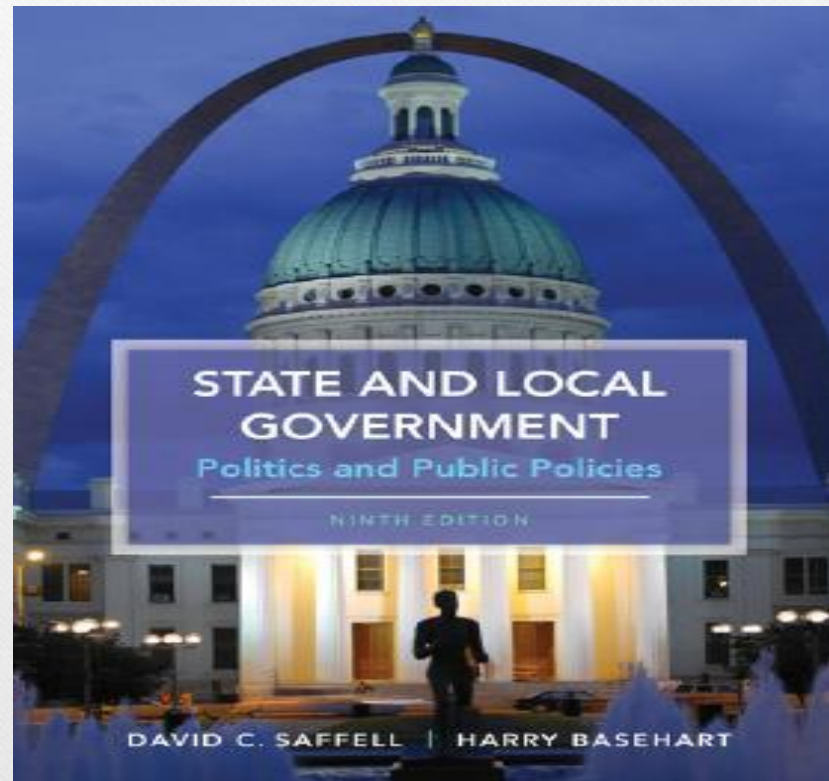


FEDERALISM

State & Local Gov Ch 2

-
- In this section we'll examine our model of federalism as prescribed by the Constitution
 - Why it was adopted
 - How powers are distributed between two levels of gov
 - Recent changes to the framework
 - How citizens' participation at various levels of gov affects the federal system

How do we define Federalism ?



Definition

System of Gov where powers are shared (not necessarily equally) between two national sovereigns;

- a central, national, federal gov, &
- regional, state, sub-national gov

Federal Framework

- Based on Americans' inherent mistrusts of centralized power, limited powers were initially granted to the central gov
 - *Under Declaration of Independence 1776 the states garnered much of the power & granted little if any to the central gov.*
 - *States can even dissolve the central gov*
 - *This arrangement is called a **Confederal System**, a construct of the states instead of the people*

New Federalism

- **2nd Founding or Constitution & Bill of Rights of 1791** (first 10 amendments to Constitution, introduced by James Madison) altered this arrangement
- It assigned powers to 2 levels of gov, with limited powers of central gov & granted a broader range of powers to state gov
- US first country to adopt federalism as its governing framework
- Arrangement grants 17 Expressed Powers (specific powers) to Congress. Article 1 Section 8 (p.83-84, Ginsberg)

Expressed/Enumerated Powers

- What are they?
 - Collect taxes
 - Coin money
 - Declare war
 - Make Treaties
 - Regulate commerce (hearings re Wall St & banking policies)

Additionally Granted Implied Powers

- Implied Powers = Not spelled out
- Gives Congress the powers to make laws to support the Expressed powers. Power granted under Necessary & Proper Clause
- Also called “The Elastic Clause”
- Powers not granted rest in the hands of the people

Preemption Clause: Feds can preempt state laws

- The gorilla that swallows state laws

Ad Hoc

Partisan/Ideological view of Federalism

- Some choose a more state-centric view of federalism over a nation centric view based on ideological bias

Why did the Founding Fathers adopt Federalism ?

- US- the earliest federally organized society along this model
- Several countries adopted one form or another of federalism after WW 2 as they sought their own independence from colonial rulers
- Federalist arrangements ideal for societies which are ethnically, religiously, linguistically & geographically diverse

Why Federalism was adopted

- Many were seeking to unite diverse states/territories into single country
- Eg. Iraq 2005 wrote a federal constitution in an effort to unite the bitter factions of Sunni, Shia & Kurds under one state but granting some power-sharing divisions to each
- Secessionist movements occur regularly, even within democracies, eg French Canada

The Political Bases of American Federalism

- The choice of federalism for the US was accidental because there were other forms of gov from which to choose
- Reflected more of a compromise between those;
 - i) Who wanted more powers granted to the states (as granted under the Articles of Declaration), vs.
 - ii) Those who wanted powers in favor of / shared with the central gov
- The framers were looking for a workable solution in order to preserve the union
- A hybrid solution which is called a republic form of gov.
- The word *federal/federalism* was never used. Why?

Political Benefits & Costs of Federalism

- Federalism accommodates diversity of the nation, but is limiting, since no one group can garner so much power that it threatens the stability of the whole
- Madison argued in favor of the majority/over minority rule, but with limitations on the majority
- He believed that the mere diversity & size of the nation would ensure that the tyranny of the majority rule could not succeed

4 Advantages

1. Keeps government closer to people: “not a one size fits all”
2. Local differences to be reflected in state and local government policy
3. States are laboratories of experimentation
4. Achievement of some national goals across the nation

Some Draw backs

- Too much emphasis placed on the states = allegiance to the whole (union) can suffer
- Support to a common principle can also suffer
Eg. Secessionist threats by southern states
- Believed that sufficient national consciousness exists among Americans, counter-balanced by considerable local/state pride & allegiance
- Tilts American federalism toward a de-centralized state
- Each state is an entity on to self having its own flag, motto, state symbol, etc.

Unitary System

- All powers rest in national gov
- It in turn determines how much powers are shared/ granted to lower, regional or state gov
- Central gov has the authority to create or dissolve lower gov which exist strictly at the pleasure of the central gov
- Examples of Unitary systems: Britain, Sweden, Japan

Unitary System

- In the US the local gov can be altered by state gov. Local gov are not mentioned in our Constitution
- In effect the relationship between state gov & local gov can be seen as a unitary arrangement
- While some unitary states are democratic (Britain, Sweden), others such as China are not

The Constitutional Bases for Federalism

- All the delegates agreed on the need to strengthen the arms of the central gov
- They never thought that that would occur at the reduction of the strengths of the states

Two areas that the central gov needed authority over were the ability to:

- i) Tax w/o authority of the states
 - ii) Negotiate domestic & foreign policy w/o states' consent
- Ability of Congress to tax & regulate interstate commerce would be a tremendous boost for central gov's powers

Distribution of Powers

National Government Powers

- Declare War
- Make Treaties
 - Tax
- Imports/Exports

Shared Powers

- Make & Enforce Laws
- Create Judiciary
- Eminent Domain

State Government Powers

- Health & Safety
- Regulate Elections
- Interstate Commerce

Constitutional basis cont'd

- Congress was already assigned ***Implied Powers*** (Necessary & Proper Clause), which give Congress the powers to make laws to support the Expressed powers
- Over time the federal courts have interpreted these laws in favor of the central gov
- Founders' decision to create separate branches of gov also favored the federal gov's position
- So too is the fact that the president is not elected, or selected by the legislature- allows for independent leadership
- ***Supremacy Clause*** granted greater powers to the central Gov whenever conflict arises between states & central gov

Limits to States' Powers

Limits on States' rights:

- Cannot print money
- Make treaties
- Declare war
- Levy import or export taxes
- Maintain standing armies/navies
- Cannot punish an individual retroactively for a crime which the state declares as crime after the act

State Rights

- Run Elections
- Public Health
- Permits and Licenses
- Workers' Safety
- Regulate Interstate Commerce

Limits to Federal Powers

- The **10th Amendment** restricts the powers of the central gov with respect to the states
- Powers assigned to the states are those which are not assigned to the central gov despite the implied powers
- Federal gov cannot alter the boundaries of the states or abolish a state
- Existence of states is a constitutional right

Interpretations of the Constitutional Provisions

- Two competing views of the nation - state relationship or division of powers persist to this day
- Some thought they were supporting the:
 - i) Creation of an indivisible union
 - ii) Others thought that they were constructing a contract between the states

Power Shift to National gov

- 1930 national gov began expanding more into the business of the state & local matters
- Supported by Supreme Court's position under chief justice Marshall
- ***McCulloch vs. Maryland*** (1819) earlier ruled that the implied powers gave Congress wide latitude to make all laws necessary to carry out the Constitutional powers

Key Dates in American Federalism

- Figure 2-4

Restraining National Power with Dual Federalism 1789-1937

- During this period the arrangement was called *dual federalism*, or “*Layer cake*” federalism
- The Constitution provided a distribution of powers to both central & state gov in which each wielded complete authority in its own sphere
- This system of dual federalism saw power being shared between National & State gov
- States however, saw much of the administrative work falling in their laps

Power shift cont'd

- Federal laws were ruled to be supreme laws of the land
- Role of national gov grew larger since 1790
- 1937 - Several Supreme Crt's rulings increased the federal gov's role in several key areas
- States' failure to provide health & welfare for their citizens led feds to provide basic economic security to citizens during the Great Depression

Power Shift cont'd

- Other factors that contributed to this shift;
 - i) Territorial expansion
 - ii) War
 - iii) Economic crises which required greater involvement of the central gov
- As society grows, its demands on gov also grew
- Even Jefferson who believed in small gov, saw an early expansionist movement

Power Shift cont'd

- By the time of T. Roosevelt's presidency (1901-1909) America had begun transitioning itself from an agrarian society to an urbanized & industrialized one
- His presidency assumed an activist role in improving the conditions of the poor.
- Child labor, environmental protection
- Regulations against corruption of big business & its influence on the legislatures

Power Shift cont'd

- Yet the states & local gov still retained the authority to provide most of the services –their authorities were preserved under the 10th *Amendment/ Reserved Power*
- Included: law enforcement, health & safety reg., marriage/divorce laws, issuance of driver's license
- Concurrent Powers: powers possessed by both states and national gov: eg. levying of taxes, trade practices

1933-1945

- This all began to unravel with the Great Depression
- State resources were exhausted & direct Federal interventions began under FDR
- Million Americans were displaced & suffered; no support social net
- State Govs were overwhelmed w/o the organizational structure or funds to respond

1933-1945

- Hoover -national gov felt the need to protect citizens during depression- direct intervention
- Roosevelt made grants available to states on condition that monies be spent on predetermined programs – indirect intervention under the New Deal
- *Grant aids* were extended into social programs to assist poor children, medicaid

New Deal & Cooperative Federalism

- Under FDR Congress introduced the new deal to stimulate the economy
- Whole hosts of initiatives which saw the Federal presence in every area of the citizens lives, including the business arena
- Regulations affected business & labor
- Welfare system was introduced

New Deal

- Feds began funding large scale programs in every state, eg. construction of interstate highways
- *Grants-in-aid* programs used strategically by feds to bring states in line with national programs & goals
- States began implementing federal programs – Medicaid
- The once defined lines between feds and states became blurred
- New deal moved away from Dual federalism to Cooperative Federalism

1963 -1969

- Fed gov began expanding again under Lynden Johnson
- Rise of social justice & racial equality movements, publicized by spread of TV, including brutal treatments of protesters
- Civil Rights movement peaked under Johnson's presidency

1963 -1969

- Johnson used the opportunity to push Social Welfare programs & voting rights legislations thru Congress
- Permanently altered the power relationship between Washington & states

1963-1969

- FBI & Fed Justice Dept became active at the state levels, especially in the South
- Massive expansion of the Feds - even under presidents who did not run under the push for big gov –Eisenhower, Jefferson, Lincoln
- Media coverage of political activism - Civil Rights movements, race issues, voting rights, etc.
- Feds under certain presidents became more responsive

Everyday Federalism: Presidential Management of Fed- State Relations

- Relationships between Washington & states have been a complex one, complicated or facilitated depending who is president
- Relationships are managed depending on how president understands & views the division of powers between the levels of gov
- Is it co-operative/collaborative or competitive?

Everyday Federalism

- Devolution of power: when Feds delegate responsibilities to local gov & states certain powers; eg tax collection
- Granting states/local gov authority helped to implement grants-in-aid programs
- **1963-69** Under Johnson grants went directly to local gov, bypassing state gov

Everyday Federalism

- **1969-1974** Nixon was keen on making the programs more efficient
- Took a more managerial approach as opposed to an ideological approach
- Consolidated multiplicity of programs under 6 major areas
- Introduced the ***Block Grants*** which allowed states some discretions on disbursements (under fed guidelines)

More recent past

- **1981-89** Reagan, a believer in smaller gov, cut fed spending & reduced gov size while increasing military budgets
- Ideological position referred to as *instrumental federalism*
- **1993-2000** Bill Clinton, while a believer in state-centered federalism while as a governor, with support of a Republican Congress supported extending powers to the states
- **Bush jr** reversed many federal environmental regulations which under Clinton overruled the states
- Eg. Arsenic levels in water, air pollutants, health & safety in work place

Cooperative Federalism

Required to administer & facilitate the following:

- Day to day joint/ cooperative activities which must go on between feds, states local gov; eg., welfare & highway programs
- Center for Disease Control & Prevention
- National & state police & crime fighting initiatives, national security
- 1/2 trillion in tax dollars \$ transferred annually to states to administer
- Deductions of state/local taxes when filling out tax returns are examples of feds aiding states

Conflict in the Federal Relationship

- The nature of the divisions of power naturally leads to some conflicts/challenges
- *Unfunded Mandates* are an area of conflict between fed & states
- Laws/regulations imposed on states w/o sufficient funds to implement them

Conflicts cont'd

- States are responsible for education, health care & illegal immigrants, but feds do not pay the costs
- “No child left behind”
- National guards are maintained by the states, but can be called up for service by fed- Iraq war

States & Localities as Lobbyists

- Relationship between feds, states & local gov is defined by lobbying
- Always a tension between feds on one side & the states & localities on the other due to the nature of the division of powers; eg., the administration of state lands & unfunded mandates & money,
- The dependence of state & local gov on fed money resulted in several interstate agencies which operate lobbyists:

States & Localities as Lobbyists

- National League of Cities, National Conference of Legislatures, American Public Welfare Assoc.
- Some states even retain direct lobbyists in Washington
- 2001-2006 these agencies received \$173 million in earmarks from Congress for state projects

Relationship between States

- Relationship between states is also covered under the Constitution
- *Full faith & Credit Clause* obliges each state to recognize contracts made in each other's state
- Extradition provisions

Relationship between States

- Controversy revolve around recognizing same-sex marriage in states which do not grant such rights
- Cooperation between states is a must given that governors have to deal with each other on several common concerns
- Competition exists in areas of efforts to attract investments, businesses, jobs, etc.

Relationships

- Disagreements re: natural resources such as water is important, especially as a depleting resource
- Water of Upper Colorado are shared by 3 other states
- Summer of 2008 saw intense dispute between Florida & Georgia which was experiencing major droughts & wanted to divert more water from the St's John River which also supplies the state of Florida
- Size of the states also figure in the overall scheme of things
- Lion's share of Homeland security funds going to larger states, eg. NY over smaller states

State –Local Relationship

- Of the 89,527 gov units, only 51 do not fall under the state & local gov
- However, these relationships are not mentioned by the constitution
- Instead they strictly fall under the state jurisdictions
- Hence , can also be dissolved by the states

Role of the Presidency

- While the founding fathers envisioned more control in the hands of the states, we presently witness a confused situations under successive presidents
- Pres G. W Bush made symbolic gestures to devolve national powers & direct them to state gov, including some policies on administering federal health care & welfare programs
- At the same time his presidency imposed mandatory national testing for education while each year less & less funds for housing, education, health, etc are give to the states (Welch)
- **Congress** appears to have little sympathy towards granting the states more powers

States

With the Bush presidency preoccupied with wars in Iraq & Afghanistan, several states began introducing initiatives at state levels:

- Cloning & anti-cloning laws
- Consumer & worker safety
- Protect individuals from genetic testing for hiring practices
- Raising minimum wages to national level or above

States

- California adopted stricter air pollution standards
- Feds have been behind in several of these areas
- Mayors of 132 cities 135 states signed on to the Kyoto protocols on global warming while Bush administration rejected it
- Many began acting independently of the fed re illegal immigration
- States are gaining more controls over federal social welfare programs

Supreme Court

- Final arbiter of what & where federal lines of authority are drawn
- Final arbiter of what & where state lines of authority are drawn
- Court has ruled significantly in favor of states in past 15 years, reversing Congress's attempts to extend federal laws into state jurisdictions

Supreme Crt

- 2003 Supreme Court ruled in favor of Fed s over states rights on civil rights issues
- Examples of states attempting to push their laws
 - Massachusetts banned trading with Myanmar/Burma based on the human rights violations in that country
 - American companies challenged it & Supreme Court struck it down in favor of the Fed gov which is responsible for international business
 - NAFTA , 1992, signed by the Fed gov which regulated trade between US, Mexico & Canada- forced states to adjust to new trade rules

Conclusion

- How to divide powers between the two levels of gov was a major concern in the minds of the framers of the Constitution
- But the question of “Who does what” was never clearly defined
- While Americans tend to oppose expansive powers from national gov, in the first 150 years, there is a shift in the last 70 years favoring increased Fed powers
- Americans want Fed protections in areas of equality & setting national standards

Conclusion

- Fed/Congress imposed legislations on states to introduce uniformity
- Supreme Court's decisions continued to introduce uniformity in fundamental rights of American, regardless of which state one lives in
- Grants & regulations were also employed to bring states on board

Key Terms

- Grants-in-aid
- Block Grants
- Devolution
- Layer cake federalism
- ad hoc federalism
- Cooperative federalism
- Unfunded mandates
- Expressed Powers
- Full faith and credit clause
- Unitary vs. Federal
- Preemption
- Ad Hoc