

# WTN U. Class Notes

## Lesson 3 10/17/11

National or Federal Government: checks and balances on state and national interests and powers

Anti-Democratic aspect of constitution:

No right of initiative and referendum

Amendments are adopted by states — through their legislatures not majority vote and not only not by majority of citizens but not even even by a majority of the states.

Electoral college — again elected by the states not popular vote of the majority of citizens

And let me mention here that the states are what we'd call common law governments in that they have all the powers of government that at the common law governments could exercise UNLESS restrained by their state constitution. In other words, state governments are not governments with certain limited enumerated powers. CONSIDER: income tax battle in the state — did reference to taxation of dividends imply a prohibition on the taxation of income?

Evidences of Federalism:

Read Federalist Paper 39:

I. Constitution's Adoption:

A. Constitution ratified by the states, NOT the people, so in that sense it is federal in character.

B. Ratification by states is Republican in nature also — the people in the states elected their representatives who then decided whether to adopt.

C. If constitution ratified by just a majority of states then that's more "national" in character — the majority of the states would make it look like a "national" issue only. Original ratification required at least 9 of the 13 but only be binding on the 9 (or whatever number ratified, not the others!)

## 2. How Branches Are Elected

How branches were elected reflected an attempt to balance national powers with state sovereignty:

### A. House and Senate

We talked about House and Senate, were checks on:

- faction and
- an attempt to balance local interests with the larger national interest. BUT they were also structured with a mind toward checking national government vs. sovereignty of states — keep federal government itself in check.

In regard to balance between national interest and state sovereignty:

1. House — national in Character — elected by the people

2. Senate — was federal in character - elected by state legislature

Also: each Chamber was check on the other

### B. President

Electoral College is clearly a federalist oriented concept.

3. How the powers of the federal government operate.

- A. Supreme Law of the Land. Article VI, clause 2. When it comes to the operation of the federal government itself, since the laws it passes are the supreme law of the land and apply to everyone and not just to the states as sovereign states it is of a national character.
- B. Limited Powers. But when it comes to the extent of its powers, what it has the power to do, it is a government of certain limited enumerated powers. If the power is not spelled out in the constitution, the federal government is not supposed to be able to do it. Tenth Amendment. And in this regard the constitution is federal in character.

The federal government has only certain powers and those powers not given to the federal government are expressly retained by the states as sovereign political entities in the 10<sup>th</sup> amendment.

When the Constitution was being debated in the state ratifying conventions, there was a great deal of concern that the proposed federal government would claim powers beyond those listed in Constitution. Nothing explicitly precluded an interpretation that would have regarded the federal government's enumerated powers as a nonexclusive listing. Tenth Amendment was a response to these concerns.

4. How the powers — the Constitution — can be changed

Amendment process also shows balance between national character of federal government and state sovereignty

Two ways to amend the constitution:

- A. one is upon petition of  $2/3^{\text{rd}}$  of the states to have convention to consider amendments,
- B. Amendment proposed by  $2/3^{\text{rd}}$  of the members of each House of Congress —  $2/3$  of Senate and  $2/3$  of House, not  $2/3$  of the total members WHICH, in itself is another check and balance — agreement by two chambers of Congress is different from agreement of a majority of the total members of Congress.

If it was wholly national in character, the whole of the people of the United States would vote on an amendment and the majority would control.

If it was wholly federal in character it would have to be approved by the states and, to be completely federal in character, would need to be approved by all the states.

We have a mixture. The states, as sovereign political bodies, through their legislative bodies are the ones to vote on whether to adopt an amendment and in that sense it's federal BUT because it requires approval by less than all the states, in this case  $3/4$ ths of the states and binds all the states, it is of a national character. In this regard, approval of amendments is different from ratification of the constitution itself.

Note: state governments are common law jurisdictions meaning have all power that a government would have at the common law except as limited or regulated by state constitution. State governments are not "limited" in same way as federal which has NO power unless given. States kind of opposite — they have all power except as limited.