

# Introduction to the American Political Process

## Class 14: Federalism

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# Readings

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# A working definition of federalism

*“Federalism is a political organization in which the activities of government are **divided** between **regional governments** and a **central government** in such a way that each kind of government has some activities on which it makes final decisions.”* (Riker 1964)

We cannot undo it, but we can **promote** it or **undermine** it through federal action:

- Supreme Court decisions
- National legislation (Congress) & executive orders (President)
- Devolution

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How is federalism related to freedom?

- Neither necessary nor sufficient
  - Great Britain: freedom coexists with centralized government
  - Brazil: federalism coexisted with oppressive dictatorship under the Vargas regime
- In theory if not in practice?
  - Noting that states’ rights have been synonymous with defense of slavery in this country’s history, we have to reason carefully

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# Riker, “Federalism: Origin, Operation, Significance”

First step: the question of freedom is freedom *for whom?*

- For the **majority**?
  - Clearly no: local opposition can derail national majority (e.g. civil rights)
- For the **minority**?
  - The *chance* to make policy: guaranteed by civil liberties, e.g. free speech
  - The *right* to make policy: granted by federalism, a stronger form of minority protection

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# Riker, “Federalism: Origin, Operation, Significance”

When does federalism’s stronger guarantee of minority protection make sense? On a case-by-case basis:

$$U + D + E \leq 0$$

**U = Uniformity:**

- Lowers the cost to individuals of obeying the rules, and to law enforcement of applying them
- Promotes interstate commerce
- **Externalities** (spillover effects): the greater they are, the stronger the democratic motivation for uniformity

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# Riker, “Federalism: Origin, Operation, Significance”

When does federalism’s stronger guarantee of minority protection make sense? On a case-by-case basis:

$$U + D + E \leq 0$$

**D = Cost of centralized decisionmaking:**

- Negative
- Low (high in absolute value) when there are many groups with divergent preferences

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# Riker, “Federalism: Origin, Operation, Significance”

When does federalism’s stronger guarantee of minority protection make sense? On a case-by-case basis:

$$U + D + E \leq 0$$

E = Cost of enforcement:

- Also negative
- Low (high in absolute value) when minority feels attached to its way of life and feels that it’s worth preserving

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Or, just judge federalism by the **minority who benefit** or the **outcomes it produces**.

# Michener, “Fragmented Democracy”

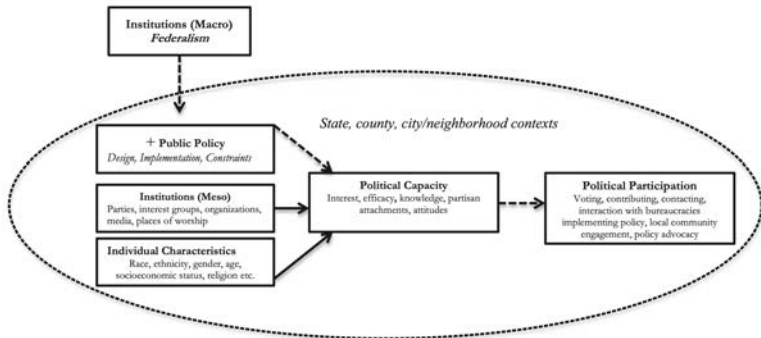
*“How do Americans understand and respond to a political system that confers (or withholds) access to resources for the most indigent—not on the basis of needs or rights—but on the basis of geographic location?”*

## Why Medicaid?

- Operates on three axes of disadvantage:
  1. **Income** (means-tested program)
  2. By extension, **race**
  3. **Health**
- Greatest reliance → most affected by regional variation

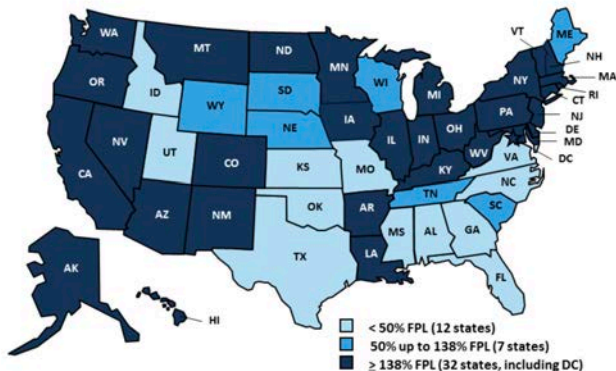
# Michener, “Fragmented Democracy”

## D. Contextualized Feedback Model of Participation



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## Medicaid Income Eligibility Levels for Parents, January 2017



NOTE: Eligibility levels are based on 2016 federal poverty levels (FPLs) for a family of three. The FPL for a family of three in 2016 was \$20,160. Thresholds include the standard five percentage point of the FPL disregard.

SOURCE: Based on results from a national survey conducted by the Kaiser Commission on Medicaid and the Uninsured and the Georgetown University Center for Children and Families, 2017.



## Findings:

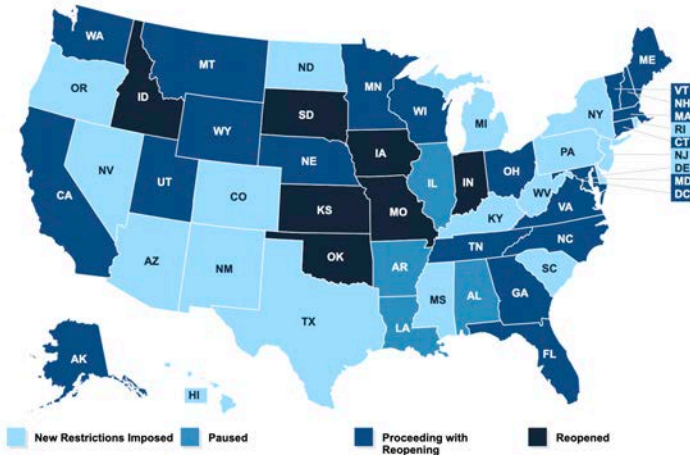
- Overall, Medicaid beneficiaries participate in politics less than non-beneficiaries
- **But**, important variation across states:
  1. States offering a wider scope of optional services → more likely to vote
  2. States that have recently expanded benefits → more likely to register to vote
  3. States that have recently reduced benefits → significantly less likely to register and vote

## Policy shapes politics.

# Federalism and covid-19

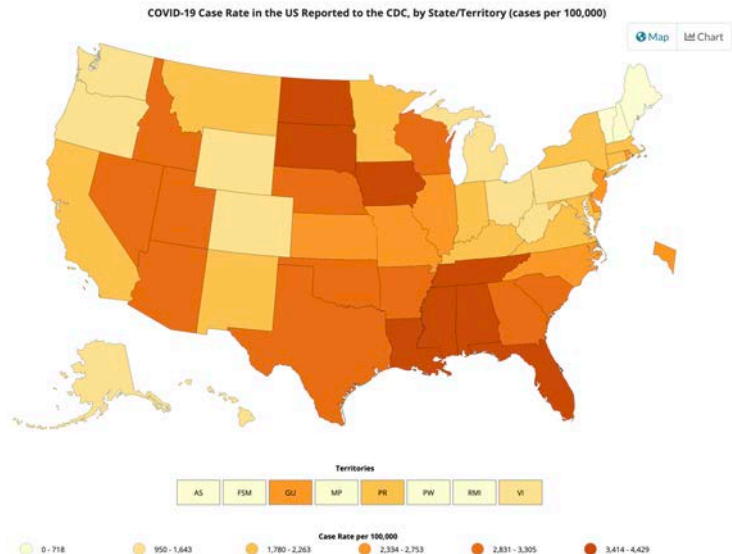
## State Social Distancing Actions

Status of Reopening



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# Federalism and covid-19



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# Hertel-Fernandez, “State Capture”

A **federalist** spin on party politics. (Recall: Schickler)

Why parties again?

1. Aldrich: to help ambitious politicians achieve their goals
2. **UCLA School: constructed and led by interest groups/high demanders for policy**

AHF contributes to this school, but also tells us:

- Coalition formation is hard
- Federalism helps: promote different agendas in different states
- Old view focused on national primary; neglected critical role of **state politics**



How conservative activists transformed state policy: **model bills**

Since 2010, a dramatic increase in surprisingly uniform state legislation on:

1. “Stand your ground” laws: allowing lethal use of force
2. Voter ID laws
3. “Right to work” laws: cannot compel members of unionized industries to pay dues

Hertel-Fernandez, Alexander. “Introduction.” In *State Capture: How Conservative Activists, Big Businesses, and Wealthy Donors Reshaped the American States-And the Nation*. Oxford University Press, 2021. © Oxford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

# Hertel-Fernandez, “State Capture”

Compared to Congress, state legislators generally:

- Are less experienced in politics
- Have less staff to help draft legislation
- (Were) less partisan
- Are juggling other jobs and responsibilities

ALEC brilliantly took advantage of all this to write legislators’ bills for them, promoting a coherent agenda across Republican state legislatures.

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# Hertel-Fernandez, “State Capture”

<i>Bill</i>	<i>ALEC Text</i>	<i>Bill Text</i>
2011 Wisconsin AB 110 “Special Needs Scholarship Act”  <i>More similar to ALEC model bills than 22% of all state legislation</i>	(A) A resident school district shall annually notify the parents of a student with special needs of the Special Needs Scholarship Program and offer that student’s parent an opportunity to enroll the student in a participating school of their choice.  Section 6. [Accountability Standards for Participating Schools]	Annually, each school board shall notify the parents of each child with a disability enrolled in the school district of the program under this section.  (4) Private school duties. Each private school participating in the program under this section shall do all of the following: (a) Comply with all health and safety

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# Hertel-Fernandez, “State Capture”

2013 Arizona  
SB 1348  
“Prohibition  
on Paid Union  
Activity (Release  
Time) by Public  
Employees Act”

*More similar to  
ALEC model bills  
than 93% of all state  
legislation*

## Section 2-A

A public employer shall not enter into any employment bargain with any public employee or union to compensate any public employee or third party for union activities.

Any employment bargain that includes compensation to public employees or third parties for union activities is declared to be against the public policy of this state and is void.

## Section 23-1422-A

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# Hertel-Fernandez, “State Capture”

Table 2.3. Top ALEC Bills Enacted, 1995–2013.<sup>a</sup>

<i>ALEC Bill</i>	<i>Enactments</i>
ALEC Education Reform Package	314
Taking the Best: ALEC’s Comprehensive Medical Liability Reform Proposal	178
Long-Term Care Insurance Act	56
High-Risk Health Insurance Pool Model Act	49
Resolution Urging the Obama Administration to Launch Negotiations for a Free Trade Agreement with Taiwan	42
College Savings Account Act	41
Resolution to Restate State Sovereignty	27
Resolution Calling for a Federal Balanced Budget Amendment	23
Rescission External Review Act	20
State Responses to Kyoto Climate Change Protocol	18
Vulnerable Adults Act	17
Resolution in Favor of a US Constitutional Amendment on Judicial Taxation	16
Expanded Consumer Choice in Financial Services Act	16
Resolution on Disease Management of Chronic Obstructive Pulmonary Disease	16
The A-Plus Literacy Act	16

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# Hertel-Fernandez, “State Capture”

Table 2.4. ALEC Bill Introductions and Enactments by Policy Area, 1995–2013.<sup>a</sup>

<i>Policy Area</i>	<i>Introductions</i>	<i>Enactments</i>
Healthcare	2,839	427
Education	2,065	414
Agriculture, energy, and the environment	734	167
Finance	229	72
Government reform	686	71
Budget and taxes	710	66
Criminal justice	557	64
Civil justice	679	58
Foreign policy	88	52
Transportation	252	42
Social welfare and benefits	245	39
Guns	322	30
General regulation	393	26
Housing	152	25
Labor unions	373	15
Voting and elections	46	5

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## Implications:

1. Just as federalism can create divergence, it can also be used as a force for national change (Schickler)
2. Federalism as a powerful tool for the minority to obstruct the will of the majority (Riker)
  - AHF: ALEC-derived state bills did more to dismantle Obama’s ACA than any abortive national efforts to repeal it

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Fall 2020

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