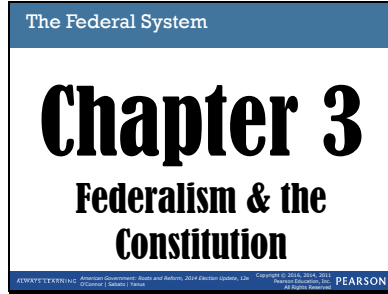


Federalism & the Constitution

Slide 1



IMMIGRATION IS AN INTERGOVERNMENTAL PROBLEM Public policy on immigration—and balancing an individual's liberty of movement with the country's security—requires the cooperation of local, state, national, and international governments. Above, European immigrants are screened for entry at Ellis Island, New York, in the 1890s. Below, Hmong immigrants receive health certifications before immigrating to the United States in the present day.

Immigration is a politically contentious subject that requires cooperation between national, state, and local governments. The United States has a federal system of government, which is the subject of this chapter.

Slide 2



System of government in which the national and state governments share power and derive all authority from the people.

Federalism & the Constitution

Slide 3

Roots of the Federal System 3.1

- ▣ National Powers Under the Constitution
- ▣ State Powers Under the Constitution
- ▣ Concurrent Powers Under the Constitution
- ▣ Powers Denied Under the Constitution
- ▣ Interstate Relations Under the Constitution
- ▣ Local Governments Under the Constitution


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It is important to understand the division of powers under the federal system. The national government has both enumerated and implied powers under the Constitution. National and state governments share an additional group of concurrent, shared, powers. Other powers are reserved for the states, or expressly denied to both governments. The powers of the national government are ultimately declared supreme. Local governments are not expressly mentioned in the Constitution and instead are granted powers by the state.

Slide 4

National Powers Under the Constitution 3.1

- ▣ Enumerated powers
 - Coin money
 - Conduct foreign relations
 - Provide for army and navy
 - Declare war
 - Collect duties and taxes



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Article I, section 8, of the Constitution specifically lists powers granted to the government. These powers are called enumerated powers. The national government has the authority to:

- coin money
- conduct foreign relations
- provide for an army and navy
- declare war
- collect taxes

The so-called elastic clause gives Congress the authority to enact laws "necessary and proper" for exercising its enumerated powers. These powers are derived from enumerated powers and are known as implied powers.

The supremacy clause declares that national laws are supreme when they conflict with state laws.

Federalism & the Constitution

Slide 5

National Powers Under the Constitution 3.1

- ▣ Necessary and proper clause (elastic)
 - Enact laws for exercising enumerated powers
 - Implied powers
- ▣ Supremacy clause

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The implied powers doctrine came out of an attempt by the State of Maryland to block under law the operations of the Federally-backed Second Bank of the United States. The State Legislature thus placed a tax on the notes held by all banks originally established outside of the State. Though it did not specifically mention the Second Bank, the Supreme Court found that it could reasonably establish that this was the purpose of the law, given that no other out-of-state banks then existed in Maryland. Under the heading of the legislation, the Second Bank's president, James McCulloch, had been prosecuted after he refused to pay the required fee. On appeal, the State made the argument that the Constitution does not mention banks and that the Second Bank of

Federalism & the Constitution

the United States thus lacked Constitutional protection. The Supreme Court rejected the actions of the State by finding that the Federal Government held implied powers under the Constitution, such as it had exercised by creating Federal banks. Chief Justice Marshall wrote the Court's opinion, referring to the political concept of the social contract to establish the binding power of the Federal Government as provided by the Constitution. Marshall then observed that the Constitution could not specifically address all of the specific ways in which the Government would fulfill the duties to which it was generally obligated, but rather implied the functions which the Government might take on to meet its responsibilities.

The supremacy clause declares that national laws are supreme when they conflict with state laws.


Federalism & the Constitution

Slide 6

3.1

State Powers Under the Constitution

- State powers not enumerated
- Tenth Amendment
 - Reserved powers



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Because states held all the power at the time the Constitution was written, the Framers felt no need to list and restate all of the powers of the states, although some are specified throughout the Constitution.


The states' powers were described in greater detail in the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." These powers are often called the states' reserved powers.

Slide 7

3.1

Concurrent Powers Under the Constitution

- Overlapping powers
 - Power to tax
 - Borrow money
 - Establish courts
 - Charter banks
 - Spend money for general welfare

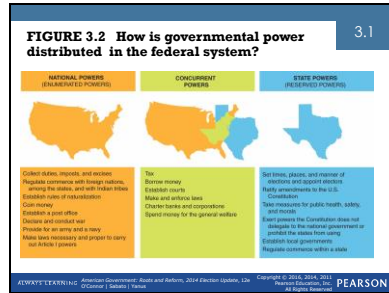


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National and state powers overlap. These concurrent powers—powers shared by the national and state governments—include the power to tax, borrow money, establish courts, charter banks, and spend money for the general welfare.

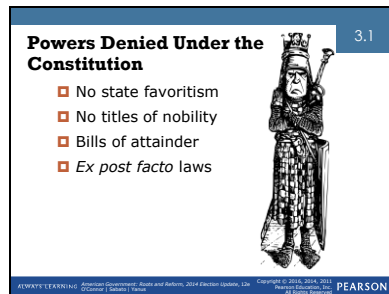
Federalism & the Constitution

Slide 8



The Constitution divides power between the national and state governments. It gives the national government a list of enumerated powers, while many state powers are captured in the reserved powers clause of the Tenth Amendment. The national and state governments also share some powers, known as concurrent powers.

Slide 9

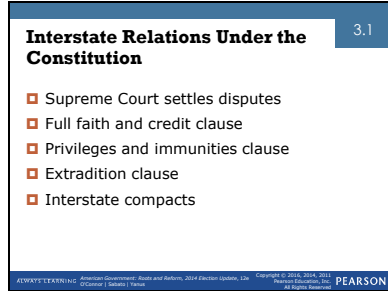


Article I of the Constitution explicitly denies some powers to the national government or states. Congress, for example, cannot regulate commerce in a way that would favor one state over another, and it cannot place duties on items exported from any state. Article I also prohibits the national government from granting titles of nobility, and government employees may not accept salaries or gifts from foreign heads of state.

Neither national nor state governments may pass a bill of attainder, a law declaring an act illegal without a judicial trial. The Constitution also bars national and state governments from passing *ex post facto* laws. This means that a law cannot be passed making an act punishable as a crime even if the action was legal at the time it was committed.

Federalism & the Constitution

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Interstate Relations Under the Constitution 3.1

- Supreme Court settles disputes
- Full faith and credit clause
- Privileges and immunities clause
- Extradition clause
- Interstate compacts

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To avoid any appearance of favoritism, the Constitution authorizes the Supreme Court to settle disputes between states.

Article IV requires that each state give "Full Faith and Credit . . . to the public Acts, Records, and judicial Proceedings of every other State." The full faith and credit clause ensures that judicial decrees and contracts made in one state will be binding and enforceable in another, thereby facilitating trade and other commercial relationships.

Article IV also contains the privileges and immunities clause, guaranteeing that the citizens of each state have the same rights as citizens of all other states. Does this clause mean that same-sex marriage that is legal in one state must be recognized in states where it is not legal?

The extradition clause, which requires states to extradite, or return, criminals to states where they have been convicted or are to stand trial.

Interstate compacts are contracts between states that carry the force of law. Currently, more than 200 interstate compacts exist.

Federalism & the Constitution

Slide 11

Local Governments Under the Constitution 3.1

- ❑ No power under Constitution
- ❑ Operate under state charter (Dillon's Rule, 1868)
- ❑ Counties



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Local governments have no express power under the U.S. Constitution.

According to Dillon's Rule, stated by Judge John F. Dillon in 1868, local governments need a state charter to operate. The charter is similar to a constitution.

Counties are the basic administrative units of local government. Every state has counties, although in Louisiana they are called parishes, and in Alaska, boroughs. Municipalities are city governments created in response to the emergence of relatively densely populated areas. County and municipal boundaries may overlap.

The term town refers to smaller communities, often run by a mayor and town council.

A special district is a local government restricted to a particular function, such as a school district. Special districts are the most numerous form of government.

Federalism & the Constitution

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3.1

Local Governments Under the Constitution

- Municipalities
- Towns
- Special districts
 - Most numerous form of government



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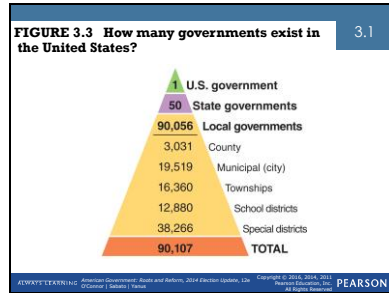
The term town refers to smaller communities, often run by a mayor and town council.

A special district is a local government restricted to a particular function, such as a school district. Special districts are the most numerous form of government.

Activity: Ask students to identify all of the governments that have authority and policymaking responsibilities in their area, from the federal and state governments to the various types of local government. At the same time, have them identify the types of public policies for which they are responsible.

Federalism & the Constitution

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More than 89,000 governments exist in the United States. Most of these governments are found at the local level, and are divided between municipal governments, towns, and special districts, such as school districts. The most common form of government is the special district.

Source: *U.S. Census Bureau*, www.census.gov/govs/cog/GovOrgTab033ss.html

Slide 14

Defining National Power: *McCulloch v. Maryland* (1819) 3.2

- First Court decision to define national and state government relationship
- Could Congress charter a bank?
- Could states tax it?

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In 1816, Congress chartered the Second Bank of the United States. In 1818, the Maryland state legislature levied a tax on it. James McCulloch, the head cashier of the Baltimore branch of the Bank of the United States, refused to pay the tax, and Maryland brought suit against him. In a unanimous opinion, the Supreme Court answered the two central questions presented to it: Did Congress have the authority to charter a bank? And, if it did, could a state tax it?

Congress had enumerated powers to borrow money and collect taxes. The constitution does not say that Congress can charter a bank, but Chief Justice Marshall found it was reasonable that Congress had the power to charter a bank, which could be considered "necessary and proper" to exercise its enumerated powers.

Marshall next addressed whether a state could tax a federal bank. To Marshall, this was not a difficult question. The state tax violated the supremacy clause because

Federalism & the Constitution

individual states cannot interfere with operations of the national government, whose laws are supreme.

The Court's decision in *McCulloch* had far-reaching consequences. Lawmakers use the necessary and proper clause to justify federal action in many areas. Furthermore, had Marshall allowed the state of Maryland to tax the federal bank, states could have attempted to tax all federal agencies located within their boundaries.

Slide 15

3.2

**Affirming National Power:
Gibbons v. Ogden (1824)**

- Congress's authority under commerce clause disputed
 - Power to regulate just products or commercial activity too?
- Ruling:
 - Congress can regulate commercial activity
 - New York had no authority to grant monopoly

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Shortly after *McCulloch*, the Marshall Court had another opportunity to rule in favor of a broad interpretation of the scope of national power. *Gibbons v. Ogden* involved a dispute that arose after the New York state legislature granted to Robert Fulton the exclusive right to operate steamboats on the Hudson River. Simultaneously, Congress licensed a ship to sail on the same waters.

Gibbons addressed this question: What was the scope of Congress's authority under the commerce clause? The states argued that "commerce," as mentioned in Article I, should be interpreted narrowly to include only direct dealings in products.

The Supreme Court ruled that Congress's power to regulate interstate commerce included the power to regulate commercial activity. Thus, New York had no constitutional authority to grant a monopoly to a single steamboat

Federalism & the Constitution

operator, an action that interfered with interstate commerce.

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3.2

**Limiting the Bill of Rights:
Barron v. Baltimore (1833)**

- Due process clause
 - Guaranteed by Fifth Amendment
 - Action by state, not federal, government caused damages
 - Federal government not at fault for state actions

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In *Barron v. Baltimore*, the Court addressed the issue of whether the due process clause of the Fifth Amendment applied to actions of the states. John Barron, a Baltimore businessman, ran a successful docking business off the city's wharf. During extensive construction, the city deposited dirt onto Barron's wharf. Barron sued the city and state for damages, arguing that the city took his lands "without just compensation," as guaranteed by the Fifth Amendment.

The Marshall Court ruled that Barron had no federal claim because enumerated rights contained in the Bill of Rights bound only the national government.


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The Dred Scott Decision 3.3

■ *Dred Scott v. Sandford* (1857)

- Slaves were property, not citizens.
- Congress could not ban slavery in new territories.
- Enhanced states' power



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States' rights continued in the issue of slavery. Dred Scott had been born into slavery but had lived at one time in territory that was not a slave state. Abolitionists used that prior residence to argue that he had been made a free man.

The Court disagreed, ruling that slaves were property. Further, Congress could not ban slavery in territories. This ruling narrowed the scope of national power in favor of states' rights.

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Discussion Questions 3

Did the Framers intend for federal or state governments to be supreme in the federal system?

How has the balance of power between state and federal governments shifted? Why have these changes occurred?

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