

The changing nature of the federalism



The principle of American federalism, created in the eighteenth century, was bold and has greatly affected U. S. history. Its influence continues today.

During the late 1780s the debates over ratification of the Constitution by Federalists and Anti-Federalists shaped controversies concerning the rights and powers of states in relation to the federal government. The Framers of the Constitution created a federal system with a national government strong enough to unify the states in their pursuit of common goals without completely robbing the states of their independence. If they had not done so, it is unlikely that the ratifying conventions in the several states would have approved the Constitution. Indeed, the inclusion of the federal principle in the Constitution was a critical factor in its ratification. The benefits of federalism, however, have reached far beyond the ratification debates.

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

Dual Federalism

During the first century of this nation's existence, the most widely accepted view of the relationship between the states and the national government was one of "dual federalism." Sometimes called the "layered cake" theory of federalism, dual federalism is based on the notion that there are two distinct

spheres of government, a national sphere and a state sphere. Within each sphere, the relevant government is independent and largely autonomous, free from intrusions by the other. While the notion that states remained completely sovereign and independent from the national government had been rejected and soundly rejected during the Civil War, dual federalism continued to be the most widely held view of federalism in this nation until the 1930s. Historians and students of federalism generally point to the Great Depression as the point in time when dual federalism fell out of fashion. In response to this nation's worst economic crisis, the national government mobilized as it never had before, creating several new, large-scale programs, including nationally administered jobs programs and Social Security. The massive extension of national governmental authority and influence that accompanied these programs dramatically altered the balance of power between the national government and the states. With the cooperation of the Supreme Court, the dual federalism approach was replaced with a new understanding of national-state relations, one which gave much greater weight to the national government prerogatives.

Cooperative or “Marble Cake” Federalism

In response to the commonly held views of dual federalism and permissive federalism, both of which suggest an adversarial relationship between the national and state governments, some constitutional scholars have argued that attempts to draw lines between national and state governmental activities are counter-productive. Instead of a two or three-layered, cake, they argued that the relationship between different levels of government in

this nation is more like a marble cake, with swirls that cut across the levels, often blurring the distinction between them. In practice:

Functions are not neatly parceled out among the many governments. They are shared functions. It is difficult to find any governmental activity which does not involve all three of the so-called “ levels” of the federal system. . . . [F]ederal-state-local collaboration is the characteristic mode of action. 5

The “ marble cake” metaphor suggests that the national and state governments are highly interwoven and interdependent. Accordingly, another term for marble cake federalism is cooperative federalism. According to this view, the national government and state governments are not, in fact, adversaries but rather different levels of government pursuing largely the same goals. For example, both national and state governments are interested in improving education, protecting the environment, promoting economic growth and reducing crime. To the extent that cooperation is feasible and beneficial, national, state and local governments can and do work together to accomplish these goals.

Since the development of our Federal government, key changes in structure have played a major role in shaping our nation. At the start of the American Revolution, neither the states that acted on their own nor Continental Congress were successful at resolving many trade disputes that were threatening the new nation’s wealth and peace. Immediately after the Constitution was signed, revisions began to take place. Congress started pushing past the enumerated powers of the National government with the insertion of the commerce clause granted to them in Article I, section 8,

Clause 3 known as the “ Commerce Clause”, or “ Interstate Commerce Clause”, one of the most regularly used by Congress today which allows the Federal government to touch almost every aspect of the U. S. economy. Before the constitution, many states were protected under legislative laws which favored their individual states in regards to trade. The primary objective of the framers was to regulate international and interstate trade by giving powers to Congress to successfully promote free trade between the states. However, It was not until one hundred years later that the Interstate Act of 1887 and the Sherman Antitrust Act of 1890 were introduced and Congress really started to involve themselves in intrastate commerce and heavily starts to utilize it for regulating commerce between states and managing trade activities between foreign nations and Indian tribes.

Moreover, the clause has provided a balance of control between states and federal government, which has made a huge impact on Americans. For example, nearly every key piece of domestic federal legislation, from laws regulating securities, transportation, energy, social security and civil rights has been enacted by Congress under the powers of this clause. Time and time again the Supreme Court has repeatedly interpreted the commerce clause. For the last century this clause has become the focus of the Federal government. The transformation of the U. S. from a loose union of powerful sovereign states to one made up of a large national government with a modern Supreme Court has made it impossible to go up against Federal laws which have strong influences over interstate commerce.