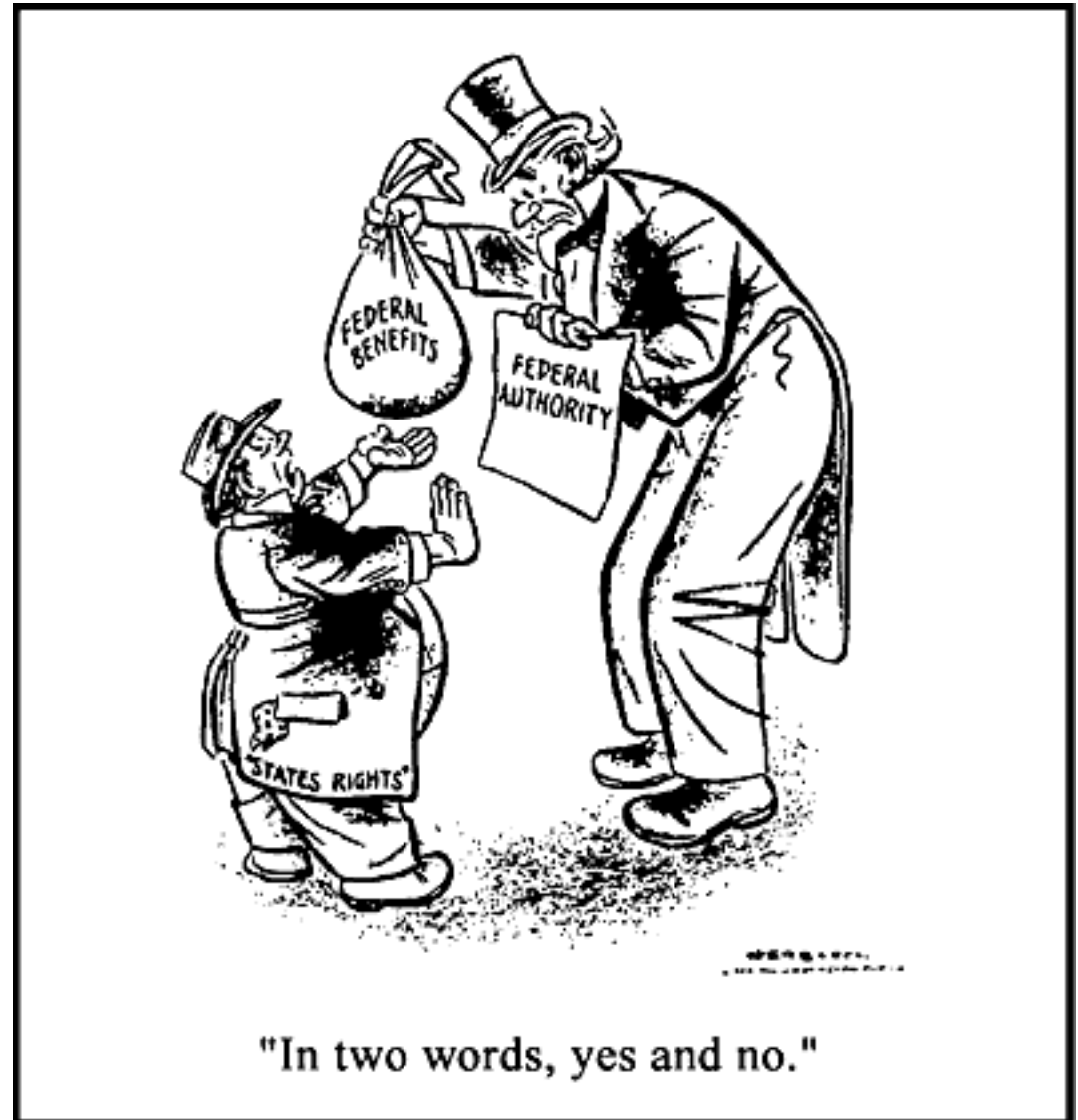


How has Federalism changed since the inception of the Constitution?

What concepts expressed by this cartoon seem beyond the scope of federalism as established by the Constitution?



"In two words, yes and no."

The Evolution of FEDERALISM

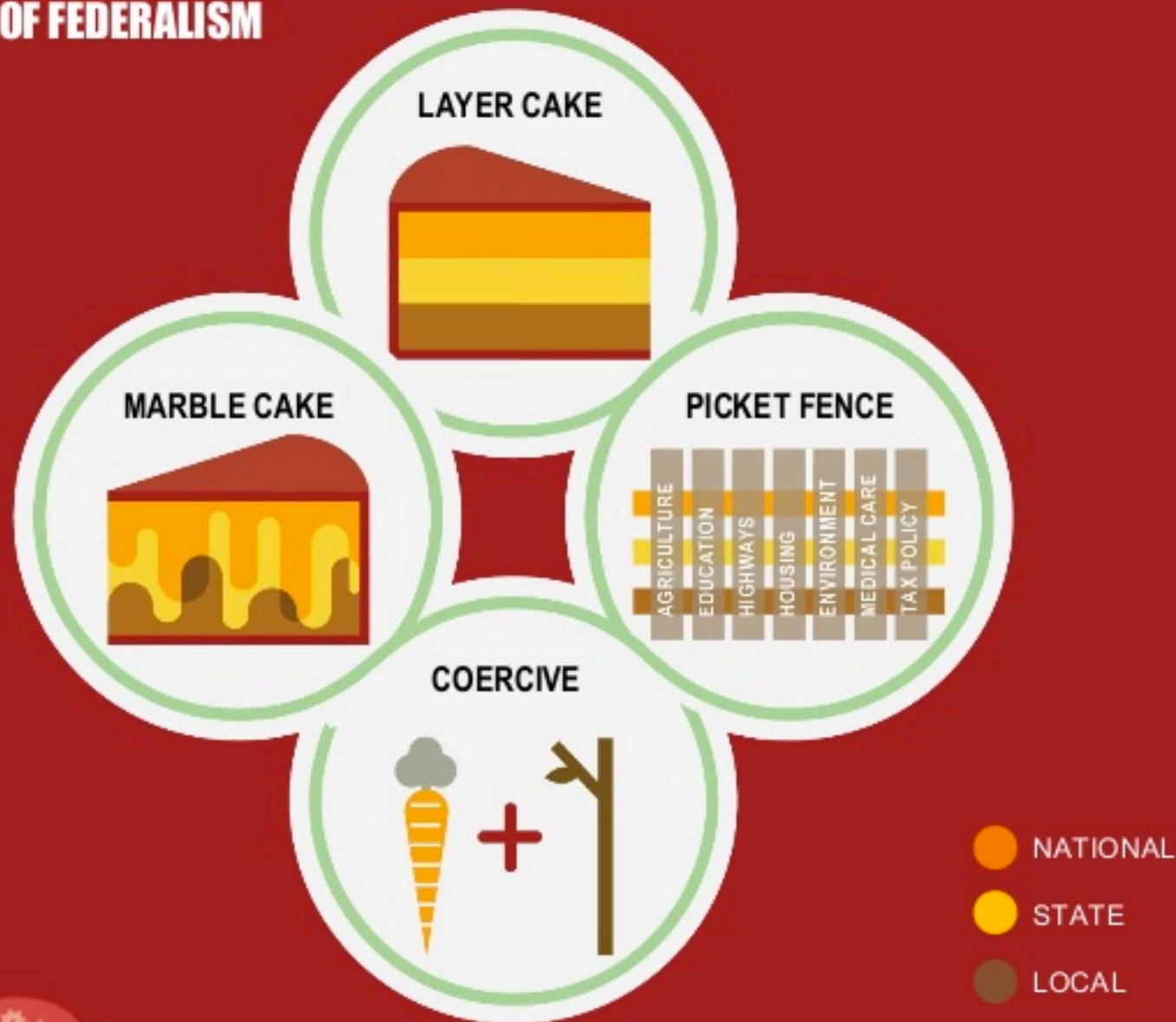
The balance and boundaries between the National govt + state govts have changed substantially over time.

There are 4 distinct periods:

- **Marshall Court (1801 – 1835)**
- **Dual Federalism (1850 – 1933) [LAYER CAKE]**
- **Cooperative Federalism (1933-1969) [MARBLE CAKE]**
- **New Federalism (1969 – Present) FI\$CAL FEDERALI\$M [DEVOLUTION]**

also: Coercive Federalism + Picket Fence Federalism

VERSIONS OF FEDERALISM



Marshall Court =

*STRENGTHENING THE POWER
OF THE FEDERAL GOVT...*

***Marbury vs Madison:**

~judicial review

***McCulloch vs Maryland:**

~elastic clause/IMPLIED powers/
supremacy of Fed. govt

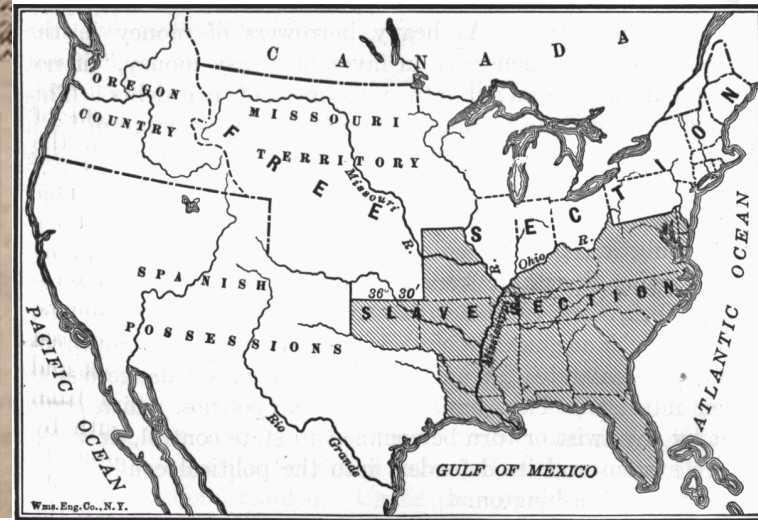
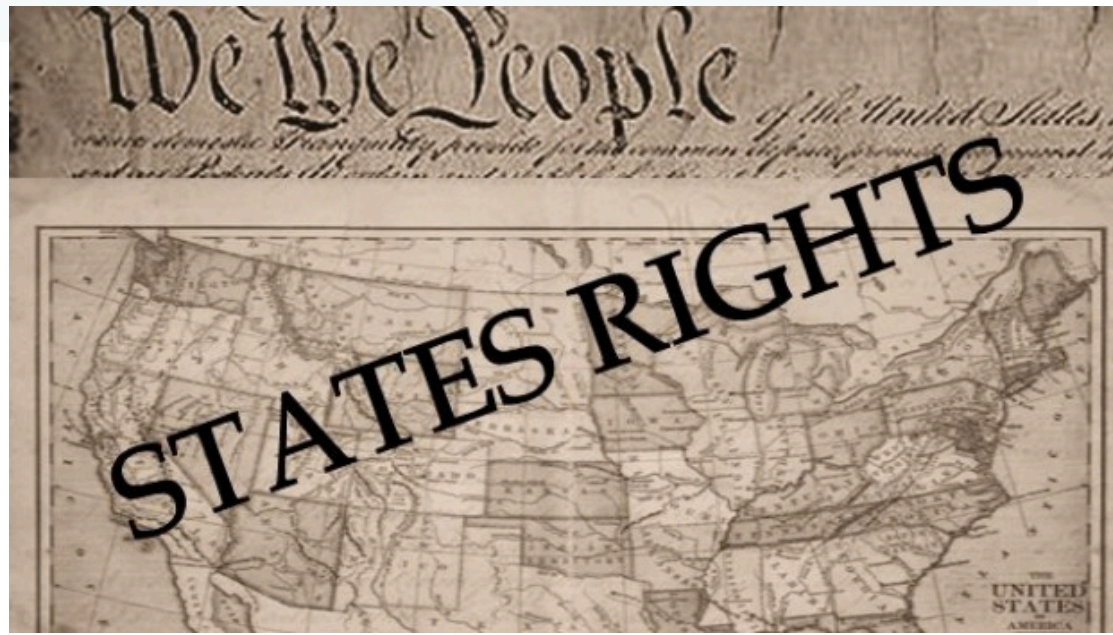
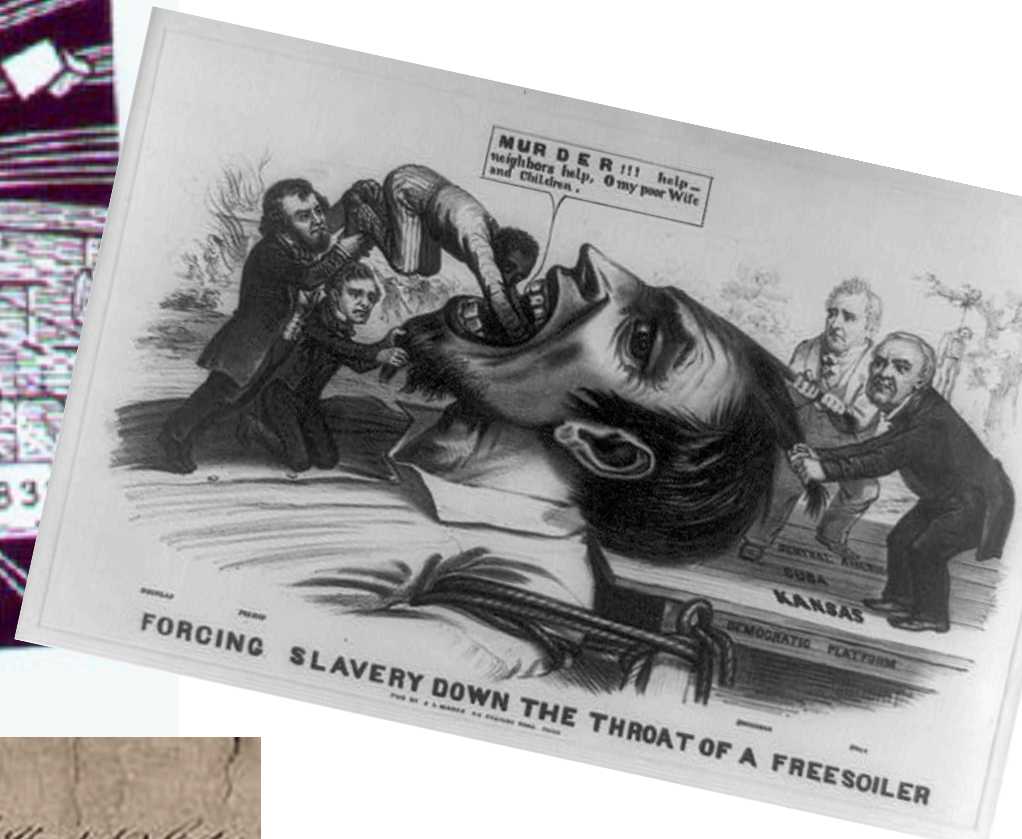
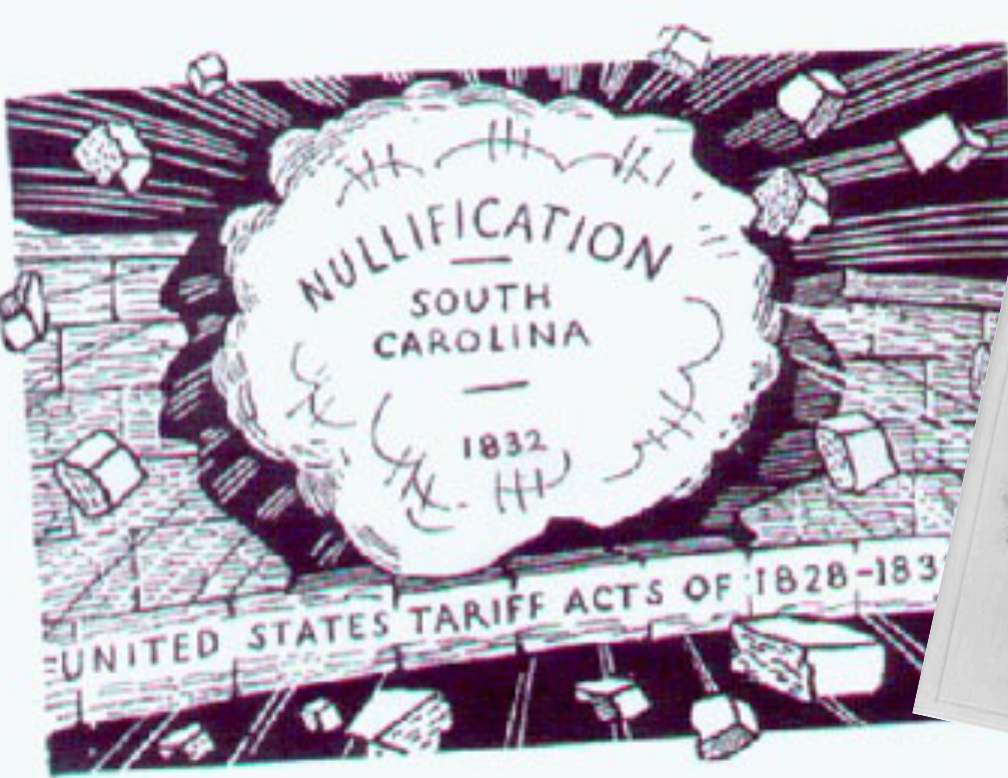
***Gibbons vs Ogden:**

~interstate commerce

THE COMMERCE CLAUSE:

Article 1, Section 8, Clause 3
gives Congress the power

“to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”



Dual Federalism (Layer Cake)



- 1 - United States Constitution
- 2 - Federal Statutes
- 3 - Federal Regulations
- 4 - State Constitution
- 5 - State Statutes
- 6 - State Regulations
- 7 - Local Rules

Federalism

10th Amendment!!

National

- Declare war
- Maintain armed forces
- Regulate interstate and foreign trade
- Admit new states
- Establish post offices
- Set standard weights and measures
- Coin money
- Establish foreign policy
- Make all laws necessary and proper for carrying out delegated powers

Shared

- Maintain law and order
- Levy taxes
- Borrow money
- Charter banks
- Establish courts
- Provide for public welfare

State

- Establish and maintain schools
- Establish local governments
- Regulate business within the state
- Make marriage laws
- Provide for public safety
- Assume other powers not delegated to the national government or prohibited to the states

• Each level of gov' t = supreme in its own sphere
kept separate

Dual Federalism – Layer Cake



- 2 (3+) distinct + separate levels of government.
- **FEDERAL GOVT:** *deals only with national issues (delegated powers)*
- **STATE GOVTS:** *deal with local matters (reserved powers)*

- Each level of gov' t = supreme in its own sphere kept separate

Supporting states' rights cases: Dred Scott vs Sanford
Plessy vs Ferguson



National Government

No Interactions Between Layers

State Government

Cooperative AKA Marble Cake Federalism...When did it begin?

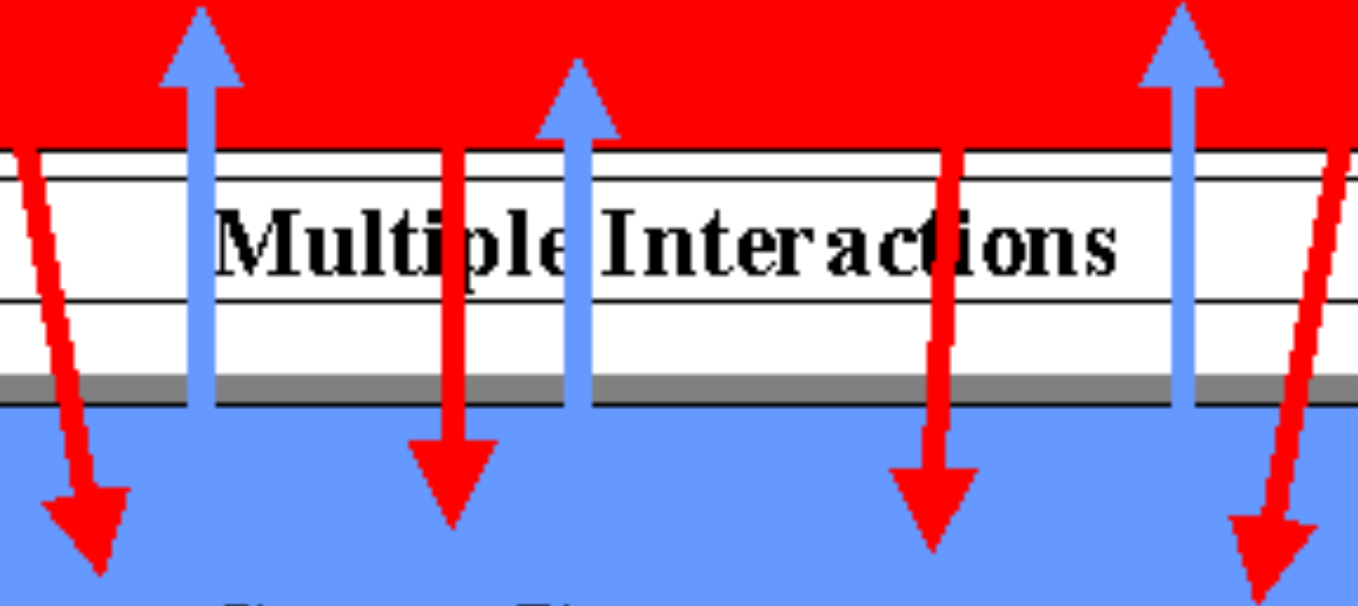




National Government

Multiple Interactions

State Government



New Deal and Cooperative Federalism

- **Great Depression**--too much for states to handle alone
- → National government **expanded its power over commerce**(?!?)

The New Deal **created massive federal programs that needed to be administered on the state and local levels, but paid for on the national level.**





https://www.youtube.com/watch?v=6SDf5_Thqsk

- **WICKFORD vs FILBURN**
- **US vs LOPEZ**
- **GONZALES vs RAICH**

**COMMERCE CLAUSE
CASES**

Cooperative Federalism = Marble Cake

- Federal + state power → more intertwined.
- State + local govts now administer many federal programs (shared costs + admin w/ Fed regs).
- Examples: Head Start, Medicare, Medicaid



Also known as
CREATIVE
FEDERALISM!!
(during LBJ's
GREAT SOCIETY)

- States depend on federal funds to support their own programs.

Fi\$cal Federalism:

“cornerstone of the natl govt’s relations w/ state +local govts”

Based on the fund\$ provided by the national government to the states...and what can be done with them.

Grants-in-Aid: (Federal cash payments to states and localities for programs they administer)

Categorical Grants-- project, formula
(specific purposes)

Block Grants (broad purposes)

Mandates: Funded + Unfunded

Revenue Sharing

Federal Mandates: Laws imposed on states

COERCIVE
FEDERALISM

States must follow under threat of legal action, sanctions or other punitive measures ****these laws override any state laws to the contrary****

PREEMPTION

EXAMPLES:

Civil Rights Act of 1964

Voting Rights Act 1965

Clean Air Act 1970 → NAAQS

National Minimum Drinking Age Act 1984

The Americans with Disabilities Act of 1990

No Child Left Behind 2001



UNFUNDED MANDATES



Mike Keefe THE DENVER POST 2004 www.caglecartoons.com



New Federalism: Devolution



- *Passing down authority from the national to state and local governments.*
- New Deal + Great Society programs seen as too large, inefficient and wasteful.
- Pres. Nixon + Reagan
- Allowed **states more control over the use of funds** (fi\$cal federalism).
- Example: 1996 Welfare Reform → BLOCK GRANTS

Nationalization Continues

- Despite the call for smaller government and devolution, involvement of the federal government continues:
 - **No Child Left Behind** began to create a national standard for education....now Common Core
 - **Department of Homeland Security** began to take local policing and emergency responsibilities from the states in the Post-9/11 U.S.





MARSHALL SANDELL
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Obergefell v Hodges



PHOTO
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CAG in cartoon 5/1/2018



Defense of Marriage Act (DOMA) 1996

- defined marriage = man + woman
- Section 3 banned same-sex marriage couples from receiving many federal benefits such as, health insurance and retirement savings.
- 2011: Executive stops defending DOMA
- Section 3 was declared unconstitutional in US v. Windsor in 2013

Obergefell v. Hodges states must recognize + allow all marriages

14th Amendment

- equal treatment to all Americans
- extended Bill of Rights to state level.

BUT!!

- States had discretion how to enforce these rights, as seen in *Plessy v. Ferguson*



UNTIL!!

- (Selective) Incorporation

Pro's and Con's of Federalism

Pro's:

- **Fosters state loyalties:** Because states have powers all their own citizens feel closely connected to their states.
- **Practices Pragmatism:** Each state is unique and state and local government can more efficiently respond to unique local issues.
- **Laboratories of Democracy:** State governments can experiment with policies and other states and the federal government can learn from their success and failures.
- **Political Stability:** By removing the federal government from some contentious policy areas federalism allows the government to achieve and maintain stability.

Pro' s and Con' s of Federalism

Pro' s:

- Encourages pluralism: Allows citizens multiple points of access and influence in government (local, state, national).
- Ensures separation of powers and prevents tyranny: Even if one person or group (faction) took control of all three branches of the federal government federalism ensures that state governments would still function independently (Federalist #10 and Federalist #51).

Pro' s and Con' s of Federalism

Con' s:

- Prevents creation of national policy: The United States often doesn' t have a single policy on issues; it often has 51 policies. (marijuana, gay marriage)
- Leads to a lack of accountability: The overlap of responsibilities makes it hard to assign blame or find the roots of failure in policies.
- Citizen Ignorance: Since most Americans know very little about their state and local governments and turnout in these elections is typically less than 25%, citizens often ignore the level of government that has the greatest ability to affect their lives.