

CHAPTER 2

Texas in the Federal System

▣ LEARNING OUTCOMES

- 2–1** Differentiate among federal, unitary, and confederal forms of government, and identify three types of powers found in the U.S. federal system.
- 2–2** Explain the constitutional bases and the development of dual federalism and cooperative federalism.
- 2–3** Describe how federalism has affected the development of our civil liberties and civil rights, particularly through the rise of the incorporation doctrine and the fall of the separate-but-equal doctrine.
- 2–4** Evaluate recent federalism controversies involving Texas, including those surrounding coercive federalism, unfunded mandates, health-care reform, and same-sex marriage.

▣ SUMMARY OVERVIEW

If one was to make a list of topics that must be understood for a proper grasp of how government in America works, federalism would be near the top of the list. This system, created by the framers of the U.S. Constitution, was the fruition of their experience and their concern about government power concentrated in the hands of one or of the few.

Their experience taught them that a unitary government could be distant and undemocratic, yet a confederacy (where the states have almost all of the power) was dysfunctional and in many ways unaccountable to the people. The framers also had a very rocky relationship with government power: King George III of Great Britain ignored their concerns and none of the colonists were represented in British Parliament.

Thus, the framers sought to alleviate their concerns and by most accounts, they did a masterful job. They created a system that is a medium ground between a unitary government and a confederacy, and a system where government power is spread around and ultimately more democratic.

In this chapter, we will explore the system of federalism and then look at how federalism affects Texas. In the first section, we will delineate between federal power and state power. Although the powers of the federal government are clearly defined in the U.S. Constitution, where federal power ends and where state power begins is not always clear and is constantly evolving. Next, we will explore the evolution of federalism. This is not a static system; it is constantly changing, and there have been many events in our nation's history that have shifted the balance of power.

Third, we will examine what role federalism has played in civil liberties and civil rights. This became a dominant issue in the 1950s and 1960s, as both the states and the federal government were forced to deal with fundamental issues related to basic individual rights such as equality and fairness. Finally, we will look at specific issues related to Texas and federalism. Texas has traditionally found itself at odds with the federal government, and that is still true today, with such hot-button issues as healthcare and immigration.

So much of what we Americans argue about when it comes to politics is the proper balance of power between the federal government and the states. In fact, that argument is older than this country: it is exactly what the Federalists and Anti-Federalists were arguing about when the Constitution was formed. The issues today are different, but the principles are the same.

Just a quick glance through history will demonstrate how vital federalism is to the functioning of our country. The Civil War was fought over federalism: should states have the right to legalize slavery, or should the federal government have the right to tell them that they can't? Do states have the right to enact immigration laws, or is that the proper purview of the federal government? Does the federal government have the authority to enact a national education law, such as No Child Left Behind, or is that the proper role of the states?

The system of federalism will always have its critics. It is important to remember, however, that while constantly evolving, it continues to work quite well and adapt to the ever-changing needs of the American people.

□ CHAPTER OUTLINE

★ **TEXANS IN CONFLICT** **Should States Have Their Own Illegal-Immigration Laws?**

2.0 **Introduction**

2-1 **What Is Federalism?**

2-1a **The Federal System**

- 1 What Is a Federal System?
- 2 The National-State Balance of Power

2-1b **Types of Powers in Our Federal System**

- 1 Delegated Powers
- 2 Reserved Powers
- 3 Concurrent Powers

2-2 **The U.S. Constitution and Federalism**

2-2a **The Expressed Powers of the Federal Government**

2-2b *McCulloch v. Maryland*

2-2c **Dual Federalism and the Tenth Amendment**

- 1 Corwin's Analysis of Dual Federalism
- 2 The Tenth Amendment

2-2d **The Development and Rise of Cooperative Federalism**

- 1 The Rise of Cooperative Federalism
- 2 Categorical Grants
- 3 Block Grants

2-2e **Federal Grants-in-Aid to Texas**

- 1 Federal Aid and the Economic Crisis

★ **HOW TEXAS COMPARES: Texas's Rank among the Fifty States for Federal Grants**

- 2 The Growth in Federal Aid

2-3 Federalism, Civil Liberties, and Civil Rights**2-3a The Fourteenth Amendment and the Bill of Rights**

- 1 The Incorporation Doctrine
 - a. What Is the Incorporation Doctrine?
 - b. The Development of the Doctrine
- 2 Who Is a Citizen?
- 3 Opposition to Birth-Right Citizenship

2-3b Civil Rights versus States' Rights

- 1 The Separate-But-Equal Doctrine
 - a. Flaws of Separate-But-Equal
 - b. Chipping Away at the Doctrine
- 2 The End of Separate-But-Equal

2-4 Federalism Controversies in Texas**★ Texas Politics and . . . FEDERALISM****2-4a Coercive Federalism and Texas**

- 1 Texans' Response to Coercive Federalism
- 2 Support for Federal Action

★ HOW TEXAS COMPARES: Texas's Environmental Rankings among the Fifty States**2-4b Unfunded Mandates**

- 1 Criticism of Unfunded Mandates
- 2 State Mandates Affecting Local Governments

2-4c Health-Care Reform: A Challenging Case in Federalism

- 1 The Health-Care Problem
- 2 The Constitutional Questions
- 3 The Supreme Court Decision

2-4d Same-Sex Marriage and the Full Faith and Credit Clause

- 1 The Full Faith and Credit Clause
- 2 The Courts Will Decide

★ TEXANS IN CONFLICT Federalism**□ CRITICAL THINKING QUESTIONS**

1. Do you think the federal government has too much power; do the states have too much power; or, is the balance of power about right? Why?
2. If *McCulloch v. Maryland* had been decided differently, what would the United States be like today?
3. If Texas passed a constitutional amendment defining marriage as a union between a man and a woman of the same race, it would obviously be unconstitutional. Yet, Texas passed a constitutional amendment defining marriage as between one man and one woman. Why is that constitutional? Should it be? Is this a proper issue for the federal government or the states? Why?

4. According to the chart in your book, Texas receives about 40 percent of its revenue from the federal government. If that were cut in half, how would Texas change? Would it be better or worse? Why?
5. As your book mentions, the AMBER alert system started in Texas and has now spread to all 50 states. Today, there is a strong movement for a “Silver Alert,” a system for senior citizens similar to the AMBER alert. Several states, including Texas, already have it. Should Congress step in and mandate this system nationwide, or is that something better left to the states? Are there any downsides to a national system such as this?

▣ LECTURE LAUNCHERS

1. **Option 1:** One way to start out this chapter is to get the students to consider some of the advantages and disadvantages of federalism. Most Americans agree that federalism is a very good arrangement, but there are no perfect systems. For instance, federalism is a good system because it is very democratic: citizens can try to influence government at the national, state, and local levels.

Another advantage is that states, as Justice Louis Brandeis termed it, are “laboratories” in the federal system. They are free to experiment with different strategies for confronting various problems, which encourages innovation. This allows other states—and the federal government—to learn what works and what doesn’t.

Federalism has its downsides, however. One is that there is a lack of cohesion across the board, so much so that many times there is no clear answer on which government is supposed to fulfill a particular role. For instance, which government has the job of evacuating citizens before a natural disaster? That issue was front and center in the aftermath of Hurricane Katrina. Another downside is the education system. There are wide disparities among the states when it comes to school funding, teacher pay, and student performance. Minnesota traditionally scores well in all three areas and Texas is near the bottom in all three categories. Is that a fair system? Should those be categories that are uniform throughout the United States?

Discussing these examples with the students should provide a springboard to other examples of how things are either the same in America, whether they are different depending on the state, and whether those uniformities or differences are advantageous or disadvantageous.

2. **Option 2:** Another option to start the chapter is to ask the students what government does. Write each of their answers on the board. Once you have a sufficient number of answers (10 or 15 is optimal), ask the students to decide whether the federal government or state government is in charge of that function.

Depending on the answers, what you will usually find is that states are in charge of quite a lot, but the federal government plays some role as well. For example, transportation is a common answer among students. Transportation is mainly a state function, but the federal government does help fund some transportation projects as well. Education, healthcare, and welfare also fit that classification.

Going through this exercise will hopefully allow students to begin to discern the relationship between the federal government and the states, which is often very complicated yet indispensable to understanding how federalism works.

IN-CLASS ACTIVITIES

1. A Unitary Government

Objectives:

- Critical thinking
- Better understanding of the subject matter

Dividing the class into groups is optional for this exercise, but it might be wise to do so in order to increase participation. Ask students how America would be different if the framers of the Constitution had set up a unitary form of government. Students can either approach this from a historical perspective, (Would there have been another revolution? Would the Civil War have still occurred?) or a modern perspective (uniformity of criminal laws, marriage laws, property laws, traffic laws, etc.).

Aftermath: Students should gain a greater insight into the concept of federalism and the sovereignty of the fifty states. Another possible outcome is to have them advocate (possibly through an assignment) for a unitary government. Or, conversely, you could have them argue the merits of a confederacy.

2. Illegal-Immigration Law in Texas

Objectives:

- Critical thinking
- Advocacy skills
- Better understanding of the subject matter

Divide the class into five groups, each representing the following entities: the federal government Department of Justice (DOJ), LULAC (League of United Latin American Citizens), Concerned Texans against Immigration (a fictitious interest group in support of the law), Republican leadership of the Texas Legislature, and Big Business in Texas (a fictitious interest group against the law).

Have them assume that Texas is considering passing a very tough immigration law similar to what Arizona and Alabama passed, and then have them advocate their respective positions. The DOJ will be against it because of the claim that immigration law is the exclusive domain of the federal government. LULAC will also be against it, as well as the big business interest group (because of the hiring restrictions the law would place on businesses and cheap labor). That will put the Republicans and the citizens group on the same side.

Have each group discuss their positions on the issue, their stated reasons for why they hold those positions, and their strategy for advocating their position through the media.

Aftermath: Immigration has been such a hot-button issue, and this activity should clear up for the students why it is relatively hard to pass these types of laws and why these groups take the positions that they do.

KEY TERMS

block grants Federal grants to state or local governments for more general purposes and with fewer restrictions than categorical grants.

categorical grants Federal aid to state or local governments for specific purposes, granted under restrictive conditions and often requiring matching funds from the receiving government.

coercive federalism A relationship between the national government and states in which the former directs the policies that the states must adopt.

commerce clause An enumerated power in Article I, Section 8, of the U.S. Constitution that gives Congress the power to regulate interstate commerce.

concurrent powers Powers that are shared by both the national and state governments.

confederal system A system of government in which member state or regional governments have all authority and any central institutions have only the powers that state or regional governments choose to give them.

cooperative federalism A relationship in which the national government and the states are mutually complementary parts of a single government mechanism.

Jim Crow laws State and local laws that promulgated racial segregation.

delegated powers In relation to the U.S. Constitution, the powers granted to the national government. These include the enumerated powers found in Article I, Section 8, of the U.S. Constitution, as well as other powers that have evolved over time.

devolution The surrender of powers to local authorities by a central government.

dual federalism The understanding that the federal government and state governments are both sovereign within their respective spheres of influence.

expressed powers Delegated powers that are explicitly listed in the U.S. Constitution.

federal system A system of government in which governmental power is divided and shared between a national, or central government, and state or regional governments.

implied powers Delegated powers that are assumed to exist so that the government can perform the functions that are expressly delegated. These powers are granted by the necessary and proper clause in Article I, Section 8, of the U.S. Constitution.

incorporation doctrine The doctrine that under the Fourteenth Amendment to the Constitution, most rights found in the Bill of Rights cannot be encroached upon by the states.

inherent powers Delegated powers of the national government that, although not always expressly granted by the Constitution, are necessary to ensure the nation's integrity and survival as a political unit. An example of such a power not mentioned in the Constitution is the power to annex territory.

necessary and proper clause The last clause in Article I, Section 8, of the U.S. Constitution, which gives Congress implied powers; also known as the *elastic clause*.

police power A government's authority to legislate for the protection of the health, morals, safety, and welfare of the people. The term does not refer to law enforcement officers.

reserved powers In relation to the U.S. Constitution, the powers that belong to the states. The legitimacy of these powers comes in part from the Tenth Amendment.

separate-but-equal doctrine The doctrine resulting from the United States Supreme Court ruling in *Plessy v. Ferguson*, which legalized segregation.

supremacy clause Article VI, Section 2, of the U.S. Constitution, which states that the U.S. Constitution, as well as laws and treaties created in accordance with the U.S. Constitution, supersede state and local laws.

Tenth Amendment The section of the U.S. Constitution that reserves powers to the states. It reads as follows: “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.”

unfunded mandates Obligations that the federal government imposes on state governments without providing adequate funding to support the programs.

unitary system A system of government in which one central government has ultimate authority, and any regional or local governments are subordinate to the central government.

WEB LINKS

Attorney General of Texas: Greg Abbott (<https://www.oag.state.tx.us/>). To follow Texas’s disputes with the federal government over such issues as abortion, environmental protection, voter ID laws, health-care reform, and immigration, see the Texas attorney general’s Web site.

C-Span Classroom (<http://www.c-spanclassroom.org/Topics/FE/Federalism.aspx>). C-SPAN’s classroom provides several videos on specific issues related to federalism.

Governing: The States and Localities (<http://www.governing.com/topics/economic-dev/The-Katrina-Breakdown.html>). *Governing* magazine provides an article on Katrina and federalism, and how such a disaster can be avoided in the future through better cooperation among all levels of government.

The Henry J. Kaiser Family Foundation (<http://www.kff.org/>). Keep up with health-care reform issues at the Kaiser Family Foundation site.

Pew Center on the States (<http://www.pewstates.org/>). Discover problems that state governments face and the kinds of innovative solutions that they have developed at the Pew Center on the States.

Supreme Court of the US Blog (<http://www.scotusblog.com/>). You can explore the role of the U.S. Supreme Court in serving as an umpire between the national government and the states at SCOTUS Blog.

Texas State Historical Association, The Handbook of Texas Online (<http://www.tshaonline.org/handbook/online/articles/fsw23>). Read about Heman Sweatt’s struggle to gain admission to the University of Texas Law School and his ultimate victory in the U.S. Supreme Court.

The Texas Tribune (<http://www.texastribune.org/immigration-in-texas/immigration/>). An excellent, in-depth resource from *The Texas Tribune* on immigration issues specific to Texas.

U.S. Government: Issues (http://gln.dcccd.edu/GOVT2301_Pilot/Lessons/Lesson06/htm/introduction.htm). The Dallas County Community College District has an excellent resource page for federalism topics, including interactive features, videos, and study questions.

INSTRUCTOR RESOURCES

Aaronson, Becca. “Interactive: Texas vs. the Federal Government.” *The Texas Tribune* August 13, 2012. August 24, 2012 (<http://www.texastribune.org/library/about/texas-versus-federal-government-lawsuits-interactive/#womens-health-program>).

Gray, Virginia, and Russell L. Hanson. *Politics in the American States: A Comparative Analysis*. Washington, DC: CQ, 2008. Print.

Lavergne, Gary M. *Before Brown: Heman Marion Sweatt, Thurgood Marshall, and the Long Road to Justice*. Austin, TX: University of Texas, 2010. Print.

Robertson, David Brian. *Federalism and the Making of America*. New York: Routledge, 2012. Print.

Smith, Peter J. *Federalism, Lochner, and the Individual Mandate*. 2011 *Boston University Law Review* 91, 1723. Print.