

Federalism: Going Deeper

Our system of dual federalism in the United States divides powers thusly:

Enumerated powers are those granted to the federal government in the Constitution

- Coin money
- Regulate interstate commerce (commerce clause)
- Declare war, allocate money for defense, and create a draft
- Transport mail
- Sign treaties...plus a few more

But...the Constitution also gives Congress the power to make all laws which "**shall be necessary and proper**" for implementing the Constitution which

Reserved powers are those reserved for the states to deal with. Examples:

- Run schools
- Run elections
- Establish corporations
- Write marriage laws
- Regulate traffic

Concurrent powers is where there is a grey area and Supreme Court gets to decide. Examples:

- Run prisons
- Build roads
- Borrow money
- Take land for public use
- Establish courts

Where is federalism in the Constitution?

- Article IV - says that states have to honor each other's laws, meaning federal
- Article VI - says that with concurrent powers, federal law trumps state law
- Tenth Amendment - says powers not given to feds are reserved for the states or the people

The Shifting Politics Under Federalism

States rights hasn't always meant "power to the people" and the federal government hasn't always protected individuals from discriminatory state laws. Here's a timeline:

1819 - In the case of *McCulloch v. Maryland*, Supreme Court justice John Marshall used the "necessary and proper clause" to rule that the federal government had implied powers beyond what was explicitly stated in the constitution. Go Feds!!

Early 1800s - Southern states claimed they had the power of "nullification" to not obey federal laws they thought were unconstitutional, especially those having to do with slavery. They received support from a more conservative Supreme Court. State Power!!

Late 1800s - States passed laws to reign in big corporations, especially the railroads. But the Supreme Court said these laws infringed on the federally protected rights of corporations. Feds Rule!!

1929 - The Great Depression cripples the country, but the Hoover Administration claims federalism prevents the federal government from doing anything. Up with States!!

1932 - FDR gets elected and claims broad federal power to get the economy moving. The Supreme Court says many of his programs are unconstitutional. He ends up providing money to states to implement programs according to federal guidelines. FDR's friend and Supreme Court justice Louis Brandeis said that in this way, states could be "laboratories of democracy" and serve as a testing ground for new ideas. I won! No, I won!

1950s and 1960s - The Supreme Court gives the federal government the power to overturn segregation at the state level. Touchdown Feds!!

1970s, 80s, and 90s - Nixon, Reagan, and Clinton administrations practice devolution. They give money to the states for programs but loosen the federal requirements about what to spend it on. States Making a Comeback!!

2000s - George W. Bush said that he favored states rights, but after 9/11 his government claimed broad federal power and he often tighten requirements for receiving federal funds, for education and social programs.

Federalism at the State Level

Local governments like Durango and La Plata County have the same relationship to the State of Colorado that the State of Colorado has to the federal government. Once local governments incorporate they have to provide services. Colorado gives them the power to use property and sales taxes to pay for these services. But the state can block local action. For example, the state passed a law forbidding local governments from passing their own minimum wage law.

States usually give local government the power to decide what people can build where. For example, Durango can decide that there will be **no apartment buildings on East Third Avenue**. This is power is called zoning. Some local governments have used this power to keep poor people out of certain neighborhoods. States sometimes pass laws saying cities have to build a certain amount of affordable housing, but cities don't always comply or find ways around the law.

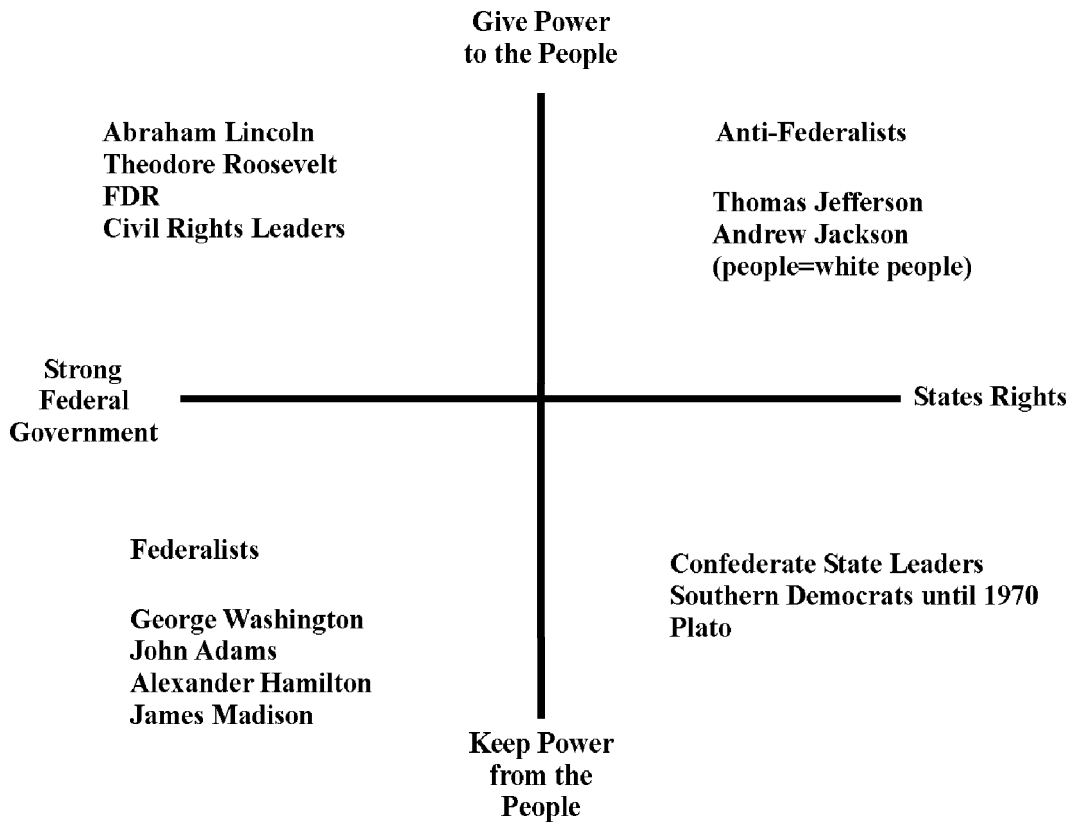
This is an example of federalism issues playing out at a smaller scale.

Federalism: Seminar Prep

Discuss the following questions in small groups. Make note of any important ideas to put into a post on your DP.

1. In the video, P.J. O'Rourke says that "big tool" of the federal government isn't always the best one for the job. As a group articulate a principle or rule for when the federal government should be in charge and when to leave things to state and local government?
2. One place that the states are laboratories of democracy is in education. States are trying all kinds of things to improve schools. But in order to get federal money, states have to follow federal guidelines like using Common Core state standards and use standardized testing to evaluate schools and teachers. What's the proper balance of power when it comes to education?
3. The spill in the Animas River has caused some to say that the federal government should turn over control of federal land, like San Juan National Forest, to the states. Is this a good idea?
4. Who should be primarily responsible for the Animas River, the federal, state, or the local governments along the river's course? Why?

5. Where are you on the political map? Place yourself on the graphic below and discuss your choice with others in your group.



Finally, write one or two seminar question on the board that your group would like to discuss in more detail.