

The Texas Constitution

Federalism: A Division of Power

A federal system of government, such as in the United States, divides power and responsibilities between the national government and state governments. At first glance, the U.S. Constitution appears to make this division clear. The supremacy clause contained in Article VI declares federal laws, treaties, and the U.S. Constitution to be the supreme law of the land.

Implied and Enumerated Powers

In addition, the U.S. Constitution grants Congress certain enumerated powers, listed in Section 8 of Article I. These powers cover a wide range of subjects, among them the authority of Congress to tax, spend, and borrow. All remaining powers belong to the states. However, the division of state and federal power is not as definitive as it might appear. The powers of Congress are augmented by the recognition that it possesses implied powers in addition to enumerated powers. Implied powers are not specifically mentioned in the U.S. Constitution, but are derived from the necessary and proper clause of Article I, Section 8. The U.S. Supreme Court has long recognized the existence of implied powers. For example, the commerce clause empowers the federal government to “regulate commerce with foreign nations and among the several states...” This now extends to an array of activities unimagined by the Framers of the Constitution and outside the scope of what most people consider interstate commerce. A broad interpretation of Article I’s ambiguous language, combined with the necessary and proper clause, has made the enumerated powers a springboard for increased federal authority over state and local policies.

Concurrent and Reserved Powers

Many powers belonging to the federal government are shared by state governments. Such powers are called concurrent powers. These include the power to tax, spend, and borrow money. State governments operate their own judicial systems, charter corporations, provide public education, and regulate property rights. The Tenth Amendment to the U.S. Constitution would seem to preserve broad authority to state governments: “The powers not delegated to the

United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.” These reserved powers, often called the police powers, allow states to legislate and regulate to protect the health, safety, and morals of citizens. State criminal law, zoning laws, environmental protection, and blue laws (laws banning the sale of certain items on Sundays, usually alcohol) are all examples of police powers.

While the sweeping language of the Tenth Amendment suggests impressive state powers, it has done little to limit federal intervention in many policy areas that were traditionally considered exclusive to the states. For example, in the 19th century marriage and education were two areas considered off limits for the national government. However, in recent decades the federal government has become increasingly active in the regulation of these activities. The ambiguity of undefined powers inherent in federalism and our nation’s Constitution results in frequent reliance on the supremacy clause as the division of powers between federal and state governments is debated.

Power Distribution in the Federal System

As a result of living under the tyrannical rule of English kings, the Framers of the Constitution feared centralizing power within a single governmental institution. Therefore, when drafting the Constitution, they gave some powers exclusively to the national government, shared some powers with both the national and state governments, and reserved some powers only for state governments. Likewise, the Constitution denied powers to each level of government. This activity tests your knowledge about the distribution of power in the federal system.

Interactive Activity: Power Distribution in the Federal System

Identifies powers exclusive to the national government or state government. Also covers powers shared between both governments. Examples include coining money, ratifying amendments to the U.S. Constitution, and passing laws governing marriage and education.