

1.9

Federalism in Action

Explain how the distribution of powers among three federal branches and between national and state governments impacts policy-making.

Despite noise to the contrary it should be recalled that sewn into the DNA of our constitution is a government that was meant to be functional. The Articles of Confederation were replaced because the national government could not adequately address the needs of the people. Collectively we agreed then and likewise today that government is a positive good. To protect the people from an abusive government, from tyranny, the Constitution has built in certain protective mechanisms, not the least being the separation of powers and checks and balances. For this reason, government action, public policy making, is anything but easy. A whimsical government we do not have. Our national public policy making process is intentionally cumbersome. The Constitution and its amendments create a long, complex and competitive national policy making process.

The national public policy making cycle follows a number of important steps. First an issue needs to be identified. Agenda setting, the next step, is facilitated by money, power and influence. The issue needs to be recognized beyond narrow interests. Now the policy needs to be formulated. How best to address the stated problem? The aforementioned issue has to be seen as a national priority. At this point the problem needs to be legitimized as an issue under the purview of government responsibility. If and when this is so the national government implements a national public policy through laws, actions and/or rulings. Public policies are constantly being evaluated, debated and contested through the democratic process. The cycle is complete when government agents maintain or terminates the policy. The national public policy making cycle is often long, complex and competitive.

All three branches were created to participate in the national public policy making process. Congress, because of its legislative authority, is often seen as the leader in public policy implementation. With the growth of the administrative state, however, executive branch agencies and departments have taken on an increased role in public policy making. And now most would agree that even the judicial branch plays more than merely a legal role in our democracy. The United States Supreme Court is involved in agenda setting, formulation, implementation, evaluation and maintenance of national public policy making. The branches rarely work in isolation of each other. Rather their respective role in the national public policy making process is blended. When the legislative, executive or judicial branches do try to act in isolation of each other in the policy making process political red flags are raised. National public policy making battles are fought in the political arena.

Let's take a closer look at the national public policy making process by looking at three distinct examples; tax, commerce and immigration policy.

The issue of taxes here is as old as the American Revolution. Governments need revenue but how much and from what sources? The political arena is forever contesting the answers to these questions. One such issue where tax policy takes center stage is health care. Millions of Americans lack sufficient access to health care. Progressive voices along with political party members sought for years a viable national public policy to address health care needs. In 2010 Democratic president Barack Obama passed into law the Affordable Care Act. In all it is estimated that the original law combined with ongoing regulatory adjustments now approaches over 20,000 pages of text. Policy-making is complicated. Most importantly, however, as the Affordable Care Act was debated in the political arena it became clear that the U.S. Supreme Court would need to legitimize the effort. In the case *National Federation of Independent Business v. Sebelius* (2012) a narrow majority of the Court upheld the tax provisions of the Affordable Care Act. The Congress's power to "lay and collect taxes" was appropriately applied in the Affordable Care Act. Opponents of this national public policy continue to threaten its livelihood. Tax policy will forever be, as it has always been, at the center of all policy disputes.

If tax policy has been at the epicenter of our national political debate, race relations certainly can be called "the American dilemma." National public policy on race has caused nothing short of a civil war. We continue to debate policies that best address discriminatory practices against marginalized groups. Interestingly enough national public policy on race has often relied upon commerce as the conduit of legitimate national government action. Whereas the courts were used first to advance national public policies that broke down discrimination in American public schools, Congress followed up with an even more pervasive policy with the passage of the Civil Rights Act of 1964. In Title II it stated clearly that...

All persons shall be entitled to the full and equal employment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

But where did Congress have the authority to act with such a broad brush? Was its enforcement by the Executive Branch a legitimate use of federal power? The Supreme Court thought so. The Civil Rights Act of 1964 was validated under the U.S. Constitution's interstate Commerce Clause (Article 1, Section 8, Clause 3). In the case *Hearts of Atlanta Motel, Inc. v. United States* (1964) the court ruled that a ban on discrimination at the privately-owned hotel was constitutional on the grounds that it catered to interstate travelers. The U.S. Constitution is empowered to regulate interstate commerce. Likewise, in the case *Katzenbach v. McClung* (1964) the court found most of the food served in this privately-owned barbecue was imported from out of state. Again the U.S. Constitution is empowered to regulate interstate commerce. It can be seen that national public policy governing commerce has been used to advance the rights and privileges of certain minority groups.

Today immigration issues demonstrate the difficulty of creating, implementing and maintaining a national public policy. Few issues show how long, complex and competitive policy-making can be like immigration questions. The policy cycle continues to grind through identifying distinct problems, agenda setting, formulating specific answers, legitimizing government's proper role and implementing a comprehensive immigration policy. It requires all of our political players to engage and do their part. The Constitution and its amendments create a long, complex and competitive national policy making process.

Political science is the study of government systems, political activity and behavior. In this unit we have discovered that political science is ultimately a power struggle. Theory, conflict and compromise have defined our quest to be self-governing. The outcome of any study in representative democracy is an appreciation for how best to become agents of public policy. Be wary if your study slights both the history and context of our representative democracy. Tolstoy warned, "The leaves of a tree delight us more than the roots." The fruit of any meaningful study involves a close analysis of one's foundations.