The Federal System

SSCG 5
SSCG5 The student will demonstrate knowledge of the federal system of government described in the United States Constitution.

a. Explain the relationship of state governments to the national government.

b. Define the difference between enumerated and implied powers.

c. Describe the extent to which power is shared.

d. Identify powers denied to state and national governments.

e. Analyze the ongoing debate that focuses on the balance of power between state and national governments.

f. Analyze the supremacy clause found in Article VI and the role of the U.S. Constitution as the “supreme law of the land.”

g. Explain the meaning of the Pledge of Allegiance to the Flag of the United States
SSCG5a. Explain the relationship of state governments to the national government.
- The word federal denotes alliances between independent sovereignties.
- Federalism is a system in which the power to govern is shared between national, state, and local governments.
US Federal System: 5 Basic Characteristics

1. Federalism provides a division of legal authority between state and national governments. Overlap occurs, but two legally distinct spheres of government exist.

2. The states are subordinate to the national government in such areas as management of foreign affairs and regulation of interstate commerce.

3. Federalism enables positive cooperation between state and national governments in programs pertaining to education, interstate highway construction, environmental protection and health, unemployment, and social security concerns.
US Federal System: 5 Basic Characteristics cont.

4. The U.S. Supreme Court serves as legal arbiter of the federal system in regard to conflicting claims of state and national governments.

5. The two levels of government exercise direct authority simultaneously over people within their territory. Dual citizenship exists under federalism, and individuals can claim a wide range of rights and privileges from both state and national governments.
Figure 4.1. The structure of fiscal flows in a federal system with three levels of governments:

Blue arrows – federal taxes; 
Pink arrows – state taxes; 
Red arrows – local taxes; 
Brown arrows - operational grants from a higher to a lower level government; 
Green arrows – expenditure.
SSCG5b. Define the difference between enumerated and implied powers.

- The **enumerated powers** are a list of specific responsibilities given to Congress found in Article 1 Section 8 of the United States Constitution.
- Congress may exercise only those powers that are granted to it by the Constitution, limited by the Bill of Rights and the other protections found in the Constitution.
SSCG5b. Define the difference between enumerated and implied powers.

- "Implied powers" are powers not given to the government directly through the constitution, but are implied.
- "Implied powers" are those powers authorized by a legal document which, while not stated, are deemed to be implied by powers expressly stated.
- These powers fall under the “Necessary & Proper” Clause or Elastic Clause in Section 8 of Article 1 of the U.S. Constitution.
SSCG5c. Describe the extent to which power is shared.

- The national government and state governments share powers.
- Shared powers between the national government and state governments are called **concurrent powers**.
- Current powers of the national government and state governments include the ability to:
  - Collect taxes
  - Build roads
  - Borrow money
  - Establish courts
  - Make and enforce laws
  - Charter banks and corporations
  - Spend money for the general welfare
  - Take private property for public purposes, with just compensation
SSCG5d. Identify powers denied to state and national governments.

- What state governments may not have the power to do:
  - May not enter into treaties with other countries
  - May not print money
  - May not tax imports or exports
  - May not impair obligations of contracts
  - May not suspend a person's rights without due process
SSCG5d. Identify powers denied to state and national governments.

- What the federal government can not do:
  - May not violate the Bill of Rights
  - May not impose export taxes among states
  - May not use money from the Treasury without the passage and approval of an appropriations bill
  - May not change state boundaries.
SSCG5d. Identify powers denied to state and national governments.

- The state or federal government can not:
  - Grant titles of nobility
  - Permit slavery (13th Amendment)
  - Deny citizens the right to vote due to race, color, or previous servitude (15th Amendment)
  - Deny citizens the right to vote because of gender (19th Amendment)
  - Ex Post Facto Laws
  - Bills of attainder
Inherent powers are those powers the government exercises simply because it’s the government.

Examples:
immigration policy & acquiring territory
Reserved powers are those powers that belong strictly to the states.

Those powers “not delegated to the United States by the Constitution, nor prohibited by the states.”

Examples: regulate trade, marriage laws, establish local governments
The Supremacy Clause is a clause in the United States Constitution, article VI, paragraph 2. The clause establishes the Constitution, Federal laws, and U.S. treaties as "the supreme law of the land".

The text establishes these as the highest form of law in the American legal system, mandating that state judges uphold them, even if state laws or constitutions conflict.
Discussion Question: How can you explain the difference between enumerated and implied powers?
The national government must do three things for the states: (1.) must guarantee a republican form of government; (2.) protect from invasion and domestic violence; and (3.) respect the territorial integrity of each state.
States have 2 obligations to the national government: conduct and pay for elections of all national government officials, and amending the Constitution.
Because federalism divides the powers of government, conflicts do arise between the national and state governments.

The federal court system, especially the U.S. Supreme Court plays a key role in settling these disputes.
In 1819, *McCulloch vs. Maryland* brought up the issue of state vs. national government and who had the most power.

Congress chartered The Second Bank of the United States. In 1818, the state of Maryland passed legislation to impose taxes on the bank. James W. McCulloch, the cashier of the Baltimore branch of the bank, refused to pay the tax.

The Supreme Court invoked the Necessary and proper Clause in the Constitution, which allowed the Federal government to pass laws not expressly provided for in the Constitution's list of express powers as long as those laws are in useful furtherance of the express powers.
The Constitution says the states must (1.) give “full faith and credit’ to the laws, records, and court decisions of other states; (2.) give one another’s citizens all the “privileges and immunities” of their own citizens; and (3.) extradite – return to a state – criminals and fugitives who flee across state lines to avoid justice.
The Constitution says each state must recognize the laws and legal proceedings of other states – “full faith and credit.” Art. IV Sec. 1

This applies only to civil law – laws relating to disputes between individuals, groups, or with the state.
Some “privileges and immunities” are the right to pass through or live in any state; use the courts; make contracts; buy, sell, and build property; and marry. Art. IV Sec. 2

States can discriminate against non-residents – voting; attending publicly supported institutions; and higher fees to hunt and fish; etc.
Extradition is the legal procedure through which a person who has fled to another state is returned to the state where the crime took place. (Art. IV Sec. 2)
SSCG5e: Analyze the ongoing debate that focuses on the balance of power between state and national governments.

7 Stages of Federalism:

- **Nationalization**: 1789 - 1830
  - The powers of the national government are clarified and defined by Supreme Court decisions under John Marshall. The concept of implied powers is established and used to authorize additional national powers.
7 Stages of Federalism

2. Dual Federalism Part 1: Taney Court ruled in favor of states rights in areas such as slavery; nullification and secession doctrines. Clear line between national & state powers. (1830-1860)

3. Dual Federalism Part 2 (1860-1930): national & state powers still clearly defined but national government gained more authority over trade & civil rights
7 Stages of Federalism

4. Cooperative Federalism (1930-1960): brought on by Great Depression; federal, state, & local government working together to solve common problems; FDR’s New Deal

5. Creative Federalism (1960-1970): Under Kennedy & Johnson, federal grants (block & categorical) were given to establish partnerships with all levels of government to deal with problems like poverty; increased national government influence.
7 Stages of Federalism

6. New Federalism (1970-1990’s): national expansion decreases; some administrative authority returns to states; included unfunded federal mandates to influence states

7. Competitive Federalism (1990’s-present): state/local governments compete for businesses/jobs; funded/unfunded federal mandates
Notes Quiz:

1. List 2 concurrent powers.
2. If a conflict exists between national (federal) & state governments, whose laws are supreme?
3. What clause includes the implied powers of the federal government?
4. What is an example of something neither state nor federal governments can do?
5. What was the first major Supreme Court case that brought up the issue of state vs. national government and who had the most power?
"That's all folks!"