



AP US Government and Politics Unit 2

Federalism

Federalism: The separation of power between national, state, and local governments.

Unitarism: A system where power is centrally concentrated.

Confederalism: A system where independent states form a loose alliance, delegating limited powers to a central authority while retaining most of their sovereignty and independence.

Federalist No. 51: Madison argued that the government should be structured to **balance self-interest with safeguards against tyranny**. To prevent any branch from becoming dominant, he emphasized a system of **separated powers and federalism**. He explained that federal and state governments are distinct yet **both draw authority from the people, serving them in different capacities** (e.g., Medicaid is federally mandated, but states manage insurance and administer the program). This **distribution of powers ensured that the federal government would not become too powerful** and forget the states.

Key Constitutional Articles and Amendments

Types of Powers

Expressed/Enumerated Powers: Powers that are explicitly stated by the Constitution.

Implied Powers: Powers not explicitly stated but necessary to fulfill duties of the federal government.

Exclusive Powers: Powers only given to the federal government.

Concurrent Powers: Powers shared by both the federal and state governments.

Reserved Powers: Powers reserved to the states under the 10th Amendment.

Article I

Section 8: This section grants the **enumerated, expressed powers** to Congress. The most important clauses are Clause 3, **The Commerce Clause**, which gives Congress the power to regulate interstate commerce, and Clause 18, **The Necessary and Proper Clause**, which gives Congress the power to create laws necessary and proper to execute their explicit powers (implicit power).

Section 9: The section limits Congress' power like prohibiting Congress from restricting the writ of **habeas corpus** (people detained must know their charges), taxing exports, passing **ex post facto laws** (punishing acts that weren't crimes when they were committed), **bills of attainder** (declaring someone guilty without a trial), and titles of nobility.

Section 10: Restricts the powers of state legislatures. States cannot enter into treaties, alliances, or confederations, coin money, pass ex post facto laws or bills of attainder, nor declare war.

Article IV

This article outlines the relationships and responsibilities between states, guaranteeing a republican form of government for every state while also providing a framework for accepting new states in the union.

Full Faith and Credit Clause: Ensures that states honor the public acts, records, and judicial proceedings of other states.

Privileges and Immunities Clause: Prevents states from treating citizens of other states in a discriminatory manner.

Extradition Clause: Ensures that individuals accused of a crime are returned to the state where the warrant for their arrest was issued.

Article VI

This article describes the supremacy of the Constitution, requiring all government officials to swear an oath to support the Constitution while prohibiting religious tests for public office.

Supremacy Clause: Declares the constitution and the laws and treaties made under it the “Supreme Law of the Land.”

Relevant Amendments

10th Amendment: Established that power not delegated to the federal government by the Constitution is reserved to the states and the people, defining federalism.

13th Amendment: Abolished slavery and involuntary servitude, except as a punishment for a crime, establishing freedom for all individuals in the U.S.

14th Amendment: Guaranteed citizenship rights, **equal protection (clause)**, and due process under the law, preventing states from infringing on individual rights.

15th Amendment: Prohibited denial of the right to vote based on race, color, or previous condition of servitude, securing voting rights for formerly enslaved men.

The 13th, 14th, and 15th Amendments increased federal powers, giving them authority to protect civil liberties.

Distribution of Powers

Exclusive Powers: The power to declare war, have an army, control interstate commerce, print money, engage in foreign relations, etc.

Concurrent Powers: The power to build roads, levy taxes, establish courts, make/enforce laws, address issues of public safety, etc.

Reserved Powers: Policing powers (police and fire departments), regulate intrastate commerce, issue a driver’s license, verify marriages, and maintain schools.

Significant Supreme Court Cases on Federalism

Marbury v. Madison

Background: After the 1800 election, President John Adams appointed several judges, including William Marbury, before leaving office. However, when Thomas Jefferson assumed

the presidency, his administration **withheld Marbury's commission**. So, Marbury petitioned the Supreme Court to issue a writ of mandamus (which it had the power to do), ordering Secretary of State James Madison to deliver the commission.

Decision: Chief Justice John Marshall ruled that **Marbury had a right to the commission**. However, the Court concluded **it could not issue a writ of mandamus**, instructing Madison to deliver the commission, because the **Judiciary Act of 1789**, which authorized such writs, was unconstitutional. They said that the **Act expanded the Court's original jurisdiction beyond what the Constitution** permitted; and if Congress can increase the judiciary's power via legislation, they can also, in the future, restrict the judiciary.

Constitutional Principles: The **Judiciary Act**, which granted the Court the power to issue writs of mandamus in such cases, conflicted with **Article III, Section 2** of the Constitution regarding the Court's original jurisdiction. The court used the **Supremacy Clause (A1 S6)** to assert the Constitution's authority over any conflicting legislation (like the Judiciary Act). However, Marbury still had his right to his commission under **Article II, Section 3**, which outlines the president's duty to ensure that laws are "faithfully executed."

Significance: This case established **judicial review** as a key principle of the judiciary, enabling the Supreme Court to review and nullify federal and state laws in conflict with the Constitution. This **increased the power of the federal government** and equalized the powers between the three branches.

McCulloch v. Maryland

Background: The state of Maryland imposed a tax on the Second Bank of the US, in an attempt to limit the bank's authority. However, James McCulloch, the bank cashier, refused to pay the tax. So, Maryland sued him, which led to a legal battle going all the way up to the Supreme Court.

- **Main Questions Before the Supreme Court:** Does the federal government have the constitutional authority to establish a bank? Can a state impose a tax on a federal institution?

Decision: Chief Justice Marshall ruled in favor of McCulloch and **upheld the federal government's power to create the bank**, asserting that the Constitution grants Congress

implied powers to regulate commerce. The bank, in this case, was a necessary and proper entity and constitutionally protected. He also ruled that **Maryland could not tax a federal entity**, as the **power to tax could be used to destroy**, which would undermine the supremacy of federal laws over state laws.

Constitutional Principles: The court cited the **Necessary and Proper Clause (A1, S8, C18)** that implied powers beyond those explicitly listed in the Constitution. They also cited the **Supremacy Clause (A6)** which establishes federal law as the “Supreme Law of the Land,” limiting states’ interference with federal powers.

Significance: This case **strengthened federal authority over the state** in matters involving implied powers. This, in the long run, expanded the scope of congressional powers and reinforced the concept of federal supremacy, establishing a precedent for future cases of federal versus state authority.

United States v. Lopez

Background: Alfonso Lopez, a high school senior, carried a handgun to school in Texas, violating the **federal Gun-Free School Zones Act of 1990**. He was arrested but argued that the federal government overstepped its authority by **legislating in areas typically handled by states**. This case eventually came up before the Supreme Court.

Decision: Congress argued that the Gun-Free School Zones Act was justified as necessary and proper for regulating interstate commerce. However, The Supreme Court, led by Chief Justice William Rehnquist, ruled that the federal **Gun Free Zones Act exceeded Congress’s power under the Commerce Clause**. The ruling argued that carrying a firearm in a school zone was not an economic activity substantially affecting interstate commerce.

Constitutional Principles: The court cited that the **Commerce Clause (A1, S8, C3)** only allows Congress to regulate activities if they substantially affect interstate commerce.

Significance: This case **reinforced the doctrine of federalism** by restricting federal overreach into state jurisdiction, particularly in cases where the connection to interstate commerce is weak.

Forms and Evolution of Federalism

Dual (Layer-Cake) Federalism: Treats state and federal government as separate entities, operating on separate, independent spheres of public policy.

Cooperative (Marble Cake) Federalism: States and federal governments have to work together on the same sphere of public policy.

- During the Great Depression, the federal government was active with the **New Deal** Program which required state cooperation.

Selective Incorporation: Process by which the Supreme Court applies fundamental rights in the Bill of Rights to the states on a case-by-case basis.

Fiscal Federalism

Fiscal federalism is the system where the federal government uses grants-in-aid to shape state policies.

Grants-in-Aid: Ever-increasing federal funding provided to states to implement certain public policy objectives.

- **Categorical Grants:** Money given to be used for very specific purposes.
- **Block Grants:** Money given for flexible use.
- **Formula Grant:** Money given based on calculations set in law and linked to factors such as the number of high lane-miles, school-aged children, or low-income families.

Funded Mandates: Requiring states to do something for money. An example of this is raising the drinking age to receive highway funding.

Unfunded Mandates: Requiring states to implement a certain policy without giving any money to the states. An example of this is the **No Child Left Behind Act**.

Revenue Sharing: When the federal government gives states money with no string attached.

Devolution: Returning of power and authority back to the states. An example of this was the **Welfare Reform Act**, giving states more influence.

Evolution of Federalism

Creative Federalism: Under LBJ, the government was innovating to tackle policy problems with increased state and federal cooperation.

- **The Great Society Program** emphasized the federal government's involvement in traditionally state-managed areas like education, health care, and civil rights.

New Federalism: Under Reagan, Nixon, and Bush, the federal government cut down on their state intervention programs and devolved more powers back to the states. They ended general revenue sharing.

Coercive Federalism: In the 1990s, the federal government had a more powerful position, positioning unfunded mandates and increasing the efficiency of federal grants. The federal programs provided did increase state/local jobs, as they required employees to carry out these programs.

Progressive Federalism: This a modern version of federalism, where local and state governments with their progressive government officials try to force compromise among national conservatives by implementing laws that challenge federal values in areas such as environmentalism and marijuana.