
Federalism 联邦制

I. 我。 HOW THE FEDERAL AND STATE GOVERNMENTS SHARE POWER

联邦政府和州政府如何分享权力

A. FEDERALISM AND THE CONSTITUTION

A. 联邦制与宪法

1. Federalism is a system of government in which more than one government holds governing authority over people within the same territory at the same time. This system was devised by the Framers as a way to reconcile the demands and interests of many states into a single political entity. An important debate at the Philadelphia Convention in 1787 involved the sharing of powers between the state and national governments. While the general form of a federal government, featuring a division of power between state and federal levels, was broadly accepted, exactly how government power was to be divided had to be hammered out. In the end, some powers were granted by the Constitution to either the federal or state governments, while some powers were shared.
1. 联邦制是一种政府体制，在这种体制下，多个政府同时对同一领土内的人民行使管辖权。制宪者设计这一体制的目的是为了协调众多州的需求和利益，使之融入一个统一的政治实体。1787 年费城制宪会议上的一场重要辩论涉及州政府和联邦政府之间的权力分配。虽然联邦政府的一般形式，即州和联邦两级政府权力分立，已被广泛接受，但政府权力的具体划分方式仍需敲定。最终，宪法规定部分权力归联邦政府或州政府所有，而部分权力则由两级政府共享。
2. Exclusive powers are those powers that are held entirely by either the federal government or state governments. A power that is exclusively held by the federal government may not be exercised by the states, and vice versa.
2. 专属权力是指完全由联邦政府或州政府拥有的权力。联邦政府专属拥有的权力不得由各州行使，反之亦然。
3. Concurrent powers are those powers that are shared by the federal and state governments and may be exercised by both.
3. 共同权力是指联邦政府和州政府共同拥有的权力，并且双方都可以行使这些权力。

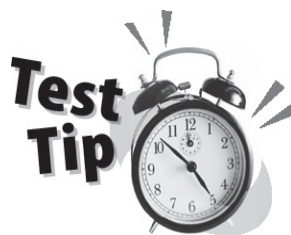
Examples of Powers Held by State & Federal Governments*

州政府和联邦政府所拥有的权力示例*

Exclusive Powers of Federal Government 联邦政府的专属权力	Concurrent Powers 并行权力	Exclusive Powers of State Governments 州政府的专属权力
coin and regulate money 货币发行和监管	taxation 税收	regulate education 教育监管
conduct foreign relations 处理对外关系	enact laws 制定法律	regulate marriage 规范婚姻
naturalization 入籍	define crimes and enforce punishments 界定犯罪行为并执行惩罚措施	regulate intrastate (within the state) commerce 规范州内（州内）商业活动
declare war 宣战	establish courts 设立法院	establish local governments 建立地方政府
maintain army and navy 维持陆军和海军	borrow money 借钱	conduct elections 举行选举
regulate interstate and foreign commerce 规范州际和国际贸易	charter banks and corporations 特许银行和公司	
establish postal system 建立邮政系统	build infrastructure (roads, dams, bridges, etc.) 建设基础设施（道路、水坝、桥梁等）	
	exercise eminent domain 行使征用权	

*This list includes examples only and is not inclusive of all powers.

*此列表仅包含示例，并不涵盖所有能力。



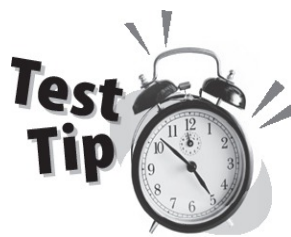
Conflicts often arise relating to state vs. federal power in specific areas. Questions about gun regulation and marijuana legalization, for instance, may lead to disagreement between state and federal laws. In these cases, the judicial branch determines which government holds authority in each particular circumstance. Considerations include the type of power in question and how the Constitution assigns (or denies) it, as well as the role of the Necessary and Proper Clause and the Supremacy Clause.

在特定领域，州权与联邦权之间常常存在冲突。例如，枪支管制和医用大麻合法化等问题可能导致州法律与联邦法律之间的分歧。在这种情况下，司法部门将决定在具体情况下哪个政府拥有管辖权。需要考虑的因素包括所涉权力的类型、宪法如何赋予（或剥夺）该权力，以及“必要且适当条款”和“最高条款”的作用。

B. FEDERALISM IN PRACTICE

B. 联邦制的实践

1. As with most aspects of government, the distinctions between exclusive and concurrent powers are not always clear. They are most commonly represented by two models or ideal types: dual federalism and cooperative federalism.
1. 与政府的大多数方面一样，专属权力和并行权力之间的界限并非总是清晰的。它们通常用两种模式或理想类型来表示：双重联邦制和合作联邦制。
 - a. Dual federalism portrays power within the federal system as clearly delineated between those powers exercised by the federal government and those held by the states. Under this analysis, each level of government holds and exercises specific powers within its own sphere of influence, and there is very limited overlap between the spheres. Dual federalism is often called *layer cake federalism* because, like a layer cake, the layers are distinctly separate from each other.
 - a. 双重联邦制将联邦体系内的权力划分为联邦政府行使的权力与各州行使的权力，二者界限分明。根据这种分析，每一级政府在其各自的影响范围内拥有并行使特定的权力，各层级之间的重叠非常有限。双重联邦制常被称为“千层蛋糕式联邦制”，因为就像千层蛋糕一样，其各层之间界限分明。
 - b. The model of cooperative federalism envisions a system in which there is extensive overlap and interplay between state and federal exercises of power. In this view, the state and federal governments share concerns involving many of the same issues and policy areas, and often act, both independently and cooperatively, within the same spheres. This model is often referred to as *marble cake federalism*, to emphasize the complex interaction between the levels of government.
 - b. 合作联邦制模式设想了一种州和联邦权力广泛重叠和相互作用的体系。在这种模式下，州政府和联邦政府在许多相同的问题和政策领域拥有共同的关注点，并且经常在同一领域内独立或合作地采取行动。这种模式通常被称为“大理石蛋糕式联邦制”，以强调各级政府之间复杂的互动关系。



The history of the United States reflects an evolving view of the appropriate exercise of power by each level of government. Overall, the trend has been an expansion of federal power into state and local areas, although, during certain periods, the ideal of dual federalism has been favored.

美国历史反映了各级政府行使权力方式的演变历程。总体而言，联邦权力不断向州和地方扩张，尽管在某些时期，双重联邦制也曾盛行。

2. Federal Grants (Grants-in-Aid). A primary avenue through which the federal government has extended its influence into state and local matters has been through the use of grants. These are transfers of money from one level of government (in this case, federal) to another to be used for a specified purpose. Federal grants may take

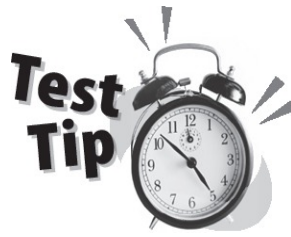
several forms, some of which come with many requirements attached, some with few.

2. 联邦拨款（补助金）。联邦政府将其影响力扩展到州和地方事务的主要途径之一是通过拨款。拨款是指将资金从一级政府（在本例中为联邦政府）转移到另一级政府，用于特定用途。联邦拨款的形式多种多样，有些附带诸多要求，有些则要求较少。
 - a. Categorical grants are grants of money to state and local governments that must be used in compliance with highly specific instructions.
 - a. 专项拨款是指向州和地方政府提供的资金，必须按照非常具体的指示使用。
 - b. Block grants are transfers of money to state and local governments given for broad purposes with few strings attached.
 - b. 整笔拨款是向州和地方政府转移资金，用于广泛的用途，很少附加条件。
 - c. Federal revenue-sharing was a practice under which the federal government collected taxes nationally and then distributed a portion of that national tax revenue to state and local governments without specific policy requirements attached. It was implemented in 1972 and reflected a movement away from what was perceived as the burdensome requirements of categorical grants. It was argued that local officials were in a better position than federal officials to determine how best to address issues on a local level. From a federal enforcement perspective, such a program was also easier and more efficient to administer. The revenue-sharing program was discontinued in 1986.
 - c. 联邦收入分享计划是指联邦政府在全国范围内征税，然后将部分税收分配给州和地方政府，且不附加任何具体政策要求。该计划于 1972 年实施，体现了政府逐渐摒弃被认为繁琐的专项拨款制度的趋势。有人认为，地方官员比联邦官员更能有效地解决地方层面的问题。从联邦执法角度来看，该计划也更易于管理，效率更高。收入分享计划于 1986 年终止。
 - d. Mandates are federal directives that generally require the recipient state or local government to comply with specific requirements in return for federal aid money. In other words, the grant of money is *conditional* on the recipient's compliance with specific federal requirements.
 - d. 联邦指令是指联邦政府发布的指令，通常要求接受援助的州或地方政府遵守特定要求，以此换取联邦援助资金。换句话说，资金的拨付取决于接受援助方是否遵守特定的联邦要求。
 - Some mandates may be unfunded. An unfunded mandate is one that imposes duties and associated costs on state or local governments without providing federal money to cover those costs.
 - 部分强制性规定可能缺乏资金支持。缺乏资金支持的强制性规定是指，联邦政府没有提供资金来支付相关费用，却对州或地方政府施加了关税和相关成本。
 - e. Federal incentives are monies offered to state and local governments and individuals for various purposes that serve the national interest.
 - e. 联邦激励措施是向州和地方政府以及个人提供的资金，用于各种服务于国家利益的用途。

Models of Federal Assistance to State and Local Governments

联邦政府对州和地方政府的援助模式

	Key Features 主要特点	Examples 示例
Categorical Grant 专项拨款	<ul style="list-style-type: none"> – money transferred between levels of government 政府各层级之间的资金转移 – recipient must comply with specific requirements 接收方必须遵守特定要求 	<ul style="list-style-type: none"> – Head Start program grants provide money for early childhood education. “启蒙计划” 拨款为幼儿教育提供资金。 – Medicaid program provides healthcare funding for eligible low-income families and individuals. – 医疗补助计划为符合条件的低收入家庭和个人提供医疗保健资金。
Block Grant 整笔拨款	<ul style="list-style-type: none"> – money transferred between levels of government 政府各层级之间的资金转移 – recipient must comply with only broad purpose; few requirements 接收方只需遵守宽泛的目的；要求很少。 	<ul style="list-style-type: none"> – Community Development Block Grant from the U.S. Department of Housing and Urban Development – 来自美国住房和城市发展部的社区发展专项拨款 – The Temporary Assistance to Needy Families (TANF) program provides a block grant to states to provide limited financial support for low-income families. – 贫困家庭临时援助 (TANF) 计划向各州提供一笔拨款，为低收入家庭提供有限的财政支持。
Revenue Sharing 收益分成	<ul style="list-style-type: none"> – revenue collected by federal government and transferred to state and local governments 联邦政府征收并转移给州和地方政府的收入 – spending at discretion of local officials ——地方官员可自行决定支出 	<ul style="list-style-type: none"> – 1986 revenue-sharing grants ranged from \$201 for the smallest town to \$41,957,530 for New York City 1986年的收入分成补助金从最小城镇的201美元到纽约市的41,957,530美元不等。
Mandate 授权	<ul style="list-style-type: none"> – federal rule that imposes an obligation on state or local government 联邦法规对州或地方政府施加了义务 – frequently associated with receipt of federal funding ——通常与获得联邦资金有关 	<ul style="list-style-type: none"> – The Civil Rights Act of 1964 outlawed discrimination based on race, color, religion, sex, or national origin. 1964 年《民权法案》禁止基于种族、肤色、宗教、性别或国籍的歧视。 – The National Minimum Drinking Age Act of 1984 conditioned receipt of federal highway funding on state compliance with raising the drinking age to 21. – 1984 年《国家最低饮酒年龄法》规定，各州必须将饮酒年龄提高到 21 岁，才能获得联邦公路资金。
Unfunded Mandate 未获拨款的授权	<ul style="list-style-type: none"> – federal rule that imposes an obligation on state or local government without providing funds to help pay associated costs 联邦法规规定州或地方政府有义务支付相关费用，但并未提供资金帮助支付相关费用。 	<ul style="list-style-type: none"> – The Americans with Disabilities Act of 1990 prohibits discrimination against disabled Americans and requires states to comply with costly access requirements. No federal funds are provided. 1990 年《美国残疾人法案》禁止歧视残疾美国人，并要求各州遵守成本高昂的无障碍设施要求。该法案不提供联邦资金。



Expect to encounter questions asking you to differentiate between block and categorical grants. In the case of a block grant, the states must spend federal funds on a broadly defined area of policy. For example, transportation block funds could be used for building roads, airports, train systems, or ports. However, with a categorical grant, states must use the money for a more specific policy area such as a categorical transportation grant that can only be used for building airports.

预计会遇到要求你区分整笔拨款和专项拨款的问题。整笔拨款是指各州必须将联邦资金用于一个宽泛的政策领域。例如，交通整笔拨款可以用于修建道路、机场、铁路系统或港口。而专项拨款则要求各州将资金用于更具体的政策领域，例如，专项交通拨款只能用于修建机场。

3. *Devolution* is a federal effort to return authority temporarily to the states, including decisions about administering federal programs and spending federal money.
3. 权力下放是联邦政府为暂时将权力交还给各州而做出的努力，包括管理联邦项目和使用联邦资金的决定。

C. MULTIPLE ACCESS POINTS

C. 多个接入点

1. An important concept with regard to both separation of powers as well as federalism, is the idea of access to power, or the ability of citizens to influence policy through multiple avenues. In this context, an *access point* is a place where individuals or groups can interact with government to affect government actions.
1. 就权力分立和联邦制而言，一个重要的概念是权力获取，或者说公民通过多种途径影响政策的能力。在此语境下，“获取途径”指的是个人或团体可以与政府互动并影响政府行为的地方。
2. The separation of powers among the three branches of government creates numerous access points by giving each branch specific powers and making each branch responsible to the public in specific ways.
2. 政府三权分立，赋予各部门特定权力，并规定各部门以特定方式对公众负责，从而创造了众多途径。

Examples of Access Opportunities*

机会获取示例*

Legislative Branch 立法部门	Executive Branch 行政部门	Judicial Branch 司法部门
<ul style="list-style-type: none"> – Citizens vote for representatives whom they believe will represent their political views and interests. <p>公民投票选举他们认为能够代表其政治观点和利益的代表。</p>	<ul style="list-style-type: none"> – Citizens vote for an executive whom they believe will represent their political views and interests. <p>公民投票选举他们认为能够代表其政治观点和利益的行政长官。</p>	<ul style="list-style-type: none"> – Citizens vote for judges at the state level. <p>公民在州一级投票选举法官。</p>
<ul style="list-style-type: none"> – Citizens share opinions with their legislators in many ways, such as phone calls, emails, social media, and town hall meetings. – 公民可以通过多种方式与立法者分享意见，例如电话、电子邮件、社交媒体和市政厅会议。 	<ul style="list-style-type: none"> – Citizens share opinions with the executive through phone calls, emails, and social media. – 公民可以通过电话、电子邮件和社交媒体向行政部门表达意见。 	<ul style="list-style-type: none"> – Citizens may file lawsuits to enforce or dispute laws or regulations. <p>公民可以提起诉讼来强制执行或质疑法律或法规。</p>
<ul style="list-style-type: none"> – Interest groups lobby legislators on behalf of their members. <p>利益集团代表其成员游说立法者。</p>	<ul style="list-style-type: none"> – Citizens and interest groups interact with various agencies to influence regulatory policy. <p>公民和利益团体与各机构互动，以影响监管政策。</p>	<ul style="list-style-type: none"> – Interest groups may file <i>amicus curiae</i> briefs to influence court decisions. – 利益集团可以提交法庭之友意见陈述书，以影响法院的判决。

*This chart is not intended to include all of the many ways citizens and groups can access government.

*本图表并未涵盖公民和团体与政府联系的所有途径。

- The federal system allows for citizens to impact policy at both the state and federal government levels. The 50 state governments replicate the federal structure, allowing access to three branches at both levels of government.
- 联邦制允许公民在州和联邦政府层面影响政策。50 个州政府都效仿联邦结构，允许公民在州和联邦政府层面都拥有三权分立的权力。

II. 二、THE EVOLUTION OF FEDERALISM

联邦制的演变

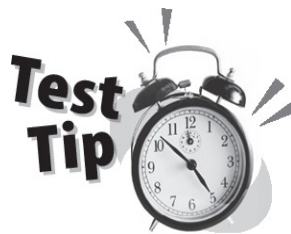
A. HOW POWER IS DIVIDED BY THE CONSTITUTION

A. 宪法如何划分权力

- Several sections and clauses within the Constitution address the sharing of power between the federal and state governments, but it is not always clearly defined. Under the federal system, states generally hold broad lawmaking authority within their borders, so long as they do not contradict federal law or infringe on individual rights. The power relationship between the state and federal governments has changed over

time through several mechanisms, especially court decisions, and continues to evolve.

1. 宪法中的若干条款涉及联邦政府和州政府之间的权力分配，但其界定并非总是清晰明确。在联邦体制下，各州在其辖区内通常拥有广泛的立法权，只要这些立法不与联邦法律相抵触或侵犯个人权利。随着时间的推移，州政府和联邦政府之间的权力关系通过多种机制，特别是法院判决，发生了变化，并且仍在不断演变。
2. **Article 1, Section 8.** This section of the Constitution lists 17 specific (enumerated) powers of Congress, including the power to tax, the power to borrow on the credit of the United States, and the power to maintain military forces. This specific and rather narrow list reflects the concept of limited government. Congress was intended to be limited in its exercise of power to the 17 specific areas described.
2. **第一条第八款。** 宪法的这一部分列出了国会的 17 项具体（列举）权力，包括征税权、以美国信用借款的权力以及维持军队的权力。这份具体且范围较窄的清单体现了有限政府的理念。国会行使权力的意图是将其限制在上述 17 个特定领域内。
3. **Necessary and Proper Clause.** The list of specific powers in Article 1, Section 8 concludes with the Necessary and Proper Clause. This clause grants Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers. . . .” In other words, Congress holds powers, which are not specified in the Constitution, that may be reasonably related to the use of those powers that are listed. These are known as implied powers. It would be futile to try to list a power for everything Congress might need to do in order to effectively exercise its enumerated powers. For example, maintaining military forces involves contracting for the manufacture of weapons, procuring housing and food for troops, providing education, and numerous other actions not specified in the Constitution. The Necessary and Proper Clause allows these and thousands of other (not enumerated) powers to be exercised by Congress.
3. **必要且适当条款。** 第一条第八款列举的具体权力清单以必要且适当条款结尾。该条款赋予国会“为执行前述权力所必需且适当的一切法律.....”的权力。换言之，国会拥有宪法中未明确规定的权力，这些权力可能与所列举的权力合理相关。这些权力被称为隐含权力。试图列举国会为有效行使其列举权力可能需要做的一切事情是徒劳的。例如，维持军队的运转涉及签订武器制造合同、为军队采购住房和食物、提供教育以及宪法中未列明的许多其他行动。必要且适当条款允许国会行使这些以及数千种其他（未列举的）权力。



Remember that the Necessary and Proper Clause is called the Elastic Clause because it expands the power of Congress.

请记住，“必要且适当条款”之所以被称为“弹性条款”，是因为它扩大了国会的权力。

4. **Regulate Interstate (and Foreign) Trade.** One of the most expansive powers listed in Article 1, Section 8 is the power of Congress to regulate interstate (and foreign) trade. This authority is found in the Commerce Clause, which grants Congress the power to “regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes . . .” (Commerce is the movement of goods and services in an

economy.) This brief clause has been the subject of intense controversy and has served as the primary basis for the expansion of federal power.

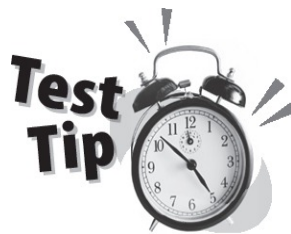
4. **监管州际（及对外）贸易。** 宪法第一条第八款列举的权力中，最广泛的权力之一是国会监管州际（及对外）贸易的权力。这项权力源于商业条款，该条款赋予国会“监管与外国、各州之间以及与印第安部落之间的商业……”的权力。（商业是指经济中商品和服务的流动。）这一简短的条款引发了激烈的争议，并成为联邦权力扩张的主要依据。

a. Note that the Constitution gives Congress the power to regulate *interstate* commerce, or business between and among the states, but not *intrastate* commerce, the regulation of which is a power retained by the states.

a. 请注意，宪法赋予国会监管州际贸易（即各州之间及州内的商业活动）的权力，但并未赋予国会监管州内贸易的权力，州内贸易的监管权由各州保留。

b. Because it can be very difficult to determine what economic transactions are interstate versus intrastate, this power has been interpreted very broadly. With a few notable exceptions, most commercial activities have been found by the Court to be a part of the stream of interstate commerce.

b. 由于很难界定哪些经济交易属于州际交易，哪些属于州内交易，因此这项权力被解释得非常宽泛。除少数例外情况外，法院认定大多数商业活动都属于州际贸易的一部分。



Scenarios in which the power of the federal government is expanded are very frequently related to the commerce power (through the Necessary and Proper Clause). This power has been used to prohibit discrimination, regulate controlled substances, prohibit human trafficking, and many other activities that do not obviously relate to interstate commerce. Also, when you see the term interstate, think of commerce power!

联邦政府权力扩张的情形通常与商业权力（通过“必要且适当条款”）密切相关。这项权力已被用于禁止歧视、监管管制物质、禁止人口贩运以及许多其他与州际贸易看似无关的活动。此外，当你看到“州际”这个词时，请想想商业权力！

5. Article IV: Relations Among States

5. 第四条：国家间关系

a. The Full Faith and Credit Clause requires states to accept the public acts, records, and judicial outcomes of the other states. For example, if two people are married in one state, their marriage must be recognized by the other states.

a. “完全信任与尊重条款”要求各州接受其他州的公共行为、记录和司法判决。例如，如果两个人在一个州结婚，他们的婚姻必须得到其他州的承认。

b. The Privileges and Immunities Clause prohibits states from discriminating unreasonably against citizens of other states. For example, a state's police force may not focus exclusively on out-of-state drivers for ticketing, but a state may charge higher tuition rates to out-of-state students, who do not support the

state's university system through their taxes.

- b. 特权和豁免条款禁止各州对其他州的公民进行不合理的歧视。例如，一个州的警察部队不得专门针对外州司机开罚单，但该州可以向外州学生收取更高的学费，因为外州学生没有通过纳税来支持该州的大学系统。
- c. Extradition is the return of a fugitive from justice from one state to another. This is guaranteed by Article IV.
- c. 引渡是指将逃避司法制裁的逃犯从一个国家遣返回另一个国家。这是《宪法》第四条所保障的。
- d. Congress admits new states to the union and governs U.S. territories.
- d. 国会接纳新州加入联邦并管理美国领土。
- e. The federal government must intervene militarily to protect states when needed.
- e. 必要时，联邦政府必须采取军事手段保护各州。

6. Article VI: Supremacy

第六条：至高无上

- a. The Supremacy Clause makes clear that the Constitution and all laws and treaties made by the federal government take precedence over state laws.
 - a. 最高条款明确规定，宪法以及联邦政府制定的所有法律和条约优先于州法律。
 - b. All state and federal officers must swear by oath or affirmation to uphold the Constitution, but religious requirements are prohibited as a requirement for holding office.
 - b. 所有州和联邦官员都必须宣誓或声明维护宪法，但禁止将宗教要求作为担任公职的条件。
7. **The Tenth Amendment** states that "[t]he 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." This amendment represents a counterweight to the broad interpretation of the Necessary and Proper Clause, and is critical to understanding the states' rights arguments that historically tend to arise when states oppose a particular national policy. The Supreme Court does not have a strong tradition of recognizing specific rights or powers as belonging to the states. However, at times the Tenth Amendment has been referenced in decisions limiting federal power, and it is generally the basis for arguments asserting that specific powers are held by the states.
7. **第十修正案**规定：“宪法未授予合众国、也未禁止各州行使的权力，均由各州或人民保留。”该修正案制衡了对“必要且适当条款”的宽泛解释，对于理解历史上各州反对特定国家政策时常出现的州权论证至关重要。最高法院并没有明确承认特定权利或权力属于各州的悠久传统。然而，在限制联邦权力的判决中，第十修正案有时会被援引，并且通常也是主张特定权力属于各州的论据基础。
8. **The Fourteenth Amendment**, adopted in 1868 following the Civil War, has also had a profound impact on the allocation of power between the states and the federal government. Conceived to address the oppression of former slaves by southern state governments, its adoption was a requirement for those states' readmission to the union and congressional representation. Section 1 defines citizenship and guarantees

due process and equal protection to all persons. Specifically, the amendment prohibits any state from depriving any person of due process or equal protection. The Due Process Clause of the *Fourteenth* Amendment (not the Due Process Clause of the *Fifth* Amendment) has been used by the Supreme Court to prohibit states from infringing upon most rights guaranteed to citizens by the Bill of Rights, which was previously interpreted as solely limiting the power of the federal government.

8. 内战结束后于 1868 年通过的**第十四修正案**，对各州与联邦政府之间的权力分配产生了深远的影响。该修正案旨在解决南方各州政府对前奴隶的压迫问题，其通过是这些州重新加入联邦并获得国会席位的必要条件。第一款界定了公民身份，并保障所有人享有正当程序和平等保护。具体而言，该修正案禁止任何州剥夺任何人的正当程序或平等保护。最高法院曾援引**第十四修正案**的正当程序条款（而非**第五修正案**的正当程序条款）来禁止各州侵犯《权利法案》保障的大多数公民权利，而《权利法案》此前一直被解释为仅限制联邦政府的权力。

Constitutional Clauses Related to Federal and State Power

与联邦和州权力相关的宪法条款

Constitutional Section or Clause 宪法章节或条款	What It Says 它上面写着什么	How It Affects the Distribution of Government Power 它如何影响政府权力的分配
Article I, Section 8 第一条，第八款	<ul style="list-style-type: none">– lists 17 specific enumerated powers of Congress 列出了国会的17项具体列举权力。	<ul style="list-style-type: none">– limits power of federal legislature (Congress) 限制联邦立法机构（国会）的权力
Necessary and Proper Clause 必要且适当条款	<ul style="list-style-type: none">– grants numerous additional unspecified powers to Congress if needed to carry out 17 enumerated powers– 赋予国会在必要时行使列举的17项权力时所需的众多其他未指明的权力。	<ul style="list-style-type: none">– expands power of Congress (Elastic Clause) ——扩大国会的权力（弹性条款）
Commerce Clause 商业条款	<ul style="list-style-type: none">– grants Congress the power to regulate interstate and foreign trade 赋予国会监管州际贸易和国际贸易的权力	<ul style="list-style-type: none">– expands power of Congress through Necessary and Proper Clause because “interstate commerce” is so broad ——通过“必要且适当条款”扩大了国会的权力，因为“州际贸易”的范围非常广泛。
Supremacy Clause 最高条款	<ul style="list-style-type: none">– states that the Constitution and federal laws and treaties are the supreme law of the land ——声明宪法、联邦法律和条约是国家的最高法律。	<ul style="list-style-type: none">– limits state power by prohibiting states from acting contrary to federal laws and treaties 限制州权，禁止各州采取违反联邦法律和条约的行为。
Tenth Amendment 第十修正案	<ul style="list-style-type: none">– reserves all rights not explicitly granted by the Constitution to the federal government to the states ——保留宪法未明确授予联邦政府的所有权利，这些权利均归各州所有。	<ul style="list-style-type: none">– enhances state power; limits federal power 增强州权；限制联邦权力
Fourteenth Amendment 第十四修正案	<ul style="list-style-type: none">– Due Process Clause requires states to ensure due process of law 正当程序条款要求各州确保法律程序正当。 <ul style="list-style-type: none">– Equal Protection Clause requires that states afford equal treatment to all persons 平等保护条款要求各州给予所有人平等待遇。	<ul style="list-style-type: none">– prohibits states from violating individual rights guaranteed by the U.S. Constitution ——禁止各州侵犯美国宪法保障的个人权利。 <ul style="list-style-type: none">– prohibits unequal treatment based on group membership 禁止基于群体成员身份的不平等待遇

B. THE SUPREME COURT AND THE EVOLUTION OF FEDERAL POWER

B. 最高法院与联邦权力的演变

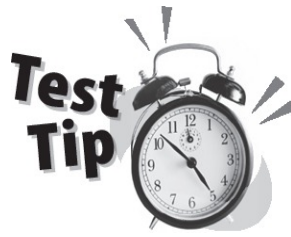
1. *McCulloch v. Maryland* (1819)

1. 麦卡洛克诉马里兰州案（1819年）

Questions around federal power and the extent of the Necessary and Proper Clause arose early in United States history. *McCulloch* was a result of Maryland's attempt to impose a tax on the Second Bank of the United States. The cashier of the Baltimore branch, James McCulloch, refused to pay the tax. The Supreme Court held that the power to establish a national bank was implied by the enumerated powers of Congress. The case produced two important rulings with regard to federal/state power sharing:

关于联邦权力和“必要且适当条款”适用范围的问题在美国历史上早期就已出现。麦卡洛克案源于马里兰州试图向美国第二银行征税。巴尔的摩分行的出纳员詹姆斯·麦卡洛克拒绝缴纳税款。最高法院裁定，国会列举的权力中包含了设立国家银行的权力。该案就联邦/州权力分配问题产生了两个重要的判决：

- a. **Facts of the Case:** In 1816, Congress chartered the Second Bank of the United States, which was the target of significant political opposition. Several states enacted anti-Bank laws. Maryland's law placed a tax on all banks operating in the state that were not chartered by the state. This tax was aimed squarely at the federal Bank. When the Bank failed to pay the tax, Maryland sued the Bank and its cashier, James McCulloch.
- a. **案件事实：** 1816 年，国会特许成立了美国第二银行，该银行随即遭到强烈的政治反对。多个州颁布了反银行法。马里兰州的法律规定，所有在该州运营但未获得州政府特许的银行均需缴税。这项税收的目标直指联邦银行。由于该银行未能缴纳税款，马里兰州起诉了该银行及其出纳员詹姆斯·麦卡洛克。
- b. **Constitutional Issue(s):** Does the federal government have the constitutional authority to charter a national bank? If so, does the state of Maryland have the authority to tax the bank?
- b. **宪法问题：** 联邦政府是否有权设立国家银行？如果有，马里兰州是否有权对该银行征税？
- c. **Holding(s):** The federal government does have the constitutional authority to charter a national bank. States do not have the authority to tax a federal bank.
- c. **结论：** 联邦政府确实拥有宪法赋予的设立国家银行的权力。各州无权对联邦银行征税。
- d. **Reasoning:** The establishment of a national bank is a legitimate exercise of congressional power under the Necessary and Proper Clause of Article I. The Constitution grants Congress several powers, including the power to borrow, tax, coin money, and regulate commerce, that may be facilitated through a national bank. Although the establishment of a bank is not one of Congress's specifically enumerated powers, it is clearly within the category of actions anticipated by the Necessary and Proper Clause. The national bank is a helpful and appropriate means for Congress to implement its enumerated powers. Furthermore, under the Supremacy Clause, the state of Maryland did not have the authority to tax the bank. "[T]he power to tax involves the power to destroy." According to the Supremacy Clause, the state of Maryland may not impede the legitimate actions of the federal government.
- d. **理由：** 根据宪法第一条“必要且适当条款”，设立国家银行是国会合法行使权力的行为。宪法赋予国会多项权力，包括借贷、征税、铸币和监管商业，而国家银行可以促进这些权力的行使。虽然设立银行并非国会列举的权力之一，但它显然属于“必要且适当条款”所预期的行为范畴。国家银行是国会行使列举权力的有效且适当的手段。此外，根据“最高条款”，马里兰州无权对该银行征税。“征税权包含着毁灭权。”根据“最高条款”，马里兰州不得妨碍联邦政府的合法行为。



McCulloch v. Maryland is important because it is the foundational case broadly interpreting the scope of the Necessary and Proper Clause. The Court held that the Necessary and Proper Clause granted Congress implied powers, which it may use to carry out its enumerated powers. Secondly, the Court relied on the Supremacy Clause to invalidate the state law to tax the national bank, which contradicted the federal law chartering the bank.

麦卡洛克诉马里兰州案之所以重要，是因为它是对“必要且适当条款”适用范围进行广泛解释的奠基性案例。法院认为，“必要且适当条款”赋予国会隐含权力，国会可利用这些权力行使其列举的权力。其次，法院援引“最高条款”宣布州政府对国家银行征税的法律无效，因为该法律与联邦特许该银行的法律相抵触。

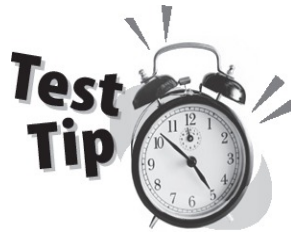
2. *United States v. Lopez* (1995)

2. 美国诉洛佩兹案（1995年）

- a. **Facts of the Case:** Alfonso Lopez was a twelfth-grade student who carried a gun and ammunition into his Texas high school. He was convicted of violating the federal Gun-Free School Zones Act of 1990 which made it illegal “for any individual knowingly to possess a firearm [in] a school zone.” He was sentenced to six months in prison and an additional two years of probation.
- a. **案件事实：**阿方索·洛佩兹是一名十二年级学生，他携带枪支弹药进入德克萨斯州的高中。他因违反1990年联邦《校园禁枪区法案》而被定罪，该法案规定“任何人在学校区域内明知故犯地持有枪支均属违法”。他被判处六个月监禁和两年缓刑。
- b. **Constitutional Issue(s):** Does the federal government have the authority to regulate firearms through the Gun-Free School Zones Act within the states under the Commerce Clause?
- b. **宪法问题：**联邦政府是否有权根据商业条款，通过《无枪校园区法》在各州范围内管制枪支？
- c. **Holding(s):** No, the Commerce Clause does not allow Congress the power to regulate the carrying of handguns within states and the Gun-Free School Zones Act is unconstitutional.
- c. **裁决：**否，商业条款不允许国会有权监管各州境内携带手枪的行为，《无枪学校区法案》违宪。
- d. **Reasoning:** The Court held that the Gun-Free School Zones Act was unconstitutional because Congress lacked the power to regulate the carrying of handguns within states under the Commerce Clause. The court ruled that the law was criminal in nature and not related to commerce or economic activity.
- d. **理由：**法院裁定《无枪校园区法案》违宪，因为根据宪法商业条款，国会无权监管各州境内携带手枪的行为。法院认为该法案本质上属于刑事犯罪，与商业或经济活动无关。
- e. *United States v. Lopez* marked a departure from the Court’s willingness, throughout most of the 20th century, to accept a very broad range of activities as

legitimate subjects of regulation by Congress under the commerce power. Lopez marks the limit of commerce power.

- e. “美国诉洛佩兹案”标志着最高法院在 20 世纪大部分时间里，不再愿意接受范围非常广泛的活动作为国会依据商业权力进行合法监管的对象。洛佩兹案标志着商业权力的界限。



On the AP® exam you will be asked about two required cases related to federalism: McCulloch v. Maryland (1819) and United States v. Lopez (1995). The Supreme Court in McCulloch v. Maryland ruled in favor of an expansion of federal power, but in United States v. Lopez the Court ruled in favor of states' rights. The overall trend in the late 20th century was for the courts to side with the federal government, but since the ruling in the Lopez decision, the Supreme Court has been less consistent.

在 AP® 考试中，你会遇到两个与联邦制相关的必考案例：麦卡洛克诉马里兰州案（1819 年）和美国诉洛佩兹案（1995 年）。最高法院在麦卡洛克诉马里兰州案中裁定支持扩大联邦权力，但在美国诉洛佩兹案中，最高法院则裁定维护各州的权利。20 世纪后期，法院的总体趋势是倾向于支持联邦政府，但自洛佩兹案判决以来，最高法院的立场变得不那么一致了。