

Unitary →

Unit 4 Question 3

3. How does federalism try to avoid the overcentralization of unitary governments and the extreme decentralization of confederations?

- Must be able to define federalism, overcentralization, unitary, decentralization, confederation
- Dual federalism
- New Deal
- Cooperative federalism
- Creative Federalism
- Ideas that should be included
 - Devolution- giving power back to the states
 - Reagan revolution

F - Supremacy Article VI, Sec. 2

F - Nec. 1, 8, 18

S - 10th Am.

- Initiative
- Referendum
- Recall

Important case- Federal Maritime Commission v South Carolina State Ports Authority 2002

Justice Thomas quote in Majority Opinion- argues that states did not consent to become part of the union- argues for state sovereignty

Dual sovereignty is a defining feature of our Nation's constitutional blueprint. See *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). States, upon ratification of the Constitution, did not consent to become mere appendages of the Federal Government. Rather, they entered the Union "with their sovereignty intact ... "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State of the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States...

- **Growth Clauses (must know!)**
 - **Elastic clause (necessary and proper A1, S8, C18), and commerce clause**
 - **These clauses increase the power of the federal government**
 - **Enumerated power + elastic clause = where the federal government gets its power**
 - **Commerce + elastic, Taxing power + elastic, general welfare clause + elastic**

What governing powers does the U.S. Constitution leave to the states? What powers does it deny to the states?

- Leaves all power to the states that are not specifically given to federal government nor denied to the states (Amendment 10)

Amendment 11- The Eleventh Amendment (Amendment XI) to the United States Constitution, which was passed by the Congress on March 4, 1794 and was ratified on February 7, 1795, deals with each state's sovereign immunity from being sued in federal court by someone of another

state or country. This amendment was adopted in response to, and in order to overrule, the U.S. Supreme Court's decision in *Chisholm v. Georgia*, 2 U.S. 419 (1793).

- Article 4- obligations that states have to one another- full faith and credit, privileges and immunities
 - States function as “laboratories of democracy”
 - Federal government getting bigger though
 - **BUREACRACY! (use this!!)- more cabinet positions, more independent agencies- these take power from the states**
 - PATRIOT ACT!

□ What are the major advantages of federalism? The major disadvantages?

- Advantages- laboratories of democracy
- *Alden v. Maine*, 527 U.S. 706 (1999)^[1], was a United States Supreme Court case which held that Article One of the U.S. Constitution did not give the United States Congress the power to abrogate the sovereign immunity of the states and thereby allow state citizens to sue their states in the respective state courts. Sovereign immunity is a pre-Constitutional right that is retained by the states.
- *United States v. Morrison*, 529 U.S. 598 (2000) is a United States Supreme Court decision which held that parts of the Violence Against Women Act of 1994 were unconstitutional because they exceeded congressional power under the Commerce Clause and under section 5 of the Fourteenth Amendment to the Constitution.
- *Kimmel v Florida Board of Regents 2000- age discrimination and employment act*

Disadvantages

- **Different laws in each state**
- Voting laws all different

Federalism

- I. Federalism is a division of power between Central and Regional Governments. It is one of three main government organizational structures.

Unitary System	Confederal System	Federal System
Power is centralized.	Power held by Independent States	Power divided between central and regional governments
Regional governments derive authority from the central government	Central government is a creature of the con-stituent governments.	Both government entities interact directly with citizens
Examples: England and France	Examples: U.S. Under the Articles of Confederation	Examples: United States, Germany and Canada

A. Rationale

- 1) Increase citizen participation by providing more entry points for government interaction.
- 2) **Local control of local issues – States have to be sensitive and responsive to local concerns regardless of the national majority view.**
- 3) Prevention of oppressive government – division of power means less concentration of power.
- 4) Fosters experimentation and innovation
- 5) Suits a large country w/ a diverse population

B. Some Disadvantages of Federalism

- 1) Makes national unity difficult to achieve and maintain
- 2) State Governments may resist national policies
- 3) May permit inequality and injustice because policies and law enforcement are uneven
- 4) Smaller units may lack expertise and funding
- 5) Local dominance by special interests

C. Constitutional Background – Constitution spells out what powers are given to the Federal government, what powers are denied to the states are denied to states, and how states deal with each other.

1) Article I, sec 8 - elastic clause - necessary and proper clause:

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

2) Supremacy clause- The Constitution and Federal law take precedence over all forms of state law.

This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the contrary notwithstanding.

D. Powers of State Governments

- 1) Tenth amendment says powers not given to federal government or denied to the states are reserved to the states or to the people.
- 2) These powers are not expressly listed – open to interpretation
- 3) Regulate intra-state commerce
- 4) Provide for state militia
- 5) Police Power – protection of health, morals, safety and welfare of the state’s citizens.
- 6) Application depends on support for increased federal regulation.

II. Models of Federalism

- A. Dual Federalism (layer cake) strict role definition for state and Federal governments with no real interaction between them
- B. Cooperative Federalism (marble cake) integration of State and Federal roles. For example Federal government provides the rules and funding for a service that is carried out by the state.
- C. Picket Fence Federalism: Citizens interact with local, state, and federal government on the basis of their interests (what ever get the job done)

III. Expansion of Federal Power- The federal government has used incentives and sanctions to expand its control over the states.

A. These incentives and sanctions are often called “carrots” and “sticks” using the metaphor of a man in a cart trying to get a donkey to pull the cart. The driver can either dangle a carrot in front of the donkey (incentive) or strike the donkey with a stick (sanction).

1) Carrots

(a) Used when the Constitution does not give the Federal Government the power to accomplish the desired policy

(b) The states have a choice to accept or reject the incentive

(c) Example: Follow our rules for Child Welfare and we will give you money to run your programs

2) Sticks

(a) Used when the desired policy IS covered by the Constitution (or by courts interpretation of it)

(b) States have no choice – they must comply

(c) Desegregate your schools or else

B. McCulloch vs. Maryland 1817- Could Maryland tax a Federal Bank?

1) Chief Justice John Marshall – Federalist - proponent of strong central government

2) broad interpretation of the elastic clause.

3) national government is derived from the people not from the states.

C. Civil War - war over states rights regarding the issue of slavery

1) South (Confederacy) wanted the right to nullify federal laws (disregard them in the southern states)

- 2) North (Union) went to war to prevent southern states from leaving
- 3) General change after the civil war of expanded role of government - not just maintenance of order or protector of freedom but also mediator between citizen and the excesses of capitalism. result of stresses produced by the industrial revolution.

D. New Deal (1932)- Response of the Roosevelt Administration to the Great Depression

- 1) Economic chaos -
 - (a) 25% Unemployment --
 - (b) Economic Output 1/2 that of 1929,
 - (c) exports 1/5 of 1929 levels--
 - (d) daily bank failures
- 2) Social Chaos
 - (a) Millions homeless
 - (b) Tremendous support for Communist, socialist, fascist parties
 - (c) Dust bowl - displacement of farmers.
 - (d) No safety net in place - private charities overwhelmed - few states had social programs.
- 3) March 1932 – FDR Inaugurated – First 100 days
 - (a) Banking - Federal Deposit Insurance
 - (b) Farming - transfer income from consumer to farmer
 - (c) Co-opted the socialist agenda - minimum wage, collective bargaining, 40 hour week, end child labor - eliminate sweat shops.
 - (d) Emergency Relief Appropriations Act - \$5 billion - WPA, CCC TVA -
 - (e) Wagner Act 1935 - Labor Laws
 - (f) Social Security Act - 1935 - presented as retirement plan when it was actually direct transfer payments to those in need.

“Government has a final responsibility for the well being of its citizenship. If private cooperative endeavor fails to provide work for willing hands and relief for the unfortunate, those suffering hardship from no fault of their own have a right to call upon the government for aid and a government worthy of its name must make a fitting response” FDR

- E. Desegregation - Brown vs. the Board of Education (1954)
 - 1) Southern segregationist strategy – cause so much disorder that integration is stopped.
 - 2) Federal Government forced to act in order to prove that southern states could not disregard federal laws.
 - 3) Voting, Rights Acts, Civil Rights Act.

- F. Lyndon Johnson - The Great Society – further expansion of Social Safety Net

Head Start, Job Core, Medicare, Medicaid

IV. Definition of Federalism Terms

- A. **Entitlement** - a benefit which one receives because he or she meets the legally defined criteria (example - social security, Medicare)
- B. **Mandate** - a requirement that a state undertake an activity or provide a service to comply with national standards, or preempts any state laws that conflict with federal law. (Endangered Species Act, Clean Air Act)
- C. **Unfunded Mandate** - a mandate for which the Federal Government does not provide any funds.
- D. **Categorical Grant** - Federal grants to states and localities that can only be used for specific programs.
- E. **Block Grants** - Federal grants for general areas in which the state can decide how the money will be spent.
- F. **Devolution** - The term used to describe the decrease in Federal power and increase of State power that has occurred since 1980.

V. Nixon - New Federalism –

- A. Revenue Sharing - direct aid to states and cities with no string attached.

- B. Block Grants – give states the ability to spend money for a particular need with few strings attached

VI. Reagan's impact. Strong States rights advocate - saw Federal Government as bloated and interfering. Devolution

- A. New - New Federalism revenue sharing minus the revenue - entitlement programs turned into block grants but only 4 out of nine grants funded as promised
- B. Myth of governments awash in money.
- C. Change in federal role
 - 1) 1960 15% of funds for State and local government came from feds-
 - 2) by 1980 it had increased to 23%,
 - 3) by 1992 it had decreased to 10%
 - 4) In recent years has gone up but expenditures have been primarily for Social Security and Medicare.

VII. Role of the Rehnquist Court – devolution through Court Decisions

- A. 1992 – Federal Requirements that New York control low level radioactive waste were beyond the scope of federal power.
- B. 1995 *United States v. Lopez* – Overturned the Gun Free School Zone Act of 1990, which banned guns within 1000 feet of a school. Ruled that it was outside federal realm because it had nothing to do with Commerce.
- C. 1997 *Printz v. United States* – Struck down provisions of the Brady Bill (1993) which required that police conduct background checks for prospective handgun purchasers. Would have required states to implement federal regulations.
- D. 2000 *Kimmel v Florida Board of Regents* – Plaintiff could not sue in Federal Court for violation of age discrimination protections.

VIII. Devolution – Conventional Wisdom

- A. Assumption 1 - State Governments leaner & meaner

- 1) combined expenditures of the states has increased 20 times faster than that of the Federal Government during the last decade.
- 2) Just as susceptible to special interest spending as the Federal Gov.

B. Assumption 2 - Most State Governments are less corrupt

- 1) State legislatures much more vulnerable to lobbyists
- 2) Term limits have decreased the experience of legislators but there are no term limits on lobbyists.
- 3) No limits on PAC contributions 20 states - few safeguards
- 4) For example in the early 1990 the FBI conducted a sting operation in California to in which bribes were paid to lawmakers to get special benefits for shrimp importers. The bill passed through the legislature rapidly and Gov. Wilson was ready to going to sign it into law. The FBI had to stop him.
- 5) 1990 – In 10 as many state and local officials charged with ethics violations.
- 6) Little press scrutiny – most of the focus is on the national government.

C. Assumption 3 - The amount given to states will be the same

- 1) By eliminating the mandate, a state can eliminate or reduce the entitlement if they choose
- 2) race to the bottom - to prevent interstate migration states decrease welfare