

*Chapter 5: Federalism*

- I. Governmental structure Figure 5.1, p. 73
- A. *Confederal*
1. Definition: decentralized system of government with sovereign power retained by each state (only states act directly on people & amend the constitution)
  2. Examples: Articles of Confederation, C.S.A., U.N.
  3. Advantages: government closest to people is strongest; government farthest is weakest & its acts can be vetoed by any 1 state
- B. *Unitary*
1. Definition: centralized system of government with sovereign power retained by central government (only central government acts directly on people & amends the national constitution)
  2. Examples: U.K., France (and most other nations outside the Western Hemisphere)
  3. Advantages: speed & efficiency in reaching uniform solutions nationwide
- C. *Federal*
1. Definition: compromise: both levels have sovereign power & can act on people; both levels must agree to amend constitution
  2. Examples: U.S., Canada, Mexico, Australia, India, Germany (most are in geographically large & culturally diverse nations; however, most other nations outside the Western Hemisphere are unitary, not federal, systems)
  3. Advantages: diverse solutions for local problems; uniform solutions for national problems
- II. Federalism: good or bad?
- A. Arguments for
  - B. Against
- III. The founding
- A. A bold new plan
  - B. Elastic language
    1. Necessary and proper clause
    2. Commerce clause
- IV. The evolving meaning of federalism
- A. The Supreme Court speaks
  - B. Nullification and war
  - C. Dual Federalism
- V. The division of powers: federal and state Box, p. 80
- A. *Federal* (national) government powers
1. Granted
    - a. *Enumerated* powers
      - (1) Definition: powers expressly given to any of the 3 branches of the federal government by the Constitution
      - (2) Examples
        - (a) Congress: raise armies & navy and other powers enumerated to Congress in Article I, section 8, pp. A7-8
        - (b) President: command the armed forces
        - (c) Judicial branch: adjudicate disputes
    - b. *Implied* powers
      - (1) Definition: powers claimed by Congress under the “necessary and proper” clause at the end of Article I, section 8, pp. A7-8
      - (2) Example: Congress first claimed the *implied* power to conscript individuals for military service in 1863
    - c. *Inherent* powers
      - (1) Definition: powers claimed by either the executive or judicial branches as inherently a part of some broad grant of power given to them by Article II or Article III

- (2) Examples
  - (a) Executive branch
    - i) *Executive privilege* (Washington) to withhold information from Congress,
    - ii) *Presidential wars* (Jefferson) to commit U.S. military forces to foreign combat without a Congressional declaration of war (Barbary Coast wars 1801-05)
  - (b) The judicial branch first claimed the *inherent* power to exercise the power of *judicial review* in 1803, *Marbury v. Madison*
- 2. Prohibited
  - a. In original Constitution Article I, section 9, p. A8 e.g., no export taxes
  - b. In Bill of Rights 1<sup>st</sup> 10 amendments (ch. 11) e.g., no establishment of religion
- B. *State* government powers
  - 1. Granted
    - a. *Enumerated* powers
      - (1) Definition: explicitly granted to the states in the Constitution
      - (2) Examples: define suffrage, ratify Constitutional amendments  
<http://www.law.emory.edu/FEDERAL/usconst/notamend.html>
    - b. *Reserved* powers (independently exercised by the 50 state governments and oftentimes further delegated to 3000+ county governments and/or tens of thousands of municipal and special-district governments)
      - (1) Constitutional definition 10<sup>th</sup> Amendment, p. A15
        - (a) Not delegated to the federal government
        - (b) Nor prohibited to the state governments
      - (2) Practical application: there are at least 9 public-policy areas where state governments have significantly more responsibilities and authority than the federal government:
        - (a) Public order
        - (b) Public morality
        - (c) Public health
        - (d) Public safety
        - (e) Public education
        - (f) Public transportation
        - (g) Public welfare
        - (h) Public elections & suffrage
        - (i) Land use
  - 2. Prohibited
    - a. In original constitution Art I, sec. 10, p. A8 e.g., no treaties or international agreements
    - b. In later amendments
      - (1) 13th (1865) - slavery
      - (2) 14th (1868) - denial of individual rights by states without due process and equal protection
      - (3) 15th (1870) - racial discrimination in suffrage
      - (4) 19th (1920) - gender discrimination in suffrage
      - (5) 24th (1964) - class discrimination in suffrage – poll tax
      - (6) 26th (1971) - age discrimination in suffrage (to those 18 and older)
- C. *Concurrent* powers
  - 1. Definition: powers granted to both the federal and state governments that can be exercised independently by either level
  - 2. Examples: power to tax and spend; generally, to make, enforce, & adjudicate laws

## VI. Fiscal federalism

- A. Grants-in-aid
- B. Rise of federal activism
- C. The intergovernmental lobby
- D. Categorical grants versus block grants
- E. The slowdown in “free” money

## VII. Federal aid and federal control

- A. Controls
  - 1. Mandates
  - 2. Conditions of aid
- B. Rivalry among the states

## VIII. Federalism and public policy

## IX. Evaluating federalism