#### **U.S. Federal System: Overview**

**Origins:** In the 17th century, the English tradition of local autonomy in towns and shires influenced the form of government that developed in the American colonies. The English people were accustomed to local self-government. In addition, the roots of Federalism were planted in the working relationship that developed during the Colonial Period between the colonies and the English Crown and Parliament. During the Colonial Period the ground was laid for interstate relations. The framers of the Constitution, therefore, had to take into account two opposing forces: state patriotism that developed out of the Colonial Experience, and Americanism that tied the states together in their fight for freedom from England.



**Principles:** Federalism involves two levels of government, each assumed to derive its powers directly from the people, at least in democratic societies. Therefore, each level of government is considered supreme in the areas of power assigned to it.

Each level of government is protected by fundamental laws of the Constitution that prevent either level from usurping or destroying the other.

#### U.S. Federal System: Supremacy Clause and Structure

#### **Supremacy Clause**

Since the division of power in the United States is a federal one, in which the two levels of government govern the same territory and people, conflicts will arise between national and state laws. Thus the Constitution's framers added Article VI, Section 2, the Supremacy Clause, to resolve these conflicts. Basically, it says that the Constitution is the Supreme Law of the Land, that it stands above all other laws.

## Following is the order of supremacy of laws governing the U.S.:

- 1. Constitution
- 2. Acts of Congress and Treaties
- 4. State Statutes
- 3. State Constitutions
- 5. City and County Charters

## Structure of the U.S. Federal System

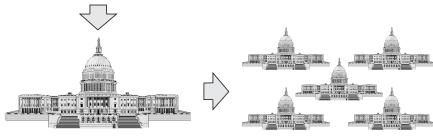
An organizational chart of the U.S. federal system might look like this:



Citizens of the United States



**U.S. Constitution** 



**National Government** 

TOWN HALL
TOWN HALL
TOWN HALL
TOWN HALL
TOWN HALL

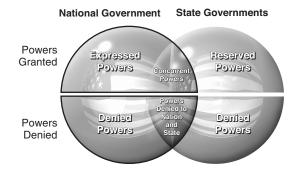
50 State Governments

**Local Governments** 

#### **U.S. Federal System: Role of National Government**

## The Relationship of Powers Held by the National Government and by the State

The role of the national government is characterized by the types of powers granted to it and denied to it under the Constitution and the U.S. federal system.



#### Type of Power & Characteristics

#### **Expressed/Enumerated Powers**

Those powers given to the national government that are specifically spelled out in the Constitution.

Article I, Section 8, U.S. Constitution, is a list of all the specific powers granted to Congress, such as "Congress shall have power to declare war."

**DOCUMENTATION & EXAMPLES** 

#### **Implied Powers**

Those powers that are not expressly stated in the Constitution, but are reasonably implied by the powers that are expressly stated.

Article I, Section 8, Clause 18, U.S. Constitution: The "necessary and proper clause" or "elastic clause" allows Congress to make all laws needed to carry out the powers stated in Clauses 1-17. For instance, Congress has passed many laws relating to the expressed power of regulating foreign and interstate commerce, such as making it a federal crime to move stolen goods across state lines.

#### **Inherent Powers**

Those powers that belong to the U.S. government because it is a national government of a sovereign state.

Sovereign states have the right to regulate immigration, as well as the power to acquire territory by legal means.

#### **Powers Denied to the National Government**

Denied powers fall into three categories:

#### Powers expressly denied in the Constitution

Some powers are specifically denied to the national government in explicit language.

## Powers denied because the Constitution is silent on the matter

Some powers are denied to the national government because the framers did not expressly give it such power; therefore, the national government cannot assume that it has the power.

## Powers denied because of the structure of a federal system

Some powers are denied the national government because, within a federal system, the central and state governments are granted certain exclusive powers. Therefore, the national government can't implement any law that undermines the powers of the state governments.

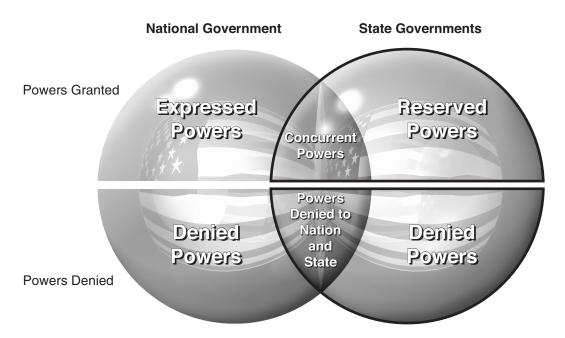
Article I, Section 9, Clause 5, U.S. Constitution: Congress cannot impose a tax on exported goods from any state.

The Constitution says nothing about setting up a public school system, therefore the national government cannot take on that responsibility. Public schools are run by their local communities.

The national government cannot impose a tax on the functions of the state government because this could result in states being taxed out of existence.

#### **U.S. Federal System: Role of State Governments**

## The Relationship of Powers Held by the National Government and by the States



#### Type of Power & Characteristics

#### **Reserved Powers**

States are allowed to exercise all powers that have not been given to the national government or not specifically prohibited to the states. Consequently, states have a wide scope in regulating their residents' lives, as long as they do not violate their constitutional rights.

#### **D**OCUMENTATION & **E**XAMPLES

Amendment 10 to the Constitution states that "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."

For instance, some states have implemented capital punishment for certain crimes, while others have not. Also, states have different requirements for obtaining a driver's license.

#### **Powers Denied to States**

Powers expressly denied to the states in the Constitution These denied powers are outlined in Article I, Section 10, Clauses 1-3.

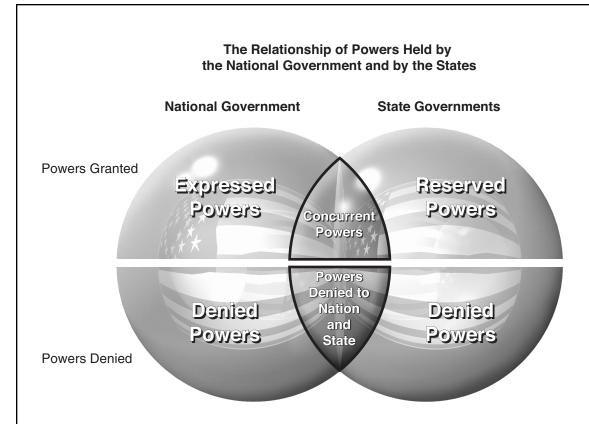
## Powers denied because of the structure of a federal system

Within a federal system, state and national governments are granted certain exclusive powers. Therefore, the state government cannot implement any laws that would undermine the national government.

States may not enter into alliances or treaties with other nations. This function and power has been exclusively granted to the national government.

State governments cannot tax the functions of the national government or declare war. Also, each state has its own constitution that also denies it certain powers.

#### U.S. Federal System: Common Roles of National and State Governments



#### Type of Power & Characteristics

#### **Concurrent Powers**

Powers that both national and state governments possess and exercise are known as concurrent powers. They exercise them separately and simultaneously.

## Powers Denied to Both National and State Governments

Both national and state governments are denied certain powers, most of which pertain to the limitation of individual freedom.

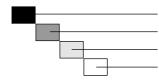
#### **DOCUMENTATION & EXAMPLES**

States may exercise any power that the Constitution does not specifically reserve for the national government; however, the exercise of such powers cannot conflict with national law. Examples of powers that both national and state governments may exercise is the power to tax. Also, they both have the power to maintain courts.

The Bill of Rights lists several ways in which the laws and actions of the country may not infringe on a person's liberty. For instance, the 4th Amendment guarantees the right of people to "be secure in their persons, houses, papers, and effects," and protects people against unwarranted searches.

#### Development of the Power of the Federal Government: 1789 to 1890

#### Key to Change in the Power of the Federal Government

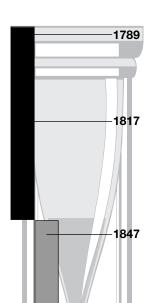


Restriction of Government Power

Expansion of Government Power Over Business & the Economy
Expansion of Government Power Over Social Concerns & Civil Rights

**Expansion of Government Power Over States** 

#### Timeline of Change in the Power of the Federal Government



1868

1887

1890

Congress proposes 12 amendments to protect against the federal government's possible infringement of individuals' rights. Ten of these are passed by 3/4 of the states, thus the Bill of Rights.

This could be seen as an effort to ensure that the federal system would not become an autocracy.

President James Madison vetoes an internal improvements bill to have the national government pay for internal improvements in states, including waterways and canals.

Although Madison supports a strong federal government, he does not want to see the Constitution changed except by proper constitutional procedures. This is one of many attempts by Congress to expand its powers under the Interstate Commerce Clause, Article I, Section 8, Clause 3.

In a case involving foreign commerce, the U.S. Supreme Court rules that the power of the federal government in interstate commerce is not limited to prohibiting state interference. It may also take positive actions to control interstate commerce.

This serves as the seed of federal expansion of power over business and commerce in the 20th century.

The 14th Amendment is ratified, giving citizens of all states "equal protection" under the U.S. Constitution. This guarantees all U.S. citizens, no matter what state they live in, constitutional rights.

This Amendment follows on the heels of the Civil War, during which division and controversy concerning states' rights wracked the country. The introduction and ratification of the Amendment follows. The Radical Republican Congress resolves to submit it to states for ratification, even when it fails to get a 2/3 vote from both houses. Furthermore, 3/4 of the states do not ratify the Amendment, yet it was proclaimed to be ratified by the secretary of state on July 20, 1868.

Beyond the aggressive way in which the 14th Amendment had been adopted, the new equal protection clause opens an avenue for complaints against state governments. People with complaints against states turned to the federal courts to overturn objectionable state laws.

#### Congress passes the Interstate Commerce Act of February 4, 1887.

This allows the federal government to control interstate activities of railroads. It also sets a precedent for the national government to involve itself in other interstate transportation and communications activities.

#### The Sherman Anti-Trust Act is passed.

This expands the jurisdiction of the federal government to regulate interstate commerce for the purpose of limiting monopolistic practices of large firms, thus beginning an era of anti-trust legislation that still affects business practice in the U.S. today.

#### Development of the Power of the Federal Government: 1905 to 1929

#### Key to Change in the Power of the Federal Government Restriction of Government Power Expansion of Government Power Over Business & the Economy Expansion of Government Power Over Social Concerns & Civil Rights Expansion of Government Power Over States Timeline of Change in the Power of the Federal Government 1905 The Swift and Company v. United States Supreme Court case determines that interstate commerce includes any kind of commercial activity that, in "the established course of the business," would eventually involve transporting something across state lines. Because of its inclusive definition of interstate commerce, this case expands the power of the national government over business activity. Such government efforts to control business come in response to the growing power of business conglomerates. For example, Carnegie Steel Company by 1899 controls almost 25% of steel and iron production in the U.S. 1913 The 16th Amendment passes, giving the federal government power "to lay and collect taxes on incomes." 1913 The Federal Reserve Act passes, providing "for the establishment of Federal Reserve Banks, to furnish an elastic currency . . . establish a more effective supervision of banking" in the U.S. 1913 The 17th Amendment passes, providing for direct election of U.S. Senators. These three changes in 1913 have long-term ramifications for states, individuals, and businesses. The federal government's control extends over not just personal incomes, but private banking and the nation's money supply. Also, the 17th Amendment removes from state governments their indirect participation in the federal legislative process. 1917 The United States enters World War I, resulting in a shift in production toward war items. The federal government assumes greater control over the economy as is often the case in times of international crisis. It is directly involved in manufacturing and production. This trend resurges during World War II. The 18th Amendment is passed; it prohibits the sale, transport, and production of 1919 alcohol in any state. The role of the national government as criminal prosecutor expands because of the extent of violations against the 18th Amendment. Federal agents become a presence in every state. Further, the amendment establishes a precedence of federal law over state law. 1929 President Herbert Hoover signs a number of measures intended to help businesses recover from the stock market crash in October and from the Great Depression that follows. These "reconstruction efforts" are deemed necessary given the crisis the country is facing. The establishment of government agencies such as the Reconstruction Finance Corporation, the Home Loan Bank, and the Farm Loan Bank further expands the federal government's role in business.

#### Development of the Power of the Federal Government: 1933 to 2001

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#### Key to Change in the Power of the Federal Government

Restriction of Government Power

Expansion of Government Power Over Business & the Economy

Expansion of Government Power Over Social Concerns & Civil Rights

**Expansion of Government Power Over States** 

#### Timeline of Change in the Power of the Federal Government

The country still suffers the effects of the Great Depression. The New Deal programs of Franklin Delano Roosevelt are instituted to help in recovery efforts.

Roosevelt's programs bring federal involvement in the economy to a new level. Programs such as the Work Projects Administration (WPA) directly provide work to the unemployed. From this point on, federal spending on social programs becomes standard.

The Communications Act establishes the Federal Communications Commission to organize traffic on air wave frequencies in broadcasting.

This legislation extends federal involvement in business; many see this as an infringement on 1st Amendment rights of freedom of speech.

U.S. enters World War II, and the government again takes control of some economic sectors.

The federal government increases production of military materiel and gains control of business in order to direct wartime production. Spending soars in the resulting industrial-military complex.

The Wilderness Act is passed to protect over 90 million acres of federal wilderness lands.

Government begins to regulate private and commercial use of the land, which is viewed as a source of renewable resources for future generations.

President Richard Nixon is inaugurated and calls for a "New Federalism."

President Nixon wants to restore more power to the states. However, spending on federal programs increases through the early 1980s.

The Consumer Product Safety Commission and Environmental Protection Agency (EPA) are created.

These agencies are designed to make businesses responsible for the effects that their products and production processes have on people and the environment. Opponents argue that economic markets, not government, are best suited to regulate wrongful business activity.

President Ronald Reagan vows to reduce the federal government's role in the economy and local affairs.

The 1980s are known as the "era of deregulation." President George Bush continues these efforts. By 1989, federal grants to local governments are reduced by approximately \$31 billion. Nevertheless, the federal deficit soars to new heights.

President Bill Clinton signs welfare reform legislation.

This legislation is part of a continuing effort to reduce the federal budget and cut federal ties to such programs as welfare, Medicare and education.

President George W. Bush creates the Department of Homeland Security.

In response to the September 11 terrorist attacks, the president creates a new department to coordinate the activity of several federal agencies, thereby increasing the oversight and enforcement power of the federal government in internal security efforts.

#### **U.S. Federal System: Relations Among States**



Crossing state lines on an interstate highway is a concrete reminder of our federal system of government.

#### "Full Faith and Credit"

Each state must recognize the legal acts and processes of other states. This section requires that each state honor the public records, judicial acts and state laws, such as deeds, marriages, divorces, court orders, etc.

#### **Extradition**

Fugitives from justice in one state must be returned to the state where the crime was committed. This is designed to prevent a criminal from escaping justice by fleeing to another state.

#### **Interstate Citizenship**

Citizens of the U.S. may travel freely between states without customs posts or any documentation such as passports. States must treat citizens of other states fairly. The citizens of each state "shall be entitled to all privileges and immunities of citizens" of every other state. However, a citizen of one state is also responsible for obeying the laws of another state while he/she is visiting. In addition, a state may require a person to live in a state for a certain length of time before he/she can hold public office, vote, acquire a driver's license, etc.

#### **Maintaining Cooperation**

Reciprocity is the rule between states. States realize that mutual help benefits the whole Union.

#### **Interstate Compacts**

Conflicts between states should be settled by written agreements called interstate compacts. These must be approved by Congress and their terms are enforced by the U.S. Supreme Court.

#### Lawsuits between States

On occasion, disputes between states are irreconcilable. As a result, these cases end up in the U.S. Supreme Court. Examples include boundary disputes, sewage problems, and water rights.

#### U.S. Federal System: Admission of New States

Article IV, Section 1 of the Constitution empowers Congress to admit new states: "New States may be admitted by the Congress into this Union . . . "

## Admission Requirements

- 1. No new state can be formed by taking territory from one or more states without their consent and the consent of Congress.
- 2. The admittance of states to the Union is subject to presidential veto.

#### **Procedure**

1. Congress must pass an "Enabling Act," which allows inhabitants of the territory to prepare a constitution.



2. This constitution must be approved by popular vote in the territory.



3. Congress must approve the constitution.



#### **Examples**

1911, Arizona modified its constitution regarding the recall of judges before Congress would grant it statehood.

1959, Alaska was prohibited from making any claims to the lands of the Aleutians before Congress granted it statehood.

