

# Federalism

[Law](#), [Constitution](#)



Federalism Federalism, and all it stands for, underpins politics in America. Federalism gives the executive its power but it also gives states a great deal of power as has been clarified in Dillon's Law. On many occasions, the Supreme Court has been called on to adjudicate what federalism means (usually in favor of the executive rather than states) but the Constitution put a great deal of faith in federalism when the Founding Fathers first constructed it. Federalism is a system of government in which a written constitution divides power between a central government and regional or sub-divisional governments. Both types of government act directly upon the people through their officials and laws. Both types of government are supreme within their proper sphere of authority. Both have to consent (agree) to any changes to the constitution. In America the term " federal government" is usually understood to refer exclusively to the national government based in Washington. This, however, is not an accurate interpretation of the term as it excludes the role played by other aspects of government concerned with the federalist structure. Federalism can be seen a compromise between the extreme concentration of power and a loose confederation of independent states for governing a variety of people usually in a large expanse of territory. Federalism has the virtue of retaining local pride, traditions and power, while allowing a central government that can handle common problems. The basic principle of American federalism is fixed in the Tenth Amendment (ratified in 1791) to the Constitution which states: | " The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, | | are reserved to the States respectively, or to the people." | America has throughout its history seen federalism

defined in a variety of patterns. Co-operative federalism: this assumes that the two levels of government are essentially partners. Dual federalism: this assumes that the two levels are functioning separately. Creative federalism: this involves common planning and decision making. Horizontal federalism: this involves interactions and common programmes among the 50 states. Marble-cake federalism: this is characterized by an intermingling of all levels of government in policies and programming. Picket-fence federalism: this implies that bureaucrats and clientele groups determine intergovernmental programmes. Vertical federalism: this is viewed as the traditional form of federalism as it sees the actions of the national government as supreme within their constitutional sphere. In America each state has its own position of legal autonomy and political significance. Though a state is not a sovereign body, it does exercise power and can carry out functions that would be carried out by the central authority in other governmental set-ups. The Constitution set up a division of power between the federal and state governments which initially limited the federal unit to the fields of defense, foreign affairs, the control of the currency and the control of commerce between the states. This division of power has been eroded over the years so that today the federal government has functions that have been greatly extended and touch on nearly all aspects of life for American citizens. Regardless of this expansion of federal power, the states continue to be very important political centers of government activity. Recent presidents such as Nixon and Reagan tried to cut back the power of the federal government and give back to the states power that was deemed to have been taken from them. The current president, George W Bush, has promised to continue with

what might be deemed a Republican principle - making Federal government smaller. This "New Federalism" had limited success under Nixon and Reagan primarily due to the confusion as to who did what after reforms in welfare. However, it was recognition by two presidents that the states could take greater responsibility in how they ran themselves and also that there should be a reduction in federal authority. The importance of the American states as legal entities is considerable. As stated this is enshrined in the Constitution. Today, most of the civil and criminal laws that govern Americans' lives are state laws. State law also covers family law, traffic law and commercial law. The most obvious example of a state's right to implement laws for itself is the right a state has to either have or not to have the death penalty for convicted murderers. The states have important regulatory functions, laying down many of the rules that businesses and trade unions must observe. States have extensive powers of taxation and combined with local governments within each state spend huge sums of money on social welfare, education, health and hospitals. In 1955, the states spent a total of \$37, 244 millions on such services. By 1978 this had increased to \$295, 510 millions. States have considerable constitutional and legal autonomy on how they fulfill their role. They are subject to only two major limitations the first is that: | The states must observe the Constitution of the United States of America and they must obey | | valid laws of the federal government made under the Constitution. | If a state's laws offend against the Constitution, the Supreme Court can declare them unconstitutional. If these laws conflict with valid federal laws then the Supreme Court can take the same course of action. If the Supreme Court decides that a law passed by Congress violates

the rights of states, then that law can also be declared unconstitutional. In reality the Supreme Court has declared against state laws far more frequently than laws passed by Congress that have implications at state level and as a result the apparent legal power base of Congress has gradually expanded over the years. In 1985, in the case *Garcia v San Antonio Metropolitan Transit Authority*, the Supreme Court essentially concluded that "the only limits upon the power of the Federal Government are political, and that any attempt to place constitutional limits upon the power of the Federal Government is unrealistic." (Vile) Federalism is still a potent force in America and it continues to draw its vigor from the desire at a political level to decentralize political power. | The second major limitation on state power is their relative lack of financial resources | | compared with those of the federal government. | No state can tax as effectively as the federal government - nor, in fact, can all the states combined. This financial strength has enabled the federal government to obtain the compliance of the states through its Grants-In-Aid Scheme whereby grants are made to states but with certain conditions attached. The federal government has used state and local government as agents to administer this aid and as such has the ability to keep the states concerned in check. In theory this gives the federal government a great deal of power over the states receiving aid. In reality, it is in the interests of all those involved to work positively together especially when the sums of money involved are so vast. In 1978, GIA (Grants-In-Aid) totalled \$70, 000 million to the states which represented 28% of their income from other sources. In the same year, the federal government spent \$348, 000 million while in total the states and local governments spent \$295,

000 million - a difference of \$53, 000 million. By 1990 this difference had increased to \$135, 400 million (though this represented a decrease in the % income of the receiving states as befitted the belief of New Federalism - see above) and by 1995 the figure for GIA stood at \$228, 000 million which also fitted in with the downsizing of federal support so that states came to rely less and less on federal aid. However, states which have suffered from a natural disaster and cannot begin to meet the monetary needs required to cope with that disaster, can be declared a " disaster area" by the federal government and receive financial support to cope with the problems presented. Financially the local and state governments could not cope with these disasters but the federal authority can. The only approach a state could take if it wanted to express real freedom from the Federal government would be to put up state taxes to such a level that it would make such an action political nonsense and ruin any chance of being re-elected for Congress or governor etc. The current system helps to build a relationship between the states and the government but it has lead to a powerful move towards centralizing government. Nixon and Reagan's attempt to reverse this by giving states unconditional block grants (called " revenue sharing") has not met with much success.