

Federalism - the Concept

The idea that the federal government and the state governments are separate sovereigns and cannot directly control each other.

In a sense, the U.S. is made up of 51 separate sovereign nations!

The Supremacy Clause:

Art VI, section 2:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

This does NOT mean that the federal government can control the states, it does however mean that where federal law conflicts with state law federal law controls.

Federalism - The Effect

- The federal government cannot force the states to do anything.
- Thus, the federal government cannot:
 - tax state governments or state government entities
 - order a state to get rid of radioactive waste within its borders (New York v. United States)
 - order a state to conduct background checks on potential gun buyers (Printz v. United States)
- Although federal law trumps state law, the power of the federal government is one of enumerated powers; wherever the U.S. Constitution does not give the federal government a power, said power is left to the states.
- (10th Amendment: 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.”)

STATE POWERS

- Define crimes and punishments for ordinary crimes
- Define and enforce everyday contract and tort law
- Regulate local education and operate public schools
- Define property rights

FEDERAL POWERS

- Coin money and run the nationwide monetary system
- Regulate things that effect interstate commerce|
- Assure civil rights to people nationwide
- Foreign Policy
- Establish nationwide policies for issues that cannot be effectively addressed on a local level

Separation of Powers

➤ Dividing the power between the branches of the federal government.

The three branches are:

	Executive	Legislative	Judicial
Who are they?	President, cabinet, administrative agencies, federal prosecutors, etc.	Congress (Senate and House)	Supreme Court and lower federal courts (created by congress)
Main function	Carries out the law	Makes Laws	Interprets Constitution and laws
Example of other power	Commander-in-chief of the armed forces	Confirms treaties	Writes the Federal rules of Civil Procedure
Checks that they possess	<ul style="list-style-type: none"> - Vetoes legislation - Appoints judges - Impoundment? 	<ul style="list-style-type: none"> - Override vetoes - Impeachment of judges and executive officers - Confirms judges 	Can declare actions or laws unconstitutional
Checks against	<ul style="list-style-type: none"> - Impeachment - Vetoes can be overridden - Action can be declared unconstitutional 	<ul style="list-style-type: none"> - Law can be declared unconstitutional - Laws can be vetoed 	<ul style="list-style-type: none"> - Impeachment by Congress - Appointed by President

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QUIZ TIME!

Separation of Powers

Congress is also divided:

	House of Representatives	Senate
# of members	435	100
How elected	Districts from around the country	2 from each state
Term	2 years	6 years
Special rules	<ul style="list-style-type: none">- Tax bills must originate here- Impeachments	<ul style="list-style-type: none">- Confirms treaties- Conducts impeachment trials- Confirms judges

Legislative Powers

- All are derived from Article I of the Constitution and/or the “enforcement” clauses of some of the Amendments. The main powers of Congress have to do with making laws in various areas.

Some Highlights:

- The taxing and spending for the “general welfare” clause; which allows taxing and spending for the “general welfare”

Note: This does NOT allow Congress to make other laws for the general welfare; that’s the states’ job

- Congress can use this power to “force” states to do things that it cannot directly order them to do because of federalism
- The “Commerce Clause” (the biggest source of Congressional power)
- To coin and regulate money (exclusive power)

Congress' Legislative Powers (Cont.)

- To promote arts and sciences through funding
 - To create and maintain armed forces
 - Enforcement clauses of the Civil Rights Amendments
 - The “necessary and proper” clause (the ‘elastic’ clause)
 - This does not give Congress new powers, but it allows Congress broad authority to develop its own means to carry out the other powers
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- Congress can also delegate its power, but cannot give other branches too much power to create law
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- Congress establishes administrative agencies in areas that require attention and expertise that Congress doesn't have; and Congress gives those agencies their power