What are the Enumerated Powers of the Federal Courts?

The Judicial Power of the Federal Courts.

By Publius Huldah.

1. "Judicial Power" refers to a court's power to hear and decide cases. **Art. III §2, U.S. Constitution, lists the cases which federal courts are permitted to hear. They may hear *only* cases**:

a) Arising under the Constitution, or the Laws of the United States, or Treaties made under the Authority of the United States [1] ["federal question" jurisdiction];

b) Affecting Ambassadors, other public Ministers & Consuls; cases of admiralty & maritime Jurisdiction; or cases in which the U.S. is a Party ["status of the parties" jurisdiction];

c) Between two or more States; between a State & Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States;[2] or between a State (or Citizens thereof) & foreign States, Citizens or Subjects[3] ["diversity" jurisdiction].

These are the ONLY cases which federal courts have constitutional authority to hear! Alexander Hamilton wrote in Federalist No. 83, 8th para:

…the judicial authority of the federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. ***The expression of those cases marks the precise limits beyond which the federal courts cannot extend their jurisdiction***, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority. [emphasis added]

In Federalist No. 80, Hamilton commented on each of these itemized "proper objects" of judicial authority. But here, we will consider only cases "arising under the Constitution", which concern "the execution of the provisions expressly contained in the articles of Union" (2nd para). [4]

2. Consider State laws criminalizing abortion or homosexual conduct. Are these "proper objects" of the judicial power of the federal courts? Do these laws fit within any of the categories of cases which federal courts are authorized to hear? *No, they don't!* **Nothing** in the Constitution forbids States from criminalizing abortion or homosexual conduct! The federal courts have no "federal question jurisdiction", no jurisdiction based on status of the parties, and no "diversity jurisdiction" to hear such cases!

But the federal courts have evaded the constitutional limits on their power to hear cases by **fabricating individual "constitutional rights" so that they can then pretend that the cases** "arise under the Constitution"!

Thus, in Roe v. Wade (1973) http://supreme.justia.com/us/410/113/case.html seven judges on the U.S. Supreme Court said a right of privacy…founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action (p. 153) makes unconstitutional State laws making abortion a criminal offense! These seven judges just made up a "**constitutional *privacy* right" which *they said* prohibits States from outlawing abortion!**

In Lawrence v. Texas (2003) http://supreme.justia.com/us/539/558/case.html six judges on the U.S. Supreme Court said a Texas Law criminalizing homosexual conduct was unconstitutional because it violated practitioners'

…right to liberty under the Due Process Clause (p.578)…of the Fourteenth Amendment (pp. 564, 579).

But ***nothing*** in our Constitution prohibits the States from making laws declaring abortion or homosexual conduct to be crimes! ***Nothing*** in our Constitution grants "rights" to individuals to engage in these practices!

3. But federal judges used the 14th Amendment as a blank check to prevent the States from outlawing conduct which the *federal judges* want to legalize. They simply *make up* a "constitutional right" to do those things. ***Under their view, there is no limit to their powers!*** States criminalize child rape, but 5 judges on the Supreme Court can fabricate a "constitutional right" to have sex with children – a "liberty & privacy right" in the 14th Amendment to have sex with children! If these "liberty & privacy rights" mean that women can abort babies & homosexual conduct is fine; why can't they also mean that adults can have sex with children? Why can't they mean that people have "liberty & privacy rights" to use crack cocaine & heroin? What's the limit? ***There IS no limit!*** Anthony Kennedy, who wrote the majority opinion in Lawrence v. Texas, said:

…As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom. (p. 579)

Kennedy just tossed Art. III §2 out the door! He and his ideological allies recognize no limits on their power! Just name an act you want legalized and if 5 of them agree, Voila! A new "liberty" "right"! *And a State law prohibiting that act bites the dust*. And since federal judges also claim the right to "set policy" for all of these United States, and we have let them do it, State laws throughout the land prohibiting that act bite the dust. And ***that*** is how we got a handful of un-elected judges setting "policy" for everyone in the country.

4. Abortion, homosexual conduct, prostitution, child sex, drugs, etc. are issues for The People of the several States to decide (subject to any restrictions imposed by their respective State Constitutions). Congress is not authorized to make laws on these subjects, and these are not listed as "rights" in the U.S. Constitution.

5. What does the due process clause of the 14th Amendment really mean? Professor Raoul Berger's meticulously researched book, Government by Judiciary: The Transformation of the Fourteenth Amendment [5] ***proves*** that the purpose of the 14th Amendment was to protect freed slaves from southern Black Codes which denied them basic rights of citizenship. In Ch. 11[6], Berger discussed the meaning of the "due process" clause of the 14th Amendment:

…nor shall any State deprive any person of life, liberty, or property, without due process of law…

The clause, "due process of law" is a term of art with a well-known & narrow meaning [7] going back to the Magna Charta! It means that a person's Life, Liberty or Property can't be taken away from him *except by the judgment of his peers pursuant to a fair trial!* Specifically, *that freed slaves could not be punished except pursuant to the judgment of their peers after a fair trial where they could appear, cross-examine witnesses and put on a defense!* "Life" meant "life" as opposed to being lynched; **"liberty" meant being *out of prison* instead of *in prison;*** and "property" meant the person's possessions.

6. So! We see that **the federal judges have *redefined* "Liberty". To them, "liberty" is freedom from moral restraints; they do not see "liberty" as freedom from coercive civil government**. They have no problem with making us objects to be plundered & controlled by the federal government! They have no problem with suppressing our religion & silencing our speech. They have no problem with imposing *their values* & radical conception of "liberty" on us.

But Professor Berger *proves* that the framers of the 14th Amendment did not understand "Liberty" as freedom from moral restraints. The purpose of the due process clause of the 14th Amendment was to protect freed slaves from being put to death, imprisoned, or having their stuff taken away except pursuant to the judgment of their peers after a fair trial!

7. When federal judges redefine terms in the Constitution, they "amend" the Constitution in violation of Art. V. Article V. sets forth the two lawful methods of amending the Constitution, neither of which is "redefinition by judges".

8. Are there remedies for this judicial lawlessness? ***YES!*** Congress should use its Impeachment Power ***to remove the usurping judges***. How many times have you heard they have "lifetime appointments"? They don't! The only reason it ends up that way is because our representatives in Congress are ignorant & lack the Will to do the right thing. Alexander Hamilton addressed judicial usurpations & the judiciary's "total incapacity to support its usurpations by force" in The Federalist No. 81, 9th para:

…the important constitutional check which the power of instituting impeachments in one part of the legislative body [House], **and of determining upon them** in the other [Senate], ***would give to*** **that body [*Congress*] *upon the members of the judicial department. This is alone a complete security.* There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it [the impeachment power], while this body [Congress] was possessed of the means of punishing their presumption by degrading them from their stations.** While this ought to remove all apprehension on the subject it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments [some had said impeachments should be tried in the supreme court]. [italics added]

Folks, ignorance & misinformation will do us in if we don't learn the Truth pretty soon. "Everybody" says judges have "lifetime appointments", & we believe it. Well, now *YOU* know that federal judges can be impeached, convicted & kicked off the bench for usurping power! We hear that "The Rule of Law" requires us to go along with all court decisions. That is a Lie! If the decision is based on an usurpation, the Rule of Law requires us to spit on the decision and demand that the judges be impeached & removed from the bench.

9. Finally, a word about our Rights: **The Constitution is about the Powers which We the People delegated to the 3 Branches of the Federal Government. It is NOT about Our Rights, which come from God, are unalienable, & predate the Constitution!** ***We*** **created the Constitution & the federal government! Why would the Creator (that's us) grant to our "creature" (the federal courts), the power to determine & define OUR Rights?**

Alexander Hamilton opposed adding a Bill of Rights to the Constitution. He said they were unnecessary & dangerous because they contain exceptions to powers which are not granted. Thus, they afford a pretext to regulate those Rights (The Federalist No. 84, 10th Para). Hamilton was a prophet as well as a genius in political philosophy.

Today, we have been conditioned to believe that the source of our "Rights" is the Constitution, as defined & "discovered", from time to time, by unelected federal judges. But D.C. v. Heller (2008) http://supreme.justia.com/us/554/07-290/ which upheld private ownership of guns, was a 5 to 4 decision! One vote switched to the other side, and the Supreme Court will rule that we have no right to bear arms.

THIS is what happens when we substitute the Constitution for God as the Source of our Rights. You must always insist that your Rights to Bear Arms – to defend yourself – are unalienable and come from God, ***not*** the Second Amendment! Don't forget that We had that Right before the Constitution was ratified. The same principle applies to all of our Rights. If, like the Declaration of Independence, we insist that they come from God and are unalienable, no human court or legislative body can take them away from us.

Publius/Huldah (June 22, 2009; revised July 16, 2010)

---

[1] Since ours is a Constitution of delegated & enumerated Powers, the U.S. must be ***authorized*** by the Constitution to act on a subject before any Treaty on that subject qualifies as part of the "supreme Law of the Land" (Art. VI, cl.2).

[2] Hamilton said this is the only instance in which the Constitution contemplates the federal courts hearing cases between citizens of the same State. The Federalist No. 80 (3rd Para from end).

[3] The 11th Amendment (ratified 1795) withdrew from the federal courts the power to hear cases filed against one of the States *by* Citizens of another State or *by* Citizens or Subjects of any foreign State.

[4] Hamilton gave examples: If a State violates the constitutional provisions which prohibit States from imposing duties on imported articles, or from issuing paper money [Art. I, §10], the federal courts are in the best position to overrule infractions which are "in manifest contravention of the articles of Union. [i.e., Constitution]" (3rd Para).

[5] Prof. Berger retired in 1976 as Senior Fellow in American Legal History, Harvard University. His book is at http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=675&Itemid=28 It is fascinating!

[6] Here is the link to Ch. 11. Read it! You will then know more about "due process" than most federal judges! http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=675&chapter=106938&layout=html&Itemid=27

[7] http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=675&chapter=106887&layout=html&Itemid=2