Federalism

The Federal System

Systems of Government

The United States is a federal republic. A federal system is one in which government power is divided between the national government and regional governments. In Canada these regional governments are called provinces, in Germany Lander. The regional governments of the United States are called, well, states. A federal system can be contrasted with two other types of political systems, unitary and confederations. A unitary system is one in which power is centralized in the national government. Any powers that regional governments enjoy are at the discretion of the national government. Two good examples of unitary systems are modern France or Japan. A confederation is a loose alliance of regional governments in which ultimate power lies with the regional governments, not the central or national government. Regional governments in a confederation may leave the alliance at any time. One need not look beyond the shores of the United States to find a good example, only beyond the present century. The first national government of the United States was in fact a confederation: the Articles of Confederation (1781-1789). The short-lived rebel regime created during the Civil War is another home-grown example of a confederation.

The Division of Power

In the United States, the Constitution grants specific powers to the national, or federal, government while reserving certain powers to the states. An important thing to keep in mind, however, is that this division of power is not static but dynamic. In its earliest decades the national government played a relatively small role in American life. War, economic crisis, and technology, however, have all contributed to increased demands for and growth in the size of government. The balance of power between the states and the federal government has evolved dramatically over the last two hundred years, with the overarching trend being the flow of power from the states to the federal government.
Who Gets What Power?

The basic powers of the federal government are found in its enumerated powers listed in Article I, Section 8 of the US Constitution. These powers cover a wide range of subjects, among them the authority of Congress to tax, spend, and borrow. A number of these powers deal with economic regulation and stimulus, such as the power to coin money, grant copyrights and maintain a postal service. Of particular importance are the commerce clause and necessary and proper clause. The enumerated powers also recognize the federal government's primacy in the conduct of diplomacy giving it authority over war and peace as well as maintenance of the armed forces. The powers of Congress are augmented by the recognition that it possesses implied powers in addition to its enumerated ones. Implied powers, such as the power to create national banks as part of the Federal Reserve System, are not specifically mentioned in the Constitution but find their basis in the necessary and proper clause of Article I, Section 8. It gives Congress authority to pass all laws necessary and proper to carry out its enumerated powers. This clause is also called the elastic clause. In addition, the supremacy clause of Article VI and the Sixteenth Amendment, granting Congress the authority to tax individual income, reinforce the range and effectiveness of federal power.

Many powers belonging to the federal government are shared by the state governments. Such powers are called concurrent powers. These powers include the power to tax, spend, and borrow money. State governments operate their own legal systems with courts to administer them, charter corporations, provide public education, and regulate property rights. The Tenth Amendment to the US Constitution, located at the end of the Bill of Rights, seems to preserve an enormous amount of authority to the state governments. It reads: "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 their citizens. State criminal law, zoning, environmental protection, and blue laws (laws banning the sale of alcohol on Sundays) are all examples of police powers. Yet while the sweeping language of the Tenth Amendment suggests impressive state power, it has done little to limit the intrusion of federal intervention in many policy areas that were traditionally considered exclusive to the states. For example, marriage and education were considered no-go zones for the national government in the 19th century. In recent decades, however, the federal government has become increasingly active in the regulation of these activities.
The Power Grid: Power Distribution in a 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: The Power Grid: Power Distribution in a Federal System

Identifies which level of government has the power (or does not have the power) to carry out a specific action. The national government can regulate commerce with foreign nations, call out the militia to execute laws, and coin money. It cannot however, impose taxes on items exported from any state. State governments can ratify amendments to the U.S. Constitution, regulate intrastate commerce, and pass laws governing activities such as crimes, marriage, education, land use etc. They cannot make laws that violate federal law or levy import/export taxes. Neither the national nor state governments can deny citizens the right to vote because of failure to pay taxes, prohibit the free exercise of religion, impose excessive bail or unusual punishments, or deprive citizens' freedom of speech, press, and assembly. Both national and state governments can establish courts, and charter banks and corporations.

Additional Resources

Websites

The United States Constitution Online
http://www.law.cornell.edu/constitution

The Cornell University Law School hosts an online version of the US Constitution searchable by article, section, and amendment.
Books

Comparative Federalism: The European Union and the United States in Comparative Perspective, edited by Anand Menon and Martin A. Schain.

Comparative federalism is now an important topic, as US and EU scholars seek to share information and insights. The present volume seeks to build on and contribute to this growing literature by developing a systematic comparison of the institutions, policies and developmental patterns of the European Union and the United States.