

Federalism

"The Government of the Union, though limited in its powers, is supreme within its sphere of action"

—Chief Justice John Marshall in *McCulloch v. Maryland*, 1819

Essential Question: How has federalism shaped the administration of public policy, and how do state, local, and national governments work within the federal framework today?

The framers of the U.S. Constitution had to balance the powers of Congress and the federal government at the national level with the powers held by the states. Where the power ultimately lies, however, has been a source of controversy since the U.S. Constitution was framed. The national legislature has stretched its powers in trying to address national needs, while states have tried to maintain their sovereignty. This chapter will explore how federalism evolved, how Congress's authority and modern function have blurred the line between state and national jurisdictions, and how modern leaders have tried to return much authority to the states.

Federalism Defined

In creating and empowering the new federal government, the framers of the Constitution debated where power should lie. The experience of having just defeated a tyrannical central government in London to secure liberty locally did not make the idea of centralizing power in the new United States very attractive. **BIG IDEA: Federalism**, the sharing of power between a central government and equally sovereign regional governments, became a key part of the framework to secure liberty while also dividing respective powers among multiple authorities.

Today, Canada, Australia, Germany, and other nations have a federal system. Some others have **unitary governments**, those with a single governing authority in a central capital with uniform law throughout the land. These include the United Kingdom, France, Italy, and Japan.

Under the original American federal system, the states had more authority than the nation. Recall that the Articles of Confederation (pages 9–11) merely created a firm league of friendship among the states. The revolutionaries created the Confederation government of the 1780s mainly for national defense and to engage in diplomatic relations with other countries. The Articles held that the national government derived all of its powers from the states.

By that time, every state had its own constitution, several with an attached bill of rights. All states had a legislature, defined crimes (such as murder and theft), and had courts for criminal trials. The framers focused on new national concerns, such as regulating commerce, building roads, coining money, defending the country, and defining immigration.

Provisions Defining Federalism

The foundation for federalism can be found in various parts of the original Constitution and the Bill of Rights. National needs require consistency across state lines, such as having uniform weights and measures and a national currency. To establish this consistency, Article I enables Congress to legislate on military and diplomatic affairs and international and interstate commerce. It also allows Congress to define such crimes as counterfeiting, mail fraud, immigration violations, and piracy. However, the framers also put limits on Congress with Article I, Section 9.

CONSTITUTIONAL PROVISIONS THAT GUIDE FEDERALISM	
Article I, Section 8	Enumerated powers of Congress, including the necessary and proper clause
Article I, Section 9	Powers denied Congress; no regulating slave trade before 1808; states to be treated uniformly
Article I, Section 10	Powers denied to the states, such as treaties; impairing contracts
Article IV	Full faith and credit; privileges and immunities; extradition
Article VI	Supremacy of the national government
Ninth Amendment	Rights not listed reserved by the people
Tenth Amendment	Powers not delegated to the federal government reserved by the states

Later provisions define the relations among the states and national supremacy. Article IV explains full faith and credit, protections of privileges and immunities, and extradition. The article requires each state to give **full faith and credit** “to the public acts, records, and judicial proceedings of every other state.” In other words, states must regard and honor the laws in other states. The **privileges and immunities clause** declares “citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.” States have created laws to protect their own residents or to give them

priority over nonresidents, but the Supreme Court has struck down most of them based on this clause. States can, however, charge different college tuition prices for in-state and out-of-state students, largely because in-state students and their families have paid into the state's tax system that supports state colleges. The **extradition** clause obligates states to deliver captured fugitive criminals back to the state where they committed the original crime.

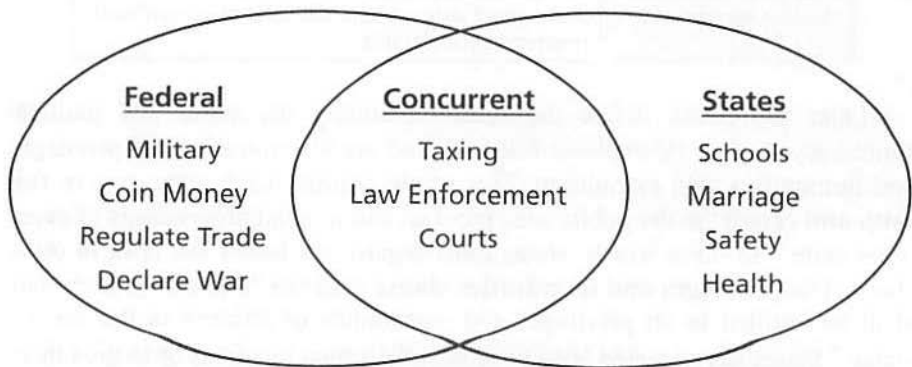
Article VI, commonly called the *supremacy clause*, places national law above state authority. National law, however, is limited by the enumerated list of Congress's powers in Article I, Section 8. (See page 20.) But when a congressional act is enacted, even if the Supreme Court has not (or has not yet) determined its constitutionality, states cannot disregard it.

The States States already had prisons, state militias, and other services when the federal system was created. The framers left these concerns up to the states, along with the management of elections, marriage laws, and the maintenance of deeds and records. Skeptics and Anti-Federalists desired an expressed guarantee in the Constitution to assure the preservation of states' rights. It came in the form of the Tenth Amendment. "The powers not delegated to the United States . . .," the amendment declares, "are reserved to the states"

States have **police powers**, or powers to create and enforce laws on health, safety, and morals. These concerns encompass much of state budgets today. States fund and operate hospitals and clinics. Law enforcement is predominantly composed of state personnel. States can set their own laws on speed limits, seat belts, and smoking in public places.

The terms of the **Tenth Amendment** distinguish the two governing spheres. The **delegated powers** (or expressed powers) are those the Constitution delegates to the federal government, listed in Article I, Section 8, and the job descriptions for the president and the courts in Articles II and III, respectively. The **reserved powers** are not specifically listed, and thus any powers not mentioned remain with the states. Some powers are held by authorities at both levels, state and federal. These are called **concurrent powers**. The states and the **nation** can both lay and collect taxes, define crimes, run court systems, and improve lands.

Federalism: A Sharing of Powers



Overlap and Uncertainty

States generally honored marriage licenses from other states, but the legalization of same-sex marriages in some states early in the 21st century caused other states to expressly refuse recognition of these marriages. Opposing states rewrote their marriage laws and added amendments to their state constitutions to define marriage as between a man and a woman only. This controversy put Article IV in direct conflict with the Tenth Amendment. The full faith and credit clause suggests that if Vermont sanctioned the marriage of two men, Missouri would have to honor it. Yet the reserved powers clause in the Tenth Amendment grants Missouri's right to define marriage within its borders. The Supreme Court settled this dispute in 2015 in *Obergefell v. Hodges*, ruling 5:4 that the right to same-sex marriage was guaranteed by the due process clause and the equal protection clause in the Fourteenth Amendment.

Federalism leaves schools, elections, and most law enforcement up to the states. Why, then, do we have a national Department of Education, the Federal Elections Commission, and a Federal Bureau of Investigation? These questions will be answered in the next section as you read about how the new nation began to walk a delicate line that divided state and federal power, how the Supreme Court has defined federalism, and how Congress became keenly interested in issues of education, political campaigns, and crime.

POWERS DELEGATED TO THE FEDERAL GOVERNMENT	POWERS RESERVED BY THE STATES
Declaring war	Regulating health and morals
Coining money	Safety regulations
Taxing	Incorporating cities and companies
Regulating interstate commerce	Defining legal relationships: marriage, divorce, wills
Defining immigration and naturalization	Operating schools

The New Republic to the New Deal

In 1788, in one of its final acts, the outgoing Confederation Congress directed states to choose presidential electors to vote for the nation's first president. With Virginia now in the Union, few doubted that George Washington was the best man for the job. He would oversee the birth of a federal system that would look drastically different after Franklin Roosevelt's New Deal went into effect.

Washington's Golden Age On February 4, 1789, electors unanimously elected Washington with their first ballot. His leadership at the Constitutional Convention, his endorsement of the new plan for government, and his alliance with Madison, Hamilton, and others made him a Federalist of the first order (though Washington would criticize the developing political parties). The same group that advocated ratification also pioneered establishing a strong national

government. The first congressional elections resulted in sending mostly Federalist-minded men to the national legislature. Only 11 Anti-Federalists filled the 59 elected seats in the first House of Representatives, and only 2 Anti-Federalists served in the 20-member Senate. This dynamic in Congress and the leadership of Washington resulted in a mainly unified federal government that accomplished much during its first term. Congress designed the courts, declared the District of Columbia the new capital city, and created national financial institutions.

Beginning Divisions As Washington and his Federalist colleagues steered the new ship of state, national politics divided Americans into two camps. The familiar debate over national strength versus states' rights and individual liberties continued to shape the United States into a two-party nation. Though political parties as we know them did not yet exist, the Federalists faced off against the Democratic-Republicans led by Thomas Jefferson and later James Madison. Several showdowns between state and national authorities and between these two groups defined the era and shaped the interpretation of the Constitution.

One of the first pressing issues arose around Congress's creation of a national bank. Washington requested opinions on the bank idea from his secretaries, Jefferson and Hamilton, who clashed mightily on the bank question and on how to interpret the Constitution. Jefferson expressed that the bank was improper and that Congress had no power to create it. He was a **strict constructionist**, one who believes the Constitution should be interpreted literally, or strictly construed. He believed that what the Constitution did not expressly permit, it forbade. Hamilton, in contrast, generally believed that if the Constitution did not forbid something, then it permitted it. Washington and the Federalist Congress went with Hamilton and established the first Bank of the United States in 1791.

Whiskey Rebellion Another controversy brewed after a federal tax burdened whiskey distillers of the backcountry. Opponents sharply challenged the new national government and refused to pay federal tax collectors. President Washington summoned the militia of several states. About 13,000 soldiers rallied to Washington's call and easily put down the rebellion. But the incident strengthened the developing Jeffersonian faction. It also called the growing federal power into question. Numerous Federalist foes condemned the administration for its brutal display of force.

John Adams and the Jeffersonians

As Washington headed into retirement, Vice President John Adams barely defeated Jefferson in an electoral vote of 71 to 68, which, at the time, gave Jefferson the vice presidency. Adams continued to establish policies to strengthen the nation that also widened the gap between his followers and Jefferson's followers. In a time of nearly full-scale war against the French, Adams and the Federalist Congress passed the Alien and Sedition Acts. These laws empowered the federal government to jail any dissenters against the government's cause or deport foreigners who posed any threat to the United States. Many outspoken

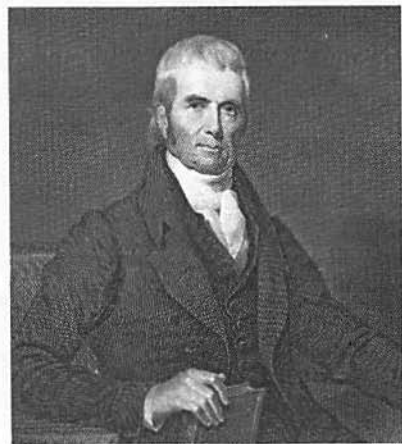
newspaper editors criticized Adams for this policy and were indicted under the law. In the minds of many, the Sedition Act, which set punishments for making false statements about the government, violated the First Amendment and sent many political converts over to Jefferson's camp.

States' Rights: Compact Theory and Nullification As Adams's administration jailed its detractors, Jefferson responded to the new laws while also developing a larger philosophy of the **compact theory**, which held that the 13 sovereign states, in creating the federal government, had entered into a compact, or contract, regarding its jurisdiction. The states created the national government and thus could judge whether federal authorities had broken the compact by overstepping the limited authority they granted in the first place. This theory challenged the authority of the federal judicial branch and the supremacy of national law. Jefferson and his supporters, however, believed that if the Federalists could stamp out free speech and free press with these harsh measures, they could soon violate other liberties in the compact. So, in secret to avoid prosecution, he penned a series of resolutions to address this violation, which became the bedrock ideas for the Jeffersonian movement and the Anti-Federalists' resurgence.


Ultimately, the resolutions declared the states' right to **nullification**, the right to declare null and void any federal law if a state thought the law violated the Constitution. The Alien and Sedition laws expired and Adams left office before opponents could challenge these in the courts. The South's reserved right to nullification—a right that has never been upheld in federal courts—continued over the ensuing decades, leading to the Civil War. Ever since the Union's victory in the conflict, the doctrine of nullification has disappeared.

The Supreme Court Shapes Federalism

“Has the government of the United States power to make laws on every subject?” delegate John Marshall asked at the Virginia ratifying convention in Richmond in 1788. Then he quickly asserted that the new federal judiciary “would declare it void” any law going against the Constitution. In 1801, outgoing president John Adams appointed Marshall as chief justice of the Supreme Court. Taking the seat as Jefferson became president, Marshall and Jefferson served as leading rivals in the Federalist-states' rights debate as the nation entered the 19th century. In 1819, the Supreme Court made a landmark decision in *McCulloch v. Maryland* addressing the balance of power between the states and the federal government.



Source: thinkstock.com
Chief Justice John Marshall



MUST-KNOW SUPREME COURT DECISIONS: *MCCULLOCH V. MARYLAND* (1819)

The Constitutional Question Before the Court: Does the federal government have implied powers and supremacy under the necessary and proper (elastic) clause and the supremacy clause?

Decision: Yes, for McCulloch, 6:0

Facts: The powers and supremacy of the federal government were the focus of a Supreme Court case when the U.S. bank controversy arose again. The state of Maryland, among others, questioned the legality of a congressionally created bank in Baltimore, where James McCulloch was the chief cashier. The Constitution does not explicitly mention that Congress has the power “to create a bank.” So Maryland, recognizing the state’s authority over everything within its borders, passed a law requiring all banks in Maryland not incorporated by the state to pay a \$15,000 tax. The purpose of this law was to force the U.S. bank out of the state and to overcome the federal government’s power. When McCulloch refused to pay the tax, the state brought the case to court. On appeal, the case of *McCulloch v. Maryland* (1819) landed in John Marshall’s Supreme Court.

The dispute centered on two central questions. One, can Congress create a bank? And two, can a state levy a tax on federal institutions?

Reasoning: Article I, Section 8, was key to answering the first question. It contains no expressed power for Congress to create a bank, Maryland and strict constructionists had argued. But it did contain the phrases “coin money,” “borrow money,” “collect taxes,” determine “laws on bankruptcies,” and “punish counterfeiting.” Banking was therefore very much the federal government’s business, and supporters argued that a bank was therefore an appropriate endeavor under the necessary and proper clause of Article I, Section 8, also known as the elastic clause because it allows the federal government to stretch its powers to carry out its purpose. John Marshall’s Court agreed unanimously. Marshall himself wrote the opinion.

Unanimous Opinion: We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional. . . .

The word “necessary” is considered as controlling the [elastic clause], and as limiting the right to pass laws for the execution of the granted powers to such as are indispensable, and without which the power would be nugatory [worthless].

To answer the second question—can a state tax a federal institution?—the Court in this landmark case invoked both the elastic clause and the supremacy clause (Article VI) for the first time, doubly strengthening the federal government. The Court strongly denounced the state's attempt to tax the national government, saying, "The power to tax involves the power to destroy . . ." It broadened what Congress could do, denoting its **implied powers** in the Constitution (those not specifically listed in the Constitution but deriving from the elastic clause), and it declared that constitutional federal law will override state law.

The sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission, but does it extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people of a single State. They are given by the people of the United States, to a Government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single State cannot confer a sovereignty which will extend over them.

Since *McCulloch v. Maryland*: The federal government has used its powers implied in the necessary and proper clause to play a role in other matters, such as education, health, welfare, disaster relief, and economic planning. In *Gibbons v. Ogden* (1824), a dispute between New York and the federal government over navigation rights on the Hudson River, the Court looked to Article 1, Section 8, Clause 3—the **commerce clause**—to certify Congress's authority over most commercial activity as well. That interpretation of the commerce clause, as well as the interpretation of the necessary and proper clause and other enumerated and implied powers in *McCulloch v. Maryland*, became the centerpiece of the debate over the balance of power between the national and state governments.

Political Science Disciplinary Practices: Analyze and Interpret Supreme Court Decisions

Apply: Write an essay in which you identify the two Constitutional questions addressed in *McCulloch v. Maryland* and explain the reasoning for the answer to each question. Cite specific passages from the opinion and/or the Constitution to back up your explanation. Finally, explain how the opinion relates to political processes and behavior. For example, what impact did it have on the development of the growing nation?

Dual Federalism and Selective Exclusiveness Since the national government did not engage in too much legislation regarding commerce at the time, the *Gibbons* decision eventually led to a system of **dual federalism**, in which the national government is supreme in its sphere—having the authority given it in Article I—and the states are equally supreme in their own sphere. Article I entitled Congress to legislate on commerce “among the states” while it did not forbid the states from regulating commerce within their borders. Chief Justice Marshall did qualify that states still had some rights to commerce, rejecting an exclusive national authority over internal commercial activity. This became known as **selective exclusiveness**—a doctrine asserting that only Congress may regulate when the commodity requires a national uniform rule.

For years, this system worked because commerce and trade were mainly local, with fewer goods crossing state lines than they do today. Congress’s relative inaction in regulating commerce until the Industrial Revolution during the mid-1700s to the mid-1800s allowed dual federalism to prevail. As the nation’s business, manufacturing, transportation, and communication advanced, Congress became more and more interested in legislating business matters. Organized labor, reformers, and progressive leaders focused the national agenda on regulating railroads, factories, and banks and on breaking up monopolies. On some occasions, the federal government crossed into the states’ domain on the strength of the commerce clause—the most frequently contested congressional power—and on some occasions lost.

National Concerns, State Obligations

State and federal governments generally followed dual federalism into the early 20th century. However, this practice gave way in response to changing societal needs as Congress’s increased use of the commerce clause empowered it to legislate on a variety of state concerns.

The Progressive movement (1890–1920) brought much federal legislation that created a power play over commerce authority. In the early 1900s, democracy became stronger through a variety of government reforms. The Sixteenth Amendment, for example, created the **federal income tax** and expanded Congress’s reach of regulation. The Seventeenth Amendment made senators accountable to the people instead of to the state governments. Voters then put reformers in office who wanted to clean up the railroads, factories, and corrupt government.

As the nation grew and citizens became more mobile, the nation’s problems, much like its goods, began to travel across state borders. The police powers originally left up to the states now became national in scope, and Congress created the Federal Bureau of Investigation (FBI). Reformers pressured Congress to act on issues when states refused or could not act. Since the Constitution nowhere gave Congress the direct power to legislate to improve safety, health, and morals, it began to rely on its regulatory power over commerce to reach national goals of decreasing crime, making the workplace safer, and ensuring equality among citizens. The commerce clause served as

the primary vehicle for such legislation. For example, the Mann Act of 1910 forbade the transportation of women across state lines for immoral purposes to crack down on prostitution. The Automobile Theft Act of 1915 made it a federal offense to knowingly drive a stolen car across state lines. Since then, Congress has made racketeering, drug dealing, and bank robbery federal crimes (though they remain illegal at the state level as well). The federal executive can enforce these laws even if the criminal activity is entirely contained in one state.

The Supreme Court Stretches the Commerce Clause

The Supreme Court, however, disappointed reformers and issued a few setbacks. The conservative Court declared that corporations as well as individuals were protected by the Constitution, and it questioned many health and safety regulations through the era. For example, when Congress passed a law prohibiting a company from hiring and forcing children to work in factories, the Supreme Court blocked it. In *Hammer v. Dagenhart* (1918), the Court ruled that the evils of child labor were entirely in the sphere of manufacturing, not commerce, and child labor was thus outside congressional authority. This ruling established a line between manufacturing as the creation of goods and commerce as the exchange of goods. By the 1920s, however, the Court relied on Justice Oliver Wendell Holmes's words, which said the shipment of cattle from one state to another for slaughter and sale constituted "a typical, constantly recurring course" and thus made both production and commerce subject to national authority.

After President Franklin Roosevelt initiated his New Deal programs during the Great Depression, a power play began between Congress and the Court that ultimately allowed the national legislature to assume broad powers under the interstate commerce authority. Specifically, the Court upheld Congress's right to create a national minimum wage law with the Fair Labor Standards Act of 1938. The act barred the shipment and transaction of commerce across state lines for firms failing to pay employees at least \$0.25 per hour. The Court upheld the act and overturned the *Hammer* decision.

Two centuries of Court interpretations, a drastic turn by the Court to broaden the scope of the interstate commerce clause, changing societal needs, and prevailing attitudes of the last two generations have shaped American federalism into its current form. Congress has won more battles than the states in claiming authority on commerce-related legislation. But as you will see with the *Lopez* case later in this chapter (page 59), the Court does not always entitle Congress to legislate under the guise of regulating commerce.

Federal Grant Program

The overlap of federal and state authority in exclusive and concurrent powers is probably nowhere more obvious than in the federal grant program. In advancing the constitutional definition of federalism, Congress has dedicated itself to addressing national issues with federal dollars. Congress collects federal tax revenues and distributes these funds to the states to take care of

particular national concerns. This process has different names, such as **revenue sharing**, **cooperative federalism**, or **fiscal federalism**. For decades, the federal government has encouraged, and at times required, states and localities to address safety, crime, education, and civil rights. Congress has largely done this by directing federal funds to states that qualify for aid. These **grants-in-aid** programs have developed over a two-hundred-year history and picked up steadily to meet the needs of society during the Progressive Era, with FDR's New Deal and then under President Lyndon Johnson's Great Society program of the 1960s. This financial aid helps states take care of basic state needs. Grants come in different forms with different requirements, and they sometimes stretch the limits of constitutionality. Political realities in Washington, D.C. and at the local level explain why these grants have gone through so many variations.

Grants Through the Mid-1900s After Americans earned independence and attained the vast lands west of the Appalachian Mountains, high-ranking soldiers received land grants for their service in the Revolution. The federal government later granted large sums of money to states so they could maintain militias. In 1862, Congress passed the Morrill Land-Grant Act. It allowed Congress to parcel out large tracts of land to encourage states to build colleges. Soon, colleges and universities grew in the Midwest and beyond. In more modern



Source: Lewis Wickes Hine, Library of Congress

The Court's decision in *Hammer v. Dagenhart* (1918) put children who worked in manufacturing, sometimes against their will, beyond the jurisdiction of the federal government. That decision was later overturned.

times, Congress has provided money to states to take care of improvements in the environment, education, unemployment, interstate highways, welfare, and health care.

In the early 1900s, most grants were grants-in-aid with conditions attached. These conditions suited the federal government because they made administration convenient. Congress used them to prod state governments to modernize. States had to match federal grants with state funds, secure statewide uniformity, and create agencies to report to the federal government. Congress started using grants heavily in 1916 to fund road construction as the automobile became central to American society and as roads became central to economic improvement.

The federal income tax caused the national treasury to grow exponentially. With these extra financial resources, Congress addressed concerns that were traditionally out of its jurisdiction. Additionally, larger numbers of people who had gained the right to vote pressed for more government reform and action. Women and other groups began voting and engaging in civic endeavors that resulted in the national government addressing more of society's concerns.

The economic crisis that followed, the Great Depression, caused the federal government to grow more, largely by implementing more grants. Traditionally, states, localities, and private charitable organizations provided relief for the poor. By 1935, most states had enacted laws to aid impoverished mothers and the aged. State funds did not always cover this effort, so President Franklin D. Roosevelt and Congress were pressured to address the issue.

Contemporary Federalism

Though state officials are well schooled in the reserved powers clause of the Tenth Amendment and can see the conflict of interest by accepting federal funds, they also find it challenging to turn away federal money to handle state concerns. States do not necessarily want to cede their authority, but at the same time, they want the funds to carry out state needs. The federal government has decided many times to pay the bill, as long as the states follow federal guidelines while taking care of the issue. Grants with particular congressional guidelines or requirements are known as **categorical grants**.

Societal Concerns of the 1960s and 1970s

During the 1960s and 1970s, several movements brought new federal initiatives. The fight for civil rights and school desegregation, the desire for clean air and clean water, and the concern for crime gained national interest. Once again, federal dollars spoke loudly to local officials. The 1964 Civil Rights Act, for example, withheld federal dollars from schools that did not fully desegregate their students. Under President Johnson, the federal government increased the number of grants to address poverty and health care.

Congress also began to redefine the grants process to give more decision-making power to local authorities. Some states felt grants had too many **strings**,

or specific requirements, attached. In 1966, Congress introduced **block grants**. Block grants differ from categorical grants in that they offer larger sums of money to the states to take care of some large, overarching purpose, without the strings of the categorical grants. Democrats led the efforts for the early block grants, such as the Partnership for Health program approved in 1966 and the Safe Streets program created in 1968.

When Republican Richard Nixon became president in 1969, he wanted to return greater authority to local governments. A believer in clear boundaries between state and federal jurisdictions, Nixon desired a mix of block grants, revenue sharing, and welfare reform. Additionally, mayors and urban leaders saw a politicization of the grants process and the way the government awarded monies. They wanted the system revamped. Many other individuals in the field wanted to consolidate and decentralize the grant process and favored block grants over categorical grants. They believed federal agencies had little understanding of how local offices implemented particular programs.

In 1971, Nixon proposed to meld one-third of all federal programs into six loosely defined megagrants, an initiative called "special revenue sharing." He wanted to consolidate 129 different programs into six block grants in the fields of transportation, education, rural development, law enforcement, community development, and employment training. He didn't achieve this goal, but in 1972, general revenue sharing provided more than \$6.1 billion annually in "no strings" grants to virtually all general-purpose governments. Congress passed two major block grants: the Comprehensive Employment and Training Act of 1973 (CETA) and the Community Development Block Grant program (CDBG) in 1974. By 1976, Congress had created three more large block grants.

Fiscal conservatives, who also favored local control, liked Nixon's plan. The result of his changes contributed to a phenomenon of mixing state and federal authority that had already begun. The classic explanation of our federal, state, and local governments often comes with a diagram of a layer cake with the federal government on top, the states in the middle, and the local government on the bottom. Everything is orderly and stacked. The flow of federal money to the various state and local governments, and even private charitable groups, however, has more recently created what is termed **marble cake federalism** because the lines are not straight and even. Federalism has become a hodgepodge of government authorities and has even mixed with the private sector. Federal grants are awarded to local nonprofits that help develop and clean up communities.

As soon as Nixon tried to steer federal money to states in larger, less restrictive ways, members of Congress realized the authority and benefits they would lose. Block grants took away Congress's role of oversight. Congress was losing control and individual members felt some responsibility to provide

federal dollars to their districts in a more specific way. From a political standpoint, block grants denied individual representatives and senators the ability to claim credit. Chairs of relevant congressional committees, too, had suddenly lost control over the process.

"In Two Words, Yes And No"



Source: *Herblock*

Describe the characters, objects, and actions in this cartoon. How does the text help convey the message? What perspective about federalism is the cartoonist trying to convey? What is the implication of the cartoonist's perspective or argument?

What was the result? The number of categorical grants increased dramatically, while block grants subsided. Congress passed only five block grants between 1966 to 1980. Categorical grants with strings, or **conditions of aid**, became the norm again. In addition to the political benefits congressional members experienced, grant recipients at the state and local levels enjoyed categorical grants. Special interest groups could lobby Congress for funding their causes. State agencies, such as those that support state health care or road construction, depend on federal aid and appreciate these grants. Community groups and nonprofit agencies thrive on these as well.



THINK AS A POLITICAL SCIENTIST: ANALYZE AND INTERPRET QUANTITATIVE DATA

Often you will be interpreting and applying information presented in the form of charts, graphs, and tables. For an accurate understanding of that information, begin by reading the title, labels, and contents of the chart, graph, or table. Be sure you understand the exact purpose of the information and exactly what the numbers represent. For example, are they percentages or amounts? If they refer to money, are the amounts expressed in constant dollars (adjusted for inflation) or real (nominal) dollars? Are the numbers expressed in thousands, millions, or billions?

Once you are sure you understand the purpose, labels, and contents of the informational illustration, look for patterns and relationships. For example, do the numbers go up or down in a predictable pattern? If there is a sudden change in a pattern, how can you explain it? Is there a clear trend visible in the information? Draw a conclusion from the information to explain what it implies or illustrates about political principles, processes, behaviors, and outcomes.

Practice: Focusing on the table below, explain and draw conclusions from the table's information, trends, patterns, and variations. Answer these questions.

- When do you see increases or decreases?
- What events or priorities might explain these changes?

TOTAL FEDERAL OUTLAYS FOR STATE AND LOCAL GRANTS, 1955–1985		
Year	(in billions of constant dollars)	Percentage of Total Federal Outlays
1955	24.4	4.7
1960	45.3	7.6
1965	65.9	9.2
1970	123.7	12.3
1975	186.8	15.0
1980	227.0	15.5
1985	189.6	11.2

Source: OMB Historical Tables, FY 2014

Then discuss the following:

- What possible limitations of the data might there be? In other words, what might be missing or overrepresented?
- What possible limitations of the visual representation of the data might there be? In other words, if it were displayed another way, might you reach different conclusions?

Returning Authority to the States

The post-New Deal trend of fiscal federalism has experienced a mixed appreciation from state and local administrators. And conservatives have pushed to reduce federal taxes and return to state and local control over reserved powers. "It is my intention to curb the size and influence of the Federal establishment," President Ronald Reagan declared as he took the oath of office in 1981, "and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people." Reagan followed with initiatives meant to define a **New Federalism** that he had promised.

Grants in the 1980s and Beyond

The federal government has created a dilemma for the states because states have come to depend on these grants. The strings can also be costly. Building projects, which make up a large share of these programs, require the local government to pay prevailing wages to its construction workers. Recipients must be careful of their project's impact on the region, and they must follow federally imposed hiring guidelines. State officials all too often see the otherwise enticing funds as not so attractive.

The federal government offered states one notable categorical grant in the early 1980s as a way to both satisfy the upkeep of highways and to ease the national drunk driving problem. Congress offered large sums of money to states on the condition that states increase their drinking age to twenty-one. Studies showed that making twenty-one the legal drinking age would likely decrease the number of fatalities on the highways. Most states complied with the National Minimum Drinking Age Act of 1984 to secure these precious dollars. South Dakota, however, challenged these strings.

In *South Dakota v. Dole*, the Supreme Court ruled that Congress did have the power to set conditions of the drinking age for states to receive federal dollars for highway repair and construction. Congressional restrictions on grants to the states are constitutional if they meet certain requirements. They must be for the general welfare of the public and cannot be ambiguous. Conditions must be related to the federal interest in particular national projects or programs, and they must not run afoul of other constitutional provisions. That is, Congress cannot use a conditional grant to induce states to engage in unconstitutional activities. South Dakota lost and Congress continued creating and controlling strings.

Mandates With strings, states receive federal monies in exchange for following guidelines. Federal **mandates**, on the other hand, require states to comply with a federal directive, sometimes with the reward of funds and sometimes—in unfunded mandates—without. The legislative, executive, or judicial branches can issue mandates in various forms. Mandates often address civil rights, environmental concerns, and other societal needs. Federal

statutes require state environmental agencies to meet national clean air and water requirements. Significant intergovernmental regulations in the late '80s and early '90s include the Clean Air Act Amendments, the Americans with Disabilities Act, the Civil Rights Restoration Act, the Family and Medical Leave Act, and the National Voter Registration Act (also known as the motor-voter law).

The **Clean Air Act**, originally passed in 1970, set requirements and timetables for dealing with urban smog, acid rain, and toxic pollutants. The **Americans with Disabilities Act** made public sector buildings and transportation systems accessible for disabled individuals. Cities and states had to make their buildings wheelchair accessible and install wheelchair lifts. The mandate imposed, according to the Congressional Budget Office's best estimates, as much as \$1 billion in additional costs on states and localities. The Clean Air Act Amendments imposed \$250 to \$300 million annually, and the cost of the motor-voter law would reach \$100 million over five years.

The federal courts have also issued mandates to ensure that state or local governing bodies act in certain ways. Judges have decreed that cities redefine their hiring practices to prevent discrimination. They have placed firm restrictions on federal housing projects. In the early 1970s, federal judges mandated that public schools arrange appropriate black-to-white enrollment ratios, essentially mandating busing for racial balance.

Devolution Americans generally agree that issues such as education and health care have become national in scope. In 1990, 75 percent of Americans believed the nation was spending too little on education and environmental protection; 72 percent said the same about health care. But people questioned whether the federal government in Washington could take care of these issues. They wanted Washington to pay, but they also wanted local control.

By 1994, the Republican Party, especially those in the House of Representatives, began a call for **devolution**—devolving some of the responsibilities assumed by the federal government over the years back onto the states. Prior to the 1994 elections, Minority House Whip Newt Gingrich led the House Republicans and congressional candidates in front of the Capitol building to push for a Contract with America, calling for "the end of government that is too big, too intrusive, and too easy with the public's money." An overwhelming Republican victory followed with a plan to return this power and those dollars to the states. With bipartisan support and President Bill Clinton's signature, they managed to pass the Unfunded Mandates Reform Act and the Personal Responsibility and Work Opportunity Reconciliation Act. The first denied Congress the ability to issue unfunded mandates, laws that were taking up some 30 percent of state budgets. The second restructured the welfare system to return much authority and distribution of welfare dollars—Medicaid, for example—to the states. As Clinton declared in a 1996 address, "The era of big government is over."



MUST-KNOW SUPREME COURT DECISIONS:

UNITED STATES V. LOPEZ (1995)

The Constitutional Question Before the Court: Does Congress have the authority under the commerce clause to outlaw guns near schools?

Decision: No, for Lopez, 5:4.

Before *United States v. Lopez*: *Gibbons v. Ogden* (1824) broadened the authority of the federal government to control commerce. (See page 49.)

Facts: Congress passed the Gun-Free School Zones Act in 1990 in hopes of preventing gun violence at or near schools. In 1992, senior Alfonso Lopez carried a .38 caliber handgun and bullets into a San Antonio high school. On an anonymous tip, school authorities confronted him, obtained the gun, and reported the infraction to the federal police. Lopez was indicted, tried, and sentenced in federal court for violating the statute. He challenged the ruling in the Supreme Court on the grounds that the federal government has no right to regulate specific behavior at a state-run school. The United States argued that the connections of guns and drug dealing put this area under federal jurisdiction and Congress's commerce power.

The Court sided with Lopez, refusing to let Congress invoke the commerce clause. "It is difficult to perceive any limitation on federal power," Chief Justice William Rehnquist wrote. "If we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate." Congress had stretched its commerce power too far. Most states have regulations on guns and where one can legally carry a firearm. That is where the Supreme Court said this authority should stay, ushering in a new phase of federalism that recognized the importance of state sovereignty and local control.

Reasoning: Chief Justice William Rehnquist, joined by justices O'Connor, Scalia, Kennedy, and Thomas, wrote the majority opinion arguing that a gun near school property does not have an impact on interstate commerce and is therefore not covered by the commerce clause.

Majority Opinion: The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

In addition to the majority opinion, there were two concurring and three dissenting opinions.

Concurring Opinions Justice Anthony Kennedy, joined by Justice Sandra Day O'Connor, focused on the nature of commerce, the obligation of the government not to tip the balance of power, and the state's control over education. Justice Clarence Thomas's concurring opinion argued that recent cases have drifted too far from the Constitution in their interpretation of the commerce clause and that if something "substantially affects interstate commerce," Congress could pass laws that regulated every aspect of human existence.

Dissenting Opinions Justice John Paul Stevens's dissent argued that the possession of guns is the result of commercial activity and is therefore under the authority of the commerce clause. Justice David Souter's dissent argued that the majority opinion is a throwback to earlier times and goes against precedent. Justice Breyer's dissent, with which Justice Stevens, Justice Souter, and Justice Ruth Bader Ginsburg joined, argued in part that given the effect of education upon interstate commerce, gun-related violence in and around schools is a commercial as well as human problem, since a decline in the quality of education has an adverse effect on commerce.

Since *United States v. Lopez*: Congress revised the federal Gun-Free School Zones Act in 1994 so that it would tie more clearly to interstate commerce. That law withholds federal funding for schools that do not adopt a zero-tolerance law for guns in school zones.

Political Science Disciplinary Practices: Analyze and Interpret Supreme Court Decisions

The full opinion of the divided court in the case of *United States v. Lopez* is available online. Refer to it as you work in small groups (or as your teacher directs) to understand the reasoning behind the various opinions. Different groups should study the reasoning behind the majority opinion, the concurring opinions, and the dissenting opinions and report a summary back to the class.

Apply: When studying your portion of the ruling, you may find the reading challenging. Take it slow, and make notes to yourself with any questions. Identify key passages in your portion of the ruling, and use them as evidence to explain your interpretation. Discuss your understanding with your group until each member is clear on the main ideas. Then decide on a way to present your summary to the class, and share the tasks in carrying that plan out.

After each group has made its presentation, discuss ways in which the concurring opinions and dissenting opinions are similar and different. Are there any points on which they all agree?

Related Case: How does the interpretation of the commerce clause in the majority opinion in *United States v. Lopez* compare to the interpretation of the commerce clause in *Gibbons v. Ogden* (page 49)?

Education: National Goals, State Management

The Constitution and the federal government left the creation and management of schools largely to the states until the 1960s. There has always been a national concern for an educated citizenry, but the racial desegregation of public schools and the Cold War competition with the Soviet Union in the 1950s caused education to move up the national agenda, and with that move came new debate about the roles of the central, state, and local governments. President Johnson (a former teacher) and Congress passed the Elementary and Secondary Education Act in 1965. The law was as much an assault on poverty as it was reform of education, ensuring that lesser-funded schools received adequate resources. State officials generally welcomed the law because of the federal government's hands-off approach to school management and the broad discretion it gave local authorities on how to spend federal monies.

By the end of Johnson's term, federal aid to education through the Department of Health, Education, and Welfare totaled \$4 billion. By the late 1970s, Congress created a new seat for the secretary of education in the president's cabinet and an entire Department of Education. In the 1980s and 1990s, presidents and members of Congress found education a topic that almost all voters cared about and wanted to improve, though viewpoints on how to improve education varied widely.

The most sweeping changes in federal education law that caused tension between the states and the national government came in the form of the **No Child Left Behind Act (NCLB)**. After campaigning to end an "education recession," George W. Bush gained bipartisan support for NCLB and signed the bill in early 2002. The new law brought Republicans and Democrats together to improve the nation's education system. The law declared that every child can learn and that schools and states should be held accountable for student learning. The act called for "highly qualified" teachers in the core subjects in every classroom, the use of proven teaching methods, and the threat of sanctions on underperforming schools. No Child Left Behind pushed for classroom lessons and methods that research has proven effective, and it gave parents information and choices about their child's education.

With these requirements and rewards also came greater emphasis on testing and the cloud of federal intervention. NCLB required that students show annual yearly progress (AYP) through federally required and regulated tests. Underperforming schools could be reconstituted, replacing the administration and teaching staff.

Public support for the law was strong and widespread at its passage, but many teachers, administrators, and state governments came to criticize NCLB. Part of the frustration was that Congress provided only 8 percent of the total funding for education nationwide, while it had increased the Department of Education's power over the nation's schools. Some of its goals were just not realistic. Nearly 80 percent of U.S. schools would be labeled failures as they could not reach the idealistic goals and deadlines. One education professor

FEDERALISM TERMS

Dual Federalism	The supremacy of the national and state governments in their own spheres, a Supreme Court doctrine common from the Civil War until the New Deal
Cooperative Federalism	The intermingled relationships among the national, state, and local governments to deliver services to citizens
Fiscal Federalism	The pattern of taxing, spending, and providing federal grants to state and local governments
New Federalism	A return to more distinct lines of responsibility for federal and state governments, begun by President Ronald Reagan
Revenue Sharing	A policy under fiscal federalism that requires both national and local funds for programs
Devolution	The continued effort to return original reserved powers to the states



POLICY MATTERS: POLICYMAKING AND THE SHARING OF POWERS

You may have heard people complain about how slow the national government is to get anything done. In fact, the sharing of powers between and among the three branches and the state governments does constrain national policymaking and slow it down, an outcome many framers of the new constitution sought in order to protect the nation from popular but possibly rash policies. **BIG IDEA** The competitive policymaking process built into the Constitution—drawing on checks and balances among the executive, legislative, and judicial branches of the federal government and the sharing of powers with the states—ensures that multiple stakeholders and institutions can influence public policy. Environmental policy provides a useful case in point for seeing how different stakeholders compete.

Background The executive branch provided the initial impetus for environmental policy. President Teddy Roosevelt (1901–1909) is known as “the conservationist president” because of his appreciation of and devotion to the natural beauty and resources of the United States. During his presidency, 230 million acres of land were set aside as public lands. One reason Roosevelt was able to achieve so much was that he believed the president was “the steward of the people” who could claim broad powers to advance the good of the American people. He had little patience with the slow pace of debate in Congress, many of whose members he regarded as “scoundrels and crooks.” Congress was needed to establish national parks, but Roosevelt was able to hasten the protection of public lands by exercising his executive authority to establish national monuments. The Grand Canyon, now a national park, was originally established as a

national monument by Teddy Roosevelt. National parks and forest preserves became mainstays on our American landscape.

Not until the 1960s and 1970s did the environmental movement take off among the public, and Congress itself began to strongly regulate industry to assist this effort. As Congress imposed environmental standards, the business community opposed regulations. Over the ensuing decades, environmental policy in the United States became a competition between environmental activists and conservative free-market thinkers. Today, millions of members of the Sierra Club, the National Wildlife Federation, Greenpeace, and the World Wildlife Fund push for greater regulations, while the manufacturing and construction sectors fight regulations that slow job development and cheer President Trump's rollback of some of these regulations.

Congress and Environmental Legislation The National Environmental Policy Act requires any government agency, state or federal, to file an environmental impact statement with the federal government every time the agency plans a policy that might harm the environment, dams, roads, or existing construction. The 1970 amendments to the Air Pollution Control Act, commonly known as the Clean Air Act, call for improved air quality and decreased contaminants. The act ultimately requires the Department of Transportation to reduce automobile emissions. The Clean Water Act of 1972 regulates the discharge of pollutants into the waters of the United States and monitors quality standards for surface waters. The Endangered Species Act established a program that empowers the National Fish and Wildlife Service to protect endangered species.

After the catastrophic Love Canal toxic waste disaster in western New York in the mid-1970s, the federal government forced industry to pay for the insurance necessary to manage their dangerous by-products. In that disaster, a company had dumped toxic chemicals in an area that later became a residential development. Heavy rains washed some of the chemicals out of the ground. Adults and children developed serious liver, kidney, and other health problems. The company responsible for this major environmental catastrophe had already gone out of business. In response, Congress created the Superfund. Essentially, industry pays into the Superfund as insurance so taxpayers do not have to pay the bill for waste cleanup. Under the law, the guilty polluter pays for the cleanup, but when the guilty party is unknown or bankrupt, the collective fund will cover these costs, not the taxpayers.

Clashes Between the Executive and Judicial Branches over Environmental Policy Over the years since the 1970 creation of the Environmental Protection Agency—an agency within the executive branch—it and the federal government in general have required states to set air quality standards, to reduce the damage done by automobiles, to measure

city smog, and to set environmental guidelines. The EPA oversees the Superfund and toxic waste cleanup.

In 2012, the EPA established limits on how much mercury and other hazardous chemicals coal- and oil-fueled power plants could emit, asserting that although limiting these emissions would cost the plants nearly \$10 billion dollars, the cost should not be a factor because the risk of the emissions to human health justified the regulation. Exercising a countervailing force, however, the Supreme Court overturned that regulation in 2015, arguing that the EPA had unreasonably neglected to consider the cost burden to the power plants and customers and exerting a check and balance to the EPA.

Clashes over Climate Change The burning of fossil fuels and the resulting greenhouse gases have heightened attention to global warming, an increase in average global temperatures. Melting polar ice caps, unusual flooding in certain areas, animal habitat destruction, and a damaged ozone layer have caused the scientific community, including the Intergovernmental Panel on Climate Change, to conclude that the use of these damaging fuels should be limited and regulated. One international attempt to combat this problem came with the 1997 Kyoto Protocol, a multicountry agreement that committed the signing nations to reduced greenhouse gas emissions. Most industrialized nations joined the treaty, and U.S. president Bill Clinton agreed to it. However, the conservative-leaning U.S. Senate at the time did not achieve the two-thirds support necessary for ratification, so the United States did not sign the treaty.

During President Obama's tenure, the Senate remained conservative-leaning, constraining the power of the government to join another international climate agreement, the 2015 Paris Agreement. President Obama sought to go around this constraint by making acceptance of membership in the agreement a matter of executive order, without the approval of the Senate. In 2017, President Trump used the same bypass method to withdraw from the Paris Agreement, though some argue that the United States was never officially a member of the Paris Agreement since the Senate did not have a voice in deciding.

State Initiatives In response to Trump's decision, a number of states decided to adhere to the guidelines in the Paris Agreement anyway, demonstrating yet another check and balance in the federal system. In 2017, for example, California passed legislation to extend its program to reduce carbon emissions, known as cap and trade, from its original expiration date of 2020 to 2030. Under this plan, companies must buy permits to release greenhouse gas emissions.

REFLECT ON THE ESSENTIAL QUESTION

Essential Question: *How has federalism shaped the administration of public policy, and how do state, local, and national governments work within the federal framework today? On separate paper, complete a chart like the one below to gather details to answer that question.*

Constitutional Approach to Federalism

Federalism in Practice

KEY TERMS AND NAMES

Americans with Disabilities Act/58	federal income tax/50	nullification/47
block grants/54	federalism/42	police powers/44
categorical grants/53	fiscal federalism/52	privileges and immunities clause/43
Clean Air Act (1970)/58	full faith and credit clause/43	reserved powers/44
commerce clause/49	grants-in-aid/52	revenue sharing/52
compact theory/47	implied powers/49	selective exclusiveness/50
concurrent powers/44	mandates/57	strict constructionist/46
conditions of aid/strings/55	marble cake federalism/54	strings/53
cooperative federalism/52	<i>McCulloch v. Maryland</i> (1819)/48	Tenth Amendment/44
delegated powers/44	New Federalism/57	unitary government/42
devolution/58	No Child Left Behind Act (2002)/61	<i>United States v. Lopez</i> (1995)/59
dual federalism/50		Whiskey Rebellion/46
extradition/44		

MULTIPLE-CHOICE QUESTIONS

Questions 1 and 2 refer to the following passage:

The Commerce Clause should be limited to its proper sphere. The current approach under the Commerce Clause requires courts to defer to congressional judgment that a regulated activity has an effect upon interstate commerce, provided that there is any rational basis for that judgment. This standard grants judicial power to the legislative branch and removes an important check on legislative power. Deference to the judgment of a coequal branch of government on a specific issue is only appropriate where the Constitution gives that branch the power to decide that issue. Here, the Constitution grants the Judicial Branch the power to decide whether Congress is acting within its enumerated powers, so no deference is due. Simply put, "The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it." —Texas Justice Foundation, Amicus Brief filed in *United States v. Lopez* 1993

1. Which of the following statements best summarizes the argument in the Texas Justice Foundation's brief?
 - (A) Judicial power should be granted to Congress in matters related to commerce.
 - (B) The judicial branch can determine if Congress is operating within its enumerated powers and thus checks legislative power.
 - (C) *Marbury v. Madison* confirms the coequal status of the branches of government.
 - (D) The Court should uphold the process in place for determining the reach of the commerce clause.
2. This passage best aligns with which of the following opinions in *United States v. Lopez*?
 - (A) We hold that the [Gun-Free School Zones] Act exceeds the authority of Congress "[t]o regulate Commerce . . . among the several States . . ."—Justice Rehnquist
 - (B) Congress's power to regulate commerce in firearms includes the power to prohibit possession of guns at any location because of their potentially harmful use. . . —Justice Stevens
 - (C) A look at history's sequence will serve to show how today's decision tugs the Court off course.—Justice Souter
 - (D) [T]he statute falls well within the scope of the commerce power as this Court has understood that power over the last half century.—Justice Breyer

3. Which of the following options represents the majority opinion in *United States v. Lopez*?
- (A) Individuals have the right to own and carry guns.
 - (B) The power of the federal government in relation to state governments is limited in this case.
 - (C) The commerce clause gives Congress broad powers to determine the constitutionality of laws.
 - (D) Even small, local events ultimately have an effect on interstate commerce.
4. Which of the following statements accurately describes federalism?
- (A) Federalism is a governing system that places a national authority above regional authority.
 - (B) Federalism ranks the sovereignty of the states over the power of the national government.
 - (C) Federalism is a balance of powers between state and local governments.
 - (D) Federalism is a sharing of powers between national and regional governments.
5. On which of the following issues did Federalists and Jeffersonians have most widely differing views?
- (A) Declaring independence
 - (B) Writing the Constitution
 - (C) Ratifying the Constitution
 - (D) Creating a national bank
6. Most members of Congress believe the legal driving age should be 18, because statistics show that drivers under eighteen have many more accidents than those 18 and older. Which of the following is the most practical and lasting action Congress can take to address this issue?
- (A) Urge the president to issue an executive order requiring drivers to be at least 18 years old.
 - (B) Mandate states to set the driving age at 18 and then withhold highway funds from any state that does not comply.
 - (C) Convince the Supreme Court that Congress, not the states, should regulate driving laws.
 - (D) Distribute educational materials on the issue to state legislatures.

7. Which of the following statements most closely conveys the main message in the cartoon below?
- (A) The federal government is like a king.
- (B) The framers foresaw the federal government becoming too powerful.
- (C) The framers tried to warn Americans the government might limit their right to vote.
- (D) Voters created a monster in the federal government.



Source: CartoonStock

8. Which of the following is an accurate comparison of federal block grants and categorical grants?

	BLOCK GRANTS	CATEGORICAL GRANTS
(A)	Let members of Congress control how to spend money in their districts	Give states control over how to spend federal money locally
(B)	Lead to loss of congressional oversight on spending grant money	Require states or localities to meet certain criteria
(C)	Are used primarily to combat terrorism at the local level	Are available to state governments but not city governments
(D)	Specify how the grant money is to be spent	Have declined in favor of block grants

FEDERAL GRANTS FROM THE TOP FIVE DEPARTMENTS FY 2011

Department of Health and Human Services	\$332 Billion
Department of Transportation	\$25.7 Billion
Department of Agriculture	\$23.3 Billion
Department of Education	\$17.3 Billion
Department of Housing and Urban Development	\$6.7 Billion

Source: www.usaspending.gov

9. Which of the following statements is reflected in the table above?
- (A) More federal dollars go toward state education and farming than any other concern.
 - (B) The constitutional outline of federalism prevents the national government from assisting with state responsibilities.
 - (C) Grants appear to assist the inner-city interests, not rural interests.
 - (D) Medical and social needs receive the most federal grant money.
10. In the *McCulloch v. Maryland* (1819) decision, which two provisions in the Constitution were upheld and strengthened?
- (A) Congress's power to regulate commerce and to levy taxes
 - (B) The necessary and proper clause and the supremacy clause
 - (C) The First and Tenth amendments
 - (D) The full faith and credit clause and the extradition clause

FREE-RESPONSE QUESTIONS

1. "In this present crisis, government is not the solution to our problem; government is the problem. From time to time we've been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else? All of us together, in and out of government, must bear the burden. The solutions we seek must be equitable, with no one group singled out to pay a higher price."

— President Ronald Reagan, First Inaugural Address,
January 20, 1981

After reading the excerpt, respond to A, B, and C on the next page.

- (A) Describe the political institution Reagan identifies as the problem.
- (B) In the context of the scenario, explain how the power of the institution described in part A can be affected by its interaction with the U.S. Supreme Court.
- (C) In the context of the excerpt, explain actions the public can take to influence the political institution described in part A.



"IF ONLY WE COULD HARVEST THE WIND COMING OUT OF THERE."

Source: CartoonStock

2. Use the political cartoon to answer the following questions.
- (A) Describe the core message of the cartoon.
- (B) Explain how the message described in part A relates to policymaking.
- (C) Explain how states can respond to the issue described in part A.
3. In 1996, California voters passed the Compassionate Use Act that legalized the medical use of marijuana. However, that state law conflicted with the federal Controlled Substances Act, which made the possession of marijuana illegal. When federal agents from the Drug Enforcement Agency raided a medical marijuana user's home and confiscated the drug, a group of people prescribed marijuana for medical reasons sued the federal government. They argued that the Controlled Substances Act exceeded the government's authority since the use of medical marijuana was completely within the state of California, not between states. The case reached the Supreme Court in 2004 as *Gonzales v. Raich*. In a 6:3 ruling, the Court decided that the government did have authority to prohibit medical marijuana possession and use, even though it was legal in California. It reasoned

that since marijuana sales are part of a national market, marijuana possession can be controlled by the federal government.

- (A) Identify the constitutional clause that is common to both *Gonzales v. Raich* (2004) and *United States v. Lopez* (1995).
- (B) Based on the constitutional clause identified in part A, explain why the facts of *Gonzales v. Raich* led to a different holding than the holding in *United States v. Lopez*.
- (C) Describe an action that California users of medical marijuana might take to limit the impact of the ruling in *Gonzales v. Raich*.
4. Develop an argument that explains how power over education should be shared in the U.S. federalist system. In your essay you must:
- Articulate a defensible claim or thesis clearly stating your position
 - Support your claim with at least TWO pieces of accurate and relevant information.
 - ♦ At least ONE piece of information must be from one of the following foundational documents:
 - Article I, Section 8 of the Constitution
 - Article VI of the Constitution
 - The Tenth Amendment
 - ♦ Use a second piece of evidence from another foundational document from the list above or from your study of federalism
 - Use reasoning to organize and analyze evidence, explaining its significance to justify your claim or thesis
 - Address opposing or alternative perspectives through refutation, concession, and rebuttal



WRITING: REFUTE CLAIMS

Refute means “to contradict” or “disprove” an opposing or alternative view. A simple “I don’t agree with you” is not an effective refutation or rebuttal. Instead, offer evidence and use solid reasoning to show why your position is stronger. However, if another view includes worthwhile ideas, acknowledge, or concede, those points, but then go on to show why your position is even stronger.