

Chapter 3

Federalism

At the conclusion of this chapter, students will be able to:

1. Explain *Federalism*;
2. Identify the three levels of government; and
3. Understand the importance of the system of checks and balances.

Introduction to Federalism

The framers of the Constitution invented modern-day federalism. With the creation of the Constitution, each citizen was recognized as a citizen of two governments: national and state.

Article I, Section 10 of the Constitution limits the powers of the states and reserves certain powers for the federal government. In contrast, the Constitution grants broad powers to the federal government. Article I, Section 10 emphasizes what the states cannot do. It gives the states authority in a few areas, specifically establishing voter qualifications and setting up the mechanics of congressional elections. Amendment X corrected this reduction in power by reserving to the states, or people, powers either not specifically delegated to the United States or specifically denied to the states.

Article I, Section 10 provides:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

The New Federalism

Introduction

According to most public opinion polls, many Americans believe that the federal government is too big, both in the number of agencies it directs and in the scope of its powers. Some people also think that the daily business of Capitol Hill has no effect on their lives, in part because they believe that politicians - who live and work "inside the beltway"- do not understand their problems. This dissatisfaction with Washington, D.C., in recent years has renewed debate over the division of power between federal and state and local governments.

Federalism - the sharing of power between the states and the national government - has been a major issue throughout U.S. history. Federalism in the United States has evolved quite a bit since it was first implemented in 1787. In that time, two major kinds of federalism have dominated political theory.

The first, **dual federalism**, holds that the federal government and the state governments are co-equals, each sovereign. In this theory, parts of the Constitution are interpreted very narrowly, such as the Tenth Amendment, the Supremacy Clause, the Necessary and Proper Clause, and the Commerce Clause. In this narrow interpretation, the federal government has jurisdiction only if the Constitution clearly grants such. In this case, there is a very large group of powers belonging to the states, and the federal government is limited to only those powers explicitly listed in the Constitution.

The second, **cooperative federalism**, asserts that the national government is supreme over the states, and the 10th Amendment, the Supremacy Clause, the Necessary and Proper Clause, and the Commerce Clause have entirely different meaning. A good illustration of the wide interpretation of these parts of the Constitution is exemplified by the Necessary and Proper Clause's other common name: the Elastic Clause.

When the federal government was established by the U.S. Constitution in 1787, it only exercised limited or enumerated powers, such as making treaties and printing money. The Tenth Amendment of the Bill of Rights, ratified in 1791, clarified that all other powers belonged to the states: "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." Over the years, in response to national crises, many of the government's powers-particularly those over social programs- were centralized to the federal level. However, in recent years, an increasing number of people on Capitol Hill and across the country want to "devolve," or transfer, power from Washington, D.C., to state and local governments.

State governments are largely responsible for managing the budgets and enforcing the laws in many policy areas, such as poverty and education. Many members of Congress want the states to take on even greater authority in these areas and others, including environmental protection and crime control. Some experts believe that state governments will be able to tackle these problems more effectively and efficiently than Washington. Others, however, doubt that the federal government will provide adequate funds and worry that some states do not have the necessary infrastructure to offer adequate services. However, giving more power to state and local governments is an experiment that many policymakers in Washington believe is worth trying.

Fighting Poverty: The Federal Government Expands

The New Deal.

Before the Great Depression, aid to the poor came mostly from churches and charity organizations. When millions of Americans fell into poverty in the 1930's, however, charities and state governments were ill-equipped financially to provide for the needy, and there was no federal policy in place to provide aid to low-income people. President Franklin Roosevelt and Congress wrote landmark legislation, known collectively as the "New Deal," to combat the effects of the Great Depression. The new legislation included massive job programs that provided work for unemployed Americans. Other programs, like Aid to Families with Dependent Children (AFDC) and Social Security, offered financial assistance to people who could not work because of family responsibilities, age, or disability. This legislation also marked the beginning of an era of centralization; control over many services became more concentrated in the federal government.

The Great Society.

The legacy of Roosevelt's New Deal continued with President Lyndon Johnson's "War on Poverty" three decades later. In 1964 President Johnson declared that no society could be great with poverty in its midst. He implemented social programs designed to eliminate poverty by moving people up the social ladder through vocational education and job training. He also promoted programs, such as food stamps, Medicare, and Medicaid, to help poor and older Americans get enough food and adequate health care. Johnson called his plan the "Great Society."

President Richard Nixon advanced many of the New Deal and Great Society programs by establishing the Supplemental Security Income program and expanding the food stamp program. He also created the Environmental Protection Agency (EPA) in 1970 to enforce laws such as the Clean Air Act (1963). In the words

of political scientist Timothy Conlan, Nixon participated in "the greatest expansion of federal regulation of state and local governments in American history."

"The Era of Big Government Is Over"

The Reagan Revolution.

In his first inaugural address in 1981, President Ronald Reagan vowed "to curb the size and influence of the federal establishment" because "the federal government is not part of the solution, but part of the problem." Aiming to reduce the size and scope of the federal government, President Reagan promised to balance the budget by scaling back programs such as Social Security, Medicare, and Medicaid. However, he also proposed tax cuts and an increase in defense spending. Although the Democratic-controlled Congress went along with some of President Reagan's proposals, it would not cut Social Security or Medicare, two very popular programs. Consequently, the budget deficit ballooned, and the federal government became, in many ways, even bigger. However, the Reagan presidency gave new prominence to federalism issues that would be promoted after the Republican Party captured control of Congress in 1994.

"Devolution Revolution."

In 1994, for the first time in forty years, a Republican majority was elected to both the U.S. House of Representatives and the U.S. Senate. A top priority for the new majority was scaling back the federal government. In the words of House Budget Committee Chairman John R. Kasich (R-Ohio), Congress wanted to "return money, power, and responsibility to the states"- a campaign some dubbed the "devolution revolution."

President Bill Clinton responded to this shift in popular sentiment by declaring in his 1996 State of the Union address that "the era of big government is over." Clinton supported much of the legislation that emerged from the 104th Congress, including an unfunded mandates law so that Washington will have to provide funds for state and local governments to enforce most new federal policies or mandates. The president was quick to point out that in 1993 and 1994, the White House's "reinventing government" proposals had called for granting states greater flexibility in operating programs.

Current Issues

The recent emphasis on giving states more authority has had a major effect on several important public policy issues, including poverty, education, and the environment.

Poverty.

President Clinton went into office in 1993 promising to "end welfare as we know it." In August 1996 he fulfilled his promise by signing a historic welfare reform bill called the Personal Responsibility and Work Opportunity Act. Then - President Clinton believed that "welfare should be a second chance, not a way of life."

The law ended the sixty-one-year guarantee of direct cash assistance to poor families with children and gave states vast new authority to run their own welfare programs with block grants from the federal government. Supporters and critics of the new law disagreed not only about its potential effect on needy citizens, but also about the states' ability to handle the problem of poverty better than the federal government.

Supporters of the welfare reform bill believed that the federal government allowed welfare to become a lifelong entitlement, rather than temporary assistance. Many Americans also argued that the national government was too inefficient and bureaucratic to properly administer programs like Aid to Families with Dependent Children and that state governments deserved at least the opportunity to control welfare. They contended that states, largely free from federal regulations and more in touch with their residents, could more effectively implement their own welfare systems.

There have been significant reductions in the number of welfare recipients in almost every state.

Relying on Volunteerism.

Lawmakers hope that individual citizens will take more responsibility for the less fortunate-specifically those trying to get off welfare-in their own communities. In April 1997 at the Presidents' Summit for America's Future, President Clinton said that "much of the work [of America] cannot be done by government alone. The solution must be the American people through voluntary service to others." Many students and adults volunteer with local charity groups, such as soup kitchens, day care centers, and food and clothing banks. Some observers, although supportive of these efforts, warn that volunteers and charities should not be relied on too heavily to aid the poor. They worry that without some sort of government safety net, many low-income people will not be able to make ends meet during an economic downturn.

Volunteerism is on the rise in the United States, according to the USA Freedom Corps, a federal agency created by the George W. Bush administration. In 2003, more than 63 million Americans donated their time as volunteers to foster a sense of community, service and responsibility.

Education.

Traditionally, control over public schools has rested with local school districts. Over the years, however, state governments have become involved in overseeing issues such as textbook selection, teacher certification, and equitable school funding. The federal government's role in education has historically been quite limited.

By the 1960's, however, the federal government had taken on a broader role in determining policies and practices in the nation's school. Building on the federal initiatives of the Great Society programs of the 1960's, President Jimmy Carter created the United States Department of Education in 1979. In 1994, President Clinton signed into law Goals 2000: Educate America Act, which set out eight national education goals and provided money to help states meet them. In 2002, President Bush signed into law the No Child Left Behind Act of 2001, which has the purpose of ensuring that children in every classroom enjoy the benefits of well-prepared teachers, research-based curriculum and safe learning environments.

Supporters of strong federal involvement in public education say schools need a benchmark, such as national education standards, to evaluate educational reform. Many argue that only federal guidance will help students in poor school districts measure up to students from wealthier districts. Supporters also maintain that only the federal government has the power to implement certain policy changes in public schools nationwide, such as desegregation and equal funding for male and female extracurricular sports.

Critics of federal involvement in public schools say that state and local authorities understand better what kind of standards and practices their school districts need. Some also believe that national standards or testing will inevitably lead to a national curriculum, the contents of which may be fiercely opposed by some local school boards. Finally, critics say that increased federal involvement adds another expensive bureaucratic layer to the educational system.

Environment.

Since the 1960's, millions of Americans have been concerned about the effects pollution has on public health, fish and wildlife, and the air quality in U.S. cities. In 1970, 20 million Americans gathered at Earth Day rallies, marches, and teach-ins to protest pollution and promote conservation. That same year, the federal government responded to these concerns by forming the Environmental Protection Agency and passing legislation such as the Clean Air Act, which limits air pollutants caused by cars and factories. In recent years, some members of Congress have called for a reduction in the scope of the EPA, instead favoring a more prominent role for state governments and local grassroots organizations in determining environmental guidelines for their own communities.

Some grassroots organizations try to increase awareness of environmental problems and convince elected leaders and ordinary citizens to take action against them. Two such organizations are the Sierra Club, which was founded to protect the wilderness, and the Audobon Society, which works to save animals from extinction. Earth Day promotes a host of environmental concerns. It has become a nationwide annual event that has gained the support of many individuals in communities across the country.

Recycling in Communities.

Recycling has been a popular grassroots environmental activity across the nation for years. Many schools and communities have started recycling programs for glass, aluminum, newspapers, and plastics to reduce the amount of solid waste. Many environmentalists and local government officials maintain that mandatory recycling should be expanded as soon as possible, because waste sites are rapidly filling up and soon there will be no place left to safely dump trash. Supporters of recycling programs believe they are making a difference in their communities without having to rely on the government.

Communities and individuals are also using both their consumer dollars and their investment dollars to voice their environmental concerns, through boycotts, for example. A survey conducted by the Calvert Group found that 81 percent of Americans "would be more likely to invest in companies if they knew they were environmentally responsible." Some corporations, such as nuclear power and petroleum companies, are responding by becoming more "green" and reducing carbon dioxide pollution and using biodegradable industrial detergent.

Conclusion

The environment is one of the many causes that citizens and local governments are supporting in their communities. Many experts believe that activism on a local level is important for communities to succeed in tackling social problems. If the "devolution revolution" continues, and the federal government becomes less involved in issues such as welfare, education, crime, and the environment, state governments will have to design improved social programs. Lawmakers at all levels of government are anxious to see if the states can meet the challenges expanded powers bring.

Timeline of Federalism in the United States

1787-1836

Increased nationalism. Articles of Confederation prove inadequate, creating the movement for a stronger national government. Under a new constitution, Chief Justice John Marshall and the U.S. Supreme Court broadly define national powers, although many states resist this trend.

1787

U.S. federal system of government devised. The delegates to the constitutional convention create a new plan for government under which power is to be shared between a national government and the state governments.

1788

U.S. Constitution takes effect. New constitution is ratified by conventions in nine of the 13 original states. The new federal government begins operations the following year.

1791

Bill of Rights added to the Constitution. The Tenth Amendment, part of the Bill of Rights, specifically addresses the question of powers reserved to the states.

1798

Kentucky and Virginia Resolutions passed. James Madison and Thomas Jefferson ghost-write these pieces of state legislation, which argue that the states have the right to void federal legislation they judge to be unconstitutional. Madison and Jefferson are responding particularly to the Sedition Act of 1798, a federal law that made it a crime to criticize the government of the United States.

1814

Hartford Convention. Delegates from the New England states meet in Hartford, Connecticut, where they threaten to secede from the Union over the issue of the national tariff and the ongoing war with Great Britain.

1819

U.S. Supreme Court rules in *McCulloch v. Maryland*. Chief Justice John Marshall writes opinion establishing that the powers of the United States are not limited to those *expressly* in the Constitution, thus expanding the power of the national government.

1824

U.S. Supreme Court rules in *Gibbons v. Ogden*. In another important opinion, Chief Justice Marshall broadly defines the national government's power to regulate commerce, consequently restricting the power of the states.

1820's

Theory of nullification gains ground. Picking up on the arguments contained in the Virginia and Kentucky Resolutions, advocates of nullification describe the Union as a compact among sovereign states, and not a government of the people. They declare that the states have the ultimate authority in deciding whether the federal government has exceeded its powers.

1830-1860

Increased sectionalism. Regional interests are put ahead of national interests as the northern and southern states begin their political and economic arguments over slavery, tariffs, and other issues. The country begins its drift toward civil war.

1831

Fort Hill Address. States' rights advocate John C. Calhoun advocates theory of nullification by citing Madison's language from the Virginia Resolution. The following year, the South Carolina legislature adopts an Ordinance of Nullification, declaring two hated federal tariffs null and void, and threatening to secede if the federal government attempts to collect the tariffs by force. In response, President Andrew Jackson issues the "Proclamation to the People of South Carolina," warning that such action would constitute treason against the United States.

1836-1860

Supreme Court adopts theory of "dual sovereignty." Under Chief Justice Roger Taney, the Court comes to view the federal and state governments as equals; their interests and "sovereignties" should be weighed against each other.

1861-1865

American Civil War. The northern states' victory determines that the federal government is not a compact among sovereign states. Rather, its authority flows directly from the people. However, the war *does not* resolve the conflict between federal and states' rights.

1880's

Revival of dual sovereignty. U.S. Supreme Court increasingly rules against federal authority and in favor of states' rights, particularly in cases where the federal government attempts to regulate business practices.

1933-1939

Roosevelt administration introduces "New Deal." The president expands federal authority to regulate the economy and provide social services, based on the federal government's constitutional right to regulate interstate commerce (Article I, section 8, paragraph 3). Although the Supreme Court initially declared Roosevelt's legislation unconstitutional, the Court reversed its position in the late 1930s.

1950's and 1960's

Revival of theory of nullification. In response to the Supreme Court's ruling in *Brown v. Board of Education* (1954), southern states decry what they see as the federal government's intrusion on traditional state government rights.

1956

Alabama passes nullification resolution. The state legislature asserts the state's right to "interpose its sovereignty" against the U.S. Supreme Court's *Brown* decision.

1957

Federal troops used to ensure school desegregation. President Dwight D. Eisenhower orders federal troops to protect nine black students as they enroll at Central High School in Little Rock, Arkansas. The governor, Orval Faubus, had earlier ordered the state's National Guard to prevent the students from enrolling. In later years, President John F. Kennedy will use federal authority to enforce desegregation orders in Mississippi and Alabama.

1960's

Johnson administration introduces "Great Society." The administration's social and economic programs, combined with the powers granted in newly enacted civil rights legislation, lead to increased federal oversight of state and local government.

1970's

Nixon administration builds on Great Society. New federal programs continue the expansion of federal power over states and localities. However, these programs are funded through federal "block grants" to the states, giving the states more discretion over spending.

1980's

Reagan administration moves to define a "New Federalism." The administration moves to limit the power of the federal government to impose its policies on state and local governments.

1990's

Debate over federal-state power sharing continues. U.S. Congress enacts legislation shifting authority and control of social, education, and economic policy to the states.

1995

Republican Congress pursues "devolution revolution." A new Republican majority in Congress moves to hand day-to-day control of many federal programs to the states. Most important, Congress gives new authority to state governments to overhaul federally mandated programs, most notably welfare. New welfare policies use block grants to give states more discretion over spending.

Congress also adopts a law compelling the federal government to pay states for the enforcement of any new federal policies or mandates. In addition, budget considerations work to limit the growth of federal programs and initiatives affecting state and local government.

Powers of the Federal Government

A. Delegated powers (specific, enumerated, granted): These powers are found in the first three articles of the Constitution.

1. Levy/collect taxes
2. Coin/print money
3. Regulate foreign and interstate commerce
4. Set up post office
5. Conduct foreign relations
6. Raise/support armed forces
7. Declare war
8. Create inferior courts

B. Implied powers (Article I, Section 8) from the NECESSARY AND PROPER CLAUSE (ELASTIC CLAUSE): Empowers the national government to do all things necessary and proper to carry out its delegated powers.

1. Draft men for armed forces
2. *McCulloch v. Maryland* (1819) supported implied powers:

Maryland tried to tax the federal bank by requiring ALL banks NOT chartered by the state to pay a tax.

Federal bank officer, McCulloch refused to pay; Chief Justice Marshall:

1) Has Congress power to incorporate a bank?

Yes, Congress may establish a bank (IMPLIED)

2) May the state of Maryland tax a branch of the U.S. bank located in Maryland?

No, the power to tax involves the power to destroy; (NATIONAL SUPREMACY)

C. Exclusive powers (inherent): Certain powers belong exclusively to the national government: Declaring war, printing money, making treaties, establishing armed forces.

D. Concurrent powers: Held and exercised by both levels of governments (e.g., taxation, establishing courts, borrowing money)

Proprietary power - The federal government or state governments may own and operate economic enterprise: parks, utilities, subway, airport, etc.

Eminent domain - Power of a state or the federal government to take private property for public use upon payment of just compensation for the property so taken.

State Powers

The 10th amendment states that the powers not delegated to the United States ... are reserved to the states respectively, or the people.

A. Police power - the power of the states to protect and promote the public health, safety, welfare and morals. (e.g., criminal laws, regulation of business, licensing professions,)

8. To regulate intrastate commerce

C. To establish local governments

D. Certain Powers are prohibited to the states - such as printing money, taxing imports and exports, making treaties with foreign countries, engaging in war, impairing the obligation of contracts, denying any person the equal protection of the law;

E. From the Civil War and the Supreme Court's ruling in *Texas vs. White* (1869), Texans learned that states cannot secede from the union.

F. States cannot deny the right to vote on account of race, color, sex, or nonpayment of poll tax.

Federal Government Obligations to States

- A. Respect state's territorial integrity (state boundaries)
- B. Guarantee republican form of government to every state, GUARANTEE CLAUSE (Article 4, Section 4)
- C. Protect state against domestic violence
- D. Protect state's equal representation in the Senate

State Obligations to Federal Government

- A. Must respect federal Constitution, laws and treaties
- B. Must organize and hold elections for federal offices (federal government holds no elections of its own)
- C. Amendments to Constitution must be ratified by $\frac{3}{4}$'s of states and states must act on amendments

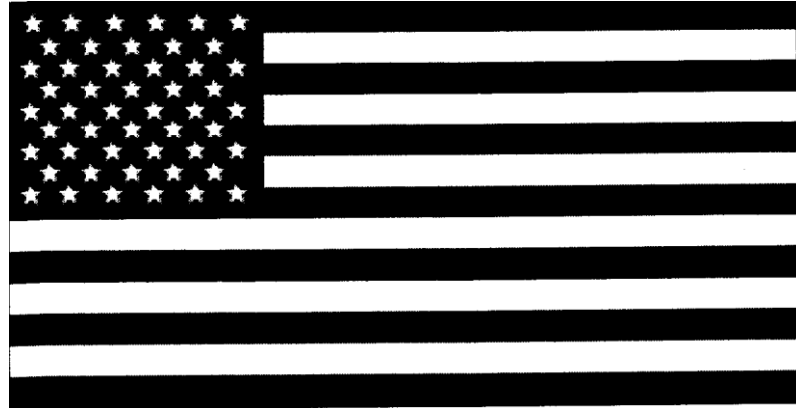


Types of Federalism

A. **Vertical federalism:** Powers flowing vertically between states and federal government

B. **Horizontal federalism:** Obligations imposed by the constitution on states in dealing with one another

1. Give FULL FAITH AND CREDIT to one another's public acts, records, judicial proceedings (e.g., birth certificates, marriage license, divorce decree,)
2. Extend to one another's citizens the PRIVILEGES AND IMMUNITIES of their own citizens.
3. EXTRADITION - Return persons fleeing from justice.
4. Resolve or settle conflicts with one another without use of force (e.g., fishing rights, highway use, and mineral rights); Supreme Court has ORIGINAL JURISDICTION in cases involving states



Three Levels of Government

federal government

1. Makes laws for the entire country
2. Deals with relations with other countries
3. Resolves disputes between states
4. Maintains basic rights for all citizens

state government

1. Makes laws for one state
2. Establishes educational system
3. Regulates commerce within the state
4. Regulates relations between citizens within the state

local government

1. Makes laws for a small area within a state - city, parish
2. Enforces local laws and ordinances
3. Provides police and fire protection

Checks and Balances

The system of "checks and balances" was established by the framers of the Constitution in an effort to ensure that no one branch of the United States government could exceed the power and authority of another.

Legislative

1. Passes laws
2. Can override veto
3. Must approve treaties
4. Must approve appointments
5. Can impeach President and judges
6. Approves judges

Executive

1. Can veto laws
2. Makes treaties
3. Appoints officials
4. Appoints judges

Judicial

1. Can rule that a law is unconstitutional
2. Can say Presidential action is unconstitutional