

Constitutional Topic: Federalism



The Constitutional Topics pages at the USConstitution.net site are presented to delve deeper into topics than can be provided on the [Glossary Page](#) or in the [FAQ pages](#). This Topic Page concerns Federalism. Federalism is not mentioned explicitly in the Constitution, but federalism is one of the many concepts that the Constitution embodies.

There are three major types of government in the place in the world today. The most prevalent is the unitary system. In a unitary system, power is held at the national level, with very little power being held in political subdivisions, such as provinces, counties, parishes, or towns. The least common is the confederation. Confederations are unions of equal states, with some power being held at the national level. Generally, it has been found that conflicting interests lead to the break-down of confederations.

The third major system is the federal system. In a federal system, the national government holds significant power, but the smaller political subdivisions also hold significant power. The United States, Canada, Australia, and Brazil are examples of federal systems.

Is any one of these better than the other? That is a matter of opinion. Suffice it to say that each has its positives and negatives, and as such, the choice for which to use in any particular nation depends on the nation, its people, its existing political subdivisions. The United States was a series of colonies under the British unitary system; upon the execution of the Revolution, the United States became a confederation under the [Articles of Confederation](#); and when that system proved unsuccessful, it was transformed into a federal system by the Constitution.

Federal systems are chosen for a number of reasons. The size of the nation might be one concern; the diversity of the political subdivisions might be another. The United States combines a bit of both: the size of the continental United States made a unitary system unwieldy, and the diverse interests of the states made confederation impossible. Nations like Switzerland have a population split by language, and despite its small size, found federalism to be a better choice than the others. China, being an extremely large and extremely diverse nation, finds the unitary system more suited to its political ideology. However, communism does not require a unitary system: the former USSR was a federation, at least in its internal structure.

Federalism in the United States has evolved quite a bit since it was first implemented in 1787. In that time, two major kinds of federalism have dominated political theory.

The first, **dual federalism**, holds that the federal government and the state governments are co-equals, each sovereign. In this theory, parts of the Constitution are interpreted very narrowly, such as the [10th Amendment](#), the [Supremacy Clause](#), the [Necessary and Proper Clause](#), and the [Commerce Clause](#). In this narrow interpretation, the federal government has jurisdiction only if the Constitution clearly grants such. In this case, there is a very large group of powers belonging to the states, and the federal government is limited to only those powers explicitly listed in the Constitution.

The second, **cooperative federalism**, asserts that the national government is supreme over the states, and the 10th Amendment, the Supremacy Clause, the Necessary and Proper Clause, and the Commerce

Clause have entirely different meaning. A good illustration of the wide interpretation of these parts of the Constitution is exemplified by the Necessary and Proper Clause's other common name: the Elastic Clause.

Dual federalism is not completely dead, but for the most part, the United States' branches of government operate under the presumption of a cooperative federalism. The shift from dual to cooperative was a slow one, but it was steady.

One of the earliest examples of a shift was in the Supreme Court's *Gibbons v. Ogden* decision, which ruled in 1824 that Congress's right to regulate commerce under the Commerce Clause could be "exercised to its utmost extent, and acknowledges no limitations, other than those prescribed in the constitution..." The Court did not expand the powers of the national government much over the next century. But in the 1930's, a wave of feeling of social injustice began to sweep the nation as the Depression began. Federal laws concerning labor, civil rights, and civil liberties began to take on a new priority. National laws, and amendments to the Constitution, have taken away many powers from the states, such as the ability to significantly restrict voting rights or the ability to draw political districts at the whim of political party bosses.

Some advocate a return to an emphasis on dual federalism as a returning of power to a government closer to the people, and hence under better popular control. There are many problems with this, however, as many states found in the Reagan era. President Reagan was a strong advocate of states rights, and wanted to return many of the powers taken up by the federal government to the states. But in many cases, this created more bureaucracy, as each of the 50 states had to establish offices to administer programs the federal government handed over. Worse, the transition was often unfunded, meaning that the costs of the programs were shifted to the states, but federal taxes were not reduced accordingly, leading to a higher tax burden on the people as states raised taxes to fund the programs. Worse, when federal taxes *were* cut, federal aid to the states that did exist was cut as well.

But despite the appeal of cooperative federalism, there is an on-going appeal to a degree of dual federalism. The failure of President Bill Clinton's national health care initiatives is a perfect example of an area of politics that the people feel is best held more closely, in spite of some of the benefits of a national system.

Regardless of the *kind* of federalism current the Constitution does provide some very specific powers to both the states and the federal government. These powers are traditionally divided into three categories.

Reserved powers are those that have been reserved specifically for the states or are of a traditionally state scope. These consist mostly of police powers, such as providing fire and police protection, establishment of health regulations, licensing, and education.

Granted powers, also known as express, enumerated, implied, delegated, and inherent powers, are those specifically listed in [Article 1, Section 8](#), such as the power to coin money, to raise an army and navy, to provide for patent and copyright protections, to establish a post office, and to make treaties and war with other nations. An express, delegated, or enumerated power is one specifically listed; an implied or inherent power is one that exists to carry out an express or enumerated power. For example, Congress can raise an army; this implies the ability to specify regulations concerning who can join the army.

Concurrent powers are those held to some extent by both the federal and state governments. Both, for

example, have taxation power, the ability to construct and maintain roads, and other spending for the general welfare.

Many things are denied of both or either levels of government. States, for example, have no authority to coin money or wage war. Neither may pass a bill of attainder or any ex post facto law. Much of the Bill of Rights applies restrictions to both states and the federal government, while all of the Bill of Rights applies restrictions to the federal government. Note that the Bill of Rights originally had no effect of restriction on the states, but judicial interpretation of the [14th Amendment's](#) due process clause has incorporated much of the upholding of civil rights to the states.

As usual, the Internet has a wealth of information about lots of topics, including federalism. Here are just a few:

- [Cases and Materials on American Federalism](#)
 - [Center for the Study of Federalism](#)
 - [List of State and State/Federal Issues](#) from the National Governor's Association
 - [The Federalist Society](#)
 - [StatesNews](#) from the Council of State Governments
 - [The U.S. Federalism Site](#)
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