

CH. 3 - FEDERALISM

Federalism, a central feature of the American political system, is the division and sharing of power between the national government and the states. The balance of power between the two levels of government has spawned some of the most intense controversies in American history. Historically, national interests have clashed with states' rights, and even today, when most Americans think of the government in Washington as vastly more powerful than the state governments, federalism is still one of the most important founding principles of the United States.

UNITARY, FEDERAL, AND CONFEDERAL POLITICAL SYSTEMS

All political systems may be evaluated according to their geographic distribution of power. A unitary system is one that concentrates all policymaking powers in one central geographic place; a confederal system spreads the power among many sub-units (such as states), and has a weak central government. A federal system divides the power between the central government and the sub-units. All political systems fall on a continuum from the most concentrated amount of power to the least. Unitary governments may be placed on the left side, according to the degree of concentration; confederal governments are placed to the right; and federal governments fall in between.

UNITARY SYSTEM	FEDERAL SYSTEM	CONFEDERAL SYSTEM
China; Britain; France	U.S.; Canada	U.S. under the Articles of Confederation; The Confederate States of America during the Civil War

THE HISTORICAL DEVELOPMENT OF FEDERALISM

Federalism was carefully defined in the Constitution as a founding principle of the U.S. political system. Even so, the nature of federalism is dynamic and has been shaped through the years by laws, Supreme Court decisions, and debates among prominent elected officials and statesmen.

FEDERALISM AS PROVIDED IN THE CONSTITUTION

When the colonies declared their independence from Britain in 1776, they reacted against the British unitary system in which all political and economic power was concentrated in London. Although the British did not impose this power consistently until after the French and Indian War ended in 1763, new controls on the colonial governments during the 1760s became a major source of friction that eventually led to war. During the American Revolution, the states reacted to Britain's unitary system by creating the Articles of Confederation that gave virtually all powers to the states. The framers at the Constitutional Convention tried to balance the perceived tyranny of the unitary system with the chaos created by the confederal system by outlining a hybrid federal system in the Constitution. Federalism, then, became a major building block for preserving freedoms while still maintaining order in the new nation.

DELEGATED POWERS

The Constitution grants the national government certain delegated powers, chief of which are the war power, the power to regulate interstate and foreign commerce, and the power to tax and spend. Delegated powers (also called expressed or enumerated powers) are those that are specifically granted to the federal government by the Constitution.

- The War Power - The national government is responsible for protecting the nation from external attacks and for declaring war when necessary. Today, defense includes not only maintaining a standing army, navy, and air force, but also the ability to mobilize industry and scientific knowledge to back the efforts of the military.
- The Power to Regulate Interstate and Foreign Commerce - The national government has the responsibility to regulate commerce between the U.S. and foreign nations, as well as trade between states (interstate commerce.) The commerce clause (Article One, Section 8, Clause 3) gives Congress

the power "to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes." The government regulates a wide range of human activity, including agriculture, transportation, finance, product safety, labor relations, and the workplace. Few aspects of today's economy affect commerce in only one state, so most activities are subject to the national government's constitutional authority.

- The Power to Tax and Spend - Even when Congress lacks the constitutional power to legislate (for example, education and agriculture), its power to appropriate money provides Congress with a great deal of control. When Congress finances an undertaking, it determines how the money will be spent. Congress may threaten to withhold funds if a project does not meet federal guidelines. In recent years Congress has refused to finance any program in which benefits are denied because of race, color, or national origin, and more recently, gender and physical handicap.

Other powers specifically delegated to the national government include coining money, establishing a postal system, and the right of the government to borrow against its credit.

CONCURRENT POWERS

All powers not granted in the Constitution to the national government are reserved for the states. States, however, may hold some of the same powers that the national government has, unless they have been given exclusively to the national government, either by provision of the Constitution or by judicial interpretation. Concurrent powers are those that both national and state governments hold. Examples are the concurrent powers of levying taxes and establishing and maintaining separate court systems. Even so, federalism limits state powers in that states cannot "unduly burden" their citizens with taxes. Neither can they interfere with a function of the national government, nor abridge the terms of a treaty of the United States government.

RESERVED POWERS

Reserved powers are those held by the states alone. They are not listed (as delegated powers are), but they are guaranteed by the 10th Amendment as reserved to the states respectively, or to the people. Reserved powers include establishing local governments and regulating trade within a state. States also have police power - the authority to legislate for the protection of the health, morals, safety, and welfare of the people. However, because these powers are not listed in the Constitution, there is sometimes a question about whether certain powers are delegated to the national government or reserved for the states.

PROHIBITED POWERS

Prohibited powers are denied to the national government, state governments, or both. For example, the federal government can't tax exports, and state governments cannot tax either imports or exports. States can't make treaties with or declare war on foreign governments.

THE NECESSARY AND PROPER DEBATE

From the beginning, the meaning of federalism has been open to debate. In the late 18th century, Alexander Hamilton - the first Secretary of the Treasury - championed loose construction, the view that the Constitution should be broadly interpreted. The national government created by the government represented "the supreme law of the land" (Article Six), and its powers should be broadly defined and liberally construed. The opposite view of strict construction, articulated by Thomas Jefferson, was that the federal government was the product of an agreement among the states and that the main threat to personal liberty was likely to come from the national government. Jefferson's strict construction required that the powers of the national government should be narrowly construed and sharply limited. This famous clash in interpretations of the Constitution shaped the political culture of the United States for many years, well into the mid-twentieth century.

Realizing that they could not make a comprehensive list of powers for the national or the state governments, the founders added to Article I the "necessary and proper clause." This clause states that Congress shall have the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Hamilton's arguments for national supremacy relied heavily on the "necessary and proper" (or elastic) clause. Jefferson's states rights point of view rested partially on the 10th Amendment that reserves powers to the states.

McCULLOCH V. MARYLAND

During the early 19th century, the Supreme Court tipped the balance of the debate to national supremacy, the point of view that the national government should have relatively more power than the states. Chief Justice John Marshall advocated this view in a series of decisions, including the influential 1819 case known as *McCulloch v. Maryland*.

The case arose when James McCulloch, the cashier of the Bank of the United States in Baltimore, refused to pay a tax levied on the bank by the state of Maryland. When state officials arrested him, McCulloch appealed to the Supreme Court. The Court's opinion set an important precedent that established national supremacy over states rights. The case questioned the right of the federal government to establish a bank, since no such right is enumerated in Article I.

Marshall ruled the Maryland law that established the tax unconstitutional with his famous statement: "The power to tax is the power to destroy." The power to destroy a federal agency would give the state supremacy over the federal government, so the states may not tax a federal agency.

THE NULLIFICATION CONTROVERSY

The issue continued to rage during the early 19th century. Eventually James Madison and Thomas Jefferson defined the states rights point of view as nullification, the right of a state to declare null and void a federal law that in the state's opinion violated the Constitution. Before the Civil War, John C. Calhoun led the charge for southern states that claimed the right to declare null and void any attempts by the national government to ban slavery. The issue was settled with the northern victory in the Civil War that determined once and for all that the federal union is indissoluble and that states cannot declare acts of Congress unconstitutional.

THE "COMMERCE CLAUSE"

The meaning of the commerce clause was at issue in the 1824 *Gibbons v. Ogden* case. Aaron Ogden had been given exclusive license by the state of New York to operate steam-powered ferryboats between New York and New Jersey. Thomas Gibbons obtained a license from the U.S. government to operate boats in the same area, and when he decided to compete with Ogden, Ogden sued, and the case went to the Supreme Court. Several issues were at stake in defining federalism:

- The definition of commerce - When New York's highest court ruled against Gibbons, defined commerce narrowly as only the shipment of goods, not navigation or the transport of people.
- National government's powers over intrastate commerce - Does the national government have the right to control any commerce within a state's boundaries?
- State government's powers over interstate commerce - Is interstate commerce a concurrent power that states may share with the national government?

John Marshall wrote the majority opinion in the case, an expansive interpretation of the commerce clause that increased the national government's authority over all areas of economic affairs. Marshall defined commerce as all business dealings, not just the transfer of goods, and he ruled that the national government could regulate within states' jurisdiction. On the other hand, interstate commerce is solely the right of the national government, and so the New York court had no right to prohibit Gibbons' trade.

EXPANSION OF THE COMMERCE CLAUSE

With the booming Industrial Revolution of the late 1800s, the debate over the balance of power between state and national government focused on the interpretation of the commerce clause, which gives Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." At first, the Court tried to distinguish between interstate commerce, which Congress could regulate, and intrastate commerce, which only the states could control. Because most companies participate in both types of commerce, the Court had a great deal of trouble distinguishing between the two. If a company is canning vegetables, some of which will be shipped within the state, and some outside the state, should different regulations apply to canning the same product? Is a shipment destined for another state under state control as long as it travels to the border? At what point does it become interstate commerce?

Over the years this clause has been interpreted more and more broadly, so that today, the national government regulates a wide range of commercial activities, including transportation, agriculture, labor relations, finance,

and manufacturing. Almost no type of commerce is controlled exclusively by the states, and the current Court interpretation of commerce laws is extremely complex.

THE COMMERCE CLAUSE AND CIVIL RIGHTS

The Commerce clause also has been used to sustain legislation outside of commercial matters. In 1964 the Supreme Court upheld the 1964 Civil Rights Act forbidding discrimination based on race in public accommodations because

"Congress's action in removing the disruptive effect which it found racial discrimination has on interstate travel is not invalidated because Congress was also legislating against what it considers to be moral wrongs."

Discrimination affects interstate commerce, so Congress constitutionally could legislate against discrimination. Again, many years later, Hamilton's loose interpretation of the Constitution insured that the principle of national supremacy prevailed over that of states rights.

REINING IN THE COMMERCE POWER

Since the 1990s the Supreme Court has been limiting the national government's power under the commerce clause. In *United States v. Lopez* (1995) the Court ruled that Congress had exceeded its authority when it banned possession of guns within one thousand feet of any school. The law was declared unconstitutional because it had nothing to do with commerce. In 2000, the Court held that the 1994 Violence against Women Act also overstepped the Constitution with the statement that violence against women had an adverse effect on interstate commerce.

TWO TYPES OF FEDERALISM

Until the 1930s, the relationship between the national and state governments was usually described as **dual federalism**, a system in which each remains supreme within its own sphere. However, as the commerce controversy in *Gibbons v. Ogden* points out, separating national from state jurisdiction isn't always easy. With the New Deal programs of the 1930s the separation proved to be virtually impossible, ushering in the era of **cooperative federalism**. During this era state and federal governments cooperated in solving the common complex problems brought on by the Great Depression. The New Deal programs often involved joint action between the national government and the states. Cooperative federalism remains in place today, with the national government involved to some extent in virtually all public policymaking.

The two types of federalism are often compared by using an analogy with two types of cakes: the layer cake (dual federalism) with its clearly distinct separations, and the marble cake (cooperative federalism) where the two intertwine and swirl together.

THE POLITICS OF MODERN FEDERALISM

The structures of the federal system have not changed much since the Constitution was written, but modern politics have changed the relationship between national and state governments, especially over the past 50 years or so. Today a major aspect of federalism is the grants-in-aid system: the national government provides millions of dollars for federal grants to states.

GRANTS-IN-AID

One of the national governments most important tools for influencing policy at the state and local levels is the federal grant. Congress authorizes grants, establishes rules for how grants may be used, and decides how much control the states have over federal funds.

Federal grants fall into two general types:

- Categorical grants are appropriated by Congress for specific purposes - highway or airport building, welfare, or school lunches. These grants usually require the state to "match" (put up money) the federal grants, although the matching funds can vary widely. There are hundreds of categorical grant programs, but a few, including Medicaid and Aid to Families with Dependent Children, account for almost 85 percent of total spending for categorical grants. State and local officials complain that these grants are often too narrow and cannot be adapted easily to local needs.

- Block grants consolidate several categorical grants into a single "block" for prescribed broad activities, such as social services, health services, or public education. This type of grant was promoted by Ronald Reagan, and during the early 1980s, Congress consolidated a number of categorical grants into block grants. Later Presidents have advocated that more consolidation occur, but Congress has been reluctant to do so. Block grants give Congress less control over how the money is used, and representative cannot take credit for grants to their particular districts. State governors generally have supported block grants, because they give states wide control of how and where the money is spent. City mayors have tended to oppose them because cities must rely on state governments to determine funding rules and amounts.

Today, even though block grants still exist, Congress is always tempted to add "strings" that set requirements for how federal grants are to be spent. As a result, block grants gradually become more categorical, a phenomenon known as "creeping categorization."

MANDATES

A recent federal control on the activities of state governments is a mandate, a rule that tells states what they must do in order to comply with federal guidelines. Often the mandates are tied to federal grants, but sometimes the mandates have nothing to do with federal aid.

Most mandates apply to civil rights and environmental protection. State programs may not discriminate against specific groups of people, no matter who pays for them. Today, anti-discrimination rules apply to race, sex, age, ethnicity, and physical and mental disabilities. States must comply with federal laws and standards regarding the environment, as well.

Mandates have been criticized strongly by state and local governments. From their point of view, it is easy enough for Congress to pass mandates when the states must foot the bills. For example, the 1986 Handicapped Children's Protection Act provided federal regulations meant to assure equal access and opportunity for disabled children. Federal guidelines included requirements for public schools to build access ramps and elevators, provide special buses and personnel, and widen hallways, all with no federal money to help schools comply.

Examples of Federal Mandates for State and Local Governments:

- 1983 - Social Security Amendments
- 1984 - Hazardous and Solid Waste Amendments; Highway Safety Amendments
- 1986 - Asbestos Emergency Response Act; Handicapped Children's Protection Act; Safe Drinking Water Act Amendments
- 1988 - Drug-Free Workplace Acts; Ocean Dumping Ban Act
- 1990 - Clean Air Act Amendments; Americans with Disabilities Act

THE ADVANTAGES AND DISADVANTAGES OF FEDERALISM

Few Americans believe that the federalist system should be abandoned, but the nature of federalism is still a controversy today, and Americans still disagree about the balance of power between national and state governments.

ADVANTAGES	DISADVANTAGES
1. Mobilization of political activity The various levels of government provide many alternatives for a citizen to be heard regarding a concern. If a local official won't listen, a citizen may appeal to someone on the state or national level.	1. Confusion of political activity The various levels of government can be confusing to a citizen, so that he or she does not know which official to contact.
2. Interest groups cannot easily take over the government. Powerful interest groups cannot force their will upon less powerful groups because in order to control, they would have to take over not only the national government, but	2. Small but motivated interest groups can block the will of the majority for extended periods of time. Sometimes small groups of people can impose their will for extended periods of time on the majority. For example, a relatively small group of southern senators blocked civil

state and local governments as well. Small groups of people have a chance to be heard and influence legislation.	rights legislation for many years after most citizens favored such legislation.
3. Diversity of policies among states encourages experimentation and creativity. 50 different state governments tackle similar issues, and a good solution in one state can be modeled in another. For example, if a state finds a good way to finance public education, other states can mimic the plan, altering for special needs. On the other hand, if a state tries something that fails, at least it affects only one state, not all.	3. Diversity of policies among states creates inequality between citizens of different states. Because states provide different levels of support, citizens in some states have more advantages than those in other states. For example, welfare benefits vary widely among the states, as do funding levels for public education.
4. Diverse policies among states are good because uniform laws don't make sense in many areas. For example, speed limits on highways should be under state and local control, as should the minimum age for obtaining a driving license. Crowded New Jersey should not have the same speed limits as does wide-open Montana. Young people in farm states should be allowed to drive at early ages in order to help support the farm.	4. Diverse policies among states even for speed limits and driving ages create confusion and inequality. Although speed limits obviously need to vary, arbitrary differences in state laws are confusing and outdated in this era of interstate highways. Differences in driving ages are not fair to young people in states with higher age requirements.

An individual's attitude about federalism depends partly on how much he or she values equality vs. freedom. Uniform laws passed by a unitary government tend to emphasize equal treatment of citizens. Diverse laws by their very nature allow a great deal of individual freedom.

THE "DEVOLUTION REVOLUTION"

Although the trend toward national supremacy has continued throughout most of American history, a movement has begun in recent years to devolve more responsibilities back to the states. The movement began as a Republican initiative shortly after the 1994 elections, when the Republicans became the majority party in both houses of Congress. The new conservative leadership looked for ways to scale back the size and activities of the national government. A major focus was the welfare system, and as a result, the welfare to work legislation passed in 1996 has led to a major shift of responsibility for welfare programs from federal to state governments. The national government continues to give block grants to states, but overall federal funding for welfare programs has decreased dramatically.

Although the balance of power between national and state governments has varied over time, the federalist system is an essential building block of American government. States sponsor major programs to fund education, help distressed cities, and provide welfare. Local governments have wide controls over a myriad of services and regulations. The federalist system is rooted in the Constitution, and governmental powers certainly will continue to be shared among national, state, and local levels.