Chapter 3
Federalism and American Political Development

Focus Questions

Q1  How did the meaning of the terms federal and federalism change over the course of the Founding and early national periods?

A1  “Federalism” comes from the Latin root foedus, meaning treaty, compact, or covenant. Federalism may be defined as a governmental structure of self-rule and shared rule. Initially, the colonial governments developed as a loose confederal system whereby sovereignty resided within the state and local governments. As addressed in Chapter 2, this presented a series of problems given there was an inability to regulate interstate commerce and provide for the common defense under the Articles of Confederation. Thus, some Anti-Federalists and all Federalists believed it was vital to strengthen the powers of the federal government although they differed as to the degree. Consequently, the Articles were disregarded in favor of the Constitution, providing greater powers for the national government; yet, upholding republican principles in which the states retained certain powers. In turn, the U.S. Constitution delineates federal powers and allocates those powers not enumerated to the national government as reserved to the states in the Bill of Rights’ Tenth Amendment, which is the cornerstone of the American federal system.

Q2  What powers and responsibilities did the U.S. Constitution give the national government in relation to the states and the states in relation to the national government?

A2  The U.S. Constitution enumerates powers to the federal government and state governments but also stipulates certain powers are shared between the two. These are known as concurrent powers. Powers vested in the federal government include the power to admit new states into the Union, coin money, declare war, regulate interstate commerce, raise and maintain an army for defense, and conduct diplomacy with other nations. The powers reserved to the states include regulating intrastate commerce, police powers (known as reserved powers including the creation of local governments and regulating health, education, safety, and upholding morals), ratifying amendments to the U.S. Constitution, and determining the time, manner, and place for elections. Alternatively, states may not enter into treaties with other nations, coin money, enact tariffs, declare war, or deny due process or equal protection under the law to citizens. The national and state governments share the power to enact eminent domain, establish banks, borrow money, collect taxes, enact legislation, and enforce laws (state and federal) providing for the general welfare. The Constitution also provides for implied powers. Congress has the power to make all laws which are deemed to be “necessary and proper” for fulfilling its enumerated powers. In addition, there are inherent powers including the federal government’s power to defend its boarders and appropriate land, if needed.
Q3 How did the expansion and integration of the American economy shape the balance of governmental power and authority within the federal system?

A3 Two competing beliefs regarding the scope, size, and powers of the federal government have been debated since the inception of our system of government. Historically, the colonies were divided between agrarian interests and mercantilism. Two competing visions of American federalism quickly emerged. Hamiltonian nationalism advocated the nation is paramount to the existence of state governments and maintains the need for a strong national government to promote commercial interests. Alternatively, the Jeffersonian or a state-centered model maintained the states pre-date the national government and advances a system of small, local governments commonly found in agrarian societies. The Hamiltonian nation-centered model of federalism advocated the need for a national bank to secure U.S. currency, which would promote an industrial economy allowing American businesses to trade and compete on a global level with countries that were developing a merchant economy such as France and England. The Jeffersonian model advocated sovereignty resides in the states with currency secured by state banks. This would become a major campaign of President Andrew Jackson in 1828. However, the emerging industrial economy in New England and the Mid-Atlantic states during the 1840s and 1850s began to challenge the viability of state-centered federalism supporting the Southern agrarian economy. These competing notions of federalism were among the factors leading to the American Civil War. Under the leadership of Abraham Lincoln and the subsequent victory of the North, the economy and governmental structure became primarily nation-centered. Throughout the late 1800s and early 1900s a massive expansion in manufacturing and industrialization occurred with corresponding federal court cases that limited the discretion of the federal government to intervene in that expansion due to the doctrines of laissez-faire, selective incorporation, and the guarantee of due process. However, as a result of the Great Depression in 1929 and the election of FDR in 1932 and the subsequent Supreme Court ruling—Wickard v. Filburn (1942), the national vision first proposed by Alexander Hamilton has prevailed to integrate global markets and augment federal intervention within all aspects of the economy, especially through tax redistributive mechanisms like grants-in-aid as well as federal mandates. But, in recent decades due to devolution, tax cutting, and macro-economic de-regulation schemes the United States has returned to a more limited version of federalism where block granting has often displaced categorical granting. Also, there has been a corresponding decrease in the size and scope of the federal government’s activities relative to the states continuing on into the first term of the George W. Bush administration. This in turn has been offset somewhat by the development of Homeland Security, a recent return to federal social program expansion as well as macro-economic re-regulation in the mid to late 2000s and early 2010s.

Q4 What fiscal and political forces led to the change in American federalism called “devolution”?

A4 Devolution or the return of political authority and fiscal control from the national government to the states may be seen as a reaction to the expansion of federal prominence as a result of the New Deal programs enacted under Roosevelt’s administration. As a result, funds were transferred from the national government to the states to support state and local programs. States became increasingly dependent on grants from the federal government to support their programs. This reliance on federal funds for state programs became a central feature of the idea of fiscal federalism. In turn, the federal government began to experience large budget deficits during the late 1970s, 1980s, and early 1990s. The burgeoning national government was beginning to be viewed as too powerful, costly, and intrusive. In 1980, the election of Ronald Reagan as president ushered in the idea that the role of the federal government should be reduced, prompting a reduction of federal intervention (and federal funding) in state matters. Subsequently, Reagan cut federal grants to states by more
than 25 percent. Devolution continued throughout the 1990s and into the twenty-first century. Consequently, this has prompted the states to fund their existing programs by generating state revenue and relying less on federal grants. Furthermore, the 1997 welfare reforms, the 2001 No Child Left Behind (Education) Act and the 2002 Homeland Security reforms have produced mixed signals whereby the federal government mandates state and local government must implement these programs but should not expect large contributions from the federal government to do so. The character of devolution has been left in the air in recent years as the Bush and Obama administrations actually moved toward greater centralization of federal policy initiatives in healthcare, domestic surveillance, immigration, and macro-financial regulation in terms of their content and implementation relative to the states.

Q5  Have the complexities and dangers of the twenty-first century rendered our government essentially national, or do state and local governments still have important roles to play?

A5  Globalization of the world’s communication, trade, and finance structures has illustrated the need for a coordinated federal system of government. Federalism contains two fundamental ideas: (1) political power is necessary, though dangerous, and must be divided between levels and branches of government, and (2) particular powers and responsibilities are best assigned to a particular level of government. Yet, immigration, national security, Hurricane Katrina, as well as international and regional trade agreements have exposed the strengths and weaknesses of American federalism. Increasingly, foreign policy is defined more by its confluence with domestic policy referred to by scholars as “intermestic policies.” The War on Terror with its implications for security, immigration, and even trade is just the most recent example of a fundamental change in the character of federal relationships brought on by new events such as this. What has become apparent is that all levels of government—federal, state, and local—must respond to these changes.
Chapter Outline

I. What is Federalism?
   A. The United States has a system of government called federalism that divides power between a central (federal) government and state and local governments.
   B. Federalism may be seen as a dichotomy whereby self-rule is congruous with shared rule.
   C. The dilemma of federalism concerns what powers should be granted and denied to the various levels of government.

II. The Original Meaning of Federalism
   A. The term “federalism” originates from the Latin word, foedus, meaning “treaty, compact, or covenant.”
   B. The early colonial governments were designed as loosely connected alliances which could best be described as confederal in which separate republics formed political alliances to coordinate foreign affairs and provide for a greater defense and promote trade among the colonies. Yet, each colony had sole authority over domestic affairs.
      1. These political arrangements provided de-centralized and fragile alliances.
      2. One of the most well-known examples of confederal relationships was seen in ancient Greece.
      3. Political alliances in the American colonies include the “Mayflower Compact” and the Articles of Confederation.
      4. During the Revolutionary War Americans were united against Great Britain. However, gaining independence proved to be difficult. In effect, the deficiencies of the Articles of Confederation illustrated the weaknesses of a confederation of states.

III. Federalism in the Constitution
   A. Led by James Madison and Alexander Hamilton, the Federalists initially favored a unitary government or a system of government in which all significant powers reside in a central entity; thus, superseding state and local governments. Historically, the most common form of government provides the greatest probability for stability.
   B. However, to appease the Anti-Federalists who favored state sovereignty, the Federalists proposed a division of powers between state, local, and a central government.
   C. Thus, dual federalism is a system of government where the national and state governments have separate spheres of authority and specific functions.
      1. Yet, power originates from the consent of the people.
      2. Under a written Constitution certain powers are granted to the national government while denied to state governments, certain powers are shared by both the national and state governments, with the remaining powers reserved to the state governments and the people.

IV. Enumerated, Implied, and Inherent Powers in the U.S. Constitution
   A. There are several different types of powers granted in the U.S. Constitution.
      1. Enumerated powers or powers specifically granted to the federal government include those granted to Congress in Article I, section 8:
         a. the power to coin money;
         b. the power to raise an army and navy;
         c. the power to declare war;
         d. provide for the common defense;
         e. establish inferior courts.
2. *Implied powers* are provided in Article I, section 8, of the U.S. Constitution whereby Congress has the authority to “make all laws necessary and proper for carrying into execution the foregoing [enumerated] powers”:
   a. regulate interstate commerce;
   b. the Anti-Federalists were concerned that Article I, section 8, also known as the “elastic clause,” would allow the federal government to encroach upon the sovereignty of state governments.

3. *Inherent powers* are those powers not enumerated in the Constitution but are necessary to safeguard the Union against attack or insurrection and geographic expansion. In effect, these powers are a necessary component of any sovereign nation:
   a. annexing land: The Louisiana Purchase, territories, adding new states;
   b. the executive power to react and respond to internal and external threats.

V. **Concurrent Powers**
   A. Concurrent powers are those responsibilities granted to the national and state governments:
      1. the power to tax;
      2. the power to establish courts;
      3. the power to construct highways;
      4. the power to establish banks and borrow money.

VI. **Powers Denied to the National Government**
   A. The powers denied to the federal government are listed in Article I, section 9, including:
      1. denying habeas corpus;
      2. prohibiting bills of attainder;
      3. forbidding ex post facto lawmaking.

VII. **Powers Reserved to the States**
   A. *Reserved powers* are powers not granted to the federal government and therefore left to the sovereignty of the states per the Tenth Amendment.
      1. Reserved powers are categorized into three types:
         a. Police powers—states are responsible for regulating public health, safety, and morals.
         b. Provision of services—states are the primary supplier of education.
         c. Control of local governments—local governments (city/local/township) exist at the behest of the state governments.
         d. To conduct elections.

VIII. **Powers Denied to the State Governments**
   A. To strengthen the Articles of Confederation, the Constitution provides that states are forbidden to exercise certain powers.
      1. Powers denied to the states include:
         a. the power to enter into treaties with foreign governments;
         b. the power to coin money;
         c. the power to impose tariffs.

IX. **Federal Obligations to the States**
   A. Article IV, sections 3 and 4, guarantee the provisions stating:
      1. Each state shall retain its geographic boundaries.
      2. Each state will be guaranteed a “Republican form of Government.”

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3. The federal government will protect each state from invasion or insurrection.

X. Relations among the States
A. To provide a union of states, Article IV, sections 1 and 2, provide that states must recognize the acts of other states, deal fairly with each other’s residents, and extradite fugitives who escape indictment from one state by fleeing to another.
   1. The union of states is strengthened by way of:
      a. Full Faith and Credit Clause—Article IV, section 1, provides that the “acts, records, and judicial proceedings” of one state be recognized by other states.
      b. Privileges and Immunities—Article IV, section 2, provides that citizens of one state be afforded the same freedoms and protections of citizens of the state in which they live.
      c. Extradition—Article IV, section 2, provides that a criminal who flees from one state and is found in another state is to be returned to the state where the crime was committed.
B. While the U.S. Constitution was designed to provide the federal government powers over military, foreign, and economic policy and the state governments’ sovereignty concerning domestic and intrastate public policies, throughout American history specific events have challenged the original intent of the Framers’ conception of the aforementioned powers.

XI. Dual Federalism and its Challengers
The balance of national power versus state sovereignty has fluctuated throughout history. Thus, American federalism has been redefined by historical events and those individuals in power. In turn, different views of federalism have defined our current structure of government.
A. Dual Federalism is the concept in which the powers and responsibilities of the national and state governments do not overlap.
   1. In effect, each level of government has a distinct and separate sphere of authority.
   2. This theory is often referred to as layer cake federalism.
B. Nation-centered Federalism is a system of government whereby the nation pre-existed the various state governments.
   1. This belief was advocated by political figures including Alexander Hamilton, Chief Justice John Marshall, and Abraham Lincoln.
   2. State governments are subordinate to the federal government.
C. State-centered Federalism is a theory of federalism maintaining the states pre-existed the nation and that the states through a compact created the Union.
   1. This view of federalism was championed by Thomas Jefferson, John C. Calhoun, and Chief Justice Roger B. Taney.
   2. Proponents believe the national government is subordinate to the states.
   3. Thus, states may secede from the Union if they so desire.
D. Chief Justice John Marshall and Judicial Nationalism (1801–1835)
   1. Chief Justice John Marshall, a Federalist, was a proponent of nation-centered federalism.
   2. The Marshall Court had a tremendous influence on the relationship between state governments and the federal government. The Court’s rulings in three cases advanced the supremacy of the national government over the states:
      a. Marbury v. Madison (1803)
         1) The Supreme Court ruled an act of Congress, specifically the Judiciary Act of 1789, unconstitutional.
2) In doing so, Marshall established the Supreme Court as final arbiter as to the constitutionality of legislation.

3) The Court’s power was defined to include interpreting the meaning of the Constitution.

b. *McCulloch v. Maryland* (1819)
   1) This Supreme Court case concerned the constitutionality of whether Congress could charter a (national) bank.
   2) Marshall ruled this was supported under the Constitution, specifically, Article I, section 8’s “necessary and proper” clause.

c. *Gibbons v. Ogden* (1824)
   1) This case dealt with the extent Congress may regulate interstate commerce, specifically if “any element” aboard a steamship “will” cross state lines.
   2) Marshall advanced a nation-centered vision of federalism by stating Congress can regulate commerce if “any passenger or goods being carried on the steamship are engaged in a continuous journey that finds or will find them in interstate commerce” per Article I, section 8, of the U.S. Constitution.

E. Chief Justice Roger Taney and the States (1836–1863)
   1. The death of John Marshall allowed President Andrew Jackson, a proponent of states’ rights and state-centered federalism, to appoint Roger B. Taney as Chief Justice.
      a. Taney who was also supportive of states’ rights (although historians have overlooked his support of the federal government’s intervention in economic issues) provided the final nail in the coffin of events leading to the Civil War when ruling in *Dred Scott v. Sanford* (1857) that blacks whether free or slaves were not considered citizens. Thus, fugitive slaves were considered property subject to government regulation and must be returned to their owners.
      b. Furthermore, Taney was sympathetic to:
         1) South Carolina Senator John Calhoun’s belief that each region of the country had the right to reject national acts or legislation thought harmful to the region known as the *theory of nullification* or “the doctrine of the concurrent majority.”
         2) Illinois Senator Stephen Douglas’s commitment to popular sovereignty whereby citizens of the respective states could vote slavery up or down.

XII. From Dual Federalism to Cooperative Federalism
   A. After the Civil War, the United States experienced:
      1. The defeat of states’ rights.
      2. The industrial revolution.
      3. The increased migration of workers to the cities.
      4. Advances in communication, transportation and an economy based upon manufacturing.
      5. An injection of immigrants within the American labor market.
      6. The beginnings of a global economy.
      7. World War I.
      8. The Stock Market Crash (Black Friday) on October 27, 1929.
   B. In response to the bank failures, high unemployment and the foreclosures of numerous family farms and businesses due to the Great Depression, Franklin Roosevelt was elected president in 1932.
1. FDR changed the basic structure of governmental arrangements from dual federalism to *cooperative federalism* whereby state/local and national officials share responsibilities and functions.
   a. Cooperative federalism is also called *marble-cake federalism* because the delineation between local, state, and federal government responsibilities is indistinguishable.
   b. The theory supporting cooperative federalism stipulates:
      1) All levels of government share responsibilities
      2) Policy-makers in all levels of government cooperate on a given policy issues (this is termed *picket fence* federalism because national, state, and local departments work as a team within a specific policy domain).

C. The Great Depression illustrated the weaknesses of our federal system of government and prompted an increased role for the federal government in all areas of society. The national crisis required national action.
   1. FDR proposed the “New Deal” in 1933 which gave the federal government new and broad authority over the economy.
   2. FDR’s proposals were initially fought by the Supreme Court which struck down several of the president’s proposals as unconstitutional violations of the federal/state relationship outlined in the Constitution.
   3. Roosevelt tried to increase the number of Supreme Court justices and appoint allies in order to win approval for his legislation.
   4. The Justices acquiesced, the infamous “Court Packing Plan” was averted, and Roosevelt’s policies went into place relatively unscathed by the Court.
   5. FDR left a legacy of having a more activist government in which more decision-making authority was assumed by the national government.

XIII. The Rise of Fiscal Federalism

Following the relative calm of the post-World War II and Korean War era, Presidents Kennedy and Johnson ushered in a new era in American federalism.

A. LBJ: Creative Federalism and Grants-in-Aid
   1. Kennedy and Johnson increased the use of categorical grant programs offering federal funds if the states and localities would engage in certain activities following federal requirements.
   2. During this time the number of new federal programs grew tremendously.
   3. The great increase in the activities of the federal government and the funds spent ushered in a period in which the federal government predominated. By 1970, almost 1 of every $4 spent by states came from federal coffers.
      a. In addition to congressional and presidential actions during this time, the federal judiciary moved to enforce the philosophic ideas behind Johnson’s “Great Society” legislation.
      b. Federal courts moved to force states to end racial discrimination and to protect civil liberties and the rights of the accused.
      c. Critics of the expansive new role for the federal government called “creative federalism” “coercive federalism.”

XIV. Nixon: Revenue Sharing and the First New Federalism

In reaction to the complex and often coercive nature of the categorical grants utilized by Lyndon Johnson, Richard Nixon adopted a policy of “New Federalism.”

A. Nixon’s “New Federalism” was an attempt to decentralize power within the federal system of government.
B. The New Federalism was fueled by two initiatives enacted during his second term.
1. Special Revenue Sharing (SRS), also known as Block Grants, which bundled categorical grants and gave states greater discretion as to how to allocate the money received through the grants.
2. General Revenue Sharing (GRS) provided funds to states and did not entail many of the spending restrictions or requirements found with other federal programs.

C. While Nixon’s “New Federalism” initiatives were successful, Congress pushed for increased regulation of state and local government. The overall devolution of power and authority envisioned by the “New Federalism” was not forthcoming and Nixon presided over the greatest expansion of federal regulation of state and local governments in American history.

XV. Reagan Turns Off the Tap: The Second New Federalism
The inauguration of Ronald Reagan in 1981 marked an important period in American federalism. Reagan viewed government as too large and intrusive.

A. The Reagan administration looked to downsize government programs and not simply change the way government money and services were delivered.

B. Reagan moved to downsize government by reducing tax revenues used to fund it.
2. The effect of ERTA was to greatly reduce federal revenues.

C. By reducing federal revenues, ERTA was to swell annual budget deficits which in turn affected the availability of federal funds to the states.

XVI. The Process of “Devolution” in Contemporary Federalism

A. Devolution, or the return of political authority and fiscal control from the national government to the states, may be seen as a reaction to the expansion of federal prominence as a result of the New Deal programs enacted under Roosevelt’s administration.

B. The burgeoning national government was beginning to be viewed as too powerful, costly, and intrusive. In 1980, the election of Ronald Reagan as president ushered in the idea that the role of the federal government should be reduced prompting a reduction of federal intervention (and federal funding) in state matters. Subsequently, Reagan cut federal grants to states by more than 25 percent.

C. Devolution continued throughout the 1990s and into the twenty-first century. Consequently, this has prompted the states to fund their existing programs by generating state revenue and relying less on federal grants. Furthermore, the 1997 welfare reforms, the 2001 No Child Left Behind (Education) Act and the 2002 Homeland Security reforms have produced mixed signals whereby the federal government mandates state and local government must implement these programs but should not expect large contributions from the federal government to do so.

D. George Bush combined dozens of categorical grants into a few block grants and reduced appropriations, thereby producing a dramatic overhaul of federal-state relations.

E. Under the Rehnquist Court several rulings by the Supreme Court have limited the ability of the federal government to use the commerce clause to push states where they do not wish to go.

F. Yet, the ruling in Gonzales v. Raich (2005) signaled a temporary rival of Wickard where Congress could intervene under the Commerce Clause to regulate the possession and use of medicinal marijuana despite voters in California approving the ballot initiative legalizing the use of marijuana for medicinal purposes.

G. It remains to be seen where the current president will ultimately take federalism but in the initial term it seems that there has been at least a modest reversal of the revolutionary trend
relative to federalism as macro-financial, macro-industrial, and macro-social nation-centered federalism has characterized recent governmental initiatives in areas including: healthcare, real estate, immigration, credit finance, etc.

XVII. The Future of American Federalism

A. The exact relationship between the national and state governments has changed since the Founding. These changes have been driven by individual policy-makers and historical events prompting changes in the relationship between the federal, state, and local governments.

B. Political power is necessary, but dangerous.
   1. Because it is dangerous, it must be divided between levels of government.
   2. Because it is dangerous, it must be divided between the branches at each level of government.

C. The changing international landscape and the global economy would suggest an increased role for the federal government to play in said matters. In turn, the resilience of the U.S. federal system will be tested.
Lecture Suggestions

Institutional/Historical Focus: Federalism and the Constitution

I. Political Principles of American Federalism

A. Initially, the Declaration of Independence outlined the justifications for American Independence (freedom, liberty, inalienable rights); yet, did not address the institutional design of government.

B. The Articles of Confederation and the U.S. Constitution address the need for a distribution of powers and responsibilities shared between the federal and state and local governments.

C. However, the exact nature of this federal system has been a matter of debate since the Constitutional Convention of 1787.
   1. The Articles of Confederation was the first governing document whereby the majority of power resided in state governments.
   2. The Articles contained no provision for a national judiciary, army, or the power to tax.
   3. Each state held a veto over amending the Articles.
   4. Nine states had to agree to major legislation in order for it to be binding.

D. The ratification of the Constitution in 1789 combines the Declaration’s philosophical tenets of freedom and liberty, the Article’s commitment to the importance of state governance and the necessity for a strong federal government. In turn, the U.S. Constitution provides for a federal system of government.

II. The Constitution and American Federalism

A. With the failure of the Articles of Confederation, America needed a new governmental structure. Given the colonists’ attachment to and the efficiency of state governments, this new structure must provide:
   1. an effective national government;
   2. sovereign state governments.

B. The Framers, notably James Madison, sought to form a system of government in which the states and the central government shared powers but also had exclusive powers enumerated in the Constitution.

C. The Framers’ belief in a federal system of government may be seen throughout the institutional structure of the Constitution.
   1. The U.S. Constitution advocates federal supremacy whereby:
      a. State laws are subservient to federal laws enacted by Congress per the supremacy clause, namely Article VI of the Constitution.
      b. Congress may propose and enact legislation, which it deems “necessary and proper” as long as said legislation does not conflict with the Constitution.
      c. The Constitution gave Congress exclusive jurisdiction over certain domestic matters such as the regulation of interstate commerce.
      d. The Constitution establishes a national executive (president).
      e. The Constitution also created a national judiciary with original and appellate jurisdiction with the power to determine the constitutionality of federal and state legislatures and courts.
   2. Conversely, those powers not provided to the federal government are reserved to the states and the people.
      a. States are responsible for regulating public health, safety, and morals.
b. States may establish banks and borrow money for infrastructure and other public works projects.

c. Local and municipal governments are under the jurisdiction of state statutes.

d. The Fifth and Fourteenth Amendments provide protection for individuals from interference in their personal rights from either federal or state governments.

3. In addition to the distribution of powers within the American federal system, the U.S. Constitution also makes provisions about the relations between individual states.

a. Article IV, sections 1 and 2, provide that states must recognize the acts of other states, treat citizens of other states fairly, and return fugitive criminals from other states.

b. Full Faith and Credit Clause—Article IV, section 1, provides that the “acts, records, and judicial proceedings” of one state be recognized by other states.

c. Privileges and Immunities—Article IV, section 2, provides that citizens of one state be afforded the same freedoms and protections of citizens of the state in which they live.

d. Article IV, section 2, provides that a criminal who flees from one state to escape indictment in another may be extradited (returned) to the state where the crime was committed.

### III. Unresolved Debates Regarding American Federalism

A. Despite these provisions within the Constitution, there are debates among scholars concerning the scope of federal involvement in policies affecting certain states based upon their geographical location. For example:

1. the American Southwest and immigration policy;
2. the Mid-Atlantic and Southern states concerning hurricane disaster relief.

B. Furthermore, discrepancies have arisen concerning the role of state-controlled National Guard units co-opted by the federal government and deployed overseas.

C. In effect, the theoretical underpinnings of the Constitution provide the national government with the responsibility of dealing with foreign and military affairs while mediating interstate commerce and foreign trade while the state governments retain those powers concerning domestic affairs. However, given historical events the lines between state and federal power are unclear.

### Political Theory Focus: The Roots of American Federalism; Federalist Numbers 17, 39, 46, and 51

I. Introduction

A. Federalism was an important concept for the Founders because of their experience under British rule.

1. The American Revolution illustrated the colonists’ distaste for monarchy.
2. The colonists believed in the republican virtue of self-rule that was the strongest between the citizen and state and local governments.
3. Consequently, they devised a system of government in which the states and a national government shared powers.

B. The Founders sought to create a system of government that was effective, stable, and responsible to the citizenry.

II. The Fear of a Tyrannical National Government

During the ratification debates, proponents of the proposed Constitution attempted to quell the fears of the Anti-Federalists that the proposed Constitution would usurp the powers currently held by
state governments. The Federalists believed the reverence currently held for state governments and the laws provided can be found in a virtuous federal government.

A. In fact, Madison views an appeal to federalism actually providing greater security against tyranny. In Federalist #51, he maintains, “a double security arises to the rights of the people” by designing a system of government whereby “power surrendered by the people is first divided between two distinct governments (state and federal) and then the portion allotted to each is subdivided among distinct and separate departments.”

B. In Federalist #17, Alexander Hamilton recognizes that proponents of sovereign state governments should not fear the encroachment of the national government because:
1. “The splendor of the national government is that the political class [men of ambition] will not concern itself with the details of the states and locales” because the state governments will be close to the “affections” [interests] of their residents (Rossiter, 1961, pp. 88–89).
2. Therefore, even if the Union attains great power, individuals will be more responsive and directly involved in local politics.
3. In fact, Hamilton believes state and local governments serve a functional role to contribute to the habit and civic education of the polity whereby the laws implemented will be embraced, respected, and perpetuated as a means and to establish and maintain good government.

III. Federalism is Necessary for Republicanism (self-rule) to Prevail

A. In Federalist #39, Madison (Publius) points out that approval of the proposed Constitution is “founded in the assent and ratification of the [American] people” (p. 211). Immediately, the “mixed character” of the ratification and amendment process demonstrates the Constitution is ultimately derived from the will of the people (republicanism) where political power is “neither wholly national nor wholly federal, but a composition of both” (p. 214).

B. In turn, federalism is a major component of the ratification process prior to the states’ approval of the proposed Constitution. It is the will of the people who reside within the various states where their allegiances reside.

IV. The People’s Preference for State Governments

A. In Federalist #46, Publius assures opponents of the proposed Constitution that the federal government will be concerned with “a more narrower field of power [treaty making, defense, trade] than the states” and, therefore if the federal government encroaches upon the “subordinate governments” the people who would comprise these states would mobilize to defend against the threat (pp. 262, 266).

B. Publius believes the powers given to the federal government are ultimately checked by the will of the people. Furthermore, the existence of state and local governments will provide additional security to guard against the encroachment of the federal government in state matters.
Projects, Exercises, and Activities

1. First, separate the class into small groups. Allow each group to design amendments to the United States Constitution. What are the processes to amend the U.S. Constitution (see Article V of the U.S. Constitution)? What is the role of the states in the amendment process? Second, what is the role of the states in calling for a Constitutional Convention? What may be the outcome(s) of said event? In effect, what may be some reasons explaining why we have not had another Constitutional Convention?

2. Considering the Deep Water Horizon oil spill, address the roles of the various levels of government in preparing for a state of emergency. Ask students to visit relevant websites (http://www.whitehouse.gov/deepwater-bp-oil-spill) and address the logistical problems with powers being divided between the federal and state governments during times of crisis and national emergencies. Consider the following questions:
   a. Is there a system of accountability for federal, state, and local agencies during times of crisis?
   b. What do you think the responsibilities of each level of government should be?
   c. How much responsibility do citizens and other private actors have in a time of crisis?

3. After breaking the class into groups of four to five, ask some of the students in each group to visit the website for Child Protective Services in your state. At the same time, other students in the group should visit the federal Child Welfare Information Gateway (http://www.childwelfare.gov/). Ask students to provide three examples cooperation between the state and federal government on this issue. Ask the students to consider the following questions:
   a. What does the relationship seem to be between the federal government and state agencies in this policy area?
   b. Are there areas where cooperation should be strengthened?
   c. Which level of government do you think is leading in this policy area? Why?
Additional Resources

Supplemental Readings


Websites

Claremont Institute for the Study of Statesmanship and Political Philosophy
Official Web page of the Claremont Institute Center for the Study of Statesmanship and Political Philosophy. The institute supports research, scholarship, teachings, public forums, and conferences.

Cornell University Law Resources
This site provides links to each state constitution.

National Conference of State Legislatures
A great website for information on federal-state issues regarding all 50 states. Daily email newsletters available.

Stateline
Information on news and policies regarding the fifty states. Provides insight and analysis of governmental policies and information concerning public officials.

National Center for Interstate Compacts
This site is the main Web page for an institute that is dedicated to the study and promotion of interstate compacts, a key development in federalism.

Interstate Compacts
This is a document sponsored by the National Center for Interstate Compacts that provides a useful overview of the nature, size, and scope of activity that encompasses these organizations as well as their role in policy relationships between the federal and state governments. It is a sound source for background in discussing this issue with your classes.
**Senator Thompson on Federalism**
This is a short clip starring former actor, Watergate lawyer, Senator from Tennessee, and Republican presidential candidate, Fred Thompson, discussing federalism. It is useful as a starting point for a class conversation about the perceived and real opportunities as well as constraints emanating out of the limited versus big government debate as it is manifested in federalism issues.

**Chris Matthews on Federalism**
This is from MSNBC’s primetime news where liberal broadcaster Chris Matthews is conducting an interview with the more conservative leaning Joe Scarborough over federal issues. Once again this presentation devolves the issue down to a national versus a state-centered approach to federalism. Thus, this scenario provides instructors an excellent opportunity to engage students in this ongoing dilemma of American politics as it is manifested in federalism.