Slide 1

Text: America and Arizona Government for Elementary Teachers

Presentation 6: Federalism

Audio: Welcome to America and Arizona government for elementary teachers. This is Presentation 6: Federalism. Federalism is an American invention and the American Constitution created a new form of government. No other country had ever attempted to structure governmental powers in such a way. In this presentation, we'll examine federalism more closely. The way federalism should work was the defining debate for the first three generations of Americans and it continues to be argued about today.

Slide 2

Text: Presentation Objectives

AEPA Objectives

0006 understand various governmental systems

AZ Social Studies Standard, Strand 3

Concept 2: Structure of Government

Audio: In this presentation, we'll cover material that needs to be understood to address the AEPA objective 6, understand various governmental systems as well as the Arizona Social Studies Standard, Strand 3, Concept 2, the structure of government. You're encouraged to look at the documents. Social Study Standards articulated by grade level for Strand 3, Civics and Government, and look at the various objectives that are matched to each grade level K through 8, to understand the concepts that you'll have to know in order to teach that level. At the end of this lecture, it would be a good idea to review those concepts and make sure that you understand them.

Slide 3

Text: Does it matter?

[Photo of a tank] [Photo of a police patrol car] [Photo of students in a classroom] [Photo of sanitation worker]

Audio: To begin, let's ask the question that doesn't matter. Who really cares whether as government service is provided by the federal central government or a local or state government? What are the advantages of a central government providing the goods and services? What's--examine that question a little bit because there are some--for one thing, the federal government has much deeper pockets than the state governments do. Most of our state governments are constitutionally prohibited from spending money they don't have and that certain limits to
resources available to them whereas the federal government obviously has no limit. And we'll discuss that much later when we talk about physical policy. But federal government has tremendous resources, had its disposal. Not only financial but human resources because there is an assumption that is usually true that at the federal level that is like the major leagues that talents and personalities that are operating down the federal level are much more experienced and professional than the officials at the local and state level, who are often new to politics and newer any ways and may not have the same level of education and understanding that someone who would--who's operating at the federal level, kind of a major league and minor league situation. Now, that's not always true and I truly don't want to argue that people in federal government are smarter than the people at state government, but there is a win-or-win effect that those who rise to the top of the federal level typically are talented and resourceful. Other advantages that the federal level is that it can engage in policy that is uniform. There is not 50 different standards if it's imposed by the federal government. There's a uniform standard that brings reliability and predictability which can be useful and advantageous for economic and safety and regulatory standards and things of that nature. This similar part of uniformity is that actions takes place at the federal level can avoid some of the local prejudice that may occur at the local level. All right. But there are real disadvantages to having things done at the federal level for the central government. Some of those disadvantages are that the very uniformity that is an advantage can be a disadvantage when a uniform rule is applied inappropriately or maybe it took extremely wasteful. So for example, when they built the federal courthouse in downtown Phoenix, the Sandra Day O'Connor building there that the federal government built is earthquake proof as all federal buildings are. But it is also tornado and hurricane proof and the odds of a tornado or hurricane hitting downtown Phoenix are extremely remote, but because it's a federal building, it had to meet the federal building codes which apply to all federal buildings. It's about uniformity maybe increased cost of that building by putting in measures and structures that won't necessary. Another disadvantage that stands from the central government doing things is it takes forever for anything to happen whereas a local government might be more responsive and can react quickly to a situation. Federal government takes forever to create change because of the very uniformity rules. Also, the federal governments may be out of touch or out of step with a local need or a local constituency. I remember I had a friend of mine who died and I went to his funeral in--on my home state of Idaho. And as I drove through, there's rural parts of Idaho, I kept seeing billboards that were critical of the federal government. And the thought occurred to me that from this rural farmland in Central Idaho, Washington D.C. felt a long, long ways away and the rules that were created there may not necessarily reflect the needs of the people who live on those local areas. Now, what are the advantages then of the state governments providing goods and services? With a large degree, they're the inverse of the disadvantages of the federal government. State government typically can be more responsive. It can react quicker to a situation in a more appropriate way. One of the biggest advantages is that state government is more accountable for its actions than is federal government. If my state government has taken an action I don't agree with, I can pick up the phone and call my state representative who lives a few blocks away from me and I can chew on his ear for a while and tell him why what he is doing is wrong whereas if I don't like what the federal government is doing, it's very difficult for me to do that. I can pick up the phone and I'm probably going to get an automated PhoneTree which may
or may not allow me to talk to human being. So, local and state governments tends to be more accountable for its actions than federal government for those reasons. Sometimes, it's good to have a lack of uniformity and state governments can experiment, can try new things that other states aren't doing. And through this grand experiment of 50 states doing things 50 different ways then maybe one of them will get lucky and come up with a solution that actually works. At which point, the other states can copy the best practices that have been modeled by the state that was successful. And this process happens all the time in state governments state that governors have meetings where they talk about and share stories of what's working and what's not working in their states and so you have a laboratory of policies in these 50 different states. I'll define the words on the disadvantages of a local government doing things. Again, they're somewhat the inverse of the advantages of federal governments. Their pocket books are not as wide, they're tight. They don't have the resources. They may not have the talent base. They may be subject to local prejudice which the federal government would be less likely to be subject to. And they may be inadequate to the tasks or they may be overwhelmed by a situation or circumstance that they're just not able to handle that problem. So there are some things that are done better at the federal level like national security and there are other things that are done better at the local level like policing speed limits. And in our country, we have this constant debate over on a particular governmental service, what level of government is the appropriate place for that service to take place in?

Slide 4

Text: What are the advantages of the central government providing goods and services?

[Photo of people in a boat on the streets of New Orleans] [Photo of people on a boat on a river with polluted water] [Photo of a Border Patrol Officer] [Photo of a stethoscope lying on money]

Audio: Sometimes, it's not altogether clear which level of government is more appropriate. We see advantages and disadvantages to all forms of government when we try to address a particular need. For instance, the hurricane Katrina illustrated the inability it seems of both levels, the federal as well as the state and local to address the situation. The state and local governments were simply overwhelmed by the needs that were present while the federal governments struggled with the inefficiencies in time and resources to address the particular needs that the locals were demanding and so neither level of government appeared to be doing a very good job for about a week or so until they got that sorted out. The British petroleum spill presents another complicated case of federalism where the sheer scale of the disaster as well as the fact that it affects multiple states makes it difficult for local and state government to address those concerns. At the same token, the federal government appears to be, perhaps, overstepping its bounds when the federal government begins to dictate to a private company the terms and conditions for how it will clean up the oil spill or how it will pay and recompense those who are damaged by the spill. It's a complicated question over where the primary responsibilities lie for the central state and local governments that are impacted by a situation like this. Another debate that is ongoing is the question of enforcement of immigration rules that on its glance appears to clearly be within the domain of the federal government. The Constitution is quite clear about that, however, the
impact of immigration, particularly illegal immigration, falls squarely on state and local
governments who are required to provide policing and education for the children of those
immigrants and healthcare and emergency situations and it is costing border states a tremendous
amount of money. And so where is the boundary between a federal and state and local
governments in that situation? Fourth case that gets tricky is healthcare. Typically, healthcare has
been a local issue, particularly the regulations involving healthcare has been handled locally,
however, with Medicaid and Medicare to a lesser degree social security of the federal
government has made in routes into healthcare regulations. And with the most recent healthcare
legislation, the federal government is making huge hindrance into the regulation of healthcare.
But at the same token, healthcare will continue to be a locally administered directed by state
licensing boards and state regulations. And so, once again, the boundaries between federal, state
and local governments are blurry and it's difficult to determine where the appropriate level of
government is on these complex problems than all of the debate on these surround this issue of
federalism.

Slide 5

Text: What is Federalism?

[Flow chart of different forms of government]

Audio: All right, so let's begin by looking at what federalism is. Let's come up with the
definition so we understand the concept that we're talking about in this presentation. Now, to
understand federalism, let's look at different forms of governments that—to know what
federalism is not. And the core of the issue here is, what is the relationship between the central
government and the people who are being governed? Now, in a federal system, the federal
government makes rules that are directly implacable to the people. And the people have to follow
those rules. At the same time, the state government makes rules that are directly applicable to the
people. The people have to follow those rules. And then there's a relationship between the federal
and state governments that is cooperative usually but not always. And the state and federal
governments have an arrangement and understanding, if you will, over whose responsibility it is
in a particular domain. So this is a concept of dual federalism, that there are two governments
that govern the people, the state governments and the federal governments. Now, we can contrast
that with a unitary system which is the form that most governments in the world take. In a
unitary system, the central government makes all of the rules that the people are required to
follow. The central government also determines the action of the regional divisions. We can call
them states. They can be called provinces, districts, whatever they call them. They're functionally
a regional administrator for a centralized government. They don't create new rules that the people
have to follow. They simply administer the rules that are made by the central government that
directly affect the people. Now, we can contrast those two with the third form of government
which is a confederacy. We've already discussed confederacies a bit when we talked about the
articles of confederation in previous discussion. But with a confederacy, the localized regional
governments, okay, we can call them states, districts, provinces, whatever, they are independent
governments. They operate independent of one another and they are not dependent upon the
central government for resources, for direction, or rule-making authority. So they govern the people directly. The central government has no input at all on rules that the people have to follow. Rather the central government is merely the arena in which the constituent independent governments operate to coordinate their actions as a collective confederacy. So in a confederacy, the primary ruling government is the state governments. In a unitary system, the primary ruling government is the central government. In a federal system, power is shared between the federal and the states governments and both levels of government make laws that is binding upon the people. Now, again, this is an American invention. It didn't exist prior to the development of our Constitution. Other countries have adopted this federal form to greater and lesser degrees of success but it seems to at least work in our form.

Slide 6

Text: Constitutional Basis

- Supremacy Clause in Article IV
- Clear Division of Powers in Article VI
- 10th Amendment

[Photo of the opening portion of the U.S. Constitution]

Audio: Now, the US Constitution invented this form of government, federalism. So let's look in the Constitution quickly for how that is set forward. The division of powers between state and federal governments are set forth pretty clearly in Article VI of the Constitution which deals with the legal status of the Constitution. And section 1 of that article simply says that the debts that were owed by the United States and all the independent states would continue to be owed by the new government. So that doesn't have a whole lot of effect anymore. The second article is the important one here and that states that this Constitution and the laws of the federal government and any treaties that have been made and signed under the proper authority, meaning they've been ratified by the senate, shall be the supreme law of the land and the judges in every state shall be bound thereby. Anything in the constitutional laws of any state to the contrary notwithstanding. And so that means that that's the referred to as the Supremacy Clause and it means that the federal government and the federal Constitution trumps state law when there is a conflict between them. Now on the other hand, we have the 10th Amendment to the Constitution and what the 10th Amendment does is its part of the Bill of Rights if you remember, and the 10th Amendment reserves right. It says the powers are not delegated to the United States, meaning the federal government, by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or the to the people, which implies that the federal government only has the power that is explicitly listed in the Constitution. It's an attempt to narrowly limit the power of the federal government. Now, that means that there is an inherent tension between these two parts of the Constitution because Article VI would imply that everything the federal legislature does is supreme and trumps state law yet, the 10th Amendment argues that the legislature can't make laws unless it's explicitly allowed for in the Constitution. And that tension between an
expansive view and the limited view of the powers of the federal government, again, was the central debate for the first three generations of Americans and continues to be argued to this day.

**Slide 7**

**Text:** Constitutional Basis

- Supremacy Clause
  - Constitution
  - National Government laws
  - International treaties

[Photo of refrigerant] [Photo of two law enforcement officers and man in handcuffs]

**Audio:** For some contemporary examples of the debate and challenges that the Supremacy Clause brings here in Arizona, we have a couple of examples. First is in 1994, the debate over freon. In '92, the United States under President Bush Sr. signed an agreement in Brazil, the Real Accords, and in that agreement, we agreed to stop the production of chlorofluorocarbons which were destroying the ozone layer. Freon is one such of these chlorofluorocarbons and that treaty which was signed by the president and ratified by the senate made it illegal to manufacture freon and the global stocks and supplies that were in existence in '92 began to dwindle. Now in '94, two years later, the Arizona legislature had a debate on the floor of the legislature and the argument was that our economy in Arizona depends on air conditioning. That if air conditioning goes away, everybody will move away and our economy will disappear overnight. Now, there are alternatives to freon but they're a little more expensive and so the legislature debated on whether or not they could declare Arizona to be freon free zone. Meaning in the state of Arizona, freon would be manufactured because it was essential to our economy. And as long as that freon did not leave the state boundaries, they would be able to manufacture it because the argument was that Congress couldn't regulate commerce unless it cross the state lines. And that would be a boon to our economy as a whole, the global suppliers of freon would move to Arizona and that's the argument was made. Someone then pointed out that the Supremacy Clause does not allow state governments to simply ignore treaties that have been signed by the president and ratified by the senate. They're the supreme law of the land and they tramp state law. And so they were unable to pass the law enabling the use of freon. So the legislature then spent the next three hours debating whether or not to secede from the union. They thankfully decided that was ill advice and did not secede from the union. All right, let's fast forward to 2010, the Arizona legislature tackles the issue of immigration with Senate Bill 1070, which makes city state crime to be in violation of Federal Immigration Law and authorizes police to require someone who is suspected of being an illegal immigrant to produce documents proving that they can be in the state. That law was very quickly, couple days later changed, so that the police could only ask for those documents of people who were already being arrested for another offense. So they wouldn't just stop people on the street. But the damage had been done and the national debate was sparked by that. One of the central parts of that debate was whether or not the state of Arizona has the ability to create law that goes beyond what the Federal rules and practices are. And in fact, the federal government sued the state and said that it did not, that the federal government is the one who
would determine the prioritization of immigration enforcement which was essentially the federal government focuses on apprehending violent immigrants to deport whereas SB 1070 seeks to deport all illegal immigrants and use the resources in a non-focused way like the federal government has. So the debate that is occurring around SB 1070 is debate about federalism and about how to apply the Supremacy Clause in this particular domain. So these debates continue today.

**Slide 8**

**Text:** Constitutional Basis

- Full Faith and credit clause

[Photo of same sex marriage ceremony]

**Audio:** Another important aspect of federalism is how the states interact with each other and the relative power between the states. Now, this is dealt within Article IV of the Constitution which is often referred to as the Full Faith and Credit clause. The first section of that says that Full Faith and Credit shall be given in each State to the public acts and records of every other state. This is why your Arizona driver's license is valid in Virginia and someone who is licensed to engage in some public work in Virginia can probably do the same in Arizona. Although it's not completely true, professional licenses tend to have to be repeated in each state. So medical license or a lawyer, bar certification or architecture license, for example, would have to reapply for in each state. But like a marriage license typically is honored from one state to the next. In related issues, Section 2 says the citizens of each State are entitled to all the privileges and immunities of citizens in the several states. Meaning there is not a tiered citizenship category. If you're a citizen in one state, that's supposed to be good enough for citizenship in another state as well. Now, this measure is not without controversy either. The most recent controversy with the Full Faith and Credit clause is that surrounding gay marriage as a handful of states have legalized gay marriage or civil unions. Other states have not and, in fact, have added constitutional provisions prohibiting gay marriage in their states. Arizona being among that latter group. Now, typically, a marriage license would be transferable from one state to the next but in the case of gay marriage, there was a Defense of Marriage Act passed in 1994 that exempted states from applying marriage to the Full Faith and Credit clause to prevent this exact scenario—to prevent people from traveling across the state lines to get married and in an ill--a marriage that would be illegal in their state and then traveling back and demanding that the state recognized the validity of that marriage. Now, this debate continues again and it's an ongoing debate but it had its core is a federalism issue in determining whether or not states have to accept the licensures in the other states in policy areas that they have specific rules on.

**Slide 9**

**Text:** Dual Federalism

- Clearly defined federal and state jurisdiction
• McCulloch v. Maryland
  o Dispute over a national Bank
  o Chief Justice Marshall ruled that the federal gov’t has “implied powers.”

[Photo of Chief Justice Marshall]

Audio: Now, at the beginning of our country's history, federalism was understood as functionally distinct governments doing different things, different policy domains so the Federal Government was responsible for one basket of policies and the state governments were responsible for a different basket of policies and programs. And this concept was called dual federalism. It's often given an analogy of a layered cake where you've got one level on the bottom and one level on top and they don't really intermingle between them. They were clearly defined federal and state jurisdictions doing separate things. Now the legal principle of dual federalism was established early in McCulloch versus Maryland. And the picture on the slide is that of Chief Justice Marshall who is the first Chief Justice of the Supreme Court in back to the lots of crown breaking presidents that set the direction that our country went down and federalism is one them. The case was McCulloch versus Maryland and it had to do with the dispute over a national bank. This argument over whether or not the central government—the federal government had the ability to create a national bank was the dominant question of the day for the first couple of administrations in our country. In fact, that argument over a central bank is largely responsible for the formation of two political parties which came as a surprise. The founders didn't really think there would be political parties and yet, within a few years, that very generation had done so. And it was over this question over whether or not there should be a federal bank. Now, what Marshall did when this case came to the court was he argued that the federal government had some implied powers because nowhere in the Constitution does it mention a bank. And so the sort of strict constitutionalists said that Congress cannot establish a federal bank because that power is not given to them in the Constitution and so the 10th Amendment says that all the states can set up banking rules, regulations. Whereas those who favored the central bank argued that in order for the country to function as an economic unit, a whole unit, there need to be a national currency and you needed to have a central bank to manage that national currency. Again, there's no mention of a bank in the Constitution. What Marshall argued with his case was that the federal government had implied powers and that the Commerce Clause in the Constitution was something that enabled Congress to do lots of things that weren't specifically mentioned at the Constitution but that they would to be able to do in order to regulate commerce. So he said that those powers are implied in the Constitution provision that Congress regulate commerce. And that clause has since been called the Elastic Clause because it seems you can make that as big as you need to make it to fit a federal program. The most recent being the healthcare where the federal government has for the first time mandated a private healthcare policies for all of its citizens. Well, again, nowhere in the Constitution will you find a provision for that, but what Marshall would argue is that the federal government under its ability to regulate commerce, it's implied that they can mandate federal healthcare policies. So this debate which began in the first generation of Americans again continues today but it was established early on that there would--it would be dual federalism with functionally distinct roles of government at the different levels.
Now, that concept of federalism has changed quite dramatically and so we will look at how that happened.

**Slide 10**

**Text:** Evolution of Federalism

- Was the major debate of the first two generations
- Federalist v. Democratic Republicans
- Andrew Jackson and the Dred Scott case

[Photo of Andrew Jackson] [Photo of Dred Scott]

**Audio:** Now, this initial debate that the first couple of generations had on federalism centered around this notion of a central bank but it also focused on the issue of slavery as well. And as I've said before, it was the major debate for the first two generations of Americans. The federalists, later the Whigs, were for the most part in favor of enhanced central power and a national bank whereas the Democratic/Republicans were opposed to that and thought it was an unconstitutional expansion of federal power. Now, Andrew Jackson was a staunch Democratic/Republican and a staunch states' rights advocate and so when Chief Justice Marshall retired, Jackson replaced him with the Chief Justice that was in favor of states' rights. And it was that court that issued the infamous Dred Scott ruling, which Dred Scott being slaves who escaped from his masters in the South and was enjoying liberty in the North and the slave owner sued the Northern state and said that that state was required under the Full Faith and Credit clause to honor the ownership rights of the slave owner and return this slave, Dred Scott, to his owner. The Supreme Court upheld the property rights of the Southern slave owners and Dred Scott was put in chains and returned to his masters and that decision can be explained again by this debate about federalism that the state governments have to recognize the authority and legitimacy of other state governments.

**Slide 11**

**Text:** State’s Rights

- John C. Calhoun and the doctrine of nullification
- Civil War ultimately decided the issue

[Photo of John C. Calhoun] [Image of Civil War battle]

**Audio:** The arguments over the boundaries of federalism continue to escalate and the debates that occurred in Congress over states' rights versus the federal system and the questions of slavery whether states could continue to practice it or not, continued to become more and more heated. John C. Calhoun was a Southern Senator who probably took states' rights to the extreme position of in our country's history. And he argued of doctrine of nullification and that was an
interpretation of the 10th Amendment, which is the--that the power is not allocated to federal government belonged to the states, which meant the states were able to direct their own policies and the Supremacy Clause, which is at odds with that 10th Amendment, says that only those laws which are made in pursuant with the Constitution have supremacy over state law. So that John Calhoun argued was that it was state legislatures who determined whether a federal law was in pursuance with the Federal Constitution and if a state legislature passed the vote to clear in a federal law to be unconstitutional then the Supremacy Clause was made null and void and that state could ignore that portion of federal law. So that doctrine of nullification was an argument to protect states from federal encroachment. And that doctrine was never accepted by the Supreme Court or by any northerner for that matter. And this debate over federalism ultimately culminated in the Civil War. And after hundreds of thousands of people were killed in this issue, the Civil War ultimately decided the issue because the North want the United States is a singular not a plural. Now--and now, when states are in the conflict with the federal government, the federal government usually wins. The doctrine of nullification does not exist.

**Slide 12**

**Text**: Decline of Dual Federalism

Three trends undermined the effectiveness of state governments

- Increased mobility of capital
- Creation of national markets and interdependence
- Emergence of large corporations

[Photo of train engine]

**Audio**: While the Civil War ended the notion of adoption of nullification and asserted the supremacy of the federal government over the States, it did not ends the functioning of the states has independent entities, the dual federalism continued in a sense that the two levels of government were functionally distinct from one another. Now, that is no longer the case. And so let's talk for just a few minutes on why that happened. Why did dual federalism cease to be the case? Well, there are three factors that led to the decline of dual federalism: the increase mobility of capital, the transfer of money from one state to the next, the creation of national markets and interdependence and the emergence of large corporations. Now, if we look back at our early history and through to the mid-1800s, America was characterized by localized markets. We engaged in international trade and there was considerable trade between the states. But the vast majority of what was bought and sold was produced locally. This because the cost of transportation was simply too high and it was difficult to move heavy bulky items. And so it was cheaper to produce those items locally even if the local market did not have a comparative advantage in those goods. So items like clothing or glassware, luxury items were transported but food, basic clothing, furniture, housing, tools, things of that nature were all manufactured locally. The capital markets were also primarily locally based. Paper currency, for the most part, was not US dollars printed by the treasury rather were bank notes printed by the local bank. And if you wanted to engage in commerce with the neighboring state, you took your paper currency to your
bank, cashed it in for hard currency, coinage of some sort, and then transfer those coins, the gold or silver with you, to the other state, deposited that money in the local bank that you were trying to trade with to receive the local currency. And then you could buy or sell or hire or do whatever you wanted. There are a lot of inefficiencies built into a market that looks like that. Now, with the advent of the railroads primarily, the economy of the United States began to dramatically change and now, it became possible to easily transfer goods even heavy goods from one side of the country to the next over large distances. And the cost of transportation became low enough that other factors or production such as labor or availability of raw materials became more important in the manufacture of goods. And markets begun to specialize and that by it become interdependent with one another. It became much easier to move money back and forth as these transportation notes begun to create national banks of banks that had offices in more than one state. So that you could use the same currency as you traveled from one side of the country to the next. And finally, these railroads were tremendously powerful and not only railroads but also other monopolies or trusts and corporations begin to rise with the development of a nationalized economy. The oil industry, the coal industry, the steel industry, again the railroads, these groups began to from powerful corporations that often had more resources at their disposal than state and local governments. States struggle to maintain their regulatory ability in this new environment. If you can't control your own economy, it's difficult to continue to provide all the services and regulatory functions that the states had than use to providing. Because of the Full Fait and Credit clause of the Constitution, it made it so that a corporation could headquarter their operations out of the state with lax regulations. And then act with impunity in other states even if they were violating local laws and ordinances because they could argue they were operating in accordance with the laws of the state where they were headquartered. Now, states began to compete for where those headquarters would be located by offering lower and lower regulations, kind of a race to the bottom. And the other states would have to allow for that business to operate. New Jersey was often referred to this time as the trader state because it's wooing of corporate headquarters through lax regulations and low tax rates meant that companies that might have headquartered and kept their tax dollars in some states all moved in New Jersey, but maintained their operation in those other states with those states being unable to regulate the behavior of those corporations. Now, one example would be if you look at your credit card statements. And if you look in the fine print, what you'll find is that almost all credit card companies are headquartered in Delaware. Now the reason for that is because Delaware has very lax usury laws. And the credit cards are able to charge essentially as much interest as they want to because that's real in the state of Delaware, where in the state of Arizona, for example, it's illegal to charge an interest rate above 30 percent. That's our state usury law. Well, if the company that's issuing you your card is not headquartered in Arizona, they don't have to abide by that rule and they can charge you 40 percent. So with this emergence of national markets, states began to lose their regulatory ability. Now, one last observation here is that these exact same dynamics are occurring in our day on the international level. With globalization, it is easy to move capital, labor and material all over the world that we have international markets now and countries are becoming interdependent and we now have multinational corporations that play countries off against one another just as corporations played states against one another. And just as states lost their regulatory ability through the nationalization of the market in America in
the 1800s, countries are now losing their regulatory ability in the international market. And it's interesting to look at the parallels and question, what will happen to states sovereignty in that setting?

**Slide 13**

**Text:** The New Deal

- The Great Depression was the final blow to Dual Federalism
- Roosevelt’s “New Deal”
  - His dilemma: he needed federal action, but such action was opposed by Congress and clearly unconstitutional
  - Tried to pack the Court

*Audio:* The Great Depression was the final blow to the concept of dual federalism. This economic crisis was such a large proportion and it simply overwhelmed the ability of the states to deal with it. In addition to a lack of ability, there was a certain lack of will on the part of the states to take the measures that people felt were necessary to deal with the unemployment and the economic misery that was occurring. The state governments were controlled for the most part by rural interests. That has long been the case. And the depression hit the cities disproportionately. And so these state legislatures controlled by rural agricultural interest were loath to increased taxes and increase public works programs for programs that would primarily help urban areas that was not their electoral base. So whether it was lack of political will or lack of ability to deal with the sheer scope of the problem, the states were not able to provide much assistance in the new deal. Now president Hoover offered his sympathy for those who are unemployed but argued that there was no constitutional provision for the federal government to fix the problem. He argued that if people wanted public works programs or soup lines or welfare programs, they ought to advocate for those things from their state governments. Now, Hoover was actually correct in his assessment. There was no constitutional basis for the federal government to provide those services. But being correct does not necessarily win elections. And Franklin D. Roosevelt promised that if he was president, he would strike a new deal with the American worker. And that new deal would fundamentally redefine federalism. He obviously won that election. But he then have the problem with the fact that Hoover was correct, it's unconstitutional for the federal government to go out and hire a bunch of people and provide welfare services to them. And so Roosevelt attempted several times to create new programs. He had difficulty getting those programs through the Congress, which was controlled by the Republican Party at the time, but even those programs that were able to get through the Congress were struck down by the Supreme Court as unconstitutional. Because there really is no constitutional way to do what Roosevelt was trying to do, so he had a problem. And he tried a couple different ways to solve that problem. One was to just have that overwhelming public support for these programs. But here, we see the functioning of the checks and balances of the system that Madison had set
up. Because the judicial branch is immune to electoral pressure and they just continued to rule these programs as unconstitutional in spite of how popular they were and the spite the fact that the vast majority of the country wanted them to occur, so popularity did not succeed. So he then came up with the plan to increase the size of the Supreme Court and appoint several new judges who would be open to his interpretation of the Constitution and allow these programs to go forward. But this attempt to pack the court struck many as an overreach of authority. It threatened the very independence of the judicial branch of the government. And so even his own party balked at packing the court by increasing the size of the court. So he had to figure out how to get his program through the court without changing the structure of the court.

**Slide 14**

Cooperative Federalism

- Found a solution in grants-in-aid

[Black and white photo of construction workers] [Black and white photo of Hoover Dam construction workers on rock climbing ropes] [Black and white photo of Hoover Dam construction workers near equipment] [Photo of modern construction workers]

**Audio**: The solution that Roosevelt struck upon was called Grants-in-Aid, and it was a new type of federalism which we now call cooperative federalism. And the way Grants-in-Aid works is the federal governments says, okay, the Supreme Court won't let us hire people and provide them welfare because it's unconstitutional. What the federal government will do instead is provide that money to produce these programs and all of the guidelines for these programs and give that to the states. And the state governments will then administer those programs, so they were federally funded and federally supervised and federally regulated. But the actual administration of the programs occurs at the state level. And that way, these new deal programs would not run afoul of the Constitution. It's kind of when doing an end run around the Constitution to be able to do what he was trying to do within those guidelines. Now, the programs are essentially the lots and lots of federal money with lots and lots of strings attached. In fact, the strings are so rigid that it is essentially a federal program. The states simply go through the motions of hiring the people and cutting the checks. But the actual decision of how to do things is all made at the federal government. The states are merely administrators of these federal programs. And we have the pictures on the slide of the Civilian Conservation Corps and the construction of the Hoover Dam. Later, we have the construction of the Interstate Highway System, and still to this day, the maintenance of state and local roads as well as the feral highway system. All of these programs are Grants-in-Aid programs. And it's an example a cooperative federalism, and federalism has never been the same since this occurred.

**Slide 15**

**Text**: Evolution of Cooperative Federalism

- LBJ-War of Poverty, first to give grants directly to local groups and cities
Audio: Federalism has continued to evolve since Roosevelt's new deal. One example is Lyndon Baines Johnson. He was trying to engage in his war on poverty. And he was running problems with state governments who are not willing to administer the programs that he was offering or particularly in the Southern states, they were administering the programs with local discrimination in the disbursement of their aid. They were not providing aid or assistance to black recipients or overall white recipients for that matter. And so what LBJ did was he began to give federal grants directly to local groups and cities bypassing the state legislatures. Now, this was still cooperative federalism but now, the state legislatures are almost completely out of the picture.

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Text: Evolution of Cooperative Federalism

- Nixon-Instituted block grants

Audio: Richard Nixon is the next president to leave his mark on federalism. Nixon began to develop what are called block grants. And what a block grant is the federal government still gives lots of money to the states but has far fewer strings attached to that aid. The state is not administering a federal program as they were with the other forms of cooperative federalism. Here instead, it is truly a state program that is state administered, state regulated, state directed but it's paid for by federal funds in the form of this block grant. It's not quite no questions asked but there are fewer regulations attached to them. An example of a block grant which was started in the Nixon administration are immunizations. The federal government wants to help states immunized people but it is the state preventive health services that set up the program, the federal government just have to pay for it. A lot of educational funding, who isn't a form of block grants to the states as well.

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Text: Evolution of Cooperative Federalism

- Carter-cut the number of grants
- Reagan-deeper cuts, eliminates city grants

Audio: Jimmy Carter was a big states' rights advocate and he sought to reduce the impact to the federal government at the state level. And one strategy he followed to do that is to begin to cut the number of grants that are paid for by the federal government. These reductions were dramatically increased during the Reagan administration, who made deeper cuts and eliminated entire programs including eliminating all of LBJ's grants to cities and urban centers that had--
were begun during his war on poverty. So these presidents attempted to reverse what had been the trend of a growing federal presents in state programs.

**Slide 18**

**Text:** Evolution of Cooperative Federalism

- Bush Sr.-Era of unfunded mandates

[Photo of George Bush, Sr.] [Photo of protestors] [Photo of salesperson holding a firearm]

**Audio:** The George Bush Sr. administration ushered in an era of unfunded mandates. That is a new twist on federalism where the federal government provides all of the requirements, all of the strings but none of the money. It's the reverse of the original Grants-in-Aid program. As well as the Congress sets requirements and rules that have to be followed but doesn't provide any resources for providing those rules. Some examples of these are the American with Disabilities Act. Most federal legislation when it changes requirement on construction of buildings takes place for all future construction has to abide by it. But the ADA require that all public buildings retroactively had to have handicap access thus required a tremendous expenditure on the part of state and local governments to retrofit every single public building in their inventory within a certain specified timeframe to create elevators and ramps and all things that were necessary and good to have. The goals of the ADA are [inaudible] but were tremendous financial burn on the states because the federal government while requiring this to happen didn't provide any funding to do it. Another example of an unfunded mandate from this period is the Brady Bill. The Brady Bill requires that people who are attempting to purchase a firearm have to have a background check to make sure that they are not crazy or have a criminal background. The--that background check is mandated by the federal government but no money is allocated to the state and local governments to actually administer these background check programs or maintain the database that is mandated by the federal government.

**Slide 19**

**Text:** Evolution of Cooperative Federalism

- Clinton-Introduce partnership model

  “Era of big government is over”

[Photo of Bill Clinton]

**Audio:** Bill Clinton introduced a partnership model of federalism and in doing so announced that the era of big government was over. Now, the partnership model was that the federal government would provide the money and some overall goals and targets that the states would then be free to decide how to meet those goals and targets. In this regard, it's similar to a block grant but a little bit different. A block grant is simply an allocation of money to the states for a particular subject area and then the states can spend it as they see fit. The partnership model is that the federal
government has a particular objective that they're trying to maintain. The model in this partnership program was welfare reform. So there is a desire by both political parties to reform welfare that welfare system was broken, people were standing on it too long, they weren't getting back to work, it was very expensive. And so the welfare was changed and the old block, that Grant-in-Aid program of AFTC was eliminated and a new program was set up whereby the federal government said we want to reduce the amount of people on welfare and we want to reduce the time that people around welfare and we're going to give the states the same amount of money that we were giving them under the old AFTC program. And if the states can meet these targets of reducing the number of people on welfare and reducing the time they're on welfare, that's going to reduce the cost of administering the program that the federal government will continue to give the states the same amount of money they were getting under the old program. So the states could actually make money if they were to be more efficient in their turnaround of welfare recipients. On the other hand, if a state failed to meet those targets and didn't decrease their welfare rosters and had people stay on their rosters too long, they would end up spending more money than the federal government had originally allocated to them. And in that case, the states should just be out of luck so it would cost states' money to have an inefficient welfare program. And so this was an attempt to providing incentive for states to figure out ways to improve the way they handled welfare. And this created a situation where there was great diversity of welfare programs around the country, competition between them for who could come up with the best program. And there were some failures that Illinois in particular, their attempt at welfare reform just crashed and burned whereas states like Wisconsin were very successful and ended up streamlining their welfare program and dramatically reducing the time that people stayed in welfare before they got a new job. And so other states began to adapt the Wisconsin model and so this laboratory of 50 states greatly improved the way welfare was administered in the country. Now, as an end note to that story of welfare reform, unfortunately for the states, by the time of the deadline had passed for when they were supposed to meet their targets by and the government was going to give them the difference between what they had spent and what they'd been promised, by then it was in the early 2000s and the surplus is that the government was enjoying during the Clinton administration have evaporated and the federal government basically reneged on its deal and kept that money in order to try to balance the budget deficits that we were experiencing in the 2000s. So it didn't worked out for the states but it's a good example of how a cooperative model can improve this quality of the government's services being offered.

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Text: Evolution of Cooperative Federalism

- Bush Jr.-Rhetoric v Action
  - Decrease in unfunded mandates
  - Increase in overall grants, especially Homeland Security
  - Increased the role of federal govt. in state/local issues

- No Child Left Behind standardizes assessment
Audio: With George W. Bush, we have a more complex picture where we have to evaluate rhetoric versus action on this question of federalism. In his speeches, Bush seemed to be an advocate of states' rights and a smaller federal government. And at the beginning of his administration, there were some efforts to decrease the number of unfunded mandates that had begun during his father's administration. But overall, if you look at his term in office, the actions of the Bush administration seem to—the end result was to increase both size of federal government and its role in state governments. This is especially true in the area of Homeland Security but also in state and local issues. The No Child Left Behind standardizes assessment for example. It standardized an assessment model nationwide and created an assessment program that up until then had been determined by state and local governments. Another area that the federal government increased its control over was the issue of disaster response, obviously, with the Katrina hurricane. After Katrina, the federal government nationalized disaster response, but before then, disaster response was a state responsibility and then if the states moving over their heads, they requested federal assistance. And typically, what was required was the governor would have to declare state of emergency and that then open the door for a federal intervention and federal assistance. That's no longer the case. It's now a presumption that a disaster that hits more than one state will begin as a federal disaster response and not wait for state governors to take action. There is also intervention in social issues by the federal government. An example would be the Terri Schiavo affair where the federal government intervened to overturn a state and local decision. Finally, at the end of his second term, the Bush administration, all that nationalized the banking sector with a huge expansion of federal authority and oversight in response to the credit crisis at the very end of his term. So, again, we have a disconnect between rhetoric and action with the Bush administration, but the overall result was a return of big government and expansion of federal government intervention and do state and local affairs.

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Text: Evolution of Cooperative Federalism

- Obama-The Return of the Feds
  - Stimulus Package
  - Health Care System Mandates
  - Cap and Trade Regulation
Audio: Barack Obama has continued the trend began by the Bush administration to return the federal government to the center stage at the expense of the states. The stimulus package like the new deal created lots of government grants and programs to be administered by state and local governments. It essentially returned to the Grants-in-Aid model of cooperative federalism. The healthcare system contains mandates that require state governments and individuals for that matter to make healthcare purchases. Now, these mandates also shift the balance in favor of the federal government from the states. Future initiatives that are [inaudible] been discussed but probably will occur in the first term of the Obama administration such as Immigration Reform and carbon Cap and Trade Regulation also promised to assert the dominance of the federal government at the expense of the states.

Slide 22

Text: Conclusion

[Flow chart of different forms of government]

Audio: Now, if you remember what federalism originally means, you have with the unitary system the central government making the rules that the people have to follow with the regional governments merely administrating those rules whereas the confederate system, the regional governments are almost entirely independent and the central government has no or little direct statutory authority over the people. The federal system which, again, was invented by the United States has two levels of government both of which has direct statutory authority and governs the people and then there's a complex and changing relationship between the federal and state governments. We've seen that as that relationship has changed over the course of our history, the federal government has grown more powerful relative to state governments. But you could argue that the founders would likely not recognize the system that we have now from what they had originally intended. Now some argue, as result to that, that the 10th Amendment is merely a forgotten relic while others argue that we should not overstate the case that the state governments still had tremendous power compared to the provinces of a unitary system's government. Clearly though, the lines between federal and state governments will likely continue to be debated in our generation just as they had been throughout the country's history. This concludes the discussion of federalism in this presentation as well as the overall section on the origins and foundations of American government. In the next section, we will turn to a discussion of the institutions that comprise our national government.

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Text: This presentation is courtesy of Brian Dille, Professor of Political Science at Mesa Community College.

[Photo of Brian Dille]

Audio: This presentation is courtesy of Brian Dille. I'm the speaker and I'm a professor of Political Science at Mesa Community College, a college of the Maricopa Community College District in Mesa Arizona. I hope you've enjoyed this presentation.