

Chapter 3 – Federalism and the Separation of Powers

Who does what? Federalism and institutional jurisdictions

- **Federalism**: the system of government in which a constitution divides power between a central government and regional government.
- **Sovereignty**: supreme independent political authority
- Even after the ratification of the constitution, the states continued to be more important than the national government
- Why keep the states: the importance of history
 - Many of the framers, like Alexander Hamilton, had hoped to create something close to a unitary national government and to circumscribe severely the power of the individual states.
 - The fact that the framers established a federal system in which the states retained significant powers is an illustration of the importance of history.
 - Citizens identified with their own states
- Federalism in the constitution: who decides what?
 - **Expressed powers**: powers specifically granted to the federal government in the text of the constitution.
 - The powers of the national government
 - o Power to collect taxes, coin money, declare war, and regulate commerce
 - o **Implied powers**: powers derived from the necessary and proper clause (art.1, Section 8) of the constitution. Such powers are not specifically expressed but are implied through the expansive interpretation of delegated powers.
 - o **Necessary and proper clause**: Art1, section8, of the constitution, which enumerates the powers of congress and provides congress with the authority to make all laws "necessary and proper" to carry them out; also referred to as the elastic clause
 - o Supremacy clause: makes all national laws and treaties "the supreme law of the land"
 - The powers of the state government
 - o Tenth amendment: aka **reserved powers**: powers that are not specifically delegated to the national government or denied to the states; these powers are reserved to the states.
 - o The most fundamental power of the states is coercion: the power to develop and enforce criminal codes, administer health and safety rules, and regulate the family via marriage and divorce laws.
 - o The states have the power to regulate individual's livelihoods: if you're a doctor or a lawyer or a plumber or a barber, you must be licensed by the state.
 - o States have the power to define private property: private property exists because state laws against trespass define who is and who is not entitled to use a piece of property.
 - o **Police power**: the power reserved to the government to regulate the health, safety, and morals of its citizens
 - o **Concurrent powers**: the authority possessed by both state and national governments, such as the power to levy taxes.
 - States' Obligations to each other
 - o **Full faith and credit clause**: the provision in art1, sect1 requiring that each state normally honors the public acts and judicial decisions that take place in another state.
 - o **Privileges and immunities**: the provision in art1, sec2, stating that a state cannot discriminate against someone from another state or give its own residents special privileges.

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Julia Schneider



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