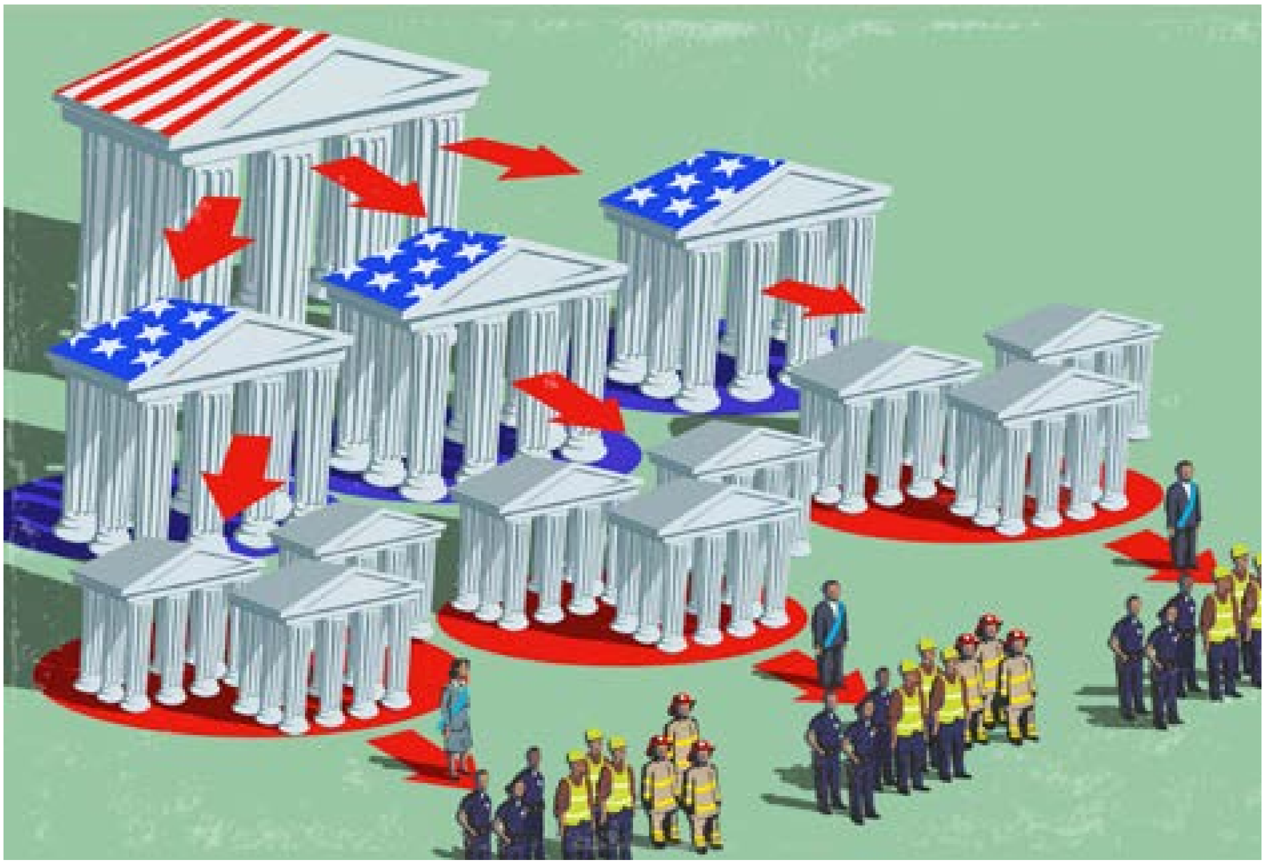
HS Civics Inquiry

Should The Powers Of The Federal Government Be Limited?



Supporting Questions

1. What powers & how are the powers of the national government regulated by the Constitution?
2. How has the structure of the national government grown from ratification of the Constitution to present?
3. How have the powers of the national government evolved over time?

Should The Powers Of The Federal Government Be Limited?

Michigan Content Expectations:	3.2.1 Explain how the principles of enumerated powers, federalism, separation of powers, bicameralism, checks and balances, republicanism, rule of law, individual rights, inalienable rights, separation of church and state, and popular sovereignty serve to limit the power of government. 3.2.3 Identify specific provisions in the Constitution that limit the power of the federal government. 3.2.4 Explain the role of the Bill of Rights and each of its amendments in restraining the power of government over individuals. (See USHG F1.1) 3.2.5 Analyze the role of subsequent amendments to the Constitution in extending or limiting the power of government, including the Civil War/Reconstruction Amendments and those expanding suffrage.
Staging the Compelling Question:	Play the game "Power Play" hosted on the iCivics site (link).

Supporting Question 1	Supporting Question 2	Supporting Question 3
What powers & how are the powers of the national government regulated by the Constitution?	How has the structure of the national government grown from ratification of the Constitution to present?	How have the powers of the national government evolved over time?
Formative Performance Task	**Formative Performance Task**	**Formative Performance Task**
Play the game "Power Play" hosted on the iCivics site (link).	In five points, summarize the growth of federal government structure using evidence/examples. Short written response - (2 paragraphs?).	Consider the evolution of government in the United States looking at sources A-C. Then, in groups jigsaw sources D & E - find (minimum) five examples of the growth of federal power. Share out as class & identify common themes…?? Classwide discussion for reasons (how or why) behind the growth of federal powers.
Featured Sources	**Featured Sources**	**Featured Sources**
Source A: Excerpt from Article 1, Sec. 9 of the Constitution Source B: Political cartoons from Archives.org Source C: Excerpt from Article 1, Sec. 8 of the Constitution Source D: Separation of Powers & Checks and Balances - Graphic	Source A: Plan of the City of Washington - 1793 Source B: National Parks Map of Washington D.C. & Monuments - Present Source C: "Federal Government Growth Before the New Deal" - Randall G. Holcombe Source D: Present Organizational Chart for United States Federal Government Source E: Evolution of Federal Government Agencies	Source A: Articles of Confederation - Article II Source B: U.S. Constitution - Amendment X Source C: United States Constitution - Article 1, Section 8, Clause 18 (Necessary & Proper Clause) Source D: Evolution of Federalism Source E: Timeline of Federalism & Change (Video source for evolution of federalism or timeline can be substituted for sources D & E)

Summative Performance Task	Argument: Should the powers of the federal government be limited? Answer in a written, evidence-based essay response.

Overview

More than just a dinnertime conversation to be avoided with family, students in this high school level inquiry really explore the compelling question "Should the powers of the Federal government be limited?" by going straight to the source. Students, over the course of this inquiry, will explore parts of the Constitution, look at political cartoons from various perspectives, and learn more about the expansion of the Federal government's powers over time.

Staging the Compelling Question

To stage this inquiry, teachers might begin by having students play PowerPlay, an iCivics game. Students will try to identify and make the best argument for power at the Federal or State level.

Supporting Question 1 Overview

The first supporting question—"What & how are the powers of the national government regulated by the Constitution?"— asks students to look at powers given, powers denied, and mechanisms for regulating powers at the level of national government. Featured sources have students looking at language from the Constitution, political cartoons & graphics of power control mechanisms. After looking at sources, students will create/complete a chart showing powers and mechanisms, then ranking powers/mechanisms based on the student perceived importance.

Supporting Question 2 Overview

The second supporting question—"How has the structure of the national government grown from ratification of the Constitution to present?"—asks students to look at documents and articles showing the physical growth of the federal government (from the planning/building of Washington D.C. to growth of the federal government as an organization. After looking at the sources students will summarize the growth of the federal government structure citing examples & evidence.

Supporting Question 3 Overview

The third supporting question—"How have the powers of the national government evolved (or encroached on states powers) over time?"—asks students to look at three foundational document sources (Articles of Confed. & Constitutional clauses) and two articles about the evolution of the federal government. Source articles will be split and jigsawed across the class with students finding five examples of the growth of federal power. This will then be discussed classwide & groups will search for common themes or mechanisms resulting in the evolution of federal power.

Summative Performance Task Overview

In the Summative Performance Task, students address the issue of whether or not the powers of the federal government should be limited, supporting their answers with evidence. After learning about powers given to the government, mechanisms to regulate power and the evolution in structure and function of the federal government, students should be able to draw on a range of examples to use as evidence in answering the compelling question "Should the powers of the federal government be limited?" in the form of a paragraph.
Student arguments will likely vary but could include any of the following:
Yes, government is already too big to be responsive to all issues (social, economic, etc.) facing the country and its citizens.
Yes, but more limits on power should be put in place...
No, times have changed from the writing of the Constitution; issues now facing the country are different and more severe, requiring more power at the national/federal level.

Supporting Question 1 - Featured Source A

U.S. Constitution - Article 1 Section 9

Article 1 - The Legislative Branch - Section 9 - Limits on Congress

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

(No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.) (Section in parentheses clarified by the 16th Amendment.)

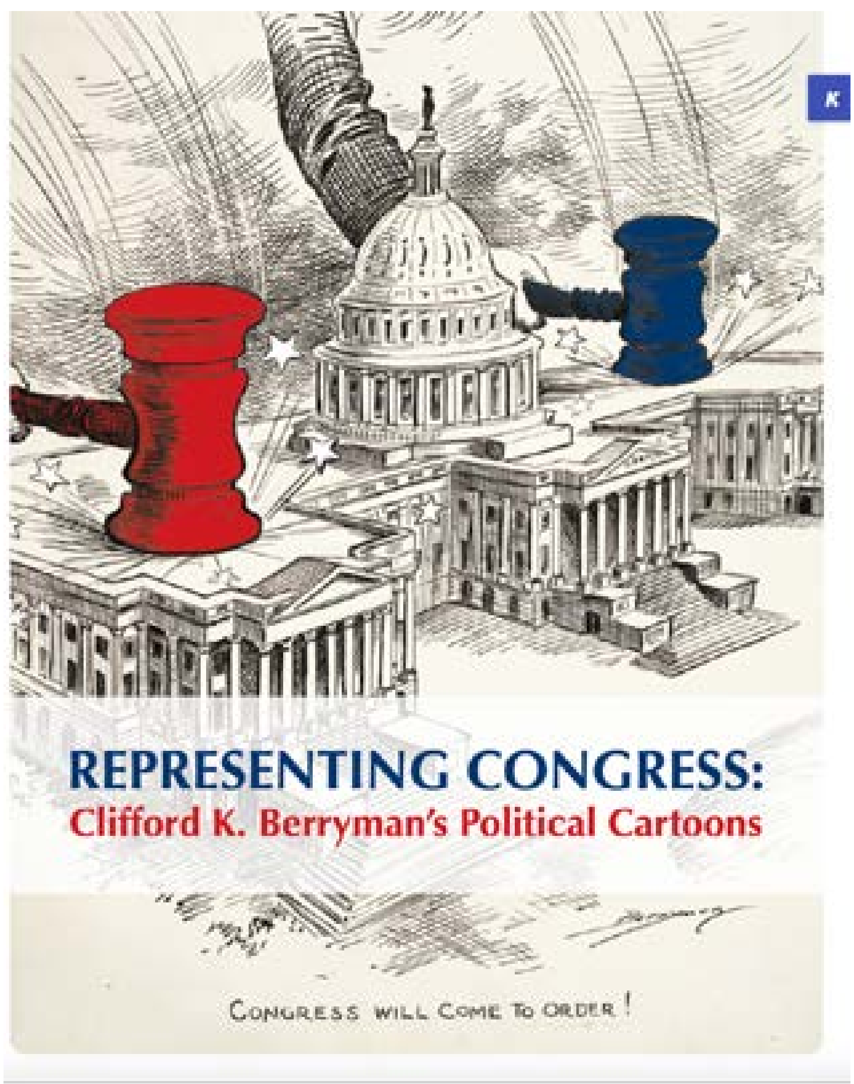
No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be

Supporting Question 1 - Featured Source B

Political cartoons from Representign Congress eBook: https://www.archives.gov/files/legislative/resources/education/congress-represented/ebook.pdf



Supporting Question 1 - Featured Source C

U.S. Constitution - Article 1 Section 8

Article 1 - The Legislative Branch - Section 8 - Powers of Congress

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and Post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

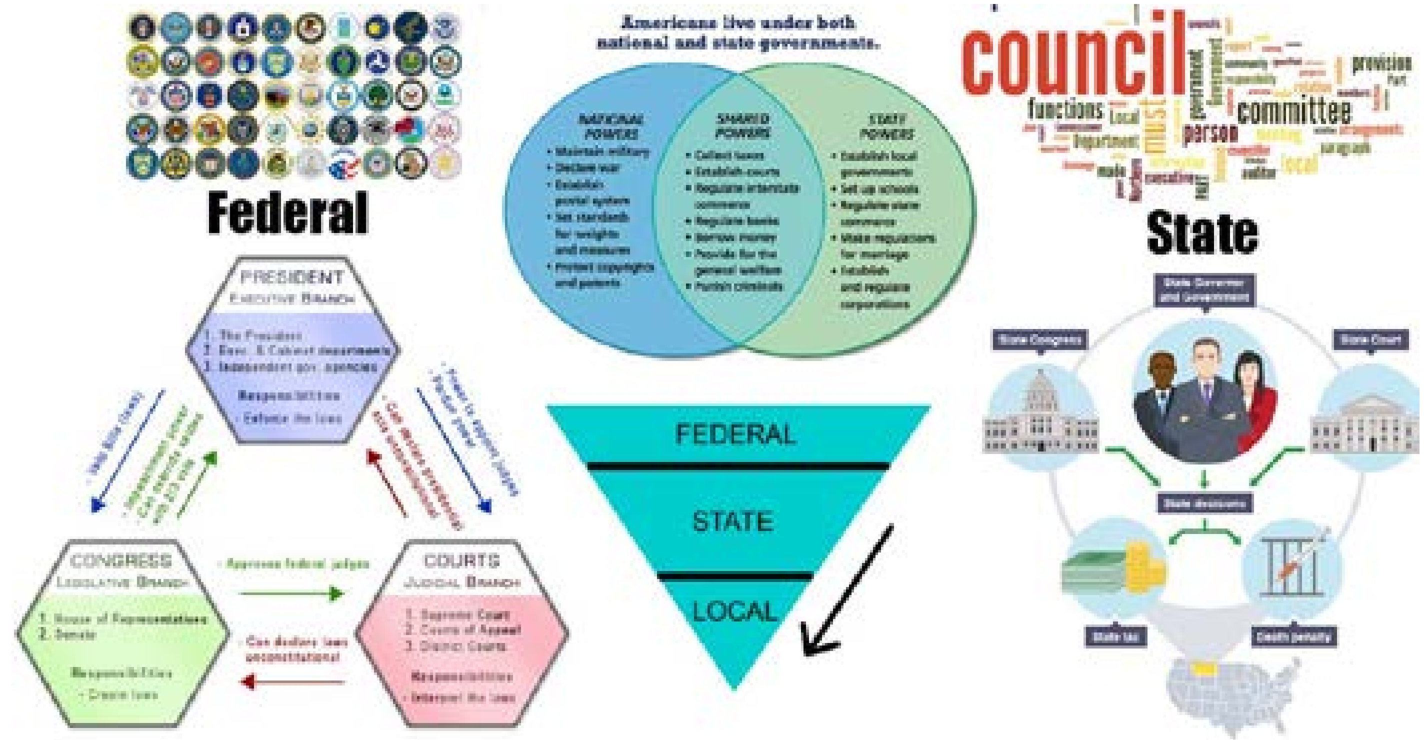
To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

Supporting Question 1 - Featured Source D



Supporting Question 2 - Featured Source A

Supporting Question 2 - Featured Source B

Supporting Question 2 - Featured Source C

Federal Government Growth Before the New Deal
Lincoln and Wilson Set Precedents for Government Spending
Monday, September 01, 1997
Randall G. Holcombe - Professor Holcombe teaches economics at Florida State University.

Popular opinion holds that most of the credit (or blame) for the incredible growth of the federal government should go to President Franklin D. Roosevelt and his New Deal. While Roosevelt certainly was a willing participant in that process, the federal government began its amazingly rapid growth well before the New Deal, and it is unlikely that it would be much smaller today even had FDR never come along.

The origins of federal growth are in the Constitutional Convention. But the modern period of growth began with the Progressive Era before World War I. Contrary to popular belief, that growth continued through the 1920s. The percentage by which the federal government grew was greater during Herbert Hoover's four years as president than during the first seven years of the New Deal. Roosevelt merely continued a long-standing trend.

The story of the growth of the federal government can be divided into two parts: before and after 1913, when the 16th amendment to the Constitution, which permitted a federal income tax, was ratified. In 1913 federal spending was a mere 2.5 percent of GNP (today spending is almost ten times that level); so if the federal government is measured only by spending, little growth took place before the income tax. Before 1913, however, the federal government grew in other ways, by enlarging its power and changing its mandate. When the colonies came together to form the United States, the founders viewed the new government as the defender of its citizens' liberty. That meant protecting their rights—and in those days the most significant threat to the rights of individuals was, in nearly everyone's eyes, the government itself. By 1913 the federal government had been transformed into an organization not to protect rights, but, ostensibly, to further the nation's economic well-being.

The first part of our story, then, is how a government that began in 1776 as a protector of individual rights had by 1913 evolved into one that presumed to guarantee the economic welfare of its citizens. The second part of the story is how the federal government, armed with a powerful new source of revenue, began a continuous expansion that lasted throughout the twentieth century. One might be tempted to argue that the income tax was the cause of the federal government's growth, but that answer would be simplistic for two reasons. First, it focuses on spending alone and ignores the growth of the federal government's legal and regulatory power that began well before 1913. Second, it treats the income tax as something thrust on the nation rather than something chosen by its citizens. Constitutional amendments must have substantial popular support to gain the approval of two-thirds of both houses of Congress and three-quarters of the state legislatures. Americans wanted an income tax because they wanted more government, and they wanted more government because they believed it would enhance their economic well-being.

World War I was a period of enormous federal expansion, and the New Deal is likewise well known as a period of government growth. Yet the time in between, the 1920s, is often characterized as a time of retrenchment. In fact, the 1920s continued the growth that began in the Progressive era and set the stage for the New Deal. Before getting into details, we need to place the decade in the context of the preceding history of the federal government.

*Federal Growth from 1776 to 1920

The first major event in the growth of the federal government was the ratification of the Constitution in 1789. Before that, the United States was governed under the Articles of Confederation. The Constitution is frequently praised as a document that protects the rights of individuals and limits the powers of government. But a comparison of the Constitution with the Articles reveals that just the opposite is true. Under the Constitution the federal government gained more power, was less accountable, and had greater latitude to determine its own scope of action. That is what the Constitution was intended to accomplish.[1]

The Constitution established the Electoral College for the selection of presidents, but specified no method for choosing electors. Several methods were used, but in most states the legislatures picked them. The framers expected that in most elections no candidate would get a majority of electoral votes. That would permit the House of Representatives to name the president from the five top electoral vote getters. That system never worked as envisioned, and by 1828, with the election of Andrew Jackson, the current system of popular voting for electors had become firmly entrenched, and along with it the party system.[2] From then on, successful candidates owed their success to the support of their parties, and in return used the political system to reward those who helped them get elected.

Undoubtedly the biggest event in the growth of the federal government was the Civil War, which established its supremacy over the states. The Civil War brought much new power to the federal government, and laid the groundwork for the growth of interest groups.[3] The first interest group to systematically raid the Treasury for its own benefit was the war veterans. Originally, Union veterans were entitled to pensions only if they had been injured in battle; they had up to five years to claim them. In 1870 veterans pensions totaled $286 million in 1990 dollars and should have then declined. Instead they rose to $1,548 million by 1890, because the Republicans, who dominated the White House and looked to veterans for political support, increasingly liberalized the pension laws until every Union veteran of the Civil War qualified.[4]

While veterans were a model for future interest groups, the Treasury at that time had decidedly limited means. At any rate, other groups were more interested in regulatory benefits. The Interstate Commerce Commission was created in 1887, and the Sherman Antitrust Act passed in 1890.[5] The transformation of the U.S. government continued as the turn of the century ushered in the Progressive Era. The Food and Drug Administration was created in 1906, the Federal Reserve in 1913, and the Federal Trade Commission in 1914. A government initially committed to protecting the liberty of its citizens now seemed to be just as firmly committed to looking out for their economic welfare.

The Progressive Era was interrupted by World War I, during which federal power advanced in unprecedented ways. The railroads were nationalized, waterborne shipping was regulated, and the United States Food Administration, created in 1917, controlled all aspects of the food industry, from agriculture to distribution to sales. Similar regulation was applied to fuels, and eventually to the whole economy.[6] When the federal income tax was introduced in 1913, the highest tax bracket was 7 percent for all income above $20,000. Because of the demand for war-related spending, by 1918 the highest rate rose to 77 percent beginning at $4,000. This was the context in which Warren G. Harding was elected to the presidency in 1920 with the theme, a "return to normalcy."

Harding, Coolidge, and Hoover

If one looks only at total federal spending, it appears that the Republican administrations of Harding and Coolidge are a period of retrenchment sandwiched between the big-spending Democratic administrations of Woodrow Wilson and FDR. The Hoover administration does not fit this view even when examined superficially, because the percentage increase in spending during those four years exceeded the growth in the first seven years of FDR's New Deal, before World War II caused spending to skyrocket. Despite the conventional wisdom that big government began with FDR, a closer examination reveals that even the Harding and Coolidge administrations were periods of substantial government growth. It was masked, though, by the reduction in war-related spending following World War I.[7] The 1920s, then, were actually a continuation of Progressive Era government expansion, which would last through the New Deal.

Contemporary political-party ideological stereotypes do not fit the pre-New Deal era. At the risk of some oversimplification, they should be reversed. The Republican party, the party of Lincoln, was the advocate of a strong federal government with increasing powers, while the Democratic party, which had most of its power in the South, advocated states' rights and a smaller federal government. Moreover, Harding and Coolidge were not particularly strong presidents, and the Congress was dominated by Republicans with substantial Progressive leanings. For Harding and, after Harding's death in 1923, Coolidge, a return to normalcy meant a return to the Progressive policies begun before the war. This was even more true of Hoover, who was an engineer by training and a firm believer in applying scientific principles of management to government. During the Wilson administration Hoover was the head of the U.S. Food Administration. He was secretary of commerce throughout the Harding and Coolidge years, before being elected president in 1928.

Federal Spending During the 1920s

Aggregate federal spending declined slightly during the 1920s, when measured in inflation-adjusted dollars per person. However, that slight decline is really a combination of two different underlying trends. In 1916, federal spending per person was $83.60. (All data are in 1990 dollars.) By 1919 it had risen 16-fold, to $1,329.77. By 1927, federal spending had fallen to its low point of the decade, $180.57. The huge decline from 1919 is accounted for by a reduction in war-related spending, but nonwar spending actually increased sharply. Note that spending in 1927 was well over double the prewar 1916 level.

A more detailed analysis reaches the same conclusion. The 1920s saw huge declines in federal military and transportation spending (because so much transportation was nationalized during World War I). When civilian spending programs are isolated, they show substantial growth. Throughout the 1920s the average annual growth rate of federal spending on commerce, overseen by Secretary Hoover, was 13 percent. Agricultural spending increased by more than 11 percent a year, and spending on labor interests grew more than 12 percent a year. Federal spending on education grew by more than 10 percent per year, as did spending on public improvements and the public domain. Among broad categories, the fastest growth was federal law enforcement, which averaged more than a 17 percent growth rate during the 1920s. Thus, one can see that civilian spending during the 1920s grew rapidly and that spending remained substantially higher than it ever had been before World War I. Measured by spending alone, the 1920s was a decade of major federal government growth.

Prohibition

Much of the rapid growth in the federal law-enforcement budget was due to the prohibition of alcohol, which began in 1920 with the passage of the 18th amendment and lasted until repeal by the 21st amendment in 1933. The Department of Justice enforced prohibition, along with the Customs Service, Coast Guard, and Bureau of Internal Revenue. The bureau participated because, while alcoholic beverages were illegal, nonbeverage alcohol was to be taxed. But even when illegal alcohol was discovered, as far as the Treasury Department was concerned, the reason it was illegal was that the taxes were not paid. From 1920 to 1930 bureau spending on enforcement regarding illegal alcohol rose from just over $2 million to more than $12 million, while revenues rose from just over $1 million to about $5.4 million. In no year during Prohibition did the bureau collect more than it spent on enforcement. Apparently, even the Bureau of Internal Revenue viewed the law on alcohol not as a method of generating revenue but rather of extending federal law enforcement. Prohibition is probably the most visible area in which the federal government attempted to increase its control over the behavior of Americans during the 1920s.

Federal Corporations

Early in its history, the United States incorporated the First and Second Banks of the United States. After the charter of the Second Bank expired in 1836, the federal government did not charter another corporation until 1904, when one was formed to construct the Panama Canal. Federally owned corporations proliferated during World War I, beginning with the Merchant Fleet Corporation in 1917. After the war, most of these federal corporations continued in business and lost huge sums of money. The War Finance Corporation, chartered in 1918 to help strategic industries borrow money, had its charter extended in 1921 to assist American business in general. The Federal Land Bank, Spruce Production Corporation, and Sugar Equalization Board were other federal corporations begun during the war that lived on.

These corporations provided a model for government growth that extended through the 1920s to the present day. In 1923, 12 federally owned banks were created by the Federal Agricultural Credits Act. In 1924 the Inland Waterways Corporation was established to operate vessels on the Mississippi River, and in 1929 the Federal Farm Board was established to finance agricultural price supports. Creation of those corporations was integral to the growth of the federal government during the 1920s, but their purpose was also significant. In each case they were established to help further the economic well-being of a particular group of Americans, reinforcing the federal government's transition from a guardian of liberty to an organization designed to oversee the national economy.

Agriculture

The 1920s were a difficult decade for American agriculture, largely because the world market for farm products was increasingly competitive. As a result, the decade is sometimes viewed as having favored business over agriculture. But in fact, the federal government began a number of initiatives to further the economic interests of farmers. In 1921 Congress passed tariffs on farm imports, and in 1922 the Capper-Volstead Act exempted agricultural cooperatives from antitrust laws. The Agricultural Credits Act of 1923 made it easier for farmers to get credit from the Federal Farm Loan Board. In 1926 the Department of Agriculture established a Division of Co-operative Marketing. The Agricultural Marketing Act of 1929 created the Federal Farm Board and, as noted, began federal price supports for agricultural products.

Adjusting for inflation, federal spending on agriculture expanded from $17 million (1930 dollars) in 1920 to $49 million by 1930. Whether evaluated in terms of budgets or number of federal programs, the increased support for agriculture in the 1920s was substantial. The charge that the federal government slighted agricultural interests is incorrect.

Antitrust

An examination of federal spending gives some indication of the growth of government, but regulation, though harder to measure, also had a big impact. Beginning with the Sherman Act in 1890, the federal government tried to limit the economic power of business through antitrust laws. Before 1905 only 22 cases were brought under the Sherman Act. But antitrust enforcement picked up later in the decade, with 39 cases brought from 1905 to 1909. From 1910 to 1919, 134 cases were brought, indicating more vigorous enforcement. In the 1920s, the number declined slightly to 125 cases.

That decline is deceiving, however, because after the increased enforcement in the prior decade, businesses acted more cautiously. The scope of antitrust enforcement was broadened in the 1920s, and cases were brought against firms in unconcentrated industries for conduct that was not obviously in violation of the antitrust laws as previously enforced. Antitrust enforcement is another area in which the federal government increased its power—yet another reason to question the conventional wisdom that it was excessively probusiness in the 1920s.

Academic Influences

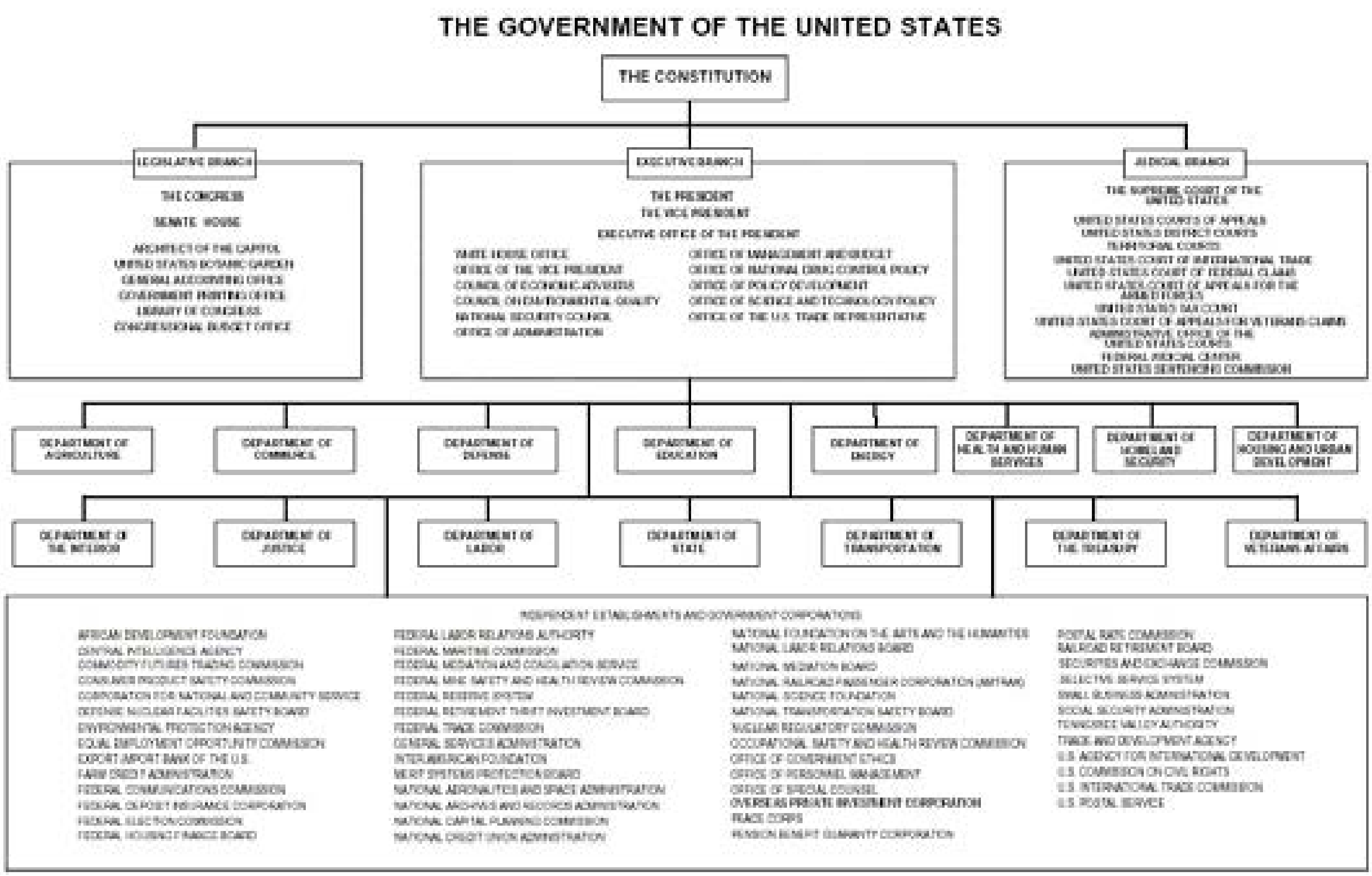
John Maynard Keynes, in a famous passage in his 1936 General Theory of Employment, Interest, and Money, remarked, "The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else." Intellectuals also pushed the federal government to broaden its scope in the 1920s. The ideas of Karl Marx were gaining credibility and moving governments into economic matters. Perhaps just as significant, although with less ideological content, were the concepts of scientific management that were gaining credibility throughout the United States. Civil Service reform had been initiated late in the 1800s to create a more professional federal work force, and there was increasing interest in applying the principles of scientific business management to government.

In 1920 the National Bureau of Economic Research was established in cooperation with government, private foundations, and academic institutions to better measure economic performance statistically so that government could apply those principles to the economy. Secretary Hoover was a strong supporter of that effort. Indeed, many of the tenets of Keynesian economics that gained prominence during the 1930s were already part of the conventional wisdom of American economists in the 1920s.[8] The alliance of academic institutions, private foundations, and government in the 1920s was yet another aspect of the growth of the federal government during the decade.

Conclusion

The New Deal is often seen as the pivotal event in the growth of America's twentieth- century Leviathan. But the federal government has grown since its inception. The most important event in the history of federal government growth was undoubtedly the Civil War. Then, supported by the popular demand for more government involvement in the economy, the ideological foundation of the massive growth in federal spending was laid during the Progressive Era at the beginning of the twentieth century. The federal income tax made that growth in spending possible.

That the federal government grew during FDR's presidency is undeniable. But Wilson and Lincoln had already set precedents for increases in government power in wartime. Thus, the main factors underlying the growth in government were firmly in place well before the New Deal.



Supporting Question 2 - Featured Source D

A. The Early Years

Federal administrative agencies have been a critical part of our political process for over 100 years, but their role in our government has changed considerably over that period of time.

When the American republic was young, the executive branch of the government was small. The first agencies of the federal government were the Departments of War, State, Navy, and Treasury. There was also an Office of the Attorney General.

The growth of the country and the expansion of governmental responsibilities led to the creation of the Department of the Interior in 1849, the Department of Justice in 1870, and the Post Office Department in 1872.

Agencies began to adopt formal operating standards and publish rules in response to public criticism of abuses of power under the spoils system. In 1868, for instance, the Treasury Department began publishing its customs decisions, followed in 1869 by the Patent Office.

The period between 1865 and 1900 saw the birth of independent regulatory commissions. Congress created these agencies to set rates and bring order into industry competition. The first of these so-called economic regulatory agencies was the Interstate Commerce Commission. It was established in 1887 in response to charges that farmers and merchants were being forced to pay exorbitant railroad rates to ship their products to market.

Reformers believed independent regulatory commissions would bring greater, expertise, specialization and continuity to bear on economic problems than Congress could, and would operate in a dispassionate, nonpolitical environment.

However, many regulatory commissions had dual and sometimes contradictory objectives: To control and direct a specific industry and to promote those same industries. It was not long before many "independent" regulatory commissions were being accused of being "captives" of the industries they were supposed to regulate. In some cases industries themselves supported the creation of regulatory rate commissions as a way to help end competitive practices.

The economic concerns that led Congress to create independent regulatory commissions were soon joined by more social concerns such as public health and safety. For instance, in the early 1900's, the publication of Upton Sinclair's The Jungle brought nationwide attention to unsanitary practices in the meat industry. This followed news of rotten canned meat being served to American soldiers in the Spanish-American War and two decades of complaints about U.S. meat exports-for a time banned in Europe.

Congress tried unsuccessfully to solve the problem with a number of meat inspection laws. The solution was finally found in more comprehensive legislation and broadened authority for an administrative agency. The Food and Drug Act of 1906 mandates protection of the public from the health hazards of adulterated and mislabeled foods, drugs, cosmetics, and medical devices. The Bureau of Chemistry, which later became the Food and Drug Administration, was given expanded powers to implement the new law.

B. Bureaucratic Expansion

Governmental concern with social issues took an even greater leap during the Depression years. President Franklin D. Roosevelt's New Deal brought a vast expansion in federal government programs and agencies as the nation struggled toward economic recovery.

Another expansionary period took place in the 1960's and early 1970's as a result of the consumer, health and safety, and environmental movements. The Occupational Safety and Health Administration was created in 1971 and the Consumer Product Safety Commission in 1973. The Environmental Protection Agency was created by an executive reorganization plan in 1970 that pulled together 15 components from five departments and agencies.

With the creation of these regulatory agencies came an acceleration of regulatory activity. However, by the late 1970's this trend slowed. "Excessive" regulation began being blamed for everything from raising interest rates to forcing small business into bankruptcy and making U.S. businesses uncompetitive in world markets.

The regulatory process itself came under sharp attack. Complaints became commonplace about "interference in the marketplace," "red tape," "big government," and "faceless, nameless bureaucrats." The sheer volume of federal rules and regulations with their complexity, costs, and delays were leading to public and business-sector frustration and impatience with the federal government.

Supporting Question 3 - Featured Source A

Amendment X
The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Supporting Question 3 - Featured Source B

Article 1, Section 8, Clause 18
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Supporting Question 3 - Featured Source C

The Struggle Between National Power and State Power
As George Washington's secretary of the treasury from 1789 to 1795, Alexander Hamilton championed legislative efforts to create a publicly chartered bank. For Hamilton, the establishment of the Bank of the United States was fully within Congress's authority, and he hoped the bank would foster economic development, print and circulate paper money, and provide loans to the government. Although Thomas Jefferson, Washington's secretary of state, staunchly opposed Hamilton's plan on the constitutional grounds that the national government had no authority to create such an instrument, Hamilton managed to convince the reluctant president to sign the legislation.[1] When the bank's charter expired in 1811, Jeffersonian Democratic-Republicans prevailed in blocking its renewal. However, the fiscal hardships that plagued the government during the War of 1812, coupled with the fragility of the country's financial system, convinced Congress and then-president James Madison to create the Second Bank of the United States in 1816. Many states rejected the Second Bank, arguing that the national government was infringing upon the states' constitutional jurisdiction.
A political showdown between Maryland and the national government emerged when James McCulloch, an agent for the Baltimore branch of the Second Bank, refused to pay a tax that Maryland had imposed on all out-of-state chartered banks. The standoff raised two constitutional questions: Did Congress have the authority to charter a national bank? Were states allowed to tax federal property? In McCulloch v. Maryland, Chief Justice John Marshall argued that Congress could create a national bank even though the Constitution did not expressly authorize it.[2]
Under the necessary and proper clause of Article I, Section 8, the Supreme Court asserted that Congress could establish "all means which are appropriate" to fulfill "the legitimate ends" of the Constitution. In other words, the bank was an appropriate instrument that enabled the national government to carry out several of its enumerated powers, such as regulating interstate commerce, collecting taxes, and borrowing money.
This ruling established the doctrine of implied powers, granting Congress a vast source of discretionary power to achieve its constitutional responsibilities. The Supreme Court also sided with the federal government on the issue of whether states could tax federal property. Under the supremacy clause of Article VI, legitimate national laws trump conflicting state laws. As the court observed, "the government of the Union, though limited in its powers, is supreme within its sphere of action and its laws, when made in pursuance of the constitution, form the supreme law of the land." Maryland's action violated national supremacy because "the power to tax is the power to destroy." This second ruling established the principle of national supremacy, which prohibits states from meddling in the lawful activities of the national government.
Defining the scope of national power was the subject of another landmark Supreme Court decision in 1824. In Gibbons v. Ogden, the court had to interpret the commerce clause of Article I, Section 8; specifically, it had to

determine whether the federal government had the sole authority to regulate the licensing of steamboats operating between New York and New Jersey.[3]

Aaron Ogden, who had obtained an exclusive license from New York State to operate steamboat ferries between New York City and New Jersey, sued Thomas Gibbons, who was operating ferries along the same route under a coasting license issued by the federal government. Gibbons lost in New York state courts and appealed. Chief Justice Marshall delivered a two-part ruling in favor of Gibbons that strengthened the power of the national government. First, interstate commerce was interpreted broadly to mean "commercial intercourse" among states, thus allowing Congress to regulate navigation. Second, because the federal Licensing Act of 1793, which regulated coastal commerce, was a constitutional exercise of Congress's authority under the commerce clause, federal law trumped the New York State license-monopoly law that had granted Ogden an exclusive steamboat operating license. As Marshall pointed out, "the acts of New York must yield to the law of Congress."[4]

Various states railed against the nationalization of power that had been going on since the late 1700s. When President John Adams signed the Sedition Act in 1798, which made it a crime to speak openly against the government, the Kentucky and Virginia legislatures passed resolutions declaring the act null on the grounds that they retained the discretion to follow national laws. In effect, these resolutions articulated the legal reasoning underpinning the doctrine of nullification—that states had the right to reject national laws they deemed unconstitutional.[5]

A nullification crisis emerged in the 1830s over President Andrew Jackson's tariff acts of 1828 and 1832. Led by John Calhoun, President Jackson's vice president, nullifiers argued that high tariffs on imported goods benefited northern manufacturing interests while disadvantaging economies in the South. South Carolina passed an Ordinance of Nullification declaring both tariff acts null and void and threatened to leave the Union. The federal government responded by enacting the Force Bill in 1833, authorizing President Jackson to use military force against states that challenged federal tariff laws. The prospect of military action coupled with the passage of the Compromise Tariff Act of 1833 (which lowered tariffs over time) led South Carolina to back off, ending the nullification crisis.

The ultimate showdown between national and state authority came during the Civil War. Prior to the conflict, in Dred Scott v. Sandford, the Supreme Court ruled that the national government lacked the authority to ban slavery in the territories.[6]

But the election of President Abraham Lincoln in 1860 led eleven southern states to secede from the United States because they believed the new president would challenge the institution of slavery. What was initially a conflict to preserve the Union became a conflict to end slavery when Lincoln issued the Emancipation Proclamation in 1863, freeing all slaves in the rebellious states. The defeat of the South had a huge impact on the balance of power between the states and the national government in two important ways. First, the Union victory put an end to the right of states to secede and to challenge legitimate national laws. Second, Congress imposed several conditions for readmitting former Confederate states into the Union; among them was ratification of the Fourteenth and Fifteenth Amendments. In sum, after the Civil War the power balance shifted toward the national government, a movement that had begun several decades before with McCulloch v. Maryland (1819) and Gibbons v. Odgen (1824).

The period between 1819 and the 1860s demonstrated that the national government sought to establish its role within the newly created federal design, which in turn often provoked the states to resist as they sought to protect their interests. With the exception of the Civil War, the Supreme Court settled the power struggles between the states and national government. From a historical perspective, the national supremacy principle introduced during this period did not so much narrow the states' scope of constitutional authority as restrict their encroachment on national powers.[7]

Dual Federalism

The late 1870s ushered in a new phase in the evolution of U.S. federalism. Under dual federalism, the states and national government exercise exclusive authority in distinctly delineated spheres of jurisdiction. Like the layers of a cake, the levels of government do not blend with one another but rather are clearly defined. Two factors contributed to the emergence of this conception of federalism. First, several Supreme Court rulings blocked attempts by both state and federal governments to step outside their jurisdictional boundaries. Second, the prevailing economic philosophy at the time loathed government interference in the process of industrial development. Industrialization changed the socioeconomic landscape of the United States. One of its adverse effects was the concentration of market power. Because there was no national regulatory supervision to ensure fairness in market practices, collusive behavior among powerful firms emerged in several industries.[8]

To curtail widespread anticompetitive practices in the railroad industry, Congress passed the Interstate Commerce Act in 1887, which created the Interstate Commerce Commission. Three years later, national regulatory capacity was broadened by the Sherman Antitrust Act of 1890, which made it illegal to monopolize or attempt to monopolize and conspire in restraining commerce (Figure 03_02_Commerce). In the early stages of industrial capitalism, federal regulations were focused for the most part on promoting market competition rather than on addressing the social dislocations resulting from market operations, something the government began to tackle in the 1930s.[9]

The new federal regulatory regime was dealt a legal blow early in its existence. In 1895, in United States v. E. C. Knight, the Supreme Court ruled that the national government lacked the authority to regulate manufacturing.[10]

The case came about when the government, using its regulatory power under the Sherman Act, attempted to override American Sugar's purchase of four sugar refineries, which would give the company a commanding share of the industry. Distinguishing between commerce among states and the production of goods, the court argued that the national government's regulatory authority applied only to commercial activities. If manufacturing activities fell within the purview of the commerce clause of the Constitution, then "comparatively little of business operations would be left for state control," the court argued.

In the late 1800s, some states attempted to regulate working conditions. For example, New York State passed the Bakeshop Act in 1897, which prohibited bakery employees from working more than sixty hours in a week. In Lochner v. New York, the Supreme Court ruled this state regulation that capped work hours unconstitutional, on the grounds that it violated the due process clause of the Fourteenth Amendment.[11]

In other words, the right to sell and buy labor is a "liberty of the individual" safeguarded by the Constitution, the court asserted. The federal government also took up the issue of working conditions, but that case resulted in the same outcome as in the Lochner case.[12]

Cooperative Federalism

The Great Depression of the 1930s brought economic hardships the nation had never witnessed before. Between 1929 and 1933, the national unemployment rate reached 25 percent, industrial output dropped by half, stock market assets lost more than half their value, thousands of banks went out of business, and the gross domestic product shrunk by one-quarter.[13]

Given the magnitude of the economic depression, there was pressure on the national government to coordinate a robust national response along with the states.

Cooperative federalism was born of necessity and lasted well into the twentieth century as the national and state governments each found it beneficial. Under this model, both levels of government coordinated their actions to solve national problems, such as the Great Depression and the civil rights struggle of the following decades. In contrast to dual federalism, it erodes the jurisdictional boundaries between the states and national government, leading to a blending of layers as in a marble cake. The era of cooperative federalism contributed to the gradual incursion of national authority into the jurisdictional domain of the states, as well as the expansion of the national government's power in concurrent policy areas.[14]

The New Deal programs President Franklin D. Roosevelt proposed as a means to tackle the Great Depression ran afoul of the dual-federalism mindset of the justices on the Supreme Court in the 1930s. The court struck down key pillars of the New Deal—the National Industrial Recovery Act and the Agricultural Adjustment Act, for example—on the grounds that the federal government was operating in matters that were within the purview of the states. The court's obstructionist position infuriated Roosevelt, leading him in 1937 to propose a court-packing plan that would add one new justice for each one over the age of seventy, thus allowing the president to make a maximum of six new appointments. Before Congress took action on the proposal, the Supreme Court began leaning in support of the New Deal as Chief Justice Charles Evans Hughes and Justice Owen Roberts changed their view on federalism.[15]

In National Labor Relations Board (NLRB) v. Jones and Laughlin Steel,[16] for instance, the Supreme Court ruled the National Labor Relations Act of 1935 constitutional, asserting that Congress can use its authority under the commerce clause to regulate both manufacturing activities and labor-management relations. The New Deal changed the relationship Americans had with the national government. Before the Great Depression, the government offered little in terms of financial aid, social benefits, and economic rights. After the New Deal, it provided old-age pensions (Social Security), unemployment insurance, agricultural subsidies, protections for organizing in the workplace, and a variety of other public services created during Roosevelt's administration.

In the 1960s, President Lyndon Johnson's administration expanded the national government's role in society even more. Medicaid(which provides medical assistance to the indigent), Medicare (which provides health insurance to the elderly and disabled), and school nutrition programs were created. The Elementary and Secondary Education Act (1965), the Higher Education Act (1965), and the Head Start preschool program (1965) were established to expand educational opportunities and equality. The Clean Air Act (1965), the Highway Safety Act (1966), and the Fair Packaging and Labeling Act (1966) promoted environmental and consumer protection. Finally, laws were passed to promote urban renewal, public housing development, and affordable housing. In addition to these Great Society programs, the Civil Rights Act (1964) and the Voting Rights Act (1965) gave the federal government effective tools to promote civil rights equality across the country.

While the era of cooperative federalism witnessed a broadening of federal powers in concurrent and state policy domains, it is also the era of a deepening coordination between the states and the federal government in Washington. Nowhere is this clearer than with respect to the social welfare and social insurance programs created during the New Deal and Great Society eras, most of which are administered by both state and federal authorities and are jointly funded. The Social Security Act of 1935, which created federal subsidies for state-administered programs for the elderly; people with handicaps; dependent mothers; and children, gave state and local officials wide discretion over eligibility and benefit levels. The unemployment insurance program, also created by the Social Security Act, requires states to provide jobless benefits, but it allows them significant latitude to decide the level of tax to impose on businesses in order to fund the program as well as the duration and replacement rate of unemployment benefits. A similar multilevel division of labor governs Medicaid and Children's Health Insurance.[17]

Thus, the era of cooperative federalism left two lasting attributes on federalism in the United States. First, a nationalization of politics emerged as a result of federal legislative activism aimed at addressing national problems such as marketplace inefficiencies, social and political inequality, and poverty. The nationalization process expanded the size of the federal administrative apparatus and increased the flow of federal grants to state and local authorities, which have helped offset the financial costs of maintaining a host of New Deal- and Great Society–era programs. The second lasting attribute is the flexibility that states and local authorities were given in the implementation of federal social welfare programs. One consequence of administrative flexibility, however, is that it has led to cross-state differences in the levels of benefits and coverage.[18]

New Federalism

During the administrations of Presidents Richard Nixon (1969–1974) and Ronald Reagan (1981–1989), attempts were made to reverse the process of nationalization—that is, to restore states' prominence in policy areas into which the federal government had moved in the past. New federalism is premised on the idea that the decentralization of policies enhances administrative efficiency, reduces overall public spending, and improves policy outcomes. During Nixon's administration, general revenue sharing programs were created that distributed funds to the state and local governments with minimal restrictions on how the money was spent. The election of Ronald Reagan heralded the advent of a "devolution revolution" in U.S. federalism, in which the president pledged to return authority to the states according to the Constitution. In the Omnibus Budget Reconciliation Act of 1981, congressional leaders together with President Reagan consolidated numerous federal grant programs related to social welfare and reformulated them in order to give state and local administrators greater discretion in using federal funds.[19]

However, Reagan's track record in promoting new federalism was inconsistent. This was partly due to the fact that the president's devolution agenda met some opposition from Democrats in Congress, moderate Republicans, and interest groups, preventing him from making further advances on that front. For example, his efforts to completely devolve Aid to Families With Dependent Children (a New Deal-era program) and food stamps (a Great Society-era program) to the states were rejected by members of Congress, who feared states would underfund both programs, and by members of the National Governors' Association, who believed the proposal would be too costly for states. Reagan terminated general revenue sharing in 1986.[20]

Several Supreme Court rulings also promoted new federalism by hemming in the scope of the national government's power, especially under the commerce clause. For example, in United States v. Lopez, the court struck down the Gun-Free School Zones Act of 1990, which banned gun possession in school zones.[21]

It argued that the regulation in question did not "substantively affect interstate commerce." The ruling ended a nearly sixty-year period in which the court had used a broad interpretation of the commerce clause that by the 1960s allowed it to regulate numerous local commercial activities.[22]

However, many would say that the years since the 9/11 attacks have swung the pendulum back in the direction of central federal power. The creation of the Department of Homeland Security federalized disaster response power in Washington, and the Transportation Security Administration was created to federalize airport security. Broad new federal policies and mandates have also been carried out in the form of the Faith-Based Initiative and No Child Left Behind (during the George W. Bush administration) and the Affordable Care Act (during Barack Obama's administration).

Supporting Question 3 - Featured Source D

Timeline from: http://federalism.org/resources/federalism-timeline/