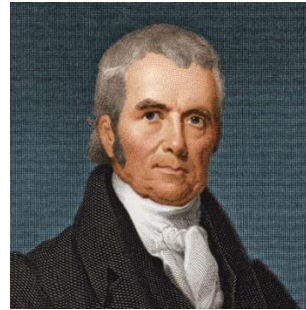


Federalism in Action

1. The Marshall Court – Expanding National Power

Chief Justice of the Supreme Court – **John Marshall** was the longest serving Chief Justice in American history (from 1801 to 1835).



The first major **federalism case** decided by the Marshall court was ***McCulloch v. Maryland*** in 1819. The case involved the Second Bank of the United States, a national bank founded by Congress, whose charter had been left to expire due to the debate about the bank being constitutional and raised the question; did Congress have the authority to create a national bank?

Several states, including Maryland, had already passed laws allowing them to tax the Second Bank of the United States. National Bank officials in Maryland refused to pay this tax, and the issue was taken to the Supreme Court.

The two key issues of the case were:

- a. **Did Congress have the authority to establish the bank in the first place?**
- b. **Did the individual states have the authority to tax the bank that was located within their states?**

The response to part a.

The Supreme Court made a unanimous decision, and Chief Justice Marshall was firmly on the side of authority for the national government. His decision was based on the fact that by ratifying the Constitution, the states and the people ceded some of their sovereignty to the national government. He cited the necessary and proper clause (an implied power) which in the court's opinion allowed Congress to establish a national bank.

The response to part b.

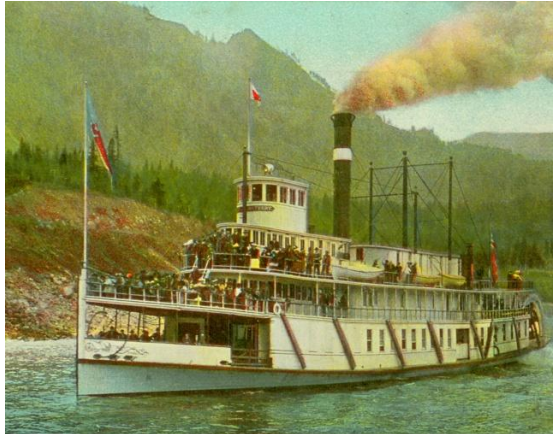
Again the court sided with the national government. Maryland and the other states do not have the authority to tax the bank's state branches. State governments do not have the right to tax any constitutional implied powers or those under the necessary and proper clause.

This link opens to Oyez.org and the case *McCulloch v. Maryland*.

<https://www.oyez.org/cases/1789-1850/17us316>

The next major case for the Marshall court was ***Gibbons v. Ogden*** (1824)

This case involved the powers of Congress related to the commerce clause within the Constitution. The case will become known as the “**steamboat monopoly case**” arising from a battle between two powerful businesses in New York and New Jersey.



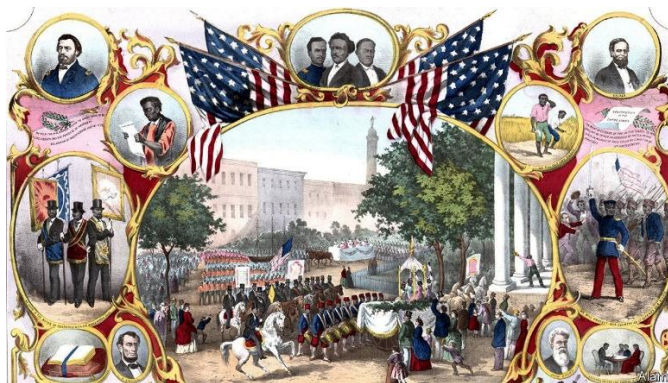
Aaron Ogden had been granted a monopoly by a New York state law which protected his routes within New York state and between New York and New Jersey. Thomas Gibbons was another steamboat operator who had a license from the federal government to operate the same routes as Ogden. Gibbons then filed suit against Ogden to block his monopoly approved by New York State.

The Supreme Court’s decision was based on the power of Congress to regulate trade as stated in the commerce clause. Marshall also added the right of the federal government under the supremacy clause, which meant that the monopoly granted by the State of New York was invalid.

This link opens to Oyez.org and the case *Gibbons v. Ogden*.

<https://www.oyez.org/cases/1789-1850/22us1>

The Thirteenth, Fourteenth, and Fifteenth Amendments



After the Civil War (April 12, 1861 – May 26, 1865) three amendments to the Constitution were ratified that reduced the power of the states.

Thirteenth Amendment: the constitutional amendment that outlawed slavery.

Fourteenth Amendment: the constitutional amendment that provides that persons born in the United States are citizens and **prohibits** states from **denying** persons **due process** or **equal protection** under the law.

Southern states could no longer deny citizenship to former slaves. According to the due process clause, state governments cannot deny persons their life, liberty, or property without legal safeguards. The **equal protection clause** prohibits many forms of discrimination, and states must treat all people equally regarding the application of laws.

Fifteenth Amendment: the constitutional amendment that prohibits the denial of voting rights on the basis of race, color, or previous condition of servitude, which gave Black male citizens the right to vote.

Despite these equal rights in the Constitution, the Supreme Court ruled on a vision of federalism that recognized state authority, even though that authority was restricting the rights of citizens based on their racial identity. The landmark case that restricted the rights of African Americans after the Civil War was ***Plessy v. Ferguson*** (1896). The Supreme Court upheld the law of Louisiana that allowed racial segregation on a ***separate but equal*** basis. The ruling said that Louisiana did not violate the Fourteenth Amendment by creating separate but equal facilities.

This link opens to Oyez.org and the case of ***Plessy v. Ferguson***.

<https://www.oyez.org/cases/1850-1900/163us537>

In the early years of American history, the nation saw an era of **dual federalism**: when there was a distinct, but not complete, separation between the federal and state governments. Each division did their own work without interfering with the other.

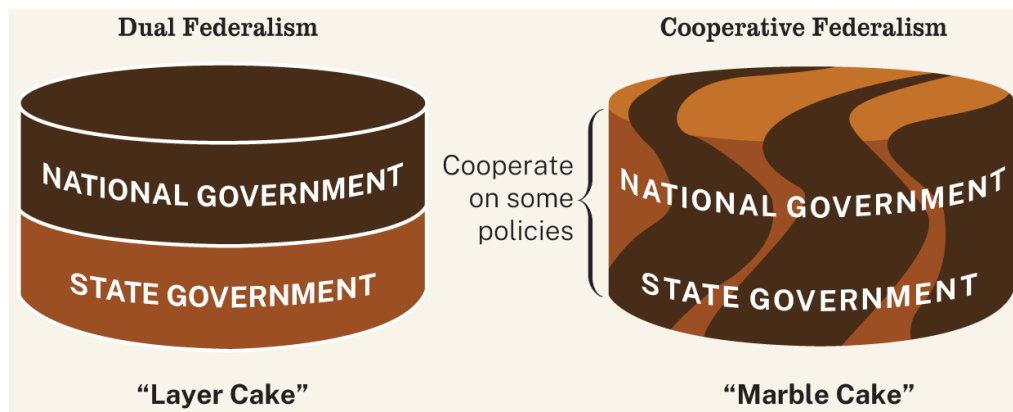
In the 1920's this dual federalism changed with the Supreme Court case of ***Gitlow v. New York (1925)***. This case started a political system known as **selective incorporation**; a process through which the Supreme Court applies fundamental rights in the Bill of Rights to the states on a case-by-case basis.

In this case, the court ruled that freedom of speech and the press are fundamental liberties protected by the due process clause from violations by the states. This limited states' actions in taking away the personal freedoms guaranteed in the First Amendment. This ruling has reflected on another amendments, such as the Fourteenth Amendment, to prevent states from taking away a person's liberty provided for in the Bill of Rights.

This link opens to Oyez.org and the Supreme Court case ***Gitlow v. New York***.

<https://www.oyez.org/cases/1900-1940/268us652>

Over time in this period the national government would move away from dual federalism and use a system of **cooperative federalism**; a system where both levels of government work together in the same areas of public policy.



Under cooperative federalism, the two levels of government do **not** play the same roles. The national government is responsible for raising revenues and setting standards while the states administer these programs. The analogy of a marble cake shows the “mixing” of the new relationship.

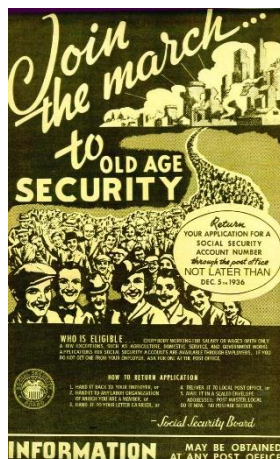
The Great Depression changed American Federalism

The Great Depression was the longest and deepest downturn in the history of the United States and the modern industrial economy lasted more than a decade, beginning in 1929 and ending during World War II in 1941. During these times, the inability of the states to cope with this crisis increased the power of the national government and strained American Federalism.

The Roaring Twenties saw the states increase their spending, especially due to the automobile industry and the creation of a system of roads. To do this, the states had borrowed large sums of money. When the Stock Market crashed in 1929 and the depression began, many states could not respond to their residents' needs. Local governments could not take care of the millions of unemployed, so they appealed to the national government for help.



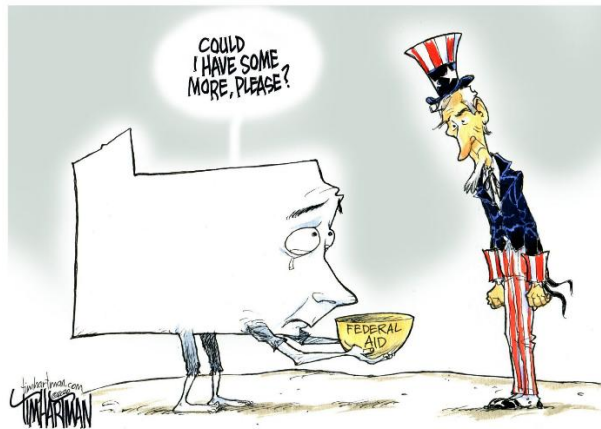
In his inaugural address in 1933, President Franklin Delano Roosevelt pledged to use the full powers of the executive branch to fix the Great Depression. He knew that the state governments had failed and were in no position to refuse the large amounts of federal aid that was dispersed during the New Deal. Cooperative federalism now replaced dual federalism and now gave the federal government more say in areas of public policy that was once controlled by the states. Perhaps the best example of this change was the creation of the **Social Security Act** in 1935 which established unemployment insurance for workers and set up old-age insurance and assistance programs, later added with disability insurance.



Modern American Federalism

One of the primary tools used by the federal government to achieve its policy objectives with the states is the use of **grants-in-aid**. This is federal money provided to states to implement public policy objectives.

The federal government also provides **categorical grants**: national funding to states where spending is specifically restricted to certain categories. Sometimes the conditions for these grants may require the states or local governments or regional authorities to provide matching funds in order to receive this funding. There are often specific instructions given as to how this money will be spent with special considerations involving populations, incomes, and need.



Grants-in-Aid may not always be accepted by the states but if they do accept the funds then it is like the **carrot and the stick theory**. The federal government dangles the carrot (the use of funds to carry out national objectives) with the stick (being the ability of the federal government to cancel the aid if the states do not follow the federal government's policies).

Some people say that these grants are a form of bribery. For example, most states raised their drinking age to twenty-one as a result of the National Minimum Age Drinking Act in 1984, a condition of a block grant that provided transportation funds from the federal government to the states.

Politicians and economists in favor of categorical grants believe that they can reduce any inequality between the states. For example, in 1965 the Medicaid program began to provide health-care assistance to low-income individuals who were medically needy (but not on welfare). With these funds, states, local, and regional governments could improve the lives of their people, an issue not possible without these federal funds.

Sometimes the federal government issues **mandates**: federal requirements that states must follow and to take a specific action. When the federal government makes requirements without providing funds it is called an **unfunded mandate**; an example being ***The Americans with Disabilities Act of 1990*** which required states to change existing public buildings and make them accessible for people with disabilities. Ironically, the federal government received the praise for the act, but the states received the bills for making everything accessible!

Devolution and Block Grants

Devolution is when the federal government gives more authority to the states.

Block Grants are a type of grant preferred by states that give state officials more authority over how these federal funds can be spent. Block Grants reduce the federal influence over the states.

A block grant or per capita cap would be a fundamental change to Medicaid financing.

	Current Medicaid Program	Block Grant	Per Capita Cap
Coverage	<ul style="list-style-type: none"> Guaranteed coverage, no waiting list or caps 	<ul style="list-style-type: none"> No guarantee (can use wait lists or caps) 	<ul style="list-style-type: none"> May be guaranteed for certain groups
Federal Funding	<ul style="list-style-type: none"> Guaranteed, no cap Responds to program needs (enrollment and health care costs) Can fluctuate 	<ul style="list-style-type: none"> Capped Not based on enrollment, costs or program needs Fixed with pre-set growth 	<ul style="list-style-type: none"> Capped per enrollee Not based on health care costs and needs Fixed with pre-set growth per enrollee
State Matching Payments	<ul style="list-style-type: none"> Required to draw down federal dollars Federal spending tied to state spending 	<ul style="list-style-type: none"> Unclear Federal spending not tied to state spending beyond cap 	<ul style="list-style-type: none"> Unclear Federal spending not tied to state spending beyond per enrollee cap
Core Federal Standards	<ul style="list-style-type: none"> Set in law with state flexibility to expand 	<ul style="list-style-type: none"> Uncertain what the requirements would be to obtain federal funds 	

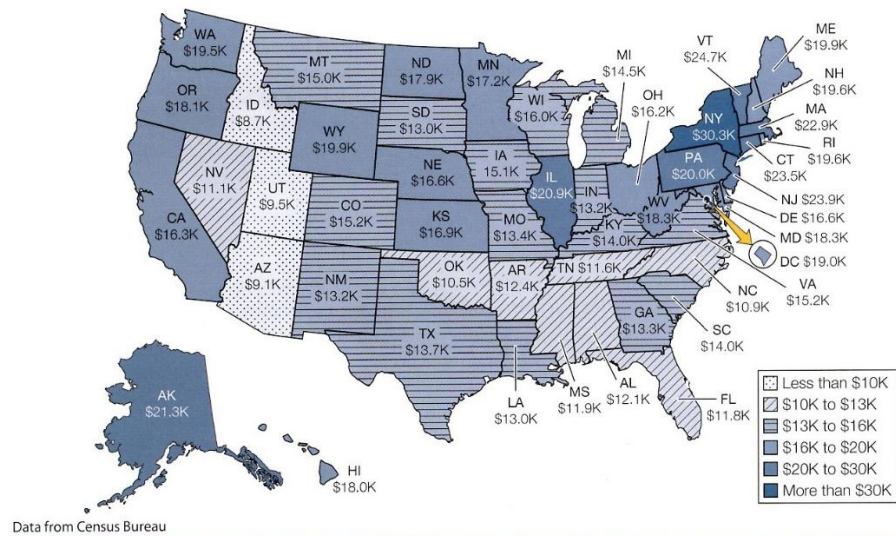
Other examples of Block Grants are when the U.S. Department of Health and Human Services provides block grants to set up programs for drug and alcohol addictions or when the U.S. Department of Energy gives block grants to help state and local governments reduce energy use, rely less on oil and gas, and improve energy efficiency.

Revenue sharing is when the federal government apportions tax money to the states with no strings attached; they can be used for any governmental purpose. Federal Revenue sharing ended in 1986, and large federal deficits will prevent sharing in the near future.

Education Policy

Per-Pupil Spending in Public Elementary-Secondary School Systems, by State: Fiscal Year 2023

The map shows spending per pupil across the states for grades pre-K through 12. Note the large differences in spending across the states. Looking at the color variations, is it possible to discern a source of tension in a federal system — how much some states “subsidize” other states?



Traditionally, education was controlled by states and local school districts, but in the 21st century, the federal government became more involved by attaching requirements such as standard testing mandates, as a condition for awarding block grants. There are two sides to this; those for state control say the federal government has overstepped their bounds. Those in the federal government are for more controls as they do not want students to be educationally disadvantaged depending on the state where they live.

In the meantime, teachers, parents, and students are caught in the middle as education policy continues to change.

Management of Covid-19

In late 2019 and into early 2020, SARS-CoV-2, an infectious respiratory virus, caused a pandemic. As the crisis escalated, the federal government’s response included bans on international travel, more testing, and financial relief for businesses and citizens.

By November 2022, the federal government had spent \$5.2 trillion on the pandemic. More than \$800 billion was in the form of grant money to the states for K-12 education, rental assistance, and public health measures. Meanwhile, states struggled to stop the spread and had to resort to stay-at-home orders, closing schools and non-essential businesses. State policies varied depending on rates of infection, hospitalizations, and number of deaths.