# Federalism

# 4

- → BLOCK GRANTS
- → CATEGORICAL GRANTS
- → COMMERCE CLAUSE
- → COMPETITIVE FEDERALISM
- → COOPERATIVE FEDERALISM
- → CREATIVE FEDERALISM
- → DEVOLUTION
- → DUAL FEDERALISM
- → FISCAL FEDERALISM
- → FUNDED MANDATES
- → LAYER CAKE FEDERALISM
- → MARBLE CAKE FEDERALISM
- → *MCCULLOCH V MARYLAND*
- → NEW FEDERALISM
- → UNFUNDED MANDATES

## CONTEMPORARY CONNECTION

In 2009, the Department of Education announced the "Race to the Top" grant program that states could apply for if they adopted specific testing and teacher evaluation procedures and what was called a "common core" curriculum. Even though a majority of states took part in the program, by 2015 some states decided to opt out of the grant program because they felt that the federal government was becoming too intrusive in what was supposed to be a state run function—education. This chapter looks at the relationship between the states and the federal government, known as federalism.

Federalism, the division of power between the federal government and state governments, has been a central and evolving feature of our system of government. Political scientists also refer to this relationship as one where the federal government is divided among various levels of local government. This chapter also explores the various levels of government, their individual powers, their shared powers, and the historical and constitutional bases of federalism. It will also look at fiscal federalism, the manner in which the federal government offers federal assistance through different kinds of grants to state and local governments.

Advocates of a strong federal system believe that state and local governments do not have the sophistication to deal with the major problems facing the country. They feel that local politicians are provincial in their point of view and would advocate sectional issues that do not take into account the interests of an entire nation. People favoring a strong federal system also point to the inability of state and local governments to support the vast programs without an extensive tax base. They also feel that an elitist group would gain control and ignore the needs of the minority.

Critics of a strong federal system point to the fact that local leaders are most sensitive to the needs of their constituents. They also feel that states have a better ability to develop public policy

that can be supported by a broad tax base. And critics point to the many demands made upon local governments by the federal government in order for the states to receive financial aid from the federal government.

Through this debate you can see how important the relationship among levels of government is. It can affect the kind of political participation that exists. It can determine the kind of public policy that is developed and implemented. Such issues as a national drinking age, a national speed limit, and consistent emission standards in every state have emerged in the debate over which level of government is best suited to solve the problems facing the country. Additionally, after the Republicans won back control of Congress in 1994, the issue of devolution of federal power, returning the balance of federal-state responsibilities back to the states, emerged in the name of unfunded mandates, those regulations passed by Congress or issued by regulatory agencies to the states without federal funds to support them.

## LOCAL GOVERNMENTS

**Federalism organizes a country's government, taking into account the needs of local levels of government.**

Compared to other means of dividing power, federalism establishes a unique working relationship with the other levels of government and its people. Neither component can abolish or alter the other single-handedly. On the other hand, a unitary system of government centralizes all the power, and a confederation decentralizes all the power. Most parliamentary governments like Great Britain and France are unitary. Power can be taken away from the local unit by the central authority. The former Soviet Union, after its breakup, formed the Russian Confederation. The United States had a confederation, under the Articles of Confederation, that failed after a few short years in existence. The loosest confederation that exists on the international scene is the United Nations.

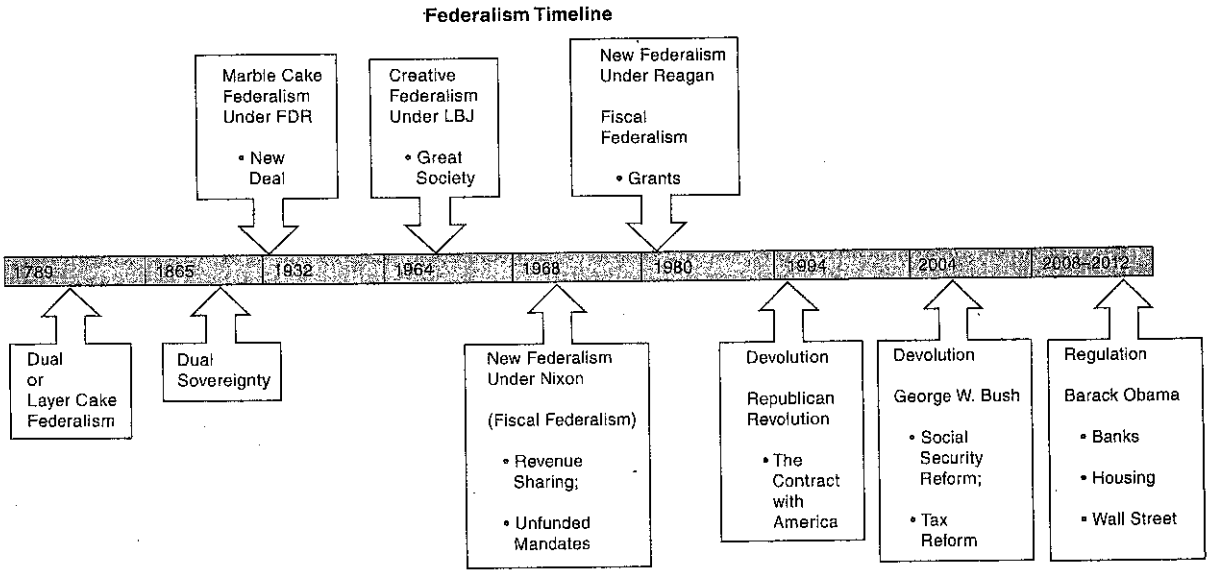
The advantage of the federal system over a unitary system and confederations is that there is a distinctive line drawn between what is in the purview of the central government versus what local governments are concerned with. The central government is concerned with broader issues affecting the entire country such as foreign policy, interstate matters, and immigration. Local governments are concerned with matters that have a direct impact on the daily lives of their citizens such as motor vehicle laws, garbage, education, and public health and welfare. Shared interests involve methods of raising revenues and the creation of a criminal justice system as well as common spending programs. Public policy is developed by both state and federal legislation. Yet, at times, the distinction between which policies are federal and which should be developed by the states becomes cloudy.

### Schools

Between the operations of the federal government and local governments, our lives are deeply affected by a federal form of government. The sheer number of governments that exist nationwide illustrate the complexity of the federal system. If you are concerned with the education of your child, you must be aware of the local requirements set up by your town's school board, and you have to support the school district through some kind of tax system. The state government may set up minimum graduation requirements and laws affecting the certification of teachers. The national government may offer states and local districts aid if the districts meet national standards.

In 2001 Congress passed the "No Child Left Behind Act." According to the Department of Education, "The NCLB Act incorporates increased accountability for states, school districts, and schools; greater choice for parents and students, particularly those attending low-performing schools; more flexibility for states and local educational agencies in the use of federal education dollars; and a stronger emphasis on reading, especially for our youngest children." Specifically,

the provisions of the No Child Left Behind legislation direct the U.S. Department of Education to "hold schools accountable for academic achievement by setting academic standards in each content area for what students should know and be able to do; gather specific, objective data through tests aligned with those standards; use test data to identify strengths and weaknesses in the system; report school condition and progress to parents and communities; empower parents to take action based on school information; celebrate schools that make real progress; and direct changes in schools that need help." In 2009, the Department of Education implemented as part of the American Recovery Act the "race to the top" program that encouraged states through grants to satisfy certain educational policies such as performance-based standards for teachers and principals, complying with nationwide standards, promoting charter schools and privatization of education, and computerization. Part of the standards included a "Common Core" curriculum. By 2015, states began to opt out of the grant program because of the Common Core demands.




## HISTORY OF FEDERALISM

**The historical foundation of federalism was established through the writings in the Federalist Papers and early Supreme Court decisions.**

Even before the Constitution was ratified, strong arguments were made by Alexander Hamilton, John Jay, and James Madison in the Federalist Papers urging the inclusion of a federal form of government to replace the failed confederation. In Federalist No. 9 Hamilton states, "This form of government is a convention by which several smaller states agree to become members of a larger one, which they intend to form. It is a kind of assemblage of societies that constitutes a new one, capable of increasing, by means of new associations, until they arrive to such a degree of power as to be able to provide for the security of the united body." Those who feared that the federal government would become too strong were assured by Madison in Federalist No. 14 that "in the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. . . . The subordinate governments, which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity." These excerpts illustrate the fact that a federal form of government was central to the success of the new Constitution.

## Court Cases

After the Constitution was ratified and the new federal form of government was formed, the new government established lines of authority defining its power structure. By 1819 the first real challenge to the authority of the United States by individual states took place in the case of *McCulloch v Maryland*. The issue revolved around the right of Maryland to tax paper currency needed by a branch of the U.S. National Bank located in that state. The bank was established by Congress using the elastic clause of the Constitution. In one of a series of landmark decisions, the Supreme Court, under the leadership of John Marshall, ruled unanimously that the "power to tax involves the power to destroy." It reasoned that because the United States had the right to coin and regulate money it also had the right to set up a National Bank to do this under the "necessary and proper" clause. After the bank was created, the laws protecting it were supreme; therefore, Maryland could not tax the federal institution.

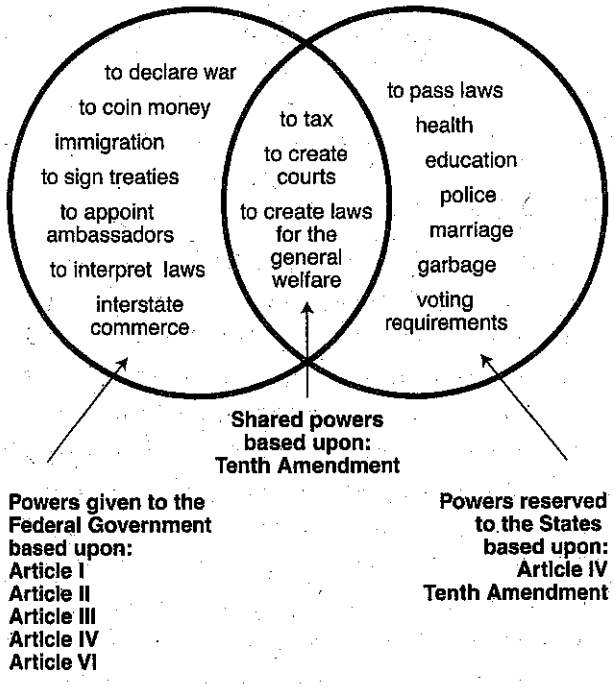
## DUAL FEDERALISM

**The traditional theory of dual federalism evolved from a constitutional basis.**

As was established in Chapter 3, the Constitution provides for the rules of the federal system by giving delegated powers to the federal government and reserved powers to the states. This dual federalism became the first type of relationship for the United States. If you picture two intersecting circles, you will be able to get a clear picture of what dual federalism represents.

Dual federalism existed historically to 1930. From the outset, when Congress made the determination to admit new states, it offered them a partnership. From the Louisiana Purchase to the pursuit of Manifest Destiny, as our country's borders expanded to the West Coast, every state admitted knew the conditions. However, one key event brought up the issue of what kind of federal government we would have—the Civil War was fought to preserve our federal system of government. Its background was sectionalism, a battle over states' rights, especially dealing with the issues of slavery and tariffs.

**DUAL FEDERALISM: THE CIRCLE THEORY**



## LAYER CAKE FEDERALISM

An extension of dual federalism developed after the Civil War. It became known, according to political scientist Morton Grodzins, as layer cake federalism. It was a federalism characterized by a national government exercising its power independently from state governments. Following a more traditional approach, layer cake federalism was constitutionally based, and each level of government tried to exercise its own control over its own sphere of influence.

## MARBLE CAKE FEDERALISM

If the federal government's relationship with the state governments could be described as a layer cake in the nineteenth and early twentieth centuries, then with the onset of the New Deal, federalism could be classified as a marble cake. Think of the two circles pictured above with bits and pieces of marble. The federal government becomes more intrusive in what had been typically the domain of state governments.

**While it may sound contradictory, a cooperative federalism developed during the New Deal and lasted until the Great Society, resulting in greater growth of the federal government. Political scientists compare it to a marble cake.**

During the New Deal, President Roosevelt needed drastic action to solve the problems brought on by the Great Depression. Establishing federal relief and recovery programs such as the Agricultural Adjustment Act (AAA) and the National Recovery Act (NRA), and reforming such localized institutions as banks with the Federal Deposit Insurance Corporation (FDIC) resulted in a much greater involvement on the local level by the federal government. Public work programs such as the Civilian Conservation Corps further brought the federal government into cities. Public policy became more of a sharing between the federal and state levels of government. The national government would provide the money; state governments would administer the programs. There were critics of these efforts. New Deal programs such as the AAA were declared unconstitutional by the Supreme Court.

## CREATIVE FEDERALISM

The Great Society of Lyndon Johnson provided an even greater reliance on federal programs. Such actions as Medicare, Medicaid, the War on Poverty, and increased civil rights legislation forced the states to rely more heavily on federally funded programs. It also created an era of further cooperation among the many levels of government. The following components describe this creative approach to federalism:

**Creative federalism during the Great Society increased the marble cake approach of intergovernmental relations.**

- sharing the costs between the national and state governments for programs that typically would fall under the purview of state control,
- guidelines and rules set down by the federal government in order for the states to reap the benefits of federally funded programs,
- providing for the dual administration of programs such as Medicaid, which has a shared approach financially as well as administratively.

## COMPETITIVE FEDERALISM

When Richard Nixon proposed a series of measures aimed at decentralizing many of the Great Society programs of Lyndon Johnson, he dubbed his program "the new federalism." This theme was later picked up by Ronald Reagan in 1980 and became the hallmark of his administration.

**Competitive federalism under Nixon in the 1970s and Reagan and Bush in the 1980s reversed the marble cake nature, creating a "new federalism," where the states were given more responsibility.**

The aim of competitive federalism was to offer states pieces of the marble cake but to have them accept it with conditions and with a promise to develop

programs on their own. Federal orders in the Equal Opportunity Act of 1982 mandated compliance by the states under the threat of criminal or civil penalty. A second example was the placement of restrictions on other federal programs if a state did not meet the criteria of a specific program. Over 60 federal programs ranging from civil rights to the environment have this requirement. A third example is crossover requirements. If a state is going to receive federal money, it must agree to do something in return. For instance, under the Emergency Highway Energy Conservation Act of 1974, states had to agree to limit highway speed limits to 55 mph if they wanted to receive funding for highway repair. Additionally, under this competitive new federalism, states were forced to create their own standards of compliance based on federal legislation. The Clean Air Act of 1970 set national standards for air quality but directed the states to implement the law and enforce it.

## FISCAL FEDERALISM

Fiscal federalism, through different grant programs, slices up the marble cake into many different pieces, making it even more difficult to differentiate the functions of the levels of government.

The development of federalism since the New Deal has been fiscal in nature—that is how much funding is appropriated by the federal government to the states, under what conditions, and what the states can do with these funds.

Fiscal federalism can be classified in three major program areas: categorical grants including project and formula grants, block grants, and revenue sharing. They are usually aimed at assisting the states in areas of health, income security, education, employment, and transportation. A categorical grant is defined as federal aid that meets the criteria of a specific category and has specific criteria attached to them. These criteria can range from nondiscriminatory practice to minimum wages.

### Grants

The two types of categorical grants that are given are project grants, which are based on competitive applications by states and individuals, and formula grants, which are based on specific formulas developed by Congress. These grants have an impact on such areas as families with dependent children and nutrition programs. Block grants are a form of federal aid with far fewer strings attached. They go to local communities for specific purposes, and the states decide where and how to spend the money. Along with revenue sharing, which gives money directly to the states with no strings attached, these two forms of fiscal federalism were vastly reduced under Ronald Reagan and George H. W. Bush.

An example of the block grant concept implemented during the Clinton administration was welfare reform. After vetoing the Republican-sponsored welfare reform proposal, President Clinton ultimately signed into law a far-reaching welfare reform bill in 1996. This law transferred the responsibility of welfare to the states. The federal government eliminated the entitlement and gave block grants to the states. The states then developed their own programs to move people from welfare to work within a five-year period.

In answering the questions regarding the use of federal grants, you should have a broad understanding of the overall purposes of the grant and mandate programs. The overall objective is to provide the states and localities with money they normally would not get. This would have the effect of reducing the fiscal burden on the states. In return, the federal government is able to achieve national goals they set in specific areas like education or helping minorities. The federal government through these kinds of grants can direct where this money goes and earmark it to those states with a poorer population. The money could also be used by a target audience with experts controlling the allocation of money received. The end result would be the development of many programs by state and local agencies without creating massive government bureaucracy.

## DEVOLUTION

**Since 1944 federalism has been moving toward devolution, the return of power to the states.**

After the election of 1992, deficit reduction became a primary goal of President Clinton. After his budget proposal was approved by Congress, it became apparent that fiscal federalism and grant programs would be greatly affected by cutbacks in the federal budget. Even so, the trend seemed to support grants based on specific federal requirements. The move toward national educational standards was supported by a number of federal grants to school districts willing to accept the concept.

The Rhenquist Court has reflected the changing nature of federalism. It has affirmed the ability of the federal government to pass along programs to the states, yet it has also made it clear that, in areas such as abortion and carrying out the death penalty, states can and should act on their own. In one of the most interesting decisions the Court made, *United States v Lopez* in 1995, the Court, in a 5–4 decision, ruled that the Federal Gun Control Act prohibiting the possession of a gun within 1,000 feet of a school was unconstitutional based on a misuse of federal authority. The Court has also limited the power of the federal government to enforce provisions of the Americans with Disabilities Act during the last decade.

After the election of 1994, the Republican Contract with America clearly signaled a return to a more traditional approach now called "devolution." This trend continued as the Republicans maintained their majority in both houses in the 1996 election. Such measures as welfare reform, a balanced budget amendment to the Constitution, and regulatory reform were introduced with the explicit purpose of downsizing government and returning power to the states. Congress passed an Unfunded Mandates Law that placed major restrictions on Congress and the executive branch regarding passing legislation and regulations that had a price tag for the states. In fact states challenged the Motor Voter Act of 1993 as an unfunded mandate placing an unfair fiscal burden on the states. California refused to appropriate the funds necessary to implement it, and the Justice Department brought the state to court. The courts, however, ruled that California must abide by the provisions of the law. Other parts of the contract were passed by one or both of the houses but not signed into law by the president. But the message of the election was clear—federalism was again undergoing a major transformation that will last well into the twenty-first century, and with the election of George W. Bush in 2000, the trend of devolution was high on their agenda.

As it turned out, George W. Bush had a mixed record. Even though he was a proponent of devolution, the federal government grew during his two terms. A Medicare Prescription Drug Act was passed and the federal budget increased every year, resulting in record deficits and one of the worst recessions in the nation's history. After Barack Obama was elected president, many of his proposals to end the recession came into conflict with devolution. Obama favored massive government spending and a return to increased regulation of the banking and housing industries.

After the 2010 midterm elections, the new Republican House majority and the supporters of the Tea Party urged President Obama to reduce federal government spending and the role that the federal government plays in imposing regulations on the states. A new era of increased devolution would be a consequence of these policies. Yet, Congress still passed a bill that President Obama signed that was called The Dodd-Frank Wall Street Reform and Consumer Protection Act. Republicans promised to weaken these measures after their midterm victories in 2010 and 2014.

With the election of Donald Trump in 2016, a move back to devolution became a priority of the President and the Republican majority in Congress. Environmental regulations were rolled back and Dodd-Frank reforms were weakened.