books on constitutional history and federalism. His books include *Well Begun: Chronicles of the Early National Period*, *Roots of the Republic*, and *Contexts of the Bill of Rights* which he co-edited with Pulitzer-prize nominee Richard B. Bernstein. Schechter served as editor-in-chief of Cengage's multi-volume and award-winning American Governance.

Thomas S. Vontz is Professor of Education and Director of Kansas State University's Center for Social Studies Education. Vontz is a Fellow at the Center for the Study of Federalism, co-author of Congressional Quarterly's *Exploring Political Ideas*, Executive Associate Editor of Cengage's *American Governance*, and directs the Center for Civic Education's Project Citizen program in Kansas.