

# AP American Government

## WILSON, CHAPTER 3

### Federalism



#### OVERVIEW

States participate actively both in determining national policy and in administering national programs. Moreover, they reserve to themselves or to localities within them important powers over such public services as schooling and law enforcement, and such important public decisions as land use. In a unitary system, these powers are exercised by the national government.

How one evaluates federalism depends in large part on the value one attaches to the competing criteria of equality and participation. Federalism means that citizens living in different parts of the country will be treated differently. This applies not only to spending programs (such as welfare), but also to legal systems (where civil rights may be differentially protected or criminal sentencing may vary). Yet federalism also means that there are more opportunities to participate in the decision making. It allows people to influence what is taught in the schools, and to decide where highways and other government projects will be built. Indeed, differences in public policy—that is, unequal treatment—are largely the result of wider participation in decision making. It is difficult, perhaps even impossible, to have more of one of these values without having less of the other.

From the 1930s to the present, United States politics and public policy became decidedly more nationalized, with the federal government, and especially the federal courts, imposing increasingly uniform standards on the states. These usually took the form of mandates and conditions of aid. Efforts begun in the 1960s and 1970s to reverse this trend by shifting to revenue sharing and block grants were only partially successful. In the mid-1990s, the Supreme Court began to review the doctrine of state sovereignty and the effort to devolve power from Washington to the states gained momentum. But whether these developments will effect significant and lasting changes in federalism remains to be seen.

#### OBJECTIVES

The central purpose of the chapter is to introduce the student to some of the complexities of federal government in the United States—that is, one where both the national and state governments have powers independent of one another. After reading and reviewing the material in this chapter, the student should be able to do each of the following:

- Explain the difference between federal and centralized systems of government, and give examples of each.
- Show how competing political interests at the Constitutional Convention led to the adoption of a federal system that was not clearly defined.
- Outline the ways in which national and state powers have been interpreted by the courts.
- State the reasons why federal grants-in-aid to the states have been politically popular, and cite what have proven to be their pitfalls. Distinguish between categorical grants and block grants.
- Distinguish between mandates and conditions of aid with respect to federal grant programs to states and localities. Discuss whether or to what extent federal grants to the

states have created uniform national policies comparable to those of centralized governments.

- Evaluate the effect of devolution on relationships between the national and state governments. Assess its implications for citizens as taxpayers and as clients of government programs.

## OUTLINE

- I. Governmental structure
  - A. Introduction
    1. Federalism: a political system with local government units, as well as a national government, that can make final decisions regarding some governmental activities and whose existence is protected
      - a) Local governments are able to make decisions on at least some matters without regard to the preferences of the national government
      - b) Examples of federal governments: United States, Canada, India, Germany, Switzerland, Australia
    2. Unitary government:
      - a) All local governments are subservient to the national government
      - b) Local governments can be altered or abolished by the national government
      - c) Local governments have no final authority over any significant government activities
      - d) Examples of unitary governments: France, Britain, Italy, Sweden
    3. Special protection of subnational governments in federal system due to:
      - a) Constitution of country
      - b) Habits, preferences, and dispositions of citizens
      - c) Distribution of political power in society
    4. National government largely does not govern individuals directly, but gets states to do so in keeping with national policy
  - B. Federalism: Good or Bad?
    1. Negative views: federalism blocks progress and protects powerful local interests
      - a) Laski: the states are “parasitic and poisonous”
      - b) Riker: federalism facilitated the perpetuation of racism
    2. Positive view—Elazar: federalism contributes to governmental strength, political flexibility, and fosters individual liberty
    3. Federalism has good and bad effects
      - a) Different political groups with different political purposes come to power in different places
      - b) *Federalist* No. 10: small political units are more likely to be dominated by single political faction—which allows all relevant interests to be heard, somewhere
  - C. Increased political activity
    1. Most obvious effect of federalism: it facilitates political mobilization
    2. Federalism decentralizes authority, lowering the cost of political organization at the local level
- II. 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 since power comes from the people, who shift their support to keep the two in balance.
    2. New plan had no historical precedent

3. Tenth Amendment was added as an afterthought to clarify the limits of the national government's power
4. Tenth Amendment has had limited applicability, but has recently been used by the Supreme Court to give new life to state sovereignty
- B. Elastic language in Article I: necessary and proper clause
  1. Precise definitions of powers are politically impossible due to competing interests, e.g., commerce
  2. Hamilton's view: national supremacy since the Constitution was the supreme law of the land
  3. Jefferson's view: states' rights with the people as ultimate sovereign; the national government was likely to be the principal threat to individuals' liberties
- III. The debate on the meaning of federalism (THEME A: WHO GOVERNS WHAT? FEDERALISM AND CONSTITUTIONAL LAW)
  - A. The Supreme Court speaks
    1. Hamiltonian position espoused by Chief Justice John Marshall
    2. *McCulloch v. Maryland* (1819) settled two questions
      - a) Could Congress charter a national bank? Yes, even though this power is not explicitly in the Constitution because of the "necessary and proper" (elastic) clause.
      - b) Could states tax such a federal bank? No, because national powers were supreme and therefore immune to state challenge.
    3. Later battles related to federal taxes on state and local bond interest
  - B. "Nullification": states had the right to declare null and void a federal law that they believed violated the Constitution
    1. Authors: James Madison (Virginia Resolutions), Thomas Jefferson (Tennessee Resolutions), and John Calhoun
    2. Question settled by the civil war: the federal union was indissoluble and states cannot nullify federal law; position was later confirmed by the Supreme Court
  - C. Dual federalism: both national and state governments are supreme in their own spheres, which should be kept separate
    1. Example: interstate vs. intrastate commerce
      - a) Early product-based distinctions were unsatisfactory
      - b) Still, the Supreme Court does seek some distinction between what is national and what is local, though it is not entirely consistent in its support of state sovereignty
    2. Doctrine of dual federalism still is argued, however—and sometimes successfully
  - D. State sovereignty
    1. Supreme Court has strengthened states' rights in several recent cases
      - a) *U.S. v. Lopez* (1995), guns in schools
      - b) *U.S. v. Morrison* (2000), overturned Violence Against Women Act of 1994, stating that attacks against women do not substantially affect interstate commerce
      - c) *Printz v. U.S.* (1997), background checks on gun purchasers
    2. Supreme Court has also strengthened the Eleventh Amendment, protecting states from suits by citizens of other states or foreign nations
      - a) *Alden v. Maine* (1999), compliance with federal fair labor laws
      - b) *Federal Maritime Commission v. South Carolina Ports Authority* (2002), states did not agree to become mere appendages of national government
    3. But not all recent decisions have supported state sovereignty

4. State can do what is not prohibited by the Constitution or preempted by federal policy, and that is consistent with its own constitution
    - a) Police power
    - b) State governments also responsible for public education, law enforcement and criminal justice, health and hospitals, roads and highways, public welfare, and use of public lands
  5. States' constitutions may provide for direct democracy
    - a) State constitutions more detailed about many matters, and thus view of government is more expansive
    - b) Initiative
    - c) Referendum
    - d) Recall
  6. Protections for the states in the Constitution
    - a) No state can be divided without its consent.
    - b) Two Senators for every state
    - c) Every state assured of a republican form of government
    - d) Powers not granted to Congress are reserved to the states
  7. Cities, towns, and counties have no such protections.
    - a) They exist at the pleasure of the state government, so there is no struggle over sovereignty (Dillon's Rule)
    - b) See the Politically Speaking box, The Terms of Local Governance
- IV. Federal-state relations (THEME B: WHO GOVERNS NOW? THE CONTEMPORARY POLITICS OF FEDERALISM)
- A. What Washington legally may do is not the same as what politics may require
  - B. Grants-in-aid
    1. Grants show how political realities modify legal authority
    2. Began before Constitution with land and cash grants to states
    3. Dramatically increased in scope in twentieth century
    4. Prevailing constitutional interpretation until late 1930s was that the federal government could not spend money for purposes not authorized by the Constitution—grants were a way around this
    5. Grants were attractive to state officials for various reasons.
      - a) Federal budget surpluses (nineteenth and early twentieth centuries)
      - b) Federal income tax increased revenues
      - c) Federal control of money supply
      - d) Appeared as “free” money for state officials, who did not have to be responsible for federal taxation
    6. Required broad congressional coalitions with wide dispersion of funds, because every state had an incentive to seek grant money (example: post-9/11 “fair-share” security funding formulas)
  - C. Meeting national needs
    1. 1960s shift in grants-in-aid
      - a) From what states demanded...
      - b) ...To what federal officials considered important as national needs
      - c) Meanwhile, state and local governments had become dependent on federal funds
      - d) Washington's grants to state and local governments has reached new highs since 2000
  - D. The intergovernmental lobby
    1. Hundreds of state and local officials lobby in Washington
    2. The Big 7

- a) U.S. Conference of Mayors
  - b) National Governors Association
  - c) National Association of Counties
  - d) National League of Cities
  - e) Council of State Governments
  - f) International City/County Management Association
  - g) National Conference of State Legislatures
3. Purpose: to get more federal money with fewer strings
  4. Since 1980, their success has been more checkered
- E. Categorical grants versus revenue sharing
1. Categorical grants are for specific purposes defined by federal law; they often require local matching funds
  2. Block grants (sometimes called special revenue sharing or broad-based aid) were devoted to general purposes with few restrictions—states preferred block to categorical grants
  3. Revenue sharing (sometimes called general revenue sharing) requires no matching funds and could be spent on almost any governmental purpose
    - a) Distributed by statistical formula
    - b) Ended in 1986, after fourteen years
  4. Neither block grants nor revenue sharing achieved the goal of giving the states more freedom in spending
    - a) Did not grow as fast as categorical grants
    - b) Number of strings increased, even on these programs
  5. New block grant programs were created for low-income housing, pre-school education and other programs from 2001-2003; these programs were cut or frozen by 2004 due to drops in state government revenues
  6. Block grants grew more slowly than categorical grants because of the differences between the political coalitions that supported each
    - a) Federal officials, liberal interest groups, organized labor tend to distrust state government; categorical grants give the national government more power
    - 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 state agencies
    - d) Supervising committees in Congress favored growth of categorical grants
    - e) Revenue sharing was wasteful because it was so widely distributed that it did not reach those with greater need in sufficient amounts
- F. Rivalry among the states
1. Intense debate regarding whether the federal government is helping some regions at the expense of others
  2. Snowbelt (Frostbelt) versus Sunbelt states: debate focuses on allocation formulas written into federal laws
  3. Difficulty telling where funds are actually spent and their effect, though
  4. With numerous grants distributed on the basis of population, the census takes on monumental importance
- V. Federal aid and federal control
- A. Federal controls on state governmental activities
1. Conditions of aid: tells state governments what they must do if they wish to receive grant money; traditional control
  2. Mandates: tells state governments what they must do
- B. Mandates

1. Mandates: federal rules that states or localities must obey, generally have little or nothing to do with federal aid
    - a) Civil rights
    - b) Environmental protection
  2. May be difficult to implement and/or be costly
  3. Mandates may also make it difficult for state/local governments to raise revenues, borrow funds, and privatize public functions; some may expose them to financial liability
  4. Controversial mandates may result from court decisions (example, state prisons, school desegregation plans)
- C. Conditions of aid
1. Attached to grants
  2. Conditions range from specific (apply to particular programs) to general (cover all or most grants)
  3. Divergent views of states and federal government on costs and benefits of these conditions; each side attempts to bargain to pass on most of the cost to the other sides
  4. President Reagan attempted to cut back both federal money and conditions of aid; after a bump in the early 1990s, this was continued in the mid-1990s
- VI. A devolution revolution? Focus on the 104th Congress (1995–1996)
- A. Devolution initiatives returned program management to the states, with some federal guidelines, but no guarantee of federal support
- B. Block grants for entitlements
1. AFDC and Medicaid had operated as entitlements—federal funds a fixed proportion of state spending on these programs
  2. Republicans in 104th Congress proposed making these and other programs block grants
  3. AFDC did actually become a block grant
  4. Devolution became part of the national political agenda
  5. Some evidence that devolution in welfare programs continued from states to localities, localities to non-profit and private organizations
- C. What’s driving devolution?
1. Devolution proponents harbor a deep-seated ideological mistrust of federal government and believe that state governments were more responsive to the people
  2. Deficit politics encouraged devolution
    - a) Major cuts sought in entitlement spending
    - b) In return, governors were given more power and flexibility to implement program
  3. Devolution supported by public opinion—though strength of support uncertain
  4. See the What Would You Do? exercise, Abortion Funding.
- VII. Congress and Federalism—politics remains local
1. Congress members represent conflicting constituencies—won’t always agree with governors and mayors
  2. Parties once linked legislators to local groups—their erosion increases political competition.