

## The Constitutional Framework: Federalism

Constitutional Origins and the Transformation of Federalism in the United States.

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### Themes of the Class

- Why and how has the national government grown so powerful since the founding?
- What was the **role of the Courts** in determining early powers of the Federal Government?
- How did early legal challenges establish the framework for the growth of federal power?
- How have implied powers been used to shape the nationalization of policy in the United States?

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### Expansion Federal Powers:

#### *The Role of the Courts*

Federal Government asserts constitutional primacy.

- McCulloch v. Maryland (1819)
  - Establishes supremacy and elastic clauses
  - Implied powers granted as extensions of express powers in Constitution
- Gibbons v. Ogden (1824)
  - Establishes and strengthens commerce clause.
- These two come to be used to justify federal intervention in labor laws, interstate trade, etc.

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Establishing *Implied Powers*,  
*Supremacy and Sovereignty*: the National Bank

- Secretary of Treasury Alexander Hamilton argues for the creation of a National Bank of the United States to help the cash-strapped republic **expand the money supply, extend credit, collect taxes, pay the nation's debts, handle foreign exchange, and store government money.**
- Those favoring limited federal power (such as Thomas Jefferson) object that a central bank falls outside the expressed powers in the Constitution.

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Establishing *Implied Powers*,  
*Supremacy and Sovereignty*: the National Bank

- Hamilton advances the doctrine of **implied powers.**
- The founders couldn't imagine all **future exigencies and actions** that would that Congress would face in the execution of the powers specified in Article 1, Section 8.
- The Constitution not only provides for **the enumerated powers**, but also extends Congress **implied powers** through the "**necessary and proper clause**" which give Congress the authority to do what is necessary to execute the enumerated powers and responsibilities.

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Establishing *Implied Powers*,  
*Supremacy and Sovereignty*

- *McCulloch v. Maryland* (1819)
  - Does Congress have the power charter a Bank of the United States?
  - Can state governments tax federal property?

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Establishing *Implied Powers*

Chief Justice John Marshall's Decision:

- **Doctrine of *Implied Powers***
  - The necessary and proper clause (Article I, Section 8), allows Congress "all means which are appropriate" to fulfill "the legitimate ends" of the Constitution.
  - Creation of the bank is appropriate, as it is necessary in order for the federal government to carry out several enumerated powers– such as such as regulating interstate commerce, collecting taxes, and borrowing money.
  - The Constitution provides for a more expansive government, as Congress and the Federal Government have implied powers that flow from the enumerated powers.

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Establishing *Federal Supremacy*

Chief Justice John Marshall's Decision:

- **Supremacy Clause:**
  - "the government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the constitution, form the supreme law of the land."
  - Because the power to tax involves the power to destroy" Maryland was **unconstitutionally** undermining the superior laws and institutions of the United States.

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Establishing *National Sovereignty*

Chief Justice John Marshall's Decision:

- **Sovereignty** rests in the People of the United States of America, not the states.
- "the government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit."
- Maryland's tax violated constitutional sovereignty because it imposed a tax on the people in the United States by a state accountable to only some of the people.

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Nationalizing *the Commerce Clause*

- Gibbons v. Ogden (1824)
  - Can the state of New York issue exclusive licenses/monopoly for ferry service between states?
  - Does Congress have the power to regulate interstate commerce?
  - Does Congress have the power to regulate commerce that is not wholly contained within a single state?

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Nationalizing *the Commerce Clause*

- Congress has the sole and appropriate power to regulate *interstate commerce*.
- This power applies broadly.
  - Congress can **regulate trade** among the many states.
  - Congress can also **regulate trade that is intermingled with the states**, so long as there is an interstate dimension to the regulation of commerce.

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Implied powers, the commerce clause, and the expansion of federal power

Congress has drawn upon implied powers to dramatically expand the reach of the Federal government

- Creation of the IRS (implied)
- Creation of the Air Force (implied)
- Nationalization of the Minimum Wage (interstate commerce)
- Banning workplace discrimination and harassment (interstate commerce)
- Regulation of Health Care through ACA (implied and interstate commerce).

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Looking forward:  
Expansion of Federal Power

- Expansion of Federal power was gradual through much of history.
  - The vision of **Dual Federalism** maintained a clear division of powers between the Federal and state governments.
- Expansion of federalism is driven by different philosophies governing the federal state relationship over time.
  - Post Depression era vision of **Cooperative Federalism** and **Regulated Federalism** drive massive expansion of national government's influence over state policy.
- Tension over Federal and state power persist today.
  - Vision of **New Federalism** and Devolution aim to return autonomy to state governments.

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Looking forward: The Role of the Courts in the  
Nationalization of Civil Liberties and Civil Rights

- The tension between minority rights, state politics, and the Constitution.
- The roll of Congress and the Courts in the nationalization of the Bill of Rights.
- The growth of federal power in protecting individual rights and freedoms.

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