

Federalism



Development of a New Type of Government
by your founding fathers

- Federalism- the division of power between the central and state government. Powers are shared and also unique to each level. This is a DUAL system of government.

Federalism

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I.) Federalism: Definition:

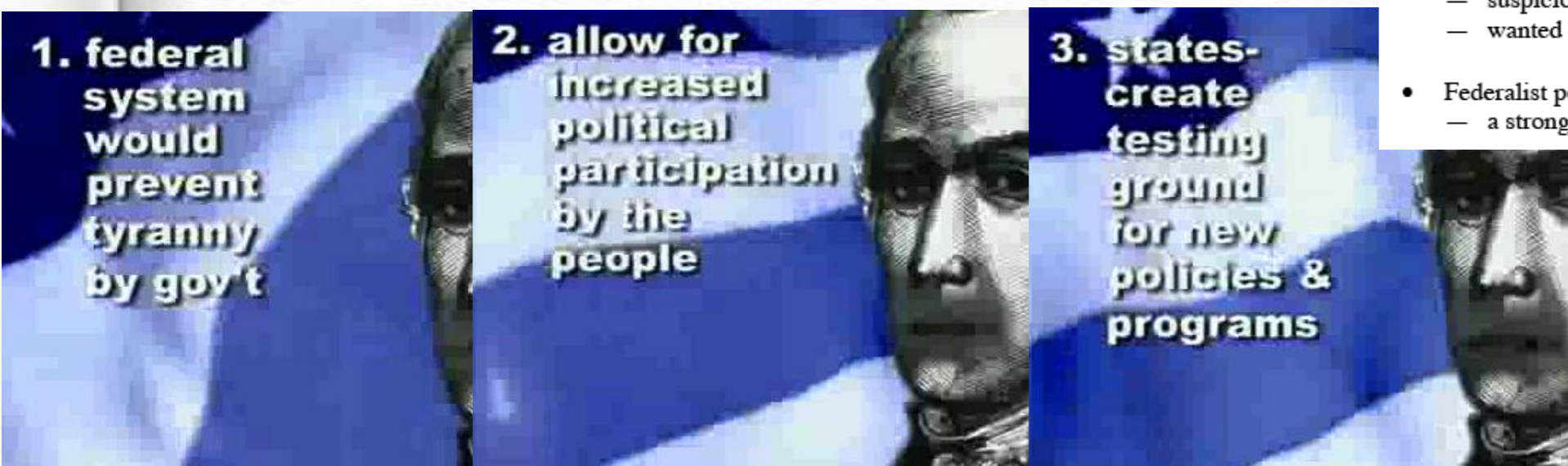
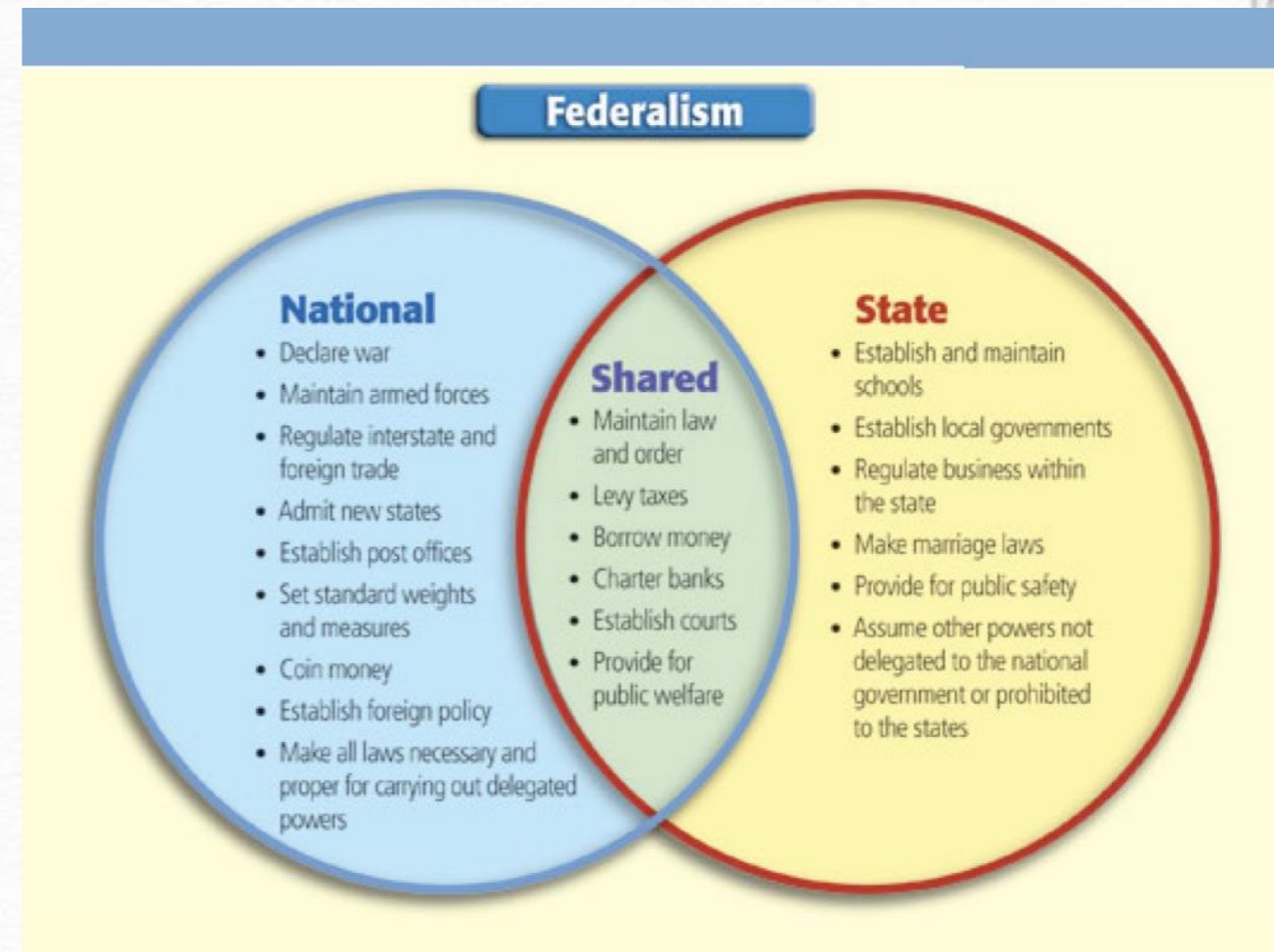
II.) Why Federalism?

A.) History

- 1.) Articles of Confederation were weak
- 2.) Belief that a divided gov't is a restrained government

B.) Addressing the needs- With a Dual system of gov't, it address local concerns and wider national concerns.

- 1.) national level
- 2.) state level
- 3.) states Testing Grounds **



- **Anti-Federalist position**
 - suspicious of a strong central government
 - wanted bill of rights to protect personal liberties
- **Federalist position**
 - a strong central government was the best way to protect freedom

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III.) Powers of the National Gov't

A.) Expressed Powers:

- 1.) **powers** of Congress specifically listed in the Constitution

B.) Implied Powers

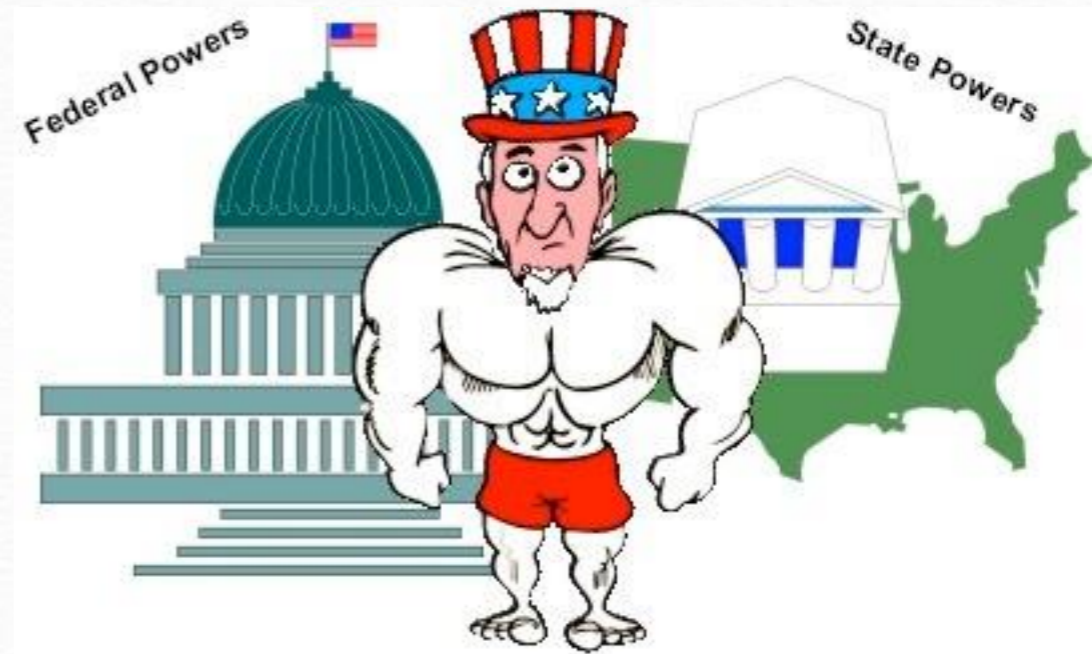
- 1.) Powers that are not expressively stated but reasonably suggested
 - a. necessary and proper to execute the reasonable and logical **powers**

C.) Inherent powers (not expressively provided by Constitution)

- 1.) things only the fed. Gov't can handle
- 2.) e.g. immigration, acquire territory

D.) Exclusive (delegated) Powers

- 1.) National Government Power Only (sovereign state)
 - a.) foreign policy
 - b.) regulate interstate commerce
 - c.) see "Powers Denied to the States" below

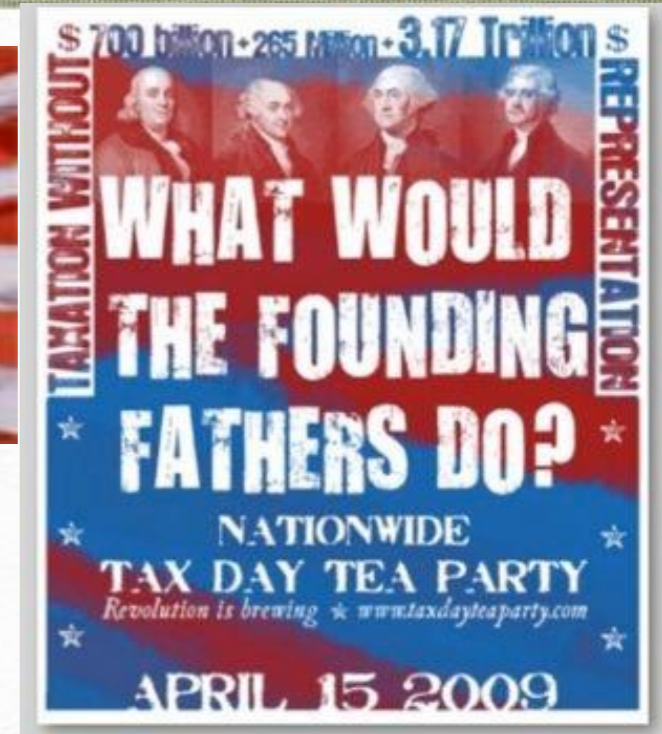


"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

- Article I - establishes the legislative branch of the national government setting forth the two houses of Congress to make laws.
- Article II - establishes the executive branch to carry out the laws passed by Congress.
- Article III - creates the U.S. Supreme Court and empowers Congress to establish lower Federal Courts to interpret the laws.

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IV.) Powers of the States

A.) Reserved Powers (powers neither granted or denied to the National Government)

- 1.) 10th Amendment
- 2.) Examples - "escape clause"
 - a.) criminal statutes
 - b.) education
 - c.) health & safety regs
 - d.) licensing (i.e.marriage)
 - e.) conduct elections

B.) Powers Denied to the States

- 1.) only the federal gov't has
 - a.) treaty
 - b.) alliance
 - c.) coin money
 - d. tax imports



V.) Concurrent Powers

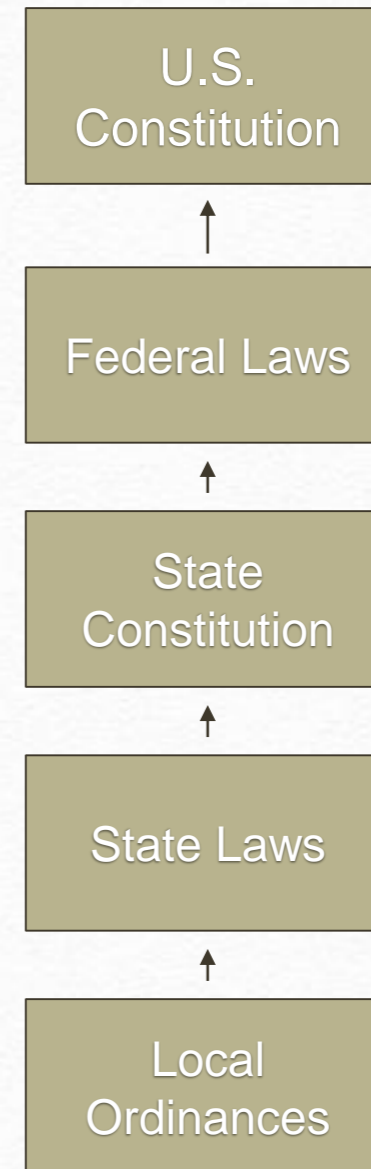
- A.) powers that both the federal gov't and state gov't have
- 1.) power to levy taxes
 - 2.) make laws (protection of civil liberties)

VI.) Federalism and the Law

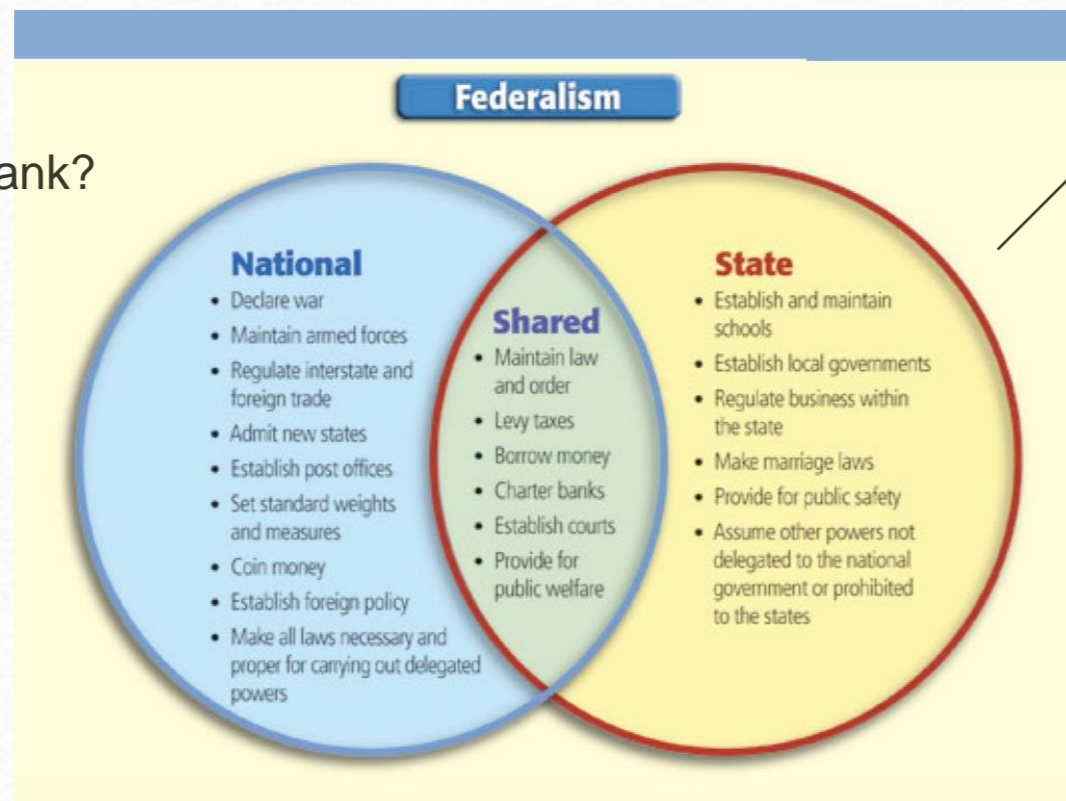
- A.) most rules laws are local or state
- B.) Supremacy Clause: Article Six, **Clause 2**
- 1.) Specific order

C.) Role of Supreme Court

- 1.) *McCulloch v. Maryland* (1819) - "Necessary and Proper Clause" (Elastic Clause)
Article 1 section 8



Can Congress charter a national bank?



LOCAL GOVERNMENT

- Created by the States, and can only do those things States give it the power to do
- Provide Services/activities, collect taxes, trash pickup

VII. Current Federalism Issues

Federal and State Powers

A. In general, the federal government has power over economic issues, the military and defense.

In general, state governments have power over social, moral, and family issues.

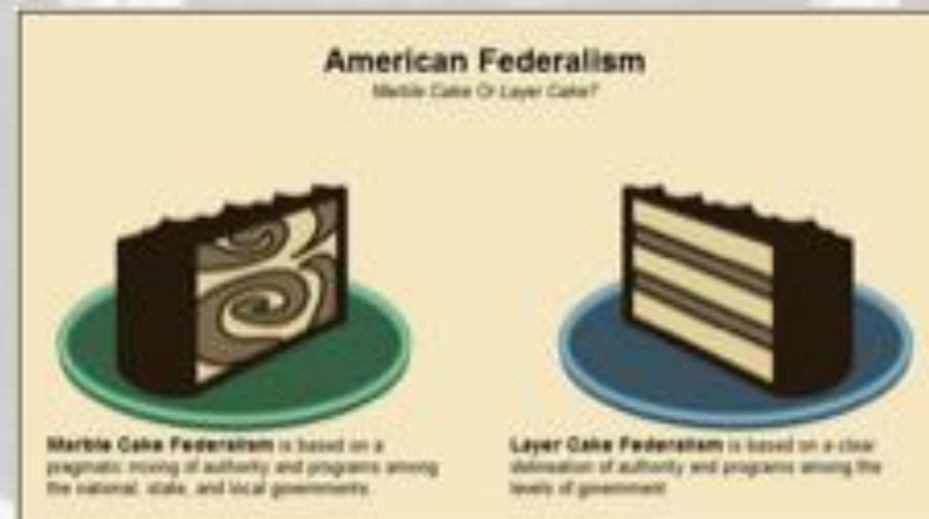


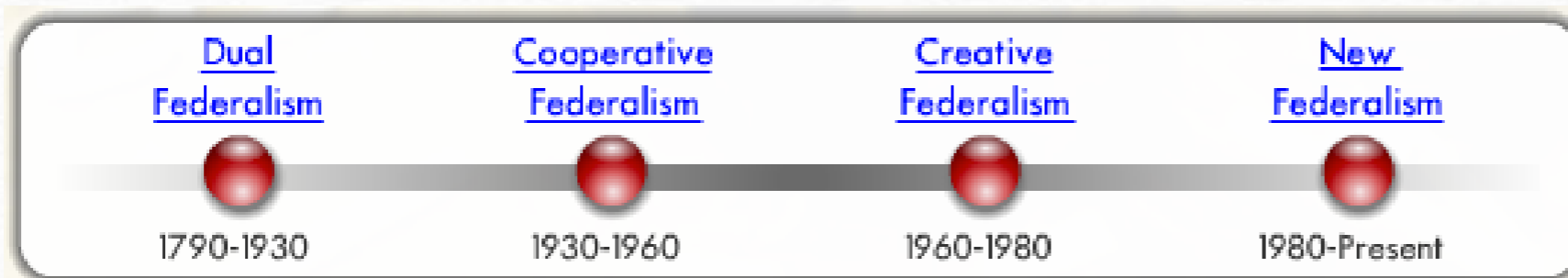
History of Federalism



Theories of Federalism

- **Dual Federalism**
 - *Layer Cake* Nationalism
 - States/Nat' l Govt Remain Separate in own spheres
- **Cooperative Federalism**
 - *Marble Cake* Federalism
 - States/Nat' l Govt Share powers & policy responsibilities





Creative Federalism

An era of federalism where the national government channeled federal funds to local governments and even citizen groups to address problems that states supposedly could not, or were not willing to alleviate. The most visible example of creative federalism was President Lyndon Johnson's Great Society programs which included numerous specific grants involving education, urban renewal, and poverty reduction.

NEXT 

New Federalism / Devolution

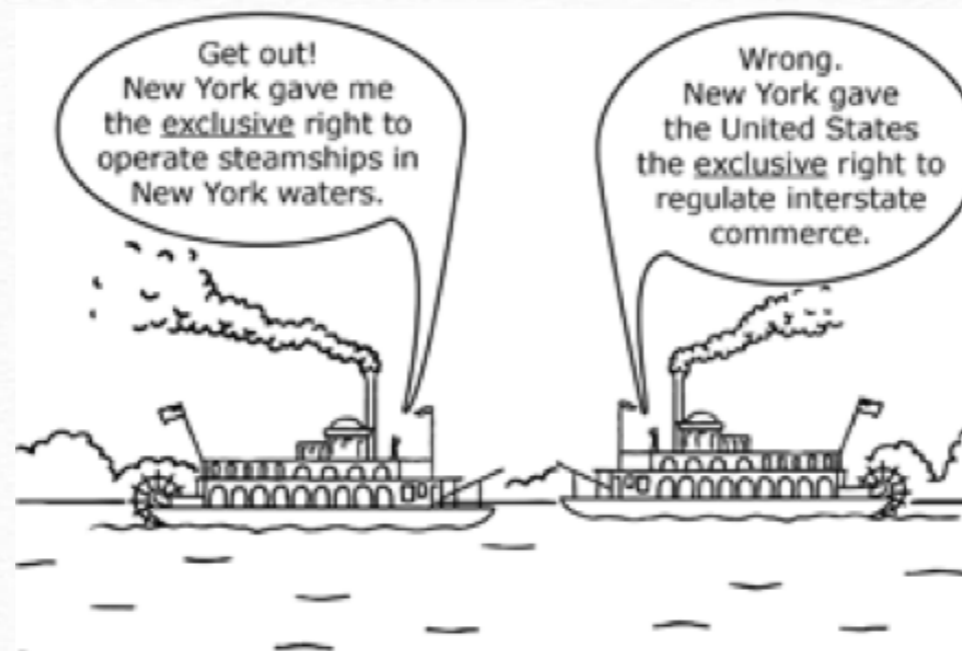
An era of federalism where national policy mandates were challenged by the states. President Ronald Reagan, a strong proponent of new federalism acting on behalf of the states, proposed reductions in federal grants and moved to consolidate numerous categorical grants into fewer, less restrictive block grants. Within broad policy areas including education, health, and transportation, states gained more

NEXT 

Devolution Revolution

Growth in Federal Power

- In *Gibbons v. Ogden* (1824), the Court defined commerce broadly, to include all “intercourse” between states.
- Importance of the *Commerce Clause*: This clause gives the federal government the right to regulate interstate commerce, but maintains the states right to regulate commerce within its borders.



- In *Heart of Atlanta Motel v. US*, which is not technically a federalism case, the Court upheld the Civil Rights Act of 1964 using the Commerce Clause. This greatly expanded federal power.

Shifting Powers

Throughout American history, the pendulum of power has swung between the Federal Government and the States. In recent years, the swing has been toward giving power back to the States.

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States	Date(s)/Issue	Federal Government
1798 Kentucky and Virginia resolutions argue that States have the right to void federal legislation they find unconstitutional.		1819 <i>McCulloch v. Maryland</i> —Supreme Court rules that federal law prevails over State laws or constitutions.
1832 South Carolina votes to nullify new federal tariff.		1824 <i>Gibbons v. Ogden</i> —Supreme Court broadly defines National Government's power to regulate commerce.
1940s–1950s Southern States battle for right to resist federal efforts to end segregation.		1832 President Jackson warns that nullification would constitute treason against the United States.
1980s New federalism cuts funding to States and cities.		1865 Union victory in the Civil War establishes supremacy of the National Government.
1990s Congress acts to shift control of social, education, and economic policy to the States.		1930s New Deal programs expand federal authority over the economy and social services.
		1957 Federal troops used to ensure school desegregation in Little Rock, Arkansas.
		1960s–1970s Great Society programs send federal money to States with strings attached.

1. What are the advantages of a system of government in which the States and their local governments hold much of the power?
2. What might be a negative consequence of increased power for the States?

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E.) Recent Trends in federalism

1.) How can fed. get involved where it doesn't have power?

a.) Federal Grants-in-Aid: federal funds Congress gives to states/local gov't (way to influence states)

b.) Federal Govt. strengthened during Depression/WW2

c.) Shift from \$ state demands to what feds wanted

2.) Federal Mandates: rules telling states what they must do to comply w/federal guidelines (regardless if fed. funding provided)

a.) Civil Rights Acts/Clean Air Act/ADA

b.) Nixon's New Federalism: *"power, funds, and responsibility will flow from Washington to the states and to the people,"*

c.) Unfunded Mandate 1990s (curbed)

shift to states' priorities



Block Grants:

Given to states/local govt. to support **broad programs** (comm. devel. & social services)...**less strings attached**...

Community Development, Energy Efficiency, Social Services

How do block grants go along with devolution?

D.) Strengths

- 1.) flexibility fosters individual liberty
- 2.) Increased political activity

E.) Weaknesses

- 1.) blocks progress
- 2.) protects powerful local interests
- 3.) Inefficient and Expensive

What is left of state power?

- By the last quarter of the twentieth century, many scholars thought that the Tenth Amendment had little relevance.
- Then, along came the *Lopez* case...
 - The federal government did not have the authority to create gun-free school zones under the *Commerce Clause*. The Court held, “*The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.*”

HIGH COURT KILLS
LAW BANNING GUNS
IN A SCHOOL ZONE

BITTERLY DIVIDED RULING

5-to-4 Decision Deals Blow to
Federal Government Role in



Hot Issues

- Some of the hottest issues in American politics are, at their core, disputes over federalism.
- Hot issues involving federalism today are
 - Gay marriage
 - [Medical Marijuana](#)
 - Obamacare
 - Immigration enforcement
 - Abortion
 - Civil Rights

Voting Rights Act of 1965

Section 5 provides that states, cities, and counties with a history of racial discrimination in voting rules must first “preclear” any changes in their voting systems with the Department of Justice or a special court in Washington.

Relationships Between States

- Full Faith and Credit Clause (Article IV, Section 1) requires states to recognize the public acts and legal judgments of other states.
- Privileges and Immunities Clause (Article IV, Section 2) requires states to offer out-of-state citizens the same treatment as in-state residents.
- Extradition is a process where a state must return a person when he or she has been charged with a crime in another state.

