Chapter 4

Federalism

Defining the powers of National and State Governments
FIGURE 3.1 NUMBER OF GOVERNMENTS IN THE UNITED STATES

- U.S. government: 1
- State governments: 50
- Local governments:
  - County: 3,043
  - Municipal (city): 19,431
  - Townships: 16,506
  - School districts: 13,522
  - Special districts: 35,356
- Total: 87,909
Origins of the Federal System

- Under the Articles, the U.S. was governed by a confederation.
  - National government derives power from states
    - Led to weak national government
    - Framers remedied problems with a federal system

- Federal system
  - U.S. was the first country to adopt a federal system of government
  - The national government and state governments derive all authority from the people.
  - Different from unitary system
    - The local and regional governments derive all authority from a strong national government.
FIGURE 3.2 THE FEDERAL, UNITARY, AND CONFEDERATE SYSTEMS OF GOVERNMENT
The source of governmental authority and power differs dramatically in various systems of government.

Federal System
National government and states derive authority from the people

Unitary System
Local and regional governments derive authority from the national government

Confederate System
National government derives authority from states

States  People  National Government
National Powers Under the Constitution

- Enumerated Powers
  - 17 specific powers granted to Congress
    - Article 1, section 8 of the U.S. Constitution
    - Taxation
    - Coinage of money
    - Regulation of commerce
    - National defense
  - Necessary and Proper Clause
  - Implied Powers
- Supremacy Clause
  - Mandates that national law is supreme to all other laws passed by the states or by any other subdivision of government
State Powers
Under the Constitution

- **Article 1**
  - Allows states to determine time, place, and manner of elections for House Representatives and Senators

- **Article II**
  - Requires that each state appoint electors to vote for president

- **Article IV**
  - Privileges and immunities clause
  - Republican form of government
  - Protection against foreign attacks and domestic rebellion

- **Tenth Amendment**
  - States’ powers described here
  - Reserve (or police) powers
Concurrent Powers

- Concurrent powers
  - Authority possessed by both state and national governments and exercised concurrently (at the same time) as long as that power is not exclusively within the scope of national power or in conflict with national law
    - Power to tax (states already had this one)
    - Right to borrow money
    - Establish courts
    - Make and enforce laws to carry out these powers
FIGURE 3.3 THE DISTRIBUTION OF GOVERNMENTAL POWER IN THE FEDERAL SYSTEM

NATIONAL POWERS (ENUMERATED POWERS)
- Coin money
- Conduct foreign relations
- Regulate commerce with foreign nations and among the states
- Provide for an army and a navy
- Declare and conduct war
- Establish a national court system
- Make laws necessary and proper to carry out the foregoing powers

CONCURRENT POWERS
- Tax
- Borrow money
- Establish courts
- Make and enforce laws
- Charter banks and corporations
- Spend money for the general welfare
- Take private property for public purposes, with just compensation

STATE POWERS (RESERVE POWERS)
- Set time, place, and manner of elections
- Ratify amendments to the federal Constitution
- Take measures for public health, safety, and morals
- Exert powers the Constitution does not delegate to the national government or prohibit the states from using
- Establish local governments
- Regulate commerce within a state
Denied Powers

- States cannot
  - Enter into treaties
  - Coin money
  - Impair obligation of contracts
  - Cannot enter into compacts with other states without congressional approval
  - Denied the authority to take arbitrary actions affecting constitutional rights and liberties
  - Cannot pass a bill of attainder
  - No ex post facto laws

- Congress cannot
  - Favor one state over another in regulating commerce
  - Cannot lay duties on items exported from any state
  - Cannot pass a bill of attainder
    - Laws finding a particular party guilty without trial
  - No ex post facto laws
    - No convictions for breaking a law prior to its enactment
Relations Among the States

- Mechanisms for interstate disputes
  - Directly settled by U.S. Supreme Court under its original jurisdiction
  - Full Faith and Credit Clause
    - Ensures judicial decrees and contracts made in one state will be binding and enforceable in others
    - States can vary considerably on social issues - implications?
  - Privileges and Immunities Clause
  - Extradition Clause
  - Interstate compacts
    - Over 200 exist today
    - Contracts between states that carry the force of law
      - Drivers License Compact
    - Consent of Congress
Relations Within the States: Local Government

- Local governments’ authority not granted by the people but through state governments
  - States establish or charter their administrative subdivisions.
  - Local governments carry out or execute the duties of state governments on smaller scale.
Federalism and the Marshall Court

- Two rulings in the early 1800s had a major impact on the balance of power between national and state governments.
  - *McCulloch v. Maryland* (1819)
    - Upheld power of national government and denied the right of state to tax national bank
  - *Gibbons v. Ogden* (1824)
    - Upheld broad congressional power to regulate interstate commerce
Dual Federalism: The Taney Court, Slavery, and the Civil War

- Dual Federalism
  - Belief that having separate and equally powerful levels of government works best
  - Implication: National government should not exceed its constitutionally enumerated powers and all other powers are, and should be, reserved to the states or the people.

- *Dred Scott v. Sandford* (1857)
  - Declared the Missouri Compromise unconstitutional
  - Congress lacked the authority to ban slavery in the territories.
The Civil War, Its Aftermath, and the Continuation of Dual Federalism

- National government grew in size and powers after Civil War (1861-1865)
  - 13th, 14th, and 15th Amendments
    - Prohibited slavery and granted civil and political rights to African Americans
  - Supreme Court adhered to concept of dual federalism
    - Plessy v. Ferguson (1896)
    - Confusion over regulation of commerce
    - Inconsistent rulings on scope of national power
Setting the Stage for a Stronger National Government

☐ Sixteenth Amendment (1911)
  - Authorized Congress to enact a national income tax
    - Supreme Court had found congressional legislation in this area unconstitutional

☐ Seventeenth Amendment (1913)
  - Made senators directly elected by the people
  - Removed their selection from state legislatures
Different Eras of Federalism

- Dual Federalism I 1788-1860
- Dual Federalism II 1860-1930
- Cooperative Federalism 1930-1960
- Creative Federalism 1960-1980
- Devolution 1980-2001
- Today????
The Changing Nature of Federalism: From Layer Cake to Marble Cake

Layer cake federalism
- Each layer, national, state and local, had clearly defined powers and responsibilities.
- After the New Deal, the nature of the federal system changed.

Marble cake metaphor
- Cooperative federalism
  - The relationship between the national and state governments that began with the New Deal
Great Depression
- Bank failures (1920s)
- 1921 slump in agricultural prices
- 1926 construction industry went into decline
- 1929 (summer) inventories of consumer goods and cars were at an all-time high
- October 29, 1929, stock market crashed
Cooperative Federalism: New Deal and Growth of National Government

- The New Deal (1933-1939)
  - Intense governmental activity on the national level
  - Response to Great Depression required the exercise of tremendous national authority
    - New agencies and programs
  - Supreme Court worried about scope of these programs in terms of regulating commerce and the economy
    - Court-packing plan response to anti-New Deal court decisions
  - New programs required cooperation across all levels of government.
Cooperative Federalism

- Amendments
  - 21st
  - 22nd

- Court Cases
  - Powell v AL
  - Korematsu v US
  - Brown V Board
  - US v Darby

- Changes
  - Great Depression
  - New Deal
  - WWII
  - Fair labor standards Act
  - Agricultural Adjustment Act
  - Court Packing Scheme
  - Banking Act
  - Executive Order 9981
  - Little Rock 9
  - Categorical Grants
  - Grants in Aid
Federal Grants and National Efforts to Influence the States

- Morrill Land Grant Act of 1862
- New Deal
- Most grants were **categorical grants**.
  - Grant for which Congress appropriates funds for a specific purpose
  - States could accept or not but if accepted they must do exactly what the Federal Government said
Creative Federalism
Influencing Local Government

Lyndon Johnson has a Better Idea

- 1960s War on Poverty
- Education Legislation
- Medicaid/Medicare
  - Direct assistance to states, local governments, and citizen groups
  - Grants used to push national agenda rather than respond to state demands
- Unfunded Mandates
- Court Decisions
  - Expansion of Criminal Rights
  - Griswold v CT
  - Roe v Wade
Creative Federalism

**Cases**
- Baker v Carr
- Westbury v Sanders
- Furman v GA
- Griswold v CT
- Miranda v AZ
- Gideon v Wainwright
- Roe v Wade

**Amendments**
- 23rd
- 24th

**Changes**
- 25th
- 26th
- Great Society
- War on Poverty
- Civil Rights
- Civil rights act 1964
- Voting rights act 1965
- Fair housing act 1968
- Clean air act
Devolution: Returning Power to the States

- New Federalism
  - Federal/state relationship proposed by Reagan administration during the 1980s
  - Return administrative powers to the state governments

- Reagan Revolution
  - Block grants
    - Broad grant with few strings attached
    - Given to states by federal government for activity in specified area (education or health services, for example)
Devolution: Returning Power to the States

- The Devolution Revolution
  - Contract with America
  - Unfunded Mandates
    - National laws that direct states or local governments to comply with federal rules and regulations but contain no federal funding to help pay the cost of meeting those requirements
  - Personal Responsibility and Work Opportunity Reconciliation Act of 1996
Devolution: Returning Power to the States

- Federalism Under the Bush Administration
  - Budget shortfalls at federal and state level
  - States raised taxes and cut services; received aid from federal government
  - Federal government expanded post 9/11
    - Department of Homeland Security
    - No Child Left Behind
      - Example of preemption
      - Viewed by many as an unprecedented usurpation of state and local powers
Devolution

Cases
- Garcia v San Antonio Metro
- Webster v Reproductive Health Services
- Seminole Tribe v FL
- US v Lopez
- Printz v US
- US v Morrison

Changes
- Block Grants
- Contract with America
- Unfunded mandate reform act
- Personal responsibility and work opportunity Act
- TANF
- Defense of Marriage Act
- 911

Amendments
- 27th
Amending the Constitution: The Bill of Rights

- First ten amendments to the U.S. Constitution
  - Specific protections of personal rights
  - Freedom of expression, speech, religion, and assembly
  - Right to bear arms and no quartering of soldiers responses to British rule
  - Ninth Amendment: enumerated rights are not inclusive
  - Tenth Amendment: powers not given to the national government are reserved by the states or the people
Formal Amendment Process

First step Proposal

Proposed by Congress by a \( \frac{2}{3} \) vote in both houses

This is the way all 27 amendments have begun!

or

Proposed at a national convention called by Congress when requested by \( \frac{2}{3} (34) \) of the State legislatures
Formal Amendment Process

Second Step
Ratification

Ratified by the State legislatures of \( \frac{3}{4} \) (38) of the States

Used 26 Times

OR

Ratified by conventions held in \( \frac{3}{4} \) (38) of the States

Used 1 Time
Formal Amendment Process

Step 1: Amendment Is Proposed
- Proposed by Congress by a $\frac{2}{3}$ vote in both houses

Step 2: Amendment Is Ratified
- Ratified by the State legislatures of $\frac{3}{4}$ (38) of the States

Most Common 26 of 27 Times
Formal Amendment Process

Step 1: Amendment Is Proposed
- Proposed by Congress by a $\frac{2}{3}$ vote in both houses
- Proposed at a national convention called by Congress when requested by $\frac{2}{3}$ (34) of the State legislatures

Step 2: Amendment Is Ratified
- Ratified by the State legislatures of $\frac{3}{4}$ (38) of the States
- Ratified by conventions held in $\frac{3}{4}$ (38) of the States
Informal Methods of Amending the Constitution

- Judicial Interpretation
  - *Marbury v. Madison* (1803)
  - What should govern judicial interpretation?
    - Framers’ intent?
    - Elastic, flexible document that could conform to ages?

- Lawmaking
  - Congress interpreting what fulfilling the Constitution says
Informal Methods of Amending the Constitution

- Presidential Actions
  - Enforcing Legislation
  - Executive Orders

- Political Party Actions
  - Governing
  - Electoral College

- Social and Cultural Change
The Supreme Court: A Return to States’ Rights?

- From New Deal to 1980s: Court has generally expanded national authority at the expense of the states
- Beginning in 1980s: Court interpretations altered
  - Willingness to allow Congress to regulate in a variety of areas waned
  - Sovereign immunity
    - Right of a state to be free from lawsuit unless it gives permission to the suit
    - Under the 11th Amendment, all states are considered sovereign.
  - Questions regarding the Courts’ future direction
<table>
<thead>
<tr>
<th>Decisions for States' Rights</th>
<th>How They Voted</th>
<th>Decisions for Federal Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strike down the Gun Free School Zones Act.</td>
<td></td>
<td>Upholds ability of state employees to sue under Family and Medical Leave Act (rejects state immunity).</td>
</tr>
<tr>
<td>Local sheriffs cannot be required to conduct background checks under the Brady gun control law.</td>
<td></td>
<td>2005: Gonzales v. Raich Upholds power of Congress to ban and prosecute the possession and use of marijuana for medical purposes, even in states that permit it.</td>
</tr>
<tr>
<td>2000: United States v. Morrison</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strike down a central portion of the Violence Against Women Act.</td>
<td></td>
<td>2006: Gonzales v. Oregon The Department of Justice does not have the right to block physician-assisted suicides.</td>
</tr>
<tr>
<td>2001: University of Alabama v. Garrett</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gives states immunity from suit by employees under the Americans With Disabilities Act.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>