

Federalism essay:

It is clear when we look at the globe that many countries are too large for all the administration to come from the capital. The process of de-centralization (distributing the functions of the government) is, therefore, a more agreeable option. There are various forms of de-centralization. These can be through systems of Local Government, which is multi-functional with 'significant' autonomy in decision making. The most important of these forms of de-centralization, however, is that of federalism, where legal sovereignty is shared between central and regional governments. In this essay I am going to explain Wheare's definition of federalism, provide some criticism to it, and try to apply it to federal states.

Wheare's definition is a principle by which governmental powers are divided so that the general and regional governments are each, within a sphere, co-ordinate and independent. In my opinion this definition is relatively vague, but Wheare accepts that many students will not accept his definition. In his book on the subject of 'Federal Government' he outlines the meaning of the federal principle and comes to the definition as a conclusion to this. I am going to outline his arriving at this decision. Wheare gives a loose meaning of the term federalism. He says that the majority of people who use the term all agree that it is "...an association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence" (Chapter 1 of Federal Government; K. C. Wheare). He then goes on to say that these theorists differ when it comes to the question of the form of association that a federal system should have. Wheare decides to take the Constitution of the United States of America as his example. He maintains that it has become so that any definition of federalism which does not mention this Constitution is not adequate (despite the fact that he states that the US Constitution does not mention the words federal or federation at all). In this case the central government is independent on certain matters, and the state

governments are independent on other matters. The citizen, therefore, is subject directly to two governments. These governments, however, are not subordinate, but co-ordinate with each other. It was only through amendments to the original Constitution that it got to be this way. The old Constitution saw the government as an agent and the state government dependent on the central government; now they have equal positions. He comes to the conclusion that each federal government is different to the next, but that it is universally thought that the United States is the prime example of a federal state. He concludes by saying: "By the federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.

Of course, it is very difficult to define federalism. It is given that it is a Constitutional concept where authority is geographically divided, and the US Constitution is taken as a model. There is naturally the problem of the difference between what is laid down on paper and what actually happens. Other countries have adopted a 'federal' Constitution, but they are very differently arranged to the United States. Wheare's definition of federalism is very difficult to apply, so that the two levels of government are independent from each other. Perhaps it is the idea of federalism which is flawed. Blondel analyzes the definition that Wheare gives us. Blondel cited five of his federal features. In the first one of these he asks how we are to allocate the functions of governments to their respective levels; the division of the fields of governmental activity. He wonders about the number and relationship between the authorities; how many levels of government should there be, and how should they be related to each other. Where should we locate the power to appoint and select authorities? He then asks where should the administrative and implementing areas of the government be. In the last of his federal features, Blondel asks the critical question: Where is the location of constitutional power going to rest? Who is going to provide the answers to all the questions? If constitutional power rests on one government, the other government is dependent on that government. Therefore these powers have to be shared. Blondel comes to the conclusion that Wheare defined federalism in a constitutional way, and not in relation to practice.

There is a major ambiguity in the concept of federalism in that there is an overlap of sub-national and unitary states. An example of this is comparing unitary Britain with federal Germany. In Britain, local government is administrative. In Germany the administration is carried out by the central government. Does this mean that Britain is more 'federal' than Germany? How much de-centralization or centralization does a country need to be defined as a federal state? In a unitary state there is no limit to centralization, and in a federation there is no limit to de-centralization. But even in countries such as Britain there have been significant moves towards de-centralization. This only proves further the ambiguity of the term 'federalism', and that in the real world the constitutional allocation of powers matter a great deal.

In my application of federalism, I am going to concentrate on three states: two of the 'classic federalist' states: The Federal Republic of Germany and the United States of America, and Switzerland. European and American federalism both have different roots and ideals. In Europe, especially in Germany there is a sense of importance over the co-operation between the levels of government. The federation links the people of the different regional states together. In Europe there is a conscious effort to make the decisions at the lowest level possible, allowing the central government to offer a presiding leadership overall. The Federal Republic of Germany consists of sixteen 'Lander', or states. Each has a constitution, which must be in keeping with the republican, democratic and social principles set out in the federal constitution, the Basic Law. Germany is one of the classic federal states, and has had a long run of federalism, broken only by the National Socialist unitary state of 1933-45. Germany has realized that it is much easier for a country with a federal structure than a centralized state to take account of regional characteristics and problems. A federal structure is good for countries with regional diversities, as Germany and the US have, as it promotes regional culture. The Basic Law has determined the law-making powers of the states and the federal government. They have been grouped into three categories: exclusive, concurrent and

framework legislation. The Federation may only legislate in such cases that it is necessary to have a uniform law for the whole country. Other tasks were incorporated into the Basic Law in 1969 as 'joint responsibilities'. In general administration the Federation is limited to the administration of foreign affairs, the armed forces, and taxation. Most administrative responsibilities lie with the states themselves. The Federation's jurisdiction lies with the Supreme Courts and the Federal Supreme Courts, which ensure the correct interpretation of the Basic Law. The strength of the states lies in their participation in legislation through the Bundesrat. Thus Germany has become a country in which most laws are enacted centrally while the bulk of legislation is administered by the member states.

The Basic Law for the Federal Republic was adopted in 1949, and was not intended as a definitive constitution, only as a temporary framework for a new democratic system. Its authors wanted to make sure that the disasters of the previous constitution, which led to the Nazi domination of Germany, were not repeated. The Basic Law became a solid framework, and its requirement for reunification was fulfilled in 1990. Germany is a federal state based on the rule of law and social justice. It opted for indirect representative democracy. Public authority must be recognized and approved of by the people, but they have no direct say in the exercise of that authority, except in elections. The constitutional decision is in favour of a federal state. The sixteen Lander have some of the features of a state, as does the central federal government. Each state has its own powers which are restricted to certain spheres. At the centre of the Basic Law is the concept of the rule of law, and this incorporates the separation of powers. The executive, legislature, and judiciary exercise public authority, and are independent to each other. This is also mirrored in the system of checks and balances that exists in Germany as it does in the US. In my research I have realized that the Federal Republic of Germany and the United States of America are very similar in practice. But, unlike the US "...German federalism from its inception has stressed interdependence, not independence between the two levels" (Hoetjes 1993).

In America, however, federalism exists as a “contract in which the states come together to create a central government with limited functions.” Like Germany, the Constitution of the United States is built around the concept of the separation of powers and a system of checks and balances. This Constitution was drawn up in 1787 by the Founding Fathers, to replace the weak confederation that had existed since the Declaration of Independence. The vastness and diversity of the different states required a federal constitution. Of course, anti-federalists claim that the Founding Fathers created a national government in this constitution. The US Constitution is a particularly ambiguous one, as it can be interpreted in many different ways. Different groups have used the same Article to argue separate points; many claim it to be irrelevant in modern America. In the American Constitution the federal government has been granted autonomy from the state governments, but this is checked with the powerful state influence in Congress. In my interpretation of the situation the central government is very powerful, due to the extended interpretation over the years of Article 1. Madison claimed in *The Federalist* number 45 that: “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” The term ‘dual-federalism’ is often used to describe the US system of government. As in the European Union, the federal government’s law is supreme over the state government’s law. In my view, and in the view of many others, the US Constitution didn’t set up a very powerful federal or national government, but just allowed for one to be created in the future. As I have said before, there is often huge difference in what happens in practice than what was set out in the written Constitution. In practice the ‘federal’ government now has many of the constitutional powers of a national government. The US Constitution is a guide, and not a blueprint.

The Swiss Constitution has many unique features, which owe themselves to the origin of the Republic. The alliance of three states in 1291 to protect their independence under the Holy Roman Empire was known as the ‘Everlasting League’. This led to the League of

Thirteen Members and lasted for three centuries. In 1648 independence was granted by the Treaty of Westphalia. In 1798 the French occupation brought about a constitution moulded on the French. In 1803 a new Constitution was given to Switzerland by Napoleon called the 'Act of Mediation'. In 1815 the Congress of Vienna recognized the independence of the Swiss Confederation, and a new federal Constitution was adopted in 1848 which was replaced by the Constitution of 1874. The actual system of government in Switzerland is quite different to that of the US or of Germany. The supreme legislative authority, like the other two countries we have discussed, is the Federal Assembly which is divided into two chambers: the National Council, which is elected by the population, and the Council of States, which consists of two members per state. Three of the cantons (states) are divided into two because of old tradition. This produces a strange situation in the Council of States, since they only have half a vote, and hence only one seat. It results in the canton of Basle city (a half canton) with 235,000 inhabitants has one vote, and the canton of Uri, with only 34,000 inhabitants, has two votes. The Federal Assembly consists of seven members, and they jointly govern the country. They take it in turn to become the chair, and thus the President of the Confederation. There can be no vote of censure, and neither the parliamentary vote nor referendum can cause the Council to resign. Two strange features of Swiss government are those of referendum and initiative. A bill must be submitted to referendum if a petition bearing no less than 50,000 citizens' signatures is submitted within 90 days of the bill being passed by the Federal Assembly. The citizens can actively take part in the country through 'initiative'. The people can, if they produce a petition bearing the signatures of 100,000 people, demand that the Constitution be totally or partially revised.

The cantons in Switzerland represent the states in the United States of America. These are sovereign in so far as the sovereign rights are not limited by the Federal Constitution. In some of the small cantons direct democracy still exists. The citizens assemble in the capital and can take part in the discussion. In some cantons laws must be brought to the people before they are implemented. In other cantons there is the referendum law, and citizens can always propose new laws by the right of the 'initiative'.

I have discussed the various aspects of federalism in relation to three countries, but how do these countries, and others, relate to the definition of federalism given by K. C. Wheare? In his definition, Wheare did not specify which powers were to be allocated to each government, both state and federal. He hasn't even outlined which areas of power should lie with which government. This is a problem that I have with this definition. It is also very vague. In my opinion it is a very vague definition, and even reading the preamble before it does not make it much clearer. Later on in his work he gives a clearer definition of federalism and lays down the spheres of authority. In my opinion Wheare feels that both the general and regional governments should have direct influence on the people.

It is not easy to apply this definition due to its vagueness. In the United States of America, despite the Constitution granting the federal government limited power, the federal government definitely seems to have many more powers within its 'sphere' than the state governments. It is not independent to the state governments, due to the many checks and balances that exist in the Constitution, but because of these checks and balances is co-ordinate with them. Despite this the state governments have a lot of freedom in legislation for internal affairs. European federalism is different. In Germany the state governments do not seem to have as much freedom as the individual states in the US have. The concept of federalism exists on mutual co-operation between the various levels of government. The Lander contribute to the success of Germany as a whole. They are co-ordinate with the central, federal government. Switzerland is, by definition, a confederation. This is like an alliance between states, which is a more or less permanent union. In a confederation the central government has less power than in a federation, and "unanimity [between the states] may be a condition of collective action" (Comparative Government and Politics: Hague, Harrop and Breslin). Because of this the cantons in Switzerland are more independent than the Lander or states in the US, but they do co-ordinate with the central government.

To construct a successful federation it is necessary to keep within a framework. The state and federal governments must have things in common, but also significant differences. It is a constitutional settlement, which forces the politicians to operate with considerable restraint. Federalism is a constitutional phenomenon, but as social and economic situations change, so does the federal constitution. Personally I do not think that Wheare's definition is adequate due to the ambiguity of the term 'spheres'. But I do agree with him in the fact that both governments are, to different extents in each country, co-ordinate and independent.