Creating Federalism

Inquire: How has Federalism Worked in the U.S.?

Overview

This strange new experiment — two governments, created by the people and working for the people, sharing government responsibilities — has led to a variety of positional circumstances in different periods of time.

In some cases, the responsibilities of each government — central/national and local/state — were intentionally separate, but together, made the government. Like layers in a cake, each part is different, but they work together to make the whole.

Other times, the governments shared responsibilities and resources, each participating in the same area with different functions — like a marble cake with distinct flavors swirling throughout.

Big Question: What are the types of federalism in the U.S. in the last 150 years?

Watch: Baking the Cake of Federalism

Dual Federalism and Cooperative Federalism

Morton Grodzins coined the cake analogy of federalism in the 1950s while conducting research on the evolution of American federalism. Until then, most scholars had thought of federalism as a layer cake, but according to Grodzins, the 1930s ushered in “marble-cake federalism.”

“The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system.”

Dual federalism has several merits:

- Because there are economic, demographic, social, and geographical differences among states, one-size-fits-all features of federal laws are suboptimal. Decentralization accommodates the diversity that exists across states.
- By virtue of being closer to citizens, state and local authorities are better than federal agencies at discerning the public’s needs.
- Decentralized federalism fosters a marketplace of innovative policy ideas as states compete against each other to minimize administrative costs and maximize policy output.
Cooperative federalism has advantages as well:

- Because state and local governments have varying fiscal capacities, the national government’s involvement in state activities such as education, health, and social welfare is necessary to ensure some degree of uniformity in the provision of public services to citizens in richer and poorer states.
- The problem of collective action, which dissuades state and local authorities from raising regulatory standards for fear they will be disadvantaged as others lower theirs, is resolved by requiring state and local authorities to meet minimum federal standards (e.g., minimum wage and air quality).
- Federal assistance is necessary to ensure state and local programs (e.g., water and air pollution controls) that generate positive externalities are maintained. For example, one state’s environmental regulations impose higher fuel prices on its residents, but the externality of the cleaner air they produce benefits neighboring states. Without the federal government’s support, this state and others like it would underfund such programs.

Morton Grodzins’ analogy changed the game in the 1950s and brought a new way of thinking about U.S. federalism. Which model of federalism do you think works best for the United States?


Read: Federalism from 1870-1968

Dual Federalism: 1870-1933

The 1870s ushered in a new phase in the evolution of U.S. federalism. Under dual federalism, the states and national government exercised exclusive authority in distinctly delineated spheres of jurisdiction. Like the layers of a cake, the levels of government did not blend with one another but rather were clearly defined. Two factors contributed to the emergence of this conception of federalism. First, several Supreme Court rulings blocked attempts by both state and federal governments to step outside their jurisdictional boundaries. Second, the prevailing economic philosophy of laissez-faire capitalism loathed government interference in industrial development.

One of its adverse effects on industrialization was the concentration of market power. Because there was no national regulatory supervision to ensure fairness in market practices, collusive behavior among powerful firms emerged in several industries.

To curtail widespread anticompetitive practices in the railroad industry, Congress passed the Interstate Commerce Act in 1887, which created the Interstate Commerce Commission. Three years later, the Sherman Antitrust Act of 1890 broadened national regulatory capacity, which made it illegal to monopolize, or attempt to monopolize, and conspire in restraining commerce.

The new federal regulatory regime was dealt a legal blow early in its existence. In 1895, the Supreme Court ruled that the national government lacked the authority to regulate manufacturing in the case United States v. E. C. Knight.

In the late 1800s, some states attempted to regulate working conditions. For example, New York State passed the Bakeshop Act in 1897, which prohibited bakery employees from working more than 60 hours
in a week. In *Lochner v. New York*, the Supreme Court ruled the Bakeshop Act regulation that capped work hours unconstitutional, on the grounds that it violated the due process clause of the 14th Amendment. In other words, the right to sell and buy labor is a "liberty of the individual" safeguarded by the Constitution, the court asserted.

In these situations, and in the laws passed during this time, the areas of authority and responsibilities of the two governments seemed clearly defined and separated. There was little, if any, overlap of the work of the two governments.

**Cooperative Federalism**

The Great Depression of the 1930s brought economic hardships the nation had never witnessed before. Between 1929 and 1933, the national unemployment rate reached 25 percent, industrial output dropped by half, stock market assets lost more than half their value, thousands of banks went out of business, and the gross domestic product shrunk by one quarter. Given the magnitude of the economic depression, there was pressure on the national government to coordinate a robust national response along with the states.

**Cooperative federalism** was born of necessity and lasted well into the 20th century as the national and state governments each found it beneficial. Under this model, both levels of government coordinated their actions to solve national problems such as the Great Depression and the civil rights struggle of the following decades. In contrast to dual federalism, it eroded the jurisdictional boundaries between the states and national government, leading to a blending of layers as in a marble cake. The era of cooperative federalism contributed to the gradual incursion of national authority into the jurisdictional domain of the states, as well as the expansion of the national government’s power in concurrent policy areas.

The New Deal programs President Franklin D. Roosevelt proposed as a means to tackle the Great Depression ran afoul of the dual-federalism mindset of the justices on the Supreme Court in the 1930s. The court struck down key pillars of the New Deal — the National Industrial Recovery Act and the Agricultural Adjustment Act, for example — on the grounds that the federal government was operating in matters that were within the purview of the states. The court’s obstructionist position infuriated Roosevelt, leading him in 1937 to propose a court-packing plan that would add one new justice for each one over the age of 70, thus allowing the president to make a maximum of six new appointments.

Before Congress took action on the proposal, the Supreme Court began leaning in support of the New Deal as Chief Justice Charles Evans Hughes and Justice Owen Roberts changed their views on federalism.

In *National Labor Relations Board (NLRB) v. Jones and Laughlin Steel*, for instance, the Supreme Court ruled the National Labor Relations Act of 1935 constitutional, asserting that Congress can use its authority under the commerce clause to regulate both manufacturing activities and labor-management relations.

The New Deal changed the relationship Americans had with the national government. Before the Great Depression, the government offered little in terms of financial aid, social benefits, and economic rights. After the New Deal, it provided old-age pensions (Social Security), unemployment insurance, agricultural subsidies, protections for organizing in the workplace, and a variety of other public services created during Roosevelt’s administration.
In the 1960s, President Lyndon Johnson's administration expanded the national government's role in society even more with his Great Society programs. Medicaid, Medicare, and school nutrition programs were created. Educational opportunities were expanded at all levels to promote equality. Additional laws were passed promoting environmental and consumer protection. Finally, laws were passed to promote urban renewal, public housing development, and affordable housing. In addition to these Great Society programs, the Civil Rights Act (1964) and the Voting Rights Act (1965) gave the federal government effective tools to promote civil rights equality across the country.

While the era of cooperative federalism witnessed a broadening of federal powers in concurrent and state policy domains, it was also the era of a deepening coordination between the states and the federal government in Washington. Nowhere is this clearer than with respect to the social welfare and social insurance programs created during the New Deal and Great Society eras, most of which are administered by both state and federal authorities and are jointly funded.

The Social Security Act of 1935 created federal subsidies for state-administered programs for the elderly, people with disabilities, dependent mothers, and children. The act gave state and local officials wide discretion over eligibility and benefit levels. The unemployment insurance program, also created by the Social Security Act, requires states to provide jobless benefits. It allows states, however, significant latitude to decide the level of tax to impose on businesses in order to fund the program, as well as the duration and replacement rate of unemployment benefits. A similar multilevel division of labor governs Medicaid and the Children’s Health Insurance Program (CHIP).

Thus, the era of cooperative federalism left two lasting attributes on federalism in the United States. First, a nationalization of politics emerged as a result of federal legislative activism aimed at addressing national problems such as marketplace inefficiencies, social and political inequality, and poverty. The nationalization process expanded the size of the federal administrative apparatus and increased the flow of federal grants to state and local authorities, which have helped offset the financial costs of maintaining a host of New Deal and Great Society era programs. The second lasting attribute is the flexibility that states and local authorities were given in the implementation of federal social welfare programs. One consequence of administrative flexibility, however, is that it has led to cross-state differences in the levels of benefits and coverage.

Reflect Poll: Federal or State?

Federal or state: by which government are the people best served? Circumstances, specific issues, and the Constitution all help decide this issue. But, as you have seen, the pendulum does move from side to side — the federal government is the answer to our problems… the state government is the answer to our problems… the federal government is the answer to our problems… the state government is the answer to our problems…

Which do you believe should be the focus: the federal government or state governments?

- federal government
- state governments
Expand: The Pendulum Swing

The History: 1789-1968

The English colonies pushed back against the encroachments of an overreaching central government. Standing firm on the Enlightenment ideas of Thomas Hobbes, John Locke, and others, they asserted their rights to throw off a government which had broken the social contract. This led them to develop a government where the 13 new states had the vast majority of power and the central government was weak. This system proved unworkable, so a new Constitution created our federal government with a much stronger national government.

In the early years, Washington, Hamilton, Adams, and others wanted the national government to have significant power. They were followed by Jeffersonian Democratic-Republicans who championed the rights of the states. Through the first half of the 1800s, the pendulum swung back and forth. From 1870 to 1933, the divisions seemed clear in the period of dual federalism. However, the Great Depression and the New Deal led to an expansion of the national government’s power and to the era of cooperative federalism.


During the administrations of Presidents Richard Nixon (1969–1974) and Ronald Reagan (1981–1989), attempts were made to reverse the process of nationalization — to restore states’ prominence in policy areas into which the federal government had moved in the past. New federalism is premised on the idea that the decentralization of policies enhances administrative efficiency, reduces overall public spending, and improves policy outcomes. During Nixon’s administration, general revenue sharing programs were created that distributed funds to the state and local governments with minimal restrictions on how the money was spent. Beginning in 1980, Reagan championed “devolution revolution” in U.S. federalism, pledging to return authority to the states according to the Constitution. In the Omnibus Budget Reconciliation Act of 1981, Congressional leaders, together with President Reagan, consolidated numerous federal grant programs related to social welfare and reformulated them in order to give state and local administrators greater discretion in using federal funds.

However, Reagan’s track record was inconsistent. This was partly due to the fact that the president’s devolution agenda met opposition from Democrats in Congress, moderate Republicans, and interest groups, stymieing further advances on that front. For example, his efforts to completely devolve Aid to Families With Dependent Children and food stamps to the states were rejected by members of Congress, who feared states would underfund both programs, and by members of the National Governors’ Association, who believed the proposal would be too costly for states. Reagan terminated general revenue sharing in 1986.

Supreme Court rulings also promoted new federalism by limiting the scope of the national government’s power, especially under the commerce clause. For example, in United States v. Lopez, the court struck down the Gun-Free School Zones Act of 1990, which banned gun possession in school zones.

It argued that the regulation in question did not “substantively affect interstate commerce.” The ruling ended a nearly 60-year period in which the court had used a broad interpretation of the commerce clause that by the 1960s allowed it to regulate numerous local commercial activities.
Swinging Back: 2001-Present

Many would say that the years since the 9/11 attacks have swung the pendulum back in the direction of central federal power. The creation of the Department of Homeland Security federalized disaster response power in Washington, and the Transportation Security Administration was created to federalize airport security. Broad new federal policies and mandates have also been carried out in the form of the Faith-Based and Community Initiative and No Child Left Behind (during the George W. Bush administration) and the Affordable Care Act (during Barack Obama’s administration).

Federalism in the United States has gone through several phases of evolution during which the relationship between the federal and state governments has varied. This ever-shifting set of boundaries will continue to define “federalism” in America as advancements in every area of life bring new challenges and new goals to this ongoing experiment of “two governments, one country” which began in 1789.

Lesson Toolbox

Additional Resources and Readings

A Crash Course video covering federalism and its evolution over the history of the U.S.
- Link to resource: https://www.youtube.com/watch?v=J0gosGXsgl

A video discusses federalism in the United States: a system that provides for both a national government and state governments
- Link to resource: https://www.youtube.com/watch?v=fF3EvltwHYk

An article from the Council of State Governments discussing what you need to know about federalism, including its birth, values, and new laws

Lesson Glossary

dual federalism: a style of federalism in which the states and national government exercise exclusive authority in distinctly delineated spheres of jurisdiction, creating a layer-cake view of federalism

cooporative federalism: a style of federalism in which both levels of government coordinate their actions to solve national problems, leading to the blending of layers as in a marble cake

new federalism: a style of federalism premised on the idea that the decentralization of policies enhances administrative efficiency, reduces overall public spending, and improves outcomes

Check Your Knowledge

1. Under cooperative federalism, both levels of government coordinated their actions to solve national problems, such as the Great Depression and the civil rights struggle of the following decades.
   a. True
   b. False

2. Dual federalism left a lasting attribute which is the flexibility that states and local authorities were given in the implementation of federal social welfare programs.
   a. True
b. False
3. It was during Richard Nixon’s presidency that new federalism arose.
   a. True
   b. False

Answer Key:
1. A 2. B 3. A

Citations

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