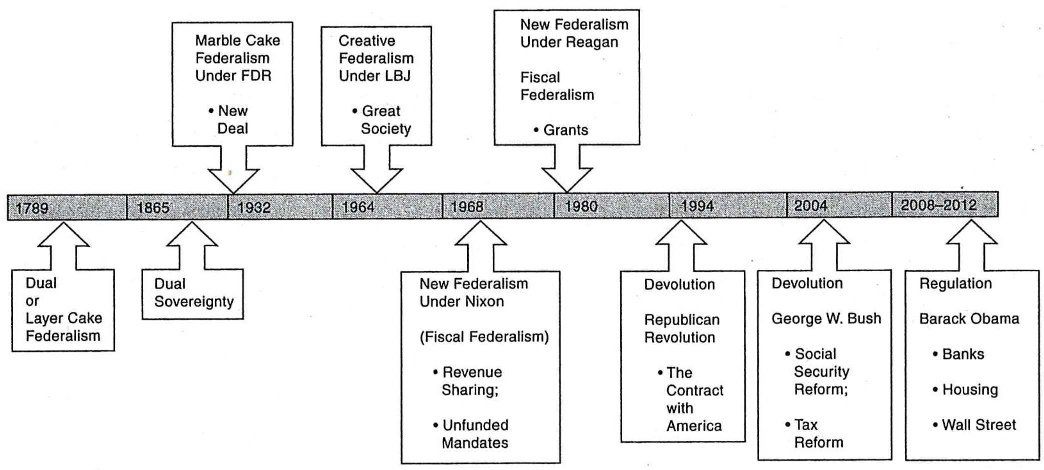
Court Cases

After the Constitution was ratified and the federal 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 had been 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.

Federalism Timeline



Dual Federalism

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, which 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.

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 powers 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

With the onset of the New Deal, federalism could be classified as a marble cake. Think of the two circles pictured here with bits and pieces of marble. The federal government becomes more intrusive in what had been typically the domain of state governments.

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)—these acts resulted in the federal government's much greater involvement on the local level. Public-works programs such as the Civilian Conservation Corps brought the federal government further into cities. Public policy became more of a sharing between the federal and state levels of government. The national government provided the money, and state governments administered the programs. There were critics of these efforts. New Deal programs such as the AAA were declared unconstitutional by the Supreme Court.

Fiscal Federalism (also known as Creative and Competitive Federalism)

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.

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.

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 sixty federal programs ranging from civil rights to the environment have this requirement. Crossover requirements constitute a third example. If a state is 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.

After his election in 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.

Fiscal Federalism Leads to Grants

GRANTS

Contemporary fiscal federalism can be classified in three major program areas: categorical grants (that include 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 practices to minimum wages.

The two types of categorical grants 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 funding they normally would not get. This would have the effect of reducing the fiscal burden on the states. In return, the federal government was able to achieve national goals set in specific areas such as education or helping minorities. Through these kinds of grants the federal government can direct where this money goes and earmark it to those states with poorer populations. The money could also be used by a target audience with experts controlling the allocation of monies received. The end result would be the development of many programs by state and local agencies without creating massive government bureaucracy.

Devolution

After the midterm election of 1994, the Republican "Contract with America" signaled the party's intention to return to a more traditional approach now called "devolution." This trend had the explicit purpose of downsizing government and returning power to the states. It 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. 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, one 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 the Republican 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—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.

The Tenth and Fourteenth Amendments and Federalism

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property/without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Tenth Amendment extends to the states the right to create laws for the best interests of their people. It is the basis of federalism, and when this amendment comes into conflict with the Bill of Rights and the Fourteenth Amendment, the outcome of the dispute further defines the changing nature of federalism. The more the Supreme Court nationalized the Bill of Rights through the application of the Fourteenth Amendment, the more judicial federalism made the Bill of Rights apply directly to the states.

Among the questions raised by these amendments:

- Does an individual have the right to die?
- How do the courts resolve the conflict between state and federal laws and issues raised by the Bill of Rights?

Required Court Cases

***McCulloch v Maryland* (1819)**

Essential Fact: Maryland imposed a state tax on the United States National Bank located in that state.

Constitutional Issue: Whether the necessary and proper clause enabled the United States to create a national bank and whether Maryland had the right to tax it.

Unanimous Decision: The Supreme Court ruled that a state did not have the right to tax a federal institution, finding that "the power to tax is the power to destroy."

***United States v Lopez* (1995)**

Essential Fact: The United States Congress passed the Gun-Free School Zone Safety Act, which made the possession of a gun within a thousand yards of a school a federal crime.

Constitutional Issue: Did Congress overstep its Commerce Authority in Article 1 Section 8 of the Constitution?

Majority Decision: In a 5-4 decision, the court held that enforcement of such an act comes under the authority of the states.

Minority Opinion: The minority believed the necessary and proper clause gave Congress the right to pass the law because educational benefits impact the entire nation.

Related Court Cases

***Printz, Sheriff/Coroner, Ravalli County, Montana v United States* (1997)**

Challenging the provision of the Brady Law that mandated local officials to perform background checks on those purchasing handguns, the Supreme Court ruled that specific part of the law was unconstitutional.

The discussion involving the relationship of the Bill of Rights to the state's right to develop its own laws and procedures goes to the heart of what the future of federalism will be.

***National Federation of Independent Business v Sebelius* (2012)**

The Supreme Court ruled that the Affordable Care Act (also known as "Obamacare") was constitutional. In a split decision, the court ruled that even though the Congress violated the Tenth Amendment's interstate commerce clause by imposing a penalty on those individuals who did not pay for health insurance, Congress under its power to tax did have the authority to collect a fee if health insurance was not purchased.

Optional Reading

Opening the Third Century of American Federalism: Issues and Prospects, by Daniel Elizar (1990)
Key Quote:

> "Nevertheless, within this deteriorating constitutional and political framework the states have become stronger and more vigorous than ever, have reasserted themselves as polities, and have become the principal source of governmental innovation in the United States as well as the principal custodians of most domestic programs. In this extraordinary turnaround they have been helped by the catastrophes that have befallen previous presidents and the positive efforts of the Reagan Administration to

have the federal government turn over certain functions to the states, free certain revenue sources to accompany them, and reduce federal regulatory interventions into state affairs and the processes of state governance."

NATIONAL POLICY MAKING AND FEDERALISM

Policy-Making Institutions

Even though each branch of government has separate powers, a significant policy-making function is defined by the Constitution. In addition, the development and growth of bureaucracies becomes a fourth branch of government, because it has independent regulatory power and is connected directly and indirectly to the federal government itself.

Bureaucracy - p. 89-97

The president, as chief executive, proposes to Congress a legislative agenda. Along with this agenda is a budget proposal that defines the extent of government involvement in supporting legislation as well as the size of government. The decision to sign or veto legislation determines the fate of legislation and the resulting public policy. Congress, through its committee system and ultimately its votes, determines the fate of the president's legislative agenda and the proposed budget. Over the past thirty years, the issue of the nation's deficit has been paramount in determining the nature of legislation passed. This changed in 1996 after President Clinton signed a balanced budget. By 2000 the debate shifted away from deficit spending to what the budget surplus should be used for. After September 11, 2001, tax cuts, a recession, and an expanded war on terrorism resulted in the return of large deficits.

President Obama, facing the worst economic crisis since the Great Depression, signed the American Recovery and Reinvestment Act of 2009. This law cost close to $1 trillion and included tax cuts for 95 percent of Americans as well as job stimulus provisions. Obama also announced measures that dealt with the ailing banks, auto industry, and the housing market. These acts, along with the 2010 federal budget, resulted in the largest deficits in American history, totaling more than $1 trillion.

The new Republican majority in the House of Representatives threatened not to authorize an increase to the national debt in 2011 unless President Obama agreed to spending cuts. As a result, Congress reached an agreement with the president to postpone the elimination of the so-called Bush tax cuts until 2012, along with major cuts in defense and discretionary spending, called the sequester. Ultimately, the country avoided going over the "fiscal cliff" in January 2013, when the Bush tax cuts were kept for everyone earning under $400,000. The sequester cuts, known as sequestration, took effect in March 2013. The reductions in spending authority were approximately $85.4 billion, split between spending cuts in defense and spending cuts in discretionary funds. These cuts were achieved by program cuts as well as federal employee furloughs. As a result of public pressure some agencies, such as the Federal Aviation Authority (FAA), were able to shift some of the cuts to avoid air-traffic-controller furloughs. An effort to come up with a grand budget deal between the president and Congress failed. In 2013, the Bipartisan Budget Act of 2013 was passed that raised budgeting caps but also lowered the projected deficit.