

Government 30

Lecture 7

Federalism #2: General and Constitutional Principles

February 27, 2006

Announcements

1. Papers were due two hours ago, electronically to your TF. Do not be late for class.
2. Office hours this week: Thursday, 1-4. Will add additional hours to Tuesday morning/afternoon each of the following two weeks.

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.

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

Institutional Protection

Sam Beer (Harvard, now emeritus) very clear: federalism ≠ decentralization

Federalism is decentralization cemented in a law that is higher than the law of the national legislature.

Implication: Federalist disputes are often matters of constitutional interpretation.

Problem: Political actors interpret the Constitution every day, whether or not they are courts (e.g., TR, FDR, or Reagan as presidents).

Federalism in Political History

A. In some respects, departure from strict devolution is quite immediate -- McCulloch v. Maryland

B. 1800-1860: Devolution in civil liberties and slavery, weaker in implied powers.

C. 1850-1900: DUAL FEDERALISM.

1. Commerce clause becomes basis of federalism
 - courts are economic regulators of nation
 - much law taken from GB common law

2. Natl govt gets ↑ing revenue from tariff

Federalism in the Twentieth Century

D. 1900-1970: THE NEW NATIONALISM (TR)

1. expansion of interstate relations and commerce
 - food & drug regulation (1885, 1906 – USDA)
 - Interstate Commerce Commission (1887), gets more powers (1920)
 - antitrust: Sherman (1890) & FTC (1913).
2. fed govt expands taxation power (16th Am).
3. New Deal: fed govt expands into labor, education; but many program run thru states

E. 1970-present: THE NEW FEDERALISM?

FISCAL FEDERALISM

A. Grants-in-Aid

B. Goals

1. state needs: transportation, welfare
2. national needs: health, educ/training

C. Mandates and Conditions

1. ADA (1990) – provide disabled w/ equal access
2. Reagan and drinking age

D. Categorical grants v block grants v revenue sharing

E. Competition among states: wisdom of founders.

Table 2. State Own Source Revenues and Federal Grants to States As a Percentage of Gross Domestic Product, 1961 - 2001

Year	Own Source Revenues	Federal Grants	Total
1961	3.87%	0.75%	4.63%
1971	5.26%	1.79%	7.06%
1981	5.46%	1.88%	7.34%
1991	5.88%	2.10%	7.98%
2001	6.01%	2.57%	8.58%

Note: Columns may not add to total because of rounding. Source: National Conference of State Legislatures, www.ncsl.org.

Growth of State Spending in Texas, 1978-2003

Year	Governor	Texas State Spending from All Funds, Billions \$	% Incr.
1978-79		16.5	
1980-81	Clements I	21.6	30.90%
1982-83	Clements I	25.7	19.00%
1984-85	White	30.9	20.20%
1986-87	White	35.6	15.20%
1988-89	Clements II	40.1	12.60%
1990-91	Clements II	48.3	20.40%
1992-93	Richards	62.7	29.80%
1994-95	Richards	75	19.60%
1996-97	Bush I	81.1	8.10%
1998-99	Bush I	88.9	9.60%
2000-01	Bush II	102.4	14.60%
2002-03	Perry	113.8	11.70%

Why Federalism?

A. For Framers, no logic. Rather a practical problem: how to unite the colonies.

B. Liberty-based Argument: liberty more secure in small republics.

(1) participation greatest in smaller governments, to a point (Eric Oliver)

(2) states often lead the way in civil rights (e.g., western states and women's suffrage)

(3) but, rights can be curtailed by states too [e.g., Jim Crow laws in South in 1890s-1910s]

Why Federalism?

Efficacy-Based Arguments

(1) Local Problem-Solving: "Washington doesn't know best" arguments.

- developmental policies versus redistributive policies.

(2) The Logic of Laboratories (Osborne)

FDR and New Deal, Balanced Budget Amendment, Regulation (RRs, food and drugs, financial services), Welfare: "workfare".

Qualification: still need degree of uniformity in order that we can all benefit from the learning?

D. Federalism as Government Competition (the Buchanan Argument)

1. Federalism a possible political analog to the market.
2. Where decentralization is high, voters have “exit options,” that is, can buy and shop elsewhere.
3. But think of Federalist critique: might “race to the bottom” adversely affect states’ abilities to provide essential services?
4. Buchanan: 19th c. U.S. growth under conditions of limited federal government. True, but (a) state government was “big” in many ways during 19th c. U.S. (see William Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America*), (b) 20th c. growth under conditions of expanded federal government.

Federalism: Protector or Enemy of Liberty?

- A. Protector: devolution of power means that it is not concentrated
- B. Threat
 1. rights and benefits of govt vary across states
 2. State majorities can oppress (Madison, *Federalist* #10)
- C. State innovation a protection (Wyoming and women)
