

Government 9: The US Constitution

March 23-27

Time Allotment: 20 minutes per day

Packet Overview

Date	Objective(s)	Page Number
Monday, March 23	<ol style="list-style-type: none">1. Define federalism.2. Briefly describe the two competing theories about how federalism should work.	2
Tuesday, March 24	<ol style="list-style-type: none">1. Outline the Court's decision in <i>McCulloch v. Maryland</i>2. Identify which parts of the COTUS are particularly relevant to the <i>McCulloch</i> decision.3. Explain the <i>McCulloch</i> decision's connection to federalism.	4
Wednesday, March 25	<ol style="list-style-type: none">1. Outline the Court's decision in <i>McCulloch v. Maryland</i>2. Identify which parts of the COTUS are particularly relevant to the <i>McCulloch</i> decision.3. Explain the <i>McCulloch</i> decision's connection to federalism.	7
Thursday, March 26	<ol style="list-style-type: none">1. Outline the Court's decision in <i>Gibbons v. Ogden</i>.2. Explain the <i>Gibbons</i> decision's connection to federalism.	10
Friday, March 27	<ol style="list-style-type: none">1. Examine the Great Seal of the United States.2. Explain the connection between the <i>McCulloch</i> and <i>Gibbons</i> decisions and federalism.	12

Additional Notes: None

Academic Honesty

I certify that I completed this assignment independently in accordance with the GHNO Academy Honor Code.

Student signature:

I certify that my student completed this assignment independently in accordance with the GHNO Academy Honor Code.

Parent signature:

Monday, March 23

Unit: Legislative Power
Lesson 1: Federalism

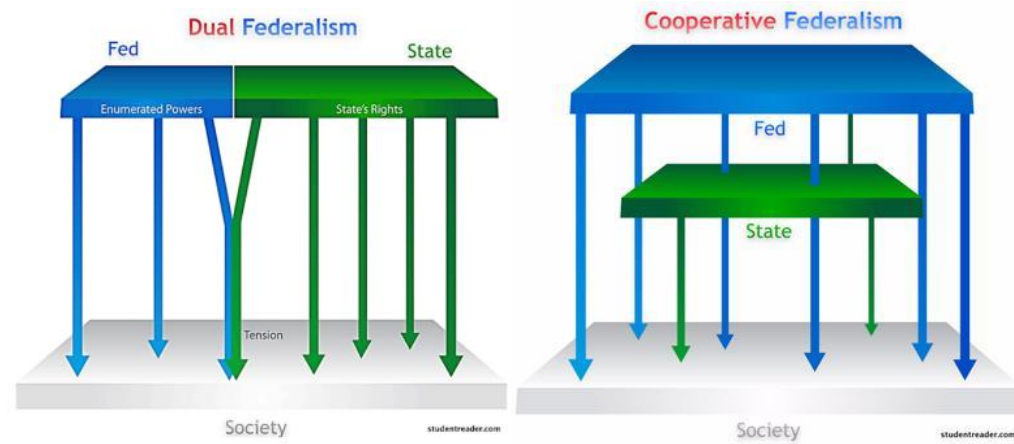
Lesson 1 Socratic Question: Keep this question in mind as you study this lesson!
What is the ideal relationship between the national government and state governments?

Objectives: Be able to do this by the end of this lesson.

1. Define federalism.
2. Briefly describe the two competing theories about how federalism should work.

Introduction to Lesson 1

Federalism is a way of organizing government authority in which the national government and state governments share power. Federalism attempts to balance two levels of government power: the national government and the state governments. This does not mean, however, that federalism immediately places the national and state governments on perfectly equal footing. There are two competing theories about how federalism should share (or balance) government power. First, dual federalism places clear boundaries between the national and state governments. That is, both levels of government have specific, explicit areas of authority. For example, the national government alone is responsible for national defense, while the state government is responsible for criminal justice. Under dual federalism, states may have different policies in areas that fall under their sphere of authority (e.g., state income tax). In contrast, cooperative federalism does not create clear boundaries between national and state spheres of authority. Instead, cooperative federalism places the national government in charge of most policy issues and uses state governments to implement national policies. Under cooperative federalism, state governments are subservient to the national government; their job is to act as the arm of enforcement for national government power and policies. As such, cooperative federalism does not permit states to adopt different policy solutions to public problems. Here are comparative diagrams of dual and cooperative federalism.



Memorize

Memorize the following definitions.

Federalism is the balance of power between national government and state governments.

NOTE: This does not mean the national and state governments are immediately presumed perfectly equal.

Dual Federalism (DF) is a theory about the division and balance of power between national government and state government. DF places the national and state government on nearly equal footing, with each level of government having specific spheres of authority. Policy diversity between states may exist under dual federalism.

Cooperative Federalism (CF) is a theory about the division and balance of power between national government and state government. CF places all policy issues under the national government's sphere of authority and uses state governments to implement those national policies. Policy diversity between states may not exist under cooperative federalism.

Diagram

Without referencing page 2, recreate the diagrams of dual and cooperative federalism. Label the components appropriately.

Tuesday, March 24

Unit: Legislative Power

Lesson 2: Federalism's Foundation

Lesson 2 Socratic Question: Keep this question in mind as you study this lesson!
How much power does the national government need to maintain national unity?

Objectives: Be able to do this by the end of this lesson.

1. Outline the Court's decision in *McCulloch v. Maryland*.
2. Explain the McCulloch decision's connection to federalism.

Introduction to Lesson 2:

With the definition and theories of federalism behind us, we'll now turn to the Supreme Court's interpretation of federalism questions. We're examining these cases because the Supreme Court's job is interpreting the Constitution. As such, if we have a question about what the Constitution demands regarding the balance of power between national and state governments, the Supreme Court will answer that question for us. Before reading the decision, familiarize yourself with the following constitutional questions of the *McCulloch v. Maryland* (1819) case:

1. Did Congress have the authority to establish the bank?
2. Did the Maryland law unconstitutionally interfere with congressional powers?

In a unanimous decision, the Court ruled that the power could be implied through enumerated powers granted to Congress in Article 1, Section 8 and the Necessary and Proper Clause. In addition, the Court found a legislature representing all of the people (i.e., the US Congress) could not be taxed by a state legislature representing a small portion of the people (i.e., the Maryland state legislature). If Maryland could not create a national entity, then it could not destroy one. If it was possible to tax something into oblivion, thereby destroying it, then Maryland did not have the power to tax something they did not create. Last, the Court clarified that the Supremacy Clause declared state laws invalid if they conflicted with federal laws.

The constitutional provisions in question include:

- Enumerated powers found in Article I, Section 8
- The Necessary and Proper Clause (also called the Elastic Clause)
- The Supremacy Clause

Read and Annotate, Part I

Read and annotate the following sections of the COTUS.

Article I, Section 8 (including the Elastic Clause)

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like

authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And

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.

Article VI (includes the Supremacy Clause)

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Wednesday, March 25

Unit: Legislative Power

Lesson 3: Federalism's Foundation

Lesson3 Socratic Question: Keep this question in mind as you study this lesson!
How much power does the national government need to maintain national unity?

Objectives: Be able to do this by the end of this lesson.

1. Outline the Court's decision in *McCulloch v. Maryland*.
2. Explain the McCulloch decision's connection to federalism.

Read and Annotate

Reread the following excerpt from Chief Justice Marshall's opinion in *McCulloch v. Maryland*.

Excerpt from Chief Justice John Marshall's Opinion in *McCulloch v. Maryland* (1819)

The first question made in the case is: Has congress power to incorporate a bank?

This government is acknowledged by all to be one of enumerated powers. . . .

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment . . . omits the word "expressly," and declares only, that the powers "not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;" . . . A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution . . . would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked. . . . Although, among the enumerated powers of government, we do not find the word "bank" or "incorporation," we find the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. . . . But it may with great reason be contended, that a government, entrusted with such ample powers . . . must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. . . . But the constitution of the United States has not left the right of congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning. To its enumeration of powers is added, that of making "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 thereof." . . . This provision is made in a constitution, intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been . . . an unwise attempt to provide . . . for exigencies which, if foreseen at all, must have been seen dimly, and which

can be best provided for as they occur. . . . Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. . . . [I]t is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is . . . constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire -- Whether the State of Maryland may, without violating the constitution, tax that branch? There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the constitution. . . . This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them. From this. . . other propositions are deduced as corollaries. . . . That the power to tax involves the power to destroy. . . . If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent-rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states. . . . The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared. We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

1. What phrases from the COTUS does Chief Justice John Marshall use to justify the power of the federal government to establish a bank?

2. Chief Justice Marshall argues, "the power to tax involves the power to destroy." Explain.

3. Explain the criteria for an implied power in the COTUS. How do we know a power is implied?

4. In *McCulloch v. Maryland* (1819), the SCOTUS helped define the relationship between the federal and state governments. Which is supreme and when?

5. Specifically, which enumerated power is in question?

Thursday, March 26

Unit: Legislative Power

Lesson 4: Federalism's Foundation

Lesson 4 Socratic Question: Keep this question in mind as you study this lesson!
How much power does the national government need to maintain national unity?

Objectives: Be able to do this by the end of this lesson.

1. Outline the Court's decision in *Gibbons v. Ogden*.
2. Explain the Gibbons decision's connection to federalism.

Introduction to Lesson 4

Gibbons v. Ogden (1824), decided 35 years after the ratification of the Constitution, was a turning point for the expansion of federal power to address national problems. Under the Articles of Confederation, the national government was virtually powerless to enact policies to rationalize the actions of states. One problem that emerged during this time was the way in which state policies tended to restrict commerce within and beyond their borders, making market exchanges inefficient and costly. In the Constitution, the framers included the Commerce Clause in Article I, Section 8 to address this issue. The Commerce Clause states that Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States. . . ." The hope was that giving Congress such a power would help to unify commerce policies thereby making market exchanges more efficient and less costly. Though the clause clearly gave Congress some power over commerce, it was unclear just how much. It was also unclear what constituted commerce. The Gibbons case clarified some of these issues under a decision issued by Chief Justice John Marshall, who had nationalist intentions. In 1808, Robert Fulton and Robert Livingston acquired a monopoly from the New York state legislature to operate steamboats on the state's waters. This monopoly extended to interstate waterways, those areas of water that stretch between states. Aaron Ogden held a Fulton-Livingston license to operate steamboats under this monopoly. However, Thomas Gibbons held a federal coasting license, granted under a 1793 Act of Congress, and operated steamboats between New Jersey and New York that competed with Ogden's. Ogden filed a complaint in the Court of Chancery of New York asking the court to restrain Gibbons from operating his boats. Ogden's lawyer contended that states often passed laws on issues regarding interstate matters and that states should have fully concurrent power with Congress on matters concerning interstate commerce. The monopoly, therefore, should be upheld. Gibbons' lawyer, Daniel Webster, argued that Congress had exclusive national power over interstate commerce according to Article I, Section 8 of the Constitution and that to argue otherwise would result in confusing and contradictory local regulatory policies. The Court of Chancery of New York found in favor of Ogden and issued an injunction to restrict Gibbons from operating his boats. Gibbons appealed the case to the Court of Errors of New York, which affirmed the decision. Gibbons appealed the case to the Supreme Court of the United States. In *Gibbons*, the Court answered the constitutional question, who has the power to regulate navigation on interstate waterways, Congress or the states?¹

¹ <https://www.landmarkcases.org/gibbons-v-ogden/gibbons-v-ogden-background-summary-and-questions-3>

Read and Annotate

Reread the following excerpt from Chief Justice Marshall's opinion in *Gibbons v. Ogden*.

Excerpt from Chief Justice John Marshall's Opinion in *Gibbons v. Ogden* (1824)

. . . Rivers and bays, in many cases, form the divisions between States; and thence it was obvious, that if the States should make regulations for the navigation of these waters, and such regulations should be repugnant and hostile, embarrassment would necessarily happen to the general intercourse of the community. Such events had actually occurred, and had created the existing state of things.

By the law of New-York, no one can navigate the bay of New-York, the North River, the Sound, the lakes, or any of the waters of that State, by steam vessels, *without a license from the grantees of New-York*, under penalty of forfeiture of the vessel.

By the law of the neighbouring State of Connecticut, no one can enter her waters with a steam vessel *having such license*.

By the law of New-Jersey, if any citizen of that State shall be *restrained*, under the New-York law, from using steam boats between the ancient shores of New-Jersey and New-York, he shall be entitled to an action for damages, *in New-Jersey*, with treble costs against the party who thus restrains or impedes him *under the law of New-York!*

It would hardly be contended, that all these acts were consistent with the laws and constitution of the United States. If there were no power in the general government, to control this extreme belligerent legislation of the States, the powers of the government were essentially deficient. . . . Few things were better known, than the immediate causes which led to the adoption of the present constitution . . . that the prevailing motive was *to regulate commerce*; to rescue it from the embarrassing and destructive consequences, resulting from the legislation of so many different States, and to place it under the protection of a uniform law. . . . The entire purpose for which the delegates assembled at Annapolis, was to devise means for the uniform regulation of trade. They found no means, but in a general government.

We do not find, in the history of the formation and adoption of the constitution, that any man speaks of a general *concurrent power*, in the regulation of foreign and domestic trade, as still residing in the States. The very object intended, more than any other, was to take away such power. If it had not so provided, the constitution would not have been worth accepting. . . . What is it that is to be regulated? Not the commerce of the several States, respectively, but the commerce of the United States. Henceforth, the commerce of the States was to be an *unit*; and the system by which it was to exist and be governed, must necessarily be complete, entire, and uniform. Its character was to be described in the flag which waved over it, E PLURIBUS UNUM.

The subject to be regulated is commerce; . . . it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. . . . Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. . . . The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation. . . .

The subject to which the power is . . . applied, is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others, is intermingled with them. Commerce among the States, cannot stop at the external boundary line of each State, but may be introduced into the interior.

It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

Comprehensive as the word among is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose. . . . The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

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1. Why was the 1787 Constitution ratified, according to Chief Justice Marshall?

2. Explain Marshall’s definition of “among the States.” How does this definition impact the Gibbons ruling?

Friday, March 27

Unit: Legislative Power

Lesson 4: Federalism’s Foundation

Lesson 5 Socratic Question: Keep this question in mind as you study this lesson!
How much power does the national government need to maintain national unity?

Objectives: Be able to do this by the end of this lesson.

1. Examine the Great Seal of the United States.
2. Explain the connection between the *McCulloch* and *Gibbons* decisions and federalism.

Examine the Image

Examine the Great Seal of the United States. What do you see?



1. Locate the motto on eagle’s scroll in the Great Seal of the United States. What is this motto?

Latin: _____

English: _____

2. Explain the connection between this motto and the Court’s decision in *McCulloch* and *Gibbons*. Treat this exercise as a minor assessment.
