

Chapter 3 – Federalism: Division of Power among National, State and Local Governments

OVERVIEW

- The framers combined elements of confederation and a national or unitary system when drafting the Constitution. It is called **federalism**. Questions over this dual sovereignty have been litigated a great deal. ***The Supreme Court has interpreted three clauses in particular in such a way as to expand national powers: the necessary and proper, the commerce, and the spending clauses.***
- In the 1960s, a new era of federalism began: cooperative or marble cake federalism. One aspect of this was the national government giving state and local governments money in the form of categorical grants. In recent years, Republicans have advocated shifting the emphasis of federalism to block grants. Despite the expansion of federal power, state and local governments remain vital components of the federal system.

OUTLINE

I. The Federalism Debate: It's New But It's Old

- Federalism divides fundamental governmental authority between at *least two different levels. For several reasons, federalism has long been thought ideally suited to U.S. conditions.

A. Federalism in Context

- Throughout U.S. history, and still today, differences of opinion have existed over the distribution of powers between the national level of government and the state and local levels of government.
- Republicans tend to advocate more power being exercised by state and local governments, while Democrats tend to favor the national level. In recent times, this debate has focused on the desirability of ***unfunded mandates***, the imposition of federal regulations on state and local governments without appropriating enough money to cover their cost.
- ***It is in Congress' interest to pass unfunded mandates. When Congress does this, it can take credit for doing something about a problem, while not having to raise taxes to pay for it.***
- After Republicans took control of both houses of Congress in 1995, they followed up on their platform of devolution and passed a federal law banning any new law that was not adequately funded, and reduced the size and scope of many federal programs. This trend continues today.
- In Brian Reid's "The Case Against a Federal Bailout of the States," he points out that the states have successfully secured a \$20 billion bailout from Washington to close their expanding budget deficits. General fund revenues have climbed 46 percent since 1990, but spending has climbed 50 percent, nearly twice the rate of federal spending. Total state government spending topped one trillion dollars per year for the first time ever in 2000 and has continued to rise.

II. Evolution of the Federalism Debate

- Because the Constitution was a compromise of opposing viewpoints, disputes have repeatedly occurred between those favoring a strong national government and those favoring more power to the states.
- The Supreme Court has played an important role in this struggle. Through the exercise of judicial review, it can declare state or national laws unconstitutional.
- Elections also impact the balance of power. Who wins control of Congress can determine the kinds of federal laws that are passed that have an impact on federalism.

A. Dual Sovereignty and Nullification

- So strong was the notion of dual sovereignty in the early years of the republic that some states believed they could nullify national laws that threatened state or individual liberties: the doctrine of nullification.
- The Supreme Court rejected the notion of states nullifying national laws in the 1819 case of *McCulloch v. Maryland*. But the nullification issue reappeared in the 1830s over tariffs and later over slavery. When President Lincoln opposed the spread of slavery in the western territories, southern states asserted they had a right to secede.
- Moreover, the outcome of the Civil War decided once and for all that whatever individual sovereignty meant, it did not mean that state legislatures could declare decisions of the national government null and void.

III. The Supreme Court and the Meaning of Dual Sovereignty

- The Commerce Clause and the Necessary and Proper Clause have expanded federal power; state sovereign immunity has restricted federal power.

A. The Commerce Clause and the Court-Packing Episode

- The meaning of the constitutional phrase giving Congress the power to regulate commerce among the states has been hotly debated. In the latter portion of the eighteenth century, the Supreme Court defined commerce in such a way that Congress's powers were limited. For example, the Court exempted manufacturing from congressional regulation. It also would not permit regulation of intrastate commerce that affected interstate commerce.
- In the 1930s, the Court reversed many of these earlier commerce decisions. The result was that Congress's power was greatly expanded. Some thought there was nothing Congress could not regulate in the name of regulating commerce.
- A recent decision of the Supreme Court indicated there are limits to this broad authority. As an exercise of its power to regulate commerce, Congress passed a federal law making it a crime to possess a gun within 1,000 feet of a public school. The Court ruled that Congress lacked the authority, to pass the law in the name of regulating commerce, declaring it unconstitutional.

B. Necessary and Proper Clause

- Chief Justice John Marshall expanded the powers of Congress by broadly interpreting the words "*necessary and proper*," hence, the clause has been called the *elastic clause*.

- A recent decision by the Supreme Court (*New York v. U.S.*, 1991) indicated that the clause did not give Congress any power it claimed. The Court ruled that Congress could not order states or local governments to bury their nuclear waste.

C. State Sovereign Immunity

- Since the mid-1990s, the Supreme Court has interpreted the Eleventh Amendment to reinforce, and sometimes expand, states' immunity from prosecution by private parties based on federal law. For example, the Supreme Court has ruled that states cannot be sued under the American with Disabilities Act, which is a federal law.

IV. Cooperative Federalism

- The notion of *cooperative federalism*, also known as "*marble-cake*" *federalism*, is the idea that all levels of government could and should perform all governmental functions together, hence, the marble-cake analogy. The governments work together to provide the most efficient method.
- This idea was endorsed strongly in the 1960s with the passage of numerous intergovernmental grants, such as the LBJ-led Great Society programs.

A. Spending Clause

- The spending clause grants Congress the power to collect taxes to "provide for the . . . general welfare." The Supreme Court, at least since the 1930s, has interpreted this clause in such a way that Congress's authority is vast.
- The Court has also upheld Congress's attaching reasonable regulations to money it allocates to state and local governments. It is this authority that has resulted in the theory and practice of cooperative federalism.

1. A Government of Shared Functions

- The federal and state government share implementation authority for policies. Cooperative federalism is good for democratic government because it allows for compromise and negotiation among all levels of policy.

2. Categorical Grants

- Some politicians - particularly Democrats - view intergovernmental grants as a way of advocating a particular political philosophy. Thus, they advocate a particular type of grant: the categorical grant. These grants are specific about how the money given to state and local governments can be spent. The War on Poverty programs from the 1960s are examples.

3. Problems of Implementation

- When problems developed over the War on Poverty programs, scholars reexamined the intergovernmental grant program. Some concluded that when implementing these grants, for various reasons, they would not be as effective as originally thought.

4. Block Grants

- ***Congress responded to the implementation theorists' criticisms of intergovernmental grants by replacing many categorical grants with block grants.*** Block grants are characterized by broad objectives, a minimum of federal restrictions, and a maximum discretion for local officials.
- First, during the Nixon administration, Congress passed general revenue sharing which did not replace but did supplement categorical grants.

- Under the Reagan administration, several categorical grant programs were converted to block grants, and general revenue sharing was eliminated.
- In 1996, Congress transformed the large categorical grant program known as AFDC (Aid to Families with Dependent Children) into a block grant.
- One criticism of these grant programs is that wealthier states get as much aid as poorer states. One argument in favor of federal grants is that they are necessary to maintain properly funded social programs.

5. The Contemporary Debate

- Under the George W. Bush Administration, the Republican Party has increasingly supported and passed grants that require states to spend the grant money in ways determined by the federal government.
- There has also been a move back to passage of unfunded mandates. Congress has incentive to pass unfunded mandates – members get credit for passing policy and are not required to spend taxpayer money on the policy.

V. Local Government

- Local governments maintain roads, take care of the parks, provide police, fire, and sanitation services, run the schools, and do many other things. The recent devolution of responsibilities to state and local governments means that they play an even more important role.

A. The Number and Types of Local Governments

- There are nearly 70,000 units of local government. In most states, the basic unit of local government is the county. The number of municipal governments has also increased in recent years. Finally, there are nearly 30,000 special districts.

B. Local Elections

- Most local governments are run by elected officials, though special-district heads are often appointed. Turnout in local elections is low, partially due to the fact that local politics is generally less contentious, except in big cities.

C. Popularity of Local Government

- Americans have more trust in their local governments than in the federal government.
- One explanation is that voters can move to a better locale if they are displeased.
- Local governments also serve as laboratories of democracy, and their wide variety gives people a choice.

D. Limits on Local Government

- Local governments face several dilemmas. If a local government tries to provide substantial services to the needy, it runs the risk of attracting more poor people to its community and driving away the better-off.
- Local governments also find themselves competing with one another to attract businesses.

VI. State Governments

- The basic design of most state governments bears a strong similarity to that of the national government.
- All states have a multi-tiered court system, a bicameral legislature (except Nebraska), and an independently-elected governor.

A. State Elections

- Most state officers are held by Republicans or Democrats. The most recent pattern is for Democrats to dominate the state legislatures and Republicans to control the governor's offices.

B. Variation in State Government Responsibilities

- The size and range of state responsibilities have grown dramatically in recent decades.
- The amount that states and their local governments spend on government services varies considerably. The differences depend on the wealth of a state as well as elections. Wealthier states spend more on public services. States having more Democrats in their legislature spend more on social services.

C. Modern State Politics

- In recent years, state political institutions have become more modern, the role of governors has grown, and states have begun to develop their own economic policies.

1. Budget Battles

- Because almost all states are constitutionally required to have balanced budgets, budget battles between governors and state legislatures can become dramatic and bruising affairs. *This is especially true in periods of economic downturn, when state taxes may fail to take in enough money to keep services at previous levels.*

2. Reapportionment and Professionalization

- Once the U.S. Supreme Court in the 1960s ordered states to reapportion, turnover rose significantly, and every 10 years, reapportionment becomes a major battle in the states.
- State legislatures have become more professional. California's legislature is one of the best examples of this; Wyoming's one of the worst. In some states, citizens reacted to the increasing professionalism by enacting term limits, cutting salaries, and reducing staffs and budgets.

3. State Economic Action

- In the 1980s and 1990s, many states resumed the active roles they had played in the nineteenth century in economic development. Thus, states passed tax incentives for businesses and pursued international avenues of trade.