

CONSTITUTION 101

Module 6: Separation of Powers and Federalism 6.6 Activity Guide

FEDERALISM in the Constitution

FEDERALISM: WHERE IS IT IN THE CONSTITUTION?

Scholars often speak of types of powers identified in the U.S. Constitution:

- Powers delegated to Congress—Article I, Section 8
- Powers denied to Congress or the states—Article I, Sections 9 and 10
- Reserved powers (reserved to the states)—the 10th Amendment
- Provision addressing the relationship between the national government and the states, the duties that states owe one another, and the nation and new states—Article IV
- Supremacy of national law—Article VI's Supremacy Clause

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

- Check on the general government—Article III and Article V

Section of the Constitution	Topic	Summary
Article I, Section 1 and Section 3	The original senate	Limiting Congress's power to “[a]ll legislative Powers herein granted.” We could even add that one to provisions limiting the powers of Congress—as some scholars would say that this provision reinforces the idea that Congress is a body with limited powers.

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Article I, Section 4	Elections and the states	The state's ability to decide on "time, manner, place" for elections, key part of federalism, and voting rights —"Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."
Article I, Section 8	Powers of Congress, including the Commerce Clause and the Necessary and Proper Clause	
Article I, Section 9	Limits on the federal government, such as habeas corpus suspension clause, ex post facto/bill of attainders, slave trade could not be banned until 1808	
Article I, Section 10	Limits on the powers of the states	
Article III, Section 2	The Courts to intervene in disputes between states, citizens, and the general government	

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Article IV	Sections I, II, III, IV I: Full Faith and Credit (<i>Saenz v. Roe</i>) II: Privilege and Immunities and Fugitive Slave Clause (<i>Prigg Case</i>) III: New States-Can the Fed. Gov buy them? (Jefferson) IV: It's a Republic, and you must be, too. The "we-got your-back" clause.	Article IV establishes that the states will give "full faith and credit" to the laws of other states. For example, if a citizen gets legally married in one state, he is still married if he moves to another state. Likewise, if a citizen commits a crime in one state, she cannot escape to another state and evade justice. States also can't discriminate against citizens of other states if they move; any U.S. citizen who moves to a state is entitled to the same "privileges and immunities" of citizenship in that state as someone born there. Article IV also promises states the protection of the federal government. It does this by promising to defend states against invasion, guaranteeing them a republican form of government, and barring the federal government from splitting up a state without the consent of its legislature and Congress. It also establishes Congress's power to admit new states and its power over federal territories.
Article V	Amendment process	Article V describes the process of amending the Constitution, which requires the ratification of three-quarters of the states. This provision of the Constitution demonstrates the importance of the states in approving the workings of the U.S. government. It does establish a role for the states in the amendment process. But at least some scholars (and founders) would say that the amendment process is rooted in popular sovereignty, not federalism.

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Article VI	Supremacy Clause	This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
Bill of Rights	Limiting the powers of the federal government	
10th Amendment	Powers reserved to the state or people	
13th Amendment. 14th Amendment. 15th Amendment	Enforcement Clauses (expansion of congressional powers over the states)	

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[Amendments 11, 16,
17, 19, 24, and 26](#)

These amendments alter the original federalism structure of the Constitution. (Popular election of senators removes state legislature control over appointment of senators, direct income taxation power increases control of federal government over economy and citizens against traditional state taxing power)