



CHAPTER 7

Federalism

IN THIS CHAPTER

Summary: One of the basic principles embodied in the United States Constitution is federalism. Federalism arose from the framers' desire to create a stronger national government than under the Articles of Confederation but preserve the existing states and state governments.

Federalism is a political system where the powers of government are divided between a national government and regional (state and local) governments. Each level of government has certain authority over the same territory and people. A constitution outlines each level of government's authority, powers, and prohibitions.

Key Terms

federalism
delegated powers
implied powers
Necessary and
Proper (Elastic)
Clause
inherent powers
concurrent powers
reserved powers
Full Faith and Credit
Clause

Privileges and Immunities
Clause
extradition
interstate compacts
Supremacy Clause
McCulloch v. Maryland
dual federalism
cooperative federalism
devolution
fiscal federalism
fiscal policy

grants-in-aid
categorical grants
block grants
revenue sharing
mandates
unfunded mandates

The Constitutional Basis of Federalism



Although the term federalism is not found in the United States Constitution, it is clearly defined in the delegated, concurrent, and reserved powers of the national and state governments. (See Figure 7-1.)

- **delegated powers**—expressed, or enumerated powers, those specifically given to the national government (Articles I–V)
- **implied powers**—although not expressed, powers that may be reasonably inferred from the Constitution (Article I, Section 8, Clause 18—the **Necessary and Proper Clause**, or **Elastic Clause**)
- **inherent powers**—powers that exist for the national government because the government is sovereign
- **concurrent powers**—powers that belong to both the national and state governments
- **reserved powers**—powers belonging specifically to the state because they were neither delegated to the national government nor denied to the states (Article IV; Amendment 10)
- **prohibited powers**—powers that are denied to the national government, state governments, or both (Article I, Sections 9 and 10; Amendments)
- For example, neither the national government nor state governments may pass an ex post facto law or a bill of attainder.

Powers of Government Under Federalism

National Powers (Expressed, Implied, Inherent)	National and State Powers (Concurrent)	State Powers (Reserved)
Regulate foreign and interstate commerce Coin and print money Provide an army and navy Declare war Establish federal courts below the Supreme Court Conduct foreign relations Make all laws “necessary and proper” Acquire and govern U.S. territories and admit new states Regulate immigration and naturalization	Levy taxes Borrow money Spend for general welfare Establish courts Enact and enforce laws Charter banks	Regulate intrastate commerce Establish local governments Establish public school systems Administer elections Protect the public’s health, welfare, and morals Regulate corporations Establish licensing requirements for certain regulated professions

Figure 7-1

Federalism in Practice

Interstate Relations

Article IV of the Constitution addresses the issue of relationships between the states. It offers several provisions:

- **Full Faith and Credit Clause**—States are required to recognize the laws and legal documents of other states, such as birth certificates, marriage licenses, drivers' licenses, wills.
- **Privileges and Immunities Clause**—States are prohibited from unreasonably discriminating against residents of other states. Nonresidents may travel through other states; buy, sell, and hold property; and enter into contracts (does not extend to political rights such as the right to vote or run for political office, or to the right to practice certain regulated professions such as teaching).
- **extradition**—States may return fugitives to a state from which they have fled to avoid criminal prosecution at the request of the governor of the state.
- **interstate compacts**—States may make agreements, sometimes requiring congressional approval, to work together to solve regional problems. Some examples are "hot-pursuit agreements," parole and probation agreements, the Port Authority of New York and New Jersey, and regulating the common use of shared natural resources.

Guarantees to the States

Article IV of the Constitution provides national guarantees to the states:

- republican form of government
- protections against foreign invasion
- protections against domestic violence
- respect for the geographic integrity of states

Some of the advantages and disadvantages of federalism are shown in Figure 7-2.

Advantages and Disadvantages of Federalism

Advantages of Federalism	Disadvantages of Federalism
<p>Ideally suited to large geographic area because it encourages diversity in local government</p> <p>Avoids concentration of political power</p> <p>Accommodated already existing state governments</p> <p>States serve as training grounds for national leaders</p> <p>Keeps government close to the people</p>	<p>Inflexibility inherent in a written constitution</p> <p>Complex, with many governments to deal with</p> <p>Duplication of offices and functions</p> <p>Conflicts of authority may arise</p>

Figure 7-2

Establishing National Supremacy



KEY IDEA

Article VI of the United States Constitution contains the **Supremacy Clause**, which helps to resolve conflicts between national and state laws. Because two levels of government are operating within the same territory and over the same people, conflicts are bound to arise. The Supremacy Clause states that the Constitution, its laws and treaties shall be the “supreme law of the land.” The Supreme Court upheld this supremacy in *McCulloch v. Maryland* (1819). The Supreme Court continued to expand the powers of Congress over interstate commerce in *Gibbons v. Ogden* (1824).

McCulloch v. Maryland (1819)

The Supreme Court dealt with the issues of the Necessary and Proper Clause and the Supremacy Clause when Maryland imposed a tax on the Baltimore branch of the Second National Bank of the United States. Chief cashier James McCulloch refused to pay the tax, Maryland state courts ruled in the state’s favor, and the United States government appealed to the Supreme Court. The Marshall court ruled that although no provision of the Constitution grants the national government the expressed power to create a national bank, the authority to do so can be implied by the Necessary and Proper Clause (Article I, Section 8, Clause 18). This ruling established the implied powers of the national government and national supremacy, the basis used to strengthen the power of the national government.

Gibbons v. Ogden (1824)

At issue was the definition of commerce and whether the national government had exclusive power to regulate interstate commerce. The New York legislature gave Robert Livingston and Robert Fulton exclusive rights to operate steamboats in New York waters and Aaron Ogden the right to operate a ferry between New York and New Jersey. Thomas Gibbons had received a national government license to operate boats in interstate waters. Ogden sued Gibbons and won in the New York courts; Gibbons appealed to the Supreme Court. The Marshall court defined commerce as including all business dealings, and the power to regulate interstate commerce belongs exclusively to the national government. Today, the national government uses the commerce clause to justify the regulation of numerous areas of economic activity.

Federalism Today



KEY IDEA

Since the founding of the United States, society has changed, and federalism has evolved to meet the changes and challenges.

Dual Federalism

The earliest (1789–1932) interpretation of federalism is the concept of **dual federalism**, which views the national and state governments each remaining supreme within their own sphere of influence. This form of federalism is often referred to as “layer cake federalism,” because each level of government is seen as separate from the other, with the national government having authority over national matters and state governments having authority over state matters. The early beliefs that states had the sole responsibility for educating their citizens and the national government had the sole responsibility for foreign policy issues are examples of dual federalism.

Cooperative Federalism

In the 1930s the interpretation of federalism shifted to that of the national and state governments sharing policymaking and cooperating in solving problems. **Cooperative federalism** or “marble cake federalism” as it came to be known, grew from the policies of the New Deal era and the need for the national government to increase government spending and public assistance programs during the Great Depression. The cooperation of the national and state governments to build the national interstate highway system beginning in the 1950s is an example of cooperative federalism. The expansion of cooperative federalism during (President Lyndon B. Johnson’s) Great Society required even greater cooperation from the states in return for federal grants.

New Federalism

During the administrations of Richard Nixon, Ronald Reagan, and George H. W. Bush the national government attempted to implement a reversal of cooperative federalism and place more responsibility on the states about how grant money would be spent. The term **devolution**—a transfer of power to political subunits—has been used to describe the goals of new federalism. An example of new federalism is welfare reform legislation, which has returned more authority over welfare programs to the states. The national government directed where much of the money should be spent in the stimulus-spending bills during the first year of the Obama administration.

Fiscal Federalism

The national government’s patterns of spending, taxation, and providing grants to influence state and local governments is known today as **fiscal federalism**. The national government uses **fiscal policy** to influence the states through granting or withholding money to pay for programs.

- **grants-in-aid programs**—money and resources provided by the federal government to the state and local governments to be used for specific projects or programs. The earliest grants often covered public works projects such as building canals, roads, and railroads, and land grants for state colleges.
- **categorical grants**—grants that have a specific purpose defined by law, such as sewage treatment facilities or school lunch programs; may even require “matching funds” from the state or local governments; categorical grants may be in the form of project grants (awarded on the basis of a competitive application, such as university research grants) or formula grants (awarded on the basis of an established formula, such as Medicaid).
- **block grants**—general grants that can be used for a variety of purposes within a broad category, such as education, health care, or public services; fewer strings attached so state and local governments have greater freedom in how the money is spent; preferred by states over categorical grants.
- **revenue sharing**—proposed under the Johnson administration and popular under the Nixon administration, a “no strings attached” form of aid to state and local governments; could be used for virtually any project but never exceeded more than 2 percent of revenues; eliminated during the Reagan administration.
- **mandates**—requirements that are imposed by the national government on the state and local governments; for example, the Americans with Disabilities Act (1990) mandates that all public buildings be accessible to persons with disabilities. Mandates often require state or local governments to meet the requirement at their own expense (**unfunded mandates**). After the mid-term elections of 1994, the Republican-controlled Congress passed the Unfunded Mandate Reform Act, which imposed limitations on Congress’s ability to pass unfunded mandate legislation.