

Chapter 6: Federalism

Introduction (1 of 3)

- Fair Labor Standards Act of 1938.
- Dual federalism.
- Cooperative federalism.
- Supreme Court judgments.

Introduction (2 of 3)

Table 6.1: A Comparison of Dual and Cooperative Federalism

	Dual federalism	Cooperative federalism
General view	Operates under the assumption that the two levels of government are coequal sovereigns, each supreme within its own sphere.	Operates under the assumption that the national government is supreme even if its actions touch state functions. States and the federal government are “partners,” but the latter largely sets policy for the nation.
View of the Constitution	It is a compact among the states and a contract between the states and the federal government.	Rejecting the view of it as a “compact,” the people, not the states, empower the national government.
Constitutional support	Tenth Amendment reserves certain powers to the states and thus limits the national government to those powers specifically delegated to it.	Tenth Amendment does not provide additional powers to the states.
	Necessary and proper clause is to be read narrowly.	Necessary and proper clause is to be read expansively and loosely.
		Supremacy clause means that the national government is supreme within its own sphere, even if its actions touch on state functions.

Introduction (3 of 3)

Table 6.2: Doctrinal Cycles of Nation-State Relations

Court era	General approach adopted
Marshall Court (1801–1835)	Cooperative federalism (as long as Congress can ground a law in its enumerated or implied powers, the Tenth Amendment does not serve as a bar)
Taney Court (1835–1864)	Dual federalism (state rights)
Civil War/Reconstruction Courts (1865–1895)	Cooperative federalism
Laissez-faire Courts (1896–1936)	Dual federalism (grounded in laissez-faire philosophy)
Post–New Deal Courts (1937–1975)	Cooperative federalism
Burger Court: National League of Cities v. Usery (1976)	Dual federalism (traditional state functions)
Burger Court: Garcia v. SAMTA (1985)	Cooperative federalism (the electoral process serves as a check on Congress)
Rehnquist Court (1986–2005)	A milder version of dual federalism, holding, for example, that states cannot be treated as administrative units of the federal government and that the federal government cannot “commandeer” state authority.
Roberts Court (2005–)	A general continuation of the Rehnquist Court’s approach

Federal Power, State Sovereignty, and the Tenth Amendment (1 of 4)

The Marshall Court and the Rise of National Supremacy

- *McCulloch v. Maryland*.
- The necessary and proper clause.
- The Tenth Amendment.
- The supremacy clause.

Federal Power, State Sovereignty, and the Tenth Amendment (2 of 4)

The Taney Court and States' Rights

- Ordinance of nullification.
- Proclamation against South Carolina.
- Ascension of Roger Taney.

Federal Power, State Sovereignty, and the Tenth Amendment (3 of 4)

The Taney Court and States' Rights

- The issue of slavery.
- *Scott v. Sandford*.
- Impact of Scott holding.
- Outbreak of the Civil War.

Federal Power, State Sovereignty, and the Tenth Amendment (4 of 4)

Table 6.3: Selected Events Leading to the Civil War

Date	Event	Result
November 1832	South Carolina adopts ordinance of nullification.	Suggests that states can nullify acts of the federal government and, if necessary, secede from the Union.
December 1832	Jackson issues proclamation warning South Carolina against secession.	Temporarily halts secession crisis, as no state follows South Carolina's lead.
December 1835	Jackson nominates Taney to be chief justice of the United States.	Delays Senate confirming Taney, a former slaveholder, until March, 1836.
May 1854	Congress repeals the Missouri Compromise.	Allows territories to enter the Union with or without slavery.
March 1857	Supreme Court issues final judgment in Scott v. Sandford.	Increases tension between the North and South, as the former loudly denounces the decision.
November 1860	Lincoln is elected president.	Prompts the South's proclamation that secession is inevitable.
December 1860	South Carolina issues ordinance of secession.	Precipitates secession by six other Southern states within the following six weeks and four more by June, 1861.

The Post–Civil War Era and the Return of Dual Federalism

- Three constitutional Amendments.
- *Coyle v. Smith*.
- Modified dual federalism.

The (Re)Emergence of National Supremacy: Cooperative Federalism (1 of 2)

- The economic collapse.
- Election of Richard Nixon.
- *National League of Cities v. Usery*.

The (Re)Emergence of National Supremacy: Cooperative Federalism (2 of 2)

- *Garcia v. San Antonio Metropolitan Transit Authority.*
- Last major articulation of cooperative federalism.
- Change: makeup of Supreme Court.

Return Of (A Milder Form Of) Dual Federalism

- *New York v. United States.*
- *Printz v. United States.*
- *National Federation of Independent Business v. Sebelius.*
- States retain sovereignty; cooperation only through incentives.

The Eleventh Amendment

- Sovereign immunity.
- *Chisholm v. Georgia*.
- *Cohens v. Virginia*
- *Hans v. Louisiana*.
- Congressional contraction state sovereignty.
- *Seminole Tribe of Florida v. Florida*.