FEDERALISM

Chapter 3

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American Government: Continuity and Change
Federalism

In this chapter we will cover...

1. The Roots of the Federal System
2. The Powers of Government in the Federal System
3. The Evolution and Development of Federalism
4. Federalism and the Supreme Court
Federalism

is a political system in which power is divided and shared between the national/central government and the states (regional units) in order to limit the power of government.
Figure 3.2 The Federal, Confederation, and Unitary Systems of Government

**Federal System**
Federal government and states derive authority from the people.

**Unitary System**
Local and regional governments derive authority from the central government.

**Confederation**
Central government derives authority from states.
Figure 3.1  Number of Governments in the U.S. in 1997

U.S. government
State governments
Local governments
  County
  Municipal (city)
  Townships
  School districts
  Special districts

TOTAL

1
50
87,453
3,043
19,372
16,629
13,726
36,683
87,504

(Special District)

- Deal with policy areas such as water, soil conservation, waste disposal.
- Coordinate efforts of independent municipal governments.
- A Board with members from each municipality typically governs these special districts (Patterson 583).
The Roots of the Federal System

• The Framers worked to create a political system that was halfway between the failed confederation of the Articles of Confederation and the tyrannical unitary system of Great Britain.

• The three major arguments for federalism are:
  1. the prevention of tyranny;
  2. the provision for increased participation in politics;
  3. and the use of the states as testing grounds or laboratories for new policies and programs.
The Powers of Government in the Federal System

The distribution of powers in the federal system consists of several parts:

– exclusive powers
– shared powers or concurrent powers
– denied powers
– enumerated powers
– and implied powers.
Article I, section 8

The enumerated powers of the central government consist of the power to:

• lay and collect taxes, duties, and imposts
• provide for the common defense and general welfare of the United States
• regulate commerce with foreign nations, and among the states, and with Indian tribes
• coin money and regulate the value thereof
• declare war
Implied Powers

• The central government may make all laws which shall be *necessary and proper* for carrying into execution the enumerated powers.

• The *necessary and proper* clause has often been used to expand the powers of the national government.

• Also referred to as the *elastic clause*
State Powers

• Most of State powers come from the Tenth Amendment that says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

• These are often referred to as reserve or police powers. States also have some powers that the central government also wields called concurrent powers such as the right to tax, borrow money, establish courts, and make and enforce laws.
A federal judge says a Dallas suburb's prohibition on renting apartments to noncitizens is unconstitutional.

From the Associated Press

May 29, 2008

FARMERS BRANCH, TEXAS -- This Dallas suburb's ban on apartment rentals to illegal immigrants is unconstitutional, a federal judge decided Wednesday.

Only the federal government can regulate immigration, U.S. District Judge Sam A. Lindsay concluded.
Denied Powers

- Article I, section 9 lays out powers denied to the central government.
  - For example: give preference to ports of one state over another
- Article I, section 10 lays out the powers denied to the states.
  - For example: enter into treaties, alliances, or confederations
Figure 3.3 The Distribution of Governmental Power in the Federal System

**NATIONAL POWERS**
- Coin money
- Conduct foreign relations
- Regulate commerce with foreign nations and among states
- Provide an army and a navy
- Declare war
- Establish courts inferior to the Supreme Court
- Make laws necessary and proper to carry out the foregoing powers

**CONCURRENT POWERS**
- Tax
- Borrow money
- Establish courts
- Make and enforce laws
- Charter banks and corporations
- Spend money for the general welfare
- Take private property for public purposes, with just compensation

**STATE POWERS**
- Set time, place, and manner of elections
- Ratify amendments to the federal Constitution
- Take measures for public health, safety, and morals
- Exert powers the Constitution does not delegate to the national government or prohibit the states from using
- Establish local governments
- Regulate commerce within a state
Relations among the States

- The Framers wanted a single country, not 13 squabbling semi-countries.
- Article IV requires states to give "full faith and credit" to each others' laws.
  - Marriage laws-DoMA see next slide
  - Driver’s license
- States are also required to extradite criminals if asked by another state.
President Clinton signed the Defense of Marriage Act (DOMA) -- HR 3396 or Public Law No. 104-199 -- on 21 September 2000. It defines marriage as an act between heterosexuals and frees one state from being required to honor the same-sex marriage conducted in another state. As of this writing, 39 states have laws based on DOMA; 18 of those are amendments to the state constitution.
Section 2 amends Chapter 115 of title 28, United States Code:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Section 3 amends Chapter 1 of title 1, United States Code:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.
The Evolution and Development of Federalism

- The allocation of powers in our federal system has changed dramatically over the years.
- The Supreme Court in its role as interpreter of constitution has been a major player in the redefinition of our Federal system.
  - McCulloch v. Maryland (1819)
  - Gibbons v. Ogden (1824)
  - Dred Scott v. Sandford (1857)
McCulloch v. Maryland (1819)

- *McCulloch* was the first major decision by the Supreme Court under Chief Justice John Marshall about the relationship between the states and the national government.
- The Court upheld the power of the national government and denied the right of a state to tax the bank.
- The Court’s broad interpretation of the *necessary and proper clause* paved the way for later rulings upholding expansive federal powers.
Gibbons v. Ogden (1824)

- The *Gibbons* case centered on the conflict between the states and the powers of Congress.
- Could New York grant a monopoly concession on the navigation of the Hudson River? The Hudson River forms part of the border between New York and New Jersey and the U.S. Congress also licensed a ship to sail the Hudson.
- The main constitutional question in *Gibbons* was about the scope of Congress' authority under the Commerce Clause.
- In *Gibbons*, the Court upheld broad congressional power over interstate commerce.
Dred Scott v. Sandford (1857)

- The Supreme Court articulated the idea of *concurrent powers* and *dual federalism* in which separate but equally powerful levels of government is preferable, and the national government should not exceed its *enumerated powers*.
- The Taney Court held that Mr. Scott was *not* a U.S. citizen and therefore not entitled to sue in federal court.
- The case was dismissed and Scott remained a slave.
- Taney further wrote that Congress had no power to abolish slavery in the territories and slaves were private property protected by the Constitution.
The Civil War and Beyond

- **Dual federalism** remained the Supreme Court's framework for federalism even after the adoption of the 13th, 14th, and 15th amendments.

- Dual federalism finally ended in the 1930s, when the crisis of the Great Depression demanded powerful actions from the national government.
The Changing Nature of Federalism

• Prior to the 1930s, many scholars used the analogy of a *layer cake* to describe federalism.
  – Each layer had clearly defined powers and responsibilities.

• After the New Deal, the analogy of a *marble cake* seemed more appropriate because the lines of authority were much more mixed.

• This marble cake federalism is often called *cooperative federalism* and has a much more powerful national government.

• States have a cooperative role, as did many cities.
Figure 3.4 The Growth of Regulatory Federalism: Enactments Added per Decade, 1931-1990

Federalism and the Supreme Court

• By the 1980s and 1990s, many Americans began to think that the national government was too big, too strong, and too distant to understand their concerns.

• The Supreme Court, once again, played a role in this new evolution of federalism.
  – For example: Since 1989, the Court has been allowing states to introduce limitations on the right to an abortion.
Figure 3.5 State-by-State Selected Abortion Restrictions, 1998

1. Partial birth abortion bans.
2. Parental consent requirements.
3. Parental consent requirements and mandatory waiting periods.
4. Partial birth abortion bans and parental consent requirements.
5. Partial birth abortion bans and parental consent requirements and mandatory waiting periods.
6. None

Continuity and Change

• Federalism as outlined at Philadelphia in 1787 has evolved considerably over time.
• Initially, the states remained quite powerful, and the national government was small and weak.
• Over time the national government became progressively stronger.
• However, we have a Court today that is more interested in reinvesting power in the Tenth Amendment and in the states.
FIGURE 4.1 POLITICAL PARTY OF STATE GOVERNORS, 2007
Democrats picked up six governorships in the 2006 midterm elections and now control the corner offices in twenty-eight states.
State legislatures (Sabato 137).