

## *A SHORT HISTORY OF AMERICAN FEDERALISM*

### *indestructible union 1789-1865*

- 1791 Bill of Rights:** powers not delegated to the national government are reserved to the states and the people
- 1791 Discussion of a National Bank**
- 1819 *McCulloch v. Maryland*** (national bank v. state): broad reading of the necessary and proper clause. Central government is given powers over taxes and commerce, and while no mention is made of incorporating banks, we cannot assume that the framers intended to embarrass the government “by withholding the most appropriate means.” “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 consistent with the letter and spirit of the Constitution, are constitutional.” Citing Supremacy Clause, Marshall declares that “the government of the Union, though limited in its powers, is supreme within its sphere of action.” “The states have no power, by taxation or otherwise,” to prevent the central government from executing its policy.
- 1833 *Barron v. Baltimore*** (wharf owner v. city): the Bill of Rights protects people only from the national government
- 1865 Civil War Ends:** the indivisible union perspective triumphs

### *dual federalism and laissez-faire capitalism 1865-1937*

- 1868 14<sup>th</sup> Amendment:** requires the states to abide by basic civil rights and gives the federal courts power to enforce compliance
- 1913 16<sup>th</sup> Amendment:** income tax makes central government financially strong
- 1920 *Missouri v. Holland*** (state v. national official): federal laws that would otherwise be unconstitutional, are constitutional if based on treaties with other nations

### *interdependency and cooperative federalism 1937 to present*

- 1937 The Revolution of 1937 in the Court:** the triumph of the New Deal in the court.
- 1964 Johnson's War on Poverty:** radical expansion of categorical grants in aid (money with strings)
- 1969 Nixon's New Federalism:** general revenue sharing (money without strings)
- 1981 Reagan's New Federalism:** responsibilities to be transferred to the states (strings without money)
- 1987 *South Dakota v. Dole*** (state v. national official): the court reaffirmed that (1) Congress can attach conditions to the receipt of federal funds, and (2) Congress may spend for the general welfare and in so doing is not limited by the direct grants of legislative power in the Constitution.
- 1994 Contract with America:** responsibilities (generally those associated with helping poor people) to be transferred to the states; block grants would limit the pain in the short run, but no guarantee that they would continue (permanent strings with temporary money). An important piece of this agenda became law with the 1996 welfare reform act that abolished federal aid to families with dependent children in favor of block grants to states (and ironically a whole bunch of mandates about who would be eligible and how the money would be spent.) In some respects this is Reagan's new federalism in a new suit of clothes. One more important element: no **new** unfunded mandates. [The appropriateness of this policy is debated by Spencer Abraham and George Miller in your reader.]
- 2000 Presidential Campaign & Aftermath — What We Say:** During the campaign both candidates promised to fix public education, and predictably the Democrat proposed a plan that had more national standards and the Republican a plan that relied more heavily on the states. — **What We Do:** The Florida vote counting fiasco was a major dispute about federalism with an amazing and ironic twist. In recent years the Democratic Party has been the party of national power, the Republican Party the party of states' rights. With the election in the balance, Democrats argued for states' rights, and the Republican Party rushed to the federal courts to overturn state law and elect George Bush.
- 2001 War on Terrorism:** Subsequent to September 11<sup>th</sup> President Bush announced a war on terrorism, a war without limits in terms of time or geography, a war that may be fought on American soil to a greater degree than any since the Civil War. This effort will stress the federal balance, especially for Republicans. Such a war seems to require increases in national power, more federal employees (e.g., airline security screeners), more federal spending and either higher taxes or ever increasing deficits.