

Federalism – the dividing power between the National Government and the States



A simple definition is that **federalism is a system that divides power between the national and state governments.**

Federalism has been a major issue since ratification of the Constitution and has caused many conflicts and controversies. One such example seen today is the legalization of marijuana.

Assignment: What is the federal government’s stance on marijuana? What states have legalized marijuana either for personal or medical use? What states have taken a stance against legalization of marijuana? What key issues still remain about the legalization of marijuana?

There are three (3) ways of dividing power between the national government and the states.

Unitary System	Confederal System	Federal System
The central government has all of the power over subnational governments	The subnational (state) governments have most of the power.	The system where power is divided between the national and state governments.
The national government may delegate certain powers to subnational governments but it has the authority to take back any powers it delegates.	National governments are heavily dependent on the states to carry out and pay for public policies.	Each level of government has some exclusive powers and some powers denied to it. Federal systems have constitutional protections for each level and ways to stop encroachment by other levels.
Examples are the U.K., China, and Iran.	The Articles of Confederation was such a system. Example today is Switzerland.	Examples are the United States, Mexico, and Nigeria.

National and State Powers

The Constitution contains and lists the powers given to the national government, especially to Congress. They are called **Enumerated or Expressed powers**. Most of these powers are found in **Article I, Section 8** of the Constitution.

The Enumerated or Expressed powers also include **Exclusive Powers**: powers that only the national government may exercise. Examples of these are the power to coin money, declare war, raise and support an army and a navy, make treaties, regulate interstate and foreign commerce and provide for the naturalization of American citizens.

Powers **NOT** specifically granted to the federal government are called **Implied Powers** and are found in the Constitution under the necessary and proper clause in Article I, Section 8.

The best **definition of Implied Powers** is powers not granted specifically to the national government but implied from the necessary and proper clause to carry out the enumerated powers.

Examples: The Constitution does not give the national government to create the Air Force as flight was not done in 1787 but the Air Force is needed to support a military. Similarly, in 2019 the Space Force was created by Congress using the same authority.

Federal Government		State Government
<p>Enumerated Powers</p> <ul style="list-style-type: none"> • Coin money • Regulate interstate and foreign commerce • Conduct foreign affairs • Establish rules of naturalization • Punish counterfeiting • Establish copyright/patent laws • Regulate postal system • Establish courts inferior to Supreme Court • Declare war • Raise and support armies • Make all laws "necessary and proper" to carry out responsibilities <p>Powers Denied</p> <ul style="list-style-type: none"> • Tax state exports • Change state boundaries • Violate the Bill of Rights 	<p>Concurrent Powers</p> <ul style="list-style-type: none"> • Levy and collect taxes • Borrow money • Make and enforce laws • Establish courts • Charter banks and corporations • Take property for public purpose with just compensation (eminent domain) 	<p>Reserved Powers</p> <ul style="list-style-type: none"> • Regulate intrastate commerce • Conduct elections • Provide for public health, safety, welfare, and morals • Establish local governments • Maintain militia (National Guard) • Ratify amendments to the Constitution <p>Powers Denied</p> <ul style="list-style-type: none"> • Tax imports and exports • Coin money • Enter into treaties • Impair obligation of contracts • Abridge the privileges or immunities of citizens or deny due process and equal protection of the laws

The Constitution denies certain powers to the national government. The federal government is prohibited from violating some rights:-

- The Constitution **prohibits Bills of Attainder** – where legislature declares someone guilty without a trial.
- Congress **cannot pass Ex Post Facto Laws** – which punish actions that were legal when they took place.
- The national government **may not suspend the Writ of Habeas Corpus**, which gives defendants the right to be informed of the charges and evidence against them.
- The national government **cannot admit new states or change a state's boundaries** without the consent of that territory's residents.
- The national government **cannot impose taxes on goods and services exported and imported between states – intraregional.**

The Constitution created a series of clauses that shape the authority of both the national and state governments. In addition, the **Fourteenth Amendment** restricts how states can treat their citizens under the **Due Process Clause** and the **Equal Protection Clause**.

The **Due Process Clause** in the Fourteenth Amendment restricts state governments from denying persons their life, liberty, or property without legal safeguards.

The **Equal Protection Clause** in the Fourteenth Amendment required states to treat all persons alike with regard to the application of the laws. [It prevents the states from discriminating against citizens based on race and other factors].

The Fourteenth Amendment, ratified in 1868, is a landmark amendment to the U.S. Constitution that addresses citizenship, equal protection, and due process. It grants citizenship to all persons born or naturalized in the United States, and prohibits states from infringing upon the privileges or immunities of citizens, depriving anyone of life, liberty, or property without due process, or denying anyone equal protection under the law.

Citizenship: The amendment declares that all persons born or naturalized in the United States are citizens of both the United States and the state where they reside.

Due Process: It prevents states from depriving any person of life, liberty, or property without due process of law.

Equal Protection: The amendment ensures that all persons within a state's jurisdiction receive equal protection under the law, meaning states cannot discriminate against individuals or groups.

Other Provisions: The 14th Amendment also includes sections addressing representation in Congress, disqualification from holding office for those who engaged in insurrection, and the validity of the public debt.

There are three (3) additional clauses that affect modern American federalism.

The **Commerce Clause** – this grants Congress the authority to regulate interstate business and commercial activities. This clause also allows Congress to regulate commerce with foreign nations and Native American tribes.

The **Necessary and Proper Clause** – this grants the federal government the authority to pass laws required to carry out its enumerated powers. This clause is also called the **Elastic Clause**. It is the power to “*make all Laws which shall be necessary and proper for carrying into Execution . . . Powers vested by this Constitution in the Government of the United States.*”

The **Supremacy Clause** – which establishes the Constitution and the laws of the federal government passed under its authority as the highest laws of the land. States must abide by laws passed by Congress even if that state’s law is in conflict with the national government. In addition, state courts must follow the Constitution.

Powers given to the State Governments

The Constitution does not specifically use the word *federalism* and is even less specific about powers given to states. The states receive their powers from the Tenth Amendment.

<p><i>Tenth Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.</i></p>
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Basically, the Tenth Amendment reserves powers not delegated to the national government to the states and the people; the basis of federalism. Those who argue **for** the Tenth Amendment believe that the Constitution limits the powers of the federal government and that any issue not specifically mentioned in the Constitution are given to the states and the people.

However, the Supreme Court Case of ***United States v. Darby*** in 1941 ruled that the Tenth Amendment was not supposed to give the states and people powers to supersede those of the national government.

Also, the Supreme Court’s decision in ***Garcia v. San Antonio Metropolitan Transit Authority*** (1985) was about compliance with the Fair Labor Standards Act in paying the workers of the transit authority. The ruling was that Congress could decide when to regulate the activities of state and local governments and therefore forcing the transit authority in paying its workers.

Reserved Powers are not given to the national government; they are retained by the states and the people.

Concurrent Powers are when the states and the national government are given the authority to act in certain areas of public policy. The Constitution grants powers to both states and the federal government.



Short Video: How is power divided in the United States government? TED-Ed, narrated by Belinda Stutzman. <https://youtu.be/HuFR5XBYLfU?si=OjOLZ8KuC6kvfJEH>

The Relationship between Regional and Local Governments and the States.

Nothing is mentioned about this relationship in the Constitution. Usually the relationship between the states and districts, counties, cities, and towns is **unitary** – the authority of the smaller units dependent and subordinate to the power and authority of that state. States can disband local authorities as well as creating rules that local governments must follow. An example is when the state can change the boundary of a school district or merge two districts into a larger one. Because of this, local officials are often frustrated because they have to follow state government rules and regulations.

Relationships between States

Article IV of the Constitution outlines the obligations between states.

Constitution Annotated: <https://constitution.congress.gov/constitution/article-4/>

There are **three (3) critical parts** to this Article.

The Full Faith and Credit Clause: it requires states to recognize the public acts, records, and civil court proceedings of another state.

Example: A couple married in New York are still married if they relocate to Florida. Also, if the same couple divorces, a child-support order issued in one state is enforceable in another state.

However, there are limits to this clause. An example being if you live in New York but go to university in New Jersey, the state of New Jersey must recognize your New York driver's license. If you move to the state of New Jersey then by law you have to change your driver's license from New York to New Jersey.

Extradition is the requirement that officials in one state return a defendant to another state where the defendant allegedly committed a crime. Most states are happy with this law as they do not want to harbor criminals.

The **Privileges and Immunities Clause** prevents states from discriminating against people from out of state. An example would be if you went to Disney World in Orlando, the state of Florida cannot charge you a higher sales tax than its residents.

However, the opposite is seen with in-state and out-of-state college fees and tuitions. In-State tax payers have already subsidized their state colleges so they do pay less.

As a general rule, the more fundamental the right, the more it is protected from discrimination under the privileges and immunities clause.

