

Today's Agenda

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- Define Federalism
- History
- Dual and Shared Federalism
- Federalism in the Courts and Constitution
- Grants

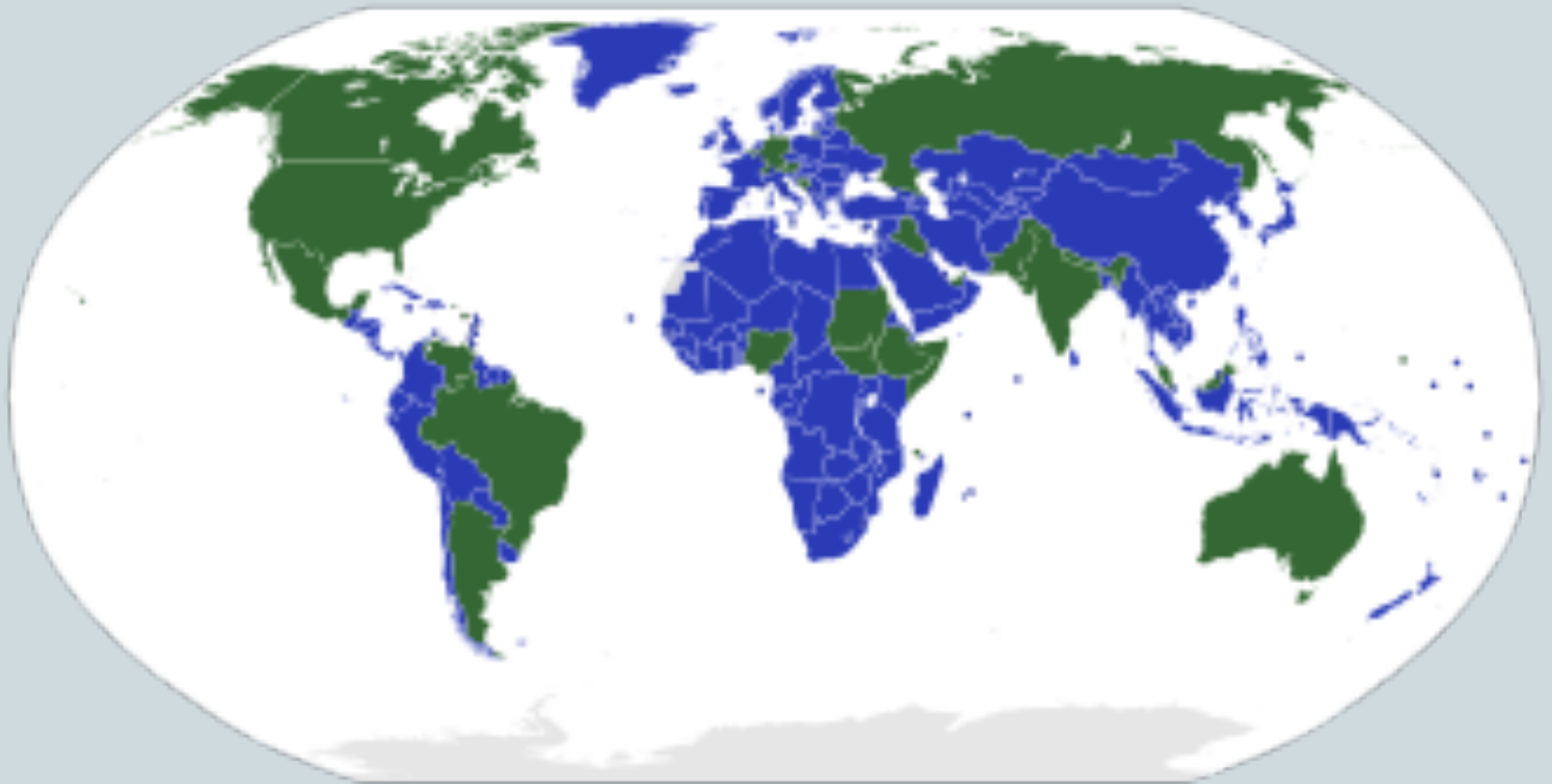
What is Federalism?

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- Federalism is a system based upon democratic rules and institutions in which the power to govern is shared between national and provincial/state governments
- In the US this is the national, state, and even local governments

Federalism Unique to the US?

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Federalism in the World

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- Most democracies are unitary systems
- Many federal systems use local levels for administrative purposes
- Many federal systems not REALLY federal
 - Russia reforms

History of Federalism

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- Articles of Confederation – state and local governments held power, and they willingly (or not at all) gave power to the national government
 - Problems: free riding, high transaction costs
- Constitutional Convention changed this arrangement in favor of the national government
- Anti-federalists argued it would never work

Federalism – American Style

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- **Federalism is a hybrid agreement**
 - Mixes elements of confederation (lower level has real power) and a unitary gov't (national level has the power)

- **Before adopting a federal system in the Constitution, U.S. had experienced both of these:**
 - Monarchy/parliament—unitary
 - Articles of Confederation--confederation

Types of Federalism

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- Two distinct forms of American federalism have been identified:
 - Dual Federalism
 - Shared Federalism

Dual Federalism

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- The simplest possible arrangement.
- This type of federalism leaves the states and the national government presiding over mutually exclusive “spheres of sovereignty.”
- The nation, however, has never divided authority so neatly.

Dual Federalism

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- From the early days of quite limited responsibility for the national government, nationalization has shifted authority to the national side and away from state gov't's
- Today the national government has a hand in almost all policies that “concern the lives” of the citizenry
- Dual federalism no longer describes that nature of federal-state relations

Shared Federalism

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- The second and more accurate conception of federalism is called shared (or “cooperative”) federalism
- It recognizes that the national and state governments jointly supply services to the citizenry
- Over the years progressive nationalization has moved American federalism from mostly dual to mostly shared

Shared Federalism

- Often the scope and complexity of modern problems mandate a joint, cooperative strategy across states and levels of government
- Critics of nationalization argue that the federal government has so intruded into the traditional responsibilities of states and local communities that even “shared” federalism is a misnomer
- But if there have always been critics, how did we get to this point?

Shared Federalism

- Why have states' rights advocates had difficulty partitioning federal and state responsibilities?
- As national politicians sought to expand their authority over the years, they discovered that the wall between the federal government and the states was not impregnable
 - The Constitution leaves ample room for a variety of federal-state relations
- Moreover, when nationalization of public policy proceeded, it rarely triggered a constitutional crisis

Shared Federalism in the Courts

- *South Dakota v. Dole (1987)*
- South Dakota, allowed 19-year-olds to purchase beer containing up to 3.2% alcohol
- In 1984, the United States Congress passed the National Minimum Drinking Age Act, withholding highway funds from states that did not adopt a minimum legal age of 21.
- South Dakota challenges the law and loses 7-2. The ruling argues that this is a valid exercise of federal authority under the “necessary and proper clause.”

The Constitution

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- The greatest victory of states' rights during the Constitutional Convention was the creation of a Senate whose members were to be selected by the state legislatures.
 - Thus, senators are beholden to the state legislators.

The Constitution

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- The ratification of the Constitution was by state conventions that directly represented the people, *not by the state governments themselves*
- Thus the people created the government, not the states
- Language governing the relationship of the national government to the states runs throughout the Constitution. But the end result was a system open to nationalizing forces

The Supremacy Clause

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- “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof [that is, in keeping with the principles of the Constitution] ... shall be the supreme law of the land.”
- The provision of the Constitution with the most profound implication for modern American federalism is the so-called supremacy clause in Article IV
 - This clause does not give the federal government free license.

Enumerated Powers

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- Article I, Section 8 lists powers of Congress (expressed/enumerated powers) – created distinction
- Some powers are broadly stated and thus helped open up state policy to national intervention.
 - Example: the commerce clause.
- In addition, the elastic clause (necessary and proper clause) also eventually undermined the restrictive purpose of the enumerated powers.

The 10th Amendment

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- Given the fear of tyranny as articulated by the Anti-federalists, it is not surprising that Madison had to promise the addition of a Bill of Rights as an incentive for ratification
- Many members of the first Congress wanted protections for the states as well as for individual citizens
- The Tenth Amendment reserves to the states (or the people) all powers not directly given to the national government

Failure of the 10th

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- The Tenth Amendment offers the most *explicit* endorsement of federalism to be found in the Constitution
- Yet despite its plain language, the Tenth Amendment has failed to play a major role in fending off national authority
- Why?
 - The powerful combination of the *supremacy* and the *elastic* clauses.

The Courts

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- The Framers envisioned the Supreme Court as the referee of disputes between national and state gov't
 - When resolved, created powerful precedents
 - Allowed national policy to develop free of state prerogatives.
- *McCulloch v Maryland*
 - Protected national gov't from actions of states.
- *Gibbons v. Ogden*
 - Only Congress possesses authority to regulate commerce.
- *Garcia v San Antonio Metro Transit Authority*
 - Federal wage hours applied to state and local employees

Outcome?

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- Bottom line: Power is shifting from the states to the federal gov't
- The 10th Amendment usually loses at the Supreme Court level
 - And when it wins, it “loses” *Bond v US*

**Remember the
Tenth Amendment!**
STATES HAVE RIGHTS TOO !

Bond v US 2011 & 2013

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- Does a criminal defendant, who has been convicted under a federal statute, have standing to challenge the conviction on grounds that the statute is beyond the federal government's enumerated powers and inconsistent with the Tenth Amendment?
 - Court found that YES, she does have standing
- Next step, does the treaty and enforcement violate the 10th Amendment?
 - No, but the prosecutor went too far
 - Minority opinion would have gutted the treaty power

Biggest Reaches into State's Powers

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- The New Deal and the Great Society
- Social Security, Medicare Medicaid, Disability/ Unemployment Insurance, Student Loans...
- Traditional state and local responsibilities became federal ones

Why Is More Policy Nationalized?

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- Collective Action Problem and Coordination Problems
- Cutthroat competition among states



Federalism Today: Grants

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- During the last fifty years federal grants-in-aid became an important part of intergovernmental relations
 - *Few grants prior to New Deal*
- All of these programs enlist categorical grants, in which federal dollars are tied to particular programs or categories of spending
- These grants are inducements to states to carry out particular programs, but they also allow the national government to define these state programs

Block Grants

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- Alternative to categorical grants: block grants
- Like categorical grants, funds are appropriated to achieve a particular policy goal with specific administrative procedures
- *Policy targets are only generally stated and fewer strings are attached*
- TANF – welfare
- Block vs. Categorical
 - 22 Block Grants, over 1,000 Categorical Grants

Any Questions?

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