

Federalism and the Separation of Powers

- Sharing Power, Preventing Tyranny

Types of Powers

■ Concurrent

- Shared by the State/National Government
- Tax, Charter banks/businesses, etc.

■ National Government:

- Expressed (Enumerated)
- Implied (granted through the necessary and proper clause)

■ State Government:

- Reserved (Tenth Amendment)
 - Coercion (the power to develop and enforce criminal codes, administer health and safety rules, and regulate the family)
 - The authority to regulate these fundamental matters is referred to as the **police power**



America's Social Contract

- The contract we call the American Constitution is this: *the people will give their consent to a strong national government if that government would in turn accept certain strict limitations on its powers.* We call this exchange of power for limits *constitutionalism*
- The Constitution contains three fundamental limitations
 - Federalism
 - Separation of Powers
 - Individual Rights

Limitations Defined

- **Federalism** divides government into two levels – national and state – each with sufficient independence (or *sovereignty*), thereby restraining the power of both
- **Separation of Powers** sought to limit the power of the national government by dividing government against itself
- **Individual Rights**, as embodied by the Bill of Rights, sought to limit government by defining the **people** as separate from it, and granting each individual an identity

Federalism

- The Constitution created two layers of government; national and state governments. This is called *dual federalism*.
- This is also called the “traditional system” because it prevailed for $\frac{3}{4}$ of our history, and most closely resembles the desires of the founding fathers.
- As the chart in the next slide demonstrates, this system invoked a weak national government and strong state responsibility for policies.

The Federal System: Specialization of Governmental Functions in the Traditional System (1789 – 1937)

National Government Policies	State Government Policies	Local Government Policies
<ul style="list-style-type: none"> Internal improvements Subsidies Tariffs Public lands disposal Patents Currency 	<ul style="list-style-type: none"> Property laws Estate laws Commerce laws Banking and credit laws Corporate laws Insurance laws Family laws Morality laws Public health laws Education laws General criminal laws Eminent domain laws Construction codes Land-use laws Electoral laws Local government laws Occupations and professions laws 	<ul style="list-style-type: none"> Adaptation of state laws Public works Basic public services

Nullification Crisis

- Southern states attempted to settle the ongoing power struggle through the doctrine of nullification
- Jefferson and Madison authored the *Virginia and Kentucky resolutions*, which suggested that states have the right to declare null and void a federal law that a state considered unconstitutional

The Commerce Clause and Expanding National Power

- In the 19th Century, the Supreme Court expands the power of the federal government through consistently expansive interpretations of the Commerce Clause.
- McCulloch v. Maryland
 - Chief Justice Marshall explains doctrine of “implied powers”
 - Allows Congress to use “necessary and proper” clause to interpret its delegated powers
 - Marshall concluded that whenever a state law conflicted with a federal law, the state law would be deemed invalid (interpretation of the Supremacy Clause)

■ Gibbons v. Ogden (1824)

- Marshall interprets the commerce clause to include all “species of commercial intercourse”
- Establishes national supremacy in all matters concerning interstate commerce

■ Despite expansive interpretation, national government does not readily expand its influence

■ In fact, in areas of governmental regulation late in the 19th Century, this interpretation serves as a cause of restraint, as most goods and commerce is not yet “interstate”

Arguments For/Against Federalism

Federalism is good because...	Federalism is bad because...
sustains American commitment & tradition of local self-government	State governments can block important national actions, prevent progress, and upset national plans
Congress consists of people who are beholden to local constituencies	It has historically allowed perpetuation of slavery, segregation, and racism
Creates a beneficial separation of power between national and state governments	
Ensures political flexibility and protects individual rights	
It facilitates political participation and activity (small constituency increases citizen involvement)	

Federalism, an Evolving System

- While the Constitution outlines a broad framework for the division of authority between the national government and the states, much adaptation and innovation has taken place
- Politicians are **goal-oriented**, and are constantly exploring the possibilities provided them by changing institutional positions. Federalism has adapted to fit the needs of specific political players
- Since the time of the Founding, Federalism has been shaped strongly by the Supreme Court

State Obligations to One Another

■ “Comity” Clause

- Ensures that citizens of one state be granted the same “privileges and immunities” in all states
- Also regulates criminal justice (extradition)

■ “Full Faith and Credit” Clause

- Requires states to honor the “Public Acts, records, and judicial proceedings” of other states
- Supreme Court has allowed exceptions for “public policy” reasons (if states have strong objections to the law, they do not have to honor it)
 - Hawaii/Vermont gay marriage initiatives

■ Both designed to promote national unity



Local Government and the Constitution

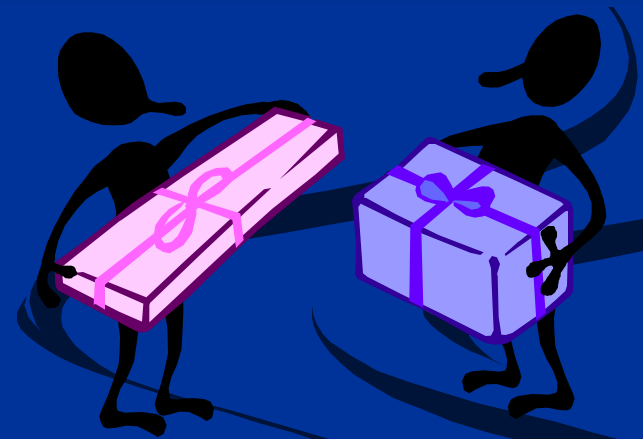
- The status of local government is probably unique in world experience in that local government has no status in the Constitution.
- *State* legislatures created local governments, to permit them to take on some of the responsibilities of *state* government
- Most states have amended their constitutions to give their larger cities *home rule* – a guarantee of noninterference in local affairs.

Cooperative Federalism

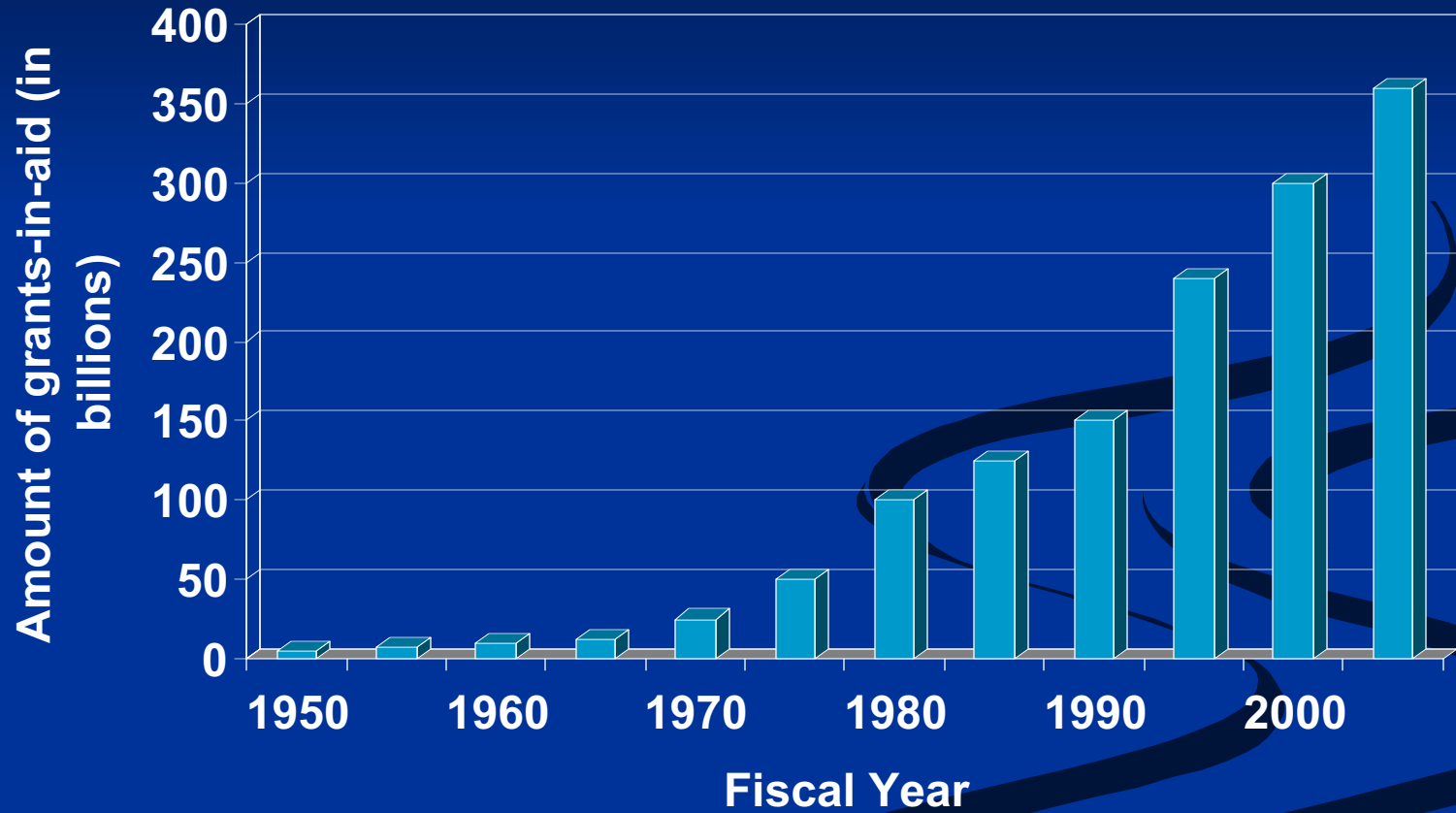
- Refers to supportive relations between the state and national government, which defines the U.S. system since the 1930s, also called “marble cake federalism” (as opposed to “layer cake”)
- This comes in the form of federal subsidization of special state and local activities called *grants-in-aid*
- Grants-in-aid are an important part of federal influence, as it presents a “carrot” whereby Congress appropriates money for state and local governments with the condition that the money be spent for a specific purpose.
- Congress relies upon grants-in-aid because it lacks the Constitutional or political power to make the states do their bidding.
- Grants-In-Aid started with farmers, as a means of avoiding the Constitutional question of interstate commerce while still achieving the goal of agricultural improvement (a national goal)

Historical Trend of Grants-In-Aid

- GIA expands to the cities in the 1930s, as Congress looks to assist the unemployed, provide public housing.
- Following WWII, Congress provides grants for urban development and school lunches.



Historical Trend of Federal Grants-In-Aid



Types of Grants-in-Aid

■ Categorical Grants

- Funds given to the states and localities, earmarked by law for specific categories such as education or crime prevention

■ Project Grants

- Program in which state/local governments submit proposals to federal agencies and for which funding is provided on a competitive basis

■ Formula Grants

- Grants in which a formula is used to determine the amount of federal funds a state or local government will receive

Regulated Federalism

- Starting in the 1960s, cooperative federalism gave way to “regulated federalism”
- The national government regulates states by threatening to withhold grant money unless states conform to national standards
 - Used to help achieve civil rights, combat poverty, and protect the environment
- Regulated federalism reflects a general shift in federal regulation away from strictly economic activities towards more “social regulation”

“Setting National Standards”

- Asbestos Hazard Emergency Act of 1986
 - Required school districts to inspect for asbestos hazards
- Americans with Disabilities Act of 1990
 - Requires all state and local governments to promote access for the handicapped to all government buildings
- Net effect of these standards is that state and local policies are more uniform from coast to coast

Mandates

- Requirements placed on states by the federal government are referred to as **mandates**
- *Unfunded Mandates* refer to federal programs imposed on the states without *any funding at all* from the national government (no grants-in-aid)



Unfunded Mandates: The Response

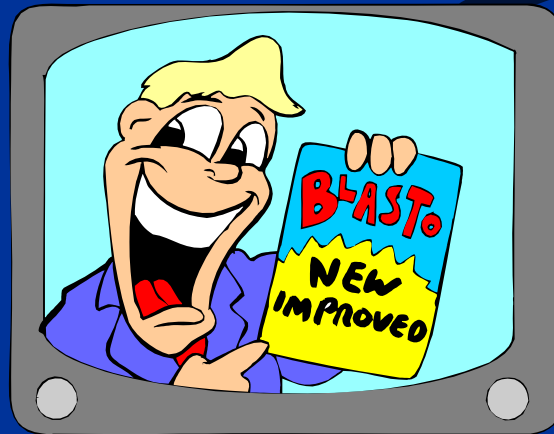
- Anger over federal unfunded mandates helped lead to the “Contract with America” revolution of 1994 that gave Republicans control of the House.
- In one of its first acts, Congress passed the “Unfunded Mandates Reform Act (UMRA)”
 - Any mandate with uncompensated state and local cost of more than \$50 million could be stopped by a point of order on the House floor (stop, look, listen)
 - During 1996 (its first year of operation) only 11 of 69 unfunded mandates met the \$50 million requirement
 - Supporters argue that the true impact of UMRA was to deter large unfunded mandates from being proposed

New Federalism and the Nation- State Tug-Of-War



New Federalism

- Today, the nation-state relationship is best described as a tug-of-war between those seeking more uniform national standards and those seeking more room for variability within the states
- Presidents Nixon and Reagan reversed the trend toward national standards and return to “traditional” policy making *‘new federalism’*



Block Grants & Revenue Sharing

■ Block Grants

- Grants that give state and local governments more freedom and discretion in deciding how to spend the money

■ Revenue Sharing

- During times of budget surplus, the federal government may give grants to states without any “strings” attached

Devolution

- Both of these attempts are examples of *devolution*, a policy intended to remove a program from one level of government by deregulating it or passing it down to a lower level of government.
- President Clinton continued the devolution trend, replacing the Aid to Families with Dependent Children (AFDC) with block grants to states through Temporary Assistance to Needy Families (TANF)
- President Bush leans more towards *regulated federalism*, with programs such as No Child Left Behind, which gives states “full freedom” to use the federal money, but provides stiff punishments for failure to meet standards

Devolution cont.

- U.S. v Lopez (1995)
 - Court held that Congress had exceeded its commerce clause power by prohibiting guns in schools
- Two of the federal government's biggest grant programs have become block grants (Medicaid and welfare)

Review

- Federalism is the sharing of power between local and national governments
- Federalism (and the Separation of Powers) succeed by limiting jurisdiction and by pitting political agents against one another as competitors
- Defining the relationship between the national government and state governments has been – and continues to be – a major issue in the nation's history
- The cornerstone of federal and state government relations today is the system of grants-in-aid, or funds distributed by Congress to state and local governments
- The federal government tells a state government what its activities and policies must be in the form of mandates and conditions of aid