With a power imbalance towards states’ rights, a confederated government is created. On the other hand, with a power imbalance towards federal rights, a unitary government is created. Each form of government remains in effect today across the world. Although both seem simpler individually, a complicated combination of both is favored by the United States and many other countries. Thus, it is important to analyze it’s benefits and costs in the policymaking process. The role of federalism in the United States is to provide a multi-staged environment for collaborative and competitive policymaking which yields policy solutions most representative of the United States population. In the case of civil rights discussions, such as the one involving marriage, the policy result is federal support of the most dominant position to ensure uniform equality. Other issue areas, like economic policy, are highly dependent upon demographics and, therefore, the policy result is more targeted.

An important first step in discussing the complex subject of federalism is to first define it in the scope of the United States. Originally, as described in the Federalist Papers, the goal was to emulate dual sovereignty between a state government and a federal government (Peterson 1995). These two governments were enacted to create a “double security” that protects citizens’ rights. An important component was that, “the different governments will control each other, at the same time that each will be controlled by itself” (Hamilton 1788). But this definition was set forth before the Civil War. The conclusion of the Civil War yielded a lethal blow to dual sovereignty. Nonetheless, there remain two components that are essential to upholding contemporary federalism. First, the citizens within each local, state, and federal district must be allowed to elect their own officials. Second, each level of government must be allowed to levy taxes on their residents to operate independently (Peterson 1995). These two components together form the federated system in place in the United States.

With this definition of a federated system in place, how does it yield a multi-staged competitive environment for policymaking? At each level of government—local, state, and federal—policy can be written and overruled through respective legislatures and court systems. However, the Supremacy Clause dictates a “top-down” resolution of laws such that federal laws supersede state laws which supersede local laws (U.S. Const. art. VI). As a result, the benefits of federalism in policymaking truly arise in areas where existing federal laws are ambiguous and thus their interpretation is left to the states or the people (U.S. Const. amend. X). Under this condition, states and local governments are free to independently develop legislation which most represents their residents’ interest. Often this process is messy as it cycles through periods of competing legislation and supreme court decisions. Furthermore, state decisions can induce neighboring states, and even the federal government, to form competing legislation.

This process is well-exemplified in the civil rights case of same-sex marriage. Let’s first consider the strategy of the opponents of same-sex marriage. After the first wind of rights for same-sex marriages, the bans start rolling in across the country. A notable characteristic of these bans is the method in which they were passed. They near-exclusively arrive in the form of state legislation. The first ban on same-sex marriage was passed in Maryland through traditional legislative means (Hagerty 2007). The subsequent bans enacted in approximately 18 more states several years later were also passed largely through state legislatures (Wolf 2015). A notable exception was the case of California where direct democracy was used to overrule a state supreme court strike down of a same-sex marriage ban through passing Proposition 8 (Cillizza 2013). While this was unfolding at the state level, the national scene played out similarly, but on a smaller scale. The most prominent national result against same-sex marriage came after Congress and Clinton passed the Defense of Marriage Act (DOMA) prohibiting federal benefits to same-sex couples (DOMA 1996). The strategy of opponents is clearly to capitalize on majority voter opinion through state and national legislation and direct democracy.

Now let’s consider the strategy of the proponents of same-sex marriage. While opponents were turning toward the traditional policy methods of legislation and direct democracy, proponents of same-sex marriage were turning to a relatively new method of policymaking: court rulings. The first milestone in favor of same-sex marriage came through a state supreme court ruling in Hawaii (*Baehr v. Miike* 1999). Several subsequent states also uphold same-sex marriage through court rulings appealing to unconstitutionality. Furthermore, legislative bans passed by the opponents of same-sex marriage are constantly being overturned by state supreme courts across the country (Wolf 2015). An important example takes place in California. Proposition 8 passed by direct democracy which bans same-sex marriage is overturned by California Supreme Court (Cillizza 2013). The case then makes its way to the federal court system eventually reaching the Supreme Court where the ruling in favor of same-sex marriage is upheld and a key section of DOMA is deemed unconstitutional (*United States v. Windsor* 2013). This causes a slew of United States District Court and Appeals Court rulings overturning same-sex marriage bans across the country (Wolf 2015). Hence, the strategy of proponents is to circumvent majority opinion through forward-thinking court rulings.

In retrospect, both opponents and proponents of same-sex marriage were extremely successful in promoting their views. Opponents started small and focused on conservative states most likely to pass preemptive bans on same-sex marriage. The success of their campaign caught the attention of Congress and led to national legislative support in the form of DOMA. In their view, the majority opinion was being accurately depicted through representative democracy at all federated levels. Proponents, on the other hand, also started small and focused on the riskier tactic of court-based policy on a state-by-state basis. By targeting liberal states with a supermajority requirement for constitutional amendments, their ideologies were likely to be favored and difficult to overturn once recognized by the courts. Yet, if their views were not recognized, they would suffer the detrimental consequences of a contrary court ruling. However, their agenda was often upheld by the courts and their cases eventually reached the Supreme Court where their view was deemed the law of the land in the case *Obergefell v. Hodges* (2015). In the end, many competing policy efforts were developed and experimented with across the states. Through all this, the proponents’ policy proved dominant and resulted in national recognition.

The strategies employed by the competing parties on same-sex marriage targeted representation of different population groups. The opponents of same-sex marriage relied heavily on state and national legislatures and direct democracy. By going this route, they were recognizing that the voting majority opinion was on their side at the time (Pew 2016). As a result, representative democracy would side with them simply by sheer numbers. This also applies to direct democracy, where applicable. The proponents of same-sex marriage also realized this and constructed their tactic upon state and national supreme court rulings. Although much riskier if gone wrong, the United States court system has historically proven to uphold minority views especially on the grounds of civil rights (Peterson 1995). In this case, the views of the minority were deemed most important and required uniform protection across the nation.

The positives and negatives of federalism are highlighted throughout this case study. One significant positive is the ability to appeal to local opinions through state decisions across a very uneven demographic. This process allows greatest support for varying viewpoints and even creates an environment where different ideals can be trialed. While this is often a positive, it can sometimes become a negative. As seen in the case of same-sex marriage, the initial demographic was largely opposed to same-sex marriage. As such, most states employed bans on the practice. However, some states deemed same-sex marriage a fundamental right of citizens through court cases. Once this was determined by one state, the question changes tones. It is no longer about majority opinion, but what is *right*. As we learned from the Civil War, the powers of local and state majorities can be used to crush the rights of the minority (Peterson 1995). Therefore, it becomes the duty of the federal government to uphold civil liberties uniformly across the population.

Although determining civil rights can corrupt the federated system, under many circumstances, this system remains superior. Consider the case of economic policy. With economic policy, unlike civil liberties, demographics play a significant role. Welfare stipends need to grow in urban areas and shrink in rural to reflection vastly different ratios of unemployed. A national-level policy on this issue would lead to some areas with welfare surplus and others with welfare deficit. Consider also minimum wage. In rural central Wisconsin, cost of living is substantially lower than urban San Francisco. A federally mandated, uniform minimum wage could lead to unemployment in one area and homelessness in another. In effect, economic policy depends on many relative factors while civil liberties are not. Federalism works well by incorporating these relative factors but fails to overlook them in favor of the greater good.

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