CHAPTER 3

Federalism

OBJECTIVES

The central purpose of the chapter is to introduce the student to some of the complexities of federal government in the United States—where both the national and state governments have powers independent of one another. After reading and reviewing the material in this chapter, the student should be able to do each of the following:

1. Identify important policy areas affected by federalism.
2. Explain the difference between federal and centralized systems of government, and give examples of each.
3. Show how competing political interests at the Constitutional Convention led to the adoption of a federal system that was not clearly defined.
4. Outline the ways in which national and state powers have been interpreted by the courts.
5. State the reasons why federal grants-in-aid to the states have been politically popular, and cite what have proven to be their pitfalls. Distinguish categorical grants and block grants.
6. Distinguish mandates and conditions of aid with respect to federal grant programs to states and localities. Discuss whether or to what extent federal grants to the states have created uniform national policies comparable with those of centralized governments.
7. Evaluate the effect of devolution on relationships between the national and state governments. Assess its implications for citizens as taxpayers and as clients of government programs.

OVERVIEW

How one evaluates federalism depends in large part on the value one attaches to the competing criteria of equality and participation. Federalism means that citizens living in different parts of the country will be treated differently. This applies not only to spending programs (such as welfare), but also to legal systems (where civil rights may be differentially protected or criminal sentencing may vary). Yet federalism also means that citizens have more opportunities to participate in decision making. It allows people to influence what is taught in the schools and to decide where highways and other government projects will be built. Indeed, differences in public policy—that is, unequal treatment—are largely the result of wider participation in decision making. It is difficult, perhaps even impossible, to have more of one of these values without having less of the other.

States participate actively both in determining national policy and in administering national programs. Moreover, they reserve to themselves or to localities within them important powers over such public services as schooling and law enforcement and such important public decisions as land use. In a unitary system, these powers are exercised by the national government.

From the 1930s to the present, United States politics and public policy became decidedly more nationalized, with the federal government, and especially the federal courts, imposing increasingly uniform standards on the states. These usually took the form of mandates and conditions of aid. Begun in the 1960s and 1970s, efforts to reverse this trend by shifting to revenue sharing and block grants
were only partially successful. In the mid-1990s, the Supreme Court began to review the doctrine of state sovereignty, and the effort to devolve power from Washington to the states gained momentum. Yet the overall impact of these efforts appears to be minimal. Federal spending on social programs, adjusted for inflation, is at its highest levels since World War II, and Congressional control over spending programs has prompted more regulation of state and local governments.

**CHAPTER OUTLINE WITH KEYED-IN RESOURCES**

I. Why federalism matters
   A. Shared power between national and state governments allows both to influence public policy.
   B. Federalism influences important policy areas, including taxation, education, transportation, crime and punishment, and civil liberties.
   C. Political conflicts between national and state governments persist over time.
      1. Intergovernmental disputes over slavery were intensified by lack of unity among the states.
      2. Debate over the regulation of business and social welfare programs centered on whether the federal government had the right to intervene in these affairs.

II. The Founding
   A. A bold, new plan to protect personal liberty
      1. Founders believed that neither national nor state government would have authority over the other, because power comes from the people, who shift their support to keep the two in balance.
      2. New plan had no historical precedent
      3. Tenth Amendment was added as an afterthought to clarify the limits of the national government’s power.
      4. Tenth Amendment has had limited applicability, but has recently been used by the Supreme Court to give new life to state sovereignty.
   B. Elastic language in Article I: Necessary and Proper Clause
      1. Precise definitions of powers are politically impossible due to competing interests, for example, commerce.
      2. Hamilton’s view: national supremacy, because the Constitution was the supreme law of the land
      3. Jefferson’s view: states’ rights with the people as ultimate sovereign; the national government was likely to be the principal threat to individuals’ liberties.

III. The debate on the meaning of federalism (THEME A: WHO GOVERNS WHAT; FEDERALISM AND CONSTITUTIONAL LAW)
   A. The Supreme Court speaks
      1. Hamiltonian position espoused by Chief Justice John Marshall
      2. *McCulloch v. Maryland* (1819) settled two questions
         a) Could Congress charter a national bank? Yes, because of the “necessary and proper” (elastic) clause, even though this power is not explicitly in the Constitution
         b) Could states tax such a federal bank? No, because national powers were supreme and therefore immune to state challenge
      3. Later battles related to federal taxes on state and local bond interest.
   B. “Nullification”: states had the right to declare null and void a federal law that they believed violated the Constitution
      1. Authors: James Madison (Virginia Resolutions), Thomas Jefferson (Tennessee Resolutions), and John C. Calhoun
2. Question settled by the Civil War: the federal union is indissoluble, and states cannot nullify federal law; position later confirmed by the Supreme Court

C. Dual federalism: both national and state governments are supreme in their own spheres, which should be kept separate.
   1. Example: interstate versus intrastate commerce
      a) Early, product-based distinctions were unsatisfactory
      b) Still, the Supreme Court does seek some distinction between what is national and what is local, although it is not entirely consistent in its support of state sovereignty

2. Doctrine of dual federalism still is argued, however—and sometimes successfully

D. State sovereignty
   1. Supreme Court has strengthened states’ rights in several recent cases
      a) United States v. Lopez (1995), guns in schools
      b) United States v. Morrison (2000), overturned Violence Against Women Act of 1994, stating that attacks against women do not substantially affect interstate commerce
      c) Printz v. United States (1997), background checks on gun purchasers

2. Supreme Court has also strengthened the Eleventh Amendment, protecting states from suits by residents of other states or citizens of foreign nations
   a) Alden v. Maine (1999), compliance with federal fair-labor laws
   b) Federal Maritime Commission v. South Carolina Ports Authority (2002), states did not agree to become mere appendages of national government

3. But not all decisions have supported state sovereignty

4. State can do what is not prohibited by the Constitution or preempted by federal policy, even if it is consistent with its own constitution
   a) Police power—generally recognized; refers to those laws and regulations, not otherwise unconstitutional, that promote health, safety, and morals.

5. Protections for the states in the Constitution
   a) No state can be divided without its consent.
   b) Two senators for every state
   c) Every state assured of a republican form of government.
   d) Powers not granted to Congress are reserved to the states.

6. Cities, towns, and counties have no such protections.
   a) They exist at the pleasure of the state government, so there is no struggle over sovereignty (Dillon’s Rule)
   b) See the Politically Speaking box: The Terms of Local Governance

7. Current conflicts are mostly over federal grants or federal mandates, which require states to meet certain standards before they can receive federal funds.

IV. Governmental structure
A. Introduction
   1. Federalism: a political system with local government units, as well as a national government, that can make final decisions regarding some governmental activities and whose existence is protected
      a) Local governments are able to make decisions on at least some matters without regard to the preferences of the national government.
      b) Examples of federal governments: United States, Canada, India, Germany, Switzerland, Australia

2. Unitary government:
   a) All local governments are subservient to the national government.
   b) Local governments can be altered or abolished by the national government.
c) Local governments have no final authority over any significant federal government activities.

d) Examples of unitary governments: France, Britain, Italy, Sweden

3. Special protection of sub national governments in federal system due to:
   a) Constitution of country
   b) Habits, preferences, and dispositions of citizens
   c) Distribution of political power in society

4. National government largely does not govern individuals directly, but compels states to do so in keeping with national policy.

B. Federalism: Good or Bad?
1. Negative views: federalism blocks progress and protects powerful local interests
   a) Laski: the states are “parasitic and poisonous”
   b) Riker: federalism facilitated the perpetuation of racism

2. Positive view—Elazar: federalism contributes to governmental strength and political flexibility and fosters individual liberty

3. Federalism has good and bad effects
   a) Different political groups with different political purposes come to power in different places.
   b) *Federalist* No. 10: small political units are more likely to be dominated by single political faction—which allows all relevant interests to be heard, somewhere

C. Increased political activity
1. Most obvious effect of federalism: it facilitates political mobilization.
2. Federalism decentralizes authority, lowering the cost of political organization at the local level.

D. What the states can do
1. Play a key role in social welfare, public education, law enforcement, criminal justice, health and hospitals, and roads and highways; also in managing water supplies

2. State constitutions are more detailed and sometimes confer more rights than the federal one in the above matters.

3. State constitutions open one or more of three doors to direct democracy:
   a) State constitutions allow for some form of legislation by initiative.
   b) About half the states permit the referendum.
   c) Twenty states permit the recall, whereby voters can remove an elective official from office.

4. Existence of states is guaranteed by the federal Constitution.

V. Federal-state relations (THEME B: WHO GOVERS NOW; THE CONTEMPORARY POLITICS OF FEDERALISM)

A. What Washington legally may do is not the same as what politics may require.

B. Grants-in-aid
1. Grants show how political realities modify legal authority.
2. Land grants began before Constitution; cash grants to states began in 1808.
3. Grants dramatically increased in scope in twentieth century.
4. Prevailing constitutional interpretation until late 1930s was that the federal government could not spend money for purposes not authorized by the Constitution—grants were a way around this.
5. Grants were attractive to state officials for various reasons.
   a) Federal budget surpluses (nineteenth and early twentieth centuries)
b) Federal income tax increased revenues

c) Federal control of money supply

d) Appeared as “free” money for state officials, who did not have to be responsible for federal taxation.

6. Required broad congressional coalitions with wide dispersion of funds, because every state had an incentive to seek grant money (example: post-9/11 “fair-share” security funding formulas)

C. Meeting national needs

1. 1960s shift in grants-in-aid

   a) From what states demanded . . .

   b) . . . To what federal officials considered important as national needs

      (1) Federal grants to state and local governments increased.

      (2) Purpose of federal funds changed.

D. The intergovernmental lobby

1. Hundreds of state and local officials lobby in Washington

2. The Big 7:

   a) U.S. Conference of Mayors

   b) National Governors Association

   c) National Association of Counties

   d) National League of Cities

   e) Council of State Governments

   f) International City/County Management Association

   g) National Conference of State Legislatures

3. Purpose: to get more federal money with fewer strings

4. Since 1980, their success has been more checkered.

E. Categorical grants

1. Categorical grants are made for specific purposes defined by federal law; they often require local matching funds.

2. Block grants (sometimes called special revenue sharing or broad-based aid) were devoted to general purposes with few restrictions—states preferred block to categorical grants.

3. Neither block grants nor revenue sharing achieved the goal of giving the states more freedom in spending.

   a) Did not grow as fast as categorical grants

   b) Number of strings increased, even on these programs

4. Block grants grew more slowly than categorical grants because of the differences between the political coalitions that supported each.

   a) Federal officials, liberal interest groups, organized labor tend to distrust state government; categorical grants give the national government more power.

   b) Categorical grants are matters of life or death for various state agencies.

   c) Supervising committees in Congress favored growth of categorical grants.

F. Rivalry among the states

1. Intense debate regarding whether the federal government is helping some regions at the expense of others

2. Snowbelt (Frostbelt) versus Sunbelt states: debate focuses on allocation formulas written into federal laws.

3. Difficulty determining where funds are actually spent and their effect, though

4. With numerous grants distributed on the basis of population, the census takes on monumental importance.

VI. Federal aid and federal control

A. Federal controls on state governmental activities
1. Conditions of aid: tell state governments what they must do if they wish to receive grant money; traditional control
2. Mandates: tell state governments what they must do
B. Mandates
1. Mandates: federal rules that states or localities must obey; generally have little or nothing to do with federal aid
   a) Civil rights
   b) Environmental protection
2. May or may not be funded
   a) Mandates more likely in policy areas that receive less federal funding
   b) Waivers exempt some parties from federal mandates.
3. Mandates may also make it difficult for state/local governments to raise revenues, borrow funds, and privatize public functions; some may expose them to financial liability.
4. Controversial mandates may result from court decisions (for example, state prisons, school desegregation plans).
C. Conditions of aid
1. Attached to grants
2. Conditions range from specific (apply to particular programs) to general (cover all or most grants).
3. Divergent views of states and federal government on costs and benefits of these conditions; each side attempts to bargain to pass on most of the cost to the other sides
VII. A devolution revolution
A. President Reagan asked Congress to consolidate numerous categorical grants into large block grants.
B. The 1994 election of Republican majorities in House and Senate led to devolution initiatives that sought to reduce the number of federal regulations and shift responsibility for programs to the states.
C. Result of devolution initiatives
1. AFDC converted to block-grant program (TANF) in 1996
2. Medicaid not converted to block grant
3. Federal spending increased—did not decrease; 2006 inflation-adjusted per household spending levels highest since World War II
4. More, not fewer, rules and regulations overall
5. Little change in congressional preemption of state laws
VIII. Congress and federalism—politics remains local
1. Congress members represent conflicting constituencies—won’t always agree with governors and mayors
2. Parties once linked legislators to local groups—their erosion increases political competition
WEB RESOURCES
U.S. Conference of Mayors:  www.usmayors.org
National Governors Association:  www.nga.org
National Association of Counties:  www.naco.org
National League of Cities:  www.nlc.org
Council of State Governments:  www.csg.org
International City/County Management Association:  www.lcma.org
National Conference of State Legislatures:  www.ncsl.org
Governing.com: The Resource for States and Localities:  www.governing.com

IMPORTANT TERMS
block grant  Money from the national government that states can spend within broad guidelines determined by Washington

categorical grant  Federal grant for a specific purpose, such as building an airport

conditions of aid  Terms set by the national government that states must meet if they are to receive certain federal funds

dual federalism  Doctrine holding that the national government is supreme in its sphere, the states are supreme in theirs, and the two spheres should be kept separate

express preemption  A federal law or regulation containing language explicitly displacing or superseding any contrary state or local laws

federalism  A political system in which there are local (territorial, regional, state, or municipal) units of government, as well as a national government; powers are shared between the local units and the national government

grant-in-aid  Money given by the national government to the states

initiative  Process that permits voters to put legislative measures directly on the ballot

mandate  Terms set by the national government that states must meet whether or not they accept federal grants

“necessary and proper” clause  Section of the Constitution allowing Congress to pass all laws “necessary and proper” to its duties and that has permitted Congress to exercise powers not specifically given to it (enumerated) by the Constitution

nullification  The doctrine that a state can declare null and void a federal law that, in the state’s opinion, violates the Constitution

police power  State power to enact laws promoting health, safety, and morals

recall  Procedure whereby voters can remove an elected official from office
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**referendum**  Procedure enabling voters to reject a measure passed by the legislature

**waiver**  A decision by an administrative agency granting some other part permission to violate a law or rule that would otherwise apply to it

**THEME A: WHO GOVERNS WHAT; FEDERALISM AND THE CONSTITUTION**

**Instructor Resources**


**Summary**

The Founders disagreed over the exact division of powers in a federal system. Hamilton argued for national supremacy, Jefferson for states’ rights. The *Tenth Amendment* spelled out what all the Founders assumed from the outset: that the federal government would have only those powers given to it by the Constitution. On the other hand, the elastic language of Article I—the “necessary and proper” clause—provided a basis for arguing that the federal government had much broader powers. The “rules” about who governs what were not clear from the start.

The Supreme Court became the arbiter of this dispute. Chief Justice John Marshall supported the Hamiltonian position, and in *McCulloch v. Maryland* (1819) the Court held not only that the Congress had the right to set up a bank, but also that such an enterprise was immune to state taxation. After the Civil War, conflict focused on the commerce clause and the power of the federal government to regulate commerce. At first the Court distinguished between interstate commerce, which the federal government could regulate, and intrastate commerce, which it could not. Practical difficulties in differentiating one from the other led the Court, by the 1940s, to hold that the federal government could regulate virtually any economic transaction it wanted to regulate.

The Supreme Court’s struggles with defining the scope of federal power were influenced largely by economic theory. Under the *laissez-faire* beliefs that dominated nineteenth-century United States politics, the government was to remain neutral toward the economy and not become involved in its management. The Court infused this concept into its decisions on federalism by striking down most
government efforts to intervene in the economy. The Great Depression of 1929 compelled the federal government under President Franklin Roosevelt’s New Deal to take steps to alleviate the people’s misery, but the justices consistently voided most such legislation as exceeding federal authority. On reelection in 1936, an exasperated President Roosevelt sought to increase the membership on the Supreme Court by “packing” it with justices who favored his perspective on federalism. Although the court-packing plan failed, one justice altered his view and began to uphold an expanded federal role in the economy. This has been described as the “switch in time that saved nine.” Recently, however, the Supreme Court has placed some limitations on the ability of the federal government to legislate requirements for the states. In both United States v. Lopez (1995) and Printz v. United States (1997), the Supreme Court ruled that the Congress has overextended the commerce clause in its regulations on gun ownership. In addition to these rulings on the Tenth Amendment, the Court has also upheld state sovereignty through the Eleventh Amendment, protecting states against suits by residents of other states and citizens of other countries. These cases are a significant development in the Court’s thinking about state sovereignty. However, their significance should not be overstated: though the states are protected by the Constitution, Congress can still legislate extensively and broadly on domestic policy.

Discussion Questions

1. Under the federalist system, states have great flexibility in their management of crime, education, business, and property. What are the advantages of having each state be responsible for these key policy areas? What are the disadvantages?

2. Does the states’ growing dependence on Washington have any bearing on lawmakers’ relationship with the people? Are people today more or less likely to hold state officials responsible for social problems?

3. Certain areas in Nevada permit prostitution; nine states have legalized the use of marijuana for medical purposes; Massachusetts and Iowa have legalized same-sex marriage. Could the federal government legally intervene to forbid such practices in these states? Explain why or why not.

4. It would be possible to write a constitution that specified national, state, and even local spheres of governing much more clearly than the U.S. Constitution does. What might such a document look like? What would be its advantages? What would be its disadvantages?

THEME B: WHO GOVERNS NOW; THE CONTEMPORARY POLITICS OF FEDERALISM

Instructor Resources


**Summary**

The political dynamics of federalism have changed over the years. In the 20th century, the balance between state and federal power clearly tipped in favor of the national government. As early as the 1960s, Senator Everett Dirksen of Illinois warned that soon “the only people interested in state boundaries will be Rand-McNally.” This concern exaggerated the extent to which the federal government can invade local prerogatives. The reason is that the constitutional structure forces members of Congress to remain focused on local issues—if only to achieve reelection.

The shift to national control began in the late 19th century, but it was not until the growth of grant-in-aid programs during the 1960s that the symmetry of authority—the key to federalism—became relatively one-sided. As state and local governmental budgets became increasingly dependent on federal resources, the intergovernmental lobby, whereby local officials set up offices in Washington to compete for federal money, developed. The rivalry among states intensified when Congress began to loosen the strings of categorical grants and replace them with block grants based on distributional formulas.

The absence of federal strings and the greater leeway in spending federal funds did not produce a corresponding increase in the freedom of local officials. First, creeping categorization occurred as the federal government began to disapprove of the way the states utilized block grants. Its response was to impose more restrictions on block grants. Second, categorical grants spawned state agencies and interest groups that relied on such grants for their survival. Because these groups frequently were successful in convincing congressional committees to preserve a particular grant from being merged into a larger block grant program, the result was to limit the overall number of block grants. And third, the ideological dimension of federalism became more prominent. Liberals, Democrats, and minority groups preferred to continue the practice of prescribing national standards as an antidote to the prejudices of local officials. Conservatives, Republicans, and business leaders preferred to transfer decision making to the local level to avoid the inflexibility of national regulations. Thus in the 1980s and early 1990s, stalemate developed as a Democratic Congress pushed in one direction while Republican administrations pushed in the other.

By the mid 1990s, the pendulum began to swing back toward greater state authority. Two trends prompted this change. First, many states became frustrated by federal meddling in local affairs. In 1993, for example, the state of Hawaii refused to fly the American flag for an entire weekend as a sign of protest, and an active movement on behalf of secession emerged. Second, the increased level of professionalism in local governments encouraged states to experiment with new programs of their own. Congressional support for policy innovation resulted in lawmakers’ giving states greater authority over the federal welfare program. This divestiture of federal control led President Clinton to declare in 1996 that the era of big government was over. But his statement appears to have been premature. Recent federal expansions in Medicare coverage and the enactment of the No Child Left Behind funding program, complete with new state mandates, suggest that lawmakers today are more inclined to keep Washington in control of these programs.

**Discussion Questions**

1. Does the system of grants-in-aid upset the balance of federalism? Do grant programs enable Congress to do what it pleases by bribing states into compliance? Or do these programs merely increase the likelihood of national policy uniformity? What would be the consequence if a state refused federal grant money?

2. To what extent have interest groups produced grants-in-aid, and to what extent have grants-in-aid produced interest groups? Who constitutes the intergovernmental lobby?
3. Why did the Republican-led devolution revolution fail to produce more widespread results?

4. Does the federal government’s response to hurricanes Katrina and Rita support or refute the argument that oversight of social programs ought to rest with state officials?

5. Should states be able to adapt federal programs to suit their own needs? Or should everyone follow the same standards? How might differing standards trigger questions of fairness and equity?