

# Federalism

A “**federal system**” is a government in which the national government and state governments share power and derive all authority from the people (U.S. Constitution).

The U.S. Constitution established a “federal system” with a strong national government. The previous constitution, the Articles of Confederation, had established a “**confederate system**” in which the national government derived power from the states.

Most countries are neither federal nor confederate systems, but are instead “**unitary systems**” in which all power resides in the central government and local power is derived from the central government.

# Federalism

While the United States is a “federal system”, the individual states are each “unitary” governments.

Local governments derive all of their power from the state government, while the state government derives its power from its state constitution and the U.S. Constitution.

The U.S. Constitution outlines the “**enumerated powers**” of the national government and the “**reserved powers**” of the state governments. Powers that are shared by the national and state governments are called “**concurrent powers.**”

# Division of Power

The U.S. Constitution divides power between the national government and state governments.

The “**supremacy clause**” in Article VI states that national laws supersede state laws if the national government is acting within its constitutional limits. The Supreme Court, therefore, has played a major role in defining the nature of the U.S. federal system.

The **10<sup>th</sup> Amendment** states that all powers not delegated to the national government are reserved to the states, but the “**implied powers**” of the national government derived from the “**necessary and proper clause**” result in more national authority than a literal reading of the 10<sup>th</sup> Amendment would indicate.

# National Power

The meaning of the “necessary and proper clause” was clarified by the Supreme Court in *McCulloch v. Maryland* (1819).

The case dealt with the national government’s power to establish a national bank and the state government’s power to tax that bank.

The **Marshall Court** ruled that Congress’s authority to create a national bank was an “implied power” based on the “necessary and proper clause.”

The Court then ruled that the state tax on the bank violated the “supremacy clause” because the states cannot pass laws that will interfere with operations of the national government.

# National Power

A broad interpretation of the national government's power was further established in *Gibbons v. Ogden* (1824).

The Court clarified the authority of Congress under the “**commerce clause**” to mean the ability to regulate commercial activity in general.

Why is the national legislature doing this?

Why is it trying to use its implied powers?

Why is the Supreme Court allowing it to do so?

# Relations Between States

The U.S. Constitution outlines specific relations between the states.

The “**full faith and credit clause**” in Article IV requires each state to recognize contracts and judicial proceedings in other states.

The “**privileges and immunities clause**” in Article IV requires each state to grant equal rights to the citizens of other states.

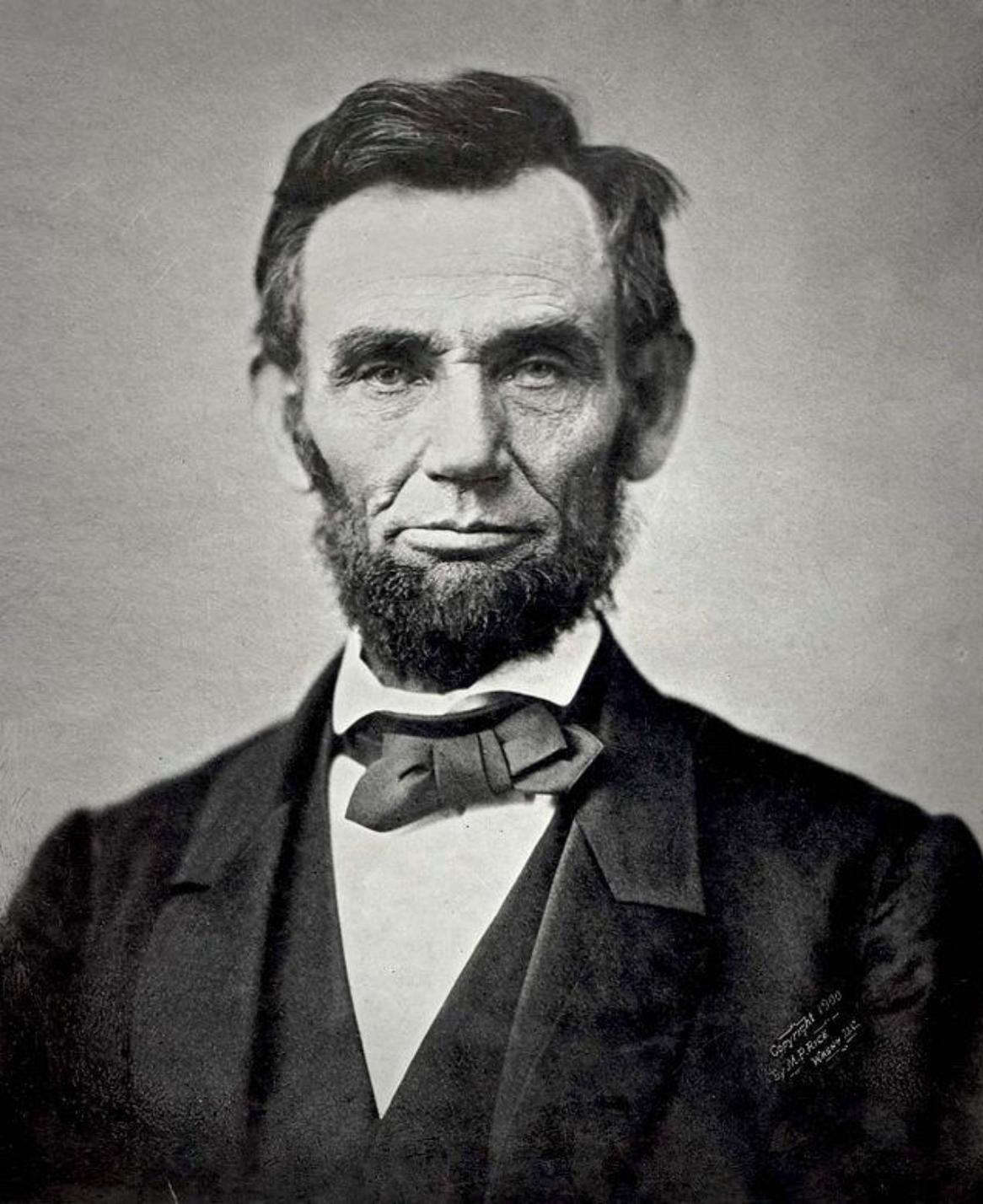
The “**extradition clause**” in Article IV requires each state to extradite, or return, criminals to states where they have been convicted.

# Changes in Federalism

While the **Marshall Court** embraced a broad interpretation of the national government's power, and the **Taney Court** that followed continued to expand national power, the United States still had what is referred to as “**dual federalism**” for most of the 19<sup>th</sup> century.

Dual federalism posits that having separate and equally powerful state and national governments is the best constitutional arrangement. Also called “**layer-cake federalism**”

The slave-owning states supported dual federalism because they wanted to retain as much power at the state level as possible. They even argued that states could “**nullify**” federal laws if they objected to them.



**BOOM!**

# Post-Civil War Federalism

The concept of nullification was destroyed along with the southern states' attempt to form a new confederacy.

After the Civil War the southern states had to write new state constitutions approved by the U.S. Congress, which further expanded the national government's power relative to the states.

As industrialization expanded in the 1880s and 1890s the federal government sought to increase regulation of the economy. The Supreme Court's decisions sometimes increased federal power but at other times preserved state power.

The real catalyst for dual federalism's demise was the series of economic events in the 1920s that culminated in the Great Depression of the 1930s.

# Cooperative Federalism

The national government's response to the Great Depression, Franklin Roosevelt's New Deal, ushered in what political scientists call “**cooperative federalism.**”

Cooperative federalism involves an intertwined relationship between the national, state, and local governments. Rather than each “layer” of the cake having different authorities, all three levels of government cooperate in many different areas. Cooperative federalism is also called “**marble-cake federalism**”

During the Great Depression and World War II, the national government became a major player in domestic policy and constructed grant programs in cooperation with the states.

# Federal Grants to States

The purpose of giving **grants-in-aid** to states:

- 1) provide state and local governments with additional funds
- 2) set national standards for national problems
- 3) financially equalize rich and poor states

The types of grants-in-aid include: **categorical** grants and **block** grants.

The use of federal spending by Congress to influence state policy is referred to as “**fiscal federalism.**”

# Categorical Grants

Categorical grants are federal funds appropriated by Congress for a specific purpose or “category” of policy.

Categorical grants are often made available on a matching basis; that is, states must contribute money to match federal funds.

Example: Medicaid, a joint federal-state health care insurance program for low-income, elderly, and disabled people that was passed as part of Lyndon Johnson’s Great Society legislation in the 1960s.

Using categorical grants, the national government may pay as much as 90 percent of the total cost (ex: Medicaid expansion under the Affordable Care Act).

Categorical grants can be used by the national government to “coerce” state governments to adopt particular public policies and is sometimes referred to as “**regulated federalism**” (ex: Race to the Top education grants during Barack Obama’s presidency).

# Block Grants

As opposition to the growth of national power and regulated federalism continued during the 1970s, conservatives promoted “**devolution**” through the use of **block grants**. The call to return decision-making power to the states was called **New Federalism** and was most influential during Ronald Reagan’s presidency.

**Block grants** are federal funds given to the states without specific guidelines for their use or administration. Proponents of block grants argue that they empower the states to solve problems in their own way without direction from the national government. Republicans promoted and expanded the use of block grants during the 1980s and 1990s.

An example of devolution, that is, returning administrative and budget authority back to the states, was the reform of federal welfare programs in the 1990s that created **Temporary Assistance for Needy Families (TANF)**, which converted the existing federal welfare program into a state program.

Currently: Republicans in Congress and President Trump have expressed the desire to convert Medicaid into a block grant program, which would give states more discretion to spend less on the program and change eligibility requirements.

# Unfunded Mandates

While states may benefit from federal funds, either in the form of categorical or block grants, they sometimes suffer from what are referred to as **“unfunded mandates.”**

Congress may pass legislation that obligates the states to comply with new requirements (a mandate), but not provide any funds to do so (an unfunded mandate). The states, therefore, can have new financial obligations forced on them by the national government.

An example of an “unfunded mandate” was George W. Bush’s No Child Left Behind (NCLB) education reform that imposed a host of federal regulations without any funding to help with compliance. NCLB was recently replaced by the Every Student Succeeds Act (ESSA), which reduced the standardized testing requirements and the accountability measures attached to them.

# Federalism Today

Today, both parties attempt to approach federalism in a pragmatic manner. For example, the Obama Administration attempted to use categorical grants to impose national health care standards, while at the same time deferring to the states on issues like California's automobile emissions standards and Colorado's legalization of marijuana.

Critics argue that such "patchwork laws" will become confusing and that a uniform national standard for automobile emissions would be better for the automobile industry.

Federalism, of whatever type, has the effect of **decentralizing** the policymaking system, which allows the states to become "**laboratories of democracy.**" Most national legislation originates at the state level.

An example is the health care reform passed in Massachusetts by Governor Mitt Romney, which then became the basis for national legislation called the Patient Protection and Affordable Care Act (Obamacare).

# Questioning Federalism

Which states benefit from **fiscal federalism**? States are categorized as “**donor**” or “**recipient**” based on whether they pay more in taxes than they receive in federal aid. 78% of Republican states (18 out of 23) are recipient states. 41% of Democratic states (8 out of 19) are recipient states. Ironically, the south benefits from the redistribution of wealth by the federal government, but is the most opposed to federal spending and federal authority.

What are the benefits of federalism in general? Policy experimentation, diversity of culture, increase in political participation, cultivation of political leaders, and political stability.

Should your ability to obtain health insurance, get married, use marijuana, and not be subject to the death penalty depend on which state you live in? Is environmental, immigration, and gun policy a *federal* or *state* issue?