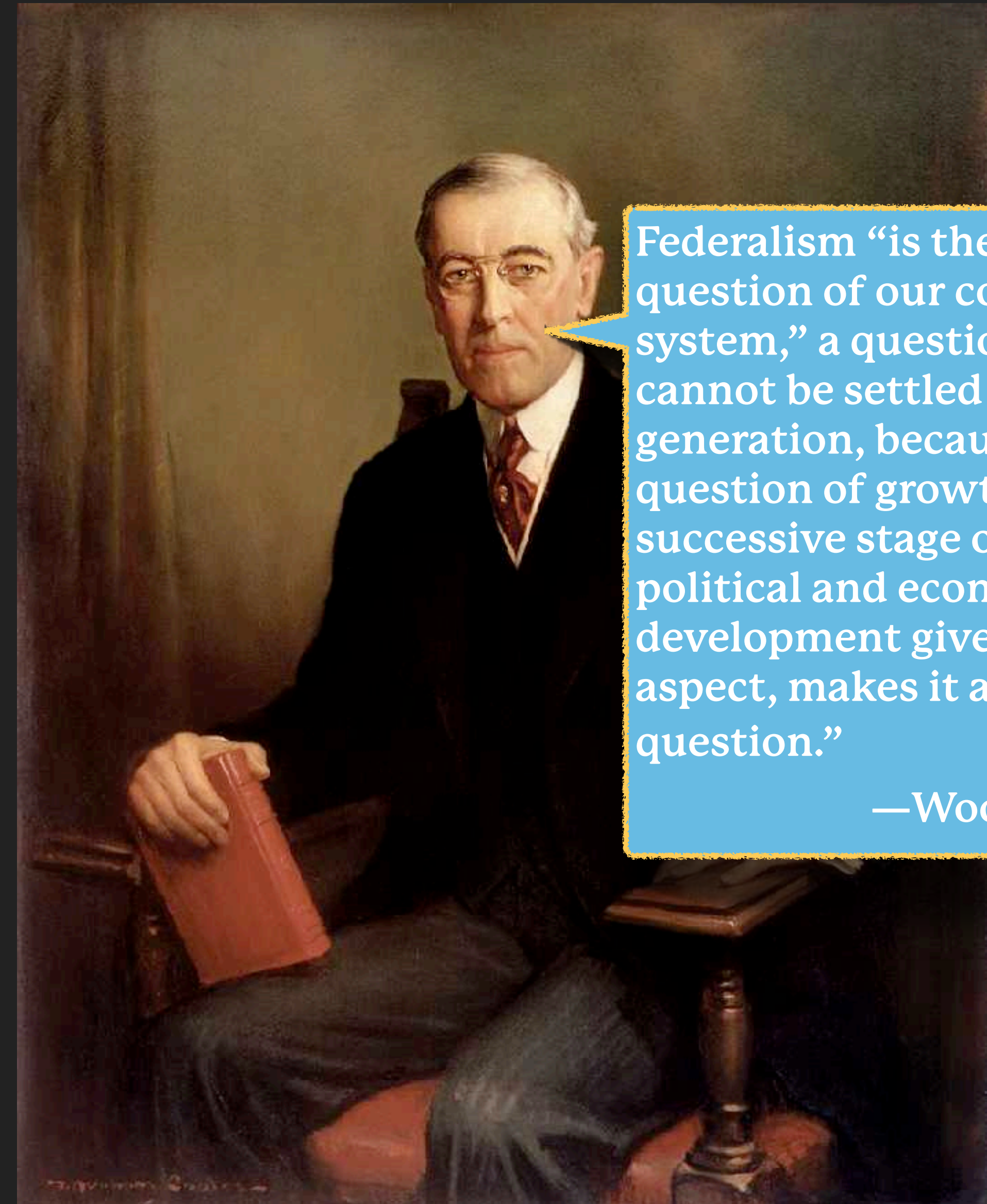




WHAT IS FEDERALISM?

WHAT IS FEDERALISM?

- **Federalism** is “a political system in which the national government shares power with local governments” (Wilson 2016).
- In the US, states have a protected role in the Constitution.
- The federal government often makes policy in the United States, but implementation depends on the states.
- Federalism is at the heart of health care, education, crime, environment, and health policy in the United States.
- **Key concept:** Contemporary defense and criticism of federalism often rest less on principle than partisanship.



Federalism “is the cardinal question of our constitutional system,” a question that cannot be settled by “one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question.”

—Woodrow Wilson

THREE FORMS OF GOVERNMENT



Unitary System

STATE/REGIONAL AND LOCAL GOVERNMENTS DERIVE THEIR POWER FROM CENTRAL GOVERNMENT



FEDERALIST SYSTEM

POWER AND RESPONSIBILITY IS DIVIDED BETWEEN CENTRAL AND STATE/LOCAL GOVERNMENTS



Confederation

POWER IS LARGELY IN THE HANDS OF INDEPENDENT STATES. THE CENTRAL GOVERNMENT IS A CREATION OF THOSE SMALLER GOVERNMENTS

- What would make nations choose each of these systems?
- What are the strengths and weaknesses of each?

THE FOUNDERS

- ▶ It's undeniable that **"big government"** has grown much larger than even Federalists envisioned.
 - ▶ The federal government employs over **2 million civilian employees** and spent **\$6.55 trillion dollars** in 2020.
- ▶ The Founders believed that federalism was a mechanism to **preserve liberty**, but that notion of liberty included the **right of people to own slaves**.
- ▶ In Federalist 28, Hamilton noted that people could shift their allegiance between states and federal governments, writing "If their rights are invaded by either, they can make use of the other as the instrument of redress."
- ▶ The idea of states' rights seemed so obvious to the Founders that the **Tenth Amendment** explicitly protecting them was not in the ratified Constitution.

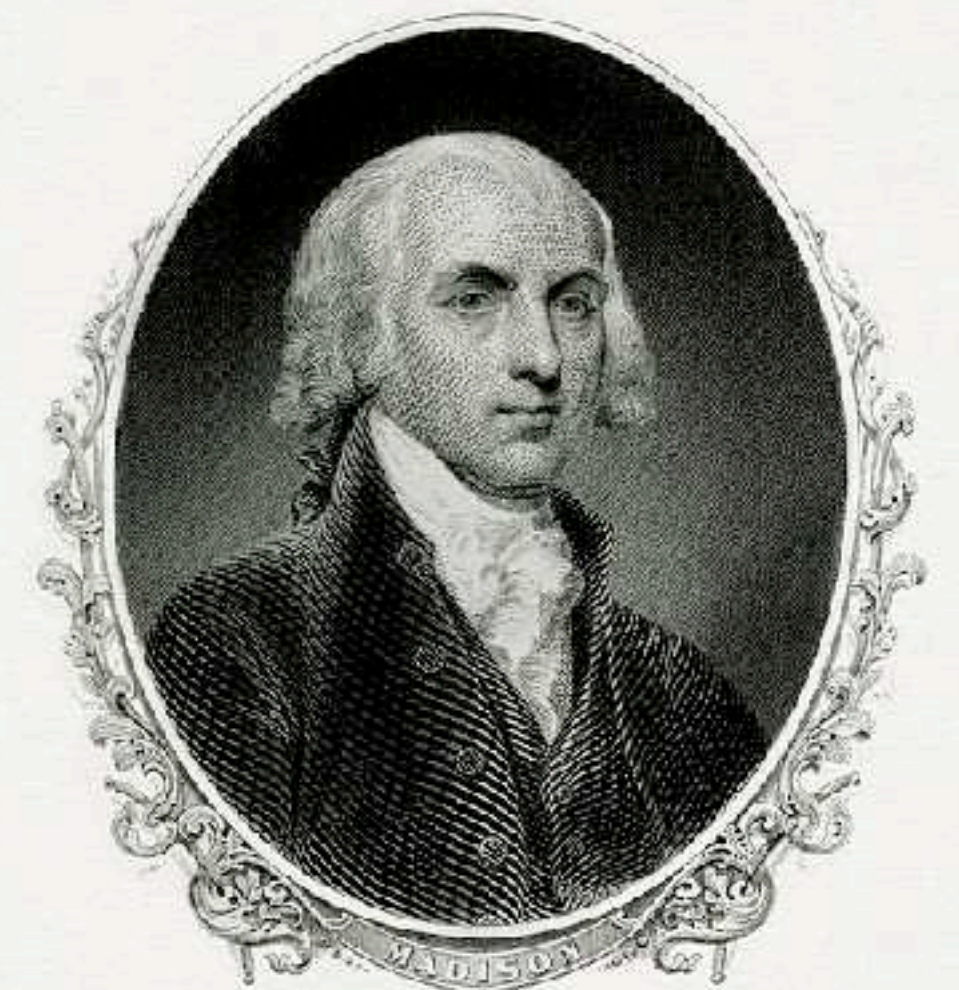


“Crucial to understanding federalism in modern day America is the concept of mobility, or the ability to vote with your feet. If you don't support the death penalty and citizens packing a pistol — don't come to Texas. If you don't like medicinal marijuana and gay marriage, don't move to California.”

Former Texas Governor Rick Perry, in his 2011 book Fed Up!

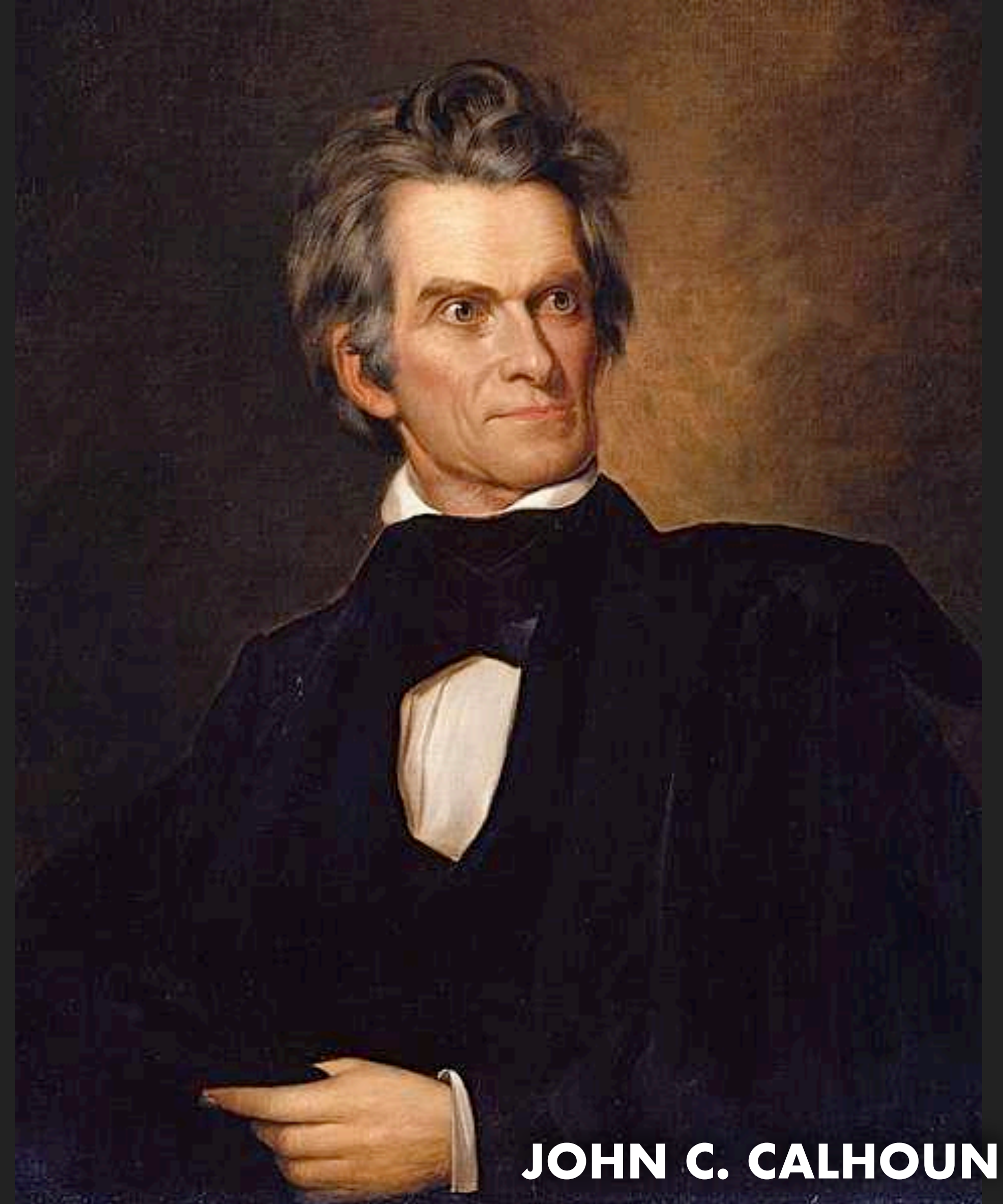
DIFFERING NOTIONS OF FEDERALISM

- ▶ The Constitution is not explicit in its division of responsibility between states and the federal government.
- ▶ **Hamilton** believed that the federal government was “the supreme law of the land.” (Article VI)
- ▶ **Jefferson** believed the principal threat to liberty was the federal government.
- ▶ **Madison** wrote “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” (Federalist No. 45)



ARGUMENTS ABOUT FEDERALISM

- ▶ The **Elastic Clause (or Necessary and Proper clause)** gives Congress the power “[t]o make all Laws which shall be necessary and proper for carrying into Execution” the other federal powers granted by the Constitution. (Article I, Section 8).
 - ▶ The theoretical debate since 1789 has centered on “**necessary**,” from the creation of a national bank to national healthcare.
- ▶ Some, including Jefferson and John C. Calhoun, argued that states have the power of **nullification**, to declare federal law null and void in their territories.



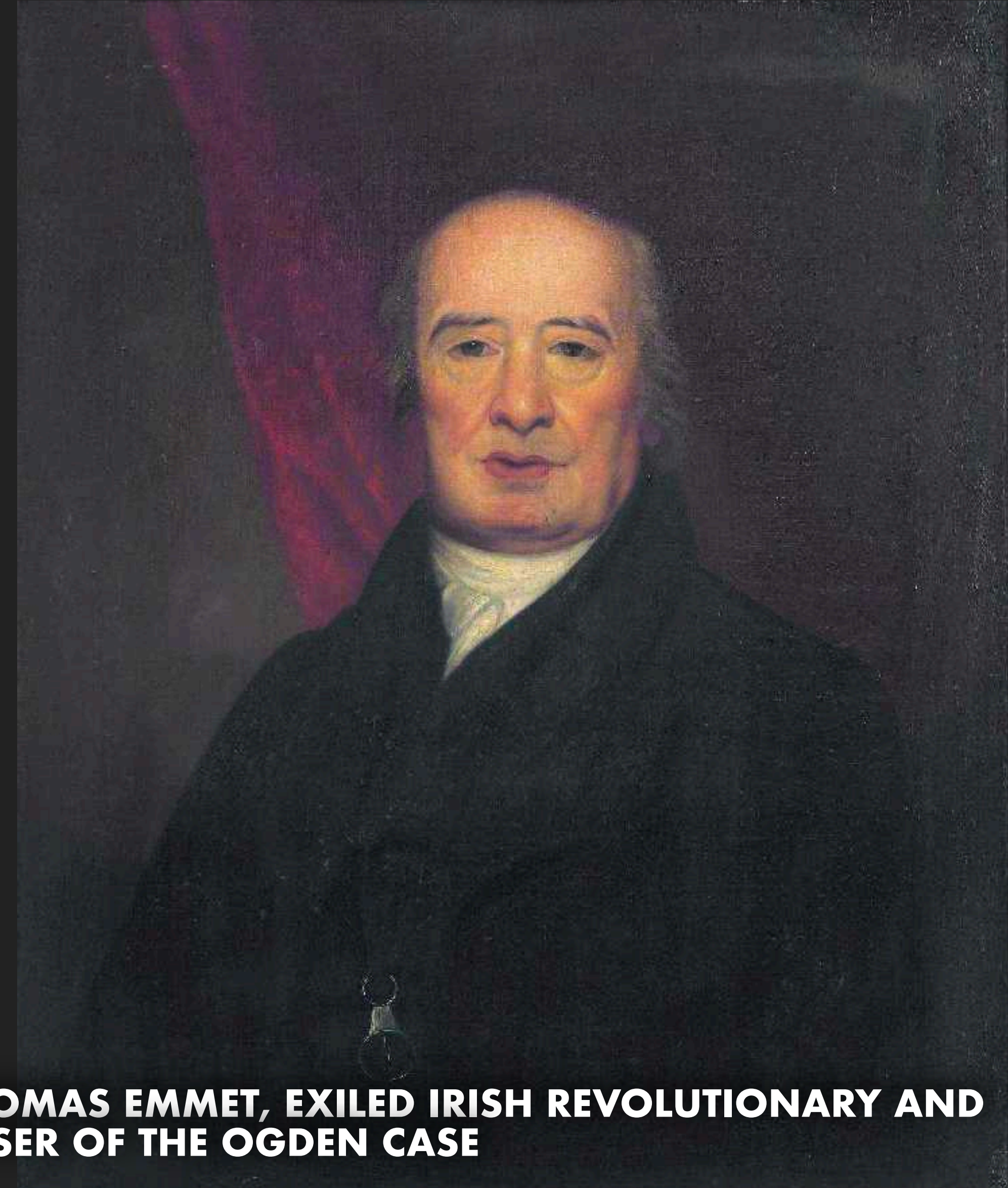
JOHN C. CALHOUN

“...the Constitution of the United States is a compact between the people of the several states, constituting free, independent, and sovereign communities...the government it created was formed and appointed to execute, according to the provisions of the instrument, the powers therein granted as the joint agent of the several states...all its acts, transcending these powers, are simply and of themselves null and void...”

John C. Calhoun, Ordinance of Nullification (1832)

CONSTITUTIONAL FEDERALISM

- ▶ The **Commerce Clause** in the Constitution has been used to justify federal intervention in the states.
- ▶ This has increased dramatically since the Supreme Court's **Gibbons v Ogden** (1824) decision that affirmed the exclusive right of Congress to regulate interstate trade.
- ▶ However, recent courts have limited this power. **U.S. v. Lopez** struck down a federal law banning guns in school zones? Why?
- ▶ The **Full Faith and Credit Clause** says that states must honor the court proceedings, contracts, and acts of other states.
 - ▶ Drivers Licenses, Marriages, Extradition



THOMAS EMMET, EXILED IRISH REVOLUTIONARY AND LOSER OF THE OGDEN CASE

TWO VIEWS OF FEDERALISM

- ▶ William H. Riker, an American political scientist, argued that “the **main effect of federalism** since the Civil War has been to **perpetuate racism.**”
- ▶ Political scientist, Daniel J. Elazar, argued that the “**virtue of the federal system** lies in its ability to develop and maintain mechanisms vital to the **perpetuation of the unique combination of governmental strength, political flexibility, and individual liberty**, which has been the central concern of American politics.”
- ▶ Those are different views, I think.



ALABAMA GOVERNOR GEORGE WALLACE STANDING AGAINST DESEGREGATION

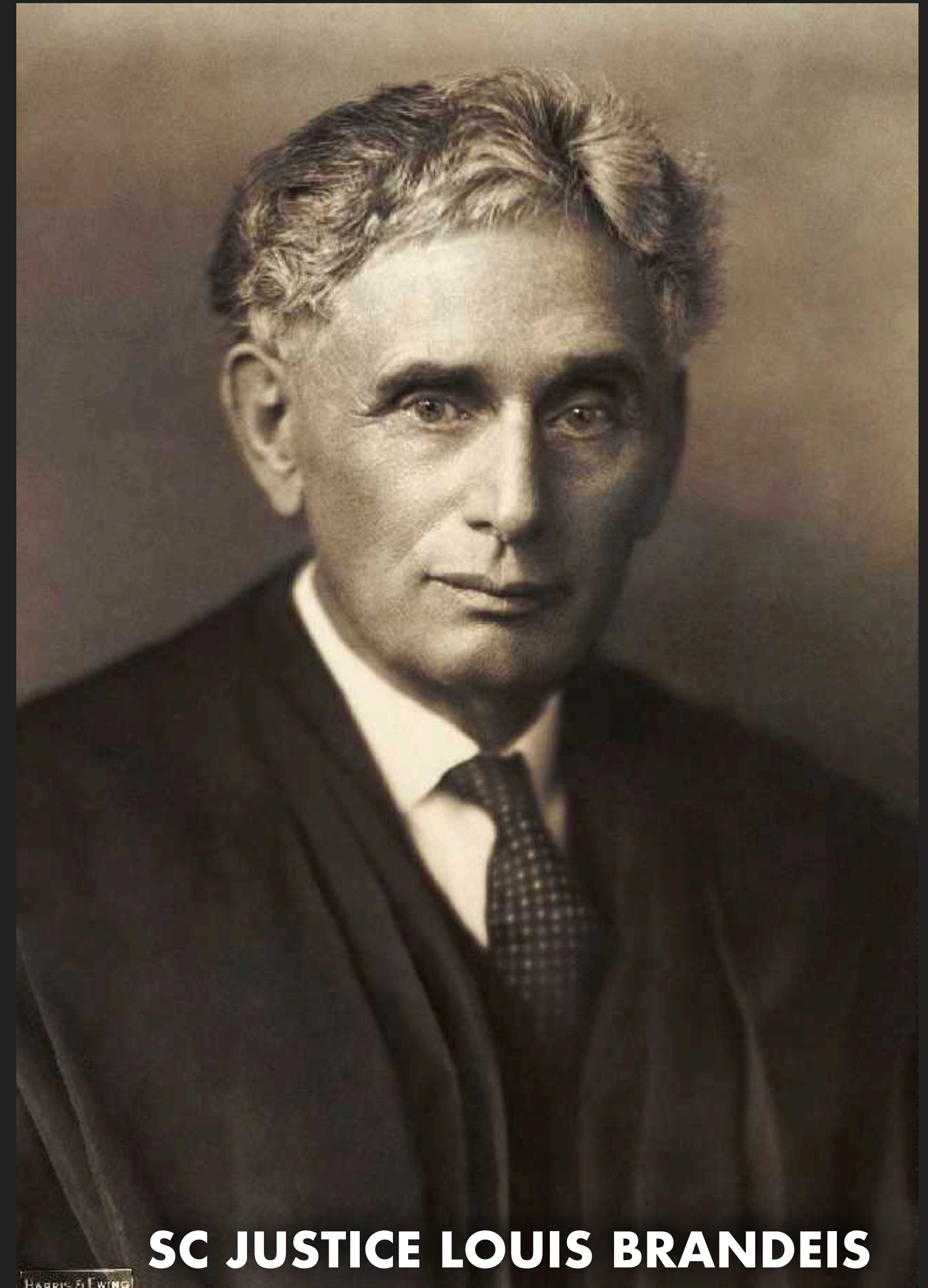
DUAL AND COOPERATIVE FEDERALISM

- ▶ Regulation of **interstate commerce** is an explicit power given to Congress.
- ▶ Until the 20th century, the Court tried to distinguish between intrastate and interstate commerce. Why?
 - ▶ This was **dual federalism**, which held that the national government is supreme in its area and the states are supreme in theirs.
- ▶ Since the 1940s, though, the federal government has assumed increasing power over **commerce, education, transportation**.
 - ▶ This is called **cooperative federalism**, in which federal and state governments share power in many areas.



LABS OF DEMOCRACY OR BASTIONS OF DISCRIMINATION?

- ▶ Some argue that the major benefit of the federalism system is that states can act as **"laboratories of democracy."**
 - ▶ State experimentation can lead to national innovation, meet cultural needs of individual states, etc.
- ▶ Others argue that this **experimentation comes with a cost** in the form of diminished rights for some.
 - ▶ Criminal rights, health care, discrimination issues, etc.



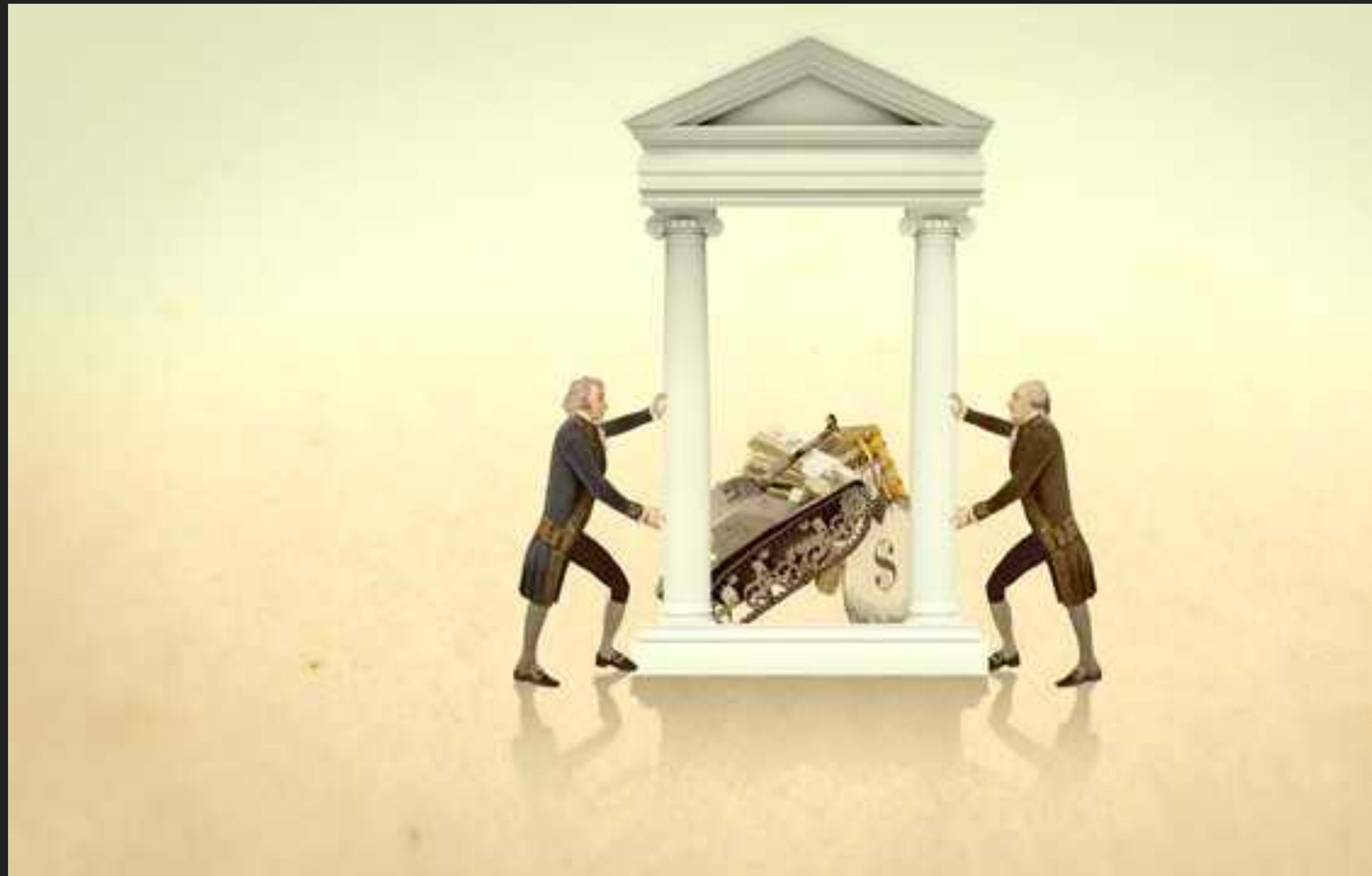
SC JUSTICE LOUIS BRANDEIS



**HOW DO WE SETTLE FEDERALISM
DISPUTES?**

TYPES OF FEDERAL POWER

- ▶ There are three types of federal power:
 - ▶ **Enumerated Powers** (those listed directly in the Constitution)
 - ▶ Declare War, Print Money, Etc.
 - ▶ **Implied Powers** (those reasonably granted from expressed powers)
 - ▶ Form a National Bank, etc.
 - ▶ **Inherent Powers** (those assumed by all sovereign governments)
 - ▶ Acquire Territory, etc.



TYPES OF STATE POWER

- ▶ State powers are not listed in the Constitution, but provided in the **10th Amendment**.
- ▶ **Reserved Powers:** education, intrastate commerce, etc.
- ▶ **Concurrent Powers:** make laws, establish crimes and punishments, etc.
- ▶ **Prohibited Powers:** deprive citizens of rights, tax exports, etc.





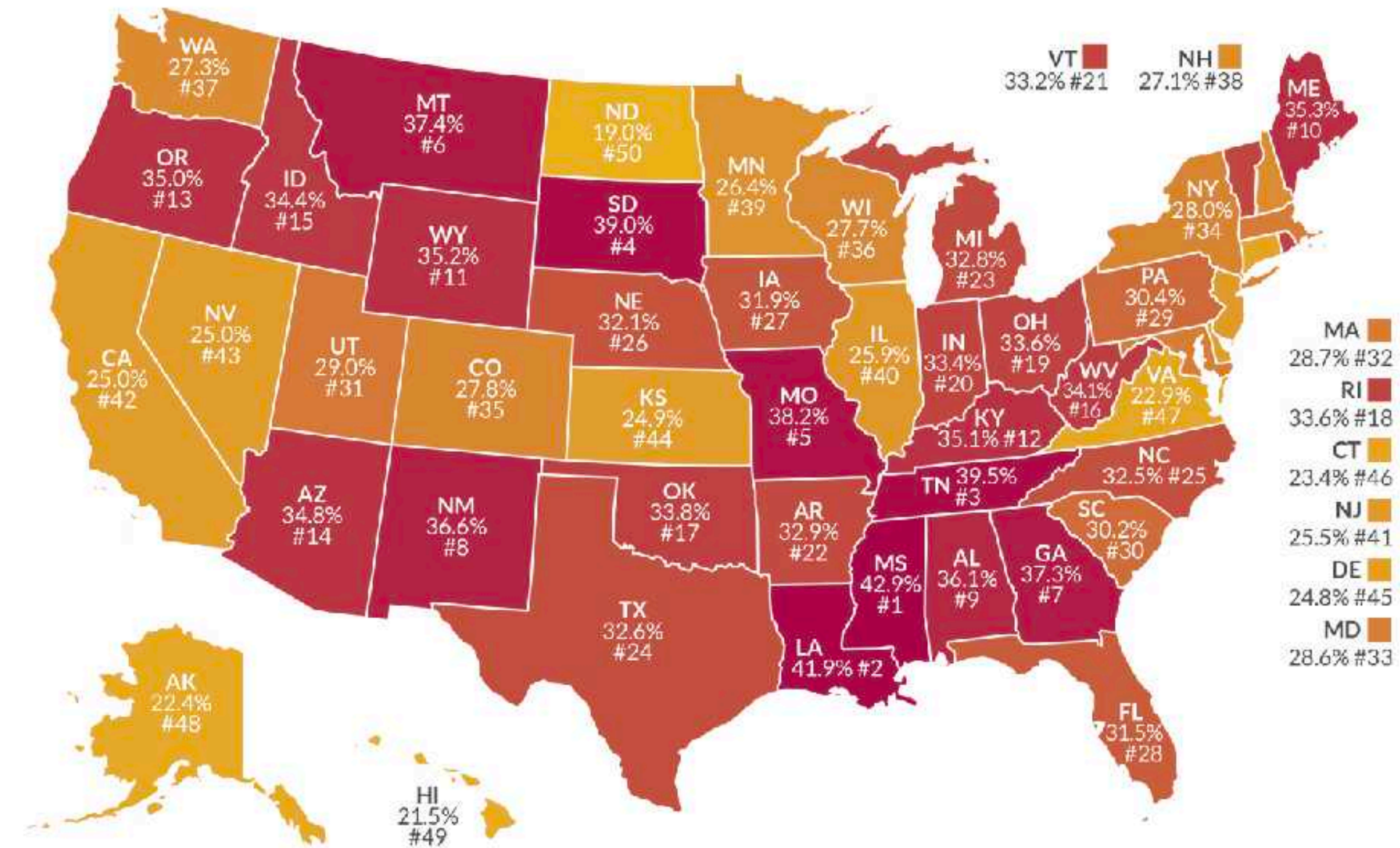
FEDERALISM AND THOSE BENJAMINS \$\$\$

FEDERAL GRANTS

- ▶ One way the federal government has imposed its will on the states is through the use of federal dollars.
- ▶ Today, these come in two forms:
 - ▶ **Categorical Grants:** Given for a specific purpose and often comes with strings attached, such as matching.
 - ▶ Ex: Money is given specifically for a state's free lunch program.
 - ▶ **Block Grants-** Given for a broader purpose, fewer restrictions.
 - ▶ Ex: Money is given for the general field of education.
- ▶ Both forms of grants are levers of enormous federal power.

Which States Rely Most on Federal Aid?

Federal Aid as a Percentage of State General Revenue (FY 2013)



Notes: Figures are calculated by dividing each state's "Intergovernmental Revenue" by its "General Revenue." "General Revenue" includes all tax revenue but excludes utility revenue, liquor store revenue, and investment income from state pension funds. D.C. is designated as a local entity by the U.S. Census Bureau and thus not included here.
Source: U.S. Census Bureau; Tax Foundation.



MANDATES

- ▶ **Mandates** are more controversial. They are laws and regulations set at the federal level and imposed on the states.
- ▶ Mandates can be enforced through **grants** or **penalties**.
 - ▶ No Child Left Behind, National Drinking Age, Americans with Disabilities Act
- ▶ Much of the controversy today surrounds **unfunded mandates**.



PRESIDENT BUSH SIGNING NCLB INTO LAW

THE RESURGENCE OF STATES RIGHTS

- ▶ Since the 1980s, there has been a resurgence in the idea of **dual federalism among conservatives**.
 - ▶ A series of court cases (Lopez, Morrison, and Printz) invalidated federal laws on guns and crime.
 - ▶ But in 2005, the Court ruled that Congress can criminalize marijuana even in states that have legalized it.
- ▶ Since the 1980s, many conservatives have embraced the concept of **devolution** of power to the states.
- ▶ Some Liberals embraced **progressive federalism**.
 - ▶ “Sanctuary cities,” emissions standard for cars.
 - ▶ In 2015, the Supreme Court ruled that state laws against same-sex marriage were unconstitutional.
- ▶ Federalism: principle or politics?



REAGAN AND JUSTICES REHNQUIST AND BURGER



BIG PICTURE

WHY SHOULD WE HAVE FEDERALISM?

WHAT ARE THE BENEFITS OF FEDERALISM?



WHY ISN'T FEDERALISM THE BEST?

WHAT ARE THE DRAWBACKS OF FEDERALISM?

