

Chapter 3

Federalism

REVIEWING THE CHAPTER

CHAPTER FOCUS

The central purpose of the chapter is to introduce you to some of the complexities of government in the United States caused by the adoption of a federal system, that is, one in which both the national and state governments have powers independent of one another. You should also note how the nature and the effects of U.S. federalism have changed throughout U.S. history and continue to change to this day. After reading and reviewing the material in this chapter, you should be able to do each of the following:

1. Explain the difference between federal and centralized systems of government, and give examples of each.
2. Show how competing political interests at the Constitutional Convention led to the adoption of a federal system, but one that was not clearly defined.
3. Outline the ways in which the courts interpreted national and state powers and why the doctrine of dual federalism is still alive.
4. State why federal grants-in-aid to the states have been politically popular, and cite what have proved to be the pitfalls of such grants.
5. Distinguish between categorical grants and block grants or general revenue sharing.
6. Explain why, despite repeated attempts to reverse the trend, categorical grants have continued to grow more rapidly than block grants.
7. Distinguish between mandates and conditions of aid with respect to federal grant programs to states and localities.
8. Define *devolution* and its roots.
9. Discuss whether or to what extent federal grants to the states have succeeded in creating uniform national policies comparable to those of centralized governments.

STUDY OUTLINE

I. Introduction

A. The story of Susette Kelo

1. Property condemned by city officials
2. Desire to redevelop area with pricey townhouses, malls and a large hotel
3. Supreme Court upheld the city's decisionmaking
 - a) Property can be seized for public use
 - b) Property can be seized for economic development in distressed communities

B. What could anyone do about it?

II. Why “federalism” matters

A. Reaction to the *Kelo* decision and other examples of tension and variation in policy-making

1. Grass roots lobbying campaigns
2. Thirty-four states tightened laws to make seizures more difficult
3. Half of the states have a minimum wage standard that is higher than the federal standard
4. Sometimes, but not always, the national government leads in making, administering and funding expensive public policies

B. Federalism

1. Definition: system in which the national government shares power with local governments
2. States have a specially protected existence and authority (not merely junior partners)
3. The implementation and funding of federal decisions depends upon state and local government
4. The impact of federalism is widespread (roads, crime, civil liberties, civil rights, etc.)
5. The degree and manner in which federalism has mattered has changed over time
 - a) Recent highly visible attempts to scale back the national government
 - (1) Devolution
 - (2) Block grants
 - b) Long-standing tension between national and state governments
 - (1) Slavery
 - (2) Regulation of business and social welfare programs
 - (3) States rights
 - (4) Mandates

III. Governmental structure and assessment

A. Structure and examples

1. Definition: political system with local governmental units, in addition to national ones, that can make final decisions
2. Examples of federal governments: Canada, India, and Germany
3. Examples of unitary governments: France, Great Britain, and Italy
4. Special protection of subnational governments in federal system is the result of
 - a) Constitution of country
 - b) Habits, preferences, and dispositions of citizens
 - c) Distribution of political power in society
5. National government largely does not govern individuals directly but gets states to do so in keeping with national policy

B. Good or bad?

1. Confusion about responsibility for particular functions can have dire consequences
 - a) Hurricanes Katrina and Rita led to fighting between federal, state and local officials
 - b) First-responders and disaster relief workers were nongovernmental, volunteers
 - c) Some government agencies made delivery of aid harder
2. Negative views: block progress and protect powerful local interests
 - a) Laski: states “poisonous and parasitic”
 - b) Riker: perpetuation of racism
3. Positive view: Elazar: strength, flexibility, and liberty
4. Federalism makes good and bad effects possible
 - a) Different political groups with different political purposes come to power in different places
 - b) *Federalist* No. 10: small political units dominated by single political faction

C. Increased political activity

1. Most obvious effect of federalism: facilitates mobilization of political activity
2. Federalism lowers the cost of political organization at the local level

IV. 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 derives from the people, who shift their support
2. New plan had no historical precedent
3. Tenth Amendment was added as an afterthought, to define the power of states

B. Elastic language in Article I: necessary and proper

1. Precise definitions of powers politically impossible because of competing interests, such as commerce
2. Hence vague language—"necessary and proper"
3. Hamilton's view: national supremacy because Constitution supreme law
4. Jefferson's view: states' rights with people ultimate sovereign

V. The debate on the meaning of federalism

A. The Supreme Court speaks

1. Hamiltonian position espoused by Marshall
2. *McCulloch v. Maryland* settled two questions
 - a) Could Congress charter a national bank? (yes, because "necessary and proper")
 - b) Could states tax such a bank? (no, because national powers supreme)
3. Later battles
 - a) Federal government cannot tax state bank
 - b) Nullification doctrine led to Civil War: states void federal laws they deem in conflict with Constitution

B. Dual federalism

1. Both national and state governments supreme in their own spheres
2. Hence interstate versus intrastate commerce
 - a) Early product-based distinction difficult
 - b) "Original package" also unsatisfactory

C. State sovereignty

1. Mistake today to think dual federalism is entirely dead
 - a) Supreme Court has limited the use of the commerce clause
 - b) New life has been given to the Eleventh Amendment
 - c) Although not all recent Supreme Court decisions support greater state sovereignty
2. Constitutional basis of state and local government
 - a) New debates have resurrected notion of state police powers
 - b) State constitutions tend to be more detailed and expansive
 - c) Many state constitutions open the door to direct democracy
 - (1) initiative
 - (2) referendum
 - (3) recall
 - d) Existence of the states guaranteed while local government exist at pleasure of states

VI. Federal-state relations

A. Grants-in-aid

1. Grants show how political realities modify legal authority
2. Began before the Constitution with "land grant colleges," various cash grants to states
3. Dramatically increased in scope in the twentieth century

4. Were attractive for various reasons
 - a) Huge budget surpluses in 1880s
 - b) Federal income tax was created
 - c) Federal management of money and the power to print more at will
 - d) “Free” money for state officials
5. Required broad congressional coalitions
 - a) Example: federal funds for increased public safety post-September 11
 - b) Example: Homeland Security grants and fair share formulas
- B. Meeting national needs: 1960s shift in grants-in-aid
 1. From what states demanded to what federal officials found important as national needs
 2. Impact of the rise of “federal activism”
 - a) Increase in federal grants to state and local government
 - b) Shift in the purposes for such money
- C. The intergovernmental lobby
 1. Hundreds of state, local officials lobby in Washington
 2. Federal agencies have staff members that provide information, technical assistance, and financial support to state and local organizations
 3. Purpose: to get more federal money with fewer strings
- D. Categorical grants versus revenue sharing
 1. Categorical grants for specific purposes often require local matching funds
 2. Block grants devoted to general purposes with few restrictions
 3. Revenue sharing requires no matching funds and provides freedom in how to spend
 - a) Distributed by statistical formula
 - b) Ended in 1986
 4. Neither block grants nor revenue sharing achieved the goal of giving states more freedom in spending.
 - a) Neither grew as fast as the states had hoped—categorical grants, on the other hand, continued to grow
 - b) The federal government increasingly attached “strings” to what was supposedly unrestricted
 5. Why block grants grow more slowly?
 - a) Desire for federal control and distrust of state government
 - b) No single interest group has a vital stake in multipurpose block grants, revenue sharing
 - c) Categorical grants are matters of life or death for various agencies
- E. Rivalry among the states
 1. Increased competition a result of increased dependency
 2. Snowbelt (Frostbelt) versus Sunbelt states
 - a) Difficulty telling *where* funds spent
 - b) Difficulty connecting funds to growth rates
 - c) Focus on formulas and their impact
 3. Census takes on monumental importance
- VII. Federal aid and federal control
 - A. Introduction
 1. Fear of “Washington control” and jeopardy of Tenth Amendment
 2. Failed attempts at reversal in trends (block grants and revenue sharing)
 3. Traditional and newer forms of federal controls on state governmental actions
 - a) Conditions of aid tell a state government what it must do to obtain grant money
 - b) Mandates tell state governments what to do, in some instances even when they do not receive grant money

B. Mandates

1. Most concern civil rights and environmental protection
2. Administrative and financial problems often result
3. Federal-state disputes, fueling the friction
 - a) Some mandates are not adequately funded
 - b) Explaining the variation in funding
 - (1) Number is high in environmental policy, low in education policy and moderate in health policy
 - (2) Lower rates of spending are associated with more mandates
 - (3) Waivers more easily obtained in some policy areas than others
4. Additional costs imposed on the states through
 - a) Federal tax and regulatory schemes
 - b) Federal laws exposing states to financial liability
5. Federal courts have fueled the growth of mandates
 - a) Interpretations of the Tenth Amendment have eased flow of mandates
 - b) Court orders and prisons, school desegregation, busing, hiring practices, police brutality

C. Conditions of aid

1. Received by states voluntarily, at least in theory
 - a) Financial dependence blurs the theory
 - b) Civil rights generally the focus of most important conditions in the 1960s, a proliferation has continued since the 1970s
 - (1) Conditions range from specific to general
 - (2) The states and federal government disagree about the costs and benefits of rules
2. Different demands result in complex bargaining among government officials
 - a) Bargains originally favored local officials
 - b) Emergence of Washington's needs over local needs

VIII. A devolution revolution?

A. Efforts of the Reagan administration

1. Consolidation of categorical grants into block grants
2. Less money sent to the states, but with fewer strings
3. States started spending more of their own money as well

B. Republican efforts in the 1990s

1. Attempt to cut government spending, roll back federal regulations and shift important functions back to the states
2. Reform of AFDC
3. Devolution
 - a) An old idea led from a new direction, Congress
 - b) Spending was considered a form of constituency service

C. Was the era of big national government over?

1. Annual federal spending per household up
2. Federal revenues and debts are at an all time high
3. Spending by state and local government spending has increased as well
4. Large, costly federal programs remained and were not turned into block grant programs (Medicaid)
5. There have been more, not fewer government rules and regulations

D. Impact of devolution – where it did occur

1. Dramatic decrease in welfare rolls
2. Second order devolution
3. Third order devolution

- E. Congressional preemption
 - 1. Express preemption
 - 2. Implied preemption
- IX. Congress and federalism: nation far from wholly centralized
 - A. Members of Congress still *local* representatives
 - B. Members of Congress represent different constituencies from the same localities
 - C. Link to local political groups eroded
- D. Differences of opinion over which level of government works best