

Chapter 3

American Federalism

Key Chapter Questions

1. What are the advantages of American federalism? Also, why is federalism “strained” in other regions such as Canada (Quebec), Russia (relationships with its 21 autonomous republics), and the United Kingdom (devolution in Scotland and Wales)?
2. What powers are delegated to the national government, what powers are reserved for the states and what concurrent powers are shared by the national and state governments? What are the limitations of national and state governments? Finally, how does secessionism still live on in contemporary America?
3. How have the federal courts affected the system of federalism? How and why is the U.S. Supreme Court’s record on federalism “mixed”?
4. What has been the role of federal grants in helping state and local governments find solutions to their problems?
5. What are federal mandates? What are some of the new techniques of federal control?
6. What are reasons for the growth of big government? Why is Congress pressured to reduce national programs?
7. What is the future of federalism? How will the “devolution revolution” affect that future?

Chapter Outline

- I. Introduction
 - A. Federalism is the constitutional division of powers between the national government and the states
 - B. Federalism issues are at the top of the political agenda along with the issue of devolution.
 - C. Since the New Deal in the 1930s to today, there has been a shift of power from the states to the national government; since 1994 elections there has been an attempt to return power to the states as exemplified by the Educational Flexibility Partnership Demonstration Act of 1999
 - D. Issues of federalism are found today in Canada (Quebec), the former Soviet Union, the United Kingdom (Scotland and Wales), and so forth.
 - E. Supreme Court’s recent record on federalism has been “mixed.”
 - F. Federalism debates depend upon issue at stake and rival philosophies of national action vs. decentralization.
- II. Defining federalism (one scholar has counted 267 definitions)
 - A. Constitutionally divided powers between national and constituent (state) governments
 1. Distribution of powers cannot be changed by ordinary laws
 2. Both governmental levels operate through own agents and exercise power directly over individuals (both levels derive powers from constitution)
 3. Dual, Marble cake, competitive, permissive, and new varieties of federalism
 4. Canada, Switzerland, Mexico, Australia have federal systems (nearly 40 percent of global population live in federally-organized nations); Only 21 of 185 nation-states claim to be federal polities.
 5. U.S. is a nation of about 85,000 governmental units

- B. Alternatives to federalism
 - 1. Unitary systems place all governmental power in central government (Britain, France, Israel)
 - 2. Confederation allows central government to make regulations for constituent governments (European Union is a contemporary example; Articles of Confederation is a past one)
 - C. Why federalism?
 - 1. Federalism checks the growth of tyranny
 - a. Inhibits formation of a single-interest majority
 - 2. Federalism allows unity without uniformity
 - a. No need for consensus on every divisive issue
 - 3. Federalism encourages experimentation
 - a. States are "laboratories" for public policy experimentation
 - b. States have been in the forefront on health care, voting, air pollution control programs
 - 4. Federalism keeps government closer to the people
 - a. Provides numerous arenas for decision-making
 - b. Local and state politics involve citizens in large numbers
- III. The constitutional structure of American federalism
- A. Powers of the national government
 - 1. Express, implied, and inherent powers
 - 2. Four constitutional pillars that permit expansion of central government functions
 - a. National Supremacy Article binds all public officials to support the Constitution
 - b. The War Power: the national government has the power to wage war
 - c. The power to regulate interstate and foreign commerce through the commerce clause, Congress can regulate many activities and sustain other legislation as well
 - d. The power to tax and spend by attaching conditions to its grants of money, Congress may regulate what it cannot directly control by law
 - B. Powers of the states
 - 1. States have reserved powers: the Constitution reserves for the states all powers not granted to the national government, subject only to the limitations of the Constitution
 - 2. Each state has concurrent powers with the national government
 - C. Constitutional limits and obligations
 - 1. States' prohibitions
 - a. Cannot make treaties with foreign nations
 - b. Cannot authorize private parties to engage in piracy
 - c. Cannot coin money
 - 2. States' prohibitions without congressional consent
 - a. Cannot tax imports, exports, or foreign ships
 - b. Cannot keep troops or ships in peacetime (except the National Guard)
 - c. Cannot enter into compacts with other states or foreign nations which infringe upon national supremacy
 - d. Cannot engage in war, unless invaded or in imminent danger
 - 3. National government cannot use powers to interfere with state responsibilities
 - a. National government must guarantee to each state a republican form of government
 - b. National government must protect states against domestic insurrection
 - c. Note unfunded mandates and states' sovereign immunity cases
 - D. Interstate Relations
 - 1. Full faith and credit (note insert on same-sex marriages)
 - a. Clause requires each state court to accept civil judgments and public records of other state courts (Article IV, Section 1)
 - 2. Interstate privileges and immunities (Article IV, Section 2)
 - a. States must extend to citizens of other states the privileges and immunities granted to their own citizens
 - b. States may not impose unreasonable residency requirements
 - 3. Extradition (Article IV, Section 2)

- a. Fugitives must be returned by the governor to the state from which they fled (some exceptions)
- 4. Interstate compacts
 - a. Establishes interstate agencies to resolve interstate problems (must be approved by Congress)
- 5. Note “Federalism in Comparative Perspective” Insert—Canada, Germany, and Switzerland

IV. The role of the federal courts: umpires of federalism

A. *McCulloch v. Maryland*

- 1. John Marshall established the doctrines of implied national power and national supremacy
- 2. *McCulloch v. Maryland* was significant in providing support for nationalism

B. Federal courts and the role of the states

- 1. Actions by state and local officials can be challenged before a federal judge
- 2. Preemption—federal laws take precedence over state and local laws (civil rights, water quality)
- 3. Supreme Court has generally favored powers of federal government over the states

C. The great debate: centralists versus decentralists

1. The decentralist position

- a. The national government is nothing more than an agent of the states, and every one of its powers should be narrowly defined
- b. The Tenth Amendment prohibits the national government from using delegated powers to interfere with activities reserved for the states

2. The centralist position

- a. The Constitution is a supreme law established by the people; it was intended that the central government's powers be liberally defined
- b. The national government is a government of all the people, and each state speaks for only some of the people

D. The Supreme Court and the Role of Congress

- 1. The centralist position has had the Supreme Court's constitutional endorsement throughout most of history, but recently the Court has veered back to a more decentralist position
 - a. Note ruling on imposition of term limits—*Stevens vs. Thomas*
 - b. Note that Congress may no longer authorize individuals to bring legal actions against states in order to force compliance with federal law in either federal or state courts
- 2. Court's “constitutional counterrevolution”—striking down of Violence Against Women Act, on grounds that Congress had exceeded its powers and intruded on the powers of the states
- 3. Court increasingly split along ideological lines with conservatives favoring states' rights and liberals resisting that interpretation (Souter, Stevens, Ginsburg, Breyer)

V. Regulatory Federalism, Federal Grants, and Federal Mandates

A. Goals of federal grants

- 1. To supply revenue to state and local governments
- 2. To establish minimum national standards
- 3. To equalize resources among the states
- 4. To attack national problems, yet minimize the growth of federal agencies

B. Types of federal grants

1. Categorical-formula grants

- a. Congress appropriates funds for specific purposes
- b. Funds are subject to detailed federal conditions

2. Project grants

- a. Congress appropriates a certain sum, which is allocated to state and local units based on applications

3. Block grants

- a. Allocated to states for prescribed activities with few federal restrictions

C. The politics of federal grants

- 1. Arguments about what constitutes desirable public policy, where power should be located, and who will gain or lose by the various types of grants
- 2. Iron triangles or issue networks: interest groups, congressional committees, and federal

- bureaucrats form forces and are effective in protecting programs
- 3. Republicans favor less federal supervision and the delegation of spending discretion to the state and local governments; Democrats favor detailed federally supervised spending
- 4. The Republicans made one major change in federal-state relations by ending Aid to Families with Dependent Children (AFDC); Republican conservatives insisted on some federal restrictions
- 5. The battle over the appropriate level of government to control the funds tends to be cyclical
- D. Unfunded Mandates Reform Act of 1995
 - 1. This act calls for issuing reports on the impact of unfunded mandates, providing judicially enforceable cost-benefit analyses of mandates and regulations, and consulting state and local officials prior to the issuance of regulations; still, has not slowed down mandates appreciably
 - 2. The act imposes constraints on Congress itself; increases congressional awareness of mandates
- E. New techniques of federal control (insert)
 - 1. Direct orders: compliance under threat of criminal or civil sanction (EEOA-1972)
 - 2. Cross-cutting requirements: conditions on one grant extended to all federally-supported activities (Title VI of the 1964 Civil Rights Act)
 - 3. Cross-over sanctions: permit the use of federal dollars in one program to influence state and local policy in another (federal highway aid and minimum drinking age of 21)
 - 4. Total preemption: national government preempts under the supremacy and commerce clauses
 - 5. Partial preemption: federal law establishes basic policies but requires states to administer them (Clean Air Act of 1990 example of mandatory partial preemption)

VI. The politics of federalism

A. The growth of big government

- 1. Power has shifted from social institutions to the national government
- 2. Reasons for this shift in power
 - a. Many problems have become national in scope
 - b. With industrialization, powerful interests made demands on the national government
 - c. Peoples' attitudes toward national government changed with the growth of the national economy and the creation of a national transportation and communications network
 - d. Economic and social conditions created pressures for expansion of the national government
 - e. Political leaders, federal judges, and federal administrators promoted federal initiatives
- 3. The politics of federalism are changing, and Congress is pressured to reduce the size and scope of national programs
 - a. Tax laws no longer permit automatic increases to compensate for inflation, so Congress faces reduced federal revenues
 - b. The cost of entitlement programs is going up, so it is tempting for Congress to turn over the problems to the states by using block grants

B. The devolution revolution: a revolution or just rhetoric?

- 1. In the 104th Congress, there was a dramatic shift in responsibilities from the national government back to the states; however, Congress also increased the authority of the national government in many areas, so the revolution may have “fizzled”

VII. The future of federalism

A. Debate over federalism has three levels

- 1. Which government can most effectively deal with a particular problem?
- 2. Where can groups best be heard?
- 3. Which is the best way to protect liberty and promote equality?

B. The reemergence of the states

- 1. Shift of programs to states meant huge growth of state governments and greater state expenditures

C. The future of federalism

- 1. States are stronger than ever (expanded roles, perhaps more favorable to minorities);
- 2. Business interests complain that conflicting state regulations burden interstate commerce

- (note states joining suit against Microsoft)
3. Federal system remains rooted in constitutional system—not likely that national government will retreat to a pre-1930 or pre-1960 posture—new issues demand federal action such as the global economy, the information explosion, and technology
 4. Americans strongly attached to federal system—are pragmatists who use the level of government necessary to meet new needs and challenges