What is a Federal Republic?

Overview

The constitutional principle of federalism holds that the people delegate certain powers to the national government in the Constitution. All those powers not delegated to the national government remain with the states and the people. For the Founders, the principle of federalism was a means of protecting liberty by limiting and dividing government power. After the failure of the Articles of Confederation, many people realized the need for a stronger central government. The delegates to the Constitutional Convention were tasked with the difficult duty of crafting a government that appropriately distributed the power between the national government and states.

Recommended Time
Two 45-minute class periods

Objectives

Students will:

- Identify powers belonging to the national government, state government, and shared by both.
- Understand Article I, Section 8 and the Tenth Amendment to the Constitution.
- Understand Federalist and Anti-Federalist views of the power-sharing relationship between the national government and the states.
- Analyze current events in the context of federalism.
- Evaluate issues and determine if they would be best dealt with at the national level, state level, or neither.

Materials

Highlighter Pens in Blue, Yellow, and Green
Handout A: Patrick Henry at the Virginia Ratifying Convention
Key Terms
Background Essay
Handout B: James Madison and Federalism - Excerpts from Federalist # 39
Handout C: Federalism Venn Diagram
Handout D: Article I, Sections 8, 9, 10, and Amendment X of the Constitution

These instructional materials are in draft form for pilot testing.
Lesson Plan

Background/Homework [20 Minutes the day before]
On the day prior to the lesson, have students read the **Background Essay: What Is a Federal Republic?** Instruct students to answer the questions at the end of the essay.

Warm-Up [20 – 30 minutes]
A. As students enter, hand one student a copy of the Patrick Henry quotation on **Handout A: Patrick Henry at the Virginia Ratifying Convention**. Once class has started, ask that student to stand up and read the quotation aloud. Lead the class in a discussion about Henry’s concerns.
B. Divide students into small groups and distribute **Handout B: James Madison and Federalism - Excerpts from Federalist # 39**. After students have completed it, lead the class in a discussion of the questions. See the answer key for suggested responses.

Activity [45- 60 minutes]
A. Have students complete **Handout C: Federalism Venn Diagram** individually.
B. Divide students into groups of four and have them read **Handout D: Article I, Sections 8, 9, 10, and Amendment X of the Constitution**.
C. While in groups, students should identify any similarities or differences between what they wrote on **Handout C** and the powers listed in the Constitution on **Handout D**.
D. Have students continue to work in their groups using **Handout D** to identify additional ways in which the people’s rights are protected by limits on the powers of Congress.
E. As a class, briefly discuss their results and observations about the similarities and differences between their Venn diagrams and the Constitution.
   - How did the Founders view the size of the federal government and its relationship with the state governments?
   - How did the Founders dictate limits on government power to protect the rights of the people?

Wrap-Up [10 minutes]
A. As a large group, ask students to share their responses to the final critical thinking question from the **Background Essay**: To what extent should the national government make laws concerning the controversial topics listed below? Use the Constitution to frame your response:
   - Health insurance
   - Education standards
   - Marriage and family law
   - Medical marijuana
   - Assisted suicide

These instructional materials are in draft form for pilot testing.
B. Bring the conversation back to Patrick Henry’s concern at the Virginia Ratifying convention. Taking the history of the United States and these current issues into account, has the principle of federalism endured? Was Patrick Henry right? Explain.

**Homework and Extension Options**

A. Using the local newspaper, television coverage, or an online news source, have students identify a current federalism issue and write an abstract for one of the reports they find. The abstract should address the “reporter questions”: who, what, why, when, where, results, and analysis. In the “analysis” section, have students explain why the issue is an example of federalism, and how they think it should be resolved.

B. Have students identify a portion(s) of Article I, Sections 8, 9, and the Tenth Amendment that they would like to revise to clearly specify the duties of Congress, powers denied to Congress, and/or the powers of the states. After revising the relevant portions, answer the following questions:
   • Why did you make the changes?
   • How would the proposed changes affect the country today?
   • How do your revisions reflect the principles of federalism and limited government?

C. Have students research current issues of federalism such as same-sex marriages, health care, or national standards in education. Are these issues best left to individual states, or should the national government be involved? Ask students to take a position on whether the federal government or state governments would best handle their topic and prepare to defend the chosen position in a debate.
“And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, \textit{We, the people}? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, \textit{We, the people}, instead of, \textit{We, the states}? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states!”

-Patrick Henry, Virginia Ratifying Convention, June 4, 1788

These instructional materials are in draft form for pilot testing.
Key Terms

Directions: As you read each Background Essay, be on the lookout for these key terms. After reading, write the correct definition for each term.

Unlock the Key Terms
Choose a key term and use that term twice today in conversation.

Rights
____________________________________________________________________________________
____________________________________________________________________________________

Powers
____________________________________________________________________________________
____________________________________________________________________________________

Ratify
____________________________________________________________________________________
____________________________________________________________________________________

Commerce
____________________________________________________________________________________
____________________________________________________________________________________

Segregation
____________________________________________________________________________________
____________________________________________________________________________________

Jim Crow laws
____________________________________________________________________________________
____________________________________________________________________________________

Commerce Clause
____________________________________________________________________________________
____________________________________________________________________________________
Background Essay:
What is a Federal Republic?

The Founders were always wary of government power. They wrote the Constitution to limit its authority. One way they did this was to create a federal republic. The national government was given specific powers, and others remained with the states or the people. These two separate powers – the national government and state governments – could co-exist because the national government was given only those powers specified in the Constitution. Most leading Founders believed the Articles of Confederation created a central government that was too weak. Therefore, they gave greater – but still limited – powers to the federal government in the new Constitution. Among these were the powers to regulate commerce between states, to coin money, to raise armies, and to collect taxes.

Another way the principle of federalism was applied in the Constitution was in the structure of the U.S. Congress. The people would be represented in the House of Representatives. States would be equally represented in the Senate, with each state legislature selecting two Senators. In this manner, both the states and the people would have a say in federal laws.

The Federalist/Anti-Federalist Debate
The two major political groups at the time were the Federalists and the Anti-Federalists. They disagreed about the new distribution of power. Many Anti-Federalists had been happy with the Articles of Confederation and feared that the new central government created by the Constitution would take over the states. They believed that the states should retain more power, and they argued that the new Constitution should not be ratified. They were especially alarmed by vague phrases in the listing of Congress’s powers, such as “necessary and proper,” and “general welfare.” They worried these words might be interpreted as broad grants of power to allow the federal government to interfere with the powers of the states and the liberties of the people. They also believed the people needed a bill of rights to protect themselves against the national government.

Federalists favored the Constitution as written. They supported a strong but constrained central government and weaker state governments. They believed that state powers and individuals’ rights were secure under the Constitution because the central government’s role was limited by the list of enumerated powers (Article I, Section 8), as well as by the list of denied powers (Article I, Section 9). The Constitution did not list powers of states because it was assumed the states kept all their powers except those given to the federal government and those powers denied to states in Article I, Section 10.

The Tenth Amendment
The Federalists eventually won the debate when the Constitution was ratified (approved) in 1789 by the required number of states. But calls for a bill of rights continued. In fact, eight states
submitted lists of proposed amendments along with their ratifications. The one amendment proposed by all was the principle now contained in the Tenth Amendment.

The Tenth Amendment states: “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.” The Founders included the Tenth Amendment to support the limited nature of the federal government. It highlights the fact that the states and the people keep all powers not given by the Constitution to the federal government. If a power is not given to the federal government, it remains with the states and the people.

The Fourteenth Amendment, ratified after the Civil War in 1868, dramatically altered the federal republic created by the Founders. By limiting the types of laws states could pass, the amendment struck a blow to state sovereignty. Beginning about sixty years after it was passed, the Supreme Court would begin using the Fourteenth Amendment to apply Bill of Rights limits to the states. The Seventeenth Amendment further changed the balance of federalism when it was added to the Constitution in 1913. The Seventeenth Amendment provided for the direct election of Senators to U.S. Congress by the people of each state. State legislatures would no longer be represented in one house of Congress. Supporters of this change believed it resulted in a more democratic society. Critics argue that the change resulted in more federal laws that infringe on the powers of states or that carry mandates with no funding attached.

Criticisms of State Power
One major criticism of strong state power comes from the legacy of slavery. After the Civil War and Reconstruction, the slaves had been freed but they were not equal under law. A majority of states enacted Jim Crow laws (after a black character in popular variety shows of the time). These laws outlawed interracial marriage, and they legalized segregation and different treatment based on race. These laws violated the Equal Protection Clause of the Fourteenth Amendment (1868), but it would be nearly a century before the United States government moved to secure equal protection.

By 1914, every Southern state and many Northern ones had passed laws that created two separate societies: one for whites, and one for blacks and “non-whites.” Blacks could not use white facilities like restrooms, restaurants, or parks, or even be buried in the same cemeteries as whites. In the case of Plessy vs. Ferguson (1896), the Supreme Court upheld separate but equal accommodations. By September 1949, only fifteen states had no segregation laws in effect.

The first major legal blow to Jim Crow laws was the landmark 1954 decision of Brown v. Board of Education. In this case, the Supreme Court found segregation in public schools unconstitutional. This eventually meant that the states would have to follow the directions of the federal government and integrate their schools. The 1954 Brown case marked the beginning of the Civil Rights Movement toward equal treatment in public life and the end of the Jim Crow period. Later federal legislation intended to correct civil rights violations by states included the Civil Rights Act (1964) and the Voting Rights Act (1965).

These instructional materials are in draft form for pilot testing.
Responses to Jim Crow

In response to Jim Crow laws, many argued for increased federal power. They pointed to the legal inequality and violation of natural rights caused by such laws. They claimed a strong federal government could correct such wrongs. They made the case that states often commit wrongful acts, and that the federal government is an important force to correct these wrongs.

Others disagreed, pointing out that the federal government did nothing to protect citizens’ rights over decades of segregation. They also point to other topics. For example, state power allows the states to make policies that meet the needs of their citizens, or to adopt successful policies from other states. What is acceptable for the people in some states—casinos and gambling, for example—may not be welcome in others. Other current examples include legal questions of gay marriage, medical marijuana, education, assisted suicide, and other issues.

Finally, some point out that power corrupts, and that the desire for power is a natural human tendency. Why, they ask, would the people elected to federal government offices do any better at protecting rights than people in states offices would? The answer to these questions, they say, is not to trust certain leaders more than others, but to hold all officials accountable to the requirements set by the Constitution.

The American federal system was designed to prevent abuses of power. Neither a very strong federal system nor complete state independence has been shown to be perfect. Finding the right balance of power has been vital to liberty—and controversial—throughout our history.

Comprehension and Critical Thinking Questions

1. What is the principle of federalism?
2. What does the Tenth Amendment state?
3. How did the Fourteenth and Seventeenth Amendments alter the system of federalism originally established in the Constitution?
4. Re-read the section on the history of Jim Crow laws from Reconstruction to the Brown decision and the Civil Rights Movement. Does that history seem to argue for an increase in federal power? Explain why or why not.
5. To what extent should the national government make laws concerning the controversial topics listed below? Use the following sources to frame your response: Article I, Section 8; Article I, Section 9, Article IV; Article VI, the Tenth Amendment, the Fourteenth Amendment.
   - Health insurance
   - Education standards
   - Marriage and family law
   - Medical marijuana
   - Assisted suicide
Handout A: James Madison and Federalism - Excerpts from Federalist # 39

Directions: Using three highlighter pens, read the following passages from Federalist #39 and discuss the questions below. Numbers in brackets show paragraph numbers from the complete essay, and all italics are Madison’s. Note vocabulary tips (for underlined terms) at the end.

- Where Madison uses the term, “national,” think “We the People,” and highlight those aspects blue.
- Where he uses the term “federal,” think, “We the States,” and highlight those aspects yellow.
- Where he says we have both federal and national influences, highlight in green.

1. Ratification of the Constitution [10]
   [R]atification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong…The act, therefore, establishing the constitution, will not be a national, but a federal act.

2. The House of Representatives [12]
The House of Representatives…is elected immediately by the great body of the people. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular state. So far the government is national, not federal.

3. The Senate [12]
The Senate…derives its appointment indirectly from the people…[and] will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is federal, not national.

The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government…[T]he proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects…

5. Amending the Constitution [15]
[O]n the authority by which amendments are to be made, we find it neither wholly national nor wholly federal. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the Union…Were it wholly federal on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on
all…In requiring more than a majority, and particularly in computing the proportion by States, not by citizens, it departs from the national and advances towards the federal character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the federal and partakes of the national character…

6. Summary [16]
The proposed Constitution...[is] neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

Comprehension and Discussion Questions
1. According to Madison, did the Constitution provide for a nation of people or a nation of states—or both? Explain.
2. Discuss – to what extent was Alexander Hamilton on target in this statement: “This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people...Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalship, which will ever subsist between them.” (1788)

Vocabulary
Ratification: official approval
Immediately: directly
Derive: to receive from a specific source
Indefinite: difficult to determine
Supremacy: having the highest authority or power
Enumerated: listed
Residuary: remaining
Inviolable: sacred; permanent
Sovereignty: independence
Reside: originate in
Concurrence: agreement
Alteration: change; amendment
Handout C: Federalism Venn Diagram

Directions: Use the spaces below to show what powers you think should belong to each level of government.

Federalism Venn Diagram
Handout D: Article I, Sections 8, 9, 10, and Amendment X of the Constitution

Directions: Work with your group to complete the following.

1. Compare the ways you divided power between state and federal levels with the system the Founders provided in the Constitution.

2. What reasoning can you see behind the way the Founders divided power? Why were certain powers given to the federal government, but not others? Why were the powers not delegated reserved to the states and the people?

3. Identify and underline ways in which the people’s rights are protected by limits on the powers of Congress. Be prepared to explain the significance of each point that you identify.

4. Write your own title for each section on the line provided.

Article I, Section 8.
Your title: ______________________________________________________

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States; To borrow money on the credit of the United States; To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights And measures; To provide for the punishment of counterfeiting the securities and current coin of the United States; To establish post offices and post roads; To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; To constitute tribunals inferior to the Supreme Court; To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; To raise and support armies, but no appropriation of money to that use shall be for a longer
Term than two years;
To provide and maintain a navy;
To make rules for the government and regulation of the land and naval forces;
To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And
To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article I, Section 9
Your title: ______________________________________________________

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.
No bill of attainder or ex post facto Law shall be passed.
No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.
No tax or duty shall be laid on articles exported from any state.
No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.
No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.
No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

These instructional materials are in draft form for pilot testing.
Article I, Section 10

Your title: ______________________________________________________

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Amendment X

Your title: ______________________________________________________

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.
Answer Key

Background Essay

1. Federalism is the principle that people delegate certain powers to the national government in the Constitution. All those powers not delegated to the national government remain with the states and the people.
2. All those powers not delegated to the national government remain with the states and the people.
3. The Fourteenth Amendment limited the types of laws states could pass. Eventually, the Supreme Court began applying Bill of Rights limitations to state governments via the Fourteenth Amendment. The Seventeenth Amendment ended state representation in the U.S. Congress.
4. Accept reasoned answers.
5. Accept reasoned answers.

Handout B: James Madison and Federalism - Excerpts from Federalist # 39
1. According to Madison, the Constitution provided for a nation that is both a nation of people and a nation of states.
   - Yellow: Its foundation is federal.
   - Green: The sources of its powers are partly federal and partly national.
   - Blue: In its operation it is national.
   - Yellow: In the extent of its powers it is federal.
   - Green: In the amendment process it is both federal and national.
2. Accept reasoned answers.

Handout C: Federalism Venn Diagram
Accept reasoned answers.

Handout D: Article I, Sections 8, 9, and Amendment Ten of the Constitution
1. Answer will vary.
2. The decision to divide power among (federalism) and within (checks and balances) several governments positioned the American people to enjoy the benefits of a large republic (e.g., strong defense against foreign encroachments, national system of commerce, etc.) while still retaining significant control over their day-to-day affairs within the states.
3. Accept reasoned answers.
4. Suggested titles:
   - Article I, Section 8: “Powers given to Congress” or “The things Congress can do”
   - Article I, Section 9: “Some things Congress cannot do” or “Some powers denied to Congress”
   - Article I, Section 10: “The things states cannot do” or “The powers denied to states”
   - Amendment X: “The division between federal and state power” or “If the national government is not given a power and that power is not denied to states, then that power stays with the states and the people.”