**THE CONSTITUTIONAL BASIS OF FEDERALISM**

The U.S. Constitution does not use the term *federalism,* nor does it provide extensive details about the federal system. Nevertheless, the framers helped created a federalist system in the United States, particularly in the ways the Constitution allocates power.

**The National Government**

Article VI of the Constitution declares that the Constitution and any laws passed under it form the “supreme Law of the Land” in a passage called the **supremacy clause.** This clause implies that the national government has authority over the state governments.

The Constitution grants the national government several different kinds of powers and prohibits it from taking certain actions. The Constitution outlines four major types of power: enumerated, implied, inherent, and prohibited.

|  |
| --- |
| THE NATIONAL GOVERNMENT’S POWERS |
| **Type** | **Key Clause** | **Explanation** | **Examples** |
| Enumerated (expressed) | Article I, Section 8 | Powers explicitly granted to Congress | Declare war, coin money, levy taxes, regulate interstate commerce |
| Implied | Necessary and proper (Article I, Section 8) | Powers that Congress has assumed in order to better do its job  | Regulate telecommunications, build interstate highways |
| Inherent | Preamble | Powers inherent to a sovereign nation | Defend itself from foreign and domestic enemies |
| Prohibited | Article I, Section 9 | Powers prohibited to the national government | Suspend the writ of habeas corpus, tax exports |

**Enumerated Powers**

In Article I, Section 8, the Constitution specifically grants Congress a number of different powers, now known as the **enumerated powers.** The enumerated powers include the power to declare war, coin money, and regulate interstate commerce. Because these powers are expressly stated in the Constitution, political scientists sometimes also refer to them as **expressed powers.**

**Implied Powers**

The national government is not limited to the enumerated powers. At the end of Article I, Section 8, the Constitution also grants Congress the power to do anything “necessary and proper” to carry out its duties. This clause is known as the **necessary and proper clause** or the **elastic clause** because of its mutability. Because the powers bestowed by this clause are implied rather than stated, they also are known as **implied powers.**

**Example:** The Constitution does not specifically grant Congress the power to regulate telecommunications because such technology did not exist at the time of the founding. But according to the Constitution, Congress has the power to regulate interstate commerce. Regulating telecommunications is considered necessary for Congress to properly regulate interstate commerce, and so Congress has since assumed this power.

**McCulloch v. Maryland**

This landmark Supreme Court case from 1819 concerned a state government’s ability to tax a national bank. The Court, relying on the necessary and proper clause, ruled that the national government has far more powers than the Constitution enumerates in Article I, Section 8. The necessary and proper clause has allowed the national government to regulate air travel, combat industrial pollution, and foster the creation and growth of the Internet.

**Inherent Powers**

The preamble to the Constitution lays out the basic purposes of the United States government: to provide for the welfare of its citizens and to defend against external enemies. Because the federal government is sovereign, it also has certain powers called **inherent powers,** which are necessary to protect its citizens and defend its right to exist. The primary inherent power is self-preservation: A state has the right to defend itself from foreign and domestic enemies.

**Prohibited Powers**

The Constitution also explicitly denies the national government certain powers. For example, Congress cannot tax exports or tell states how to choose electors for the Electoral College. The powers denied to the national government are called the **prohibited powers.**

**The Commerce Clause**

The Supreme Court’s decision in the 1824 case Gibbons v. Ogden reasserted the federal government’s authority over the states. Aaron Ogden had a monopoly on steamship navigation from the state of New York. When Thomas Gibbons began operating his steamship in New York waterways, Ogden sued. The Court found that New York State did not have the right to issue a monopoly to Ogden because only the national government has the power to regulate interstate commerce. Chief Justice John Marshall referred to the **commerce clause** (which gives Congress the authority to regulate interstate commerce) of the Constitution as justification for his decision.

**The State Governments**

The Constitution also grants state governments some key powers, including the right to determine how to choose delegates to the Electoral College. States also have a great deal of latitude to write their own constitutions and pass their own laws. All state governments have three branches (paralleling the national government), although the powers granted to the branches differ in each state. In some states, for example, the governor has a great deal of power, whereas in others, his or her power is severely limited. States also use a variety of methods to choose judges.

The vast expanse of the national government has led some to conclude that state governments are of secondary importance. In 1941, for example, Supreme Court justice Harlan Stone remarked that the Tenth Amendment (which reserves powers to the states) had no real meaning. State governments, however, are still vital political actors, and they have adapted to new roles and new circumstances. At the start of the twenty-first century, many states have reasserted their strength and taken a larger role in homeland security, economics, and environmental policy.

**Professional and Nonprofessional Legislatures**

All states have a legislative body that makes laws, and all but one of the legislatures are bicameral. (Nebraska is the lone state with a unicameral legislature.) In some states, being a legislator is a full-time job. These legislators are paid well, have large staffs, and meet in session for much of the year. Political scientists call this type of legislature a **professional legislature.** In other states, the legislators are in session for short periods, receive very little pay, and have almost no staff. These states pride themselves on having nonprofessional citizen legislators rather than professional politicians.

**Reserved Powers**

The Tenth Amendment states that the powers not granted to the national government, and not prohibited to state governments, are “reserved to the States.” Political scientists call this the **reservation clause,** and the powers that states derive from this clause are known as the **reserved powers.**

**Concurrent Powers**

Powers held by both states and the national government are known as **concurrent powers.** The power to tax is an example of a concurrent power: People pay taxes at the local, state, and federal levels.

**The Full Faith and Credit Clause**

The **full faith and credit clause** (found in Article IV of the Constitution) both establishes and limits state powers. It declares that state governments must respect the laws and decisions of other state governments, such as driver licenses and marriage certificates issued by other states. To some extent, then, the clause expands state power: A state’s decision is binding on other states. At the same time, the clause limits state power by forcing the states to honor one another’s laws.

**Local Governments**

Although the Constitution mentions state governments and grants them some specific powers, it does not mention local governments at all. Courts have interpreted this omission to mean that local governments are entirely under the authority of state governments and that a state can create and abolish local governments as it sees fit.

**State Power**

The most obvious example of state supremacy over local government is that state governments take over local institutions somewhat regularly. State governments also have the power to redefine local governments, stripping their powers and changing the laws. In 1995, for example, the state of Illinois gave the mayor of Chicago almost complete control of the Chicago school system because the previous board of education had failed to improve schools.

**Types of Local Government**

States have created a multitude of types of local government. In fact, there are approximately 84,000 local governments in the United States. Each state has the power to define local government in any way it wants, allocating different types and degrees of power and responsibility. For a local government to have power, it must be granted a **charter** by the state, specifying its powers and responsibilities.

Most states grant some degree of autonomy to local governments. This autonomy is known as **home rule:** a promise by the state government to refrain from interfering in local issues. State governments give up this power because local governments with substantial autonomy can often manage local affairs better than the state government could. Ultimately, however, the state can still take power away from local governments, even those with home rule.

Some states have a complicated patchwork of town governments, with villages, townships, counties, and cities all having different powers. The most common—and probably the least known—type of local government is called a **special district,** a local government created to deal with a single issue or problem. Special districts frequently overlap with other types of local government, and the range of powers they possess varies greatly. Control of special districts also varies greatly: Some have elected leadership, whereas others have leaders appointed by the governor or legislature.

**Example:** Special districts are the most numerous type of government in the United States—totaling more than 39,000 across the country. They are also the most diverse. In some states, boards of education are special districts. Most states also have very specialized districts, such as water reclamation districts, boards to oversee public universities, and economic development districts. In some states, many of these districts have elected leaders. In Illinois, for example, citizens vote for dozens of local governments. Some special districts have the power to borrow money and oversee major construction projects (such as bridges, landfills, and treatment plants).

**HISTORY OF FEDERALISM**

Federalism has evolved over the course of American history. At different points in time, the balance and boundaries between the national and state government have changed substantially. In the twentieth century, the role of the national government expanded dramatically, and it continues to expand in the twenty-first century.

**Dual Federalism (1789–1945)**

**Dual federalism** describes the nature of federalism for the first 150 years of the American republic, roughly 1789 through World War II. The Constitution outlined provisions for two types of government in the United States, national and state. For the most part, the national government dealt with national defense, foreign policy, and fostering commerce, whereas the states dealt with local matters, economic regulation, and criminal law. This type of federalism is also called **layer-cake federalism** because, like a layer cake, the states’ and the national governments each had their own distinct areas of responsibility, and the different levels rarely overlapped.

**The Civil War and the Fourteenth Amendment (1861–1868)**

Part of the disputes that led to the Civil War (1861–1865) concerned federalism. Many Southerners felt that state governments alone had the right to make important decisions, such as whether slavery should be legal. Advocates of **states’ rights** believed that the individual state governments had power over the federal government because the states had ratified the Constitution to create the federal government in the first place. Most Southern states eventually seceded from the Union because they felt that secession was the only way to protect their rights. But Abraham Lincoln and many Northerners held that the Union could not be dissolved. The Union victory solidified the federal government’s power over the states and ended the debate over states’ rights.

The Fourteenth Amendment, ratified a few years after the Civil War in 1868, includes three key clauses, which limit state power and protect the basic rights of citizens:

1. The **privileges and immunities clause** declares that no state can deny any citizen the privileges and immunities of American citizenship.
2. The **due process clause** limits states’ abilities to deprive citizens of their legal rights.
3. The **equal protection clause** declares that all people get the equal protection of the laws

**Industrialization and Globalization (1865–1945)**

The nature of government and politics in the United States changed dramatically in the late nineteenth and early twentieth centuries. The national government assumed a larger role as a result of two major events:

1. **Industrialization:** The economy became a national, industrial economy, and the federal government was much better equipped than the states to deal with this change. For much of the nineteenth century, the government pursued a hands-off, laissez-faire economic policy, but it began to take a stronger regulatory role in the early twentieth century.
2. **Globalization:** Because of its vast economy and its extensive trading networks, the United States emerged as a global economic power. The federal government assumed a greater economic role as American businesses and states began trading abroad heavily.

Although these events played out over many decades, they reached their high points during the presidency of Franklin Roosevelt (1933–1945). The Great Depression, brought about by the crash of the stock market in 1929, was one of the most severe economic downturns in American history. Many businesses failed, roughly one-third of the population was out of work, and poverty was widespread. In response, Roosevelt implemented the New Deal, a series of programs and policies that attempted to revive the economy and prevent further depression. The New Deal included increased regulation of banking and commerce and programs to alleviate poverty, including the formation of the Works Progress Administration and a social security plan. In order to implement these programs, the national government had to grow dramatically, which consequently took power away from the states.

**Cooperative Federalism (1945–1969)**

Federalism over much of the last century has more closely resembled a marble cake rather than a layer cake as federal authority and state authority have become intertwined. The national government has become integrated with the state and local governments, making it difficult to tell where one type of government begins and the other types end. State and local governments administer many federal programs, for example, and states depend heavily on federal funds to support their own programs. This type of federalism is called **cooperative federalism,** or **marble-cake federalism.**

**New Federalism (1969–present)**

Since the 1970s, political leaders and scholars of the **New Federalism** school have argued that the national government has grown too powerful and that power should be given back to the states. Although the national government remains extremely important, state governments have regained some power. Richard Nixon began supporting New Federalism during his presidency (1969–1974), and every president since Nixon has continued to support the return of some powers to state and local governments. Although political leaders disagree on the details, most support the general principle of giving power to the states.

New Federalism has taken concrete form in a variety of policies. New Federalists have argued for specific limits on federal power, as well as **devolution,** a policy of giving states power and responsibility for some programs. For example, the 1996 welfare reforms gave states the ability to spend federal dollars as they saw fit. Supporters claim that local and state governments can be more effective because they understand the circumstances of the issue in their state. They argue that a one-size-fits-all program imposed by Washington cannot function as effectively.

**Advantages and Disadvantages of New Federalism**

New Federalism appeals to many people because of its emphasis on local and state governments. Many Americans feel that the national government has become too intrusive and unaccountable. These people champion state and local government as closer to the people and thus more accountable. However, Americans often want a single seat of power for some tasks. Competing local and state governments can cause more problems than they solve, especially during emergencies. For example, the terrible hurricanes of 2005 led residents of Louisiana, Mississippi, and Alabama to demand a better, more unified national response.

**The Supreme Court and New Federalism**

The Supreme Court has played a New Federalist role by siding with state governments in a number of cases. Perhaps the most well known of these cases is *United States v. Lopez* (1995), in which the Court ruled that Congress had overstepped its authority in creating gun-free school zones. More controversially, in 2000, the Court struck down parts of the Violence Against Women Act (1994) for much the same reason in *United States v. Morrison.* In other cases, the court has ruled that state governments cannot be sued for violating rights established by federal law. Overall, the Supreme Court in the 1990s reduced the power of the federal government in important ways, particularly in relation to the commerce clause.

Money plays a key role in the federal government’s relationship with the states. Congress gives money to the states, for example, but stipulates how this money should be used in order to force the states to cooperate with federal policies.

**FEDERALISM IN ACTION**

**Federal Aid to the States**



Since World War II, states have come to rely heavily on federal money. Likewise, the national government has also relied on the states to administer some federal policies, a practice called **fiscal federalism.** The term **grants-in-aid** refers to the federal government giving money to the states for a particular purpose. There are two general types of grants-in-aid:

1. **Block grants:** Money given for a fairly broad purpose with few strings attached.
2. **Categorical grants:** Money given for a specific purpose that comes with restrictions concerning how the money should be spent. There are two types of categorical grants:
* **Project grants:** Money states apply for by submitting specific project proposals
* **Formula grants:** Money given to states according to a mathematical formula

**Example:** When the Republicans retook Congress in 1994, they changed many federal grants into block grants. Instead of giving money to states to buy textbooks or repair schools, for example, Congress gave states blocks of money to spend on education in any way the states saw fit.

**Revenue Sharing**

In 1972, the Nixon Administration initiated a practice called revenue sharing, in which the federal government gave money to the states with no restrictions attached whatsoever. Presidents Gerald Ford and Jimmy Carter relied less on revenue sharing, which disappeared completely in the 1980s during the Reagan Administration.

**Federal Pressure on the States**

The federal government uses a number of tactics to compel states to follow its policies and guidelines. Congress can order states to comply but usually applies pressure more subtly by threatening to withhold funds from disobedient states.

**Example:** When the federal government decided to raise the drinking age to twenty-one, it denied certain highway funds to states that opted not to comply.

**Mandates**

Sometimes the federal government orders states to do certain things, such as obeying housing laws or environmental regulations. These demands are called **mandates.** An **unfunded mandate** is one for which the federal government provides no money. For example, the federal government has required state and local governments to live up to the Americans with Disabilities Act without providing money to make buildings accessible to handicapped people. State governments resent unfunded mandates because they drain state coffers.

One way for Congress to pass mandates is to impose regulations and standards on state and local governments. In the past, Congress has forced state governments to meet certain environmental standards, for example. Scholars call this practice **regulated federalism.**

**Preemption**

Because of the supremacy clause, all laws passed by the national government take priority over state and local laws. The national government, then, can override state laws if it can demonstrate a compelling national interest; this practice is called **preemption.**

**Horizontal Federalism**

**Horizontal federalism** refers to the ways state governments relate to one another. States often compete or cooperate on many different issues, from environmental policy to economic development. One state, for example, may lower its tax rate in order to attract businesses away from other states. States have a great deal of leeway in how they behave toward one another.

**ADVANTAGES AND DISADVANTAGES OF FEDERALISM**

The pros and cons of federalism have been the subject of debate since the creation of the republic.

**Federalism’s Advantages**

Proponents argue that federalism does the following:

* **Fosters state loyalties:** Many Americans feel close ties to their home state, and federalism maintains that connection by giving power to the states.
* **Practices pragmatism:** Running a country the size of the United States, with such a diverse population, is much easier to do if power is given to local officials. Likewise, state and local officials are closer to the problems of their areas, so it makes sense for them to choose policies to solve those problems.
* **Creates laboratories of democracy:** State governments can experiment with policies, and other states (and the federal government) can learn from their successes and failures.

**Example:** California has frequently led the nation in environmental regulations: Many measures adopted by California are subsequently adopted by other states. And during the 1990s, Wisconsin governor Tommy Thompson experimented with welfare policy, and those experiments influenced federal welfare reform.

* **Leads to political stability:** By removing the national government from some contentious issue areas, federalism allowed the early U.S. government to achieve and maintain stability.
* **Encourages pluralism:** Federal systems expand government on national, state, and local levels, giving people more access to leaders and opportunities to get involved in their government.
* **Ensures the separation of powers and prevents tyranny:** Even if one person or group took control of all three branches of the federal government, federalism ensures that state governments would still function independently. Federalism, therefore, fulfills the framers’ vision of a governmental structure that ensures liberty.

**Federalism’s Disadvantages**

Critics argue that federalism falls short in two ways:

* **Prevents the creation of a national policy:** The United States does not have a single policy on issues; instead, it has fifty-one policies, which often leads to confusion.
* **Leads to a lack of accountability:** The overlap of the boundaries among national and state governments makes it tricky to assign blame for failed policies.

**Citizen Ignorance**

Critics argue that federalism cannot function well due to ignorance. Most Americans know little about their state and local governments, and turnout in state and local elections is often less than 25 percent. Citizens consequently often ignore state and local governments, even though these governments have a lot of power to affect people’s lives.