



Federalism

The state governments are, by the very theory of the constitution, essential constituent parts of the general government. They can exist without the latter, but the latter cannot exist without them.

Joseph Story



Federalism as a System of Government

- US has many governments
 - national
 - state
 - county
 - city
 - school districts
 - special districts
- Together, these governments form our federal system.



Hurricane Katrina: Who's in Charge Here?

- confusion and accusations among city, state and national officials after Katrina
- causes
 - division of core responsibilities
 - confusion
 - problems with communication



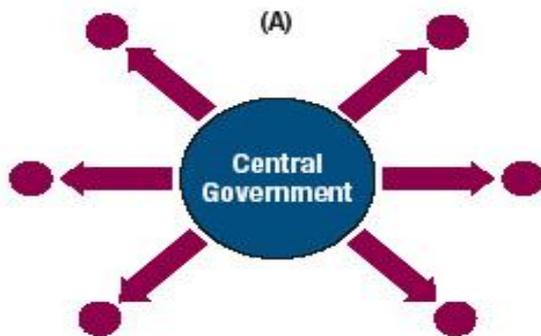
Types of Government Systems

- federalism: significant government powers are divided between a central government and smaller governmental units
- confederation: loose association of states with very little power in central government
- unitary: central government has complete power over its constituent units

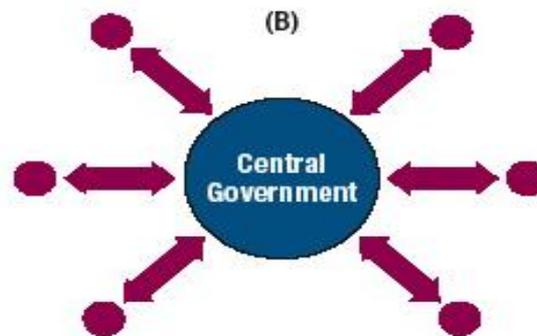


Types of Government Systems

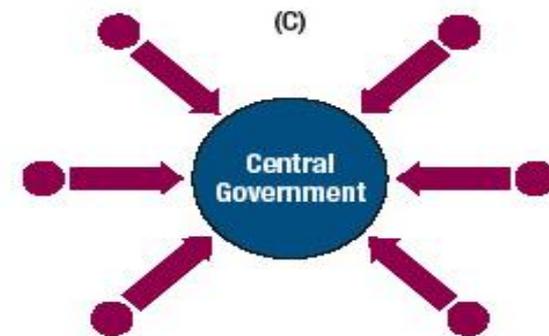
Most countries have unitary systems (A), in which the central government controls state and local governments, which in turn exert power over citizens. The US, however, has a federal system (B), in which the central government has power over some areas, the states over others and both share power on others. In a confederation (C), the central government has only a loose coordinating function with real power residing in the constituent states / units.



Unitary
The central government controls all subunit governments (e.g., states, regions). Examples: Japan, France



Federal
The central government and subunit governments share power. Examples: United States, Mexico, India, Canada



Confederal
The central government exercises no control over subunit governments and acts at the suffrage of the subunits. Examples: United Nations, the European Union, the Confederation of Independent States

 States and regions



Federalism in the Constitution

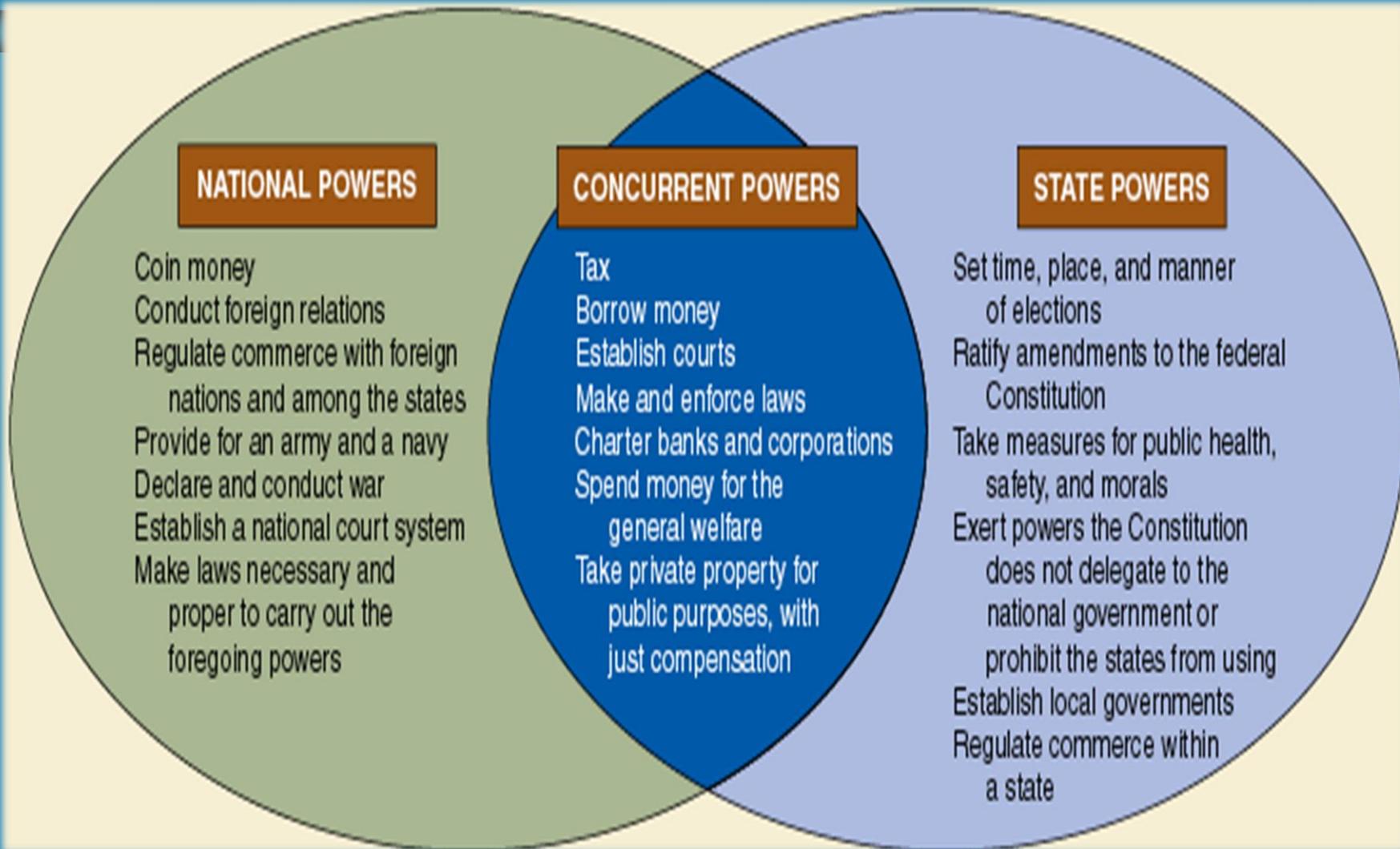
- independent state powers
 - Supremacy Clause (Article VI, Clause 2): establishes that the Constitution, national laws made pursuant to it, and treaties made under its authority, constitute the supreme law of the land
 - enumerated powers (Article I, Section 8): Congress may exercise powers Constitution grants it, subject to the individual rights listed in Bill of Rights.
 - Reservation Clause (10th Amendment): Any powers Constitution doesn't delegate to national government and doesn't prohibit to states, are reserved to states or people.

The Constitutional Underpinnings of Federalism



Provisions	Where to Find Them in the Constitution	What They Mean
Supremacy of the national government in its own sphere	Supremacy clause: Article VI	The supremacy clause establishes that federal laws and the Constitution take precedence over state laws and constitutions.
Limitations on national government powers and reservation of powers to the states	Enumerated national powers: Article I, Section 8 Limits on national powers: Article I, Section 9; Article IV, Section 3; Eleventh Amendment Bill of Rights: First through Tenth Amendments Reservation clause: Tenth Amendment	The powers of the federal government are laid out specifically in the Constitution, as are strict limitations on the power of the federal government. Powers not specifically spelled out are reserved to the states or to the people.
Limitations on state powers	Original restrictions: Article I, Section 10 Civil War Amendments: Thirteenth through Fifteenth Amendments	The Constitution places strict limitations on the power of the states in particular areas of activity.
State role in national government	Ratification of Constitution: Article VII Amendment of Constitution: Article V Election of representatives: Article I, Section 2 and Section 4 Two senators from each state: Article I, Section 3 No deprivation of state suffrage in Senate: Article V Choice of senators: Article I, Section 3 (however, see Seventeenth Amendment) Election of president: Article II, Section 1 (however, see Twelfth Amendment)	The states' role in national affairs is clearly laid out. Rules for voting and electing representatives, senators, and the president are defined so that state governments play a part.
Regulation of relations among states	Full faith and credit: Article IV, Section 1 Privileges and immunities: Article IV, Section 2	Constitutional rules ensure that the states must respect each other's legal actions

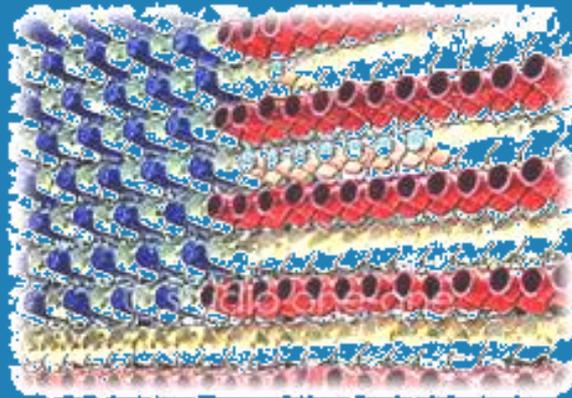
The Distribution of Governmental Power in the Federal System





The States' Roles in National Government

- amend the Constitution
- elect House of Representatives
- elect Senate
- elect President through Electoral College





Relations Among the States

- horizontal federalism: the horizontal allocation of power among coequal states ... Preserving interstate harmony and protecting citizens from excessive burdens requires limits on how states may use their shared authority. (Think of the horizontal board in a picket fence.)
- vertical federalism: division between national government and states
- privileges and immunities (Article IV): Prevents a state from treating citizens of other states in a discriminatory manner.



Relations Among the States

- interstate compacts: Congressionally-approved agreement between two or more states

Advantages	Disadvantages
Flexible and enforceable	Lengthy and challenging process
Interstate uniformity without federal intervention	Lack of familiarity with the mechanism among state government officials and the public
States maintain collective sovereignty	Perceived loss of individual state sovereignty
Alternative to federal pre-emption	Delegation of state regulatory authority to an interstate agency

Interstate compacts with 25 or more members	13
Least compact memberships by a state (HI & WI)	14
Most compact memberships by a state (NH & VA)	42
Average compact memberships by a state	27
Compacts developed prior to 1920	36
Compacts developed since 1920	150+
Interstate compacts currently in operation	200+



The Evolution of American Federalism

- Despite many ebbs and flows in the relative power of the states and national government, the national government eventually gained ground.
- Economic crises generate pressure for a greater national government role.
- War spurs greater national government role.
- Problems arose that were best solved by the national government (example: pollution, denial of civil rights, etc)



The Perpetual Debate About the Nature of American Federalism

- nationalist position: focuses on supremacy clause, elastic/necessary and proper clause (Article I, Section 8): grants Congress power to pass all laws necessary and proper for carrying out its enumerated list of powers
- states' rights position: focuses on dual federalism (political arrangement in which power is divided between national and state governments in clearly defined terms, with state governments exercising those powers accorded to them without interference from the national government)

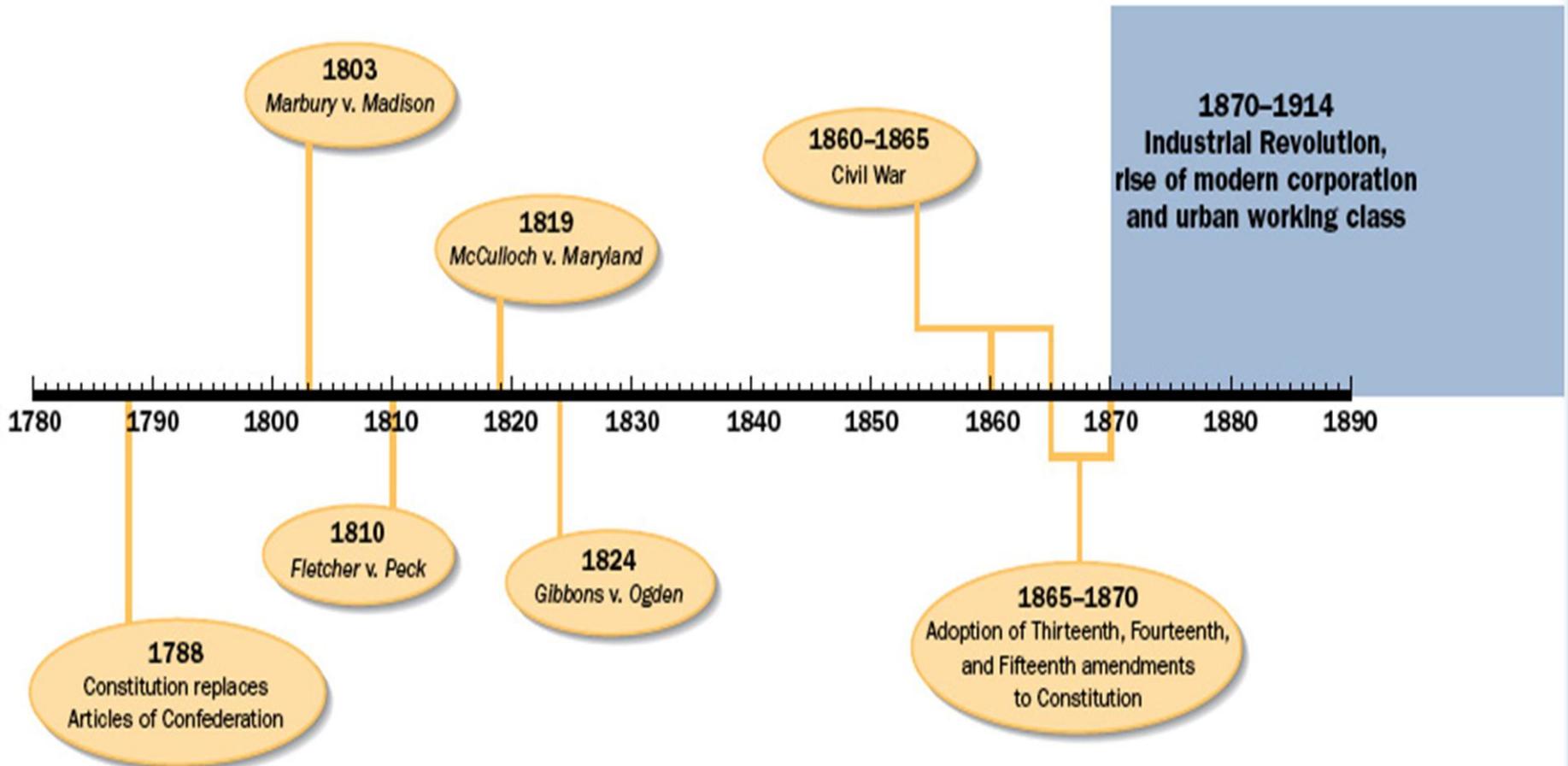




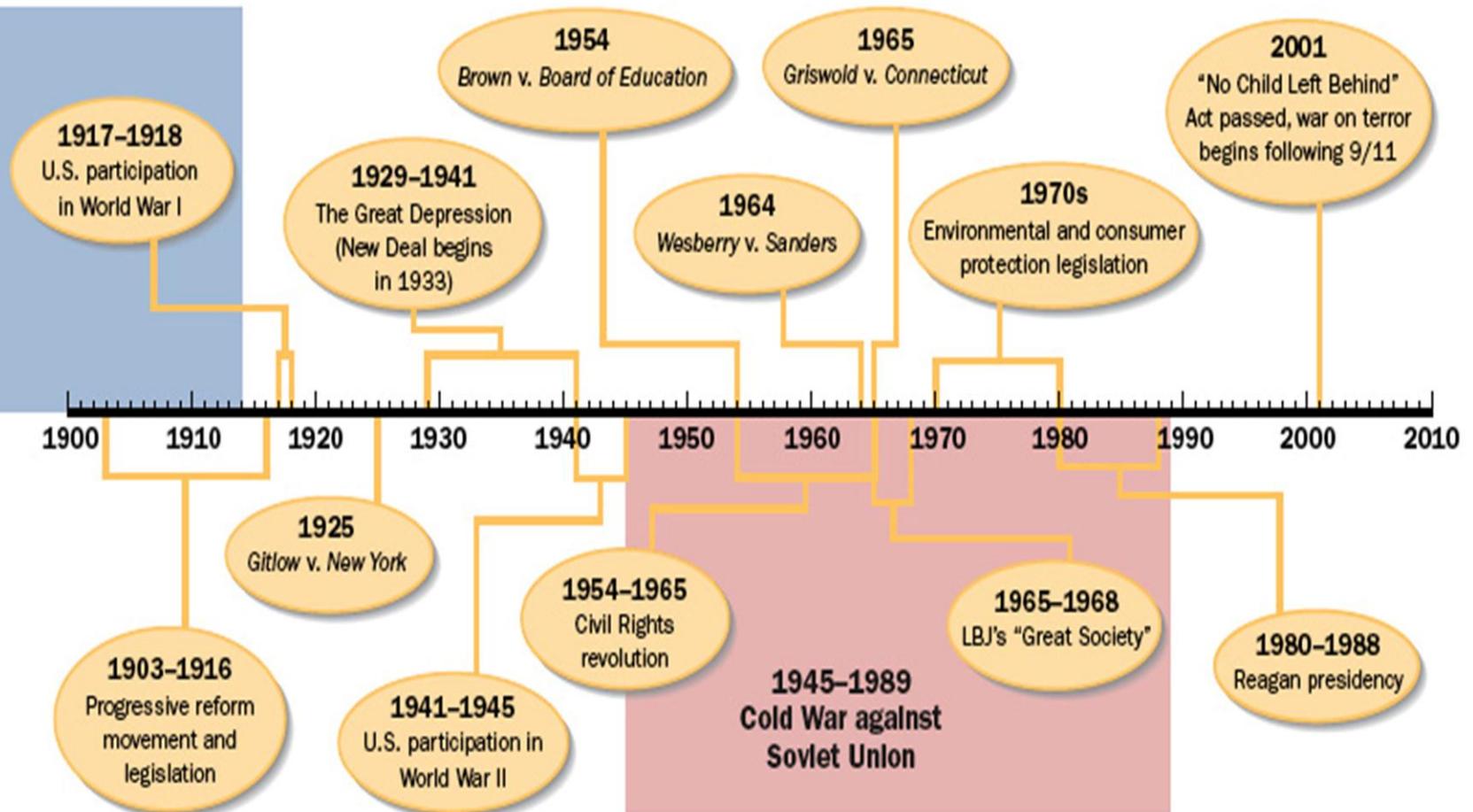
Federalism Before the Civil War

- nullification: doctrine that states can set aside, refuse to aid in or attempt to prevent enforcement of national laws
- pre-Civil War Supreme Court
 - *Fletcher v. Peck* (1810): landmark US Supreme Court decision ... earliest case of the Court asserting its right to invalidate state laws which are in conflict with or are otherwise contrary to the Constitution
 - *McCulloch v. Maryland* (1819): landmark US Supreme Court decision ... people are sovereign not states, broad interpretation of necessary and proper clause
- preemption: national law supersedes state law when national law is in conflict with a state law (based on the supremacy clause)

Timeline: Landmarks in the History of US Federalism



Timeline: Landmarks in the History of US Federalism



The Civil War and the Expansion of National Power



- Decisive victory established that Union was indissoluble.
- Civil War Amendments
 - 13th Amendment: abolished slavery and involuntary servitude
 - 14th Amendment: granted citizenship to all persons born or naturalized in the US, including former slaves
 - due process clause: government may not deprive citizens of life, liberty or property without due process of law
 - equal protection clause: no state shall deny to any person within its jurisdiction the equal protection of the law

The Civil War and the Expansion of National Power



- Civil War Amendments

15th Amendment: the right of citizens of the US to vote shall not be denied or abridged by the US or by any state on account of race, color or previous condition of servitude



Expanded National Activity Prior to WWI



Congress gave enormous new powers to the national courts to deal with justice at the state level.

National government enforced civil rights protections for African-Americans.

The Interstate Commerce Commission and Sherman Anti-Trust Acts strengthened national role in new areas.

The 16th Amendment authorized income tax and provided means of developing and expanding grant-in-aid system.

Expanded National Activity with the New Deal



National government assumed its greatest power during the Great Depression.

Problems created by the Great Depression in the 1930s were too great for states or private business to remedy.

Emergency relief measures enacted by Congress centralized the power of the national government in financial and social areas. Supreme Court ultimately upheld New Deal legislation.



Expanded National Activity during Post-WWII Period



Brown v. Board of Education of Topeka, Kansas (struck down separate but equal doctrine) and *Baker v. Carr* (example of judicial intervention into state political affairs, enforcing reapportionment by states) further expanded national power in states' affairs.

Great Society and Civil Rights Act of 1964 expanded national government's role in an effort to achieve socially desirable outcomes.

Several Supreme Court cases limited national power and revived states' rights (*Seminole Tribe of Florida v. Florida*, *United States v. Lopez*).

Federalism Cases Indicating Supreme Court's Devolution of Power Back to States



Case	Year	Vote	Issue/Question	Decision
<i>Webster v. Reproductive Health Services</i>	1989	5-4	Are several state abortion restrictions constitutional?	Yes. In upholding most of the restrictions, the Court invited the states to begin to enact new state restrictions.
<i>New York v. Smith</i>	1992	6-3	Does the Low-Level Waste Act, which requires states to dispose of radioactive waste within their borders, violate the Tenth Amendment?	Yes. The section of the act that requires the states to take legal ownership of waste is unconstitutional because it forces states into the service of the federal government.
<i>U.S. v. Lopez</i>	1995	5-4	Does Congress have the authority to regulate guns within 1,000 feet of a public school?	No. Only states have this authority; no connection to commerce found.
<i>Seminole Tribe v. Florida</i>	1996	5-4	Can Congress impose a duty on the states to negotiate with Indian tribes?	No. Federal courts have no jurisdiction over an Indian tribe's suit to force a state to comply with the Indian Gaming Regulations Act, thus upholding the state's sovereign immunity (immunity from a lawsuit).
<i>Boerne v. Flores</i>	1997	5-4	Is the federal Religious Freedom Restoration Act and its application of local zoning ordinances to a church constitutional?	No. Sections of the act are beyond the power of Congress to force on the states.
<i>Printz v. U.S.</i>	1997	5-4	Can Congress temporarily require local law enforcement officials to conduct background checks on handgun purchasers?	No. Congress lacks the authority to compel state officers to execute federal laws.
<i>Florida Prepaid v. College Savings Bank</i>	1999	5-4	Can Congress change patent laws to affect state sovereign immunity?	No. Congress lacks authority under the commerce clause and the patent clause to eliminate sovereign immunity.
<i>Alden v. Maine</i>	1999	5-4	Can Congress void state immunity from lawsuit in state courts?	No. Congress lacks the authority to eliminate a state's immunity in its own courts.
<i>U.S. v. Morrison</i>	2000	5-4	Does Congress have the authority to provide a federal remedy for victims of gender-motivated violence under the commerce clause of the Fourteenth Amendment?	No. Portions of Violence Against Women Act were found unconstitutional.

Resurgence of the States in the 1990s



- growing state share of public spending
- growing state share of public employees
- growing popularity of devolution: the transfer of power from national government to states
- role of the Rehnquist Court: revival of the principle that the Constitution limits national government power in order to protect federalism, limited Congress' ability to "commandeer" state governments to advance national policies



Resurgence of the States in the 1990s



- role of Clinton and the 104th Congress:
 - restricted national review of state criminal cases
 - welfare reform legislation provided vastly increased state authority
 - transformed national public housing program into a block grant
 - restricted Congress' ability to enact unfunded mandates (national requirements for state and local governments unaccompanied by the funding necessary to implement them)



Terrorism, Bush Presidency and Resurgence of the National Government

- The terrorist attacks of September 11, 2001 and the subsequent war on terrorism helped refocus public attention on the national government.
- This tendency was further exaggerated by the perceived need for homeland security.
- Under Bush, there was expansion of national role in non-security realms as well.



Changing American Federalism

- past: layer cake metaphor (dual federalism) views federalism with fixed divisions between layers or levels of government
- present: marble cake metaphor views federalism in which all levels of government are involved in a variety of issues and programs





National Grants-in-Aid to the States

- Grants-in-aid are national funds allocated to states and local governments.
- National grants-in-aid to state and local government have grown steadily since 1970, the only exception being during the first half of the 1980s during the Reagan presidency.
- Because state and localities are doing more on their own, thus increasing their spending, the proportion of national grants as a proportion of state and local budgets has increased only a little since 1970, even though there have been ups and downs over the years.



The Growth in National Grants to States and Localities

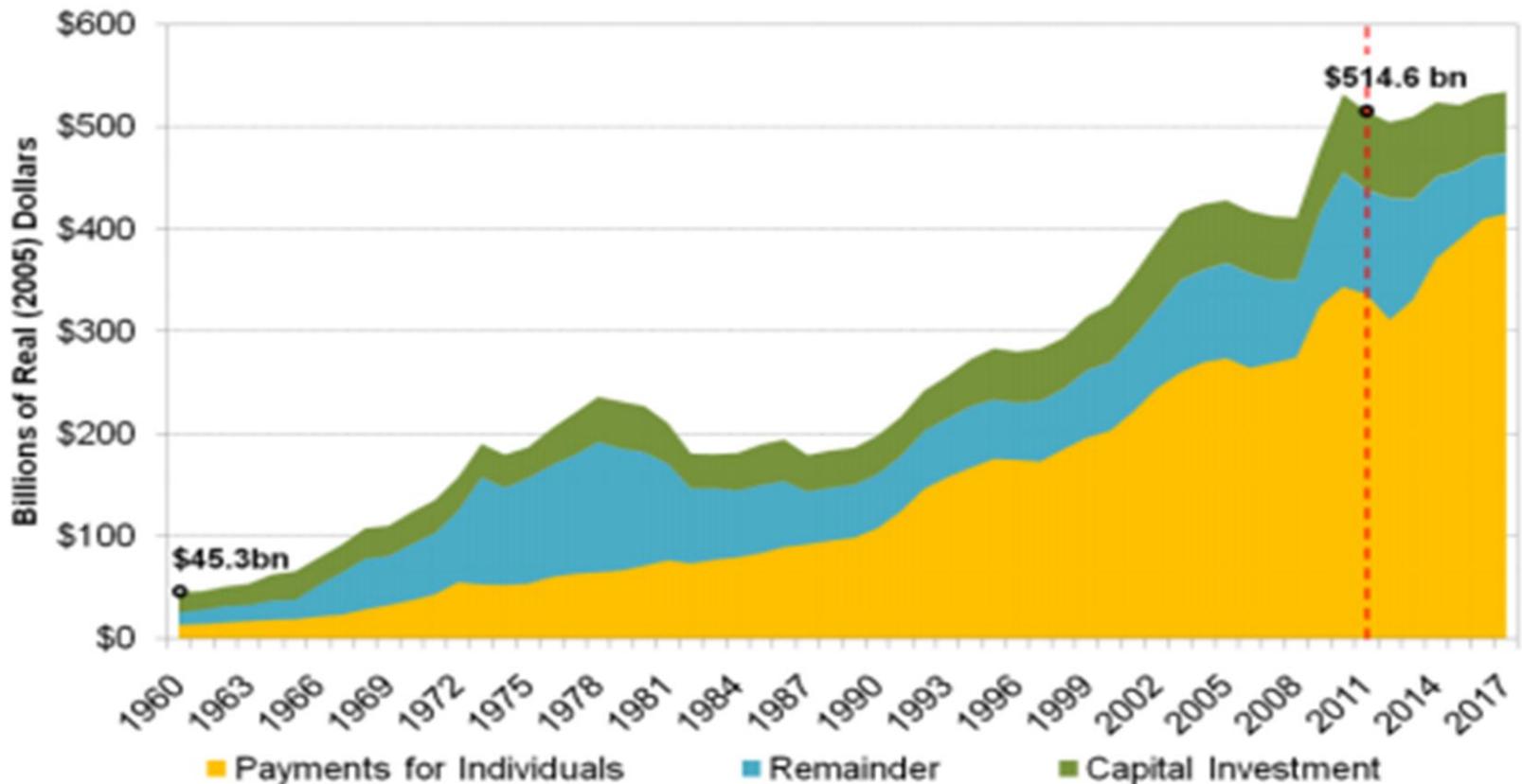


The national government spends over \$500 billion annually on grants-in-aid to state and local governments, making grants-in-aid the third largest item in the national budget after Social Security and national defense.

In recent decades, national aid to state and local governments has soared and their reliance on national aid for the financing of certain government functions has increased.

It is important to note that national grants-in-aid is a larger source of revenue for state and local governments than personal, sales and property taxes. Grants provided about 26% of current receipts in 2010, a portion that has steadily grown throughout a 40-year period. In the past decade, national grants-in-aid financed over 20% of state budgets on average.

The Growth in National Grants to States and Localities, 2006-2017

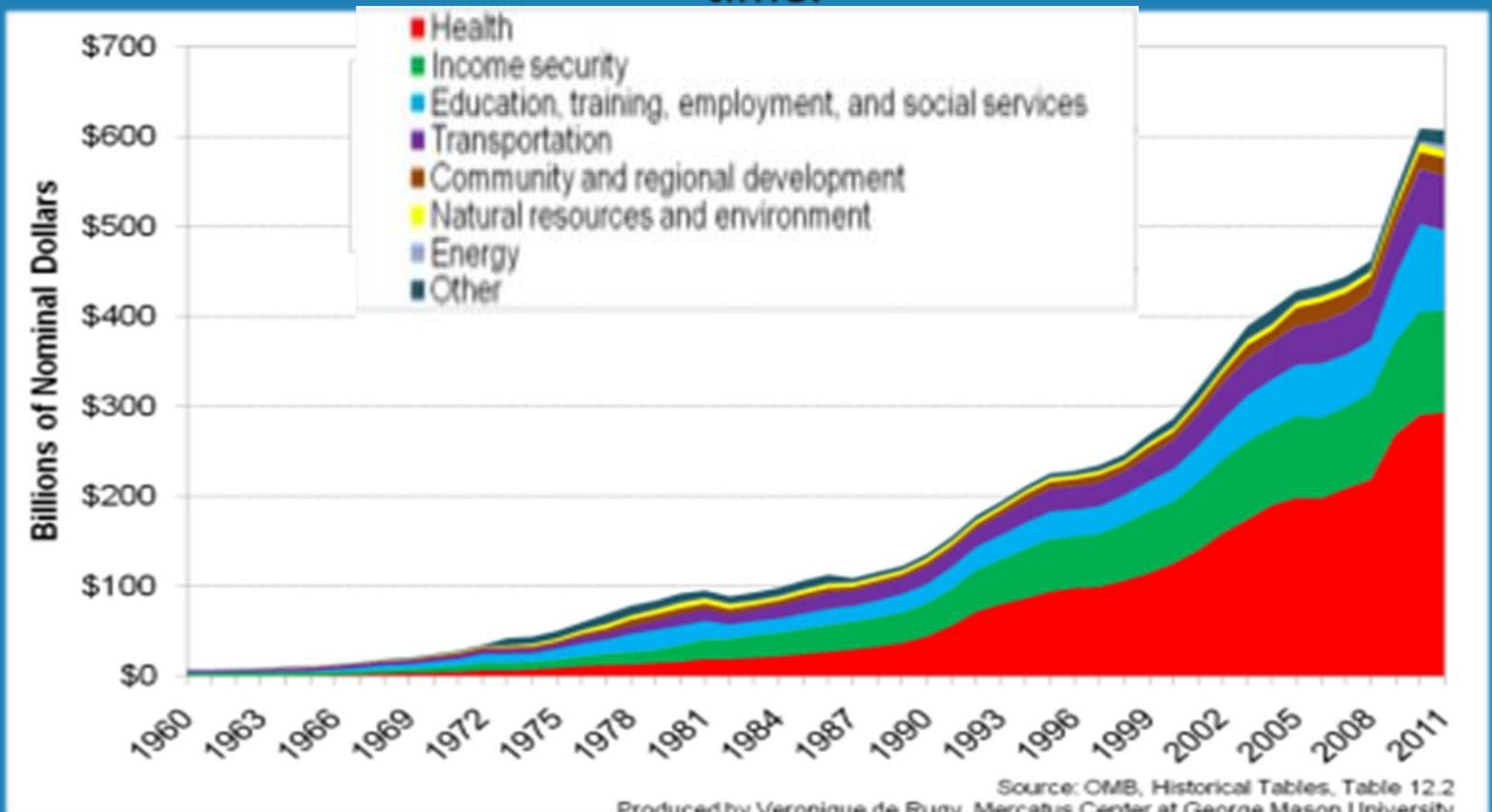


Source: OMB, Historical Tables, Table 12.1. Data estimates after 2011 are projected outlays
Produced by Veronique de Rugy, Mercatus Center at George Mason University

Categories of National Grant Funding to States and Localities, 1960-2011



This chart highlights the key categories of national grant funding to state and local governments and how this funding has shifted over time.





Categories of National Grant Funding to States and Localities

- The key categories of grants-in-aid to state and local governments include: health, income security, education, transportation, housing and community services. These functions combined constitute more than 90% of total grant outlays.
- During the Nixon Administration, major new grants were created for natural resources and environment, community and regional development, and other general government revenue sharing programs.
- Over time, however, health (mainly Medicaid with 91%) and income security programs have increased as a share of national grants more than any other program. Health grants grew from 24% of national funds in 1980 to 58% in 2010.



Types of Grants

- categorical grants: spent only for narrowly defined purposes, states never required to accept but acceptance requires adherence to rules and regulations, main source of national aid to state and localities, an example of process of cooperative federalism (national, state and local governments interact cooperatively and collectively to solve common problems)
- block grants: large sums of money granted by national government with only general provisions regarding how money is to be spent
- general revenue sharing: national government shares revenue with states or localities according to formulas by which revenue is divided, states and localities free from most controls, matching funds may be required

Debates About National Money and Control



- Most contemporary conflicts about federalism concern not just money but also control.
 - conditions on aid: require states to spend grant money in certain ways if they want to receive national funding
 - mandate: requires states to carry out certain policies, even when little or no national government aid is involved
 - preemption: national statutes prevail over state statutes



FEDERAL



STATE



LOCAL





US Federalism: Advantages

- pragmatic: (1) easier to govern large diverse country with local governments, power distributed in more manageable increments (2) local governments are closer to and more knowledgeable about the problems of their areas
- innovation/experimentation: states can experiment with innovative policies and can learn from the successes and failures of other states' experiments ... examples: California and environmental regulations, Wisconsin and welfare reform, Massachusetts and statewide health care system
- specialization: allows each state to focus more energy and resources on its own agenda ... easier to create laws tailored to specific locations or circumstances, diversity of responses to meet diversity of needs



US Federalism: Advantages

What Each State Has More Of Per Capita Than Any Other

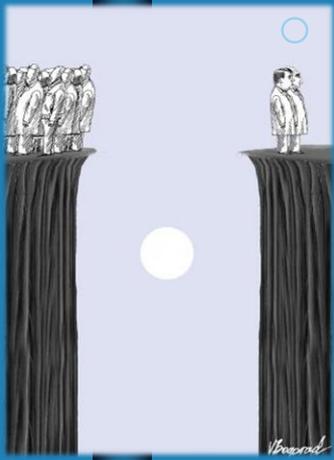


States can experiment!



US Federalism: Advantages

- big picture focus: with responsibilities dispersed to states and localities, national government can focus on larger issues that demand nation-wide solutions ... examples: foreign policy, terrorism, pandemics, macroeconomic issues, etc
- responsiveness: the closer a government is to its citizens, the more likely it is to respond to the needs of citizens ... 50 state governments can be more responsive to citizen needs
- participation: creates smaller democracies within a larger democracy, making people feel more involved ... gives people more access to leaders and more opportunities to participate ... easier for people to facilitate change if needed





US Federalism: Advantages

- conflict management/good fit: allows different communities and states to create their own policies so that people with strong views can live in situations with which they agree / are comfortable rather than being in constant conflict with hostile community
- decentralization of power: tyranny occurs more easily when all power is centralized in a single location ... with further separation of powers, all three branches of national government could be lost but states would still function independently ... fulfills framers' vision of a governmental structure that ensures liberty

**I don't think
we're a good
fit**





US Federalism: Disadvantages

- hinders creation of effective national policy: extremely difficult and time-consuming to create national policy on any issue ... even then often watered down /weak with different requirements, exceptions, etc from state to state
- (variation of above) hinders establishment of national standards: national standards important for social progress but extremely difficult, if not impossible, to establish across 50 states
- overlapping jurisdiction: overlapping jurisdiction can create confusion and breakdown in order ... Is marijuana legal? It's *not* legal in the US. It *is* legal in Colorado.
- balance of power: hard to find the right balance of power between state and national on certain issues ... examples: immigration, environment, natural disasters, policing, etc



US Federalism: Disadvantages



lack of accountability: each level can blame the other, duck responsibility for failed policies and never be held accountable

○ deadlock between levels of government: states can fight against national laws by challenging them in court, going out of their way to not enforce them or even deliberately obstructing enforcement ... if a hostile relationship develops between the national government and a number of states it could bring the federal system to a halt

- inequalities between states: education, health care, welfare, etc determined and funded by states ... may have equality of opportunity within a state (or may not) but no equality of opportunity from state-to-state without national standards, such inequalities tend to grow over time



US Federalism: Disadvantages

- spillover effects: extraterritorial effects that regulations of one state have on other states ... don't intentionally discriminate against neighbors or their citizens, don't favor insiders (citizens or businesses) and don't erect protectionist barriers at state lines but do create consequences for neighboring state ... examples: California's tighter emissions requirements raised car prices for buyers in all states, Colorado's recreational marijuana legalization increased drug trafficking across state lines, citizens from restrictive-gun-states cross state lines to buy guns in permissive-gun-states and tote them home



US Federalism: Disadvantages



race to the bottom: State A reduces public benefit amounts below those of neighboring State B, forcing those in need to relocate to State B and reducing State A's costs even further ... State B retaliates with same strategy perhaps involving State C as well ... each state benefits as welfare costs drop, those in need are abandoned

- cross-border conflict: individual states compete against each other for businesses, sports teams, reputation, etc ... competition can escalate ... may benefit individual state but does nothing for the betterment of the country as a whole.
- citizen ignorance and apathy: state and local election turnout is less than 25% and few have any idea what their state and localities do



What Sort of Federalism?

- Federalism is here to stay. Still, citizens can decide *what sort* of federalism we should have.
 - dual federalism (layer cake): separate but equally powerful branches and levels of government that can balance each other
 - cooperative federalism (marble cake): all levels of government working together cooperatively to achieve and solve common problems
 - creative federalism (picket fence): shifted more power toward the national government, bypassing state governments and allowing the national government to have direct control over statewide programs



What Sort of Federalism?

- new federalism: more power was returned to states in effort to even out balance between national and state governments
- Bush federalism: gave an extreme amount of power to national government to deal with changing world
- judicial federalism: ability of the Supreme Court and judicial review to influence the type of federalism through their ability to rule on constitutionality and where the power goes





What Sort of Federalism?

- fiscal federalism: money controls everything, giving Congress massive amounts of power
- progressive federalism: allows states to have greater control over issues normally reserved to national government and lets states experiment with different variations on the same government mandate (can inform national government which type of changes are most effective)
- Federalism remains an important aspect of American politics.



The End

