WHY FEDERALISM?

Why do we have state and local governments? Why not govern the entire nation from Washington? Why not have a unitary government—a centralized regime responsible to all the people and capable of carrying out uniform policies throughout the country?

Advantages of Federalism

The argument for American federalism—for dividing powers between national and state governments (and for further dividing state powers among many types of local governments)—centers on the advantages of decentralization, which are as follows:

1. Federalism permits diversity. Local governments may deal directly with local problems. The entire nation is not straitjacketed with a uniform policy to which every state and community must conform. State and local governments may be better suited to deal with specific state and local problems. Washington bureaucrats do not always know the best solution for problems in Commerce, Texas.

2. Federalism helps manage conflict. Permitting states and communities to pursue their own policies reduces the pressures that would build up in Washington if the national government had to decide everything. Federalism permits citizens to decide many things at the state and local levels of government and avoid battling over single national policies to be applied uniformly throughout the land.

3. Federalism disperses power. The widespread distribution of power is generally regarded as a protection against tyranny. To the extent that pluralism thrives in the United States, state and local governments have contributed to its success. State and local governments also provide a political base for the survival of the opposition party when it loses national elections.

4. Federalism increases political participation. It allows more people to run for and hold political office. Nearly a million people hold some kind of political office in counties, cities, townships, school districts, and special districts. These local leaders are often regarded as closer to the people than Washington officials. Public opinion polls show that Americans believe that their local governments are more manageable and responsive than the national government.

5. Federalism improves efficiency. Even though we may think of eighty thousand governments as inefficient, governing the entire nation from Washington would be even worse. Imagine the bureaucracy, red tape, delays, and confusion if every government activity in every community in the nation—police, schools, roads, fire departments, garbage collections, sewage disposal, street lighting, and so on—were controlled by a central government in Washington. Even in the Soviet Union, where centralized discipline and party control are a matter of political ideology,
leaders have been forced to resort to decentralization simply as a practical matter. Moreover, federalism encourages experimentation and innovation in public policy in the states.

**Disadvantages of Federalism**

However, federalism has its drawbacks.

1. Federalism allows special interests to protect their privileges. For many years, segregationists used the argument of states' rights to avoid federal laws designed to guarantee equality and prevent discrimination. Indeed, the states' rights argument has been used so often in defense of racial discrimination that it has become a code word for racism.

2. Federalism allows local leaders to frustrate national policy. They can obstruct not only civil rights policies but also policies in areas as diverse as energy, poverty, and pollution.

3. Federalism allows the benefits and costs of government to be spread unevenly. Some states spend more than twice as much per capita as other states on education. Even in the same state, some wealthy school districts spend two or three times as much as poorer districts. The taxes in some states are much higher than in other states; five states have no state income tax at all.

4. Federalism creates disadvantages in poorer states and communities, which generally provide lower levels of education, health, and welfare services; police protection; and environmental protection than wealthier states and communities.

5. Federalism obstructs action on national issues. Although decentralization may reduce conflict at the national level, some very serious national issues may be swept under the rug. For many years, decentralizing the issue of civil rights allowed segregation to flourish. Only when the issue was nationalized in the 1960s by the civil rights movement was there any significant progress. Minorities can usually expect better treatment by national agencies than by state or local authorities.

**CONSTITUTIONAL HISTORY OF FEDERALISM**

The importance of formal constitutional arrangements should not be underestimated. However, the American federal system is also shaped by the interpretations placed on constitutional principles. The real meaning of American federalism has emerged in the heat of political conflict between the states and the nation.
Implied Federal Powers

Political conflict over the scope of national power is as old as the nation itself. In 1790 Alexander Hamilton, as secretary of the treasury, proposed the establishment of a national bank. Congress acted on Hamilton's suggestion in 1791, establishing a national bank to serve as a depository for federal money and to aid the federal government in borrowing funds. Jeffersonians believed that the national bank was a dangerous centralization in government. They objected that the power to establish it was nowhere to be found in the delegated powers of Congress. Jefferson argued that Congress had no constitutional authority to establish a bank, because a bank was not "indispensably necessary" in carrying out its delegated functions. Hamilton replied that Congress could derive the power to establish a bank from grants of authority in the Constitution relating to money, in combination with the clause authorizing Congress "to make all laws which will be necessary and proper for carrying into execution the foregoing powers." Jefferson interpreted the word necessary to mean indispensable, but Hamilton argued that the national government had the right to choose the manner and means of performing its delegated functions and was not restricted to employing only those means considered indispensable in the performance of its functions. The question eventually reached the Supreme Court in 1819, when Maryland levied a tax on the national bank and the bank refused to pay it. In the case of McCulloch v. Maryland, Chief Justice John Marshall accepted the broader Hamiltonian version of the necessary-and-proper clause; "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited but consistent with the letter and the spirit of the Constitution, are constitutional."

The McCulloch case firmly established the principle of implied powers—that the necessary-and-proper clause gives Congress the right to choose its means for carrying out the delegated powers of the national government. Today Congress can devise programs, create agencies, and establish national laws on the basis of long chains of reasoning from the most meager phrases of the constitutional text, all because of the broad interpretation of the necessary-and-proper clause.

National Supremacy

The case of McCulloch v. Maryland also made a major contribution to the interpretation of the national supremacy clause. Chief Justice Marshall held that a Maryland tax on the national bank was unconstitutional on the grounds that it interfered with a national activity being carried out under the Constitution and laws "made in Pursuance thereof." Thus Maryland's state tax law was declared unconstitutional because it conflicted with the federal law establishing the national bank. From Marshall's time to the present, the national supremacy clause has meant that states cannot refuse to obey federal laws.

Secession and Civil War
The Civil War was the greatest crisis of the American federal system. Did a state have the right to oppose national law to the point of secession? In the years preceding the war, John C. Calhoun argued that the Constitution was a compact made by the states in their sovereign capacity rather than by the people in their national capacity. Calhoun contended that the federal government was an agent of the states and the states retained their sovereignty in this compact; and that the federal government must not violate the compact, under penalty of state nullification or even secession. Calhoun's doctrine was embodied in the constitution of the Confederacy, which began with the words "We, the people of the Confederate States, each state acting in its sovereign and independent character, in order to form a permanent federal government. . ." This wording contrasts with the preamble of the U.S. Constitution: "We, the people of the United States, in order to form a more perfect union. . ." 

What was decided on the battlefields between 1861 and 1865 was confirmed by the Supreme Court in 1869: "Ours is an indestructible union, composed of indestructible states." Yet the states' rights doctrine and the political disputes over the character of American federalism did not disappear with General Robert E. Lee's surrender at Appomattox. The Thirteenth, Fourteenth, and Fifteenth amendments, passed by the Reconstruction Congress, were clearly aimed at limiting state power in the interests of individual freedom. The Thirteenth Amendment eliminated slavery in the states; the Fifteenth Amendment prevented states from denying the vote on the basis of race, color, or previous enslavement; and the Fourteenth Amendment declared: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These amendments delegated to Congress the power to secure their enforcement. Yet for several generations, they were narrowly construed and added little, if anything, to national power. By tacit agreement, after southern states demonstrated their continued political importance in the disputed presidential election of 1876, the federal government refrained from using its power to enforce these civil rights.

**Civil Rights**

After World War II, however, the Supreme Court began to build a national system of civil rights based on the Fourteenth Amendment. The Court had held that the Fourteenth Amendment prevented states from interfering with free speech, free press, and religious practices. Not until 1954, however, in the desegregation decision in *Brown v. Board of Education of Topeka*, did the Court begin to call for the full assertion of national authority on behalf of civil rights. When the Court decided that the Fourteenth Amendment prohibited the states from segregating the races in public schools, it was asserting national authority over deeply held beliefs and long-standing practices in many of the states.

The Supreme Court used the Fourteenth Amendment to ensure a national system of civil rights supported by the power of the federal government. This was an important step in the evolution of the American federal system. The controversy over federally imposed
desegregation in the southern states renewed the debate over states' rights versus national authority. The vigorous resistance to desegregation in the South following Brown testified to the continued strength of the states in the American federal system. Despite the clear mandate of the Supreme Court, the southern states succeeded in avoiding all but token integration for more than ten years. Yet only occasionally did resistance take the form of interposition. Governor Orval Faubus called out the Arkansas National Guard to prevent a federal court from desegregating Little Rock Central High School in 1957. But this interposition was ended quickly when President Dwight D. Eisenhower ordered the National Guard removed and sent units of the U.S. Army to enforce national authority. In 1962 President John F. Kennedy took a similar action when Governor Ross Barnett of Mississippi personally barred the entry of a black student to the University of Mississippi despite a federal court order requiring his admission. Governor George Wallace also literally stood in the doorway to prevent desegregation at the University of Alabama but moved aside several hours later when federal marshals arrived. These actions upheld the principle of national supremacy in the American political system.

**Interstate Commerce**

The growth of national power under the interstate commerce clause of the Constitution is also an important development in the evolution of American federalism. The Industrial Revolution in the United States created a national economy with a nationwide network of transportation and communications and the potential for national economic depressions. Industrialization created interstate business that could be regulated only by the national government; this reality was recognized in the passage of the Sherman Antitrust Act in 1890. Yet for a time, the Supreme Court placed obstacles in the way of national authority over the economy and by so doing created a crisis in American federalism. For many years, the Court narrowly construed interstate commerce to mean only the movement of goods and services across state lines, and until the late 1930s, the Court insisted that agriculture, mining, manufacturing, and labor relations were outside the reach of the delegated powers of the national government. However, when confronted with the Great Depression of the 1930s and the threat of presidential attack on its membership, the Court yielded. The Court recognized the principle that production and distribution of goods and services for a national market could be regulated by Congress under the interstate commerce clause. Thus, the national government was given effective control over the national economy, and today few economic activities are outside the reach of congressional power.

**Loss of Reserved Powers**

For two hundred years, American federalism incorporated the idea of constitutionally protected state powers. The federal government could not directly interfere with the independent powers of state governments and vice versa. An early Supreme Court decision asserted that: "Neither government can intrude within the jurisdiction of the other or authorize any interference therein by its judicial officers with the action of the other." This
meant that Congress could not *directly* coerce the states in the performance of their traditional functions—education, streets, police and fire protection, water and sewers, and refuse disposal. Rather Congress sought to influence state and local affairs by granting or withholding federal aid dollars depending on whether state and community governments conformed to federal guidelines.

However, in its 1985 *Garcia v. San Antonio Metropolitan Transit Authority* decision, the Supreme Court reversed itself and removed all barriers to direct congressional legislation in matters traditionally "reserved" to the states. The Court dismissed the argument that the nature of American federalism and the reserved powers clause of the Tenth Amendment prevented Congress from directly legislating in state and local affairs. The Court held that it would no longer intervene to protect state powers, that judicial intervention was "unworkable," and that Congress should decide how far its powers extended to state and local affairs.

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**Federalism's Constitutional Status Today**

What is left of federalism today? If there are no real constitutional restraints on the powers of the national government, if people look primarily to the national government to solve their problems, if the national government's superior fiscal resources give it powerful leverage over states and communities, what remains of the federal division of power between the states and the nation? Are there any guarantees of state power remaining in our federal system?

The notion of representational federalism denies that there is any constitutional division of powers between the states and the nation and asserts that federalism is defined by the states' role in electing members of Congress and the president. The United States is said to retain a federal system because national officials are selected from subunits of government; that is, the president is selected through the allocation of electoral college votes to the states, and the Congress through the allocation of two Senate seats per state and the apportionment of representatives to states based on population. Whatever protection exists for state power and independence must be found in the national political process—in the influence of state and district voters on their senators and representatives. Representational federalism does not recognize any constitutionally protected powers of the states.

The Supreme Court appears to have adopted this notion of the representational federalism, especially in its *Garcia* decision when it declared that there were *no* "a priori definitions of state sovereignty," *no* "discrete limitations on the objects of federal authority," and *no* protection of state powers in the Constitution. According to the Court, "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal powers." The Court rhetorically endorsed a federal system but left it up to Congress, rather than to the Constitution or the courts, to decide which powers should be exercised by the states and which should be exercised by the national government.1

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