

Policymaking in a Federal System: The U.S. Experience in Education and Health Care

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Resumo

O Federalismo nos Estados Unidos envolve a divisão da autoridade e responsabilidade entre diferentes níveis de governo, incluindo os governos nacional, estatal e local. A interação entre essas esferas cria um processo político complicado. A partir da dimensão constitucional, a constituição americana fornece certos poderes ao governo nacional, embora as constituições estaduais também aumentem as responsabilidades dos estados. Já na dimensão financeira, doações de verbas entre as diferentes esferas de governo frequentemente moldam a formulação de políticas. Educação e saúde são exemplos dessa dinâmica política. No ensino elementar e secundário, os estados têm a responsabilidade primária constitucional e financeira, mas o governo nacional tem um papel cada vez mais importante e os distritos escolares locais prestam serviços educacionais. Na política de saúde, o governo nacional assume a responsabilidade primária e os estados desempenham um papel significativo, embora secundário. A formulação de políticas em um sistema federal tem vantagens e desvantagens, e navegar com sucesso nessa arena intergovernamental permanece como um desafio importante para os políticos das esferas nacional, estadual e local.

Palavras-Chave:

Federalismo, relações intergovernamentais, política pública, política de saúde, política de educação.

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Abstract

Federalism in the United States involves the division of authority and responsibility among different levels of government, including national, state and local governments. The interplay among these levels creates a complicated policy process. From a constitutional dimension, the U.S. Constitution provides certain powers to the national government, but state constitutions also highlight state-level responsibilities. From a financial dimension, grants between levels of government often shape policymaking. Education and health care provide examples of this policy dynamic. In elementary and secondary education policy, the states have primary constitutional and financial responsibility, but the national government plays an increasingly important role, and local school districts deliver educational services. In health care policy, the national government has assumed primary responsibility, with states playing a significant although secondary role. Policymaking in a federal system has both advantages and disadvantages, and successfully navigating this intergovernmental arena remains an important challenge for national, state and local policymakers.

Keywords

federalism, intergovernmental relations, public policy, health care policy, education policy

Public policymaking in the United States is shaped fundamentally by American federalism. Like Brazil, the United States has a federal system that divides authority and responsibility among national, state and local governments. Our focus in this essay is how that division of authority and responsibility affects the development of public policies. For examples, we turn to education and health care, which are two areas with quite different policy dynamics. How does federalism help us to understand those different dynamics?

Public policies, like education and health care, are what governments do. Each is an accumulation of events by which officials in government seek to achieve desired outcomes. In a typical definition, James Anderson defines policy as a “relatively stable, purposive course of action or inaction followed by an actor or set of actors in dealing with a problem or matter of concern.”¹ *Public* policies are those policies developed by governmental bodies and officials.

There are many areas of American public life in which “purposive” actions and inactions are pursued. From foreign policy to welfare policy to housing policy, government officials engage in numerous debates, deliberations and actions to pass laws and develop programs to address perceived needs. Policymaking is complicated and often contentious as policy problems are debated, discussed and defined; legislation is drafted amidst numerous compromises; and programs are designed and implemented.

Federalism is an important part of this story. Government policymakers and bureaucrats at different levels of the federal system – national, state and local – often have quite different interests and perspectives on how particular policies should be developed and implemented. As we will see, for example, education policy is currently being reshaped as state policymakers respond to the Obama Administration’s proposals to restructure accountability systems. In health care as well, states are playing a key role. Many states objected to the recent national health reform act and sought relief in the courts and through the political process. In both policy areas, federalism is central to the unfolding policy dynamic.

To set the stage for our policy discussion, we turn first to a closer look at American federalism. Two dimensions – constitutional and financial – are particularly helpful to our understanding of federalism and policymaking.

Constitutional Dimension. The structures and practices of American federalism are grounded in the U.S. Constitution, which is one of the oldest national constitutions in the world. Approved in 1789, the Constitution is based upon a broad ‘framework’ approach to constitutional design. It is relatively short – only 18 pages in length -- and provides general parameters for government structures and responsibilities, but few details. In contrast, the 1988 Brazilian Constitution is much longer – 110 pages in length -- and provides considerably more details on the structures and responsibilities of government. One result of this brevity for the U.S. Constitution is the frequent debates over how this document should be applied.

The U.S. Constitution focuses primarily on the structure and authority of the national government. Article I, which describes the legislative branch, lists a number of specific powers of the national government, such as supporting an army and providing for a national currency. In addition to these “enumerated powers,” the Constitution contains a number of other clauses that identify important responsibilities for the national government.

- The “necessary and proper” clause empowers the national government to engage in activities needed – necessary and proper – to carry out existing powers.
- The “general welfare” clause empowers the national government to engage in activities that support the general welfare of the country.
- The “interstate commerce” clause allows the national government to regulate activities between the states.
- The “equal protection of the laws” clause in the 14th Amendment empowers the national government to remedy discriminatory actions that might exist in states, such as racial discrimination in the assignment of children to schools.

These clauses raise the possibility that the national government might engage in activities beyond the “enumerated powers.” Furthermore, Article VI of the Constitution states that the Constitution, and all laws passed by the national government, shall be the “supreme law of the land.” This statement appears to make clear that national laws are supreme over laws passed by state governments, should there be a conflict.

State governments, on the other hand, are not given specific powers or responsibilities in the U.S. Constitution. The treatment of the states in the U.S. Constitution is much briefer than the national government. However, the 10th Amendment to the Constitution, passed just a few years after the Constitution was approved, reserves to the states and the people those “powers not delegated” to the national government. A strict reading of this clause would support a position for a limited national government role, leaving many policy areas to the responsibility of the states.

Indeed, many policy debates in American politics are, in part, a debate about which level of government should be responsible for a specific policy. Education and health care, for example, which are our focus later in this paper, are not mentioned in the Constitution. Which level of government should take responsibility for these important policies? The U.S. Constitution does not provide clear guidance on this question.

Adding to the constitutional dimension, each state has its own constitution that provides detailed descriptions on the structure of state government and its roles and responsibilities. Included in each state constitution is a description of local governments, such as municipalities and school districts. This third level of the American intergovernmental system is not mentioned at all in the U.S. Constitution. Cities, counties, special districts, school districts and other forms of local government are the creation of states, not the national government.

Financial Dimension. The complexity of American federalism from a constitutional perspective is reflected in the financial spending pattern for many important policy areas.

Table 1 provides a breakdown for spending by national, state and local governments in several important policy areas.

Health care, for example, is a policy area that is split among all three levels of government, with national and state governments sharing the major roles. Of the \$906 billion spent in 2008 on health care by all governments, the national government spent 44% and the states spent 43%. In education, on the other hand, local governments in the form of school districts have the primary role, as measured by direct expenditures. Local governments spend 70% of the monies devoted to education. This overall pattern of spending, in which all three levels of government play a role, raises many issues around coordination of policy development and service delivery by government officials at these levels.

Table 1 – Financial Dimension²

	Social Security and Pensions	Health Care	Education	Welfare
Total Direct Expenditures (in Billions, 2008)	\$840	\$906	\$859	\$498
<i>Level of Gov't</i>				
National	79,00%	44,00%	2,00%	57,00%
State	17,00%	43,00%	28,00%	26,00%
Local	4,00%	13,00%	70,00%	17,00%
Total	100%	100,00%	100,00%	100,00%

This picture is further complicated by the intergovernmental transfer of monies between levels of government. In a number of policy areas one level of government raises money through taxation and other means, than transfers those monies as grants to another level of government where it is actually spent. In welfare policy, for example, the national government transfers some monies to states and local governments to be used in various welfare programs. In elementary and secondary education, local school districts account for almost all direct expenditures, but they receive over half of those monies from state governments, and to a lesser extent, the national government. In these and other policies, intergovernmental fiscal relations are often critical in the policy process.

Policymaking in a Federal System. Constitutional and financial dimensions point to a complicated policymaking system in which all three levels of government typically play some role in the policy process. This creates a high degree of interdependence among levels of government for the development and implementation of many public policies. National policymakers, for example, may have the major responsibility to design a particular policy, but they might rely upon state and local officials for the actual delivery of

that service. This interdependence has been characterized by some as “picket fence” federalism in which officials at the three levels of government are connected together, similar to the vertical pieces of a picket fence.³

This interdependence is sometimes cooperative, but it also can be competitive and conflictual. Government officials at the three levels might work together with a common goal and in a cooperative manner, but in other instances they might see themselves as competitors or obstacles to successful policymaking and delivery. Superintendents and principals in local school districts, for example, sometimes view state and national education officials as supporters and helpful guides in the development of education policy, but in other cases, those officials at ‘higher’ levels are seen as intruders or obstacles to the local delivery of a quality education system.

Policymaking in a federal system, then, is often filled with debate and tension among government officials at the three levels. At each level, officials develop strategies to ‘work the system’ in order to achieve their goals. Deil Wright describes the many games officials play, such as “grantsmanship,” in which officials develop skills to successfully apply for grant monies from other levels of government, and “end run,” in which local officials bypass the state level and go directly to national-level officials to secure policy support.⁴

To explore the role of federalism in public policymaking, we turn now to two important policy areas – public education and health care – that demonstrate quite different policy dynamics.

Education Policy. Public education is one of the most important policy areas in the United States and also one of the most intergovernmental. The delivery of educational services for kindergarten through high school students, which is the focus in this essay, relies extensively upon all three levels of government. Policymakers and officials at these levels share a common goal to improve learning outcomes so all students are prepared for success in careers, college and citizenship. This common goal is frequently cast in terms of high learning standards for all students, accountability for students and adults to reach those standards, and adequate finances to support this system. To understand the intergovernmental dynamic that shapes this policy area, we turn first to the constitutional and financial dimensions.

Education: Constitutional Dimension. As noted earlier, the word ‘education’ is not in the U.S. Constitution. Unlike the Brazilian Constitution that describes education as a right of all citizens and obligation of the government, the U.S. Constitution makes no reference to education. Furthermore, the U.S. Constitution makes no reference to municipalities or other local governments that could deliver educational services. Again, the Brazilian Constitution outlines an important role for states and municipalities in education policy, but the U.S. Constitution is silent in all respects.

What does this mean for education policy? From a reading of the U.S. Constitution, it is not clear what role national, state and local governments might play in the development and delivery of educational services. Indeed, at the national level, in the 1973 court case of *San Antonio School District v. Rodriguez*, which involved claims of inequitable

financing for public schools, the U.S. Supreme Court declared that since there is no right to education in the U.S. Constitution, the national government is not responsible to address inequities in funding for public schools. The Court suggested that state government would be the more appropriate venue for such cases.

Indeed, each state has its own constitution that includes a reference to the state's responsibility to provide an education for its citizens. The Illinois Constitution, for example, declares that state government is responsible "to provide for an efficient system of high quality public educational institutions and services." The New York Constitution states that "the legislature shall provide for the maintenance and support of free common schools, wherein all the children of this state may be educated." Pursuant to these constitutional provisions, every state has created a system to provide educational services.

Furthermore, it is up to each state to establish local governments that can assist in the delivery of educational services. States have done this, although in somewhat different ways. Most states have created local school districts in which a school board composed of local citizens, elected or appointed, hires a superintendent who is responsible for then hiring principals and teachers to work in individual schools. A school district might have the same boundaries as a municipality, but many do not.

Does this leave the national government without a role in education policy? No, but from a constitutional perspective, the national government must turn to the "equal protections" clause and other areas of the Constitution for its bases of action. The states can claim a clearer mandate for action based on their own constitutions, but the education policy terrain is certainly open for debate.

Education: Financial Dimension. The importance of federalism also is apparent when we consider the funding of public schools. In 2008-09, \$605 billion was spent in the United States on elementary and secondary public education.⁵

This level of expenditure amounted to just over \$10,000 per student.⁶

Table 2 – Education: Financial Dimension⁷

	Revenue Raised by...	Intergovernmental Transfers by...	Direct Expenditures...
National	9%	8%	<1%
State	47%	1%	2%
Local	44%	53%	98%

This is a considerable sum of money. What role does each level of government play in this financial dimension? The answer points again to the importance of state and local governments. If viewed from a revenue perspective, state governments raise 47% of the revenues used to support public education, while local governments raise 44% (see table 2). For most states, the state income tax and sales tax are the key revenue sources; for most local governments the property tax is the largest revenue source. Only 9% of education revenues are raised by the national government. While national government officials often highlight the importance of public education and make claims around improving education, most of the money to support education comes from the other two levels of government.

Of particular interest – from a federalist perspective – is that over half of this money is transferred between levels of government before it is directly spent on educational services. Almost all of the money raised by the national government is transferred to states (8%) and school districts (1%), with most of it going to states, which then transfer it to school districts. Similarly, almost all of the money raised by states for public education is transferred to school districts, where it is spent on teachers' salaries, curriculum material, and other educational purposes. Thus, local school districts spend about 98% of all funds devoted to elementary and secondary education, but they raise less than half of that from their own revenue sources.

This transfer of monies between levels of government points to the importance of intergovernmental grants as a critical part of education policy. Some of these funds are transferred based on competitive grant proposals, but most transfers are done through formulas. The national government, for example, transfers money to states based on a number of factors, with the number of low-income students a particularly prominent one. Also, most states have a basic grant program that allocates monies to school districts based on the number of students in the district and might also include income and other factors. These formulae can be quite complicated, and they are very important in discussions that take place around education policy.

Building from our discussion on constitutional and financial dimensions, we focus now on the major roles and responsibilities of each level of government.

Education: Government Roles. By their own constitutions, state governments have the responsibility to provide a public education for citizens of their state. Each state establishes a structure of school districts for the delivery of educational services and develops many of the major requirements and guidelines for education. Each has a state education agency that works closely with the federal government and local school districts to develop a quality educational system.

Funding is one of the most important state roles. As noted above, on average, states raise almost half of the revenues used to support public education. State financial support for education, however, varies considerably across the country. The state of Vermont is on one end of this spectrum, providing 89% of the monies for total education spending, while state funding in Illinois provides only 30% of all revenues used in education

spending. In Illinois, then, local governments must provide a major part of school funding through their own revenue sources, whereas in Vermont local governments provide a very small amount of the funding.

The adequacy of state funding is a frequent source of controversy. Since the 1973 San Antonio court case in which the U.S. Supreme Court removed responsibility for such issues from the national government, state courts have become the frequent setting for such actions. Indeed, in forty states legal suits have been filed in state courts seeking changes in how schools are funded. In many cases the complaint is on equity grounds because poorer communities with limited property values are not able to raise as much money to support their schools as are more wealthy communities. In other cases, the complaint is that overall spending is not high enough to provide a quality education. In about half of these cases the state court has agreed and has requested that more funding be provided to poorer communities or overall to all schools. A political battle often follows between the legislature and governor over how to address the court's request.

In addition to funding, states usually provide overall guidance on learning standards, curriculum, and assessments that will be used in the public schools. Massachusetts, for example, established in the mid-1990s a set of learning standards for all grades and all subjects. Based on these broad guidelines, curriculum frameworks were developed in basic subject areas. Teachers used these frameworks to help develop their instructional plans. The state then developed an assessment system based on the curriculum frameworks. Known as the Massachusetts Comprehensive Assessment System (MCAS), tests are given in grades 3 through 10 in key subject areas. To graduate from high school, students must pass the mathematics and English language arts MCAS tests.

Each state can develop its own approach to standards, curriculum and assessment. Some states develop very robust and detailed materials in this area, while others provide less material and leave more responsibility to local school districts. The result is a variety of standards, curriculum and assessment tools. Some argue that this diversity is a positive result of federalism, while others are more critical, raising concerns that some states are not providing a quality educational experience for their students. In response to this later critique, a recent effort known as the Common Core State Standards Initiative has gained considerable prominence. Supported by over forty states, common standards are being developed in mathematics and English language arts. A key question in the next few years will be whether and how states incorporate these standards into their own educational systems.

States have a variety of other educational responsibilities. Each state establishes guidelines and requirements for the training of teachers, which is usually done through colleges and universities, and requirements for teachers to receive and retain a license to teach in particular subject areas. States also pass laws that outline labor-management relations in education, including the general role of unions and collective bargaining in those states that have public sector unions. Many states also play an important role in funding the construction of new school buildings and related facilities.

At the local level, school board members, superintendents, principals and teachers are responsible for delivering educational services through school districts. In 2002, there were 15,014 school districts across the country.⁸ Some districts include only a few schools, while large urban districts might have several hundred or more individual schools. Each state defines the structure and responsibilities of the district. In some cases, as noted earlier, a school district has the same boundaries as a municipality, but school districts more often overlap municipal boundaries, such as a regional school district that includes several municipalities or a school district that is coterminous with county boundaries.

Governance and finances also vary. Most school districts have elected school boards with citizens chosen from the community to serve on the board. Often board members receive no compensation, serving on the board because of their interest in education and public service. They are responsible for hiring the superintendent and providing overall policy guidance for the district. In a smaller number of districts, but often in larger cities, the board members are appointed by mayors or other local government officials. With respect to finances, 90% of school districts are considered to be fiscally independent, which means they raise their own local revenues, principally through the property tax. The other 10% are fiscally dependent upon a county or municipality, relying upon that unit of government to raise the local monies needed to support education.

The national government plays the smallest role in public education – as measured by constitutional authority and finances – but it is still quite prominent and captures considerable public attention. President Obama and several of his predecessors have described themselves as ‘education presidents.’ Working with Congress, they have developed a number of important programs to support the education of children in the country’s school districts.

Seeking a remedy to inequities is one prominent reason for national government involvement in public education. As noted earlier, the 14th Amendment to the Constitution gives the national government authority to ensure that all citizens have “equal protection under the laws.” Using this standard, for example, federal district courts played a major role in the 1960s, ‘70s and ‘80s to address inequities by race. A number of cities were required to establish busing programs to transport students to schools other than their neighborhood school, thereby integrating the schools and providing more equality in terms of educational resources. In Boston, Massachusetts, for example, students from predominately black residential areas were transported by bus to schools in other parts of the city, and many white students also were transported to schools beyond their neighborhood.

National government involvement targets a number of other areas, including low income families and students with special needs. For example, the national government provides extra funding to states and school districts with higher proportions of students from low-income families. As another example, based on a law passed in 1975, the national government mandates that states and school districts provide a variety of educational services to students with additional learning, emotional, and physical needs.

These special education requirements come with some national funding, but typically not enough to cover additional costs incurred by school districts. States and the districts themselves must meet this financial challenge.

The Elementary and Secondary Education Act, first passed in 1965, is the single most prominent piece of national legislation in this area. It covers a variety of important topics, focusing particularly on financial support for schools with low-income students. Every seven-to-eight years the law is reauthorized and has become broader in scope and more prescriptive. The most recent reauthorization came in 2002 and was titled No Child Left Behind (NCLB) by the Bush Administration.

Emphasizing the popular trend towards standards and accountability, NCLB established a variety of requirements for states that accepted funding through the law. Included among the requirements are:

- States must establish learning standards and proficiency requirements along with testing in grades 3-8 and 10.
- All students must be “proficient” in reading and mathematics by 2013-14.
- This proficiency standard applies to all students in a school, as well as separately to various subgroups of students, including by low income, race, ethnicity, disability, and limited English proficiency.
- Schools must make “adequate yearly progress” in each subgroup to achieve this goal. If they don’t, they face increasing penalties and requirements, including the funding of supplemental learning services and school choice.

Since 2002, NCLB has been a major part of the policy discussion in the education field. Many state officials complain that the national government is exceeding its authority, but ultimately states have put in place testing and accountability systems to meet the requirements of the law. The law is praised for its focus on subgroups, but criticism mounted as an increasing number of schools are unable to meet the 2013-14 proficiency requirements. Many claim that it is unrealistic to expect all students to reach a proficiency level.

Current Debates. The future of NCLB is one of the major topics of discussion today. It was scheduled for reauthorization in 2009, but members of Congress have been unable to agree upon a new version. Partisan politics has made a consensus very difficult to achieve, yet many agree that changes are needed. Each year, for example, more schools fail to meet adequate yearly progress, yet many of these schools are judged to be good schools by other standards. The 100% proficiency requirement is seen by many as unrealistic. Pressure to change the law mounts.

Changing NCLB is supported by the Obama Administration. During the recent recession, the Administration and Congress provided \$79.3 billion for elementary and secondary education in the American Adjustment and Recovery Act of 2009 (sometimes know as the “Stimulus Bill”). This was the largest ever one-time infusion of monies from the federal government into elementary and secondary education. School districts across the country used these funds to avoid teacher layoffs and to improve educational systems.

As part of this initiative, the Obama Administration established its own set of priorities and a policy framework for moving forward. Rather than focus on a proficiency standard for 2013-14, the Administration encourages states to adopt standards and assessments that prepare all students to be “college and career ready.” Further, states should focus on the lowest performing schools, and the Administration is advocating a set of specific strategies to turn-around these schools. Also, states should develop performance evaluation systems for teachers and principals that include a measure of actual student achievement.⁹

Seeking to put these priorities into practice, the Obama Administration in October 2011 announced that it would grant individual states broad waivers or exceptions to many of the NCLB requirements if the state would commit to implement key priorities of the Administration. This broad use of administrative waiver authority, which is usually exercised for narrow and specific circumstances, is unusual and has been criticized by some in Congress. Still, many states are preparing waiver proposals and identifying likely revisions to their accountability systems to match the Obama Administration framework.

The debate over NCLB and the Obama Administration framework is most prominent today, but there are a number of other important policy issues that capture attention. Charter schools, for example, continue to be an important policy topic. Begun in Minnesota in the early 1990s, over half the states now have charter school laws that allow parents, teachers, and other groups to create charter schools, which receive public money and have open admissions, but operate outside the traditional school district. School choice is another important topic. Many states and school districts have various policies to promote intra-district or inter-district choice so students can attend a school other than their neighborhood school.

Health Care Policy. Health care in the United States is another very important policy area and one that reveals a different intergovernmental dynamic. Local governments play a much smaller role, with national and state governments assuming primary responsibility. For national and state policymakers, there are three key goals in health policy: control health care costs, improve the quality of health care, and expand access to cover all citizens. The challenge is to overcome the long-standing status of the U.S. as a country with very high health care costs yet inadequate coverage for many of its citizens.

Importantly, unlike education, health care in the United States is delivered primarily through the private sector. Most hospitals are private, non-profit or for-profit institutions, and health care insurers are similarly private entities. Most Americans receive health care through their employer, as part of their employee benefits. The government helps to provide a legal structure for this health care system, but for many Americans health care is not seen as a service provided by government. However, for the increasing number of citizens who do not receive health care through this private-based system, the government has assumed a more central role.

Health Care: Constitutional Dimension. Like education, the U.S. Constitution makes no reference to health care policy or health care rights. Whereas the Brazilian

Constitution provides specific citizen rights and government obligations in this area, the U.S Constitution is silent. There is no clear constitutional directive in this policy area. To assert a constitutional role, the national government must turn to less specific parts of the Constitution, such as the responsibility to “promote the general welfare,” provide “equal protection under the laws,” or “regulate commerce among the states.”

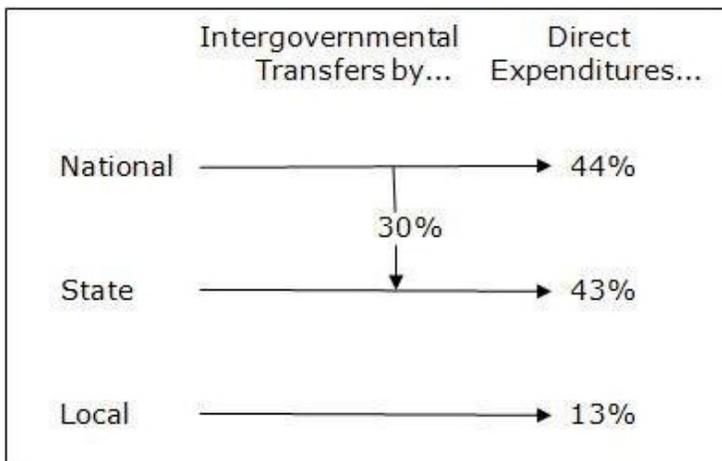
The states also lack a clear mandate for action. Unlike education, state constitutions generally make no specific reference to health care as an obligation of state government or right of citizens. As with the national government, state authority in this area rests primarily on more general constitutional provisions to promote the common good and protect the citizens of the state.

Although lacking in constitutional directives, national, state and even local governments have assumed some role in providing health care. As noted above, government policymakers play an important role in providing the legal support structure for the private delivery of health care through employers. Contractual rules and obligations are important in this system.

But more relevant to our discussion, national, state and local governments play an important role in providing health care services to many Americans who do not receive employer-based health care. Many elderly citizens receive health care through government programs, and low-income individuals and families also receive health care support. National, state and local governments pay for services that are often received at private hospitals, but there are publicly-owned hospitals that also provide services.

Health Care: Financial Dimension. Health care is an expensive policy area. Across all levels of government, in 2008-09 \$906 billion was spent providing health care. Unlike education, national and state governments made most of the direct expenditures, with the national government accounting for 44% and the fifty states accounting for 43% of direct expenditures (see Table 3). The remaining 13% was spent by local governments.

Table 3 – Health Care: Financial Dimension¹⁰



From an intergovernmental perspective, there is a major transfer of monies from the national to state and local governments. In fact, 30% of monies spent on health care were intergovernmental grants from the national government to primarily state governments. Considering both direct expenditures and intergovernmental transfers, the national government accounts for almost three-quarters of total health care spending.

Health Care: Government Roles. As noted, national and state governments play the major role in health care policy. In some areas, like Medicare, the national government acts alone, but in other areas, like Medicaid, the national and state governments act in a partnership. More recently, several states have launched innovative health care strategies within their own borders, and in 2010, the national government passed a comprehensive national health care law that has put a major strain on the national-state partnership. Before focusing on the recent legislation, we turn first to a brief description of more long-standing roles.

Medicare is a national government program created in 1965 for the elderly and persons with permanent disabilities. It covers various hospital services, physician payments, prescription drugs and other services for 47 million people. It accounts for almost 25% of all government health care spending in the U.S. It is funded by national government general revenues as well as payroll taxes paid by all who work. In addition, recipients who choose certain levels of coverage pay premiums and co-pays to help offset costs.¹¹

Medicaid also was created in 1965 by the national government, but it is a joint effort of the national and state governments. It is a means-tested program that provides health care services for low-income individuals and families. It provides services for over 60 million people and accounts for 16% of nation-wide health care spending. In this national – state partnership, the national government establishes a basic set of health care services that must be provided to all recipients, but states can choose to provide additional services. Among the basic services, for example, are inpatient hospital and x-rays, while optional services include prescription drugs and dental, among others. Medicaid costs are split between the national government and the states, with the national share between 50% and 76% of total costs, depending upon the wealth of the state. Wealthier states, like Massachusetts and Connecticut, receive the lower percentage while less wealthy states receive a higher national cost share.¹²

In addition, individual states have launched their own health care reform efforts. Often, these are done as part of a waiver policy under the Medicaid program. Granted extra flexibility to tailor their program, states have experimented with different kinds of health care delivery systems for those people within their state who lack their own health care insurance. In Massachusetts, for example, a Medicaid waiver was combined with state legislation in 2006 to establish a state health care law that required every citizen to be insured. The state established a health care exchange to help people learn about health care options, and it expanded government coverage for people who could not afford health insurance or did not have insurance through an employer. More recently, Vermont has launched another innovation system in which state government will play a single-payer role to coordinate health care coverage in that state.

Current Debates. In March 2010, after highly partisan debates and votes, Congress approved and President Obama signed the Patient Protection and Affordable Health Care Act. This is the most comprehensive health care legislation passed at the national level, and it is perhaps the most controversial as well. The Act calls for implementation over the next several years through a national – state partnership. This legislation is providing a major test of American federalism.

The provisions of the Act cover many areas of health care policy, with an overall goal of providing health insurance coverage for all Americans.¹³ Building on current programs, the Act expands Medicaid coverage to more individuals and families, with the national government covering 90% or more of these additional costs. The act also restructures key parts of Medicare.

There are several important roles for the states. Each state is to identify the major requirements for an essential insurance benefits package. Private insurance providers are expected to offer insurance plans with at least these key components and coverage. Importantly, each state is expected to create an insurance exchange in which consumers can shop for an affordable insurance plan. This online exchange will offer individuals, families and small employers a venue in which to identify appropriate and affordable insurance plans. If a state does not create an exchange, the national government will do so.

There are two important mandates in the law. First, the Act requires all citizens to have a health care plan at least equal to the essential benefits package. Medicaid and other subsidies will be available for low income individuals and families. Failure to have such a plan results in financial penalties. Second, larger employers are required to offer a health care plan to their employees. Failure to do so results in a financial penalty.

The Patient Protection and Affordable Health Care Act touched a raw nerve in American federalism. Many state leaders and almost all Republicans in Congress expressed strong objection to the Act. Within days of passage, 26 states filed lawsuits against the national government seeking to have the Act ruled unconstitutional. The lawsuits objected primarily to the Medicaid program changes as well as the individual mandate to purchase insurance.

The constitutional standing of the individual mandate has become the key issue. Does such a mandate infringe upon an individual's personal liberty? Is the mandate a valid exercise of the taxing power of the government, since penalties for noncompliance are paid on individual tax forms? Could this mandate be justified under the national government's authority to regulate interstate commerce? Is this mandate "necessary and proper" for the national government's successful development of an important health care policy that will benefit the entire nation?¹⁴

These questions, among others, are at the center of debates in national district and appellate courts. The lawsuits were filed in different states and have resulted in conflicting rulings by district and appellate courts. In November 2011, the U.S. Supreme Court agreed to hear one of the cases. A decision by the court is expected in mid-year 2012. It is likely to be one of the most important decisions in recent decades on the current status of federalism and the extent of national authority.

This controversy has extended beyond the courtroom. Seventeen states have passed legislation opposing some parts of the law; sixteen states are seeking an “interstate freedom compact” to not implement the law; and at least ten states have raised the Nineteenth Century theory of nullification to argue that the law will be invalid in their state. In addition, all of the current Republican candidates for President have pledged to repeal or dismantle the law if they are elected in 2012. The future for this Act is uncertain at best.

Conclusions. Policymaking in a federal system is fraught with challenges. In education and health care, policymakers and other government officials at all three levels of government play important and interconnected roles. The U.S. Constitution is often vague on how policy responsibilities are to be shared, and the financial system of funding streams and grants creates a web of interdependencies among national, state and local officials. In this environment it is an ongoing challenge to sort out roles and responsibilities.

Despite the complexity and frequent tensions, there are positive points to be noted. Perhaps most importantly, the states serve as “laboratories” for policy development.¹⁵ There are many examples in which states have experimented with policy ideas. In education, for example, individual states have developed creative accountability systems as well as innovative educational strategies, like charter schools. In health care, Massachusetts passed and implemented a state health care law that became the model for national legislation. With states, and sometimes local governments, as laboratories, the national government (and other states) can watch and learn about a policy approach to see if it is successful and whether it might be applied elsewhere.

The federal system also provides many opportunities for participation by citizens and government officials. Successful policymaking benefits from broad participation of all stakeholders. In a federal system this breadth of participation is more easily achieved, simply by the design of the system. In education, for example, many people are involved in shaping policy. Particularly at the local and state levels, a broad range of government policymakers and bureaucrats, as well as parents and other citizens, play a role in shaping education policy. Such broad participation raises many issues and concerns, often resulting in a more fully developed policy.

There are, however, potential disadvantages to a federal system as a venue for policymaking. One important concern is equity. When authority and policy responsibilities are devolved to state and local governments, it is often the case that the resulting service delivered to citizens will be inequitable across state and local governments. In some cases this might be the choice of local citizens, but often the variation is the result of different financial capacities. In education, for example, it has long been a concern that schools in low-income and property-poor areas do not have the same financial resources to support public education. National and state governments try to compensate for this financial deficit, but the pattern continues.

Developing policies that reflect a national purpose is another important challenge. With fifty states exercising significant authority in many policy areas, and the national

government's role sometimes ambiguous, it can be difficult to create a united front to move the nation forward in a particular policy area. National health care legislation is a recent example. Despite calls for a more robust national health care system that will enhance American international competitiveness, opposition from many states and ongoing debate over the most recent legislation may undermine this national initiative.

Policymaking in a federal system has served the United States well for many years, but it remains a major challenge. It is rare that one level of government can carry a policy through to its completion. Rather, most policies include an important intergovernmental dynamic. Achieving success in this environment is not easy. The complexity of intergovernmental policymaking and the many points of potential opposition in a federal system put a premium on exercising effective leadership and crafting intergovernmental relationships. To move forward in the 21st Century, national, state and local policymakers will need a full set of leadership and interpersonal skills to bring all parties together in the development and implementation of public policies.

Notes

¹James E. Anderson, *Public Policymaking: An Introduction*, 7th edition. Boston: Wadsworth, 2011, p. 7.

² Data from www.usgovernmentspending.com.

³ See David B. Walker, *The Rebirth of Federalism: Slouching Toward Washington*, 2nd Edition, New York: Chatham Publishers.

⁴ Deil Wright, *Understanding Intergovernmental Relations*, Brooks/Cole Publishers, 1988, pp. 482-490.

⁵ Note that the focus in this section is on elementary and secondary education. Table 1 provided data for education policy that includes higher education.

⁶ U.S. Census Bureau, *Public Education Finances, 2009, G09-ASPEF*, U.S. Printing Office, Washington, D.C.

⁷ U.S. Census Bureau, *Public Education Finances, 2009, G09-ASPEF*, U.S. Printing Office, Washington, D.C.; U.S. Census Bureau, *State and Local Government Finances Summary: 2008, G08-ALFIN*, U.S. Printing Office, Washington, D.C.; and calculations by the author.

⁸ U.S. Census Bureau, *2002 Census of Governments, Volume 1, Number 1, Government Organization, GC02(1)-1*, U.S. Government Printing Office, Washington, DC, 2002.

⁹ U.S. Department of Education, *A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Act*, March 2010.

¹⁰ Data from www.usgovernmentspending.com.

¹¹ See Henry J. Kaiser Family Foundation, *Medicare at a Glance*, September 2010, at <http://www.kff.org/medicare/upload/1066-13.pdf>.

¹² See Henry J. Kaiser Family Foundation, *Medicaid Program at a Glance*, June 2010, at <http://www.kff.org/medicaid/index.cfm>.

¹³ See Henry J. Kaiser Family Foundation, *Summary of New Health Reform Law*, at <http://healthreform.kff.org/>.

¹⁴ Bradley Joondeph, “Federalism and Health Care Reform: Understanding the States’ Challenges to the Patient Protection and Affordable Care Act,” *Publius: The Journal of Federalism*, 41:3, pp. 447-470.

¹⁵ The notion of states as “laboratories” for policy development was popularized by U.S. Supreme Court Justice Louis Brandeis in a court decision written in 1932.

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