

Unit One Lesson #6:

Constitutional Federalism: The Powers of Government

- Constitutional Breakdown
- Powers of the National Government
- Expansion of Central Government Functions
- Concurrent Powers
- Powers of the States
- Balance of Power Debate

Constitutional Breakdown

- Article I - Legislative
- Article II - Executive
- Article III - Judicial
- Article IV – The States
- Article V - Amendments
- Article VI - Supremacy
- Article VII – Ratification

“L E G S A S”

POWERS OF THE NATIONAL GOVERNMENT

Powers granted **ONLY** to the national government are known as **exclusive powers** (Not all national powers are exclusive - such as tax)

1. Enumerated (a.k.a.: expressed, delegated) powers

- Actually stated in the Constitution
- Many are listed (enumerated) in Article 1, Section 8

Enumerated Powers Granted to Congress Article I, Section. 8.

4. 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;
7. To constitute Tribunals inferior to the supreme Court;
9. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
12. To raise and support Armies, but no Appropriation of Money to that Use shall be for longer Term than two Years;
15. To provide and maintain a Navy;
17. To make Rules for the Government and Regulation of the land and naval Forces
19. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

POWERS OF THE NATIONAL GOVERNMENT

2. Implied powers

- Not stated explicitly, but suggested implicitly
- Importance of necessary and proper clause (**elastic clause**)
- Allow the national government to extend its powers beyond those enumerated in the Constitution



Necessary and Proper Clause – AKA . . .

Elastic Clause

Imagine the elastic clause as a giant pair of sweatpants.

The elastic clause, or the necessary and proper clause, is a constitutional clause that gives Congress the power to make all laws “necessary and proper” for executing its powers.

In other words, it means that it is implied that Congress has the power, for instance, to set up a national banking system, even though it’s not expressed in the Constitution.



POWERS OF THE NATIONAL GOVERNMENT

3. Inherent powers

- Not stated explicitly, but held by the national government by virtue of its being a national government.
- Some of these powers come from the Preamble (certain foreign policy powers such as immigration, diplomatic recognition, or acquiring territory).



U.S. Immigration
and Customs
Enforcement

Expansion of Central Government Functions

These constitutional powers expand the power of the federal government

1. The Supremacy Clause
2. The Power to Regulate Interstate and Foreign Commerce (**Commerce Clause**)
3. The War Power
4. The Power to Tax and Spend



Expansion of Central Government Functions

1. The Supremacy Clause

States may not override national policies; this restriction also applies to local units of government, since they are agents of the states (Constitution and national laws are the supreme laws)

The supremacy clause in the Constitution states that federal law takes precedence over state law when the laws conflict

Supremacy Clause - A Ladder of Laws

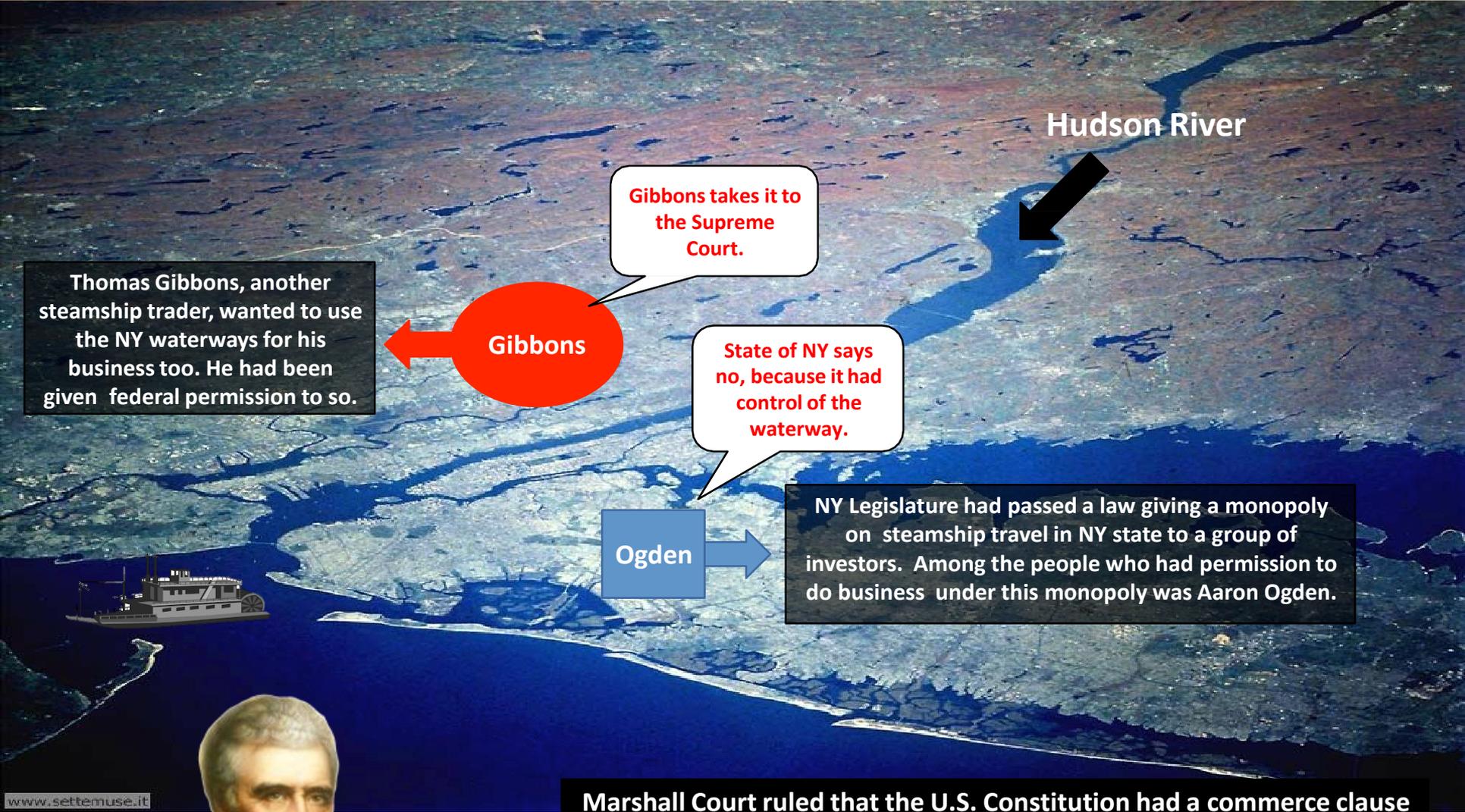
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1. U.S. Constitution
 2. Federal Laws and Treaties
 3. State Constitutions
 4. State Laws
 5. Local Laws

Expansion of Central Government Functions

2. The Power to Regulate Interstate and Foreign Commerce

- Through the commerce clause, Congress can regulate many activities and sustain other legislation as well
 - *Gibbons v. Ogden* (1824)
 - Only National government (Congress) may regulate interstate commerce
 - Power is not shared with the states
- The federal government's role has been greatly expanded through the interpretation of this clause
 - *Heart of Atlanta Motel v. U.S.* (1964)
 - Congress has a right to regulate individual, private businesses in the interest of promoting interstate travel
 - Civil Rights Act of 1964 applied to private businesses because customers come from out-of-state

Gibbons v. Ogden (1824)



Thomas Gibbons, another steamship trader, wanted to use the NY waterways for his business too. He had been given federal permission to so.

Gibbons takes it to the Supreme Court.

State of NY says no, because it had control of the waterway.

NY Legislature had passed a law giving a monopoly on steamship travel in NY state to a group of investors. Among the people who had permission to do business under this monopoly was Aaron Ogden.



Marshall Court ruled that the U.S. Constitution had a commerce clause that allowed the federal government to regulate commerce and believed that the U.S. government had the "necessary and proper" or "elastic clause" to regulate interstate commerce.

Expansion of Central Government Functions

3. The War Power

- The national government has the power to wage war
- The president can send troops because he is commander-in-chief of the military

4. The Power to Tax and Spend

- By attaching conditions to its grants of money, Congress may regulate what it cannot directly control by law
 - Congress can't technically legislate everything, but it can spend on virtually anything.
 - States don't have to accept federal money, but if they do, they must follow federal guidelines (e.g. federal highway funds can be denied if a state's alcohol purchasing age is less than 21, federal education funds can be denied if states do not comply with No Child Left Behind Act) – Federal “strings” attached to funding are ways in which the federal government can get its way on things.
 - Recent example: Obamacare – Supreme Court ruled it was a tax and that the federal government could require people to have healthcare

CONCURRENT POWERS

- Each state has concurrent powers with the national government
- **Granted to Congress, but not denied by Constitution or courts to the states >> held by both national and state governments**
- **Examples:**
 - Taxing
 - Borrowing
 - Establishing court system
 - Establishing law enforcement agencies
- Questions of federal/state authority are decided by courts

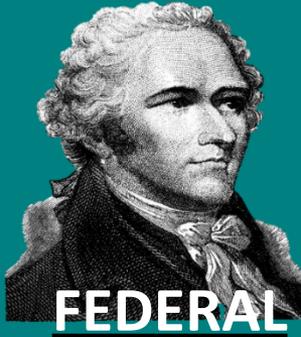


Concurrent powers are shared by both the Federal and State governments.

POWERS OF THE STATES

- States have **RESERVED POWERS**: the Constitution reserves for the states all powers not granted to the national government, subject only to the limitations of the Constitution
- **Amendment # 10** states that any powers not granted to the national government are reserved for the states
- **Examples:**
 - Establishing voting requirements
 - Running elections
 - Establishing education
 - Licensing professionals
 - Protecting community health
 - Establishing a vehicle code and state police

BALANCE OF POWER DEBATE



FEDERAL



STATE

Fourteenth Amendment:

Constitutional Amendment that grants citizenship, equal protection, and due process under the law to all people born in the United States.

Over the years, the Fourteenth Amendment has been used to require states to protect most of the same federal freedoms granted by the Bill of Rights.

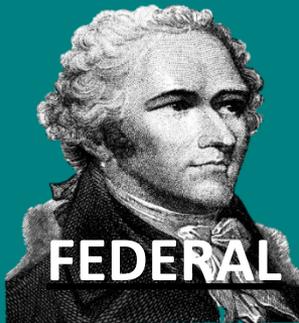
Example: African American voting rights.

Tenth Amendment:

Constitutional Amendment that stipulates that all powers not given to the federal government are reserved to the States or the people.

This guarantee protects states' reserved powers to regulate such things as marriage, divorce, and intrastate transportation and commerce, and to pass laws affecting education and public health and safety.

BALANCE OF POWER DEBATE



Implied powers:

Powers of the federal government that are not explicitly named in the Constitution but are implied by the "necessary and proper clause" so that the federal government can carry out its enumerated powers.

STATE



Reserved powers:

Powers that only the state governments can carry out, such as setting up schools

or running elections. The concept of reserved powers is defined in the 10th Amendment, which states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively." In other words, if the Constitution does not give a certain power to the federal government and does not explicitly say that the states are not allowed to carry out that responsibility, then it is reserved for the state.

