

1.7

Relationship Between States and the Federal Government

Explain how societal needs affect the constitutional allocation of power between the national and state governments.

Theory, conflict and compromise have greatly influenced our Constitutional system. At its root is a power struggle. What is the scope of governing power? Who holds the power? How should this power be allocated? How best can this power be exercised? And who should benefit from this power? These are the fundamental questions facing all governments. Answers from previous eras, as we have seen, may in fact be insufficient for our times. "The Constitution belongs to the living and not to the dead," Thomas Jefferson said. For this reason, we continue to raise these essential questions even today. Answering them is no more or less easy than it has been throughout all of our history. Public policy disputes over social policy resonate even more.

Federalism reflects the dynamic distribution of power between national and state governments. The exclusive and concurrent powers of the national and state governments help explain the negotiations over the balance of power between the two levels. Understanding where the central powers end and the state powers begin has never been easy. The interpretation of the Tenth and Fourteenth Amendment, the commerce clause, the necessary and proper clause, and other enumerated and implied powers is at the heart of the debate over the balance of power between the national and state governments.

In so small way President Franklin D. Roosevelt in his Second Inaugural framed the scope of central power within a federal structure:

Instinctively we recognized a deeper need—the need to find through government the instrument of our united purpose to solve for the individual the ever-rising problems of a complex civilization. Repeated attempts at their solution without the aid of government had left us baffled and bewildered. For, without that aid, we had been unable to create those moral controls over the services of science which are necessary to make science a useful servant instead of a ruthless master of mankind. To do this we knew that we must find practical controls over blind economic forces and blindly selfish men.

We of the Republic sensed the truth that democratic government has innate capacity to protect its people against disasters once considered inevitable, to solve problems once considered unsolvable. We would not admit that we could not find a way to master economic epidemics just as, after centuries of fatalistic suffering, we had found a way to master epidemics of disease. We refused to leave the

problems of our common welfare to be solved by the winds of chance and the hurricanes of disaster.

In this we Americans were discovering no wholly new truth; we were writing a new chapter in our book of self-government.

Such sentiments did not contradict, for FDR, our original social contract. Our Constitution, a covenant with the people, empowered a representative democracy to respond to our day-to-day problems. Global privatization and decentralization of power notwithstanding, the American experiment in self-government continues to demand creative solutions to contemporary demands.

A case in point would be the federal government response to natural disasters. National public policy now requires government action to insulate the people from natural phenomenon like hurricanes and tornados. Once considered simply acts of nature, these terrible events now fall under the authority of state and federal governments. Agencies like the Federal Emergency Management Administration (FEMA) help us cope and rebuild after natural calamities. Few debate the merits of such programs. We have come to expect a strong government, our government, to lend us a helping hand when needed.

Yet at other times we want our strong government to step back. Keep us safe but let us alone when we make private lifestyle choices. An example of this in our own time is State-level legalization of marijuana. Despite certain national laws The Controlled Substances Act (1970) gave the national government authority over much of our drug policy. Federalism, however, still reserves certain power and authority to state and local governments. Many states have fought back against national drug policies. Numerous states have now enacted marijuana policies that challenge even recent Supreme Court decisions to the contrary. See *Gonzales v. Raich* (2005). We the people, as the ultimate agents of power, want a strong central government but not too strong.

Note that in a federal system, however, policy making goes on not only within the national government and its three branches but also between the national government and state and local governments. The constitution has placed clear limits upon the scale and scope of the national government. It is prevented from doing whatever it wants. When the national government encroaches upon state and local prerogatives local governors and legislatures will let them hear about it. Yet increasingly the national government and its budgetary largesse can assist state governments fulfill their needs. The federal government provides monies to state and local governments through block grants and categorical grants. Block grants provide the most discretion whereas categorical grants are allocated to specific programs and projects. When cities, for instance, want help in fighting crime, improving their schools and/or build large infrastructure projects the national government often provides budgetary helps. Additionally, the national government at times can mandate, or require, states and local government to fulfill certain national priorities. For example, the Americans with Disabilities Act (1990) was a federal mandate that, in part, required all public buildings

to be wheel chair accessible. In this way the national government uses both sticks (mandates) and carrots (block grants and categorical grants) to interact with state and local governments in the policy making process.