

## Understanding Federalism: Who Holds the Power?

### *Three Lessons*

This unit involves three lessons:

1. Understanding the concept of federalism;
2. Identifying issues that should be left to the federal government, reserved to the states or addressed by both the state and national government and why; and
3. Analyzing the advantages and disadvantages of a federal system of government.

Grade Level: Secondary

New Jersey Standards:

- 6.1.12 A1: Analyze how historical events shape the modern world.
- 6.2-12 A4: Evaluate competing ideas about the purpose of the national and state governments and how they have changed over time (e.g., the American version of federalism, the powers of the federal government and the states, differing interpretations of Article I, Sections 8-10).
- 6.2-12 B2: Propose and justify new local, state, or federal governmental policies on a variety of contemporary issues (e.g., definition of marriage, voting systems and procedures, censorship, religion in public places).
- 6.2-12 C1: Debate current issues and controversies involving the central ideas of the American constitutional system, including representative government (e.g., Electoral College and the popular vote), civic virtue (e.g., increasing voter turnout through registrations and campaigns), checks and balances, and limits on governmental power).
- 6.2.12 C2: Analyze, through current and historical examples and Supreme Court cases, the scope of governmental power and how the constitutional distribution of responsibilities seeks to prevent the abuse of that power.
- 6.4.12 H3: Analyze social and political trends in post Reconstruction America
- 6.4.12 K7: Analyze the Civil Rights Movement

Objectives:

1. To identify the concept of federalism as one of the major principles of the United States Constitution.
2. To analyze the reason for the inclusion of this concept in the United States Constitution.

3. To identify the different powers held by the federal government and those held by the states.
4. To analyze whether certain issues should be addressed by the federal government, by state government, or concurrently.
5. To examine the advantages and disadvantages of a federal form of government.

Lesson Length: 2 – 3 days

Materials: Video clip from “Forrest Gump” and/or the article entitled “Wallace in the Schoolhouse Door,” available at <http://www.npr.org/templates/story/story.php?storyId=1294680>  
Handout 1: “Federalism: What is it?”  
Handout 2: “Who Should Have Control Over These Issues?”

Lesson Overview:

Federalism is a constitutional principle that divides the governmental power between the states and the federal government. It was incorporated into the United States Constitution through two main provisions: Article I and the Tenth Amendment. Article I, section 8 of the Constitution limits the powers of the United States Congress by specifically listing powers delegated to the national government. For example, the Constitution gives Congress the power to tax, provide for an army and navy, make treaties and regulate interstate trade. Article I, section 9 specifically limits the powers of Congress, as do Amendments 1, 3, 4, 5, 6, 7 and 8. The Tenth Amendment to the Constitution reserves those powers not delegated to the federal government to the states.

In this unit, students will first be introduced to the Constitutional principle of federalism through a photo or short video clip of Alabama Governor George Wallace refusing to enforce the federal anti-discrimination laws by blocking students from entering the University of Alabama in 1963. Students will examine this scene and analyze why the federal government prevailed.

Then students will work in small groups to define federalism using the United States Constitution and their textbooks and to apply the concept to modern day issues. Students will consider and decide whether each issue is one for the state of New Jersey or the federal government to regulate.

Finally, students will examine the advantages and disadvantages of a federal system of government.

Introduction/Anticipatory Set:

Show a short video clip of Alabama governor, George Wallace, refusing to desegregate the University of Alabama pursuant to federal law in 1963. You may want to show this from the popular movie, “Forrest Gump,” National Public Radio’s website, available at: <http://www.npr.org/templates/story/story.php?storyId=1294680>, or use the image below. The National Guard was forced to intervene and enforce federal orders. The scene exemplifies the conflict that existed between the state of Alabama and the national government. Governor Wallace is standing in front of the door to one of the buildings at the University of Alabama in an

attempt to stop the desegregation of that institution by two African American students on June 11, 1963. When confronted by federal marshals, he stepped aside. Later in life, Wallace apologized for his attempt to block integration.



After showing this clip and/or image, pose the following questions:

1. What issue is highlighted in this clip/ image?

The issue of desegregation in the South.

2. What did the state of Alabama want?

The state of Alabama, as expressed through Governor Wallace, viewed this as a state issue and, therefore, did not want the federal government to intervene. Governor Wallace reasoned that if the people of Alabama did not want to allow African-Americans into the public schools, a true democratic system would allow them to refuse their entry. According to Governor Wallace, the states had the Constitutional right to operate public schools.

3. How did this differ from what the federal government desired?

The federal government wanted to enforce an order from a federal judge to admit two black students to the University of Alabama based on the decision of the United States Supreme Court in *Brown v. Board of Education*, which desegregated the public schools. (See *Brown v. Board of Education of Topeka*,

347 U.S. 483 (1954)). The federal government looked at the issue of desegregation as national rather than a state question.

4. Which entity (state or federal government) prevailed in this situation? How do we know this?

The federal government prevailed: the school was desegregated pursuant to the Fourteenth Amendment and the students were allowed to attend the university. Note, however, that President Kennedy was forced to federalize the Alabama National Guard to help with the crisis.

#### Activities/Procedures:

#### Background

If you do not think that your students have sufficient understanding of the background regarding the reasons why the United States government was established as a federal government with some powers given to the national government, other powers reserved to the states, and in some cases shared powers by the state and national government, you may want to have your students research the background to federalism in the United States Constitution, or use the materials from Units 1-3 of *We the People: The Citizen and the Constitution* (free classroom sets of these materials are available by contacting the New Jersey Center for Civic and Law-Related Education at 732-445-3413), or provide a brief background:

- a. After the Revolutionary War, the founding fathers wanted to establish an effective system of government. The founding fathers had just received independence from King George III of Great Britain and were therefore fearful of creating another monarchy or dictatorial government. They wanted to avoid the concentration of power in the central government.
- b. The founding fathers first drafted and incorporated the Articles of Confederation (1781 – 1788). This system of government was based on a loose union of the states. Under this system, the federal government had very little power. Most power was held by the states.
- c. The Articles of Confederation did not provide a workable government for the new nation. Therefore, the founding fathers decided to revise the Articles. Eventually, they threw out the Articles and drafted the United States Constitution. They recognized the need for a division of power and therefore created the constitutional principle of federalism.
- d. Federalism is the division of power between the federal and state government. This concept is integrated into the United States Constitution in Article I (section 8 articulates the powers given to Congress, section 9 restricts the actions of Congress, and section 10 limits the actions of the states) and the Tenth Amendment (which reserves those powers not delegated to the United States by the Constitution, nor prohibited by it to the States). Federal law is the supreme law of the land. The states

cannot ignore federal law, but they can pass laws to further enhance these laws, such as stricter environmental or occupational regulations. If there is a conflict between the state and federal law, the Supreme Court will review the law.

**Activity One: Federalism: What is it?**

Using the Constitution, students should answer the three questions on Handout 1. The teacher should review these answers to ensure that the students understand what powers belong to the federal government and which are reserved for the states. Students should also understand that some powers are held concurrently by both the federal and state governments.

**ANSWER SHEET FOR HANDOUT 1:**

1. Federalism is the division of powers between the state and national government.
2. The major powers of the Federal Government are provided in Article I, Section 8 of the Constitution. The federal government has limited power in that most of the powers are delineated without room for interpretation. For example, the federal government has the ability to coin money and raise a navy.
3. The Tenth Amendment to the Constitution states that all powers not delegated to the federal government are reserved for the states. The Constitution also spells out certain powers which the state cannot hold in Article I, Section 10. For example, the states cannot tax goods shipped from one state to another. The states' power often focuses on issues that will have a direct impact on the community, such as regulation of the speed limit and the definition of marriage.

The chart below identifies the major powers of the federal, state and concurrent powers. This diagram can supplement the information provided and serve as useful study tool for the students. (From Ben's Guide to Government, available at <http://bensguide.gpo.gov/>).

National Government	State Governments
<ul style="list-style-type: none"> <li>• Print money</li> <li>• Regulate interstate (between states) and international trade</li> <li>• Make treaties and conduct foreign policy</li> <li>• Declare war</li> <li>• Provide an army and navy</li> <li>• Establish post offices</li> <li>• Make laws necessary and proper to carry out the these powers</li> </ul>	<ul style="list-style-type: none"> <li>• Issue licenses</li> <li>• Regulate intrastate (within the state) businesses</li> <li>• Conduct elections</li> <li>• Establish local governments</li> <li>• Ratify amendments to the Constitution</li> <li>• Take measures for public health and safety</li> <li>• May exert powers the Constitution does not delegate to the national government or prohibit the states from using</li> </ul>

In addition to their exclusive powers, both the national government and state governments share powers. Shared powers between the national government and state governments are called [concurrent powers](#). Current powers of the national government and state governments include the ability to:

- Collect taxes
- Build roads
- Borrow money
- Establish courts
- Make and enforce laws
- Charter banks and corporations
- Spend money for the general welfare
- Take private property for public purposes, with just compensation

### Activity Two: *Who should have control over these issues?*

Break the students into ten small groups. Divide the note cards provided in Handout 2 and hand them out to the ten groups to answer. Some issues are easier than others. For example, students may easily understand why the state of New Jersey should regulate the speed limit (direct, local control and knowledge of the geography of the area). However, other issues will stir debate, such as the definition of marriage, which has traditionally been left to the states. After all the groups have completed Handout 2, the students should reconvene as a class. Each group will present their answers to the entire class. Discussion and debate is encouraged.

### ANSWER SHEET FOR HANDOUT 2:

1. Declaring war on another country: The National government only.

Article I, Section 8 states that Congress shall have the power “to declare war.” This provision provides a uniform policy for the entire nation.

2. Anti-discrimination laws: Concurrent authority.

Both the federal government and states regulate the area of anti-discrimination. The Fifth and Fourteenth Amendments to the United States Constitution prohibit discrimination by the state and federal governments. These amendments provide for “equal protection” under the law and prevent discrimination based on such factors as race, religion, national origin, and sex. In addition to these Constitutional provisions, Congress passed expansive legislation in 1964 that outlawed discrimination based on race, religion, sex and national origin. (P.L. 88-352, 78 Stat. 241, July 2, 1964). This legislation, unlike the Constitutional amendments, is applicable to private businesses.

Similar to the United States Constitution, the New Jersey Constitution has an “equal protection” clause. The Supreme Court of New Jersey has interpreted this clause, Article I, Paragraph I, to allow numerous groups their rights -- most recently homosexuals. For example, in the 2006 New Jersey Supreme Court decision, Justice Albin stated that “To comply with the equal protection guarantee of Article I, Paragraph 1

of the New Jersey Constitution, the State must provide to committed same-sex couples, on equal terms, the full rights and benefits enjoyed by heterosexual married couples." New Jersey has also enacted several statutes that expand on the rights that the federal government offers. The New Jersey Law against Discrimination (NJ-LAD) is one of the most expansive anti-discrimination laws in the country. The NJ-LAD prohibits discrimination against the following protected categories: race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy and sexual harassment), marital status, domestic partnership status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information liability for military service, or mental or physical disability, including AIDS and HIV related illnesses. (See N.J.S.A. 10:5-1, et seq.)

### 3. The Death Penalty: Concurrent authority.

The states decide whether or not to have the death penalty in their particular jurisdiction. New Jersey currently has the death penalty as a means of punishment. However, in 2006, Governor Jon Corzine signed into law a temporary moratorium on the death penalty until a commission researched the issue. On January 2, 2007, the New Jersey Death Penalty Study Commission recommended the abolition of the death penalty. They concluded that the death penalty is not a viable deterrent and is inconsistent with the standards of decency. The legislature is urged to enact legislation based on the Panel's recommendations.

Even though the states have the ultimate power to decide whether to have this punishment in their jurisdiction, the federal government has the ultimate power to define its constitutionality. For instance, although the Supreme Court has ruled that the death penalty is not a per se violation of the Eight Amendment's "cruel and unusual" clause, it has limited the application of the death penalty in numerous ways. In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court determined that executions of the mentally retarded is "cruel and unusual" punishment. The Court further limited the application of the death penalty in 2006 when they invalidated the death penalty for juvenile offenders. (See *Roper v. Simmons*, 543 U.S. 551 (2005)). Congress has also prescribed the death penalty for numerous federal crimes.

### 4. Qualifications for and procedures for voting: Primarily state.

The New Jersey Constitution spells out the requirements for voting. Specifically, Article II, Section I, Paragraph 3 states that "Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people." New Jersey law highlights the constitutional requirements to vote and explains when a person is not eligible to vote. (See N.J.S.A. 19:4-1).

The Fifteenth Amendment to the United States Constitution states that one cannot be denied of their right to vote based on their race, color, or previous condition of servitude.

The Voting Rights Act of 1965 further expanded the rights of the voters by banning poll taxes and literacy tests. Moreover, it states that every person's vote should be equal. (See 42 U.S.C. 1973 to 1973aa-6).

5. The Definition of Marriage: Primarily state.

"Marriage," like most social, health and education issues, has traditionally been left to the states, since it is not within those areas of authority clearly granted to the federal government. However, in 1996, Congress passed the Defense of Marriage Act which defined marriage as the union between a man and a woman for the purposes of federal law. (See 1 U.S.C. § 7.) No act or agency of the U.S. federal government currently acknowledges homosexual marriage. Notwithstanding the Defense of Marriage Act, the states have the prerogative to define marriage within their specific jurisdiction. In the seminal decision *Lewis v. Harris*, the New Jersey Supreme Court declared that "unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated under our State Constitution." (See 188 N.J. 415 (October 25, 2006)). In practice, this decision mandated that homosexuals should be given the same rights as heterosexual couples. In December 2006, the legislature enacted legislation that stated that homosexual couples should be awarded equality under the law and those rights possessed by married heterosexual couples. See N.J.S.A. 37:1-28. Although New Jersey enacted this progressive legislation, it refused to use the word "marriage" to describe the union between two homosexuals.

6. Defining crimes: Concurrent.

Both the state and federal governments define crimes. A federal crime is an offense that is made illegal through Congress' legislation and/or a crime that occurs on federal property. Recently, the Supreme Court has struck down some laws promulgated by Congress deeming offenses a crime. The Supreme Court has stated that Congress does not have the power to regulate these areas. In the most well-known decision, *United States v. Lopez*, the Court concluded that Congress could not pass a law regulating firearms in school zones. (See *United States v. Lopez*, 514 U.S. 549 (1995).

The state of New Jersey defines what is a state crime in the state. These crimes are defined in state legislation. See N.J.S.A. 2C. For example, in N.J.S.A. 2C:11-3, the New Jersey legislature defines the elements of murder.

7. The Speed Limit: State.

The regulation of the speed limit is a local issue and is thus determined by the state government. The New Jersey Department of Transportation (through Orders of the Commissioner of Transportation) determines the speed limits for a particular road. The New Jersey Department of Transportation is much more familiar with the roads and traffic in the state than the federal government.



8. **Abortion: Concurrent**

The state of New Jersey can regulate abortion within their state. For example, New Jersey law explains that though abortion is permitted, no one can be forced to perform an abortion. (See N.J.S.A. 2A:65A-1). Furthermore, the New Jersey legislature has determined that partial birth abortions are banned in New Jersey. (See N.J.S.A. 2A:65A-6).

However, all state laws must be consistent with the U.S. Constitution. If a state law conflicts with the Constitution, the Supreme Court will declare that the law is unconstitutional and therefore unenforceable.

9. **Currency: National government only.**

Article I, Section 8, para. 5 of the United States Constitution gives Congress the power to coin money. A uniform monetary system is critical to the commercial success of our country. Trade and travel would be significantly hindered if each state had a different type of currency.

10. **The Police Force: State.**

The New Jersey state police has control over issues that occur within the state of New Jersey and are based on state law.

**Activity 3: What are the advantages and disadvantages of federalism?**

Have students write any essay responding to the following question: "Based on the lesson today, list two advantages and two disadvantages of federalism. Do you agree with the concept of federalism or do you believe think that the state or federal government should have ultimate power? Explain."

Discuss the student essays in class and conclude that while federalism may lead to confusion, inconsistencies and slow progress, it is an effective mechanism for dispersing power throughout the country, involving many people in decision-making, and keeping elected representatives close to their electorates.

**Closure:**

Although the system of federalism was created more than 200 years ago, it is still a developing concept. For example, in the 1833 decision, *Barron v. Baltimore*, the Supreme Court held that the Bill of Rights restrained only the federal government. (See 32 U.S. (7 Pet.) 32 (1833)). The states therefore could offer or choose not to offer the protections guaranteed by the first ten amendments. It was not until after the Civil War during the era of Reconstruction that the federal government determined that the southern states should not be readmitted without certain guarantees. The states that had seceded were required to guarantee black suffrage and the provisions of the Fourteenth Amendment (equal protection and due process) in their new state constitutions before they could be represented in the national government.

Black Codes and other Jim Crow laws kept the system of segregation in the South in place until the wave of civil rights marches and cases in the 1950s and 1960s. The federal government ultimately prevailed in forcing the states to desegregate by enforcing the seminal Supreme Court decisions in *Brown v. The Board of Education of Topeka* and the anti-discrimination legislation such as the Civil Rights Acts of 1964 and 1965. The Courts reiterated that the Fourteenth Amendment of the United States Constitution mandated that the states provide “equal protection” under the law. This has been interpreted to mean that even though the states have the power under the 10<sup>th</sup> Amendment to maintain peace within their jurisdiction, they still must provide for equal protection of their citizens consistent with the United States Constitution as interpreted by the United States Supreme Court.

Today, the issue is once again at the forefront. In this age of terrorism, some suggest that we need a strong federal government to regulate and unify the United States’ defense program. On the other hand, some states assert that the states should have the power to defend against terrorism and to ensure that the national government does not invade individual rights.

#### Assessment:

Students will be evaluated throughout the lesson. During the group presentation, each student can be individually assessed to evaluate their understanding of the principle of federalism and the higher level analysis of recognizing when they believe an issue should be controlled by the state or federal government. The closure activity will also confirm whether students understood the material. Student essays will be graded and may be shared.

#### Extension Activities:

1. Rather than providing the students with the answers given in the Answer Key, assign each student a topic listed on the note cards. Students can conduct research on the following:
  - a. Who has control over this particular issue;
  - b. Define how this power has been asserted;
  - c. Do you agree that this particular entity (New Jersey or federal government) should have control over this issue? Explain.
  - d. Where does this particular entity get the authority to regulate this issue? *Note: During an election year, students could expand this research project by explaining how a particular presidential candidate stands on this particular issue.*
2. Have students examine how the political parties feel on this issue of federalism. For example, why do the Democrats often favor a strong federal government on certain issues? Why do the Republicans often favor strong state governments?
3. Students can research the historical context of the principle of federalism, tracing its development through key historical times. This project could focus on several events such as the Civil War, where the South favored strong states’ rights and control, to World War II, where President Franklin D. Roosevelt emphasized the need for a strong federal government to the present day situation.

4. Require students to find three articles that represent federalism in the United States today. They should summarize the article and explain why this issue/activity is controlled by the federal or state government.

## FEDERALISM: WHAT IS IT?

Define federalism.	Identify five powers of the federal government listed in the Constitution? Where are these powers listed?	What are the major powers of the states provided for in the Constitution? Where are these powers listed?

Handout 2

**NOTE CARDS: WHO SHOULD HAVE CONTROL OVER THESE ISSUES?**

Cut out and use the note cards provided below. For each issue, determine whether it should be reserved to the national government, the states or concurrent. Be prepared to defend your conclusions.

DECLARING WAR ON ANOTHER COUNTRY	ANTI-DISCRIMINATION LAWS
THE DEATH PENALTY	QUALIFICATIONS FOR VOTING
DEFINITION OF MARRIAGE	DEFINING CRIMES
THE SPEED LIMIT	ABORTION
CURRENCY TO HAVE	THE POLICE FORCE

