* The Federal System
* Chapter 4
* **Division of powers:**

1. The Constitution divided government authority by giving the national government certain powers and then reserving all other powers to the states or to the people.
   * + **Reserved powers** are those powers reserved directly to the states. While the Constitution does not list these powers specifically, it grants the states those powers not delegated to the national government or specifically banned from the states. So, the states have authority over matters not found in the Constitution, such as regulation of their public school system.

2. There are some powers that the state and national government share.

* + - Concurrent powers are those powers that the national government and the states both have. Each level of government exercises these powers independently.
      * *Examples*: power to tax, to maintain courts and define crimes, and to appropriate private property for public use. The states may exercise any power not reserved by the Constitution for the national government, as long as state actions don’t conflict with any national laws.

3. The Constitution specifically denies some powers to each level of government.

* + - Denied powers are those powers the Constitution specifically denies to all levels of government.
    - Examples: The Constitution specifically states that the federal government may not tax exports and may not interfere with the ability of the states to carry out their responsibilities. It also says the states may not make treaties or alliances with foreign governments and states may not coin money.
* The concept of federalism has changed greatly since 1787. It’s no longer a static relationship between different levels of government, but now it’s a dynamic concept that affects every day decisions at all levels.
* The Constitution grants 3 types of power to the national government:
  1. **Expressed powers** are those powers directly expressed or stated in the Constitution by the Founders.
     + These include things like the power to levy taxes, coin money, make war, raise an army and navy and regulate commerce and trade.
  2. The authority that the national government requires to carry out the powers that are expressly defined in the Constitution are called **implied powers**. These spring from and depend on expressed powers.
     + For example, the power to draft people into the military is implied by the power given to the government to raise an army.
     + The basis for implied powers is the **elastic clause**.
  3. Those powers that the national government may exercise simply because it is a government are its **inherent powers**.
     + For example, the government must control immigration and establish diplomatic relations with foreign countries even though these powers are not spelled out in the Constitution.
* The Supremacy Clause in Article VI, Section 2, makes the acts and treaties of the U.S. supreme.
* Article VI also requires that national and state officials be bound to support the Constitution.
* So, state officials are not permitted to use their state’s reserved powers to interfere with the Constitution.
* Article IV, Sections 3 and 4, of the Constitution states that the national government must do 3 things for the states:

1. *The national government must guarantee each state a republican form of government.*
   * Enforcement of this guarantee has become a congressional responsibility.
   * Example: this guarantee has only been used extensively one time. Just after the Civil War some southern states refused to ratify the Civil War amendments. Congress ruled that these states did not have a republican form of government. It refused to seat senators and representatives from these states until the states ratified the CW amendments and changed their laws to recognize African Americans’ rights.

*2. The national government must protect states from invasion and domestic violence.*

* + An attack on one state is considered an attack on the whole country.
  + Another way this power is exercised is *domestic violence*. If a state is experiencing widespread violence and/or panic, the president can send in troops to help control the situation, even if local authorities object.
  + Example: during the integration of schools in the south, Presidents Eisenhower and Kennedy had to send federal aid to control riots and violence and to actually force some of the schools to recognize the new laws and allow integration.
  + Also, the federal government has extended the meaning of domestic violence to include *natural disasters*.

*3. The national government has the duty to respect the territorial integrity of each state.*

* + The federal government cannot use territory that is part of an existing state to create a new state unless they have permission from the legislature of the state involved.
* What happens if a territory wants to become an official state of the U.S.?
  + The Constitution gives Congress the power to admit new states to the Union. There are 2 restrictions on that power:
  + No state may be formed by taking territory from one or more of the existing states without the consent of the legislature of the states involved.
  + Acts of admission, like all laws, are subject to presidential veto.
* Our country began with the original 13 states. Since then 5 states (Vermont, Kentucky, Tennessee, Maine and WV) have been created from existing states. Two states, WV and TX, were admitted under unusual circumstances (WV was created from 40 western counties of VA that broke away when VA seceded from the Union. TX won independence from Mexico and sought annexation to the U.S. for several years before they were admitted. Because of the debate in Congress over another slave-holding state joining the U.S., TX was granted immediate statehood and was allowed to skip the territorial process.) The last 2 states, Hawaii and Alaska, were admitted in 1959 after each adopted constitutions without waiting for an enabling act from Congress.
* Congress or the President may deny a state admission or require a state to modify its state constitution before admission is granted.
* Once admitted to the Union, each state is equal to every other state and has rights to control its internal affairs. All states are bound to support the Constitution.
* The states perform 2 important functions for the national government:
  + State and local governments conduct and pay for elections of all national government officials (Senators, Representatives, and Presidential electors).
  + States play an important role in the amendment process. No amendment may be added to the Constitution unless ¾ of the states approve it.
* Because federalism divides governmental power between the national and state governments, the Supreme Court plays a key role as umpire for our federal system.
* Section 2
* While states have considerable independence, they are still required to follow rules of cooperation with other states. Article IV of the Constitution requires states to:
  1. Give “full faith and credit” to the public acts, records and judicial proceedings of other states. Ex: each state must recognize a car registration issued in another state.
     + This clause applies only to civil law, or laws relating to disputes between individuals, groups or with the state. States cannot enforce another state’s criminal laws. (This type of law is needed in the federal system. Without it, each state could treat all other states like foreign countries.)
     + The “full faith and credit” rule is broad. *Public acts* refers to civil laws passed by state legislatures. *Records* means such documents as mortgages, wills, marriage licenses, car registrations and birth certificates. *Judicial proceedings* refers to court actions affecting civil matters. Court decisions in civil matters will be honored and enforced in all states.

2. Give each other’s citizens all the “privileges and immunities” of their own citizens.

* + - As interpreted by the Supreme Court, this clause means that one state cannot discriminate unreasonably against citizens of another state. (Reasonable discrimination is things like states require that you be a resident of their state before you can serve on their juries, vote in state elections, etc.)
    - The Courts have never given a complete listing of “privileges and immunities.” However, examples include the right to pass through or live in any state; the right to use the courts; to make contracts; to buy, sell and hold property.

3. Extradite, or return to a state, criminals and fugitives who flee across state lines to escape justice.

* + - Because states are basically independent of one another, some means is needed to prevent criminals from escaping justice simply by going from one state to another. It is now a federal crime to flee from one state to another to avoid prosecution for a felony.
* The Constitution requires that states settle their differences peacefully.
* The main way states do this is through interstate compacts, which are written agreements between 2 or more states.
* Congress must approve interstate compacts. Once Congress approves an interstate compact, it is binding and its terms are enforceable by the Supreme Court.
* When states cannot resolve their disputes through other means, then one state may sue another but ONLY in the SUPREME COURT.
* Section 3
* The question of the roles of state and national governments in a federal system is a question that has been examined for 200 years in American government.
* In the history of the U.S. there have been 2 different views of how federalism should operate:
  1. States’ rights position-favors state and local action in dealing with problems. States’ rightists argue:
     + This view states that the Constitution is a compact among the states.
     + The states make up the national government and give it only certain limited powers. (Any doubt about whether a power belongs to the national government or is reserved to the states should be settled in favor of the states.)
     + State governments are closer to the people and can better reflect their wishes than the national government.
     + They tend to see the national government as heavy-handed and a threat to individual liberty.
     + Believe strongly in the 10th amendment.

2. Nationalist position-favors national action in dealing with problems. Nationalists argue:

* + - It is the people, not the states that create both the national government and state governments. Therefore, the government is not subordinate to the states.
    - The powers expressly delegated to the national government should be expanded as necessary to carry out the people’s will. Believe strongly in “Necessary and proper”
    - National government stands for all people while state governments speak for only part of the people.
    - They look to the federal government to solve major social and political questions.
* The huge growth in the national government has shifted the balance of our federal system; at the expense of the states.
* The main reason the national government has been able to grow so large is the adaptability of our Constitution. This has allowed the Supreme Court, Congress, and the President to stretch the powers of the central government to meet the needs of a modern industrial nation.
* To accomplish this goal of growth, 3 provisions of the Constitution have been applied in most cases:
  1. War powers-the national government has been given the authority to make/declare war. Today, the government claims they need to be active in education and the economy in order to ensure the nation is strong enough to defend itself.

2. Commerce power-The Constitution give the central government the right to regulate commerce and trade.

* + The Supreme Court has interpreted the term “commerce” to mean almost any activity connected with producing, buying, selling, and transporting goods.
  + Ex: Congress used the commerce clause to pass the Civil Rights Act of 1964, which prohibited racial discrimination in hotels, restaurants and other public accommodations. The Court reasoned that if restaurants and hotels discriminate against A.A.s then they are restricting interstate commerce. Congress has the power to regulate commerce. Therefore, Congress may pass laws against racial discrimination.

3. Taxing power-the 16th amendment gave Congress the power to levy an income tax, which is the tax on individual income.

* + This has become the major source of revenue for the national government. Congress has used the taxing power to increase the national government’s authority in 2 ways:
    - Taxes are sometimes used to regulate businesses as when Congress heavily taxes a dangerous product so that it is not profitable to make.
    - Congress can use taxes to influence states to adopt certain programs. (Ex: employers are allowed to deduct from their federal taxes any state taxes paid to support state unemployment programs.)
* As the national government has grown and enlarged its powers, Congress has developed 2 major ways to influence the policies of state and local governments:
  1. Federal Aid-The main type of federal aid is *federal grants*, which are sums of money given to state or local governments for certain purposes.
     + (Federal grants redistribute income among the states. Taxes are collected in all 50 states then that money is allocated through grants to people in many states. Grants often help reduce inequalities among wealthy and less wealthy states. The process of deciding who gets what money can be very political with state reps fighting fiercely in Washington for their state.)
     + Grants come at a price. Federal money is only granted if state and local governments are willing to meet certain conditions.
  2. Preemption laws-*Preemption* is the federal government’s ability to take over a state government function.
     + Ex: when Congress passed the 1990 Nutritional Labeling and Education Act, states were no longer allowed to set their own food labeling standards, even when they were higher than the new national standards.
     + Congress can pass new mandates of preemption for states and are not required to provide funds for carrying out the policy. Preemption can hurt states because it can break their state budget.
* Federalism in the U.S. shifts with each sitting president. President Ronald Reagan endorsed the policy of “new federalism” which worked to return more power to state and local governments. His successor, George HW Bush carried on this program. However, new federalism has been weakened over time by new presidents.
* Debate over our federal system exists mainly because carrying out policies requires a degree of shared responsibility. In most cases, both levels of government often believe they have the right to play the lead role.
* A policy is a stated course of action for addressing certain problems or issues. When the government settles on a course of action for a problem or issue, we call it public policy.
* Federalism influences public policy in 2 ways:
  1. It influences how and where policies are made
  2. It places certain limits on policy making
* Because the U.S. has many different units of government (50 state governments and thousands of local governments), there is room for experimentation in policy making.
* States can serve as testing grounds for new policies. Ex: Georgia was the first state to allow 18 year olds to vote. Since it went so well in GA, other states soon adopted the same policy and it became an amendment to the Constitution.
* Most often policy originates at the *national level*. Congress can impose policies on states if local groups resist a federal law that infringes on people’s basic rights. (Ex: civil rights struggles in the late 50s and 60s in the south)
* Rival political parties are a key element of democratic government.
  1. Federalism makes it possible for different parties to be victorious in state, local and national elections.
  2. Federalism lessens the risk of one party having a monopoly of political power.
  3. Ex: After the Civil War the Democratic Party went into a long period of decline on the national level. However, the party was able to survive because its candidates managed to maintain control of many state and local offices in the south.
* Because Federalism provides for several levels of government, citizens have many opportunities to participate in politics. Americans can choose to run for local office, to lobby a state government, or to campaign for a candidate for national office. It also gives citizens many points of access to government leaders and increases their opportunities for influencing public policy.
* The great increase in public policy beginning in the mid-1930s called for a large bureaucracy, or organization of government administrators, to carry out legislation. As these bureaucrats gained more expertise, they offered more and more ideas, leading to a huge growth in public policy.
* One of the main results of this increase in federal programs has been the change in the ways state and federal officials relate to one another. As local and state officials tried to take advantage of the new federal programs, they were forced to work more closely with federal officials.
* Federalism allows for real economic and political differences among the states because it permits each state considerable freedom in arranging its own affairs. As a result, states have the option to do more than others to regulate business and industry, concentrate their resources on providing more health services, etc.
* *Fletcher v. Peck* (1810)
* In 1795, the **Georgia state legislature passed a land grant** awarding territory to four companies. The following year, however, the legislature voided the law and declared all rights and claims under it to be invalid. In 1800**, John Peck** acquired land that was part of the original legislative grant. He then sold the land to **Robert Fletcher** three years later, claiming that past sales of the land had been legitimate. Fletcher argued that since the original sale of the land had been declared invalid, Peck had no legal right to sell the land and thus committed a breach of contract.
* **Constitutional Question**: Could the contract between Fletcher and Peck be invalidated by an act of the Georgia legislature?
* **Ruling**: the Georgia legislature could not take away the land or invalidate the contract because, the Court held, laws annulling contracts or grants made by previous legislative acts can only be declared unconstitutional by the Supreme Court.
* **Effects: First time a state law is declared unconstitutional by the Supreme Court**
* *Missouri v. Holland* (1920)
* In December 1916, the United States and Great Britain entered into a treaty to protect a number of migratory birds in the U.S. and Canada. Congress passed the Migratory Bird Treaty Act in 1918 in order to facilitate enforcement of the treaty. When **Ray P. Holland**, the U.S. Game Warden, threatened to arrest citizens of Missouri for violating the Act, the state of Missouri challenged the treaty.
* **Constitutional Question**: Did the treaty infringe upon rights reserved to the states by the Tenth Amendment?
* **Ruling**: No. The Court held that the national interest in protecting the wildlife could be protected only by national action. The Court noted that the birds the government sought to protect had no permanent habitats within individual. The Court thus upheld the exercise of the treaty power and thus found no violation of the Tenth Amendment.
* **Effects:** This decision established that the national government’s power to make treaties does not infringe upon the rights reserved to the states.
* *Citzens United v. FEC*, 2010
* **Facts:** Citizens United sought an injunction against the Federal Election Commission in the United States District Court for the District of Columbia to prevent the application of the Bipartisan Campaign Reform Act (BCRA) to its film *Hillary: The Movie*. In an attempt to regulate "big money" campaign contributions, the BCRA placed a variety of restrictions on campaigns and how much can be donated or raised. Citizens United argued that: 1) Section 203 violates the First Amendment on its face and when applied to *The Movie* and its related advertisements, and that 2) Sections 201 and 203 are also unconstitutional as applied to the circumstances.
* **Constitutional Questions:**
  + 1) Did the Supreme Court's decision in *McConnell* resolve all constitutional as-applied challenges to the BCRA when it upheld the disclosure requirements of the statute as constitutional?
  + 2) Do the BCRA's disclosure requirements impose an unconstitutional burden when applied to electioneering requirements because they are protected "political speech" and not subject to regulation as "campaign speech"?
  + 3) If a communication lacks a clear plea to vote for or against a particular candidate, is it subject to regulation under the BCRA?
  + 4) Should a feature length documentary about a candidate for political office be treated like the advertisements at issue in *McConnell* and therefore be subject to regulation under the BCRA?
* **Decision:** The Supreme Court overruled *Austin v. Michigan Chamber of Commerce* and portions of *McConnell v. FEC*. (In the prior cases, the Court had held that political speech may be banned based on the speaker's corporate identity.) The majority held that under the First Amendment corporate funding of independent political broadcasts in candidate elections cannot be limited.
* **Effects:** Now there are no limits on how much PACs can raise for candidates…creating the Super PAC!