

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
enumerated (expressed) powers
implied powers
Necessary and Proper (Elastic) Clause
inherent powers
concurrent powers
reserved powers

10th Amendment
Commerce Clause
Full Faith and Credit Clause
Privileges and Immunities Clause
extradition
interstate compacts
Supremacy Clause
McCulloch v. Maryland

U.S. v. Lopez
dual federalism
cooperative federalism
devolution
fiscal federalism
fiscal policy
grants-in-aid
categorical grants
block grants
revenue sharing

The Constitutional Basis of Federalism



Why Federalism?

- States wanted to retain some powers independent of the national government to prevent tyranny of the national government
- Keep government closer to the people (local control)
- It was necessary to get the states to agree to the constitution

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 given specifically 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 states 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	Levy taxes	Regulate intrastate commerce
Coin and print money	Borrow money	Establish local governments
Provide an army and navy	Spend for general welfare	Establish public school systems
Declare war	Establish courts	Administer elections
Establish federal courts below the Supreme Court	Enact and enforce laws	Protect the public's health, welfare, and morals
Conduct foreign relations	Charter banks	Regulate corporations
Make all laws "necessary and proper"		Establish licensing requirements for certain regulated professions
Acquire and govern U.S. territories and admit new states		
Regulate immigration and naturalization		

Figure 7-1

- **10th Amendment**—“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- **14th Amendment**—“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
- **Commerce Clause**—Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”
- **Necessary and Proper Clause**—Congress has the power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

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, driver’s 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.

Establishing National Supremacy



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.

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

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.

United States v. Lopez (1995)

U.S. v. Lopez, which declared the Gun Free School Zones Act an unconstitutional overreach, was seen by some experts as signaling a shift in the Court’s interpretation of the Commerce Clause after nearly 50 years of rulings that resulted in an expansion of Congress’s power. Alfonso Lopez carried a concealed weapon into his San Antonio high school. He

was originally charged with violating a Texas law that banned firearms in schools, but the state charges were dismissed after he was charged with violating a federal law: the Gun Free School Zones Act of 1990. This Act made it a federal offense “for any individual knowingly to possess a firearm [in] a school zone.” Lopez was tried and convicted for carrying a weapon on school grounds. Lopez challenged his conviction, arguing that the Gun Free School Zones Act was an unconstitutional exercise of Congress’s power. Schools were controlled by state and local governments and were not under the authority of the federal government. The federal government claimed that it had the authority to ban guns in schools under its commerce power because guns in school led to gun violence. A violent crime ultimately affects the condition of the school and the well-being of the population. In a 5-4 decision supporting Lopez, the Supreme Court found that the 1990 Gun Free School Zones Act did violate the Constitution, claiming Congress was overreaching its powers granted under the Commerce Clause.

Federalism Today



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.

› Review Questions

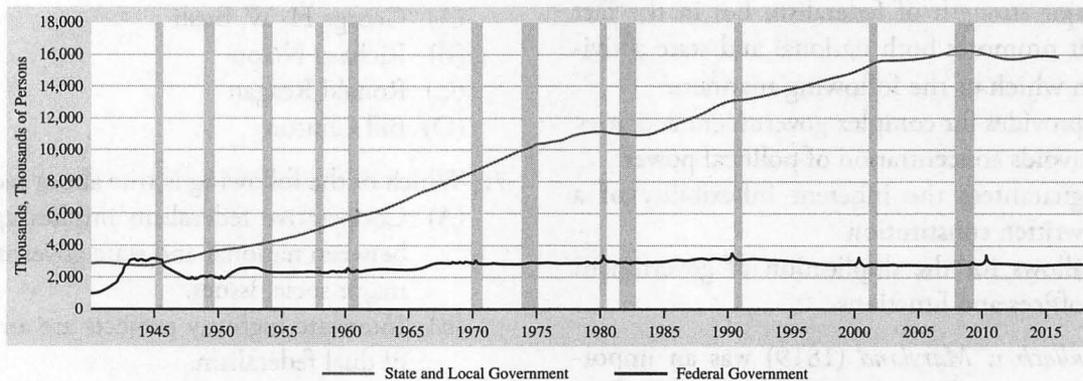
Multiple-Choice Questions

- A major strength of federalism lies in the fact that it promotes both national and state activities in which of the following manners?
 - provides for complex government activities
 - avoids concentration of political power
 - guarantees the inherent inflexibility of a written constitution
 - allows for the duplication of government offices and functions
- McCulloch v. Maryland* (1819) was an important Supreme Court case involving federalism because
 - it called for a republican form of government
 - it provided for a national law protecting against domestic violence
 - following this case, the Supreme Court became the third powerful branch of the national government
 - the Supremacy Clause of the Constitution was upheld
- Article IV of the United States Constitution guarantees which of the following to the states?
 - extradition privileges
 - reserved powers of the states
 - grants-in-aid
 - a republican form of government
- Which of the following is NOT a concurrent power of national and state governments?
 - protecting the public's health, welfare, and morals
 - borrowing money
 - chartering banks
 - establishing courts
- Cooperative federalism can best be described as
 - the national government's ability to help the states through the spending of tax dollars and the providing of project grants
 - placing more responsibility on the states as to how grant money is to be spent
 - "marble-cake federalism"
 - "layer-cake federalism"
- The president most responsible for the implementation of new federalism was:
 - George H. W. Bush
 - Richard Nixon
 - Ronald Reagan
 - Bill Clinton
- Which of the following is true about federalism?
 - Cooperative federalism implies agreement between national and state governments on major social issues.
 - Interstate highway projects are an example of dual federalism.
 - Fiscal federalism involves limited control of the national government over the states.
 - Nixon's revenue-sharing plan is an example of fiscal federalism.
- Which of the following has the fewest "strings" attached when it comes to spending government monies?
 - mandates
 - categorical grants
 - block grants
 - grants-in-aid
- Federalism as a form of government has many disadvantages. A major disadvantage of federalism is
 - conflicts may arise over authority of government
 - there is concentration of political power
 - government is not close to the people
 - existing state governments are not accommodated
- Prohibited powers are powers that are denied to both the national and state governments. These denied powers are found in
 - Article I, Section 8
 - Article I, Sections 9 and 10
 - Article IV, Section 4
 - Article I, Section 8, Clause 18

Free-Response Questions

Use the line graph below to answer question 11.

Government Employment 1940–2015



Source: St. Louis Fed

11. Using the data in the graph above, and your knowledge of U.S. government and politics, perform the following tasks:
- Identify a trend shown in the graph.
 - Explain how each of the following supports the trend identified in Part A.
 - Block grants
 - Revenue sharing
12. One basic principle embodied in the Constitution is federalism, which developed from the Founding Fathers' desire to create a stronger national government than under the Articles of Confederation. That national government, however, is limited by the provisions of the U.S. Constitution.
- Define federalism.
 - Describe two advantages of federalism.
 - Explain how each of these Supreme Court decisions either expands or limits the power of the national government:
 - McCulloch v. Maryland* (1819)
 - U.S. v. Lopez* (1995)

› Answers and Explanations

1. B. Governmental power is divided between the national and state governments, each operating within the same geographic territory with power over a single population. Providing for complex governmental activities (A) and allowing for the duplication of government offices and functions (D) are not usually considered major strengths of federalism. The Constitution is a very flexible document (C).
2. D. *McCulloch v. Maryland* upheld Article VI of the Constitution, which declares the Constitution the “supreme law of the land.” The Supreme Court (C) was established by Article III of the Constitution as the highest court of the judicial branch. Answer choices (A) and (B) were not provisions of the decision in *McCulloch v. Maryland*.
3. D. The United States Constitution guarantees a republican form of government to each state. Extradition occurs between states when one state requests an accused person be returned to the state where the crime occurred (A). The reserved powers of the states is found in the Tenth Amendment, not Article IV (B). There is no guaranteed that the federal government will provide grants-in aid to the states (C).
4. A. Protecting the public health, welfare, and morals is a reserved power of the states. The other answer choices represent concurrent powers, or those shared by both the national and state governments.
5. C. Cooperative federalism involves the national government and state governments working together to solve problems, often with a blending (similar to that of a marble cake) of responsibilities. Choices (A) and (B) are not the best descriptions of cooperative federalism, because neither reflects mutual sharing and planning between the national and state governments. “Layer-cake federalism” (D) describes dual federalism.
6. B. Richard Nixon began the program of new federalism to place responsibility on the states for the spending of grant money. New federalism continued under succeeding presidents, particularly Ronald Reagan (C) and George H. W. Bush (A).
7. D. Revenue sharing is an example of fiscal federalism, in which the federal government uses grants to influence the states. Cooperative federalism may involve differences between two levels of government. For example, interstate highways were constructed in the South during the Civil Rights Movement, even though the southern states clashed with federal civil rights policies (A). The interstate highway system is an example of cooperative federalism, which involves sharing between two levels of government (B). Fiscal federalism involves some control over the states by the national government’s granting or withholding money for programs (C).
8. C. Block grants (C) have fewer strings attached than categorical grants (B), which may require matching funds from state or local governments. Some mandates require the use of state or local funds (A). The federal government requires grants-in-aid (D) to be used for specific projects or programs.
9. A. Conflicts between national and state authority may arise under the system of federalism. While federalism provides for a strong national government, power is not concentrated in the national government (B). State governments remain close to the people (C), and the needs of state governments are accommodated under federalism (D).
10. B. Article I, Section 9, denies certain powers to the national government; Article I, Section 10 denies powers to the state governments. Article I, Section 8 (A) details the powers of Congress. Article IV, Section 4 (C) guarantees each state a republican form of government. Article I, Section 8, Clause 18 (D) is the “necessary and proper clause.”
11. (A) Any of the following two are acceptable trends:
 - Federal level of employment remains constant
 - State and local level of employment increases

- There is a widening gap between federal and state/local employment

(B) Block grants support the trend because the federal government gives money to the states and local government with few strings attached. The governments receiving the money can use it for a variety of purposes within a broad category, such as education, health care, or transportation. With few strings attached, state and local governments have a great amount of freedom in how to use the money. Revenue sharing is also a plan to give aid to state and local governments with no strings attached, allowing the money to be used for virtually any project. Because the federal government is giving more money and freedom to spend that money to state and local governments, there is a greater need for employees at the state and local level and fewer employees at the federal level.

12. (A) Federalism is defined a political system where the powers of government are divided between a national government and regional (state, province, etc.) governments. Each level of government has certain authority over the same territory and people.

(B) Advantages of federalism include:

- being ideally suited to large geographic areas because it encourages diversity in local government
- avoiding the concentration of political power
- accommodating already existing state governments
- having states serve as training grounds for national leaders
- keeping government close to the people

(C) In *McCulloch v. Maryland*, the Supreme Court expanded the powers of the national government by holding that Congress has implied powers derived from those listed in Article I, Section 8. The Court allowed that the “necessary and proper” Clause gave Congress the power to establish a national bank. In *U.S. v. Lopez*, The Supreme Court limited the powers of Congress by ruling that Congress may not use the commerce clause to make possession of a gun in a school zone a federal crime. The Gun Free School Zones Act passed by Congress in 1990 was unconstitutional because Congress had exceeded its power to legislate under the Commerce Clause.

› Rapid Review

- Federalism is a system of government in which the powers of government are divided between a national government and regional (state and local) governments.
- There are both advantages and disadvantages to federalism as a form of government.
- Federalism can be found in the delegated, reserved, and concurrent powers of the Constitution.
- Article IV of the Constitution provides for interstate relations, including full faith and credit, privileges and immunities, extradition, interstate compacts.
- Article IV of the Constitution provides national guarantees to the states.
- *McCulloch v. Maryland* and *Gibbons v. Ogden* upheld national supremacy and expanded the powers of Congress under the Commerce Clause, respectively.
- As practiced in the United States, federalism has evolved through many phases, including dual federalism, cooperative federalism, new federalism, and fiscal federalism.