



The U. S. Constitution Series
In Partnership with the National Constitution Center

AP[®] U.S. Government and Politics

Federalism, the Commerce Clause, and
the Tenth Amendment



Federalism, the Commerce Clause, and the Tenth Amendment

Workshop Handbook

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Federalism, the Commerce Clause, and the Tenth Amendment

Essential Question:

How do constitutional provisions related to federal and state powers impact the way government functions and policies are developed or enforced?

Directions

Using the checklist below, indicate which level of government (federal, state, or local) is responsible for the development and/or enforcement of policy related to each topic. It is possible that more than one level of government is responsible for dealing with the issue, in which case you can indicate that by checking multiple boxes. Then, provide a brief rationale for your choices.

Issue	Federal	State	Local	Rationale
Health Care				
Legalization of Marijuana				
Immigration				
Gun Control				
Same-Sex Marriage				
Educational Reforms				
Environmental Hazards				

Federalism, the Enumerated Powers, and the Commerce Clause

The Interactive Constitution: The Constitution includes sections that support a nation-centered view of federalism and other areas that support a state-centered perspective. In this lesson module you will examine federalism as laid out by the founding delegates in Article I and in the Tenth Amendment, as well as legal doctrine created from constitutional interpretations. Using the National Constitution Center's Interactive Constitution (<http://constitutioncenter.org/interactive-constitution>), you will analyze expert commentaries on the intent of the constitutional delegates, the impact of the Bill of Rights, and the precedents set by Supreme Court cases.

First, let's use the Interactive Constitution to determine what federalism is and how it has been implemented since the U.S. Constitution was adopted in 1787.

- ▶ Navigate your browser to the Interactive Constitution website: (<http://constitutioncenter.org/interactive-constitution>).
- ▶ Click on the "Explore It" link near the bottom of the page to go to the main page of the Interactive.
- ▶ The page includes links with the numbers and titles of the Amendments. It also includes a link in the top right-hand corner of the page to the Articles of the Constitution, titled "Article."
- ▶ Click on the "Article" link and choose Article I. The main page of the Article contains the text of the Article, as well as links to specific sections of the Article. Click on the section titled "Powers of Congress."
- ▶ Read Section 8 of Article I
- ▶ Read the Common Interpretation written by Barnett and Gerken. Then, answer the questions that follow.

Common Interpretation of Federalism

In the chart, indicate the four phases of federalism identified by Barnett and Gerken in their common interpretation. Then, describe each phase in your own words and explain how state power has or has not been protected in each phase.

Phases of Federalism

Enumerated Powers	Fundamental Rights	New Deal	State Sovereignty

Why would it be important for the federal government to have broader powers?
Why would it be important to limit the powers of the federal government?

Check for Understanding

Review the two political cartoons dealing with federalism. As a class, analyze the cartoons and discuss the artists' perspectives on federalism and the relationship between the federal government and state governments.

Cartoon #1

http://mrortlieb.weebly.com/uploads/8/9/7/6/8976286/1206334_orig.jpg

Cartoon #2

<http://media.townhall.com/Townhall/Car/b/gv100211dAPR20111001044611.jpg>

	Cartoon #1	Cartoon #2
What do you see?		
What do the various parts of the cartoon represent? How do you know?		

	Cartoon #1	Cartoon #2
What is the artist's claim about federalism and the relationship between the federal government and the states?		

Enumerated Powers and the Commerce Clause

Second, let's look at one of the enumerated powers the founders granted to the federal government in Article I of the Constitution.

- ▶ On the Interactive Constitution, navigate to Article I.
- ▶ Choose Section 8, "Powers of Congress," then select the Commerce Clause.
- ▶ Read the highlighted text.
- ▶ Read the Common Interpretation of the Commerce Clause written by Barnett and Koppelman. Then, answer the questions that follow.

According to the Commerce Clause, the U.S. Congress shall have the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." With reference to the Commerce Clause, what is a value in having the federal government regulate interstate commerce?

Is there a reason why states would want more power to govern or control behavior linked to interstate commerce? Explain your thinking.

Barnett and Koppelman note that the Commerce Clause raises at least three questions of interpretation. Explain what those questions are and why they are important.

How did the decision in *U.S. v Darby* change the legal definition of “commerce,” and why was that significant?

Why was Justice Scalia’s reasoning an important clarification of the Court’s decision in the *Lopez* case?

In its ruling in the Affordable Care Act case (*NFIB v. Sebelius*, 2012), why did the Court NOT base its decision on the Commerce Clause?

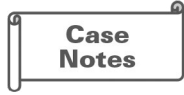
In an age of instant communication, growing diversity, urban growth, and digital commerce, what remain viable arguments supporting the preservation of state autonomy over unconstrained federal expansion?

Applying Your Understanding

Now that you have read common interpretations about federalism and the Commerce Clause, keep the ideas from these interpretations, as well as the concept of judicial review in mind, as you listen to and read the following scenario. Then, complete the chart that follows.

A high school senior was arrested for bringing a .38 caliber handgun to school and was charged under state law with firearm possession on school premises. The next day the state charges were dismissed after federal agents arrested the student for violating a federal statute, the federal Gun-Free School Zones Act of 1990. Normally, police power and educational policies fall under the authority of state governments. However, Congress had passed this new law assuming it had such authority based on 55 years of the Supreme Court's interpretation of the Commerce Clause in Article I of the Constitution.

Only in this case the U.S. Supreme Court disagreed with the arguments of the federal government, ruling the Gun-Free School Zones Act unconstitutional and overturning the student's conviction. The government's principle argument supporting Congress's power to make carrying a gun to school a federal crime was that firearm possession in an educational environment would likely lead to violent crime, which in turn would affect the economy by raising insurance costs and limiting the willingness to travel in the area perceived to be unsafe. The Court's response was that this would create a slippery slope in which the federal government could regulate almost any activity simply by citing social costs instead of a more direct link to interstate commerce.



Case:

Year:

CASE BACKGROUND (include relevant events, legislation, or rulings):

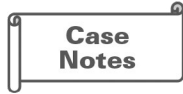
LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:

Implications:

[Source: adapted from, *Casing History* by Rhonda Webb, Lassiter High School, Cobb County, Georgia. Used with permission.]

New York v. United States (1992)

Complete the Case Notes chart below for the case of *New York v. United States*. You may use websites like <https://www.law.cornell.edu/supct/html/91-543.ZO.html> or <https://www.oyez.org/> to find information. Then, share your chart with a partner and discuss the information you have collected.



Case:

Year:

CASE BACKGROUND (include relevant events, legislation, or rulings):

LAW, AMENDMENT, or CONSTITUTIONAL TEXT in question:

MAJORITY OPINION

AUTHOR:

Key Claim(s):

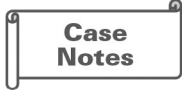
Reasoning used to justify the opinion:

DISSENTING OPINION

AUTHOR:

Key Claim(s):

Reasoning used to justify the opinion:



Case:

Year:

Implications:

[Source: adapted from, *Casing History* by Rhonda Webb, Lassiter High School, Cobb County, Georgia. Used with permission.]

The Tenth Amendment

Now let's explore the Tenth Amendment in more depth.

- ▶ Navigate your browser to the Interactive Constitution website: (<http://constitutioncenter.org/interactive-constitution>).
- ▶ Click on the “Explore It” link near the bottom of the page to go to the main page of the Interactive. The page includes links with the numbers and titles of the Amendments.
- ▶ Click on the Tenth Amendment. The link takes you to the main page for the Amendment.
- ▶ Included on this page is the text of the Amendment, as well as the Common Interpretation. There are also links to the two Matters of Debate articles; each scholar has written one of these articles.
- ▶ In small groups, read the Common Interpretation and then answer the questions that follow. Everyone should answer the first question. You should also answer your assigned question and be prepared to explain your answer to the other members of your group.

Do the scholars believe that the Tenth Amendment was necessary? Why or why not? Cite evidence from the text.

According to the Common Interpretation passage, what is the purpose of the Tenth Amendment?

What political concept creates the foundation for our federal system as implied by the wording of the Tenth Amendment? Explain your answer.

How does Alexander Hamilton's quotation, "For why declare that things shall not be done, which there is no power to do?" relate to the reluctance of Constitutional Framers to add a bill of rights to the Constitution? Why was one added anyway?

What is meant by "Tenth Amendment doctrine," and how did it develop?

What has the Tenth Amendment never been used to do by the U.S. Supreme Court that is surprising, since it is part of the Bill of Rights?

The Tenth Amendment: Matters of Debate

Now that you have read the Common Interpretation of the Tenth Amendment, read the Matters of Debate. The same scholars that wrote the Common Interpretation have written these articles, but they have included their own interpretations and understandings of the Tenth Amendment.

Read both articles and then use the organizers to summarize their main arguments and the evidence they use to support their positions.

Lawson's Claim or Thesis: :

Reasoning:

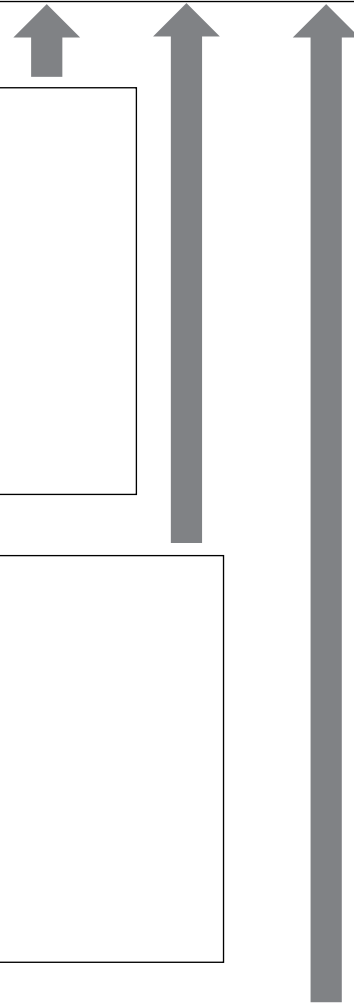
Evidence:

Reasoning:

Evidence:

Reasoning:

Evidence:



Shapiro's Claim or Thesis:

Reasoning:

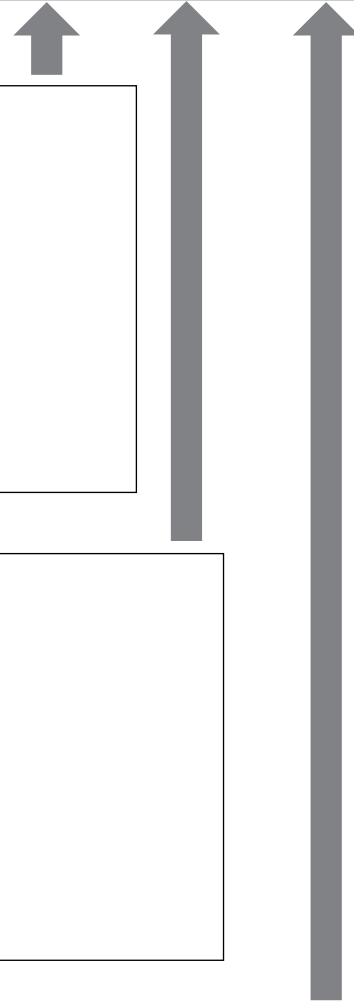
Evidence:

Reasoning:

Evidence:

Reasoning:

Evidence:



Next, based on what you have read, respond to the questions you have been assigned. You may collaborate with a member of another group who has the same questions as you. However, you will be responsible for explaining your answers to your group. You will also be responsible for understanding the answers to all of the questions.

Explain what Lawson means when he says, “Virtually every case involving the application of the Bill of Rights to the federal government can, and probably should, be recast as a case about the scope of the federal government’s enumerated powers.”

Explain what Lawson means when he refers to our foundational document as a “zombie” Constitution?

How does Lawson’s characterization of the Constitution affect the importance of the Tenth Amendment in preserving the balance of power?

How does Shapiro's essay compare in tone and theme with Lawson's?

How does Shapiro understand and interpret the Tenth Amendment differently from Lawson?

What evidence does Shapiro give to support his criticism of the Supreme Court's contemporary references to the Tenth Amendment doctrine in defending "dual federalism"?

Assessment

Respond to the following question using what you have learned about federalism, the enumerated powers, the Commerce Clause, and the Tenth Amendment.

The framers of the Constitution devised a federal system of government that affected the relationship between the national and state governments.

- a. Explain how the Commerce Clause has been used to expand the power of the federal government over the states.
- b. Explain how Supreme Court decisions have played a role in the devolution of power from the national government to the states.

Modified from Free Response Question 2 on the 2015 exam

Assessment

Respond to the following question using what you have learned about federalism, the enumerated powers, the Commerce Clause, and the Tenth Amendment.

The framers of the Constitution created a political system based on limited government. The original Constitution and the Bill of Rights were intended to restrict the powers of the national government. Later constitutional developments also limited the powers of state governments. Explain how each of the following limits the powers of the national government.

- ▶ Federalism
- ▶ Checks and balances

Modified from Free Response Question 4 on the 2010 exam

Assessment

Respond to the following question using what you have learned about federalism, the enumerated powers, the Commerce Clause, and the Tenth Amendment.

The power of the federal government relative to the power of the states has increased since the ratification of the Constitution.

Describe the following provisions of the Constitution and explain how each has been used over time to expand federal power.

- ▶ The “necessary and proper” or “elastic” clause
- ▶ The commerce clause

Modified from Free Response Question 2 on the 2005 exam