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AMERICAN FEDERALISM – THE PROBLEM OF THE DISTRIBUTION OF POWERS BETWEEN THE FEDERATION AND THE INDIVIDUAL STATES

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ABSTRACT

There are more than 200 sovereign states on the globe, and they all have unique characteristics. On the globe, no two states are the same. The idea of territoriality, which divides states into federal and unitary states, is one of the most significant characteristics that set them apart.

One of the most powerful nations in the world, the United States of America continues to work hard to protect all that is important to its citizens while maintaining strong democratic principles. American history includes the creation of a federal system. Due to these factors, America is fascinating and challenging to comprehend and evaluate. The link between the core and the periphery is quite unclear. This article's goal is to argue these ambiguous policies by bringing them to light.

The federal and state powers are specifically listed in the United States Constitution. However, certain ambiguities make it hard to determine where the boundary between federal and state authorities resides. The topic of discussion in this essay is this troubling predicament. In the framework of the paper's theme, the Supreme Court of America's expertise, and its authority in the process of the separation of powers will be examined. Here, it should be highlighted that everything is up to interpretation, which will rely on the Supreme Court judge. A conclusion will be offered based on the work's argument, outlining the author's perspective.

INTRODUCTION

Territorial organizations may take many various, unique shapes around the world. Each state determines the necessary and historically appropriate geographical arrangements. The choice of territorial organization models is thought to play a role in the success of nations. The federal structure is the most intriguing of the several territorial arrangements. This kind of geographical organization obviously tries to decentralize authority and reinforce current local administrations. Federalism has a long history as a type of territorial organization. Its significance to the globe is immense and unmatched.

American federalism has the longest history, and its fundamentals, benefits, and drawbacks have been widely explored by science. It should be mentioned that the particulars chosen for the paper's topic are less established in the academic world. The paper's objective is challenging yet intriguing. It is important to examine the complex and contentious problems of American federalism, both then and now. As you are aware, when we discuss the power of the federation and the different states in the United States of America, the issue of the separation of powers has always been and continues to exist. Certain questions have remained unanswered for 200 years. The article will concentrate on these difficulties as a result. The nine Supreme Court justices give the reader the sense that they are the primary controllers of the allocation of power in this context, which highlights the significance of the Federal Supreme Court of the United States of America's competency and precedent judicial practice.

Federalism is one of the most sophisticated and intriguing systems of territorial arrangement that the US Constitution initially established. This article addresses the legislative powers of the United States' federation and states. The article will focus on the nature and relevance of federalism, analyze the history of federalism in America, and discuss the actions of Presidents Roosevelt, Reagan, and Clinton in the context of the transfer of legal power from the federation to the states. The focus will be on the United States Constitution and the provisions in the Constitution that directly relate to the legislative powers delegated between the states and the Federation.

Based on the developed reasoning, it can be said that even 200 years after the founding of the United States, fundamental questions implicating federalism remain unsettled. Legislative powers that are redistributed between the states and the federation are still the subject of interpretation.

FEDERALISM'S SIGNIFICANCE AND ITS HISTORICAL ORIGINS

Federalism is a complicated and multifaceted phenomenon that affects many facets of public life, including political, legal, economic, cultural, and foreign affairs.[1] There are several definitions of the term "federalism," which is taken from Latin and used in legal, political, and scientific literature.[2]

Federal states are those that have legally autonomous state formations and whose independence is only constrained by the rights of the entire federation, according to the scientific definition of federalism.[3]

In a federal system, there are greater options for disagreements to be settled legally, consistently, and through compromises. Many autonomous components of such a system tend to control their interconnectedness independently of any outside authority. As a result, the federal system starts to operate independently. The fundamental tenet of federalism is that it provides citizens with a genuine opportunity to manage their affairs, join forces with others in accordance with their beliefs, and participate in the powers of the administrative, legislative, and judicial branches of government.

Power is spread vertically as well as horizontally under the federal territorial organization, and it is maximally decentralized and increasingly susceptible to civil authority. It should be mentioned that in the framework of republican governance, the federal model is more frequent. However, there are exceptions in Belgium[4] and Malaysia,[5]

1 Kveselava I., Federalism, unitarism, self-government (history and practice), Tb., 2014. [in Georgian]
2 Gogiashvili G., Comparative Federalism, Tb., 2000, p. 21-23. [in Georgian]
3 Constitutional law. manual. Ed. Avtandil Demetrashvili. Tb., 2005. p. 160. [in Georgian]
4 The Constitution of Belgium.
5 The Constitution of Malaysia.

where federalism exists under a monarchical style of governance.

The local constitution and legal system coexist alongside the federal constitution and legislation in most federal states. The United States of America,[6] Germany,[7] Austria,[8] and Switzerland[9] are examples of these types of federations. However, not all federal states provide for the right of an entity to have its own constitution. Such countries are India,[10] Pakistan,[11] Nigeria,[12] etc.

One of the most pressing challenges in the Federal Territorial Organization is the matter of legislative competence separation between the Federal Center and the states.[13] Many attempts in the literature and legislative practice to define broad criteria for allocating legislative powers have failed.[14]

In terms of politics, the United States of America was founded as the first federal state in 1787. The United States of America's geographic location, awareness of cultural unity, and foreign security interests were undoubtedly the cornerstones of the union built on federal principles, which were based on the Constitution and had to guarantee the realization of the idea of freedom and unlimited popular sovereignty, political order, protection of property, and the continuation of the nation.

THE HISTORICAL STAGES OF AMERICAN FEDERALISM'S FORMATION

The thirteen colonies declared their independence and freedom prior to the Revolutionary War. The newly established states understood that collaboration was necessary to operate well on the new national stage and enter the global arena both during hostilities and after the war.

The Articles of Confederation, America's first attempt to formalize federalism, were a failure. Since it was replaced by the Constitution of 1787, this durable document, and the system of government it established have withstood the shaky beginnings of the Republic, a Civil War, severe economic downturns, America's involvement in two World Wars, and 227 years of countless internal and external challenges.

The centralist concept of federalism was established in accordance with the Constitution of the USA. Alexis de Tocqueville commented, "in America, it may be said that the township was organized before the county, the county before the state, the state before the union."[15] The Framers split the atom of sovereignty. The genius of their idea was that American citizens would have two political capacities, one state and one federal, each protected from incursion by the other.[16]

The events of 1862-1865 in the US resulted in an expansion of the federal government's legislative authority.[17] Under President Roosevelt, a major reorganization of the US federal system took place:[18] The federal financing program[19], which was largely focused on developing a new legal framework in the social sector, increased the central government's influence.[20]

Reagan's approach was to increase the lobbying power of states and local governments. During Reagan's presidency, several federal initiatives relating to legislation implementation and development were moved to state legislatures.[21] Reagan's reforms were a failure. The defeat of the reform was further supported by the US Congress's refusal to decentralize the federal government.[22]

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6 The Constitution of the United States.
7 The Constitution of the Federal Republic of Germany.
8 The Constitution of Austria.
9 The constitution of Switzerland.
10 The Constitution of India.
11 The Constitution of Pakistan.
12 The Constitution of Nigeria.
13 Musgrave, R., Musgrave, P., Public Finance in Theory and Practice, New York, 1976, S. 6.
14 Breton, A., Scott, A., The economic constitution of federal states, Toronto, 1978, S. 12, cit: Frenkel, M., Föderalismus und Bundesstaat, S. 95.
15 Alexis de Tocqueville, Democracy in America ch. II (Henry Reeve trans., Bantam Classics 2004) (1835).
16 U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).
17 Schultze, R.-o., Föderalismus, in: D. Nohlen, Pipers Wörterbuch zur Politik, Bd. 2, S. 94.
18 Bothe, M., Die Entwicklung des Föderalismus in den angelsächsischen Staaten, in: Jahrbuch des öffentlichen Rechts der Gegenwart, 1982, S. 113.
19 Health care, vocational education, social protection of the unemployed, provision of pensions and protection of mothers.
20 Hesse, J/Benz, A., New Federalism unter Präsident Reagan, Speyer, 1987, S. 3.
21 These programs focused on family support, traffic, urban development, upbringing and social policy.
22 Annaheim, J., Die Gliedstaaten im amerikanischen Bundesstaat, Berlin, 1992, S. 51.

Between 1980 to 1990, the federation limited the states' legislative authority.[23] In 1994, a new majority in Congress assured its voters that the unfunded mandates would be phased out. In 1995, President Clinton signed the Unfunded Mandate Reform Act, which he regarded as a historic step in restoring people's control at the municipal and state levels.[24]

Despite several attempts today, during both the Trump and Biden administrations, the legislative powers that states may have over the federation remain ambiguous, with the US Federal Supreme Court playing a significant part in this process.[25]

THE UNITED STATES OF AMERICA'S CONSTITUTION AND FEDERALISM

The Constitutional Convention met in Philadelphia between May and September of 1787 to discuss and attempt to solve the shortcomings of the Articles of Confederation.

Only the United States Congress is permitted under the United States Constitution to organize and maintain an army, form and maintain a navy, and adopt regulations for the management and organization of the land and naval forces.[26] Even if the conduct is strictly intrastate, the Commerce Clause can and has been interpreted to empower Congress to control any actions that together have an impact on a national market. The US Congress has the authority to enact a rule of conscription for police duty to maintain US law and prevent uprisings.[27]

The entry specified in Article 1 (8) of the Constitution is controversial since functions that can freely be part of the powers of the States are included in the list, which comes under the jurisdiction of Congress. Such controversies about the legislature's separation of powers can benefit the federal government and Congress.

The commerce clause, which grants Congress the authority to regulate interstate trade, is also contentious.[28] The term "commerce" can be interpreted narrowly to refer to a group of activities different from manufacturing, farming, or mining, for example, barring the federal government from regulating these and other related activities under the Commerce Clause. This limited view is in line with the Supreme Court's understanding during the first century following ratification as well as the most recent research on the Clause's original meaning.[29] This record might be viewed as forbidding states from developing and adopting manufacturing, farming, and mining legislation.[30]

The Constitution's Taxation Clause, which provides Congress with the power to tax and spend to "provide for the . . . general Welfare of the United States,"[31] similarly has been "controversial since it first saw the light of day."[32] Does it provide Congress the ability to control through spending? Does this term imply that Congress may only use funds for purposes that are in line with other authorities that have been granted to it, or for any worthwhile cause? The responses to these questions have significantly affected the balance of federal and state authority, and they have been the topic of acrimonious disputes.

It should also be emphasized that the Necessary and Proper Clause, which empowers Congress to "make all laws necessary and appropriate for carrying out the execution," is ambiguous.[33] Such an understanding of Congress's jurisdiction grants the federal legislature broad flexibility.[34]

The Constitution of the United States of America prohibits states from using their constitutional

23 Zimmermann, J. F., Federal Preemption. The Silent Revolution, Ames (Iowa), 1991.

24 Bothe, M., Die Kompetenzstruktur des modernen Bundesstaates in Rechtsvergleichenden Sicht, S. 52.

25 Timothy J. Conlan/ James D. Riggle/ Donna E. Schwartz, Deregulating Federalism? The Politics of Mandate reform in the 104th Congress, in: Publius 25 (3), 1995, S. 23-40.

26 The United States Constitution clearly lists the legislative functions of the federal government. Powers not listed here's are the powers of the state legislature.

27 U.S. Const. art. I, § 8, cl. 3.

28 U.S. Const. art. I, § 8, cl. 3.

29 United States v. Lopez, 514 U.S. 549, 553–54 (1995); Randy E. Barnett, The Original Meaning of the Commerce Clause, 68 U. Chi. L. Rev. 101 (2001).

30 United States v. Lopez, 514 U.S. 549, 553–54 (1995); Randy E. Barnett, The Original Meaning of the Commerce Clause, 68 U. Chi. L. Rev. 101 (2001).

31 U.S. Const. art. I, § 8, cl. 1.

32 Robert G. Natelson, The General Welfare Clause and the Public Trust: An Essay in Original Understanding, 52 U. Kan. L. Rev. 1, 3 (2003).

33 U.S. Const. art. I, § 8, cl. 18.

34 It all depends on the Supreme Court of the United States' interpretation of the word "necessary."

powers. Without the consent of Congress, no state can join a union or confederation, tax the export or import of products, retain soldiers or warships during peacetime, enter into any treaty or agreement with another state or foreign state, or wage war. Without a doubt, such a constitutional restriction is a crucial guarantee of the federal state's geographical unity.[35]

The most important safeguard of a federal state's territorial integrity is the general principle that federal law takes precedence over state law. According to the United States Constitution, the federal constitution and laws, as well as all treaties entered or to be entered into by the United States, are the supreme laws of the country, and every state judge is bound by them, even if state constitution and laws are found to be in opposition to these activities.[36]

After the Civil War, "Reconstruction" began across the nation. There was a great deal of disagreement in the nation regarding how to handle the former Confederate states, including whether the fundamental relationship between the federal and state governments that predated the War should be restored or whether fundamental changes to that relationship were required to stop the recurrence of the causes of the conflict.

In the late nineteenth and early twentieth centuries, rapid industrialization caused several economic and social challenges, which in turn led to a number of governmental reforms. An "increasing sense that government at all levels needed to intervene in the socioeconomic order to implement antitrust and regulatory laws, labor and welfare measures, and tax reform" has been said to define this period.[37] Several constitutional amendments were ratified by the country, including the Sixteenth, which authorized the imposition of direct federal income taxes, and the Seventeenth, which allowed for the direct election of senators by the people of each state, as opposed to through their state legislatures. Federal authority kept growing and solidifying.

The first constitutional amendment of the Progressive Era is regarded as the Sixteenth Amendment, which was ratified on February 3, 1913. The Supreme Court overturned a federal income tax in Pollock v. Farmers' Loan & Trust Company in 1895 as an unconstitutional direct tax because it was not distributed to the states based on their different populations. This decision was reversed by the Sixteenth Amendment.[38] Some opponents viewed this as a "power grab" by the federal government aimed at further weakening the states: The 1921 Sheppard Towner Act, which approved funding for child and maternity care and is referred to as the "first venture of the federal government into social security legislation," was one of the first pieces of legislation the federal government used its newfound power to pass after the Sixteenth Amendment.[39]

On May 31, 1913, the Seventeenth Amendment was ratified, allowing for the direct election of senators by state citizens as opposed to state legislatures. Allowing direct state control over federal government activities, nullified one of the states' basic, essential structural safeguards.

THE SUPREME COURT OF THE UNITED STATES' PRECEDENT-SETTING PRACTICE

The federal courts swiftly assumed the role of establishing the division of powers between the federal and state governments. The court stated in the case of Fletcher v. Peck[40] that Georgia's legislation could not invalidate a contract since the federal constitution did not allow bills of attainder or ex post facto statutes. Chief Justice John Marshall stated that the court had no intention of "disrespecting Georgia legislation or deeds." Regardless of this rationale, it was established that the Supreme Court has the authority to overturn an unlawful state statute.[41]

In Martin v. Hunter's Lessee, the Supreme Court decided that it might also supersede state courts. In Fairfax's Devisee v. Hunter's Lessee, the Supreme

35 U.S. Const. art. I, § 10.

36 Frenkel, M., Föderalismus und Bundestaat, II Band, Bundesstaat, S. 120.

37 John D. Buenker, The Ratification of the Federal Income Tax Amendment, 1 Cato J. 183, 184 (1981).

38 Buenker, supra note 78, at 185.

39 J. Stanley Lemons, The Sheppard-Towner Act: Progressivism in the 1920s, 55 J. Am. Hist. 776, 776 (1969).

40 Fletcher v. Peck (1810)

41 Roy G. Blakey & Gladys C. Blakey, The Federal Income Tax 70 (The Lawbook Exchange Ltd., 2006) (quoting Richmond Times-Dispatch, Mar. 3, 1910).

Court had determined four years prior that Virginia was prohibited from seizing a loyalist's property by the Jay Treaty between the United States and Great Britain. By declaring: "The court is united in view, that the appellate jurisdiction of the highest court of the United States does not extend to this court," the Virginia Supreme Court declared that it was not bound by the Supreme Court's decision. In Martin, the Supreme Court stressed once more that it "walked cautiously" while examining decisions made by state courts. The high regard in which the court whose decisions we are asked to evaluate is held, as well as the respect we have for its knowledge and skill, significantly increase the difficulties of the work that has uninvitedly been placed upon us. The Supreme Court once more struck a balance between this reverence and deference and the acknowledgment that "the United States Constitution was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States." According to the Supreme Court's ruling, it has appellate authority over constitutional issues in state courts. The Supreme Court had ruled that it might overturn state courts and declare state statutes that violate the Constitution unlawful.[42]

The United States was the first country to establish a constitutional monitoring institute in the federal state.[43] The United States Supreme Court declared the first state law unlawful in 1796.[44] The following actions have been found illegal: a statute that requires teachers to swear an oath;[45] A law prohibiting public demonstrations near foreign embassies;[46] A law banning the burning of the American flag.[47] The most contentious judgment of the United States Supreme Court was the revocation of a state statute that prohibited abortion.[48]

In relation to secession, an intriguing case has been recorded in the United States. The United States Supreme Court clarified in the decision "Texas v. White"[49] that states have an obligation to obey all federal laws until the Federal Supreme Court verifies a breach of the federal government's authority. The secession of the southern states is declared null and void from the beginning. [50]

One of the most important decisions involving congressional authority was heard by the Supreme Court in 1824. Competing steamboat ferry operators with boats that sailed in the seas between New York and New Jersey were involved in the Gibbons v. Ogden case. Ogden requested an injunction to prevent Gibbons from using the same route, and the State of New York granted him an exclusive license allowing him to operate there. In retaliation, Gibbons claimed that a 1793 Congress legislation governing coastal commerce gave him the right to compete with Ogden. He was unsuccessful in New York's trial and appellate courts, but the Supreme Court ruled in his favor. The Trade Clause, which states that "Congress shall have the power to regulate commerce among the several States," was the foundation of the Court's ruling in favor of Gibbons. The Court determined that the term "commerce" included navigation between the states and that the preposition "among" following the phrase "the several States" indicated that Congress's power to regulate commerce "did not stop at the external boundary line of each State but may be introduced into the interior." Due to the contradictory act of Congress and the Supremacy Clause of the Constitution, the New York legislation granting Ogden an exclusive license constituted a "nullity." By acknowledging Congress's extensive jurisdiction to control business conduct, Gibbons dramatically increased the federal government's scope of authority.[51]

Years after the Civil War, the Supreme Court declared that the First Amendment right to free assembly and the Second Amendment right to keep and bear weapons did not apply to states. [52] The Supreme Court acknowledged in 2010 that the Second Amendment applies to states via the Fourteenth Amendment, limiting governments' authority to prohibit gun ownership.[53]

42 Martin, 14 U.S. at 323.
43 Rice, W. G., A Tale of Two Courts, Madison, 1967, S. 63. cit: Frenkel, M., Föderalismus und Bundesstaat, II Band, Bundesstaat, S. 210.
44 Haller, W., Supreme Court und Politik in den USA, Bern, 1972, S. 133.
45 West Virginia State Board of Education v. Barnette (1943).
46 Boos v. Barry (1988).
47 Texas v. Johnson (1989).
48 Roe v. Wade (1973).
49 Texas v. White (1869)
50 Tekülve, E., Probleme der Gebietsveränderungen im Bundesstaat, S. 137.
51 Gibbons, 22 U.S. at 194.
52 United States v. Cruikshank, 92 U.S. 542 (1875).
53 McDonald v. City of Chicago, 561 U.S. 742 (2010).

In one case [54] the Court explained that congress might control isolated economic activity since there is a "close and vital link" between states for commerce.[55] [56] It should be emphasized that, according to the court's explanation, Congress was granted the ability to penetrate the state's legislative power and regulate the areas on which the state has the power to adopt a law.

The separation of legislative powers between the states and the federal government remains an issue, as the Obergefell v. Hodges decision on same-sex marriage demonstrates.[57] It is apparent that rules governing domestic ties between husband and wife, parent and child, and other topics fall under the jurisdiction of individual states.[58] Nevertheless, the decisions of the Supreme Court reduce the powers of the state legislature. Loving v. Virginia[59] is another good example of this, in which the Supreme Court used the Fourteenth Amendment to remove a Virginia law on interracial marriage. The Court used the Fourteenth Amendment in Kirchberg v. Feenstra[60] to overturn state legislation that made the husband "head and master" of the family.

The Supremacy Clause's most recent interpretation demonstrates how hazy the line between state and federal legislative authority is to this day. In recent decades state laws have been held preempted under the preemption doctrine in such divergent areas as regulation of emissions,[61] trucking[62] and locomotive equipment,[63] immigration,[64] food and drug regulation,[65] aviation,[66] state age-verification requirements for the shipment and delivery of tobacco,[67] the treatment and processing non-ambulatory animals in a slaughterhouse,[68] and arbitration agreements.[69]

54 NLRB v. Jones & Laughlin Steel Corp. (1937)
55 United States v. Darby (1941) is a case on the same theme.
56 Wickard v. Filburn (1942) is a case on the same theme.
57 Obergefell v. Hodges (2015)
58 In re Burrus, 136 U.S. 586, 593–94 (1890).
59 Loving v. Virginia (1967)
60 Kirchberg v. Feenstra (1981)
61 Am. Elec. Power Co. v. Connecticut, 131 S. Ct. 2527 (2011).
62 Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 133 S. Ct. 2096 (2013).
63 Kurns v. R.R. Friction Prods. Corp., 132 S. Ct. 1261 (2012).
64 Arizona v. United States, 132 S. Ct. 2492 (2012).
65 PLIVA, Inc. v. Mensing, 131 S. Ct. 2567 (2011).
66 Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422 (2014).
67 Rowe v. N.H. Motor Transport Ass'n., 552 U.S. 364 (2012).
68 Nat'l Meat Ass'n v. Harris, 132 S. Ct. 965 (2012).
69 Marmet Health Care Ctr., Inc. v. Brown, 132 S. Ct. 1201 (2012).

CONCLUSION

Federalism has a lengthy history in America, yet the legislative powers of the states and the federation are not clearly separated to this day. The powers of Congress are defined in the US Constitution, which, as analysis has shown, are vague and allow for unjustified limitations on the legislative powers of the states. As the analysis has shown, with the change of presidents, the approach to delegating legislative powers to the states changed, though this process did not achieve absolute perfection. The Federal Supreme Court's approach also sheds light on the ambiguity in this clause; The Supreme Court continues to turn to the Framers for direction when deciding significant cases that involve federalism or raise federalism-related problems. Judges may be thought of as limiting and encroaching on state legislative authority.

The only sure thing regarding the future of American federalism, as this discussion implies, is that no predictions can be made. Federalism is still a fundamental idea that defines America and a key instrument used to create its government, even though how it is understood now differs from how it was understood in the colonial era.

Both federal and state power have expanded and solidified along with the country. That course has not been easy or straight. Warfare, even military conflict, has paved the path. But the Constitution has always been the basis for the powers and restrictions imposed on the federal and state governments. The battle to define both continues to be decided first, and frequently last, by the courts. That has so far worked, but not always successfully or particularly well. However, no one has come up with a superior or another strategy.

Clearly, the United States' shift to centralism is dictated by historical experience, but states must be given the legislative power necessary to function efficiently at the local level, or federalism as an idea will lose its sense of territorial arrangement.

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