

The United States: A federal government of limited powers

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International developments are having a significant impact on the ways in which all governments function and the United States is no exception. Global trade agreements, the demand for human rights, and even the fight against international terrorism have all created increasing pressures to centralize government responsibilities. For the United States, these pressures are causing new changes to American federalism, which is at the heart of its constitutional structure.

American federalism is a delegation of limited powers and responsibilities to the federal government, with all other powers reserved for the states. The original American states were fully functioning constitutional bodies before the writing and ratification of the Constitution. After declaring their independence from the United Kingdom in 1776, eleven of the thirteen states discarded their colonial charters and adopted constitutions, providing both for the structure and operation of government and for the protection of individual rights. The states were also linked together as a confederation under the Articles of Confederation. However, when that limited union proved inadequate to meet the international and economic challenges of the post-independence years, the states sent delegates to a constitutional convention to, in the words of the Constitution, “create a more perfect union.”

The more perfect union established by the United States Constitution of 1788 creates a more powerful federal government, with a bicameral legislature, a strong chief executive, and a Supreme Court. At the same time, the Constitution vests the federal government with limited, albeit very important powers that it did not have under the Articles of Confederation, including the power to tax and spend for the public welfare, and the power to regulate interstate and foreign commerce. All powers not delegated to the federal government are reserved to the states, exactly where they were before the Constitution was written and ratified.

This distribution of responsibilities, which left the states almost wholly responsible for domestic affairs, has changed over time. Sometimes it has changed by formal constitutional amendment, but more often by broad interpretations of federal power under the taxing and spending clause and the interstate and foreign commerce clause by the Supreme Court of the United States. The Fourteenth Amendment, adopted in 1868 after the American Civil War, gave the federal government a major role to play in the protection of rights. The Sixteenth Amendment, adopted in 1913, enhanced the federal government’s power to tax incomes, allowing it to develop a system of grants-in-aid that now exceeds \$600 billion and affects almost every area of domestic policy. The United States Supreme Court has interpreted the reach of federal authority very broadly under both the taxing and spending and interstate and foreign commerce clauses. This permits the federal government to regulate almost all forms of economic activity and financially support a wide variety of domestic projects. Since the mid-1990s, there have been a few decisions by the Supreme Court that limit federal authority and remind us that the federal government is a government of limited powers. However it remains to be seen whether these decisions will serve as a real brake on the expansion of federal authority.

One effect of the expansion of federal activity in domestic policy has been the creation of a complex web of intergovernmental relationships in which local, state, and federal authorities bargain with each other in both the making and implementation of public policy. This development is often referred to as cooperative federalism. Some commentators maintain that the federal government has become so dominant in its bargaining position that cooperative federalism has been replaced by a kind of coercive federalism, in which the federal government increasingly preempts state laws, encroaches on state tax bases, and compels the states to comply with federal policies.

Historic, social, and economic forces have shaped American federalism over the past 200 years – the purchase of the Louisiana Territory from France in 1803, the subsequent opening of the American west, the Civil War, the constitutional amendments adopted in its aftermath, industrialization, immigration and urbanization, the Great Depression and President Franklin D. Roosevelt’s New Deal programs of the 1930s, and the Second World War and the Cold War that followed it. While these events increased the role of the federal government in the American federal system, all governments – federal, state, and local – do more than they did 200 years ago. **Increasingly, policies are not in the exclusive domain of any one government, but involve cooperation among all orders of government.**

Today, globalization, international terrorism, and the demand for human rights are likely to affect American federalism in much the same ways, with the power of the federal government increasing and further momentum towards cooperative federalism. For example, the United States is a signatory of both the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). These trade agreements are binding international agreements, which the United States must fulfill regardless of its internal political arrangements. Consequently, the United States Supreme Court could declare state regulations invalid, not because they violate the United States Constitution, but because they violate international agreements.

The federal role in law enforcement has increased because of the threat of international terrorism. This enhanced federal role will not replace local law enforcement; in fact, local responsibilities will also increase. It does mean, however, that law enforcement, like most other governmental functions, will increasingly become a shared responsibility and will pose new challenges to American patterns of cooperative federalism. Finally, the worldwide demand for human rights places new pressures on state practices, such as capital punishment, which, while not violating the United States Constitution, are often perceived as violating international norms.