

CRISIS, CIVIL WAR, AND RECONSTRUCTION**Issues Connector: Federal Power and States' Rights**

The Constitution granted most rights to the states, but in practice, the federal government has slowly gained control in many of the areas originally governed by state laws. One of the earliest challenges to federal authority was the Whiskey Rebellion of 1794. When George Washington sent federal troops to put down the rebellion, he established a precedent for federal authority to enforce its laws within a state.

At its core, the Civil War was fought primarily over the issue of states' rights—southerners believed that it was the constitutional right of individual states to determine whether slavery should be permitted or not. They also believed that they had the right to leave the Union. The federal government claimed that states did not have the right to secede from the Union. The war and its aftermath established broad powers for the federal government.

Article 1, Section 8, U.S. Constitution, 1787

This short statement, known as the “commerce clause,” has been at the center of many constitutional conflicts between state and federal government. Under this clause, Congress is given the power to regulate commerce between and among the states. The courts have interpreted this power very broadly, usually in favor of the federal government over states' rights. The commerce clause has been used to improve waterways and highways, regulate air safety, and limit goods shipped between states.

Tenth Amendment, U.S. Constitution, 1791

Part of the Bill of Rights, the Tenth Amendment reserves for the states all powers not specifically granted to the federal government in the Constitution. However, many powers omitted in the Constitution fall under the control of the federal government. Some people believe that the Tenth Amendment was drafted to ensure that individual states would continue to run their own affairs.

Kentucky and Virginia Resolutions, 1798

The Alien and Sedition Acts gave the President power to imprison and deport citizens of other countries who were in the United States. The acts also made it a crime to resist federal law or to criticize the government. The Kentucky Resolutions, written by Thomas Jefferson, and the Virginia Resolutions, written by James Madison, claimed that the Alien and Sedition Acts were unconstitutional, because they gave the President too much power and violated the First Amendment, which guarantees free speech. Furthermore, the Kentucky and Virginia Resolutions claimed that a state could nullify or invalidate acts of Congress that the states believed were unconstitutional. The Kentucky and Virginia Resolutions represent the first legal protests by the states against the power of the federal government.

CRISIS, CIVIL WAR, AND RECONSTRUCTION**Issues Connector: Federal Power and States' Rights*****Dred Scott v. Sandford, 1857***

In the years before the Civil War, the battle over states' rights and federal powers focused almost exclusively on the issue of slavery. Laws regarding slavery varied from state to state. Dred Scott argued that because he had lived in a free state, he had obtained his freedom and could no longer be enslaved. The Court found against him, arguing that enslaved people were property and not citizens, so Scott did not have the right to bring a lawsuit. In the same ruling, the Court held that the federal government did not have the power to ban slavery in any territory. This decision was seen as a great victory for states' rights advocates.

South Carolina Ordinance of Secession, 1860

On December 20, 1860, South Carolina became the first state to secede from the Union, claiming that states had the right to remove themselves from the federal union. In subsequent months, other southern states joined South Carolina in seceding, and the fight for states' rights rapidly evolved into a civil war. After the Union won the Civil War in 1865, the federal government officially forbade states from seceding.

Civil Rights Act, 1964

During the 1950s and 1960s, many states held that the federal government overstepped its powers in passing sweeping civil rights legislation that overturned many state laws. The Civil Rights Act of 1964 barred states from using race or other factors to determine a person's eligibility to vote in a federal election. The following year, the Voting Rights Act of 1965 strengthened protections for African American and other minority voters.

Public Lands in Alaska

States' rights issues continue to be debated, from whether to grant statehood to Washington D.C. to federal mandates imposed on states, such as No Child Left Behind. Some of the most contested issues center on environmental restrictions, including whether or not to drill for oil in the Arctic National Wildlife Refuge, or ANWR. Some state officials in Alaska, where ANWR is located, insist that drilling is a matter for the state to decide. However, since ANWR was established by federal statute, the Congress maintains jurisdiction. State officials in Alaska have also disagreed with the federal government's management of coastal waters and other environmental issues. In this quote, Alaska governor Frank Murkowski challenges federal regulations limiting fishing and hunting.

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"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"
 —Article 1, Section 8, U.S. Constitution, 1787

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.
 —10th Amendment, U.S. Constitution, 1791

"... the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes ..."
 —Kentucky Resolution, 1798

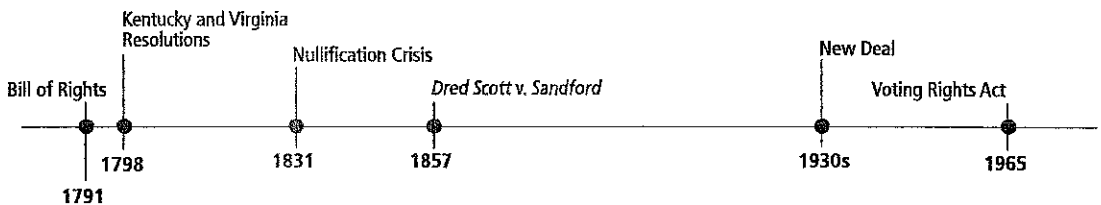
"As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his status, as free or slave, depended on the laws of Missouri, and not of Illinois."
 —Dred Scott v. Sandford, 1857

"We, the People of the State of South Carolina ... do declare ... that the Ordinance adopted by us in Convention ... whereby the Constitution of the United States of America was ratified ... [is] hereby repealed; and that the Union now subsisting between South Carolina and other States, under the name of the 'United States of America,' is hereby dissolved."
 —South Carolina Ordinance of Secession, 1860

"No person acting under color of law shall in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote ..."
 —Civil Rights Act, 1964

"The federal takeover of our fish and game management is a severe setback in our long battle with the federal government for states' rights and to be able to take responsibility for ourselves."
 —Alaska Governor Frank Murkowski, 2003

Federal Power and States' Rights



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Directions: *Read the excerpts regarding the issue of federal power and states' rights in the United States. Then answer the questions that follow.*

1. According to the Constitution, who has all powers not specifically granted to the federal government? In what area does the Constitution give Congress power over the states?

2. How does the Kentucky Resolution define the purpose of the federal government?

3. Who does South Carolina believe should make decisions about inclusion in the federal government? Why?

4. **Recognize Bias** What charged language does Governor Murkowski use to emphasize his point?

5. **Draw Conclusions** Which of these statements support states' rights? Which support the power of the federal government?

6. **Apply Information** When should the power of the state be supreme? When should the federal government have the final say? Explain how you formed your opinion.
