

# **2. Federalism**

# 1. Three Systems of Gov

## 1) Unitary System

- Ultimate gov authority rests in national (central) gov.
- Local gov exercises only those powers given to them by central gov.
- : Decisions of gov of departments & municipalities overruled by national gov
- ex) France, Korea

## 2) Confederal System

- Opposite of a unitary governing system
- : A central gov handles only **common concern** clearly delegated to it by the member states.
- : League of independent states
- ex) Switzerland

## 3) Federal system

- Lie between unitary & confederal forms of gov
- : Central gov & constituent gov (=local gov) both act directly on the people
- : USA, Australia, Canada, Mexico, India, Brazil, Germany

## 2. Why Federalism

### 1) Benefits: Practical & Political Solution

- (1) Federalism retains state traditions & local power, while establishing a strong national gov capable of handling common problems.
- (2) Slow travel & communication contributed to isolation of many regions
- (3) Huge geographic or population size makes it impractical to locate all political authority in one place.
- (4) Federalism brings gov closer to the people.
- (5) Federalism allows many functions to be farmed out by central gov to states or provinces in big countries.
- (6) State gov's long have been a training ground for future national leaders.
- (7) Federalism allows for many political subcultures along the lines of race, ethnic origin, wealth, education, age, religion & sexual preference.

### 2) Arguments against Federalism

- (1) Powerful state & local interests may block national plans.
- (2) Many Americans suffer as a result of inequalities across states in terms of educational spending, achievement, crime etc.

# 3. Constitutional Basis for American Federalism

## 1) Powers of the National Gov

### (1) Enumerated Powers

- Powers **specifically granted** to national gov by Constitution.

: coining money, setting standards for weights & measures, admitting new states, establishing post offices & declaring war

### (2) Elastic Clause

- Necessary & Proper Clause

- Powers that can be **reasonably inferred** but not clearly stated in Constitution

### (3) Inherent Powers

- Powers deriving from the fact that US is a sovereign nation

: **No specific clause** in Constitution says anything about acquisition of additional land.

: But US acquired Louisiana, Florida, Texas, Oregon, Alaska & Hawaii.

## 2) Powers of State Gov

- State's right to regulate commerce within its borders

- Have **police power**

: Laws governing crimes, marriage, contracts, education, traffic laws & land use.

: Health, morals, safety & welfare of the people

### 3) Concurrent Powers

- States share concurrent powers with national gov
- : Not specifically stated in Constitution
- : Only implied
- : power to tax
- : Without taxing power, states may not function properly.
- : Borrowing money & establishing courts
- : Chartering banks & corporations

### 4) Prohibited Powers

- ex) National gov expressly denied the power to impose **taxes on exports**.
- ex) National gov cannot create a national public school system.
- ex) No state allowed to enter into a treaty on its own with another country.

### 5) Supremacy Clause

- Making Constitution & federal laws superior to all conflicting state & local laws.
- State cannot use their reserved or concurrent powers to block national powers
- Most extreme result of conflicts among national gov & state gov's was **Civil War**.

### 6) Vertical Checks & Balances

- Founding Fathers wanted to prevent national gov from becoming too powerful.
- States act as a check on national gov

## 7) Interstate Relations: Horizontal Federalism

- States have numerous commercial, social & other dealings among themselves.
- : Give full faith to every other state's public acts, records & judicial proceedings
- : Return persons fleeing from justice in another state back to their home state, when required

## 8) Defining Constitutional Powers

### : McCulloch v. Maryland (1819)

#### ① Fact of the Case

- Congress chartered two national banks (First Bank & Second Bank)
- : Gov of Maryland imposed a **tax** on the Second Bank in order to put a Baltimore branch out of business
- : [James McCulloch](#) (branch's cashier) refused to pay tax.

#### ② Process

- Maryland took him to state court.
- : State of Maryland won.
- : National gov appealed the case to Supreme Court.

#### ③ Supreme Court

- Establishing a national bank aided national gov in the exercise of its designated powers
- : States have authority to set up such a bank.
- : Central gov has implied power under the necessary & proper clause
- Established doctrine of **national supremacy**
- No state use its taxing power to tax an arm of national gov





James McCulloch  
([http://en.wikipedia.org/wiki/James\\_McCulloch](http://en.wikipedia.org/wiki/James_McCulloch))

## 9) States' Rights & Resort to Civil War

### - Civil War

: Fight to free the slaves

: National gov supremacy *v.* Rights of separate states

: Defeat of South

→ Ended any idea that a state within Union can successfully claim the right to secede from Union.

### - After the Civil War

: Thousands of new employees were hired.

: \$1.3 billion (= \$11.5 b today) national gov budget was passed

: First income tax was imposed to help pay for the war.

→ Expanded role of national gov

= Supremacy of the national gov

### (1) Dual Federalism

- Distinction between federal & state spheres of gov authority

: State gov & national gov are viewed as **layer cake** (separate entities)

: Looks on nation state as co-equal sovereign powers

: States exercised their police power within borders

: National gov out of **purely local affairs**

ex) 1919 federal law banning child labor was found unconstitutional

Because national gov tried to regulate local problem.



## **(2) Cooperative Federalism**

### **- Great Depression**

- : 4,500 banks failed
- : 32,000 business closed down
- : 1/4 labor was unemployed

### **- FDR's New Deal**

- : Numerous gov spending & welfare programs
- : States & national gov cooperation to solve complex common problems
- : Joint action between national gov & states

### **→ Picket-Fence Federalism**

- : More cooperative gov in 1960s + 70s
- : Specific programs & policies involve all levels of gov (national & state & local gov)

## **10) Other Issues**

### **(1) Federal Grants-in-Aid**

- : National gov gave **land grants** for canals, railroads & roads.
- : Congress gave **cash grants-in-aid** to states for state militias (1808).
- : Cash grants for improvements in education, pollution control, recreation, highways in 1930s & 1960s ...

### **(2) Categorical Grants-in-aid**

- **Specific goals** for aids
- : Five types (school grant, sport grant, housing grant, health grant, disabled people grant & travel grant)
- : State officials prefer this aid because states do not have to tax their constituents more with federal money.

## - Feeling the Pressure

- : But no dollars sent to the states are completely **free of burden**.
- : All funds come with requirements that must be met by states.
- ex) Federal funds for **highway improvements** (1980s - 90s)
  - States raised minimum drinking age to 21.

### (3) Block Grants

- Federal funds to states & local govts for general areas
- : Criminal justice & mental health programs
- : More flexibility in how money is spent.
- : 10% of all federal aid programs

### (4) Federal Mandate

- Requirement in federal legislation
- : It forces states & municipalities to follow certain rules
- ex) Ways voters are registered, ocean-dumping restrictions & education of persons with disabilities

### (5) Trends in Federalism

- **George Bush**'s belief that **states**, not the federal gov, should manage large social programs (welfare).
- : Small federal gov
- **Barack Obama** likes big federal gov

## 11) Federalism & Supreme Court

- Supreme Court has final say on constitutional issues
- : Significant role in determining line between federal & state powers
- **Commerce Clause**
- : Enumerated power listed in US Constitution
- : Congress has power to regulate Commerce with foreign nations, among several States & with Indian Tribes.

### ex) United States v. Lopez (1995)

#### ① Facts of the Case

- Alfonso Lopez was a **12th grade** high school student, San Antonio.
- : He carried a **gun** into his school.
- : He was charged with firearm possession at school.
- : Lopez was found guilty & sentenced to six months' imprisonment & two years' supervised release.

#### ② Question

- Is the 1990 **Gun-Free School Zones Act** constitutional or unconstitutional?  
(forbidding individuals from knowingly carrying a gun in a school zone)
- : Does the Congress legally legislate states under the Commerce Clause?

#### - Lopez's legal defense

- : Federal gov had **no authority** to regulate firearms in school zones.
- : Federal law under which Lopez was convicted was unconstitutional.

### - Prosecutor (gov)

- : Possession of a firearm in a school zone leads to violent crime.
- : Crime affects general economic condition by **limiting travel** in the area.
- : weaker economy
- : Possession of a firearm at a school fell under the jurisdiction of the **Commerce Clause** of US Constitution.

### ③ Supreme Court (Chief Justice Rehnquist)

- Congress had broad lawmaking authority under the **Commerce Clause**.
- : But it was **not unlimited**
- : Commerce Clause does not apply to commerce as carrying handguns, especially when there was no evidence that carrying them affected economy on a massive scale.
- : Congress has power to regulate only actions that **substantially** affects interstate commerce.
- This case limited on national gov's authority under the commerce clause