

AP GOV FEDERALISM REVIEWED!

Government in America (Pearson) Chapter 3
American Government: (Wilson) Chapter 3
Institutions & Policies

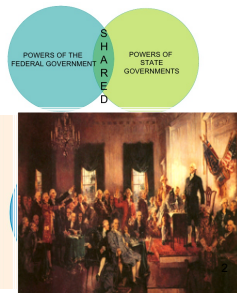
FEDERALISM

- Federalism:** "a way of organizing a nation so that two or more levels of government have formal authority over the same area and people."

– **Translation:** distribution of power between state and central gov't

- Why did the Framers select **federalism** for the new nation?
 - Strong loyalty to individual states
 - U.S. was vast and the population was spread out across large area

Federalism



IS FEDERALISM THE ONLY WAY?

- There are alternative ways of organizing a nation's government

- Most nations have a **unitary system**

– Power is in the hands of the federal government

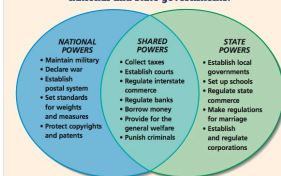
- Confederation** is when almost all power is with the states and the federal government is weak

– REMEMBER: Articles

Intergovernmental relations:

- The interaction and dealing between federal, state, and local government
- In a federal system the central and state government oftentimes share power

Americans live under both national and state governments.



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NATIONAL GOVERNMENT (Expressed, Implied, and Inherent Powers)

- Regulate foreign and interstate commerce
- Coin money
- Provide an army and navy
- Declare war
- Establish federal courts below the Supreme Court
- Conduct foreign relations
- Exercise powers implied from the expressed powers

NATIONAL and STATE GOVERNMENTS (Concurrent Powers)

- Levy taxes
- Borrow money
- Spend for general welfare
- Establish courts
- Enact and enforce laws

STATE GOVERNMENTS (Reserved Powers)

- Regulate intrastate commerce
- Establish local government systems
- Administer elections
- Protect the public's health, welfare, and morals

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- **Expressed Powers:** (aka- enumerated, delegated, exclusive powers)
 - powers granted to the national government by the Constitution
- **Implied powers:**
 - Powers not specifically stated, but justified by the “necessary and proper” clause
- **Concurrent Powers:**
 - Powers that the national and state government share
- **Reserved Powers:**
 - Powers kept for the states (10th amendment)

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THE CONSTITUTIONAL BASIS OF FEDERALISM

- **States still had lots of power**
 - Constitution does **NOT** specify all the powers states have
 - **10th Amendment:** states kept all powers not explicitly forbidden
- **Reserved powers:** powers granted specifically to the states:
 - Regulate intrastate commerce
 - organize local governments
 - responsible for state & federal elections
 - ratify Constitutional Amendments
 - etc.

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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THE CONSTITUTIONAL BASIS OF FEDERALISM

- **Constitution does specify powers the states DO NOT have:**
 - **Enumerated powers:**
 - Declare war, enter into treaties, coin money, tax interstate trade, grant titles of nobility, etc.
 - **Amendments have expanded:**
 - 13th amendment- prohibit slavery
 - 14th- deny equal protection of law
 - 15 & 19- deny vote because of race or gender
- **Federal government duty to the states:**
 - Cant divide states, must protect them from invasion, etc.
- **Concurrent Powers:** shared powers
 - Levy taxes, maintain law & order, establishing courts, legislate, etc.

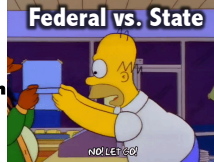
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SUPREMACY CLAUSE: Article VI, Clause 2

✓ Federal laws supersede state laws

Tug of War

over whether state or federal govt should govern or legislate on different issues.



EXAMPLES:

- Civil War raised the question of state vs. federal authority
 - Federal authority over states achieved (but debate continues)
- Fight for Racial Equality
 - Failure of Arkansas to enforce Brown v. Board of Education → Little Rock 9 & Intervention by President Eisenhower
- Today: Marijuana, Immigration & "sanctuary cities", etc.

NATIONAL SUPREMACY HAS BEEN ESTABLISHED

Powers of the federal government

- **Enumerated Powers:** powers explicitly listed in the Constitution (**Article I, Section 8**)
- **Implied Powers:** these are derived from the "elastic clause"
 - "Elastic clause": allows Congress to make laws that are "necessary and proper" to carry out its enumerated powers
 - Ex: Constitution does not mention the ability to create a **national bank**
 - Hamilton & Congress used the "elastic clause" to create the BUS
 - **McCulloch v. Maryland** the Supreme Court ruled the creation of the national bank was constitutional
 - Congress has implied powers necessary to implement its enumerated powers
 - Supremacy of the Constitution
 - Federal laws over state laws

Loose construction: broad interpretation of the Constitution



NATIONAL SUPREMACY HAS BEEN ESTABLISHED

Powers of the federal government

- **Commerce Clause:** Constitution gives Congress the power to regulate commerce.
 - Evolving definition and debate about the definition of "commerce"
 - **Gibbons v. Ogden:** ruled Congress could control **interstate commerce**
- **Huge debate about the proper role of the government's regulation of biz.**
- Gilded Age: limited regulation, but industrialization increased calls for economic regulation
- Progressive Era: laws against monopolies, child labor, city services, environment, etc.
- New Deal: expansion of regulatory power
- Late 1980's restriction of Congressional regulatory power
- **U.S. v. Lopez** (1995) ruled that Congress cannot use commerce clause to make possession of a gun in a school zone a federal crime



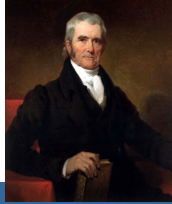
HIGH COURT KILLS LAW BANNING GUNS IN A SCHOOL ZONE

BITTERLY DIVIDED RULING

5-to-4 Decision Deals Blow to Federal Government Role in

NATIONAL SUPREMACY?

- Debate continues:
- **10th Amendment** provides “powers not delegated to the U.S. by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”
 - Advocates of states’ rights argue that the 10th amendment gives the national government only those powers specifically granted to it in the Constitution
 - **Strict construction:** if it’s not in the Constitution, it can’t be done.
- Supreme Court decisions have ruled that 10th does NOT mean that states are above the federal government.



Supreme Court Cases:
The Marshall Court-
Establishing Federal Supremacy

Main Cases

- **Marbury v Madison (1803)**
- **McCulloch v Maryland (1819)**
- **Gibbons v Ogden (1824)**

States’ Obligations to Each Other

- **Full Faith and Credit Clause:** states must honor the acts, records, and proceedings of other states
 - Gets complicated:
 - Congress passed Defense of Marriage Act (DOMA) that allowed states not to honor LGBT marriages from other states
 - DOMA ruled unconstitutional in 2013
 - Legalized marijuana
- **Extradition:** states required to return a person accused of a crime in another state to that state for trial and/or possible imprisonment
- **Privileges and Immunities Clause:** Prohibits a state from discrimination against residents of another state
 - Gets complicated:
 - State colleges can charge higher tuition to out-of-state students



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INTERGOVERNMENTAL RELATIONS TODAY

- Power has gradually shifted from states to the federal government
- From **Dual to Cooperative Federalism**
- **Dual federalism:** Layer cake
 - The federal government and states each have their own separate spheres of authority
 - Federal power is interpreted narrowly
- **Cooperative federalism:** Marble cake
 - The federal government and states share spheres of power / responsibilities.
- U.S. system has transitioned from a dual federalism to a cooperative
 - Examples:
 - Education: National Defense of Ed Act
 - Transportation: Interstate Highway Act
- Federal government shares the costs by providing federal \$ that is typically attached to federal guidelines.



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INTERGOVERNMENTAL RELATIONS TODAY

- Politics **OVERLY** simplified:
 - **Republicans** tend to favor a weaker national government (favor state power)
 - **Democrats** tend to favor a stronger national government to address social and economic issues
 - It's complicated!
- Federalism:
 - New Deal (1930s), Great Society (1960s) massive expansion of gov't power (growth of marble cake)
 - **Devolution** since election of Reagan in 1980
 - Shifting of power and responsibilities of policies from the central government **to states & local govt.**
 - It's complicated: Devolution?
 - Republicans increasingly expanded the role and power of the federal government
 - No Child Left Behind (2001)
 - Defense of Marriage Act (DOMA)- 1996

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INTERGOVERNMENTAL RELATIONS TODAY: MONEY

- **Fiscal federalism**: key component of cooperative federalism is the distribution of federal grants
- Two main types of federal grants:
 - **1) Categorical grants**: can only be used by states for specific purposes
 - Significant way for federal government to influence policy
 - **Crossover sanctions**: withholding money unless states change their policy
 - Tying highway funding to increasing drinking age to 21
 - **Crosscutting requirements**: condition on a federal grant is extended to all activities supported by federal funds
 - A university discriminates in its athletics program, could lose federal aid for all of its programs.
 - Two types of categorical grants:
 - **Project grants** (most common): awarded on basis of competitive application
 - **Formula grants**: federal money distributed based upon a formula (# of recipients, income, etc.)

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INTERGOVERNMENTAL RELATIONS TODAY: MONEY

- Two main types of federal grants:
 - **1) Categorical grants**
 - **2) Block grants**: federal money given to states that only specifies the policy area in which the money could be used (education, health care, etc.)
- **Rush for federal money**
 - Lawmakers and lobbyists attempt to secure federal dollars
- **Mandates**: requirement that states must provide certain services as a condition of receiving federal funds.
- **Unfunded mandates**: requirements placed on states by the federal government that are not funded

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UNDERSTANDING FEDERALISM : THE GOOD & THE BAD

- **More opportunities for participation:** more levels of government create more opportunities for civic engagement
- **Decentralizes policy:** allows voters in different areas to choose representatives that will promote their interests at both the state and federal level
 - policies at state or local level
- **Preventing national majorities:** local interests can stop national policies supported by a majority of Americans
 - Southern states during the civil rights movement
- Increased **bureaucracy:** lots of government
- **Disparity in services and spending** between states



BIG IDEA:

“The interpretation of the

- 10th and 14th amendments
- the commerce clause
- the necessary and proper clause,
- and other enumerated and implied powers

is at the heart of the debate over the balance of power between the national and state governments.”

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Jocz at the White House thinking about federalism!