

FEDERALISM

Federalism

- Constitution divides powers of government on a territorial basis between a national government and state governments

US Constitution

- Provides for division of powers between the National Gov. and the States
- Each level of government is over the same people at the same time

Powers of the National Gov.

- ⦿ National Government has Delegated Powers
- ⦿ Delegated Powers= those powers given to it by the Constitution

Expressed Powers

- ⦿ These powers are specifically spelled out in the Constitution:
 - Lay and collect taxes
 - Coin money
 - Regulate foreign and interstate commerce
 - Declare war
 - Grant patents and copyrights

Implied Powers

- ⦿ Not expressly stated in the Constitution, but are reasonably suggested
- ⦿ Necessary and Proper Clause says that Congress has the power to:

“make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers....”

Implied Powers Examples

- ⦿ Regulation of labor and management
- ⦿ Building of the interstate highway system
- ⦿ Prohibiting racial discrimination
- ⦿ Building Hydroelectric Dams

Inherent Powers

- ⦿ These powers belong to the National Government because all governments have these powers
- ⦿ Examples:
 - Immigration
 - Acquire territory
 - Protect the nation from rebellion

Powers Denied to the Federal Government

- ⦿ Expressly denied:
 - Laws prohibiting freedom of religion
 - Conducting illegal searches or seizures
 - Denial of trial by jury
- ⦿ Silence of the Constitution
 - National School System
- ⦿ Existence of Federal System
 - Cannot tax states

State Governments

States have Reserved Powers

Reserved Powers: 10th Amendment
leaves powers NOT granted to the
National Government to the States

Examples of Reserved Powers

- ◎ The States have a huge area of power to regulate:
 - Marriage
 - Alcohol sales
 - Professionals—doctors, lawyers, etc.

Exclusive Powers

- Most powers given to the National Government are exclusive powers
- Exclusive Powers can be used by the National Government alone
- The CANNOT be used by the States

Exclusive Powers:

- ⦿ Examples:

- Power to:

- Coin Money
- Make Treaties
- Power to Regulate Interstate Commerce

Concurrent Powers

- ⦿ Powers that the National Gov. and States possess at the same time:
- ⦿ Power to:
 - Tax
 - Define crimes and punish them
 - Take private property for public use

Supremacy Clause

- Constitution and the laws of the United States are the “supreme Law of the Land”—Article VI, Sec. 2
- If National and State law conflict, then National (Federal) law wins

Supreme Court and Federalism

- McCulloch v. Maryland (1819)
 - Second Bank of the United States was chartered by Congress in 1816
 - 1818: Maryland legislature placed a tax on all notes issued by the Baltimore branch of the Second Bank of the United States
 - James McCulloch (branch cashier) refused to pay the tax and he was convicted by Maryland courts

Supreme Court

- ⦿ Unanimously reversed the Maryland Courts
- ⦿ Chief Justice John Marshall
 - Based decision firmly on the Constitution's Supremacy Clause
 - When there is a conflict, the Federal Gov. wins