**Federalism**

Think about all the decisions that are made in your home: what shows you and your family like to watch, who does which chores, what time you usually have dinner, which snacks go on the grocery list, and whether sports or board games or music get played when you’re together.

Would you rather all these rules and routines in your home be set by your family, or by a committee of your neighbors who have decided the best way to do each of these things?

Or on a Friday night, would you rather decide where to go with your group of friends, or put it up to a vote among your whole class and try getting everyone to agree each week?

These types of questions, as you’ll see, illustrate the idea of federalism.

When it comes to setting the rules and routines at home, your parents and family probably have more information about you—your preferences, your strengths, and your situation—than a neighbor down the block you may have never met. They are more likely to share your values and beliefs about what is most important in the world. You have more opportunities to explain things to them--why you’ll be late for dinner or out past your bedtime for a movie premier—and they are more equipped to make the rules that work for you or your siblings than your neighbor would be.

Of course, there are exceptions—there are certain basic rules that your parents must follow, too—they can’t just decide not to feed you. Similarly, you and your neighbors will want to have rules that make it possible to travel to one another’s houses—you will all want to agree to drive on one side of the road, for example. You will also probably want to have your town maintain a police force to keep you safe. But your family is more involved with you, and you with them, and they know more about your life and your situation, so most of the time, it will be them, and not your neighbor, guiding things at home.

This, in essence, is the logic of federalism: the division of power between the states--which are closer to our communities--and the federal government, which is more removed.

**Local Government and Police Power at the Founding**

Under our Constitution, most political powers belong to the states. As the Tenth Amendment makes clear, unless a political power is given to the federal government, it is assumed to remain with the states.

*“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”*

This broad authority of the states to regulate on behalf of the health, welfare, safety, and morals of the people is called the police power.

If one reads the documents the colonists sent to the British government before and during the American Revolution, the violation of local government was chief among the topics they raised—it was, perhaps *the* central issue of injustice in the eyes of the colonists.

For instance, the Declaration of Independence famously objected to the British shutting down Massachusetts’s local government as one of the grounds for separation, continuing a long trend of similar objections.

For example, the Declaration of Resolves of the First Continental Congress (1774), a sort of rough draft of the Declaration of Independence, explains that “That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council… [with the colonists] entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity”—“internal polity” being an old-timey way of saying the local government’s “police power.” In other words, the problem was that the British parliament was trying to take away the exclusive power of the local legislatures to regulate their local affairs.

The Virginia Resolves against the Stamp Act in 1765 had similarly explained “that his majesty's liege people of this his most ancient colony have enjoyed the right being thus governed by their own assembly, in the article of taxes and internal police.” The Pennsylvania Constitution of 1776 declared “That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.”

The Massachusetts Constitution to this day declares that “The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

And so on.

Even the famous colonial cry against “taxation without representation” went deeper than mere dollars and cents and instead illustrated the belief that laws should not, as a general rule, simply be imposed on a community from afar. In fact, the colonists themselves were actually ok with some taxation without representation—taxation to regulate international trade, for example, was fine with them—but once Parliament claimed the right to regulate the taxation of their local activities, there was nothing stopping them from regulating *all* aspects of those activities. That, the colonists’ feared, would be the beginning of the end of their liberty.

In other words, the Founders took seriously the belief that states--rather than a distant central government like Parliament--should be the ones to regulate most issues of daily life. They remained concerned about concentrated power, wielded from far away, rather than representing the diversity and local interests of the different states

Creating a new federal government that would both be able to effectively handle national affairs while still protecting the rights and powers of the states, as well as individuals, was a considerable challenge.

Although they recognized that the new nation’s first attempt at a government under the Articles of Confederation had leaned too heavily toward state power, the drafters of the Constitution still recognized the advantages of a government that was focused on the states—and that the American people wanted one like that. So they took the Articles, looked at its shortcomings, took into consideration its strengths, and then sat down to draft the Articles of Confederation 2.0, a.k.a. the Constitution.

Almost everyone in both the Constitutional Convention and in the country agreed that most power should remain with the states, but they also thought that the Articles of Confederation had left *too* much power there and thus created an ineffective federal government. They wanted to make a stronger federal government, but had to be careful about it: the stronger the federal government could be, the more it could threaten citizens’ liberty.

As such, the Constitution carefully limited federal power only to those powers and obligations specifically discussed in the Constitution. This is called “the enumerated powers”, meaning they are enumerated, or listed out, in the Constitution.

They made sure to only give the federal government authority over a few issues—such as interstate commerce (buying, transporting, and selling things across state lines) and foreign policy—while leaving most government at the state level. (And in case it wasn’t clear that this was what they had done, most of the state ratifying conventions demanded what became the Ninth and Tenth Amendments in the Bill of Rights to reiterate that the federal government was only one of specific enumerated powers, leaving most power with the states.)

**The Police Power and Limits on State Government**

In addition, unless the Constitution prohibits a state from doing something, it is allowed to do it under its expansive *police power* (which, again, is not people with badges and squad cars, but the authority of a state to regulate for the health, welfare, safety, and morals of the people).

In other words, when determining whether a certain action is allowed under the U.S. Constitution, when it comes to the federal government, the burden of proof is to show that the power is actually authorized by an enumerated power. For state government, on the other hand, the burden of proof is to show that a state cannot act.

Though the state police power is wide-ranging, there are still limits on it. Federalism, like democratic government itself, can be abused, and it has been in our nation’s history. That recognition is why a state’s use of its police powers cannot violate either the federal Constitution or the restrictions in a state’s own constitution. Article 1, Section 10 of the U.S. Constitution includes a list of important limits on state police powers, a list which was significantly expanded on in the 14th Amendment.

For example, not only does Congress have the power to coin money in Article I, Section 8, but Section 10 specifically bans the states from making their own money. By way of contrast, although Congress is allowed to have taxes in Article I, Section 8, since the Constitution doesn’t ban states from having taxes: they are still allowed to have them as well.

After the Civil War, Congress decided to add more restrictions on the states in the Thirteenth, Fourteenth, and Fifteenth Amendments. Although most power and decisions would still stay at the state level, it was agreed that the basic rights that the federal government had to follow from the Bill of Rights, such as freedom of speech, would now also apply to the states. In addition, the states could no longer allow slavery, and had to guarantee equal protection and due process to all within their boundaries.

That is why, although some cited “states’ rights” as a justification for maintaining white supremacy between the Civil War and the Civil Rights movement, such racial discrimination was not actually even a right that the states retained under the Tenth Amendment. Most of the rest of the country, including even strong believers in federalism, insisted the federal government could suppress state-sponsored Jim Crow. The Supreme Court agreed in the *Brown v. Board of Education of Topeka* decision, protecting the individual right to be free from government discrimination.

**Federalism and Limits on the Federal Government**

Federalism has been arguably the US Constitution’s primary means of preventing the federal government from violating one’s liberty (with the separation of powers/checks and balances the other major technique). For most of American history, Congress refused to pass bills and presidents vetoed legislation they believed exceeded the constitutional authority of the federal government. The Supreme Court similarly often argued the federal government has violated the rights of citizens’ and the states by interfering where it has no authority.

For example, Congress has the power to regulate interstate commerce, a power added by the Founders to prevent the states from having trade wars with each other. In the early 1930s, President Roosevelt and Congress claimed this authorized the federal government to regulate a local sale of a chicken—whether or not a customer could pick a chicken from a coop. The Supreme Court said that since Congress had the authority to regulate *interstate* commerce, such a local sale was an issue for the states, and not the federal government. As far as the federal government was concerned, a citizen could buy a chicken of his choice.

Eventually, Franklin Roosevelt appointed enough justices that the Court changed its mind and said the power to regulate interstate commerce was so expansive it even let the federal government regulate how much a farmer could grow, even if he was not selling it, much less selling it across state lines. *Wickard v. Filburn* (1942) set the precedent that the federal government could not only regulate interstate commerce directly, but the federal government could effectively regulate anything that also affected, even slightly, interstate commerce. This significantly and controversially increased the scope of what the federal government could do; later cases tried to suggest this power could not be used to regulate non-commercial activity.

Americans continue to debate where exactly the Constitution draws the line between federal and state power. While it can sometimes be frustrating if the federal government doesn’t have authority to pass a policy you like, there are several reasons to protect decentralized federalism. A limited federal government protects individuals’ rights, too; you don’t have to worry as much about bad people or tyrants taking control of the federal government if its powers are limited. It allows states to try new policies, which, if successful, can be adopted in other states. It is easier to get agreement at the more local level, or to have common ideas.

Keeping most decisions at the state level also allows different communities to make different decisions in line with their different beliefs and environments—in other words, to recognize the diversity of America.

For example, states have different laws concerning divorce, adoption, or minimum wage, or gambling. They also may have different rules about water—for example, a state with beaches or large rivers can regulate water differently than a desert. A policy may be a good idea for one place, but not for the whole country. A recent debate has been whether the federal government or the states has the right to regulate the possession of marijuana.

The U.S. Constitution tries to strike a balance: creating a sufficiently strong but carefully limited federal government, while also making sure states protect basic rights of individuals.