

# **FEDERALISM IN THE U. S. CONSTITUTION**

## **INTRODUCTION**

Shays' Rebellion and other problems convinced leaders in the U.S. to scrap the Articles of Confederation and create a new Constitution that would feature a stronger, federal type of national government. This new Constitution, ratified in 1788, specifically assigned various powers to the national government and the states. Some powers would be enjoyed only by the national government, some powers enjoyed only by the states, and some powers would be shared. This division of powers between the national government and the states is known as "federalism." It has been a topic of passionate political debate.

## **THE DIVISION OF POWERS IN THE U. S. CONSTITUTION**

The U.S. Constitution lists several different types of powers, carefully drawing the dividing line in our nation's federalist structure:

- 1) Delegated Powers- These powers are given to the national (Federal) government ONLY. They were specifically designed to remedy the weaknesses of the national government found in the Articles of Confederation. They include the power to coin money, declare war, regulate interstate commerce, administer territories such as the District of Columbia, make foreign treaties, raise national taxes, create Federal courts, etc. Delegated Powers are also known as Enumerated Powers, or Exclusive Powers, or Expressed Powers.
- 2) Reserved Powers- These powers are given to the states ONLY. According to the 10<sup>th</sup> Amendment, "Powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states." This is an enormous grant of power, but it has been greatly eroded over the years by U.S. Supreme Court decisions.
- 3) Concurrent Powers- These powers are SHARED by both the national government and the states. Taxation and law enforcement are classic examples of Concurrent Powers.
- 4) Powers Denied to the National Government- These are powers the Constitution specifically prohibits the national government from having. These include preventing Congress from changing state borders without their permission or passing taxes on interstate commerce.
- 5) Powers Denied to the States- These are powers specifically denied to the states. They were designed to reduce the powers of states given under the Articles of Confederation. They prohibit states from coining money, making foreign treaties, impeding interstate commerce, issuing Letters of Marque & Reprisal, etc.

- 6) Powers denied to Both National and State Governments- NO government in the United States is permitted to pass Ex Post Facto Laws, Bills of Attainder, or grant Titles of Nobility, etc.
- 7) Implied Powers- In the famous “National Bank Case” *McCulloch v. Maryland* (1819), the U.S. Supreme Court decided that the “Necessary & Proper Clause” of the Constitution allowed the national government to pass any law useful in carrying-out the Delegated Powers. Although this power isn’t specifically mentioned in the Constitution, the Supreme Court says it is “implied” by the Constitution. Since then, the Necessary & Proper Clause of the Constitution has been called the “Elastic Clause” because it can be “stretched” to cover almost anything the Federal government wants to do.

### THE SUPREMACY CLAUSE OF THE CONSTITUTION

The Supremacy Clause of the Constitution establishes a hierarchy (a chain-of-command or “pecking order”) of laws in the United States. No law may contradict any of the laws in the levels above it. This leaves the U.S. Constitution (as interpreted by the Supreme Court) as the highest law of the land.

1. U.S. Constitution
2. Federal (National Government) Laws
3. State Laws
4. County & Local Ordinances

### CHANGING THE CONSTITUTION

The official method of changing the U.S. Constitution is through the amendment process. Amendments are added to the Constitution through a two-step process: first, a proposal phase, and then a ratification phase. An amendment can be proposed two different ways, and it can be ratified two different ways. All constitutional amendments so far have utilized Proposal Method #1. The Ratification Method #2 has only been used once; all other times the Ratification Method #1 was used.

Proposal Method #1- 2/3 vote by BOTH Houses of Congress

Proposal Method #2- An amendment proposed by a National Constitutional Convention (asked for by 2/3 of state legislatures)

Ratification Method #1- Approval votes by ¾ of state legislatures

Ratification Method #2- Approval by ¾ of State Delegations at a National Ratifying Convention

### INFORMAL CONSTITUTIONAL CHANGE

The meaning of the Constitution can be changed in informal (unofficial) ways. Congress can change the Constitution through “Congressional Elaboration” whereby they fill in the details for enforcing constitutional amendments. “Presidential Practice” has also changed the meaning of the Constitution; for instance we have allowed the President to send troops into “conflicts” even though only Congress has the official power to declare war. Most importantly, Federal Courts (with the Supreme Court as the final word) have the power of “Judicial Review,” whereby they interpret (decide the meaning of) the Constitution. Judicial Review is based on the *Marbury v. Madison* (1803) case.