

Federalism



FEDERALISM: THE DIVISION OF POWER

TEXT SUMMARY

Federalism is the system of government in which a written constitution divides the powers of government. The U.S. Constitution provides for the **division of powers** between two levels—the National Government and the States.

The National Government possesses **delegated powers**—powers specifically given by the Constitution. Most of these are **exclusive powers**, or powers that belong only to the National Government.

There are three kinds of delegated powers. **Expressed powers** are those listed in the Constitution. **Implied powers** are not listed but are suggested. **Inherent powers** are those that national govern-

ments have historically possessed, such as the regulation of immigration. Some powers delegated to the National Government are **concurrent powers**. It shares these powers with the State governments.

The States' powers are called **reserved powers**. They are powers not already given to the National Government and not listed as powers the States may not have. For example, the States may decide how old people must be to get drivers' licenses.

Since some of the powers of the National and State governments overlap, the Supreme Court plays the key role of resolving disputes. As part of this job, it applies the Constitution's Supremacy Clause, which states that the Constitution is the "supreme Law of the Land."

THE BIG IDEA

Federalism divides the powers of the United States government between the National Government and the States.

GRAPHIC SUMMARY: *The Division of Powers*

How the Powers of Government Are Divided		
Delegated Powers (Federal)	Concurrent Powers (Both)	Reserved Powers (States)
<ul style="list-style-type: none"> • To regulate foreign and interstate commerce • To raise and support armed forces • To coin money • To establish post offices and roads 	<ul style="list-style-type: none"> • To collect taxes • To enforce laws and punish criminals • To maintain courts • To borrow money 	<ul style="list-style-type: none"> • To conduct elections • To provide public education • To issue licenses • To regulate intrastate commerce

1) What is the difference between Expressed, Implied and Inherent Powers?

-Using the Graphic-

- 2) Which level & power of gov't establishes schools?
- 3) Which level & power of gov't collects taxes?
- 4) Which level & power of gov't coins money?
- 5) Which level & power of gov't regulates foreign commerce(Trade)?



Federalism

Understanding the Principle

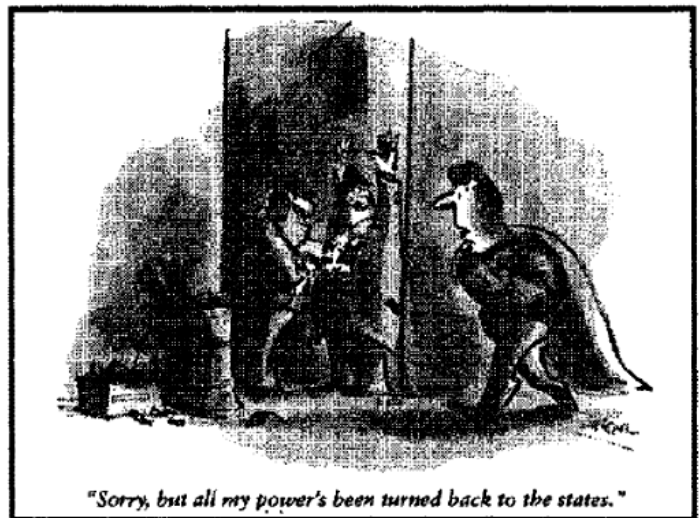
Like the separation of powers, the principle of federalism also seeks to limit the power of government. Federalism involves a different kind of separation of powers—the division of power between the National Government and the State governments.

The Constitution spelled out the areas in which the Federal Government was to have control—national defense, currency, foreign affairs, and regulating commerce with foreign nations and among States, to name just a few. It left to the States and local governments power over matters closer to home—birth, marriage, death, education, running elections, and police powers needed to protect the health, safety, and welfare of citizens.

The Constitution at Work

Because the principle of federalism was rather skeletal in the Constitution, it was not long before court cases challenged where federal power ended and State power began. One such case, *Gibbons v. Ogden*, arose in 1824 when the Supreme Court had to decide whether the Federal Government had the ultimate power over interstate commerce. The Court found the Federal Government's authority does preside over the State's authority on such matters. In subsequent decades, disagreement between the North and South over slavery, tariffs, and other matters brought the issue of States' rights to the boiling point. Southern States declared that they had the right to secede from the federal union, thus denying that the Federal Government had any power to govern them. Northern States fought the Civil War in part to prove that Southern States did not have the right to secede. Although the South lost, conflicts between federal rights and States rights did not end there.

Since the Civil War, the Federal Government's role in and authority over State affairs has varied. The Great Depression of the 1930s opened the door for the Federal Government to move further into areas of State authority. With



a large segment of the population unemployed, poverty was rampant and State and local governments could not afford to provide for the welfare of impoverished citizens. The Federal Government stepped in, providing programs and funding to help rejuvenate the economy.

The Federal Government's power extended into the primarily State-run education system when the Supreme Court ordered schools desegregated in the case of *Brown v. Board of Education of Topeka*, 1954. And in the 1960s, the Federal Government passed several social and economic programs that further expanded its authority in education and welfare.

In recent times, the pendulum has begun to swing back a little. Congress has taken steps to return control over traditional State matters to the States. Even though some or all funding for many social and economic programs, such as the welfare system, may come from the Federal Government, State governments have assumed greater control over such programs' goals, design, and execution.

Directions: Answer all questions completely.

- 6) Explain the purpose of Federalism and how it works.
- 7) What was the issue in the **Gibbons vs. Ogden case**?
- 8) What did the Supreme Court find in the **Gibbons vs Ogden case**?

McCulloch v. Maryland

A New Government = Big Questions

In 1816, the state of Maryland tried to make a play against the United States government. In order to understand the tension between Maryland and the federal government, you have to imagine what it was like when the United States was first born. Our Founding Fathers had created a brand-new government. There had never been another government exactly like it. Even though the Constitution described how it was supposed to work, the Constitution could not describe every detail. There were lots of questions—especially about how much power the federal government had.

Constitutional Powers

The U.S. Constitution created three branches of government and gave each branch certain powers. The legislative branch is made up of Congress, which is made up of the Senate and the House of Representatives. Article I of the Constitution gives Congress a long list of powers. It also says Congress can “make all Laws which shall be necessary and proper” for carrying out these powers. But what does that mean? In 1816, Congress made a decision that tested out the “necessary and proper” question in a big way.

Congress Creates a Bank

All nations need money to carry out their business, and the United States was no different. To make it easier for the government to do business, in 1816 Congress passed a law creating a national bank. The Bank of the United States was just like any other bank, except it was where the federal government did its banking business. In those days, state banks issued bank notes that functioned like money. The Bank of the U.S. was also allowed to issue bank notes{money}. In exchange for this special treatment, it agreed to loan money to the U.S. government.

Maryland Passes a Tax

Once the bank was established, it opened branches in different states. One branch was located in Baltimore, Maryland. **James William McCulloch** was the cashier at the Baltimore branch of the Bank of the U.S. The U.S. government didn't ask Maryland for permission—it just opened the branch & started doing business. Maryland's state banks weren't very happy about having a new competitor in town where people could do their banking. They also didn't like that the Bank of the U.S. had a privileged relationship with the U.S. gov't. In response, Maryland's gov't passed a law of its own: Any bank that had not been chartered, or organized, in the state of Maryland had to pay a special tax. The Bank of the U.S. refused to pay, so the state of Maryland sued the bank in state court.

Who Has the Power?

The Maryland courts sided with Maryland. So, in 1819, the bank appealed to the United States Supreme Court. There were two main questions that needed to be answered: Did the Constitution allow Congress to start a bank? And if so, was a state allowed to tax a bank that was part of the federal government?

As always, the Supreme Court decided the case by looking at what the Constitution says. The Constitution gives Congress the power “to regulate Commerce . . . among the several States.” Regulate

means to make rules about something. Commerce is another word for business or trade. The Constitution also gives Congress the power to borrow money and collect taxes. But the Constitution does not say Congress has the power to start a bank. Could Congress start one anyway?

If It's Necessary and Proper, It's Okay

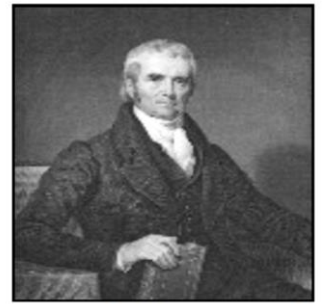
John Marshall was the Chief Justice of the U.S. Supreme Court and wrote the Court's opinion in *McCulloch v. Maryland*. In a unanimous decision, the Supreme Court said yes. First, a bank is “**necessary and proper**” for carrying out the powers related to commerce, borrowing, and taxes. But even without the power to do what is “necessary and proper,” Congress would still be able to start a bank. Why? Because sometimes in order to be able to do one thing, you have to be able to do something else. For example, the Court pointed out that the Constitution gives Congress the power to maintain a navy but says nothing about steam ships.



James William McCulloch was the cashier at the Baltimore branch of the Bank of the United States.

If It's Necessary and Proper, It's Okay

Even so, “no one doubts the power of Congress to use them.” In the same way, the Court said, “A bank is a proper and suitable instrument to assist the operations of the gov’t.” This decision expanded the powers of the national gov’t. It did this by saying by saying the gov’t could take any action that was appropriate for carrying out its powers—even if that action was not specifically mentioned in the Constitution, like starting a bank. Congress was only prohibited from doing things the Constitution specifically said it could not do.



John Marshall was the Chief Justice of the U.S. Supreme

State Interference? Not Okay.

As for Maryland’s bank tax, the Constitution says that laws of the United States “shall be the supreme law of the land” and states must follow them. The Court said that if Maryland could tax the Bank of the U.S., it would have the power to tax the bank so heavily that the bank would be forced to leave the state. The court said that states are not allowed to interfere with the business of the U.S. government. This decision affirmed that the national United States gov’t is “supreme” over state governments, just like the Constitution says. Maryland could not try to force the bank out by making it pay taxes.

Directions: Choose which answer is correct by using “A” or “B” for each sentence below.

	A	B	
The way our government should work is described in the _____.	Congress	Constitution	9)
The Constitution created ____ branches of government.	three	two	10)
The legislative branch is made up of ____.	Congress	Founding Fathers	11)
The Constitution gives Congress a list of _____.	powers	decisions	12)
Congress can make laws that are necessary and _____ for carrying out its powers.	powerful	proper	13)
McCulloch v. Maryland was about whether the Constitution lets Congress start a _____.	bank	tax	14)
McCulloch v. Maryland was also about whether a state could _____ a U.S. bank.	issue	tax	15)
Like state banks, the Bank of the U.S. was allowed to issue _____.	bank notes	snack bars	16)
Bankers in Maryland were _____ about the new bank in Baltimore.	unhappy	happy	17)
The first two courts ruled _____ Maryland.	against	for	18)
The Supreme Court ruled _____ Maryland.	against	for	19)
The Court said a bank is _____ for assisting government operations.	unsuitable	proper	20)
The Court said Congress can carry out its powers in any way that is not _____ by the Constitution.	mentioned	prohibited	21)
The Constitution says laws of the United States are _____.	supreme	necessary	22)
The Court said Maryland could not interfere with business of the _____ government.	national	state	23)