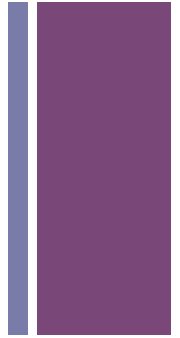




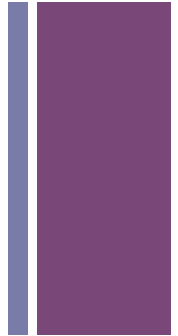
# Federalism

+ **EQ #5 What is Federalism? How are powers divided in a federal system?**



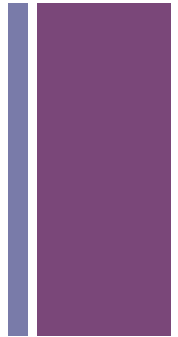
# + What is Federalism?

- Is a form of shared government
- In our federal system, government is divided between the national and state levels
- Each level has its own powers and responsibilities
- Often spheres overlap
- This form of government is uncommon



# + Common Governmental Structures

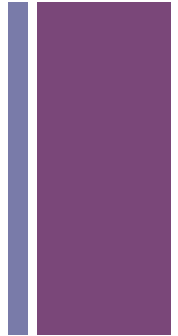
- **Federal:** Government powers are divided; citizens follow both federal and state laws
- **Unitary:** All power is concentrated in one central government; uniform laws; most countries are unitary
- **Confederate:** An association of independent sovereign states with a weak national government



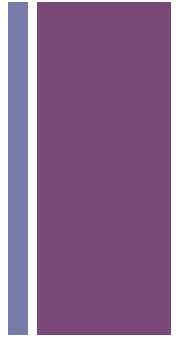
# + Why do Federal systems Decentralize Government?

A federal system decentralizes (or spreads out)  
government power to create:

- More opportunities for political participation (campaigns, running for office)
- More chances for public involvement (voting)
- More direct input on decisions (many are made at LOCAL levels of government)

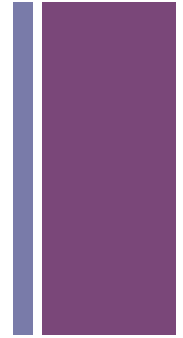


## + Hot Issues



- Some of the hottest issues in American politics are, at their core, disputes over federalism.
- Some hot issues involving federalism today
  - Gun laws
  - Legalization of marijuana
  - Immigration
  - Assisted Suicide

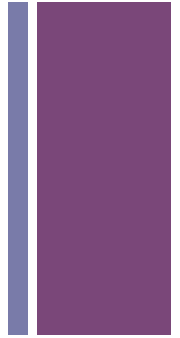
# + Brainstorm Activity



- In pairs, create a list of TEN laws effective today in the U.S. (i.e., highway laws, income tax, ...)
- Indicate which are **STATE** and which are **FEDERAL/NATIONAL** laws
- Do you see any patterns?
- Examples:
  - Military draft
  - Murder
  - Income tax
  - School Requirements
  - Gun laws

## + Powers Stand or Sit Activity

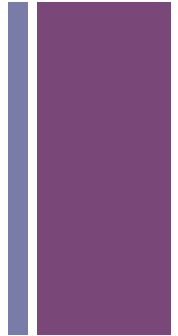
- **Stand** if you think it's a STATE power
- **Sit** if you think it's a FEDERAL power
- **Both-** Raise your hand
  
- What are the patterns?





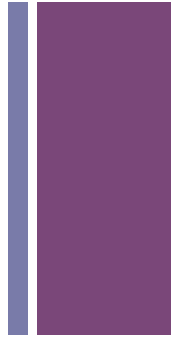
# + **STAND for State laws** **SIT for National laws**

- DEFEND THE BORDERS
- ISSUE DRIVERS LICENSES
- CREATE MARRIAGE LAWS
- LEVY TAXES
- IMPOSE TARRIFS
- DECLARE WAR
- MAKE AGREEMENTS WITH OTHER COUNTRIES
- PROTECT RIGHTS
- COIN MONEY



# + **STAND for State laws** **SIT for National laws**

- CONDUCT ELECTIONS
- CREATE HIGH SCHOOL GRADUATION REQUIREMENTS
- PUNISH LAW BREAKERS
- CREATE ENVIRONMENTAL PROTECTION LAWS
- REQUIRE VOTER REGISTRATION
- ESTABLISH DRINKING AGE LIMIT (21)

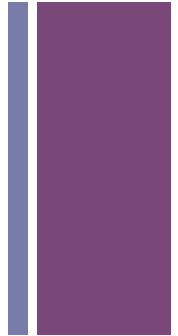


# + National and State Powers

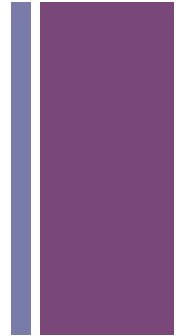
- In general, the federal/national/central government has power over economic issues, and the military and defense.
- In general, state governments have power over social, moral, and family issues.

## + Pair Share

- Discuss what you think are the greatest strengths and weaknesses of the federal system with a partner.
- Record your list and report out.



# + Positives and Negatives of Federalism



## ■ Negative view:

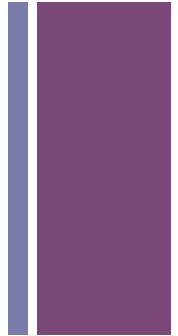
- Federalism blocks progress and protects powerful local interests.
- Laws and rules differ and are confusing.

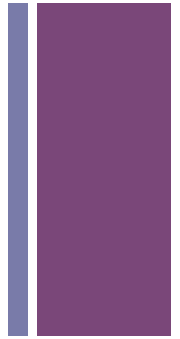
## ■ Positive view:

- Federalism contributes to governmental strength, political flexibility, and fosters individual liberty and the development of leaders.
  - Regional differences but unity thru national laws
- **Federalist #10:** small political units allow all relevant interests to be heard.

## + EQ #6-How is power divided in the US Federal Structure?

- The National Government has three types of **DELEGATED POWERS** (expressed, implied and inherent)
- States have **RESERVED POWERS**
- Powers shared by both are **CONCURRENT** powers





## Division of Federal and State Powers

### NATIONAL GOVERNMENT (Expressed, Implied, and Inherent Powers)

- Regulate foreign and interstate commerce
- Coin money
- Provide an army and navy
- Declare war
- Establish federal courts below the Supreme Court
- Conduct foreign relations
- Exercise powers implied from the expressed powers

### NATIONAL and STATE GOVERNMENTS (Concurrent Powers)

- Levy taxes
- Borrow money
- Spend for general welfare
- Establish courts
- Enact and enforce laws

### STATE GOVERNMENTS (Reserved Powers)

- Regulate intrastate commerce
- Establish local government systems
- Administer elections
- Protect the public's health, welfare, and morals

**Critical Thinking** The Constitution established a detailed plan for the distribution of power between the federal and state governments. *What powers are shared by the national and state governments?*

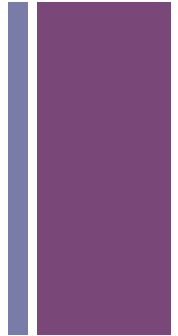
# + What are Delegated Powers?

- Powers that belong to the **National Government** are called delegated powers
- They are given to the national government through the Constitution
- The National Government has three types of **DELEGATED POWERS**
  1. EXPRESSED / ENUMERATED
  2. IMPLIED
  3. INHERENT

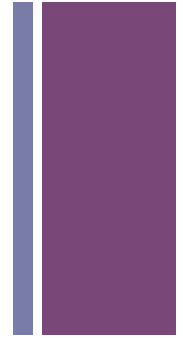


# + 1. Expressed Powers (Enumerated Powers)

- **Expressed Powers are powers given to the National Government in writing through the Constitution**
- **Examples:**
  - Congress can coin money (\$)
  - Congress can tax citizens
  - Declare war
- Read about Expressed Powers and take Readers Notes as you read. Write at least THREE items.



## + 2. What are Implied Powers?



- **Implied Powers** are not directly stated in the Constitution *but are implied by what is stated*
- The **Necessary and Proper / Elastic Clause** implies these powers
- It states that Congress can “make all laws which shall be necessary and proper” for carrying out its expressed powers
- Read about Implied Powers- Take Reader’s Notes and underline and choose at least FIVE key points.

# + Implied Powers

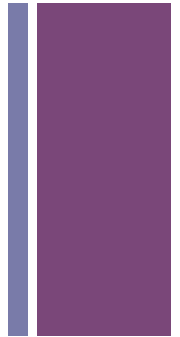
- Congress gets MOST of its power from the Necessary & Proper Clause

Here's how it works

- Expressed Power:  
Congress may regulate interstate commerce
- Implied Power:  
Congress builds an interstate highway system.

Express Power:  
Congress coins money

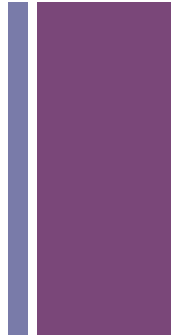
- Implied Power:  
Congress creates a federal bank to help citizens manage money



## + 3. Inherent Powers

- **Inherent Powers** are the powers that the National Government has because it's a *sovereign* nation
- Inherent to the very idea of government
- Example: Congress regulates immigration; defends our borders
- Read about Inherent Powers. Record TWO key items.

# + Reserved Powers- States Powers



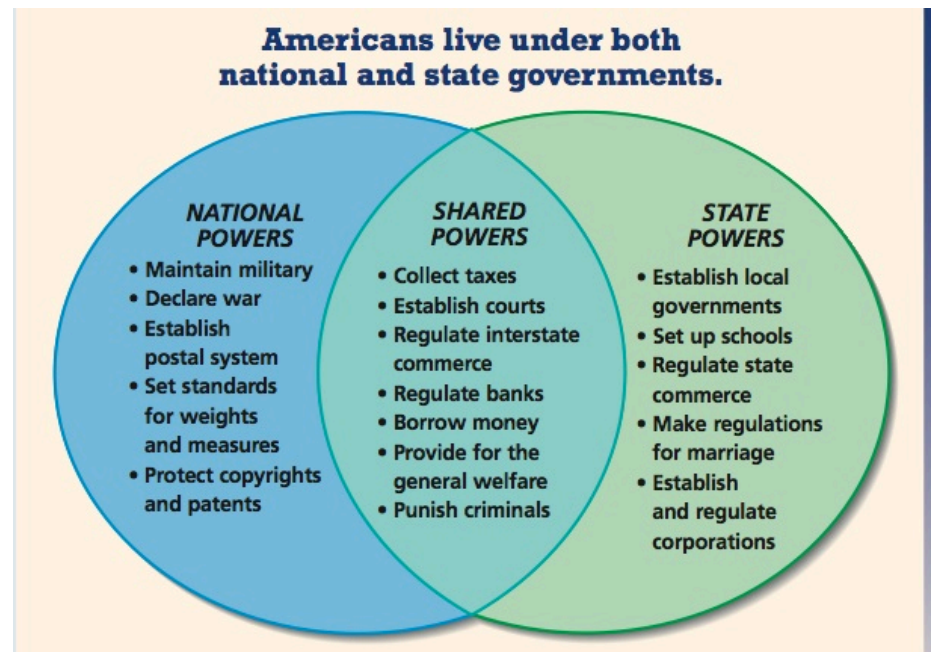
- States have reserved powers
- These come from the 10<sup>th</sup> Amendment
- These are NOT listed in the Constitution but they are any powers that:
  1. Are NOT already given to the National Government
  2. Are not listed in the Constitution as powers the States may NOT have.

Example: The power to set marriage requirements

# + Concurrent Powers

- Powers shared by both the National Government and the States are called **concurrent powers**

- Examples:  
Collecting taxes,  
Making & enforcing laws



## + *McCulloch v. Maryland, 1819*

- Read the Background Summary and discuss Q's with table partner(s)...
- Read EXCERPTS from Constitution; explain these in your own words verbally with partner (or ask for help)
- Read Summary Arguments; discuss which you agree with and why
- Write your Decision in INB-
  - Can Congress constitutionally charter a national bank in Maryland? Why/not?

Why is this case significant in understanding our federal system?

## + *McCulloch v. Maryland, 1819*

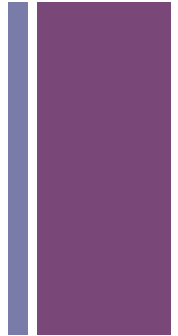
- Answer from the Supreme Court...
  - Yes, even though this power is not explicitly in the Constitution, it was “necessary and proper.”
  - It is an **implied power based on the power to regulate currency and trade**



# + *McCulloch v. Maryland, 1819*

- So what? Significance of the case...
  1. The decision reinforces the supremacy of the national government over states when their laws are in conflict
  2. It establishes the Supreme Court as umpire in disputes between the federal and state governments
  3. It upholds the idea that Congress has implied powers (that go beyond those expressed)

# + The Supremacy Clause



- States that the Constitution is “**supreme law of the land.**”
- Local, State and Federal laws must not conflict with the Constitution
- Implies a hierarchy:
  - National laws are supreme over state laws as long as the national government is acting within its constitutional limits

# + What must the national government do for the states?

- The Constitution spells out what the national government must do for the states:
  1. Guarantee every State a republican /representative form of government
  2. Protect against invasion and domestic violence  
(wars, natural disasters, unrest)
  3. Respect the legal existence & physical boundaries of each State

# + What must states do?

## 1. Full Faith and Credit Clause

- Each State must honor the laws, records and court decisions of other States.
- Examples: drivers license, marriage, adoption, etc. are recognized as legal in other states
- Same sex marriage had been an exception until June, 2015.
  - Now all states must grant the right to marry to same sex couples, too. To deny is unconstitutional.

# + What Must States Do?

## Privileges and Immunities Clause

### 2. Privileges and Immunities Clause

- No State can discriminate against a person who lives in another State.
- Must treat all US citizens the same, regardless of their residence
- Reasonable distinctions are o.k. (i.e. wait period before becoming resident of a State; **college out-of-state vs. in-state tuition**)

# + What Must States Do? Extradition

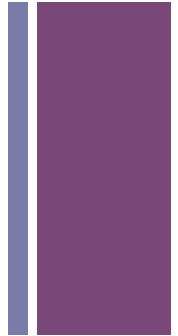
## Extradition

- States must return suspects of crimes who flee into their borders.
- Suspects may be tried for crimes in multiple states.

# + Federalism Over Time

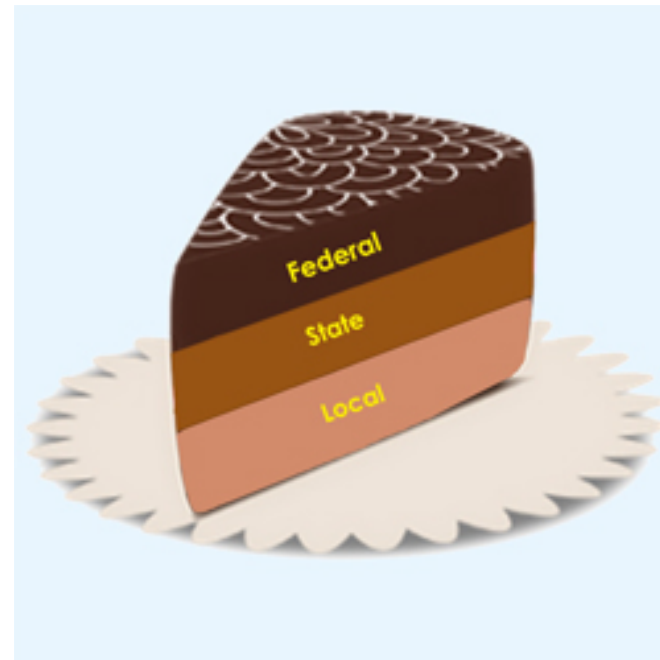
- Film Clip!

<http://study.com/academy/lesson/the-evolution-of-american-federalism-1937-present.html>



# + Evolution of Federalism- Dual v. Cooperative Federalism

- **Dual federalism:** Both national & state governments are supreme in their own spheres, which are kept separate.
- Like a layer cake
- This type of federalism was used in the past (“Then”)





# + Evolution of Federalism- Today we have **Cooperative Federalism**

- In **Cooperative federalism** the state and federal spheres overlap and distinctions between them are blurred.
- Like a **marble cake**
- This is today's federalism



# + Federalism and the Constitution

- There is tension between the federal government and states for money, power and control.
- The Constitution does NOT always help resolve these tensions.
- The courts have had to help.



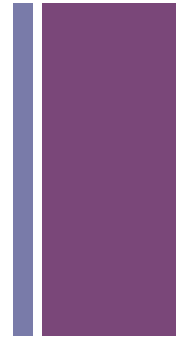
# + Fiscal Federalism

- The system of distributing federal money to state governments
- About 1/3 of states' fiscal spending comes from **federal aid**
- Money is distributed through categorical and block grants.



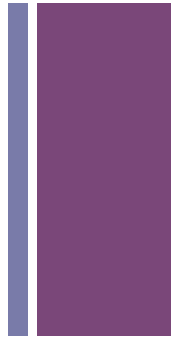
# + Categorical Grants v. Block Grants

- Categorical grants -
  - Are for specific purposes, defined by federal law.
  - Have many strings attached/conditions under which the money is given
  - States like these LESS than BLOCK grants



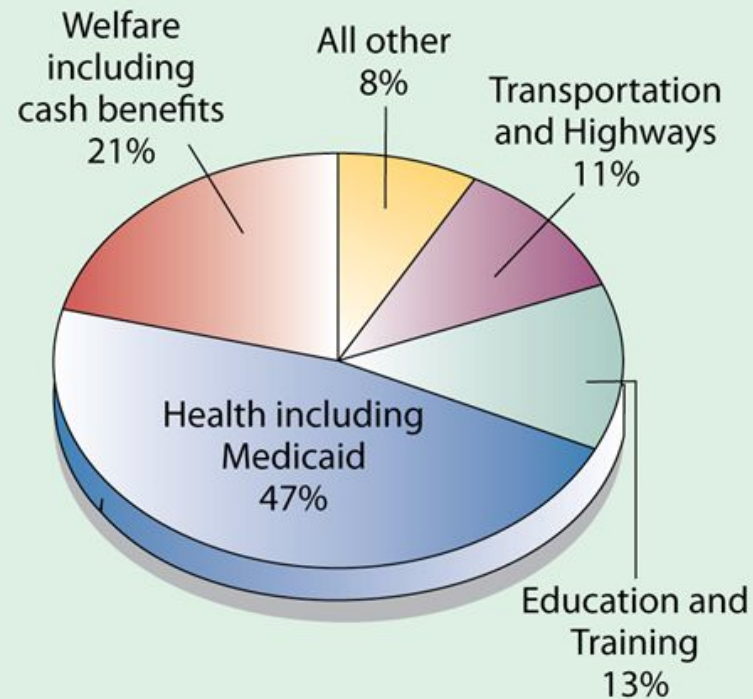
## + Block Grants

- Are federal funds devoted to general purposes
- Have few restrictions/strings/rules.
- Are preferred by states because states have more discretion on this spending.
  - Revenue sharing is a type of block grant that requires no state matching funds and can be spent on almost any governmental purpose.



# Types of Federal Grants

- In 1996 there was a shift from categorical grants to block grants
- 2 types of categorical grants:
  - Formula grants
  - Project grants
- Block grants
  - Far more flexible



Purposes of Federal Grants to State and Local Governments

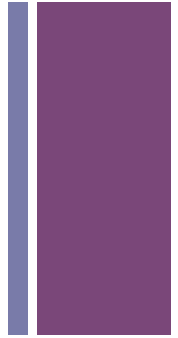
# + How does the National Government use Federal Aid to exert Federal Control?

- The national government uses spending strategies to control states. States resent this.

1. Conditions of aid: Tell state governments what they must do if they wish to receive grant money.

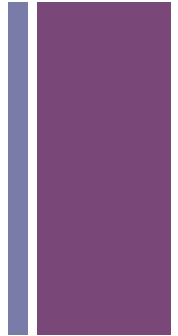
**Example-** Raising the drinking age to 21 in order to get Interstate Highway \$.

2. Mandates: Many laws contain federal rules that states must obey with little or no federal aid to help states pay. **Example-** Americans With Disabilities Act—make buildings accessible but pay yourself.



## + Increasing National Power- *Gibbons v. Ogden*, 1824

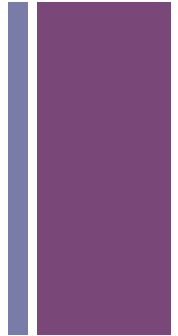
- In *Gibbons v. Ogden* (1824), the Court defined **commerce** broadly, to include all “interaction” between states.
- The federal/national government had superior authority to regulate trade over states.
- This led to **greatly expanded federal power**.
- Congress had the ability to make laws that regulate everyday interactions between citizens.





## + What is left of state power?

- By the last quarter of the twentieth century, many scholars thought that the **Tenth Amendment** had little relevance.
- Then, along came the *Lopez* case...



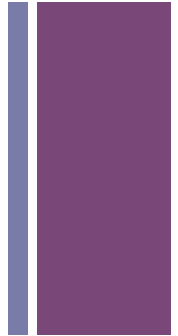
## + *US v. Lopez*, 1995

### ■ Facts/Background:

- Gun violence at schools was increasing;
- US Congress believed some states needed stricter gun laws.
- Gun laws had been a states issue
- Congress passed the Gun Free School Zone as test case using Regulate Commerce

# + *US v. Lopez*, 1995

- Constitutional Issue:
  - Can the US Congress enact a law (via the Commerce Clause) which makes gun possession in a school zone a federal offense?
  - Do they have the implied power to do that?
- Decision:
  - The US Supreme Court struck down the federal law as unconstitutional



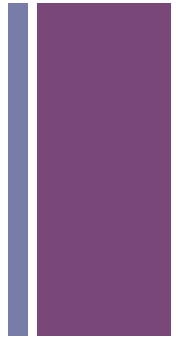
# + *US v. Lopez*, 1995

## ■ Rationale/Reasoning:

- Gun violence is a problem but the impacts from gun violence are NOT directly commerce;
- Therefore, states should regulate it, not Congress (i.e. the federal government)

## ■ So What?

- Federalism is revived in Lopez decision



# + Devolution- Restoring power to the States

- **Devolution**- Is the statutory (by law) transfer or delegation of power from the federal government back to the states.
- It **reduces the power** of the federal government
- Conservatives / Republicans are strong proponents of devolution- more state control and less federal government involvement.
- **Film Clip**- <http://study.com/academy/lesson/devolution-definition-examples.html>

## + Devolution- The Welfare Reform Act, 1996

- An example of **devolution** is the Welfare Reform Act of 1996
- This law gave states **great discretion** in creating the requirements for receiving benefits and spending federal funds on welfare programs for their citizens.
- Welfare Benefits- Include unemployment, food stamps and other benefits.