



The U.S. Constitution

“A Living Document”

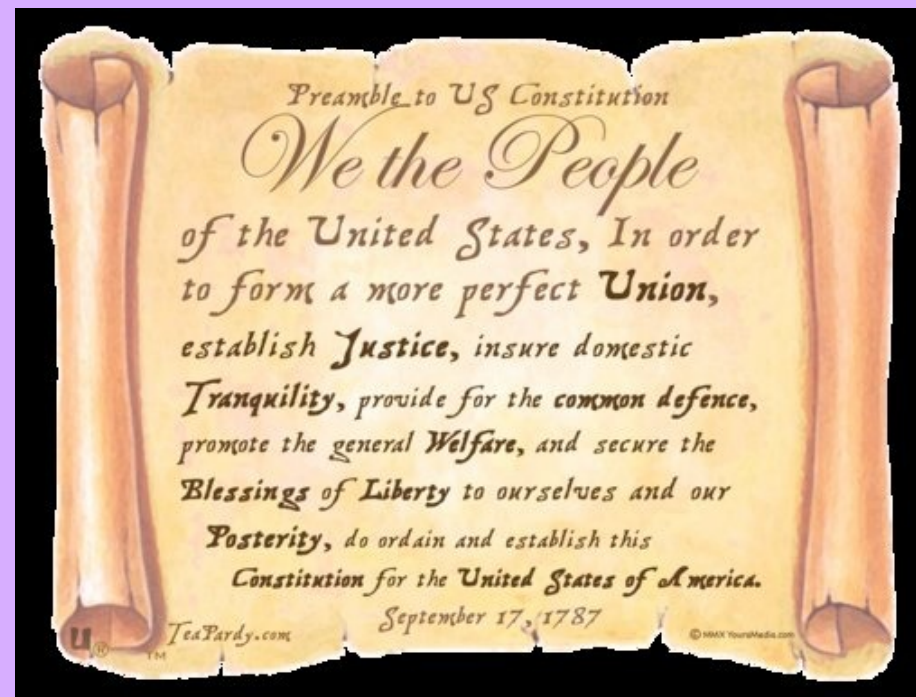
Outline of the *U.S. Constitution*

- Document that was **established in 1789**
- Over 200 years
- Has passed the “test of time” (So far)
- Brief document
- **Approximately 7,000 words**
- Its “briefness” is one of its strengths.....?



The Preamble

- Purpose :
- To Introduce the document
- Describes the duties of the gov't as created by the *U.S. Constitution*

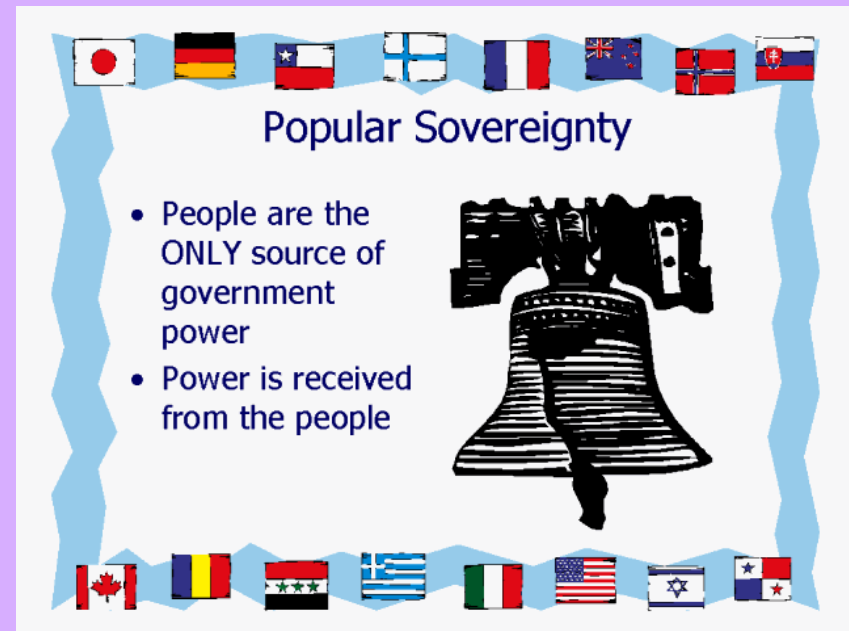


The Articles

- Article I :
- Legislative Branch
- Article II :
- Executive Branch
- Article III :
- Judicial Branch
- Article IV :
- Outlines State Responsibilities
- “Full Faith & Credit”
- Article V :
- Amendment Process
- Article VI :
- *U.S. Constitution* is the Supreme Law of the land
- Article VII :
- Requirements for ratification

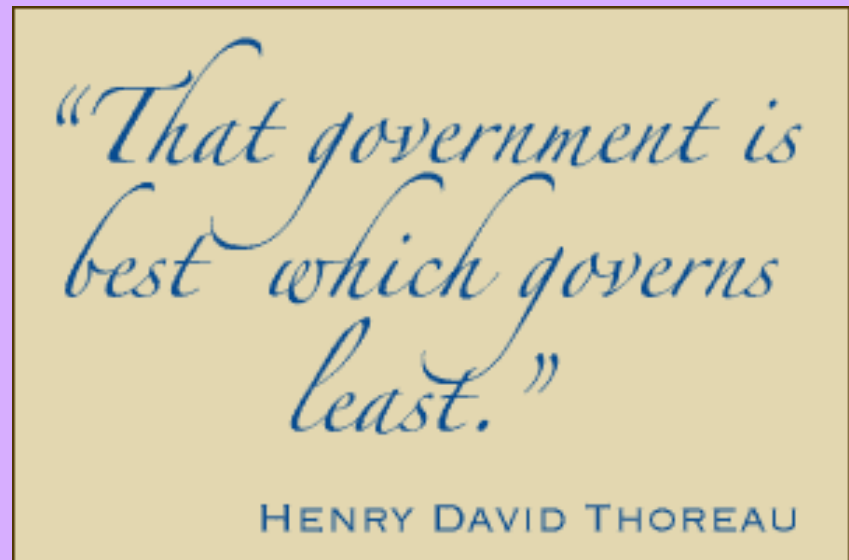
Basic Principles

- Popular Sovereignty :
- “We the people of the U.S....do ordain and establish this Constitution for the U.S. of America” (*Preamble*)
- Political power vested in the people
- Gov’t can only govern at the consent of the people



Basic Principles cont..

- Limited Gov't
- Gov't can only do those things that the people have empowered them to do
- Constitutionalism :
- Gov't must be conducted according to constitutional law
- Also known as :
- Rule of Law
- Gov't and officials not above the law



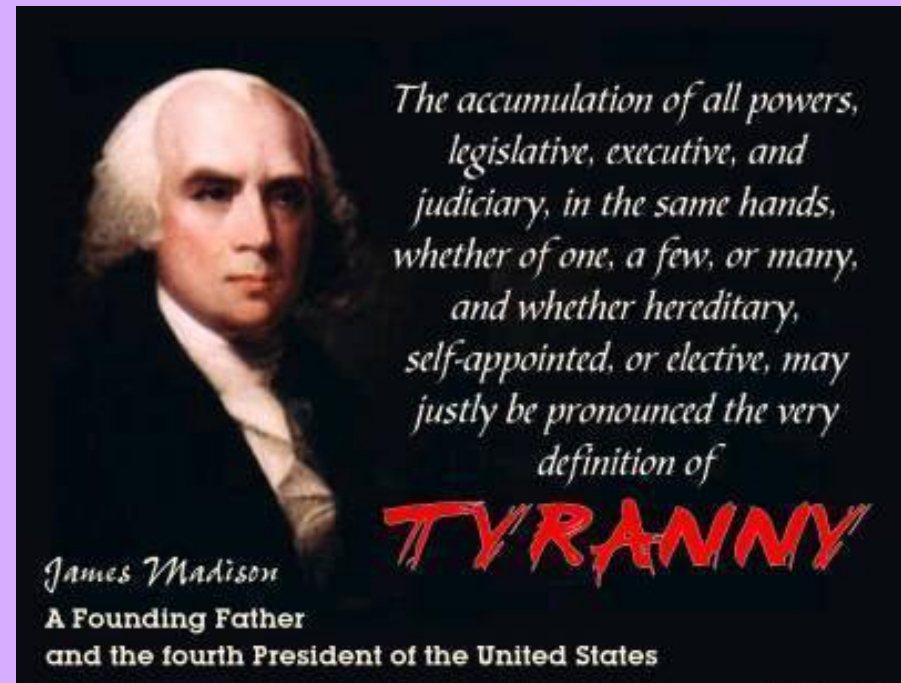
Basic Principles cont...

- Separation of powers
- In a “*presidential system*”
- Broad powers of government separated between different branches



Basic Principles cont...

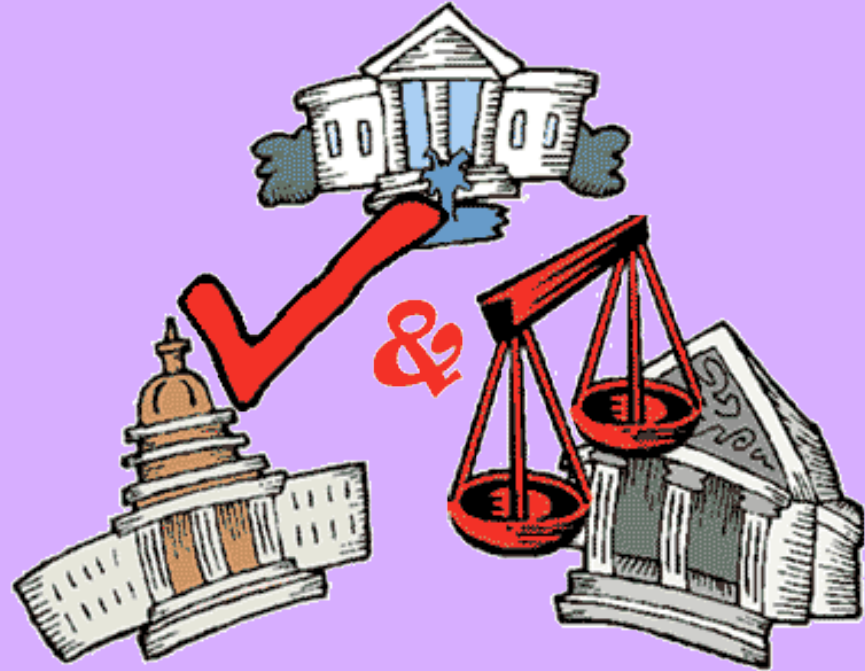
- Article I, Section 1 :
- “All legislative powers herein granted shall be vested in a Congress of the U.S.”
- Article II, Section 1 :
- “The executive branch shall be vested in a President of the U.S.”
- Article III, Section 1 :
- “The judicial power of the U.S. shall be vested in 1 supreme court, and in such inferior courts as the Congress may from time to time ordain and establish



The Federalist # 47

Basic Principles cont...

- Checks & Balances
- Each gov't branch is subject to a number of constitutional checks by the other branches

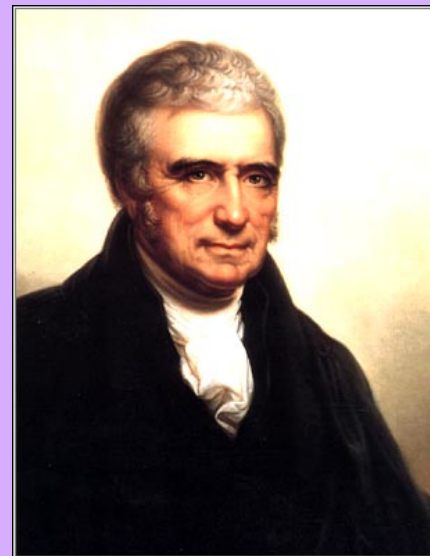


Basic Principles cont...

- Checks & Balances in action :
- Congress has power to make law :
- President can veto any act/law
- Congress can override a veto by a 2/3 vote
- Congress (senate) can also refuse to approve a treaty or appointments
- President nominates people that are likely to be approved
- Congress (House of Rep) has power to impeach the President; tried by the senate
- Has happened 2x's :
- Andrew Johnson : 1868
- Bill Clinton : 1998
- Supreme Court has the power to declare laws unconstitutional

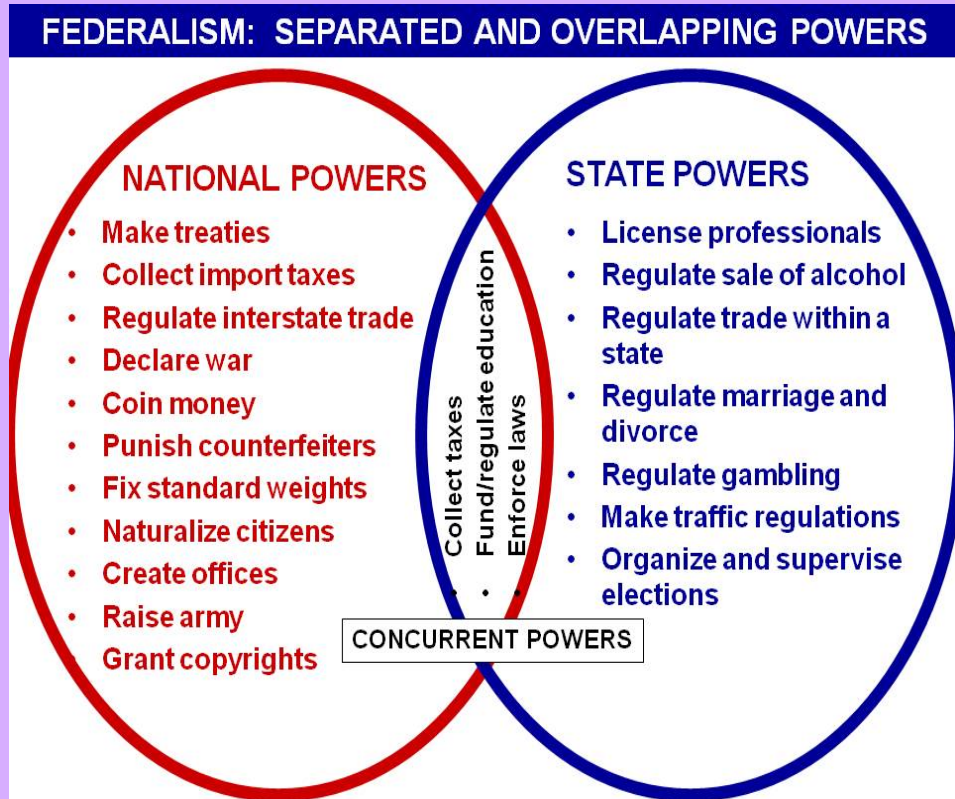
Basic Principles cont...

- Judicial Review :
- Power of the Supreme Court to declare a law unconstitutional
- Used for the 1st time in case of Marbury v. Madison in 1803
- Chief justice : John Marshall



Basic Principles cont...

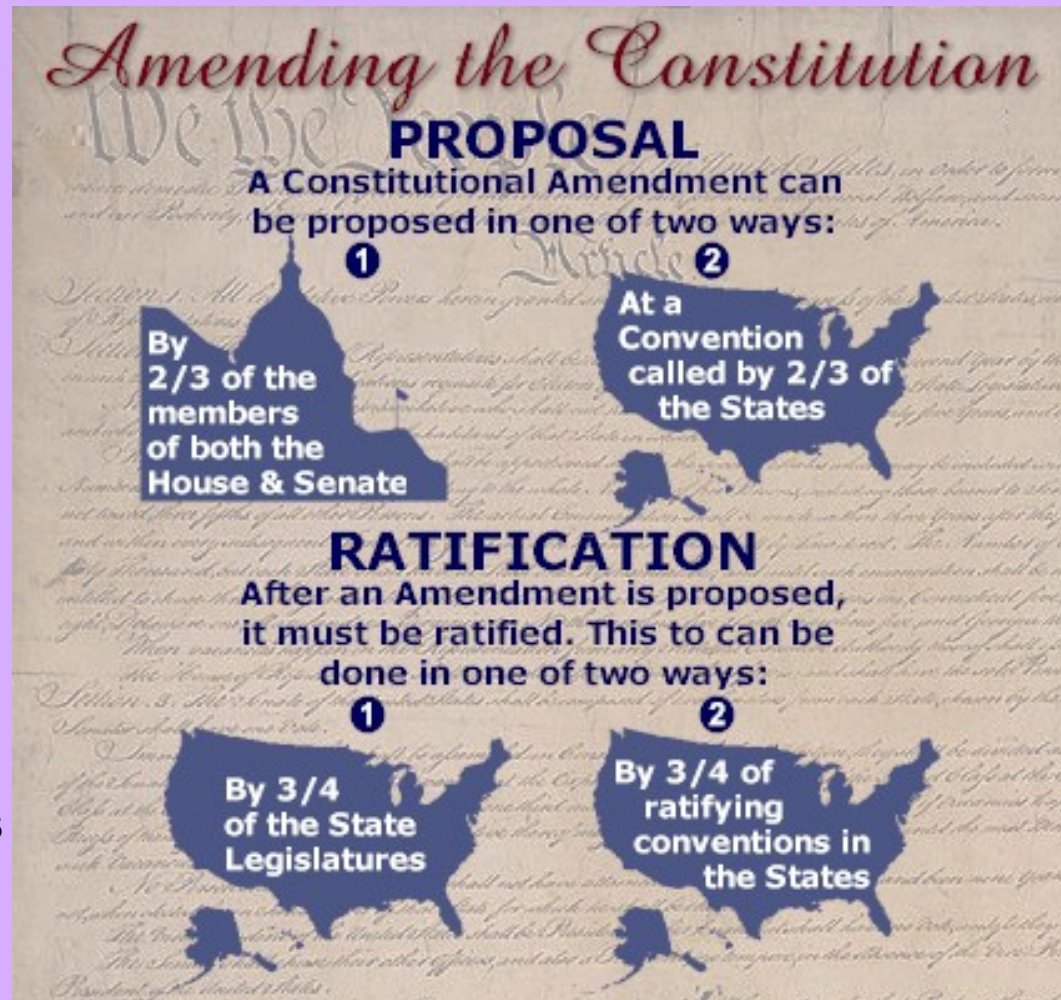
- Federalism :
- Division of power between a central gov't and political subdivisions (state & local gov't)



Changing the *Constitution*

- Formal Process :
- Amendments :
- Process Outlined in Article V
- 2 methods for proposal; 2 methods for ratification
- Only has happened 27 times in over 200 years

Amendment Process



2/3 = 34 States

3/4 = 38 States

Amendment Process : Federalism in action

- The Proposal for an amendment is done on the federal level
- Ratification takes place on the state level



Miscellaneous Amendment Stuff

- More than 10,000 proposals for amendments have been introduced
- Only 33 have made it to the states
- Only 27 have been ratified
- If a state initially rejects an amendment, it can later reverse its decision
- The reverse is not true
- Congress can place a time limit on the ratification process

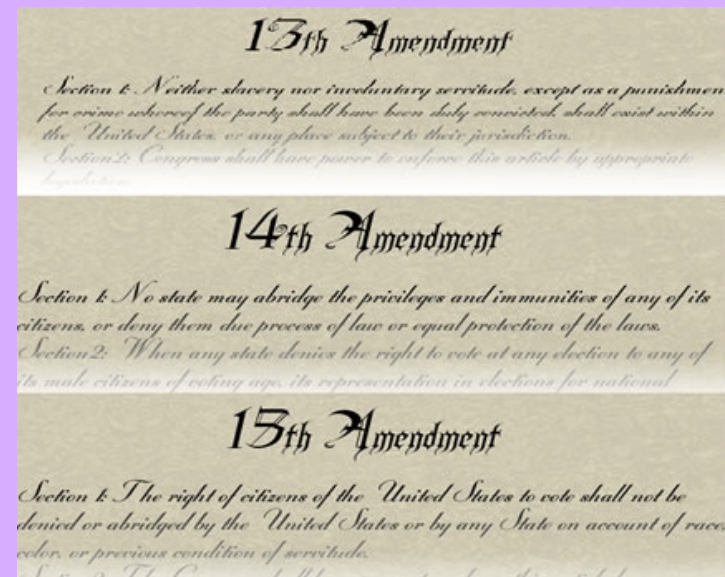
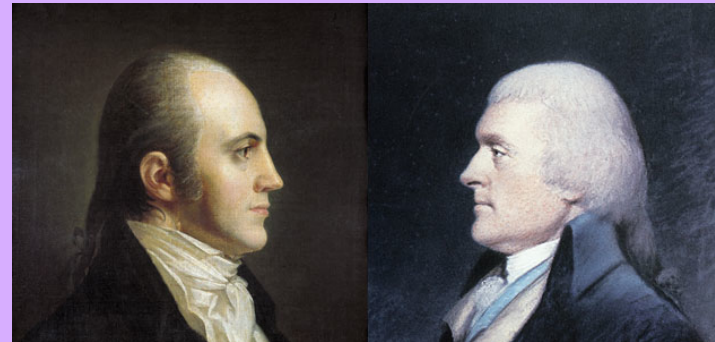
Examining the Amendments

- Bill of Rights
- 1st 10 amendments
- Authored (primarily) by James Madison
- Influenced by George Mason's *Virginia Declaration of Rights* &
- Thomas Jefferson's *Virginia Statute for Religious Freedom*
- Individual freedoms (except # 10)
- Jefferson only agreed to support *The Constitution* if it was added



Examining the Amendments cont...

- The other 17 amendments came as a result of a situation or circumstance
- Ex (s)
- 12th Amendment
- Result of election of 1800 (TJ)
- 13th, 14th, & 15th
- Result of Civil War



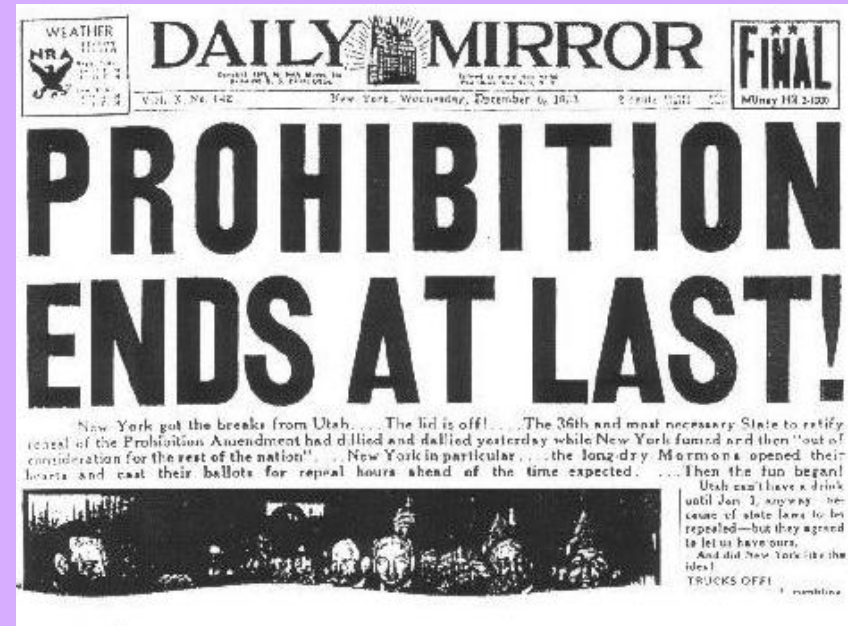
Examining the Amendments cont...

- Other examples :
- 22nd Amendment
- Result of FDR's 4 Election victories
- 26th Amendment
- Result of pressure during WWII & Vietnam War



Examining the Amendments cont...

- Only 1 Amendment has ever been repealed - 18th Amendment repealed by the 21st Amendment



Informal Amendment

- Due to the *Constitution's* “Briefness” :
- There needed to be a way to “fill in the spaces/gaps”
- Informal amendment :
- Process to change the *Constitution* without changing the written word

Informal Amendment Methods

- Basic Legislation :
- Congress has created laws to fill in the missing info in the *Constitution*
- Ex). **Article III, Section 1** : establishes the **Judicial Branch**; Judiciary Act of 1789 gives the specifics
- Ex). **25th Amendment** gives more specifics of **Presidential Succession**



Informal Amendment Methods

- Executive Action : Used to get around Congress –war, agreements
- The President has historically increased the power of the office by certain actions
- Ex). Only Congress is given power to declare war
- President; however, is the Commander of Chief
- Ex). Executive Agreement :
- An agreement made between the President and the head of state of another country



Informal Amendment Methods

- Party Practices : No Constitutional provision for parties to determine candidates
- George Washington warned the people about “the baneful effects of the spirit of party”
- Ex).
- Still, Conventions meet to determine candidates



Informal Amendment Methods

- Custom ∴ President's Cabinet ; V.P. taking over for a president upon death
- There are many “unwritten” customs that are not mentioned in *Constitution*; yet are still done
- Ex) Constitution did not specify that the “office” of the president transfer, only the duties
- 25th amendment changed that in 1967



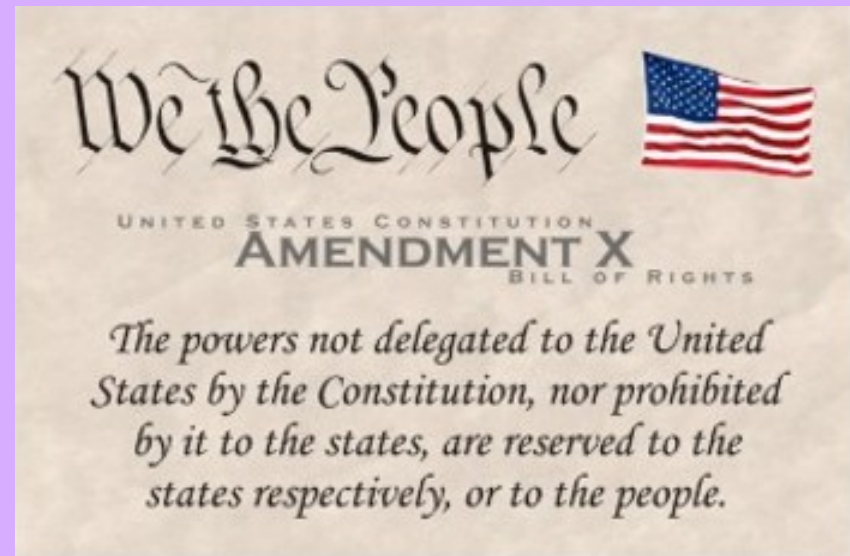
Federalism

- Federalism :
- Shared powers between the Central gov't and its political subdivisions
- Debate :
- Framers of *Constitution* struggled with it
- Just fought a war to end tyranny but.....*Articles of Confederation* was too weak
- Felt that Federal system would not take away personal liberties, but would be strong enough to settle issues



Division Power

- Key element of the U.S. Federal gov't system
- Shared powers between federal and state gov'ts
- Implied in the body of the *Constitution*
- Spelled out in the 10th Amendment



Federalism in action

- Examples of federalism in the U.S.
- Ex). Liquor sales :
- 1/3 of states (including Va.) have state run liquor stores
- 2/3 of states have privately owned liquor stores
- Ex). Oregon and N.J. : no self service gas service
- Ex). Nebraska has a unicameral house

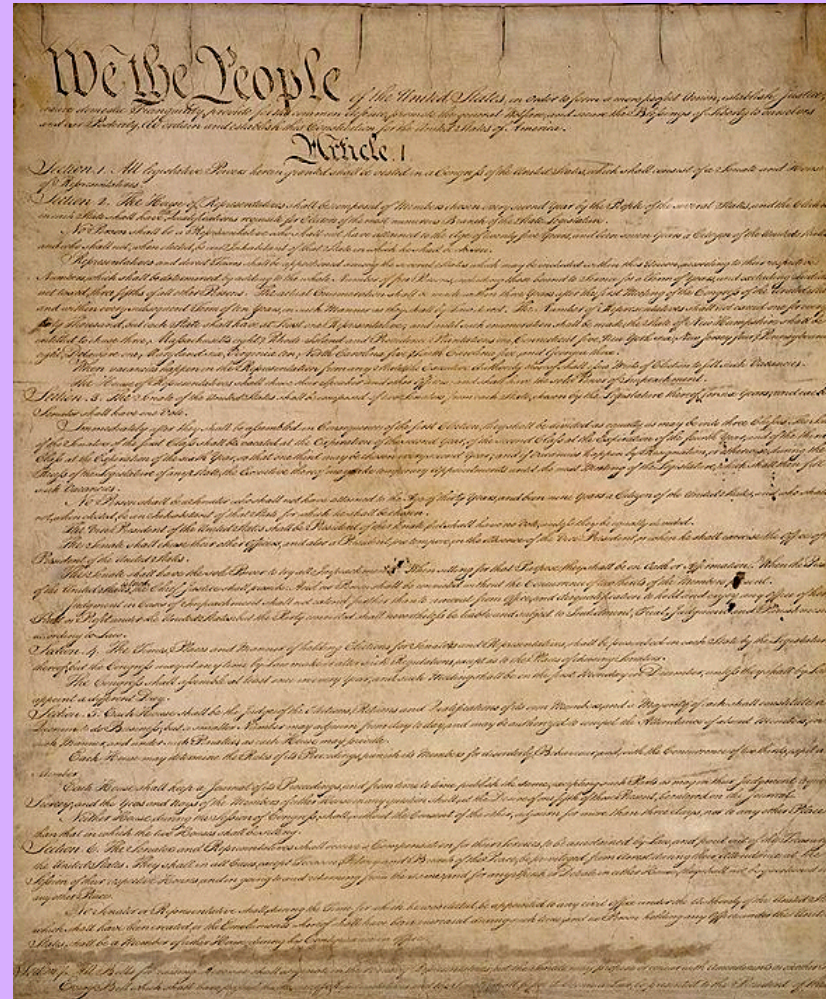


Powers of the National Gov't

- Delegated powers :
- Federal gov't has only those powers granted in the *Constitution*
- The delegated powers are known as expressed powers ;
- Sometimes also called enumerated powers

Congressional Expressed Powers

- Found in *Article I*, section 8
- 18 clauses with 27 expressed powers
- Ex (s)
- Power to tax
- Power to Coin Money
- Control interstate commerce
- Declare war
- Make treaties



Executive Expressed Powers

- Found in *Article II , Section 2*
- Gives the President a broad range of powers
- Ex (s) :
- Commander in Chief
- Appoint federal officials
- Grant reprieves



Judicial Expressed Powers

- Found in *Article III* :
- Grants the Judicial power to the *U.S. Supreme Court* and the federal courts



Implied Powers

- Implied Powers :
- Those not expressly stated in the *Constitution*
- They are reasonably implied by the Expressed Powers
- *Article I, Section 8 grants Congress the :*
- Necessary and Proper Clause
- Also called the elastic clause

Elastic Clause

- Congress shall have the power to “make all laws which shall be necessary and proper for carrying into execution the foregoing powers

» Article 1, section 8, paragraph 18

Implied powers cont...

- Ex). Interstate highway system
- Ex). Building of hydroelectric dams
- Ex). Crime to move stolen goods or kidnapped people across state lines

Inherent Powers

- Inherent Powers
- Powers that are not expressed but have traditionally been held by the federal gov't
- Ex (s)
- Regulation of immigration
- Acquisition of territory
- Protect nation against rebellion or attempts to overthrow gov't

Powers Denied to the Nat'l Government

- Done in 3 Major ways :
- Expressly stated
- Through silence (gov't of delegated powers)
- System of Federalism

Powers of the State

- Reserved Powers :
- Powers that the *Constitution* does not grant to the National gov't and does not deny to the states
- The *Constitution* does not express powers to the states

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

REF09

Reserved powers

- Ex). Public Schools
- Ex). Taxing
- Ex). Establishing voting requirements
- Ex). Dept. of Motor Vehicles
- Ex). Licensing of professionals (doctors, lawyers, teachers)

Powers denied to the states

- Some powers are expressly denied
- Some are denied inherently as a result of federalism

Exclusive & Concurrent powers

- Exclusive Powers :
- Powers that *the Constitution* gives to the National gov't are for the national gov't alone
- Ex). Power to coin money
- Ex). Make treaties
- Concurrent Powers :
- Powers that *The Constitution* gives to both the National and State gov'ts
- Ex). Levying of taxes
- Ex). Criminal system

Federalism & Local Gov'ts

- Over 80,000 units of local gov't in the U.S.
- Each of these is created by its parent state; cannot exist on its own

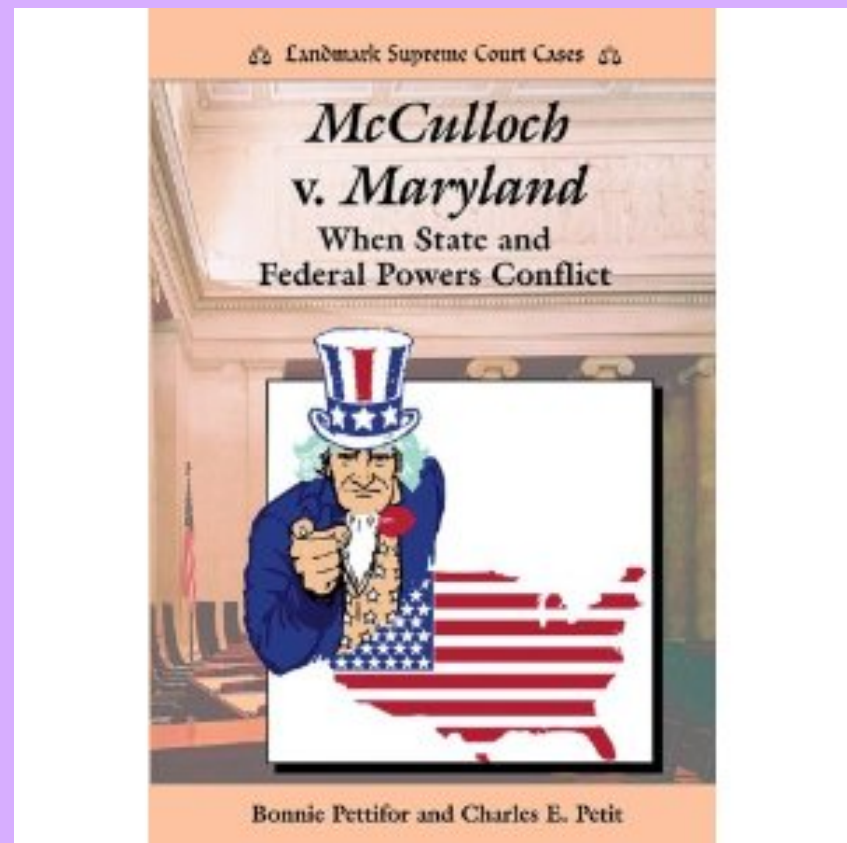
Supreme Law of the Land

- Framers of the *U.S. Constitution* feared conflicts between National gov't & States
- Supremacy Clause :
- Gives the U.S. gov't and the *U.S. Constitution* the designation of “Supreme Law of the Land”



Federalism & The Supreme Court

- Supreme court serves as the mediator in the Federal System
- Ex).
- McCulloch v. Maryland :
- Maryland tried to tax the Baltimore Branch of the National Bank
- Decision :
- State cannot tax a portion of the National Gov't
- “The Power to tax is the power to destroy”



Obligation to States

- National gov't must :
- “Guarantee to every state in this union a Republican form of gov't” (Article IV, sec 4)
- Does not define “Republican form”
- Representative??
- Ex). Southern states could not be readmitted to Union unless they ratified 13th, 14th, & 15th Amendments

13th Amendment

Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2: Congress shall have power to enforce this article by appropriate legislation.

14th Amendment

Section 1: No state may abridge the privileges and immunities of any of its citizens, or deny them due process of law or equal protection of the laws.

Section 2: When any state denies the right to vote at any election to any of its male citizens of voting age, its representation in elections for national

15th Amendment

Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2: The Congress shall have power to enforce this article by appropriate legislation.

Obligation to States cont...

- National gov't must :
- “protect each one of them (states) against invasion.....to protect against domestic violence” (Article IV, sec 4)
- Ex). Racial violence in Chicago & Baltimore after Martin Luther King's assassination



Obligation to States cont...

- National Gov't must :
- recognize the existence and boundaries of each state
- Include representatives from each state in both houses of congress



Admission of States

- Only the U.S. Congress has the power to admit states
- Only restriction in the *U.S. Constitution* :
- Cannot create a state from territory of another state without consent

Admission Procedure

- Territory submits application for statehood to Congress
- Congress may pass an enabling act :
- Requires the territory to draft a state constitution
- If Congress accepts the constitution it passes an act of admission
- President then must sign the act for the state to enter the Union

Admission Procedure cont...

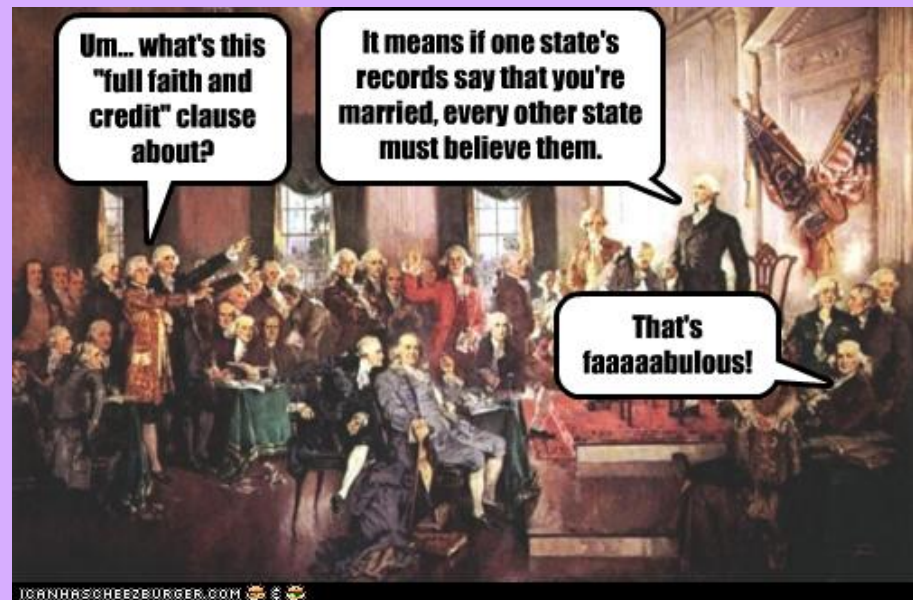
- Congress may also require certain conditions before they grant an act of admission
- Ex). 1896 : Utah was admitted only if they outlawed polygamy
- This Congressional power has been challenged
- Upheld in the case of *Coyle v. Smith*

Cooperative Federalism

- By nature...Federalism requires shared powers
- Also requires cooperation
- Grants-in-aid :
- Grants of money or other resources to states or local gov'ts
- Categorical Grants :
- Grants given for a specific/defined purpose
- Block Grants :
- Grants given with more broad uses
- Project Grants :
- Grants given to support a project such as disease research, or job training programs

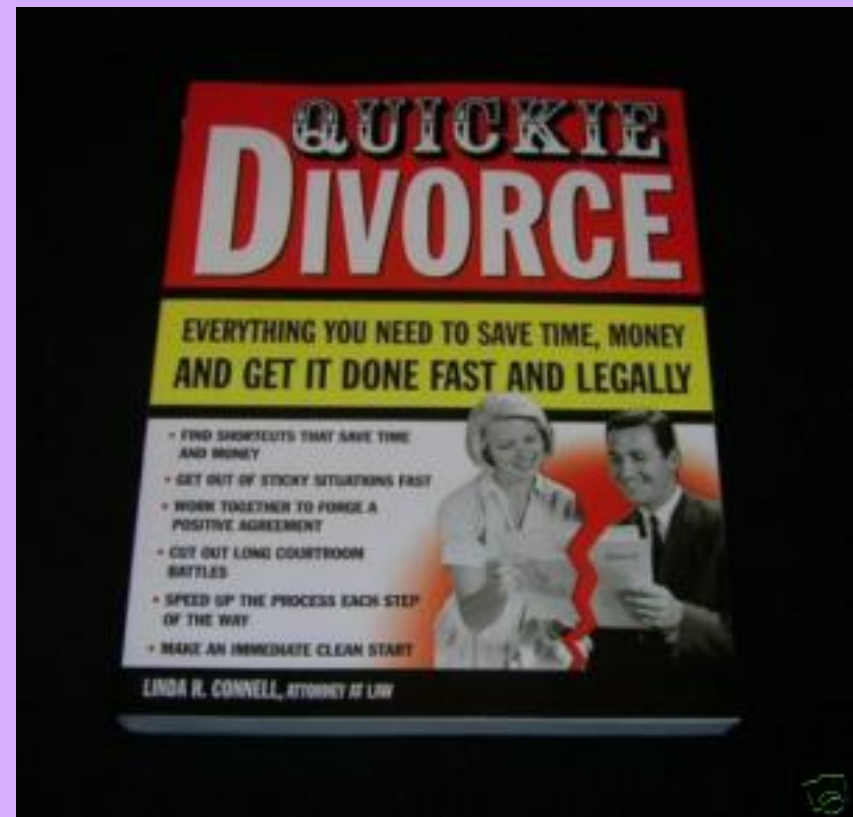
Full Faith & Credit

- “Full faith and credit shall be given in each state to the public acts records, and judicial proceedings of every other state”
- Ex). Drivers license
- Ex). Marriage License(?)
- Ex). Divorce(?)



Full Faith & Credit exceptions

- Only applies to civil matters; not criminal matters
- Certain divorces may not be recognized
- *Williams v. North Carolina* :
- “Quickie Divorce” in Nevada was not recognized
- Couple had no intention of living in Nevada permanently



Extradition

- Legal process by which a fugitive from 1 justice in one state is returned to that state
- Usually a routine matter in which a governor approves
- *Puerto Rico v. Branstad* :
- Federal courts can order an unwilling governor to extradite a fugitive



Privileges & Immunities

- State cannot make unreasonable distinctions between their own residents and people from other states
- Can set requirements on living and having certain rights (voting, running for public office)