

Item Name:	Shared Powers in Government
Item Type:	Complex Project
Subject and/or Course:	U.S. Government/Civics, Grade 11-12
Common Core Standards:	<p>CCSS.ELA-LITERACY.RH.11-12.1 Cite specific textual evidence to support analysis of primary and secondary sources...</p> <p>CCSS.ELA-LITERACY.RH.11-12.9 Compare and contrast treatments of the same topic in several primary and secondary sources...</p> <p>CCSS.ELA-Literacy.WHST.11-12.1 Write arguments focused on discipline-specific content....</p> <p>CCSS.ELA-Literacy.WHST.11-12.7 Conduct short as well as more sustained research projects to answer a question...</p> <p>CCSS.ELA-Literacy.WHST.11-12.8 Gather relevant information from multiple authoritative print and digital sources...</p>
Developer/Source:	Published by Summit Public Schools (some modifications made.)
Item Features:	<p>Administration: Curriculum-embedded</p> <p>Length of time for response: Multiple weeks</p> <p>Method of scoring: Analytic Rubric</p> <p>Opportunity for student collaboration: Once a week</p> <p>Opportunity for teacher feedback and revision: Daily</p>

Collection of performance assessment items compiled by



Subject area/course: History/Social Studies; U.S. Government

Grade level/band: 11-12

Task source: Summit Public Schools

Shared Powers in Government

TEACHER'S GUIDE

A. Task overview:

This task asks students to write an argumentative essay about which level of government, federal or state, should have authority and power when making and executing laws related to a controversial issue. Students will research an issue of their choice, write an argument in support of their position, and then present it to their classmates.

B. Aligned standards:

1. Common Core State Standards

[CCSS.ELA-Literacy.RH.11-12.1](#) Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

[CCSS.ELA-Literacy.RH.11-12.9](#) Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

[CCSS.ELA-Literacy.WHST.11-12.1](#) Write arguments focused on *discipline-specific content*.

[CCSS.ELA-Literacy.WHST.11-12.7](#) Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem; narrow or broaden the inquiry when appropriate; synthesize multiple sources on the subject, demonstrating understanding of the subject under investigation.

[CCSS.ELA-Literacy.WHST.11-12.8](#) Gather relevant information from multiple authoritative print and digital sources, using advanced searches effectively; assess the strengths and limitations of each source in terms of the specific task, purpose, and audience; integrate information into the text selectively to maintain the flow of ideas, avoiding plagiarism and overreliance on any one source and following a standard format for citation.

2. Critical abilities

Research: Conduct sustained research projects to answer a question (including a self-generated question) or solve a problem, narrow or broaden the inquiry when appropriate, and demonstrate understanding of the subject under investigation. Gather relevant information from multiple authoritative print and digital sources, use advanced searches effectively, and assess the strengths and limitations of each source in terms of the specific task, purpose, and audience.

Analysis of Information: Integrate and synthesize multiple sources of information (e.g., texts, experiments, simulations) presented in diverse formats and media (e.g., visually, quantitatively, orally) in order to address a question, make informed decisions,



understand a process, phenomenon, or concept, and solve problems while evaluating the credibility and accuracy of each source and noting any discrepancies among the data.

Communication in Many Forms: Use oral and written communication skills to learn, evaluate, and express ideas for a range of tasks, purposes, and audiences. Develop and strengthen writing as needed by planning, revising, editing, and rewriting while considering the audience.

Use of Technology: Present information, findings, and supporting evidence, making strategic use of digital media and visual displays to enhance understanding. Use technology, including the Internet, to research, produce, publish, and update individual or shared products in response to ongoing feedback, including new arguments or information.

3. Other standards

C3 Framework

D2.Civ.1.9-12. Distinguish the powers and responsibilities of local, state, tribal, national, and international civic and political institutions.

D3.1.9-12. Gather relevant information from multiple sources representing a wide range of views while using the origin, authority, structure, context, and corroborative value of the sources to guide the selection.

D4.1.9-12. Construct arguments using precise and knowledgeable claims, with evidence from multiple sources, while acknowledging counterclaims and evidentiary weaknesses.

AP Topics

APS.SOC.9-12.I Constitutional Underpinnings of United States Government

APS.SOC.9-12.I.D - Federalism

Understand the implication(s) of federalism as a foundation of American

government.

Analyze current political issues through the lens of Federalism.

C. Time/schedule requirements:

The following schedule is an estimate of the number of school days required for students to complete this task. Time requirements will vary based on grade level, schedule constraints, class size, class length, and academic readiness.

Day	What Students Need To Do
Day 1	Step 1. Introduction to Federalism
Day 2	Step 2. Get familiar with the task requirements, expectations, and due dates
Day 3	Step 3. Complete the Federalism Case Study
Day 4	Step 4. Choose an issue
Days 5 - 6	Step 5. Research The Issue
Days 7 - 8	Step 6. Federalism Today Rough Draft
Day 9	Step 7. Peer Review of Essay



Days 10 - 12	Step 8. Oral Presentations
Day 13	Step 9. Submit final essay

D. Materials/resources:

- Students will need access to the Internet for research
- Copies (digital or hard) of the following documents:
 - Item A – Hook Activity
 - Item B – PPT presentation, “What is Federalism?”
 - Item C – Intro to Federalism Reading
 - Item D – Federalism Case Study
 - Item E – Picking a Current Issue - Real World Context
 - Item F – Researching Your Issue
 - Item G – Federalism and DARE Persuasive Writing
 - Item H – Federalism Today: Persuasive Essay Outline
 - Item I – Peer Editing Guide

E. Prior knowledge:

- Students should be familiar with the concepts of separation of powers and limited government.
- Key vocabulary terms that will be introduced include: Tenth Amendment, Fourteenth Amendment, Reserved Powers, Concurrent (shared) Powers, Expressed (Enumerated) Powers, Commerce Clause, Privileges and Immunities clause, New Federalism, Block Grants, Necessary and Proper Clause. Students may need introduction to these terms before the task depending on the teacher’s judgment about the adequacy of Items B (PPT presentation) and C (Intro to Federalism reading) to help students build necessary background knowledge.

F. Connection to curriculum:

This task is about the concept of federalism and the U.S. Constitution.

G. Teacher instructions:

1. Introduction to Federalism

Materials: Hook Activity (Item A), PPT (Item B), & Reading (Item C)

The purpose of this task is to introduce students to the fundamental concept of federalism, specifically focusing on the implications of shared sovereignty between the state and federal governments.

2. Go Over the Project Overview and Rubric

Materials: Student task sheet; Rubrics

3. Complete the Federalism Case Studies Packet

Materials: Federalism Case Study (Item D)



The purpose of this task is for students to demonstrate their understanding of how power is distributed between the states and federal government according to the U.S. Constitution. Students should read the case study provided and answer the questions at the end of the case.

4. Current Issues and Federalism

Materials: Picking a Current Issue - Real World Context (Item E)

Work Products: Picking a Current Issue - Real World Context (Item E)

The purpose of this task is for students to pick an issue they are currently passionate about or would like to learn more about and that is relevant to the question: Which level of government should have power? Students will identify why they are interested in this issue.

5. Research the Issue

Materials: Researching Your Issue (Item F)

Work Product: Researching Your Issue (Item F)

The purpose of this step is for students to investigate and illustrate how the U.S. Constitution, Supreme Court precedent, and logic support the division and/or sharing of powers over their issue. This should then inform the position they will take in their final products. Teacher should support students as needed. Students should be directed to draw research from a variety of sources, including websites, books, interviews, documentaries, speeches, etc. These sources should represent multiple perspectives on this issue. The teacher might suggest helpful websites or sources to launch the research activity.

6. Federalism Today Rough Draft

Materials: Federalism and DARE Persuasive Writing (Item G); Federalism Today: Persuasive Essay Outline (Item H)

Work Products: Federalism and DARE Persuasive Writing; Federalism Today: Persuasive Essay Outline

Students will contextualize sources and use sentence and paragraph structures such as transitions to add cohesion and organization to their essay as a whole. Organizing evidence in a clear way will also be crucial in effectively supporting their thesis statement and subclaims.

7. Peer Review of Essay

Materials: Peer Editing Guide (Item I)

Work Product: Peer Editing Guide

Students will share their essays with a peer. The second student will read their classmate's essay and complete the peer review sheet. Students will use the feedback they receive to revise their essay.

8. Presentation of Argument

Work Product: Speech

9. Submit Final Draft of Essay

Work Product: Final Essay



H. Student support:

- All student directions will be provided in writing and will be read orally.
- Extended time and additional supports and tools may be provided in response to teacher evaluation of student progress.

I. Extensions or variations:

This task might be modified to increase peer collaboration. For example, students might conduct research in pairs or teams focusing on the same issue, students might present grouped by topic, or the teacher might build in additional opportunities for peer feedback and revision.

J. Scoring:

Student work should be scored using the *History/Social Science Research or Inquiry, Grade 12 Rubric* and the *Federalism Presentation Rubric*.



Subject area/course: History/Social Studies; U.S. Government

Grade level/band: 11-12

Task source: Summit Public Schools

Shared Powers in Government

STUDENT INSTRUCTIONS

A. Task context:

Why are some issues, like education, regulated by individual states, whereas others like immigration and interstate commerce fall under the domain of the federal government? When the framers created the U.S. Constitution they did not envision some of the controversial issues that exist today. These include, but are not limited to, gay marriage, legalization of drugs (i.e., marijuana), gun control, health care, and education.

Your class is selecting an issue to lobby the government about. You will select an issue you are interested in and make a strong argument about what level of government – state or local – should address that issue. Specifically, consider the implications of assigning the authority and power in executing laws or public policy related to that issue to different levels of government. You will need to reference the U.S. Constitution, Supreme Court precedent, and relevant political, economic, and social contexts to support your argument. After constructing an argumentative claim and selecting high-quality evidence in the essay, you will present your findings and recommendations in regards to what level of government should have the autonomy to decide the issue to the class in order to convince them that this is the most reasonable and legal approach to the issue.

Note that you are not arguing for or against an issue; you are choosing what level of government should address the issue and exploring the implications of your decision.

B. Final product:

Your task is to select an issue you are interested in and make a strong argument about what level of government – state or local – should address that issue. After constructing an argumentative essay, you will present your findings and recommendations in regards to what level of government should have the autonomy to decide the issue to your classmates.

ADDITIONAL INFORMATION

C. Knowledge and skills you will need to demonstrate on this task:

- Develop a discipline-specific argument focused on federalism and address a specific contemporary issue
- Locate and use varied sources to understand the topic
- Compare and contextualize sources to accurately understand them



- Use and accurately explain evidence from those sources to support your argument
- Include accurate content and connections to context that support your argument

D. Materials needed:

- Access to the Internet and other resources for research
- Copies (digital or hard) of the following documents:
 - Item A – Hook Activity
 - Item C – Intro to Federalism Reading
 - Item D – Federalism Case Study
 - Item E – Picking a Current Issue - Real World Context
 - Item F – Researching Your Issue
 - Item G – Federalism and DARE Persuasive Writing
 - Item H – Federalism Today: Persuasive Essay Outline
 - Item I – Peer Editing Guide

E. Time requirements:

This task will take approximately 2-3 weeks to complete. Your teacher will provide additional details regarding deadlines and due dates.

F. Scoring:

Your work will be scored using the *History/Social Science Research or Inquiry, Grade 12 Rubric* and *Federalism Presentation Rubric*. You should make sure you are familiar with the language that describes the expectations for proficient performance.



Federalism Presentation Rubric

Name:				
Speaking/ Listening (___/8)	8 Student uses extensive eye contact, appropriate body language, and voice projection. Presentation is engaging and genuinely inspires audience to agree with presenter. Student presents logical, well-developed claims with ample specific evidence that clearly supports claims. Audience does not have to guess why you chose your evidence.	7 Student uses eye contact, appropriate body language, and voice projection. Presentation is engaging. Student presents information, and supporting evidence logically such that audience understands entirety of the presentation.	6 Students' eye contact, appropriate body language, voice projection may vary. Evidence supporting line of reasoning and the organization, development, substance, and style are appropriate to purpose, audience, and task	5 Student rarely uses eye contact, appropriate body language, or voice projection. Student reads from notes/slides for entire presentation. Evidence is lacking and does not support claim or position.
Notes:				

Rubric for History/Social Science Research or Inquiry, Grade 12

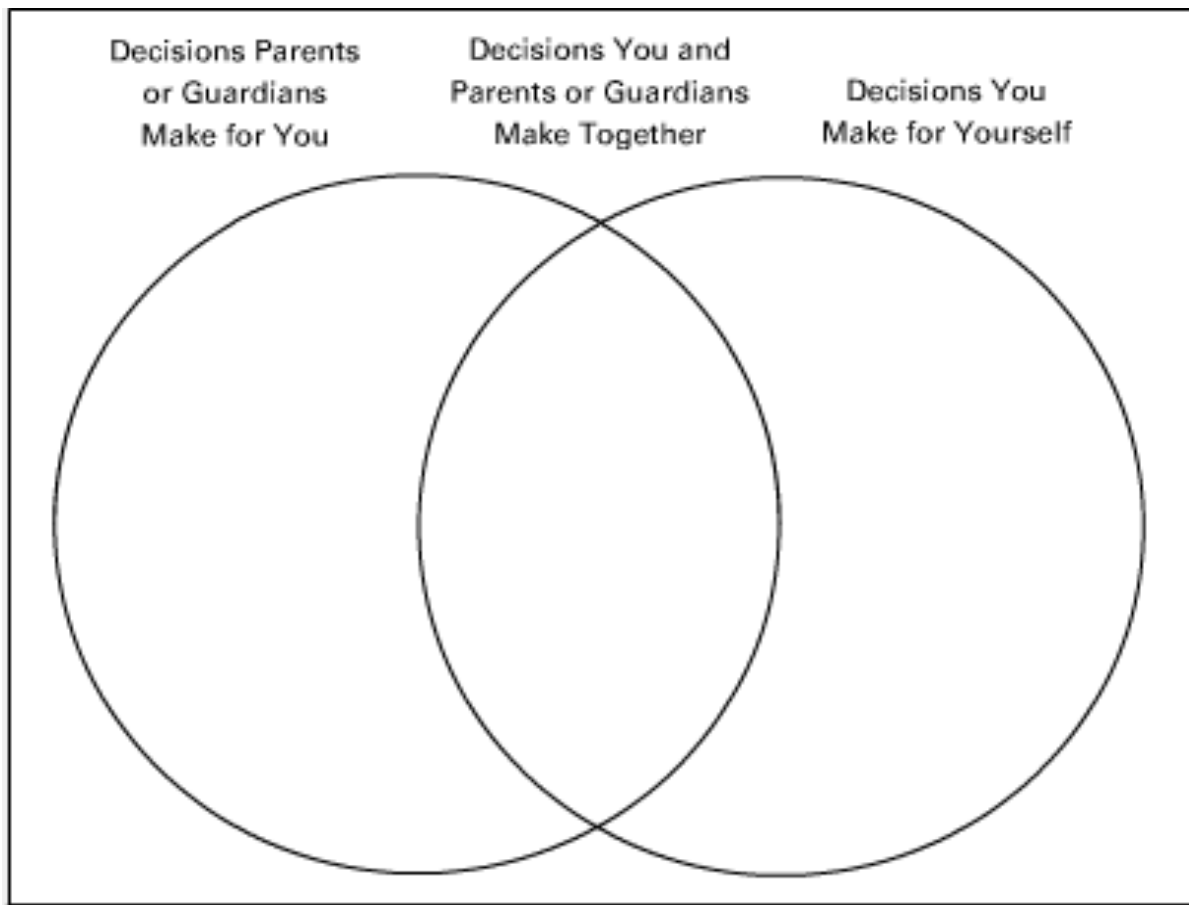
The ability to reason, problem-solve, develop sound arguments or decisions, and create new ideas by using appropriate sources and applying the knowledge and skills of a discipline.

	EMERGING	E/D	DEVELOPING	D/P	PROFICIENT College Ready	P/A	ADVANCED College Level
ARGUMENT <i>What is the evidence that the student can develop a historical/social scientific argument?</i>	<ul style="list-style-type: none"> Thesis is unclear or underdeveloped Makes unclear or irrelevant claims One claim dominates the argument and alternate or counterclaims are absent 		<ul style="list-style-type: none"> Thesis is relevant to the prompt or research question Makes claims relevant to the thesis Mentions questions or counterclaims 		<ul style="list-style-type: none"> Thesis clearly answers the prompt or research question Makes relevant, specific claims that support the thesis Discusses questions or counterclaims 		<ul style="list-style-type: none"> Thesis is precise and nuanced and clearly answers the prompt or research question Makes relevant, specific, and significant claims that support the thesis Develops and responds to questions or counterclaims to sharpen the argument
EVIDENCE <i>What is the evidence that the student can select sources and support the argument?</i>	<ul style="list-style-type: none"> One or two credible sources that share perspective are consulted Evidence is over-reliant on one source. Evidence is irrelevant OR absent 		<ul style="list-style-type: none"> Multiple credible sources are consulted Refers to evidence from few sources Evidence, including information and quotations, is included and supports the argument 		<ul style="list-style-type: none"> Sources consulted are credible and vary in perspective OR format (e.g., text, graphic, visual media, etc.) Evidence from relevant primary and secondary sources is used in major parts of the argument Evidence, including information and quotations, is explained to support the argument 		<ul style="list-style-type: none"> A variety of sources, both in perspective AND format (e.g., text, graphic, visual media, etc.) are consulted Evidence from relevant and significant primary and secondary sources is used throughout the argument A synthesis of evidence clearly, accurately, and convincingly supports the argument

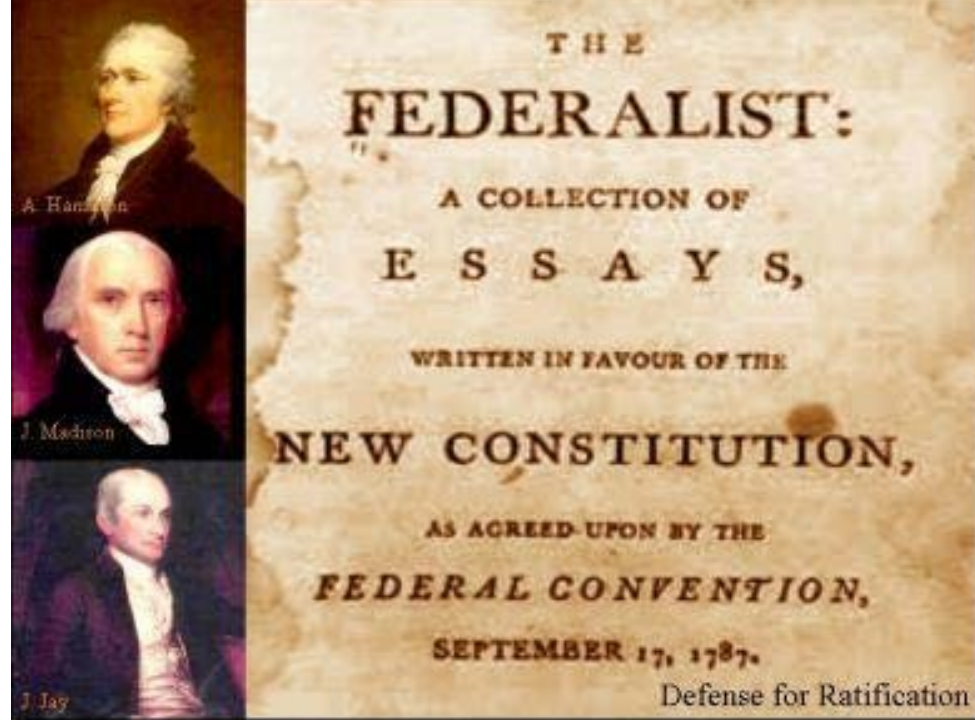
¹ This domain is to be scored only for tasks that require that students design their own projects.

<p>ANALYSIS <i>What is the evidence that the student can analyze sources?</i></p>	<ul style="list-style-type: none"> Information from sources is indiscriminately presented as fact One source dominates the argument 		<ul style="list-style-type: none"> Uses the date or origins of a source to pose questions Compares points of view or information from different sources 	<ul style="list-style-type: none"> Uses the date and origins of a source to accurately understand its contents or author's point of view Compares sources and notes discrepancies between them 	<ul style="list-style-type: none"> Uses the dates and origins of sources to accurately understand authors' purposes and perspectives and content of the sources Compares sources, noting discrepancies and challenging them with other information or explaining them
<p>CONTENT <i>What is the evidence that the student knows and can use accurate and relevant historical/social scientific content?</i></p>	<ul style="list-style-type: none"> Historical/social scientific content is absent and/or contains significant inaccuracies Connections to particular historical/social science contexts are absent 		<ul style="list-style-type: none"> Historical/social scientific content is limited but accurate Mentions relevant (e.g. historical, political, social, cultural) contexts in relation to topic 	<ul style="list-style-type: none"> Content is detailed, accurate, and supports the argument Includes a discussion of relevant (e.g. historical, political, social, cultural) contexts 	<ul style="list-style-type: none"> Content is accurate, conveys depth and breadth of knowledge on topic, and seamlessly supports the argument Situates issue in relevant and significant (e.g. historical, political, social, cultural) contexts

Federalism: Your parents and you!



1. What types of decisions do your parents or guardians make for you? What types of decisions do you make for yourself? What types of decisions do you make together?
2. Why are some decisions shared while others are not?
3. What are the benefits of making decisions this way? What are the drawbacks?
4. How do you think this system of making decisions is similar to the way power flows between national and state governments?



Federalism

Power sharing between the federal and states governments & how that has changed over time

The Big Picture



Due to the failures of the Articles of Confederation the Founding Fathers set up a federal system of government where the state and national gov'ts share power and are ultimately responsible to the people.

Questions We Will Consider:

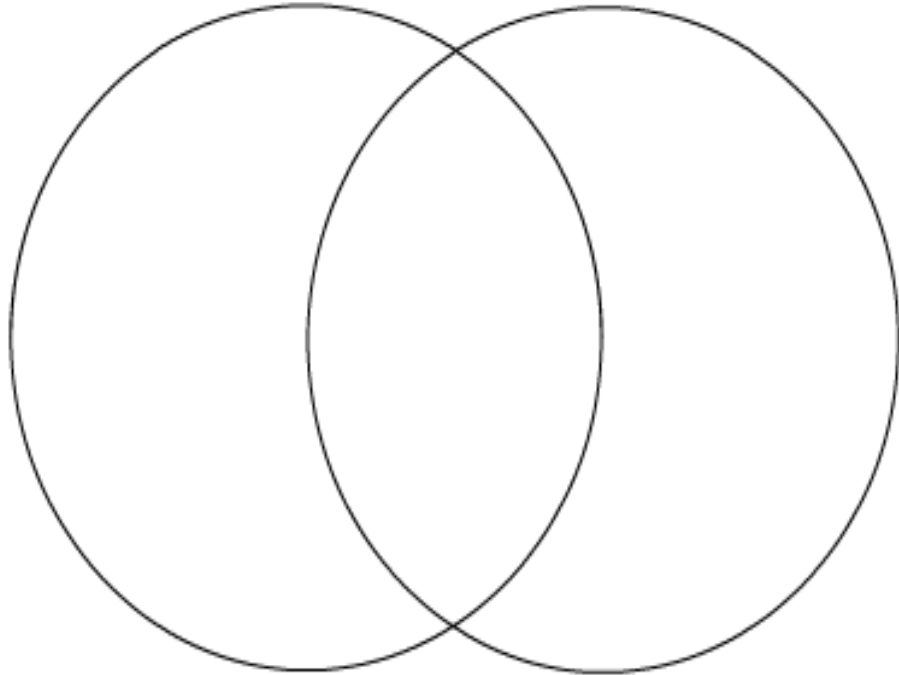
- **What are the key features of the Federal system as outlined in the Constitution?**
- **Changes over time?**
- **How does federalism impact**

Federalism: Your parents and you!

Decisions Parents
or Guardians
Make for You

Decisions You and
Parents or Guardians
Make Together

Decisions You
Make for Yourself



1. What types of decisions do your parents or guardians make for you?

What types of decisions do you make for yourself? What types of decisions do you make together?

2. Why are some decisions shared while others are not?

3. What are the benefits of making decisions this way? What are the drawbacks?

4. How do you think this system of making decisions is similar to the way power flows between national and state governments?

Constitution Continued

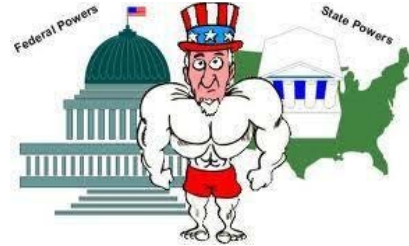
- Art I, Sect 9: Powers denied to the fed gov't
 - No prohibition of slavery before 1808, Congress cannot suspend habeas corpus except in rebellion or invasion
- Art I, Sect 10: Powers denied to the state gov't's
 - No state shall enter into treaties, shall coin money, grant titles of nobility.
 - Equal Protection Clause- No state shall “deny to any person within its jurisdiction the equal protection of the law” (14th Amendment, 1868)
- 10th Amendment: “Powers not delegated to the U.S. by the Constitution, nor prohibited by it to the states, are reserved to the states.”



How the Constitution establishes federalism

POWER SHARING:

1. **Inherent**– all gov't possess these powers
 - Immigration, Foreign policy
2. **Expressed/Enumerated** -- Stated specifically
 - Congress makes laws, Executive approves laws, Judiciary checks laws
3. **Implied** (Makes expressed powers work) – Congress establishes a civil service system to hire federal workers
 - Necessary and Proper Clause Article I Section 8 (also known as the Elastic Clause)
4. **Concurrent** - shared powers between the state and fed gov'ts
 - education, taxation
5. **Reserved** – 10th Amendment protects states rule



Powers of Federal and State Gov't

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Government & Level Power

FEDERAL

Expressed Powers

- Coin money
- Set up a postal system
- Maintain military forces
- Declare war
- Regulate interstate and foreign commerce
- Regulate immigration
- Negotiate treaties with foreign countries

SHARED

Concurrent Powers

- Guarantee civil rights and liberties
- Levy and collect taxes
- Provide for public safety
- Protect public health
- Establish courts
- Punish lawbreakers
- Borrow money
- Construct and maintain roads

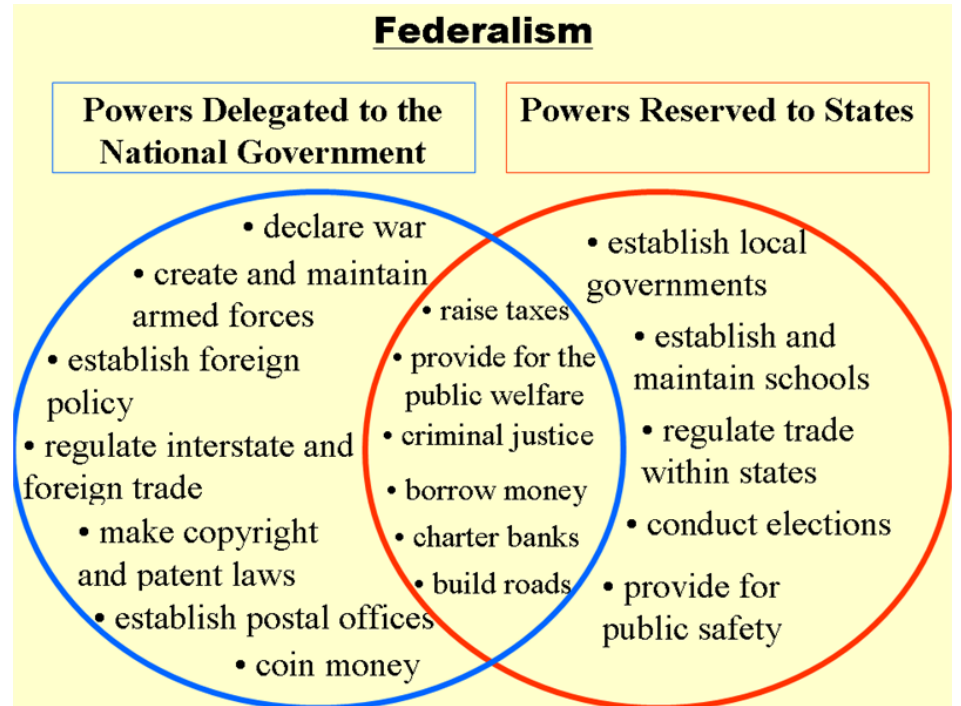
STATE

Reserved Powers

- Conduct elections
- Establish local governments
- Establish schools
- Regulate marriage, divorce, and adoption
- Regulate intrastate commerce
- Provide fire and police protection
- Enact license requirements

Different Types of Federalism

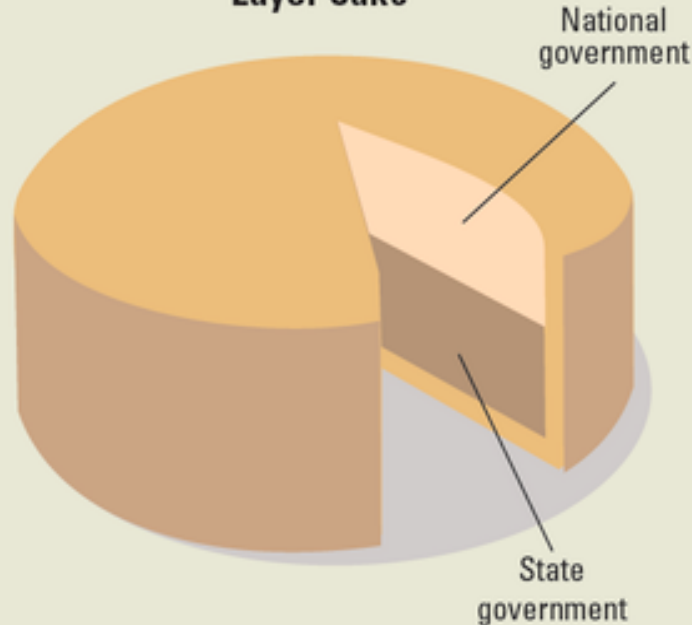
Dual/Layer Cake (1789-1933):
like a layer cake, states' and fed gov'ts each had distinct areas of responsibility, different levels rarely overlapped.



Dual and Cooperative Federalism

During the era of dual federalism, the national and state governments usually operated independently of one another. The two levels have often been compared to a layer cake. The shift to cooperative federalism led to more sharing of responsibilities. The result was a mingling of federal and state powers, like the swirls in a marble cake.

**Dual Federalism:
Layer Cake**



**Cooperative Federalism:
Marble Cake**



Different Types of Federalism

- **New Federalism (1969-present)**: Starts with Nixon who argued the fed gov't was too big,
 - Limits fed power, (devolution -giving states power and responsibility for some programs.)
 - Supreme Court in the 1990s further reduced the power of the fed government in important ways, particularly in relation to the commerce clause.



Devolution (New Federalism): -giving states power and responsibility for some programs.

sought to restore the balance between the two levels of government. This was done by returning control over many programs to the states.

Recipe for Regulated Federalism

Ingredients



Federal programs and unfunded mandates



Federal grants-in-aid, state and local



State and local officials

Recipe for the New Federalism

Ingredients



State programs and policies



Federal block grants, state and local tax dollars



State and local officials

Federalism: National, State, and Local Powers

EQ: How does power flow through our federal system of government?

Introduction:

You might not expect the gray wolf to be involved in a power struggle between the national government and state wildlife agencies. Under our federal system of government, states traditionally exercised control over wildlife within their borders. Wolves were universally viewed as threats to people and livestock. In fact, many states paid residents a bounty, or reward, for every wolf they killed. As a result, by the mid-1900s, wolves had all but disappeared from every state except Alaska.

Concern over the dwindling population of once-common animals such as the gray wolf led Congress to pass the Endangered Species Act in 1973. This law gave control of endangered animals to the U.S. Fish and Wildlife Service. Once the gray wolf came under federal protection, state bounties were banned and the hunting of wolves was outlawed in most areas. A person found guilty of killing a wolf could be punished with a fine of \$100,000 and a year in jail.

The Fish and Wildlife Service also worked to restore endangered species to habitats where they had once flourished. As part of this effort, federal officials reintroduced gray wolves to Yellowstone National Park in 1995. No wolves had been seen in the park, which includes parts of Idaho, Montana, and Wyoming, since 1939.

The return of wolves to Yellowstone Park triggered a storm of protest from nearby sheep and cattle ranchers. Fearing wolf raids on their livestock, they urged state officials to wrest control of the growing wolf population away from the federal government. Fish and Wildlife Service officials resisted these efforts, fearing that handing over wolf management to the states could lead to overhunting and even extinction.

By early 2007, the wolf population in Idaho and Montana had grown to the point at which the Fish and Wildlife Service agreed to return management of wolves back to state agencies. Wyoming, however, had not yet developed a management plan that both state and federal officials found acceptable.

This long and often-heated debate over who should manage the gray wolf is an example of the kinds of conflicts that can arise in a federal system of government. This chapter will trace the evolution of federalism in the United States over the past two centuries, including the important role of state and local governments within our federal system of government.

- 1. Why did the gray wolf population become a government issue?**
- 2. What were the national (federal) government's arguments?**
- 3. What were the state governments' arguments?**
- 4. How do you think power might flow through our federal system of government?**

Section 2: The Establishment of a Federal System

The United States was the first nation-state founded with a federalist system of government. The adoption of such a system by the framers of the Constitution was not so much a choice as a necessity. The delegates attending the Constitutional Convention in 1787 knew full well that the 13 states would be reluctant to give up any real power to a national government. As a result, the framers were careful to spell out how power should be divided among the national government and state governments.

The Constitutional Division of Powers

The U.S. Constitution divides powers into three categories: expressed, concurrent, and reserved. The diagram on the opposite page shows how these powers are distributed between the national and state governments.

Expressed powers are powers specifically granted to the national government. The Constitution lists only 17 of these specific powers. Some, such as the power to coin money or to make treaties with other countries, are delegated exclusively to the national government. Others, such as the power to levy taxes, are concurrent powers shared by the national and state governments.

The Constitution says little about the powers reserved by states. But it does place some requirements on state governments. The Full Faith and Credit Clause, for example, insists that states recognize, honor, and enforce one another's public actions. Because of this clause, a driver's license issued by your home state is recognized as legal in any other state.

In addition, the Privileges and Immunities Clause says a state cannot discriminate against residents of other states or give its own residents special privileges. This means that if you move to a new state, you will enjoy all of the rights given to any other citizen of that state.

The Tenth Amendment further clarifies the constitutional division of powers by declaring that powers not specifically delegated to the national government are reserved for the states. These reserved powers include overseeing public schools, regulating businesses, and protecting state resources. The states also reserve the power to establish and regulate local governments.

The Benefits of a Federal System

While the framers had little choice but to create a federal system of government, they could see several benefits of federalism. Four of the most important are listed below.

Federalism protects against tyranny of the majority. By dividing power among several units of government, federalism makes it difficult for a misguided majority to trample the rights of a minority. If a minority group feels abused in one state, its members can move to a state where their rights are more likely to be respected.

Jonah Goldberg, an editor with the National Review, compared the states to housing dorms on a hypothetical college campus to describe how this protection benefits a diverse population. On this campus, roughly half of the students like to have loud parties every night, while the other half like to have peace and quiet for studying. He wrote,

A purely democratic system where all students get to decide dorm policy could result in the tyranny of 51 percent of the students over 49 percent of the students. The party-hardy crowd could pass a policy permitting loud music and . . . parties at all hours of the night. Or if the more academically rigorous coalition won, they could ban "fun" of any kind, ever . . .

But, if you allowed each individual dorm to vote for its own policies, you could have a system where some dorms operate like scholarly monasteries and other dorms are more fun than a pool party . . . Theoretically, 100 percent of the students could live the way they want. Maximized human happiness!

—Jonah Goldberg, "United States of Happiness," *National Review Online*, 2004

Federalism promotes unity without imposing uniformity. As Goldberg’s example suggests, federalism allows groups with different values and different ways of life to live together in peace. Likewise, federalism allows states to pass laws that reflect the needs and goals of their citizens while still remaining part of the union of states. All states, for example, support public education for young people. But how schools are funded and regulated differs from state to state, depending on local preferences.

Federalism creates “laboratories” for policy experiments. The flexibility of federalism allows states to act as testing grounds for innovative solutions to common problems. U.S. Supreme Court Justice Louis Brandeis once noted,

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.

—Justice Louis Brandeis, dissent in *New State Ice Co. v. Liebmann*, 1932

If a state tries a new idea and succeeds, other states will follow suit. On the other hand, if an experimental policy fails, the problems that result are limited to one state. In some cases, a failure may provide lessons to others about better ways to implement policies.

Federalism encourages political participation. Finally, federalism provides an opportunity for people to be involved in the political process closer to home than the nation’s capital. As Goldberg observed,

The more you push . . . decisions down to the level where people actually have to live with their consequences, the more likely it is they [the people] will be a) involved and interested in the decision-making process, and b) happy with the result. Federalism . . . requires the consent of the governed at the most basic level. Sure, your side can lose an argument, but it’s easier to change things locally than nationally.

The Drawbacks of a Federal System

For all of the benefits, there are drawbacks to a federal system. One is the lack of consistency of laws and policies from state to state. This can create problems when people move from state to state. Drivers who cross state lines, for example, may not be aware that the speed limits and traffic laws of one state may not apply to the next. Teachers and other professionals often face hurdles when they move from state to state. A teaching credential valid in one state may not allow a teacher to teach in another state without additional testing or coursework.

Another drawback of our federal system is the tension it sometimes creates between state and federal officials. The Constitution does not always draw a clear dividing line between national and state powers. For example, it does not specify whether control of wildlife should be a federal or a state responsibility. The same can be said for other issues, such as regulating air quality and providing health care to the poor. When questions arise over who is in charge, it is often left to the Supreme Court to draw the line between the state and federal authority.

Section 3 - The Evolution of Federalism

There are approximately 88,000 national, state, and local units of government in the United States. The diagram on the opposite page shows how that total breaks down into a pyramid of governments. Not surprisingly, with so many different units of government at work in this country, relations among the different levels have evolved and changed over time.

Dual Federalism: A Layer Cake of Divided Powers

The framers of the Constitution disagreed among themselves about the ideal balance of power among the different levels of government. But they did agree, as James Madison wrote in *The Federalist No. 45*, that the powers of the national government were “few and defined” and the powers of the states “numerous and indefinite.”

From 1790 to 1933, national and state governments maintained a fairly strict division of powers. Political scientists sometimes refer to this system as **dual federalism**, or “layer cake” federalism. In such a system, the two levels of government are part of the whole, but each has its own clearly delineated responsibilities.

During the era of dual federalism, the Supreme Court sometimes played the role of referee between the states and the national government. In the case of *McCulloch v. Maryland* (1819), which was discussed in Chapter 4, the Court made it clear that federal laws took precedent over state laws when the two came into conflict.

A few years later, the Court further clarified the roles of the state and national governments, this time in the regulation of commerce. The case of *Gibbons v. Ogden* (1824) arose when the New York State legislature granted Aaron Ogden a monopoly on steamboat operations between New York and New Jersey. Ogden went to court in New York to force a rival steamboat operator, Thomas Gibbons, off the river. When the state court ruled in Ogden’s favor, Gibbons appealed the decision to the Supreme Court.

Lawyers for Gibbons argued that New York had no authority to limit commerce on waterways between states. The Supreme Court agreed. Chief Justice John Marshall concluded that the Constitution clearly gives control of trade among the states to the national government. As a result, New York’s grant of a monopoly to Ogden was unconstitutional.

The Gibbons decision drew a sharp line between state and federal power. The national government controls **interstate commerce**, or trade among the states. The states control **intrastate commerce**, or trade within their borders. This clear division of power was typical of how federalism worked during the dual federalism era.

Cooperative Federalism: A Marble Cake of Mixed Powers

The Great Depression of the 1930s led to a very different conception of federalism. As the Depression deepened, the efforts of state governments to feed the hungry and revive the economy proved inadequate. In desperation, Americans turned to the national government for help.

On taking office in 1933, President Franklin Roosevelt launched a flurry of legislation known as the New Deal. These New Deal programs ushered in a new era of shared power among national, state, and local governments. Unlike in the past, when officials at different levels had viewed each other with suspicion, they now worked together as allies to ease human suffering.

Political scientists refer to this new era as one of **cooperative federalism**, or “marble cake” federalism. Political scientist Morton Grodzins wrote of the federalist system during this period,

When you slice through it you reveal an inseparable mixture of differently colored ingredients . . . so that it is difficult to tell where one ends and the other begins. So it is with the federal, state, and local responsibilities in the chaotic marble cake of American government.

—“The Federal System,” 1960

The diagram on this page illustrates the differences between dual (layer cake) and cooperative (marble cake) federalism.

A key ingredient in marble cake federalism was a mix of federal **grants-in-aid** programs. Grants-in-aid are funds given by the federal government to state and local governments for specific programs, such as aid to the unemployed. Such grants had long been used by the national government, but only for very narrow purposes. Roosevelt greatly expanded the use of grants-in-aid to get help to the needy. In 1927, shortly before the Depression began, federal funds made up less than 2 percent of state and local government revenues. This figure jumped to just over 13 percent early in the New Deal and remained near there until 1960.

Regulated Federalism: More Money with More Strings Attached

A generation later, President Lyndon Johnson set out to expand on the New Deal by creating what he called the Great Society. The Great Society was a set of programs designed to end poverty, eliminate racial injustice, and improve the environment.

Like Roosevelt, Johnson looked to state and local governments to carry out many of his new programs. As during the New Deal, the federal government provided funding in the form of grants. But unlike earlier grants-in-aid, Great Society grants often came with strict regulations as to how the money could be spent. Johnson called his partnership with state and local governments creative federalism. Political scientists, however, prefer the more descriptive term **regulated federalism**.

Johnson's Great Society legislation led to a huge increase in federal involvement in state and local governments. Political scientist Timothy Conlan observed that by the end of the 1960s,

The federal government became more involved in virtually all existing fields of governmental activity—including many that had been highly local in character (for example, elementary and secondary education, local law enforcement, libraries, and fire protection). In addition, new public functions were established, such as adult employment training, air pollution control, health planning, and community antipoverty programs.

—Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform*, 1998

Although state and local governments welcomed the new influx of federal funds, they were not happy about the federal regulations that came with the money. They were even less happy about the rapid growth of **unfunded mandates** that began in the 1960s. These are programs and regulations imposed on state and local governments by Congress without adequate funding, if any, attached to them.

Unfunded mandates were attractive to members of Congress, since members could declare that they were solving problems without having to raise taxes to fund the solutions. Instead, the mandates put the burden of paying for those solutions on state and local governments. In effect, Congress provided the recipe for solving problems but required state and local governments to provide the ingredients—both money and people—to make those solutions work.

New Federalism: Returning Power to the States

The rapid expansion of federal power in the 1960s alarmed people who valued state and local control. While running for president in 1968, Richard Nixon promised voters that he would restore “true” federalism by reigning in federal power. Nixon called his pledge to return power to the states the **new federalism**. Political scientists call these more recent efforts to return power to the states **devolution**.

Devolution began slowly in the 1970s and 1980s, first under President Nixon and later under President Ronald Reagan. Both presidents tried to shift power back to the states by encouraging them to write their own “recipes” for solving problems. The national government's role was reduced to providing ingredients, mostly in the form of federal funds.

Devolution picked up speed in 1994, when Republicans gained control of Congress for the first time in 40 years. Once in power, the new Republican majority enacted the Unfunded Mandates Reform Act. The purpose of this 1995 law was to stop Congress from burdening states with responsibilities without providing adequate funding.

A year later, Congress pushed devolution still further when it overhauled the nation's welfare system. In the past, federal officials had closely regulated how states gave out welfare payments to needy families. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act, more commonly known as the Welfare Reform Act, returned control of welfare systems to state governments.

The federal government continued to provide "ingredients" in the form of **block grants** to the states. But unlike the highly regulated grants-in-aid that funded Great Society programs, block grants left states free to decide how best to spend the money they received. One of the requirements imposed on state welfare programs was that they limit the time a person could receive federally funded welfare payments to five years.

Support for Devolution from the Supreme Court

In recent years, the Supreme Court has contributed to devolution in a series of decisions limiting federal power. One of the first involved the Gun-Free School Zones Act of 1990, a law passed by Congress to create "gun free" zones around public schools. Soon after the law's passage, Alfonso Lopez Jr., a high school student in Texas, was convicted of violating the law by taking a gun to school. Lopez appealed his conviction on the grounds that Congress lacked the power to regulate gun possession in schools.

United States v. Lopez reached the Supreme Court in 1994. The government argued that possession of a firearm in a school zone could lead to violent crime. Such criminal activity, in turn, could discourage travel in the area. Therefore, the law was a legitimate use of Congress's power to control interstate commerce.

The Court did not agree. It struck down the 1990 act as an unconstitutional expansion of federal power. In his decision, Chief Justice William Rehnquist wrote,

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would . . . convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road . . . but we decline here to proceed any further. To do so would require us to conclude that . . . there never will be a distinction between what is truly national and what is truly local . . . This we are unwilling to do.

If the past is any guide, federalism will continue to evolve in the future. Devolution may continue to shift power back to the states in some areas, such as gun control. In other areas, such as dealing with terrorism, the national government may expand its power. What is certain is that the debate over how power should be shared will continue.

Do This: After reading section 3 create a timeline in your notebook, and place each of these terms along it:

- Dual federalism
- Cooperative federalism
- Regulated federalism
- New federalism (devolution)

For each term, include the approximate dates that this type of federalism existed and a simple illustration. Also briefly explain how national and state powers were defined during each period.

Gun Control Laws and the Constitution

Gun rights and gun control are issues that have sparked heated debate for many years throughout the country. At the heart of the matter is the meaning of the 2nd Amendment of the U.S. Constitution, which reads:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Whatever the full meaning of this amendment, it is focused mainly on gun rights. However, it does not clearly spell out what the government can and cannot do to regulate gun ownership and gun use. Nor does it clearly spell out whether such regulation is to be decided by the states separately, or by the national government acting for all the states.

In some gun control cases, those favoring tougher action by the national government base their views on the Constitution's Commerce Clause. They say firearms are a commercial product that the Commerce Clause gives Congress the authority to regulate. Or they say gun violence can disrupt society and interstate commerce in ways that allow Congress to act based on the Commerce Clause. Opponents say these arguments stretch the meaning of the Commerce Clause too much and give Congress authority the framers never intended it to have.

The two following brief articles deal with this question of state versus national action to regulate guns.

- J.B. Wogan, "Who Should Regulate Guns?," *Governing: The State and Localities*, June 28, 2013, online at: <http://www.governing.com/blogs/fedwatch/gov-who-should-regulate-guns.html>
- Michael De Los Santos, "Gun Control Facts: The Commerce Clause Makes Gun Control a State Question," Policy.Mic, January 14, 2013, online at: <http://mic.com/articles/22853/gun-control-facts-the-commerce-clause-makes-gun-control-a-state-question>

As you read the articles, pay attention to the kind of argument each writer makes. What, if anything, do the articles say about the right to bear arms itself? What regulations do they seek to impose on that right? What basic argument do they make about state versus national authority over gun regulation? And finally, what constitutional arguments do they make – that is, how well do they identify the expressed, concurrent, and reserved constitutional powers that apply to this issue?

Once you have read both articles, briefly answer the question on the next page.

Questions

1. Does Michael De Los Santos want gun regulation to be left up to the states or the national government? What are his strongest arguments in favor of his position?
2. Does J. B. Wogan want gun regulation to be left up to the states or the national government? What are his strongest arguments in favor of his position?
3. Do either of these writers mention any of the expressed, concurrent, and reserved powers that apply to this issue? If so, identify the ones each writer mentions.
4. Which writer shows most clearly how the constitutional division of powers justifies his view? Cite details to support your answer.
5. With which author do you agree overall as to whether gun control should be up to states or to the national government? Why?

Pick an issue that you are passionate about or want to learn more about.

What is your issue?

Why did you choose this issue?

How does this issue impact you?

What does this issue “look like” in your community, state, or country?

Who do you think should have the power to make decisions, laws, rules, etc., concerning your issue?

Federalism Project: Researching Your Issue

Research your issue to find evidence to develop a position on whether the state or the federal government should have power to legislate on the topic you chose. Make note of the sources you consult on the back of this paper or on an additional sheet.

Your paper & presentation should discuss:

- Context/Background information on your issue (*you should have a quick 30 second summary of the history and debate that surrounds your topic*)
- Arguments in favor of the federal government
- Arguments in favor of the state government
- Constitutional justification for your claim (clauses, articles, powers, amendments, etc.)

Answer the following questions as you research your issue:

1. What is the central debate with your issue?
2. What current events or historical details are important to know in regards to your issue?
3. What is the **state's perspective** (1-2 paragraphs) on this issue?
4. What is the **federal government's** (1-2 paragraphs) perspective on this issue?
5. Does the Constitution support State or Federal Power for your issue?
 - a. Which expressed, concurrent, or reserved powers apply to your issue? Explain.
 - b. Are there any amendments that relate to your issue? Explain.
 - c. Does the Commerce Clause, Supremacy Clause, or Elastic Clause apply to your issue? Explain.
6. What Supreme Court decisions have discussed your issue, and what was their decision?

Persuasive Writing/Argument: The DARE Strategy

THIS IS FOR THE BODY OF YOUR ARGUMENT!!

Directions: You will develop a short persuasive speech for a panel of judges. To prepare you will fill in the matrix below using the DARE writing strategy. Make sure to refer to your resources and guiding questions in order to have legit facts and substance.

One strategy for persuasive writing is creating paragraphs in the following order:

DARE:

- **D**evelop topic sentence
- **A**dd supporting ideas (evidence!!)
- **R**eject an argument for other side
- **E**nd with conclusion

Develop topic sentence	Example 1: The Dream act must get passed!! Example 2: The Dream act will destroy American society!
Add supporting ideas	Example 1: Undocumented students have a right to an education and deserve a chance to get legal status. Example 2: The Dream Act will give amnesty to people who have broken our immigration laws and encourage more people to come here illegally!
Reject an argument for other side	Example 1: Undocumented students are not criminals, they want to go to college so they can be productive members of society. Example 2: Undocumented students don't deserve the same rights as documented students because they are breaking our immigration laws.
End with conclusion	Example 1: Therefore, you must pass the Dream Act! Example 2: That is why you must oppose the Dream Act!

Federalism Persuasive Essay and Presentation

I. Introduction: Analysis of issue through providing context (This is the introduction of your essay)

1. What is the state's position/perspective on this issue? How does that clash with the federal government's laws, opinions, etc.?
2. What is the Federal Government's position/perspective on the issue? How does that clash with the states?

II. Facts of Federalism and the U.S. Constitution (This is the body of your essay)

1. What does the Constitution say about your issue?
2. Which of the expressed, concurrent, and/or reserved powers in the U.S Constitution connect to your issue?
3. What positive and negative impacts does this issue have on the community if the federal government has the power?
4. What positive and negative impacts does this issue have on the community if the state government has the power?

Use some of these terms within your evidence to support your argument: Tenth Amendment, Fourteenth Amendment, Reserved Powers, Concurrent (shared) Powers, Expressed (Enumerated) Powers, Commerce Clause, Privileges and immunities clause, New Federalism, Block Grants, Necessary and Proper Clause.

III. Prediction and Recommendation (Conclusion to Essay)

Prediction: Based on your research, what might you guess will happen next between the state and the federal government? Who appears to be winning the fight?

Recommendation:

What do you think should happen in order to best support your issue and what is best for the community/state?

Peer Editing

After following the directions, write **advanced** or **needs work** for each element. Then give a specific suggestion for how the writer can improve that part of the paper.

Directions	Advanced (Yes/ Extensively) OR Needs Work	Give one specific suggestion for the writer. How can he or she improve this part of the paper?
1. Does the essay clearly take a stance on which level of government should address the issue?		
2. To what extent are the US Constitution and Supreme Court precedents cited?		
3. What evidence is used to support that this level of government should address the issue?		
4. Is there elaboration and analysis of the evidence?		
5. Are the sources accurately contextualized to provide the reader a better sense of their importance and meaning?		
6. Is there a coherent structure to the essay that incorporates transitions and paragraph structures to add clarity to the essay?		

Additional Comments: