Ch.3 Federalism and the Separation of Powers as Political Institutions:

-federalism and separation of powers serve to channel and constrain political agents, first by limiting their judicial authority, second by pitting them against one another as political competitors

“divide and separate” principle…What is it?

1. Federalism- the division of powers and functions between the national government and state governments…limiting power by creating two sovereigns
2. Federalism in the Constitution

-expressed powers- those powers specifically named in the Constitution and given to the national government

-implied powers-powers derived from the necessary and proper clause (Art. I, sec 8)

-*McCulloch v. Maryland* (1803)

 -allows the national government to expand its scope of authority

 -Supremacy Clause: Article VI🡪 grants national government more power

1. The Powers of State Governments

-10th Amendment- “reserved powers” not specifically delegated to the national gov’t.

-police power- power reserved to the state to regulate the health, safety , and morals of its citizens

-concurrent powers- authority possessed by both state and national governments

Q. Usually when there is a conflict between national and state levels, which side wins out?

 -“full faith and credit clause” –Article IV, sec, 1: requiring that the states (normally) honor the public acts and judicial decisions that take place in another state

 Q How does gay marriage fit in to this clause?

* “Privileges and immunities clause”- Art. IV, sec. 2: a state cannot discriminate against someone from another state or give its own residents special privileges (seeks to promote national unity)

Q. What about state college tuition differences?

1. Limitations on the States

-extradition🡪 returning fugitives from law

-Art. I, sec. 10: “no state, without the consent of Congress..enter in any agreement or compact with another state”

-legally binding agreement to settle problems across state lines

i.e. Port New York Authority (NY & NJ—1921) 🡪 Port Authority of NY/NJ (1972)

1. Local governments and the Constitution

-no status in the Constitution; state legislatures created them

-home rule- power delegated to the state to a local unit of government to manage its own affairs

1. The Slow Growth of the National Government’s Power
2. Dual Federalism- a two-layered system (1787-1937) most fundamental governmental powers were shared between the federal and state governments

-the elastic clause allowed the national government to increase its power

-**commerce clause**- delegates to Congress the “power to regulate commerce w/foreign nations, and among the several states, and with Indian tribes”

-*McCulloch v. Maryland* (1803)- answered TWO fundamental questions

1. Could the national government create a bank?

2. Could a state tax this bank?

-*Gibbons v. Ogden* (1824)- gave rise to what was, “interstate commerce”

\*later in the 19th century, when the national gov’t, sought to use its power to REGULATE the economy rather than merely promote economic development, the concept of interstate commerce began to operate as a restraint rather than a source of national power 🡪 Supreme Court struck down several acts/laws as unconstitutional

\*shift in 1937 🡪 Supreme Court converted commerce clause – limitations to source of power for national government

1. Cooperative Federalism and Grants-In-Aid
2. Type of federalism existing since the New Deal era in which grants-in-aid have been used to strategically to encourage states and localities to pursue nationally defined goals

i.e. Intergovernmental cooperation

 -grants-in-aid funds given by congress to states (& local) to be spent on particular purposes in as defined by congress

 -i.e. Early land grants in 19th century

 -Post WWII, money went to urban development and school lunches

 -Categorical Grants-in-aid- funds given to states that are specifically earmarked by law w/specific categories for; such as education and crime prevention.

i.e. 55 MPH speed limits…or lose federal highway funding

 -Formula Grants- amount of aid received is determined by a formula

 -Project Grants- grant programs in which state & local governments submit proposals to federal agencies & for which funding is provided for on a competitive basis

\*Grodzins Marble Cake federalism

1. Regulated Federalism and national Standards

-states conform, or else…again 55 MPH, yet other areas as well

-civil rights, poverty programs, environmental protection 🡪 “social regulation”

-national government provides the money, but states must reach conditions to get $

i.e. Americans w/Disabilities Act (1990)

-**Unfunded Mandates**- national standards or programs imposed on state and local governments by federal government without giving money or reimbursement

i.e. No Child Left Behind Act

-Unfunded Mandates Reform Act (UMRA)- any unfunded mandate can be stopped by a point of order raised on the House/Senate floor; “stop, look, listen”

Q. What does the cost shifting of recent federal mandates illustrate about the current administration and congress?

C. New Federalism and the National-State-Tug-Of-War

“**new federalism**”- coined by Nixon, used by Reagan…wanted to return the size and power of the national government to a traditional notion of freedom and actions for the states

-**block grants**- federal funds given to states to pay for services with very little strings attached

-**devolution**- strategy of delegating to the states more and more authority over a range of policies

GW Bush- “*compassionate conservative*” 🡪 wants to be seen as conservative, but closer to the spirit of the New Deal

D.The Supreme Court as Referee…recent court cases

 10th Amendment used to bolster arguments for **states’ rights** (belief that states should oppose increasing authority of the national government) —used early pre-Civil War 1930s

-Court began to expand federal power, which made the 10th Amendment irrelevant

-recent years have seen the Court rule in favor of the states, thus more narrowly restricting power of the national government (bringing back the 10th!)

 -*U.S. v. Lopez* (1995) 🡪 guns in school zones

 -*Printz v. U.S.* (1997) 🡪 part of Brady Bill, background checks for gun purchases

 -*City of Boerne v. Flores* (1996) 🡪 Congress had gone too far in restricting the power of the states to enact regulations they deemed necessary for the protection of public health & safety

-U.S. v. Morrison (2000) 🡪 Court struck down provisions of 1994 Violence against Women Act

1. Historical Trends for National-State-Tug-Of-War:
2. John Marshall Court 🡪 nationalizing trend
3. Roger Taney Court 🡪 Denationalizing trend
4. Court at start of FDR’s New Deal 🡪 denationalizing trend
5. Court after 1936 election 🡪 more nationalizing trend
6. Burger and Rehnquist Courts 🡪 more denationalizing, yet patient
7. Roberts Court 🡪 seen as more denationalizing trend
8. The Separation of Powers
9. Checks and Balances 🡪 mechanisms through which each branch of government is able to participate in and influence the activities of the other branches
10. Legislative Supremacy 🡪 the preeminent position assigned to Congress by the Constitution
11. Divided government- when the Presidency is controlled by one party and the Legislative branch is controlled by the other party
12. The Role of the Supreme Court