

Treaties—A Federal Power, Not State Power

In this lesson, students will experience in a greatly simplified manner and then draw conclusions about what could happen if any state could enter a treaty with another country.

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| GRADES | 4 th and 5 th |
| TIME | 1 class period |
| SUBJECTS | Civics, Social Studies |
| STRATEGIES | Class participation |
| TAGS | federal, federal power, common, treaty, treaties, sovereignty, sovereign power, Constitution |
| LESSONS | Civics and Social Studies – Allocation of governmental powers and duties under the Constitution Federal v state powers and duties civil behaviors reasoning |

Objectives

Students will know that:

- states are not sovereign nations. They each gave up elements of independence to become part of a nation, so cannot do all the things sovereign nations do. Every state, in becoming part of the nation, gave to the federal government the status and powers of a sovereign nation as expressed, implied, and limited by the Constitution.
- among the powers all states gave up to the federal government is the making of treaties with other nations. States may not make treaties with other nations.
- treaties are legally binding agreements between/among nations and become part of international law.
- if the US makes a treaty, its terms become the law for the whole nation; even if people in a state do not like it, they are bound by it.
- The US President may enter into an international treaty with the advice and consent of the 2/3 of the members of the US Senate.

Students will understand that making treaties with other nations needs to be a federal - not state - job because:

- treaties affect the whole nation so those who create (President) or consent to them (Senators) must therefore be made only by people elected to represent and act for the whole nation.
- making treaties is a power of sovereign nations, and states are not sovereign.
- Allowing one state to bind the other states by entering an agreement with a foreign country would be unfair to the other states whose elected representatives had no voice in that decision, and such treaties would create constant strife between the people of different states.

Glossary

- landlocked - (especially referring to a state, territory, or country) almost or entirely surrounded by land; having no ocean coastline or seaport
- sovereignty - autonomy; independence from foreign control
- sovereign nation - a nation free from foreign control
- sovereign power - a power that can be exercised only by a fully independent nation's government, ex: entering into treaties and issuing money
- treaty - binding agreement among sovereign nations that become part of international law

Setting the Stage

Read and explain in your own words:

Sovereignty means total independence of a nation from outside control. When states joined the United States, they had to give up some powers to the national/federal government that can only belong to a sovereign nation, not each of its parts. The Constitution lists many of the sovereign powers and duties that the US government alone must handle. These duties are the ones that affect the whole nation.

One of the powers specifically given to the federal government deals with making treaties, official agreements between our country and other countries. These agreements have the force of law all over the United States.

Article I §10 prohibits states from making treaties.

Article II §2 gives the power to make treaties with other countries to the President by and with the advice and consent of 2/3 of the Senate.

Example of a Treaty and its Effect

As an example, starting many years ago, long before your parents, grandparents and even great grandparents were born, the United States made a series of treaties with other countries to protect many kinds of birds that migrate to, within, and from those countries and the US.

Chimney swifts, birds that eat mosquitos but build their nests in chimneys, are among the many kinds of birds that treaty promises to protect. The treaty is still in effect. So today, more than 100 years after the treaty was first created, if chimney swifts build nests in your chimney, even if the baby birds' squawks keep you awake every night all summer long, you are not allowed to remove the nests or do anything to disturb the birds.

Because the treaty was made legally by the then President with the consent of at least 2/3 of the Senate, (who were elected to represent the people in every state), it became and remains the law everywhere in the nation. If you are found guilty of breaking this law, you are guilty of a federal crime, and you may well have to pay the federal government a huge amount of money for each nest or bird you disturbed.

Let's do something that will show you what could happen if all the states could make treaties with other countries.

Activity to demonstrate possible results if individual states could make treaties with other nations

Divide the class into 2 groups and separate them.

Group I = State Legislators and the Governor of Maine

Group II = State Legislators and the Governor of North Dakotan

Tell both groups:

You are the governors and lawmakers of 2 different states:

- Group I, you are Mainers.
- Group II, you are North Dakotans
- You have been elected by the people of your state to represent them as you make laws and see to it that they are carried out. Pick which of you will be the governor; later, she or he will speak for your group.

Directing their attention to the map, have them note their closest neighbor to the north and what they border on every side.

- Canada is north for both states.
- North Dakota is rectangular. It has Minnesota on the east, Montana on the west, and South Dakota on the south, so is landlocked.
- Maine is closer to a triangle. It has the Atlantic Ocean and Canada on the northeast, Canada and New Hampshire on the west, and the Atlantic on the southeast.

Say to the North Dakotan governor and lawmakers privately:

North Dakotans, your state is looking for cheaper natural gas because your winters are long and cold. Canada has plenty. Ocean fishing is not a business in North Dakota since you are nowhere near an ocean. Canada will sell your state the natural gas you need for a much lower price if you agree that no Americans will fish in a huge area of the Atlantic that presently is used by many American fishermen who live on the Atlantic coast. Almost everyone in North Dakota will save a huge amount of money if the price of natural gas is much lower. If you make this agreement, its terms will become the law in every state. Will you agree to it? Why or why not?

Say to the Mainer governor and lawmakers privately:

Mainers, Canada has a serious shortage of wheat, soybeans, and corn due to severe drought and fires throughout their farmland. Though Maine does not have these crops to sell, Canada says that if Maine will enter a treaty that allows Canada to buy all the crops they need at a very low price from other states, Canada will prevent any Canadians from fishing in a huge part of the ocean that is rich in fish off the coast of Maine. Maine has many commercial fishermen who will benefit greatly from this agreement. If you make this agreement, its terms will become the law in every state. Will you agree to it? Why or why not?

Discussion

After each state makes its decision, explain the treaty that Canada offered to North Dakota. Have the governor of that state announce the decision it made and explain the reasons for decision.

Do the same with Maine.

If either state agreed to the treaty that Canada offered them, ask:

- Was the treaty made or approved by elected representatives from the whole country?
- Was it agreed to by elected representatives of the states that might be hurt by its provisions?
- If not, how could it be fair to all of the people who must obey its provisions?
- Does this remind you of the Patriot anger over no taxation without representation?
- How do the citizens of the state that did not make the treaty but are bound and hurt by it feel toward the state that entered into the treaty?
- Imagine if this kind of thing happened over and over, helping one state at the expense of others. What would result?
- Should state governments or only the federal government have the power to enter into treaties with other nations?

Sources

US Constitution

Article I §10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II §2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Migratory Bird Treaty Act of 1918

- 16 USC Chapter 7, Subchapter II: Migratory Bird Treaty
<http://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter7/subchapter2&edition=prelim>
- Explanatory Article
https://en.wikipedia.org/wiki/Migratory_Bird_Treaty_Act_of_1918
- Biden Admin 2021 Developments in 1918 Migratory Bird Treaty Act
<https://www.washingtonpost.com/climate-environment/2021/09/29/migratory-bird-treaty-act-biden/>