

Federalism

Sharing of powers between national government and State Governments

Dual Federalism I

□ Cases

- Marbury v Madison
- Gibbons v Ogden
- McCullouch v Maryland
- Dred Scott v Sanford

□ Amendments

- Bill of Rights
- 11th
- 12th

□ Changes

- Abolition

Dual Federalism II

Cases

- Tx v. White
- Plessey v Ferguson
- Schenk v US
- Gitlow v NY

■ 18th

■ 19th

Amendments

- 13th
- 14th
- 15th
- 16th
- 17th

Changes

- Interstate commerce act
- Sherman antitrust act
- Keating Owen Act
- Industrialization
- Stock market crash

Cooperative Federalism

- Amendments
 - 21st
 - 22nd
- Court Cases
 - Powell v AL
 - Korematsu v US
 - Brown V Board
 - US v Darby
- Changes
 - Great Depression
 - New Deal
 - WWII
- Fair labor standards Act
- Agricultural Adjustment Act
- Court Packing Scheme
- Banking Act
- Executive Order 9981
- Little Rock 9
- Categorical Grants
- Grants in Aid

Creative Federalism

- Cases
 - Baker v Carr
 - Westbury v Sanders
 - Furman v GA
 - Griswold v CT
 - Miranda v AZ
 - Gideon v Wainwright
 - Roe v Wade
- Amendments
 - 23rd
 - 24th
 - 25th
 - 26th
- Changes
 - Great Society
 - War on Poverty
 - Civil Rights
 - Civil rights act 1964
 - Voting rights act 1965
 - Fair housing act 1968
 - Clean air act

Devolution

□ Cases

- Garcia v San Antonio Metro
- Webster v Reproductive Health Services
- Seminole Tribe v FL
- US v Lopez
- Printz v US
- US v Morrison

□ Changes

- Block Grants
- Contract with America
- Unfunded mandate reform act
- Personal responsibility and work opportunity Act
- TANF
- Defense of Marriage Act
- 911

□ Amendments

- 27th

The Evolution of State and Local Governments

- Original unit: the state
- States determined the existence of local government
- States and local governments primarily part-time in the past. Grew to be full-time.
- Not always representative of all constituencies.
 - *Baker v. Carr* (1962) One person, one vote
 - 1960s and 1970s
 - More responsibilities given to states; more assistance, more mandates
 - Since 1970s, national government has moved to give states more autonomy and fewer federal dollars.

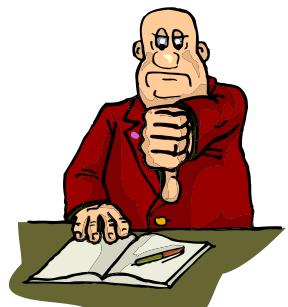
State Governments

- Have primary responsibility for
 - Education
 - Public health
 - Transportation
 - Economic development
 - Criminal justice
- Licenses and regulates various professions
- Recently more involved in environmental and welfare policies



State Constitutions

- Describes the basic policies, procedures, and institutions of the governments of a specific state
- Original state constitutions
 - Did not fully embrace checks and balances
 - Governors were particularly weak
 - Legislatures powerful
 - Originally, S.C., N.Y., and Massachusetts gave governor's veto power.
 - Impact of Civil War
 - Role of Western States



State Constitutions

- Compared to the U.S. Constitution, state constitutions are easy to amend.
 - Every state allows for the convening of a constitutional convention,
 - AND each has a process for the legislature to pass an amendment.
 - Usually by supermajority; submit to voters for approval through a referendum
 - Implication: frequent changes & longer documents
 - 6,000 specific amendments adopted

Governors

- Chief elected executive in state government
 - Most visible
 - Most important role: identifying pressing problems of their state and proposing solutions
 - Budgets are critical
 - Veto authority
 - General or package
 - Line-item veto
 - Implementation influence
 - Judicial appointments, pardoning power
 - Extradition





State Legislatures

- Originally strong yet non-professional in nature
 - Half original state legislatures began without a gubernatorial veto check.
 - Many formulated budgets and made administrative appointments.
 - Citizen legislators
- Today: 43 state legislatures meet every year.
 - Floor sessions longer
 - More committee work
 - All but Nebraska have two chambers
- Term limits

TABLE 4.1 States with Term Limits

	<i>House</i>		<i>Senate</i>	
	<i>Takes Effect</i>	<i>Limit (years)</i>	<i>Takes Effect</i>	<i>Limit (years)</i>
Maine	1996	8	1996	8
California	1996	6	1998	8
Colorado	1998	8	1998	8
Arkansas	1998	6	2000	8
Michigan	1998	6	2002	8
Florida	2000	8	2000	8
Missouri*	2002	8	2002	8
Ohio	2000	8	2000	8
South Dakota	2000	8	2000	8
Montana	2000	8	2000	8
Arizona	2000	8	2000	8
Oklahoma	2004	12	2004	12
Nevada	2008	12	2008	12
Utah	2006	12	2006	12
Wyoming	2006	12	2006	12
Louisiana	2007	12	2007	12
Nebraska	n/a	n/a	2008	8

*Because of special elections, term limits were effective in 1998 for one senator and in 2001 for five House members.

Source: <http://www.ncsl.org/programs/legman/about/states.htm>

State Courts

- Primary function: settle disputes
 - Most disputes matter of state law
 - Criminal behavior
 - Family law
 - Contracts, liability, land use
 - States are separate systems
 - Own rules, procedures
 - The ONLY time state and federal courts converge is when a case
 - involves a claim that a state law or practice violates a federal law
 - or, a state court judge has interpreted the Constitution.

State Courts

□ Inclusion

- The principle that state courts will apply federal laws when those laws directly conflict with the laws of the state.

□ Specialized courts

- Issues such as family disputes, traffic
- Do not use juries

□ Appellate courts

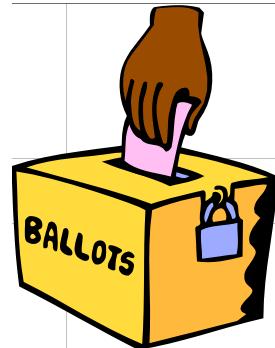
- Have panels of judges



FIGURE 4.2 State Court Structure

Most state courts have the basic organization shown in the figure below.

	Jury or Bench Trials	Jurisdiction	Judges
STATE SUPREME COURT	Bench only	Appeal (limited)	Panel of judges, elected/appointed for fixed term
APPEALS COURTS	Bench only	Appeal (readily granted)	Panel of judges, elected/appointed for fixed term
CIRCUIT OR COUNTY COURTS	Jury and Bench	Original and appeal	One judge per court, elected/appointed for fixed term
MUNICIPAL AND SPECIAL COURTS	Bench only	Original	One judge per court, elected/appointed for fixed term



Elections and Political Parties

- Determine who will fill offices and direct the state government
- Almost all elections are partisan.
- Party histories vary among states.
 - Competition between Republican and Democratic Party since the Civil War
 - Since 1994, Republicans have made gains in state elections.
 - Today, Republicans hold majority of governorships.
 - Georgia: last southern state that elected only Democratic governors since the Reconstruction era.
 - While important, partisanship does not always predict outcomes.

TABLE 4.2 Judicial Selection Patterns

<i>Partisan Election</i>	<i>Nonpartisan Election</i>	
Alabama	Arizona	
Arkansas	California	
Georgia	Florida	
Indiana	Idaho	
Illinois	Kentucky	
Kansas	Michigan	
Louisiana	Minnesota	
Mississippi	Montana	
Missouri	Nevada	
New Mexico	North Dakota	
New York	Ohio	
North Carolina	Oregon	
Pennsylvania	Oklahoma	
Tennessee	South Dakota	
Texas	Washington	
West Virginia	Wisconsin	
<i>Election by Legislature</i>	<i>Appointment by Governor</i>	
Connecticut	Delaware	
Rhode Island	Hawaii	
South Carolina	Maryland	
Vermont	Massachusetts	
Virginia	New Hampshire	
	New Jersey	
<i>Missouri (Merit) Plan</i>		
Alaska	Iowa	Oklahoma
California	Kansas	Tennessee
Colorado	Missouri	Utah
Indiana	Nebraska	Wyoming

Source: *The Book of the States, 2000–2001*, 137–39. ©2000, Council of State Governments. Reprinted with permission.

Direct Democracy



□ Progressive Reform

■ Direction initiatives

- Voters can place a proposal on a ballot and enact it into law without involving the legislature or governor.

■ Indirect initiatives

- Legislature places a proposal on a ballot and allows voters to enact it into law, without involving the governor or further action by the legislature.

TABLE 4.3 Authority for the Initiative and Popular Referendum

<i>State</i>	<i>Direct Initiative</i>	<i>Indirect Initiative</i>	<i>Popular Referendum</i>
Alaska		X	X
Arizona		X	X
Arkansas	X		X
California	X		X
Colorado	X		
Florida	X		
Idaho	X		X
Illinois	X		
Kentucky			X
Maine		X	X
Maryland			X
Massachusetts		X	X
Michigan	X	X	X
Mississippi		X	
Missouri	X		X
Montana	X		X
Nebraska	X		X
Nevada	X	X	X
New Mexico			X
North Dakota	X		X
Ohio	X	X	X
Oklahoma	X		X
Oregon	X		X
South Dakota	X		X
Utah	X	X	X
Washington	X	X	X
Wyoming		X	X

Source: *The Book of the States*, 2000–2001, 211. ©2000, Council of State Governments. Reprinted with permission.

Direct Democracy

- Direct referendum
 - Voters can veto a bill recently passed in the legislature by placing the issue on a ballot and expressing disapproval.
- Advisory referendum
 - Voters cast non-binding ballots on an issue or proposal.
- Recall
 - Voters can petition for a vote to remove office holders between elections.

Local Governments

- More individualized than state governments
- Most office-holders are part-time.
- Immediacy of issues: health and safety, education, jobs and economic vitality, zoning.
- Stuff of every day living



Charters



Dillon's Rule (1868)

- Court ruling that local governments do not have any inherent sovereignty but instead must be authorized by state government.

Charter

- Document that, like a constitution, specifies the basic policies, procedures, and institutions of a municipality.

- Special
- General
- Classified
- Optional
- Home Rule

Types of Local Governments

- Counties
 - Geographic district created within a state with a government that has general responsibilities for land, welfare, environment and sometimes rural service policies.
- Towns
 - Five states in Midwest refer to towns as form of government in which everyone in a community is invited to an annual meeting to elect officers, adopt ordinances, and pass budgets.
- Municipality
 - Government with general responsibilities, such as city, town or village government, that is created in response to the emergence of relatively densely populated areas.
- Special district
 - Local government with particular function, e.g. water, parks.

Municipal Government

TABLE 4.4 Major Forms of Municipal Government

Form of Government	1984	1988	1992	1996	1998	2002
Council-Manager	3,387 (48.5%)	3,232	2,760	2,441	2,356	2,290 (34.7%)
Mayor-Council	3,011 (43.1%)	2,943	3,319	3,635	3,686	3,686 (55.8%)
Commission	143 (2.0%)	146	154	168	173	176 (2.7%)
Town Meeting	337 (4.8%)	333	365	363	369	370 (5.6%)
Representative Town Meeting	63 (.9%)	65	70	79	82	81 (1.2%)
Total	*6,981	*6,719	*6,668	*6,686	*6,666	*6,603 (100%)

*Totals for U.S. local governments represent only those municipalities with populations of 2,500 and greater. There are close to 30,000 local governments with populations under 2,500.

Source: Statistics from "Inside the Year Book: Cumulative Distributions of U.S. Municipalities," *The Municipal Year Books 1984–2002*, International City/County Management Association (ICMA), Washington, DC.

State and Local Finances

- Federal funding for state and local government generally declining.
 - Increase in requirement of state spending to support national programs and concerns.
 - Security costs
- Taxes and fees vary across states
 - Rely equally on income and sales taxes
 - Some have no sales taxes; some have double digit sales taxes
 - Some have no income tax
 - Tax increases generally bode ill for elected officials at the state level.
- Local governments rely on property taxes.

State and Local Finances

□ Progressive Tax

- Tax level increases with the wealth or ability of an individual or business to pay

□ Regressive Tax

- Tax level increases as the wealth or ability of an individual or business to pay decreases

Texas vs. US government

- Both have constitutions
 - United States
 - 7 Articles
 - 27 Amendments
 - 20 pages
 - 220 years
 - Texas
 - 17 Articles
 - 432 Amendments
 - 140 pages
 - 131 years

Texas vs. US government

- Both have Bicameral Legislatures
 - Senate
 - U. S.
 - Senate represents States
 - 2 per state 100 total
 - 30 years old
 - Resident 9 years
 - U. S. Citizen
 - Texas
 - Senate represents Geographic areas
 - 1 per area 31 total
 - 26 years old
 - Resident 5 years
 - U. S. Citizen

Texas vs. US government

- Both have Bicameral Legislatures
 - House of Representatives
 - U. S.
 - Texas
 - House represents people in the States (435 total)
 - Based on states population
 - 25 years old
 - Resident 7 years
 - U. S. Citizen
 - House represents people divided into 150 districts
 - 1 per district 150 total
 - 21 years old
 - Resident 2 years
 - U. S. Citizen

Texas vs. US government

- Both have executives

- U. S.

- President

- 35 years old natural born citizen

- Lived in US for 14 years

- Texas

- Governor

- 30 years old US citizen

- Resident 5 years

- Unlike the US where the President selects his dept. heads (Cabinet) with senate approval, The Texas Governor selects only the Secretary of State. All other Dept. heads are elected by the people.

Texas vs. US government

- Both have Judicial Branches
 - U. S.
 - Supreme Court
 - Many Federal Appeals Courts
 - Many District Courts
 - Judges appointed for Life term
 - Texas
 - 2 Supreme Courts
 - Courts of Appeals
 - Many Lower courts
 - Judges elected for varying terms.
- Unlike the US the people elect the Judges to the bench, unless there is an emergency vacancy, then the Governor appoints.