

## CHAPTER 4

# Federalism

### PARALLEL LECTURE 4.1

- I. Federalism: Definitions and Theoretical Perspectives
  - A. In a federal system, two or more governments exercise power and authority over the same people and the same territory. In the United States, government power is divided between the national government and the states.
    1. The U.S. Constitution specifically defines only the powers to be granted to the national government; all the other powers are “reserved to the states.”
    2. Federalism offers an approach that unifies diverse people into nations, but it also retains the elements that can lead to disunity. (See Compared with What?)
  - B. Scholars have attempted to capture the true meaning of federalist arrangements by using several different adjectives or metaphors. The two most popular are discussed here. (See Figure 4.1.)
    1. **Dual federalism** implies the existence of distinct layers of government, each with powers in their own spheres; these powers are not mixed or shared (represented by the layer-cake metaphor).
      - a) The national government rules by enumerated powers only (supported by the Tenth Amendment).
      - b) The national government has a limited set of constitutional purposes (despite the implied powers of the elastic clause).
      - c) The national government and the states are each sovereign within their own spheres.
      - d) The relationship between the national government and the states is characterized by tension.
      - e) States are viewed as powerful components of the federal system, equal in some respects with the national government (a focus on states’ rights).
      - f) Dual federalism characterized how American governments functioned from 1789 to 1933.
    2. **Cooperative federalism** emphasizes the intermingling of government activities at different levels and in various spheres (represented by the marble-cake metaphor).
      - a) The national and state governments undertake functions jointly.
      - b) Nations and states routinely share power.
      - c) Power is not concentrated at any level of government.
      - d) This view stresses the role of the national government, supported by an expansive view of the supremacy clause (Article VI).
    3. The critical difference between the theories of dual and cooperative federalism is the way they interpret two sections of the Constitution: the Tenth Amendment and the so-called elastic clause.
      - a) The Tenth Amendment says that “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.”

- b) The elastic clause (Article I, Section 8, Clause 18) is the section of the Constitution from which the concept of implied powers—those powers not spelled out, but expected to be asserted by the national government to carry out its enumerated responsibilities—is derived.
  - C. The relationship between national and state governments has shifted over time. Why?
    - 1. Constitutional theory does *not* account for such shifts, but because the Constitution is not very specific about how federalism is supposed to work, it does allow for such shifts over time.
    - 2. Both elected and appointed officials across levels of government often make policy decisions based on pragmatic considerations without regard to theory.
    - 3. Public officials and citizens increasingly recognize that public problems often span several government boundaries.
- II. True understanding of American federalism involves recognizing the forces that prompt changes in relationships between the national government and states, such as national crises and demands, judicial interpretation, expansion of grants-in-aid and the professionalism of state governments.
  - A. National crises and demands
    - 1. The elastic clause allows legislation that is “necessary and proper” to the functioning of the national government to be adopted. This has increased the scope of the national government in times of crises and national emergencies, such as the Civil War and other wars, the Great Depression and the aftermath of September 11th.
    - 2. The problems of the Great Depression proved too extensive for state governments or private businesses to manage. The New Deal revolutionized the national government’s role in solving problems and was accomplished without Congress claiming new powers.
    - 3. Recent domestic terror attacks likewise caused swift congressional passage of legislation such as the Patriot Act in response, often with much debate about the appropriate limits of national government power.
    - 4. A different example of legislation is the **Voting Rights Act of 1965**, which gives national government officials the power to decide whether individuals are qualified to vote and requires that qualified individuals be permitted to vote in national, state, and local elections.
      - a) The Constitution specifies that the states shall set voter qualifications (Article I, Section 2).
      - b) However, the elastic clause, coupled with the Fifteenth Amendment, enlarged the power of the national government and justified the Voting Rights Act to insure that all citizens would have an equal opportunity to be enfranchised.
  - B. Judicial interpretation can shift the balance.
    - 1. The case *McCulloch v. Maryland* determined states could not tax the national government because the national government’s powers originated from the people.
    - 2. The Constitution’s **commerce clause** has been a vehicle through which the courts have expanded or contracted national power—depending on whether the word *commerce* was interpreted broadly or narrowly. Historically, the Supreme Court has interpreted the clause broadly to give the national government more power. Then, in recent years, however, a more conservative court has interpreted it narrowly only to reverse itself again later.
    - 3. Examples: In 1990, a case successfully challenged Congress’ authority to ban guns in schools, determining this issue was not related to commerce. A Brady

gun bill challenge by sheriffs held the bill unconstitutionally gave the national government power over local sheriffs and violated separation of powers. On the other hand, the well-known *Bush v. Gore* decision (see chapter beginning) overruled the Florida Supreme Court's Florida election law interpretation and ordered recounts to stop. Finally, a 2002 decision saw the U.S. Supreme Court invalidate Virginia's attempt to execute a mentally-retarded convicted murderer.

- C. Incentives granted by the national government can also shift the balance between nation and state.
    - 1. A **grant-in-aid** is money paid by one level of government to another level, to be spent for a specific purpose. Such grants are often awarded on a matching basis. They have doubled in spending amounts every five years since 1960 and they take two general forms: categorical grants and block grants.
      - a) **Categorical grants** are targeted for specific purposes, such as federal grants to states for disaster assistance. Restrictions on their use leave little discretion to the government receiving the grant. These grants may be further divided into two groups.
        - (1) **Formula grants** are distributed according to a given formula, specifying who is eligible and how much each recipient will receive.
        - (2) **Project grants** are awarded on the basis of competitive applications.
      - b) **Block grants** are awarded for more general purposes, such as community development. (See Figure 4.2.) They tend to increase state power and decrease national power.
    - 2. Grant money always comes with strings attached; usually these define what the money must be used for, or require the states to evaluate how well the grant is working. The national government may use grants to achieve some broad national goal that is not necessarily closely related to the specific purpose of the grant.
    - 3. Examples include the use of highway funds to cause state adoption of the federal drinking age of 21 and then the .08 percent blood-alcohol level for drunk driving.
  - D. Professionalism of state governments
    - 1. State governments are more capable policy performers and have disproved the description of states as weak links in the American policy system due to better trained policy staff, longer legislative sessions and increased legislative pay, attracting better caliber candidates to seek office, greater state and local revenue sources, and better trained bureaucracies.
    - 2. Changes in national government policies have led to capacity-building elements being included in grants-in-aid. An example is the Elementary and Secondary Education Act (ESEA), which not only provided federal assistance to needy students, but also strengthened state departments of education that administer those grants. The "No Child Left Behind" Act of 2001 expanded the national government's role in education.
- III. Ideology, Policymaking and American Federalism.
- A. The American federal system provides myriad opportunities for interested parties to push their ideas. The existence of national and state governments and their bureaucratic agencies offers policy entrepreneurs venues where they can attempt to influence policy and politics. Ideological views of federalism influence the shape of the nation's politics and policy.

- B. Conventionally, conservatives are more closely associated with dual or “layer-cake” federalism due to conservative beliefs of national government over-regulation and a preference for state freedoms to experiment with policy.
  - C. Conventionally, liberals are more closely aligned with “marble-cake” federalism decrying state inequities and the need for federal government protection of the rights and needs of certain citizens, such as those seeking protection from business interests.
- IV. Federalism is ever-evolving and changing. Further review of many past presidencies reveals that while the conventional characterizations of the ideologies and federalism types are true, the stereotypes of these ideological traits may be more closely related to the purposes of government and policy needs. The more recent manifestations are referred to as **New Federalism and New Age Federalism.**
- A. Between 1969 and 1974, President Nixon imposed a **New Federalism** designed to decentralize national policies. He called for combining categorical grants into block grants.
  - B. From 1977 to 1981, President Carter continued the trend of cutting national aid to states. He did not support the extensive block-grant approach of Nixon.
  - C. Between 1981 and 1989, President Reagan promised a “new New Federalism” to restore a proper constitutional relationship among the national, state, and local governments. He was committed to reducing federal taxes and spending. .
  - D. President Clinton’s policies seemed to be a continuation of the same goals of asking states to be creative problem-solvers, though he reasserted the role of the national government as “guru” to guide and encourage states to experiment with vexing problems. E. President George W. Bush has sought to embrace the state’s rights perspective but in a tempered fashion. His approach signaled a move away from the Republican effort in 1994 scaling back the national government while ignoring the potential costs – in human and environmental terms,- of their proposals.
- V. Although recent manifestations of federalism have cut the national government’s financial role in providing money to the states, this should not necessarily be interpreted to mean that the national government has a reduced role overall. Congress has found new ways to place restrictions or requirements on states’ actions without having to spend money to do it.
- A. **Preemption** is the power of Congress to enact laws that assume total or partial responsibility for a state government function. There are two types of preemption: mandates and restraints.
    - 1. **Mandates** require states to undertake an activity or provide a service in keeping with a minimum national standard (example: Congress has mandated that the state provide their low-income citizens with access to some minimal level of health care through the Medicaid program).
    - 2. **Restraints** forbid state governments to exercise certain powers.
      - a) In 1982, the national government prohibited states from imposing regulations that would require bus companies to serve small and remote communities.
    - 3. Preemption results in additional costs for state and local governments and interferes with their ability to set priorities, such as the 1988 Family Support Act requiring states to continue Medicaid coverage for one year for families who left welfare for jobs, but gave the states no funding for this purpose
  - B. Recently, Congress has taken steps to curb its interference in state and local government. The Unfunded Mandate Relief Act (1995) required cost analysis of legislation, and Congress must hold a separate vote specifically imposing a requirement on other governments without providing money to fulfill that requirement.

- C. The practice of unfunded mandates from the national government to state governments reveals different presidents' support for mandates vary by policy area and show that pragmatic substantive policy considerations and ideology determine outcomes rather than views of federalism.
- VI. Federalism is related to electoral outcomes in national and state elections
- A. State campaign experience and experiences in elected state offices are increasingly important in later national office ambitions.
  - B. State electioneering experience builds networks and fundraising potential for national races.
  - C. The experience of serving in upper-level state elected offices can prove to be of later Electoral College benefit by acquiring a network of other state officials' contacts.
  - D. Redistricting is tied to federal influences on state redistricting efforts, as a recent Texas legislative example demonstrates. Preclearance of potential district designed by the U.S. Justice Department also means federal oversight of state districts.
- VII. Americans come under the jurisdiction of several governmental units, which have been created by state governments. Federalism has also contributed to the formation of over 87,000 local government units in the last century.
- A. These units are municipal and county governments, and school and special districts.
    - 1. **Municipal governments** are the governments of cities and towns.
    - 2. **County governments** administer counties.
    - 3. **School districts** administer local elementary and secondary education programs.
    - 4. **Special districts** perform particular functions such as sanitation or transportation.
  - B. **Home rule** is a right given from state governments to municipal governments to enact and enforce legislation in certain administrative areas.
  - C. This multitude of governments has both positive and negative aspects.
    - 1. Its positive potential means that
      - a) Localized government is closer to the people.
      - b) There are more opportunities for participation.
      - c) Greater leeway exists for small-scale experimentation.
      - d) More levels of government increase the possibilities of responding to diversity.
    - 2. Its negative potential means that
      - a) Small-scale governments may lack resources to respond to local problems.
      - b) The complexity of multiple governments may discourage individual participation.
      - c) Organized interests, or "insiders," with time, money, and expertise may dominate decentralized governments.
      - d) Conflicting standards and laws may cause confusion.
- VIII. Federalism and Globalization
- A. Federalism is gaining new importance as the sovereignty of individual nations is diminished and more interstate linkages are formed.
    - 1. 43 states have established foreign offices, often for trade purposes.
    - 2. Among the 180 nations in the world, 24 of these are members of federations containing about 40% of the world's population.
    - 3. The European Union is an example of this pattern, with the potential to overcome longstanding religious, ethnic, linguistic and cultural differences, and to create an alternative to the U.S. dollar.
  - B. There is a relationship between federalism and pluralism.
    - 1. Federalism recognizes the legitimacy of states as political units.
    - 2. These political divisions are an acknowledgment of diversity.

3. Each of the two competing theories of federalism supports pluralism.
  - a) Dual federalism gives prominence to local rather than national standards.
  - b) Cooperative federalism blurs the line between state and national responsibility, which encourages the people to promote their interests at the level of government— state or national—that offers the best chance of success.