

# Government 30

## Lecture 6

### Federalism #1: General and Constitutional Principles

February 22, 2006

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## Announcements

1. Papers due this Monday, February 27, 9 AM electronically to your TF. Do not be late for class.
2. Use sources, esp. *Federalist* and/or Brutus (most IMP), readings from this class (a plus), or contemporary examples (e.g., news articles) to bolster your point.
3. BUT...don't need to cite more than 1 or 2 examples for your case. Main focus is argument. These are not research papers. Conciseness is key.
4. Writing Demands



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## Federalism:

### Definition and First Principles

- Definition: a system of divided sovereignty in which a national government shares power with local/state units of government, and in which the latter receive (1) partial jurisdiction over policy matters and (2) institutional protection of this jurisdiction.

#### First Principles of Federalism

1. Divided Sovereignty: Who Gets What, When, How Depends on Where
2. Partial Jurisdiction: What is the Division of Sovereignty?
3. Institutional Protection

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## Divided Sovereignty

1. Imagine a nation w/o federalism
  - no governors, or state legislatures
  - no state referenda
  - no state police
  - Wanna hunt? Talk to the Dept of Interior, not the DNR
  - culturally, not states but regions or localities
2. Imagine a nation under the Articles
  - Would WWI, WWII, Vietnam have been fought?
  - How would nation have responded to Depression?
  - Would African-Americans, Native Americans, women have civil rights everywhere?

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## WHAT IS THE DIVISION OF SOVEREIGNTY?

The Federalists: Limited, but necessary and proper, national power.

Hamilton, *Federalist #17* (Rossiter ed., p. 86): "Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought in the first instance to be lodged in the national depository. The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction." (See also #23.)

Beer: the "nationalist theory"

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## What is the Division of Sovereignty? The Marshall Court steps in

*McCulloch v. Maryland* (1819): Question -- can state of Maryland tax Bank of the U.S.? Is Bank of the U.S. constitutional?

**Court:** "The subject is the execution of those great powers on which the welfare of the nation essentially depends. It must have been the intention of those who gave these powers, to insure, so far as human prudence could insure, their beneficial execution. This could not be done, by confining the choice of means to such narrow limits as not to leave it in the power of congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."

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## What is the Division of Sovereignty? The Marshall Court steps in

“Let the end be legitimate, let it be within the scope of the constitution, and *all means* which are *appropriate*, which are plainly adapted to that end, which are not prohibited, but consist with the letter and the *spirit* of the constitution, are constitutional. . . .” (Young, pp. 33-34)

Bottom line: Hamilton wins, Jefferson loses. (Madison has mixed feelings.)

Notice “less-than-strict” constructionism even this early.

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## National v. Compact Theory

1. Who is “We the People”?  
National -- people of the U.S. as individuals  
Compact -- people as represented by sovereign states
2. A Right of Nullification, or Secession? (Calhoun/Hayne v. Webster)
3. What does “Necessary and Proper” Mean?  
Compact (Jefferson): Absolutely necessary  
National (Hamilton-Madison): Appropriate.

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## The Nullification Controversy

1. Debates from 1830s to 1860s about right of states to secede
2. Daniel Webster’s argument (“common goods”):  
“Take for instance the Delaware breakwater. . . It will cost several millions of money. Would Pennsylvania ever have constructed it? Certainly never, . . . because it is not for her sole benefit. Would Pennsylvania, New Jersey and Delaware have united to accomplish it at their joint expense? Certainly not, for the same reason. It could not be done, therefore, but by the general government.”
3. Secessionists’ response -- either (a) natural right to secede, or (b) like colonists, can secede under abuse

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## What is “Necessary and Proper”?

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Constitution: Art I, S 8: “necessary and proper” clause.

Madison, *Federalist* #44, Rossiter ed., p. 253: “No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power for doing it is included.”

Madison, *Federalist* #45, Rossiter ed., pp. 260. “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

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## Madison on division of sovereignty (cont.)

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“The former [powers of the national government] will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.”

“The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

“The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments in times of war and security.”

Madison, *Federalist* #45, Rossiter ed., pp. 260-261.

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