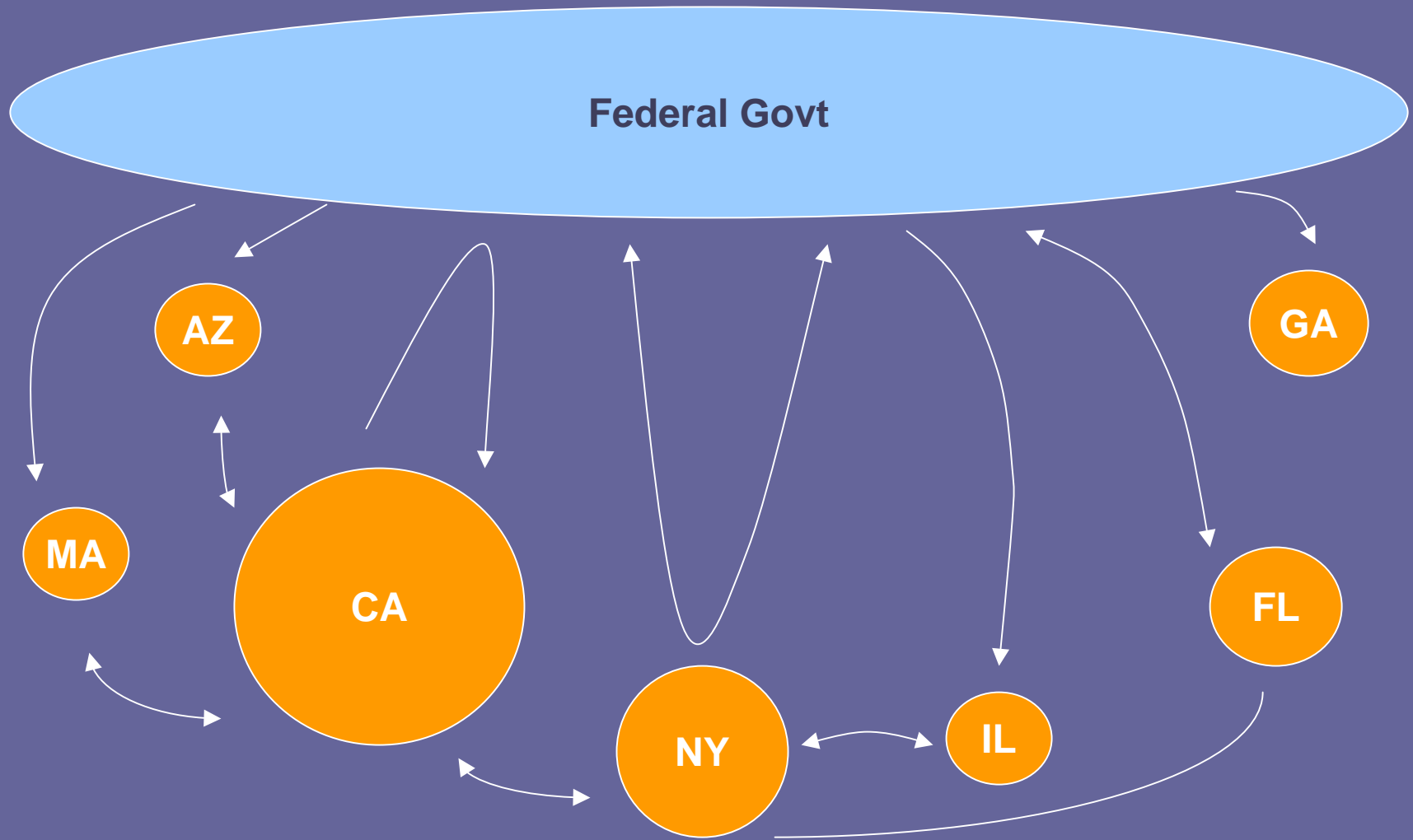


Dynamic Federalism: A Public Choice Analysis and Environmental Case Study

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States as "laboratories of democracy": Dissemination of policy innovation in a federal system



Optimal conditions for encouraging policy exchange

- 1. Interest groups and politicians with state and federal ties and ambitions
- 2. Overlapping state/fed'l jurisdiction
- 3. Courts willing to foil attempts to obstruct policy exchange

Drivers of dynamic federalism

Interest groups - opportunities for success when blocked at other (perhaps preferred) level;

- Politicians - disproportionately large political payoffs for "doing something" at their level where no action at other levels
- Motivated bureaucrats - may have freer hand to realize policy goal on issue considered "new"

Drivers have incentives to block dynamic federalism as well

A. "Lock in" legislative victory by incorporating preemption provision

B. Bring litigation to challenge opponents' successes at given govt level

claim it exceeds fed'l commerce clause power;

claim federal preemption;

claim invalid state regulation of the national market

The role of the courts: Repel "lock in"; keep "pathways" clear

- 1. interpret scope of federal authority broadly (*e.g., Raich rationale*)
- 2. interpret federal preemption narrowly (*e.g., use "clear statement" rules*)
- 3. interpret the scope of the dormant commerce clause narrowly (*e.g., limit challenges to facial discrimination*)

Dynamic Federalism and Climate change policymaking

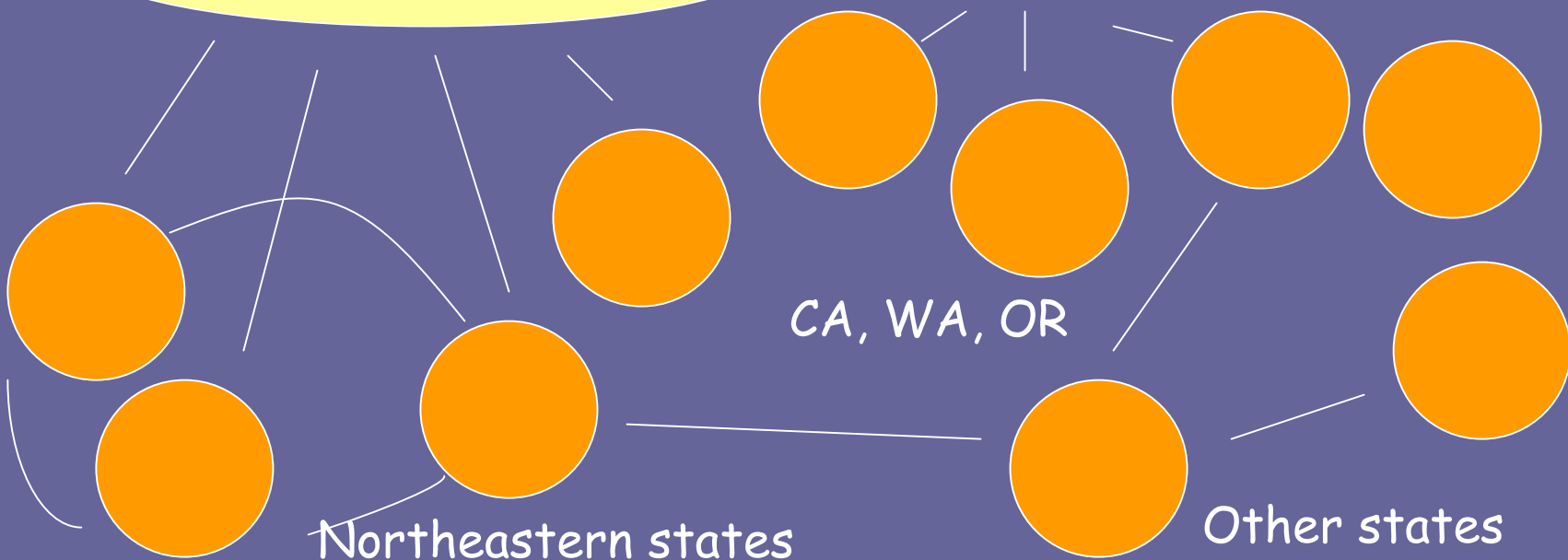
- **Questions:**
- What are potential benefits of policy innovation sharing betwn fed'l / state?
- What interest groups/politicians are driving the dynamic?
- Is there a role for the courts in repelling efforts to block innovation-sharing betwn levels of govt?

The climate change policymaking "dynamic"

Fed'l level: voluntary measures only

Regional: NE

Regional Pacific.NW



Why current emphasis upon state/local climate policy?

Phase I (last decade) state climate policymaking

- Electricity deregulation
- Rise of clean energy business groups
- Energy/envtl conscious state officials;
- Opportunistic politicians (e.g., Pataki; Schwarzenegger)
- Hard-working envtl-minded state officials/ local groups

Phase II (this decade) same as above plus:

- Nat'l envt'l groups stymied at fed'l level
- But Exceptions: States/envtl groups seeking to compel federal regulation.

Shift in envtl focus from fed'l to state/local: BIG PICTURE sketch

- 1970s: • Env'tl interests = "first-movers" on (preferred) fed'l level
- 1980s-90s: • Rise of "second movers" -- industry opposition groups at fed'l level
- 2000's: • "first-mover" envtl interests move to state level

Examples of pathway-restricting legal challenges

- American Auto. Assoc. challenge to CA greenhouse gas vehicle emission standards
(based on federal preemption)
- (withdrawn) Hydro-Quebec challenge to CT state renewable portfolio standard
(based on NAFTA)