



Federalism

American National Government
Topic Three

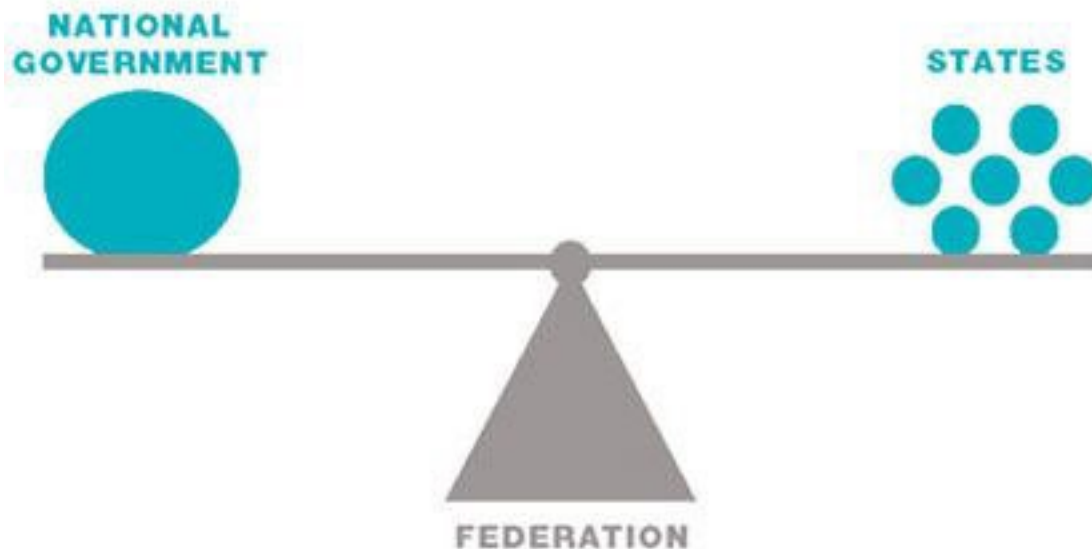
Overview

- What is federalism?
- Why federalism?
- How has federalism changed through American history?
- What are the contemporary politics of federalism?

I – What is federalism?

What's Federalism?

- What is federalism?
 - A way to structure power that reduces its centralization
 - Same people & territory included in two levels of government
 - Each has its own set of elected officials, independent authority
 - Each is constitutionally protected and can exert leverage over the other
 - Means there's two independent and competing levels of government



Alternatives to Federalism

Power

More decentralized

More centralized



Confederation

Federation

Unitary system

Examples:

European Union,
United States (1781-
1789), Switzerland
(pre-1798),
Confederate States of
America

Examples:

United States (after
1789), Australia,
Germany, Mexico,
Canada, India, +
~10 more

Examples:

United Kingdom,
France, Japan,
Sweden, Vietnam +
roughly 7/8 of all
countries

American Federalism in Comparative Perspective

- Federalism is rare among all democratic countries but common for large diverse countries like the US
 - US is the third largest country in the world by population, fourth by land area
 - Largest democracies are almost all federal states: India, Canada, Germany, Australia, Brazil, Mexico
 - But the United States' version is combined with unique features

American Federalism in Comparative Perspective

- Unique features of American federalism
 - Equal representation of states with widely different populations
 - Symmetric bicameralism and equal Senate representation means states have much more power than in most other federal systems
 - This generates much more unequal representation of voters
 - Integration of the party system
 - Most federal systems do not have the same two parties competing in every state/province
 - Ex: India has strong regional parties; Canada's Quebecois parties only exists in Quebec, UK's SNP only in Scotland

II – Why federalism?

Why Federalism?

- Federalism is a common arrangement for large countries, but quite rare overall
- This raises the question: why would we want to have it or want to avoid it? What are the advantages and disadvantages of federalism?

Why Federalism?

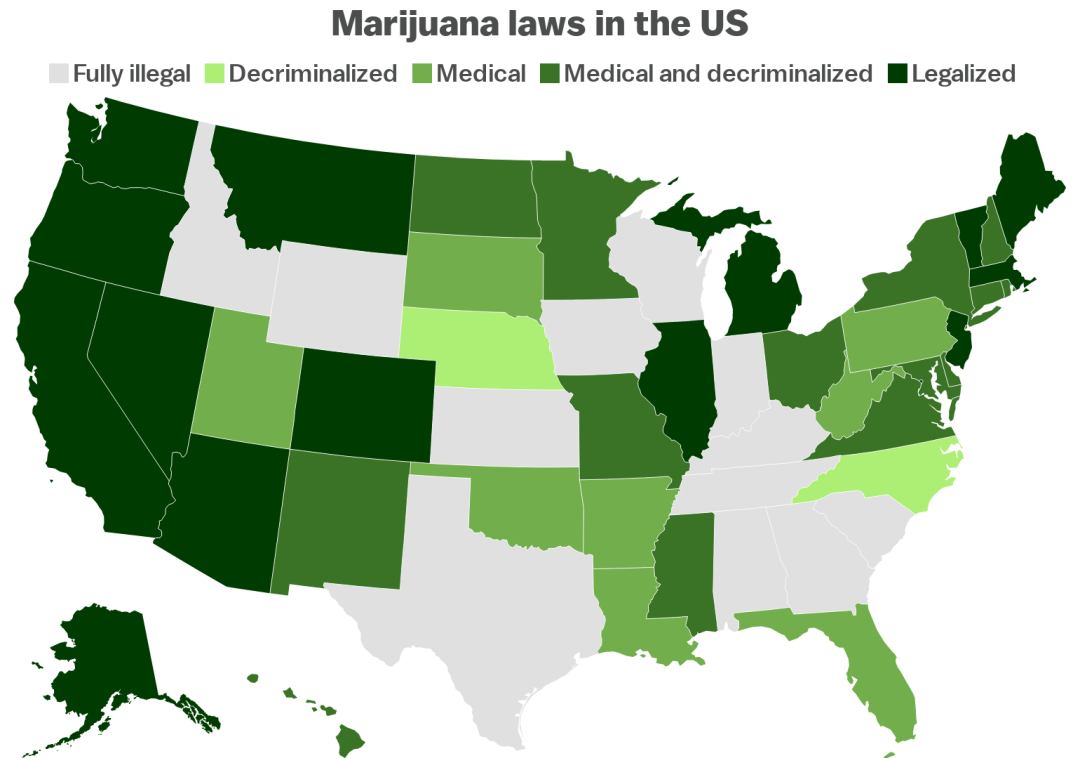
- What are some of the potential advantages of federalism?
 - Federalism can help manage large and diverse countries
 - Helps diverse countries to 'hang together' by allowing different policy mixes in different areas
 - Helps administration of government by creating more local authorities
 - Principle of **subsidiarity**
 - Decisions should be made as close to those impacted by them as possible

Why Federalism?

- What are some advantages of federalism?
 - From a democratic perspective, federalism may be good because it shortens chains of delegation and makes representatives closer to the people
 - Fewer constituents to each representative makes the principal-agent problem easier; easier accountability
 - Allows for accommodating regional preferences and diversity (subsidiarity again)
 - Example: abortion

Why Federalism?

- More advantages
 - States as laboratories for policy innovation
 - Example: marijuana legalization
 - (But also, vote suppression)

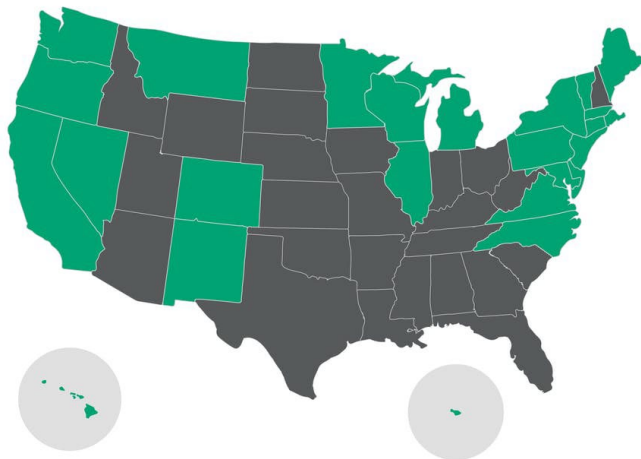


*Washington, DC, legalized marijuana for recreational purposes, but doesn't allow sales.

Source: Marijuana Policy Project

Why Federalism?

- More advantages
 - States can act (locally) when the federal government doesn't
 - California on air pollution
 - United States Climate Alliance



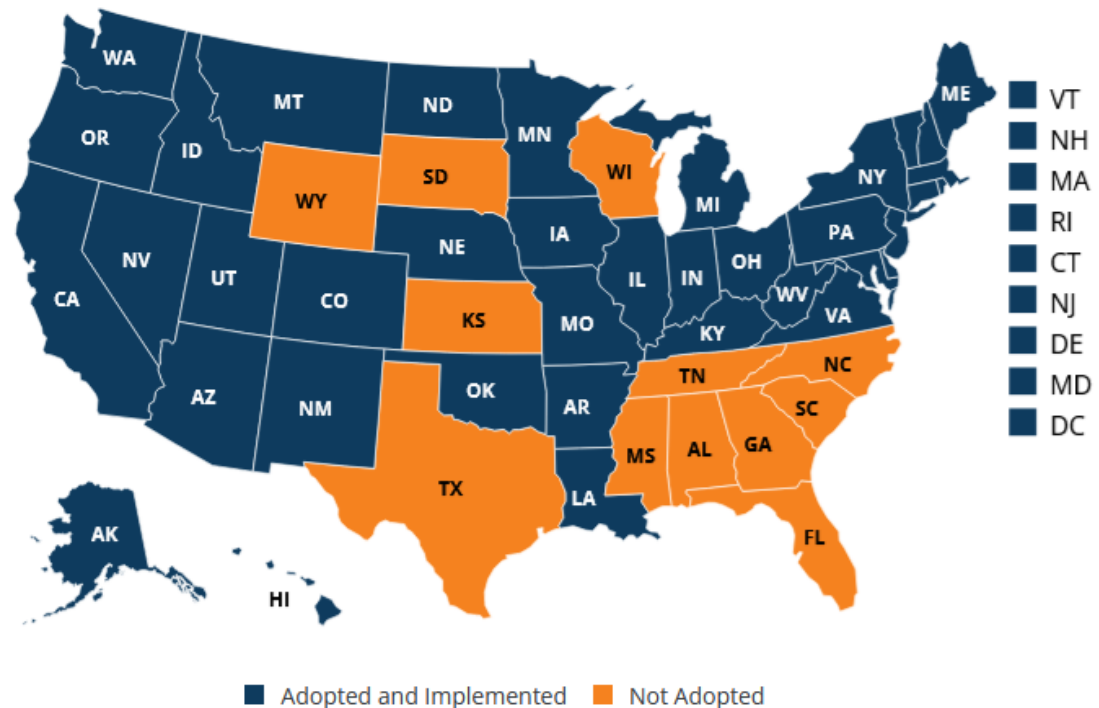
US Climate Alliance in 2020



Women in 1955 LA struggling through smog

Why Federalism?

- What are some of the disadvantages of federalism?
 - Makes it difficult to solve national problems
 - Example: uneven health insurance availability through ACA Medicaid expansion



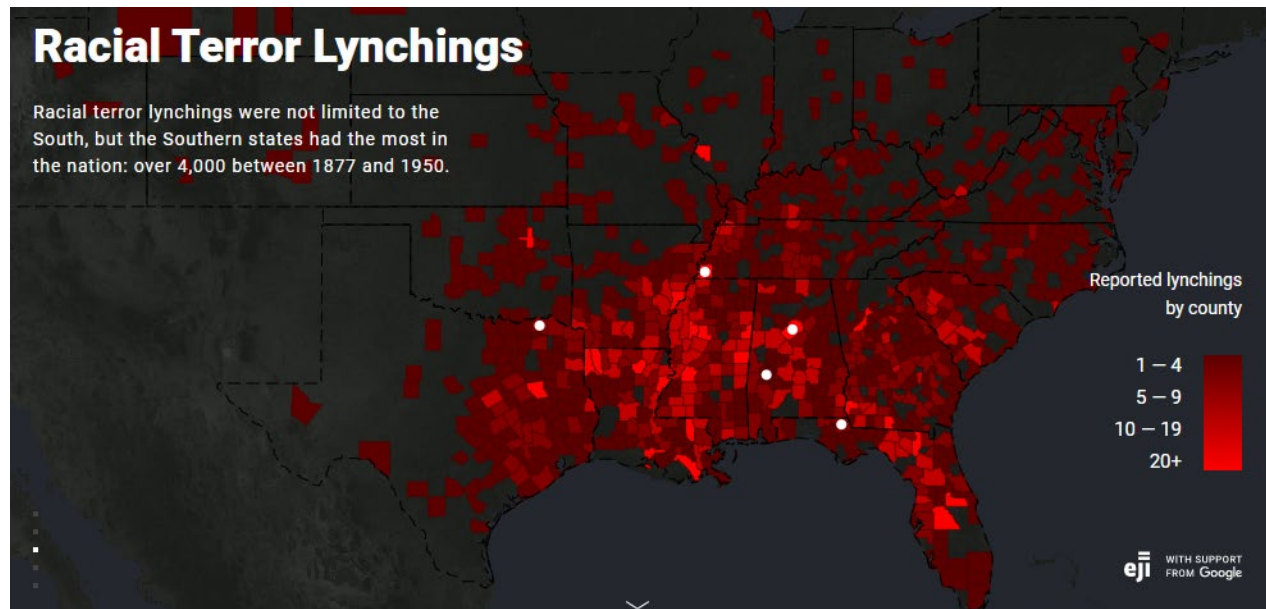
Why Federalism?



- More disadvantages
 - Threat to national unity
 - States rights advocates believed that state legislatures could invalidate acts of Congress = **nullification**
 - Compact theory of federalism suggested that states could secede from the union = **secession**
 - Civil War

Why Federalism?

- More disadvantages
 - Tyranny of local majorities
 - Jim Crow in the South



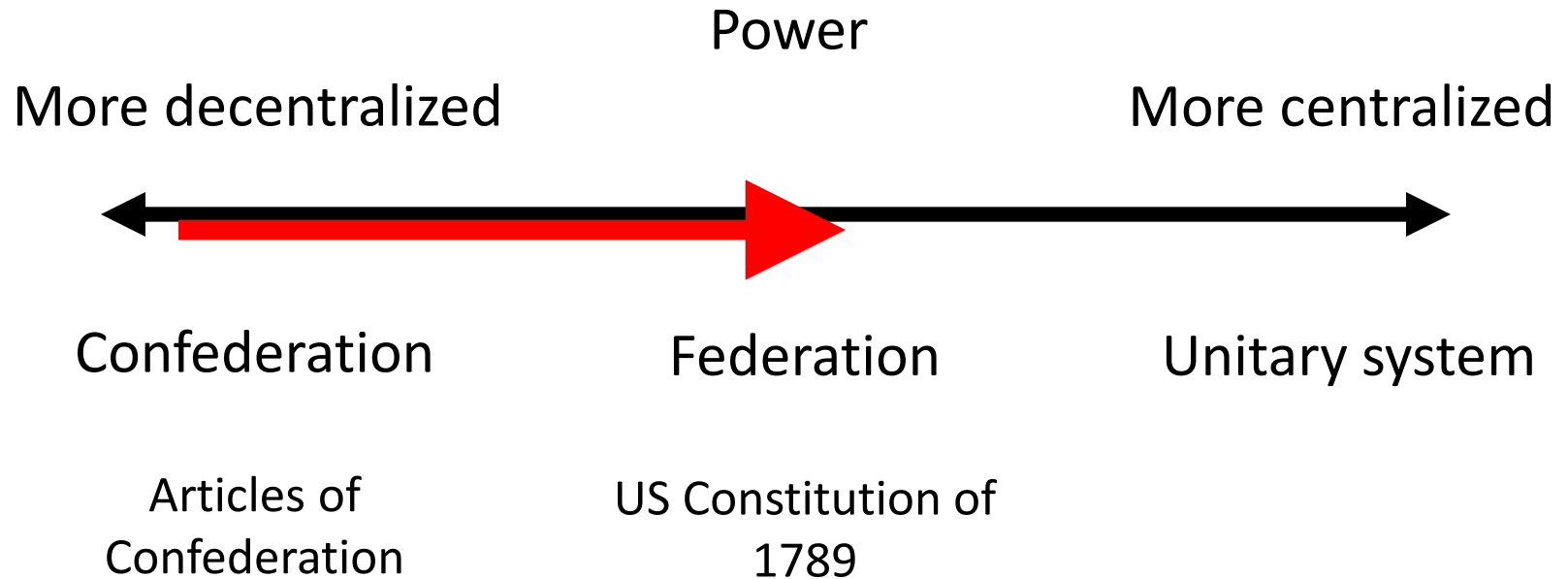
Why Federalism?

- More disadvantages
 - Duplication and inefficiency
 - Why do we need to pay for multiple sets of state governments?
 - Coordinating 50+ govts to act together uses up resources
 - Race to the bottom
 - Lax environmental standards
 - Labor exploitation
 - Reduced state financial resources
 - Tax avoidance (ex: Amazon HQ2)



III – How has federalism changed through American history?

Change in Federalism over American History



- The US Constitution enabled massive centralization of power and authority compared to the Articles of Confederation
- Subsequent changes starting around the turn of the 20th century continued process of centralization

Models of Federalism

- How has this change toward centralization happened over American history?
 - Can tell the story in terms of changing models of federalism:
- Two historical models:
 - Dual federalism
 - Co-operative or shared federalism
- Contemporary politics of federalism is between two models:
 - Regulated federalism
 - New federalism

Models of Federalism

- **Dual federalism**

- Clear division between Congress' areas of authority and states'
 - National government is one of enumerated powers only
 - Purposes national government may constitutionally promote are few



Dual Federalism



- Federal responsibilities

- Tariffs
- Public lands/territories
- Foreign policy

- State responsibilities

- Elections and apportionment
- Civil & property rights
- Internal improvements
- Banking & economic activity

Dual Federalism

- Within their spheres, Congress and states are sovereign and equal
 - Divided sovereignty
- Relation between Congress and states is one of tension not cooperation
- Roughly describes 1789 – 1930s

The Move toward Centralization

- Seeds of change are planted early, take decades to sprout in a few big events
 - Supreme Court precedents
 - Civil War
 - Growth of the national economy
 - New Deal

The Move toward Centralization

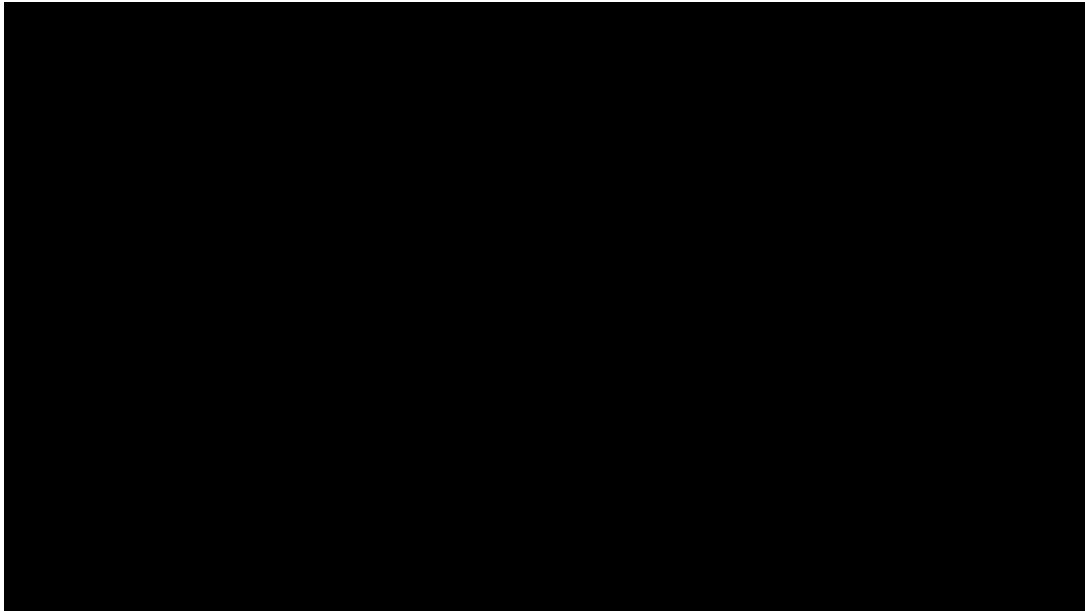
- Supreme Court precedents greenlight federal power
 - McCulloch v. Maryland (1819)
 - Gibbons v. Ogden (1824)
- Together, McCulloch v. Maryland and Gibbons v. Ogden would supply powerful precedents for 20th-century exercises of federal power to regulate the economy
 - Commerce Clause and Necessary and Proper Clause are the keys
 - Were not seen as hugely important decisions at the time since economic activity was still highly localized

The Move toward Centralization

- Civil War settles questions of federal-state relations
 - States lose power after the Civil War
 - The Reconstruction Amendments (13th, 14th, and 15th) create an indisputably national polity for first time
- Civil War also helps power economic integration of the country
 - Northern war industries develop it economically and knit it together
 - Southern reconstruction integrates South into the booming national industrial economy

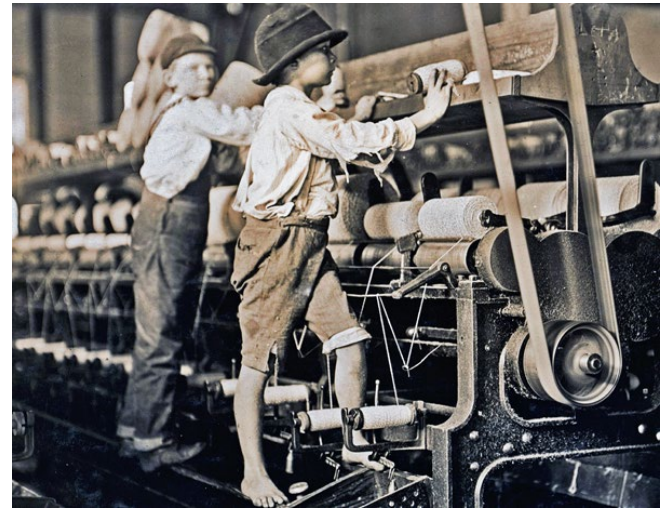
The Move toward Centralization

- Development of a national industrial economy (late 19th and early 20th centuries)
 - Probably the most important single development in history, in US and elsewhere. It transformed government and society



The Move toward Centralization

- National industrial economy created many new problems most Americans wanted government to address
 - E.g. unequal power between workers and employers, unsafe working conditions, tainted goods, poor wages, child labor, etc.
- The Great Depression
 - 1/4 of the country is out of work, Americans go hungry
- Individually, states did not have the resources to solve these problems



Reactions to the Move toward Centralization

- During the *Lochner* era (1897-1937), the Supreme Court was very skeptical of economic regulation
 - Struck down many new state and federal regulations on economic activity, including worker safety, maximum hour, minimum wage, etc.
 - Economically conservative justices invented new constitutional principles (like liberty of contract) to justify their decisions
 - Ended after FDR threatened to pack the Court

Reactions to the Move toward Centralization

- During Jim Crow (1880-1970), Southern representatives use federalism to subject Black Americans to economic exploitation, disenfranchisement, lynching and racial terror
 - Relied on Southern states' power in the Senate (filibuster) plus post-Civil War reestablishment of limits on federal power over states
 - “States rights” merely a euphemism for segregation in 20th century, as it was for slavery before Civil War

Reactions to the Move toward Centralization

- Southern politicians claimed the federal government exceeded its authority when it interfered with issues like schooling, public accommodations (restaurants, hotels, public pools, etc), and voting rights
 - In American history, decentralizing power (as through federalism or 'states rights') means protecting states' ability to oppress, disenfranchise, and terrorize vulnerable minorities, especially Black Americans
 - In 20th century, weakening federalism led to (more) racial justice
 - Contemporary skepticism about federalism heavily influenced by this history

Comparing the Move toward Centralization

- Growth in size, power, and authority of governments in response to industrial problems happens in all countries
 - In the US, biggest changes happen in response to the Great Depression
- **New Deal (1933-1941)**
 - President Franklin Roosevelt established economic management as one of the national government's primary responsibilities
 - Fought the Supreme Court to end *Lochner* era resistance to economic regulation ("The switch in time that saved nine")

The Move toward Centralization

- New Deal brings age of **co-operative (or shared) federalism**
 - Facilitated by:
 - Supreme Court decisions
 - Broad and powerful political coalition
 - Consolidated by Eisenhower (R) administration
 - Embiggened by Lyndon Johnson's Great Society in 1960s
 - Congress passed over 100 new categorical grant programs
 - Subsidized state programs and implemented national goals
 - Traditional state and local responsibilities were federalized

Cooperative Federalism

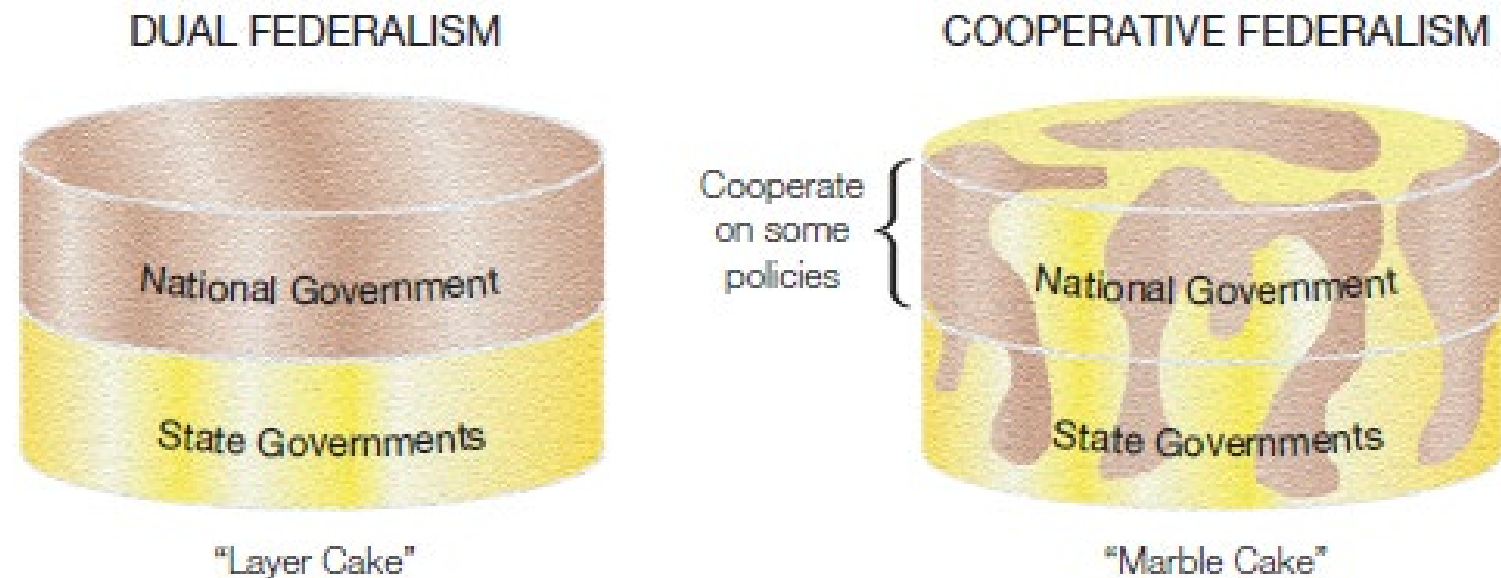
- Cooperative (or Shared) Federalism

- 1937 to 1960s
- Federal-state-local *sharing* of responsibility of virtually all functions
 - “Marble cake”
- Congress leads, but does not coerce

History of Federalism

FIGURE 3.2 Dual versus Cooperative Federalism

In layer-cake federalism, the responsibilities of the national government and state governments are clearly separated. In marble-cake federalism, national policies, state policies, and local policies overlap in many areas.

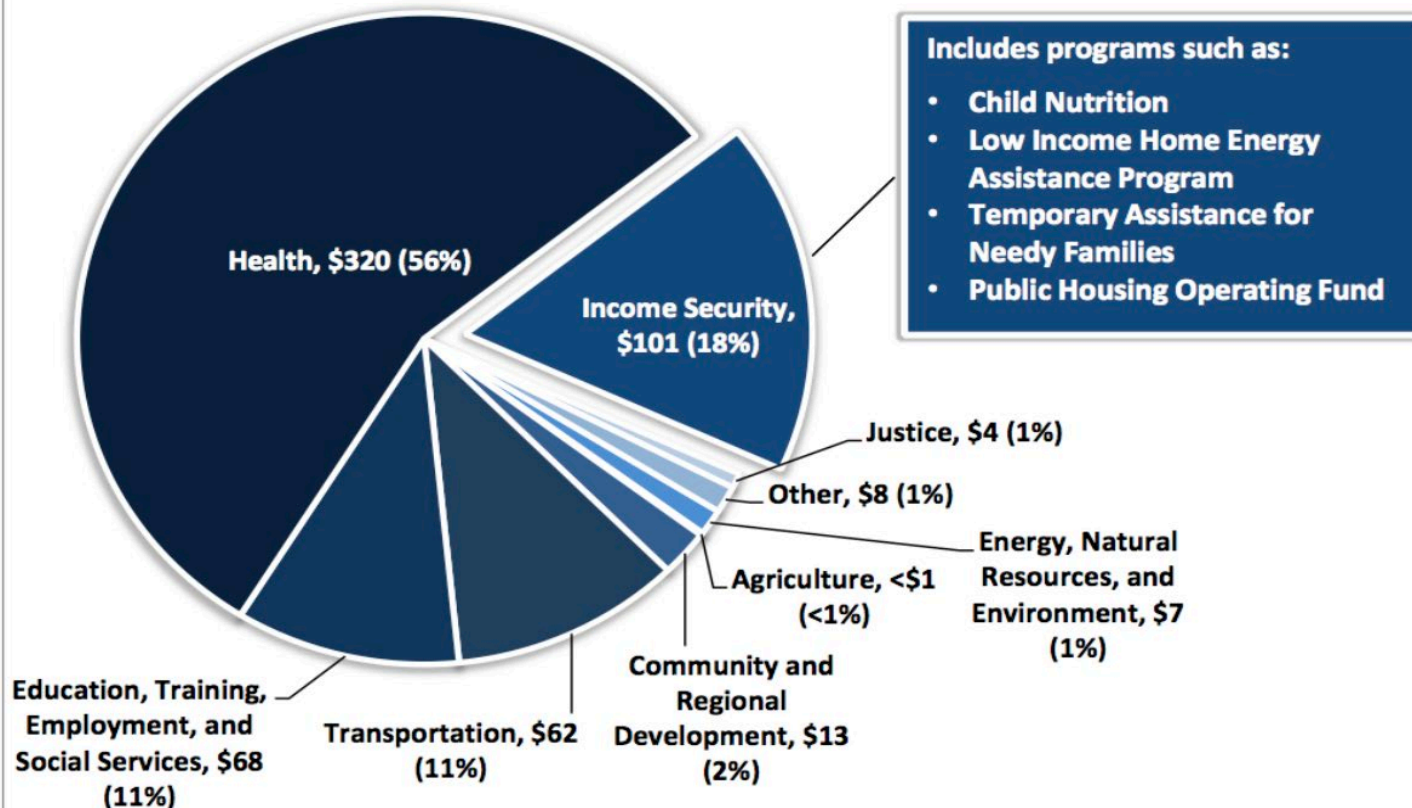


Tools of Cooperative Federalism

- Main tool of cooperative federalism is **grants-in-aid**
 - Congress offers grants using its taxing and spending powers
 - Congress attaches conditions to most grants (**categorical grants**)
 - Grants are popular among members of Congress & state governments
 - Example: Medicaid

Distribution of Federal Grant Money by Program Area

Grants to State and Local Governments by Function, FY 2014 (amounts in billions)

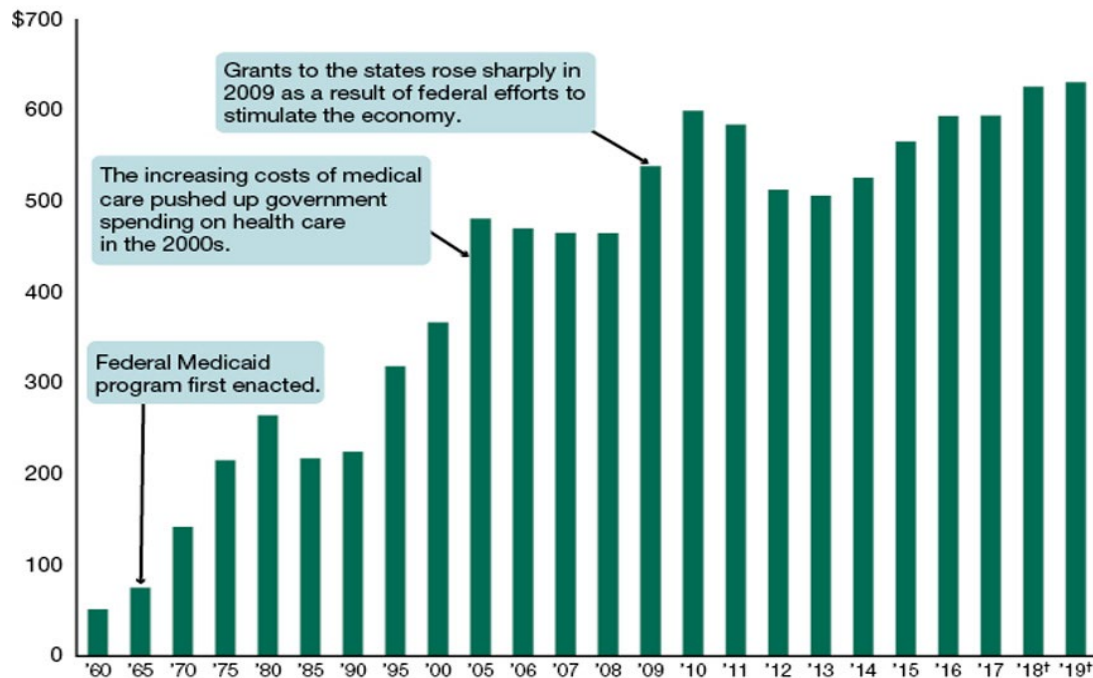


Source: OMB Historical Tables, FY 2016, Table 12-3

Growth of Federal Grants-in-Aid

FIGURE 3.1

Historical Trend of Federal Grants-in-Aid,* 1960–2019 (in billions of dollars)**



*Excludes outlays for national defense and international affairs.

**Data in constant (fiscal year 2009) dollars.

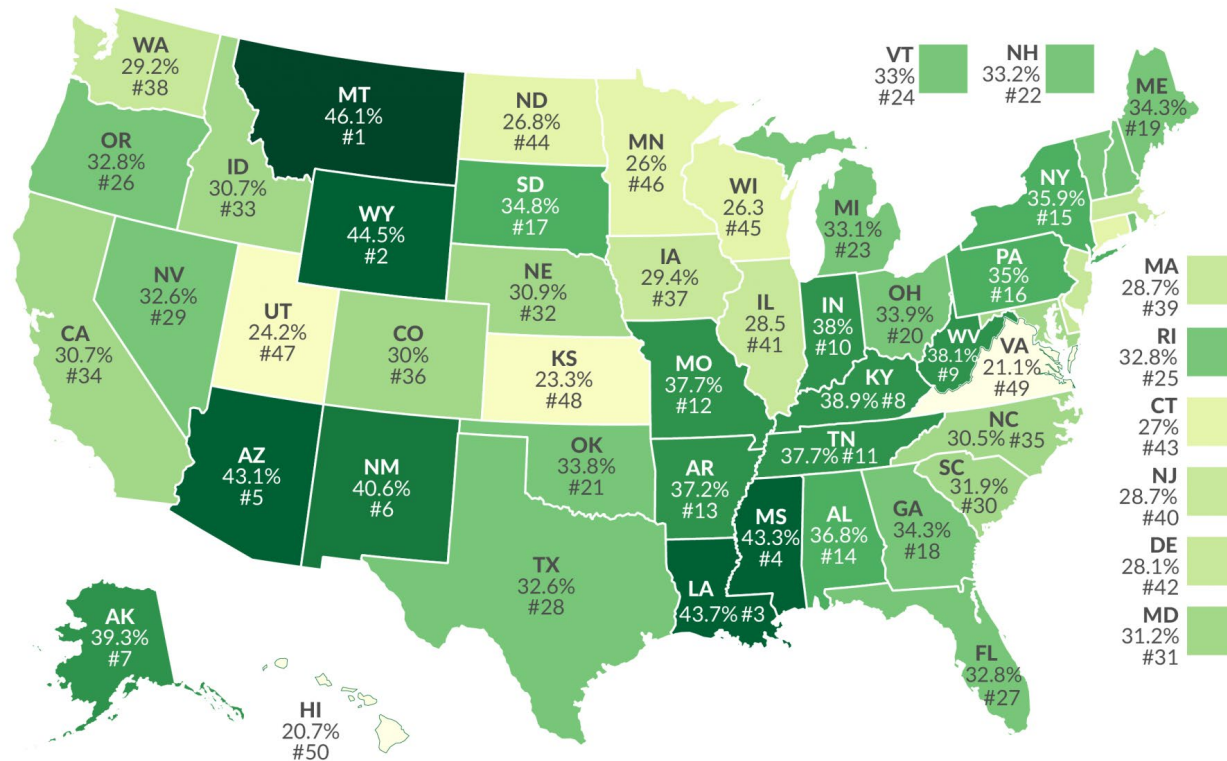
†Data for 2018 and 2019 are estimated.

SOURCE: Office of Management and Budget, U.S. Budget for Fiscal Year 2019, Historical Tables: Table 12.1, Summary Comparison of Total Outlays for Grants to State and Local Governments: 1940-2023, www.whitehouse.gov/omb/historical-tables/ (accessed 6/8/18).

Share of State Revenue that is Money from the federal government

Which States Rely the Most on Federal Aid?

Federal Aid as a Percentage of State General Revenue, Fiscal Year 2017



Note: Figures are calculated by dividing each state's "Federal Intergovernmental Revenue" by its "General Revenue." "Federal Intergovernmental Revenue" includes money transferred from the federal government to states. "General Revenue" includes all tax revenue but excludes utility revenue, liquor store revenue, and investment income from state pension funds. D.C. is designated as a local entity by the U.S. Census Bureau and is thus not included here.

Sources: U.S. Census Bureau, "Annual Survey of State and Local Government Finances"; Tax Foundation calculations.

Federal Aid as a Percentage
of State General Revenue



IV – What are the contemporary politics of American federalism?

Models of Federalism

- Political conflict between state and federal authority today is largely defined by two competing models of federalism:
 - Regulated federalism
 - New federalism

Regulated Federalism

- In the 1960s and 70s, Congress began using three additional tools, arguably ushering in an era of **regulated federalism**.
 - First tool: **unfunded mandates**
 - *Requires* state governments to undertake an activity; it's a coercive order
 - Mandates often impose costs on states for which they are not reimbursed
 - Example: National Voter Registration Act (1993)
 - Second tool: **cross-over sanctions**
 - Cross-over sanctions cause states to lose money in one area for not complying with federal mandates in another
 - Ensures state compliance with national policy preferences
 - Example: lose highway money if states don't raise the drinking age

Regulated Federalism

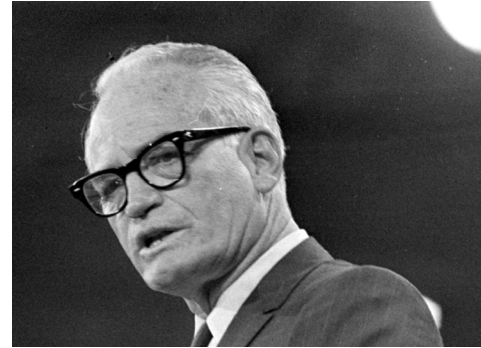
- A third tool is **preemption**
 - Federal laws and policies that assert the national government's prerogative to control public policy in a particular field
 - Often equivalent to a mandate
 - Example: Civil Aeronautics Act preempts local ordinance against jet traffic at night
- These tools advanced federal power over the states
- All these tools have been used by Democrats & Republicans
 - Not a partisan thing



Southern California's Burbank Airport and neighboring homes

Contemporary Federalism

- Growth of federal power, and its use to desegregate the South and other parts of the country, sparked backlash
 - States and local governments push hard against it; seek **devolution** of policy making authority
 - Emergence of modern conservative movement to oppose federal power
 - Reagan's **New Federalism** provides a name for the new politics of giving states more power



Anti-civil rights conservative GOP nominee
Barry Goldwater paves the way for...



...conservative Republican President Reagan

Contemporary Federalism

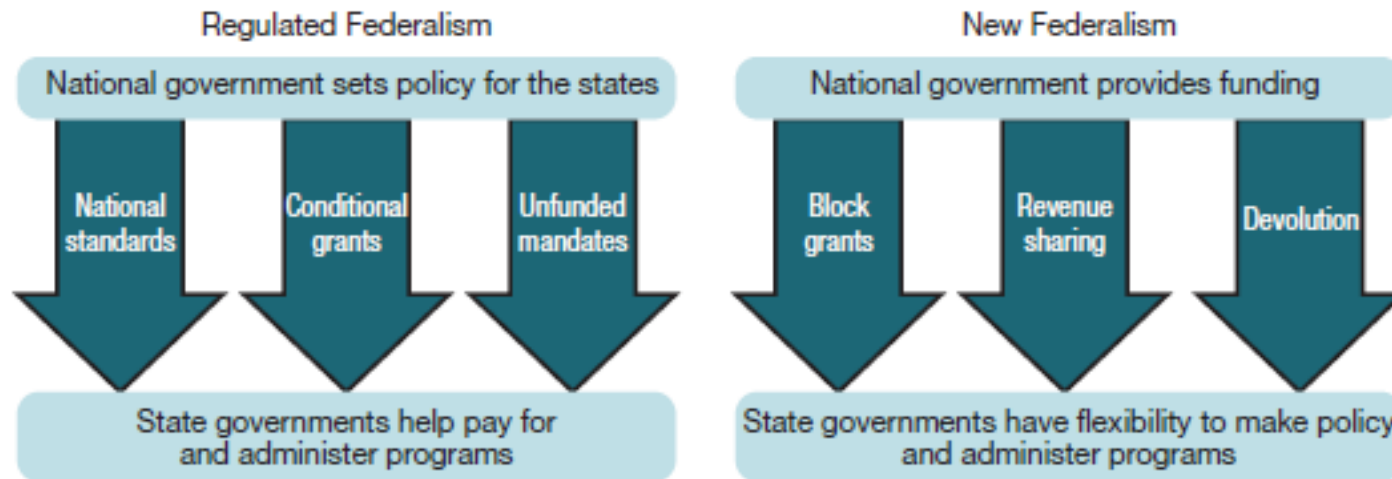
- Major tool of the New Federalism is the **block grant**
 - Whereas categorical grants are tightly controlled, block grants give states wide discretion about how to use federal money
 - A grant for 'education' might get partly diverted into prisons, for instance
 - Supposed to grant states flexibility
 - Favored by Republicans because block grants are much easier to cut than categorical programs

Contemporary Federalism

- Major Supreme Court federalism cases impose more limitations on the power of the federal government vis-à-vis the states
 - **National Federation of Independent Business v. Sebelius (2012)**
 - Upheld key aspects of the Affordable Care Act (ACA) but also made the law's expansion of Medicaid voluntary for states
 - Court held that the ACA's provision making all Medicaid funding depend on a state expanding Medicaid was too coercive upon the states, and struck it down
 - **Shelby County v. Holder (2013)**
 - The Court struck down part of the Voting Rights Act
 - Court reasoned that the country had changed since the 1960s and that having some states need their laws cleared by the federal government offended the 'sovereign equality' of states
 - Unleashed a wave of sweeping restrictions to voting rights, including eliminating polling places, reducing early voting periods, and enacting burdensome voter ID laws

Contemporary Federalism

- The contemporary politics of federalism is defined by conflict between these two models & goals
- Overall, the federal government still has the upper hand



Summary

- Federalism is an institutional arrangement for decentralizing power by creating two independent and competing levels of government
- Through American history, we have moved from dual federalism to cooperative federalism, greatly expanding the power of the federal government
 - The development of a national industrial economy was the most important driver of this change
- Today, the politics of federalism are defined by conflict between regulated federalism and new federalism