KEY EVENTS IN THE HISTORY OF AMERICAN FEDERALISM

Federalism: 10th Amendment – powers not prohibited to the states are reserved to the states.

Dual Federalism (1801-1933) - a.k.a. "Layer cake"

Federal and state governments are "co-equals," with much independence given to the states in some issues. Clear divisions of responsibility between fed. & state govts: 1) race relations; 2) education

1801-1835 Nationalist Period. The Marshall Court dramatically increased the power of the federal government in relation to the states. *McCulloch v. Maryland* (1819) landmark court case establishing Congress's establishment of a national bank using the "elastic clause."

1835-1861 Dual Federalism and Nullification. Strong emphasis on states' rights (Ex.: South Carolina's Doctrine of Nullification re: the tariff and slavery. The Supreme Court becomes increasingly uncomfortable with the issue of federalism and slavery (*Dred Scott Decision*, 1857).

1861-65 American Civil War. The North's victory determines that the federal government and constitution will reign supreme. However, the war *does not* resolve the conflict between federal and state authority. Battles will be fought over authority in voting eligibility, school desegregation, and caring for the nation's poor. *Morrill Act* (1863) - 1st federal grants for land grant universities (e.g. VA Tech)

Cooperative Federalism (1933-present) - a.k.a. "Marble cake"

Federal government clearly supreme over states.

Fed. Gov much more involved in traditionally state roles (shared responsibility): 1) civil rights, 2) health care, 3) unemployment, 4) education

1933-1939 Introduces FDR the "New Deal." In response to widespread poverty and unemployment, Roosevelt Administration responds through a series of sweeping national programs such as social security, public works programs, etc. The Supreme Court eventually confirmed FDR's right to actively intervene in areas traditionally left to states on the basis of the federal government's Constitutional Right to regulate interstate commerce (Article I, Section 8 - "elastic clause").

1954 *Brown v. Topeka Board of Education.* The Supreme Court mandated school integration. The southern states decry what they see as the federal government's intrusion on traditional states' rights.

1957 Little Rock, Arkansas. Arkansas Gov. Orval Faubus orders State National Guard to prevent black students from enrolling at all white Central High School. President Eisenhower responds by ordering federal troops to protect the black students and to enforce the Supreme Court's <u>Brown</u> decision.

1964-1968 LBJ and the "Great Society." Johnson administration introduces a far-reaching domestic program to fight poverty and civil rights violations. LBJ administration enacts Medicaid and other programs which involve Federal oversight of state governments.

1970 Nixon Administration Builds on "Great Society." New federal programs continue the expansion of the federal power over states and localities. Clean Air and Water Acts are enacted in the form of direct orders. Others are funded through "block grants" which give states more discretion over spending.

1980s Reagan and "New Federalism." Reagan attempts to limit the powers of the federal government to impose its policies on state governments -- *Devolution*. However, as the budget deficit begins to soar, the ability of the national government to fund state programs becomes limited. Mandates like the Americans with Disabilities Act are unfunded.

1990s Clinton Administration Declares "The era of big government is over." Clinton and a Republican dominated Congress shift the responsibility of welfare away from the federal government to the states in the form of block grants with strings attached.

2000s George W. Bush and the "9-11 Era." Greater federal control over law enforcement, education, and security (examples No Child Left Behind Act, USA Patriot Act).

Trend Toward Devolution

- **Devolution** granting powers from the federal government to the states
- 1981-2001 beginning with the Reagan administration, attempt to give states more flexibility and control
- Examples: block grants, welfare
- September 11, 2001 federal government began to reverse this trend under Bush 43 and Obama administrations

FEDERALISM AND THE COURTS

Supreme Court & Federalism Cases

- *McCulloch v. Md* (1819) SC ruled that the establishment of the national bank is constitutional using "necessary & proper clause;" AND the state of Maryland could not tax the BUS saying "the power to tax is the power to destroy"
- Gibbons v. Ogden (1824) ferry boat case; only Congress can regulate interstate commerce.
- *Gitlow v. New York* (1925)- Though it did allow some limits on free speech, the SC for the first time holds the Bill of Rights is applicable to the states by virtue of the 14th Amendment ("no state may deny due process under the law)
- U.S. v. Lopez (1995) The SC struck down the Gun-Free-School-Zone Act. The act forbids "any individual knowingly to possess a firearm at a place that [he] knows...is a school zone. Unconstitutional use of the "commerce clause" in which "Congress exceeded its authority to legislate.
- *McDonald v. Chicago* (20100 Roberts Court Struck down Chicago's handgun ban and said the 2nd Amendment can limit the states

Selective Incorporation a.k.a Incorporation Doctrine – The legal doctrine by which portions of the Bill of Rights are applied to the states through the Due Process Clause of the Fourteenth Amendment.