



veto refuse to sign a bill into law

filibuster prolonged floor debate aimed at defeating measures by preventing a final vote

INTRODUCTION—Constitutional Concepts;
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States' Rights and Federalism

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federalism a system of political organization; a union is formed of separate states or groups that are ruled by a central authority on some matters but are otherwise permitted to independently govern themselves

have been defined, as well as how these concepts have been applied and should be applied. The supremacy clause commands all citizens of the United States to recognize the Constitution as the supreme law of the land. This means that every person called upon to perform an official act—whether to arrest someone, to veto a bill, or filibuster in a session of Congress—must also decide whether this act carries out or violates the intent of the Constitution.

Some legal scholars have argued that the United States could survive if the Constitution did not include Article II, providing for the presidency, or Article III, establishing the federal courts, or even if it lacked the Bill of Rights. They hold this belief because they think that these institutions and the rules they follow can be determined by reading the rest of the Constitution. But this view could not hold true of Article I, which establishes Congress and its powers. Nor is it true of the supremacy clause, which ranks with just a very few provisions of the Constitution as indispensable to the American system of government. Indeed, the supremacy clause reflects the judgment of the Framers about the kind of government the United States should have: a government that is by the People, of the People, and for the People.

Federalism is a system of government in which power is shared by the national and state governments. A federal system is different from a confederation, where the states have most of the power, and it is different from a unitary system, where the central government is in charge.

Federalism is also a political principle which is sometimes put forth as a limit on national power. This was, in fact, the intention of the Framers of the Constitution and the Bill of Rights. But the principle of federalism is also viewed as the continually changing and developing relationship between the national government and state governments. Defining federalism in this way raises many difficult questions and issues, because federalism refers to no precise plan or agreed-on formula of government. In the United States, federalism may be best understood as an evolving set of compromises between rival authorities.

Government in the American Colonies

Before the American Revolution, the only central authority that ruled the thirteen colonies was the British government. The colonies had equal power and privileges in their relations to each other. After the Revolution, the colonists were not eager to establish immediately another powerful central government to govern their newly independent states.

Oddly enough, the actions of the British government during the colonial period had shown the colonies and their leaders how much they shared and how dependent they were on one another. The colonists saw



Alexander Hamilton, the Father of Federalism

Articles of Confederation the first constitution of the thirteen original United States; in effect 1781-1789

sovereignty the state of having supreme and independent power

ratify to formally approve a document, thereby making it legal

that if only a few of the colonies resisted the harsh measures the British government had imposed, their efforts would surely fail—and all the colonies would have to share the costs of that failure. The colonists realized that they needed to speak to Great Britain in a single voice, so they formed one centralized committee to represent them. This committee became the Continental Congress, which guided the colonies through the American Revolution. After the nation won its independence, the Continental Congress became the model for the "federal" government of the new United States of America.

The States and the Federal Government

The relationship between the states and the new national government had hardly been considered by the leaders of the new American nation. The first formal plan of government for the newly independent states began to take shape in the Articles of Confederation. The Articles granted extensive powers to the national government, while recognizing only a "league of friendship" in which each state retained "its sovereignty, freedom and independence."

Congress was the only branch of government that the Articles of Confederation created. Although they gave Congress power to govern, Congress was in fact nearly powerless and depended completely on the states for both raising money and enforcing the laws. The economic crisis that followed on the heels of the Revolution made clear this contradiction.

Strengthening the central government. The Constitutional Convention of 1787 attempted to resolve the problems in the Articles of Confederation by strengthening the central government. But the Framers, who were political realists, did not expect that the state legislatures would willingly hand over their power to a new national government. They decided to bypass the state legislatures when it came time to ratify the Constitution; and at the same time, they continued to argue that the new federal form of government established by the Constitution was a mixture of unitary and confederate forms.

Questions about federalism continued to be raised even after the Constitution was ratified in 1788. The concerns of those who favored states' rights led to the inclusion of the Tenth Amendment in the Bill of Rights, ratified in 1791. The Tenth Amendment reserves to the states, or to the people, all powers not expressly granted to the national government. But the Tenth Amendment did not settle the debate, since it seems to have merely reaffirmed the federal relationship between the states and the national government already set forth in the Constitution.

The power to interpret the Constitution. Two key questions about federalism were still left unanswered. First, precisely what powers does the Constitution grant to the national government? Second, who has the authority to interpret the meaning of these grants of power? James Madison attempted to answer the first question in 1798 when he, along with Thomas Jefferson, stated that the doctrine of nullification was a limit on the power of the national government. Under this doctrine, states were able to nullify—declare unlawful—an act of Congress which, in their



•tition incitement of resistance to or insurrection against lawful authority.

In 1995 the Supreme Court decided a case *U.S. Term Limits Inc. v. Thornton*, that challenged a state's right to add qualifications for serving in Congress. Justice John Paul Stevens' majority opinion was based on the concept of the federal union as a compact among the people with "a single National Government" serving as their agent. Allowing individual States to adopt their own qualifications for congressional service," he wrote, "would be inconsistent with the Framers' vision of a uniform National Legislature representing the people of the United States." Justice Clarence Thomas dissented for the minority of four. He advanced a view of federalism that no justice had advocated in over sixty years, since before the New Deal. "The ultimate source of the Constitution's authority," he wrote' "is the consent of the people of each Individual State, not the consent of the undifferentiated people of the Nation as a whole. " This position would make the nation nothing more than an agent of the states and all of its powers would be narrowly defined.

secession formal departure or withdrawal from an organization

dual federalism doctrine that holds that both the state and the federal government are supreme and autonomous within their respective areas

supreme having the highest authority

opinion, was unconstitutional. Although Madison and Jefferson used this doctrine in an attempt to nullify the Sedition Act passed by Congress in 1798, that law expired before the doctrine could be fully evaluated.

Supreme Court decisions answered the question of who has the authority to interpret the meaning of the Constitution. In *Marbury v. Madison* (1803) and *McCulloch v. Maryland* (1819), the justices held that the Supreme Court itself had the final word and then used this authority to increase the power of the national government. Specifically, the Court ruled that the national government could use the necessary and proper clause in Article I, Section 8, of the Constitution to exercise powers not expressly granted elsewhere in the document.

But the doctrine of nullification, though buried, was not dead. By 1828, John C. Calhoun of South Carolina again began the process of nullification. According to Calhoun, the Constitution was created by agreement not of the people but of the states. Because the states had established the national government, they were sovereign and superior to that government. This same idea, sometimes known as the compact theory, was used to justify secession by the Confederate states from the Union more than thirty years later, leading to the Civil War.

Federalism in Modern America

The victory of the Union in the Civil War finally put to rest the compact theory of government and its related doctrine of nullification. By the end of the nineteenth century, a new theory known as dual federalism gained popularity. This theory was based on the Tenth Amendment, and held that both the national and the state governments have authority within their separate spheres. In other words, a use of Congress's authority that would otherwise be legal was unconstitutional if it involved a subject over which the states, rather than the federal government, were sovereign. The dual federalism doctrine holds that both the state and the federal government are supreme and autonomous within their respective spheres.

The New Deal. The Great Depression of the 1930s and the programs of the New Deal eventually brought the dual federalism theory to an end. The states were helpless to solve the terrible economic crisis facing the American people as a whole. Since the theory of dual federalism acted to limit national power, either it or the New Deal would have to go. In the end, President Franklin D. Roosevelt ensured that his New Deal's policies would triumph.

President Roosevelt's victory in the 1932 election, and especially his landslide reelection in 1936, sharply changed the character of federalism in the United States. The national government began to act in ways that the Framers could never have imagined. The New Deal began a trend toward increasing the power of the national government and reducing the authority of state governments. That trend continued until the 1980s, when Ronald Reagan was elected president.

The "Reagan Revolution." Historians and political scientists are still attempting to evaluate the impact of the "Reagan revolution," which began when Ronald Reagan defeated President Jimmy Carter in the 1980



devolution federalism federalism where powers are transferred from the central government to local authorities

judicial federalism federalism in which the courts determine how powers are shared between the national and state governments

INTRODUCTION—Constitutional Concepts; Constitutional Origins; ARTICLE VI—The Supremacy Clause; TENTH AMENDMENT

No Religious Test for Public Office
Richard E. Morgan

affirmation declaration under the penalty of perjury

election. One of the major themes of Reagan's presidency was termed "the New Federalism." By this, President Reagan meant returning power to the states by allowing them to take over matters that had long been accepted as responsibilities of the national government. This concept of federalism also guided the Republican-controlled Congresses of the 1980s and 1990s, and also, to some extent, the policies of the Democratic Clinton administration in the 1990s. In what came to be called devolution federalism, Congress, in 1996, changed the Aid to Families with Dependent Children (AFDC) program into a block grant program, giving the states almost total control over the nation's welfare policies.

Emergence of judicial federalism. Supreme Court decisions during this period, too, followed along this line. In 1980, in *PruneYard Shopping Center v. Robins*, the Court allowed state courts to base their decisions solely on state constitutional guarantees, thereby granting their residents rights not contained in the Constitution. Then, in *Prinz v. United States* (1997), the Court ruled that Congress cannot order state officials to conduct background checks on persons who want to purchase handguns. Some legal scholars have argued that the Court's narrow interpretations support its efforts at encouraging the development of judicial federalism.

Given the nation's history, the struggle over the limits that federalism places on the national government's powers and the rights reserved to the states probably is far from over. It is important to understand that while these disputes can divide the nation, they also symbolize America's flexible national character. As times and circumstances change, so do the ideas about how the powers of government should be shared. Devolution federalism is probably just another stage in the continuing evolution of federalism itself.

ARTICLE VI, SECTION 3, OF THE CONSTITUTION STATES

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution, but no religious Test shall ever be required as a qualification to any Office of public Trust under the United States.

When the Constitutional Convention was held in 1787, a thirteen states in the Confederation except New York and Virginia had religious tests for public office. That meant that only persons who declared their belief in certain religious truths could hold public office, such as serving in legislatures or as governors or judges.

In Massachusetts, persons seeking public office had to declare, believe in the Christian religion, and have a firm possession [knowledge] of its truth." New Hampshire's constitution required state officials