

LASTING FREEDOM, PEACE & PROSPERITY COME FROM ADHERING TO THE LAWS OF NATURE

FEDERAL

STATE

COUNTY

LOCAL

We the People

LAWS OF NATURE

UNIT 1 LESSON 6

Pages 74-78

(In Waples. This is what we call your textbook.)

Dual and Cooperative Federalism

STUDENTS WILL KNOW THAT:

- 1. The interpretation of the 10th and 14th Amendments, the commerce clause, the necessary and proper clause, and other enumerated and implied powers are at the heart of the debate over the balance of power between the national and state governments.**

**I learned from Jim, if Dwight
ever asks you if you accept
something secret, you reply,
"absolutely I do."**

**HOW IS
FEDERALISM
BETTER THAN A
CONFEDERATION?**

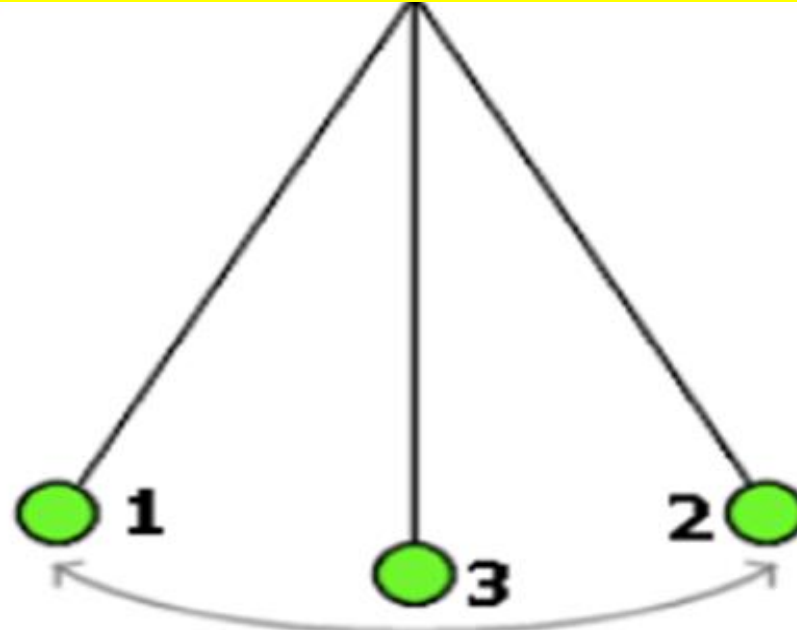


GOLDILOCKS OF GOVERNMENT THINK OF THE PENDULUM SWING

**TOO STRONG
(KING)**



A unitary government is like one really big chair, with all of the government's power sitting in one place.



**JUST RIGHT
(FEDERAL GOV'T)**



The states and central government must work together and balance each other out, like a set of chairs around the table.

**TOO WEAK
(ART OF CONF)**



A confederation of states is like a bunch of different chairs grouped together. They hold power independently but work collectively.

ALTERNATIVES TO FEDERALISM

- **UNITARY SYSTEM** (**REMEMBER THE SINGLE CHAIR**)
 - Places all governmental power in one, central, geographic area
 - More efficient than a federal system (which can be a bad thing)
 - Why don't we use it?
 - Not used because too reminiscent of British rule (strong, distant government that becomes tyrannical)
- **CONFEDERATION** (**REMEMBER THE DIFFERENT CHAIRS**)
 - Sovereign states create a central government but carefully limit its power and do not give it direct authority over individuals
 - States are supreme over central government
 - Why don't we use it?
 - Not used because too reminiscent of Articles (tried and failed)



A unitary government is like one really big chair, with all of the government's power sitting in one place.



A confederation of states is like a bunch of different chairs grouped together. They hold power independently but work collectively.

FEDERALISM

- ***DEFINITION - Constitutional division of powers between the national government and the states; both get their powers from Constitution, not each other***
- **Constitution (federally based) replaced Articles (confederation based)**
- **Federal system is NOT as efficient as a unitary system (which can be good)**
- **Federalism issues are at the top of the political agenda along with the issue of devolution**
- **Since the New Deal in the 1930s to today, there has been a shift of power from the states to the national government; since 1994 elections there has been an attempt to return power to the states**
- **Federalism debates depend upon issue at stake and rival philosophies of national action vs. decentralization**

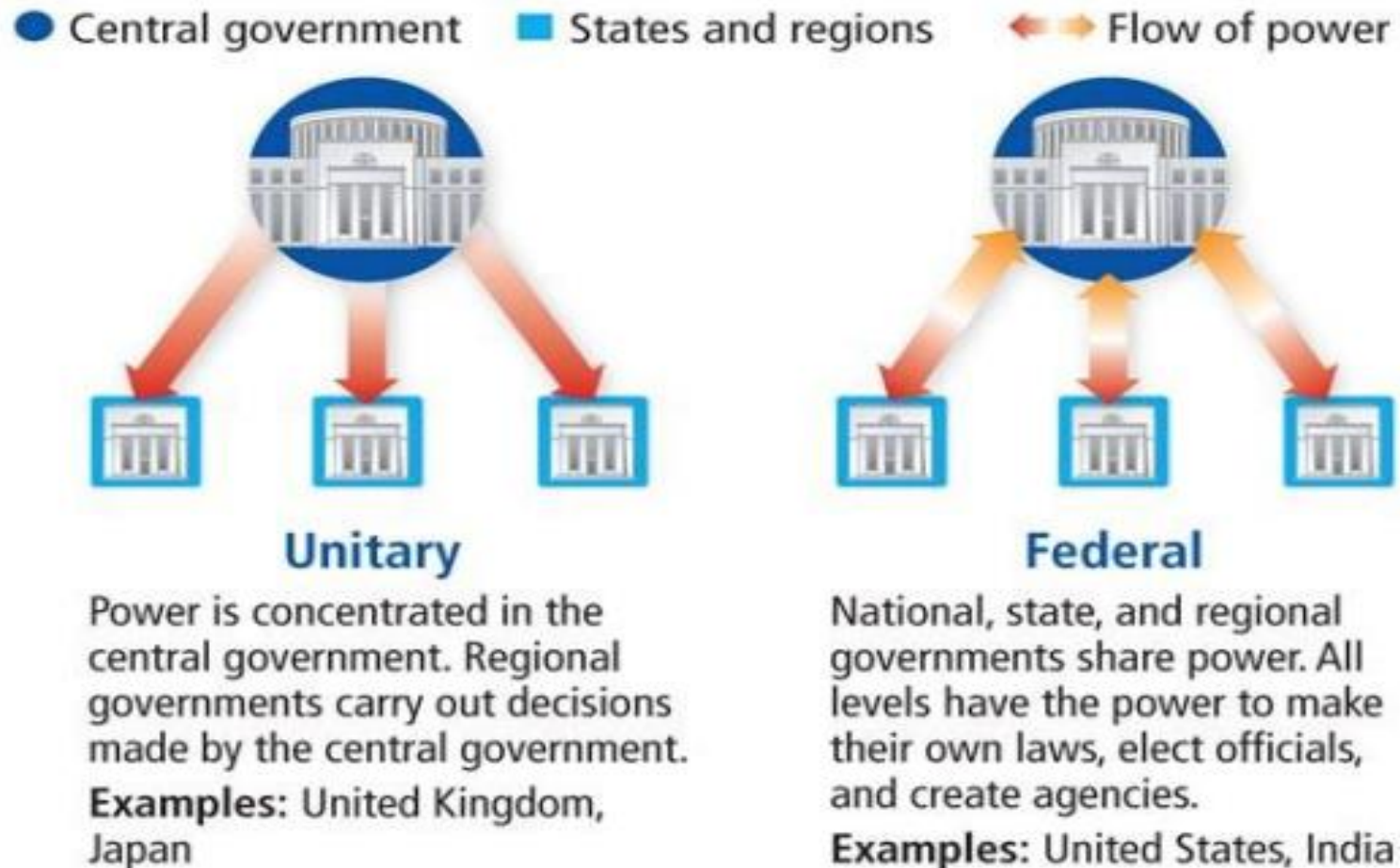
FEDERALISM



The states and central government must work together and balance each other out, like a set of chairs around the table.

ESSENTIAL QUESTION CFU

Give one modern-day example of how a unitary system could be better than a federal system.



TWO TYPES OF DIVISION OF POWERS

PRE NEW DEAL

Layer Cake Federalism



Programs and authority are clearly divided among the national, state, and local governments.

POST NEW DEAL

Marble Cake Federalism



Programs and authority are mixed among the national, state, and local governments.

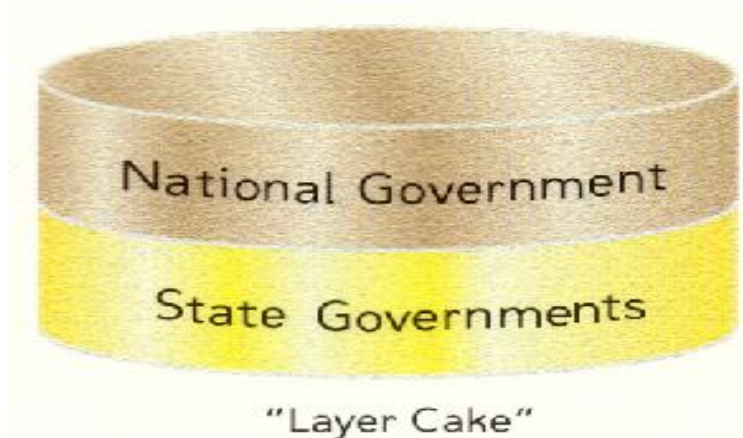
IF YOU DON'T KNOW WHAT A LAYER CAKE OR MARBLE CAKE IS, PLEASE ASK. I DIDN'T KNOW. CAKE IS CAKE TO ME.

WHAT IS DUAL (“LAYER CAKE”) FEDERALISM?

- Prevalent through ~ 1937
- **State governments and national government each remained supreme within their own spheres.**
- Proper relationship between government and the states, portraying the states as powerful components of the federal government -- nearly equal to the national government.
- Powers and policy assignments of the layers of government were distinct, as in a layer cake.
- **Suggested that the powers of the national government should be interpreted narrowly (Constitution gives the federal government limited powers and the rest should be to the states).**

DUAL (“LAYER CAKE”) FEDERALISM

- Dual federalism
 - Each government unit -- nation and state -- is sovereign within its sphere.
 - The relationship between nation and states is best characterized by tension rather than cooperation.
 - The national government has a limited set of constitutional purposes. All remaining powers belong to the states.
- Of primary importance in dual federalism is **states' rights**, which reserve to the states all rights not specifically conferred on the national government by the Constitution. According to the theory of dual federalism, a rigid wall separates the nation and the states.

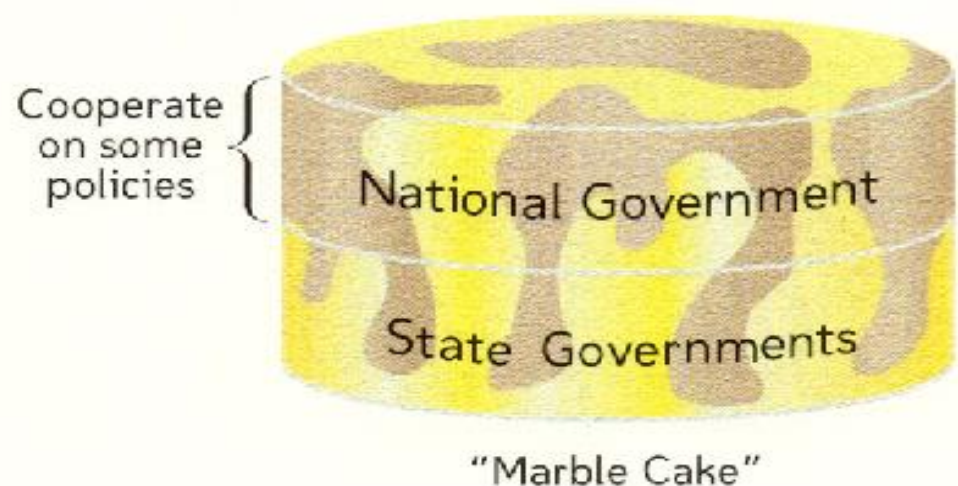


WHAT IS COOPERATIVE (“MARBLE CAKE”) FEDERALISM?

- Prevalent since ~ 1937
- **Mingling of responsibilities between the state and national government.**
- Sharing powers & policy assignments, like a marble cake.
- Acknowledges a need for cooperation between state and federal governments.
- **Suggests that powers of the national government should be interpreted broadly.**

COOPERATIVE (“MARBLE CAKE”) FEDERALISM

- **Cooperative federalism rejects that state and national government must exist in separate spheres**
 - **National and state agencies typically undertake government functions jointly rather than exclusively and routinely share power.**
 - **Power is not concentrated at any government level or in any agency. The fragmentation of responsibilities gives people and groups access to many venues of influence.**

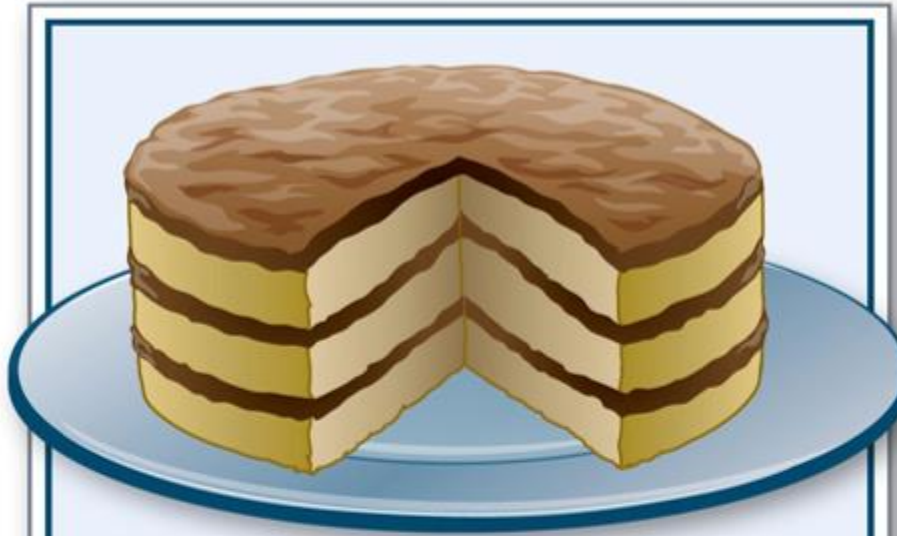


DIFFERENCE BETWEEN DUAL AND COOPERATIVE

- **What is a critical difference between dual and cooperative federalism?**
 - How they interpret the elastic clause and Tenth Amendment.
- **Which two sections of the Constitution define the relationship between state and national governments?**
 - Article 1, Section 8, lists the enumerated powers of Congress and ends with the elastic clause, which gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers" meaning the enumerated powers.
 - The 10th Amendment reserves for states or the people powers not assigned to the national government or denied to the states by the Constitution.
- **Dual federalism insists that powers not assigned to the national government are only for states and the people, and claims that the elastic clause is inflexible.**
- **Cooperative federalism restricts the 10th Amendment and suggests supplements to the elastic clause.**

ESSENTIAL QUESTION CFU

- Literally, which cake is better – layer or marble?
- Explain why state governments would like dual federalism. How does the 10th Amendment play a role in this form of federalism?



Layer Cake Federalism

is based on a clear delineation of authority and programs among the levels of government.



Marble Cake Federalism

is based on a pragmatic mixing of authority and programs among the national, state, and local governments.

10TH AMENDMENT VS. 14TH AMENDMENT

The arguments presented to the Supreme Court of the United States in *Plessy v. Ferguson* involve two competing amendments to the Constitution. The Fourteenth Amendment says states may not deny people equal protection of the law and the Tenth Amendment reserves broad, undefined powers (often referred to as police powers) for the states.

- ***Federal Power***

- Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

- ***State Power***

- Tenth Amendment**

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.

Plessy argued that by restricting him to a separate train car, the State of Louisiana violated his Fourteenth Amendment rights. However, the State of Louisiana countered that it had the power under the Tenth Amendment to create laws that preserve order and public peace. ¹⁵

WHAT ARE THE ADVANTAGES OF FEDERALISM?

1. FEDERALISM CHECKS THE GROWTH OF TYRANNY

- Inhibits formation of a single-interest majority
- If tyranny occurred in a few states, federal government could prevent its spread to others (e.g. Shays' Rebellion).
- National government has only those powers granted to it - all others belong to states through Amendment 10.

2. FEDERALISM ALLOWS UNITY WITHOUT UNIFORMITY

- No need for consensus on every divisive issue
- More suitable for geographically large nation – allows for differences among states
- More suitable for heterogeneous people – allows for differences

3. FEDERALISM ENCOURAGES EXPERIMENTATION

- States are "laboratories" for public policy experimentation (gambling in NV, marijuana in CO)
- States have been in the forefront on health care, voting, air pollution control programs

4. FEDERALISM PROVIDES TRAINING FOR FUTURE NATIONAL LEADERS

- Training ground for state and local politicians to gain experience
- 20 of nation's 45 presidents served as governor of a state = executive office experience

5. FEDERALISM KEEPS GOVERNMENT CLOSER TO THE PEOPLE

- Provides numerous arenas for decision-making
- Local and state politics involve citizens in large numbers (most Americans had a stronger allegiance to their state and state government)
- Multiple points of access for citizens

WHAT ARE THE DISADVANTAGES OF FEDERALISM?

- 1. Promotes inequality because of states differ in the resources they can devote to providing services.**
 - Some states put more money to public education than others**
- 2. Enables local interests to delay or even thwart majority support for a policy.**
- 3. Creates confusion because the different levels of government make it difficult for citizens to know what different governments are doing.**

What
do
you
notice
that
stands
out?

Who pays? **DELAWARE, MINNESOTA, NEW JERSEY, and CONNECTICUT**
all paid at least \$6,000 more in federal taxes per person than they received in federal aid.
15 other states were net donors.

Net Donor: Over \$5,000 Per Person	Connecticut \$6,241	New Jersey \$6,644	Minnesota \$7,431	Delaware \$12,285
Net Donor: Between \$1 and \$5,000 per person	Ohio \$49 Georgia \$434 Washington \$773 Wisconsin \$1,000	North Carolina \$1,108 California \$1,466 Nevada \$1,616 Arkansas \$1,723	Massachusetts \$2,133 Colorado \$2,176 Nebraska \$2,850 Texas \$2,243	Rhode Island \$2,732 Illinois \$3,640 New York \$4,502

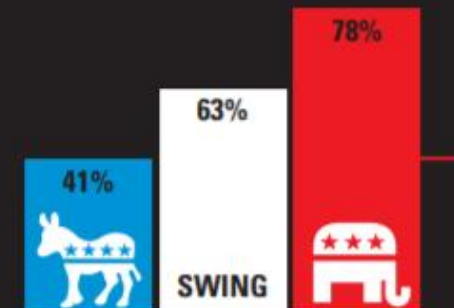
Who receives? **ALASKA** took in twice the federal money in 2007 that it paid in taxes. 31 states are recipient states. Of the top six recipient states, four are southern.

Net Recipient: Over \$5,000 Per Person	Alaska	New Mexico	Mississippi	Virginia	West Virginia	Alabama
	-\$7,448	-\$7,143	-\$6,765	-\$6,239	-\$5,820	-\$5,130
Net Recipient: Between \$1 and \$5,000 per person	Hawaii	South Carolina	Arizona	Utah	Pennsylvania	
	-\$4983	-\$3,756	-\$1,976	-\$792	-\$385	
	North Dakota	Kentucky	Idaho	Indiana	Oklahoma	
	-\$4,856	-\$3,012	-\$1,281	-\$723	-\$376	
	South Dakota	Maryland	Wyoming	Tennessee	New Hampshire	
	-\$4,414	-\$3,010	-\$1,205	-\$603	-\$349	
	Maine	Vermont	Missouri	Florida	Michigan	
-\$4,221	-\$2,854	-\$1,190	-\$581	-\$171		
Montana	Louisiana	Iowa	Oregon	Kansas		
-\$4,149	-\$2,180	-\$1,075	-\$474	-\$154		

SOURCE: Data from United States Internal Revenue Service; *Statistical Abstract of the United States 2012*; and *U.S. Census of Population and Housing, 2010*.

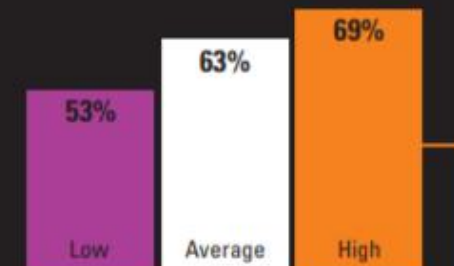
Who are the Recipient States?

Recipient states by party



18 out of 23 Republican-voting states (78%) are recipient states compared to 8 out of the 19 Democratic-voting states (42%).

Recipient states by poverty level



9 of 13 states with high poverty levels are recipient states (69%), while only 9 of 17 states with low poverty levels are recipient states (53%).

ESSENTIAL QUESTION CFU

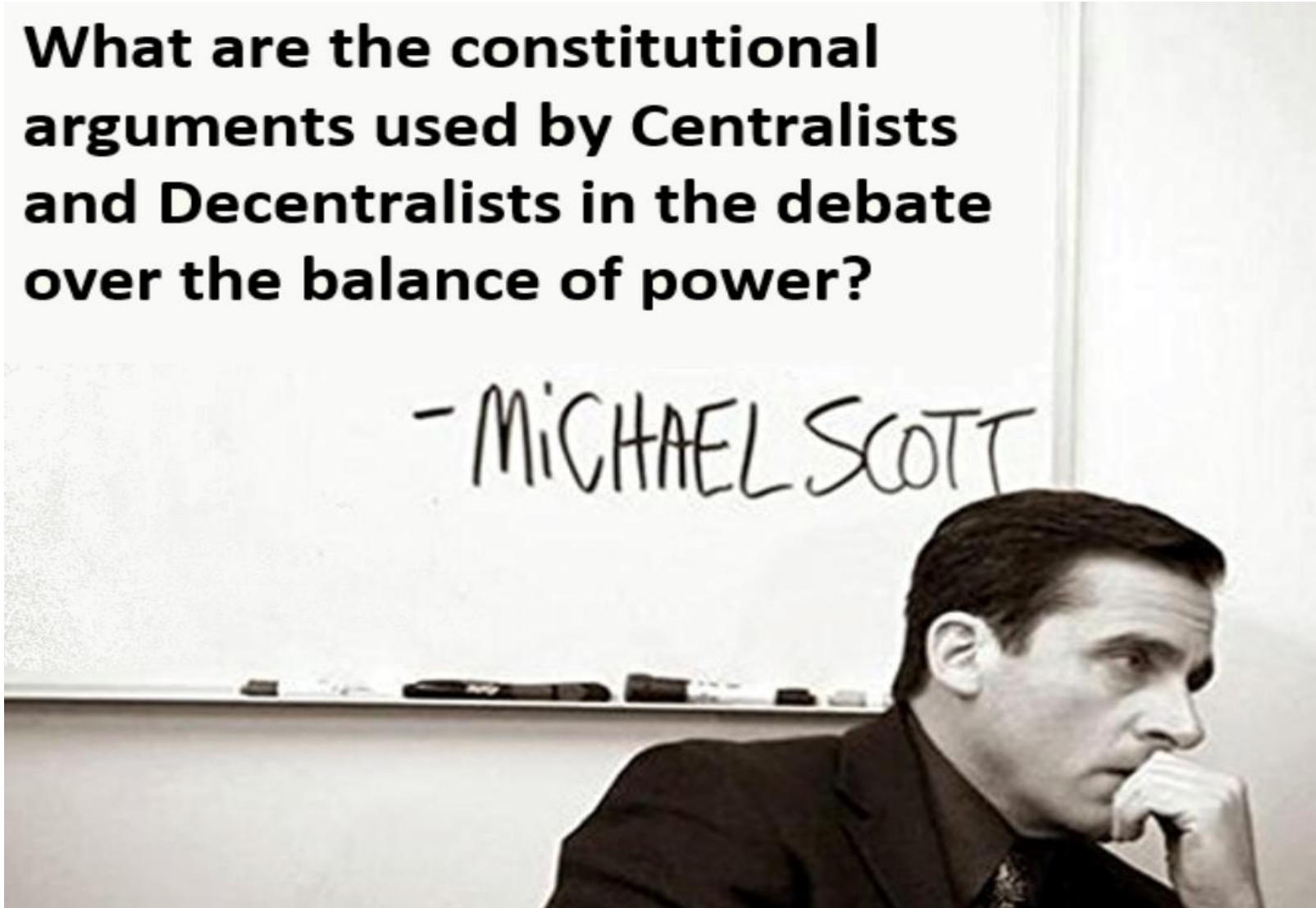
What are the advantages and disadvantages of a federal system?

How Texans View the US



What are the constitutional arguments used by Centralists and Decentralists in the debate over the balance of power?

**THINK ABOUT
IMPLIED POWERS
AND
RESERVED POWERS**



CENTRALISTS = FEDERALISTS = NATIONALISTS = LOOSE CONSTRUCTIONISTS

DECENTRALISTS = ANTI-FEDERALISTS = STATES RIGHTERS = STRICT CONSTRUCTIONISTS

DEBATE BETWEEN CENTRALISTS AND DECENTRALISTS

- **THE CENTRALIST (NATIONALIST) POSITION**

- The Constitution is a supreme law established by the people; it was intended that the central government's powers be liberally defined
- The national government is a government of all the people, and each state speaks for only some of the people
- Constitution created by people (“We the people...”) and not the states
- Elastic, commerce, and taxing/spending clauses give great power to national government
- 14th Amendment grants citizenship, equal protection, and due process under the law to all people born in the United States
- Powers go to states only if they have been surrendered by national government
- When in doubt, matter should be resolved in favor of national government
- Implied loose interpretation of the Constitution
- While state govt’s may be closer to people, some of those state governments have violated people’s basic rights (e.g. South during first 70 years of 20th century) – national government has been key protector of rights

DEBATE BETWEEN CENTRALISTS AND DECENTRALISTS

- **THE DECENTRALIST (STATES' RIGHTS) POSITION**
 - The national government is nothing more than an agent of the states, and every one of its powers should be narrowly defined
 - Constitution carefully limits national authority to delegated powers
 - The 10th Amendment prohibits the national government from using delegated powers to interfere with activities reserved for the states
 - 10th Amendment gives broad powers to states
 - When in doubt as to which holds a power, matter should be resolved in favor of states
 - Implies strict interpretation of the Constitution
 - National government has gotten too big and impersonal
 - State governments are closer to the people

ESSENTIAL QUESTION CFU

What are THREE other terms for Centralists?

What are THREE other terms for Decentralists?

Who are your THREE favorite characters from The Office?



Even today, some of the issues at the heart of the debates at the Constitutional Convention still exist.

What would some of them be?

What are some of the issues at the heart of the debates at the Constitutional Convention that still exist today?

GOVERNMENT SURVEILLANCE

USA PATRIOT ACT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) - 2001

- The law covered intelligence gathering and sharing by executive branch agencies, points of criminal procedure, and border protection. It also widened authority on tapping suspects' phones.
- Soon, people began to question the law's constitutionality and its threat to civil liberties.
- Some of the most controversial parts of the Patriot Act surround issues of privacy and government surveillance. The Fourth Amendment to the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" It requires law-enforcement officers to obtain warrants before making most searches.
- Does the government have the right to collect phone and internet data from individuals?



What are some of the issues at the heart of the debates at the Constitutional Convention that still exist today?

GOVERNMENT SURVEILLANCE

USA FREEDOM Act (Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection and Online Monitoring) – 2015

- Restored in modified form several provisions of the Patriot Act
- Imposes new limits on the bulk collection of telecommunication metadata on U.S. citizens by American intelligence agencies, including the National Security Agency.
- Restores authorization for roving wiretaps and tracking lone wolf terrorists



What are some of the issues at the heart of the debates at the Constitutional Convention that still exist today?

PUBLIC EDUCATION

No Child Left Behind Act – 2001

- An act to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.
- States must adopt education accountability standards. States must annually test students. Sanctions against schools that fail to meet adequate yearly progress.
- NCLB was criticized for growing the federal footprint in K-12 education.
- Education advocates also claim the law has been underfunded.
- Does the federal government have the right to play a role in education in America?



ESSENTIAL QUESTION CFU

In your opinion, should we strengthen the Patriot Act to prevent further acts of terrorism?



Let's pretend you have a friend. Pretend your friend was absent from class today. What would you say if you had to explain the lesson to your friend? What are the 3 most important ideas?



**WHENEVER I'M ABOUT
TO DO SOMETHING, I THINK
“WOULD AN IDIOT DO THAT?”
AND IF THEY WOULD
I DO NOT DO THAT THING**

- DWIGHT SCHRUTE