

Unit 3

Federalism: U.S. v. the States

Learning Objectives

After completing this session, you will be able to:

- Explain how the Constitution distributes power between the national and state governments.
- Describe the various types of federalism.
- Explain the changes that have occurred in the federal system in the past 200 years.
- Summarize the part played by state governments in the contemporary federal system.
- Discuss the role of grant-in-aid programs in the American federal system.
- Describe the advantages and disadvantages of a federal system.

Topic Overview

Unit 3 provides an overview of the workings of federalism in the United States. In this unit, the complex and changeable relationship between the national and state governments is explored. By focusing on the conflicts between national and state powers, the unit develops a deeper understanding of nature of governmental power in the American system.

Federalism is the division of powers between a central government and regional governments. Most developed nations experience ongoing struggles over the relative powers of their central and regional governments. The United States has a **federal system** of government where the states and national government exercise separate powers within their own spheres of authority. Other countries with federal systems include Canada and Germany. In contrast, national governments in **unitary** systems retain all sovereign power over state or regional governments. An example of a unitary system is France.

The framers of the U.S. Constitution sought to create a federal system that promotes strong national power in certain spheres, yet recognizes that the states are sovereign in other spheres. In "**Federalist No. 46**," James Madison asserted that the states and national government "are in fact but different agents and trustees of the people, constituted with different powers." Alexander Hamilton, writing in "**Federalist No. 28**," suggested that both levels of government would exercise authority to the citizens' benefit: "If their [the people's] rights are invaded by either, they can make use of the other as the instrument of redress." However, it soon became clear that Hamilton and Madison had different ideas about how the national government should work in practice. Hamilton, along with other "federalists" including Washington, Adams, and Marshall, sought to implement an expansive interpretation of national powers at the states' expense. Madison, along with other "states' rights" advocates including Thomas Jefferson, sought to bolster state powers.

Topic Overview, cont'd.

The U.S. Constitution delegates specific **enumerated powers** to the national government (also known as **delegated powers**), while reserving other powers to the states (**reserved powers**). Article VI of the Constitution declares the laws of the national government deriving from the Constitution to be “the supreme law of the land” which the states must obey. The Tenth Amendment to the Constitution, a part of The Bill of Rights passed in 1791, attempts to limit national prerogatives over the states by declaring: “The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.”

While the Constitution carves out significant spheres of power for the states, it also contains several potential powers for the national government. These potential powers, also called **implied powers**, include Congress’s power under Article I, Section 8, to make laws that are “necessary and proper” for carrying out its enumerated powers. The president’s constitutional role as “commander in chief” has allowed presidents, including Lincoln, Franklin Roosevelt, and now George W. Bush, to claim emergency powers for the national government in times of national emergency. Finally, the Supreme Court’s original delegated powers in Article III were significantly enhanced in the case of *Marbury v. Madison* (1802), where Chief Justice John Marshall first articulated the Court’s power to exercise judicial review. **Judicial review** is the power to strike down as unconstitutional acts of the national legislature and executive, as well as state actions.

A review of American history shows that the lines that divide power between the national government and the states are blurry, and in practice the balance of powers between the two levels of government is constantly in flux. At the same time, certain periods of federalism can be identified, and are often associated with creative (although not always precise) metaphors:

- **Dual federalism**, also known as “layer cake federalism” involves clearly enumerated powers between the national and state governments, and sovereignty in equal spheres. This relationship predominated from the 1790s to 1930.
- **Cooperative federalism**, also known as “marble cake federalism,” involved the national and state governments sharing functions and collaborating on major national priorities. This relationship predominated between 1930 and 1960.
- **Creative federalism**, also known as “picket fence federalism,” predominated during the period of 1960 to 1980. This relationship was characterized by overloaded cooperation and crosscutting regulations.
- Finally, **new federalism**, sometimes referred to as “on your own federalism,” is characterized by further devolution of power from national to state governments, deregulation, but also increased difficulty of states to fulfill their new mandates. This period began in 1981 and continues to the present.

There are other concepts of federalism that help describe the complicated relationships between the national and state governments. **Judicial federalism** involves the struggle between the national and state governments over the relative constitutional powers of each, and over key constitutional provisions including the Bill of Rights and the Fourteenth Amendment. With its power of judicial review, the Supreme Court is the arbiter of what the Constitution means on various questions, including federalism. Chief Justice John Marshall defended a national-supremacy view of the Constitution in the 1819 case of *McCulloch v. Maryland*. In that case the Supreme Court expanded the powers of Congress through a broad interpretation of its “necessary and proper” powers, and reaffirmed national supremacy by striking down Maryland’s attempt to tax the Bank of the U.S.

Not all judicial decisions favor national power. In the 1997 case, *Printz v. United States*, for example, the court invalidated federal law that required local police to conduct background checks on all gun purchasers. The court ruled that the law violated the Tenth Amendment. Writing for the five-to-four majority, Justice Antonin Scalia declared: “The Federal government may neither issue directives requiring the states to address particular problems, nor command the states’ officers, or those of their political subdivisions, to administer or enforce a Federal regulatory program.... Such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”

Topic Overview, cont'd.

Fiscal federalism involves the offer of money from the national government to the states in the form of grants to promote national ends such as public welfare, environmental standards, and educational improvements. Until 1911, federal grants were used only to support agricultural research and education. With the passage of the Sixteenth Amendment in 1916, which legalized the federal income tax, the national government gained a significant source of revenue that it used to shape national policy in a variety of new policy areas.

Categorical grants, in which the national government provides money to the states for specific purposes, became a major policy tool of the national government during the New Deal era, and expanded rapidly during the 1960s' Great Society. But state and local officials began to criticize this method of national support because of the costly application and implementation procedures. They also complained that it was difficult to adapt the grants to local needs.

Beginning in the mid 1960s, **block grants**, which combined several categorical grants in broad policy areas into one general grant, became increasingly popular. States prefer block grants because they allow state officials to adapt the grants to their particular needs. Congress, however, is reluctant to use block grants because they loosen Congress's control over how the money is spent.

Revenue sharing was developed during the Nixon administration as a way to provide monies to states with no strings attached. Using statistical formulas to account for differences among states, the national government provided billions of dollars to the states until the program was abolished in 1986.

There are several pros and cons associated with U.S.-style federalism. Some advantages include a greater degree of local autonomy, more avenues for citizens to participate, and more checks and balances against concentrations of power. Some disadvantages include increased complexity of government that can produce duplication and inefficiency, and increased legal disputes between levels of government.

Pre-Viewing Activity and Discussion (30 minutes)

Before viewing the video, discuss the following questions:

- Why does Congress, according to Chief Justice Marshall, have the power to create a national bank?
- What would our national government look like today if it possessed only the enumerated powers?
- What view of federalism is applied in the **Dred Scott** decision?
- Discuss the role the national government plays in secondary education. How has the government come to play this role?
- What kinds of powers should be held by the states alone?
- Take a list of commonly provided public services—Roads and Highways, National Defense, Health Care, Public Housing, and Education. Which level of government is best suited to take primary responsibility for providing the service? Why?

Watch the Video (30 minutes) and Discuss (30 minutes)

The video includes three segments. If you are watching on videocassette, watch each segment and then pause to discuss it, using the questions below. If you are watching a real-time broadcast on the Annenberg/CPB Channel, watch the complete video and then discuss.

1. Federal Wolves at the Door

This story highlights the federal Endangered Species Act, passed by Congress in 1973, which imposes federal mandates on states to protect animal species that are deemed in danger of becoming extinct. In this story, the state of Idaho is grappling with a federal mandate that says wolves, an endangered species, must be reintroduced into the state and managed by state authorities. In the end, despite protests from many Idahoans, the Idaho government realized it must comply with the national government's mandate.

Discussion Questions

- On what grounds did the national government mandate that the state of Idaho had to allow the reintroduction of wolves?
- By requiring that Idaho manage the wolves once they have been reintroduced, the national government was enforcing an unfounded mandate. Can you think of other unfounded mandates that are imposed on your state?
- Why shouldn't the states be allowed to decide what is to be done about endangered species?

2. Using Federal Dollars To "Buy" Interstate Highway Safety

The federal government sometimes uses grants-in-aid programs to expand into policy areas that are traditionally (and constitutionally) controlled by the states or local authorities. This story involves federal efforts to impose a national drunk driving standard, as measured by a .08 blood alcohol level, at the urging of national groups including Mothers Against Drunk Driving (MADD). In the 1980s, states were put under pressure to adopt the national standard or risk losing millions in federal highway funds. South Carolina, a state with a long tradition of resistance to federal encroachments on its authority, has yet to adopt the national standard for its citizens. The story closes in 2002, when the .08 bill died in the South Carolina State Legislature. As a result of the committee's action, the state has kept its constitutional authority to set its own standards, but it risked losing 64 million dollars in federal highway funds if it failed to adopt the national standard by 2007.

Discussion Questions

- It is clear that the national government cannot directly legislate on the issue of drunk driving. How has the national government managed to implement a national blood alcohol standard?
- What is the difference between the carrot and the stick approach to national mandates?
- Are there other areas where the national government uses its financial resources to force states to enact specific laws?

Watch the Video and Discuss, cont'd.

3. When Welfare Depends on Where You Live

This story explores one example of “devolution,” a process where the national government reduces its authority over some issues and shifts power to the states. In 1996, President Clinton signed a welfare reform bill that provided federal funds to the states in the form of block grants, but allowed states to set their own welfare policies. Supporters of the bill, officially entitled **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996**, hailed it as a way to allow states to determine for themselves how they should assist their citizens, while critics charged that some states were unwilling to or incapable of providing sufficient help to the people who need it most. In the first five years after the law was enacted, over one million people, mostly women, went off welfare, while welfare rolls dropped by more than 50 percent nationwide. However, the aggregate statistics don’t reflect significant differences among states in how they have run their welfare programs and in how successful they are. For example, some states have reduced their welfare rolls by 90 percent, while others saw much smaller reductions.

Discussion Questions

- What is devolution and why has it gained favor in recent years?
- Those who advocate stronger states often argue that the states can serve as laboratories for policy experimentation. Is the story of welfare reform a good example of that argument?
- To what extent is it appropriate that the benefits one receives depends on state residence?
- Can you think of other examples where services or benefits depend on where you live?
- What services, if any, should be uniform across the country?

Post-Viewing Activity and Discussion (30 minutes)

1. Determining What Is “Necessary and Proper” in Practice (15 minutes)

According to Chief Justice John Marshall, Congress is not constricted to simply the enumerated powers. Instead, it may justify legislative action if it is “necessary and proper” to the carrying out of any enumerated power. List some examples of congressional use of the “necessary and proper” justification. Discuss whether or not the laws are in fact “necessary and proper” to carrying out the enumerated power to which they are linked. Try crafting your own law (e.g., some version of educational reform). Develop an argument to support your position that the proposed law is necessary and proper to carry out a power enumerated to the national government.

2. Imagining a Unitary Government (15 minutes)

Assume that the framers of the Constitution had decided to establish a unitary form of government instead of a federal system. What would have been the advantages or disadvantages of such a change? Would we have had a Civil War? What would have happened to individual freedoms? Would public services be better or worse?

Homework

Read the following Readings from Unit 4 to prepare for next week's session.

- Introduction—Civil Liberties: Safeguarding the Individual
- Tocqueville, *Democracy in America*: "Effects of the Tyranny of the Majority Upon the National Character of the Americans—The Courtier Spirit in the United States"
- Locke, "An Essay Concerning the True Original, Extent, and End of Civil Government"
- Mill, "On Liberty"
- Thoreau, "Civil Disobedience"

Read next week's Topic Overview.

Critical Thinking Activity: Go to the course Web site and try the Critical Thinking Activity for Unit 3. This is a good activity to use with your students, too.

www.learner.org/channel/courses/democracy

Classroom Applications

You may want to have your students do the post-viewing activities: Determining What Is "Necessary and Proper" in Practice and Imagining a Unitary Government. They are provided for you as blackline masters in the Appendix.

Web-Based Resources

www.closeup.org/federal.htm—This is **The Close Up Foundation's** special topics page on federalism. This Web site is a useful resource guide for students and teachers that includes ideas for lesson plans, and links to articles, television reports, original documents, and other Web sites that deal with federalism.

www.landmarkcases.org/mcculloch/federalismactivity.html—**Street Law** and **the Supreme Court Historical Society** sponsor a classroom federalism activity involving *McCulloch v. Maryland*. This activity is very well organized, and includes an extensive list of handouts, objectives, guidelines, and discussion ideas.