I. THREE SYSTEMS OF GOVERNMENT

There are more than 200 independent nations today. Nations typically structure relations between a central government and local units in one of three ways.

A. A Unitary System

In a unitary system of government, the central government gives power to sub-national governments (counties, provinces, etc.). This is the most common form of government. Local governments typically have only those powers granted to them by the central government, rather than any reserved powers. Especially important is the central government’s role of provider of funds. Many sub-national governments rely exclusively on funds from the national government for overhead and program administration, as they may not have the power to tax.

B. A Confederal System

In a confederal system of government, power is retained by local or regional governments. The EU (European Union) is an example of a current confederal system. Each country has ultimate power within the system although there is an EU parliament and other institutions that set a common European policy.

C. A Federal System

Federal systems divide power between the national and lower level governments. Each government has distinct powers that the other governments cannot override. A number of countries use a federal form of government (Australia, Brazil, Canada, Germany, India, Mexico, and the United States).

II. WHY FEDERALISM?

A. A Practical Constitutional Solution

The authors of the Constitution wanted to combine a central government strong enough to maintain order with strong states. The appeal of federalism was that it retained state traditions and local power while establishing a strong national government capable of handling common problems.

1. Benefits for the United States. State governments have served as training grounds for national politicians and as laboratories in which new ideas can be tested.

2. Allowance for Many Political Subcultures. In Federalist Paper No. 51, Madison argued that adopting a federal system would protect the people from the absolute power of the national government and the will of an unjust majority. A federal system also allows for social and political diversity within and between states.

B. Arguments against Federalism

Smaller political units are more likely to be dominated by single political groups. Some Americans suffer as a consequence of different standards in different states.

III. THE CONSTITUTIONAL BASIS FOR AMERICAN FEDERALISM

A. Powers of the National Government

1. The Necessary and Proper Clause. Many of these powers are traced to the Necessary and Proper Clause in Article I, Section 8.
2. **Inherent Powers.** The other major source of power is known as *inherent powers*, powers that are recognized by all sovereign nations.

B. **Powers of the State Governments**

Reserved powers of the states are, according to the Tenth Amendment, all powers that were not delegated to the national government. Interpretation of the Constitution has significantly altered the meaning of this amendment. In 1791, when this amendment became effective, the national government was not as active as it is today. In theory, states still retain all powers not delegated to the national government, but in reality the national government has expanded the scope of governmental action on a grand scale. Key concept: **police power**, the authority to legislate for the protection of the health, morals, safety, and welfare of the people. In the United States, most police power is reserved to the states.

C. **Concurrent Powers**

*Concurrent powers* are powers that are shared by both the national and state governments. Examples include the power to tax, to make and enforce laws and to establish courts, and to a limited extent, police power.

D. **Prohibited Powers**

*Prohibited powers* apply to both the national and state governments. The national government is prohibited from taxing exports. State governments are prohibited from conducting foreign policy and from coining money.

E. **The Supremacy Clause**

Article VI of the Constitution declares that actions by the national government are supreme. Any conflict between a legitimate action of the national government and a state will be resolved in favor of the national government.

F. **Vertical Checks and Balances**

Federalism can be seen as an additional way of preventing government from growing too strong, beyond the division of the national government into the legislative, executive, and judicial branches.

G. **Interstate Relations**

Article IV of the Constitution attempts to resolve potential problems between states by stipulating the following:

1. **Full Faith and Credit Clause.** States must honor actions of other states. The **Full Faith and Credit Clause** protects the rights of citizens as they move from state to state, and it has contributed to the unity of American citizens.

2. **Privileges and immunities.** Citizens of one state must not be treated as aliens when in another state. If the citizen of one state moves to another state, the receiving state must treat the new person as a citizen with all its **privileges and immunities**.

3. **Interstate extradition.** If a person is alleged to have committed a crime in one state and then flees to another state, the accused person will be extradited to the state where the alleged action occurred. States may also enter into **interstate compacts**. These agreements between states must be approved by Congress if the compact alters the power relationship between states or the national government.
IV. DEFINING CONSTITUTIONAL POWERS—THE EARLY YEARS

The following two cases are important in defining the boundaries between federal and state power.

A. *McCulloch v. Maryland* (1819)

This case settled a constitutional question concerning the powers of the national government. Chief Justice John Marshall’s decision confirmed national power. The power of Congress is not strictly limited to the expressed powers. Marshall held Congress has implied powers to carry out the expressed powers. Further, Marshall upheld the Supremacy doctrine by ruling that states could not override federal actions by taxing them.

1. **The Constitutional Questions.** Strict constitutional constructionists contended that the national government had only those powers necessary for the exercise of its designated powers (per the Necessary and Proper Clause), and that chartering a bank and contributing capital to it were not necessary. Loose constructionists believed that the word “necessary” could not be looked at in its strictest sense. The important issue was: If the national bank was constitutional, could the state tax it?

2. **Marshall’s Decision.** Marshall said that Congress’ power to establish a national bank was not expressed in the Constitution, but he argued that if establishing a national bank aided the government in the exercise of its designated powers, then the authority to set up such a bank could be implied.

B. *Gibbons v. Ogden* (1824)

This case set the precedent for the national government to regulate a wide range of economic activities. The definition of what could be considered interstate commerce was greatly expanded. In time, this definition would allow Congress the power to regulate a wide range of economic activities.

1. **The Background of the Case.** The case involved a dispute regarding competition between boat operators on New York state waters. The constitutional issues involved how the term commerce should be defined, whether the national government’s power to regulate interstate commerce extended to commerce within a state (intrasate commerce), and whether the power to regulate interstate commerce was a concurrent power or an exclusive national power.

2. **Marshall’s Ruling.** Marshall expanded the definition of commerce by defining it as all commercial intercourse, including navigation and the transport of people. He also used this opportunity to validate and increase the power of the national legislature to regulate commerce. Marshall further held that the commerce power of the national government could be exercised in state jurisdictions, even though it cannot reach solely intrastate commerce. Finally, he emphasized that the power to regulate interstate commerce was an exclusive national power.

V. STATES’ RIGHTS AND THE RESORT TO CIVIL WAR

A. The Shift Back to States’ Rights

In the Jacksonian era (1829–1837) states’ rights were reemphasized by the new Democratic Party. However, President Jackson would not tolerate a direct challenge to the Supremacy doctrine, as was presented by South Carolina’s nullification doctrine. Because South Carolina received little or no support from other southern states in this
dispute over the national government’s exercise of its enumerated power to set taxes on imports (tariffs), the state had to back down.

B. War and the Growth of the National Government

1. The War Effort. A major effect of the Civil War was the growth of the national government. The cost of the military led the national government to develop new ways to generate revenue (the first income tax). This increased action by the national government did not end with the war. After the war there was no longer a question as to whether the national government was supreme.

2. The Civil War Amendments. The post-war amendments represented a serious enhancement of national power. The national government now abolished slavery (Thirteenth Amendment), defined who was an American citizen (Fourteenth Amendment), and attempted (with limited success) to provide rights to the freed slaves that included the right to vote (Fifteenth Amendment). In time, the Fourteenth Amendment—at first almost a dead letter—would be used to apply the Bill of Rights to state governments and to underpin the civil rights gained by African Americans in the 1960s.

VI. THE CONTINUING DISPUTE OVER THE DIVISION OF POWER

A. Dual Federalism and the Retreat of National Authority

Dual federalism emphasized dividing the state and national spheres of power into entirely separate jurisdictions.

1. A Return to Normal Conditions. This doctrine was, in part, a return to the states’ rights beliefs that prevailed before the Civil War.

2. The Role of the Supreme Court. The Supreme Court was caught on the wrong side of the Civil War conflict and lost its legitimacy for a generation. As the Court regained its powers, it used them to define and defend what we now call dual federalism. In particular, the Court denied the federal government any police power at all.

B. The New Deal and Cooperative Federalism

Cooperative federalism emphasized an expanded role for the national government, and cooperation between the national government and the states.

1. The “New Deal.” In response to the Great Depression, Franklin D. Roosevelt’s administration implemented social-welfare programs designed to alleviate the bad economic times. Dual federalism, in contrast, dictated that programs such as relief to the poor were entirely outside of the federal role.

2. The End of Dual Federalism. The Supreme Court struck down dozens of New Deal programs as unconstitutional. After Roosevelt threatened to “pack” the Court with newly appointed justices, however, the Court ceased to interfere with the national government’s attempts to legislate broadly under the Commerce Clause.

3. Cooperative Federalism. Roosevelt’s programs typically were funded by the federal government, but administered by states and local governments, thus creating a cooperative framework for federalist relations.

C. Methods of Implementing Cooperative Federalism
1. **Categorical Grants.** Federal grants became a popular way to help construct the national infrastructure. In addition to infrastructure needs, states began to see federal grants as a way to provide services to the public. Key concept: **categorical grants**, or federal grants to states or local governments that are for specific programs or projects.

2. **Feeling the Pressure—the Strings Attached to Federal Grants.** Usually such grants must include matching funds from the state or local governments. Often, grants have significant strings attached.

3. **Block Grants.** Key concept: **block grants**, which allow state or local governments more leeway in deciding how to spend funds for a specific type of governmental service such as health care. Policies such as welfare reform have enabled states to act as policy laboratories, trying different policy solutions to see what works best.

4. **Federal Mandates.** Sometimes the federal government will impose a **federal mandate** on state or local governments to implement a costly policy in return for funds that may not make up the full costs of the program.

**VII. THE POLITICS OF FEDERALISM**

The devastation caused by Hurricane Katrina unleashed a heated debate about the allocation of powers between the national and state governments. Americans disagreed about which level of government should be held accountable for the inadequate response.

A. **What Has National Authority Accomplished?**

   It has been an engine of change in American history. National authority freed the slaves and initiated economic regulation and welfare support in the 1930s.

   1. **Civil Rights and the War on Poverty.** Under Lyndon Johnson (1963–1969) national authority was used to expand support for the poor and to guarantee civil rights to African Americans and others.

   2. **Why Should the States Favor the Status Quo?** Some states may be out of step with the majority on an issue such as the right of African Americans to vote. National authority can impose a national consensus on recalcitrant states. States may compete against each other for the best business climate by lowering taxes, but the national government does not experience this imperative. Finally, local economic interests may wish to preserve the status quo (functioning as factions in the sense described in Madison’s Federalist Paper No. 10.)

B. **Federalism Becomes a Partisan Issue**

   As the Republicans became more conservative in their views of the extent of national government power, Democrats have become more liberal and supportive of that power.

   1. **The “New Federalism.”** Beginning with President Richard Nixon (1969–1974) the Republican Party championed **devolution**, or the transfer of powers from the national government to the states. They called this policy **federalism**, a new use of the term.

   2. **Federalism in the Twenty-first Century.** Under current conditions, however, liberals may have pragmatic reasons to support states’ rights in some instances, such as in gay rights issues.

**VIII. FEDERALISM AND THE SUPREME COURT TODAY**
A. **Reining in the Commerce Power**
   Since the early 1990s, the Court has reined in some of the federal government’s authority under the Commerce Clause, though this hardly amounts to a return to dual federalism. One of the most significant decisions in this line of precedent is *United States v. Lopez*.

B. **State Sovereignty and the Eleventh Amendment**
   The Court has ruled that in many cases, the states are immune from suits brought by their own citizens in federal court. This is a significant expansion of states’ rights.

C. **Tenth Amendment Issues**
   The Court has ruled that the federal government cannot “conscript state governments as its agents” in undertaking programs. It can still “bribe” them, however.

D. **Other Federalism Cases**
   The Court in recent years has scrambled to find consistency as it rules on clashes between the federal government and states, ruling for Oregon and its *Death with Dignity Law* and against California and its Medicinal Marijuana Program.