The Roots of the Federal System

- Under the Articles, U.S. was a **confederation**.
- Could not be **unitary system** like Great Britain.
- Chose a **federal system**.
- National and state governments share power.
- National and state governments get power from people.
Figure 3.1 - Governments in the U.S.

- U.S. government: 1
- State governments: 50
- Local governments:
  - County: 3,033
  - Municipal (city): 19,492
  - Townships: 16,519
  - School districts: 13,051
  - Special districts: 37,387
- TOTAL: 89,527
Figure 3.2- Systems of Government

- Federal System
  National government and states derive authority from the people

- Unitary System
  Local and regional governments derive authority from the national government

- Confederate System
  National government derives authority from states

States People National Government
National Powers

- **Enumerated powers** set out in Article 1, Section 8.

- Include coining money, providing army, creating courts.

- **Necessary and proper clause** is basis of **implied powers**.

- Article VI includes **supremacy clause**.
Other Powers

- Tenth Amendment deals with powers not enumerated.
- Reserves rights for states or the people.
- Includes regulation for health, safety, and morals.
- Other powers are concurrent, or shared.
- Include taxation, making laws, chartering banks.
- Other powers are expressly denied.
- Include bills of attainder and ex post facto laws.
Figure 3.3- Distribution of Power

**NATIONAL POWERS (ENUMERATED POWERS)**
- Coin money
- Conduct foreign relations
- Regulate commerce with foreign nations and among the states
- Provide for an army and a navy
- Declare and conduct war
- Establish a national court system
- Make laws necessary and proper to carry out the foregoing powers

**CONCURRENT POWERS**
- Tax
- Borrow money
- Establish courts
- Make and enforce laws
- Charter banks and corporations
- Spend money for the general welfare

**STATE POWERS (RESERVE POWERS)**
- Set time, place, and manner of elections
- Ratify amendments to the U.S. Constitution
- Take measures for public health, safety, and morals
- Exert powers the Constitution does not delegate to the national government or prohibit the states from using
- Establish local governments
- Regulate commerce within a state
Relations Among the States

- States must give full faith and credit to other states.
- Privileges and immunities clause guarantees equality.
- States are required to extradite criminals.
- States work together through interstate compacts.
# Table 3.1 - Compacts by the Numbers

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interstate compacts with 25 or more members</td>
<td>13</td>
</tr>
<tr>
<td>Least compact memberships by a state (HI &amp; WI)</td>
<td>14</td>
</tr>
<tr>
<td>Most compact memberships by a state (NH &amp; VA)</td>
<td>42</td>
</tr>
<tr>
<td>Average compact memberships by a state</td>
<td>27</td>
</tr>
<tr>
<td>Compacts developed prior to 1920</td>
<td>36</td>
</tr>
<tr>
<td>Compacts developed since 1920</td>
<td>150+</td>
</tr>
<tr>
<td>Interstate compacts currently in operation</td>
<td>200+</td>
</tr>
</tbody>
</table>
The Marshall Court

- Helps to define balance of state-federal power.

- *McCulloch v. Maryland* (1819).

- Concerns states’ power to tax the national government.


- Concerns Congress’ power to regulate commerce.
Dual Federalism, 1800-1932

- Defined by two separate governments.
- Each has its own sphere of responsibility.
- Characterized as layer-cake federalism.
- *Dred Scott* rules that Congress cannot regulate slavery.
- Federal government grows and changes after Civil War.
- Sixteenth and Seventeenth Amendments set stage.
Cooperative Federalism, 1932-80

- Cooperative federalism defined by collaboration.
- Characterized as marble-cake federalism.
- Result of New Deal recovery efforts, 1930s.
- Also seen in Great Society program, 1960s.
- Use of categorical grants.
New Federalism, 1980-2001

- New Federalism defined by return to state power.
- President Ronald Reagan was a pioneer.
- Use of less restrictive block grants.
- Also seen in 1990s Republican Revolution.
- Passage of law attempting to end unfunded mandates.
- President George W. Bush departs from this trend.
- Prompted by 9/11 and the use of preemption.
Supreme Court and Federalism

- Court has played significant role in defining federalism.
- Idea of “new judicial federalism.”
- Issue areas such as sovereign immunity and abortion.
- Rehnquist Court initially seemed pro-states.
- More recent decisions were mixed.
- Uncertainty exists about direction of Roberts Court.
AV- Access to Abortion
Figure 3.4 - Supreme Court and Federalism

<table>
<thead>
<tr>
<th>Decision for States’ Rights</th>
<th>How They Voted</th>
<th>Decision for Federal Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>cannot be required to conduct background checks under the Brady gun control law.</td>
<td>Upholds the Civil Rights Act.</td>
</tr>
<tr>
<td></td>
<td>under the Americans with Disabilities Act.</td>
<td>Upholds the ability of state employees to sue under the Americans with Disabilities Act.</td>
</tr>
<tr>
<td>2006. Gonzalez v. Draxler</td>
<td>The Department of Justice does not have the right to block physician-assisted suicides.</td>
<td>2004: Tennessee v. Lane</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2005: Gonzales v. Raich</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2006: U.S. v. Georgia</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2007: Gonzales v. Carhart</td>
</tr>
</tbody>
</table>

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