

## Final Exam- Written portion

The power struggle of balanced power between the states and the federal government is something that has always been give and take but some periods give more give to one than the other while the other is left with an unfair advantage. However there are safeguards to keep the power in check for both the states and the federal government in check while at the same time keeping civil rights equal for all.

There are two different safeguards approaches to keep a balance of power for both the states and the federal government, both trying to do the same thing but both equally different. The political safeguard approach aims at preserving federalism by relying on provisions in the constitution that will integrate both the state and federal governments together. This is done through things like the adoptions of laws in which a specific procedure must be adhered to in order for the laws to be adopted. That procedure is done through both the participation of both the senate or the states and without both then the law cannot be adopted thus keeping check of power for both the states and the federal government of power. This is different from the Judicial safeguard as it does not believe in the integration of federal and state governments as the federal government has an unfair advantage over the states. That unfair advantage is that the federal government has all of the money that the states wish to receive in order fund schools, roads etc. so essentially if the states do not participate in the way the federal government wants them to participate in then the states do not receive funding. This can sway power obviously to the federal government and not keeping check on anything. This approach believes that a third party should get involved to insure a balance of power, that third party being the judicial branch. The judicial branch then would keep in mind the public interest and advance or adopt laws that would reflect that public interest while maintain a balance between the two. In order to effectively protect the state from an over-powerment of federal power you must look at the "state's rights amendments" which are inherently the 10<sup>th</sup> and 11<sup>th</sup> amendments, those give a clear indication on how the state's should be separate from federal power.

There are four clauses that the Federalist periods look toward in order to determine the amount of power given to either the Federal or State governments. The first clause is the combination of both the interstate commerce clause and the necessary and proper clause. The next constitutional clause that is looked at is the Taxing and spending clause. The third commerce clause is the 14<sup>th</sup> amendment that consulted the privileges and immunities clause, due process clause, and equal protection clause. The last constitutional clause that is looked at is the 10<sup>th</sup> and 11<sup>th</sup> amendment that had to deal with the specific state's rights.

There are 4 different periods in time that in turn reflect the fluctuation of power between the states and the federal government. The first period in time is the Federalist period, which was between 1789 and the 1860's. During this time the scope was focused on increasing federal power while trying to limit state power. The clauses during this time were interpreted very broadly as to increase the power of the Federal Government. This broad interpretation of clauses can be seen in the cases presented during this time the first one being the Legal Tender Cases of 1884 which dealt with the authorization of 150 million greenbacks in order to combat the debt caused by the Civil War. A suit was brought forth by those who did get much back when they went in to turn in their greenbacks. The question in this case was whether or not the Congress had the authority to print these legal tenders even though there were no backings? The Courts in this case said yes that Congress did have authority to print them under the broad interpretation of the Commerce Clause because if for some reason money isn't paid back for the debt the country had it essentially would interfere with interstate commerce thus giving Congress authority. Another example of this is seen the taxing and spending clause which at this time the case of Springer v. U.S 1881. that dealt with an inherent "direct tax" but with a broad interpretation of the Taxing and Spending clause the tax was upheld to grant the Federal government more power. Another example is the 14<sup>th</sup> amendment in the case of Barron v. Baltimore of 1833 that allowed the city of Baltimore to dump their renovation dump in Barron's wharf, which whom was a private citizen. The Due Process clause at this time was interpreted

narrowly in order to grant more Federal Power. The 10<sup>th</sup> and 11<sup>th</sup> amendment however were interpreted narrowly during this period as to keep state power down because these amendments dealt with the direct state power. In McCulloch v. Maryland (1819) Congress created a statute which manifested a national bank and would tax other banks except for the national bank. Maryland said this was a violation of the 10<sup>th</sup> amendment, however because the amendment was interpreted very narrowly while the commerce clause was interpreted very broadly the courts allowed for this.

The next period was the Dual Federalism era during the 1860's-1870's that had a different style of scope than the Federalist period. The scope of this time was to equalize power between both the states and the Federal government, this was done by giving all the enumerated powers to the U.S. government while giving the rest to the states. The commerce clause in this period was interpreted narrowly as shown through U.S. v. E.C. Knight 1895. In this case a monopoly of sugar refining was found and the Federal government stepped in to break up the monopoly however this was considered a violation of Congress's power. The Taxing and Spending clause along with the 10<sup>th</sup> and 11<sup>th</sup> amendments during this time was also interpreted narrowly as to grant more power to the states. This can be seen through the Bailey v. Drexel Furniture of 1920 and Hammer v. Daggenthart (1918) cases which both deal with child labor laws. The cases were interpreted in the equal protection clause of the 14<sup>th</sup> amendment and the state sovereignty clause narrowly in, which the states internally should be able to make their own decisions about child labor laws. The Due process clause in this time was interpreted broadly because the 5<sup>th</sup> amendment via the 14<sup>th</sup> amendment were intended to not be interpreted to state criminal trials. Another case as seen in this period was the Slaughterhouse Cases of 1837 which had a narrow interpretation of the 14<sup>th</sup> amendment primarily through the Due process clause and the Privileges and Immunities clause. The case dealt with a monopoly of slaughterhouses and land that had been sold by the state to one company pushing other slaughterhouses out of business, which the complaintiffs said was in violation of their 14<sup>th</sup> amendment Due process and