

Lesson 3: A Federal Constitution

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to explore the relationship of the state governments to the central government formed by the U.S. Constitution. The Background Essay for the lesson defines the concept of “federalism” as it applies to the kind of government the Constitution forms. That is, it is a system in which powers are divided up between the states and a strong federal government, but also shared among them as well. The essay then refers to the heated ratification debates in which Federalists and Anti-Federalists argued about whether the new Constitution gave too much power to the federal government. Student Activity 1 and Student Activity 2 for the lesson ask students in small groups to read and answer questions about two key participants in those debates.

When the lesson is completed:

- Students will be able to describe and explain the ways the Constitution divides power between the state and federal governments.
- Students will be able to explain why the issue of federalism and the balance of authority between the states and the federal government were central to the debates over the ratification of the Constitution.
- Students will discuss and evaluate the contrasting views of “Brutus” and James Madison regarding the Constitution and its likely relationship to the state governments.

Teacher Directions

Before this class meets: Divide the class into two or four small groups. As homework or during an earlier class period, have all students read the lesson’s Background Essay “Federalism and the U.S. Constitution.” Have the students from half of the small groups read Sources 1 and 2 for this lesson. Have the students from the other half of the groups read Sources 3 and 4. (Some of this reading could be done during class if it seems time will permit.) The Background Essay deals with the way the Constitution structures the relationship between the states and the federal government.

In class: Briefly discuss the Background Essay and address any questions the students have about it. Then provide one half of the student groups with copies of Student Activity 1. Provide the other half of the groups with Student Activity 2. These pose questions about the source readings assigned to each group. Group 1 is assigned a passage from *Brutus I* and from James Madison’s *Federalist No. 45*. Group 2 is assigned another passage from *Brutus I* and from Madison’s *Federalist No. 10*. Have each group discuss the questions and take notes on their answers. Leave 15 minutes or so for students to share their answers in an all-class discussion.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand

(In order of their appearance in the lesson material.)

- **confederation**—an alliance of states or nations that allows each member to govern itself while agreeing to some common rules and purposes.
- **federalism**—a political system in which the same territory is controlled by two levels of government.
- **naturalization**—the process by which U.S. citizenship is granted to a lawful permanent resident.
- **ratify**—to approve an act so as to make it legally binding.
- **the “necessary and proper” clause**—the last on the list of enumerated powers that Article I, Section 8 of the Constitution grants to Congress. It allows Congress to do what is necessary and proper actually to implement any of the other powers in a given set of circumstances.
- **duties, imposts, and excises**—“duties and imposts” both refer to taxes on imports or exports; “excises” are taxes on the manufacture and sale of goods produced in the U.S.

Sources to Read

This lesson’s Background Essay: “Federalism and the U.S. Constitution”

The following are located in the “Sources for this Lesson” section and fully at the indicated link.

- **Source 1:** A passage from “Brutus I” available online from Teaching American History at: <https://teachingamericanhistory.org/document/brutus-i/>.
- **Source 2:** A passage from *Federalist No. 45* available online from Yale Law School’s Avalon Project at: https://avalon.law.yale.edu/18th_century/fed45.asp.
- **Source 3:** A different passage from “Brutus I” available online from Teaching American History at: <https://teachingamericanhistory.org/document/brutus-i/>.
- **Source 4:** A passage from *Federalist No. 10* available online from Yale Law School’s Avalon Project at: https://avalon.law.yale.edu/18th_century/fed10.asp.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 17; Grade 12, No. 18; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- Robert J. Allison and Bernard Bailyn, editors, *The Essential Debates on the Constitution: Federalist and Antifederalist Speeches and Writings* (Library of America, 2018).
- M. E. Bradford, *Original Intentions: On the Making and Ratification of the United States Constitution* (University of Georgia Press, 1993).
- Hillsdale College Politics Faculty, editors, *The U.S. Constitution A Reader* (Hillsdale College Press, 2012)
- Gordon S. Wood, *Power and Liberty: Constitutionalism in the American Revolution* (Oxford University Press, 2021).
- Gordon S. Wood, “The Articles of Confederation and the Constitution” (Humanities Texas, July/August 2010) available online at: <https://www.humanitiestexas.org/news/articles/gordon-s-wood-articles-confederation-and-constitution>.

Background Essay

Federalism and the U.S. Constitution

The American Revolution was a revolt of thirteen of Britain’s North American colonies. They united in a Continental Congress for the purposes of fighting that revolutionary war. After the war, those now independent states adopted the Articles of Confederation as their governing set of rules. Throughout this time, most Americans fiercely defended the independence of the state they lived in. Many identified themselves more strongly as citizens of their state than as members of a unified nation. This spirit is reflected in the Articles, which left almost all power in the hands of the individual state legislatures. This led to many difficulties. Under the Articles, states often failed to provide taxes they had agreed to. The national government was often powerless to settle disputes between the states.

Soon, some of America’s most admired leaders thought these chaotic conditions presented a danger to the survival of the nation. The states authorized these leaders to meet and revise the Articles. In sessions closed to the public, they met in Philadelphia in the summer of 1787 and instead decided to ignore the Articles and design an entirely new system. The U.S. Constitution was their answer. It provided for a much stronger national government that limited the powers of the states in several ways. However, it did not abolish their separate governments. It tried to combine state governments and the national government in a new way. The term for this new, middle way is “federalism.”

The Founders opposed what they called a “unitary” government—that is, one all-powerful national government. However, they also opposed the loose “confederation” the Articles had created. In that looser government, nearly all power rested with the states. Those states only granted a few areas of control to the weak central government. What the Founders wanted was a middle way, a system in which powers could be divided between the states and a strong federal government, but also shared between them as well.

One way the powers were divided up was by limiting the federal government to tasks that were truly national in effect. Article I, Section 8, provides a list of all the powers granted to the federal government. For example, it has the power to declare war and raise armies, to regulate commerce with foreign nations and among the states, to establish a rule for naturalization, to coin money, to raise taxes, and to impose duties, excises, and imposts uniformly throughout the country. The Founders believed these powers in their very nature were ones that only a strong federal government should enforce for the entire country. The states, meanwhile, would continue to have all the powers needed to govern on the local and state level. Those powers included policing crime, education, rules on the ownership of property, the regulation of trade within the state, maintaining state roads, or taxing to support state needs.

This division of powers between the federal and the state governments is another one of the “checks and balances” that maintain our system of limited government.

However, the Founders did not want two entirely separate levels of government. They wanted the states to be involved in the way the federal government worked. So, for example, the states play a role in how both the House of Representatives and the Senate are selected. State population determines each state's number of House members. The Senate is made up of two Senators from each state, and originally the Constitution gave each state legislature the power to select its state's Senators. This representation by state meant that state concerns would likely be uppermost in the plans of many members of Congress. The Electoral College also makes the states central to the selection of the President. A set group of Electors for each state means that all the states, as states, have a say in who the next President will be.

The Constitutional Convention completed its work on September 17, 1787. It then submitted the U.S. Constitution to the public. Before it could go into effect, it had to be ratified by conventions in at least nine of the thirteen states. Those who supported the Constitution called themselves "Federalists." However, not everyone was happy with what the Convention had come up with. These opponents came to be labeled "Anti-Federalists." Vigorous debates between these two sides took place in each state.

Some of the most heated arguments were about the Constitution's likely effect on the independence of the states. For many Anti-Federalists, the Constitution seemed to give far too much power to the new federal government. Some felt that power could easily be used to eliminate the state governments. A related concern was about the huge territory over which the federal government would rule. The fear was that the federal government would be too remote and out of touch. Unlike the states, it would have to deal with a great many interest groups and factions, and these could cause constant turmoil and prevent the government from acting in a calm and thoughtful way. The Federalists devoted a good deal of energy to countering these two concerns as the states were preparing to hold conventions to vote on whether to ratify the new Constitution.

One well-known Anti-Federalist wrote several articles under the name Brutus. His first article addresses both issues—about the government's powers and about its great geographical extent. James Madison addressed these same issues in two separate essays included in *The Federalist Papers*. The student activities for this lesson will ask you to look more closely at the arguments these two men made regarding the federal government's powers, its size, and its likely relationship to the state governments.

Sources for this Lesson

Source 1: Brutus I on the danger of an all-powerful federal government

“Brutus” was an Anti-Federalist from the state of New York. He may have been Robert Yates, a New York delegate to the Constitutional Convention. The passage here is from the first of several articles Brutus published criticizing the proposed Constitution. Available online from Teaching American History at: <https://teachingamericanhistory.org/document/brutus-i/>.

A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding. —By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.” . . .

[T]he legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. . . .

Source 2: James Madison in *Federalist 45* on the limited powers of the federal government

The Federalist Papers were a series of 85 essays written between October 1787 and May 1788 by James Madison, Alexander Hamilton, and John Jay, all using the pen name “Publius.” The essays appeared in various New York state newspapers. Their purpose was to convince New Yorkers to support ratification of the proposed U.S. Constitution. This passage is from

Federalist 45, written by James Madison. Available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed45.asp.

The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and exclusively by the State legislatures. Even the House of Representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the State legislatures. Thus, each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing towards them.

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.

The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security.

Source 3: Brutus I on the danger of a large republic

This is another passage from Brutus I, his first in a series of essays opposing ratification of the U.S. Constitution. Available online from Teaching American History at: <https://teaching-americanhistory.org/document/brutus-i/>.

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States. . . .

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other.

Source 4: James Madison in *Federalist 10* on the value of an extended republic

This passage is from another essay in *The Federalist Papers* by James Madison. It is from the last part of one of his best known of these essays, *Federalist 10*. Available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed10.asp.

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments

render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

Student Activity 1

Student Group 1

Instructions to the Group: Have all group members read and discuss Source 1 and Source 2 and look over the questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. In a few sentences, explain what Brutus I in Source 1 is worried about?
2. Why does he put so much emphasis on the “necessary and proper” clause at the end of Article I, Section 8 of the U.S. Constitution?
3. In a few sentences, summarize why Madison in Source 2 thinks that the fears Brutus expresses are wrong?
4. Which of these two sources makes the most convincing argument? Why do you think so?
5. Today, the federal government is far larger and stronger than it was in 1787. Considering our country today, were Brutus's fears expressed in source 1 valid? Why or why not?

Use additional sheets for your notes as needed. Share your group's view with the class.

Student Activity 2

Student Group 2

Instructions to the Group: Have all group members read and discuss Source 3 and Source 4 and look over the questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. In Source 3, Brutus says “a free republic cannot succeed” in a country spread over a territory as huge as the United States in 1787. In a few sentences, sum up the specific reasons he gives for this belief.
2. Brutus says a large republic would result in “a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other.” Does Madison (in Source 4) disagree with this prediction? Or does he not believe a “constant clashing of opinions” would be all that serious a problem? Explain your answer.
3. Madison seems most worried about a government controlled by “the secret wishes of an unjust and interested majority.” Why does he think this danger would be less likely to arise in a republic extended over a large area?
4. Think about the ways America has changed since 1787, in extent, population, number of states, technology, industry, society, and size and purposes of government. Considering these changes, whose views seem more valid today, those of Brutus or those of Madison?

Use additional sheets for your notes as needed. Share your group's view with the class.