Advanced Placement American Government
Unit III: The Federal System

Monday	9/16	Quiz over Ch3 pp. 49-60 (Outline sections I - IV) Evaluating sample AP essay questions.
Tuesday	9/17	Practice Essay for AP Exam - Start in class, finish for homework (27 points applied to test/quiz category).
Wednesday	9/18	Collect practice essay question. **Video: DNA and the Death Penalty**
Thursday	9/19	Answers due for questions over ***Federalist #10*** (Reading in Wilson pp. A20-A24, questions in unit packet). **Seminar discussion** of the ideas of ***Federalist #10*** and how they compare to de Tocqueville's ideas in the ***Omnipotence of the Majority***.
Friday 9/20		Parent/Teacher conference day - No School! (Tentative)
Monday	9/23	Quiz over Ch3 pp. 60-71 (Outline sections V - VII) **Video: *Faith, Politics, and the Christian Right***
Tuesday	9/24	Critical Review due on ***The Federal System*** , by Grodzins (in packet). Class discussion and food opportunity (you figure it out)!
Wednesday	9/25	Answers due for questions over ***Federalist #39*** (Ciglar/Loomis p. 38, questions in unit packet) Class discussion of ***Federalist #39***.
Thursday	9/26	Short answer free-responses due for:"***Stacking the Deck on Gay Marriage" by Steve Chapman*** (questions are end of reading. Complete the **Evaluate and Sort out questions.**) **Distribute essay questions for first AP style test.** No notes or other help allowed during test. This will only be done once.
Friday 9/27		**AP Multiple Choice Test** - 60 questions - 45 minutes - Chapters 1,2,3, and 4 (**Wilson text only**)

Monday 10/1 **AP Format Free Response Test**–2 Questions-45 Minutes. Optional I.D. Cards due- 3pts bonus for terms onl;y
5 pts bonus for terms and brief article synopses-Yes! I read them!

3

Federalism

I. Reviewing the Chapter

A. Chapter Focus

The central purpose of the chapter is to introduce you to some of the complexities of government in the United States caused by the adoption of a federal system—that is, one in which both the national and state governments have powers independent of one another. You should also note how the nature and the effects of American federalism have changed throughout American history and continue to change to this day. After reading and reviewing the material in this chapter, you should be able to do each of the following:

1. Explain the difference between federal and centralized systems of government, and give examples of each.
2. Show how competing political interests at the Constitutional Convention led to the adoption of a federal system, but one that was not clearly defined.
3. Outline the ways in which the courts interpreted national and state powers and how the doctrine of dual federalism came to be moot.
4. State why federal grants-in-aid to the states have been politically popular, and cite what have proved to be the pitfalls of such grants.
5. Distinguish between categorical grants and block grants or general revenue sharing.
6. Explain why, despite repeated attempts to reverse the trend, categorical grants have continued to grow more rapidly than block grants.
7. Distinguish between mandates and conditions of aid with respect to federal grant programs to states and localities.
8. Discuss whether or to what extent federal grants to the states have succeeded in creating uniform national policies comparable to those of centralized governments.

B. Study Outline

I. Governmental structure
   A. Federalism: good or bad?
      1. Definition: political system with local government units, in addition to national one, that can make final decisions
      2. Examples of federal governments: Canada, India, Germany
      3. Examples of unitary governments: France, Britain, Italy
      4. Special protection of subnational governments in federal system is the result of
         a. Constitution of country
         b. Habits, preferences, and dispositions of citizens
         c. Distribution of political power in society
      5. National government largely does not govern individuals directly but gets states to do so in keeping with national policy

6. Negative views: block progress and protect powerful local interests
    a. Laski: states "poisonous and parasitic"
    b. Riker: perpetuation of racism
7. Positive view
    a. Elazar: strength, flexibility, liberty
8. Federalism makes good and bad effects possible
    a. Different political groups with different political purposes come to power in different places
    b. *Federalist* No. 10: small political units dominated by single political faction

B. Increased political activity
1. Most obvious effect of federalism: facilitates mobilization of political activity
2. Federalism lowers the cost of political organization at the local level

II. The Founding
A. A bold, new plan to protect personal liberty
1. Founders believed that neither national nor state government would have authority over the other because power derives from people, who shift their support
2. New plan had no historical precedent
3. Tenth Amendment was added as an afterthought, to define power of states

B. Elastic language in Article I: necessary and proper
1. Precise definitions of powers politically impossible because of competing interests, such as commerce
2. Hence vague language—"necessary and proper"
3. Hamilton's view: national supremacy because Constitution supreme law
4. Jefferson's view: states' rights with people ultimate sovereign

III. The debate on the meaning of federalism
A. The Supreme Court speaks
1. Hamiltonian position espoused by Marshall
2. *McCulloch* v. *Maryland* settled two questions
    a. Could Congress charter a national bank? (yes, because "necessary and proper")
    b. Could states tax such a bank? (no, because national powers supreme)
3. Later battles
    a. Federal government cannot tax state bank
    b. Nullification doctrine led to Civil War: states void federal laws they deem in conflict with Constitution

B. Dual federalism
1. Both national and state governments supreme in their own spheres
2. Hence interstate versus intrastate commerce
    a. Early product-based distinction difficult
    b. "Original package" also unsatisfactory
    c. Today dual federalism virtually extinct

IV. Federal-state relations
A. Grants-in-aid
1. Grants show how political realities modify legal authority
2. Began before Constitution with "land grant colleges," various cash grants to states
3. Dramatically increased in scope in twentieth century
4. Were attractive for various reasons
    a. Federal budget surpluses (nineteenth century)
    b. Federal income tax became flexible tool
    c. Federal control of money supply meant national government could print more money
    d. "Free" money for state officials
5. Required broad congressional coalitions

B. Meeting national needs

1. 1960s shift in grants-in-aid
    a. From what states demanded . . .
    b. . . . To what federal officials found important as national needs

C. The intergovernmental lobby
1. Hundreds of state, local officials lobby in Washington
2. Purpose: to get more federal money with fewer strings

D. Categorical grants versus revenue sharing
1. Categorical grants for specific purposes; often require local matching funds
2. Block grants devoted to general purposes with few restrictions
3. Revenue sharing requires no matching funds and provides freedom in how to spend
    a. Distributed by statistical formula
    b. Ended in 1986
4. Neither block grants nor revenue sharing achieved goal of giving states more freedom in spending

V. The slowdown in "free" money

A. Block grants grow more slowly than categorical
1. No single interest group has a vital stake in multipurpose block grants, revenue sharing
2. Categorical grants are matters of life or death for various agencies
3. Revenue sharing was wasteful and lacked a constituency

B. Rivalry among the states
1. Increased competition a result of increased dependency
2. Snowbelt (Frostbelt) versus Sunbelt states
3. Actual difficulty telling *where* funds spent
4. Census takes on monumental importance

VI. Federal aid and federal control

A. Mandates
1. Federal rules states or localities must obey, whether receiving aid or not
    a. Antidiscrimination rules
    b. Pollution-control laws
2. Administrative and financial problems often result
3. Most controversial mandates result from court decisions
    a. Easier now for citizens to sue localities

B. Conditions of aid
1. Attached to grants states receive voluntarily
2. Conditions range from specific to general
3. Divergent views of states and federal government on costs, benefits
    a. Example: Rehabilitation Act of 1973
4. Failed presidential attempts to reverse trend
    a. Example: Nixon's New Federalism creating revenue sharing
5. Reagan's attempt to consolidate categorical grants; Congress's cooperation in name only

C. The states respond
1. Experiments with new ways of delivering services
    a. Encouraged by federal laws such as Federal Support Act
    b. Discouraged by federal rules but still some innovation
    c. Examples: child care, welfare, education (Minnesota, Rhode Island, Maryland)

D. Sorting things out
1. One view
    a. Federal government pays for national programs
    b. States pay for local programs
2. Eisenhower's attempt (1957)
3. Reagan's "swap" (1981)
    a. Failed because Constitution purposely left responsibilities vague

VII. Federalism and public policy
   A. Nation still far from wholly centralized
      1. Members of Congress still *local* representatives
      2. Members of Congress represent different constituencies from the same localities
      3. Link to local political groups eroded
      4. No single national policy in most policy areas
         a. Example: welfare
      5. Increasing difficulty of managing programs
         a. Example: Oakland aircraft hangar
      6. Differences of opinion over which level of government works best

C. Key Terms Match

Match the following terms and descriptions. (Note: One of the descriptions should be matched with two terms.)

a. AFDC
b. block grants
c. categorical grants
d. conditions of aid
e. confederation or confederal system
f. dual federalism
g. Economic Development Administration
h. federal system
i. federal republic
j. grants-in-aid
k. intergovernmental lobby
l. interstate commerce
m. intrastate commerce
n. land grant colleges
o. Madison, James
p. *McCulloch* v. *Maryland*
q. mandates
r. Model Cities
s. national interests
t. necessary-and-proper clause
u. New Federalism
v. nullification
w. revenue sharing

1. ____ Governmental concerns considered to be primarily the responsibility of the central government
2. ____ Governmental concerns considered to be primarily the responsibility of the state governments
3. ____ Supreme or ultimate political authority
4. ____ A system in which sovereignty is wholly in the hands of the national government
5. ____ A system in which the state governments are sovereign and the national government may do only what the states permit
6. ____ A system in which sovereignty is shared between the national and the state governments
7. ____ The Founders' term for a federation
8. ____ The clause that stipulates that powers not delegated to the United States are reserved to the states or to the people
9. ____ A Supreme Court decision embodying the principle of implied powers of the national government
10. ____ The term used by the Supreme Court to create the category of "implied powers" of the national government
11. ____ The doctrine espoused by Calhoun that states could hold certain national government policies invalid within their boundaries
12. ____ The doctrine that both state and national governments are supreme in their respective spheres
13. ____ Business that is conducted in more than one state
14. ____ Business that is conducted entirely within one state
15. ____ Federal funds provided to states and localities
16. ____ State educational institutions built with the benefit of federally donated lands
17. ____ A program proposed in the 1960s to give federal funds to a small number of large cities with acute problems

(continued)

x. sovereignty

y. states' rights

z. Tenth Amendment

aa. unitary system

18. ____ A federal grant for a specific purpose, often with accompanying conditions and/or requiring a local match

19. ____ A federal grant that could be used for a variety of purposes, usually with few accompanying restrictions

20. ____ Federal rules that states must follow, whether they receive federal grants or not

21. ____ Federal rules that states must follow if they choose to receive the federal grants with which the rules are associated

22. ____ Nixon's attempt in the 1970s to reduce federal restrictions on grants-in-aid

23. ____ An interest group made up of mayors, governors, and other state and local officials who depend on federal funds

24. ____ The *Federalist* author who said that both state and federal governments "are in fact but different agents and trustees of the people, constituted with different powers"

25. ____ A federally funded program to distribute welfare benefits

26. ____ A part of the U.S. Department of Commerce

D. Did You Think That . . . ?

Below are listed a number of misconceptions. You should be able to refute each statement in the space provided, referring to information or argumentation contained in this chapter. Sample answers appear at the end of the Handbook.

1. "The Constitution clearly established the powers of the national and state governments."

2. "Most governments in the world today have both national and state governments, as in the United States."

3. "Our national government spends most of its time governing individual citizens."

4. "The complexity of federalism tends to discourage citizen participation in government."

AP GOVERNMENT

QUESTIONS FEDERALIST # 10

1. WHAT IS A FACTION?

2. ACCORDING TO JAMES MADISON, WHAT IS THE PRINCIPLE CAUSE OF FACTIONS IN SOCIETY?

3. HOW WOULD YOU CHARACTERIZE MADISON'S VIEWS ON FACTIONS? HOW DO YOU ACCOUNT FOR HIS BELIEFS?

4. HOW DOES MADISON PROPOSE TO DEAL WITH FACTIONS?

5. WHAT SPECIFIC PROVISIONS ARE INCORPORATED INTO THE CONSTITUTION WHICH RESTRAIN FACTIONS FROM GAINING CONTROL OVER THE ENTIRE GOVERNMENT?

6. IS IT POSSIBLE FOR ONE FACTION TO GAIN CONTROL OF THE ENTIRE GOVERNMENT? IF YES, UNDER WHAT CIRCUMSTANCES?

7. CONSIDERING THE GROWTH OF POLITICAL ACTION COMMITTEES (PAC'S) AND OTHER SINGLE ISSUE GROUPS, DO WE NEED TO PLACE NEW CHECKS ON THESE *FACTION* S IN ORDER TO PRESERVE DEMOCRACY?

The Federalist No. 10

November 22, 1787

James Madison

TO THE PEOPLE OF THE STATE OF NEW YORK.

Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail therefore to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice and confusion introduced into the public councils, have in truth been the mortal diseases under which popular governments have every where perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American Constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty; that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and over-bearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found indeed, on a candid review of our situation, that some of the distresses under which we labor, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it is worse than the disease. Liberty is to faction, what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of Government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them every where brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning Government and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have in turn divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern Legislation, and involves the spirit of party and faction in the necessary and ordinary operations of Government.

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men, are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens, and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are and must be themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and

probably by neither, with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property, is an act which seems to require the most exact impartiality; yet, there is perhaps no legislative act in which greater opportunity and temptation are given to a predominant party, to trample on the rules of justice. Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: Nor, in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought, is, that the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote: It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our enquiries are directed: Let me add that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure Democracy, by which I mean, a Society, consisting of a small number of citizens, who assemble and administer the Government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of Government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronized this species of Government, have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking.

Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens, elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interest of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal, and it is clearly decided in favor of the latter by two obvious considerations.

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each Representative will be chosen by a greater number of citizens in the large than in the small Republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The Federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular, to the state legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of Republican, than of Democratic Government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties

and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a Republic has over a Democracy, in controlling the effects of factions, is enjoyed by a large over a small Republic—is enjoyed by the Union over the States composing it. Does this advantage consist in the substitution of Representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied, that the Representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the Union, increase this security? Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States: a religious sect, may degenerate into a political faction in a part of the Confederacy but the variety of sects dispersed over the entire face of it, must secure the national Councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a Republican remedy for the diseases most incident to Republican Government. And according to the degree of pleasure and pride, we feel in being Republicans, ought to be our zeal in cherishing the spirit, and supporting the character of Federalists.

PUBLIUS

national standards. President Reagan's New Federalism proposed the merging of grant-in-aid programs into block grants to the states leading eventually to a reduced federal role in financing state and local governments. The continuing conflict between the themes and realities of centralization and decentralization are examined in the following selection.

10

Morton Grodzins
THE FEDERAL SYSTEM

Federalism is a device for dividing decisions and functions of government. As the constitutional fathers well understood, the federal structure is a means, not an end. The pages that follow are therefore not concerned with an exposition of American federalism as a formal, legal set of relationships. The focus, rather, is on the purpose of federalism, that is to say, on the distribution of power between central and peripheral units of government.

I. THE SHARING OF FUNCTIONS

The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system. Consider the health officer, styled "sanitarian," of a rural county in a border state. He embodies the whole idea of the marble cake of government.

The sanitarian is appointed by the state under merit standards established by the federal government. His base salary comes jointly from state and federal funds, the county provides him with an office and office amenities and pays a portion of his expenses, and the largest city in the county also contributes to his salary and office by virtue of his appointment as a city plumbing inspector. It is impossible from moment to moment to tell under which governmental hat the sanitarian operates. His work of inspecting the purity of food is carried out under federal standards; but he is enforcing state laws when inspecting commodities that have not been in

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From Morton Grodzins, ed., *Goals for Americans: The Report of the President's Commission on National Goals* (New York: The American Assembly), pp. 265–282. Reprinted by permission.

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Report of the President's Commission on
5–282. Reprinted by permission.

interstate commerce; and somewhat perversely he also acts under state authority when inspecting milk coming into the county from producing areas across the state border. He is a federal officer when impounding impure drugs shipped from a neighboring state; a federal-state officer when distributing typhoid immunization serum; a state officer when enforcing standards of industrial hygiene; a state-local officer when inspecting the city's water supply; and (to complete the circle), a local officer when insisting that the city butchers adopt more hygienic methods of handling their garbage. But he cannot and does not think of himself as acting in these separate capacities. All business in the county that concerns public health and sanitation he considers his business. Paid largely from federal funds, he does not find it strange to attend meetings of the city council to give expert advice on matters ranging from rotten apples to rabies control. He is even deputized as a member of both the city and county police forces.

The sanitarian is an extreme case, but he accurately represents an important aspect of the whole range of governmental activities in the United States. Functions are not neatly parceled out among the many governments. They are shared functions. It is difficult to find any governmental activity which does not involve all three of the so-called "levels" of the federal system. In the most local of local functions—law enforcement or education, for example—the federal and state governments play important roles. In what, a priori, may be considered the purest central government activities—the conduct of foreign affairs, for example—the state and local governments have considerable responsibilities, directly and indirectly.

The federal grant programs are only the most obvious example of shared functions. They also most clearly exhibit how sharing serves to disperse governmental powers. The grants utilize the greater wealth-gathering abilities of the central government and establish nationwide standards, yet they are "in aid" of functions carried out under state law, with considerable state and local discretion. The national supervision of such programs is largely a process of mutual accommodation. Leading state and local officials, acting through their professional organizations, are in considerable part responsible for the very standards that national officers try to persuade all state and local officers to accept.

Even in the absence of joint financing, federal-state-local collaboration is the characteristic mode of action. Federal expertise is available to aid in the building of a local jail (which may later be used to house federal prisoners), to improve a local water purification system, to step up building inspections, to provide standards for state and local personnel in protecting housewives against dishonest butchers' scales, to prevent gas explosions, or to produce a land use plan. States and localities, on the other hand, take important formal responsibilities in the development of national programs for atomic energy, civil defense, the regulation of commerce, and the protection of purity in foods and drugs; local political weight is always a factor in the operation of even a post office or a military establishment. From abattoirs and accounting through zoning and zoo administration, any governmental activity is almost certain to involve the influence, if not the formal administration, of all three planes of the federal system.

II. ATTEMPTS TO UNWIND THE FEDERAL SYSTEM

[From 1947 to 1960] there [were] four major attempts to reform or reorganize the federal system: the first (1947–49) and second (1953–55) Hoover Commissions on Executive Organization; the Kestnbaum Commission on Intergovernmental Relations (1953–55); and the Joint Federal-State Action Committee (1957–59). All four of these groups . . . aimed to minimize federal activities. None of them . . . recognized the sharing of functions as the characteristic way American governments do things. Even when making recommendations for joint action, these official commissions [took] the view (as expressed in the Kestnbaum report) that "the main tradition of American federalism [is] the tradition of separateness." All four . . . in varying degrees, worked to separate functions and tax sources.

The history of the Joint Federal-State Action Committee is especially instructive. The committee was established at the suggestion of President Eisenhower, who charged it, first of all, "to designate functions which the States are ready and willing to assume and finance that are now performed or financed wholly or in part by the Federal Government." He also gave the committee the task of recommending "Federal and State revenue adjustments required to enable the States to assume such functions."[1]

The committee subsequently established seemed most favorably situated to accomplish the task of functional separation. It was composed of distinguished and able men, including among its personnel three leading members of the President's Cabinet, the director of the Bureau of the Budget, and ten state governors. It had the full support of the President at every point, and it worked hard and conscientiously. Excellent staff studies were supplied by the Bureau of the Budget, the White House, the Treasury Department, and, from the state side, the Council of State Governments. It had available to it a large mass of research data, including the sixteen recently completed volumes of the Kestnbaum Commission. There existed no disagreements on party lines within the committee and, of course, no constitutional impediments to its mission. The President, his Cabinet members, and all the governors (with one possible exception) on the committee completely agreed on the desirability of decentralization-via-separation-of-functions-and-taxes. They were unanimous in wanting to justify the committee's name and to produce action, not just another report.

The committee worked for more than two years. It found exactly two programs to recommend for transfer from federal to state hands. One was the federal grant program for vocational education (including practical-nurse training and aid to

[1]The President's third suggestion was that the committee "identify functions and responsibilities likely to require state or federal attention in the future and . . . recommend the level of state effort, or federal effort, or both, that will be needed to assure effective action." The committee initially devoted little attention to this problem. Upon discovering the difficulty of making separatist recommendations, i.e., for turning over federal functions and taxes to the states, it developed a series of proposals looking to greater effectiveness in intergovernmental collaboration. The committee was succeeded by a legislatively based, 26-member Advisory Commission on Intergovernmental Relations, established September 29, 1959.

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fishery trades); the other was federal grants for municipal waste treatment plants. The programs together cost the federal government less than $80 million in 1957, slightly more than two percent of the total federal grants for that year. To allow the states to pay for these programs, the committee recommended that they be allowed a credit against the federal tax on local telephone calls. Calculations showed that this offset device, plus an equalizing factor, would give every state at least 40 percent more from the tax than it received from the federal government in vocational education and sewage disposal grants. Some states were "equalized" to receive twice as much.

The recommendations were modest enough, and the generous financing feature seemed calculated to gain state support. The President recommended to Congress that all points of the program be legislated. None of them was, none has been since, and none is likely to be.

III. A POINT OF HISTORY

The American federal system has never been a system of separated governmental activities. There has never been a time when it was possible to put neat labels on discrete "federal," "state," and "local" functions. Even before the Constitution, a statute of 1785, reinforced by the Northwest Ordinance of 1787, gave grants-in-land to the states for public schools. Thus the national government was a prime force in making possible what is now taken to be the most local function of all, primary and secondary education. More important, the nation, before it was fully organized, established by this action a first principle of American federalism: the national government would use its superior resources to initiate and support national programs, principally administered by the states and localities.

The essential unity of state and federal financial systems was again recognized in the earliest constitutional days with the assumption by the federal government of the Revolutionary War debts of the states. Other points of federal-state collaboration during the Federalist period concerned the militia, law enforcement, court practices, the administration of elections, public health measures, pilot laws, and many other matters.

The nineteenth century is widely believed to have been the preeminent period of duality in the American system. Lord Bryce at the end of the century described (in *The American Commonwealth*) the federal and state governments as "distinct and separate in their action." The system, he said, was "like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, yet each set doing its own work without touching or hampering the other." Great works may contain gross errors. Bryce was wrong. The nineteenth century, like the early days of the republic, was a period principally characterized by intergovernmental collaboration.

Decisions of the Supreme Court are often cited as evidence of nineteenth-century duality. In the early part of the century the Court, heavily weighted with Federalists, was intent upon enlarging the sphere of national authority; in the later years (and to the 1930s) its actions were in the direction of paring down national

powers and indeed all governmental authority. Decisions referred to "areas of exclusive competence" exercised by the federal government and the states; to their powers being "separated and distinct"; and to neither being able "to intrude within the jurisdiction of the other."

Judicial rhetoric is not always consistent with judicial action, and the Court did not always adhere to separatist doctrine. Indeed, its rhetoric sometimes indicated a positive view of cooperation. In any case, the Court was rarely, if ever, directly confronted with the issue of cooperation versus separation as such. Rather it was concerned with defining permissible areas of action for the central government and the states; or with saying with respect to a point at issue whether any government could take action. The Marshall Court contributed to intergovernmental cooperation by the very act of permitting federal operations where they had not existed before. Furthermore, even Marshall was willing to allow interstate commerce to be affected by the states in their use of the police power. Later courts also upheld state laws that had an impact on interstate commerce, just as they approved the expansion of the national commerce power, as in statutes providing for the control of telegraphic communication or prohibiting the interstate transportation of lotteries, impure foods and drugs, and prostitutes. Similar room for cooperation was found outside the commerce field, notably in the Court's refusal to interfere with federal grants-in-land or cash to the states. Although research to clinch the point has not been completed, it is probably true that the Supreme Court from 1800 to 1936 allowed far more federal-state collaboration than it blocked.

Political behavior and administrative action of the nineteenth century provide positive evidence that, throughout the entire era of so-called dual federalism, the many governments in the American federal system continued the close administrative and fiscal collaboration of the earlier period. Governmental activities were not extensive. But relative to what governments did, intergovernmental cooperation during the last century was comparable with that existing today.

Occasional presidential vetoes (from Madison to Buchanan) of cash and land grants are evidence of constitutional and ideological apprehensions about the extensive expansion of federal activities which produced widespread intergovernmental collaboration. In perspective, however, the vetoes are a more important evidence of the continuous search, not least by state officials, for ways and means to involve the central government in a wide variety of joint programs. The search was successful.

Grants-in-land and grants-in-services from the national government were of first importance in virtually all the principal functions undertaken by the states and their local subsidies. Land grants were made to the states for, among other purposes, elementary schools, colleges, and special educational institutions; roads, canals, rivers, harbors, and railroads; reclamation of desert and swamp lands; and veterans' welfare. In fact whatever was at the focus of state attention became the recipient of national grants. (Then, as today, national grants established state emphasis as well as followed it.) If Connecticut wished to establish a program for the care and education of deaf and dumb, federal money in the form of a land grant

was found to aid that program. If higher education relating to agriculture became a pressing need, Congress could dip into the public domain and make appropriate grants to states. If the need for swamp drainage and flood control appeared, the federal government could supply both grants-in-land and, from the Army's Corps of Engineers, the services of the only trained engineers then available.

Aid also went in the other direction. The federal government, theoretically in exclusive control of the Indian population, relied continuously (and not always wisely) on the experience and resources of state and local governments. State militias were an all-important ingredient in the nation's armed forces. State governments became unofficial but real partners in federal programs for homesteading, reclamation, tree culture, law enforcement, inland waterways, the nation's internal communications system (including highway and railroad routes), and veterans' aid of various sorts. Administrative contacts were voluminous, and the whole process of interaction was lubricated, then as today, by constituent-conscious members of Congress.

The essential continuity of the collaborative system is best demonstrated by the history of the grants. The land grant tended to become a cash grant based on the calculated disposable value of the land, and the cash grant tended to become an annual grant based upon the national government's superior tax powers. In 1887, only three years before the frontier was officially closed, thus signalizing the end of the disposable public domain, Congress enacted the first continuing cash grants.

A long, extensive, and continuous experience is therefore the foundation of the present system of shared functions characteristic of the American federal system, what we have called the marble cake of government. It is a misjudgment of our history and our present situation to believe that a neat separation of governmental functions could take place without drastic alterations in our society and system of government.

IV. DYNAMICS OF SHARING: THE POLITICS OF THE FEDERAL SYSTEM

Many causes contribute to dispersed power in the federal system. One is the simple historical fact that the states existed before the nation. A second is in the form of creed, the traditional opinion of Americans that expresses distrust of centralized power and places great value in the strength and vitality of local units of government. Another is pride in locality and state, nurtured by the nation's size and by variations of regional and state history. Still a fourth cause of decentralization is the sheer wealth of the nation. It allows all groups, including state and local governments, to partake of the central government's largesse, supplies room for experimentation and even waste, and makes unnecessary the tight organization of political power that must follow when the support of one program necessarily means the deprivation of another.

In one important respect, the Constitution no longer operates to impede centralized government. The Supreme Court since 1937 has given Congress a

relatively free hand. The federal government can build substantive programs in many areas on the taxation and commerce powers. Limitations of such central programs based on the argument, "it's unconstitutional," are no longer possible as long as Congress (in the Court's view) acts reasonably in the interest of the whole nation. The Court is unlikely to reverse this permissive view in the foreseeable future.

Nevertheless, some constitutional restraints on centralization continue to operate. The strong constitutional position of the states—for example, the assignment of two Senators to each state, the role given the states in administering even national elections, and the relatively few limitations on their lawmaking powers—establishes the geographical units as natural centers of administrative and political strength. Many clauses of the Constitution are not subject to the same latitude of interpretation as the commerce and tax clauses. The simple, clearly stated, unambiguous phrases—for example, the President "shall hold his office during the term of four years"—are subject to change only through the formal amendment process. Similar provisions exist with respect to the terms of Senators and Congressmen and the amendment process. All of them have the effect of retarding or restraining centralizing action of the federal government. The fixed terms of the President and members of Congress, for example, greatly impede the development of nationwide, disciplined political parties that almost certainly would have to precede continuous large-scale expansion of federal functions.

The constitutional restraints on the expansion of national authority are less important and less direct today than they were in 1879 or 1936. But to say that they are less important is not to say that they are unimportant.

The nation's politics reflect these decentralizing causes and add some of their own. The political parties of the United States are unique. They seldom perform the function that parties traditionally perform in other countries, the function of gathering together diverse strands of power and welding them into one. Except during the period of nominating and electing a President and for the essential but nonsubstantive business of organizing the houses of Congress, the American parties rarely coalesce power at all. Characteristically they do the reverse, serving as a canopy under which special and local interests are represented with little regard for anything that can be called a party program. National leaders are elected on a party ticket, but in Congress they must seek cross-party support if their leadership is to be effective. It is a rare President during rare periods who can produce legislation without facing the defection of substantial numbers of his own party. (Wilson could do this in the first session of the Sixty-Third Congress; but Franklin D. Roosevelt could not, even during the famous hundred days of 1933.) Presidents whose parties form the majority of the Congressional houses must still count heavily on support from the other party.

The parties provide the pivot on which the entire governmental system swings. Party operations, first of all, produce in legislation the basic division of functions between the federal government, on the one hand, and state and local governments, on the other. The Supreme Court's permissiveness with respect to the expansion of national powers has not in fact produced any considerable

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extension of exclusive federal functions. The body of federal law in all fields has remained, in the words of Henry M. Hart, Jr., and Herbert Wechsler, "interstitial in its nature," limited in objective and resting upon the principal body of legal relationships defined by state law. It is difficult to find any area of federal legislation that is not significantly affected by state law.

In areas of new or enlarged federal activity, legislation characteristically provides important roles for state and local governments. This is as true of Democratic as of Republican administrations and true even of functions for which arguments of efficiency would produce exclusive federal responsibility. Thus the unemployment compensation program of the New Deal and the airport program of President Truman's administration both provided important responsibilities for state governments. In both cases attempts to eliminate state participation were defeated by a cross-party coalition of pro-state votes and influence. A large fraction of the Senate is usually made up of ex-governors, and the membership of both houses is composed of men who know that their reelection depends less upon national leaders or national party organization than upon support from their home constituencies. State and local officials are key members of these constituencies, often central figures in selecting candidates and in turning out the vote. Under such circumstances, national legislation taking state and local views heavily into account is inevitable.

Second, the undisciplined parties affect the character of the federal system as a result of Senatorial and Congressional interference in federal administrative programs on behalf of local interests. Many aspects of the legislative involvement in administrative affairs are formalized. The Legislative Reorganization Act of 1946, to take only one example, provided that each of the standing committees "shall exercise continuous watchfulness" over administration of laws within its jurisdiction. But the formal system of controls, extensive as it is, does not compare in importance with the informal and extralegal network of relationships in producing continuous legislative involvement in administrative affairs.

Senators and Congressmen spend a major fraction of their time representing problems of their constituents before administrative agencies. An even larger fraction of Congressional staff time is devoted to the same task. The total magnitude of such "case work" operations is great. In one five-month period of 1943 the Office of Price Administration received a weekly average of 842 letters from members of Congress. If phone calls and personal contacts are added, each member of Congress on the average presented the OPA with a problem involving one of his constituents twice a day in each five-day work week. Data for less vulnerable agencies during less intensive periods are also impressive. In 1958, to take only one example, the Department of Agriculture estimated (and underestimated) that it received an average of 159 Congressional letters per working day. Special Congressional liaison staffs have been created to service this mass of business, though all higher officials meet it in one form or another. The Air Force in 1958 had, under the command of a major general, 137 people (55 officers and 82 civilians) working it its liaison office.

The widespread, consistent, and in many ways unpredictable character of

legislative interference in administrative affairs has many consequences for the tone and character of American administrative behavior. From the perspective of this paper, the important consequence is the comprehensive, day-to-day, even hour-by-hour, impact of local views on national programs. No point of substance or procedure is immune from Congressional scrutiny. A substantial portion of the entire weight of this impact is on behalf of the state and local governments. It is a weight that can alter procedures for screening immigration applications, divert the course of a national highway, change the tone of an international negotiation, and amend a social security law to accommodate local practices or fulfill local desires.

The party system compels administrators to take a political role. This is a third way in which the parties function to decentralize the American system. The administrator must play politics for the same reason that the politician is able to play in administration: the parties are without program and without discipline.

In response to the unprotected position in which the party situation places him, the administrator is forced to seek support where he can find it. One ever-present task is to nurse the Congress of the United States, that crucial constituency which ultimately controls his agency's budget and program. From the administrator's view, a sympathetic consideration of Congressional requests (if not downright submission to them) is the surest way to build the political support without which the administrative job could not continue. Even the completely task-oriented administrator must be sensitive to the need for Congressional support and to the relationship between case work requests, on one side, and budgetary and legislative support, on the other. "You do a good job handling the personal problems and requests of a Congressman," a White House officer said, "and you have an easier time convincing him to back your program." Thus there is an important link between the nursing of Congressional requests, requests that largely concern local matters, and the most comprehensive national programs. The administrator must accommodate to the former as a price of gaining support for the latter.

One result of administrative politics is that the administrative agency may become the captive of the nationwide interest group it serves or presumably regulates. In such cases no government may come out with effective authority: the winners are the interest groups themselves. But in a very large number of cases, states and localities also win influence. The politics of administration is a process of making peace with legislators who for the most part consider themselves the guardians of local interests. The political role of administrators therefore contributes to the power of states and localities in national programs.

Finally, the way the party system operates gives American politics their overall distinctive tone. The lack of party discipline produces an openness in the system that allows individuals, groups, and institutions (including state and local governments) to attempt to influence national policy at every step of the legislative-administrative process. This is the "multiple-crack" attribute of the American government. "Crack" has two meanings. It means not only many fissures or access points; it also means, less statically, opportunities for wallops or smacks at government.

If the parties were more disciplined, the result would not be a cessation of the process by which individuals and groups impinge themselves upon the central government. But the present state of the parties clearly allows for a far greater operation of the multiple crack than would be possible under the conditions of centralized party control. American interest groups exploit literally uncountable access points in the legislative-administrative process. If legislative lobbying, from committee stages to the conference committee, does not produce results, a Cabinet secretary is called. His immediate associates are petitioned. Bureau chiefs and their aides are hit. Field officers are put under pressure. Campaigns are instituted by which friends of the agency apply a secondary influence on behalf of the interested party. A conference with the President may be urged.

To these multiple points for bringing influence must be added the multiple voices of the influencers. Consider, for example, those in a small town who wish to have a federal action taken. The easy merging of public and private interest at the local level means that the influence attempt is made in the name of the whole community, thus removing it from political partisanship. The Rotary Club as well as the City Council, the Chamber of Commerce and the mayor, eminent citizens and political bosses—all are readily enlisted. If a conference in a Senator's office will expedite matters, someone on the local scene can be found to make such a conference possible and effective. If technical information is needed, technicians will supply it. State or national professional organizations of local officials, individual Congressmen and Senators, and not infrequently whole state delegations will make the local cause their own. Federal field officers, who service localities, often assume local views. So may elected and appointed state officers. Friendships are exploited, and political mortgages called due. Under these circumstances, national policies are molded by local action.

In summary, then, the party system functions to devolve power. The American parties, unlike any other, are highly responsive when directives move from the bottom to the top, highly unresponsive from top to bottom. Congressmen and Senators can rarely ignore concerted demands from their home constituencies; but no party leader can expect the same kind of response from those below, whether he be a President asking for Congressional support or a Congressman seeking aid from local or state leaders.

Any tightening of the party apparatus would have the effect of strengthening the central government. The four characteristics of the system, discussed above, would become less important. If control from the top were strictly applied, these hallmarks of American decentralization might entirely disappear. To be specific, if disciplined and program-oriented parties were achieved: (1) It would make far less likely legislation that takes heavily into account the desires and prejudices of the highly decentralized power groups and institutions of the country, including the state and local governments. (2) It would to a large extent prevent legislators, individually and collectively, from intruding themselves on behalf of non-national interests in national administrative programs. (3) It would put an end to the administrator's search for his own political support, a search that often results in fostering state, local, and other non-national powers. (4) It would dampen the

process by which individuals and groups, including state and local political leaders, take advantage of multiple cracks to steer national legislation and administration in ways congenial to them and the institutions they represent.

Alterations of this sort could only accompany basic changes in the organization and style of politics which, in turn, presuppose fundamental changes at the parties' social base. The sharing of functions is, in fact, the sharing of power. To end this sharing process would mean the destruction of whatever measure of decentralization exists in the United States today.

V. GOALS FOR THE SYSTEM OF SHARING

The Goal of Understanding

Our structure of government is complex, and the politics operating that structure are mildly chaotic. Circumstances are ever-changing. Old institutions mask intricate procedures. The nation's history can be read with alternative glosses, and what is nearest at hand may be furthest from comprehension. Simply to understand the federal system is therefore a difficult task. Yet without understanding there is little possibility of producing desired changes in the system. Social structures and processes are relatively impervious to purposeful change. They also exhibit intricate interrelationships so that change induced at point "A" often produces unanticipated results at point "Z." Changes introduced into an imperfectly understood system are as likely to produce reverse consequences as the desired ones.

This is counsel of neither futility nor conservatism for those who seek to make our government a better servant of the people. It is only to say that the first goal for those setting goals with respect to the federal system is that of understanding it.

Two Kinds of Decentralization

The recent major efforts to reform the federal system have in large part been aimed at separating functions and tax sources, at dividing them between the federal government and the states. All of these attempts have failed. We can now add that their success would be undesirable.

It is easy to specify the conditions under which an ordered separation of functions could take place. What is principally needed is a majority political party, under firm leadership, in control of both Presidency and Congress, and, ideally but not necessarily, also in control of a number of states. The political discontinuities, or the absence of party links, (1) between the governors and their state legislatures, (2) between the President and the governors, and (3) between the President and Congress clearly account for both the picayune recommendations of the Federal-State Action Committee and for the failure of even those recommendations in Congress. If the President had been in control of Congress (that is, consistently able to direct a majority of House and Senate votes), this alone would have made possible some genuine separation and devolution of functions. The failure to

decentralize by order is a measure of the decentralization of power in the political parties.

Stated positively, party centralization must precede governmental decentralization by order. But this is a slender reed on which to hang decentralization. It implies the power to centralize. A majority party powerful enough to bring about ordered decentralization is far more likely to choose in favor of ordered centralization. And a society that produced centralized national parties would, by that very fact, be a society prepared to accept centralized government.

Decentralization by order must be contrasted with the different kind of decentralization that exists in the United States. It may be called the decentralization of mild chaos. It exists because of the existence of dispersed power centers. This form of decentralization is less visible and less neat. It rests on no discretion of central authorities. It produces at times specific acts that many citizens may consider undesirable or evil. But power sometimes wielded even for evil ends may be desirable power. To those who find value in the dispersion of power, decentralization by mild chaos is infinitely more desirable than decentralization by order. The preservation of mild chaos is an important goal for the American federal system.

Oiling the Squeak Points

In a governmental system of genuinely shared responsibilities, disagreements inevitably occur. Opinions clash over proximate ends; particular ways of doing things become the subject of public debate, innovations are contested. These are not basic defects in the system. Rather, they are the system's energy-reflecting life blood. There can be no permanent "solutions" short of changing the system itself by elevating one partner to absolute supremacy. What can be done is to attempt to produce conditions in which conflict will not fester but be turned to constructive solutions of particular problems.

A long list of specific points of difficulty in the federal system can be easily identified. No adequate congressional or administrative mechanism exists to review the patchwork of grants in terms of national needs. There is no procedure by which to judge, for example, whether the national government is justified in spending so much more for highways than for education. The working force in some states is inadequate for the effective performance of some nationwide programs, while honest and not-so-honest graft frustrates efficiency in others. Some federal aid programs distort state budgets, and some are so closely supervised as to impede state action in meeting local needs. Grants are given for programs too narrowly defined, and overall programs at the state level consequently suffer. Administrative, accounting, and auditing difficulties are the consequence of the multiplicity of grant programs. City officials complain that the states are intrusive fifth wheels in housing, urban redevelopment, and airport building programs.

Some differences are so basic that only a demonstration of strength on one side or another can solve them. School desegregation illustrates such an issue. It also illustrates the correct solution (although not the most desirable method of

QUESTIONS FOR FEDERALIST #39

Answer on separate paper.

1. Why, according to Madison, is it altogether necessary that the new government be republican in nature?

2. On what grounds does he reject the "republican" label when used to describe certain other governments of his day?

3. What would be the difference, in his thinking, between a "federal" and a "national" government?

4. Using this distinction from answer #3, how does Madison describe:

   a. the proposed act of establishing a Constitution?

   b. the composition of Congress and the executive branch?

   c. the actual operation of governmental powers?

   d. the extent of those governmental powers?

   e. the process of amending the Constitution?

5. Madison concludes that the proposed Constitution is neither federal nor national, but a mixture. How do you think that the Constitution might have differed if the authors had decided simply on a:

   a. national government?

   b. federal government?

- From the Wilson text workbook

2.1

The Federalist, No. 39

James Madison

At the time of the framing of the Constitution, the founders were aware of two basic forms of government: a national government, with total central domination, and a confederation, a loose alliance of states in which the central government has virtually no power. When the Constitution and *The Federalist* were written, a "federal" government and a "confederation" were synonymous. The governmental form that has come to be called *federalism,* in which authority is divided between two independent levels, was the invention of the founders, though the label came later.

Critics of the Constitution believed the document gave so much power to the central government that it was in fact "national" in character. In *The Federalist,* No. 39, James Madison refutes this charge and asserts that the new government is "neither a national nor a federal Constitution, but a composition of both." Being a politician, Madison took great pains to point out that the national government's powers are strictly limited to those enumerated in the Constitution and that the residual sovereignty of the states is greater than that of the national government. The first part of this paper can also be regarded as an elegant statement of what Madison meant by the term *republic.*

To the People of the State of New York: The first question that offers itself is, whether the general form and aspect of the government be strictly republican?* It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the revolution; or with that honorable determination, which animates every votary [devotee] of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the Convention therefore be found to depart from the republican character, its advocates must abandon it as no longer defensible.

* A *republican* form of government is one in which power resides in the people but is formally exercised by their elected representatives.

What then are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people, is exercised in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with a hereditary aristocracy and monarchy, has with equal impropriety been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion, to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is *essential* to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is *sufficient* for such a government, that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the Constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the coordinate branches of the legislature. According to all the Constitutions also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behaviour.

On comparing the Constitution planned by the Convention, with the standard here fixed, we perceive at once that it is in the most rigid sense conformable to it. The House of Representatives, like that of one branch at least of all the State

Legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people.* The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of the State Constitutions. The House of Representatives is periodically elective as in all the States: and for the period of two years as in the State of South-Carolina. The Senate is elective for the period of six years; which is but one year more than the period of the Senate of Maryland; and but two more than that of the Senates of New-York and Virginia. The President is to continue in office for the period of four years; as in New-York and Delaware, the chief magistrate is elected for three years, and in South-Carolina for two years. In the other States the election is annual. In several of the States however, no constitutional provision is made for the impeachment of the Chief Magistrate. And in Delaware and Virginia, he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the Judges are to hold their places, is, as it unquestionably ought to be, that of good behaviour. The tenure of the ministerial offices generally will be a subject of legal regulation, conformably to the reason of the case, and the example of the State Constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the Federal and the State Governments; and in its express guarantee of the republican form to each of the latter.

But it was not sufficient, say the adversaries of the proposed Constitution, for the Convention to adhere to the republican form. They ought, with equal care, to have preserved the *federal* form, which regards the union as a *confederacy* of sovereign States; instead of which, they have framed a *national* government, which regards the union as a *consolidation* of the States. And it is asked by what authority this bold and radical innovation was undertaken. The handle which has been made of this objection requires, that it should be examined with some precision.

Without enquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first to ascertain the real character of the government in question; secondly, to enquire how far the Convention were authorised to propose such a government; and thirdly, how far the duty they owed to their country, could supply any defect of regular authority.

* The Seventeenth Amendment, adopted in 1913, changed the election procedure for senators from indirect election by state legislatures to direct election by the people of each state.

First. In order to ascertain the real character of the government it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears on one hand that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation; but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act therefore establishing the Constitution, will not be a *national* but a *federal* act.

That it will be a federal and not a national act, as these terms are understood by the objectors, the act of the people as forming so many independent States, not as forming one aggregate nation, is obvious from this single consideration that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no other wise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority; in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes; or by considering the will of a majority of the States, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act. In this relation then the new Constitution will, if established, be a *federal* and not a *national* Constitution.

The next relation is to the sources from which the ordinary powers of government are to be derived. The house of representatives will derive its powers from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in the Legislature of a particular State. So far the Government is *national* not *federal*. The Senate on the other hand will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct

and co-equal societies; partly as unequal members of the same society. The eventual election again is to be made by that branch of the Legislature which consists of the national representatives; but in this particular act, they are to be thrown into the form of individual delegations from so many distinct and co-equal bodies politic. From this aspect of the Government, it appears to be of a mixed character presenting at least as many *federal* as *national* features.

The difference between a federal and national Government as it relates to the *operation of the Government* is supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy, in their political capacities: In the latter, on the individual citizens, composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so compleatly, as has been understood. In several cases and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the Government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the Government on the people in their individual capacities, in its ordinary and most essential proceedings, may on the whole designate it in this relation a *national* Government.

But if the Government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the *extent* of its powers. The idea of a national Government involves in it, not only an authority over the individual citizens; but an indefinite supremacy over all persons and things, so far as they are objects of lawful Government. Among a people consolidated into one nation, this supremacy is compleatly vested in the national Legislature. Among communities united for particular purposes, it is vested partly in the general, and partly in the municipal Legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controuled, directed or abolished by it at pleasure. In the latter the local or municipal authorities form distinct and independent portions of the supremacy, no more subject within their respective spheres to the general authority, than the general authority is subject to them, within its own sphere. In this relation then the proposed Government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general Government.* But this does not change the principle of the case. The decision is to be impartially made, accord-

* The tribunal to resolve boundary disputes became the Supreme Court (see *McCulloch* v. *Maryland*, which follows this selection).

ing to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general rather than under the local Governments; or to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly *national*, nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established Government. Were it wholly federal on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the Convention is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by *States*, not by *citizens*, it departs from the *national*, and advances towards the *federal* character: In rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal*, and partakes of the *national* character.

The proposed Constitution therefore is in strictness neither a national nor a federal constitution; but a composition of both. In its foundation, it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal, and partly national; in the operation of these powers, it is national, not federal; in the extent of them again, it is federal, not national. And finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national.

Summary Questions

1. According to Madison, why was the new U.S. Constitution neither a "national" nor a "federal" document? Which of its features were designed to curb the national government's domination of the states?
2. Madison believed the Constitution set up a republican rather than a democratic form of government. What features of the document were designed to give the people an indirect rather than a direct influence on public policy?

Sort out the political implications.

- What political motivation might Perry have had for talking about secession? Who would be attracted by such talk, and who repelled?
- How important is the federal relationship to our identities as citizens of states and of the United States?

3.2 Stacking the Deck on Gay Marriage

Steve Chapman, Chicago Tribune

Why We Chose This Piece

You might think of gay marriage as a civil rights issue, but as this opinion piece by Chicago Tribune columnist Steve Chapman shows, the way it has been handled in the United States opens up intriguing issues of federalism and states' rights as well.

As Chapman explains, generally speaking, marriage laws are up to states to determine. (There are limits to a state's autonomy. When some states forbade people of different races to marry, for instance, the Supreme Court stepped in—eventually—to prohibit such laws.) Despite the difference in how states treat marriage, Article IV, Section 1, of the U.S. Constitution says that each state has to respect the "public acts, records, and judicial proceedings" of the others, giving them "full faith and credit." Even if you run away to get married in Las Vegas, you are considered to be married in all fifty states.

Unless, that is, you happen to be gay. Fearing that the courts in the state of Hawaii might legalize gay marriage, and that other states might be forced to follow suit, legislators rushed to write what they called the Defense of Marriage Act (DOMA), which specifically defined marriage as taking place between one man and one woman. It said that a gay marriage did not need to be recognized outside the state where it had taken place and such marriage did not confer any of the federal benefits of marriage. Both houses of Congress passed DOMA handily, and in September 1996, President Bill Clinton signed it into law.

Hawaii did not legalize gay marriage, but in May 2004 the Supreme Judicial Court of the state of Massachusetts decided that gay marriage would be legal there. A few other states have since followed suit. As of this writing, gay marriage is also legal in Vermont, Maine, Connecticut, and Iowa. However, couples married in those states (and those who were married in California before the passage of Proposition 8 put an end to gay marriage there) still are not married in the eyes of the federal government. In the article you are about to read, Chapman argues that DOMA violates the principle of federalism by foreclosing the option of gay marriage at the federal level. Can a state marriage be genuine if it lacks the federal underpinnings?

Selection published: April 26, 2009

The country used to be unanimous in rejecting gay marriage. But that consensus, like the polar ice sheets, is showing some cracks. Vermont recently became the fourth state to allow gays to wed, and New York may be next. Elsewhere, marriage remains as Miss California prefers—solely between a man and a woman.

It's at moments like this that the framers of the Constitution begin to look even wiser than usual. Somehow they anticipated that people in Massachusetts would not want to live under exactly the same laws as people in Mississippi. So they set up a system known as federalism, which allows different states to choose different policies. Thus we simultaneously uphold majority rule and minority rights.

This, at least, is how federalism is supposed to operate—letting subsets of the national population get their way in their own locales. There's only one hitch: In this case, it doesn't quite work that way.

Why not? Because of a huge imbalance created by that longtime nemesis of state sovereignty—the federal government. Under the 1996 Defense of Marriage Act, Virginia has complete authority to deny the privileges and responsibilities of marriage to same-sex partners. But Iowa doesn't have the complete authority to grant them.

Oh, Iowa can provide recognition to gay marriages under all its laws and policies. But that's a surprisingly small part of what marriage encompasses. Under federal law, there are more than 1,100 rights and privileges that go with being a husband or wife. And none of them is available to married same-sex couples.

Under federal law, a person may transfer property to a spouse tax-free. Married couples may file their income taxes jointly. Someone whose spouse dies is assured Social Security survivor's benefits. A married person has the authority to make medical decisions for an incapacitated partner.

Or say you're an American citizen living in this country who marries a foreigner. Normally, you would be entitled to bring your beloved to this country to live permanently and become a citizen.

But if you're both of the same sex, you can forget all of the above. Even though Iowa might like to put heterosexual and homosexual married couples on the same footing, it can't, because the federal statute blocks the way.

"In determining the meaning of any act of Congress, or of any ruling, regulation or interpretation of the various administrative bureaus and agencies of the United States," says DOMA, "the word 'marriage' means only a legal union between one man and one woman as husband and wife."

That decree may sound reasonable: Since most Americans and most states reject same-sex marriage, federal policy should as well. But it conflicts with how the nation has handled marriage up till now, which is to leave it up to individual states to decide who may wed—and then honor those diverse choices.

Some states, for instance, allow marriages between first cousins; others forbid it. Some states allow 15-year-olds to marry with parental consent, while most set the minimum age higher.

And the feds? They have consistently observed a policy of staying the hell out. Washington doesn't tell Colorado and New York which marriages it will acknowledge. Colorado and New York tell it.

Not so with same-sex unions. Under DOMA, the federal government insists that some marriages are not marriages.

That's particularly hard to justify because the other major provision of the law bends over backward to protect state authority over matters marital. It says no state is obligated to recognize a same-sex marriage that took place somewhere else. Gays married in Vermont magically become single when they venture into New Hampshire.

This part of the law goes beyond the norm to accommodate different preferences. Usually, states are obligated to enforce contracts made in other states. Back in the segregationist years, Southern states often honored interracial marriages transacted beyond their borders even though they regarded them as "so unnatural that God and nature seem to forbid them."

Given the strong feelings about gay marriage, the local option is the best option. States that abhor the idea should be free to implement policies reflecting that sentiment. But the other side should have exactly the same prerogative: giving both heterosexual and homosexual couples access to marriage in full.

Our system, unlike Mao's China, is supposed to let a hundred flowers bloom. But for the best growth, the federal sun has to shine on all of them.

Consider the source and the audience.

- The *Chicago Tribune* is a major urban newspaper in the Midwest. Chapman is an opinion writer and a member of the *Trib*'s editorial board. He's married, with kids and a house in the Chicago suburbs. Does this piece have a different impact coming from such a mainstream source than if it appeared, say, in a gay outlet like the *Advocate*?

Lay out the argument, the values, and the assumptions.

- Is Chapman in favor of gay marriage, or against it? Does it matter to his argument?
- What rights does he think marriage entails? What is the relationship of state to federal marriage rights?
- On what grounds does Chapman object to DOMA?

Uncover the evidence.

- What kind of evidence does an argument like Chapman's require? Does he need data, or is it sufficient to rest it on the Constitution and on principles of logic?

Evaluate the conclusion.

- Is Chapman right that DOMA violates the principle of federalism?
- What kind of solution to gay marriage does Chapman favor? Does he argue that gay marriage should be legal in all fifty states?

Sort out the political implications.

- Why was DOMA written the way it was? What do you think was its authors' primary motivation?
- As more states allow gay marriage as an equal right, what might happen to DOMA if it ends up challenged in the Supreme Court?