Summary
Key Constitutional, Statutory, and Judicial Dimensions of the Internal Market of the United States of America

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U.S. federalism embodies dual sovereignty. The U.S. Constitution and each state constitution is supreme law within its spheres of authority, and Americans are dual state and U.S. citizens. The federal (i.e., national) government cannot order a state or local government to enact a law, forbid a state or local government from enacting a law, or command a state or local legislative or executive official to execute a federal law. A federal court can strike down a state or local law deemed violative of the U.S. Constitution, a treaty, or a federal statute enacted pursuant to the U.S. Constitution or a treaty, and Congress can preempt (i.e., displace) a state or local law that duplicates or conflicts with Congress's constitutional authority.

State and local governments thus regulate whatever they have the political will to regulate so long as they do not violate their own state constitution or violate the U.S. Constitution, a treaty, or a federal law. The federal government, however, can do only what is permitted by the U.S. Constitution. The federal government possesses limited delegated powers; states possess inherent powers. Most important, states retain the police power, namely, the authority to legislate for the health, safety, welfare, and morals of their residents. States and their local governments exercise a wide range of powers governing most human activities from birth to death and beyond.

Internal-market regulation is rather non-centralized and entails complex interplays among federal, state, local and tribal governments, non-profit associations, and for-profit organizations in ways that mostly preclude clear overall command and control by one government.

For about the first 145 years of U.S. history, the internal market was regulated mostly by state and local laws, with the U.S. Supreme Court striking down state and local laws that interfered with interstate commerce. State and local laws ordinarily passed federal constitutional muster so long as they did not discriminate against out-of-state persons or enterprises. The federal government did not become broadly active until Congress created the Interstate Commerce Commission in 1887. Federal regulation increased slowly thereafter until the Great Depression (1929-38) when the federal government vastly expanded regulation, which continues today. Nonetheless, state and local governments still play potent internal-market roles.

I. The U.S. Constitutional Framework of the Internal Market

The U.S. Constitution sets forth a basic framework for internal-market regulation by the federal government while reserving many matters to the states.

A. Delegated Powers

The states delegated to Congress (Art. I, Sec. 8) authority to:

1. Levy certain taxes, mainly customs duties (the Constitution was amended in 1913 to allow the federal government to levy individual and corporate income taxes)
2. Borrow money
3. Regulate commerce with foreign nations, among the several states, and with the Indian tribes
4. Establish a uniform rule of naturalization
5. Establish uniform laws on bankruptcies
6. Coin money and regulate its value and the value of foreign currencies
7. Fix the standards of weights and measures
8. Provide for punishing the counterfeiting of securities and currency
9. Establish post offices and post roads
10. Provide for patents and copyrights
11. Establish courts inferior to the Supreme Court

However, the elastic "necessary and proper" clause (Art. I, Sec. 8, Para. 18) allows Congress to interpret its powers broadly so as to enact laws it deems necessary and proper to execute the powers delegated to Congress and to the executive and legislative branches by the Constitution.

States cannot tax instrumentalities of the federal government and the federal government cannot tax instrumentalities of the sovereign states (e.g., a state office building, a city hall, or public school).

B. Relevant Restrictions on the States

The Constitution (Art. I, Sec. 10) prohibits states from enacting certain anti-common-market policies, including

1. Concluding treaties
2. Coining money
3. Emitting bills of credit
4. Making anything but gold and silver coin a tender in payment of debts
5. Enacting any bill of attainder or *ex post facto* law
6. Enacting any law impairing the obligation of contracts (because contract law is overwhelmingly a state-law matter)
7. Levying taxes on foreign and domestic imports or exports

C. Relevant Restrictions on the U.S. Government

The U.S. Constitution (Art. I, Sec. 9) prohibits the federal government from

1. Enacting any bill of attainder or *ex post facto* law

2. Levying taxes on any goods exported from any state
3. Giving any fiscal or regulatory preference to the ports of one state over those of another state
4. Requiring any vessel to pay a duty when sailing from the port of one state to the port of another state

D. Interstate and Foreign Compacts

The U.S. Constitution permits states to conclude "Agreements or Compacts" with each other and with "foreign powers" with Congress's consent (Art. I, Sec. 10, Para. 2). A compact is a voluntary agreement between two or more states to resolve a boundary dispute or achieve a common purpose. Common purposes might include managing interstate allocations of water and natural resources, interstate transportation, environmental protection, education, regulation, corrections, public safety, and taxation.

States that join an interstate compact ordinarily stay in compliance. If not, they exit or find themselves shunned by the other compact members. Compliance is a matter of mutual monitoring; so, a non-compliant state is ordinarily spotted quickly. If non-compliance can be treated as a breach of contract, a federal court can enforce compliance.

States also conclude agreements and compacts with foreign jurisdictions. States' agreements with foreign governments involve mostly relations with subnational governments and focus mainly on economic and cultural matters. Cities, which are legal creatures of the states, enter agreements with cities and subnational governments abroad and engage in sister-city relations.

E. U.S. Supreme Court Jurisdiction

The U.S. Constitution gives the high court jurisdiction over, among other things, all matters arising under the Constitution and in which the United States is a party, as well as "Controversies between two or more States . . . Citizens [and businesses] of different States . . . [and] Citizens of the same State claiming Lands under Grants of different States" (Art. III, Sec. 2).

F. Full Faith and Credit

The U.S. Constitution (Art. IV, Sec. 1) provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state" (e.g., accepting the validity of another state's court order). The U.S. Supreme Court employs this clause to (1) require states, in most cases, to accept and enforce judgments rendered by sister-state courts, (2) decide when a state must assume jurisdiction for a claim originating in another state, and (3) limit the application of one state's law over other states' laws in multistate disputes. States sometimes engage in voluntary mutual recognition, as with driver's licenses.

G. Privileges and Immunities

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" (Art. IV, Sec. 2). The U.S. Supreme Court deems this to mean that no state can deny in-state rights or benefits (e.g., the right to vote or receive welfare benefits) to an out-of-state migrant for more than 30-90 days. A business chartered in Pennsylvania that operates also in Ohio must comply with Ohio laws but cannot be discriminated against by Ohio or treated differently than businesses chartered in Ohio.

H. Extradition

A person charged with a crime in one state who flees to another state "shall," upon request of the governor of the state from which the person fled, be delivered by authorities of the other state back to the state having jurisdiction over the crime (Art. IV, Sec. 2).

I. Amendments to the U.S. Constitution

Aside from the Eleventh Amendment (1798) and, arguably, the Thirteenth Amendment (1865), which abolished slavery, and the Sixteenth Amendment (1913) giving the federal government authority to collect individual and corporate income taxes, no other amendments to the U.S. Constitution pertain specifically to the internal market.

II. The State Constitutional Frameworks of the Internal Market

Each state has its own constitution. Importantly, state constitutions regulate the chartering and governance of private and public corporations. Almost all such corporations are chartered under state law, not federal law (e.g., Facebook was first chartered in Florida but reincorporated in Delaware). Some state constitutions also regulate child labor and labor relations concurrently with federal laws. Some have provisions very friendly to labor unions; others have anti-union "right-to-work" laws. A few state constitutions stipulate a minimum wage (which must be equal to or higher than the minimum wage set by the federal government since 1938).

Various state constitutions provide for regulating economic development, banking, real estate ownership and transactions, estate matters, usury, insurance (e.g., automobile, home, and health), railroads, public utilities (e.g., electricity rates), motor vehicles, public transportation, alcoholic beverages, gaming and lotteries, mining, natural resources, water resources, state public lands, environmental protection, hunting and fishing, animal welfare, elementary, secondary and higher education, non-profit organizations, public health, immunizations, social welfare, housing, and an official language (if any). (The U.S. Constitution mentions no language.)

Some provisions of states' constitutional declarations of rights affect market matters, such as equal rights for women and rights to privacy, a clean environment, and to hunt, fish, and farm. States also set minimum ages for purchasing certain goods (e.g., tobacco). States can exceed federal rights protections and also grant rights not recognized by the federal government (e.g., LGBTQ employment rights) so long as states do not fall below federal-protection levels.

Each state has its own court system. Local counties ordinarily operate the state courts of original jurisdiction; judges on those courts are elected or appointed from within each county. Given that more than 98 percent of all litigation occurs in the state courts, these courts hear many internal-market matters. Also, given that the U.S. Supreme Court usually hears less than 80 cases per year from about 9,000 appeals per year, the state high courts are the final word on most litigation. However, the U.S. Constitution (Art. VI, Para. 2) requires state judges to apply and uphold federal laws when necessary in cases before them. State courts cannot hear lawsuits against the United States and cases involving some specific federal criminal, antitrust, bankruptcy, patent, and copyright laws and some maritime cases. However, most states have their own laws in some of these fields.

Litigation on internal-market matters in state courts can take one year or multiple years. There are too many cases and too many factors to calculate even an average time period. Those who wish to take legal action against a local government can usually do so with little difficulty. Lawsuits involving possible monetary settlements attract lawyers willing to litigate for clients for free in return for a cut of the final settlement. Non-monetary lawsuits are filed regularly by businesses, interest groups, citizen groups, neighborhood associations, and others.

A. Procurement and Investment

States, especially big states, affect the internal market through procurement and investments. California's GDP is the world's fifth largest. The state's procurement and investment decisions have national and international ramifications.

Each state has its own procurement rules and practices, although most states more or less follow the Model Procurement Code and Regulations promulgated by the American Bar Association. Some federal rules affect state and local government procurement, including some rules and judicial decisions that flow from the U.S. Constitution's contracts clause (Art. I, Sec. 10). More federal rules apply when state and local governments spend federal grant funds. Additionally, trade agreements impose some constraints on procurement.

B. Occupational Licensing

The federal government licenses few occupations. States license many occupations from attorneys, physicians, dentists, nurses, teachers, and engineers to plumbers, bartenders, barbers, cosmetologists, and massage therapists. Each state decides which occupations to license, and each determines its own licensing standards for each occupation. The recent trend has been for states to move slowly toward reciprocity. Some federal agencies are prodding states toward mutual recognition.

C. Local Government Frameworks

Local governments are not mentioned in the U.S. Constitution because they are legal creatures of their states. Each state established its own local government system through its constitution and/or statutes. Forty-eight states have county governments; all states have village, borough, township, city and/or other municipal governments, as well as special district governments that ordinarily perform one local function. Forty-five states have independent school districts. In 2012, the United States had 3,031 counties, 19,519 municipalities, 16,360 townships, 12,880 independent school districts, and 38,266 special districts. Local governments employ 14.5

million people, and state governments 5.1 million people, compared to 2.8 million federal civilian employees.

Many states give their local governments fiscal and regulatory powers that often intersect with internal-market matters. County, municipal, and township governments issue permits, licenses, and so on for all businesses that operate within their jurisdiction. They handle such matters as health and safety regulation. Local governments establish and administer building codes, fire codes, electrical codes, plumbing codes, and the like. Most localities base their codes on model codes developed voluntarily by professionals in each field, while some states require their local governments to implement model codes. Some states permit municipalities to set a higher minimum wage than the state's minimum wage. Counties, municipalities, and townships may affect internal-market flows by, for example, banning the use of certain products such as plastic bags or by taxing certain goods, such as carbonated beverages. Many enforce historic preservation ordinances, and many direct investment to poor neighborhoods. Local governments exercise the zoning power, which designates sections of their locality as industrial, commercial, residential, and so on. Land-use planning and management are mostly local functions.

Sometimes county, municipal, and township policies have substantial interstate-commerce impacts. Big cities and counties also deploy considerable fiscal weight in the marketplace. New York City has the world's 11th largest GDP. Its FY 2020 budget is estimated at $92.2 billion, and its public-employee pension fund is $201 billion. The city is largely free to make its own procurement and investment decisions, which have internal- and foreign-market impacts.

1) *Business-Location Incentives*

Cities and counties are the main drivers of incentives to entice firms to locate in their jurisdiction. However, state governments assist their local governments and add incentives. Local and state governments have recently spent about $45 billion per year on business incentives. The federal government has not interfered with state and local business-incentives. States would resist intervention as an intrusion into their sovereignty. Also, there is no agreement on how do define an "incentive." The main restraints on incentives are state and local voters.

III. The U.S. Constitution's Commerce Clause

The most contested provision of the U.S. Constitution since 1789 has been the interstate commerce phrase within the commerce clause. The clause states: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Art. I, Sec. 8).

A. Foreign Commerce Clause

The federal government's authority to regulate foreign commerce has not provoked much state-federal debate since the nineteenth century when tariffs were an important federal revenue source. Conflict is alleviated partly because only the U.S. Senate, in which each state is represented by two senators, ratifies treaties (by a two-thirds vote of the senators). Treaties are the supreme law of the land. They preempt conflicting state laws or local ordinances. States must comply with self-executing treaties and with federal laws enacted to implement treaties. Trade agreements, while not treaties, also require state compliance because they are executed via federal law.

One state worry is trade agreements forbidding non-tariff trade barriers. Congress has given the president authority to preempt state laws deemed to be non-tariff barriers that violate trade agreements. Ordinarily, presidents seek to resolve such matters by negotiation with affected states and foreign challengers.

B. Indian Commerce Clause

The country's 573 sovereign tribal nations participate fully in the country's internal market to the extent of their economic capacities but have certain asymmetric powers. One cannot be a citizen of a tribe, own land or property in Indian country, or do business on a reservation without the tribe's consent. Some states complain that tribes sell tax-free goods such as gasoline and cigarettes that non-Indians purchase so as to escape their state's taxes on these goods.

C. Intrastate Commerce

The commerce clause does not permit the federal government to regulate commerce occurring wholly within a state that has no impact on interstate, foreign, or Indian commerce. Each state has inherent plenary authority over its intrastate commerce.

D. Interstate Commerce Clause

The interstate commerce clause is the phrase: "Commerce . . . among the several States." No one knows what the framers meant by "commerce" with respect to the internal market or by "among the several states." The clause has been debated for 230 years by members of Congress, the U.S. Supreme Court, state and local officials, and law professors.

Today, interstate commerce includes the movement, communication, or transmission of every species of persons, things, services, capital, information, and energy across state lines, as well as facilities incident to such movement (e.g., hotels and restaurants). The federal government has jurisdiction over outer space activities. Eleven states have an FAA-licensed spaceport.

1) ***Pre-1930s and Post-1930s Approaches to Interstate Commerce***

Before the Great Depression of the 1930s, Congress and the U.S. Supreme Court showed more restraint in regulating interstate commerce than after 1929. Unprecedented expansions of federal power over commerce occurred during the 1930s, including the creation of many federal agencies such as the Securities and Exchange Commission in 1934 (to regulate stock markets) and National Labor Relations Board (1934).

Before 1937, the U.S. Supreme Court adhered to a narrow view of interstate commerce. Generally, the Court treated farming, mining, and manufacturing as intrastate commerce. In 1937, the Court began deferring to Congress's definitions of interstate commerce, allowing Congress to vastly expand its regulation of an increasing range of economic matters. Crucial to this switch was the Court's willingness to allow Congress to regulate matters of intrastate commerce deemed to have substantial effects on interstate commerce. In the Court's post-1937 view, Congress can (1) regulate the use of channels of interstate commerce, (2) regulate and protect instrumentalities of and persons or things in interstate commerce even if a threat comes only from intrastate commerce, and (3) regulate any "activities having a substantial relation to interstate commerce."

After 1937, the Court did not strike down a single federal statute as exceeding Congress's interstate commerce power until 1995, when it struck down the Gun-Free School Zones Act as exceeding Congress's commerce authority. The Court did so again in 2000; however, the two cases are exceptions to the Court's continuing deference to Congress's interpretations of its interstate commerce powers.

Even so, the Court has held that state regulations affecting interstate commerce will ordinarily be upheld if the state law "regulates evenhandedly to effectuate a legitimate local public interest . . . its effects on interstate commerce are only incidental" and "the burden imposed on" interstate commerce is not "clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree" and whether the local purpose "could be promoted as well with a lesser impact on interstate activities."

2) *Other Facets of Interstate Commerce*

a) *Prohibitions of Interstate Commerce*

Congress can prohibit interstate commerce, especially when it harms other states, such as interstate shipments of diseased livestock or agricultural produce.

b) *The Commerce Clause as a De Facto National Police Power*

The U.S. Supreme Court has held that the commerce clause is similar to the states' police power. As such, Congress can regulate activities that are not purely commerce.

E. The Dormant Commerce Clause

The dormant commerce clause is a doctrine forged by the U.S. Supreme Court in the nineteenth century to vacate state laws that discriminate against or unduly burden interstate commerce in the absence of applicable federal statutes. It seeks to prevent protectionist state policies that disfavor out-of-state citizens or businesses. The Court uses two tests. (1) Rigorous "strict scrutiny" review is applied to any state law that discriminates against out-of-state commerce on its face or in its effect. A state must prove its law serves a compellingly legitimate local purpose that cannot be served adequately by reasonable, nondiscriminatory, and alternative means. The standard is hard for a state to satisfy. (2) When a state law burdens interstate commerce in a nondiscriminatory manner, the Court applies a balancing test that weighs the law's burden on interstate commerce against its local benefits.

IV. Monetary Policy

The Bank of North America (1781-1791) created by the Confederation government and the First (1791-1811) and Second (1816-1836) Banks of the United States performed central-bank functions. From 1836 to 1913, the United States had no central bank. Congress created the Federal Reserve System in 1913 as a non-centralized public-private system. The Federal Reserve's Board of Governors in Washington, DC, is the public component and is a *de facto* central bank. The Federal Reserve System has four basic tasks: (1) formulate and implement monetary policy, (2) maintain stability of the U.S. financial system, (3) regulate banks and protect consumer credit rights, and (4) provide financial services to the U.S. government. Owing to fears of centralization, the Federal Reserve System also has 12 private regional banks that formulate monetary policy, help implement system policies, supervise the member banks in their regions, protect regional economic interests, and facilitate public input into the system. Each regional bank has nine private-citizen directors.

V. Dual Sovereignty

Dual sovereignty has important internal-market consequences. Vis-à-vis the U.S. Constitution, states can legislate on any subject so long as (a) Congress does not preempt the state law by a federal law enacted pursuant to its authority under the federal Constitution, (b) a treaty does not preempt a state law, (c) the U.S. Supreme Court does not strike down the law as violating the federal Constitution, or (d) the U.S. Constitution does not explicitly prohibit policy action by the states. States can and do legislate in areas of power delegated to the federal government when Congress is unable or unwilling to act..

B. Federal Preemption of States' Powers

Within its delegated powers, Congress can preempt state laws present in a federal field. Sometimes Congress occupies an entire field, leaving no room for state action. Frequently, Congress leaves room for state legislation. This is sometimes called partial (as opposed to total) preemption. A significant use of partial preemption is environmental law. Virtually every federal environmental law allows states to establish environmental standards that are equal to or greater than the federal standards.

1) *California's De Facto Preemption of Other States*

Size asymmetries create opportunities for big states to affect smaller states. California has a land area of 155,973 square miles, 40,017,007 people, and the world's fifth biggest GDP. Policies promulgated by California sometimes compel firms to alter the products they sell nationwide rather than tailoring products only for California.

C. Federal Incorporation of State Law

Federal laws often incorporate state law. Federal bankruptcy law allows state law to determine the existence of debt. Federal law protects persons and corporations from deprivations of property, but state law mostly defines what property is. The federal income-tax code and Social Security Act (1935) provide benefits to married persons, but marriage is defined by state law.

D. Anti-Commandeering

The federal government cannot require state or local legislative or executive officials to enforce federal laws. Otherwise, the federal government must enforce its own law. The anti-commandeering doctrine is the principal legal basis for state legalizations of marijuana and for the eight states and more than 300 counties and cities that have declared themselves ‘sanctuary’ jurisdictions that refuse or limit cooperation with U.S. Immigration and Customs Enforcement’s efforts to apprehend and deport illegal aliens.

E. Dual Regulation

The federal government and the states both regulate many internal-market fields. Leading examples are banking, securities, labor relations, and telecommunications.

A private bank can be established under a federal charter issued by the comptroller of the currency of the U.S. Department of the Treasury pursuant to the National Bank Acts (1863 and 1864). It is thus termed a ‘national’ bank. Alternately, a private bank can be established under a state charter. State-chartered banks that join the Federal Reserve System are regulated by the Federal Reserve as well as their state; state-chartered banks that do not join the Federal Reserve are regulated by the Federal Deposit Insurance Corporation (FDIC) (created in 1933) and their state. Overall, depository institutions are regulated by the Federal Reserve, FDIC, U.S. Office of the Comptroller of the Currency, National Credit Union Administration (created in 1934), Federal Trade Commission, U.S. Consumer Financial Protection Bureau (established in 2010), and the states.

Insurance is regulated mostly by the states even though Congress has authority to do so. Congress specifically reserved insurance regulation to the states via federal legislation. In other fields, congressional inaction leaves a field open to state regulation.

F. Corporation Chartering

Nearly all public and private corporations (e.g., Google, Microsoft, Facebook) are chartered by a state, with only a few exceptions. Most big corporations incorporate in Delaware, which competes for this business.

G. Dual Taxation

The federal government has limited tax power. A state can levy any tax it desires so long as the tax does not violate the state constitution, the U.S. Constitution (e.g., a tax on imports or exports), or a federal statute (e.g., the Internet Tax Freedom Act, 1998 and 2015) or treaty, or is not struck down by the U.S. Supreme Court for obstructing interstate commerce or discriminating against out-of-state persons or entities.

Local governments rely mainly on the property tax, but many states allow some local governments to piggyback on the states’ sales tax. That is, if the state sales tax is 6 percent, a municipality might levy a 7 percent tax. Together, 14 states allow about 2,700 of their municipal governments to levy an income or wage tax. The historical importance of state and local taxation is reflected in the fact that as late as 1933, total federal government revenues and expenditures accounted for only one-third of all government revenues and expenditures.

States cannot tax instrumentalities of the federal government and the federal government cannot tax instrumentalities of the states (e.g., a state office building, a city hall, or public school).

Neither the federal government nor state governments have a constitutional or statutory obligation to consult or coordinate with the other on setting tax rates or bases—and they do not do so. States also do not overtly coordinate their taxes.

Court cases on state taxation of interstate commerce are legion and extremely complex. Essentially, states can tax interstate commerce to recover costs and tax interstate activities that have a regular or permanent nexus to a state.

The biggest current tax controversy is states' authority to require out-of-state vendors to collect each state's sales tax on Internet or mail-order purchases made by each state's residents and to remit the revenue to the buyer's state.

H. Dual Borrowing

The federal government and state governments each borrow under their own rules. There is no constitutional or statutory limit on federal borrowing. The federal government does not regulate state and local borrowing, nor does it bail those governments out of debt.

States cannot file for bankruptcy in federal bankruptcy court because they are sovereigns that can default on their debts. County and municipal governments can file for bankruptcy under the U.S. Municipal Bankruptcy Act (1934) if their state allows them to do so.

Forty-nine states have a constitutional or statutory requirement to have a balanced operating budget every year or biennium. States regulate borrowing by their local governments. State and local governments have operating budgets that must be balanced and capital budgets for borrowed funds. The federal government has one unified budget.

States do little monitoring of local governments. One exception is fiscal affairs, especially localities in fiscal distress. In extreme cases, a state can take over a local government, as did New York, which took over New York City and sidelined its elected government when the city was nearing bankruptcy in the mid-1970s. States ordinarily rely on local officials to certify they are in compliance with state rules. For the most part, local officials comply with state laws. Many cities retain a municipal-law specialist to advise the city council and mayor. Otherwise, citizens do monitoring, which they can enforce by filing lawsuits against their local government in state court. The state courts are major actors in settling matters of local compliance with state law and also cases involving questions of whether a local government has exceeded its charter powers and/or encroached upon state powers. On matters involving civil rights and federal law (e.g., federal grants received by a local government), citizens can (and do) sue their local government in federal court.

The federal government allows purchasers of state and local bonds to deduct the interest they earn on those bonds from their federal income-tax liability. This is an indirect subsidy worth about $61 billion per year to state and local governments because it allows them to borrow at lower interest rates than would prevail without the federal tax deduction.

I. Eminent Domain

The federal and state governments each have inherent eminent-domain power to take private property for "public use." However, both the U.S. Constitution and the state constitutions require a government to pay "just compensation" for private property taken from its owner. States grant eminent-domain power to most of their local governments. State and local governments often use this power for economic development incentives.

J. Fiscal Equalization

Unlike most federal countries, the United States has no fiscal equalization or solidarity fund. However, more than 60 percent of all federal aid to state and local governments is for Medicaid (i.e., health insurance for people unable to afford private insurance). The federal government pays 76.98 percent of Medicaid's costs in the poorest state, Mississippi, but 50 percent in the wealthiest states such as Connecticut and Colorado. Altogether, federal aid, which totaled $750 billion in 2019, accounts for about 31 percent of state-local budgets.

K. Countercyclical Aid

During recessions, the federal government normally increases spending to stimulate the economy. State and local governments, which must balance their budgets, normally cut spending and employment. Consequently, since 1929, the federal government has ordinarily increased aid to state and local governments during recessions.

L. Dual Prosecution

A person can be tried and convicted of the same criminal behavior in both federal and state courts. Such double prosecutions do not violate the protection against double jeopardy found in the U.S. Constitution and in state constitutions because the federal and state governments are separate sovereigns. Hence, businesses know that malfeasance might be prosecuted by the federal and/or state governments. In New York especially, recent state attorneys general have taken many actions against Wall Street firms.

M. State Attorneys General

State attorneys general are the states' chief law-enforcement officers. They enforce, among other things, states' business, financial, tax, and consumer-protection laws. In recent decades, attorneys general have become active in national business affairs by working together through the National Association of Attorneys General (founded in 1907) to file multistate lawsuits against national and multinational corporations.

1) *District Attorneys*

States also have district attorneys (DAs), usually attached to county governments. DAs in some large urban counties have significant market impacts, most prominent being the DA of Manhattan borough, New York City. This DA, who is elected by Manhattan's voters, is sometimes dubbed "the world's district attorney" because of his or her impact on Wall Street.

N. Natural Resources

Ownership of natural resources is tied to land ownership. Land is owned by private individuals, private corporations, the federal government, state and local governments, and tribal governments. The federal government owns nearly one-third of the U.S. land area (most being national parks and protected wildernesses). The federal and state governments split ownership of off-shore resources. Generally, states have primary ownership and jurisdiction over natural resources within three miles of their coast. The federal government owns natural resources in the submerged lands on the Outer Continental Shelf, which extend at least 200 nautical miles out from the states' offshore boundaries.

State and local governments levy fees and taxes (e.g., severance taxes) on natural resources exploited by private entities within their boundaries and their off-shore jurisdiction. Once natural resources enter interstate commerce (e.g., oil in pipelines), they are subject to federal regulation, although the federal government imposes numerous environmental, safety, and labor rules on natural-resource extraction. State and local governments cannot tax natural-resource exploitation occurring on federal or Indian lands. Likewise, states regulate natural-resource exploitation. For example, 34 states permit fracking; the other 16 states (e.g., New York) prohibit it.

O. Uniform State Laws

The Uniform Law Commission, formed by the states in 1892, seeks to foster more uniformity in states' commerce laws and reduce needs for federal legislation. It proposes laws for enactment by the states. The most important current law is the Uniform Commercial Code (UCC) of 1951—often called "the backbone of American commerce." It is a comprehensive set of laws enacted by the states to govern all commercial transactions. It enables businesses to enter contracts with confidence that their terms will be enforced in the same way by the courts of every U.S. jurisdiction.

V. Governments as Economic Promoters

Before 1929, the federal government did not substantially intervene in the internal market to directly promote or subsidize economic development. Since 1929, the federal government has played massive roles in subsidizing and promoting specific industries and market sectors, subsidizing research and development at universities, providing tax incentives, maintaining high military spending, supporting low-income housing, and becoming a market participant. The federal government also seeks to stimulate and channel private investment.

States and many cities provide funding, tax, and regulatory incentives for economic development, support job-training programs, subsidize business incubators, supply venture capital and low-interest loans, and help businesses export products abroad. Governors and mayors frequently travel abroad to promote trade and attract foreign investment and tourists.

VI. Issues of Convergence and Divergence

Where states must comply with federal law, where states adopt a uniform law, and where states adopt a model law or a pioneering state's successful law as a result of policy diffusion, there is convergence; however, there continues to be considerable interstate policy and regulatory divergence. For example, state gun regulations run a wide gambit from strict rules to lax rules. Divergence is increasing with growing polarization between Democratic and Republican states.

Top-down convergence has been driven mainly by the federal government since the 1930s, although the federal government ordinarily allows states to tailor and adapt federal rules to local circumstances, which means some divergence. Interest groups and public opinion also drive convergence bottom up. Business, professional, environmental, health, and education interests usually lobby for the same kinds of regulations in every state. Divergence remains, though, because they have only mixed success. International agreements have not played much of a role in convergence. Economic competition drives some convergence among states, especially in such fields as education, job training, infrastructure, and public amenities. Otherwise, it drives divergence, as in labor laws. Southern states believe anti-union laws make them more economically competitive. But some states with strong pro-union laws are actually more competitive, and very few pro-union states have retreated from such policies. Americans are not overly disturbed by divergence, except when it produces serious injustices or other negative consequences. Races to the bottom occur in very few policy fields, even environmental protection. California has some of the nation's highest regulatory standards, but it has a robust competitive economy with a GDP larger than that of the U.K. Mississippi, with much thinner regulation, remains the country's poorest state.

V. Conclusion

The U.S. internal market is regulated independently and coordinately by the federal, state, local, and tribal governments and by private, non-profit, standards-setting associations. The system evolved mostly pragmatically and politically over 230 years through federal and state legislative and judicial actions. The internal market was regulated and promoted predominantly by the states until about 1929, but afterward, by both the federal and state governments, with local governments also being vital. In recent decades, the federal government has become the predominant regulator, partly because of the increasingly nationalized and globalized economy. Big-business lobbyists usually prefer regulation by one 500-pound gorilla in Washington, DC, rather than by 50 monkeys.