

FEDERALISM AND SEPARATION OF POWERS

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INTRODUCTION

Federalism

- Limits government
- Divides government into two levels
- National and state

Separation of powers

- Limits government
- Divides government against itself
- Share powers across branches

FEDERALISM

Federalism system of government that divides power between a central government and regional governments

Sovereignty supreme and independent political authority

Expressed powers given directly in Constitution

Implied powers necessary and proper clause

Supremacy clause national laws trump state laws

Reserved powers tenth amendment reserves powers not specified in the Constitution to the states

Police power power to regulate health, safety, welfare, and morals of citizens

Concurrent powers power possessed by both the state and national government (e.g. taxation)

OBLIGATIONS OF STATES TO EACH OTHER

- Full faith and credit clause
 - States must honor other states' laws
- Privileges and immunities
 - No special treatment of residents
- Extradition

EVOLUTION OF FEDERALISM IN THE US

- Up through the 1930s
- Fundamental government powers shared by national and state governments
- State governments more important

- Necessary and proper clause interpreted widely in *McCulloch v. Maryland*
- Interstate commerce clause in *Gibbons v. Ogden*
- Both granted much power to national government
- Little growth of the national government up through 1930s
- Judiciary dominated by states rights interpretations post Marshall

- FDR elected in 1932
- New Deal: greatly expanded scope and power of national government
- FDIC, TVA, SEC, FHA, NLRB, social security, etc

- Post 1930s through 1960s
- Federal government uses subsidies to encourage states to pursue federal goals
- Subsidies called grants-in-aid

- Layer cake - marble cake
- Federal aid to states makes up roughly 30-35% of states budgets

- 1960s to present
- More active federal government
- Threaten to withhold funding if states don't conform to national standards
 - E.g. American with disabilities act
- Unfunded mandates
- Conditional grants, block grants

SEPARATION OF POWERS

There can be no liberty where the legislative and executive powers are united in the same person... [or] if the power of judging be not separated from the legislative and executive powers

- Baron de Montesquieu

- Separate functions of government to preserve liberty
- Legislative
- Executive
- Judicial

Ambition must be made to counteract ambition

- Violates separation of powers
- Each branch may "check" the two others
- National policy represents views of all three branches
- "Separated institutions sharing power"

LEGISLATIVE CHECKS

- Executive

- Override veto
- Impeach and remove president
- Senate can reject nominees/treaties
- Conduct investigations
- Refuse to pass laws/funding president requests

- Judicial

- Change size of court & # of justices
- Constitutional amendments
- Reject nominees
- Impeach and remove justices
- Amend court jurisdictions
- Appropriations

- Legislative
- Veto
- Special sessions
- Carries out laws
- Vice president casts tiebreaking vote in Senate
- Judicial
- Nominates justices
- Pardons
- Executes decisions

- **Legislative**
- Declares laws unconstitutional
- Chief justice presides over Senate hearings to impeach president
- **Executive**
- Declare executive actions unconstitutional
- Issue warrants