РОССИЙСКАЯ ФЕДЕРАЦИЯ
ФЕДЕРАЛЬНОЕ АГЕНТСТВО ПО ОБРАЗОВАНИЮ
ГОСУДАРСТВЕННОЕ ОБРАЗОВАТЕЛЬНОЕ УЧРЕЖДЕНИЕ
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ФЕДЕРАЛИЗМ В США

Учебно-методическое пособие для вузов

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В пособии рассматривается история и эволюция Федерализма в Соединенных Штатах Америки. Пособие предназначено для студентов языковых факультетов в курсе «История и культура США» и студентов-юристов, историков, политологов, изучающих государственное устройство США, а также для всех, кто владеет достаточными навыками чтения на английском языке и интересуется вопросами страноведения США.

ПРЕДИСЛОВИЕ

Федерализм – это союзное государство, состоящее из государственных образований (штатов), обладающих определенной юридической и политической самостоятельностью. Федерализм представляет собой разделение власти. Это значит, что органы управления штатов не являются просто лишь региональными органами государственного управления. Все штаты имеют свои собственные конституции, билли о правах, законодательную базу, исполнительную ветвь и судопроизводство.

В настоящем пособии рассматриваются истоки и причины возникновения федеральной формы правления в США; предлагается обзор основных этапов её развития и самых значимых событий в процессе её эволюции. Особое внимание уделяется тому, что говорит Конституция США о разделении власти между штатами и центральной государственной федеральной властью; исследуются три исторических события, которые укрепили главенство федеральной власти без упразднения органов правления в штатах; рассматривается новая форма кооперации между государственным управлением и правительствами штатов.

Пособие призвано помочь студентам разобраться в вопросах разделения власти между двумя уровнями управления и получить представление, как об истории, так и о современных тенденциях федерализма в Америке.

Пособие состоит из четырёх частей и Приложения.

В первой части лингвострановедческого пособия содержатся наиболее важные сведения о возникновении и совершенствовании федеральной формы правления в Соединённых Штатах Америки, определившейся самой историей этой страны.

Во второй части *Supplementary materials* предлагаются пять аутентичных источника для самостоятельного исследования.

В третьей части *Cultural literacy vocabulary* представлены лингвострановедческие реалии, обозначенные в тексте *звёздочкой* (*).

Четвертая часть пособия *Check yourself* содержит задания, справиться с которыми помогают тексты первой части и словарь реалий *Cultural literacy vocabulary*. Предлагаемые задания нацелены на повышение степени усвоения материала. Ключи дают возможность студентам самостоятельно изучить исследуемую тему и проверить уровень овладения информацией.

Пособие составлялось по многочисленным аутентичным источникам, список которых включён в библиографию.

Пособие «Федерализм в США» может быть рекомендовано студентам факультета иностранных языков, юридического, исторического и философского факультетов.

PART I. FEDERALISM IN THE UNITED STATES OF AMERICA

Federalism* in the United States refers to the division and sharing of constitutionally assigned or implied powers between the national and state governments. American's federal system, a mixture of states' rights and national supremacy, permits the states and municipalities control over a number of important programs – highways, some welfare programs, education, the police, and land-use regulations. While the federal government possesses enormous power, it must persuade the states to govern in ways that will meet political, economic, and social goals. The states may not always be so persuaded – witness the years of resistance to progressive civil rights legislation passed by Congress*, or the desegregation rulings of the United States Supreme Court.

The US Constitution* gives certain powers to the federal government*, other powers to the state governments, and yet other powers to both. For example, only the national government can print money; the states establish their own school systems; and both the national and the state governments* can collect taxes.

Despite federalism's imperfections, American federalism has been an attractive political arrangement shared by other nations such as Canada, Australia, India, Germany, and Switzerland.

THE CONSTITUTION AND THE STATES

The founders* were basically divided over the meaning of federalism. One group subscribed to the views of Alexander Hamilton*, who argued for a powerful federal government – i.e., the concept of national supremacy. The other view, espoused by Thomas Jefferson*, assumed the federal government to be a creation of the states. The Jeffersonians believed that an "oppressive" national government could threaten individual liberties. It should therefore have limited powers. This basic struggle between national supremacy and states' rights would intensify over time.

The main ideas to be remembered:

Under the Constitution, the states gave up some powers, kept others for themselves, and agreed that some would be shared. In the area of shared powers, national law is supreme. The Constitution also includes rules about

how the states should cooperate as well as guarantees about how the states and the national government should interact.

The United States Constitution does not tell exactly how state governments should be run. That matter is left to the state constitutions. However, several parts of the U.S. Constitution are especially important for understanding the role of the states in the division of powers. Article I describes what kinds of laws Congress may and may not make. Article IV is about relations between the states. Article VI tells what should be done if state and national laws conflict. The Tenth Amendment explains to whom powers belong when the Constitution does not give them to the national government. The Fourteenth Amendment deals with state citizenship.

Relations between States

If you have ever traveled from one American state to another, you probably did not notice any difference. You are able to move around as a free citizen because the Constitution provides a system by which the states cooperate.

- *Each state honors acts of other states.* Article IV of the Constitution begins with the statement: "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." This statement means that the legal acts and records of each state are recognized by all the others. For example, your birth certificate is valid in all the states, not just in the state in which you were born. If a man and a woman are married in one state, every other state regards the marriage legal, even though marriage laws are not the same in each state. If a person has a legal driver's license in one state, he or she may legally drive an automobile in any other state. If you owe money to a business in one state, you will still owe the money if you move to another state.
- *Rights of state citizenship.* The Fourteenth Amendment says that each citizen of the United States is also a citizen of the state in which he or she lives. As an American citizen, if you move to another state, you will also become a citizen of the new state. However, a state may require you to live there for a certain period of time before you can vote in an election* or do certain other things. One reason for this requirement is to make sure that you really do intend to make the new state your home.

The Constitution also provides for people who simply travel to another state to do business or to visit. Article IV states that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States". This means that as a visitor in any state, you will still be protected by both state and national laws. You may work, buy property, or conduct business just as though you were a citizen there.

- *States cooperate through extradition.* Often the states help each other in arresting persons accused of crimes. The governor of one state may ask the governor of another state to send back an accused person who has run away. Sending back an accused person to the state where the crime was committed is called extradition. According to Article IV, requests for extradition will always be granted. Usually such requests are granted, even though the Constitution does not state any punishment for a governor who turns down a request for extradition. Occasionally, a governor will turn down such a request because he or she believes that the prisoner is innocent or will not have a fair trial in the other state. The Supreme Court has ruled that governors are free to turn down requests for extradition if they choose.
- *Other forms of cooperation.* The states also cooperate in some ways that are not required by the Constitution. In some cases there may be good reasons for different states to have different laws. However, states often cooperate to pass laws that are the same, or almost the same. Also, the governors of all the states sometimes meet together. They discuss problems the states share and ways to deal with the problems they have in common. Sometimes the governors ask the national government to pass laws they think will help every state.

National Promises to the States

The Constitution also includes several guarantees that the national government makes to the states. Some of these include guarantees of rights and promises to do or not to do certain things.

- *Promises concerning new states.* Article IV gives Congress the power to admit new states into the United States. New states have the same rights and powers as old states. This article also includes several promises about how new states will be formed. The national government promises that new states may not be created by dividing or joining existing states without the agreement of the state legislatures and Congress.
- *The promise of republican government.* Article IV includes a guarantee that the national government will not allow any state to fall under the control of an absolute government.
- *The promise of defense.* Article IV also includes two other promises. One is that the national government will protect each state against invasion. Another guarantee is that the national government will help put down riots or violence within the state if the state government requests help.

Three Kinds of Powers

To make sure that the states never become simply regional headquarters of the national government, the Constitution divides the powers of government into several groups.

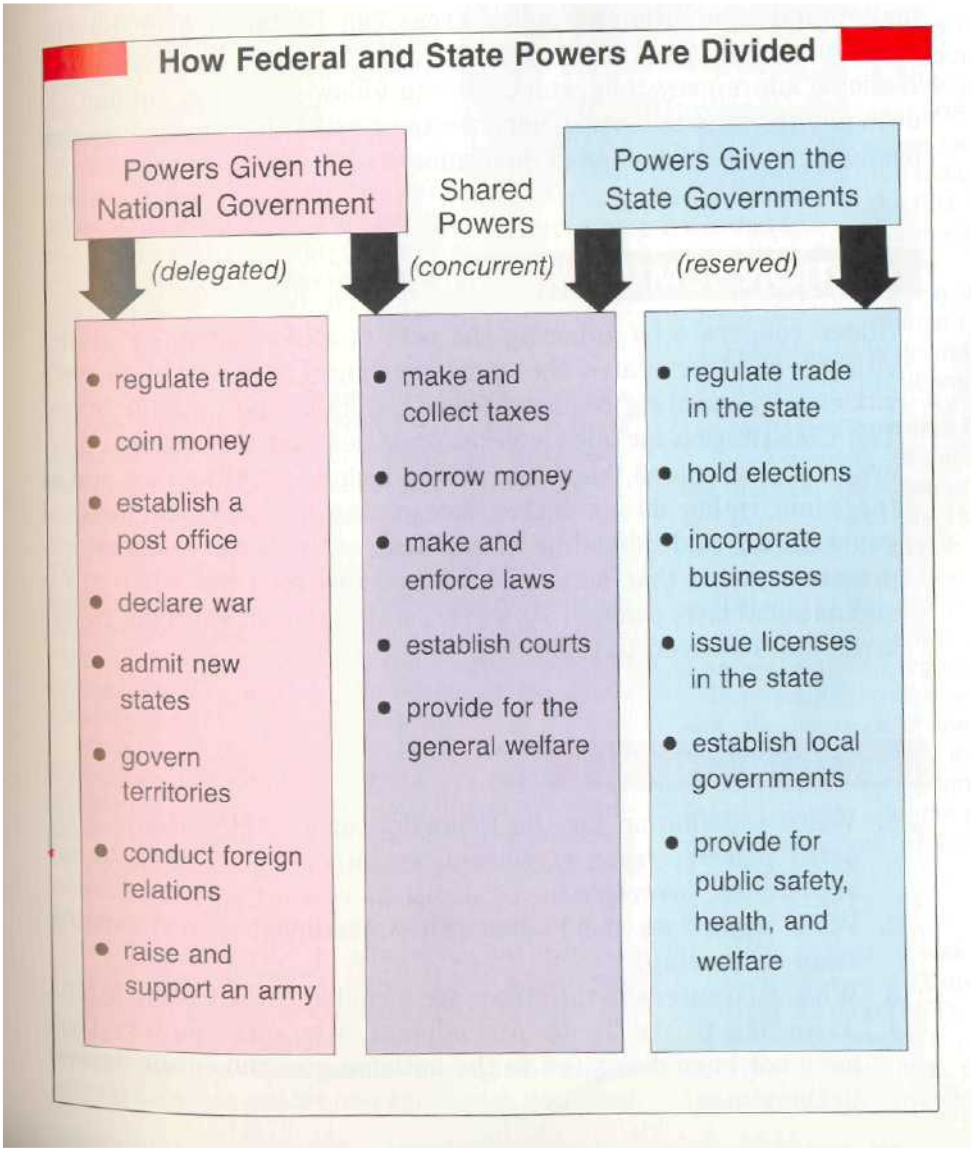
*Delegated powers**. To delegate something means to let someone else handle it. Delegated powers in American plan of government are those powers that are granted by the states to the national government. Most of these are listed in Article I of the Constitution. They include the power to coin money, the power to make laws that regulate trade between states, the power to make laws that regulate trade with foreign countries, the power to make treaties, the power to declare war, and others. Obviously, if the states had delegated all powers to the national government, there would be no division of powers. This plan of government would be unitary, not federal.

*Reserved powers**. To preserve some independence by the states, the Constitution allows states, or the people, to keep some powers for themselves. These powers are called reserved powers**.** Some of the powers reserved, or set aside, to the states, or the people, are the power to conduct elections and the power to ratify amendments to the Constitution. Other reserved powers include the power of states to regulate trade within their borders and the power to set up local governments, such as counties and cities.

The Tenth Amendment promises reserved powers to the states. It states that all powers neither given to the national government nor denied to the states are reserved to the states and to the people. Many early Americans thought this amendment was extremely important. They worried that perhaps the new Constitution gave too much power to the national government. They hoped the Tenth Amendment would keep the national government from growing more powerful. However, the Tenth Amendment turned out to be less important than they had hoped.

*Concurrent powers**. The powers that belong both to the states and to the national government are called concurrent powers**.** For example, both the states and the national government have the power to tax, borrow and spend moneys. Also, both have the power to make laws and the power to set up courts. State courts settle cases involving state laws, while national courts surceases involving national laws. What happens if both a state and the national government make laws that conflict with each other? Article VI of the U.S. Constitution provides the answer. When state and national laws conflict, the national laws alone must be followed. This constitutional principle is called national supremacy**.** Another important term describes what happens when the national government begins to make laws in an area of policy that had once been left to the states. When this occurs, they say that the national government

has preempted, or taken possession of the policy area. It is important to understand that although policy areas can be taken over by the national government, many state powers may not be preempted. National supremacy* tells which laws to follow in case of conflict. It does not abolish the state governments or make them mere regional headquarters of the national government.



Thus, states cooperate by honoring the acts of other states, by giving citizens of other states the same privileges given to their own citizens, by granting requests for extradition, and in other ways. The Constitution includes several promises that the national government guarantees the states. These include granting new states the same rights as old states, preserving a republican form of government, and defending states against invasion. National supremacy means that national laws must be followed when state and national laws conflict. However, states remain supreme in the areas still reserved to them.

THE GROWTH OF NATIONAL SUPREMACY

The main ideas to be remembered:

National supremacy has been strengthened as a result of three historic events. One was the 1819 Supreme Court case *McCulloch* v. *Maryland**. The second was the Civil War. The third event was the 1954 Supreme Court case *Brown* v. *Topeka Board of Education**.

Article VI of the Constitution is very clear about national supremacy. It says that the Constitution, national laws, and treaties are the "supreme law of the land", and state court judges must honor them. It also says that no state constitutions or state laws may conflict with the supreme law of the land.

At times, national supremacy has been challenged. In this part of the chapter, you will read about three of the most important challenges. Each challenge failed. Because of these three important failures, national supremacy is seldom questioned today. Disagreements between the states and the national government now take different forms.

There Are Implied Powers

In 1791, Congress passed a law setting up a federal bank. Many of the state legislatures were very angry about this. They thought the federal bank would take business away from state banks. They argued against Congress's power to set up a federal bank. The states claimed that the only powers given to the national government were the ones that were enumerated, or listed in the Constitution. The state legislatures pointed out that the Constitution did not mention that Congress had the power to set up a federal bank. Therefore, they argued that the Tenth Amendment gave the power to set up a bank to the state governments only. According to the state legislatures, this power was reserved to the states, not delegated to the national government.

In 1818, the state legislature of Maryland decided to punish the Maryland branch of the federal government's bank by passing a law requiring the bank to pay a high tax. However, the bank refused to pay the tax. When this happened, the state of Maryland sued the bank's cashier, James McCulloch. In 1819, the case *McCulloch* v. *Maryland** reached the Supreme Court.

The Supreme Court ruled that the tax was unconstitutional and did not have to be paid. The Court provided two landmark reasons for this decision.

First, the Court pointed out what Article VI of the Constitution says about national supremacy. The Court admitted that some powers are reserved to the states. However, it insisted that when the national government is exercising a delegated power, the states are not allowed to interfere.

Second, the Court drew attention to the part of the Constitution that follows the enumeration of delegated powers in Article I. This section of the Constitution explains that the powers delegated to the national government include more than the ones that are enumerated. They also include the power to make laws that are "necessary and proper" for carrying out the ones that are listed. The Court called these "necessary and proper" powers *implied powers**. The Court ruled that setting up a national bank was an implied power given to the national government.

After *McCulloch* v. *Maryland case** the clause in Article I that speaks of laws that are "necessary and proper" came to be called the "elastic clause"*. It acquires this name because it can be "stretched", like elastic, to give the national government many powers that people had formerly considered reserved to the states. The "elastic clause" has justified many new laws dealing with subjects covered by implied powers. It has also made the Tenth Amendment much less important than opponents of national government power had hoped it would become.

States May Not Secede

At one point in American history, many southern states became very frustrated because they could not get Congress to pass the laws they wanted. Northern states were able to block southern demands. Eventually, 11 southern states tried to secede, or leave the union of the United States. However, the national government fought this attempt. The Civil War, which lasted from 1861 to 1865, was the result.

The Civil War* brought many changes to this country. The most well known, of course, is that it abolished slavery. The Civil War also strengthened national supremacy. Before the Civil War, many people believed that a state could secede if the population of that state was no longer willing to be a part of the United States. However, the Civil War established that states may not escape national supremacy by seceding.

National Law Cannot Be Nullified

In 1954, the Supreme Court reached a historic decision in a case called *Brown* v. *Topeka Board of Education**. The Supreme Court ruled in

this case that it was unconstitutional for states to set up separate schools for black and white students. The Court ruled that such schools do not give black and white students equal protection of the laws, which is promised by the Fourteenth Amendment. The reaction to this Court decision further changed the relationship between the states and the national government. Again national supremacy was strengthened as a result.

At first, many southern states were furious about the Supreme Court's decision to end the system of "separate but equal" education. Some state legislatures even passed laws to nullify, or disregard, it. In nullifying the Supreme Court's decision, the state legislatures did not exactly say that they would not obey the Constitution. They claimed instead that they had as much right to interpret the Constitution as did the Supreme Court. Their interpretation was that the system of "separate but equal" education was allowed by the Constitution.

The national government ignored the state nullification laws. To enforce the Supreme Court decision, President Eisenhower* sent federal troops to Central High School in Little Rock, Arkansas, in 1957. The federal troops were sent to protect black students and make sure they were admitted to classes at the previously all-white school. In later years, the national government again sent federal troops to various locations in order to enforce the decisions of the Supreme Court.

The events following *Brown* v. *Topeka Board of Education* established the rule that states may not escape national supremacy by passing nullification laws. The Supreme Court's interpretation of the Constitution is final. However, the Supreme Court may modify its interpretation of the Constitution and change previous rulings.

COOPERATION BETWEEN STATES AND NATIONAL GOVERNMENTS

The main ideas to be remembered:

The national government provides federal aid to the states through grants. But what exactly is federal aid? Federal aid is money given by the national government to state governments in order to help them accomplish certain things. One of the reasons that the national government has been able to give the states federal aid is that the national government collects revenue, or money, more easily than do the states. The national government collects revenue through the national income tax.

There is more to federal aid than simply giving out money. If you gave someone money, you might be interested in knowing what that person

did with it. For the same reason, the national government is interested in what the states do with federal aid. This interest results in shared decision making. The national government makes some decisions about how the aid is to be spent, while the state governments make others.

Cooperation between state and national governments can be traced as far back as 1787, when the Northwest Ordinance was enacted. However, federal aid is relatively new. Over the years, cooperation between state and national governments changed in various ways. It will likely continue to change in the future.

Categorical Grants*

One of the ways the national government gives aid to the states is through categorical grants. Categorical grants or grants-in-aid programs are gifts of money that can be spent only in very specific and detailed ways. The way these grants work can be broken down into three steps. The steps are as follows.

First, the national government designs a plan, or program, for dealing with a certain problem faced by the states. Examples of such problems might include pollution control or highway construction.

Second, the national government invites the states to join the program. Here is how the invitation works. The national government promises each state a certain amount of money to deal with the problem, if the state agrees to spend a certain amount of its own money on the problem as well. The national government also demands that each state must follow federal guidelines of the program exactly if the state expects to receive the grant.

Third, a state accepts the invitation. The state government takes care of the day-to-day operation of the program. The national government supervises the program to make sure that the state is keeping its promise to follow the federal guidelines.

Block Grants*

The other major way the national government gives aid to the states is through block grants. Block grants are different from categorical grants in that they are not based on detailed programs designed by the national government. Instead, the national government gives the states money to be used for certain very broad purposes. However, the money cannot be used for the same purposes as categorical grants. Certain guidelines must be followed by the states in spending the money that comes from block grants, but overall, block grants have fewer strings attached than do categorical grants.

State governments usually dislike the many guidelines that must be followed in applying for and spending grants. The paperwork and guidelines are often referred to as "red tape"*. You can easily see that state governments might prefer block grants to categorical grants because fewer guidelines are involved. However, the national government tends to give out categorical grants more often than block grants. Having more and stricter guidelines means that the national government can keep tighter control over what happens to the money it gives out. This is why about eight-tenths of all federal aid to the states is given in the form of categorical grants, while only about one-tenth is given in the form of block grants. Other forms of federal aid make up the remaining one-tenth.

How Federal Aid Has Changed the States

Offering the states categorical grants and block grants has changed the relationship between the states and the federal government in many ways. The following are five of the most important.

– The influence of the national government has increased. By giving aid only to the states that will follow its guidelines, the national government has much control over how states carry out various programs, thus increasing its influence.

– The size of the state governments has increased. By requiring states to spend some of their own money to qualify for certain grants, the national government has persuaded the states to become involved in many activities and projects they might never have become involved in on their own. This involvement has increased the size and scope of state governments.

– The power of state governors has increased. Under many state constitutions, the governor has quite a bit of power, while under others, the governor is relatively weak. However, federal aid increases a governor's power because most federal aid programs name the state governor as the person in charge of applying for the grant and spending it. Having control of large grant monies increases a governor's power.

– The demands states make on the national government have increased. Federal aid has caused the states to discover common interests. All states are interested in persuading the national government to increase the total amount of aid, to make the aid available for purposes the states desire, and to simplify the guidelines, or "red tape".

– The states have become more competitive in some ways. Although the states share common interests in obtaining federal aid, they must also compete with each other for a share of the federal pie. The national government has a limited amount of money to give the states. Every state depends heavily on federal money for highway construction. Each

state must look out for its own interests in order to obtain a share of federal grant money.

How Federal Aid Might Change in the Future

Federal aid might change in the future in at least two different ways. The reasons for these two changes are very different.

1. *Guidelines may become less strict.* As the states gain experience cooperating with each other to put pressure on the national government, there might be a shift toward the kinds of grants the states prefer. Block grants or other types of grants with more flexible guidelines may become more easily available.

2. *The amount of federal aid may be less.* At the present time, the national government has a budget deficit. A budget deficit means that the government is spending more than it takes in as revenue. The budget deficit has grown rapidly in recent years and has become a serious problem. Some people want to make it smaller by increasing taxes. Others want to make it smaller by reducing spending for defense or domestic programs. Some kinds of spending are more likely to be reduced than others. Federal aid to the states is one area of spending that is likely to be reduced.

No one can predict what kinds of changes will take place. Making guidelines for federal aid to the states less strict would probably reduce the influence of the national government on the states. Reducing the total amount of federal aid given to the states would certainly do so.

Thus, the state and national governments cooperate through the spending of categorical and block grants. These grants from the national government have changed state government in many ways. In the future the pattern of federal aid will likely change.

ADVANTFGES AND DISADVANTAGES OF FEDERALISM

The founders created a federal structure to prevent a tyrannical concentration of political power which might silence the voice of the states. The ultimate goal of the federal system would be to strengthen the foundations of democracy through power-sharing. Has the federal vision of the framers been fulfilled?

Federalism is seen as having a number of advantages: (a) it promotes a measure of local control over political life and multiplies the opportunities for political participation through the elections of thousands of state and local officials; a citizen or interest group denied access at one

level of government can seek redress at another; in short, the opportunity to gain political power is widely disseminated among the fifty states, 3,000 counties, and thousands of municipal governing units; (b) it encourages experimentation and diversity vis-a-vis the nation's social and political needs; Georgia was the first state to allow eighteen-year-olds the right to vote, and California was a pioneer in devising air-pollution policies long before the federal government passed a comprehensive clean-air act for the entire nation.

Some notable negative aspects of federalism are: (a) its local orientation encourages provincialism and obstruction of progress; (b) local autonomy can create wasteful duplication, such as the plethora of agricultural agencies at all three levels of government. The bureaucracies become bloated and administrative costs increase proportionately; (c) federal systems may have difficulty coordinating problems that "spill over" state lines, such as air and water pollution. Acid rain that falls upon states in New England originates in the industrial centers of the Midwest, but those polluting states can refuse to pay for damages.

The sharing of political power is the trademark of contemporary federalism. While national supremacy is now accepted, the states are clearly partners with the federal government on both policy coordination and implementation. Even after the Reagan* era, billions of federal grant dollars continue to reinforce the "marble cake" relationship.

In the past, some experts have predicted that an all-powerful federal government would eventually render the states politically meaningless. However, state governments have markedly improved their performance during the last twenty-five years in such policy areas as education, urban renewal, and the environment. Political leadership in the states has also improved. In short, the federal tradition seems to be in no danger of extinction.

THE PRINCIPLE OF FEDERALISM

This is an essay that describes how federalism is *supposed* to work according to the standard "civics book" kind of definition. It is interesting to consider this, and then note how much the balance of power in the USA today has shifted in favor of the federal (or national) level of government in actual practice.

The principle of federalism is based on the idea that political power is shared and divided between the national government and the state governments. This federal system contrasts with unitary systems, in which ultimate political power is held by the national government, and confederal systems, in which state governments retain political sovereignty. In the United States, the Constitution establishes the initial division of powers between the national and state governments within the federal system. The

Constitution (and the federal system that followed from it) was largely the result of a compromise between Federalists, who advocated the establishment of a stronger national government, and Anti-Federalists, who wanted state governments to retain more of their sovereignty. According to the Constitution, some powers, whether expressed or implied, are exercised exclusively by the national government, while other powers are reserved exclusively for the states. Still other powers are shared concurrently by both national and state governments.

This fundamental theory of federalism effectively limits the power of both national and state governments. For example, the federal government cannot exercise powers that are exclusively reserved for the states, such as conducting elections, establishing local governments, regulating commerce within a state, or establishing a state militia. Similarly, state governments cannot duplicate or interfere with exclusive national powers such as coining money, conducting foreign policy, declaring war, or admitting new states. In addition, there are certain powers that are expressly denied both national and state governments by the Constitution. For example, the federal government is prohibited from taxing exports, changing state boundaries, or violating any of the rights or liberties that are protected by the Bill of Rights. State governments are prohibited from taxing either imports or exports, entering into treaties, interfering with contractual obligations, or denying rights of due process. Neither the national nor the state governments are allowed to grant titles of nobility, permit slavery, or deny citizens the right to vote because of race or sex.

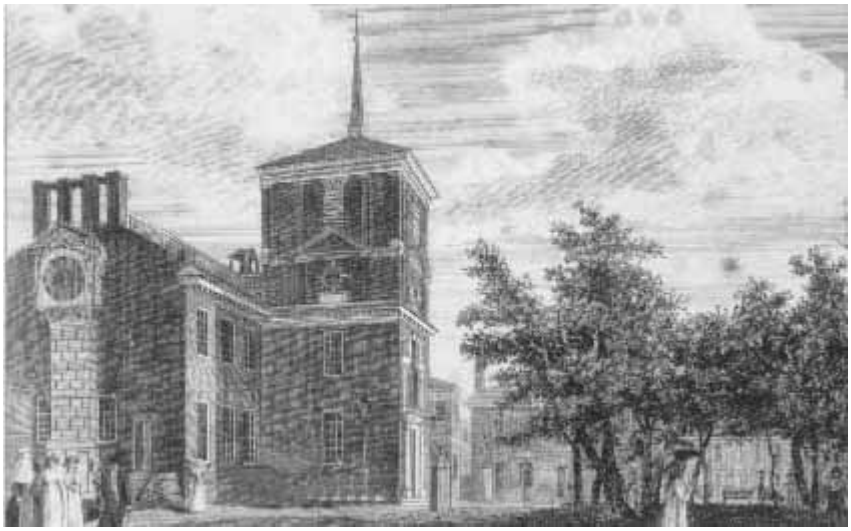
PART II. SUPPLEMENTARY MATERIALS

Text 1.

AMERICAN FEDERALISM, PAST, PRESENT AND FUTURE

Since its inception more than 200 years ago, American federalism has undergone tremendous change. Today, all governments federal, state and local – play a greater role in the lives of their citizens, expectations about what kind of services and rights people want from government have changed, and relations among the federal, state and local governments have become infinitely more complex. In this brief essay, Ellis Katz, professor of political science and a fellow of the Center for the Study of Federalism at Temple University, explores the origins and development of American federalism, its contemporary practice and problems, and the forces that seem to be moving it in new directions.

When the 13 North American colonies declared their independence from Great Britain on July 4, 1776, they recognized the need to coordinate their efforts in the war and to cooperate with each other generally. To these ends, they adopted the Articles of Confederation, a constitution which created a league of sovereign states which committed the states to cooperate with each other in military affairs, foreign policy and other important areas. The Articles were barely sufficient to hold the states together through the war against England and, at the successful conclusion of that war, fell apart completely as the states pursued their own interests rather than the national interest of the new United States.



A view of the State House in Philadelphia, Pennsylvania where the U.S. Constitution was signed. This black-and-white photo of an original hand-colored lithograph by Birdi & Son, sold by R. Campbell & Co. 1799, was provided by the U.S. Library of Congress.

The Origin and Development of American Federalism

To remedy the defects of the Articles (or, in the words of the Constitution of 1787, "to create a more perfect union"), George Washington, Alexander Hamilton, James Madison, and other nationalist leaders called upon the states to send delegates to a constitutional convention to meet in the city of Philadelphia in May 1787. It was, of course, that convention that produced the Constitution of the United States.

The framers of the Constitution rejected both confederal and unitary models of government. Instead, they based the new American government on an entirely new theory: federalism. In a confederation, the member states make up the union. Sovereignty remains with the states and individuals are citizens of their respective states, not of the national government. In a unitary system, on the other hand, the national government is sovereign and the states, if they exist at all, are mere administrative arms of the central government. In the American federal system, the people retain their basic sovereignty and they delegate some powers to the national government and reserve other powers to the states. Individuals are citizens of *both* the general government and their respective states.

This brief history is important for two reasons. First, the American federal system is not simply a decentralized hierarchy. The states are not administrative units that exist only to implement policies made by some central government. The states are fully functioning constitutional polities in their own right, empowered by the American people to make a wide range of policies for their own citizens.

Second, the framers expected that the states would be the principal policymakers in the federal system. The powers granted to the federal government are relatively few in number and deal mainly with foreign and military affairs and national economic issues, such as the free flow of commerce across state lines. Most domestic policy issues were left to the states to resolve in keeping with their own histories, needs and cultures.

The first 75 years of American development (1790-1865) were marked by constitutional and political conflicts about the nature of American federalism. Almost immediately George Washington, Alexander Hamilton, John Marshall and their Federalist colleagues argued for an expansive interpretation of federal authority, while Thomas Jefferson, James Madison, Spencer Roane and their partisan allies maintained that the American union was little more than a confederation in which power and sovereignty remained with the states. By the 1850s, the debate focused on whether slavery was a matter for national or state policy.

The American Civil War (1860-1865) did much to resolve these federalism questions. The northern victory and the subsequent adoption of

the 13th, 14th and 15th amendments to the Constitution ended slavery, defined national citizenship, limited the power of the states in the areas of civil rights and liberties, and, generally, established the supremacy of the national Constitution and laws over the states. Federalism issues continued of course, and during the first third of this century, the U.S. Supreme Court often cited federalism considerations to limit federal authority over the economy. Two developments, however, led to the expansion of federal authority, and, according to some critics, brought about an imbalance in American federalism.

First, under the New Deal programs of President Franklin D. Roosevelt*, the functions of the federal government expanded enormously. It was the New Deal that gave rise to Social Security, unemployment compensation, federal welfare programs, price stabilization programs in industry and agriculture, and collective bargaining for labor unions. Many of these programs, while funded by the federal government, were administered by the states, giving rise to the federal grant-in-aid system. The U.S. Supreme Court legitimated this expanded federal role, and since 1937 has pretty much allowed the national government to define the reach of its authority for itself.

Second, during the 1950s and 1960s, the national government became viewed as the principal promoter and defender of civil rights and liberties. In a series of very important decisions, the U.S. Supreme Court struck down state-supported racial segregation, state laws that discriminated against women, and state criminal proceedings that violated the due process of law provision of the 14th Amendment. Thus, people looked to the institutions of the national government (especially to the U.S. Supreme Court) to defend them against their own state governments.

These two developments required a reconceptualization of federalism. Until the New Deal, the prevailing concept of federalism was "dual federalism*," a system in which the national government and the states have totally separate sets of responsibilities. Thus foreign affairs and national defense were the business of the federal government alone, while education and family law were matters for the states exclusively. The New Deal broke this artificial distinction and gave rise to the notion of "cooperative federalism*," a system by which the national and state governments may cooperate with each other to deal with a wide range of social and economic problems.

Cooperative federalism characterized American intergovernmental relations through the 1950s and into the 1960s. The principal tool of cooperative federalism was the grant-in-aid, a system by which the federal government uses its greater financial resources to give money to the states to pursue mutually agreed upon goals. The building of the interstate highway system in the United States during the 1950s and 1960s is usually cited as an example of cooperative federalism working at its best. The

federal government provided up to 90 percent of the cost of highway construction, gave technical assistance to the states in building the highways, and, generally, set standards for the new roads. The highways were actually built and maintained by the states.

Three points about this sort of cooperative federalism need to be made clear. First, the federal government and the states agreed on the goals; both wanted the roads built. Second, only the federal government and the states were involved in the programs. Cities and other units of local government were not full partners in the cooperative federalism of the 1950s and early 1960s. Third, the grant-in-aid programs affected only a small number of policy areas; most of the funding went for highways, airport construction, and housing and urban development. As late as 1963, the total funding for all federal grants-in-aid was only about $9 thousand-million.

But this sort of cooperative federalism ended by the mid-1960s. Under President Lyndon B. Johnson's* Great Society, the federal government sometimes enacted grant-in-aid programs in which the states had little interest, or to which they were actually opposed. Second, federal funds were now often given directly to units of local government – counties, cities, small towns, and school and other special districts. Third, while previous grant-in-aid programs were limited to a few areas on which the federal government and the states agreed, the Great Society reached almost every policy area – education, police and fire protection, historic preservation, public libraries, infant health care, urban renewal, public parks and recreation, sewage and water systems and public transit.

The consequence of all this was two-fold. First, the number of players in the intergovernmental system increased tremendously, from 51 (the states and the federal government) to the 80,000 or so units of local government that existed at the time. Second, federal grants-in-aid, which affected only a few policy areas previously, now affected almost all areas of public life. This led to a number of managerial and political problems (coordination, accountability, priorities, micro-management, etc.) that political scientist David Walker has summed up with the phrase "the hyperintergovernmentalization" of American public policy.

President Richard M. Nixon* tried to fix all of this by the consolidation of small categorical grant programs into larger bloc grant programs in which the states would have more discretion. By and large, however, his efforts failed. By the time he left office, there were more grant programs (over 600) than when he started. The presidency of Ronald Reagan* seemed to promise a solution. While Reagan supported many of Nixon's proposed solutions, his real impact was on federal spending, which has caused Americans to re-think not only federalism, but the role of government itself.

Wanting a smaller role for government, especially for the federal government, Reagan successfully fought for increased defense spending, tax cuts and increased (or at least maintained) levels of Social Security payments. The result was that there was less and less money available for federal domestic grant-in-aid programs. While federal grant-in-aid spending crept upwards during the Bush* administration, and has remained fairly stable during the Clinton* administration (over $225 thousand-million in 1996), Reagan's strategy, by and large, has worked – although it has created a new set of problems for state and local government.

American Federalism Today and Tomorrow

American federalism was never merely a set of static institutional arrangements, frozen in time by the U.S. Constitution. Rather, American federalism is a dynamic, multi-dimensional process that has economic, administrative, and political aspects as well as constitutional ones. This is perhaps more true today than it ever has been. Let me suggest six crucial issues that Americans face today:

Unfunded Mandates. With the shortage of federal money to support federal priorities, Congress, using its constitutional authority to "regulate commerce among the states," imposed direct regulations upon the states. Since these regulations require the states to act but do not provide any funding to finance these activities, they are called "unfunded mandates." Many of these regulations deal with environmental protection, historic preservation and the protection of individual rights, but they all carry with them substantial costs to the states. The states rebelled against these federal requirements and, in response, Congress enacted the Unfunded Mandates Act of 1995, which (with certain threshold requirements) prohibits the federal government from placing new requirements on state and local government without providing the necessary finding. It remains to be seen whether this law will effectively limit the range of federal activity, especially given how broadly the U.S. Supreme Court has interpreted Congress' authority.

Constitutional Issues. Since 1937, the U.S. Supreme Court has interpreted Congress' power to spend money for the general welfare and its authority to regulate commerce among the states so broadly that the national government can reach almost any economic, social, or even cultural activity it wishes. Thus, national laws reach such traditionally local matters as crime, fire protection, land use, education, and even marriage and divorce. In its 1995 decision in *United States v. Lopez,* however, the Court unexpectedly held that the national government had exceeded its constitutional authority by enacting a law prohibiting the possession of hand guns near public school buildings. The Court held that the federal government had not demonstrated any connection between the possession

of guns near school buildings and Congress' power to regulate interstate commerce. It was the first time in 60 years that the Court had seriously questioned a congressional exercise of its commerce power. At this time, we do not know whether the Court's *Lopez* decision will simply be the exception to an otherwise unrestrained expansion of the constitutional authority of the federal government, or the beginning of a new jurisprudence which seeks to restore limits on federal authority.

Public Finance. If more policymaking and implementation responsibility is left to state and local governments, then it is likely that we will encounter a mismatch between program responsibility and fiscal capacity. During the late 1960s and early 1970s, cities received very substantial federal funding to implement the Great Society social programs. While federal funding has slowed, and in some cases even stopped, citizen demand for programs continues and even grows. Cities and other units of local government still much provide such traditional services as public education, trash disposal, crime and fire protection, and street repair and maintenance. In addition, they must satisfy largely unfunded federal and state mandates in such areas as environmental protection, race and gender-equal opportunity programs, education of the handicapped, and land-use planning. Increasingly, the demand for local services grows while the capacity to support them diminishes. This dilemma has forced local governments to become much more innovative in how such services are provided.

Reinventing Government. Caught in this dilemma of rising expectations and decreasing financial capacity, local governments have been forced to "reinvent" the way they deliver and finance services. Reinvention takes many forms. Cities across the country have experimented with greater administrative decentralization, entering into markets and competing with private service providers, redefining clients as customers and attempting to hold government agencies accountable to them. Perhaps, most interesting of all, privatization has taken many forms, ranging from contracting with private firms to providing meal service at a public school, to turning over waste disposal or even the operation of an entire prison to a private agency. In addition, cities have been forced to become less dependent on both federal aid and local property taxes and have turned to charging realistic fees for services. Creative financing and ways of delivering services appear to result in substantial cost savings with no decline in quality. It is early in the process, however, and we will need to wait to fully evaluate the full impact of "reinventing government" on public life.

International Trade. There also is a new international dimension to American federalism. Agreements such as GATT and NAFTA will have a profound impact upon federalism. Most observers suggest that the authority of the states will be further eroded as state policies on such

matters as economic development, environmental protection and professional licensing will be subject to the terms of these international agreements, as well as to the strictures of the U.S. Constitution. These observers are right, but there is another aspect to these international agreements that might enhance state authority. Under NAFTA, for example, the American states are guaranteed at least a consultative role in implementing the agreement. It will be interesting to see how the states that make up the American, Canadian and Mexican federations will be affected by this emerging "federation of federations."

The States As Laboratories. Many years ago, U.S. Supreme Court Justice Louis D. Brandeis wrote that the states were "social laboratories" in which we could experiment with a variety of solutions to social and economic problems without putting the whole nation at risk. This view of federalism is more true today than ever before. If the United States is to develop innovative and effective solutions to such problems as crime, education, welfare and urban blight, they will be forged by state governments working hand-in-hand with their local communities.

How effectively we Americans meet these challenges and use these opportunities will shape the future of American federalism.

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Text 2.

American Federalism, 1776 to 1997: Significant Events

SUMMARY

Since ratification of the Constitution, which established a union of states under a federal system of governance, two questions have generated considerable debate: What is the nature of the union? What powers, privileges, duties, and responsibilities does the Constitution grant to the national government and reserve to the states and the people? During the 208-year history of the Constitution, these issues have been debated time and again and have shaped and been shaped by the nation's political, social, and economic history.

During the pre-federalism period, the country waged a war for independence and established a confederation form of government that created a league of sovereign states. Deficiencies in the Articles of Confederation prompted its repeal and the ratification of a new Constitution creating a federal system of government comprised of a

national government and states. Almost immediately upon its adoption, issues concerning state sovereignty and the supremacy of federal authority were hotly debated and ultimately led to the Civil War.

The period from 1789 to 1901 has been termed the era of Dual Federalism*. It has been characterized as an era during which there was little collaboration between the national and state governments. Cooperative Federalism* is the term given to the period from 1901 to 1960. This period was marked by greater cooperation and collaboration between the various levels of government. It was during this era that the national income tax and the grant-in-aid system were authorized in response to social and economic problems confronting the nation. The period from 1960 to 1968 was called Creative Federalism by President Lyndon Johnson's Administration. President Johnson's Creative Federalism as embodied in his Great Society program, was, by most scholars' assessments, a major departure from the past. It further shifted the power relationship between governmental levels toward the national government through the expansion of grant-in-aid system and the increasing use of regulations. Contemporary federalism, the period from 1970 to the present, has been characterized by shifts in the intergovernmental grant system, the growth of unfunded federal mandates, concerns about federal regulations, and continuing disputes over the nature of the federal system.

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INTRODUCTION

- In 1789, thirteen years after the signing of the Declaration of Independence* and eight years after ratification of the Articles of Confederation, which established a league of sovereign states, the nation repealed the Articles of Confederation* and ratified a new Constitution creating the United States. Since its ratification the Constitution, which established a union of states under a federal system of governance, two questions have generated considerable debate: What is the nature of the union? What powers, privileges, duties, and responsibilities does the Constitution grant to the national government and reserve to the states and to the people? During the 208-year history of the Constitution the answers to these questions have been debated time and again and have

shaped and been shaped by the nation's political, social and economic history.

- What is federalism? According to James Q. Wilson and John DiIulio, Jr., it is a system of government "in which sovereignty is shared [between two or more levels of government] so that on some matters the national government is supreme and on others the states, regions, or provincial governments are supreme. There are three essential features that characterize a federal system of governance. First, there must be a provision for more than one level of government to act simultaneously on the same territory and on the same citizens. The American federal system is composed of a national government and the 50 states, both recognized by the Constitution. Local governments, creations of states, while not mentioned in the Constitution, are nevertheless key players in American federalism. Their power to regulate and legislate is derived from state Constitutions.
- Second, each government must have its own authority and sphere of power, though they may overlap. When state and federal authority conflict, federal law is supreme under the Constitution. Article I, Sec. 8 of the Constitution delegates certain enumerated powers to the national government that includes the exclusive power to mint currency, establish and maintain an army and navy, declare war, regulate interstate commerce, establish post offices, establish the seat of national government, and enter into treaties. The Constitution reserves powers not granted to the national government to states, or the people, and it establishes certain concurrent powers to be shared between state and national governments including the power to tax. In addition, the Constitution prohibits the exercise of certain powers or actions by both state and national governments including taking private land without just compensation; establishing a national religion; or prohibiting the free exercise of religion.
- Third, neither level of government (federal or state governments) can abolish the other. The Civil War was fought not only on the question of slavery but also central to the conflict were questions of states' sovereignty including the power to nullify federal laws or dissolve the Union.
- This report identifies several significant eras and events in the evolution of American federalism and provides a capsule description or discussion of each. It should be noted that among experts in the field of federalism there may be a general consensus concerning the evolution of American federalism; however, the choice of events and scholarly interpretations of such events may vary and are by nature subjective.

PRE-FEDERALISM PERIOD: 1775 TO 1789

During this period, the former colonists successfully fought the War of Independence and established a national government under the Articles of Confederation. Disenchanted with the functioning of the national government, the states called a Constitutional Convention with the aim of addressing the deficiencies in the Articles of Confederation. Instead, the delegates drafted and the states ratified, a new Constitution that created a federal system of government.

- 1776 – **Declaration of Independence.** In the midst of the Revolutionary War, which lasted from 1775 to 1783, delegates to the Continental Congress convened in Philadelphia and on July 4, 1776 adopted the **Declaration of Independence.** Each of the former colonies also established state governments to replace the colonial charters. The Continental Congress was given the power to carry on the war effort.
- 1777 – **Drafting Articles of Confederation.** The Continental Congress drafted the **Articles of Confederation,** which defined the powers of the Congress. Leery of a strong central government, the former colonists created a Confederation or "League of States" that was state-centered rather than nation-centered.
- 1781 – **Articles of Confederation approved by the States.** Under the Articles of Confederation legislative, judicial, and executive powers rested with Congress. The Articles of Confederation established a Congress comprised of one representative from each state, it limited the power of the central government, and it delegated to the states the power to levy taxes and regulate commerce. The Confederation Congress was given the power to declare war, make treaties, and maintain an army and navy. The Articles of Confederation had several noteworthy flaws that made it ineffective: 1) it did not provide for an executive to administer the government, 2) the national government lacked the power to tax, and 3) it lacked the power to regulate commerce.
- 1786 – **Articles of Confederation Reconsidered.** Demand for re-examination of the Articles of Confederation was prompted by a post-Revolutionary War economic depression; rebellion in Massachusetts among debt ridden former soldiers, led by Daniel Shays (Shays Rebellion); concerns about the ability of the Confederation to support its currency or meet domestic and foreign debt incurred during the war; issues surrounding westward expansion; and state tariff conflicts. A group later known as Federalists and including James Madison and Alexander Hamilton, sought support for a strong central government that could deal with internal insurrections, arbitrate state tariff conflicts and other conflicts among states, and manage westward expansion. Members of the group called for a Constitutional Convention in 1787 to reconsider the Articles of Confederation.

• 1787 – **Drafting a New Constitution.** A Constitutional Convention met in Philadelphia from May until September and drafted a new Constitution. Under the new Constitution the central government, "... in order to form a more perfect union," was given additional powers that included the power to levy taxes and control commerce among states and with foreign countries. In addition, the Convention created three co-equal branches of government – executive, judicial, and legislative. In a compromise (Connecticut Compromise) between rival plans offered by Virginia and New Jersey delegates, the Constitution called for the creation of a legislative branch composed of two chambers. Members of the House of Representative from each state were to be elected by the people of that state based on state population. The Senate would be comprised of two Senators from each state elected by their respective state legislatures. The Constitution included provisions that ensured the supremacy of federal laws (Article VI), but also recognized state powers and the power of the people. (Amendment X).
• 1787 & 1788 – **Campaigning for a New Constitution.** *The Federalist,* a series of 85 essays by James Madison*, John Jay*, and Alexander Hamilton* writing under the pen name *Publius,* was published during this period. The papers provided the philosophical underpinning in support of the new Constitution. Those opposed to the new Constitution (labeled Anti-Federalists but calling themselves Federal Republicans) also published articles under the pen names *Brutus* and Cato, arguing for support of a federal system of governance that would protect the state governments from the tyranny of the national government. The Anti-Federalists or Federal Republicans would eventually evolve into the Democratic Republican party that ascended to power with the election of Thomas Jefferson* in 1801.

DUAL FEDERALISM PHASE 1: 1789 TO 1865

The concept of **dual federalism*** is the idea that the national and state governments were equal partners with separate and distinct spheres of authority. Despite the doctrine of implied powers, as first enunciated in *McCulloch v. Maryland,* the federal or national government was limited in its authority to those powers enumerated in the Constitution. There existed little collaboration between the national and state governments and occasional tensions over the nature of the union and the doctrine of nullification and state sovereignty. The states rights debate and the nature of the union – whether the Constitution created a league of sovereign states or a inseparable union – was a major issue in the Civil War.
• 1789 – **Constitution Approved by the States.** State ratifying conventions convened and ratified the new Constitution, which required 3/4ths (9) of the states to vote for its approval.

• 1789 to 1801 – **The Federalist Period.** The period takes its name from the dominant political party of the time, which believed in a strong central government. Its leaders included George Washington, Alexander Hamilton, John Adams. They were opposed by AntiFederalists or Democratic Republicans, such as Thomas Jefferson, who argued against a strong central government and for state centered governance. In 1790, the federal government assumed responsibility for the war debt, which some have called an early form of federal aid. In 1791, the first ten amendments-the Bill of Rights-were added to the Constitution after being ratified by 3/4ths of the states. The Tenth Amendment protected the rights of the states and declared that all powers not expressly delegated to the central government by the Constitution were reserved for the states. This laid the foundation for the concepts of states rights, limited national government, and dual spheres of authority between state and national governments.

In 1791, Congress established the Bank of the United States at the urging of Alexander Hamilton. Thomas Jefferson opposed the idea of a national bank. Congress granted the Bank a 20-year charter. Protracted debate over the constitutionality of the Bank by pro- and anti-bank factions led to the defeat of an effort to renew the Bank's charter in 1811. The charter renewal effort was defeated partly because of the restraints the Bank put on state chartered private banks in an effort to control inflation and because some viewed the concept of central banking as an attack on state sovereignty. Years later the central or national bank controversy was at the center of the debate concerning the enumerated powers clause of the Tenth Amendment.

• 1798 – **The Doctrine of Nullification.** A Federalist-controlled Congress in 1798 passed the Alien and Sedition Acts in an attempt to silence Jeffersonian Democratic-Republican critics of the undeclared war with France. In response, Democratic-Republican controlled legislatures in Kentucky and Virginia passed resolutions supporting the concept of state-centered federalism and nullifying the Acts as unconstitutional. The **doctrine of nullification** held that any state could suspend within its boundaries the operation or implementation of any federal law it deemed to be unconstitutional. The Alien and Sedition Acts played a large part in the defeat of the Federalist Party; they expired before the Supreme Court could hear a challenge to them.

• 1800s – **Internal Improvement Debate.** During this period there was significant debate concerning the role of the national government in the provision of roads and canals as a means of encouraging settlement and aiding commerce. The debate raised questions about whether the national government could participate in such activities without a constitutional amendment that provided explicit authority or whether such activities should be undertaken solely by states and private concerns.

• 1815 – **States' Rights Doctrine**. The Hartford Convention, which was called to protest the economic hardships endured by New England states during the War of 1812, attempted to assert the "states' rights doctrine." The convention urged states to protect citizens against the acts of Congress not authorized in the Constitution.

• 1819 – **Doctrine of Implied Powers and the "necessary and proper" clause of Article I of the Constitution.** In 1816 the central bank was rechartered as the Second Bank of the United States. In 1819 the constitutionality of Congress' authority to charter a national bank-the Second Bank of the United States-was upheld by the Supreme Court in *McCulloch v. Maryland* under the doctrine of **implied powers** and the **necessary and proper** clause of Article I of the Constitution. Chief Justice John Marshall, in writing the Supreme Court's unanimous decision in support of Congress' constitutional authority to establish a national bank, acknowledged that the national government was limited to powers enumerated in the Constitution (expressed powers), but stated that Article I also allowed the national government (Congress) to pass such laws "necessary and proper" to carry out powers and duties enumerated by the Constitution. Thus, the establishment of a national bank, though not explicitly sanctioned by the Constitution, nonetheless was an appropriate activity, under the doctrine of implied powers, that allowed the national government to carry out express powers, duties, or authority such as levying and collecting taxes, issuing currency, and borrowing funds. The Bank continued to be unpopular with Democratic-Republicans and in 1832, through political maneuvering, President Andrew Jackson*, who opposed the Bank and characterized it as a "prostration of our government for the advancement of the few at the expense of the many," severely crippled the Bank by transferring its funds to state-chartered private banks until its chartered expired in 1836.

McCulloch v. Maryland settled the question of national supremacy for a time. Justice Marshall's interpretation of the Constitution was premised on the notion that the national government was the creation of the people and not the states and that Article VI established federal law as the supreme law of the land (**supremacy clause).** Justice Marshall wrote that the power to tax involves the *power to destroy.* If the Bank, an entity of the federal government, could be taxed out of existence by the states it would be a breach of Article VI, one of the fundamental principles of the Constitution – the supremacy of the national government.

• 1824 – **Federal Regulation of Interstate Commerce.** *Gibbons v.* Ogden, addressed the issue of the scope of Congress' authority under the **commerce clause** (Article I). The case involved a dispute over the use of the Hudson River. The New York state legislature had granted a company the exclusive right to the use of the river that was in conflict with Congress' granting of a license to another ship. The Supreme Court ruled

that the commerce clause of Article I granted Congress the power to regulate commercial activity and that the power to regulate commerce had no limits except those expressly stated in the Constitution. The Court prohibited the state from taking any action that would interfere with the free use of rivers and harbors.

• 1828 ***South Carolina Exposition:*** **Rationale for Nullification Doctrine.** In 1828, John C. Calhoun of South Carolina, then Vice President in the Andrew Jackson Administration, argued against the imposition of a law passed by Congress that placed a tariff on domestic raw materials and reduced protection against imported woolen goods. Calhoun's theory, which was published as the *South Carolina Exposition* and was to be used later by Southern states in their efforts to maintain the institution of slavery, contended that the national government was but a servant of the states and that the Constitution was a compact that directed the national government as an agent of the states in its actions. According to Calhoun's theory, the Supreme Court did not possess the power to rule on the validity of the actions of Congress, for it too was only an agent of the states. Calhoun's theory of nullification would have allowed a state to declare a federal law null and void within that state unless 3/4ths of the states ratified an amendment that granted Congress the power to enact the law. A state that challenged or nullified the law could either abide by the law or secede.

• 1830 – **Webster/Hayne Debate on the Doctrine of Nullification.** In January, the Senate of the United States was the venue in which Senators Robert Y. Hayne of South Carolina and Daniel Webster of Massachusetts debated the issue of state sovereignty concerning a recent tariff act passed by Congress. Senator Hayne described the nation as a league or confederation of member states and argued that a state could refuse to obey any law passed by the Congress under the states' rights or nullification doctrine. During the debate Senator Hayne, who believed in limited national government argued "Liberty first and Union afterwards." Senator Webster, in response, argued that the Constitution was the creation of the people and not the states and retorted "Liberty and union, now and forever, one and inseparable."

• 1832 – **South Carolina's Nullification Ordinance.** The South Carolina legislature passed an **Ordinance of Nullification,** which attempted to prohibit the implementation of Federal Tariff Acts of 1828 and 1832 under the banner of state sovereignty and the doctrine of nullification.

• 1842 – **Testing the Constitution's Supremacy Clause and States' Rights Doctrine.** In *Prigg v. Pennsylvania,* the United States Supreme Court ruled as unconstitutional state-passed "personal liberty" laws enacted by northern states to protect free blacks and fugitive slaves. The Supreme Court ruled that such laws were in conflict with the Fugitive Slave Act passed by Congress in 1793, and thus violated the supremacy clause of the Constitution.

• 1850 – **Prelude to the Civil War.** Fugitive Slave Act of 1850 was passed by Congress in an effort to preserve the union. In 1854 the Wisconsin Supreme Court declared the Fugitive Slave Act of 1850 unconstitutional. The U.S. Supreme Court overturned the State Supreme Court decision, which involved Sherman Booth, a noted abolitionist who freed Joshua Glover, a fugitive slave. The Wisconsin legislature, enunciating the doctrine of nullification and states' rights, declared null and void the Supreme Court decision that reversed the State Supreme Court decision. In 1857 the U.S. Supreme Court in *Scott v. Sandford* rebuffed northern abolitionists and declared the Fugitive Slave Act constitutional.
• 1860 – **The Civil War: Testing Federalism.** Civil War addressed two central issues: 1) the role of the federal government and 2) the nature of the union. Slavery accelerated tensions between nation centered and state-centered concept of the federal system. On the one hand, there were those who argued that the union was but a league of sovereign states and that each state had the power to nullify federal laws within its boundaries or ultimately secede from the union. On the other side were those who believed that the union was indestructible, created not by the states but by the people delegating to the states and the national government certain limited authority enunciated in the Constitution. The question of the nature of the union was resolved in favor of a nation-centered concept of federalism.

The role of the national government was also settled by the Civil War. Before the Civil War, the role of government was generally characterized by decentralization. The national government acted as servant to the states. During the War, state militia and state recruited volunteers were replaced by a policy of federal conscription and the national government reclaimed control over currency and banking, which had been delegated in large part to the states during the 1830s.

DUAL FEDERALISM: PART II 1865 TO 1901

Although the era of dual federalism continued, this period was marked by erratic but increasing presence of the national government into areas that had previously been the purview of the states. The Sherman Anti-trust Act, the Interstate Commerce Commission Act, as well as the Twelfth, Fourteenth, and Fifteenth Amendments were significant events that pushed federal authority into areas such as the power to regulate business and the economy, as well as civil rights. In the midst of the industrial revolution, in an effort to control the monopolistic tendencies of business, Congress passed legislation that attempted to control commerce. Congress' authority to control commerce was at the center of several legal disputes. In a series of court cases, the power of the national government (Congress) to regulate commerce was upheld. Two of the more notable laws are the Interstate Commerce Commission Act of 1887 and the Sherman Anti-trust Act of

1890. Court cases included Munn *v. Illinois* and *Wabash, St. Louis, and Pacific Rail Road v. Illinois* rendered in 1886, in which the Court held that the state could not regulate rail rates if, as a consequence, it affected a portion of the rate charged in transportation of goods across state lines. In the area of civil rights, the Court was far more restrictive in its interpretation of the Fourteenth Amendment's equal protection, due process and privileges and immunities clauses. In a series of cases, including *Plessy v. Ferguson and Bradwell v. Illinois,* the Court rulings upheld state laws restricting the freedoms and constitutional protections of certain gender or racial classes (women and minorities).

• 1868 – **Due Process and Equal Protection Clauses of the Constitution.** The Fourteenth Amendment's **due process and equal protection** clauses strengthened federal judicial powers. The Amendment, originally drafted to protect the newly freed slaves from arbitrary and capricious state actions, was used to constrain the unfair practices of businesses. According to some scholars, the Amendment, which granted Congress the power to enforce its substantive provisions, laid the foundation for future federal expansion.

• 1873 – **Doctrine of States' Rights Revived.** *Slaughterhouse Case* and *Bradwell v. Illinois* The Supreme Court played a pivotal role in two civil rights cases that tested the **privileges and immunities** clause of the Fourteenth Amendment. The Supreme Court, in its rulings in the *Slaughterhouse Cases and Bradwell v. Illinois,* noted that state and national citizenship were separate and distinct. In the *Slaughterhouse Cases* the Supreme Court upheld the state of Louisiana's right to confer upon one company the right to butcher cattle in the city of New Orleans, thus creating a monopoly in the operation of slaughterhouses. In *Bradwell v. Illinois* the Supreme Court held that a state could bar women from the practice of law. The Court's rulings in these and other cases revived the doctrine of states rights.

• 1887 – **Interstate Commerce Commission Act.** The Act further strengthened Congress' role in the regulation of commerce among states.

• 1890 – **Sherman Anti-trust Act**. The Act allowed Congress to control the formation of business monopolies and signaled a larger role for the national government in the economy.

• 1896 – **Civil Rights, States' Rights and the Separate but Equal Doctrine.** In Plessy v. Ferguson, the Supreme Court established the doctrine of separate but equal, upholding a Louisiana law that mandated racially segregated accommodation on trains, ruling that so long as the segregated facilities were equal, they were not a violation of the Fourteenth Amendment's **equal protection clause.** The doctrine was overturned in 1954 in *Brown v. The Board of Education of Topeka, Kansas*. In Williams *V. Mississippi* the Supreme Court validated the use of state literacy tests. The Court's ruling allowed a state to determine standards under which

persons would gain the right to vote. The application of literacy tests had a discriminatory impact on blacks.

COOPERATIVE FEDERALISM: 1901 TO 1960

This period marked an era of greater cooperation and collaboration between the various levels of government. It was during this era that the national income tax and the grant-in-aid system were authorized in response to social and economic problems confronting the nation. Though the first part of the 20th century has been characterized by some federalism scholars as one of inactivity, by 1920 eleven grant programs had been created and funded at a cost of $30 million. During this period the federal government was seen as "servant of the states" in the kinds of activities funded. The federal grant system, spurred by the Great Depression*, was expanded and fundamentally changed the power relations between federal and state governments.

- 1910 – **New Nationalism.** President Theodore Roosevelt's **New Nationalism** initiative sought to expand the powers of the national government. His view of government contended that matters of national concern had become too decentralized or as he stated: "[The New Nationalism] is still more impatient of the impotence which springs from overdivision of governmental power, the impotence which makes it possible for local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. The New Nationalism regards the executive power as the steward of the public welfare."
- 1913 – **New Freedom Program**. As an academician, Woodrow Wilson noted that: "The question of the relation of the States to the federal government is the cardinal question of our constitutional system. At every turn of our national development, we have been brought face to face with it, and no definition either of statesmen or of judges has ever quieted or decided it."

As President, Woodrow Wilson built upon the Roosevelt program. He sought to continue the trend toward more active national cooperation with other governments. Daniel J. Elazar, a noted scholar of federalism, contends that Wilson, in line with congressionally-determined national policies, expanded the federal role beyond "servant of the states."

- 1913 – **Sixteenth Amendment.** The Amendment, which authorized the income tax, provided the means of developing and expanding the grant-in-aid system. "If grants-in-aid are the power that drives the federal engine then the income tax is the fuel that powers it."
- 1933 to 1938 – **New Deal***. President Franklin D. Roosevelt and the Congress in response to the economic calamity of the Great Depression further expanded the federal role in domestic affairs. States were unable to respond effectively on their own. The expansion of national government in economic and social policy was seen as a necessary means of addressing

grave national economic conditions. During this period 16 on-going programs were established. The New Deal era has been characterized as "the geological fault line" in the history of federalism, particularly in the area of federal-local relations.

• 1953 – **Commission on Intergovernmental Relations**. Congress created the Commission on Intergovernmental Relations (CIR), which later evolved into the Advisory Commission on Intergovernmental Relations. The CIR was a temporary study commission comprised of persons appointed by the President and Congress. Its mission was to review federal aid to state and local governments, to determine if federal aid and involvement were appropriate, and to assess the fiscal capacity of the federal government and the states to undertake various activities.

• 1954 – **Civil Rights and States' Rights Reconsidered.** *Brown v. Board of Education of Topeka, Kansas* struck down, as unconstitutional, an earlier decision *(Plessy v. Ferguson)* and the doctrine of "separate but equal" public accommodations for blacks. The Justices cited the Fourteenth Amendment's due process and equal protection clause noting that racially segregated schools were inherently unequal. Brown prompted a new wave of action by states intent on resisting the Court's decision, including the resurrection of states' rights under the **doctrine of interposition,** which contended that a state government may interpose itself between an improper national act and the state's citizens.

• 1959 – **Advisory Commission on Intergovernmental Relations (ACIR).** ACIR was created by Congress to monitor intergovernmental relations and the operation of American federalism and to report to Congress, on a continuing basis, recommended improvements. Unlike its CIR predecessor ACIR is a continuing body comprised of representatives from federal, state, and local governments.

CREATIVE FEDERALISM: 1960 TO 1968

President Lyndon Johnson's Creative Federalism as embodied in his Great Society program was, by most scholars' assessments, a major departure from the past. It further shifted the power relationship between governmental levels toward the national government through the expansion of grant-in-aid system and the increasing use of regulations.

• 1962 – **Supreme Court Forces Reapportionment.** The Supreme Court's ruling in *Baker v. Carr* is a noted example in judicial intervention into state political affairs. The Tennessee General Assembly had not reapportioned legislative districts since 1901 despite a state constitutional requirement to apportion according to population. The migration of people from rural to urban areas without legislative districts being redrawn to reflect population shifts had resulted in city residents being under-represented in the state legislature. The Supreme Court required the reapportionment of legislative

districts based on population (proportional representation). The Supreme Court ruled that the denial of equal representation (districts equal in population size) was a violation of the equal protection clause of the Fourteenth Amendment. Based on standards established by the Supreme Court, every state except Oregon was forced to reapportion to achieve districts equal in population. Another legacy of *Baker v. Carr* was the reinvigoration of the practice of gerrymandering of legislative districts after each decennial Census in order to achieve or maintain some political advantage.

• 1964 – **Creative Federalism and the Great Society.** Creative Federalism and the Great Society sought to expand the national government's role in an effort to achieve socially desirable outcomes (i.e. reductions in poverty, elimination of hunger). Prior to the Johnson Administration, federal involvement often had to be justified as a necessary evil in order to legitimize intrusion into state and local affairs. Under the new theory, federal involvement was justified as long as Congress could establish a national purpose for such actions. The Great Society programs used states and local governments as intermediaries or agents to implement national policies, and the volume of federal regulations increased as the federal government became increasingly involved in areas that had previously been the purview of state and local governments or the private sector.

CONTEMPORARY FEDERALISM: 1970 TO 1997

This period has been characterized by shifts in the intergovernmental grant system, the growth of unfunded federal mandates, concerns about federal regulations, and continuing disputes over the nature of the federal system.

• 1970s – **New Federalism: Phase I.** During the 1960s concerns were raised about the intergovernmental grant system, particularly about duplication, fragmentation, overlap, and confusion. These concerns resulted in attempts by the Richard Nixon and Gerald Ford Administrations to redirect power relations within the federal system. The Administrations' principal tools were revenue sharing and the consolidation of federal aid programs into six special revenue sharing programs. The intent was to shift funds, authority, and responsibility to states and local governments in an effort to more effectively manage the intergovernmental grant system. Though not completely successful, the Nixon era did recast the debate on the roles of various levels of governments.

• 1976 – **Commerce Clause, Enumerated Powers, and State and Local Governments.** *National League of Cities v. Usury* addressed the conflict between the Tenth Amendment's **enumerated powers** clause, which

limited the federal government's power to those specified in the Constitution and the **commerce clause** of Article I, which bestowed upon the national government the power to regulate commerce. In ruling on the constitutionality of the Fair Labor Standards Act, which established minimum wage and maximum working hours for private and public sector employees, the Supreme Court addressed one of the fundamental issues in federalism: to what extent may the Congress impose upon the sovereignty of the states. The Supreme Court ruled that the Fair Labor Standards Act's 1974 amendments, which extended hour and wage coverage to state and local public employees, violated state sovereignty as protected under the Tenth Amendment.

• 1980s – **New Federalism: Phase II.** Initiatives of the Ronald Reagan Administration stimulated the debate on the appropriate roles of federal, state, and local government. President Ronald Reagan, rather than attempt to more rationally manage federal aid as was the case in the Nixon Administration, sought to fundamentally restructure the system of governance. In his 1981 inaugural address, President Reagan raised an issue as old as the Republic: what is the nature of the union? The President stated that "the federal government did not create the states, the states created the federal government." This statement expressed the sentiments found in the Virginia and Kentucky Resolutions, the Webster/Hayne debate, the doctrine of nullification and state sovereignty and the states' rights philosophy. The modern debate has also been fueled by dissatisfaction with the effectiveness and efficiency of the national government. In 1981 Congress passed the Omnibus Budget Reconciliation Act that consolidated a number of social programs into nine block grants, which allowed for greater state and local autonomy and flexibility in the fashioning of local strategies to address federal objectives. The Administration was not successful in the second phase of New Federalism, which would have reallocated federal and state responsibility and resources for welfare, food stamps, and Medicare and would have turned back revenue sources to the states. The George Bush Administration also offered a turn back proposal.

• 1985 – ***National League of Cities v. Usury*** **Reconsidered** In *Garcia v. San Antonio Metropolitan Transit Authority* the Supreme Court revisited the issue of state sovereignty and state and local government protection from the imposition of federal actions. Garcia *v. San Antonio* reversed *National League of Cities v. Usury. Garcia* has had two significant impacts on federalism, according to some scholars. One, under *Garcia* the Supreme Court held that the Tenth Amendment does not protect state and local governments from compliance with the Fair Labor Standards Act, which is counter to the concept of dual federalism. Two, the Court seems to be backing away from its role as final arbiter or interpreter of the Constitution in disputes between political branches of the federal government and the

states. The Court appears to be allowing such disputes to be resolved by the "political" that is the legislative branch of government.

• 1992 to 1995 – **New Federalism: Phase III.** The Bill Clinton Administration's *Reinventing Government Initiative* and the House Republicans' *Contract with* America are efforts to rearrange the power relationships in the federal system. Both efforts seek to devolve greater authority to lower levels of government. However, the initial reinvention effort, as embodied in its *National Performance Review Creating A Government that Works Better and Costs Less,* concentrated on achieving management efficiencies at the federal level. Practical outcomes have included the issuance of E.O. 12866, which encourages regulatory reform such as coordinating and consolidating planning and review requirement among complementary federal programs. *The Contract with America* is a document signed by Republicans campaigning for House seats during the 1994 election season. It includes drafts of the House Republicans' ten legislative priorities for the first 100 days of the 104th Congress, several of which focused on changing the power relationships between the national and state governments. Presently, it has refocused debate on the role of government and what level of government is best suited to carry out certain functions. The present federalism debate has resulted in the passage of unfunded federal mandate legislation, which requires the federal government to assess the cost/benefit impact of federal legislation on states, local governments, and the private sector; has fueled discussions concerning the possible elimination of several federal departments; has prompted action to reform the regulatory process; and has caused the consideration of legislation that would eliminate, downsize, consolidate, or block grant a number of federal programs in an effort to foster greater flexibility and control by state governments. This debate has been driven by fiscal and philosophical factors including the desire to reduce the federal deficit, to achieve management efficiencies at the federal level, and to reconsider the proper roles of federal, state, and local governments.

• 1995 to 1997 – The 104th Congress convened with the historic installation of a Republican majority in both houses of Congress. Taking control of the House of Representatives after 40 years in the minority, the new Republican majority moved quickly to fulfill its *Contract with* America. Among the accomplishments of the 104th Congress was the passage of the Unfunded Federal Mandate Reform Act of 1995, P.L. 104-4, which requires the federal government to assess the cost/benefit impact of federal legislation and regulations on states, local governments, and the private sector. The Congress also considered but failed to win passage of a balance budget amendment that if approved by the states would have significantly affected the intergovernmental grant system and the relationships between the national government and states and localities.

The second session of the 104th Congress brought a renewed push on several federalism/intergovernmental relations issues. Congress passed legislation restructuring the delivery of rural development services, creating new block grants in the areas of law enforcement, rural development, and welfare. Other block granting proposals consolidating job training, education, food stamps, and Medicaid failed to win final congressional approval. The Congress also passed a sweeping telecommunications act including provisions reaffirming the authority of state and local governments to regulate and manage public rights-of-way, requiring reasonable compensation for the use of public rights-of-way, and prohibiting the preemption of local zoning authority in the sitting of cellular towers. In addition, the Act preempts local, but not state, taxation of direct satellite broadcast services. For his part, President Clinton vetoed product liability legislation that would have preempted state tort laws governing the awarding of damages in civil cases.

State's Rights and Responsibilities Revived. The Supreme Court, in several cases, some narrowly decided, has provided ample evidence that the era of judicial restraint may be over in matters of federalism and the power relationships between the federal government and the states. In 1985, in *Garcia v. San Antonio Metropolitan Transit Authority,* the Court declared that states must find redress from congressional regulation through the political/legislative process and not the judiciary. In several recent cases, starting with *New York v. United States* and including *United States v. Lopez* and *Seminole Tribe of Florida v. Florida,* the Supreme Court has taken a more activist role, limiting the power of the federal government and narrowing the Court's interpretation of the commerce clause in favor of state rights. In 1992, in *New York v. United States,* the Supreme Court declared unconstitutional provisions of the Low Level Radioactive Waste Policy Amendments Act of 1985. The Act required states to establish sites for the disposal of non-federal radioactive waste generated by businesses within their borders. States failing to establish such disposal sites were to be legally liable for damages incurred by businesses such as hospitals, nuclear utility companies, and medical research labs that generate low-level radioactive material. In a victory for state's rights advocates, the Supreme Court ruled that the federal government could not compel states to enact or administer a federal regulatory program.

In a second victory for states, the Supreme Court, in 1995, in *United States v. Lopez,* in a 5-4 decision, narrowed the interpretation of the **commerce clause** when declaring the Drug Free School Zone Act of 1990 unconstitutional. The Act made it a federal crime to possess a gun within 1,000 feet of a school. The Court ruled that the Act could not be justified under the **commerce clause** of the Constitution. The Court's narrow decision was seen as a victory for states' rights advocates who asserted that the Act intruded on the law enforcement responsibilities of states.

In a third decision, *Seminole Tribe of Florida v. Florida,* affirming the sovereignty of states, the Supreme Court ruled that the Indian Gaming Regulatory Act of 1988 allowed Indian tribes to undertake certain gambling activities on Indian lands only after entering into a compact with the state in which the gaming activity is to be located. The Act gave Indian tribes the right to sue states in federal court to compel good faith negotiations in establishing the compact. The Supreme Court ruled the provision allowing Indian tribes to sue states in federal court unconstitutional because it violated the Constitution's Eleventh Amendment restriction prohibiting any person of another state or foreign land from suing a state in federal court.

– *U.S. Term Limits, Inc. v. Thornton,* **Congressional Term and the Concept of Dual Citizenship.** In a defeat for states' rights advocates, the Supreme Court, in a 5-4 decision, declared term limit legislation enacted by several states unconstitutional. Proponents of term limit legislation argued that the Constitution (Article 1, Section 4) allowed each state to fix the time, place, and manner of elections for Senators and Representatives of Congress. The Supreme Court ruling reaffirmed the concept of dual citizenship enunciated in 1873 in the *Slaughterhouse Cases and Bradwell v. Illinois.* The Court ruled that a state could not add to the qualifications for federal office as enunciated in Article I of the Constitution. Further, Justice Kennedy, in a concurring opinion, noted that term limits violate the "fundamental principles of federalism." He argued that there exists "a federal right of citizenship, a relationship between the people ... and their National Government, with which the states may not interfere."

– During its 1996 session, the Supreme Court, in *Printz v. United States,* heard arguments challenging the Brady Gun Control Act. The Act establishes a 5-day waiting period and compels local law enforcement officials to undertake a criminal background check of persons wishing to purchase a handgun. The Act has been challenged as a violation of state sovereignty. The Supreme Court will render its decision sometime in 1997. The case will have important federalism implications and will provide a clue to the direction of the Supreme Court in matters of federalism and state sovereignty.

– **ACIR Abolished.** Federal financial support for the independent federal agency, which began its work in 1959, terminated in 1996.

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Text 3.

HISTORY OF U.S. FEDERALISM

This section presents descriptions of the evolution of the relationship between the states and the national government. It includes a chronology of critical points in the evolution of U.S. federalism, with particular focus on the second half of the twentieth century.

Descriptions: cakes and controversy

Laurence J. O'Toole (1993:29) points out that "history and theory have …been closely linked" in intergovernmental relations. Although there is some controversy over the degree to which the levels of government were truly separate in their actions during the first century of the republic, there is general agreement that there has been a progression in the shift in power since the founding of the country, away from the states and towards the national government.

Analysts and historians of federalism consider the changing nature of authority and flow of resources between national and state governments. Most analysts begin with characterizations of the federal system as either dual or unitary.

Models of Intergovernmental Relations (Wright, 1988, Hamilton & Wells, 1990)
In a **dual**, or **coordinate** system, the separate levels of government have distinct, autonomous spheres of authority.
Compound systems include overlapping, interdependent governments and are characterized by bargaining. They may be **cooperative** or **competitive**.
In **unitary, centralized** or **national** systems, states are subordinate to the national government and the relationship is hierarchical.
More Divisions of Power (Diamond, 1974)
Confederal : states retain sovereign power, national government is dependent on their will.
Federal: states retain powers within a certain sphere and national government has power in a different sphere
Unitary or **national** government retains all power, with states dependent on its will.

Evolving Divisions of Power (Walker, 1995)
Dual Federalism of the Rural Republic (1789-1861): enumerated powers, sovereign and equal spheres
Dual Federalism Serving Commerce (1861-1930): "to perfect the free economy".

Growing government at both levels, with states as senior partners in police powers and providing services, federal government in regulating commerce.
Cooperative Federalism (1930-1960): Shared functions, focus on providing services, broadly collaborative patterns.
CreativeFederalism, Picket-Fence Federalism (1960-1980): Overloaded cooperation, intergovernmental fiscal transfers, crosscutting regulation and states as implementers of federal mandates, devolutionary revenue sharing.
Cooptive Federalism and the Reaction (1981-) Devolution, deregulation, proposed swaps, supply-side reductions, deficit dominates.

According to Diamond (1974:47), Madison had to define federalism so that the delegates at the constitutional convention believed that they "could have their cake and eat it too." But what kind of a cake was it? The dual system has been described as a "layer cake", with distinct, and separated powers exercised by the different levels of government, but (Joseph McLean – Walker:93) Morton Grodzins argues that a marble cake, swirled and intermixed, is a better description of the intertwined policy-making and administrative functions of state and national government. David Walker proposes that the plums) that characterize shared programs under fiscal federalism suggest a fruit cake (1995:132), and Wildavsky (1998) adds the image of a birthday cake to the metaphorical menu.

Chronology

Here is a timeline of important periods in the evolution of federalism, with some discussion of the characteristics of these periods.

Chronology of U.S. Federalism	
1760-1860	Founding to Civil War
1880-1920s	Post-Bellum Expansion and Progressive Era
1930s- 1960	New Deal and World War II, Postwar Prosperity
1960s-1970s	Great Society and Viet Nam War
1970s-1999	New Federalisms

Founding to Civil War

Federalism in the first century of U.S. history is often described as dual, with clear distinctions between the spheres of activity of state and national government. Competition between the two levels was chiefly over economic development and regulation. Critiquing the notion that this period was marked by competing or separated federal and state powers, Grodzins and Elazar have pointed out that even in this early period federal relationships were marked by partnership and cooperation. While there were few intergovernmental grants before the Civil War, the governments cooperated in establishing new territories and the transportation needed to open and exploit the new lands. At the same time, financial transfers betweens governments – so much a part of contemporary federalism – were virtually nonexistent. While some land grants were provided to the states, they were quite limited.

1760-1780s 	Declaration of Independence, Articles of Confederation Constitution Commerce clause Tax and spend, general welfare	Hamilton and his colleagues, the original Federalists, believed only a strong central government could provide the new nation with the economic, political and military cohesiveness it would need to maintain its independence. The antifederalists saw such a government as the greatest threat to that new-found liberty, and feared that by creating a strong central government they were replacing one tyranny with another. For them, government of daily life was best carried out by groups that were closely bound by ties of kinship, belief and history – states and local governments. The national government would be the best locus for issues of diversity, with debate taking place among the states
1790-1800s	Tenth amendment– reserve clause	Political parties formed initially around the two positions: federalists in support of a strong national government and the Democrat-Republican party opposing the centralizing tendencies. The first change of parties, Jefferson succeeding Adams, was fueled in part by reaction against just the sort of central government overreaching the drafters

		had feared. The Alien and Seditions Acts were being used by Adams to stifle political opposition. The Virginia and Kentucky legislatures passed resolutions nullifying the acts. The election of Thomas Jefferson – and his accession with only a hint of a threat from Virginia's troops, which were then stronger than the national army – was the young nation's first successful transition between the different philosophies of federalism.
1810s		The victory of Jeffersonian ideals was short-lived. The new government was increasingly active in commerce with the establishment of a bank, and the controversy it engendered served to reframe the Constitution. In ruling on this and other matters, the Marshall Court defined the role of the Supreme Court as a coequal with the executive and legislative branches. Establishing the lines between state and national government authority through its interpretation of the supremacy, commerce and contract clauses of the constitution, it supported a relatively expansive interpretation of the national government's economic authority.
1819	McCulloch v. Maryland- construes "necessary and proper" to favor expansion of national authority	In its 1819 ruling, McCulloch v. Maryland, the Court upheld the creation of a national bank. The court was asked to interpret whether "necessary and proper" limited the national government, in accordance with Jefferson's narrow construction of the meaning of the clause. Chief Justice John Marshall took the broad construction, interpreted the constitution not as a compact among sovereign states but a national constitution established by the people of the United States. Thus

		construed, "necessary and proper" meant the national government could take actions that were appropriate to implementation of its prescribed powers, and not only those that were indispensable. *"The government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it...is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist." Chief Justice John Marshall, McCulloch v. Maryland (1819)*
1820s-1830s	States clash over tariffs. South Carolina declares right of state nullification of federal laws	The Jacksonians challenged the emerging economic dominance of central government and banking powers and sought to strengthen states and individual power. No simple restoration of an agrarian order was possible, however. In 1830, Northern and Southern states, always at economic odds, clashed over tariffs and, ultimately, slavery. Hamilton's fears that state factions would set aside property rights seemed to be confirmed by the Jacksonians, who opposed policies of the national government that favored strong commercial interests as antidemocratic, while equating states' economic control with personal liberty and economic decentralization. Although elected on a platform of states' rights, when a crisis of national unity threatened Andrew Jackson asserted the primary importance of maintaining a union. Opposing the tariffs, John C. Calhoun argued in support of the doctrine of nullification, warning that national majorities could

		override the liberty of minorities unless states had the right to nullify tyrannical laws. This "trial of sectionalism" ultimately culminated in the Civil War.
	Doctrine of dormant commerce clause articulated in Cooley v. Board of Wardens	The notion of a "negative" or "dormant" Commerce Clause was articulated in Cooley v. Board of Wardens, giving states limited authority over local aspects of interstate commerce, absent conflicting federal legislation and provided it was otherwise within state authority. The ruling left final decisions to the Court, which would judge whether the matter under consideration was nationwide in scope, in which case state laws could not have jurisdiction. In the absence of Congressional action related to commerce (according to Lund, Congress did not legislate affirmatively in regards to the commerce clause until 1887), the Supreme Court could and did define the boundaries of state and national action.
1854	Pierce vetoes land grant for mentally handicapped	*"If Congress is to make provision for [paupers], the fountains of charity will be dried up at home, and the several States, instead of bestowing their own means on the social wants of their people, may themselves through the strong temptations, which appear to the States as individuals, become humble suppliants for the bounty of the Federal Government, reversing their true relation to this Union." (Congressional Globe, 33d Congress, 1st session (May 1854) pp. 1061-63, cited in Vasey, 1958: 270-271)*
1862	Morrill Act-land grant colleges	The Morrill Act of 1862 providing for land grants to states to support public institutions of higher education,was the first time the national government

		participated financially in a program of state welfare.
1860s	Civil war  *slave narratives*	Doctrine of nullification laid to rest by force of arms. The most important national-state interactions in the first century revolved around slavery and its consequences. From the start, slavery embodied a fundamental contradiction between economic and personal liberty: humans treated as property. The issue repeatedly set South and North in opposition to one another: over how slaves should be counted; whether new territories could choose to permit slavery; and how they were to be treated when passing through non-slave states. The Civil War cast the national government as the protector of civil liberty against state incursions, with the fourteenth amendment the conduit through which national standards of personal rights were eventually funneled to the states. For the defeated South, however, these actions were seen as an absolute violation of personal and property rights by the national government. Conservative courts support states' unwillingness to act on civil rights.

Post-Bellum Expansion and Progressive Era

Following the Civil War, diversity among states was no longer seen as a source of liberty. While individual states might lead with their progressive reforms, only the national government could take that agenda to all states. The national government became a more active regulator and reformer in the economic system, while state reforms focused on traditional areas of police power and services – hospitals, sanitation and public welfare. By the last two decades of the nineteenth century, the national government became the keeper of economic development, greatly expanding its role in supporting and regulating commerce. This growth of national authority, ostensibly controlling industries, was more often protective of the large commercial interests.

Cutting across all levels of government, progressive political reforms

included a movement towards more direct democratic devices such as secret ballots and initiatives, managerial reforms at all levels of government, a merit system, antitrust legislation, and an income tax. Like the antifederalists and Jacksonians before them, the Progressives sought to correct an imbalance between economic growth and personal liberty. Industrialization, urbanization and immigration created new problems that existing institutions were ill-suited to solve. State and local governments were absorbed with these problems, which seemed to be exacerbated by corruption and collusion between corporations and the national government. Progressive responses to the problems of modernization often began at local and state levels, in the governments that were struggling to cope with the consequences of the economic changes. Unlike earlier reactions to economic centralization, however, the reform agenda was then taken to the national level.		
1880s 1887	First affirmative commerce clause actions by Congress after court rejects state laws on railroads, food, common carriers, utility regulation Interstate Commerce Act	As statute law replaced common law in states attempting to deal with the social and economic changes, efforts to develop uniform legal doctrines across the states were finally abandoned as unconstitutional. National regulation started in late 19th century, with such measures as the 1884 animal industry act for control of disease in cattle. State laws were often the stimulus for these national regulations. State actions to regulate railroads, rejected by the Supreme Court in 1886, led to the interstate commerce act in 1887. Similarly, late 1890 and early 1900 laws related to food, common carriers and utility regulation all led to national laws in the face of the Court's continued rejection of state actions. "*Instances have not been wanting where the concept of interstate commerce has been broadened to exclude state action, and narrowed to exclude Congressional action.*" (Felix Frankfurter)
1887	The first program of cash rather than land grants	A program creating agricultural experiment stations included oversight that is a prototype for modern grants-in-aid: state accountability through audits and a requirement that the Secretary of the Interior certify state eligibility for the

		program and withold grants if conditions were not met.
1890s	Sherman Antitrust Act State railroad commissions, antitrust laws and lottery laws preempted 1894 income tax overturned	The Interstate Commerce Act of 1887 and the Sherman Antitrust Act of 1890 were part of the expansion of federal authority over commerce that took place during that period, often at the expense of states. Thirty state railroad commissions, for example, were replaced by a federal authority, as were existing state antitrust and lottery laws. Although an income tax had been levied during the Civil War, the Supreme Court overturned an 1894 income tax provision as unconstitutional because it was not proportional.
1900s	"Stream of commerce" doctrine developed in price fixing ruling Mann Act  child labor laws	A 1905 case involving price fixing by meat packers served to establish the doctrine of "stream of commerce", which applied national laws to any part of an activity if the whole took place among the states. Emboldened by these precedents, Congress enacted the Pure Food and Drug act in 1906. This was a dramatic movement into an area of traditional public health that had generally been under police powers of the states. The courts sustained such "federal police powers" expansion into that area in the teens and twenties, upholding the Mann act and the pure food and drug act of 1906.
1913	16th amendment--income tax	The sixteenth amendment, adopted in 1913, stands as a watershed for modern federalism. The size of the tax was extremely modest by today's standards, but it created the foundation for twentieth century federalism, with its emphasis on intergovernmental transfers and the use of taxing and spending powers to further national policies.
1910s	tax incentives adopted, upheld--	Despite uncertainty as to the constitutionality of such a course, the

	narcotics tax	national power to tax was quickly used to affect policy whether through incentives or prohibitions. In doing this the national government soon acted in areas once considered the domain of state police powers, as with a narcotics tax that was upheld in 1919.
1922	Court rules that commerce disregards state lines .	By 1922, the Court ruled that commerce as a unit disregards state lines and national control of commerce – even intrastate – is not an invasion of state authority. However, state laws affecting health tended to be upheld in face of this.
1920s	11 grant-in-aid programs Court rules that federal grants in aid are voluntary so it has no jurisdiction.	As the country moved from a primarily rural, agrarian society to an urban industrial one, large-scale social institutions developed to cushion some of the worst social dislocations caused by the changes. These were primarily private or local government – or party – activity. Even with the capacity to levy progressive income taxes, national efforts at social welfare programs were highly tentative at first. Nonetheless, by 1920 there were eleven grants-in-aid programs. Challenges to the legality of such grants were rejected by the court on the grounds that participation in the programs was voluntary on the part of the states and thus did not violate separation of powers. The earliest such program in health, the 1921 Sheppard-Towner Act maternity and infancy health program aroused much opposition from state and professional groups, and was allowed to die in 1929.

New Deal and World War II

Hamilton had argued that a strong national government was needed to respond to external enemies and to protect commerce. His theory was vindicated as a global depression and two World Wars led to the most powerful national government in the history of the United States. Although the New Deal was the most centralizing period of Federalism, the shift was well under way before FDR's election. The national government's greater flexibility in raising revenues following the adoption of the 16th amendment led to revenue sharing, with a pattern of federalism that continues today: advanced approval of state plans, formula funding or distribution, requirements to provide matching funds, and detailed reporting.

Postwar Prosperity The national government played such a dominant role in the New Deal and World War II that some students of federalism have declared an end to federalism as the founders intended. However, state governments tended to keep pace with the national growth, and growth in national governmental power was shared to some extent with the states. From the New Deal onward, state-national relationships were closer than they had been in the first half of the nation's history, with different levels of government working together towards common objectives. Grodzin describes the intermingling of governmental responsibility as a "marble cake" in contrast to dual federalism's "layer cake".

1930s	New Deal: centralized response to national crisis Nationally-based welfare state	Although the courts initially rejected FDR's New Deal programs, his threat to add judges to the court until it voted his way shifted the balance and the court ultimately reversed itself, giving its approval to the crisis-driven centralization under way. The New Deal put forward a doctrine that a centralized response was needed to the national economic crisis. The national government assumed authority over areas of economic regulation and development that had been the states' domain, including labor relations and agriculture. It established a nationally based welfare state.
1937-1941	Court gives control over commerce to	After a series of four to five decisions, only a single vote needed to shift to

	Congress. U.S. v. Darby	change the outcome. Beginning with a 1937 decision that upheld the National Labor Relations Act, the Court finally gave up on defining the national role in Commerce in the face of conflicting Congressional action. *"The motive and purpose of a regulation of interstate commerce are matter for the legislative judgement upon the exercise of which the Constitution places no restriction and over which the courts are given no control." United Sates v. Darby, 312 U.S. 100 at 113 and 115 (1941) (McMahon 1972:47)*
1940s	Marble cake federalism era	Many social support programs remained under state control, albeit within guidelines set nationally. State police powers even expanded as the states carried out the national programs. *"The accretion of federal power has been piecemeal, much contested, often much agonized over, and legislatively qualified, and normally the outcome of emergency, or of powerful public pressure to stave off international or domestic disasters... Extensions of federal power since the New Deal have been remarkable for their assiduous respect for federalism".* (Collins 1983: xviii)
1944	McCarran act delegates regulation of banking and insurance to states	The McCarran Act of 1944 confirmed that Congress' authority over commerce was broad, in this case extending to taxation and regulation of insurance.
1950s	21 new grant-in-aid programs 1946-1961 economic development--highway spending Commission on intergovernmental	Eisenhower attempted to reverse the centralizing trend in the national government's involvement in domestic policy, and established the Commission on Intergovernmental Relations to identify activities to return to the states. However, the commission found few

	relations unsuccessfully seeks to return programs to states States' rights—"interposition" asserted in opposition to civil rights	such programs, and in the end no changes were implemented. In the post World War II period, the courts for the first time asserted national authority in regards to civil rights under the equal protection clause of the fourteenth amendment. The confrontation pitted southern states as deniers rather than protectors of liberty against the national government. Nullification was revived as "interposition" as states sought to defy federal orders to integrate schools in the wake of Brown v. Board of Education. State legislators revived the theory that the Constitution represented a compact and passed resolutions calling for the use of the theory as a basis for challenging the Court.

Great Society and Viet Nam War

Another period of national government activism began in 1964 with Lyndon B. Johnson's election. Elected with a strong mandate and large Democratic majorities in both houses, LBJ greatly expanded the national commitment to addressing social problems that beset society.

The courts uphold crosscutting grants, coercive taxes and outright mandates in the face of growing challenges by states. Black asks the poignant question:

"Is there an implied limitation on the federal powers, to the effect that they shall not be used to deal with some matters which lie within state authority? The prevalent modern answer is negative. But if that is right, the grave corollary is that federalism has no basis in firm constitutional law". (Black, 1963: 25)

1960s 1964,	Great society – "creative federalism" Grants to many levels of government; projects and grants	The "Creative Federalism" of that period was marked by an explosion of grants that reached beyond the states to establish intergovernmental links at all levels, often bypassing states entirely. Programs were aimed at both racial and economic injustice. Most of the new programs were

1968	Cross-cutting conditions on grants	funded through categorical and project grants, aimed at specific problems or groups and often bypassing states. Civil Rights Acts attached cross-cutting provisions on all grants.
1960s	1965--Highway beautification Act: cross-over sanction environmental and other regulation through partial preemption and substitution	The 1965 Highway Beautification Act was a nearly example of a cross-over sanction, in which aid for one activity was tied to performance of a different one. Water Quality Act (1965), Wholesome Meat Act (1967), Wholesome Poultry Act (1968) were examples of partial preemption. For example, the Wholesome Meat Act allowed the central government to take over in any state that had not adopted standards at least equal to the federal ones in three years.
1970s	growing conflict between states and national regulators national price controls	The growth of national government programs seeded a reaction. Programs overlapped and conflicted with one another. State administrators, growing increasingly capable in part as a result of the interaction around the grants, sought greater control over the programs. The War in Viet Nam, the oil crisis and the 1970's recession drained off the economic growth that had allowed the new programs to be set in place without disrupting taxpayers. Public reaction against the war eroded confidence in the national government. Relationships between state and national administrators, although often cooperative, became increasingly conflict-laden.

New Federalisms

Beginning with Richard M. Nixon's administration there has been a series of efforts to reduce national control over the grants-

in-aid programs and revise the character of federal involvement in general welfare spending. As the size of the federal budget has become a limiting factor in policy making, Congress has been increasingly willing to use mandates and coercive grants to achieve policy objectives during the 1970s and 1980s. This has further fueled a reaction against this regulatory federalism.		
1970s 1972	Nixon – new federalism General Revenue Sharing	Arrange of administrative reforms with a devolutionary objective were carried out under Nixon, including decentralization of national programs to field regions, streamlining of services, and redirection of funds towards general levels of government. Block grants and revenue sharing, enacted under Nixon, Carter and Reagan, reduce federal requirements, giving state grantees greater freedom while setting the stage for withdrawal of federal fiscal support. The attempts at retrenchment on federal grants have not marked a period of returning state power, however.
1980s	New Federalism II	Revenue cuts without matching spending cuts eventually produced a fiscally-driven impasse in government. A devolutionary agenda was promoted, but not carried out. 13 new block grant programs enacted. Court upholds the use of cross-over sanctions in tying highway funds to minimum drinking age.
1985	Garcia decision	In a ruling that eliminated virtually all barriers to federal

		regulation of state functions, the Supreme Court ruled that limits on the federal government's power to interfere with state functions rests with the political process
1995-1997	Contract with America Unfunded Mandates Reform Act Health Insurance Portability and Accountability Act Welfare Reform, Balanced Budget Act,	The 104th Congress enacted insurance reform, modeled in part on state insurance market reform laws. Implementation was carefully tailored so as not to preempt current state practices that exceeded the federal rules. While a pseudo-dual framework was retained, with states above all responsible for geographically defined elements such as defining pools of risk, this solicitude towards the states serves to underline the extent to which their authority ceded by Congress and revocable at will. Welfare block grants ostensibly devolved the program to states but also included major new restrictions on how the moneys could be spent.
1990s	Lopez decision	Recently the Supreme Court (having reached a nadir in federalism with the Garcia decision which effectively overturned the tenth amendment in favor of states' lobbying Congress) has shown signs of defining and separating areas of state and national authority. It decided that the national government has reached into what should be state police powers in the matter of guns near schools.

U.S. Federalism Web Site

Text 4.

FEDERALISM AND NATIONAL SUPREMACY

The government of the United States is a federal union. That is to say, it consists of a central authority endowed with great yet limited powers to enact and execute laws regulating matters of general interest throughout its whole area; then, this area is made up of forty-eight States, each of which is in a sense subordinate to the central authority but possesses important powers of its own right. A federal union in terms of the relationship between the central authority and the State or provincial governments contrasts on the one hand with a unitary government, such as that of Great Britain or of an American State, and on the other hand with a confederation, such as the government of the United States under the Articles . In a unitary government the central authorities may have only limited powers; but the subordinate governing units, such as the British counties and the American cities, have no powers of their own right, but only those conferred upon them by the central government. In a confederation the central authority has only those powers with which the smaller units invest it; the smaller units alone have power of their own right.

DISTRIBUTION OF FEDERAL POWERS

Exclusive and concurrent powers

The distribution of powers in the federal union, as devised in 1787, has undergone great modification. Under the Constitution the national government alone enjoys certain powers, such as those of declaring war and negotiating peace; the States alone enjoy certain other powers, such as creating local governments and enacting codes of criminal law. These powers are termed exclusive. At the same time the national and State governments together share certain powers. Each level may assess taxes; each may support a police force; each may create a judicial system. These powers are called concurrent. Questions regarding the exercise of concurrent powers are so important that the same political party may be divided on the national and the State levels over them. The concurrent powers have contributed much to that distinctive American situation that finds party organizations of the same “national” party working not only

independently of one another but even for opposing ends. For example, the national party organization may work for the construction of a federal dam across a river to produce hydroelectric power; at the same time the party organization of the State concerned may urge State or even private exploitation of these water resources. The Constitution draws no sharp line between the national and the State exercise of the concurrent powers. In fact, since it would be impossible to enumerate all political powers, it would also be impossible to draw a strict boundary between the areas of national and State jurisdiction. Hence there is a wide belt of political territory that is in dispute between national and State authorities. The contests over this disputed territory provide the chief material for the constitutional history of the United States.

Supremacy of national law

It must be noted, however, that in the area of concurrent power, federal legislation always takes precedence over State legislation. That is, once federal action is taken, a State law may not overturn the federal law, or lessen its effectiveness. Moreover, the federal government is ultimately supreme over State governments. This federal supremacy is established by the Constitution, which states that "The 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 …" (Art. VI, cl .2).

Tools of national supremacy

The Supreme Court is the umpire in any instance in which it is alleged that a State law contravenes a federal law or the Constitution: the Judiciary Act of 1789 established the procedures whereby it should hear any case of this nature. In these hearings the federal Supreme Court has tended to favor the national government, an understandable tendency when one reflects that the Supreme Court is an arm of the national government. Actually, as will be seen below, there have been tremendous pressures upon the national government to exploit this supremacy. In fact, granted the taxing powers that the federal government has under the Constitution as amended, it is difficult to see how with its great financial resources it could be other than supreme over the States. At the same time this constitutional clause legalizes the supremacy and sets aside any need for national compulsion of the States.

Inherent and delegated powers

Before advancing toward an analysis of how the federal structure of the American government has developed, it would be well to note another means of classifying the types of political power under the national Constitution. According to this scheme of classification, powers are either inherent or delegated. An inherent power may be defined as a power which a government is authorized to employ simply because the power rightfully belongs to that government, and because the government concerned has the strength to exercise that power. Thus the presence or absence of inherent powers depends upon an accepted doctrine about the sources of a specific government's authority, and upon that government's aggressiveness in seeking powers.

In the United States, the State governments possess inherent powers, by general consent of scholars, judges, and leaders. These powers are, according to their doctrine, subject to the limitations imposed by the national Constitution and the constitution of the given State. In other terms, a State government may enact and carry out laws in any field not barred to it by the federal Constitution or its own constitution. The inherent powers of the States are sometimes called reserved powers, for the Tenth Amendment to the Constitution asserts that "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."

Meanwhile the federal government possesses the inherent power of conducting its relations with foreign governments. That is, in declaring war, making peace, or negotiating treaties, the national government need seek no constitutional authorization for its activity; for it is held that the conduct of foreign affairs is an inherent power of any national government. The only constitutional questions that arise concern the problem of which branch of the government is empowered to act. However, it should be noted, that this is practically the only sphere of action in which there is general consent to the doctrine that the national government has inherent powers.

A delegated power, by contrast, is a named power that has been conferred upon a government from some external source, which, following various political concepts, may be another government, one or more nongovernmental institutions, the people as a whole, or God. For example, under the Articles of Confederation the national government possessed delegated powers which had been conferred by the States. Under the present Constitution, modern American doctrine holds that the national government has delegated powers which were conferred by the people. In other words, the national government may do only what is authorized by the Constitution and its Amendments, so far as domestic affairs are concerned. Hence the national government is also said to have enumerated powers, that is, powers that are enumerated in the Constitution.

To sum up, acts justified in the name of inherent powers come almost entirely from the State governments; the national government almost always resorts to acts justified by delegated powers. A reading of the national and the State constitutions will highlight the difference. The national Constitution is composed largely of affirmative statements declaring the various powers of the national government. State constitutions, on the other hand, contain many negative statements, the prohibitions on the exercise of powers that the State governments might otherwise enjoy as inherent powers. In any event, the powers of both the national and the State governments are limited by accepted doctrine-all by the national Constitution, and those of the State governments by their own constitutions as well.

THE DEVELOPMENT OF NATIONAL POWER

The doctrines of the sources of power of the nation and States have not changed much in an absolute sense. Through later Amendments (from the Thirteenth to the Twenty-first) and some new ideas (for example, the inherent powers of the nation in foreign affairs), some reallocation of powers has occurred within the framework of the delegated and inherent powers doctrine. But the powers themselves have been increasingly used. Since the adoption of the national Constitution, the powers-in-use of the national government have greatly expanded. During the same era the powers-in-use of the State governments have not diminished; rather, they too have greatly expanded, but not to the degree that the national powers have. It is essential to investigate why and how this expansion in national power has taken place, and what its effects have been upon federal-State relations.

Causes for the expansion

The principal material causes for the expansion in the powers of the federal government appear to be economic and technological. In addition, there were psychological causes as well-the mushrooming of nationalism in America as in the rest of the world, and the idea of collective responsibility for problems that were once considered personal or local, to name only two. At the time the Constitution was adopted, businesses in the main were so small that they could be policed by local authorities; hence there were few significant pressures upon the national government to undertake their supervision. On the other hand, since the War between the States there has emerged an economy based on aggregations of industry, commerce, and finance, whose operations extend across the borders of several States or even across the nation, and whose resources, annual budgets, and payrolls in some cases surpass those of any State in the country. Later there

developed nation-wide unions of workingmen to deal with these business aggregations. Soon various interests were calling for governmental regulation or governmental promotion of these aggregations and unions. It was impossible for the States to control such bodies, especially since the federal government has exclusive power to legislate with regard to interstate commerce. Indeed, more than a suspicion arose that some large corporations and syndicates controlled several States. Hence the federal government alone could shoulder the burden of regulation and promotion which was demanded.

Other important factors leading to the expansion of national power have been the depression of the 1930's and the two world wars of the twentieth century. During the depression the responsibility of caring for the unemployed and the aged was frequently greater than many States could or would assume. Two world wars exacted an amount of unity and direction unknown in peacetime. Only the federal government could impose that unity. Hence the national government has overseen the distribution of raw materials, the maintenance of production levels, the allocation of manpower, and a host of other activities relative to the production of armaments and the other necessities of war. These national powers are not "emergency powers"; they are based upon the authority given Congress by the Constitution "To raise and support armies, . . ." "To provide and maintain a navy," and "To make rules for the government and regulation of the land and naval forces" (Art . I, sec . 8, cls. 12-14). Often at the end of a war the statutes are not repealed; they are simply no longer administered. Hence World War II was fought to a considerable degree on World War I laws, and the Korean conflict on statutes of both world wars. Moreover, some of these wartime laws could be invoked even if no war existed, providing there was no clause in them confining their validity to wartime; however, the Supreme Court may then reexamine them for their constitutionality in peacetime.

Means of achieving the expansion

The Principle of Implied Powers: The chief means whereby the powers of the national government have been expanded has been through constitutionally implied powers. An implied power is a power which, although not expressly conferred by the Constitution, is so closely related to, or similar to, one or more of the delegated powers that its constitutionality may be assumed. The first use of implied powers came shortly after the adoption of the Constitution, when Secretary of the Treasury Alexander Hamilton sought to have Congress charter a Bank of the United States. Hamilton held that the national government was empowered to charter a bank because of its delegated authority to regulate currency and because of the power conferred upon Congress "To make all

laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof" (Art . I, sec. 8, cl . 18). In spite of the opposition of Secretary of State Thomas Jefferson, who maintained that the "necessary and proper" clause was not sufficient authorization, Congress chartered the bank.

The federal Supreme Court is the final arbiter as to the constitutionality of an implied power. In the case of McCulloch versus Maryland (1819), a case in which the constitutionality of the Bank of the United States was challenged, Chief Justice John Marshall gave general authorization to the principle of implied powers in his ruling that ". . . Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted toward that end, which are not prohibited but consist with the letter and spirit of the constitution, are constitutional ." Marshall himself was an advocate of a strong central government; and the Supreme Court under his leadership laid the foundation for a powerful national authority. The expansion of this national authority has been based primarily upon new implied powers; and the Supreme Court has more often upheld than overthrown these novel assumptions of power.

Strict Constructionists versus *Broad Constructionists*: The dispute between those who make a strict construction of the Constitution and those who make a broad construction is the dispute between those who would limit the powers of the national government and those who would expand them. The strict constructionists are mostly also supporters of States' rights; the broad constructionists are the proponents of a strong central government. The first great instance of such a dispute after the adoption of the Constitution was the contest between Jefferson and Hamilton respecting the establishment of the Bank of the United States. Since that time similar disputes have arisen virtually every time that the national government has assumed some new power. The position of the strict constructionists is simply that the national government may do no more than is specifically provided in the Constitution. The position of the broad constructionists is paraphrased in John Marshall's ruling in the case of McCulloch versus Maryland.

In general it may also be said that the proponents of a broad construction are those who at the moment are in command of the national government; and that those who uphold a strict construction are those who are out of power. Hamilton was a Federalist, one of the group that was in power from 1789 until 1801; Jefferson was an Antifederalist, or a Republican, one of the group then out of power. When the Antifederalists came to power in 1801 with the election of Jefferson to the presidency, they soon adopted a broad construction of the Constitution; they were compelled to in order to justify such an act as the Louisiana Purchase,

which is certainly not referred to in any way in the Constitution. Their opponents, the Federalists, who were now out of power, soon expressed the strict-constructionist point of view, carrying it to the extreme of threatening secession during the War of 1812; for they felt that the war was being fought for the benefit of the Republican West at the expense of Federalist New England.

Another illustration of the connection between political control and the attitude toward the construction of the Constitution occurred when Abraham Lincoln was elected President in 1860. His party, the Republican not to be confused with Jefferson's group-revealed itself to be a partisan of a strong central government; and elements of the Democratic Party-the successor to Jefferson's group-as adherents of States' rights, went to the point of leading the South, which they controlled, into secession from the Union. Later, after Franklin D. Roosevelt was elected as Democratic candidate for the presidency in 1932, the national Democratic Party urged the need for a strong central regime whereas the Republicans argued in behalf of States' rights.

These seeming contradictions concerning a broad or a strict construction among proponents of a strong central government and supporters of States' rights have an explanation. A partial solution concerns interest groups. Behind every major party candidate for the presidency stands a combination of interests that want something from the government. After his election, the successful candidate normally will attempt to satisfy at least some of the wants of his supporters. Often in his attempt he will take recourse to certain new implied powers; this is especially true of those Presidents who have been backed by groups that before his election were not in power, as in the cases of Jefferson, Lincoln, and F. D. Roosevelt. The Louisiana Purchase aided the agrarian groups behind Jefferson; the National Bank Act of 1862, the financial groups behind Lincoln; and the Social Security Act of 1935, the labor organizations behind Roosevelt.

At the same time, in satisfying the wants of his supporters, the President, along with Congress, almost inevitably wreaks some injury upon those interest groups out of power; for example, the Louisiana Purchase, by increasing the size of the United States and thereby making possible the future election of agrarian-minded congressmen from the new States of the area, menaced the power of the New England financial and commercial interests in Congress. Hence the groups that are out of power will tend to support a strict-construction, States'-rights point of view, in which they will argue that the actions taken by the national government have been unconstitutional, since beyond the proper scope of its authority. Thus these groups are acting in defense of their interests, which they feel are being injured by the measures of the national government.

COOPERATIVE FEDERALISM

As the national powers have expanded, more of them have been administered in conjunction with the State governments. For more than a century after the adoption of the Constitution, the State and national governments were assumed to be solely competitors. The then popular theory of the relationship between the two levels of government may be termed separatist federalism. This position is illustrated by a portion of the Supreme Court ruling in Tarble's Case in 1871: ". . . there are within the territorial limits of each State two governments, restricted in their spheres of action, but independent of each other, and supreme within their respective sphere . Each has its separate departments; each has its distinct laws, and each has its own tribunals for their enforcement. Neither government can intrude within the jurisdiction, or authorize any interference therein by its judicial officers with the action of the other."

However, about the time of World War I this position came to be supplanted by one that may be called cooperative federalism. Under cooperative federalism the State and national governments began consciously collaborating toward certain ends. Rather than remaining as separate as possible, they began to consider the potentialities of mutual aid. Some of the new cooperation occurred in the area of concurrent powers (for instance, highways) and some in areas reserved to the States, especially among the so-called police powers-that is, the power to legislate with respect to public health, morals, welfare, and safety. In reference to the police powers, the workings of cooperative federalism brought about a considerable extension in the powers and functioning of the national government.

The system of grants-in-aid

Probably the chief instrument whereby the national government has penetrated fields once limited to the States has been the grant-in-aid. The system of grants-in-aid has been especially prominent since 1933; however, it existed on a narrower basis for many years before. The-provision of the Land Ordinance of 1785 that in the new western States the federal government should give each State government one section out of every township for the maintenance of public schools was one of the first grants-in-aid. Today, however, the principal form of such grants is money, for such broad purposes as social welfare, education, veterans' services, agriculture, public works, natural resources conservation, public housing, and the National Guard.

Conditions for Grants: Today these grants are usually made on a conditional basis alone, by which the national government fixes a number of standards which the State governments must meet in order to qualify for

the grants. Normally the State governments must themselves appropriate money for the undertaking, up to an amount equal to the contribution of the national government. The projects must use bookkeeping and accounting methods prescribed by the national government. Workers on the projects ordinarily must be employed according to some measure of ability, without partisan considerations-a requirement that has stimulated the rise of State civil service systems based upon merit. The funds must be expended only for specified activities that have been planned in collaboration with federal authorities. Finally, the federal government is free to withdraw the grant whenever it discovers that a State is not complying with the stipulated conditions.

Cooperation without grants

The national and State governments cooperate in numerous other ways which do not involve the transfer of funds. Some of the more important include collaboration among national, State, and local officials, and the exchange of information among different levels of government. For example, in criminal investigations, State and local police officers often work with agents of the Federal Bureau of Investigation and the Treasury Department. Data from the criminal files of the FBI are available to all cooperating law agencies. At one time law enforcement officials of the States were greatly hampered by their inability to cross State lines to arrest criminals who had moved out of the State, sometimes taking their loot with them. Today, however, drawing authority from its warrant to regulate interstate commerce, the national government has made it a federal offense to cross a State line in an effort to evade prosecution for crime, or to transport stolen goods across a State line.

THE STATES UNDER THE CONSTITUTION

However limited the relations between the States and the national government may have once been, the Constitution from the outset provided certain major bonds between the two. The national government plays an important part in the creation of new States; it has certain fundamental obligations to the States; and at the same time the Constitution prohibits certain actions to the States.

Creation of new States

The chief task of Congress in the creation of new States is that of admitting them to the Union; for presumably the residents of the area themselves create the State and its governing machinery. When the people of a given area seek admission as a State they petition Congress to declare

under what conditions they may be admitted. If Congress is willing that the area enter the Union, it passes an enabling act, under which the people of the area summon a convention to draft a constitution. If Congress finds the proposed constitution satisfactory, it may then by joint resolution admit the State. Congress may establish requirements that must be satisfied in the constitution; for example, it demanded that Oklahoma include a pledge to keep the State capital at Guthrie until 1913. However, Oklahoma promptly violated this provision after being admitted; and in 1911 the Supreme Court held this violation justifiable, inasmuch as by requiring such a pledge the national government might make some States unequal to others (Coyle versus Smith).

The admission of States may be complicated by political considerations. Serious consideration has been given in the 1950's to the admission of Hawaii as a State. However, the project has been blocked in part by some southern Democrats who profess to fear the racial admixture of the Hawaiian people, in part by other Democrats who feel certain that Hawaii will elect two Republican Senators, and in part by congressmen of both parties who suspect that the Communist Party dominates the Hawaiian waterfront. Some Democrats have insisted that in spite of its slender population Alaska should be admitted to the Union at the same time; for it appears that Alaska will elect two Democratic Senators, so that neither party will gain an advantage from these admissions.

Duties of the national government to the States

The national government has several important duties with respect to the States. The most notable of these duties are: the guarantee of a republican form of government in the States; the assurance of the territorial integrity of the States; and the protection of the States from foreign invasion and domestic disorder . All these duties are prescribed by the Constitution. However, even if the Constitution had not provided them, the first and last would probably have been assumed by the national government for its own security.

Guarantee of a Republican Form of Government: According to the Constitution, "The United States shall guarantee to every State . . . a republican form of government (Art . IV, sec. 4.) However, the Constitution does not define "republican form of government," nor does it indicate which branch of the national government shall judge when a State does not have such a government. In the terminology of 1787, "republican" was probably construed to mean that the government should be composed of elected officials, with great leeway as to form. The term does not mean exclusively "representative"; in 1912, certain citizens of Oregon asserted in court that the direct initiative and referendum in their State deprived them of a republican form of government; the Supreme Court ruled that the

matter was beyond its jurisdiction; Congress meanwhile continued to seat Representatives and Senators from Oregon . Hence it may be assumed that the national government has found direct public participation in the legislative process to be consonant with a republican form of government.

The Oregon dispute followed the usual pattern in the determination of whether a State has a republican form of government. The federal Supreme Court has refused to rule in such cases, holding that they are political rather than legal matters. Hence the onus of decision has fallen upon the President and Congress. The prime criterion lies in the position adopted by Congress with respect to Senators and Representatives from the State or States concerned. After the Civil War, for example, Congress while controlled by the extremist Republicans refused to accept members from the southern States until those States had ratified the Fourteenth and Fifteenth Amendments and had made certain changes in their political structures; otherwise, it was alleged, those States would not have a republican form of government. Considering the general powers of Congress, such as the one permitting it to withhold federal funds from a State, it appears that the judgment of Congress can be final and compulsor.

The Assurance of Territorial Integrity: The Constitution provides that ". . . no new States shall be formed or erected within the jurisdiction of any other State; nor shall any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of Congress" (Art . IV, sec . 3, cl .1). Part of the logic underlying this provision has been suggested above. It should also be noted that if there were no obligation to consult the State legislatures before redrawing the boundaries of a State, the party in power in the national government might change these boundaries in such a way as to make its Senate majority almost unassailable; for example, a Democratic majority might divide Democratic Texas into five States while consolidating several normally Republican midwestern States into one State. One of the chief consequences of this provision today is that there is no easy way of making more equal the representation of such population giants as California and such population midgets as Nevada. Moreover, it thwarts the proposals of some planners who argue that such interstate metropolitan areas as New York City, Chicago, Philadelphia, St. Louis, Kansas City, and Cincinnati should be established as separate States. The State legislatures would almost certainly oppose these projects, if only because of the tax receipts and power the State governments would lose. Protection from Foreign Invasion and Domestic Violence: The Constitution provides that the national government " . . . shall protect each [State] . . . against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence" (Art . VI, sec. 4). Of course, invasion of a State would be an invasion of the United States, so that a guarantee of this sort is rather needless. Ordinarily a State is

expected to cope with local disorders by means of its own police forces and its militia. If a State cannot do so, however, and if either the governor or the State assembly applies for federal assistance, the national government will probably intervene. If the disorders destroy property of the federal government or interfere with some federal function, the national government may intercede without any request for aid from the State government (see, for example, the lead illustration to Chapter 21).

Prohibitions on the States

The Constitution imposes a number of prohibitions on the States, in that it forbids them to carry on any of a number of types of actions. Several of these prohibitions cover fields in which the federal government is presumed to have exclusive powers; they are fields in which State activity would severely contract the power of the national government to enact and execute laws dealing with all the American people. Other prohibitions are designed to secure the people in their persons and their property; they are similar to limitations which the Constitution sets for the national government as well. These prohibitions on State activity are discussed at length in the various chapters dealing with the functioning of the national government; but it would be well to enumerate the principal prohibitions on the States at this point. These prohibitions forbid the States to negotiate treaties or alliances with foreign powers; maintain armed forces; tax federal property; levy import or export duties; regulate interstate commerce; coin money; make anything but gold or silver legal tender; impair contracts; deny a citizen of another State the privileges and immunities of American citizenship; deny any person the equal protection of the laws; or deny any person due process of law.

INTERSTATE RELATIONS

Interstate obligations

The federal Constitution sets certain obligations that the States must respect in their relations with one another. These obligations will be discussed more fully in the chapters dealing with governmental functioning. Briefly, States must give “full faith and credit” to the public acts and records of all other States; and they must guarantee citizens of other States all the “privileges and immunities'” of an American citizen. “Full Faith and Credit”: If the States were independent powers, as foreign states are to one another, any person might escape the laws and court judgments of his home State by moving to another State (unless the two States had a treaty governing such cases) . For example, if he owed money in Alabama, he might not be held liable for the debt if he went to Arkansas.

However, the "full faith and credit" clause of the Constitution resembles a universal treaty binding all the States to regard each other's laws as their own laws. A business that secures a charter of incorporation (a legal document) from one State may operate in another State so long as it obeys the laws that most States have enacted to regulate "foreign" corporations. If a court in New York decides that a man must pay a debt, and the man flees to California, his creditor can, without having to try the case over again, get the California courts to enforce the decree of the New York court. There is one area in which recently the "full faith and credit" clause has faltered: divorces. Some court decisions in the past few years have cast doubts on the validity of Nevada divorces in other States. Despite the tendency of the States to have many different laws, this clause binds them together and makes business and personal affairs much more stable than they would otherwise be.

"*Privileges and Immunities*": In another important way, the Constitution acts as a super-treaty among the States. It prevents any State from discriminating against a citizen of any other State. For instance, a State cannot block a resident of another State from using its courts and police on equal terms with its own citizens. It cannot keep other Americans from freely entering its territory. Its recreational parks, its roads, its harbors, and its other public facilities are open to all Americans without distinction. If someone from another State wishes to sell products or perform work in the State, he is entitled to do so with only such restrictions as are imposed upon citizens resident in the State.

However, some limits to the grant of all privileges and immunities exist. Minor burdens can be placed upon non-residents to compensate the State for the difficulty of administering to non-residents. For example, an extra fee may be charged a non-resident applicant for a license to do business, on the ground that it costs more to investigate his application. Of greater importance are limitations upon non-residents that are justified on the ground that experience in the State is essential to the activity the nonresident wishes to engage in. For instance, the States require a term of residence as a condition to granting a newcomer the right to vote. Also, doctors, lawyers, and other professional people moving into a State may find it unusually difficult to practice their callings; they may feel that their qualifications are superior to those demanded of local residents. However, the federal courts have agreed with the States that special local conditions in these occupations permit unusual burdens to be placed upon non-residents or new residents. Naturally, the State organizations of the members of these professions encourage the imposition of such burdens so as to reduce the likelihood of competition from members of these professions immigrating from other States, and bring pressure upon their State government to enact appropriate laws.

Interstate agreements

One means whereby the States have attempted to solve problems related to more than one State without the intercession of the national government has been the interstate agreement or compact. The Constitution provides that a State may enter such a compact only with the consent of Congress (Art. I, sec. 10, cl. 3). However, the federal courts have consistently ruled that such a compact is permissible even without federal consent provided that it does not conflict with the political power of the national government, nor infringe upon its supremacy. For instance, an interstate agreement determining the allocation of water in an area in which the national government has its own irrigation project would be overthrown by the federal courts.

The States have negotiated over one hundred of such compacts, most of them in the twentieth century. A large number of the recent compacts deal with the allocation and conservation of natural resources; for example, seven western States in 1922 agreed to the Colorado River Compact distributing rights to the waters of that river among the States concerned. One of the most important compacts was that between New York State and New Jersey establishing the Port of New York Authority, which administers the harbor facilities in the two States that comprise the Port of New York-New York and New Jersey. The type of enforcement agency for administering the compact varies greatly. Often the States erect a commission for administrative purposes; but in the long run there is no superior authority to compel the States to abide by these compacts.

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Text 5.

TEACHING ABOUT FEDERALISM IN THE UNITED STATES

Although it was not directly named in the Constitution, federalism is a central principle of government in the United States of America. It is important for all students to learn about federalism so they can comprehend the federal system in the United States and recognize examples of federalism in other countries. Teaching and learning about federalism, therefore, is essential to education for citizenship in a democracy. This Digest (1) defines federalism and discusses basic characteristics of the U.S. federal system; (2) provides an overview of the changing nature of federalism in the United States and internationally; (3) calls upon teachers to conduct deliberative discussions of federalism in relationship to other

principles of constitutional democracy; and (4) recommends Internet resources related to federalism.

Defining federalism

The word federal denotes alliances between independent sovereignties. "The Oxford Guide to the U.S. Government", an important source for any student or teacher of history, describes federalism in the United States as "the division of governmental powers between the national and state governments". "The Oxford Guide" informs us that "state governments can neither ignore nor contradict federal statutes that conform to the supreme law, the Constitution" (Patrick, Pious, and Ritchie 2001, 234-235). Unlike a confederation, a federal republic does not permit a state to have full or primary sovereignty over its internal affairs. If a conflict exists between the state and federal government, the supremacy clause mandates that federal laws are supreme. The powers of the central or national government typically are enumerated in a written constitution.

Under the U.S. Constitution, any powers not specifically granted to the national government are presumed to be retained by state governments. State governments have their own spheres of jurisdiction and often have been extolled as important laboratories for governmental experimentation. Throughout United States history, individuals have argued that the states are better able than the national government to respond effectively to public policy issues. Others seek the strength of the national government, particularly during times of crisis.

The U.S. federal system has five basic characteristics:

– Federalism provides a division of legal authority between state and national governments. Overlap occurs, but two legally distinct spheres of government exist.

– The states are subordinate to the national government in such areas as management of foreign affairs and regulation of interstate commerce.

– Federalism enables positive cooperation between state and national governments in programs pertaining to education, interstate highway construction, environmental protection and health, unemployment, and social security concerns.

– The U.S. Supreme Court serves as legal arbiter of the federal system in regard to conflicting claims of state and national governments.

– The two levels of government exercise direct authority simultaneously over people within their territory. Dual citizenship exists under federalism, and individuals can claim a wide range of rights and privileges from both state and national governments.

Political scientists define two types of federalism: dual and cooperative. From one vantage point, federalism can be viewed as a "layer"

cake (dual); from another it may be pictured as a "rainbow" or "marble" cake (cooperative).

Proponents of states' rights and powers hold that the Constitution is a compact between the states and the federal government. Both states and the national government are supreme within their own spheres. Advocates of dual federalism argue that the national government cannot "invade" the power that is reserved for the states.

Proponents of the position that the people, not the states, created the federal government want a cooperative approach to state-nation relations. Cooperative federalism emphasizes the "general welfare" clause and the "necessary and proper" clause of the Constitution by which power of the national government may be expanded even if the actions of the national government touch or overlap with traditional state functions.

The changing nature of federalism

The principle of American federalism, created in the eighteenth century, was bold and has greatly affected U.S. history. Its influence continues today. During the late 1780s the debates over ratification of the Constitution by Federalists and Anti-Federalists shaped controversies concerning the rights and powers of states in relation to the federal government.

The ideas stated in the "Federalist" papers are at the core of civic culture in the United States and serve as a reference for citizens in other democratic nations of the world. The 15th through the 22nd "Federalist" papers, for example, discuss the defects of the Articles of Confederation, the federal system that preceded ratification of the U.S. Constitution. The 39th "Federalist" paper shows that federalism provided by the U.S. Constitution is a compound system that conjoins national and state powers. Other papers in the "Federalist" that are especially helpful in explaining federalism in the United States include the 10th, 14th, 45th, and 51st.

The balance of power between national and state governments and consequent changes in federalism have evolved in U.S. history. National government power generally has expanded over state power through Supreme Court decisions, constitutional amendments, executive orders, and federal statutes. Nineteenth century states' rights proponents exemplify reactions to a stronger national government. Twentieth century influences concerning the growth of national government power within the federal system were initiated by events associated with two World Wars, the Great Depression, the Cold War, and civil rights movements. From the Nixon to the Reagan-Bush administrations, however, "New Federalism" sought to return power to the states.

During the Clinton presidency, the year 1996 was identified as the so-called "Devolution Revolution" as more powers, such as those

pertaining to economic regulations and social welfare, were directed from the federal government to the states. By 1997 the development of the "New Federal Order" meant less intrusion by the federal government into the affairs of state governments.

At the beginning of the twenty-first century, the issue of national security in respect to terrorist threats calls into question the fractious relationship between peoples and governments throughout the world. The issue of creating unity and protecting security and individual rights in culturally diverse nations is related to federalism. Some analysts regard federalism as an antidote to over-centralization because it fosters democratic participation and prevents the over-centralization of political power.

Deliberative discussion and the understanding of federalism

Deliberative discussion is a method for establishing the credibility of historical evidence and arguments and a means to develop historical understanding in students. Deliberation involves teachers and students in careful reading and extended discussion about principles of government such as federalism and their connections to other key concepts in the theory and practice of constitutional democracy.

Teachers can engage students in deliberative discussions about issues of federalism in U.S. history, which are organized around seminal documents such as selected "Federalist" papers, selections from records of debates in Congress, or landmark opinions of Supreme Court Justices. Starting with a seminal document, the teacher and students discuss the central ideas and issues in the primary source. The teacher asks students to suspend judgments about past issues and points of view while trying to understand the context of the document. The teacher then introduces additional related documents so students have a richer contextual understanding of the period. Students are invited to find other documents that more fully illuminate their inquiries into the past. This kind of inquiry offers students opportunities to understand the on-going ideas and issues that are associated with the principle of federalism.

Drake, Frederick D. - Nelson, Lynn R.

PART III. CULTURAL LITERACY VOCABULARY

Adams John – (October 30, 1735 – July 4, 1826) was an American politician and the second President of the United States (1797-1801), after being the first Vice President (1789-1797) for two terms. He is regarded as one of the most influential Founding Fathers of the United States.

Adams came to prominence in the early stages of the American Revolution. As a delegate from Massachusetts to the Continental Congress, he played a leading role in persuading Congress to adopt the United States Declaration of Independence in 1776. As a representative of Congress in Europe, he was a major negotiator of the eventual peace treaty with Great Britain, and chiefly responsible for obtaining important loans from Amsterdam.

Adams's revolutionary credentials secured him two terms as George Washington's vice president and his own election as the second president of the United States. During his one term as president, he was frustrated by battles inside his own Federalist party against a faction led by Alexander Hamilton, and he signed the controversial Alien and Sedition Acts. The major accomplishment of his presidency was his peaceful resolution of the Quasi-War crisis with France in 1798.

After Adams was defeated for reelection by Thomas Jefferson, he retired to Massachusetts. He and his wife Abigail Adams founded an accomplished family line of politicians, diplomats, and historians now referred to as the Adams political family. His achievements have received greater recognition in modern times, though his contributions were not initially as celebrated as other Founders'.

Adams was the father of John Quincy Adams, the 6th President of the United States.

The Articles of Confederation and Perpetual Union (commonly referred to as the **Articles of Confederation**) – was the first constitution of the thirteen United States of America and legally established the Union of the States. The Second Continental Congress appointed a committee to draft the 'Articles' in June 1776 and proposed the draft to the States for ratification in November 1777. The ratification process was completed in March 1781, legally federating the sovereign and independent states, allied

under the Articles of Association, into a new federation styled the "United States of America". Under the Articles the states retained sovereignty over all governmental functions not specifically relinquished to the central government.

Block Grants – federal grants-in-aid which are directed at broad policy areas, such as crime or community development. Generally, the states and localities have greater discretion in determining how the funds may be allocated than is the case with categorical grants.

Brown v. Topeka Board of Education – (1954) was a landmark decision of the United States Supreme Court, which overturned earlier rulings going back to Plessy v. Ferguson in 1896, by declaring that state laws that established separate public schools for black and white students denied black children equal educational opportunities. Handed down on May 17, 1954, the Warren Court's unanimous (9-0) decision stated that "separate educational facilities are inherently unequal." As a result, de jure racial segregation was ruled a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. This victory paved the way for integration and the civil rights movement.

Bush George Herbert Walker (born June 12, 1924) served as the 41st President of the United States from 1989 to 1993. Bush held a variety of political positions prior to his presidency, including Vice President of the United States in the administration of Ronald Reagan (1981–1989) and Director of Central Intelligence (DCI) under Gerald R. Ford.

Bush was born in Massachusetts to Senator Prescott Bush and Dorothy Walker Bush. Following the attacks on Pearl Harbor in 1941, at the age of 18, Bush postponed going to college and became the youngest naval aviator in the US Navy at the time. He served until the end of the war, then attended Yale University. Graduating in 1948, he moved his family to West Texas and entered the oil business, becoming a millionaire by the age of 40.

He became involved in politics soon after founding his own oil company, serving as a member of the House of Representatives, among other positions. He ran unsuccessfully for president of the United States in 1980, but was chosen by party nominee Ronald Reagan to be the vice presidential nominee; the two were subsequently elected. During his tenure, Bush headed administration task forces on deregulation and fighting drug abuse.

In 1988, Bush launched a successful campaign to succeed Reagan as president, defeating Democratic opponent Michael Dukakis. Foreign policy drove the Bush presidency; military operations were conducted in

Panama and the Persian Gulf at a time of world change; the Berlin Wall fell in 1989 and the Soviet Union dissolved two years later. Domestically, Bush reneged on a 1988 campaign promise and after a struggle with Congress, signed an increase in taxes that Congress had passed. In the wake of economic concerns, he lost the 1992 presidential election to Democrat Bill Clinton.

Bush is the father of George W. Bush, the 43rd President of the United States, and Jeb Bush, former Governor of Florida. He was the last World War II veteran to serve as U.S. president, and the last president to have fought in a war before being elected.

Categorical Grants – federal grants-in-aid which are directed at a specific state or local governmental project.

Civil War, the – (1861–1865) also known as the War Between the States and several other names, was a civil war in the United States of America. Eleven Southern slave states declared their secession from the U.S. and formed the Confederate States of America (the Confederacy). Led by Jefferson Davis, they fought against the U.S. federal government (the Union), which was supported by all the free states and the five border slave states in the north.

In the presidential election of 1860, the Republican Party, led by Abraham Lincoln, had campaigned against the expansion of slavery beyond the states in which it already existed. The Republican victory in that election resulted in seven Southern states declaring their secession from the Union even before Lincoln took office on March 4, 1861. Both the outgoing and incoming U.S. administrations rejected secession, considering it rebellion.

Hostilities began on April 12, 1861, when Confederate forces attacked a U.S. military installation at Fort Sumter in South Carolina. Lincoln responded by calling for a volunteer army from each state, leading to declarations of secession by four more Southern slave states. Both sides raised armies as the Union assumed control of the border states early in the war and established a naval blockade. In September 1862, Lincoln's Emancipation Proclamation made ending slavery in the South a war goal, and dissuaded the British from intervening. Confederate commander Robert E. Lee won battles in the east, but in 1863 his northward advance was turned back at Gettysburg and, in the west, the Union gained control of the Mississippi River at the Battle of Vicksburg, thereby splitting the Confederacy. Long-term Union advantages in men and material were realized in 1864 when Ulysses S. Grant fought battles of attrition against Lee, while Union general William Sherman captured Atlanta, Georgia, and marched to the sea. Confederate resistance collapsed after Lee surrendered to Grant at Appomattox Court House on April 9, 1865.

The American Civil War was the deadliest war in American history, causing 620,000 soldier deaths and an undetermined number of civilian

casualties. Its legacy includes ending slavery in the United States, restoring the Union, and strengthening the role of the federal government. The social, political, economic and racial issues of the war decisively shaped the reconstruction era that lasted to 1877, and brought changes that helped make the country a united superpower.

Clinton Bill William Jefferson (born **William Jefferson Blythe III**, August 19, 1946) – served as the 42nd President of the United States from 1993 to 2001. He was the third-youngest president; only Theodore Roosevelt and John F. Kennedy were younger when entering office. He became president at the end of the Cold War, and as he was born in the period after World War II, he is known as the first Baby Boomer president. His wife, Hillary Rodham Clinton, is currently the United States Secretary of State. She was previously a United States Senator from New York, and also candidate for the Democratic presidential nomination in 2008. Both are graduates of Yale Law School.

Clinton was described as a New Democrat and was largely known for the Third Way philosophy of governance that came to epitomize his two terms as president. His policies, on issues such as the North American Free Trade Agreement and welfare reform, have been described as centrist. Clinton presided over the longest period of peace-time economic expansion in American history, which included a balanced budget and a reported federal surplus. Based on Congressional accounting rules, at the end of his presidency Clinton reported a surplus of $559 billion. On the heels of a failed attempt at health care reform with a Democratic Congress, Republicans won control of the House of Representatives for the first time in forty years. Two years later, in 1996, Clinton was re-elected and became the first member of the Democratic Party since Franklin D. Roosevelt to win a second term as president. Later he was impeached for obstruction of justice, but was subsequently acquitted by the U.S. Senate.

Clinton left office with an approval rating at 66%, the highest end of office rating of any president since World War II. Since then, he has been involved in public speaking and humanitarian work. Clinton created the William J. Clinton Foundation to promote and address international causes such as treatment and prevention of HIV/AIDS and global warming. In 2004, he released his autobiography *My Life*, and was involved in his wife Hillary's 2008 presidential campaign and subsequently in that of

President Barack Obama. In 2009, he was named United Nations Special Envoy to Haiti.

Competitive federalism – means that regional or local governments compete with other regional or local governments. People choose which regional or local government to live under. The governments compete for citizens. Investors choose which regional or local government to invest in. The governments compete for investment.

Concurrent power – power belonging to both the state and federal government.

Congress – is a vital component of the American political system. The Constitution of the United States grants all the legislative powers of the federal government to the Congress, which consists of two Houses: the Senate and the House of Representatives. The Congress is the supreme legislative organ. Its residence is on Capitol Hill, in the center of Washington.

Constitution, the – is the source of government authority and the fundamental law of the land. For over 200 years it has guided the evolution of governmental institutions and has provided the basis for practical stability, individual freedom, economic growth and social progress. Adopted in 1787, the Constitution was finally ratified and came into force on March 4, 1789.

In 200 years, the United States has experienced enormous growth and change. Yet the Constitution works as well today as when it was written. One reason is that the Constitution can be amended, or changed. Another reason is that the Constitution is flexible: its basic principles can be applied and interpreted differently at different times.*(See Appendix)*

Cooperative federalism – was an arrangement when the three levels of government (federal, state, and local) worked cooperatively on programs to cope with the nation's domestic problems.

Creative federalism – was predominated during the period of 1960 to 1980. This relationship was characterized by overloaded cooperation and crosscutting regulations. It is also known as "picket fence federalism".

Declaration of Independence – is a statement adopted by the Continental Congress on July 4, 1776, which announced that the thirteen American colonies then at war with Great Britain were now independent states, and thus no longer a part of the British Empire. Written primarily by Thomas Jefferson, the Declaration is a formal explanation of why Congress had voted on July 2 to declare independence from Great Britain, more than a year after the outbreak of the American Revolutionary War. The birthday of the United States of America – Independence Day – is celebrated on July 4, the day the wording of the Declaration was approved by Congress.

After finalizing the text on July 4, Congress issued the Declaration of Independence in several forms. It was initially published as a printed broadside that was widely distributed and read to the public. The most

famous version of the Declaration, a signed copy that is usually regarded as *the Declaration of Independence*, is on display at the National Archives in Washington, D.C. Although the wording of the Declaration was approved on July 4, the date of its actual signing is disputed by historians, most accepting a theory that it was signed nearly a month after its adoption, on August 2, 1776, and not on July 4 as is commonly believed.

Delegated Power – the authority granted by the states to the national government.

Dual Federalism – was prevailing view of the relations between the state and national governments before 1937. Each level of government was viewed as having its own separate source of authority and areas of responsibility. The states were not supposed to interfere in foreign affairs, for example, because seen as a federal responsibility, and the federal government was not supposed to intervene in areas of state responsibility.

Eisenhower Dwight David "Ike" – (October 14, 1890 – March 28, 1969) was the 34th President of the United States from 1953 until 1961 and a five-star general in the United States Army. During the Second World War, he served as Supreme Commander of the Allied forces in Europe, with responsibility for planning and supervising the successful invasion of France and Germany in 1944–45. In 1951, he became the first supreme commander of NATO.

As President, he oversaw the cease-fire of the Korean War, kept up the pressure on the Soviet Union during the Cold War, made nuclear weapons a higher defense priority, launched the Space Race, enlarged the Social Security program, and began the Interstate Highway System. He was the last World War I veteran to serve as U.S. president, and the last president born in the 19th century. Eisenhower ranks highly among former U.S. presidents in terms of approval rating.

"Elastic Clause" – the clause in Article I of the Constitution that grants Congress the power to make any and all laws considered "necessary and proper" for carrying out its functions.

Emancipation Proclamation, the – the statement made by President Abraham Lincoln on 1 January 1863 that all slaves in the Confederate States were "forever free". It had no actual power to make them free, but people talk about Lincoln "freeing the slaves" because of this proclamation (= announcement). It helped the north in the American Civil War as well, by allowing black people to serve in the army and navy, and by changing the war into a fight against slavery, which caused many

people in England and France to give their support to the North. The Proclamation led in 1865 to the Thirteenth Amendment to the American Constitution, which officially ended slavery in all parts of the US.

Equal-protection clause – is the provision of the Constitution's Fourteenth Amendment that forbids any state to deny any person in its jurisdiction the equal protection of the laws.

Exclusive powers – are the rights and powers held by individual states rather than by the federal government, by giving them mutually exclusive powers as well as concurrent powers.

Federal government – is the common government of a federation.

The structure of federal governments vary from institution to institution based on a broad definition of a basic federal political system, there are two or more levels of government that exist within an established territory and govern through common institutions with overlapping or shared powers as prescribed by a constitution.

The United States is considered the first modern federation. After declaring independence from Britain, the U.S. adopted its first constitution, Articles of Confederation in 1781. This was the first step towards federalism by establishing the federal congress. Yet, Congress was limited as to its ability to pursue economic, military, and judiciary reform. In 1787, federal congress participated in what is known as the Philadelphia Convention and by 1789, the U.S. was officially a federation.

The Federal Government of the United States is the central United States governmental body, established by the United States Constitution. The federal government has three branches: the legislative, executive, and judicial. Through a system of separation of powers and the system of "checks and balances," each of these branches has some authority to act on its own, some authority to regulate the other two branches, and has some of its own authority, in turn, regulated by the other branches. The policies of the federal government have a broad impact on both the domestic and foreign affairs of the United States. In addition, the powers of the federal government as a whole are limited by the Constitution, which, per the Tenth Amendment, gives all power not directed to the National government, to the State level, or to the people.

The seat of the federal government is in the federal district of Washington, D.C.

Federalism – is a form of government that derives authority between a government at the national level and other governments at the state level. Federalism is distinguished from unitary government (such as that of Great Britain), in which all governmental authority resides at the national level, and confederacy (such as the Confederate States of America, 1861-1865), in which individual states have the ultimate authority. In the United States, the term *federalism* refers to the national government.

Founders, the (The Founding Fathers of the United States) – were the political leaders who signed the Declaration of Independence in 1776 or otherwise took part in the American Revolution in winning American independence from Great Britain, or who participated in framing and adopting the United States Constitution in 1787-1788, or in putting the new government under the Constitution into effect. Within the large group known as "the founding fathers," there are two key subsets, the Signers (who signed the Declaration of Independence in 1776) and the Framers (who were delegates to the Federal Convention and took part in framing or drafting the proposed Constitution of the United States. Most historians define the "founding fathers" to mean a larger group, including not only the Signers and the Framers but also all those who, whether as politicians or jurists or statesmen or soldiers or diplomats or ordinary citizens, took part in winning American independence and creating the United States of America. The eminent American historian Richard B. Morris, in his 1973 book *Seven Who Shaped Our Destiny: The Founding Fathers as Revolutionaries,* identified the following seven figures as the key founding fathers: Benjamin Franklin, George Washington, John Adams, Thomas Jefferson, John Jay, James Madison, and Alexander Hamilton.

Warren G. Harding, then a Republican Senator from Ohio, coined the phrase "Founding Fathers" in his keynote address to the 1916 Republican National Convention. He used it several times thereafter, most prominently in his 1921 inaugural address as President of the United States.

Franklin Benjamin – (January 17, 1706 [O.S. January 6, 1705] – April 17, 1790) was one of the Founding Fathers of the United States of America. A noted polymath, Franklin was a leading author and printer, satirist, political theorist, politician, scientist, inventor, civic activist, statesman, and diplomat. As a scientist, he was a major figure in the Enlightenment and the history of physics for his discoveries and theories regarding electricity. He invented the lightning rod, bifocals, the Franklin stove, a carriage odometer, and the glass 'armonica'. He formed both the first public lending library in America and first fire department in Pennsylvania. He was an early proponent of colonial unity, and as a political writer and activist he supported the idea of an American nation. As a diplomat during the American Revolution he secured the French alliance that helped to make independence of the United States possible.

Franklin is credited as being foundational to the roots of American values and character, a marriage of the practical and democratic Puritan values of thrift, hard work, education, community spirit, self-governing institutions, and opposition to authoritarianism both political and religious, with the scientific and tolerant values of the Enlightenment. In the words of Henry Steele Commager, "In Franklin could be merged the virtues of Puritanism without its defects, the illumination of the Enlightenment without its heat." To Walter Isaacson, this makes Franklin, "the most

accomplished American of his age and the most influential in inventing the type of society America would become."

Franklin became a newspaper editor, printer, and merchant in Philadelphia, becoming very wealthy, writing and publishing *Poor Richard's Almanack* and *The Pennsylvania Gazette*. Franklin was interested in science and technology, and gained international renown for his famous experiments. He played a major role in establishing the University of Pennsylvania and Franklin & Marshall College and was elected the first president of the American Philosophical Society. Franklin became a national hero in America when he spearheaded the effort to have Parliament repeal the unpopular Stamp Act. An accomplished diplomat, he was widely admired among the French as American minister to Paris and was a major figure in the development of positive Franco-American relations. From 1775 to 1776, Franklin was Postmaster General under the Continental Congress and from 1785 to 1788 was President of the Supreme Executive Council of Pennsylvania. Toward the end of his life, he became one of the most prominent abolitionists.

His colorful life and legacy of scientific and political achievement, and status as one of America's most influential Founding Fathers, has seen Franklin honored on coinage and money; warships; the names of many towns, counties, educational institutions, namesakes, and companies; and more than two centuries after his death, countless cultural references.

Great Depression, the – was a worldwide economic downturn starting in most places in 1929 and ending at different times in the 1930s or early 1940s for different countries. It was the largest and most severe economic depression in the 20th century, and is used in the 21st century as an example of how far the world's economy can decline. The Great Depression originated in the United States; historians most often attribute the start to the stock market crash of October 29, 1929, known as Black Tuesday.

Hamilton Alexander – (January 11, 1755 or 1757 – July 12, 1804) was the first United States Secretary of the Treasury, a Founding Father, economist, and political philosopher. He led calls for the Philadelphia Convention, was one of America's first Constitutional lawyers, and cowrote the *Federalist Papers*, a primary source for Constitutional interpretation.

Born on the British West Indian island of Nevis, Hamilton was educated in the Thirteen Colonies. During the American Revolutionary War, he joined the New York militia and was chosen artillery captain. Hamilton became senior aide-de-camp and confidant to General George Washington, and led three battalions at the Siege of Yorktown. He was elected to the Continental Congress, but resigned to practice law and to found the Bank of New York. He served in the New York Legislature, and was the only New Yorker who signed the Constitution. As Washington's Treasury Secretary, he influenced formative government policy widely. An admirer of British political systems, Hamilton emphasized strong central government and implied powers, under which the new U.S. Congress funded the national debt, assumed state debts, created a national bank, and established an import tariff and whiskey tax.

By 1792, a Hamilton coalition and a Jefferson-Madison coalition had arisen (the formative Federalist and Democratic-Republican Parties), which differed strongly over Hamilton's domestic fiscal goals and his foreign policy of extensive trade and friendly relations with Britain. Exposed in an affair with Maria Reynolds, Hamilton resigned from the Treasury in 1795 to return to Constitutional law and advocacy of strong federalism. In 1798, the Quasi-War with France led Hamilton to argue for, organize, and become *de facto* commander of a national army.

Hamilton’s opposition to fellow Federalist John Adams contributed to the success of Democratic-Republicans Thomas Jefferson and Aaron Burr in the uniquely deadlocked election of 1800. With his party’s defeat, Hamilton’s nationalist and industrializing ideas lost their former national prominence. In 1801, Hamilton founded the *New York Post* as the Federalist broadsheet *New York Evening Post*. His intense rivalry with Vice President Burr eventually resulted in a duel, in which Hamilton was mortally wounded, dying the following day.

Implied Powers – through court interpretation or congressional action and stem from the delegated powers granted Congress by the Constitution. These powers are directly related to the “necessary and proper” elastic clause.

Inherent Power – power assumed by a President that the Constitution does not specify.

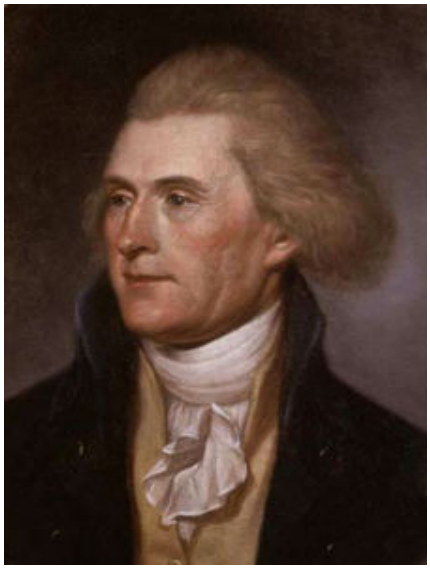
Jackson Andrew (March 15, 1767 – June 8, 1845) – was the seventh President of the United States (1829–1837). He was military governor of Florida (1821), commander of the American forces at the Battle of New Orleans (1815), and eponym of the era of Jacksonian democracy. A polarizing figure who dominated American politics in the 1820s and 1830s, his political ambition combined with widening political participation, shaping the modern Democratic Party.

His legacy is now seen as mixed, as a protector of popular democracy and individual liberty, checkered by his support for Indian removal and slavery. Renowned for his toughness, he was nicknamed “Old Hickory”. As he based his career in developing Tennessee, Jackson was the first president primarily associated with the American frontier. His portrait appears on the United States twenty-dollar bill.

Jay John – (December 12, 1745 –May 17,1829) was an American politician, statesman, revolutionary, diplomat, a Founding Father of the United States, President of the Continental Congress from 1778 to 1779 and, from 1789 to 1795, the first Chief Justice of the United States. During and after the American Revolution, he was a minister (ambassador) to Spain and France, helping to fashion American foreign policy and to secure favorable peace terms from the British (the Jay Treaty) and French. He co-wrote the *Federalist Papers* with Alexander Hamilton and James Madison.

As leader of the new Federalist Party, Jay was Governor of New York from 1795 to 1801 and became the state's leading opponent of slavery. His first two attempts to pass emancipation legislation failed in 1777 and 1785, but the third succeeded in 1799. The new law he signed into existence eventually saw the emancipation of all New York slaves before his death.

Jefferson Thomas – (April 13, 1743 – July 4, 1826) was the third President of the United States (1801–1809), the principal author of the Declaration of Independence (1776), and one of the most influential Founding Fathers for his promotion of the ideals of republicanism in the United States. Major events during his presidency include the Louisiana Purchase (1803) and the Lewis and Clark Expedition (1804 -1806).



As a political philosopher, Jefferson was a man of the Enlightenment and knew many intellectual leaders in Britain and France. He idealized the independent yeoman farmer as exemplar of republican virtues, distrusted cities and financiers, and favored states’ rights and a strictly limited federal

government. Jefferson supported the separation of church and state and was the author of the Virginia Statute for Religious Freedom (1779, 1786). He was the eponym of Jeffersonian democracy and the co-founder and leader of the Democratic-Republican Party, which dominated American politics for a quarter-century. Jefferson served as the wartime Governor of Virginia (1779 -1781), first United States Secretary of State (1789-1793), and second Vice President (1797-1801).

A polymath, Jefferson achieved distinction as, among other things, a horticulturist, statesman, architect, archaeologist, paleontologist, inventor, and founder of the University of Virginia. When President John F. Kennedy welcomed forty-nine Nobel Prize winners to the White House in 1962 he said, "I think this is the most extraordinary collection of talent and of human knowledge that has ever been gathered together at the White House – with the possible exception of when Thomas Jefferson dined alone." To date, Jefferson is the only president to serve two full terms in office without vetoing a single bill of Congress. Jefferson has been consistently ranked by scholars as one of the greatest U.S. presidents.

Johnson Lyndon Baines (August 27, 1908 – January 22, 1973) – often referred to as **LBJ**, served as the 36th President of the United States from 1963 to 1969 after his service as the Vice President of the United States from 1961 to 1963.

Johnson, a Democrat, succeeded to the presidency following the assassination of President John F. Kennedy*, completed Kennedy's term and was elected President in his own right, winning by a large margin in the 1964 Presidential election. Johnson was greatly supported by the Democratic Party and, as President, was responsible for designing the "Great Society" legislation that included laws that upheld civil rights, Medicare, Medicaid, aid to education, and his attempt to help the poor in his "War on Poverty." Simultaneously, he greatly escalated direct American involvement in the Vietnam War.

Johnson served as a United States Representative from Texas, from 1937–1949 and as United States Senator (as his grandfather foretold when LBJ was just an infant) from 1949–1961, including six years as United States Senate Majority Leader, two as Senate Minority Leader and two as Senate Majority Whip. After campaigning unsuccessfully for the Democratic nomination in 1960, Johnson was selected by John F. Kennedy to be his running-mate for the 1960 presidential election. Johnson's popularity as President steadily declined after the 1966 Congressional elections, and his re-election bid in the 1968 United States presidential

election collapsed as a result of turmoil within the Democratic party related to opposition to the Vietnam War. He withdrew from the race to concentrate on peacemaking.

Johnson was renowned for his domineering personality and the "Johnson treatment," his arm twisting of powerful politicians. He was a legendary "hands-on" manager and the last President to serve out his term without ever hiring a White House Chief of Staff or "gatekeeper" (a position invented by Kennedy's predecessor, Dwight Eisenhower).

Johnson died after suffering his third heart attack, on January 22, 1973. He was 64 years old.

Kennedy John Fitzgerald (May 29, 1917 – November 22, 1963) – often referred to by his initials **JFK**, was the 35th President of the United States, serving from 1961 until his assassination in 1963.

After Kennedy's military service as commander of the Motor Torpedo Boat PT-109 during World War II in the South Pacific, his aspirations turned political. With the encouragement and grooming of his father, Joseph P. Kennedy, Sr., Kennedy represented Massachusetts's 11th congressional district in the U.S. House of Representatives from 1947 to 1953 as a Democrat, and served in the U.S. Senate from 1953 until 1960. Kennedy defeated then Vice President and Republican candidate Richard Nixon in the 1960 U.S. presidential election, one of the closest in American history. He was the second-youngest President (after Theodore Roosevelt), the first President born in the 20th century, and the youngest elected to the office, at the age of 43. Kennedy is the first and only Catholic president, and is the only president to have won a Pulitzer Prize. Events during his administration include the Bay of Pigs Invasion, the Cuban Missile Crisis, the building of the Berlin Wall, the Space Race, the African American Civil Rights Movement and early events of the Vietnam War.

Kennedy was assassinated on November 22, 1963, in Dallas, Texas. Lee Harvey Oswald was charged with the crime but was shot and killed two days later by Jack Ruby before he could be put on trial. The FBI, the Warren Commission and the House Select Committee on Assassinations concluded that Oswald was the assassin, with the HSCA allowing for the probability of conspiracy based on disputed acoustic evidence. The event proved to be an important moment in U.S. history because of its impact on the nation and the ensuing political repercussions. Today, Kennedy

continues to rank highly in public opinion ratings of former U.S. presidents.

Layer cake (federalism) – is the relationship between the central government of a nation and that of its states, where the powers and policy assignments of the government hierarchy ("layers" of government) are clearly spelled out and distinct from one another.

In other words, the national government deals with the issues that are national and the states deals with the state and local issues. Ideally, there will be no interference between the two arenas.

This term was coined by political scientist, Morton Grodzins. In the United States, this type of federalism developed after the Civil War in the 1870s, and ran on until the New Deal era of the 1930s.

Madison James – (March 16, 1751 – June 28, 1836) was an American politician and political philosopher who served as the fourth President of the United States (1809–1817), and one of the Founding Fathers of the United States. Considered to be the "Father of the Constitution", he was the principal author of the document. In 1788, he wrote over a third of the Federalist Papers, still the most influential commentary on the Constitution. The first President to have served in the United States Congress, he was a leader in the 1st United States Congress, drafted many basic laws and was responsible for the first ten amendments to the Constitution (said to be based on the Virginia Declaration of Rights), and thus is also known as the "Father of the Bill of Rights". As a political theorist, Madison's most distinctive belief was that the new republic needed checks and balances to protect individual rights from the tyranny of the majority.

As leader in the House of Representatives, Madison worked closely with President George Washington to organize the new federal government. Breaking with Treasury Secretary Alexander Hamilton in 1791, Madison and Thomas Jefferson organized what they called the *Republican Party* (later called the Democratic-Republican Party) in opposition to key policies of the Federalists, especially the national bank and the Jay Treaty. He secretly co-authored, along with Thomas Jefferson, the Kentucky and Virginia Resolutions in 1798 to protest the Alien and Sedition Acts.

As Jefferson's Secretary of State (1801–1809), Madison supervised the Louisiana Purchase, doubling the nation's size, and sponsored the ill-fated Embargo Act of 1807. As president, he led the nation into the War of 1812 against Great Britain. During and after the war, Madison reversed

many of his positions. By 1815, he supported the creation of the second National Bank, a strong military, and a high tariff to protect the new factories opened during the war.

"Marble Cake" (Cooperative Federalism) – In response to the commonly held views of dual federalism and permissive federalism*, both of which suggest an adversarial relationship between the national and state governments, some constitutional scholars have argued that attempts to draw lines between national and state governmental activities are counter-productive. Instead of a two or three-layered, cake, they argued that the relationship between different levels of government in this nation is more like a marble cake, with swirls that cut across the levels, often blurring the distinction between them.

The "marble cake" metaphor suggests that the national and state governments are highly interwoven and interdependent. Accordingly, another term for marble cake federalism is cooperative federalism. According to this view, the national government and state governments are not, in fact, adversaries but rather different levels of government pursuing largely the same goals. For example, both national and state governments are interested in improving education, protecting the environment, promoting economic growth and reducing crime. To the extent that cooperation is feasible and beneficial, national, state and local governments can and do work together to accomplish these goals.

McCulloch v. Maryland – (1819) was a landmark decision by the Supreme Court of the United States. The state of Maryland had attempted to impede operation of a branch of the Second Bank of the United States by imposing a tax on all notes of banks not chartered in Maryland. Though the law, by its language, was generally applicable, the U.S. Bank was the only out-of-state bank then existing in Maryland, and the law is generally recognized as having specifically targeted the U.S. Bank. The Court invoked the Necessary and Proper Clause in the Constitution, which allowed the Federal government to pass laws not expressly provided for in the Constitution's list of express powers as long as those laws are in useful furtherance of the express powers.

This fundamental case established the following two principles:

The Constitution grants to Congress implied powers for implementing the Constitution's express powers, in order to create a functional national government.

State action may not impede valid constitutional exercises of power by the Federal government.

The opinion was written by Chief Justice John Marshall.

Missouri Compromise, the – was an agreement passed in 1820 between the pro-slavery and anti-slavery factions in the United States Congress, involving primarily the regulation of slavery in the western territories. It prohibited slavery in the former Louisiana Territory north of

the parallel 36°30' north except within the boundaries of the proposed state of Missouri. Prior to the agreement, the House of Representatives had refused to accept this compromise and a conference committee was appointed. The United States Senate refused to concur in the amendment, and the whole measure was lost.

During the following session (1819-1820), the House passed a similar bill with an amendment, introduced on January 26, 1820 by John W. Taylor of New York, allowing Missouri into the union as a slave state. The question had been complicated by the admission in December of Alabama, a slave state, making the number of slave and free states equal. In addition, there was a bill in passage through the House (January 3, 1820) to admit Maine as a free state.

The Senate decided to connect the two measures. It passed a bill for the admission of Maine with an amendment enabling the people of Missouri to form a state constitution. Before the bill was returned to the House, a second amendment was adopted on the motion of Jesse B. Thomas of Illinois, excluding slavery from the Missouri Territory north of the parallel 36°30' north (the southern boundary of Missouri), except within the limits of the proposed state of Missouri.

National Supremacy – is the concept written into the Constitution that requires all state and local laws to conform to the Constitution, treaties made with foreign nations, and federal statutes. It means that national law takes precedence over state law.

National Supremacy: What does it mean?

This is a continuation of my previous essay on the idea of federalism as it applies to the government of the USA. In this section, I deal with the doctrine of national supremacy and its implications for the United States Constitution. I also describe some of the effects that such ideas have had on our current political system.

The doctrine of national supremacy is a kind of outgrowth of federalism in the sense that it was established as a consequence of the Federalists' success in selecting delegates who supported their views and eventually ratified the Constitution. The national supremacy principle states that all federal laws (including the Constitution itself) are superior to any conflicting state or local laws, such that the federal laws will always take precedence. This principle was established by Article 6, section 2 of the Constitution, which states that the Constitution and any laws made under the authority of the United States "shall be the supreme Law of the Land". Since the beginning of the 20th century, this supremacy clause has been used to extend the powers of the federal government in many areas such as taxation, commerce, transportation, and environmental regulations.

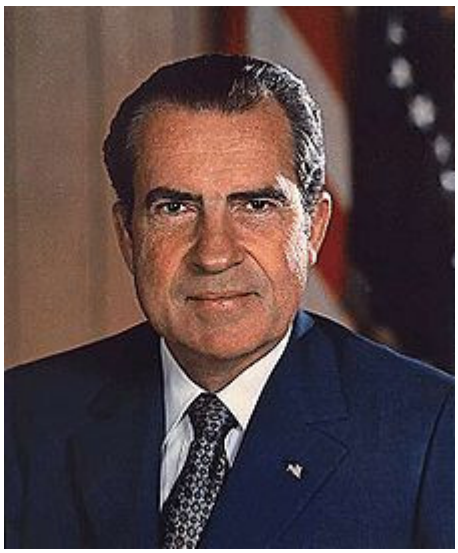
National supremacy limits the power of state and local governments because it allows the federal government to use legislation combined with

occasional Supreme Court rulings to preempt any state or local laws with which it is judged to be in conflict. For example, the federal civil rights laws that were enacted during the 1960s prevented states or state agencies from passing laws that discriminated against minorities. In a similar fashion, the 24th amendment to the Constitution prevented states from limiting the right to vote through the use of poll taxes. Since the era of "cooperative federalism", the federal government has been able to use block grants or categorical grants-in-aid to control what kinds of projects that states can implement as well as how the funding is allocated. Because the states have become increasingly dependent on these federal grants, the federal government has even been able to preempt state laws that have little to do with federal funding, as was the case in the 1980s when states were coerced into raising the drinking age to 21 under the threat of losing funding for transportation projects.

Under our federal system, certain rights and liberties are protected by the states and the national government. As part of the compromise between the Federalists and the Anti-Federalists, the Constitution included a proposal of twelve amendments, ten of which were ratified soon after the adoption of the original Constitution. These became known as the Bill of Rights. Several of these amendments provide the protections of individual rights that are now known as civil liberties-restraints on the power of government to infringe on the personal freedom of individuals. These include such time-honored traditions as freedom of speech, freedom of religion, freedom of the press, the right to trial by jury, the right to privacy, and the right to keep and bear arms. Originally, only the national government (but not the state governments) protected these rights. With the passage of the 14th amendment, however, along with the various interpretations of the Bill of Rights by the Supreme Court, these protections were also applied to state governments as well, such that no state is allowed to violate the basic freedoms outlined in the Bill of Rights, including the right to due process.

New Federalism – attempts by the Nixon and Reagan administrations to turn federal responsibilities over to the states, usually through general revenue sharing and block grants. The Reagan administration added the concept of "devolution" and sharp cutbacks in federal aid to states and communities.

Nixon Richard Milhous (January 9, 1913 – April 22, 1994) – was the 37th President of the United States (1969–1974) and the only president to resign the office. He was also the 36th Vice President of the United States (1953–1961).



Nixon was born in Yorba Linda, California. After completing undergraduate work at Whittier College, he graduated from Duke University School of Law in 1937 and returned to California to practice law in La Mirada. After the attack on Pearl Harbor, he joined the United States Navy, served in the Pacific, and rose to the rank of Lieutenant Commander during World War II. He was elected in 1946 as a Republican to the House of Representatives representing California's 12th Congressional district, and in 1950 to the United States Senate. He was selected to be the running mate of Dwight D. Eisenhower, who was the Republican Party nominee in the 1952 presidential election, becoming one of the youngest vice presidents in history. He waged an unsuccessful presidential campaign in 1960 and an unsuccessful campaign for Governor of California in 1962, then announced his withdrawal from the political scene. In 1968, however, Nixon ran again for president of the United States and was subsequently elected.

The most immediate task facing President Nixon was the Vietnam War. He initially escalated the conflict, overseeing secret bombing campaigns, but soon withdrew American troops and successfully negotiated a ceasefire with North Vietnam, effectively ending American involvement in the war. His foreign policy initiatives were largely successful: his groundbreaking visit to the People's Republic of China in 1972 opened diplomatic relations between the two nations, and he initiated détente and the Anti-Ballistic Missile Treaty with the Soviet Union. Domestically, he implemented new economic policies which called for wage and price control and the abolition of the gold standard. He was reelected by a landslide in 1972. In his second term, the nation was afflicted with economic difficulties. In the face of likely impeachment for his role in the Watergate scandal, Nixon resigned on August 9, 1974. He was later pardoned by his successor, Gerald Ford, for any federal crimes he may have committed while in office.

In his retirement, Nixon became a prolific author and undertook many foreign trips. He suffered a debilitating stroke on April 18, 1994, and died four days later at the age of 81.

Permissive federalism –holds that the states are subordinate to the national government and that they derive their existence and authority from the national government.

Reagan Ronald Wilson – (February 6, 1911 – June 5, 2004) was the 40th President of the United States (1981–1989) and the 33rd Governor of California (1967–1975). Born in Tampico, Illinois, Reagan moved to Los Angeles, California in the 1930s. He began a career in filmmaking and later television, making 52 films and gaining enough success to make him a household name. Though largely a B film actor, he starred in both *Knute Rockne*, *All American* and *Kings Row*. Reagan served as president of the Screen Actors Guild, and later spokesman for General Electric (GE); his start in politics occurred during his work for GE. Originally a member of the Democratic Party, he switched to the Republican Party in 1962. After delivering a rousing speech in support of Barry Goldwater's presidential candidacy in 1964, he was persuaded to seek the California governorship, winning two years later and again in 1970. He was defeated in his run for the Republican presidential nomination in 1968 as well as 1976, but won both the nomination and election in 1980.

As president, Reagan implemented sweeping new political and economic initiatives. His supply-side economic policies, dubbed "Reaganomics," advocated reduced business regulation, controlling inflation, reducing growth in government spending, and spurring economic growth through tax cuts. In his first term he survived an assassination attempt, took a hard line against organized labor, and ordered military actions in Grenada. He was reelected in a landslide in 1984, proclaiming it was "Morning in America."

His second term was primarily marked by foreign matters, namely the ending of the Cold War, the bombing of Libya, and the revelation of the Iran-Contra affair. Publicly describing the Soviet Union as an "evil empire", he supported anti-Communist movements worldwide and spent his first term forgoing the strategy of détente by ordering a massive military buildup in an arms race with the USSR. Reagan negotiated with Soviet General Secretary Mikhail Gorbachev, culminating in the INF Treaty and the decrease of both countries' nuclear arsenals.

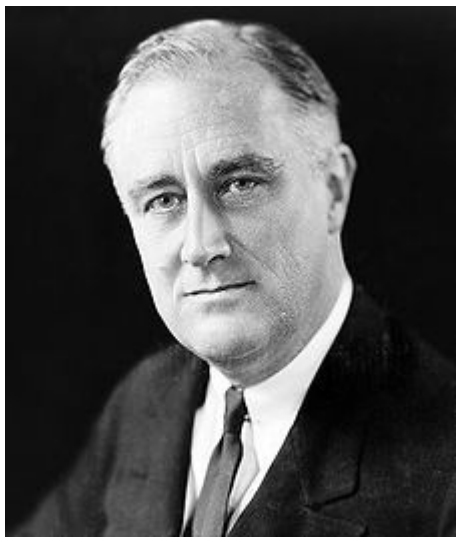
Reagan left office in 1989. In 1994, the former president disclosed that he had been diagnosed with Alzheimer's disease earlier in the year; he died ten years later at the age of 93. He ranks highly among former U.S. presidents in terms of approval rating.

"Red Tape" – refers to complicated rules or procedures that must be obeyed if the bureaucratic work is to be accomplished. Red tape can also mean bureaucratic delay or confusion and excessive paperwork. The term

derives from the English practice of binding legal and government documents in England with a red-colored tape.

Reserved Power – a power set aside for the states or to the people by the authority of the Constitution.

Roosevelt Franklin Delano (January 30, 1882 – April 12, 1945) – the only U.S. President elected to more than two terms, was a central figure in world events during the mid-20th century, leading the United States during a time of worldwide economic crisis and world war. Often referred to by his initials, **FDR** won his first of four presidential elections in 1932, while the United States was in the depths of the Great Depression. His combination of optimism and economic activism is often credited with keeping the country's economic crisis from devolving into a political crisis. He led the United States through most of World War II, and died in office of a stroke, shortly before the war ended. Roosevelt has been consistently ranked by historians as one of the most successful of U.S. Presidents.



Roosevelt's approach to the economic situation he inherited is known as the New Deal. The New Deal consisted both of executive orders and legislation pushed through Congress. Executive orders included the bank holiday declared when he first came to office; legislation created new government agencies, such as the Works Progress Administration and the National Recovery Administration, with the intent of creating new jobs for the unemployed. Other legislation provided direct assistance to individuals, such as the Social Security Act.

As World War II began, with Japanese occupation of countries on the western Pacific rim and the rise of Hitler in Germany, FDR kept the US on an ostensibly neutral course. But once war broke out in Europe, Roosevelt provided Lend-Lease aid to the countries fighting against Nazi Germany, with Great Britain the recipient of the most assistance. Upon the Japanese attack on Pearl Harbor, Roosevelt immediately asked for and received a declaration of war against the Axis powers. With the nearly total mobilization of the US economy to support the war effort, the US economy soon recovered.

Roosevelt dominated the American political scene, not only during the twelve years of his presidency, but for decades afterwards. His presidency created a realignment in American politics that dominated American politics until the election of Ronald Reagan in 1980. FDR's coalition melded together such disparate elements as Southern whites and

African Americans in the cities of the North. Roosevelt's political impact also resonated on the world scene for long after his death, with the

Selective Incorporation – is the process by which certain of the guarantees expressed in the Bill of Rights become applicable to the states through the Fourteenth Amendment. Under the total incorporation approach, an approach never adopted by a majority of the Supreme Court, all the Bill of Rights and the attendant case law interpreting them, are applied to the states. Under the selective incorporation approach, select guarantees in the Bill of Rights and their related case law are applied to the states.

State governments – are those governments formed in each U.S. state.

Structured in accordance with state law (including state constitutions and state statutes), most state governments are modeled on the federal system, with three branches of government – executive, legislative, and judicial.

Under the Tenth Amendment to the United States Constitution, all governmental powers not granted to the federal government by the Constitution are reserved for the states or to the people.

The governments of the 13 colonies which formed the original union under the Constitution trace their history back to the royal charters which established them during the year of colonialism. Most other states were organized as federal territories before forming their governments and requesting admittance into the union.

Notable exceptions are California, Vermont, Texas and Hawaii, which were sovereign nations before joining the union.

Washington George – (February 22, 1732 [O.S. February 11, 1731] – December 14, 1799) was the commander of the Continental Army in the American Revolutionary War (1775–1783) and served as the first President of the United States of America (1789–1797). For his essential roles in both war and peace, he is often referred to as the father of his country.

The Continental Congress appointed Washington commander-in-chief of the American revolutionary forces in 1775. The following year, he forced the British out of Boston, lost New York City, and crossed the Delaware River in New Jersey, defeating the surprised enemy units later that year. As a result of his strategy, Revolutionary forces captured the two main British combat armies at Saratoga and Yorktown. Negotiating with Congress, the colonial states, and French allies, he held together a tenuous army and a fragile nation amid the threats of disintegration and failure. Following the end of the war in 1783, Washington returned to private life and retired to his plantation at Mount Vernon, prompting an incredulous King George III to state, "If he does that, he will be the greatest man in the world."

He presided over the Philadelphia Convention that drafted the United States Constitution in 1787 because of general dissatisfaction with the Articles of Confederation. Washington became President of the United States in 1789 and established many of the customs and usages of the new government's executive department. He sought to create a nation capable of surviving in a world torn asunder by war between Britain and France. His unilateral Proclamation of Neutrality of 1793 provided a basis for avoiding any involvement in foreign conflicts. He supported plans to build a strong central government by funding the national debt, implementing an effective tax system, and creating a national bank. Washington avoided the temptation of war and began a decade of peace with Britain via the Jay Treaty in 1795; he used his prestige to get it ratified over intense opposition from the Jeffersonians. Although never officially joining the Federalist Party, he supported its programs and was its inspirational leader. Washington’s farewell address was a primer on republican virtue and a stern warning against partisanship, sectionalism, and involvement in foreign wars.

Washington was awarded the very first Congressional Gold Medal with the Thanks of Congress.

Washington died in 1799, and the funeral oration delivered by Henry Lee stated that of all Americans, he was “first in war, first in peace, and first in the hearts of his countrymen.” Washington has been consistently ranked by scholars as one of the greatest U.S. Presidents.

PART IV. CHECK YOURSELF

CHECK YOURSELF

Look for answers to these questions:

1. What rules does the Constitution give for relations between the states?
2. What guarantees about the national government's relations to the states are included in the Constitution?
3. Does national supremacy mean that the national government may take over all state powers? Why or why not?
4. How did the Supreme Court case *McCulloch* v. *Maryland* strengthen national supremacy?
5. How did the outcome of the Civil War strengthen national supremacy?
6. How did the events following the Supreme Court case *Brown* v. *Topeka Board of Education* strengthen national supremacy?
7. Why does the national government prefer categorical grants to block grants?
8. Why do state governments prefer block grants to categorical grants?
9. Why might the national government's budget deficit change this new pattern of cooperation between the state and national governments?
10. What are three essential features that characterize a federal system of governance?

Matching Questions

Match each glossary term on the left with a corresponding definition on the right.

a. Missouri Compromise

b. reserve powers

c. block grant

d. competitive federalism

e. categorical grants

f. fiscal federalism

g. Kentucky Resolution

h. marble-cake federalism

i. nullification doctrine

j. commerce clause

1. Constitutional provision that empowers the national government to regulate interstate trade

2. early statement of states rights in which a state legislature held the federal Alien and Sedition Act as null and void

3. position of Tenth Amendment that all powers not granted to the federal government are retained by the states

4. intergovernmental relations based upon financial grants
5. argument that states have the right to invalidate federal laws
6. federal grant for broad purposes, with substantial discretion given to state and local governments
7. early legislative agreement to head off sectional tensions over slavery: one state to be added as a free state, another as a slave state
8. intergovernmental relations characterized by a mixing of governing responsibilities among levels of government
9. intergovernmental relations characterized by cutbacks in federal aid, resorting of governmental responsibilities, and federal/state tensions
10. federal grant given for very specific purpose, with tight federal control

Completion Questions

Fill in the blank(s) so as to make a true statement.

1. Federalism refers to governing relationships between_____operating at different governmental_____.

2. The_____theory sees the federal system as the creation of a formal governing arrangement among thirteen sovereign state governments.

3. _____is the term used to describe a variety of efforts taken by state governments to assert their own governing power and challenge perceived encroachment by the power of the national government.

4. In the important Supreme Court case of_____, the court upheld the use of the necessary and proper clause to justify activities of the national government (in the context of a national bank) to take action not specifically sanctioned in the Constitution.

5. Sectional differences among the states were temporarily resolved in the early decades of the nineteenth century through the_____, which added one state to the union as a slave state and added Maine to the union as state free of slavery.

6. _____is the process through which the rights and liberties outlined in the Constitution have been extended to cover the actions of state and local governments.

7. Through_____grants, the federal government provides states and localities with funding for broad functional areas and allows these units to determine specific projects and spending priorities.

8. _____are requirements placed upon state and local governments by the federal government in order to pursue such objectives as affirmative action and environmental protection.

9. Through the_____, President Lincoln announced that all slaves residing in states engaged in rebellion against the Union would be free upon, control of these states by the Union army.

10. The provision of the Tenth Amendment that forbids states from abridging Constitutional rights of citizens and requiring equal enforcement of the law for all citizens is known as the

True/False Questions

For each of the following questions, indicate whether it is true or false by circling the appropriate letter.

T F 1. The supremacy clause of the Constitution holds that only the federal government can levy taxes.

T F 2. Nullification refers to the doctrine announced by some states that they had the power to render federal laws as void, without force.

T F 3. During the period known as dual federalism, the federal government was the dominant player and initiated bold social programs known as the Great Society.

T F 4. Through its Constitutionally defined power to regulate interstate commerce, the federal government now regulates many types of business activities, including environmental protection and consumer product safety.

T F 5. Categorical grants by the federal government to the

states were eliminated along with general revenue sharing.

T F 6. State and local discretion over the expenditure of federal grant dollars is greater in Categorical grants than in block grants.

T F 7. Matching requirements are attached to federal grants so that regulated private-sector companies will pay their fair share for environmental protection.

T F 8. The move toward deregulation has consistently been more popular among Democrat leaders than Republican leaders.

T F 9. The power of the federal government to levy a tax on personal incomes was granted through an amendment to the Constitution.

T F 10. Secession refers to the action of states to formally leave the Union.

Multiple-Choice Questions

Circle the letter of the appropriate response to each of the following questions.

1. *The Tenth Amendment, included in the Bill of* R*ights, provided reserved powers that*

a. prevented any action on slavery for twenty years.
b. retained for the states all powers not given national government.
c. required that all bills concerning in the House of Representatives.
d. kept the right to levy property taxes for state and local governments.
e. required that financial reserves be maintained at all times to protect the national currency.

2. *According to the contract theory, American federalism is based upon*

a. consent of the whole people.
b. consent of sovereign state governments.
c. approval of the British Parliament.
d. a and c
e. none of the above appropriations originate

3. *The Compromise of 1850 temporarily eased sectional tensions by*

a. granting formal federal approval of the nullification doctrine.
b. granting all states the right to levy an income tax.
c. allowing Missouri to enter as a slave state Maine as a free state.
d. eliminating all tariffs and export controls in southern states.
e. allowing California to enter as a free state while enacting a tougher federal law regarding

runaway slaves.

4. *Federalism during the first century of American history has been described as*

a. layer-cake federalism.
b. marble-cake federalism.
c dual federalism.
d. cooperative federalism.
e. a and c

5. *Which type of federal grant gives the federal issues government the most control over state and local expenditures of grant funds?*

a. block grant
b. general revenue sharing
c. categorical grant
d. none of the above

6. *Which of the following is not a. significant reason for the growth of national government power in the American system of federalism?*

a. expansive use of the necessary and proper clause
b. federal spending power
c. greater use of the commerce clause to regulate private-sector activities
d. selective incorporation of the Bill of Rights
e. revocation of the reserved powers clause in the Tenth Amendment

7. *Matching requirements are included as part of sectional tensions by federal grants to states and localities so that*

a. there is no violation of the separation of powers principle.
b. states will spend as much as the federal government on all grant-related projects.
c. states and localities will have some and financial stake in grant projects.
d. federal officials can cease all efforts to in monitor grant projects.
e. a and c

8. *Regulatory mandates enacted by the federal government are often vexing to states and localities because*

a. states and localities are required to take mandated action without sufficient funds to cover new costs.
b. states and localities prefer to regulate many areas of activity without federal interference.
c. states and localities believe that because they are closer to the problems and issues involved, they are better prepared to devise regulatory solutions.
d. all of the above
e. b and c

9. *The national government has been able to influence speed limits on highways and the determination of legal drinking ages by*

a. exerting powers specifically listed in the Constitution as powers of the national government.
b. attaching regulatory requirements to federal grants for highway and transportation projects.
c. presidential appeals to governors to join a voluntary effort to reduce speed limits and Rights legal drinking ages.
d. complete consensus on these issues states and the federal government.
e. amendments added to the Constitution dealing with these specific issues.

10. *For what reason are state governments becoming more active and powerful players in the contemporary system of American federalism?*
a. There is greater professionalism in state legislatures and executive branches.
b. The federal deficit restricts the spending power of the federal government.
c Conservative presidential administrations argue that more power be given to states and localities to solve public problems.
d. all of the above
e. a and b

KEYS

Matching Questions

1. j
2. g
3. b
4. f
5. i
6. c
7. a
8. b
9. d
10. e

Completion Questions

1. two or more governments; levels
2. compact
3. States rights
4. *McCulIough v. Maryland*
5. Missouri Compromise
6. Selective incorporation
7. block
8. Regulatory mandates
9. Emancipation Proclamation
10. equal protection clause

True/False Questions

1. F
2. T
3. F
4. T
5. F
6. F
7. F
8. F
9. T
10. T

Multiple-Choice Questions

1. b
2. a
3. e
4. e
5. c
6. e
7. c
8. d
9. b
10. d

APPENDIX

CONSTITUTION OF THE UNITED STATES

(In Convention, September 17, 1787)

PREAMBLE

We the people of the United States in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide, for the common defense, promote, the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT

Section 1. Congress

Powers *Vested in Senate* and House

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. House of Representatives

Election of *Representatives*

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Qualifications of *Representatives*

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Apportionment of Representatives

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including bound to service for a term of years, and excluding Indians not taxed, three-fifths other persons. The actual enumeration shall be made within three years after the meeting of the Congress of the United States, and within every subsequent term years, in such manner as they shall by law direct. The number of Representative not exceed one for every thirty thousand, but each State shall have at least one sentative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence plan one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

This clause has been superseded, so far as it relates to representation, by Section 2 of the Fourteenth Amendment to the Constitution.

Vacancies

4. When vacancies happen in the representation from any state, the executive at thereof shall issue writs of election to fill such vacancies.

Officers of the House – Impeachment

5. The House of Representatives shall choose their Speaker and other officers shall have the sole power of impeachment.

Section 3. The Senate

Number of Senators

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Superseded by Amendment XVII.

Classification of Senators

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes.

The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Modified Amendment XVII.
Qualifications of Senators

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

President of Senate

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

Officers of Senate

5. The Senate shall choose their other officers, and also a President pro Tempore, in the absence of the Vice President or when he shall exercise the office of President of the United States.

Trial of Impeachment

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.
Judgment on Conviction of Impeachment

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. Election of Senators and Representatives – Meetings of Congress

Election of Members of Congress

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

See Amendment XX.

Congress to Meet Annually

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Changed to January 3d by Amendment XX.

Section 5. Powers and Duties of Each House of Congress

Sole Judge of Qualifications, of Members

1. Each House shall be the judge of the elections, returns and qualification of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Rules of Proceedings – Punishment of Members

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journals

3. Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the years and nays of the members of either House on any question shall, at the desire of o of those present, be entered on the Journal.

Adjournment

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than in which the two shall be sitting.

Section 6. Compensation, Privileges and Disabilities, of Senators and Representatives

Compensation – Privileges

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Disability to Hold Other Offices

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

See also Section 3 of the Fourteenth Amendment.

Section 7. Mode of Passing Laws

Special Provision as to Revenue Laws

1. All bills for raising revenue shall originate in the House of Representatives; but the late may propose or concur with amendments as on other bills.

Laws, How Enacted

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President

of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by years and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Resolutions, Etc.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of Senate and House of Representatives, according to the rules and limitations prescribed ;in the case of a bill.

Section 8. Powers Granted to Congress

Taxation

1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Loans

2. To borrow money on the credit of the United States;

Commerce

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

Naturalization and Bankruptcies

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

Coin

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

Counterfeiting

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

Post Office

7. To establish post offices and post roads;

Patents and Copyrights

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

Courts

9. To constitute tribunals inferior to the Supreme Court;

Piracies

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

War

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

Army

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

Navy

13. To provide and maintain a navy.

Military and Naval Rules

14. To make rules for the government and regulation of the land and naval forces;

Militia, Calling Forth

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

Militia, Organizing and Arming

16. To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

Federal District and Other Places

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other buildings; – And

Make Laws to Carry Out Foregoing Powers

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

For other powers, see Article II, Section 1; Article III, Sections 2 and 3; Article IV, Sections 1 – 3; Article V; and Amendments XIII – XVI and XIX – XXI.

Section 9. Limitations on Powers Granted to the United States

Slave Trade

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas Corpus

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Ex Post Facto Law

3. No bill of attainder or ex post facto law be passed.

Direct Taxes

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Duties on Exports

5. No tax or duty shall be laid on articles exported from any State.

No Commercial Discrimination to Be Made Between States

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

Money, Now Drawn From Treasury

7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of Nobility

8. No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign State.

For other limitations see Amendments I –X.

Section 10. Powers Prohibited to the States

Powers Prohibited, Absolutely

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold 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.

Powers Concerning Duties on imports or Exports

2. 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.

Powers Permitted With Consent of Congress

3. 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. EXECUTIVE DEPARTMENT

Section 1. The President

Executive Power Vested in President – Term of Office

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years,

and, together with the Vice President, chosen for the same term, be elected, as follows:

Appointment and Number of Presidential Electors

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Mode of Electing President and Vice President

3. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

See Amendment XX.

Time of Choosing Electors and Casting Electoral Vote

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.
Qualifications of President

5. No person except a natural-born citizen, or a citizen of the United States, at time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

See also Article II, Section 1, and Fourteenth Amendment.

Presidential Succession

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Salary of President

7. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath of Office of President

8. Before he enter on the execution of his office, he shall take the following oath or affirmation: – "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States".

Section 2. Powers of the President

Commander-in-Chief

1. 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 offenses against United States, except in cases of impeachment.

Treaties and Appointments

2. He 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 heads of departments.

Filling Vacancies

3. 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.

Section 3. Duties of the President

Message to Congress – Adjourn and Call Special Session

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

See also Article I, Section 5.

Section 4. Removal of Executive and Civil Officers

Impeachment of President and Other Officers

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

See also Article I, Sections 2 and 3.

ARTICLE III. JUDICIAL DEPARTMENT

Section 1. Judicial Powers Vested in Federal Courts

Courts – Terms of Office and Salary of Judges

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. Jurisdiction of United States Courts

Cases That May Come Before United States Courts

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; – to all cases affecting ambassadors, other public ministers and consuls; – to all cases of admiralty and maritime jurisdiction; – to controversies to which the United States shall be a party; – to controversies between two or more States; – between a State and citizens of another State; – between citizens of different States; – between citizen; the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

See also Eleventh Amendment.

Jurisdiction of Supreme and Appellate Courts

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Trial of Crimes

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall

have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

See also Fifth, Sixth, Seventh, and Eighth Amendments.

Section 3. Treason

Treason Defined

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Conviction

2. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment

3. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV. THE STATES AND THE FEDERAL GOVERNMENT

Section 1. Official Acts of the States

Faith and Credit

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

See also Fourteenth Amendment.

Section 2. Citizens of the States

Interstate Privileges of Citizens

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Fugitives From Justice

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Fugitives From Service

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service labor may be due.

"Person" here includes slave. This was the basis of the Fugitive Slave Laws of 1793 and 1850. It is now superseded by the Thirteenth Amendment, by which slavery is prohibited.

Section 3. New States

Admission or Division of States

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned as well as of the Congress.

Control of the Property and Territory of the Union

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. Protection of States Guaranteed

Republican Form of Government

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V. AMENDMENTS

Amendments, How Proposed and Adopted

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived equal suffrage in the Senate.

ARTICLE VI. GENERAL PROVISIONS

The Public Debt

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

See also Fourteenth Amendment, Section 4.

Supreme Law of the Land

2. 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, anything in the Constitution or laws of any State to the contrary notwithstanding.

Oath of Office – No Religious Test Required

3. Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION

Ratification of Nine States Required

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in convention by the unanimous consent of the States present the seventeenth day of
September in the year of our Lord one thousand seven hundred and eighty-seven, and of
the Independence of the United States of America the twelfth. In witness whereof we
have hereunto subscribed our names.

AMENDMENTS

AMENDMENT I

Restrictions on Powers of Congress

[Section 1*.] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Proposed September 25, 1789; ratified December 15, 1791.

* Words in brackets added.

AMENDMENT II

Right to Bear Arms

[Section 1.] A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT III

Billeting of Soldiers

[Section 1.] No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT IV

Seizures, Searches and Warrants

[Section 1.] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT V

Criminal Proceedings and Condemnation of Property

[Section 1.] 1. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT VI

Mode of Trial in Criminal Proceedings

[Section 1.] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT VII

Trial by Jury

[Section 1.] In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the *i* common law.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT VIII

Bails – Fines – Punishments

[Section 1.] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT IX

Certain Rights Not Denied to the People

[Section 1.] The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT X

State Rights

[Section 1.] 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.

Proposed September 25, 1789; ratified December 15, 1791.

AMENDMENT XI

Judicial Powers

[Section 1.] The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Proposed March 4, 1794; ratified February 7, 1795; declared ratified January 8, 1788.

AMENDMENT XII

Election of President and Vice President

[Section 1.] The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; – The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; – The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. – The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

Proposed December 12, 1803; declared ratified September 25,1804.

AMENDMENT XIII

Slavery

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted,

shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Proposed January 31, 1865; ratified December 6, 1865; certified December 18, 1865.

AMENDMENT XIV

Citizenship, Representation, and Payment of Public Debt

Citizenship

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.

Apportionment of Representatives

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in portion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Disqualification for Public Office

Section 3. No person shall be a Senator or Representative in Congress or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the

United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Public Debt, Guarantee of

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Power of Congress

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Proposed June 13, 1866; ratified July 9, 1868; certified July 28, 1868

AMENDMENT XV

Elective Franchise

Right of Citizens to Vote

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Power of Congress

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed February 26, 1869; ratified February 3, 1870; certified March 30, 1870.

AMENDMENT XVI

Income Tax – Congress Given Power to Lay and Collect

Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Proposed July 12, 1909; ratified February 3, 1913; certified February 25, 1913.

AMENDMENT XVII

Popular Election of Senators

[Section 1.] The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

[Section 2.] When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

[Section 3.] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Proposed May 13, 1912; ratified April 8, 1913; certified May 81, 1913.

AMENDMENT XVIII

Prohibition – States Given Concurrent Power to Enforce

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the

several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Proposed December 18, 1917; ratified January 16, 1919; certified January 29, 1919. Effective January 29, 1920. For repeal see Amendment XXI.

AMENDMENT XIX

Equal Suffrage

[Section 1.] The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

[Section 2.] Congress shall have power to enforce this article by appropriate legislation.

Proposed June 4, 1919; ratified August 18, 1920; certified August 26, 1920.

AMENDMENT XX

Commencement of Congressional and Presidential Terms

End of Terms

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Assembling of Congress

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Congress Provides for Acting President

Section 3. If at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall

become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Congress Has Power Over Unusual Elections

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Date in Effect

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Conditions of Ratification

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

Proposed March 2, 1932; ratified January 23, 1933; certified February 6, 1933.

AMENDMENT XXI

Repeal of Prohibition

Repeal of 18th Amendment

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Control of interstate Liquor Transportation

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Condition of Ratification

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Proposed February 20, 1933; ratified December 5, 1933; certified December 5, 1933.

Ratified by the California State Convention on July 24, 1933.

AMENDMENT XXII

Terms of Office of the President

Limitation on Number of Terms

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Condition of Ratification

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Proposed March 24, 1947; ratified February 27, 1951; certified March 1, 1951. [16 Fed. Beg. 2019 (1951).]

AMENDMENT XXIII

District of Columbia

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitle if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article amendment.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed June 16, 1960; ratified March 30, 1961; certified April 3, 1961.

AMENDMENT XXIV

Qualifications of Electors; Poll Tax

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed September 14, 1962; ratified January 23, 1964; certified February 4, 1964.

AMENDMENT XXV

Succession to Presidency and Vice Presidency; Disability of President

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Proposed July 6, 1965; Certified February 23, 1967.

AMENDMENT XXVI

Voting Age

Section 1. The right of citizens of the United States to vote at the age of eighteen or over, shall not be denied or abridged by the United States or any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed 1971; certified 1972.

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