Department of Political Science

Raja N.L. Khan Women's College

Offers

Course Material

For

Sem – IV (Hons) Paper - CC8T

On

1. Salient Features of US Constitution
2. American Federalism – past, present, future
3. Party system in USA
4. Judicial Organisation of the USA
5. Powers & Functions of the US President

By

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Salient features of US Constitution:

Although there are many interesting features in its constitution but the most important are:

- Written constitution
- Rigid constitution
- Popular sovereignty
- Bicameral legislature
- Separation of powers
- Checks and balances
- Judicial Review
- Presidential system
- Federal system
- System of republic
- System of spoils
- Bill of Rights
- Dual Citizenship

1. Written Constitution:

American constitution is a written constitution framed in 1787 and enforced in 1789. It consists of seven articles; three of them related to structure and powers of Legislative (Article 1), Executive (Article 2) and Judiciary (Article 3) and the other four dedicated to position of states (Article 4), modes of amendments (Article 5), supremacy of national power (Article 6) and ratification (Article 7). It also holds that constitution is the supreme law of the land. Article one is the longest and cannot be amended. Like other constitutions, it also consists of preamble; a single sentence that introduces and defines purpose of the document.

2. Rigid Constitution:

It is one of the most rigid constitutions in the world which means that for amending it, a special and difficult procedure has to be followed. It consists of 2 steps;

2.1 Proposal for Amendment:

Either two-third (67%) of both the houses (Senate and House of Representatives) shall propose for amendment to constitution or on the application of legislatures of two-third (67%) states shall call a convention for proposing amendment.

2.2 Ratification of Proposal:

The amendment shall be ratified by the legislatures of three fourth (75 %) of all states or by the convention of three fourth of states.

It is because of this rigidity that American constitution has been amended only 27 times in over 200 years.

3. Popular Sovereignty:

In U.S, the people rule i.e. they have delegated their powers to the government and the government owes its authority to the will of the people. The principle of popular sovereignty is stated in the Preamble of constitution as "*we the people……..do ordain and establish this constitution for United States of America."*

4. Bicameral Legislature:

The constitution of USA provides for bicameral legislature i.e. two houses in the centre. According to Article 1, "All legislative powers are vested in Congress." Congress consists of two houses i.e. Lower House or House of Representatives and the Upper House or Senate.

4.1 House of Representatives:

The House of Representatives has 435 members who are elected by the people through adult franchise method for a period of two years on population basis i.e. state with larger population gets more seats in this house like California has 53 members.

4.2 Senate:

The members of Senate are elected by the state legislatures. Each state has two senators meaning that each state has two votes in senate. These senators are elected for a period of six years on parity basis. The total number of senators is 100 as the total states are 50.

5. Separation of Powers:

The doctrine of separation of powers divides power between the three pillars/institutions of government to prevent interference of one institution in the affairs of another. The powers are divided among Congress, President and the Judiciary.

Congress has the power to make laws which outline general policies and set certain standards. ***President*** can enforce, execute and administer law. He is assisted by his cabinet but is **solely** responsible for all actions of Executive branch.***Judicial Powers*** are exercised by the Supreme Court which interprets laws and decided cases and controversies in conformity with the law and by the methods prescribed by law.

6. Checks & Balances:

The system of Checks and Balances laid down by the separation of powers prevents misuse of powers. The powers are provided in such a way that it provides a check upon other institutions.

Examples:

a) President can veto a bill passed by the Congress. The congress can pass legislation over president's veto by two third majority.

b) President has the power to appoint judges of the Supreme Court subject to approval of the Senate.

c) The constitution has vested the powers of ***"Judicial Review"*** in Supreme Court. Supreme Court can approve, reject or review any action taken by the President or laws made by the Congress as it did in ***Marbury vVs Madison*** Case.

All this creates a system which makes compromises necessary which is a sign of healthy democracy. It prevents the rise of dictators as well.

7. Federal System:

The U.S constitution provides for a federal system of government which means that powers are divided among centre/federal government and the states. According to Article 1, the federal government has jurisdiction over 18 matters and residuary powers are vested in states. States are autonomous bodies and centre cannot meddle in their affairs. In case of conflict, Supreme Court decides or settles the dispute.

8. Presidential System:

The constitution provides for a presidential form of government. Article 2 provides the powers, election and their matters related to president. President is elected for a term of 4 years and is not answerable to Congress but cannot dissolve Congress. He has a cabinet to assist him in running his executive powers.

9. Republicanism:

The constitution calls for a republican system with President as elected head of the state. The constitution derives its authority from the people and is supreme law of the land. Neither centre nor states can override it.

10. Bill of Rights:

The first ten amendments to the constitution are called "Bill of Rights". The BOR provides for the rights of a person's property, liberty, freedom of speech, press, religion and assembly.

11. Dual Citizenship:

The constitution provides for dual citizenship i.e citizen of United States and the state where one is domiciled. Britain and Pakistan provides for single citizenship.

12. System of Spoils:

When a president is elected, he does appointment of public offices. If in elections, President elected is of the opposition party, he dismisses the public office bearers and makes fresh appointments. Under this system, a civil servant appointed by one president on political consideration cannot retain his office when an opposition President secures victory in polls.

American Federalism
Past, Present and Future

by

Ellis Katz

Since its inception more than 200 years ago, American federalism has undergone tremendous change. Today, all governments—federal, state and local—play a greater role in the lives of their citizens. Expectations about what kind of services and rights people want from government have changed, and relations among the federal, state and local governments have become infinitely more complex. In this brief essay, Ellis Katz, professor of political science and a fellow of the Center for the Study of Federalism at Temple University, explores the origins and development of American federalism, its contemporary practice and problems, and the forces that seem to be moving it in new directions.

When the 13 North American colonies declared their independence from Great Britain on July 4, 1776, they recognized the need to coordinate their efforts in the war and to cooperate with each other generally. To these ends, they adopted the Articles of Confederation, a constitution which created a league of sovereign states which committed the states to cooperate with each other in military affairs, foreign policy and other important areas. The Articles were barely sufficient to hold the states together through the war against England and, at the successful conclusion of that war, fell apart completely as the states pursued their own interests rather than the national interest of the new United States.

The Origin and Development of American Federalism

To remedy the defects of the Articles (or, in the words of the Constitution of 1787, "to create a more perfect union"), George Washington, Alexander Hamilton, James Madison, and other nationalist leaders called upon the states to send delegates to a constitutional convention to meet in the city of Philadelphia in May 1787. It was, of course, that convention that produced the Constitution of the United States.

The framers of the Constitution rejected both confederal and unitary models of government. Instead, they based the new American government on an entirely new theory: federalism. In a confederation, the member states make up the union. Sovereignty remains with the states and individuals are citizens of their respective states, not of the national government. In a unitary system, on the other hand, the national government is sovereign and the states, if they exist at all, are mere administrative arms of the central government. In the American federal system, the people retain their basic sovereignty and they delegate some powers to the national government and reserve other powers for the states. Individuals are citizens of both the general government and their respective states.

This brief history is important for two reasons. First, the American federal system is not simply a decentralized hierarchy. The states are not administrative units that exist only to implement policies made by some central government. The states are fully functioning constitutional polities in their own right, empowered by the American people to make a wide range of policies for their own citizens.

Second, the framers expected that the states would be the principal policymakers in the federal system. The powers granted to the federal government are relatively few in number and deal mainly with foreign and military affairs and national economic issues, such as the free flow of commerce across state lines. Most domestic policy issues were left to the states to resolve in keeping with their own histories, needs and cultures.

The first 75 years of American development (1790–1865) were marked by constitutional and political conflicts about the nature of American federalism. Almost immediately George Washington, Alexander Hamilton, John Marshall and their Federalist colleagues argued for an expansive interpretation of federal authority, while Thomas Jefferson, James Madison, Spencer Roane and their partisan allies maintained that the American union was little more than a confederation in which power and sovereignty remained with the states. By the 1850s, the debate focused on whether slavery was a matter for national or state policy.

The American Civil War (1860–1865) did much to resolve these federalism questions. The northern victory and the subsequent adoption of the 13th, 14th and 15th amendments to the Constitution ended slavery, defined national citizenship, limited the power of the states in the areas of civil rights and liberties, and, generally, established the supremacy of the national Constitution and laws over the states. Federalism issues continued, of course, and during the first third of this century, the U.S. Supreme Court often cited federalism considerations to limit federal authority over the economy. Two

developments, however, led to the expansion of federal authority, and, according to some critics, brought about an imbalance in American federalism.

First, under the New Deal programs of President Franklin D. Roosevelt, the functions of the federal government expanded enormously. It was the New Deal that gave rise to Social Security, unemployment compensation, federal welfare programs, price stabilization programs in industry and agriculture, and collective bargaining for labor unions. Many of these programs, while funded by the federal government, were administered by the states, giving rise to the federal grant-in-aid system. The U.S. Supreme Court legitimated this expanded federal role, and since 1937 has pretty much allowed the national government to define the reach of its authority for itself.

Second, during the 1950s and 1960s, the national government came to be viewed as the principal promoter and defender of civil rights and liberties. In a series of very important decisions, the U.S. Supreme Court struck down state-supported racial segregation, state laws that discriminated against women, and state criminal proceedings that violated the due process of law provision of the 14th Amendment. Thus, people looked to the institutions of the national government (especially to the U.S. Supreme Court) to defend them against their own state governments.

These two developments required a reconceptualization of federalism. Until the New Deal, the prevailing concept of federalism was "dual federalism," a system in which the national government and the states have totally separate sets of responsibilities. Thus foreign affairs and national defense were the business of the federal government alone, while education and family law were matters for the states exclusively. The New Deal broke this artificial distinction and gave rise to the notion of "cooperative federalism," a system by which the national and state governments may cooperate with each other to deal with a wide range of social and economic problems.

Cooperative federalism characterized American intergovernmental relations through the 1950s and into the 1960s. The principal tool of cooperative federalism was the grant-in-aid, a system by which the federal government uses its greater financial resources to give money to the states to pursue mutually agreed-upon goals. The building of the interstate highway system in the United States during the 1950s and 1960s is usually cited as an example of cooperative federalism working at its best. The federal government provided up to 90 percent of the cost of highway construction, gave technical assistance to the states in building the highways, and, generally, set standards for the new roads. The highways were actually built and maintained by the states.

Three points about this sort of cooperative federalism need to be made clear. First, the federal government and the states agreed on the goals; both wanted the roads built. Second, only the federal government and the states were involved in the programs. Cities and other units of local government were not full partners in the cooperative federalism of the 1950s and early 1960s. Third, the grant-in-aid programs affected only a small number of policy areas; most of the funding went for highways, airport construction, and hous-

ing and urban development. As late as 1963, the total funding for all federal grants-in-aid was only about $9 thousand-million.

But this sort of cooperative federalism ended by the mid-1960s. Under President Lyndon B. Johnson's Great Society, the federal government sometimes enacted grant-in-aid programs in which the states had little interest, or to which they were actively opposed. Second, federal funds were now often given directly to units of local government—counties, cities, small towns, and school and other special districts. Third, while previous grant-in-aid programs were limited to a few areas on which the federal government and the states agreed, the Great Society reached almost every policy area—education, police and fire protection, historic preservation, public libraries, infant health care, urban renewal, public parks and recreation, sewage and water systems and public transit.

The consequence of all this was two-fold. First, the number of players in the intergovernmental system increased tremendously, from 51 (the states and the federal government) to the 80,000 or so units of local government that existed at the time. Second, federal grants-in-aid, which affected only a few policy areas previously, now affected almost all areas of public life. This led to a number of managerial and political problems (coordination, accountability, priorities, micromanagement, etc.) that political scientist David Walker has summed up with the phrase "the hyperintergovernmentalization" of American public policy.

President Richard M. Nixon tried to fix all of this by the consolidation of small categorical grant programs into larger bloc grant programs in which the states would have more discretion. By and large, however, his efforts failed. By the time he left office, there were more grant programs (over 600) than when he started. The presidency of Ronald Reagan seemed to promise a solution. While Reagan supported many of Nixon's proposed solutions, his real impact was on federal spending, which has caused Americans to re-think not only federalism, but the role of government itself.

Wanting a smaller role for government, especially for the federal government, Reagan successfully fought for increased defense spending, tax cuts and increased (or at least maintained) levels of Social Security payments. The result was that there was less and less money available for federal domestic grant-in-aid programs. While federal grant-in-aid spending crept upwards during the Bush administration, and has remained fairly stable during the Clinton administration (over $225 thousand-million in 1996), Reagan's strategy, by and large, has worked—although it has created a new set of problems for state and local government.

American Federalism Today and Tomorrow

American federalism was never merely a set of static institutional arrangements, frozen in time by the U.S. Constitution. Rather, American federalism is a dynamic, multi-dimensional process that has economic, administrative, and political aspects as well as constitutional ones. This is perhaps more true today than it ever has been. Let me suggest six crucial

issues that Americans face today:

Unfunded Mandates. With the shortage of federal money to support federal priorities, Congress, using its constitutional authority to "regulate commerce among the states," imposed direct regulations upon the states. Since these regulations require the states to act but do not provide any funding to finance these activities, they are called "unfunded mandates." Many of these regulations deal with environmental protection, historic preservation and the protection of individual rights, but they all carry with them substantial costs to the states. The states rebelled against these federal requirements and, in response, Congress enacted the Unfunded Mandates Act of 1995, which (with certain threshold requirements) prohibits the federal government from placing new requirements on state and local government without providing the necessary funding. It remains to be seen whether this law will effectively limit the range of federal activity, especially given how broadly the U.S. Supreme Court has interpreted Congress' authority.

Constitutional Issues. Since 1937, the U.S. Supreme Court has interpreted Congress' power to spend money for the general welfare and its authority to regulate commerce among the states so broadly that the national government can reach almost any economic, social, or even cultural activity it wishes. Thus, national laws reach such traditionally local matters as crime, fire protection, land use, education, and even marriage and divorce. In its 1995 decision in *United States v. Lopez*, however, the Court unexpectedly held that the national government had exceeded its constitutional authority by enacting a law prohibiting the possession of hand guns near public school buildings. The Court held that the federal government had not demonstrated any connection between the possession of guns near school buildings and Congress' power to regulate interstate commerce. It was the first time in 60 years that the Court had seriously questioned a congressional exercise of its commerce power. At this time, we do not know whether the Court's *Lopez* decision will simply be the exception to an otherwise unrestrained expansion of the constitutional authority of the federal government, or the beginning of a new jurisprudence which seeks to restore limits on federal authority.

Public Finance. If more policymaking and implementation responsibility is left to state and local governments, then it is likely that we will encounter a mismatch between program responsibility and fiscal capacity. During the late 1960s and early 1970s, cities received very substantial federal funding to implement the Great Society social programs. While federal funding has slowed, and in some cases even stopped, citizen demand for programs continues and even grows. Cities and other units of local government still provide such traditional services as public education, trash disposal, crime and fire protection, and street repair and maintenance. In addition, they must satisfy largely unfunded federal and state mandates in such areas as environmental protection, race and gender-equal opportunity programs, education of the handicapped, and land-use planning. Increasingly, the demand for local services grows while the capacity to support them diminishes. This dilemma has forced local governments to become much more innovative

in how such services are provided.

Reinventing Government. Caught in this dilemma of rising expectations and decreasing financial capacity, local governments have been forced to "reinvent" the way they deliver and finance services. Reinvention takes many forms. Cities across the country have experimented with greater administrative decentralization, entering into markets and competing with private service providers, redefining clients as customers and attempting to hold government agencies accountable to them. Perhaps most interesting of all, privatization has taken many forms, ranging from contracting with private firms to providing meal service at a public school, to turning over waste disposal or even the operation of an entire prison to a private agency. In addition, cities have been forced to become less dependent on both federal aid and local property taxes and have turned to charging realistic fees for services. Creative financing and ways of delivering services appear to result in substantial cost savings with no decline in quality. It is early in the process, however, and we will need to wait to fully evaluate the full impact of "reinventing government" on public life.

International Trade. There is also a new international dimension to American federalism. Agreements such as GATT and NAFTA will have a profound impact upon federalism. Most observers suggest that the authority of the states will be further eroded as state policies on such matters as economic development, environmental protection and professional licensing will be subject to the terms of these international agreements, as well as to the strictures of the U.S. Constitution. These observers are right, but there is another aspect to these international agreements that might enhance state authority. Under NAFTA, for example, the American states are guaranteed at least a consultative role in implementing the agreement. It will be interesting to see how the states that make up the American, Canadian and Mexican federations will be affected by this emerging "federation of federations."

The States as Laboratories. Many years ago, U.S. Supreme Court Justice Louis D. Brandeis wrote that the states were "social laboratories" in which we could experiment with a variety of solutions to social and economic problems without putting the whole nation at risk. This view of federalism is more true today than ever before. If the United States is to develop innovative and effective solutions to such problems as crime, education, welfare and urban blight, they will be forged by state governments working hand-in-hand with their local communities.

How effectively we Americans meet these challenges and use these opportunities will shape the future of American federalism.

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PARTY SYSTEM IN USA

Features of the Party system

One of the most significant features of the American political parties is their decentralization. Although the Republican and the Democratic parties are two national parties, much of the power in the party system is concentrated in the State capitals and rooted organizationally in the country and municipal levels. Apart from the selection of Presidential and Vice-Presidential nominees and the preparation of national platforms, the Party's central agencies are virtually powerless. Control remains with State and local leadership in conducting the campaign and in deciding upon candidates for office. "A sense of discipline to higher authority is almost unknown, and, if pressed, doubtless would be met by indignation and resistance on the part of the local units concerned."[5] Professor Key says that the national party is little more than "gathering of sovereigns (or their emissaries) to negotiate and treat with each other."[6]

There is, however, evidence of a counter-trend in the direction of a greater concentration of power and this is essentially due to the centripetal tendencies of a modern government. This is a universal phenomenon and American party system cannot escape therefrom. For example, the Presidential party increasingly has come to be identified as national in outlook no matter whether the occupant of the White House is a Republicon or a Democrat. On the other hand, localism still remains strong in the Congressional party. The result is a wide gap between the President and Congress in the formulation of policy. But the reality is otherwise. The two wings of the party are not so sharply divided due to the "nationalisation" of politics and if this process continues the sectionalism is sure to disappear from the American party system.

Another important characteristic of the American parties is their reluctance to become tied to any rigid ideological doctrine. The party division is rather blurred and no distinct line of demarcation can be drawn to separate their programmes. Agriculture is not now the predominant occupation of the Americans, and the greater part of the annual wealth does not come from the soil. Large sections of the Middle West and the South, once the strongholds of agrarian democracy, have become industrialised and there is a corresponding change in the attitude of the people. Their needs have also changed and so they look towards government with changed spectacles. Then, the interests of industry, trade and agriculture overlap and dovetail in many ways. There can be no divorce between them. Within industry itself there is a sharp difference and different points of views are put forward to remedy their disabilities. For example, automobile and allied industries are not inclined to protective tariffs; investors of capital abroad and bankers favour low tariffs.

These complexities in the economic life of the country have made the Democrats to shift to new grounds. They have abandoned their old slogan to "tariff for revenue only" and stand for protection, if somewhat modified by reciprocal trade agreements. The Republicans, too, extend considerable support to this programme. The result is, as Professor Beard says, "that the cleavage between the right and left wings of each is greater than the gulf between the parties themselves, especially in the Senate where agrarian states have a disproportionate weight."[7]

James Bryce, after a deep study of the American system, observed that these two great parties were like two bottles. Each bore a label denoting the kind of liquor it contained, but both were empty. It is not true, according to Beard, "that the two parties are exactly identical except as to their labels."[8] There are two important facts to be observed in this connection. The first is, loyalty to tradition which makes the strongholds of both the parties to continue in their support to the parties concerned. Secondly, the old sentiments and opinions still determine the attitude of different interests and characterise the divisions among the voters. This can be illustrated by a sample poll taken by the American Institute of Public Opinion and cited by Professor Charles Beard. According to this sample poll the Democratic candidate, President Roosevelt, "received 28 per cent of the votes in the upper income group of citizens, 53 per cent in the middle income group, and 69 per cent in the lower income group, while his Republican opponent, Wendell Wilkie, received 72 per cent of the votes in the upper group, 47 per cent in the middle group, and 31 per cent in the lower group." A similar poll was again taken in 1943 and identical results were obtained, except for some minor changes in the percentages.

To sum up, the major parties in the United States are deep rooted in capitalism. The only difference between the two is that the Republicans think that the more government leaves capitalism alone the more it flourishes. The Democrats maintain that unless capitalism is constantly adjusted to social, technological and economic changes, it may perish of its own inflexibility. In international politics the Democrats play the "strange role of the party of nationalism, strong armies and navies, international intervention and war leaving to the Republicans—at any rate for the time being—the less glamorous and rather unfamiliar role of advocating caution, restraint and even isolationism." But Reagan and George Bush disproved it.

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Supreme Court

At the apex is the Supreme Court and it is the creation of the Constitution and specifically mentioned in Article Three, Section one. It was first organised under the Judiciary Act of 1789 with the Chief Justice and five associate Justices. Its membership has, however, varied and the present strength of a Chief Justice and eight associated Justices was fixed in 1869 where it has remained ever since.[4] The Court held its first two terms in Wall Street in New York City. Its next two terms were held at Philadelphia and thereafter it met at Washington.

Justices of the Supreme Court are appointed by the President with the advice and consent of the Senate. The Constitution does not prescribe any qualifications hence the President may appoint anyone for whom Senatorial confirmation can be obtained. Terms of Federal Judges are for life or during good behaviour and they are removable by impeachment only. After reaching the age of seventy they may retire or resign and receive full salary, provided they have served for ten years or more. Or they may retire at sixty-five with fifteen years of service, at full pay. If they retire, and not resign, they are still Federal Judges and can be given an assignment.[5] Their salaries are fixed by an Act of Congress, and while they can be raised at any time no dimunition can be made during the tenure of office of any judge.

The jurisdiction of the Supreme Court is both original and appellate. The original jurisdiction, however, is extremely limited and an average of only four or five cases come before the court each year for original trial. The Constitution opens the court to such trials when (1) a foreign ambassador, minister or consul, or (2) one of the States is a party. This jurisdiction of the Supreme Court is the grant of the Constitution itself and the Supreme Court has decided, in the famous *Marbury* v. *Madison* that Congress can neither increase nor reduce the jurisdiction of the court in this respect. Legislative action, however, has granted concurrent trial power to the District Courts in some of these cases. Under the present Judicial Code the following original cases must be brought to the Supreme Court: (1) cases against foreign ambassadors and ministers and (2) cases between one of the States and the United States, a foreign State or another one of the States.

In all other cases the Supreme Court has appellate jurisdiction both as to law and facts "with such exceptions and under such regulations as Congress shall make." In accordance with this provision, Congress has defined in detail the appellate jurisdiction of the Supreme Court. At present, cases come to it from State Courts, Federal Courts of Appeal and in a few instances, Federal District Courts. The expectation is that the Supreme Court should not devote its time "upon mere settlement of law suits in the manner of an ordinary law court, but rather upon constitutional interpretation and policy, especially in economic and social fields, appeals lacking in this higher interest are likely to encounter no very warm reception."[6]

There are, thus, two general sources from which cases may reach the Supreme Court on appeal:

(a) Cases from the highest State Courts where a federal question is presented, namely, when the State Court has held that a federal law, treaty, or executive action violates the Constitution of the United States or has held that the law enacted by the State or the State action is valid under the Constitution and when that finding of the State Court is challenged. The power of the Supreme Court to review laws is based upon the constitutional provision that the laws made by Congress and treaties concluded by the Federal Government are supreme law of the land and, consequently, supersede the Constitutions and laws enacted by the State Legislatures. Some of the Court's greatest decisions have been rendered in such cases, where an appeal has been taken to it when a State Court has denied a claim based upon an alleged federal right.

(b) Cases from the lower Federal Courts, chiefly from the Courts of Appeal. But the cases coming to the Supreme Court on this count are insignificant, only one in thirty cases, since final determination had been vested by law in these courts in many types of cases between private individuals. But when a litigant claims that a constitutional right has been denied to him, it is a case for the Supreme Court.

Two special proceedings may, also, be noted. The Supreme Court may require a Court of Appeal to transmit a case to it, either before or after decision, when, on a petition of a party to the suit, the Court concludes that the case is of such significance as to make decision by the highest court desirable. A Court of Appeal may also take the initiative of certifying to the Supreme Court questions or propositions of law involved in a case that it requires instructions from a superior court to enable it to make a proper decision. The Supreme Court may, on such a reference, merely answer the question or it may require that the whole case be submitted to it for final decision.

Cases in a few instances may go directly from a District Court to the Supreme Court. If a District Court holds a Federal law to be unconstitutional in a case in which the United States is a party or in a case between two private parties in which the United States has been made a "party by intervention" direct appeal goes to the Supreme Court. The Judiciary Act of 1937 permits such direct appeals to the Supreme Court. An occasional case also goes up from one of the special courts.

The Supreme Court meets on the second Monday in October for a session which generally extends through

to June. Special session may be called by the Chief Justice when the Court is adjourned, but the occasion must be of unusual urgency and importance.[7] Six Justices constitute a quorum no matter whether the Chief Justice is present or not. When a case has been argued, the court holds a conference where the Justices discuss their views and, then, vote. The Chief Justice usually states his opinion first and other Justices follow him in order of their seniority. The meeting culminates with a vote conducted by the Chief Justice who calls upon his associates in reverse order according to the dates of their commission and himself voting last. If the Chief Justice belongs to the majority opinion, he may request one of his associates to prepare the opinion of the Court, or he may prepare it himself, after which it is scrutinised by the Court at a second conference and approved. Any member of the Court who disagrees with the majority may file a dissenting opinion, a right frequently taken advantage of. The concurrence of at least five of the ni e Judges is necessary to the validity of a decision[8] and, as a matter of fact, many important decisions have been rendered by a bare majority of the Court, that is 5 to 4.

Federal Courts of Appeal

Next below the Supreme Court are Federal Courts of Appeal, known before 1948 as the Circuit Courts of Appeal, 12 in all, one for each of the eleven judicial circuits in which the United States is divided and an additional one for the District of Columbia created in 1948. These Courts were created in 1891 to relieve the overburdened Supreme Court of a great deal of its appellate jurisdiction by making many decrees and judgments of the Circuit Courts final. The Chief Justice is assigned by law to the Federal Court of Appeal of the District of Columbia. The eight associate Justices are distributed by assignment among the other circuits. Six of them are assigned to one district and each of the remaining two are assigned to other districts. The requirement of the original Judiciary Act that Justices of the Supreme Court travel on circuit has been repealed and they now only rarely if ever choose to do so. A Court of Appeal must have at least three Judges, two of whom are necessary for a quorum. The number of Judges in each circuit varies from three to nine. Appeal Judges are appointed by President with the advice and consent of the Senate for terms of good behaviour.

The Federal Courts of Appeal have essentially appellate jurisdiction, that is, they hear and determine only cases appealed from the lower courts, and their decisions are final in most cases except where the law provides for a direct review by the Supreme Court. This relieves the Supreme Court of all but the most important cases and enables it to dispatch its business more promptly. Federal Courts of Appeal also review and enforce orders of the Legislative Court, and quasi-judicial boards and commissions. The Supreme Court may call up from a Federal Court any case on a writ of *certiorari* involving an important constitutional or legal point.

District Courts

The lowest grade of Federal Courts is the District Court, ninety-four in number. In some cases a State constitutes one district in other cases a State is divided into two or three districts. Districts have from one to twenty-four judges; in a few instances one judge serves two or more districts. The judges are appointed by the President with the approval of the Senate for terms of good behaviour.

Excepting the few cases which originate in the Supreme Court, and those of special character that commence in the Legislative Courts, most other cases, civil and criminal, under the laws of the United States, start in District Courts. Their jurisdiction is original and no case comes to them on appeal, although cases begun in State Courts are occasionally transferred to them. Ordinarily, cases are tried with one judge presiding. Since 1937, three judges must sit in most cases involving the constitutionality of federal statutes. Appeals in such cases may be taken directly to the Supreme Court and it was a part of President Roosevelt's proposal to reorganise the Federal Courts. Otherwise, appeals as a rule, go first to the appropriate Court of Appeal.

The jurisdiction of the Federal Judiciary may thus be summed up:

SUPREME COURT

Original Jurisdiction:

1. Action by the United States against a State.
2. Action by a State against a state.
3. Cases involving ambassadors and other public ministers.
4. Action by a State agains citizen of another State or aliens (jurisdiction is not exclusive).

Appellate Jurisdiction:

1. From lower Federal Courts.
2. From state Courts when a 'federal question' is involved.

11 COURTS OF APPEAL

Appellate Jurisdiction only:

1. From certain District Courts.
2. From certain Legislative Courts.
3. From certain great commissions, such as, Securities and Exchange Commission.

89 DISTRICT COURTS:

Original Jurisdiction:

1. Over cases of crimes against the United States.
2. Over civil actions by the United States against an individual.
3. Over cases involving citizens of different States.
4. Over actions by a state against an alien or citizen of another state
5. Over cases of admiralty and maritime jurisdiction.
6. Over such other cases as Congress may validly prescribe.

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Powers & functions of the US President

* The Powers of the President may broadly be divided into :- ① Executive Powers ② Legislative Powers ③ As a national leader.

* Executive Powers may further be divided into -
  (i) Supervision over the administrative agencies.
  (ii) enforcement of laws.
  (iii) to make appointments & removals.
  (iv) granting of pardons.
  (v) to conduct diplomatic relations & negotiate treaties.
  (vi) to act as commander-in-chief of the Armed force
  (vii) to act in emergencies.

1. Executive Powers :-

i) **President as chief Administrator** — As the head of the national administration & chief executive it is the duty of the President to see that the constitution, laws & treaties are duly enforced throughout the country. He directs the Head of the Depts & their subordinates in the discharge of their functions vested in them by Congress. Some depts are placed by law under his direct control. He has also the power to remove the head of the Dept. who refuses to obey his orders.

ii) **Powers of Law Enforcement** — As law enforcement official for the nation his responsibility is not limited to the execution of the specific

provisions of the Congressional statutes. It also includes the duty of protecting the whole constitutional system of govt., guarding it against attack from any source & ensuring to all citizens protection against rebellion or other danger to the rights.

iii) Power of Appointment — The constitution gives the President the power to nominate & by & with the advice & consent of the Senate to appoint ambassadors, other public ministers, consuls, judges of the Supreme Court & all other officers of the US. Appointment to the Superior federal services fall under two groups: a) Officers whose appointment is entrusted by the constitution or Congress to the President & Senate e.g. heads of the Dept-s, judges, diplomats, Marshalls etc. b) Inferior officers whose appointments are vested in the President alone by the Congress e.g. bureau chiefs, subordinate officials etc.

Power of Removal — The president can remove the superior official in consultation with the Senate & can remove the inferior officials solely.

iv) Power Of Pardon — The constitution authorises the President to grant reprieves & pardons for offences against the US.

v) Military Power – The President is the Commander-in-chief of the Army, Navy & the state militia. He has the power to appoint & dismiss military & naval officers with the consent of the Senate. The Power to declare war belongs to Congress though the President through the conduct of foreign affairs may bring about the situation when war may become a virtual necessity. During War there is tremendous enhancement of President's power both as executive & as Commander-in-chief.

vi) Conduct of Foreign Affairs :— The president appoints ambassadors & other public ministers with the consent of the senate. He negotiates & concludes treaties with foreign govt.s subject to the ratification of $\frac{2}{3}$ majority of the Senate. He also receives ambassadors from foreign countries.

vii) Emergency ——— The congress authorises the President to determine whether there is an emergency. In times of emergency the powers of the President over the nation extend a lot although the constitution of the US does not specially provide for any kind of emergency.

2. Legislative Powers :-

i) Presidential Messages :- The President may send messages to the Congress on a vast scale of public problems. They indicate the need of the govt. & the necessity for an appropriate legislation. Often these messages are accompanied by detailed drafts of legislation.

ii) Power to call the session — The President is empowered to call extraordinary sessions of the Congress for consideration of urgent special matters & also in case of disagreement between them. He is also given the power of adjournment in case of disagreement between the two Houses.

iii) Budget — The Budget & Accounting Act, 1921 vests in the President the sole responsibility for requesting the grant of funds by Congress & empowers him to assemble, correlate, revise, reduce or increase the estimates of several Depts & Establishments.

iv) Power to issue Ordinances — The issuing of ordinances or 'executive Orders' has now become an important part of President's legislative powers.

v) Veto Powers — Finally the President is given an important share in legislation through his veto power. The constitution requires that all Bills must be submitted to the President before becoming law. If he approves, he appends his signatures thereto & it is promulgated as law. If he disapproves, he returns it to the House in which it originated with his objection within ten days. Congress by a $\frac{2}{3}$ vote in each chamber may then pass it over his veto. If the President fails to sign or veto the Bill within ten days it becomes law without his signature. If congress adjourns within ten days after the President receives the Bill & he takes no action, the Bill is automatically killed. This is known as 'Pocket veto.'

3. The President as National Leader

a) A Party leader - The position of the President as the political leader of the Party is as much a source of his power as the authority which the Constitution confers upon him.

b) Voice of the People — The president is the voice of the people, The leading formulator & expounder of public opinion. While he acts as a political leader, he serves as a moral spokesman for all.

e) Head of the State — As the head of the state the President serves American people as a symbol of unity, a magnet of loyalty. His dignified role & national responsibilities combine to make him a powerful chief of the state representing the whole nation.
