

# **4. Federalism, Civil Liberties & Mid-term Review 1**

**Breakout Sessions  
POLS 1101  
8:40am-9:35am Baldwin 322  
& 9:55am-10:50am Journalism 509**

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# **Federalism**

# Theories

- **Dual federalism:** The powers of the national government and the states are clearly distinguished.
  - Delegated powers; Reserved powers
- **Cooperative federalism:** Different levels of governments work together to serve people's needs.
- **Ideal types!** Reality is a mix-up of them.

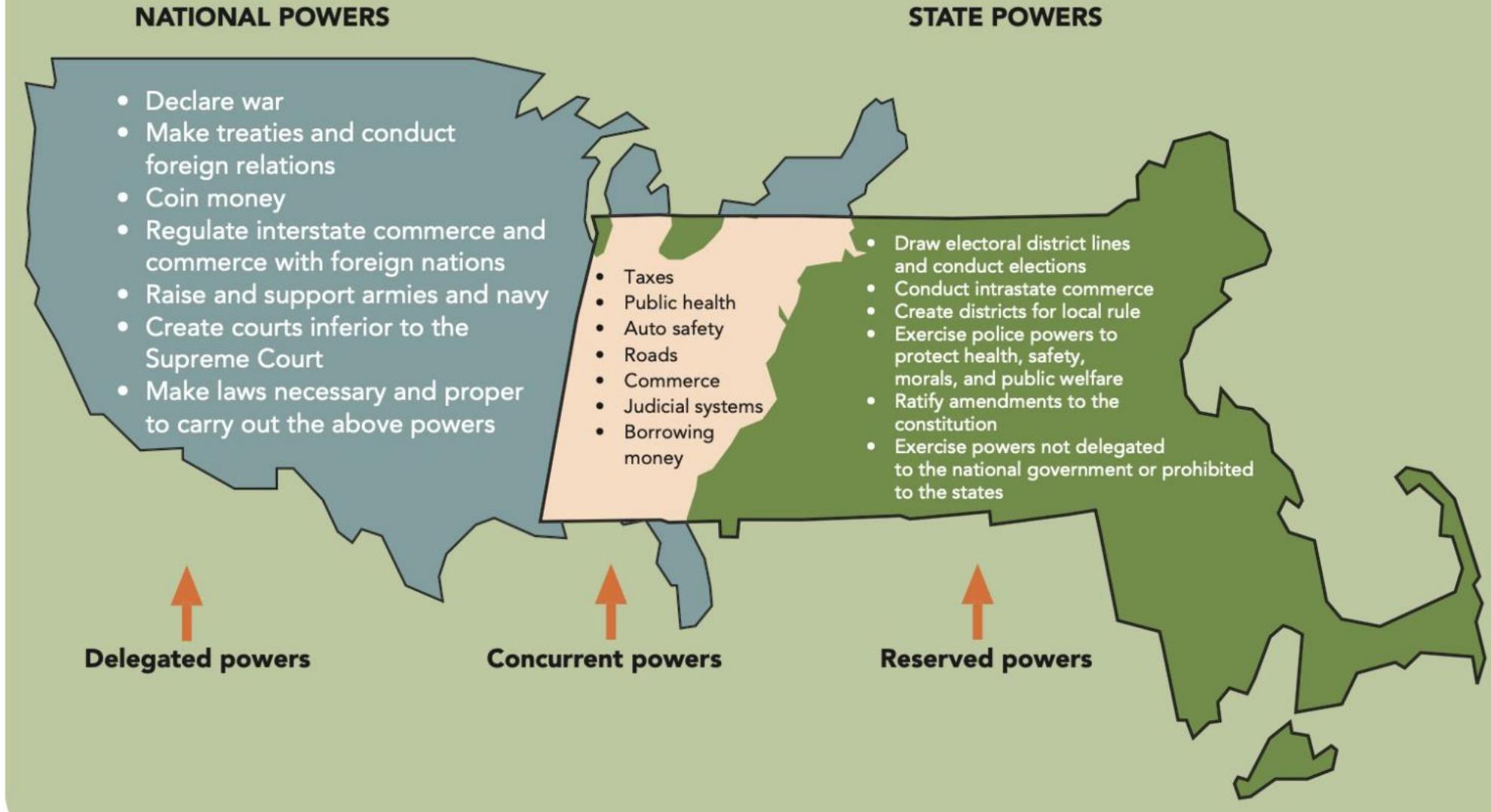
# How can federalism be influenced?

- Judicial interpretation
  - Recall: Actual lawmakers **vs.** Essential discretionary power
- Grants-in-Aid: Money, money, money!
  - **Categorical grants, Block grants**
  - Formula grants, Competitive grants
- National crises and demands
  - Inadequate state capacity
  - What is “crisis”? What is “state capacity”?
    - Recent cases
- Professionalization of state governments
  - Strong state capacity

# Ideology, Policymaking, and Federalism

- Recall: The major differences between liberals & conservatives lie in their views toward **the purpose of the government** (socio-economic dimension).
- In reality, conservatives do not always support the expansion of the state power, and liberals can be against national power. **The key here is still what the national / state power is used for.**
- **Preemption:** the power of Congress to enact laws by which the national government assumes **total or partial responsibility** for a state government function.
  - Do you think there are some powers that must be retained in the states? If you do, what are these powers? Why do you think this way?

## The Division of Powers in the Federal System



# Advantages and Disadvantages of Federalism

- One puzzle where “common sense” fails
  - Generally, the local government is closer to people and directly influence policies, so citizens will be passionate about voting in local elections, regardless of their ideologies, party identities, etc.
  - **Actually, people are much less likely to vote in state and local elections. –Why?**
    - Remark: A great study starts from the gap between theory and reality!
    - **Dispersed power** -> little publicity for local elections, nonpartisan local affairs -> less prominent competition, less clearly recognizable identity labels -> **political apathy**
    - **Dispersed power** -> complex government structure, higher requirement for political participation -> hard for people to participate -> **political apathy**
    - **Therefore, more participating opportunities do not lead to majoritarian democracy, but to pluralist democracy** -> an possible explanation for the intension between the majority rule and the pluralist reality.
    - Anyway, federalism provides more **flexibility**!

# Civil Liberties

# Fundamental Concepts

- **Civil liberties:** Restraints on the government (“negative rights”)
- **Civil rights:** What the government must do to protect individuals (“positive rights”).
- Civil liberties were confirmed by the Constitution, and even expanded in political (judiciary) practices.
  - **Due-process clause** (the 14<sup>th</sup> Amendment): Applied the principles of the Bill of Rights to the state level; civil liberties were to be protected from state laws.
  - Therefore, it is essential to know about cases (and how the SC statement evolved) if we wish to understand civil liberties.
    - **Selective incorporation:** SC as the “actual law maker” – It has determined, on a case-by-case basis, whether a particular Bill of Rights guarantee applies to the states via the 14th Amendment.

# Freedom of Expression

- **Basic principle (1<sup>st</sup> Amendment):** Unrestricted discussion of public affairs
  - However, 1) it says nothing about private restrictions on speech;
  - 2) There should be no threats to public order.
    - Clear and present danger test (**Schenck v. United States, 1919**)  
-> Immediate and real threat (**Brandenburg v. Ohio, 1969**)
    - Fighting words (**Chaplinsky v. New Hampshire, 1942; Cohen vs. California, 1971**)
- **Extensions**
  - **Symbolic expression (non-verbal communication)**
    - Tinker v. Des Moines Independent County School District (1969)
    - Texas v. Johnson (1989)
    - Citizens United v. Federal Election Commission (2010)
  - **Obscenity**
    - Miller v. California (1973)
    - Jenkins v. Georgia (1974)
    - Reno v. ACLU (1997)

# Freedom of Expression (cont'd)

- **Extensions**
  - **Hate speech**
    - Nationalist Socialist Party of America v. Village of Skokie (1977)
    - Matal v. Tam (2016)
  - **Freedom of the press**
    - **Prior restraint:** censorship before publication
  - .....
- **NOTES**
  - What was the decision of a case, and how did SC **come to** it (even overruling a precedent)?
  - How did the majority (and even minority) opinion **interpret** the Constitution?
  - What is the **relationship** between cases?
  - Remember “freedom of speech” applies **only to public affairs.**

# Freedom of Religion

- **The Establishment Clause:  establish certain religions!**
  - Establishment clause and school prayer (see slides)
    - Engel v. Vitale (1962)
    - Wallace v. Jaffree (1985)
    - Santa Fe Independent School District v. Doe (2000)
  - Lemon v. Kurtzman (1971) & *Lemon Test* (see slides)
  - Agostini v. Felton (1997): Requires government neutrality
  - Lynch v. Donnelly (1984): Blurred boundaries between religious expression and secular tradition in pluralistic contexts (majority – minority)!

# Freedom of Religion (cont'd)

- The Free-exercise Clause:  interfere with certain religious exercises!
  - Tensions between the establishment clause & the free-exercise clause
    - Under a neutral, generally applicable law, **when must** the government grant a religious exemption, and **when may** it refuse?  
Propose a workable standard, and address whether exemptions impose meaningful harms on third parties or signal governmental favoritism toward religion.
  - Basic principle: **Strict scrutiny** (a balance between free exercise and establishment?)
    - If a law imposes burden on a religious belief or conduct, it must serve a **compelling** governmental interest, be **narrowly tailored**, and employ **the least restrictive** means.

# Should “implied” rights be protected?

- **Privacy (Also see slides)**
  - Griswold v. Connecticut (1965): Right to privacy is an “**implied right**” (maybe we can call it this way!) in the Bill of Rights!
  - Roe v. Wade (1973): the right to **abortion**
  - Lawrence v. Texas (2003): legalization of **same-sex sexual conduct**
  - Obergefell v. Hodges (2015): legalization of **same-sex marriage**
  - Dobbs v. Jackson Women’s Health Organization (2022): More conservative attitude toward **substantive due process rights (“implied rights”)**
- **Back to key controversies in the Constitution & Federalism**
  - When a claimed right is not enumerated in the Constitution, is it legitimate for courts to recognize it as “liberty”? If so, **on what basis** (tradition, constitutional principles, dignity/autonomy, social consensus)? How do we avoid the charge of judicial invention?

# **Mid-term 1 Review**

# Midterm 1

- **Location:** Breakout Section Classroom
- **Time:** **Breakout Section Time, Friday (2/13)**
  - If anyone needs A&T (DRC) accommodations, please contact them to make arrangements
  - If they need approval from instructors, please contact Dr. Nicholson, since he is responsible for this class.
- **Layout:** Multiple choices (25-30) [Scantron 882-E] & Short-answer questions (choose 4-5) [Bluebook]
  - remember to buy bluebooks, scantrons, #2 pencils at the bookstore
- **Remember:** This is a CLOSED BOOK exam! Pay attention to integrity requirements!
- **What:** Political Values – Civil Rights, all we have learned (and will learn) before the test
- **Suggestions**
  - Remember **my name** and the **time for your breakout session (not time for lecture! But 8:40 F, or 9:55 F)**, since you will write it **on the cover of your bluebook**.
  - **Key ideas** (theory, concept, professional items, SC cases) + **explanation** (when, where, who, what, why, how – not all of them; **put down what you believe to be necessary**)
  - **If you are not sure, much is better. If you really have no idea, only telling stories is also encouraged.**

# Midterm 1 Review

- **Review Sheet on eLC**
  - Combine it with **lecture slides**, as well as breakout session slides (if you find it helpful to understand basic concepts & theories)
- **Thanks to our Lead TA, Mckinley Frees!**
  - **Key items review:** <https://quizlet.com/941685878/key-terms-in-political-science-flash-cards/?i=61humc&x=1jqt>
  - **Study guide:** <https://quizlet.com/study-guides/key-terms-in-political-science-d2f0198b-e0ea-489b-8865-618807e199dd?i=61humc&x=13qt>

# Group Study Activity: Midterm 1 Review

- **Goal:** To produce a mini study guide (NOT to repeat definitions!)
  - Focus on relationships, distinctions, and exam-style thinking
  - Output must be **organized, testable, and aligned with exam style.**
- Each group produces the review material for **ONE chapter.**

## Several forms for reference:

- **Confusion Pairs:** A vs B, C vs D, ...
- **Concept Map:** 1 or more map showing relationships
  - A framework that contains the most important concepts and their inner logic
  - (Should) also **add important items from lecture slides that are not on the review sheet**
  - *If a map is too difficult, a list of definitions / explanations of the concepts is also okay – then you actually combine the first two forms together.*
- **Predicted Exam Set:** MC + Short Answer (with answer)

You can decide the roles assignment within your group.

22485 (8:40 Baldwin)

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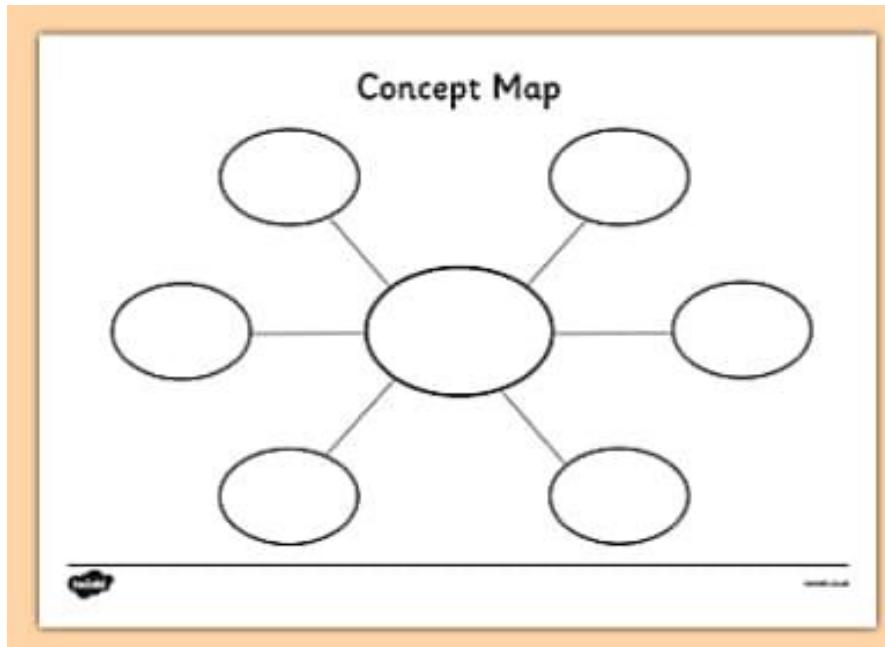
22490 (9:55 Journalism)

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# 1. Confusion Pairs

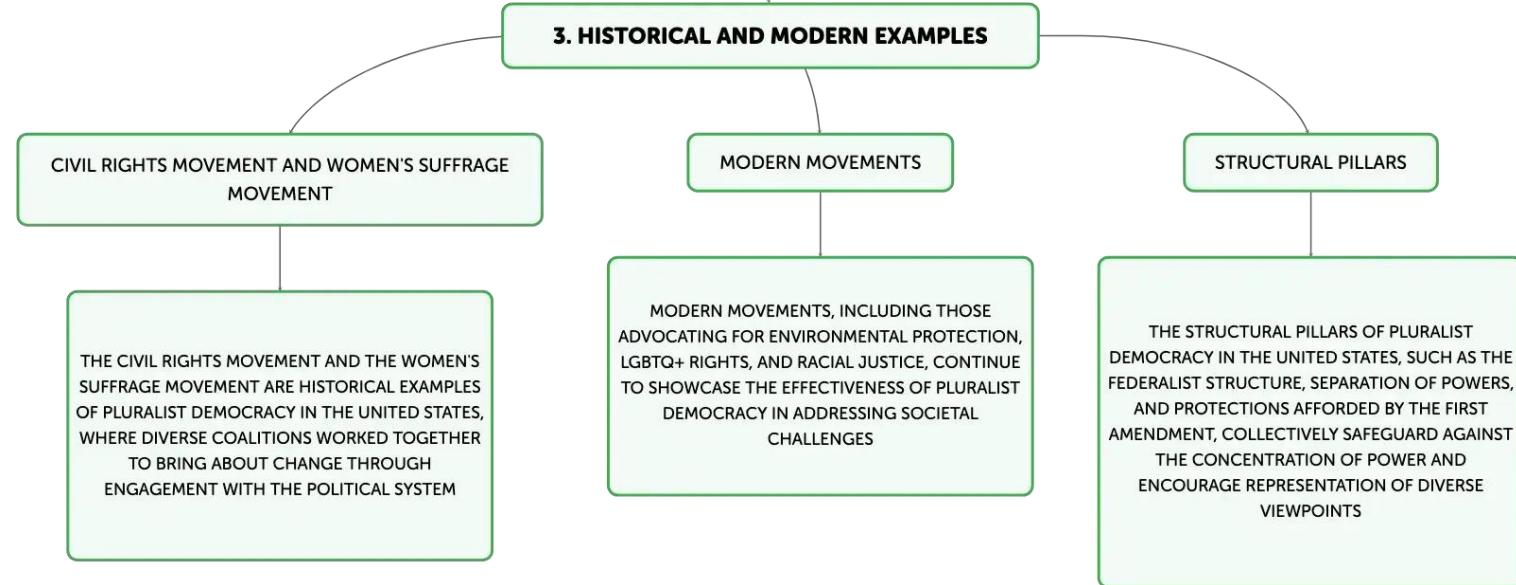
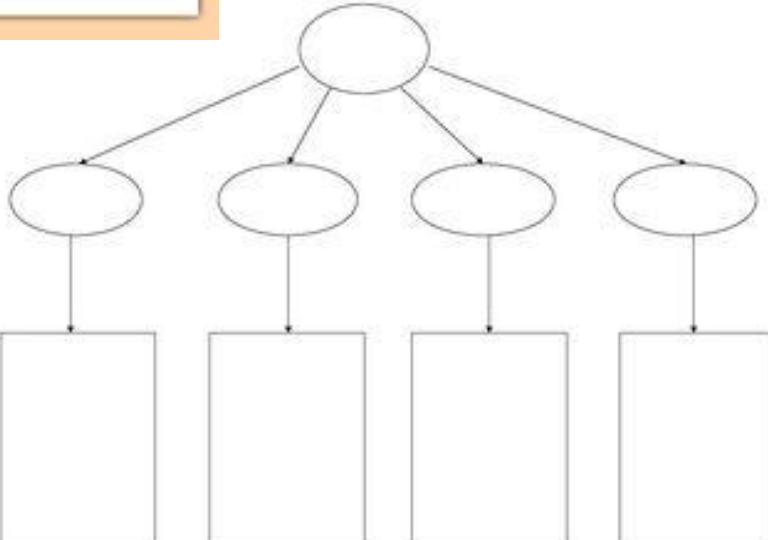
- Pick several pairs using **any** of these criteria:
  - **Similar wording** (easy to mix up)
  - **Same topic, different logic** (e.g., model vs model / clause vs clause)
  - **One is a subset / mechanism / cause / outcome of another**
  - **Likely wrong-answer trap** (a real term used in the wrong context)
- **Required format for each pair**
  - Pair: A vs B
  - (Decision rule: “If \_\_\_ → A; if \_\_\_ → B.”)
  - (Trap: “Students confuse them when \_\_\_.”)
- **e.g.**
  - Procedural / substantive democracy
  - Layer-cake / marble cake federalism
  - *Lemon v. Kurtzman (1971)* & *Lemon Test*
- Not acceptable:
  - Copying textbook definitions
  - Two terms that are basically synonyms
  - A vs B with no “decision rule”
  - A list of 10 pairs with no inner logic
- Acceptable:
  - Fewer pairs but **highly interrelated concepts** that predict exam answers

## 2. Concept Maps

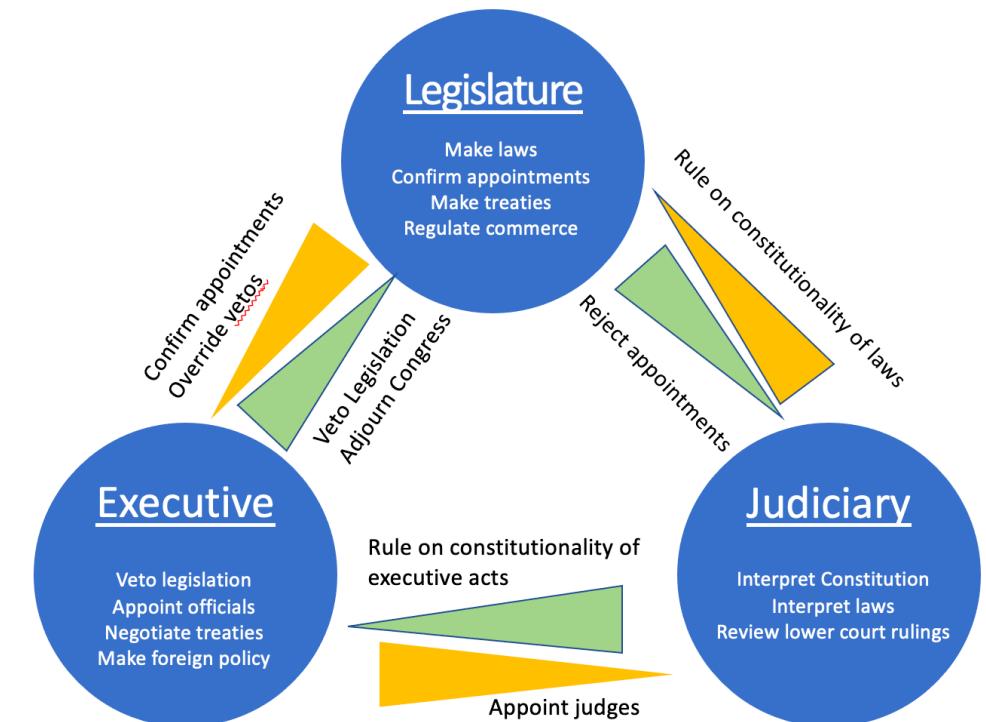


You can:

- group ideas together
- show contrasts
- show “this leads to that”
- show where people usually get confused



Separation of Powers / Checks and Balances



# 3. Predicted Exam Set

- **MC**
  - Each citizen having one vote demonstrates which principle of procedural democracy?
    - A. Universal participation.
    - B. Political equality.
    - C. Majority rule.
    - D. Responsiveness
  - A private employer fires an employee for what they posted online. Is this a First Amendment violation?
    - A. Usually yes
    - B. Usually no
    - C. Only if the post is offensive
    - D. Only if it is political speech
- **SA**
  - Discuss the principles of procedural democracy.
  - Federalism can be described with cake metaphors. What is layer-cake and marble cake federalism? Which metaphor best describes how federalism works today?

# More Tips for Short-answer Questions

- **Use key items as much & accurate as possible**
  - Telling stories is okay if you forget the concepts, where can get some of the points
    - Only when the story you tell is extremely close to the key idea of professional items can you get all the points.
    - However, try as possible as you can to write what you know down to your bluebook – it could really increase the probability of getting more credits! **DO NOT LEAVE ANY QUESTION BLANK!**
- **Avoid too big, too general pictures in your answer -> BE SPECIFIC!**
  - For history: **Who?** **Why** (especially its relation to **theoretical implications**)? **What?** (e.g. names of **influential cases of the SC**) **How?** **Impacts** on later events?
  - For theoretical questions: **Item + key idea + How it applies** to your answer
- Suggestion: Maybe you can make full use of your bluebook – no need to fit all the answers onto two pages. Again, write the time for your **DISCUSSION SESSIONS** (not TTR 1:15-2:10, but **F 8:40 / F 9:55**) on the cover of your bluebook!

# More Tips for Short-answer Questions (cont'd)

- Don't overlook details – they can be both in MC and SA questions.
- Try to use **bullet points (1,2,3; a,b,c; ...)**.
  - Make your ideas easy to identify — graders can quickly find your key points and give you credits.
- Use **enough space** — don't squeeze your writing at the bottom of the page.
  - We use each bluebook only ONCE – so there's no need to save space for next time.
  - Make your answers clear and easy to read!
- When your answer is not included in your textbook / slides but makes sense, I give you “appropriate” credits.
  - I'm happy to see your own thinking, since we cannot remember everything.
  - However, still try to review carefully, since some of your own ideas can overlap with each other – in essence they refer to the same “key concept”. In this case, maybe you cannot get a full credit.

# **Next week...**

**Good luck in your Mid-term 1!**

- Feel free to email me if you have any questions!
- ENJOY YOUR WEEKEND!
- Don't forget to prepare for your exam!