

AMERICAN FEDERALISM

- I. 1787 FEDERALISTS VS. ANTIFEDERALISTS debated the source of power between the national government and the states
 - a. In recent years, the national government has given states more freedom to act on issues such as health care and global warming
 - b. California's effort on environment shows how important local and state regulations and power can be.
- II. DEFINING FEDERALISM
 - a. DEFINITION – a form of government in which a constitution distributes authority and powers between a central government and smaller regional governments-usually called states, provinces, or republics
 - i. Federalism or federal system refers to the system of national and state governments; federal government is the national government in Washington DC
 - ii. What is important is the Constitution divides governmental powers between the national government and smaller regional governments (state and local).
 - iii. DUAL FEDERALISM- Constitution gives a limited list of powers- foreign policy and national defense- to national government, leaving the rest to sovereign states
 - iv. COOPERATIVE FEDERALISM- system of intergovernmental relationships and calls for cooperation among various levels of government.
 - v. MARBLE CAKE FEDERALISM – mixed set of responsibilities in which ALL levels of government are engaged in a variety of issues versus a layered approach

- vi. COMPETITIVE FEDERALISM – National, state and local governments are in competition with each other to deliver packages of services and taxes.
- vii. PERMISSIVE FEDERALISM – the states’ power is permitted by the national government
- viii. NEW FEDERALISM – power of the federal government is limited in favor of the broad powers reserved for states; Reagan, Scalia, Thomas, Rehnquist, O’Connor
- ix. CITIES ARE NOT SOVEREIGN ENTITIES!
- b. ALTERNATIVES TO FEDERALISM
 - i. UNITARY SYSTEMS- all power is in a central government
 - 1. China, France and Scandanavia
 - ii. CONFEDERATIONS- sovereign nations create a central government but totally limit its power and exists only for the regional governments
 - 1. 13 states prior to Constitution (Articles of Confederation)
 - 2. Southern states in Civil War
- c. WHY FEDERALISM?
 - i. Federalism checks the growth of tyranny. US associates federalism with freedom; no one unit holds the power
 - ii. Federalism allows unity without uniformity. Conflicts (abortion, gun control) can be argued at the lower level governments; not all on a national level.
 - iii. Federalism encourages experimentation. “laboratories of democracy.” Massachusetts’ health care law before national law.
 - iv. Federalism provides training for National Offices. Training ground with local politicians before taking the national stage.

- v. Federalism creates opportunities for future national candidates.
- vi. Federalism keeps government closer to the people.

III. THE CONSTITUTIONAL STRUCTURE OF AMERICAN FEDERALISM

a. POWERS OF THE NATIONAL GOVERNMENT

- i. DELEGATED POWERS- powers explicitly given to the national government and listed in the Constitution
 - 1. Legislative, Executive and Judicial powers
 - 2. Regulate interstate commerce and appropriate funds
- ii. IMPLIED POWERS – powers that allow Congress to carry out its functions
 - 1. Power to create banks
 - 2. The constitutional basis for implied powers is the NECESSARY AND PROPER CLAUSE (Article 1, Section 8, Clause 3)
- iii. EXPRESS POWERS – Powers that the Constitution specifically grants to one of the branches of government
- iv. INHERENT POWERS – Foreign affairs; the national government inherently is the only power that can deal with foreign entities
- v. Review table 3-1 on page 70
- vi. The express, implied and inherent powers allow a flexible system that allows the federal government to expand central powers to meet needs
 - 1. Rests on 4 Constitutional pillars:
- vii. THE NATIONAL SUPREMECY ARTICLE: Article VI dictates that the laws of the US will be the supreme law of the land and that the states cannot override federal law

- viii. **THE WAR POWER:** The **FEDERAL** government is responsible for protecting the nation from external aggression
- ix. **THE POWER TO REGULATE INTERSTATE AND FOREIGN COMMERCE: THE COMMERCE CLAUSE** (Article 1, Section 8, Clause 1); packs a tremendous Constitutional punch; can be interpreted **VERY** broadly because few interactions occur outside this jurisdiction
 - 1. *Gibbons vs. Ogden* (1824) affirmed the broad authority of the **COMMERCE CLAUSE**
 - 2. Chief Justice Marshall asserted that national interests prevail and broadly defined interstate commerce
- x. **THE POWER TO TAX AND SPEND**
 - 1. Congress has the power to appropriate money via taxes and allows them to regulate what it cannot directly control by law
 - a. Education and agriculture
 - b. Congress determines how the money will be spent
 - c. Congress frequently requires states to do certain things called **FEDERAL MANDATES**; clean up air and water
- b. **POWERS OF THE STATES**
 - i. The states have **RESERVE POWERS** which are powers that are not granted to the national government
 - ii. The national and state governments at times share powers called **CONCURRENT POWERS**
 - 1. Levy taxes and regulate intrastate commerce
- c. **CONSTITUTIONAL LIMITS AND OBLIGATIONS**
 - i. States are prohibited from:
 - 1. Making treaties with foreign governments

2. Authorizing private persons to prey on shipping and commerce of other nations
 3. Coining money, issuing bills
 4. Taxing imports or exports
 5. Taxing foreign ships
 6. Keeping troops or ships of war in time of peace, except national guard
 7. Engaging in war
- ii. National government needs to refrain from interfering with states' rights and responsibilities
 - iii. The Supreme Court is the arbiter of disputes between the national and state governments
 - iv. The Constitution obliges the national government to protect states against DOMESTIC INSURRECTION

d. INTERSTATE RELATIONSHIPS

- i. FULL FAITH AND CREDIT: (Article IV, Section 1) requires state courts to enforce civil judgments of the courts or other states and accept their public records
- ii. INTERSTATE PRIVILEGES AND IMMUNITIES: (Article IV, Section 2); states must extend to citizens of OTHER states the same privileges and immunities they offer to their OWN citizens
- iii. EXTRADITION: (Article IV, Section 2); when citizens charged with crimes in one state flee to another state, the other state must deliver them to the proper officials of the originating state
- iv. INTERSTATE COMPACTS: requires states to settle conflicts without use of force; may negotiate interstate compacts or take to Supreme Court

IV. THE FEDERAL COURTS AND FEDERALISM:

Supreme Court is called upon to determine what level of government has jurisdiction

- a. MCCULLOCH VS. MARYLAND (1819)
 - i. 1st of many chances to define the division of national vs. state governments
 - ii. Justice Marshall sided with the national government in the establishment of a bank and created the doctrine of NATIONAL SUPREMACY from the IMPLIED powers of the Constitution
 - iii. Huge long-range significance of the power of the national government over the states
- b. FEDERAL COURTS AND THE ROLE OF THE STATES
 - i. 14TH Amendment (due process) limits the states in favor of the national government
 - ii. PREEMPTION occurs when a federal law or regulation takes precedence over state law
 - 1. Civil Rights Act of 1964 or Voting Rights Act of 1965 are examples
 - 2. Over the years, federal judges have favored national laws over state laws
- c. THE GREAT DEBATE: CENTRALISTS VS. DECENTRALISTS
 - i. CENTRALISTS: favor national action; DECENTRALISTS: favor state and local action
 - ii. THE DECENTRALIST POSITION: born out of STATES' RIGHTS and the Antifederalist movement
 - 1. Believe that the Constitution is a compact among sovereign states to create a limited central government
 - 2. Agent of the states
 - 3. National government should NOT interfere with activities reserved for the states
 - iii. THE CENTRALIST POSITION: Supreme Court has generally ruled in favor of centralist position

1. Reject the idea of the Constitution as a compact of states
 2. View it as supreme law established by the people
 3. Centralists argue that the national government is a government of ALL people vs. state which is only SOME people
- d. THE SUPREME COURT AND THE ROLE OF CONGRESS

- i. 1937-1990 the Supreme Court removed federal courts from their role of protecting states; that has changed in the recent decade
- ii. Recently more power to the states vs. federal
- iii. Most recently split along ideological lines (5-4) favoring states' rights

V. REGULATORY FEDERALISM

- a. Congress authorizes programs and appropriates funds for the programs via FEDERAL GRANTS- 4 purposes....
 - i. Supply state and local governments with revenue
 - ii. Establish minimum national standards such as highways and clean air
 - iii. Equalize resources among the states by taking from wealthy and giving to poor
 - iv. Attack national problems yet minimize growth of federal agencies
- b. TYPES OF FEDERAL GRANTS
 - i. CATEGORICAL-FORMULA GRANTS: funds for specific purposes that follow a specific formula; many on a matching basis
 1. School lunches or airports
 2. Medicaid is more than 1/2
 - ii. PROJECT GRANTS: allocated to state and local units based on application
 1. National Science Foundation

- iii. BLOCK GRANTS: broad grants to states for prescribed activities
 - 1. Welfare, preventative health care, health services
 - c. THE POLITICS OF FEDERAL GRANTS
 - i. Republicans favor less strings attached, where Democrats favor broader discretion
 - ii. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 put an end to Aid to Families of Dependent Children (guaranteed welfare check without constraints)
 - iii. Battle over how much federal aid is cyclical based on who is in power
 - d. FEDERAL MANDATES
 - i. Fewer dollars doesn't mean less control
 - ii. Unfunded Mandates Reform Act of 1995 tried to rein in mandates but has basically been unsuccessful
 - e. NEWER TECHNIQUES OF FEDERAL CONTROL
 - i. DIRECT ORDERS- states must comply under threat of criminal or civil sanction; Equal Employment Opportunity Act of 1972
 - ii. CROSS-CUTTING REQUIREMENTS – establishes certain conditions that must be met; federal funds can be withheld if not established
 - iii. CROSSOVER SANCTIONS- permit the use of federal money in one program to influence state and local policy in another; adopting the minimum drinking age of 21 for federal highway funds
 - iv. TOTAL AND PARTIAL PREEMPTION – allows national supremacy clause to preempt conflicting state and local activities
- VI. THE POLITICS OF FEDERALISM: new recent trends
 - a. THE GROWTH OF NATIONAL GOVERNMENT

- i. Power has accrued to the national government
 - ii. The natural growth of industrialization, technology and globalization has created the environment for a stronger national vs. state government
 - iii. Great Depression of 1930 focused on national solutions to economic problem
 - iv. Political claims such as federal spending initiated stronger national government
 - v. Very recently a push to more state and less federal programs; reducing the size of the federal government
- b. THE DEVOLUTION REVOLUTION
- i. Fallen short in the hoped-for return of state responsibilities
 - ii. Actually the national government's role has grown stronger over the past decade; terrorism and the national homeland security

VII. THE FUTURE OF FEDERALISM

- a. State governments are stronger than ever
- b. States are more aggressive in same-sex legislation and in economic and environmental legislation
- c. The terrorism and international wars have elevated the national governmental impact
- d. Most citizens have strong attachment to national government in abstract
 - i. Inside the beltway mentality
- e. Federalism can work if national isn't ready, individual states might be
- f. Federalism is a source of frustration in conflicting national and state agendas