

## Federalism

- Defined
  - US vs. Alternatives:
  
- Models of Federalism in US
  - 1<sup>st</sup> = Articles of Confederation
  
  - Replaced w/ Constitution
    - Issue: HOW much power?
  
  - 2<sup>nd</sup> = State-Centered vs. Nation-Centered
    - Disputes over meaning (re: politics)
  
    - SCOTUS moves to define
  
    - Ex. Marshall Court (1801-1835)
      - Chief Justice John Marshall
  
      - *Marbury v. Madison* (1803)
        - » Judiciary Act of 1789
  
        - » Power of judicial review
  
        - » Result: SCOTUS = gatekeeper of Constitution
  
      - *McCulloch v. Maryland* (1819)
        - » Necessary & Proper Clause
  
        - » Result: Congress has “implied” powers
  
      - *Gibbons v. Ogden* (1824)
        - » Commerce Clause
  
        - » Result: “Commerce” defined; Interstate = domain of Congress

- *Fletcher v. Peck* (1810)
  - Contracts Clause
  - Result: SCOTUS may
  - invalidate laws of states
- *Martin v. Hunter's Lessee* (1816)
  - SCOTUS “appellate” power
  - Result: SCOTUS may
  - Review state court decisions
- Each = highly controversial
- Critics challenge national supremacy
  - Advocate “States’ Rights”
  - Most prominent = Jefferson & Madison
    - NOTE: KY& VA Resolutions (1798)
    - Madison = “interposition”
    - Jefferson = Nullification
    - NOTE: John C. Calhoun
  - Secession?
    - John Taylor of Caroline
    - Jefferson to Madison
    - Gouverneur Morris
    - Hartford Convention (1814-15)
    - SC vs. Jackson

- 1860 & 1861
- Lincoln's opposition
- Civil War = severe blow to States' Rights
  - Radical Republicans
  - Reconstruction Amendments
  - Result = Fed on top
- 3<sup>rd</sup> = Dual Federalism aka "Layer Cake" (1860s-1920s)
  - Driven by SCOTUS
  - Drawing line = difficult
  - Ex. RRs
    - *Munn v. Illinois* (1877)
      - » Result: = States may regulate RRs since open to public
    - *Wabash, St. Louis, and Pacific Railroad vs. Illinois* (1886)
      - » Reverses = States may NOT regulate; It = role of Congress
    - Congress then moves = Interstate Commerce Act (1887)
  - NOTE: layers sometimes "blended"
    - Change = opportunity
    - Ex. Law enforcement
      - » Traditionally = state power
      - » Fed Bureau of Investigation (1908)
    - Ex. Banking
      - » Traditionally = state power

» Federal Reserve Act (1913)

» Federal Reserve Board

- Progressive Era = experimentation
  - Ex. FCC, FDA, National Park Service, trust busting, etc.
- 1<sup>st</sup> use of grants
- 16<sup>th</sup> Amend (1913)
- NOTE: National doesn't "supplant" states
  - BUT states also expand
- SCOTUS accepts SOME growth – not all
  - EX. *Hammer v. Dagenhart*, (1918)
  - EX. *Adkins v. Children's Hospital* (1923)
  - Ex. *Adair v. United States* (1908)
- Cooperative Federalism -"Marble Cake"
  - Great Depression = opportunity
    - FDR & "New Deal"
    - Enacting of socialist labor policies
    - SCOTUS moves to "check" New Deal policies
      - » ex. "Black Monday"
    - FDR's "court-packing" proposal
  - Post 1937, SCOTUS takes knee
    - Preemption Doctrine
      - » Supremacy Clause (Art VI, Cl 2)

» *Gibbons v. Ogden*, (1824).

» *Ex. Gade v. National Solid Wastes Mgmt. Ass'n* (1992)

- Preemption = shift
  - Fed controls both inter & intra state commerce
- Fed control inter & intra state commerce
  - Most egregious = *Wickard v. Filburn* (1942)

— Creative Federalism – “Socialism-lite” (1960s-1970s)

- Creation of welfare state
- LBJ & Great Society
  - Ex. Civil Rights Act
  - *Heart of Atlanta Motel Inc. v. US* (1964)

• New Federalism = “Retreat” (1980s – 2000s)

- Nixon; Reagan Revolution & “Devolution”
- Basis = 10th Amend
- Champion = Rehnquist court
  - *Ex. US v. Lopez* (1995)
  - Result = shift back to state-centered federalism
- NOTE: War of Terror, Obamacare, COVID, etc.

• Federal Grants

- Used to coerce states
- Grant programs serve several purposes
- Grants come in different forms

- Categorical grants
- Block grants
- Revenue sharing grants
- Formula grants
- Project Grants
- SCOTUS Test = *South Dakota v. Dole* (1987)
- Recent years = Unfunded mandates
  - Ex. *Printz v. US* (1996)
- Advantages – Disadvantages of Federalism
  - <https://www.cx1pro.com/Nichols/psci204/addisfed.htm>
- Constitution forces states to cooperate
  - “Full Faith & Credit”
  - “Privileges & Immunities”
  - “Interstate rendition clause”
  - “Interstate Compact Clause”