

- *Partial preemptions*: These establish a floor but not a ceiling for new regulations, allowing some states to go beyond a federally required level of regulation. California, for example, has long taken advantage of this with the Clean Air Act, which allows states to impose stricter limits on auto emissions than what is federally mandated.
- *Waivers*: These tools have been used for several decades, first in welfare reform and later in Medicaid. States have been able to tailor federal entitlement and grant programs to achieve cost savings, shifts in service-delivery approaches, and other innovations.
- *Opt-outs*: These have allowed conservative states to avoid participating in some federal programs altogether. In the case of regulatory opt-outs, the federal government typically stands by to enforce federal rules in nonparticipating states, thereby ensuring some level of national uniformity. This was most notable with the Affordable Care Act, which allows states to opt out of operating their own insurance exchanges. When states opt out of grants, however, there is typically no federal fallback.

Where is all this leading? No one is quite sure. People increasingly talk of a two-speed European Union where, for example, some EU members adopt the euro while other member nations such as Denmark and Britain opt out and keep their own currencies. It seems as though something similar is happening in the political system of the United States; a sort of “two-speed federalism” is emerging where states opt in or out of federal policy initiatives based on their ideological and partisan leanings. Whether this is good or bad remains to be seen. On the one hand, states could emerge as newly empowered actors in charge of federal programs. On the other, the polarization that gave rise to wide variations among the states could become institutionalized, further segmenting the nation into radically different policy worlds.

Two-speed federalism could also be temporary. If the goals of national programs become more deeply rooted—for example, if people decide they like the expanded health care opportunities associated with Obamacare—it could prompt a push for stronger forms of nationalization of policy programs. In other words, if state governments will not implement policy programs that state citizens decide they want, they might ask the federal government not to take away state options to opt out.