

**Paper 205: Government and Politics of the U.S.A. ·  
Lecture 6**

# **Federalism**

**Paul Martin**

**[paul.martin@politics.ox.ac.uk](mailto:paul.martin@politics.ox.ac.uk)**

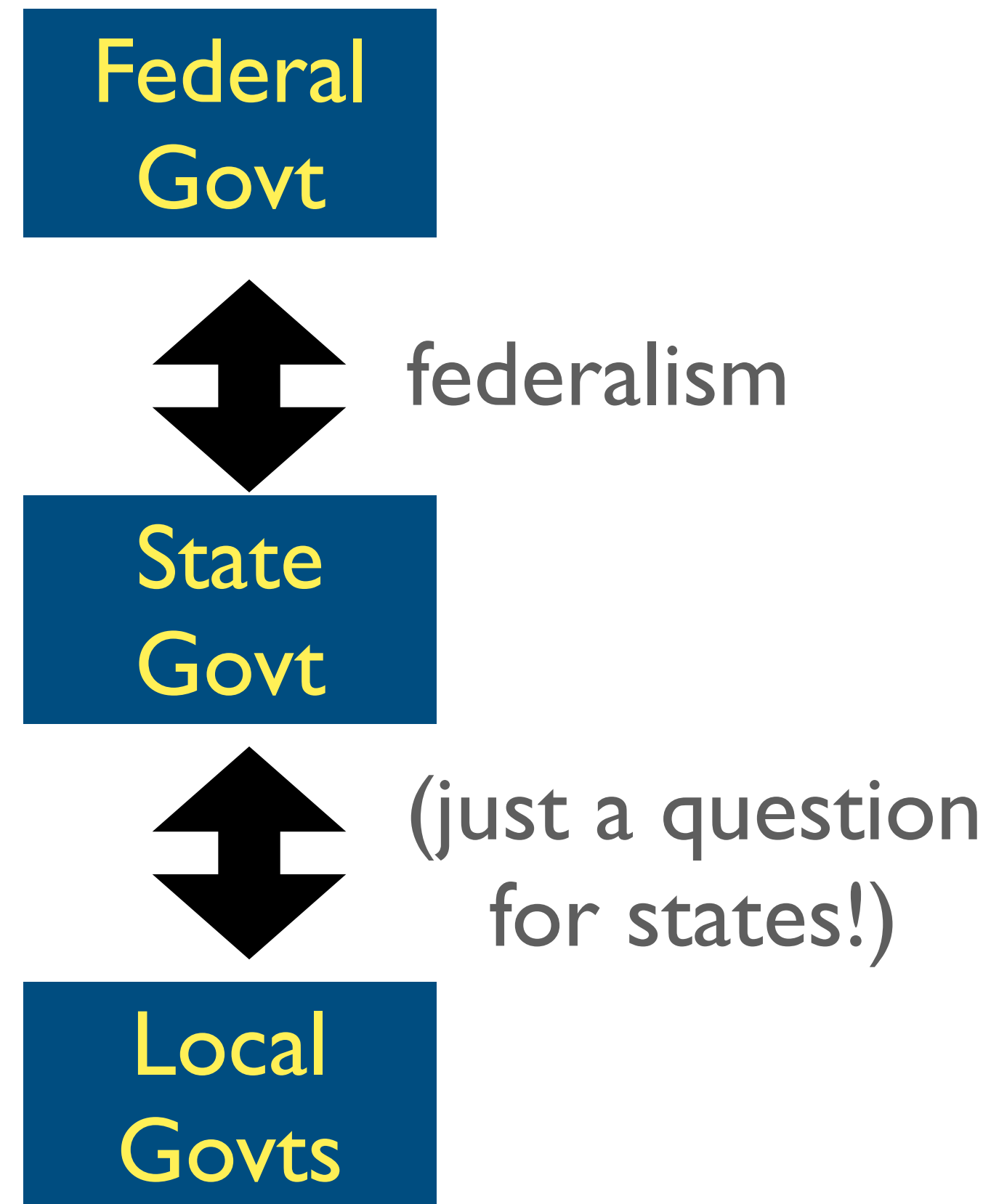
# Introduction

- Federalism is a central organising principle and practice of American government
- It rests on a limited constitutional definition
- In practice its content is highly contested and reflects a constantly changing balance between federal uniformity and territorial diversity
- Diverse models of federalism (but models not realities)
- Characteristically both a political and a legal-constitutional fight

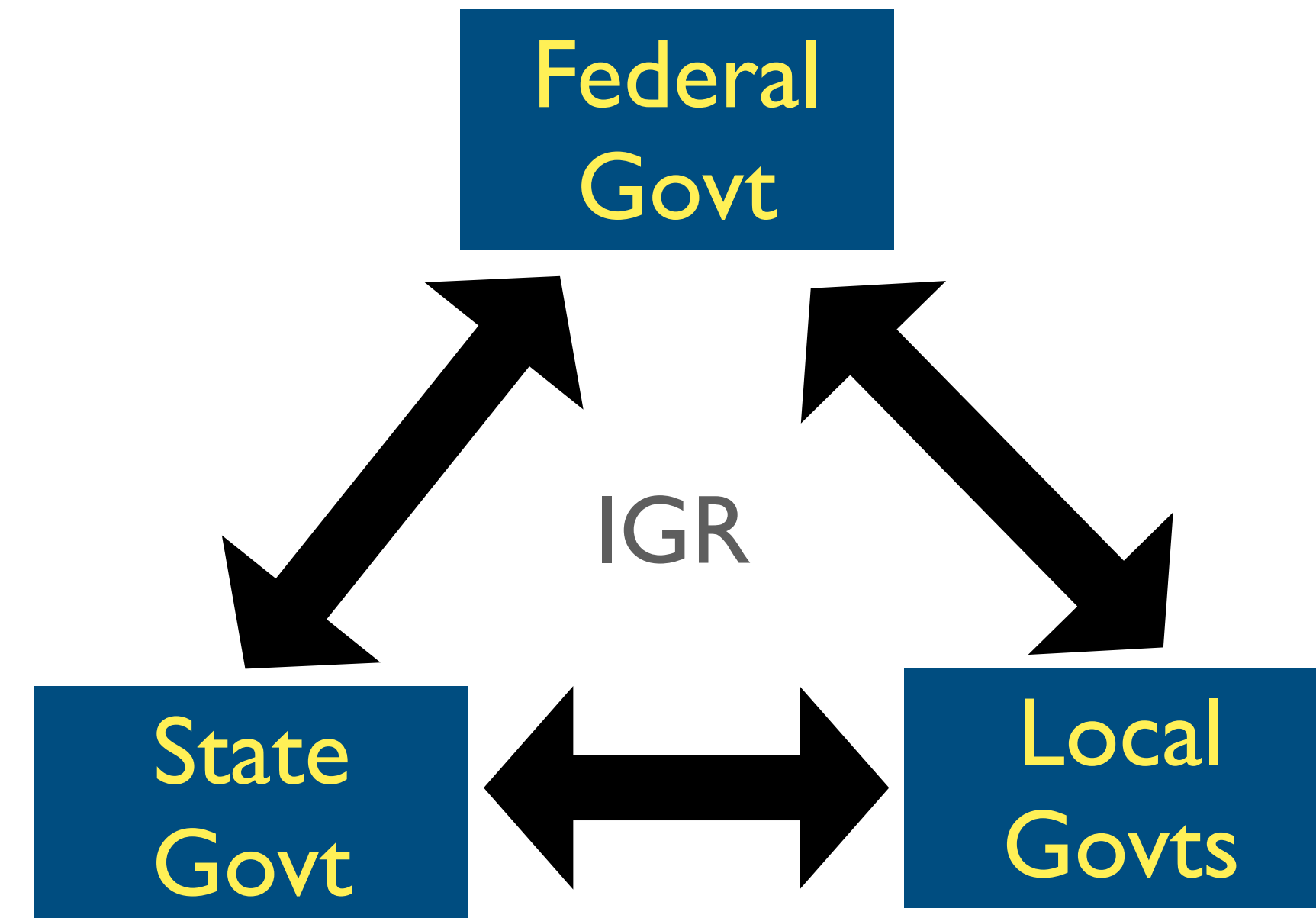
# Constitutional basis

- Fundamental/structural
- Art I S8 “regulate Commerce ...among the several States” - ?
- Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- Eleventh Amendment: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State”
- Federalism vs intergovernmental relations

# Federalism vs “Intergovernmental relations”



vs





# What are states like

- diverse!
- State constitutions, powers, elected base
- bicameral/unicameral
- Judicial appointment
- Local government
- Electoral law and direct democracy

# Changing models of federalism

- “dual”/“classical”
- “cooperative”
- “coercive”
- “new”
- Beyond “new”



# Dual federalism

- Delineated powers
- 10th Am & no general federal “police power”
- Local governments irrelevant
- Zero sum conception of powers
- C19th(?)





# Cooperative federalism

- Power not zero sum: cooperation to solve policy problems
- grants-in-aid, partial preemption, no specific singular pattern
- “marble cake” federalism
- fed/state/local





# Coercive federalism

- Strict conditions to federal aid
- “unfunded mandates”
- State dependence on federal funding
- Federal court involvement
- Critique of cooperative federalism





# **“New” federalisms**

- Resurgent state power...
- Nixon: some conditional grants -> General Revenue Sharing
- Reagan: abolition and consolidation of federal programmes, simplified block grants
- Post-94 Congressional republicans: stop preempting state authority, explicit justifications for federal power, no more unfunded mandates
- Did it amount to much?

# C21st federalisms

- Bush, Obama, ?Trump, Biden : focus on policy not primarily federalism as structural question
- Bush: No Child Left Behind (2001)
  - School standards for Acceptable Yearly Progress
  - States set policy
  - Federal govt sets basic framework & requirement for standardised testing and improvement
- Coercive...

# C2 1st federalism: Obama/PPACA (2010)

- Federal-only elements:
  - Individual mandate, employer mandate, insurance coverage for pre-existing conditions, etc
- State elements:
  - Medicaid expansion (originally mandatory but funded)
  - Insurance exchanges (optional state or federal or “partnership”)
- Marble cake! But qv Michener *Fragmented Democracy* on Medicaid



# Judicial Dimension I

- Dual federalism? Pensacola Telegraph Co. v. Western Union (1877), Wabash, St Louis, and Pacific Railway v. Illinois (1886) (Lochner v. New York (1905), Hammer v. Dagenhart (1918)
- New Deal federalism cooperative/coercive eg United States v. Darby (1941): 10th Amendment is “*a truism*”;
- American Power and Light v. Securities and Exchange Commission (1946): Commerce clause power is “*as broad as the needs of the nation*”
- Self-reversal in National League of Cities v. Usery (1976) and Garcia v. San Antonio Metropolitan Transit Authority (1985)

# Judicial Dimension II

- Constraints on commerce clause power - United States v. Lopez (1995), US v. Morrison (2000)
- very expansive reading of 11th Amendment as protecting “sovereign immunity” not non-citizen suit: doctrine from Hans v. Louisiana (1890) - Seminole Tribe v. Florida (1996); Alden v. Maine (1999)
- NFIB v. Sibelius (2012): Medicaid changes in PPACA are unconstitutionally coercive, must be optional for states to extend Medicaid or not
- Shelby County v Holder (2013), Voting Rights Act preclearance breaches “fundamental principle of equal sovereignty” of the states
- Textual basis “unclear”; example of conservative judicial creativity?

# Conclusion

- Woodrow Wilson, *Constitutional Government in the United States*:
- **“The question of the relation of the States to the federal government is the cardinal question of our Constitutional system. At every turn of our national development we have been brought face to face with it, and no definition either of statesmen or of judges has ever quieted or decided it. It cannot, indeed, be settled by the opinion of any one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question.”**