

CHAPTER 3
The Constitutional Framework:
Federalism & the Separation of Powers

POLI 201: American National Government

FEDERALISM AND THE AMERICAN FOUNDING



The *balance of power* between the central government and the states was at the heart of the constitutional struggle between the Federalists and the Antifederalists.

FEDERALISM AND THE AMERICAN FOUNDING

<p><u>What the Federalists Were For</u></p> <ol style="list-style-type: none"> 1. A powerful central government. 2. Government "filtered" from popular control. 3. A potentially expansive central government that could govern a large country. 	<p><u>What the Anti-Federalists Were For</u></p> <ol style="list-style-type: none"> 1. The retention of state sovereignty and strength. 2. More popular control of state-run governments. 3. Fidelity to traditional notions of republicanism.
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FEDERALISM AND THE AMERICAN FOUNDING

Although the Federalists won the struggle over ratification, the federal balance of power remained contested and paradoxical throughout American history and was at the heart of struggles throughout American history such as:

1. the ability of states to "nullify" federal laws;
2. the Civil War;
3. the power of the central government in the New Deal;
4. the "rights" of states vs. the rights of citizens in the Civil Rights Movement.

FEDERALISM AND THE AMERICAN FOUNDING

"[I]f the people should in the future become more partial to the federal than to the State governments ... the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due."

--James Madison (Publius)
Federalist #46



FEDERALISM AND THE AMERICAN FOUNDING

PARADOX OF POLITICS: FEDERALISM PARADOX:

Generally, there exists a trade-off between freedom and order.

Were the states to be free to pursue their own courses or would the central government coordinate and coerce them to uniformity?

STAGES OF FEDERALISM

There have been FOUR STAGES OF FEDERALISM throughout American history.

1789 1937 1960 1970 1990

I. "DUAL FEDERALISM" II. "COOPERATIVE FEDERALISM" III. "REGULATED FEDERALISM" IV. "NEW FEDERALISM"

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STAGES OF FEDERALISM

STAGE 1: "Dual Federalism" (1789-1937)

1. Central government focused on promotion of commerce and distribution of resources.
2. States retain most remaining powers.

STAGES OF FEDERALISM

Stage 1: Dual Federalism
 Power of the national government set forth in Article I, Section 8 of the Constitution

- Commerce clause
- "necessary and proper clause"
- *McCulloch v. Maryland* (1819)
- *Gibbons v. Ogden* (1824)

STAGES OF FEDERALISM

STAGE 2: "Cooperative Federalism" (1937-?)

Franklin Roosevelt's "New Deal" sparks a revolution in national policy-making and an increased role for the national government altering the balance of federal power.

STAGES OF FEDERALISM



STAGE 2: "Cooperative Federalism"

In *NLRB v. Jones and Laughlin Steel* (1937), the Supreme Court expanded its interpretation of the commerce clause to allow the national government to regulate as well as promote interstate commerce.

STAGES OF FEDERALISM

STAGE 2: "Cooperative Federalism"

The New Deal's expansion of the national government and the executive branch further empowered the national government at the expense of state autonomy.



STAGES OF FEDERALISM

STAGE 2: "Cooperative Federalism"

The national government would ensure state cooperation with federal policies by offering grants-in-aid.

<p><u>Block grants</u> are given to states for general purposes and allow state officials greater discretion over how funds will be spent.</p>	<p><u>Categorical grants</u> are given to states for more specific purposes and most of the discretion remains in the hands of federal officials and officeholders.</p>
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STAGES OF FEDERALISM

STAGE 3: "Regulated Federalism" (1960s-?)

As state and local governments came to depend on grant-in-aid support, the national government further intervened in state government decision-making by threatening to withhold such grants. This is also known as "COERCIVE FEDERALISM."

STAGES OF FEDERALISM

STAGE 3: "Regulated Federalism"

To regulate speed limits within states, the national government threatens to withhold federal transportation dollars thus coercing states to comply with federal mandates.



STAGES OF FEDERALISM

STAGE 4: "New Federalism" (1969-?)

The waning in some respects of Franklin Roosevelt's "New Deal" coalition and programs sparks a counter-federal trend, known as NEW FEDERALISM, that begins to return discretion to the state and local governments.

STAGES OF FEDERALISM

STAGE 4: "New Federalism"

The "new federalism" trend of returning discretion to the states began in the executive branch as the Nixon, Carter, and Reagan Administrations gave states a larger role in administering federal policies.



STAGES OF FEDERALISM

STAGE 4: "New Federalism"

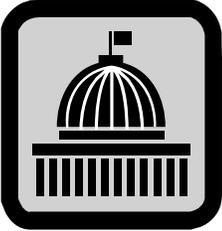
In the 1990s both Congress and the federal Courts joined the new federalism revolution.

STAGES OF FEDERALISM

STAGE 4: "New Federalism"

The Republican takeover of Congress after the 1994 elections led to a series of policies where the federal government "devolved" power to the states.

Welfare reform is a good example of such "devolution."



STAGES OF FEDERALISM

STAGE 4: "New Federalism"

In *United States v. Lopez* (1995) and *United States v. Morrison* (2000), the Supreme Court reversed its course by restricting its interpretation of what constituted "interstate commerce" to justify federal government involvement in the states.



STAGES OF FEDERALISM

"we would have to pile inference upon inference in a manner that would ... convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road ..., but we decline to proceed any further."

--Chief Justice William Rehnquist, writing for the majority in United States v. Lopez (1995)

SEPARATION OF POWERS

If FEDERALISM separates government power between the national, state, and local governments, SEPARATION OF POWERS divides government power between the legislative, executive, and judicial branches.

- LEGISLATIVE
 - Congress
 - House and Senate
- EXECUTIVE
 - President
 - Bureaucracy
- JUDICIAL
 - Supreme Court
 - Other federal courts

SEPARATION OF POWERS

"The Constitution is said to have created a system of separated powers. It did nothing of the sort. It created a system of separate institutions sharing power."

--Richard Neustadt, Presidential Power (1960).

SEPARATION OF POWERS

<p><u>Separated Power</u></p> <p>Following Montesquieu, Anti-Federalists argued for a strict separation of the legislative, executive, and judicial functions.</p>	<p><u>Separate Institutions Sharing Power</u></p> <p>As Neustadt observed, American government actually creates separate "departments" of government that compete over co-mingled, or shared, powers.</p>
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SEPARATION OF POWERS

POLITICAL PRINCIPLE #1: *All political behavior has a purpose.* Political behavior is GOAL-ORIENTED.

By establishing separate institutions that share important powers (e.g., war-making, legislation, appointments, etc.), the Constitution sought to pit the goal-oriented behavior of politicians in the legislative, executive, and judicial branches respectively against one another.

SEPARATION OF POWERS

"Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."

--James Madison (Publius), *Federalist #51*

SEPARATION OF POWERS

POLITICAL PRINCIPLE #3: *Rules and Procedures Matter*

We can apply the logic of "ambition counteracting ambition" to understand many of the motivations for the Constitution's structuring of the separation of powers.



SEPARATION OF POWERS

James Madison believed that a chief goal of the Constitution's separation of powers was to overcome LEGISLATIVE DOMINANCE.

The Constitution as an Institutional Solution

1. Bicameralism
2. The creation of a strong executive to counter Congress.

THE COSTS OF DIVIDED GOVERNMENT POWER



Through federalism and the separation of powers, the Constitution sets up conflicts which act as barriers to collective action.

Thus, when collective action is necessary and desirable, the government must overcome these barriers.

THE COSTS OF DIVIDED GOVERNMENT POWER

Federalism and the separation of powers provide impediments to the national government's ability to meet the threat of terrorism, which requires swift and concerted national government power.

THE COSTS OF DIVIDED GOVERNMENT POWER

<p><u>FEDERALISM'S CHALLENGE:</u></p> <p>National, state and local governments must overcome their natural conflicts to work together to meet terrorist threats.</p>	<p><u>SEPARATION OF POWERS CHALLENGE:</u></p> <p>The legislative, executive, and judicial branches must overcome the natural struggle between their various "ambitions" to act collectively.</p>
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THE COSTS OF DIVIDED GOVERNMENT POWER

THE FEDERAL SOLUTION: The 20th century's greater interaction between national and state governments (be it "cooperative" or "coercive") has made the transition toward coordinating national and state responses to terrorism easier.

THE SEPARATION OF POWERS SOLUTION: Capping off the 20th century's rise of "presidential government," the flexibility of the "shared power" relationship had led to increased legislative and judicial deference to the executive branch in this time of crisis.
