

## Federalism

1. Unitary vs. federal form of government
  - A. Of about 200 nation-states, about 26 are federal (e.g., Australia, Belgium, Brazil, Canada, Germany, India, Iraq, Mexico, Nigeria, Russia, and Switzerland).
  - B. About 40% of world's people live under federal forms of government, not counting the European Union, which is partly federal.
  - C. Seven of the eight territorially largest countries are federal (China is the exception)
2. Why have a federal form of government rather than a unitary form?
  - A. Need to accommodate diversity of places and peoples
  - B. Fear of imperial tyranny
  - C. Citizen access and participation
  - D. Service efficiency
  - E. Benefits of a small and large republic
4. Federalism comes from the Latin word *foedus*, meaning covenant.
5. Federalism as a matrix rather than hierarchy of levels of government
  - A. U.S. Constitution delegates to the federal or general government two framework tasks
    - 1) Commerce – common market
    - 2) Defense and foreign affairs

B. Two new tasks were added non-constitutionally during the mid-twentieth century

1) Social welfare (added during New Deal era of 1930s)

2) Civil rights and liberties (added during 1950s and 1960s)

## 5. The Supremacy Clause (Article VI)

A. “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”

B. *Missouri v. Holland* (1920)

## 6. Three eras of American federalism

1) Dual federalism (1789 - circa 1932)

2) Cooperative federalism (circa 1932 - 1968)

3) Coercive federalism (circa 1968 – present)

## 7. Key Features of Dual Federalism (1789 - circa 1932)

A. Federal and state governments occupy separate spheres of sovereign power and should not interfere with each other

B. U.S. Constitution does not grant federal government authority to fund state internal improvements (i.e., infrastructure)

C. “national government is one of enumerated powers only; Also, the purposes which it may constitutionally promote are few; Within their respective spheres the two centers of government are ‘sovereign’ and hence ‘equal’; and The relation of the two centers with each other is one of tension rather than collaboration.” Edward S. Corwin

## 8. Historical issues in dual federalism

A. U.S. Supreme Court served as umpire of the federal system

B. Pre-Civil War – Court often sought to protect new federal government from the states

- 1) *McCulloch v. Maryland* (1819) – established intergovernmental tax immunity
- 2) *Gibbons v. Ogden* (1824)

C. Interposition and nullification

- 1) Virginia and Kentucky Resolutions (1798) objecting to Alien and Sedition Acts
- 2) Tariff of Abominations (1828) and 1832 South Carolina nullification campaign
- 3) John C. Calhoun (1782-1850) advanced ideas of two-headed presidency, congressional concurrent majority, and secession

D. Post-Civil War – Court often sought to restrain federal power but also restrained both state and federal powers on behalf of *laissez faire* capitalism.

E. Harbingers of cooperative federalism as federal government made land grants to new states, followed by some cash grants-in-aid during the 1880s.

## 9. Key Features of Cooperative Federalism (circa 1932 – 1968)

A. Federal and state governments must cooperate in order to solve the nation's problems.

B. Virtually all government tasks are shared, not divided, federal-state-local responsibilities.

C. Intergovernmental bargaining and negotiation produce cooperation that minimizes federal coercion.

D. Rise of the Big 7 state-local associations

- 1) National Governors Association (NGA)

- 2) National Conference of State Legislatures (NCSL)
- 3) National Association of Counties (NACo)
- 4) U.S. Conference of Mayors (USCM)
- 5) National League of Cities
- 6) Council of State Governments (CSG)
- 7) International City/County Management Association (ICMA)

E. Federal system is more like a marble cake rather than layer cake.

F. But, substantial expansions of federal power, too.

G. Grants-in-Aid (more than 1,000 today): the fiscal heart of cooperation

- 1) Project grants: small, specific projects, usually competitive
- 2) Categorical grants for policy areas such as Medicaid, highways, environment
  - a. Most federal aid is in the form of categorical grants
- 3) Block grants combine categoricals within a broad policy field and give governors and mayors more discretion in how they spend the federal funds
  - a. Social Services Block Grant (SSBG)
  - b. Temporary Assistance for Needy Families (TANF)
  - c. Community Development Block Grant (CDBG)

H. Tax expenditures

- 1) Deduction of local property taxes from federal income-tax liability

2) Deduction of state and local income taxes from federal income-tax liability

3) No federal taxation of interest earned on state and municipal bonds

I. Natural-resource (e.g., timber and minerals) revenues from federal lands shared with host state and local governments.

1) Cheap grazing rights on federal lands for ranchers

## 10. Coercive Federalism (circa 1968 – present)

A. Key features of coercive federalism: the major political, fiscal, statutory, regulatory, and judicial practices entail centralization, state and local cooptation, and the imposition of many federal dictates on state and local governments.

B. Shift of federal aid toward social welfare

1) Total 2013 federal aid = \$632,664 billion

2) 63% of federal aid now goes to welfare, with Medicaid alone accounting for 45 percent of all grants-in-aid

C. Policy conditions attached to federal aid

1) highway billboard limits (1965)

2) 21-year-old drinking age (1984)

3) blood alcohol level of .08 for DUI (2000)

D. Mandates: direct orders carrying civil or criminal penalties for state and local officials that do not comply with the federal rules

1) disability access requirements

2) storm-water regulations

E. Preemption: federal displacement or overriding of state law under the U.S. Constitution's supremacy clause

- 1) Total preemption: complete displacement of state law
- 2) Partial preemption: federal government sets minimum standard; states can choose to exceed the federal standard (but not fall below the federal standard)

F. Federal court orders on state and local governments to reform schools, prisons, mental health institutions, and other institutions or practices

G. Nationalization of criminal law

- 1) U.S. Constitution mentions four federal crimes: treason, counterfeiting, piracies and felonies on the high seas, and violations of international law
- 2) Today, there are more than 4,500 federal criminal laws

H. Broad interpretations of federal powers by the Congress, presidents, and Supreme Court