Chapter 4: Federalism

I. Governmental structure

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, Switzerland, 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

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

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 *1st 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 *10th 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