

Federalism

Federalism: Two or more governments in which a constitution distributes powers b/w a central gov't and subdivisional governments giving both substantial responsibilities and powers. (Both derive their power from the common source – the Constitution.)

I. Types of Federalism

- A. Dual-federalism: Constitution gives limited list of powers to national government leaving most power to sovereign states.
 - 1. EX: foreign policy, defense = national responsibilities
 - 2. layer cake metaphor
 - 3. Supreme Court is umpire in any question for specific activity; cities are not sovereign entities – only national and states in US.
 - 4. states rights are primary
 - 5. each gov't sovereign within its own sphere
- B. cooperative federalism: various levels of gov't should work together to deliver public services
 - 1. power not concentrated at any level
 - 2. states/national take joint responsibility for functions
 - a. welfare
 - 3. marble cake federalism: all levels of government are involved in a whole bunch of issues rather than a layer cake, where there are definite divisions
 - a. EX: education, drugs, medical research
- C. New Federalism: Nixon, Reagan, Bush – return fiscal resources and management of programs to states using block grants and distinguish responsibility of state and national governments

II. Why Federalism?

- A. Checks the growth of tyranny
 - 1. Americans associate freedom w/ federalism – James Madison *Federalist #10* – national government can utilize states to check factions in other states
 - 2. when a party loses power, still has power in many states and can regroup with new policies
 - 3. Framers feared one faction gaining too much influence; they liked the idea of state governments being able to challenge Congress on certain issues
 - a. EX: gay rights (states leading)
- B. Allows experimentation – states can try out new programs/ideas w/ less impact if it goes wrong
 - 1. EX: GA = eighteen year old vote; CA = air pollution and affirmative action
- C. Keeps government closer to the people
 - 1. many levels of access for many diff people

2. other side – most people do not participate in local or state government = concerned w/ national and international politics

III. Alternatives

- A. Unitary system: all power rest with central government
 1. any power of provinces given can be taken away
 - a. Great Britain, Israel, France and Japan
- B. Confederation: association of independent state – creates government that opts at their discretion (European Union and former USSR)

IV. American Federalism

- A. Constitutionality
 1. national government has powers by US Constitution
 - a. exception – foreign affairs – inherent power
 2. national gov't is supreme
 3. states have powers not delegated to central gov't, except those denied by Constitution
 4. some powers are denied to both governments
 - a. EX: wrongful imprisonment
- B. Powers of national government – expresses, implied, inherent – flexibility that has allowed us to survive intact for 200 years +
 1. national supremacy clause (VI.2)
 - a. all states and national officials are bound by an oath to uphold the Constitution of the US
 - b. any national law or regulation is supreme to any conflicting state or local law
 2. regulate commerce: Congressional authority over any commerce that affects more than one state (Commerce clause I.8.3)
 - a. “to regulate commerce w/ foreign nations and among the several states, and with Indian tribes...”
 - b. can be used to sustain legislation that goes beyond commercial matters = *1964 Civil Rights Act*
 - i. forbid discrimination based on race, religion, or national origin in places of public accommodations
 - c. *Heart of Atlanta Motel v. US (1964)*
 - i. On interstate highway, an African American man; decision = discrimination restricts flow of interstate traffic; Congress may regulate under commerce clause
 3. power to declare war – protection from external aggression is handled by national government
 4. Tax and Spending power
 - a. Congress cannot regulate education or agriculture, but can spend money on them
 - b. Grants influence states – if you don't play by the national gov't rules, then we don't pay
 - i. EX: drinking age v. highway funds

- V. National gov't uses legislative action, judicial interpretation, incentives, and sanctions to shift balance of power
- A. Legislation – elastic clause
 1. EX: Voting Rights Act 1965 – states decide requirements, but national gov't has responsibility to enforce 15th Amendment (“right to vote cannot be denied...”)
 - B. Judicial Interpretation – Supreme Court and other courts; 14th Amendment’s due process clause incorporates many of the Bill of Rights amendments and it the national gov’t responsibility to carry them out
 - C. Incentives= “Grants-In-Aid”
 1. Congress hands down federal mandates and then many or may not help to pay for them
 - D. Grants
 1. Purposes of grants –
 - a. Supply states and local governments w/revenue
 - b. Estimate minimum national standards
 - i. Ex: clean air and highways
 - c. To equalize resources among states
 - d. Attack national problems w/o crating new federal agencies
 2. Types of grants
 - a. **Categorical – formula grants:** \$ given for specific purposes, subject to federal supervision
 - i. Formula must be met before they receive funds
 - ii. EX: airports, highways, Medicaid
 - iii. Local governments often match funds
 - b. **Project Grants:** state, local, and non government agencies can apply for \$
 - i. EX: employment training programs, university research grants
 - c. **Block Grants:** grants for prescribed activities w/ very few strings
 - i. States have broad flexibility
 - ii. Child care, welfare, social services, and health care
 3. **Mandate Debate:** states have complained about unfunded mandates for years!
 - a. Under Clinton, Congress passed unfunded Mandate Reform Act 1995
 - i. States Congressional Budget Office and Federal agencies must issue reports on impact of unfunded mandates
 - ii. A Congressional Committee must approve U.F. and justify why it would be appropriate for state and local to pay
- VI. Powers of States (have reserved powers – 10th Amendment)
- A. **Concurrent powers** (ex: taxes)
 1. restriction = cannot “unduly burden”

2. Congress decides what "unduly" means
- B. States are forbidden (Constitutionally)
 1. make treaties
 2. coin money
 3. tax imports and exports (national gov't/export)
 4. tax foreign ships
 5. keeping troops/militia in time of peace
 6. engage in war
- C. States are guaranteed
 1. republican form of gov't = state's delegation allowing seat in Congress indicates recognition of republican form of gov't
 2. protection against "domestic insurrection" = LA riots, Seattle (both cases the National Guard was called)
- VII. Interstate Relations (horizontal federalism)
 - A. Full faith clause (IV, 1)
 1. requires states to enforce civil judgments of other states & accept public records as valid (marriages, and licenses = identification for age)
 - B. Interstate Privileges and Immunities (IV, 2)
 1. must extend privileges and immunities to citizens of other states
 - a. laws, access to courts, freedom from discriminatory taxes
 2. EX: 18 yrs old to drink in Louisiana; gambling and prostitution in Nevada
 3. same sex marriages – Hawaii (not legal as of '98 referendum; Defense Marriage Act 1996)
 - C. Extradition (IV, 2) – states must deliver criminals back to the state
 - D. Interstate Compacts:
 1. states must settle disputes peacefully
 2. options = compact or Supreme Court
 3. compact must be approved by Congress
 4. environment, higher education exchanges
- VIII. McCulloch v. Maryland (1819)
 - A. Supreme Court defines divisions of powers b/w national and state governments
 - B. McCulloch was a cashier of a bank of U.S. in Baltimore, MD; refused to pay tax levied on bank by MD gov't.
 - C. MD argument = power to incorporate bank NOT in Constitution as Congressional power
 - D. Bank = no state could tax an agency of the national gov't. Congress did have implied power to create national bank to collect taxes, borrow money, and care for national property
 - E. Unanimous court opinion = Chief Justice John Marshall
 1. "power to tax is the power to destroy"
 2. rejected all of the arguments by Maryland
 3. opinion officially established implied powers and doctrine of national supremacy.

IX. Decentralization of Debate

- A. Centralists – favor national action in important issues; Decentralists – favor action @ state and local levels
- B. Decentralists – conservatives (state's rights) Reagan, Bush, Republican leaders of Congress, Chief Justice Rehnquist, Justice Thomas, and Justice O'Connor
 - 1. states that the Constitution is a treaty among sovereign states which created a gov't with limited authority
 - 2. national gov't is agent of states and its powers and should be narrowly defined and interpreted
 - 3. any question of whether national/state should handle a function should be decided in state's favor
 - 4. 10th Amendment = "powers not delegated to US by Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."
- C. Centralists = liberals: Chief justice John Marshall, Lincoln, Teddy Roosevelt, FDR, and usually Supreme Court justices (although currently the S. Court has conservative majority).
 - 1. reject idea of Constitution as interstate compact
 - 2. Constitution is supreme law established "by the people" = national gov't is agent of all people b/c drawn up "by the people"; not the states
 - 3. framers intended liberal definition of national powers
 - 4. central gov't should only be denied expressed forbidden powers
 - 5. each state only speaks for some people – national gov't represents all the people; States should not be allowed to interfere with a gov't that represents all the people

Justice Holmes: "I do not think the US would come to an end if we lost our power to declare an act of Congress void. I do think the union would be imperiled if we could not make that declaration as to the laws of the several states.