Devolution
1980-2001

Indah Rahmadina, Nathan Jeong, Ameya Joshi, Wasil Hussein, Asma Moshal, Justin Lee
Overview

- Definition
  - The effort to transfer responsibility for many public programs and services from the federal government to the states
  - In other words, power was transferred from the federal government to the states

- 1980 - 2001
  - Reagan’s election to 9/11

- Caused by increasing public distrust in the federal government

- Also called New Federalism
Overview

National

States
• Prior to the 1980s, Roosevelt’s New Deal Federalism (Cooperative Federalism) was standard

• States' rights were initially controversial because it had been associated with Jim Crow laws and the anti-Civil Rights movement.

• However, problems during the presidencies of Nixon, Ford, and Carter started a push for states’ rights once more
Problems:

- Richard Nixon
  - Vietnam War: Promised swift end but failed
  - Watergate Scandal: Accused of spying on the Democrats

- Gerald Ford
  - Pardoned Nixon: People felt he was associated with Watergate

- Jimmy Carter
  - Iranian Hostage Crisis: He failed to protect his own citizens from foreign threats
  - High inflation: Blamed for crumbling economy
Regan Administration

- Used past issues to blame the federal government and call for states’ rights
  - Officially started the Devolution Revolution
- Had the support of a Republican-dominated Congress
- **Block Grants**
  - Tool of the Reagan administration to give power over domestic assistance programs to states
  - They were federal grants that were placed under broad distinctions, like “Community Development”
  - Therefore, as long as it was under these categories, states were free to use these grants as they saw most fit
• Amendment 27
  • **Congressional Compensation**
  • Laws changing salaries for Representatives and Senators don’t take place until after the next election

• Amendment 10*
  • **Rights Reserved to States**
  • Any powers not explicitly given to the federal government belong to the states

• Amendment 11*
  • **Suits Against States**
  • States are immune from being sued in federal courts and sued in state courts based on federal laws
Legislation

- Intermodal Surface Transportation Efficiency Act (1991)
- Unfunded Mandates Reform Act (1995)
- Welfare Reform Act (1996)
- Education Flexibility Partnership Act (1999)
Intermodal Surface Transportation Efficiency Act (ISTEA)

- Bush’s administration passed the ISTEA Act of 1991, which essentially created a block grant and gave state’s more control in deciding and planning their surface transportation networks.

- Although the act was developed to benefit the federal government by creating many routes on the National Interstate Highway for commerce and reducing congestion, it was one of the first acts that transferred power from federal government to state governments.
The UMRA Act of 1995 states that unfunded mandates imposed by Congress on state, local, and tribal governments are prohibited.

Unfunded mandates are statutes or regulations imposed by the federal government in which federal funds are not provided, yet the state governments have to implement federal policies.

This act made it more difficult for the federal government to impose mandates on states. The act illustrates how pertinent the idea of block grants are at this time.
Also known as the NHSDA Act of 1995, which reimbursed states with $5.4 billion federal funds for state highway sectors, banned the national speed limit, and prohibits federal government from forcing states to use federal funds to change current signs or purchase new ones with metric units.

The act is quite similar to the ISTEA Act.

Although the provisions are small, the legislation passed is becoming more focused on giving states the responsibility that the federal government once held.
In the 90s, conservatives felt that welfare should be made temporary, so that people can start to work rather than only depend on welfare benefits.

Under Bill Clinton, whose 104th Congress was primarily Republican, endorsed the act.

In 1996, the act passed and stated that a person must work in order to obtain temporary welfare benefits; it also established the Temporary Assistance to Needy Families (TANF) block grant, thus allowing states to receive federal funds and apportion them accordingly for pregnant women and families with dependent children.

The act revoked the Aid to Families with Dependent Children (AFDC), which provided financial support and benefits to impoverished families.

Gave states the power to control welfare benefits in their area and not Fed. Gov.
Welfare Reform Act

National – Of every 100 poor families, how many got cash welfare?

Data – U.S. HHS, Census, and state TANF caseloads, compiled and analyzed by the Center on Budget and Policy Priorities
Education Flexibility Partnership Act

• Referred also as the Ed-Flex legislation of 1999
• Enabled states to spend federal funds towards education programs in their territory
• Would be changed by No Child Left Behind program
• Garcia v. San Antonio Metropolitan Transit Authority (1985)*
• South Carolina v. Baker (1988)*
• Webster v. Reproductive Health Services (1989)
• U.S. v. Lopez (1995)
• Seminole Tribe v. Florida (1996)
• City of Boerne v. Flores (1997)
• Alden v. Maine (1999)
• Florida Prepaid v. College Savings Bank (1999)
• Bush v. Gore (2000)*
Joe G. Garcia filed a lawsuit against the San Antonio Metropolitan Authority for not adhering to overtime pay under the Fair Labor Standards Act. The SAMA argued that it was exempt due to the doctrine of federalism established in National League of Cities v. Usery (1976) because it performed “traditional” governmental roles.

**Question:** Did FLSA apply to SAMA?

**Verdict:** Yes, the “traditional” role SAMA defined was declared too vague to separate federal and state power, thus not changing the principles of federalism established in NLC v. Usery. Therefore, SAMA was under federal authority under the Commerce Clause.
South Carolina sues Baker, who is the Secretary of the Treasury, on the grounds of the Tax Equity and Fiscal Responsibility Act of 1982, which allowed a federal tax on state and local bonds.

South Carolina believed the act violated the Pollock v. Farmers’ Loan and Trust Co.

**Question:** Can the US tax income from state bonds under TEFRA?

**Verdict:** Yes, the Supreme Court stated that the act didn’t tax the states, but bondholders, thus not violating Amendment 10
Missouri enacted legislation restricting abortion. The preamble read that life begins at conception, public facilities and funds couldn’t be used for unnecessary abortions, abortion counseling was banned, and viability tests were mandatory.

**Question:** Were the abortion restrictions unconstitutional based on the rights to privacy and the Equal Protection Clause?

**Verdict:** No, the preamble was merely an opinion, states had no right to fund abortions, there was no controversy over the counseling clause, and viability tests allowed protecting life sooner.
The Low-Level Radioactive Waste Management Act required states to dispose of radioactive waste within their borders.

New York questioned the constitutionality of the LLRWMA after becoming frustrated with noncooperative residents and neighboring states.

Question: Was Congress able to force states into managing the waste within their borders?

Verdict: No, the “take-title” clause, which stated it was the responsibility of the states to manage waste, made them servants of the federal government, violating Amendment 10.
Alfonzo Lopez, a high school student, carried a concealed handgun into school and was charged under Texas Law with firearm possession on school grounds.

The next day, federal officials charged him for breaking the Gun-Free School Zones Act.

**Question:** Was Congress allowed to pass the GFSZA under the Commerce Clause?

**Verdict:** No, the possession of a gun in a school zone is not an economic activity that can affect interstate commerce. However, the significance of this verdict is that it was the first time in over 50 years that the SC interpreted the Commerce Clause literally. Since the 1930s, it had even been used to ban segregation.
• The Seminole Tribe filed a lawsuit against Florida claiming they violated the good faith requirements of the Indian Gaming Regulatory Act
• Florida fought back saying the suit violated its sovereign immunity

**Question:** Did the Indian Commerce Clause give Congress the power to bypass state sovereign immunity through the IGRA?

**Verdict:** No, Amendment 11 guarantees that states are sovereign entities, meaning they cannot be sued without their consent, even if the suit concerns their activities promoted through the use of federal funds
City of Boerne v. Flores

- Archbishop Flores claimed that the Boerne zoning authorities violated his rights to expand his church under the Religious Freedom Restoration Act.
- Boerne claimed that the RFRA prevented them from enacting their local preservation ordinance.

**Question:** Can Congress use Amendment 14 to subject local ordinances to federal regulation?

**Verdict:** No, while Congress can protect religious freedom, they cannot tell the states in what manner to enact such legislation.
The Brady Handgun and Violence Prevention Act required local law enforcement officers to perform background checks on handgun purchasers.

Sheriffs Jay Printz and Richard Mack protested the bill.

**Question:** Did the Necessary and Proper Clause grant Congress the power to force law officers to enact background checks?

**Verdict:** No, state legislatures are not subject to federal direction, and background checks do not affect interstate commerce. Furthermore, the provisions of the Brady Bill made the checks voluntary for officers.
A group of probation officers alleged Maine had violated the overtime provisions of the Fair Labor Standards Act.

**Question:** Can Congress bypass a state’s sovereign immunity from private suits in its own courts?

**Verdict:** No, the terms of Amendment 11 suggest that the states are immune. Furthermore, the terms of Amendment 10 imply that states would keep much of their sovereignty despite being subsidiary to the national government.
The Patent and Plant Variety Protection Remedy Clarification Act allowed patent laws to apply to states.

CSB filed a patent infringement suit against FP, which is a Florida entity.

**Question:** Was it constitutional for the federal government to bypass state sovereign immunity, which was upheld in Seminole Tribe v. Florida?

**Verdict:** No, the states were immune. Although Amendment 14 allowed Congress to pass legislation to protect the property of the people from the states, there was not enough proof that the states were consistently doing so to warrant such an act.
Christy Brzonkala accused Antonio Morrison of raping her and filed a suit alleging he broke the Violence Against Women Act of 1994.

He protested that the act was unconstitutional.

**Question:** Was the VAW Act constitutional under Amendment 14 and the Commerce Clause?

**Verdict:** No, it didn’t regulate commerce nor deal with the states, so the punishment of Morrison fell to “the Commonwealth of Virginia, and not by the United States” (Chief Justice Rehnquist)
Bush v. Gore*

Following the heated election of 2000, Gore sought a recounting of the ballots by hand through the Florida Supreme Court, which they agreed to.

Bush petitioned for a stay of the FL decision.

**Question:** Did the FL Supreme Court violate the Constitution by making new election law and allowing manual recounts?

**Verdict:** Yes, only state legislatures can make election law and no recount methods would be fair. Justices Ginsburg and Stevens argued that the FL SC decision should be respected on grounds of federalism should be respected, but they were denied.
End of Devolution

- 9/11/2001
  - Marked the end for the Devolution Revolution
  - National unity and strength was necessary to survive

- No official name for era because we’re still in it!


“LET THEM EAT CAKE”