The Evolution of Federalism (HAA)

There are approximately 88,000 national, state, and local units of government in the United States. This diagram shows how that total breaks down into a pyramid of governments. Not surprisingly, with so many different units of government at work in this country, relations among the different levels have evolved and changed over time.

Dual Federalism: A Layer Cake of Divided Powers

The framers of the Constitution disagreed among themselves about the ideal balance of power among the different levels of government. But they did agree, as James Madison wrote in The Federalist No. 45, that the powers of the national government were "few and defined" and the powers of the states "numerous and indefinite."

From 1790 to 1933, national and state governments maintained a fairly strict division of powers. Political scientists sometimes refer to this system as dual federalism [dual federalism: a federal system with a fairly strict division of powers between the national and state governments; also called “layer cake” federalism], or “layer cake” federalism. In such a system, the two levels of government are part of the whole, but each has its own clearly delineated responsibilities.

During the era of dual federalism, the Supreme Court sometimes played the role of referee between the states and the national government. For example, in McCulloch v. Maryland (1819), a case involving the creation of a national bank, the Court made it clear that federal laws took precedence over state laws when the two came into conflict.

A few years later, the Court further clarified the roles of the state and national governments, this time in the regulation of commerce. The case of Gibbons v. Ogden (1824) arose when the New York State legislature granted Aaron Ogden a monopoly on steamboat operations between New York and New Jersey. Ogden went to court in New York to force a rival steamboat operator, Thomas Gibbons, off the river. When the state court ruled in Ogden’s favor, Gibbons appealed the decision to the Supreme Court.

Lawyers for Gibbons argued that New York had no authority to limit commerce on waterways between states. The Supreme Court agreed. Chief Justice John Marshall concluded that the Constitution clearly gives control of trade among the states to the national government. As a result, New York’s grant of a monopoly to Ogden was unconstitutional.
The Gibbons decision drew a sharp line between state and federal power. The national government controls **interstate commerce**, or trade among the states. The states control **intrastate commerce** [intrastate commerce: trade that takes place within the borders of a state], or trade within their borders. This clear division of power was typical of how federalism worked during the dual federalism era.

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**Cooperative Federalism: A Marble Cake of Mixed Powers**

The Great Depression of the 1930s led to a very different conception of federalism. As the Depression deepened, the efforts of state governments to feed the hungry and revive the economy proved inadequate. In desperation, Americans turned to the national government for help. On taking office in 1933, President Franklin Roosevelt launched a flurry of legislation known as the New Deal. These New Deal programs ushered in a new era of shared power among national, state, and local governments. Unlike in the past, when officials at different levels had viewed each other with suspicion, they now worked together as allies to ease human suffering.

Political scientists refer to this new era as one of **cooperative federalism** [cooperative federalism: a federal system with considerable sharing of powers among national, state, and local governments; also known as “marble cake” federalism], or “marble cake” federalism. Political scientist Morton Grodzins wrote of the federalist system during this period,

*When you slice through it you reveal an inseparable mixture of differently colored ingredients . . . so that it is difficult to tell where one ends and the other begins. So it is with the federal, state, and local responsibilities in the chaotic marble cake of American government.*

—“The Federal System,” 1960

The diagram “Dual Versus Cooperative Federalism” illustrates the differences between dual (layer cake) and cooperative (marble cake) federalism.

A key ingredient in marble cake federalism was a mix of federal **grants-in-aid** [grants-in-aid: funds given by the federal government to state and local governments for specific programs] programs. Grants-in-aid are funds given by the federal government to state and local governments for specific programs, such as aid to the unemployed. Such grants had long been used by the national government, but only for very narrow purposes. Roosevelt greatly expanded the use of grants-in-aid to get help to the needy. In 1927, shortly before the Depression began, federal funds made up less than 2 percent of state and local government revenues. This figure jumped to just over 13 percent early in the New Deal and remained near there until 1960.
Regulated Federalism: More Money with More Strings Attached

A generation later, President Lyndon Johnson set out to expand on the New Deal by creating what he called the Great Society. The Great Society was a set of programs designed to end poverty, eliminate racial injustice, and improve the environment.

Like Roosevelt, Johnson looked to state and local governments to carry out many of his new programs. As during the New Deal, the federal government provided funding in the form of grants. But unlike earlier grants-in-aid, Great Society grants often came with strict regulations as to how the money could be spent. Johnson called his partnership with state and local governments creative federalism. Political scientists, however, prefer the more descriptive term regulated federalism [regulated federalism: a federal system dominated by the national government; tightly controlled grants and unfunded mandates are key elements of regulated federalism].

Johnson’s Great Society legislation led to a huge increase in federal involvement in state and local governments. Political scientist Timothy Conlan observed that by the end of the 1960s,

The federal government became more involved in virtually all existing fields of governmental activity—including many that had been highly local in character (for example, elementary and secondary education, local law enforcement, libraries, and fire protection). In addition, new public functions were established, such as adult employment training, air pollution control, health planning, and community antipoverty programs.

—Timothy Conlan, From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform, 1998

Although state and local governments welcomed the new influx of federal funds, they were not happy about the federal regulations that came with the money. They were even less happy about the rapid growth of unfunded mandates [unfunded mandate: a regulation or policy imposed by the national government on state and local governments without adequate federal funds to carry out the policy] that began in the 1960s. These are programs and regulations imposed on state and local governments by Congress without adequate funding, if any, attached to them.

Unfunded mandates were attractive to members of Congress, since members could declare that they were solving problems without having to raise taxes to fund the solutions. Instead, the mandates put the burden of paying for those solutions on state and local governments. In effect, Congress provided the recipe for solving problems but required state and local governments to provide the ingredients—both money and people—to make those solutions work.

New Federalism: Returning Power to the States

The rapid expansion of federal power in the 1960s alarmed people who valued state and local control. While running for president in 1968, Richard Nixon promised voters that he would restore “true” federalism by reigning in federal power. Nixon called his pledge to return power to the states the new federalism [new federalism: a federal system guided by a policy of returning power to the state and local governments; block grants are a key element of new federalism]. Political scientists call these more recent efforts to return power to the states devolution [devolution: the transfer of power from a central government to a regional or local government].

Devolution began slowly in the 1970s and 1980s, first under President Nixon and later under President Ronald Reagan. Both presidents tried to shift power back to the states by encouraging them to write their own “recipes” for solving problems. The national government’s role was reduced to providing ingredients, mostly in the form of federal funds. Devolution picked up speed in 1994, when Republicans gained control of Congress for the first time in 40 years. Once in power, the new Republican majority enacted the Unfunded Mandates Reform Act. The purpose of this 1995 law was to stop Congress from burdening states with responsibilities without providing adequate funding.

A year later, Congress pushed devolution still further when it overhauled the nation’s welfare system. In the past, federal officials had closely regulated how states gave out welfare payments to needy families. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act, more commonly known as the Welfare Reform Act, returned control of welfare systems to state governments.

The federal government continued to provide “ingredients” in the form of block grants [block grants: funds given by the federal government to states without restrictions on how the money should be spent] to the states. But unlike the highly regulated grants-in-aid that funded Great Society programs, block grants left states free to decide how best to spend the money they received. One of the requirements imposed on state welfare programs was that they limit the time a person could receive federally funded welfare payments to five years.
The Impact of the Supreme Court on Devolution

Since power began shifting back to the states in the late 20th century, the Supreme Court has made a series of decisions that contributed to devolution. One of the first involved the Gun-Free School Zones Act of 1990, a law passed by Congress that banned firearm possession around public schools. In 1992, Alfonso Lopez, Jr., a high school student in Texas, was convicted of violating the law after taking a gun to school. Lopez appealed his conviction on the grounds that Congress lacked the power to regulate gun possession in schools. In United States v. Lopez (1995), the Supreme Court agreed with Lopez and voted 5–4 to strike down the 1990 act as an unconstitutional expansion of federal power. Speaking for the Court, Chief Justice William Rehnquist reasoned that upholding this law would “convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.”

The Supreme Court also limited federal power in United States v. Morrison (2000), a case involving a federal law that gave victims of gender-motivated crimes the right to sue in federal courts. In another split decision, the Court ruled that Congress did not have the authority to enact this law.

However, if the past is any guide, federalism will continue to evolve. In recent years, federal power has expanded in some areas. For example, President Bush signed the No Child Left Behind Act of 2001 into law. Under this act, states must provide students with qualified teachers and administer annual standardized tests in federally funded schools. Furthermore, in 2005 the Court upheld a federal law that limited marijuana usage in Gonzales v. Raich. In 2012, this federal law was challenged again when two states legalized recreational marijuana.

In some cases, the Court helped define what the national government can and cannot do. For instance, Congress passed
the Affordable Care Act of 2010, which required Americans to buy health insurance. Those who refused would have to pay a penalty. The Supreme Court upheld most provisions of the act in *National Federation of Independent Business v. Sebelius* (2012), but declared the act “constitutional in part and unconstitutional in part.” Chief Justice John Roberts, the deciding vote in this case, found that the federal mandate was constitutional because of Congress’s power to impose taxes, not because of the Commerce Clause, as the government argued. The Court’s decision to reject the government’s argument may limit federal power in the long run, and power will continue to shift between the states and the national government.