THE COURTS FEDERALISM REVOLUTION pdf

1: A Federalist Stronghold: John Marshall's Supreme Court [www.enganchecubano.com]

Washington, D.C. - The federalism revolution took another step forward today, as the Supreme Court struck down a federal agency's expansive interpretation of the Clean Water Act in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers.

September 6, After more than three decades on the Supreme Court, Chief Justice William Rehnquist lost his bout with thyroid cancer and died over the Labor Day weekend. Acting swiftly, the White House announced that it was now nominating Roberts as chief justice. Some years ago, Rehnquist averred that he would like to be remembered as a good administrator. By all accounts, he took great pride in the smooth functioning of the Court during his two decades as chief justice. Despite his wishes, William Rehnquist will not be remembered for the operation of his Court, but rather for his defense of the reserved powers of state and local government. Without question, the Rehnquist Court will forever be associated with federalism. At these levels of government, the people can directly participate in government, monitor those entrusted with power, and make their voices heard. At least since the New Deal, the Tenth Amendment had been edited out of the Constitution by various court decisions. Lamenting these years of neglect, Rehnquist made clear early on that he intended to revive the Tenth Amendment as a restriction on congressional power. In , just four years after President Nixon appointed him to the Court, Rehnquist wrote the first modern High Court decision to limit congressional legislation under the Commerce Clause. Prior to this National League of Cities v. Usery opinion, Congress assumed that it could legislate upon any matter if it claimed the object of legislation touched or concerned interstate commerce. Hence, under the guise of commercial regulation, Congress intruded into myriad areas of traditional state concern. With Usery, Rehnquist indicated that this era of Commerce Clause carte blanche was coming to an end. It would be the first shot fired in what constitutional scholars have called the federalism revolution. In , the Rehnquist Court decided United States v. This case dealt with the constitutionality of a federal law prohibiting possession of firearms near school premises. The possession of a firearm in school zones, the government contended, could affect the functioning of the American economy by hindering classroom education and thus result in an unproductive workforce. During the s, the Rehnquist Court also struck down statutes imposing unfunded federal mandates on the states. Unless Congress provided funding and the states freely accepted the money, the Court held that Congress could not force state officials to implement federal programs. Incrementally, the Rehnquist Court set about limiting federal power; returning true self-government to the state and local level. With the passing of Rehnquist, President Bush has nominated Roberts for chief justice, a jurist who fits nicely into the Rehnquist mold. He received his J. Court of Appeals for the Fourth Circuit. New from William J. In a time of increasing turmoil over American history, politics, and society, Crossroads for Liberty takes an eye-opening look at the American Revolution, the Articles of Confederation, and the Constitution, and asks what we can learn from them. Readers will come away with a greater understanding of current political and constitutional issues, as well as a new perspective on American history.

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2: William Rehnquist - Wikipedia

In the s, the Supreme Court's "federalism revolution" was designed to return more power to the states. When the national government funds a project that is actually implemented by the states, it is an example of.

Early life[edit] Rehnquist was born on October 1, and grew up in the Milwaukee suburb of Shorewood. His father, William Benjamin Rehnquist, was a sales manager at various times for printing equipment, paper, and medical supplies and devices; his mother, Margery Peck Rehnquistâ€"the daughter of a local hardware store owner who also served as an officer and director of a small insurance companyâ€"was a local civic activist, as well as translator and homemaker. He served from March â€" , mostly in assignments in the United States. He was put into a pre- meteorology program and assigned to Denison University until February , when the program was shut down. The program was designed to teach the maintenance and repair of weather instruments. In the summer of , Rehnquist went overseas as a weather observer in North Africa. In , he attended Harvard University , where he received another Master of Arts, this time in government. Board of Education , which was decided in In that memo, Rehnquist said: I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think Plessy v. Ferguson was right and should be reaffirmed. To the argument that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are. Justice Jackson did not ask law clerks to express his views. He expressed his own and they expressed theirs. That is what happened in this instance. Adams , [23] which involved the right of blacks to vote in an allegedly private Texas election, Rehnquist wrote: The Constitution does not prevent the majority from banding together, nor does it attaint success in the effort. It is about time the Court faced the fact that the white people of the south do not like the colored people. The constitution restrains them from effecting this dislike through state action, but it most assuredly did not appoint the Court as a sociological watchdog to rear up every time private discrimination raises its admittedly ugly head. Private practice[edit] Rehnquist moved to Phoenix, Arizona , where he was in private law practice from to He began his legal work in the firm of Denison Kitchel , subsequently the national campaign manager of the Barry M. Goldwater presidential campaign in President Nixon mistakenly referred to him as "Renchburg" in several of the tapes of Oval Office conversations revealed during the Watergate investigations. Mark Felt was Deep Throat , this speculation ended. It was William Rehnquist who determined that Government National Mortgage Association guarantees constituted a full faith and credit promise of the United States. After compiling an initial list of possible appointees that ran afoul of Chief Justice Burger and the American Bar Association , Nixon considered Rehnquist for one of the slots. Henry Kissinger discussed the possible pick with presidential advisor H. Black died September 25, , and Harlan died on December 29 of that year. Rehnquist almost always voted "with the prosecution in criminal cases, with business in antitrust cases, with employers in labor cases, and with the government in speech cases. United States , United States v. Lopez , Printz v. United States , and United States v. Similarly, Cato Institute scholar Roger Pilon has said that "[t]he Rehnquist court has revived the doctrine of federalism. In , while serving as a clerk to Supreme Court Justice Robert Jackson, Rehnquist wrote a memorandum which concludes that " Plessy v. Ferguson was right and should be re-affirmed. Bitzer, but it was rejected by the other justices. Rehnquist expressed his views about the Equal Protection Clause in cases like Trimble v. Rehnquist consistently defended state-sanctioned prayer in public schools. Missouri , the court faced a challenge to laws and practices that made jury duty voluntary for women in that state. Anthony on the new dollar, then? Diehr , U. Flook , U. Universal City Studios, Inc. Years later, in Eldred v. Ashcroft , U. Shapiro pointed out that Rehnquist seemed content to find a sufficient relationship between a challenged classification and perceived governmental interests "no matter how tenuous or speculative that relationship might be". If legislative bodies are to be permitted to draw a line anywhere short of the delivery room, I can find no judicial standard of measurement which says the ones drawn here were invalid. That there is no constitutionally significant difference between a classification that encompasses virtually no one outside the scope of its purpose and a

classification so overinclusive that the vast majority of those falling within are beyond its intended scope. Murry illuminates his view that a classification should pass muster under the rational basis test so long as that classification is not entirely counter-productive with respect to the purposes of the legislation in which it is contained. Justice William Brennan Jr. Douglas bonded over a shared iconoclasm and love of the west. Although Rehnquist was to the right of Burger, [63] "his colleagues were unanimously pleased and supportive", even his "ideological opposites". There was almost a unanimous feeling of joy. Despite this and other controversies, including a concern over his membership in the Alfalfa Club which at the time did not allow women to join [65] , the Senate confirmed his appointment by a 65â€”33 vote, and he assumed the office on September In , Rehnquist became the second chief justice after Salmon P. Chase to preside over a presidential impeachment trial, during the proceedings against President Bill Clinton. In , Rehnquist wrote a concurring opinion in Bush v. Gore , the case that effectively ended the presidential election controversy in Florida. He concurred with four other justices in that case that the Equal Protection Clause barred a "standardless" manual recount of the votes as ordered by the Florida Supreme Court. In his capacity as chief justice, Rehnquist administered the Oath of Office to the following presidents of the United States:

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3: Federalism revolution center stage in Supreme Court today | The Center for Individual Rights

In the federalism revolution of the s, however, the Supreme Court again favored a narrow interpretation of the amendment. For example, in , it struck down the Religious Freedom Restoration Act, ruling that it was an overly broad attempt to prohibit state-sponsored harassment based on religion.

For example, the Articles allowed the Continental Congress the power to sign treaties and declare war, but it could not raise taxes to pay for an army and all major decisions required a unanimous vote. The rebellion was fueled by a poor economy that was created, in part, by the inability of the federal government to deal effectively with the debt from the American Revolutionary War. Moreover, the federal government had proven incapable of raising an army to quell the rebellion, so that Massachusetts had been forced to raise its own. In , fifty-five delegates met at a Constitutional convention in Philadelphia and generated ideas of a bicameral legislature United States Congress , balanced representation of small and large states Great Compromise , and checks and balances. James Madison stated in a long pre-convention memorandum to delegates that because "one could hardly expect the state legislatures to take enlightened views on national affairs", stronger central government was necessary. Once the convention concluded and released the Constitution for public consumption, the Federalist movement became focused on getting the Constitution ratified. The most forceful defense of the new Constitution was The Federalist Papers , a compilation of 85 anonymous essays published in New York City to convince the people of the state to vote for ratification. These articles, written by Alexander Hamilton and James Madison , with some contributed by John Jay , examined the benefits of the new, proposed Constitution, and analyzed the political theory and function behind the various articles of the Constitution. The Federalist Papers remain one of the most important sets of documents in American history and political science. They generally were local rather than cosmopolitan in perspective, oriented to plantations and farms rather than commerce or finance, and wanted strong state governments and a weak national government. The Anti-Federalist critique soon centered on the absence of a bill of rights , which Federalists promised to provide. Because George Washington lent his prestige to the Constitution and because of the ingenuity and organizational skills of its proponents, the Constitution was ratified by all the states. The outgoing Congress of the Confederation scheduled elections for the new government, and set March 4, as the date that the new government would take power. In , Congress submitted twelve articles of amendment to the states. Ten of these articles, written by congressional committees, achieved passage on December 15, and became the United States Bill of Rights. The Tenth Amendment set the guidelines for federalism in the United States. Federalist Party As soon as the first Federalist movement dissipated, a second one sprang up to take its place. This one was based on the policies of Alexander Hamilton and his allies for a stronger national government, a loose construction of the Constitution, and a mercantile rather than agricultural economy. While the Federalist movement of the s and the Federalist Party were distinct entities, they were related in more than just a common name. The Democratic-Republican Party , the opposition to the Federalist Party, emphasized the fear that a strong national government was a threat to the liberties of the people. They stressed that the national debt created by the new government would bankrupt the country, and that federal bondholders were paid from taxes paid by honest farmers and workingmen. These themes resonated with the Anti-Federalists, the opposition to the Federalist movement of the s. In short, nearly all of the opponents of the Federalist movement became opponents of the Federalist Party. The movement reached its zenith with the election of John Adams , an overtly Federalist President. However, with the defeat of Adams in the election of and the death of Hamilton , the Federalist Party began a long decline from which it never recovered. The threat of secession also was proposed during these secret meetings. The Federalists were then seen by many as traitors to the union. John Marshall The United States Supreme Court under Chief Justice John Marshall played an important role in defining the power of the federal and state governments during the early 19th century. Constitution does not specifically define many dividing lines between the layers of government, the Supreme Court settled the issue in New York. The question was answered particularly in the cases, McCulloch v. Maryland and Gibbons v. Ogden , which broadly expanded the power of the national

government. Taney â€” , decided cases that favored equally strong national and state governments. The basic philosophy during this time was that the U. Government ought to be limited to its enumerated powers and that all others belonged to the states. Both the sixteenth and the seventeenth amendment bolstered the power of the national government, and divided state and federal power. Between Dual Federalism and the New Deal[edit] Following the Taney court and the rise of Dual federalism , the division of labor between federal, state, and local governments was relatively unchanged for over a century. Political scientist Theodore J. Lowi summarized the system in place during those years in The End of the Republican Era [5] Nevertheless, the modern federal apparatus owes its origins to changes that occurred during the period between and While banks had long been incorporated and regulated by the states, the National Bank Acts of and saw Congress establish a network of national banks that had their reserve requirements set by officials in Washington. Congress used its power over interstate commerce to regulate the rates of interstate and eventually intrastate railroads and even regulated their stock issues and labor relations, going so far as to enact a law regulating pay rates for railroad workers on the eve of World War I. During the s, Congress enacted laws bestowing collective bargaining rights on employees of interstate railroads and some observers dared to predict it would eventually bestow collective bargaining rights on persons working in all industries. Congress also used the commerce power to enact morals legislation, such as the Mann Act of barring the transfer of women across state lines for immoral purposes, even as the commerce power remained limited to interstate transportationâ€”it did not extend to what were viewed as intrastate activities such as manufacturing and mining. As early as , there was talk of regulating stock exchanges, and the Capital Issues Committee formed to control access to credit during World War I recommended federal regulation of all stock issues and exchanges shortly before it ceased operating in With the Morrill Land-Grant Acts Congress used land sale revenues to make grants to the states for colleges during the Civil War on the theory that land sale revenues could be devoted to subjects beyond those listed in Article I, Section 8 of the Constitution. On several occasions during the s, one house of Congress or the other passed bills providing land sale revenues to the states for the purpose of aiding primary schools. The Supreme Court began applying the Bill of Rights to the states during the s even though the Fourteenth Amendment had not been represented as subjecting the states to its provisions during the debates that preceded ratification of it. The s also saw Washington expand its role in domestic law enforcement. Disaster relief for areas affected by floods or crop failures dated from , and these appropriations began to multiply during the administration of Woodrow Wilson â€” By , the precedents necessary for the federal government to exercise broad regulatory power over all economic activity and spend for any purpose it saw fit were almost all in place. Virtually all that remained was for the will to be mustered in Congress and for the Supreme Court to acquiesce.

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4: How did Supreme Court rulings during the Industrial Revolution impact citizens' freedom? | eNotes

In this article, I develop a model of what federalism might look like to a Supreme Court justice. In doing so, I emphasize the difference between constitutional and political federalism but in the context of the judicial role in federalism.

Advanced Search Abstract The Roberts Court saw a number of important advances for judicial enforcement of federalism-based limits on congressional power, both in high-profile cases such as NFIB v. Sebelius , and lesser known ones. Much of this progress fits the conventional model of federalism as a leftâ€"right ideological issue on the Court, which divides liberal Democrats from conservative Republicans. But some noteworthy developments depart from this framework, and suggest greater openness to federalism among some on the left. Federalism has been a central focus of some of the U. To take just the most obvious example, NFIB v. Sebelius , which assessed the constitutionality of key parts of the Affordable Care Act, was possibly the most important Supreme Court federalism decision in decades. Holder , which invalidated an important provision of the Voting Rights Act of , was almost equally significant. It is often thought that the Roberts Court has ultimately done relatively little to strengthen enforcement of constitutional limits on federal power. While its overall performance in this field has been uneven, on balance the last decade has seen some notable gains for advocates of such limits. This jurisprudential and ideological story is also often linked to crass partisan politics, with Republicans seeking to invalidate Democratic policies such as the Affordable Care Act ACA , and Democrats seeking to defend them. The conventional wisdom contains an important measure of truth. But it is far from the whole story. Sebelius and a number of important less high-profile cases, even the liberal Supreme Court justices have endorsed key propositions about federalism and constitutional limits on federal power that have previously been associated mostly with conservatives. Many of these doctrinal developments have so far had only a modest real-world impact. But they are nonetheless significant. The first part of this article summarizes the key federalism cases of the Roberts Court era, and explains how some of them have considerably strengthened judicial enforcement of limits on federal power. Such cases as NFIB v. Sebelius and Shelby County v. Holder have broken important new ground, with significant real-world effects. That theory certainly helps explain a number of key developments in the Roberts Court, but it is not the whole story. In the third section, I explain how both NFIB and several less well-known rulings cut against the conventional wisdom. Finally, the last part of the article describes some possible explanations for the trajectory of Roberts Court federalism decisions, and briefly considers their implications for the future. It is impossible to reach definitive conclusions about the motives of a small number of justices whose papers have not been made public and perhaps never will be. But it is possible that we are seeing a gradual evolution of left of center attitudes toward judicial review of federalism. In some sense, almost any Supreme Court decision that addresses either the scope of government power or the extent of individual rights may be said to have an impact on federalism. The many other ways in which judicial review impacts federalism are, for the moment, set to one side. Hodges , S. The same is true of administrative law decisions that affect the extent to which federal regulations limit state policy options, 2 and statutory decisions that affect the structure of particular federal programs. But it primarily affects the form of federal power, rather than its extent. It is, therefore, best considered elsewhere. Their record in the area certainly has not been completely consistent. Judicial Enforcement of Federalism up to From the early days of the republic to the Great Depression of the s, the Supreme Court enforced at least some substantial structural limits on the scope of federal power Greve , chs. While there were many disagreements over federalism both within and outside the legal elite, the dominant view held that there were at least some substantial judicially enforceable limits on the scope of federal power to regulate economic activity, spend money, and otherwise supplant state governments and the private sector. This consensus came under pressure in the early twentieth century and largely collapsed during the Great Depression and the resulting ascendancy of the New Deal vision of constitutional law and political economy. In a series of landmark decisions in the s and s, the Supreme Court gutted most, if not all, structural limitations on the scope of federal authority, most notably in cases such as Wickard v. Filburn , U. Davis , U. As a result of the triumph of New Deal liberalism, judicial enforcement of federalism went into eclipse for many years.

With few exceptions, political and legal elites generally believed that it was a defeated and discredited idea. In the s and s, however, the New Deal political coalition partly fractured and faced a serious challenge from conservative Republicans, most notably the administrations of Ronald Reagan and George H. During the same period, conservative and libertarian jurists began to rehabilitate the idea of judicial enforcement of federalism, which became a significant precept of right-of-center originalist jurisprudence. Reagan also elevated William Rehnquist, a Nixon appointee who had promoted judicial review of federalism as far back as the s, to the position of Chief Justice. In a series of cases in the s and early s, the conservative wing of the Rehnquist Court revived judicial enforcement of federalism, albeit on a limited scale Dinan ; Somin forthcoming. In United States v. Lopez , U. Five years later, the Court invalidated another law as beyond the commerce power in United States v. Morrison , U. United States , U. United States, U. The Court also enforced Eleventh Amendment constraints on federal overriding of state sovereign immunity in various cases, including Seminole Tribe of Florida v. Florida , U. Maine , U. Flores , U. Most of these Rehnquist Court decisions limiting the scope of federal power were close five-four or six-three rulings divided along ideological lines, with conservative justices supporting the decision and liberals in dissent. In , however, the very last year of the Rehnquist Court, the justices decided Gonzales v. Conservative Justices Anthony Kennedy a key swing voter and Antonin Scalia joined the four liberals to form a six-three majority in Raich. The late Rehnquist Court also stepped back from limiting federal power in some other cases Somin forthcoming. When Roberts replaced Rehnquist as Chief Justice in , the future of judicial enforcement of federalism was, therefore, uncertain at best. The narrow five-four conservative majority on the Court would not be able to sustain it without the support of all of its members. Sebelius Despite considerable inconsistencies and internal disagreements, the Roberts Court ultimately took some major steps forward for advocates of judicial enforcement of federalism. But it broke new ground in enforcing limits on congressional power under the commerce clause, the necessary and proper clause, the Fifteenth Amendment, andâ€”potentiallyâ€”the treaty power. Sebelius , discussed below. Holder , S. Sebelius , S. In its highly controversial ruling in Shelby County v. Despite these changes, Congress reenacted the preclearance formula in with virtually no change from that which had been adopted in the extension of the Voting Rights Act, relying on data from the election. The case implicated the broader question of how much deference the Court should give to Congress in federalism cases when assessing the exercise of legislative power under the Fifteenth Amendment, and the similarly worded Section 5 of the Fourteenth Amendment. The majority included the five conservative justices, while all four liberals were in dissent. Both the justices and outside commentators were sharply divided along ideological lines. In sharp contrast, their left-liberal counterparts argued that it showed insufficient deference to Congress and opened the door to widespread future racial discrimination in election law e. Sebelius was the only Roberts-era federalism case that attracted even more attention and controversy than Shelby County. In NFIB , twenty-six state governments and various private parties challenged the constitutionality of a central provision of the ACA, the mandate requiring most Americans to purchase government-approved health insurance by Joondeph The challengers argued that the mandate was different from previous federal regulations approved under the commerce clause because it did not regulate any preexisting economic activity, even under the broad definition of such endorsed by the Court in Raich. Instead, it forced people to buy insurance even if they had been inactive. But even here, he couched his opinion in such a way as to impose some potentially significant limitations on congressional power. The state government plaintiffs also challenged the ACA requirement that states greatly expand the scope of their Medicaid programs, which provide health insurance to the poor. The law required states to cover residents with incomes up to percent of the poverty line, or else lose all of their federal Medicaid money. Dole , U. A narrow five-four majority did, however, allow the federal government to offer the states new subsidies in exchange for expanding Medicaid NFIB , pp. As of early , nineteen Republican-controlled state governments have rejected the Medicaid expansion, including such major states as Texas and Florida Madigan ; Garfield and Damico This development affects medical care for millions of people and redirects many billions of dollars of government spending. The limitations imposed on the use of the tax clause to create mandates might also make it difficult for Congress to increase the penalty for failure to purchase approved health insurance, in the future, should it turn out that a large number of people prefer to pay

the fine rather than follow the mandate Somin a, p. Both rulings also had significant real-world effects. By contrast, earlier Rehnquist-era federalism decisions struck down relatively minor laws, such as the Gun Free School Zones Act in Lopez and a requirement that state officials perform background checks for gun purchasers in Printz. Such cases had only modest effects on public policy. Lesser-known Roberts Court Federalism Cases Although they did not attract the enormous amount of attention and controversy generated by Shelby County and NFIB , several lesser-known Roberts Court decisions facilitated incremental progress for judicial review of federalism. Murphy , U. This ruling makes it more difficult for Congress to use federal grants to impose conditions on state governments when the conditions are at all unclear. United States , S. Bond addressed a case that might almost have come out of the plot of a bad romance novel: In an effort to get revenge on her rival, Ms. Bond allegedly placed dangerous chemicals in areas the other woman was likely to touch, with the result that the latter got a burn on her hand. Prosecutors charged Bond with violating a federal law implementing the Chemical Weapons Convention, an international treaty intended to prevent the use of chemical weapons in war. The implementing legislation, 18 U. The Supreme Court decided otherwise because federalism protects individual freedom as well as state sovereignty. While this conclusion does not, in and of itself, commit the Court to striking down any particular laws as beyond the scope of federal power, it does undercut traditional arguments holding that judicial intervention to protect federalism is unnecessary because state governments can fend for themselves in the political process. The venerable position that the political process provides adequate protection for state interests is a longstanding view of left-of-center critics of judicial enforcement of limits on federal power Wechsler ; Choper , ; Kramer ; Garcia v. But if the point of federalism is to protect individuals, not just states, then there can be cases where enforcement of limits on federal power is necessary to protect the former in situations where the latter have no interest in using their political muscle to constrain the federal government.

5: Federalism revolution advances in Supreme Court | The Center for Individual Rights

Scott / Rehnquist Court' s Federalism Revolution 89 Federalists, howe ver, would ele vate the states to a le vel nearly equal to that of the federal gov ernment.

6: Federalism in the United States - Wikipedia

Perhaps his most important departure from previous Court practice was his revival of the principle that the Constitution limits federal government power in order to protect federalism.

7: William RehnquistÂ's Federalist Legacy: News: The Independent Institute

The Judiciary Act of extended the federal court system to include federal jurisdictions within states and for the Supreme Court to hear state appeals. Marbury v. Madison established Judicial review which was the process of checking the constitutionality of a law.

8: Chapter 3: Federalism | American Politics Today, 2e: W. W. Norton StudySpace

The primary objective of New Federalism, unlike that of the eighteenth-century political philosophy of Federalism, is the restoration to the states of some of the autonomy and power which they lost to the federal government as a consequence of President Franklin Roosevelt's New Deal and federal civil rights laws of the s.

9: Federalism and the Roberts Court | Publius: The Journal of Federalism | Oxford Academic

It would be the first shot fired in what constitutional scholars have called the federalism revolution. Although the Court would eventually reverse the Usery decision, this did not stop Rehnquist's efforts to respect and protect the legislative

powers retained by the states under the Constitution.

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