**Federalism**

**Summary:** One of the basic principles embodied in the United States Constitution is federalism. Federalism arose from the framers’ desire to create a stronger national government than under the Articles of Confederation but preserve the existing states and state governments. **Federalism** is a political system where the powers of government are divided between a national government and regional (state and local) governments. Each level of government has certain authority over the same territory and people. A constitution outlines each level of government’s authority, powers, and prohibitions.

The Constitutional Basis of Federalism

Although the term federalism is not found in the United States Constitution, it is clearly defined in the delegated, concurrent, and reserved powers of the national and state governments.

* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*-expressed, or enumerated powers, those specifically given to the national government \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* although not expressed, powers that may be reasonably inferred from the Constitution (Article I, Section 8, Clause 18- the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*- powers that exist for the national government because the government is sovereign
* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* powers that belong \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

* *­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* powers belonging specifically to the state because they were neither delegated to the national government nor denied to the states (Article IV; \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)
* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* powers that are denied to the national government, state governments, or both \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

* For example, neither the national government nor state governments may pass an ex post facto law of a bill of attainder.

|  |  |  |
| --- | --- | --- |
| **National Powers (Expressed, Implied, Inherent)**  Regulate foreign and interstate commerce  Coin and print money  Provide an army and navy  Declare war  Establish federal courts below the Supreme Court  Conduct foreign relations  Make all laws “necessary and proper”  Acquire and govern U.S. territories and admit new states  Regulate immigration and naturalization | **National and State Powers (Concurrent)**  Levy taxes  Borrow money  Spend for general welfare  Establish courts  Enact and enforce laws  Charter banks | **State Powers (Reserved)**  Regulate intrastate commerce  Establish local governments  Establish public school systems  Administer elections  Protect the public’s health, welfare and morals  Regulate corporations  Establish licensing requirements for certain regulated professions |

Federalism in Practice

**Interstate Relations**

Article IV of the Constitution addresses the issue of relationships between the states. It offers several provisions:

* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-*states are required to recognize \_\_\_\_\_

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, such as birth certificates, marriage licenses, drivers’ licenses, wills.

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ - states are prohibited from unreasonably \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Nonresidents may travel through other states; buy, sell, and hold property; and enter into contracts (does not extend to political rights such as the right to vote or run for political office, or to the right to practice certain regulated professions such as teaching)
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_- states may \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to avoid criminal prosecution at the request of the governor of the state.

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_- states may make agreements, sometimes requiring congressional approval, to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Some examples are “hot-pursuit agreements,” parole and probation agreements, the Port Authority of New York and New Jersey, and regulating the common use of shared natural resources.

**Guarantees to the States**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Constitution provides national guarantees to the states:

* Republican form of government
* Protections against foreign invasion
* Protections against domestic violence
* Respect for the geographic integrity of states

Some of the advantages and disadvantages of federalism are shown below:

|  |  |  |
| --- | --- | --- |
| **Advantages of Federalism**  Ideally suited to large geographic area because it encourages diversity in local government  Avoids concentration of political power  Accommodated already existing state governments  States serve as training grounds for national leaders  Keeps government close to the people. |  | **Disadvantages of Federalism**  Inflexibility inherent in a written constitution  Complex, with many governments to deal with  Duplication of offices and functions  Conflicts of authority may arise |

Establishing National Supremacy

Article VI of the United States Constitution contains the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which helps to resolve conflicts between national and state laws because two levels of government are operating within the same territory and over the same people, conflicts are bound to arise. The Supremacy Clause states that the Constitution, its laws and treaties shall be the “supreme law of the land.” The Supreme Court upheld this supremacy in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Supreme Court continued to expand the powers of Congress over interstate commerce in *\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.*

***McCulloch v. Maryland* (1819)**

The Supreme Court dealt with the issues of the Necessary and Proper Clause and the Supremacy Clause when \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Chief cashier James McCulloch refused to pay the tax, Maryland state courts ruled in the state’s favor, and the United States government appealed to grants the national government the expressed power to create a national bank, the authority to do so can be implied by the Necessary and Proper Clause (Article I, Section 8, Clause 18).

This ruling established the implied powers of the national government \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the basis used to strengthen the power of the national government.

***Gibbons v. Ogden* (1824)**

At issue was the definition of commerce \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The New York legislature gave Robert Livingston and Robert Fulton exclusive rights to operate steamboats in New York waters and Aaron Ogden the right to operate a ferry between New York and New Jersey. Thomas Gibbons had received a national government license to operate boats in interstate waters.

Ogden sued Gibbons and won in the New York courts; Gibbons appealed to the Supreme Court. The Marshall court defined commerce as including \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Today, the national government uses the commerce clause to justify the regulation of numerous areas of economic activity.

Federalism Today

Since the founding of the United States, society has changed, and federalism has evolved to meet the changes and challenges.

**Dual Federalism**

The earliest (1789-1932) interpretation of federalism is the concept of **dual federalism**, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This form of federalism is often referred to as “layer cake federalism” because each level of government is seen as separate from the other, with the national government having authority over national matters and state governments having authority overstate matters.

The early beliefs that states had the sole responsibility for educating their citizens and the national government had the sole responsibility for foreign policy issues are examples of dual federalism.

**Cooperative Federalism**

In the 1930s the interpretation of federalism shifted to that of the national and state governments sharing policymaking and cooperating in solving problems. **Cooperative federalism** or “marble cake federalism” as it came to be known, grew from the policies of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The cooperation of the national and state governments to build the national \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is an example of cooperative federalism. The expansion of cooperative federalism during (President Lyndon B. Johnson’s) \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ required even greater cooperation from the states in return for federal grants.

**New Federalism**

During the administrations of Richard Nixon, Ronald Reagan, and George H.W. Bush the national government attempted to implement a reversal of cooperative federalism and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The term **devolution-** a transfer of power to political subunits- has been used to describe the goals of new federalism.

An example of new federalism is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which has returned more authority over welfare programs to the states. The national government directed where much of the money should be spent in the stimulus-spending bills during the first year o the Obama administration.

**Fiscal Federalism**

The national government’s patterns of spending, taxation, and providing grants to influence state and local governments is known today as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The national government uses \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to influence the states through granting or withholding money to pay for programs.

* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* money and resources provided by the federal government to the state and local governments to be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*. The earliest grants often covered public works projects such as building canals, roads, and railroads, and land grants for state colleges.

* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* grants that have a specific purpose defined by law, such as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. may even require “matching funds” from the state or local governments; categorical grants may be in the form of project grants (awarded on the basis of a competitive application, such as university research grants) or formula grants (awarded on the basis of an established formula, such as Medicaid).
* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* general grants that can be used for a variety of purposes within a broad category, such as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; fewer strings attached so state and local governments have greater freedom in how the money is spent; preferred by states over categorical grants.

* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* proposed under the Johnson administration and popular under the Nixon administration, a “no strings attached” form of aid to state and local governments; could be used for virtually any project but never exceeded more than two percent of revenues; \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.*

* *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-* requirements that are imposed by the national government on the state and local governments; for example, the Americans with Disabilities Act (1990) mandates that all public buildings be accessible to persons with disabilities. Mandates often require state or local governments to meet the requirement at their own expense (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*). After the mid-term elections of 1994, the Republican-controlled Congress passed the Unfunded Mandate Reform Act, which imposed limitations on Congress’s ability to pass unfunded mandate legislation.

**Rapid Review**

* Federalism is a system of government in which the powers of government are divided between a national government and regional (state and local) governments.
* There are both advantages and disadvantages to federalism as a form of government.
* Federalism can be found in the delegated, reserved, and concurrent powers of the Constitution.
* Article IV of the Constitution provides for interstate relations, including full faith and credit, privileges and immunities, extradition, interstate compacts.
* Article IV of the Constitution provides national guarantees to the states.
* *McCulloch b. Maryland* and *Gibbons v. Ogden* upheld national supremacy and expanded the powers of Congress under the commerce clause, respectively.
* As practiced in the United States, federalism has evolved through many phases, including dual federalism, cooperative federalism, new federalism, and fiscal federalism.

**Key terms:**

Federalism

Delegated powers

Implied powers

Necessary and Proper (Elastic) Clause

Inherent powers

Concurrent powers

Reserved powers

Full Faith and Credit Clause

Privileges and Immunities Clause

Extradition

Interstate compacts

Supremacy Clause

*McCulloch v. Maryland*

Dual federalism

Cooperative federalism

Devolution

Fiscal federalism

Fiscal policy

Grants-in-aid

Categorical grants

Block grants

Revenue sharing

Mandates

Unfunded mandates