

## Federalism

- Defined
  - In US
  - Alternatives:
- Models of Federalism
  - 1st US govt = Articles of Confederation
  - Replaced w/ Constitution of the United States
  - Founders divided on HOW much power?
    - State-Centered vs. Nation-Centered (1790s-1860s)
  - Evolution triggered by disputes over meaning
  - Marshall Court (1801-1835)
    - Chief Justice John Marshall
    - *Marbury v. Madison* (1803)
      - Judiciary Act of 1789
      - Power of judicial review
      - 1) Supremacy of Constitution

- 2) Power of SCOTUS
  - Marked starting point in rise of Fed power
- Result = SCOTUS had 2 ways to enhance power of nation govt:
- *McCulloch v. Maryland* (1819)
  - Necessary & Proper Clause
- *Gibbons v. Ogden* 1824
  - Commerce Clause
- *Fletcher v. Peck* (1810)
  - Contracts Clause
- *Martin v. Hunter's Lessee* (1816)
  - SCOTUS “appellate” power
- Decisions highly controversial
- Critics challenge national supremacy
  - Advocate States’ Rights
  - Thomas Jefferson

- Prominent theories
  
- Interposition
  - James Madison
  
  - Virginia Resolution of 1798
  
- Nullification
  - Thomas Jefferson
  
  - Kentucky Resolutions of 1798
  
  - John C. Calhoun
  
- Succession
  - John Taylor of Caroline
  
  - Jefferson to Madison
  
  - Gouverneur Morris
  
  - Hartford Convention
  
  - South Carolina vs. Andrew Jackson
  
  - 1860 & 1861

- Abraham Lincoln's opposition
- Civil War = severe blow to States' Rights
  - Radical Republicans
  - Reconstruction Amendments
- By 1870 Fed = on top
- Dual Federalism – “Layer Cake” (1860s-1920s)
  - Favored by SCOTUS in 19<sup>th</sup> cen
  - Drawing line = difficult
  - Ex. RRs
    - *Munn v. Illinois* (1877)
      - » State could regulate private business
    - *Wabash, St. Louis, and Pacific Railroad vs. Illinois* (1886)
      - » Congress could regulate interstate commerce
    - Interstate Commerce Act of 1877
  - Many powers = shared

- New opportunities
- Ex. Law enforcement = Federal Bureau of Investigation (1908)
- Ex. Banking = Federal Reserve Act (1913)

» Federal Reserve Board

- Throughout Progressive Era Congress experimented
- Fed govt provided cash grants
  - Push for 16th Amend (1913)
- National govt didnt supplant states
  - SCOTUS accepted SOME growth
    - NOT in certain areas
    - EX. *Hammer v. Dagenhart*, (1918)
    - EX. *Adkins v. Children's Hospital* (1923)
    - Ex. *Adair v. United States* (1908)
- Onset of Great Depression
  - FDR & “New Deal”

- Cooperative Federalism -“Marble Cake” 1930s-1950s
- Enacted many socialist labor policies
- SCOTUS overturned all New Deal policies
  - ex. “Black Monday”
- Proposed "court-packing" bill
- Post 1937 - SCOTUS allows both state & national govts to broaden powers
  - Preemption Doctrine
    - Supremacy Clause (Art VI, Cl 2)
    - *Gibbons v. Ogden*, (1824).
    - *Gade v. National Solid Wastes Mgmt. Ass'n* (1992)
    - Preemption marked shift
  - Fed control inter & intra state commerce
  - Most egregious = *Wickard v. Filburn* (1942)
- Creative Federalism – “Socialism-lite” (1960s-1970s)
  - Ex. Civil Rights Act

- *Heart of Atlanta Motel Inc. v. US* (1964)
  
- New Federalism – “Retreat” (1980s - )
  - Devolution
  
  - 10th Amendment
  
  - New Federalism reaches SCOTUS during Rehnquist court
    - *US v. Lopez* (1995)
  
    - Result = shift back toward state-centered federalism
  
  - NOTE:
  
- Federal Grants
  - Congress uses \$\$ to coerce states
  
  - Grant programs serve several purposes
  
  - Grants come in different forms
    - Categorical grants
  
    - Block grants
  
    - Revenue sharing grants

- Formula grants
- Project Grants
- South Dakota v. Dole (1987)
  - SCOTUS develops - test for grants
- Recent years
  - Unfunded mandates
  - *NY v. US* (1992)
  - *Printz v. US* (1996)
- Constitution forces states to cooperate
  - “Full Faith & Credit”
  - “Privileges & Immunities”
  - “Interstate rendition clause”
  - “Interstate Compact Clause”