

A

What Is a Federal Republic?

BACKGROUND ESSAY

The Founders were always cautious about government power. They wrote the Constitution to make a strong government, but also to limit its authority. One way they did this was by creating 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 listed in the Constitution.

Among these were the powers to regulate commerce between states, to coin money, to raise armies, and to collect taxes. The states have their own laws, but they are also subject to the laws of the federal government. This type of political system is called federalism. This separation makes states better able to create laws based on the will of their citizens. States could also come up with new ideas and experiments. If and when they succeeded, other states could use these tested ideas in their own governments.

Another way federalism was applied in the Constitution was in 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 of the Founding 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 central government created by the Constitution would take over the states. They believed that the states should keep more power, and they argued that the new Constitution should not be ratified. They did not like the vague phrases about Congress's powers, like "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 that the Constitution needed a bill of rights that listed some of Americans' specific rights and prohibited the national government from engaging in specific actions.

Federalists favored the Constitution as written. They supported a strong but limited central government with

some of the powers formerly exercised by state governments. They believed that state powers and individuals' rights were protected under the Constitution because the central government's role was limited by the list of enumerated powers and the list of denied powers. The Constitution did not list powers of states because it was assumed the states kept all the powers given to them by their state constitutions except those given to the federal government and those powers denied to states in the Constitution.

The Tenth Amendment

The Federalists eventually won the debate when the Constitution was ratified [approved] in 1788, but calls for a bill of rights continued. In fact, eight states not only ratified the Constitution but also submitted lists of proposed amendments. The one amendment proposed by all became the Tenth Amendment.

The Tenth Amendment states: "The powers not delegated [given] 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 constitutionally-limited nature of the federal government. It states again 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 or the people.

Changes to Our Federal System

The Seventeenth Amendment further changed the balance of federalism when it was added to the Constitution in 1913. The Seventeenth Amendment let the people of each state directly elect Senators to U.S. Congress. State governments would no longer be represented in one house of Congress. Supporters of this change believed it would result in less corruption and more democracy. Critics argued that the change would result in more federal laws that degraded [damaged] the power of states or that mandated state spending with no federal funding attached.

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 weakened state sovereignty. About sixty years after it was passed, the Supreme Court began using the Fourteenth Amendment to apply Bill of Rights limits to the states. Until the 1920s, the Bill of Rights applied only to the federal government. This expansion of the Fourteenth Amendment became the basis for equal protection under federal law for all individuals in the states, too.

Legislation also changed the balance of power between the national government and the states. After the Civil War, a majority of states enacted Jim Crow laws requiring racial segregation. By September 1949, only fifteen U.S. states lacked segregation

laws. The U.S. armed forces and much of the federal government were also segregated. In response to state segregation laws, many argued for more 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 argued that states often commit wrongful acts, and that the federal government should correct these wrongs. Others disagreed, arguing that the federal government did nothing to protect citizens' rights over decades of segregation. The 1954 Supreme Court case *Brown v. Board of Education* struck one of the first major blows against segregation. Just ten years later, the Civil Rights Act (1964) and the Voting Rights Act (1965) closed the curtain on the Jim Crow era. These laws and the enforcement of them came almost a century after the passage of the Fourteenth Amendment.

The Debate over Federalism

Debates over federalism often turn to other topics. Critics of federalism argue that a strong national government is needed to address unequal treatment by states. They state that the many different state laws across the country also can make it difficult for individuals and families who travel or move.

Supporters of federalism, however, argue that individuals and families who dislike the laws in one state have the freedom to move to a different state with different laws. States can make policies that meet the needs of their citizens, or adopt successful policies from other states. What is acceptable for people in some states—casinos and gambling, for example—may not be welcome in others. Finally, some supporters of federalism ask: Why would the people elected to federal offices protect people's rights any better than people in state 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 Founders believed, like many political philosophers, that the desire for power was natural. This power could be used to do bad things as easily as it could be used to do good things. The American federal system was designed to prevent abuses of power and to protect freedom.

Neither a very strong federal system nor complete state independence is perfect. Finding the right balance of power has been important to liberty—as well as controversial—throughout our history.



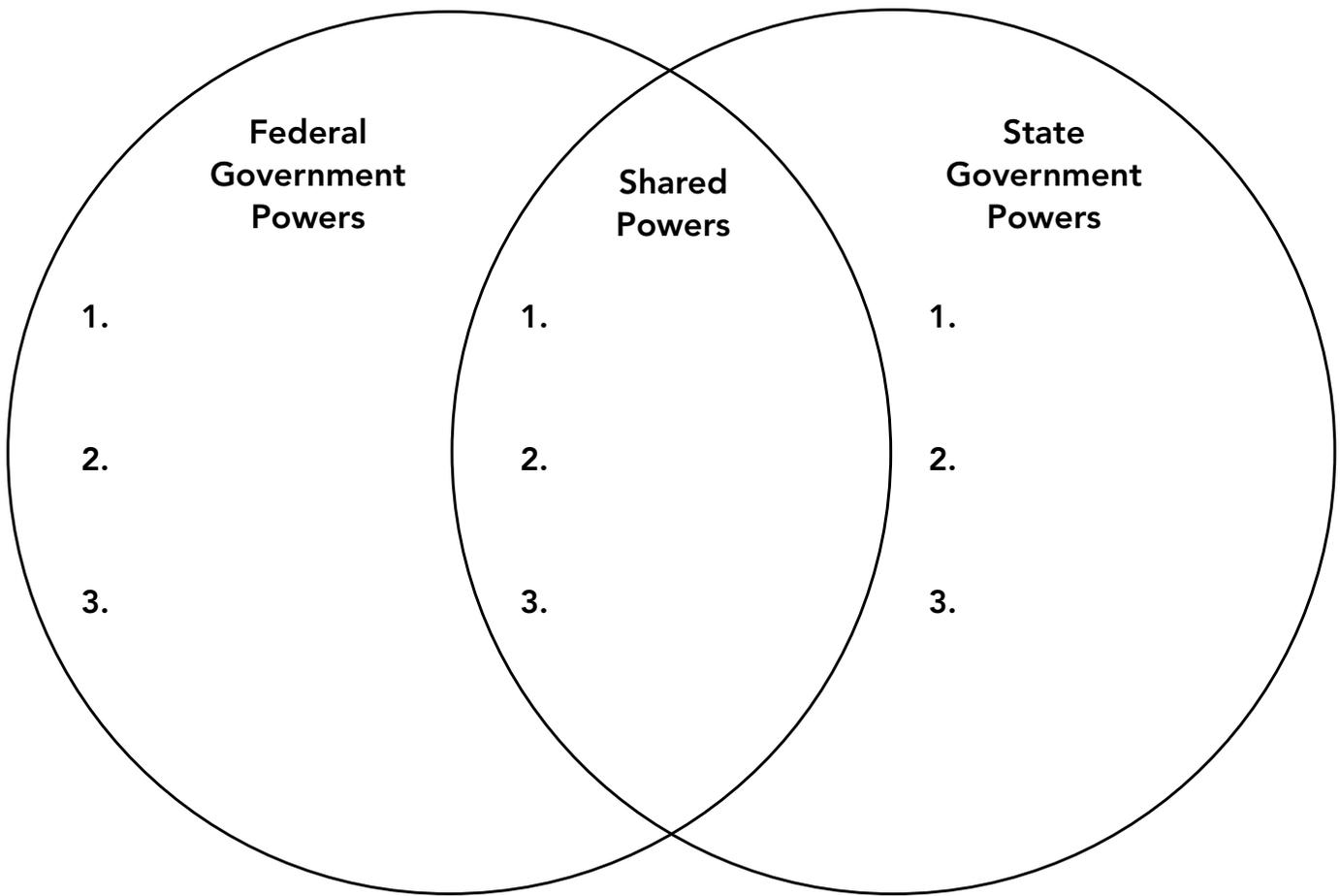
Comprehension Questions

1. What is federalism?
2. What does the Tenth Amendment state?
3. How did the Fourteenth and Seventeenth Amendments change the system of federalism originally established in the Constitution?
4. How involved should the national government be in making laws about the following controversial topics? Use the Constitution, the Tenth Amendment, and the Fourteenth Amendment to support your reasoning.
 - a. Health insurance
 - b. Education standards
 - c. Marriage and family law
 - d. Medical marijuana
 - e. Assisted suicide

B

Federalism Venn Diagram

Directions: Read the experts from the Constitution on **Handout C** and then use the spaces below to show what powers you think should belong to each level of government.





Article I, Sections 8, 9, 10 of the Constitution and the Tenth Amendment

Directions: Work with your group to complete the following.

1. How is power divided between the state and federal levels?
2. What reasoning do you think the Founders had for dividing power? Why were there 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 importance of each.

Article I, Section 8 [Powers of Congress]

- Lay and collect taxes
- Pay debts
- Provide for the common defense and general welfare
- Borrow money
- Regulate commerce
- Establish rules for naturalization [foreign people becoming citizens]
- Establish rules for bankruptcies
- Establish standard weights and measures
- Coin money
- Punish counterfeiters
- Establish post offices and post roads
- Promote the progress of science and arts and protect the rights to their writings and discoveries
- Establish courts
- Punish piracies
- Declare war
- Raise and support armies
- Provide and maintain a navy
- Make rules for land and naval forces
- Call on the militia to execute laws, suppress insurrections, and repel invasions
- Organize, arm, and discipline the militia, but reserve training and appointment of officers of the militia to the states
- Exercise control of the District [capitol]
- Erect forts, magazines, and arsenals, dockyards, and other buildings
- Make all laws necessary and proper to carry out powers in the Constitution

Article I, Section 9 [Limits on the Powers of Congress]

- The migration or importation of people [slave trade] shall not be prohibited until 1808, but a \$10 tax can be charged on importing each person
- Habeas corpus [a person who is arrested needs to be brought before a judge to determine if there is enough evidence to hold the person] shall not be suspended unless there is a rebellion or an invasion
- No bill of attainder [declaring someone guilty without a jury trial] or ex post facto Law [a new law cannot change charges or punishments of a past crime] shall be passed
- No direct taxes shall be laid unless they are based on the census
- No taxes shall be laid on exports from states
- No preference shall be given to ports of one state over another
- Vessels [forms of transportation] bound from one state to another shall not pay taxes in another state
- No money can be drawn from the treasury without passage of laws by Congress, and a regular statement of money paid and spent shall be published
- No title of nobility shall be granted by the United States, and no one shall accept any present or title from another country without the permission of Congress.

Article I, Section 10 [Limits on the Powers of States]

- No state shall enter a treaty or alliance
- No state shall coin money
- No state shall pass any bill of attainder [declaring someone guilty without a jury trial] or ex post facto law [a new law cannot change charges or punishments of a past crime]
- No state shall pass a law that breaks contracts
- No state shall grant any title of nobility
- No state shall lay imposts or duties [fees or taxes] on imports or exports without the consent of Congress or to execute inspection laws, and the money made from these shall be used by the United States treasury
- No state shall keep troops or ships in times of peace without the consent of Congress
- No state shall enter into an agreement or compact with another state or foreign power
- No state shall engage in war unless actually invaded or in imminent danger
- Tenth Amendment [powers not listed in the Constitution]
- The powers not listed in the Constitution and delegated to a specific branch are reserved for the states or the people.

D

State Power – Criticisms and Responses

Directions: Read the essay and be ready to discuss the questions that follow.

One major criticism of strong state power comes from the legacy of slavery. After the Civil War and Reconstruction enslaved people were free. They even had been guaranteed citizenship, equal protection under the law, and—for men—the right to vote. But post-Reconstruction states turned these guarantees into empty promises. A majority of states made Jim Crow laws (named after a black character in popular variety shows of the time). These laws forbade [outlawed] interracial marriage, and they legalized segregation [separation] and unequal treatment based on race. By 1914, every southern state and many northern ones had 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 v. Ferguson* (1896), the Supreme Court said that “separate but equal” accommodations were constitutional. By September 1949, only

fifteen U. S. states had no segregation laws.

The National Association for the Advancement of Colored People (NAACP) challenged these laws in court. The cases eventually went to the Supreme Court. The first major legal blow to Jim Crow laws came with the landmark 1954 decision of *Brown v. Board of Education*. In this case, the Supreme Court found that segregation violated the equal protection clause of the Fourteenth Amendment. This meant that the states would have to obey the federal government’s order to integrate their schools. The 1954 *Brown* case began the Civil Rights Movement toward equal treatment in public life and the end of the states’ use of federalism to make Jim Crow laws. Later federal laws intended to stop the use of federalism to violate civil rights by states included the Civil Rights Act (1964) and the Voting Rights Act (1965). These laws and the enforcement of them came almost a century after the passage of the Fourteenth Amendment.

Responses to Jim Crow

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

Others disagreed, stating that the national government has no better history of protecting rights than states do. The federal government did not protect citizens' rights during centuries of slavery and segregation. If more power were given to the federal government in the name of protecting rights, what would happen if officials then used that greater power to do bad things that affected the whole nation?



Critical Thinking Questions

1. How does the legacy of slavery relate to the principle of federalism?
2. What are some arguments for and against increased federal power in response to state violations of rights?
3. Which arguments are do you agree with most?