



Federalism

FEDERALISM IN THE DESIGN OF THE AMERICAN SYSTEM OF GOVERNMENT

Federalism is an institutional arrangement in which political authority is divided among different levels of government, each with distinct or overlapping powers. In the United States, federalism can be seen in the division of political power between the federal government—consisting of Congress, the president, and the Supreme Court—and 50 individual state governments.

Many democratic countries around the world, such as Great Britain, have some form of federalism, but this is usually only because their national governments have enacted laws to grant powers to local governments. At any time, simply by enacting new laws, these national governments could take back all of the delegated powers. In the U.S., in contrast, federalism is a constitutional doctrine. The federal government is granted certain powers under the Constitution, and all other powers, as reaffirmed by the Tenth Amendment, are “reserved to the States.” As a result, in the U.S., the federal government cannot simply enact new laws to change the allocation of political authority. At least in theory, this allocation can be altered only by amending the Constitution.

The design of the American system of government includes federalist elements because of the historical situation in which the founders were operating in the late 18th

century and philosophical arguments about the best way to deal with the problem of tyranny. The historical situation was the failed Articles of Confederation, under which the federal government lacked authority to regulate commerce and raise taxes to maintain an army. State governments simply had too much power. So the founders drafted a constitution in which the federal government was granted power to regulate commerce among the states—the so-called commerce clause—and to maintain an army.

The founders were also concerned with designing a government that could combat tyranny. As is well known, and seen in authoritative commentary on the Constitution, such as the Federalist Papers, the founders wished to disburse political power and make its exercise, even where disbursed, cumbersome. The founders did not wish to make the functioning of the federal government near to impossible, as happened under the Articles of Confederation. Instead, the founders granted the federal government specific powers and reserved all others to the states. In this way, the centralization and abuse of political power, which could result when factions opposed to public interest held power, would be made more difficult. Federalism was thus envisioned as one among many weapons against tyranny.



THE EVOLUTION OF FEDERALISM IN THE UNITED STATES

Even though federalism is embedded in the Constitution, the allocation of political power between the federal government and the states has not remained constant. Throughout American history, the federal government has sought to increase its political power, while states have battled to preserve their political powers, and the courts have been left with the highly charged task of sorting out the constitutional authority of each level of government.

In *McCulloch v. Maryland* (1819), for example, the Supreme Court held that the powers of the federal government are not limited to those expressly enumerated in the Constitution, but also include those “necessary and proper” to carrying out the enumerated powers. Similarly, in *Gibbons v. Ogden* (1824), the Court adopted a broad conception of congressional power under the commerce clause, drastically increasing the scope of federal government authority over the economy. Together, these decisions laid the juridical foundation for an expansive conception of federal government power.

The expansion of federal government power throughout the 19th century and up to President Franklin Roosevelt’s New Deal occurred in fits and starts. The Civil War consolidated political power in Washington, D.C., and in the war’s aftermath the federal government

assumed new powers over the economy and even in social policy areas, such as the provision of pensions to Civil War veterans. Many of these expansions of federal government authority, especially involving the regulation of business practices, were initially resisted by the courts. But by the late 1930s, the courts had come to accept that the federal government could regulate essentially all economic and related activity throughout the nation and provide virtually unlimited social services based on the commerce clause. President Lyndon Johnson's Great Society programs—food stamps, Medicare, and Medicaid—extended the economic and social programs of the New Deal. By the late 20th century, federalism was no longer an effective constitutional impediment to the exercise of federal government power in the economy and society.

A NOTE ON WISCONSIN AND FEDERALISM

Wisconsin has figured prominently in the history of American federalism. One of the many attributes of a federal system is that policy innovation is more likely to occur. State governments can each be a laboratory, as Justice Louis Brandeis once observed, and pursue novel public policy solutions to political, economic, or social problems without imposing these solutions on the entire nation. In this way, public policies can first be tested on smaller populations and, if they work, Congress can then enact legislation to have the policies apply to all states.

In this regard, Wisconsin has served as the laboratory for many of the major social, labor, and economic public policies of the 20th century, having enacted early versions of laws providing for

income taxes, workers' compensation, civil service, direct party primaries, limiting working hours for women and children, collective bargaining, workplace safety, and unemployment compensation. Much of this legislation served as the model for subsequent national legislation. Indeed, it is no surprise that President Theodore Roosevelt once referred to Wisconsin as "the laboratory of democracy."

THE NEW FEDERALISM

In his first inaugural address, in 1981, President Ronald Reagan described the dire economic problems facing the United States and announced, "In the present crisis, government is not the solution to our problem." Fifteen years later, in his 1996 State of the Union address, President William Clinton surveyed his first term in office, observing: "We have worked to give the American people a smaller, less bureaucratic government in Washington." He added, "The era of big government is over." Both men had previously served as state governors and their words reflected that the balance of political power in the U.S. had tipped a bit too far in the direction of the federal government, to the detriment of state governments. In this regard, both tapped into what has come to be known as the New Federalism—that is, the political and legal movement to transfer certain powers and responsibilities that were assumed by the federal government in the 20th century back to the states.

Under Chief Justice William Rehnquist, the Supreme Court began to blaze a new trail in federalism jurisprudence, reflecting the New Federalism. In *United States v. Lopez* (1995), for instance, the Court invalidated a federal law that prohibited the possession of guns in

in and around school grounds. This was the first decision since 1937 to hold that Congress had exceeded its commerce clause powers. The Court continued in this new direction with *United States v. Morrison* (2000), ruling unconstitutional the civil remedies provisions of the 1994 Violence against Women Act on the grounds that neither the Fourteenth Amendment nor the commerce clause authorized Congress to enact the provisions. While the Court has not been entirely consistent in its New Federalism jurisprudence, it has nonetheless demonstrated a newfound willingness to delimit federal government authority and to carve out protected spheres of state political authority under the Constitution.

THE FUTURE OF FEDERALISM IN WISCONSIN

Federalism is alive and well in the United States. That the Supreme Court has begun to consider seriously limits on federal government authority under the Constitution can only mean that the state governments may have more leeway and autonomy in devising policy solutions to address social, political, and economic problems within their borders. Even in those public policy areas in which the federal government has clear constitutional authority to act, it is increasingly providing states with assistance in the form of block grants. Given Wisconsin's long history of policy innovation and willingness to serve as a "laboratory of democracy," Wisconsin is well-positioned to respond legislatively in the New Federalism era.

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Governing Wisconsin: "Federalism"

Study Questions

1	Why did the Articles of Confederation fail?	
2	How does federalism protect against tyranny?	
3	Briefly explain a historical or current event that illustrates an instance in which the states and the federal government struggled over the distribution of power.	
4	The No Child Left Behind Act (NCLB) outlines standards-based educational reforms for public schools in all states. Is NCLB an example of New Federalism?	
5	How will the emergence of a dominant international economy affect the relationship between the states and the federal government?	
6	How well does federalism function as an arrangement for sharing powers? Or does it work better as a method for transferring power from state to federal government?	

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Study Questions in the Cognitive Domain

1	Why did the Articles of Confederation fail?	Under the Articles of Confederation, the states had too much power. The federal government could not regulate commerce, raise taxes, or maintain an army.	Cognition
2	How does federalism protect against tyranny?	A tyrant oppressively controls all state power. Federalism protects against tyranny by distributing power between the states and the federal government and dividing the federal government into three branches, which check each other against taking power from the others.	Comprehension
3	Briefly explain a historical or current event that illustrates an instance in which the states and the federal government struggled over the distribution of power.	Many events can go here. Examples include the Civil War and slavery, women's suffrage, the New Deal, abortion rights, No Child Left Behind, the death penalty, definition-of-marriage amendments, legalization of marijuana or peyote, and immigration laws.	Application
4	The No Child Left Behind Act (NCLB) outlines standards-based educational reforms for public schools in all states. Is NCLB an example of New Federalism?	No. New Federalism is a movement toward reducing federal regulation on the affairs of state governments. NCLB is the largest federal educational reform law in the history of the United States.	Analysis
5	How will the emergence of a dominant international economy affect the relationship between the states and the federal government?	States will lose power to the federal government, as they have in the past. For example, states lost power over monetary policy and maintaining a military force. States will have less flexibility to experiment as Congress forces states to have more uniform laws.	Synthesis
6	How well does federalism function as an arrangement for sharing powers? Or does it work better as a method for transferring power from state to federal government?	Initially, federalism served as a political compromise to transfer limited power from the sovereign states to a central federal government. In modern times, federalism forms the framework for continued transfer of power from the states.	Evaluation