The Constitutional Principle of Federalism

Under the Articles of Confederation, states held most of the power in the new American government. Colonists feared a strong central authority, but it was soon realized that this weak form of national government would be the demise of the new country. In the United States Constitution power is shared between the national and state (local) levels of government. This principle is known as **FEDERALISM**

This sharing of power allows us to enjoy the benefits of diversity and unity. **Policies for the well-being of the nation are made by the national government and other policies which are adopted depending on the history, needs and philosophies of each individual state are made by the state governments.**
In setting up a federal system, the writers of the Constitution divided the powers of government into three types:

1. **Enumerated/expressed/delegated powers**
   These powers specifically granted to the national/federal government and are stated specifically in Articles I-V of the Constitution.

2. **Reserved powers**
   The powers that the Constitution does not give to the national government are kept by the states. Because they are too numerous to list, Amendment 10 states simply that all powers not delegated to the United States or denied to the states are powers belonging to the states.

3. **Concurrent powers**
   Because some areas of authority of the states and national government overlap, these Powers belong to both the state and federal levels of government.
Examples of the Division of Federal and State Powers

**FEDERAL**
- *Maintain and army and navy*
- *Declare war*
- *Regulate trade between the states and with foreign nations*
- *Make treaties with other nations*
- *Coin money*

**STATE**
- *Regulate trade with the state*
- *Conduct elections*
- *Protect public safety and health*
- *Establish local governments*
- *Establish licensing requirements for certain regulated professions in the state within the state*

**BOTH**
- *Collect taxes*
- *Establish courts*
- *Make and enforce laws*
- *Borrow money*
- *Provide for the general welfare*
- *Charter Banks*

**EXpressed**

**Concurrent**

**Reserved**
Article IV of the Constitution Outlines the Relationship Between the States and the Federal Government

Provisions in State to State Relations

A) Full Faith and Credit Clause

All states are required to recognize the laws and legal documents of other states such as birth certificates, marriage licenses, driver's licenses and wills.

B) Privileges and Immunities Clause

This prevents a state from treating citizens of other states in an unfair discriminatory manner. Additionally, a right of interstate travel may plausibly be inferred from the clause. It does not apply to differential treatment when it comes to things like occupational licensing and differential fees (hunting, tuition etc...)

C) Extradition

This states that if a person accused of a crime flees to another state, the state where the accused is taken into custody, must extradite or return the fugitive to the state from which they fled to answer to their charges.

D) Interstate Compacts

States may make agreements, sometimes requiring congressional approval, to work together to solve regional problems (ex. WI and MN tuition reciprocity or NY and NJ port authority regulating shared resources)

Provisions in Nation to State Relations

A) A guarantee to a representation in the national government

B) Protections against foreign invasion

C) Protections against domestic violence

D) Respect for the state’s geographic integrity
THE IMPLIED POWERS OF CONGRESS

The final clause of Article I, Section 8 of the Constitution says Congress has the power:

“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

Also called the Elastic Clause, this clause allows Congress to decide how it should carry out the many powers given to it by the Constitution. In doing so, Congress has given itself implied powers not mentioned in the Constitution. It has argued that these implied powers are needed to fulfill its other duties.

ex. The creation of the Federal Reserve and a central banking system because Congress has the power to coin money.

Many of the laws of Congress makes today stem from the Necessary and Proper Clause because the Framers could not have made provisions for every situation that might arise in the modern world. Without its implied powers, how effectively could Congress address new situations?
DIRECTIONS ON HOW TO COMPLETE THE WHO HOLDS THE POWER WORKSHEET (in class on Friday 10/23)

All State Powers should be listed as **reserved** and the source of those powers should ALWAYS be listed as the **10th Amendment**

Federal powers found directly in the Constitution should be listed as **expressed** and you MUST have a specific clause that you can point to in Article I section 8 **clauses 1-17** that lists that specific power.

If you can not find a specific clause and you know the power has to be a federal one then list the source of the power as **clause 18 (the Elastic Clause)** and list **implied** for the type of power.

All powers that are shared by the state and federal government MUST be listed as **concurrent**. You must have **two sources of power**---Amendment 10 for the state source AND then something from clauses 1-17 that would provide the federal government with the power.