

### Chapter 3 Federalism

Essentially, the power of government must be equal to its responsibilities. The Constitution was needed because the nation's preceding system (under the Articles of Confederation) was considered too weak to accomplish its expected goals, particularly those of a strong defense and an integrated economy. However, creating a new constitution was not easy due to the autonomy of the states. The system of government that we now have in the U.S. is considered unique in the world because of the separate levels of government that exist (the states and the national government). During the history of this country this has been the source of a lot of conflict in trying to determine which level of government is supposed to carry out different policy objectives. Thus it is important for us to know the nature of this relationship, how it came about, and how it has evolved over time.

**Federalism.** A way of organizing a nation so that two or more levels of government have formal authority over the same area and people. It is a system of shared power between units of government. In the United States, it is the division of governing authority (sovereignty) between the national government and the state governments.

Keep in mind that federalism is NOT a fixed principle for allocating power between units of government. It is a principle that has changed over the course of time in response to political needs.

There are two other types of government besides federalism we need to know about: unitary, confederacy.

Unitary: most of the world's governments. All power resides in a central government.

Confederacy: a union of states in which the states retain all sovereignty.

The federal system of government here in the United States decentralizes our politics. For example, in November, there are actually 51 separate presidential elections, one for each state and one for the District of Columbia (this is how the electoral college actually works, which we will explain later in our chapter on the presidency). It offers more layers of government, which allow for more opportunities for political participation. With more people wielding power, there are more points of access in government, and more opportunities for interests to have their demands for public policies satisfied. With more decisions made in the states, there are fewer sources of conflict at the national level.

HOWEVER, the federal system not only decentralizes our politics but also decentralizes our policies too. The history of the federal system demonstrates the tension between the states and the national government about policies: who controls it and what it should be.

The word federalism does not appear in the Constitution. In the late 1700s the people of the country thought of themselves as citizens of their respective states, not necessarily as Americans. The authors of the Constitution were very aware that the people of the country were sensitive to the issues of governing authority, and were very suspicious of a strong national government. Thus they carefully spelled out the powers of the state and national governments.

Figure 3-1 in the textbook, page 70 illustrates this.

**Enumerated (sometimes called expressed or delegated) powers.** Article I, Section 8, of the U.S. Constitution spells out the specific powers of the national government.

Among these are the power to:

Coin money

Conduct foreign relations

Regulate commerce with foreign nations and among states

Provide for an army and a navy

Declare war

Establish post offices and postal roads

(Note: you do not have to remember the specific powers listed under Article I, Section 8, just be sure you understand what the concept of enumerated powers means.)

The primary purpose of the Framers was to establish a national government strong enough to regulate commerce and provide for a common defense. And yet, they were wise enough to foresee two possibilities with regard to the relationship between the states and the national government.

First, the last paragraph of Article I, Section 8, gives Congress the power “to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers...”. This is the so-called “**necessary and proper**” clause, sometimes called the **elastic clause**, of the Constitution. It allows for the national government to adapt to changing conditions. The framers did not want to overly stifle the new government with only the expressed powers. They wanted to provide flexibility to grow and adapt as changes to the political environment required. It gives the national government **implied powers**, which have changed over time.

Secondly, the framers were aware that there might be disagreements between the states and the national government. The Framers were shrewd enough to foresee this possibly happening. Which prevailed, the national or the state laws? **Article VI** of the Constitution provides the answer to this. The framers state that the Constitution, the Laws of Congress, and Treaties made under the authority of the national government “shall be the supreme Law of the Land”. It also instructs judges in every state to obey the U.S. Constitution even if their state constitutions or state laws directly contradicted it. This is known as the **supremacy clause** of the Constitution.

As you can imagine, this was a very tough thing to try to sell to the people of the country in the late 1700s. People were very skeptical of granting the new government what was considered to be a lot of power. During the debate over whether to adopt the new constitution or not, many of the arguments of the anti-federalists were directed at these, claiming that the proposed government would be too strong and would usurp the states' authority.

The response to this was the **Tenth Amendment** to the Constitution, the last of the Bill of Rights. The Tenth Amendment states, very simply, the "the 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". This has come to be known as **reserved powers**.

This is indeed rather broad and vague, much like the supremacy clause or the elastic clause. There has been no set answer to exactly how each of these powers interrelate, and the definitions of each of these have change in scope and power over time.

### **Evolution of Federalism**

To understand how federalism has existed through time as well as understand the contentious nature of the relationship between the states and the national government, the author of your text takes a look at how this relationship has evolved over time. He identifies three distinct periods of time that he contends represents how this relationship has existed. I'll not go over all aspects of it here since it is covered well in your textbook, but there are some important points that I feel need to be highlighted. The key thing to understand is that the country overall has become more national in nature (**nationalization**). As time has gone by we have come to look more towards the national government to resolve major policy issues that seem to affect us all. In looking at the three eras the author has identified that define the relationship we can see this evolution:

First Phase (1789-1865), which was characterized by conflict between the nationalist and states'-rights views.

- 1) The nationalist view, reflected in the **McCulloch v. Maryland (1819)** decision held that when national and state law conflict, national law prevails. The case also articulated the implied powers doctrine which held that the national government's powers extend beyond a narrow reading of its enumerated powers. At issue was whether the national government had the right to create a national bank and compel the states to be a part of it. The chief justice of the Supreme Court at the time of this decision was John Marshall, who believed more in a nationalist point of view and thus sided with the creation of the bank.
- 2) John C. Calhoun was more of an advocate of states'-rights. He felt that the national government was a "government of states...not a government of individuals". This line of reasoning led him to adopt his "doctrine of nullification", which stated that a state had a constitutional right to nullify a national law. Eventually the idea of states'-rights led to the Supreme Court decision of the Dred Scott case (1857). Basically the Court ruled that the so-

called Missouri Compromise (which made slavery illegal in free states or territories) was unconstitutional. The Court went further and ruled that slaves were property, not people, and thus can never earn citizenship. This ruling caused a major fraction of the Democratic Party at the time, and was a factor that ultimately led to the Civil War.

- 3) Ultimately the nationalist view was upheld by the election of Lincoln and Union victory in the Civil War.

Second Phase (1865-1937), which brought about the development of the principles of dual federalism and laissez-faire capitalism.

- 1) **Dual federalism** held that a precise separation of national and state authority was both possible and desirable.
- 2) **Laissez-faire capitalism** holds that business interests should be allowed to act without government interference. The Supreme Court interpreted the commerce clause to protect business from substantial regulation by either state or national governments.
- 3) After 1937 the Supreme Court recognized that an industrial economy must be subject to some level of national regulation if it is to serve the nation's needs and interest, thus weakening dual federalism and laissez-faire capitalism.
- 4) In the Roosevelt era the Supreme Court broadened its interpretation of the federal government's taxing and spending powers while upholding legislation of the New Deal programs.

### **Federalism Today (since the 1930s)**

The national government's policy authority has expanded greatly since the 1930s even though that authority has been reduced somewhat in recent years. Two countervailing trends in the development have emerged.

- 1) the first is a long-term expansion of national authority that began in the 1930s and continued for the next half century.
- 2) The second trend is more recent and involves a partial contraction of national authority known as "devolution".

The states and citizens have become increasingly interdependent, providing the impetus for a stronger national government.

- 1) National, state and local policymakers are encouraged to collaborate to solve policy problems. This is known as **cooperative federalism**, which stresses shared policy responsibilities rather than sharply divided ones.
- 2) The federal government's involvement in policy areas traditionally reserved for the states has increased its policy influence and has diminished state-to-state policy differences.
- 3) The federal government raises more tax revenues than do all the states and local governments combined, which led to the development of fiscal federalism. **Fiscal federalism** holds that the federal government provides some or all of the money for a program, while the states and localities administer it.

- 4) Federal assistance (such as **grants-in-aid**) provides a significant share of state revenue, though this varies from state-to-state. The two main types of federal assistance to state and local governments are **categorical grants** (designated activities, such as textbooks, teachers) and **block grants** (general areas, education for example, where the states or localities are free to spend as they see fit).

**Devolution** is the idea that American federalism will be improved by a shift in authority from the federal government to state and local governments.

- 1) Both budgetary pressures and a shift in public opinion led to changes in relations among the national, state, and local levels of government.
- 2) The Republican Revolution in Congress in 1995 took steps to decentralize federalism by reducing federal unfunded mandates and giving states more control over how money would be spent. States were encouraged to take more responsibility for welfare reform.
- 3) Public opinion plays a role in defining the boundaries between federal and state power.

The author feels that this movement (devolution) has stalled somewhat due to a couple of factors. First is the adoption of the No Child Left Behind Act under president George W. Bush. President Bush felt that the nation needed national standards for the education of children and thus pushed for a law to establish these rather than letting the states maintain their traditional independence in developing educational policy. Second, the September 11, 2001 attacks resulted in an expansion of national authority to protect the people by creating a new cabinet level Department of Homeland Security.

I am not sure I totally agree with the author that devolution is completely stalled. In the last few years we have seen contentious battles over the national budget and whether the national government should continue major programs. Conservative Republicans have pressed for a reduction of the national debt and a return of many programs back to the states rather than the national government.

From an overall perspective, however, the important thing to remember about federalism is that the relationship between our national government and the state governments has changed and evolved over time. It is expected that this trend will continue due to the changing priorities of public opinion.