

## *Imperium in Imperio*

### **Essential Questions:**

- 1] Given the historic tensions between the national government and the states [nullification, secession, etc.] and the contemporary debates regarding health care and gay marriage; what are the constitutional origins of our federal system – or federalism?
- 2] How do the parts of the founding documents that pertain to federalism interact with historic events, personalities, and ideas to shape the American experience for a people with dual sovereigns – their state and their nation – then and now?

### **Standards and Set Up:**

This lesson is designed for use in an AP US History or AP Government environment. The lesson addresses national standard 3, with particular attention to 3A and 3C. The lesson assumes that students have mastered curricular material as it relates to revolutionary events, the Articles of Confederation, and the Constitutional Convention of 1787. The lesson also expects that students have a basic understanding of the different types of powers defined, detailed, and allocated in the founding documents [ie. enumerated/delegated, reserved, and concurrent].

### **Background:**

The United States of America, as constituted after a prolonged and contentious ratification debate, was a political union of states unique in many respects. An area of particular concern for many citizens in the young “nation” and interested observers abroad involved the relationships between the member states and the new federal or central government. The founders had **enumerated** certain **powers** to the federal government and **reserved** other **powers** to the states. In addition, there were certain political functions that were possessed by both the states and federal government or **concurrent powers**. This sharing of power between different levels of government had never been tried on a scale that the young republic intended, and to many, was worthy of ridicule and doomed to fail. The federal system created by the Constitution provided for many sovereigns within a sovereign, or *Imperium in Imperio*. This Latin expression might be understood as a contradiction in terms of political science. The general thinking, reinforced by the course of nations through history, was that ultimate political power must reside in a single location. Therefore, expecting many kingdoms to coexist in political harmony within a larger kingdom was foolish and likely suicidal. This is where the experience of American federalism begins.

### **The Lesson:**

**Set Up -** From the historic debates surrounding nullification to state lawsuits challenging “Obamacare,” federalism as a concept and political reality is vital to an understanding of the American experience and the creation of public policy. As a lead in to this lesson, students will collect news items from contemporary media that involve some aspect of federalism. These stories about legalization of marijuana, delisting

## *Imperium in Imperio*

wolves, and gay marriage illustrate just how complicated policies and law can be in a political system where there is not a single sovereign. This sets the stage for an exploration of the origins of our federal system.

**Student Research** - The students are given a handout [see **Imperium in Imperio handout**] with a brief description of the lesson and federalism. Depending on class size, 11 items related to federalism are assigned to individual students or pairs of students. They are given instructions and time to research their concept[s] within the framework of federalism. For example, a pair of students with the Articles of Confederation will need to examine the Articles through a filter of state/local v central/national power orientation. Students researching Alexander Hamilton might read his contributions to the Federalist Papers in search of his position regarding state v national powers, etc. Students are informed that their research findings need to be written up so that they can present the following to the entire group.

- In what specific ways does your document, faction, personality, court ruling, or Constitutional language related to federalism?
- What is the net impact of your topic in terms of state/local power v national/central power?
- Can you quantify this impact or take a position as to how important your topic was to the development of our federal system?

I usually allow 30 minutes for student research, but students have some familiarity with the assigned concepts and have practiced using a variety of resources related to the founding documents and court cases. All students have a copy of the Articles of Confederation, the Constitution, and the Bill of Rights. They also have access to the Federalist Papers, collections of anti-federalist writings, and can use the internet to look at the opinions from assigned court cases.

**Student Presentation/Discussion** - When the individuals/pairs have completed the research, they present their findings to the class within the framework that follows:

On the whiteboard is a representation of a tug of war between state power and national power.

STATE POWER-----NATIONAL POWER  
Article VI ----->

They present their concept and then indicate which way it moved the power continuum. They also offer their educated estimation of magnitude here. This process is very interactive and the entire class can evaluate and discuss the new information. The end product is that each individual/pair presents and defends their federalism findings and with class input – writes their item on the continuum with an arrow indicating direction and a tail of varying length to indicate magnitude.

## *Imperium in Imperio*

The example illustrated above relates to the “supremacy clause” of Article VI in the Constitution, which provided the federal government a constitutional “trump card” over any state legislation contrary to national legislation. **It is important to note that the students are expected to provide accurate information as a product of their research and that each concept has a pretty clear direction in terms of state v national power; but magnitude is very speculative. This is the essence of the lesson as students not only have to know the underlying historic and political concepts, but evaluate and discuss federalism in an applicative manner that will serve as a mental framework for future historic and political lessons.**

**Assessment** - The assessment rubric for the student presentations is as follows:

---

In what specific ways does your document, faction, personality, court ruling, or Constitutional language related to federalism?	10pts/_____
What is the net impact of your topic in terms of state/local power v national/central power?	10pts/_____
Can you quantify this impact or take a position as to how important your topic was to the development of our federal system?	10pts/_____
Active participation and discussion of federalism tug of war beyond your assigned concept?	20pts/_____
<b>Total</b>	<b>50pts/_____</b>

---

In addition to the in class assessment of the research presentation and class discussion, I’ve attached a follow-up writing exercise that I often assign to reinforce the lesson and drive home the relevance piece; and demonstrate how a firm understanding of federalism and its historic roots informs thoughtful participation in our modern federal system [see **Gay Marriage Inquiry Activity**].

### **Student Work:**

Pending...

## *Imperium in Imperio*

### **Sources and Resources:**

AP students as a rule are pretty resourceful when it comes to research skills, but I do provide each student with a pocket Constitution that also contains the Articles and the Bill of Rights. They have access to Anti-federalist and Federalist writings and they can use all of the resources available on the internet to answer their questions. Unlike my colleagues in the media center [formerly the library], I do not think “Wiki is Icky.” In fact I suggest that students use [www.wikipedia.org](http://www.wikipedia.org) as a starting point for much of their research. Another useful website for the court cases, with concise renderings of major Supreme Court opinions is [www.oyez.org](http://www.oyez.org).

### **Reflections:**

Participation in the TAH grant has been rich, informative, and validating. The presentations and lectures, combined with the biographies and modeling, have added depth to my teaching expertise and more texture to my lessons. It has always been my teaching philosophy that students need to be able to climb around in the curriculum and come up with it all over their hands and face, practice becoming their own historians, and construct new understandings from their experience in the classroom. To that end, I’ve used essential questions, primary sources, and inquiry design for years in the classroom. The colloquiums have reinforced and energized these practices.

I’ve used a lesser version of the Imperium in Imperio lesson for about four years, but this process has prompted some serious upgrades and refinements. The core idea of the lesson remains unchanged, but I formalized an in class assessment rubric and tweaked a few of the concepts. The real enhancement, I believe, will be in my improved facilitation of the class discussion regarding the relative magnitudes of shift on the federalism continuum.

## *Imperium in Imperio*

*Imperium in Imperio* research handout...

The following exercise is designed to provide a better understanding of the very unique dynamic that exists in the American government between state/local governments and the national government. Since conception, the “United States” of America have struggled with *Imperium in Imperio*, aka **federalism**, or the sharing of power between different levels of government. This is an ever changing relationship of power and policy between the state governments and the national or federal government, a strained cooperation, or possibly **a power tug of war**. I’ve provided a chronological list of events, historic personalities, policies, amendments, or court rulings below – by indicating which way each of these affected the power relationship between the state and national governments, you can get a sense of how federalism has changed over time in the United States.

**State-----National**

Articles of Confederation

Constitutional Convention 1787

Anti-federalists

Federalists

Article I, Section 8

Article VI

Amendment 10

Alexander Hamilton [1796]

Thomas Jefferson [1796]

Virginia and Kentucky Resolutions

Marbury v Madison

McCulloch v Maryland

Gibbons v Ogden

**For each concept above, answer the following questions:**

- In what specific ways does your document, faction, personality, court ruling, or Constitutional language related to federalism?
- What is the net impact of your topic in terms of state/local power v national/central power?
- Can you quantify this impact or take a position as to how important your topic was to the development of our federal system?

## Imperium in Imperio Federalism “Key”

### State-----National

#### Articles of Confederation

←----- a constitution that was weak by design where states, mindful of the tyrannical influences of centralized and unchecked power, maintained almost complete sovereignty

#### Constitutional Convention 1787

-----→ an undertaking by the young “nation’s” elite to check some of the leveling influences of the Revolution and strengthen the national government’s abilities to deal with a series of issues that had emerged under the Articles so as to “render the constitution of the Federal Government adequate to the exigencies of the Union”

#### Anti-federalists

←----- a collection of people opposed to ratifying the new constitution for a variety of reasons – for the purposes of this exercise, one of the main reasons was that they believed it shifted too much power from state governments to a distant federal government

#### Federalists

-----→ a collection of people supporting the ratification of the new constitution – again, for a variety of political and personal reasons the Federalists [notably Hamilton, Madison, and Jay in a series of essays] offered positive arguments for a more powerful national government

#### Article I, Section 8

-----→ a number of powers enumerated by the founders for the national legislature  
\*\*note that clever students may argue that this strict enumeration of powers was in fact a limitation or constraint on what the federal government could actually do in terms of legislative power – but when measured against the legislature’s powers under the Articles and with the inclusion of the “necessary and proper” clause – this tugs towards national

#### Article VI

-----→ the key language in this Article is that the laws of the national legislature, when in conflict with state law, will be the “supreme law of the land” and provides authoritative language about where ultimate sovereignty resides – at federal level

#### Amendment 10

<----- an amendment to the Constitution added in part to ease the fear of Anti-federalists regarding too much power concentrated at the federal level – with language that reserved all political powers to the states and the people, that had not been expressly enumerated to the federal government

## Imperium in Imperio Federalism “Key”

Alexander Hamilton [1796]

-----→ one of the most ardent nationalists/Federalists, who wanted as much political power shifted from state citizens and governments to the national government as any of the founders

Thomas Jefferson [1796]

←----- pre-presidential TJ was quite suspicious of concentrating too much power in a location distant from the people and their local/state governments; TJ often took oppositional positions to Hamilton and in time would become an ideological leader of factions that would actively oppose the concentration and use of federal powers

Virginia and Kentucky Resolutions

←----- in the absence of judicial review, these resolutions marked an early attempt by politicians to resist “unconstitutional” federal law through a doctrine of legal “nullification” at the state level

Marbury v Madison

-----→ this transformative judicial opinion not only made the forgotten third branch of the federal government a co-equal branch, it established the precedent of judicial review and conferred to the Supreme Court the legal right to determine the constitutionality of both federal and [in time] state law

←- \*\*again, the clever student might note that Marb. v Mad. Allows the court to hold or shift power to state governments and that might allow states to tug back – to be continued...

McCulloch v Maryland

-----→ national-minded Marshall was able to affirm the constitutionality of the National Bank through the “necessary and proper” language of the Constitution and also apply the “supremacy clause” in deciding against Maryland’s attempt to use a concurrent power to tax the bank out of the state

Gibbons v Ogden

-----→ another Marshall court opinion, this one affirming the power of the national government to legislate in matters that involved “interstate commerce”

This continuum or tug of war template is a useful paradigm for all of the historic and contemporary issues that involve federalism.



**Federalism and the Ramifications of Imperium in Imperio in Modern America**  
**Laugh it up old Europe - wrapped in your quilt of unitary simplicity, but it is a beautifully complicated patchwork of powers and policies that warms this country's cockles.**

---

The situation...

Bill and Randy are a married couple living the American dream in Boston, Massachusetts, USA. Randy's job with US Bank requires a move to the Big Sky state. They find an apartment in Bozeman and Bill begins looking for work. The couple shops for a permanent residence on weekends and finds the perfect house. Given the asking price for the house, the two will need to co-borrow to be approved for the mortgage. They are working with an **in-state** credit union and lender. After filling out the paperwork as primary borrower and spouse, Bill and Randy are informed that their loan request has been denied because the credit union does not recognize their status as "married co-borrowers." They have anticipated this unfortunate response and show a copy of their marriage license, issued by the state of Massachusetts, to the loan officer. He responds by telling the couple that their marriage license "isn't worth the paper it is printed on" in Montana. They leave angry, lawyer up, and sue the credit union for discriminatory lending practices.

Using all the following policies, laws, rulings and/or Constitutional provisions – create an informed prediction regarding the outcome of the lawsuit.

**Massachusetts Law as per Mass Supreme Court ruling...**

In a 50-page, 4–3 ruling delivered on November 18, 2003, the Massachusetts Supreme Judicial Court found that the state may not "deny the protections, benefits and obligations conferred by civil marriage to two individuals of the same sex who wish to marry." Chief Justice Margaret Marshall, writing for the majority, wrote that the state's constitution "affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens," the state had no "constitutionally adequate reason for denying marriage to same-sex couples," and "The right to marry is not a privilege conferred by the State, but a fundamental right that is protected against unwarranted State interference." On the legal aspect, instead of creating a new fundamental right to marry, or more accurately the right to choose to marry, the Court held that the State does not have a rational basis to deny same-sex couples marriage on the ground of due process and equal protection.

The court gave the State Legislature 180 days to change the law to rectify the situation

**Montana -Initiative 96** of 2004 is a defense of marriage amendment that amended the Montana Constitution by adding a definition of marriage that prevents same-sex marriages from being conducted or recognized in Montana. The Initiative passed via public referendum on November 2, 2004 with 67% of voters supporting and 33% opposing.

The text of the adopted amendment, which is found at Article XIII, section 7 of the Montana Constitution, states:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.

**Defense of Marriage Act** is the short title of a federal law of the United States passed on September 21, 1996 as Public Law No. 104-199, 110 Stat. 2419. Its provisions are codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C. Under the law, also known as **DOMA**, no state (or other political subdivision within the United States) needs to treat as a marriage a same-sex relationship considered a marriage in another state (DOMA, Section 2); the federal government defines marriage as a legal union between one man and one woman (DOMA, Section 3).

The bill was passed by Congress by a vote of 85–14 in the Senate and a vote of 342–67 in the House of Representatives, and was signed into law by President Bill Clinton on September 21, 1996

### **Equal Protection Clause of the 14<sup>th</sup> Amendment**

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Constitution: Article IV [Relation of the States to Each Other] Section 1...**

Full faith and credit shall be given in each state to the public acts, records, and judicial records of every other state.

### **Article VI [The Supremacy Clause]...**

The Constitution, and the Laws of the United States which shall be made in the pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

### **Marbury v Madison**