**Chapter 5: U.S. Federalism**

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**Introduction**

In this chapter we will attempt to understand the concept of Federalism and the specific ways it works in the U.S. system of government, but first we have to ask a few questions. What is Federalism? How does Federalism exist in the United States?

**Federalism**

Federalism is defined as, “a hybrid arrangement that mixes elements of a ‘confederation’ and a ‘unitary’ government.” (Kernell & Jacobson, 2020) Let’s break this definition down a bit.

1. A confederation is where you have a number of governments that come together because of some need and attempt to work together. When we have a confederation, we have authority being held by independent “states” through some kind of agreement. Under confederations there may be a central government, but it only has the power that the individual state governments give to it.
2. The other concept mentioned in our first definition of Federalism was a “unitary government.” When we talk of a unitary government we are talking about some kind of central authority or government from where power is derived. Under unitary systems, laws created by the central government are binding on everyone.

A “Federation”, from which federalism gets its name, is when authority is divided between a central government and local governments. (Kernell & Jacobson, 2020) Thus, an easier definition for Federalism is, the sharing or mixing of power between a national government and the state governments. The United States of America is a Federation where power is shared between the 50 state governments and the national government in Washington, D.C. but it was not always that way.

**Articles of Confederation**

            Before the United States of America became the United States of America, the 13 original colonies agreed to work together under something called the “Articles of Confederation.” Under the Articles of Confederation, separate states viewed themselves as separate “governments” able to carry out their independent “government” activities, while loosely tied to a central government that had very limited authority. As discussed in Chapter 1, the Articles of Confederation proved incapable of dealing with threats to the new nation and so when representatives from the various states came together in Philadelphia to iron out some of the details of the confederation, they instead decided to scrap the articles and replaced them with what became the United States Constitution.

Today, in the United States of America, we see the concept of Federalism at work.  We have a central government in the nation’s capital (Washington, D.C.), and we also have fifty individual states that have their own elected heads (the governors), their own lawmaking bodies (the state legislatures) and their own court systems (the state courts) that interpret individual state laws. This is why the laws in one state may be somewhat different from the laws in another state.

Federalism is always at work in the United States.  “In principle” if states, groups, or individuals believe that there are problems with the laws created by the Congress, or being enforced by the President, then the United States Supreme Court can step in and say whether those laws are Constitutional or Unconstitutional.  Sometimes the Supreme Court weighing in on questions of Federalism can advance social movements, as the court did in the 1946 **Morgan v. Virginia**decision that rules that “states could not enforce segregation on interstate busses.”  However, in other cases the Supreme Court has empowered states to pass restrictive voting laws that make it harder for poor people and minorities to participate in democratic elections as happened in **Shelby County v. Holder** in 2010 where the court stripped out a key provision of the Voting Rights Act thereby allowing states to avoid federal oversight when making their election laws.

https://www.youtube.com/watch?v=UAu2APOafvw

Assignment: Write a paragraph to a member of congress expressing your opinion on the Shelby County v. Holder decision.  Explain the role you hope for them to play in determining the future of voting rights in the United States.

**The Evolution of U.S. Federalism**

https://youtu.be/9WnVPTICl4A

From its beginning in 1787 to the present day, two major political theories have developed around the concept of Federalism.  One theory is called “[Dual Federalism](https://www.youtube.com/watch?v=e0V3UZfKlKY&ab_channel=DrPalmerHistory).” The other theory is known as “[Cooperative Federalism](https://www.youtube.com/watch?v=13QwMU8Vt_4&t=10s&ab_channel=RobClydesdale).”

**Dual Federalism**

The beginning of the United States marks the beginning of Dual Federalism. Under Dual Federalism, the Federal government and the state governments occupied “separate spheres of influence.” The federal government had areas that it controlled and the state governments had areas that they control. The federal government and state governments were co-equal entities. Article I, Section 8 of the United States Constitution listed a number of things that the federal government was empowered to do.  The federal government could: tax, declare war, establish foreign policy, regulate interstate commerce, make copyright and patent laws, establish post offices, and coin money.  More of this will be discussed below.  Under this theory of Dual Federalism, it was believed that the federal government could only operate based on those items listed in the U.S. Constitution.  As a result of this the states possessed a large amount of “reserved” powers.  The United States operated under a Dual Federalism model from 1787 until about 1937 when the federal and state governments began to intersect, and sometimes conflict with one another.

**Cooperative Federalism**

From about 1937 to the present, the United States has operated under a Cooperative Federalism model.  Cooperative Federalism came about during the Great Depression, beginning in the late 1920 and lasting through the 1930’s and early 1940’s, when so many Americans were struggling to make ends meet. “In Principle” under Cooperative Federalism the federal government and the state governments work collectively with one another to address common problems.  During the Presidency of Franklin D. Roosevelt (1933-1945), the federal government began to get more involved in the day-to-day lives of U.S. citizens.  During the FDR Administration a federal jobs program was established to get Americans back to work; as was an expansive social safety net to provide for people who fell on hard times, because many Americans had fallen on hard times.  With a more expansive role for the federal government, there became a need for states and national authorities to work more in tandem with one another.  However, with the post-WWII phase of the Civil Rights movement on the horizon, the shift to Cooperative Federalism set the stage for conflict as black activists pressured the federal government to enforce racial justice initiatives in states, both North and South, that sought to maintain the structures of segregation and white supremacy.

Assignment: In a paragraph explain the difference between Dual and Cooperative Federalism.

**How Federalism Works**

Let’s briefly define “Delegated Powers,” “Reserved Powers,” “Concurrent Powers” and “Implied Powers” which explain where authority derives in a federalist system of government.

**Delegated Powers** are those powers specifically assigned to the Federal Government by the United States Constitution. The U.S. Constitution lists very specific powers that the Federal Government enjoys. The Federal Government can declare war, maintain armed forces, regulate interstate commerce, admit new states, establish post offices, coin money, establish foreign policy, and make all laws necessary and proper carryout out its delegated powers.

**Reserved Powers** are powers not specifically delegated to the Federal Government by the U.S. Constitution, but which are “reserved’ for the State governments.  Powers reserved to the states include the power to: establish schools, establish local governments, regulate businesses within the state, make marriage laws, and provide for public safety. States can assume all powers not delegated to the national government or prohibited to the states. States also have “police powers.”  Police powers have nothing to do with law-enforcement or a specific police department.  Police Powers means the states can regulate for the health, safety and welfare of its citizens.

**Concurrent Powers** are powers that the Federal Government and the state governments have in common or share simultaneously. These are things that both the Federal Government and the state governments can do. Both the Federal Government and the state governments can: maintain law and order, tax, borrow money, charter banks, establish courts, and provide for the public welfare.

**Implied Powers**are powers that are not specifically delegated in the U.S. Constitution, but are understood to be necessary and allowed. The “Necessary and Proper clause” also known as the “Elastic Clause,” from Article I, Section 8 of the U.S. Constitution gives Congress the power to make all laws it deems necessary to make the government work well. This clause constitutionally authorizes the vast majority of U.S. laws created by the U.S. Congress.

Assignment: After reading “How Federalism Works” in a paragraph explain the ways state governments and the federal government are granted their respective power and authority.

**Federalism in the U.S. Constitution**

There are six ways in which Federalism is specifically identified in the U.S. Constitution and they are:

* The Commerce Clause, Article I, Section 8
* The Elastic Clause, also known as, the Necessary and Proper Clause, Article 1, Section 8
* The Supremacy Clause, Article VI
* The Admission of New States, Article IV, Section 3
* A guarantee of a “Republican form of government”, Article IV, Section 4
* The Tenth Amendment

**Making a Federal Case**

There are a few United States Supreme Court cases that reveal and strengthen the authority of the federal government over the state governments. In the cases listed below the individual state legislatures had passed laws that would affect the “citizens” and “residents” of their states. Sometimes these laws intruded on the civil rights or civil liberties of their citizens. Alternatively, these laws attempted to overlap into an area that the Constitution specified as federal and not state jurisdiction. When this happened the U.S. Supreme Court decided that those laws were unconstitutional.  In these cases, the Supreme Court asserts that the state had overstepped its authority and thus had entered in a sphere that is designated to the federal government. Although there are dozens of such cases, below are a few to help you get started in understanding the distinct and sometimes conflicting spheres of influence that the federal government and the states governments occupy.

One early case was [McCulloch v Maryland](https://www.youtube.com/watch?v=tPdhWW6Bz-Q) (1819).  In this case the U.S. Supreme Court said that the Elastic Clause gave the Federal Government the implicit authority to create banks. Moreover, the court also stated in this case that the “Supremacy Clause” implicitly exempted the Federal Government from state taxes.

In another 19th Century case, [Gibbon v Ogden](https://www.youtube.com/watch?v=m9UyQJUx-C8) (1824) the U.S. Supreme Court said that only Congress had the power, under the Commerce Clause, to regulate interstate commerce.  The Supremacy Clause gave the Federal Government the power to pre-empt the states in all policies involving interstate commerce.

In [Griswold v Connecticut](https://www.youtube.com/watch?v=3_rFhjp0XdM&ab_channel=Quimbee) (1965) the Supreme Court said that states cannot prohibit the use of contraception which violates its residents’ rights to privacy protected under the U.S. Constitution.

In [Roe v Wade](https://www.youtube.com/watch?v=9HZj8Qp4p2A&ab_channel=Newsy) (1973) the United States Supreme Court found that states cannot impose strict limits on abortion.  The Supreme Court of the United States (SCOTUS) declared a Texas state law that imposed such strict limits to be unconstitutional.  The Court stated that the Due Process Clause of the Fourteenth Amendment provided for a right to privacy.  Roe allowed a woman the right to have a safe abortion without excessive government restrictions.

Assignment: Watch the video for EITHER[McCulloch v Maryland](https://www.youtube.com/watch?v=tPdhWW6Bz-Q), [Gibbon v Ogden](https://www.youtube.com/watch?v=m9UyQJUx-C8), [Griswold v Connecticut](https://www.youtube.com/watch?v=3_rFhjp0XdM&ab_channel=Quimbee)OR[Roe v Wade](https://www.youtube.com/watch?v=9HZj8Qp4p2A&ab_channel=Newsy) in a paragraph explain why you think the Supreme Court justices ruled the way they did. Do you agree with their decision?

**Summary**

Federalism is the system of governments that exists in the United States based on the U.S. Constitution.  Under this system the Federal Government has certain powers that are given to it by the Constitution and the 50 state governments have powers that are reserved to them.  There are also powers that are shared by both the states and federal governments.

When the United States was first established in 1787 the country operated under the system of Dual Federalism. The federal government and the state governments operated within their own spheres of influence.  Beginning in 1937, the country moved to Cooperative Federalism where the federal government seems to exert more and more influence in the affairs of the states.

**Assignments**

1. Write a paragraph to a member of congress expressing your opinion on the Shelby County v. Holder decision. Explain the role you hope for them to play in determining the future of voting rights in the United States.
2. After reading “How Federalism Works” in a paragraph explain the ways state governments and the federal government are granted their respective power and authority.
3. In a paragraph explain the difference between Dual and Cooperative Federalism.
4. Watch the video for EITHER [McCulloch v Maryland](https://www.youtube.com/watch?v=tPdhWW6Bz-Q), [Gibbon v Ogden](https://www.youtube.com/watch?v=m9UyQJUx-C8), [Griswold v Connecticut](https://www.youtube.com/watch?v=3_rFhjp0XdM&ab_channel=Quimbee) OR [Roe v Wade](https://www.youtube.com/watch?v=9HZj8Qp4p2A&ab_channel=Newsy)in a paragraph explain why you think the Supreme Court justices ruled the way they did. Do you agree with their decision?

**Key Terms**

* Federalism
* Dual Federalism
* Cooperative Federalism
* Delegated Powers
* Reserved Powers
* Concurrent Powers
* Implied Powers

**Resources**

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