

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

NATIONAL POWERS

- Declare war
- Make treaties and conduct foreign relations
- Coin money
- Regulate interstate commerce and commerce with foreign nations
- Raise and support armies and navy
- Create courts inferior to the Supreme Court
- Make laws necessary and proper to carry out the above powers

STATE POWERS

- Draw electoral district lines and conduct elections
- Conduct intrastate commerce
- Create districts for local rule
- Exercise police powers to protect health, safety, morals, and public welfare
- Ratify amendments to the constitution
- Exercise powers not delegated to the national government or prohibited to the states

- Taxes
- Public health
- Auto safety
- Roads
- Commerce
- Judicial systems
- Borrowing money

↑
Delegated powers

↑
Concurrent powers

↑
Reserved powers

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 14th 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 (1st 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**

- ❑ **Priori restraint:** censorship before publication

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- **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=1jqd>
- **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)

<https://docs.google.com/document/d/1oZrGo7eacLaCJrTkN53ogvj3fpJ4I3PoBzvRhrtt-Tg/edit?usp=sharing>

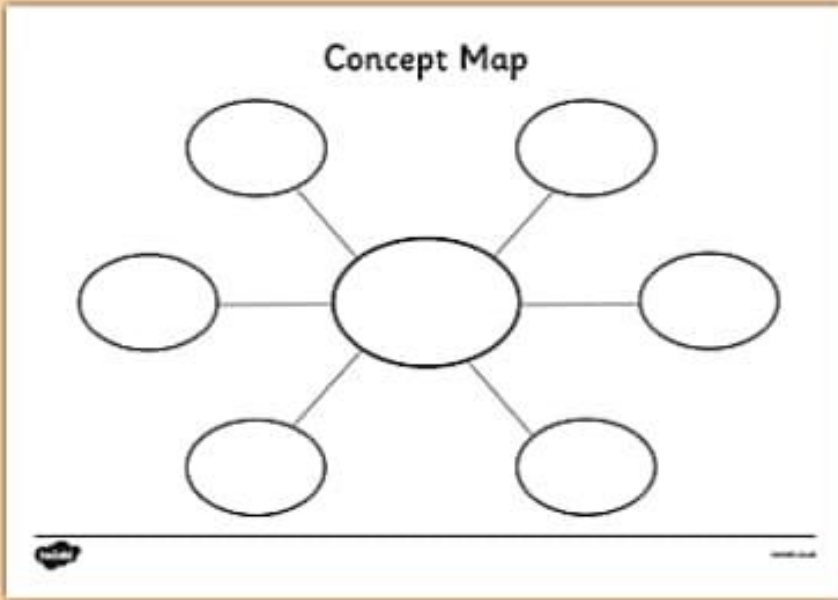
22490 (9:55 Journalism)

<https://docs.google.com/document/d/1H5oz7vaxXajeKPDKvuJgA9EZTay28qLoioXgBWpZFt4/edit?usp=sharing>

1. Confusion Pairs

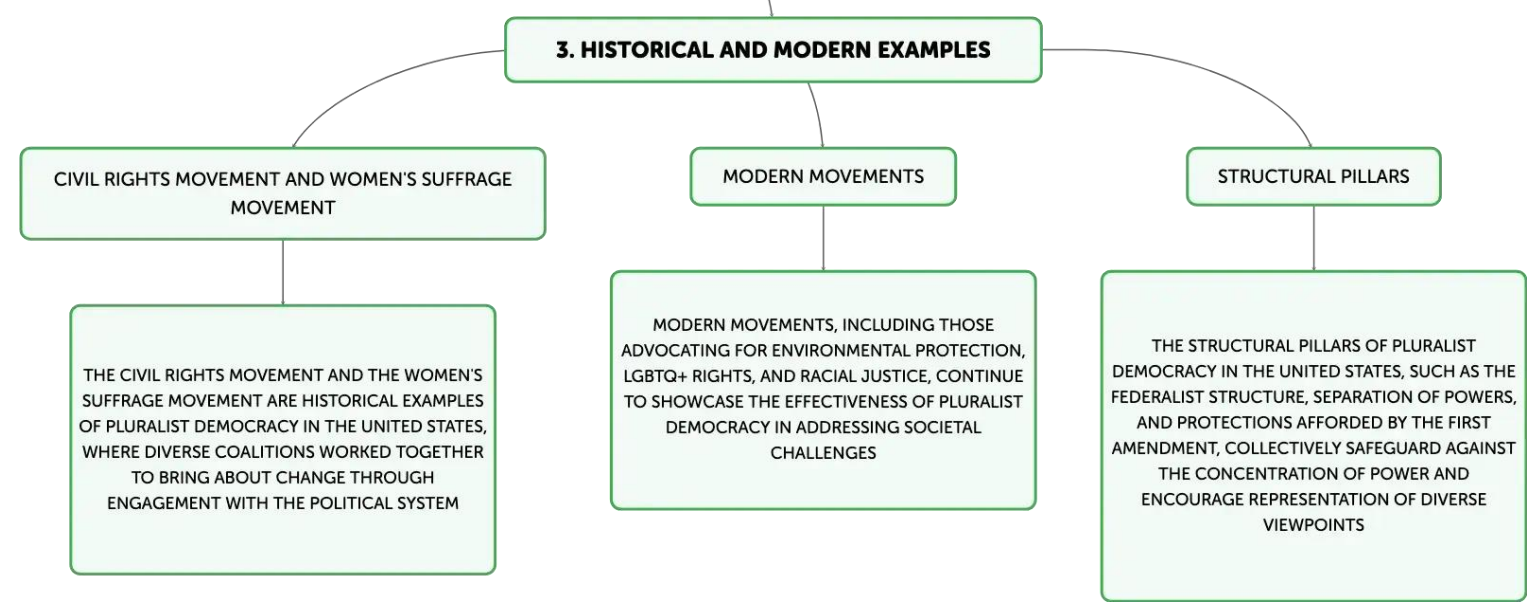
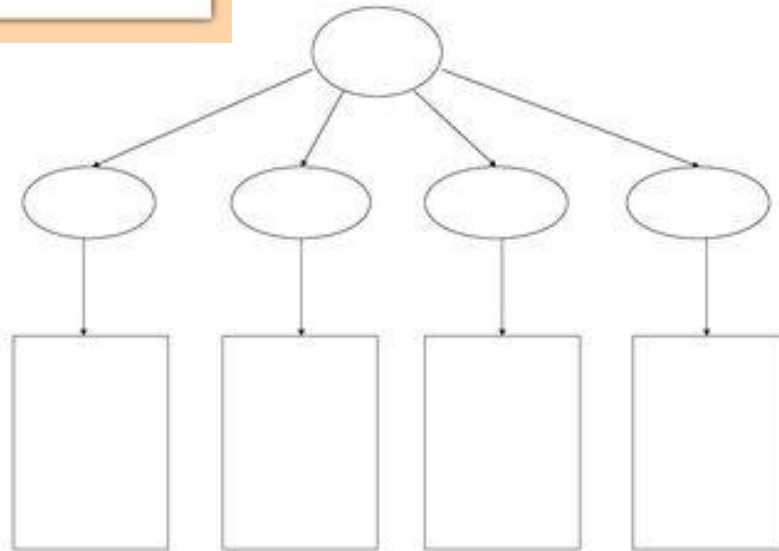
- Pick several pairs using **any** of these criteria:
 - **Similar wording** (easy to mix up)
 - **Same topic, different logic** (e.g., model vs model / clause vs clause)
 - **One is a subset / mechanism / cause / outcome of another**
 - **Likely wrong-answer trap** (a real term used in the wrong context)
- **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

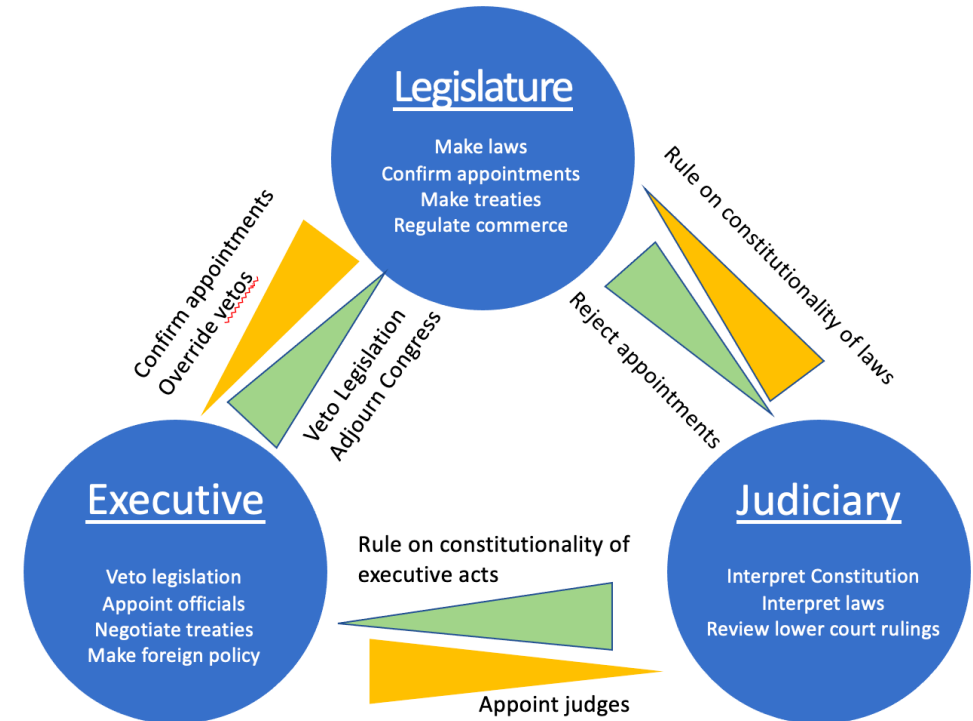


You can:

- 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!