



UNIT 1

LESSON 5

Pages 63-73, 84-90
(In Waples. This is what we call your textbook.)

Required Court Case
McCulloch v. Maryland

Required Court Case
U.S. v. Lopez

Federalism and the Division of Powers

STUDENTS WILL KNOW THAT:

1. The exclusive and concurrent powers of the national and state governments help explain the negotiations over the balance of power between the two levels.
2. The interpretation of the 10th and 14th Amendments, the commerce clause, the necessary and proper clause, and other enumerated and implied powers are at the heart of the debate over the balance of power between the national and state governments.
3. National policymaking is constrained by the sharing of power between and among the three branches and the state governments.
4. The balance of power between the national and state governments has changed over time based on U.S. Supreme Court interpretation of such cases as:
 - *McCulloch v. Maryland* (1819), which declared that Congress has implied powers necessary to implement its enumerated powers and established supremacy of the U.S. Constitution and federal laws over states laws
 - *United States v. Lopez* (1995), which ruled that Congress may not use the commerce clause to make possession of a gun in a school zone a federal crime, introducing a new phase of federalism that recognized the importance of state sovereignty and local control

WHAT ARE ALTERNATIVES TO FEDERALISM?

- **UNITARY SYSTEM** (**REMEMBER THE SINGLE CHAIR**)
 - Places all governmental power in one, central, geographic area
 - More efficient than a federal system (which can be a bad thing)
 - Why don't we use it?
 - Not used because too reminiscent of British rule (strong, distant government that becomes tyrannical)
- **CONFEDERATION** (**REMEMBER THE DIFFERENT CHAIRS**)
 - Sovereign states create a central government but carefully limit its power and do not give it direct authority over individuals
 - States are supreme over central government
 - Why don't we use it?
 - Not used because too reminiscent of Articles (tried and failed)



A unitary government is like one really big chair, with all of the government's power sitting in one place.



A confederation of states is like a bunch of different chairs grouped together. They hold power independently but work collectively.

WHAT IS FEDERALISM?

- ***DEFINITION - Constitutional division of powers between the national government and the states; both get their powers from Constitution, not each other***
- **Constitution (federally based) replaced Articles (confederation based)**
- **Federal system is NOT as efficient as a unitary system (which can be good)**
- **Federalism debates depend upon issue at stake and rival philosophies of national action vs. decentralization (be able to explain what this means)**
- **Since the New Deal in the 1930s to today, there has been a shift of power from the states to the national government; since 1994 elections there has been an attempt to return power to the states**
- **Federalism issues are at the top of the political agenda along with the issue of devolution (what is devolution?)**

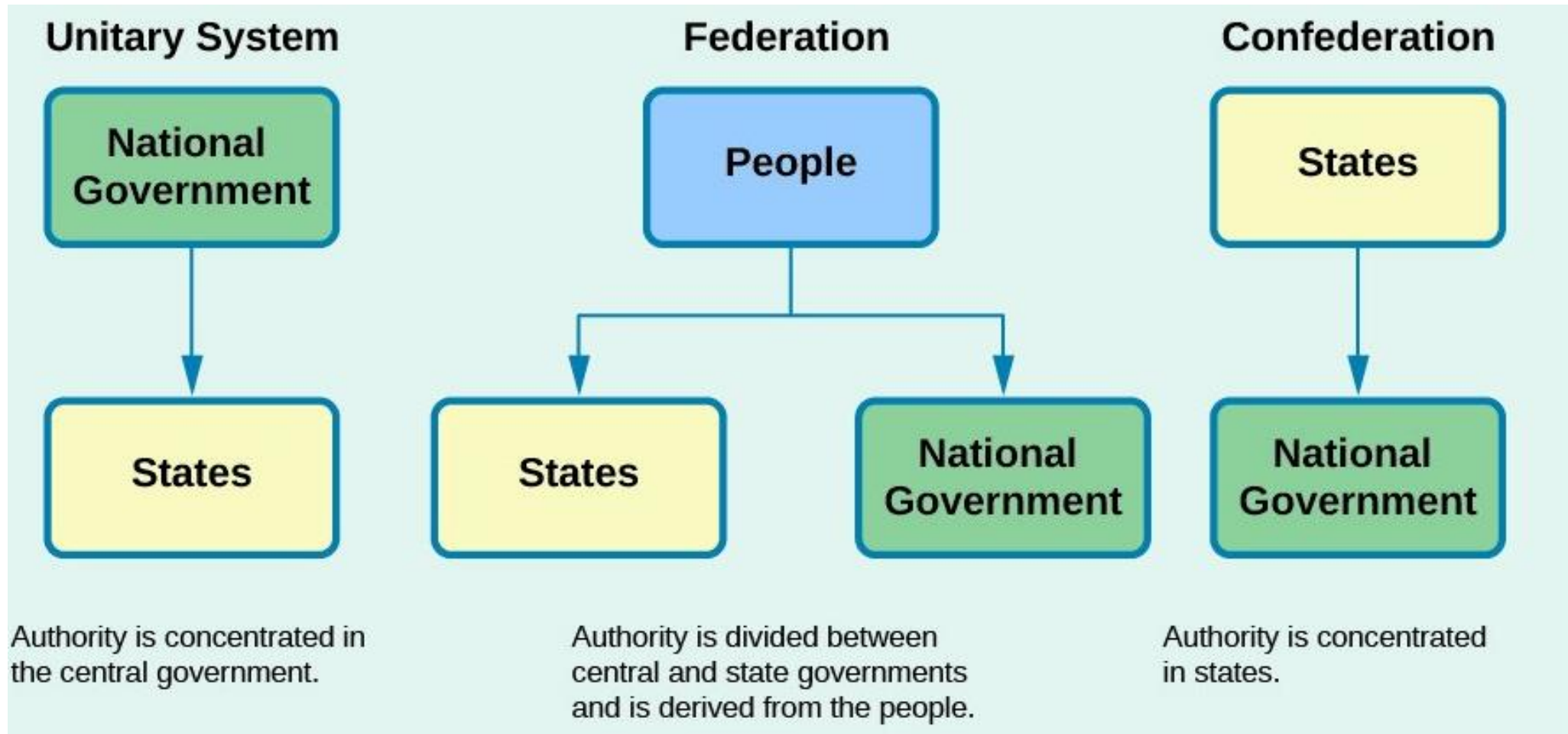
FEDERALISM



The states and central government must work together and balance each other out, like a set of chairs around the table.

ESSENTIAL QUESTION CFU

Explain how federalism differs in the amount of power that the national government has versus a confederation.





The powers delegated by the
Constitution to the federal government
are few and defined.

-James Madison

-Michael Scott

WHAT ARE POWERS GRANTED TO 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. Expressed (enumerated, delegated) powers

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

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).

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;



**U.S. Immigration
and Customs
Enforcement**

WHAT ARE POWERS GRANTED TO THE NATIONAL GOVERNMENT?

2. Implied powers

- Not stated explicitly, but suggested implicitly
- Allow the national government to extend its powers beyond those expressed/enumerated in the Constitution
- Importance of necessary and proper clause (elastic clause)
 - Hey! Isn't this Article I, Section 8, Clause 18
 - Example
 - Power to Tax (Expressed – it's in the Constitution)
 - Power to throw you in jail for not paying taxes (Implied – not stated in Constitution, but can be implied from an express/enumerated power)



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 implied power, for instance, to set up a national banking system (we are stretching the meaning of the power to borrow and spend), even though it’s not expressed in the Constitution.

A pair of gray sweatpants is shown against a background of the American flag's stripes. A red oval label is positioned on the waistband of the pants.

National
Government

ESSENTIAL QUESTION CFU

How has Article 1, Section 8, Clause 18 (aka the Necessary and Proper Clause or Elastic Clause) greatly expanded the power of the national government? Give a modern-day example.



WHAT IS THE SUPREMACY CLAUSE?

(Good for the National Gov't)

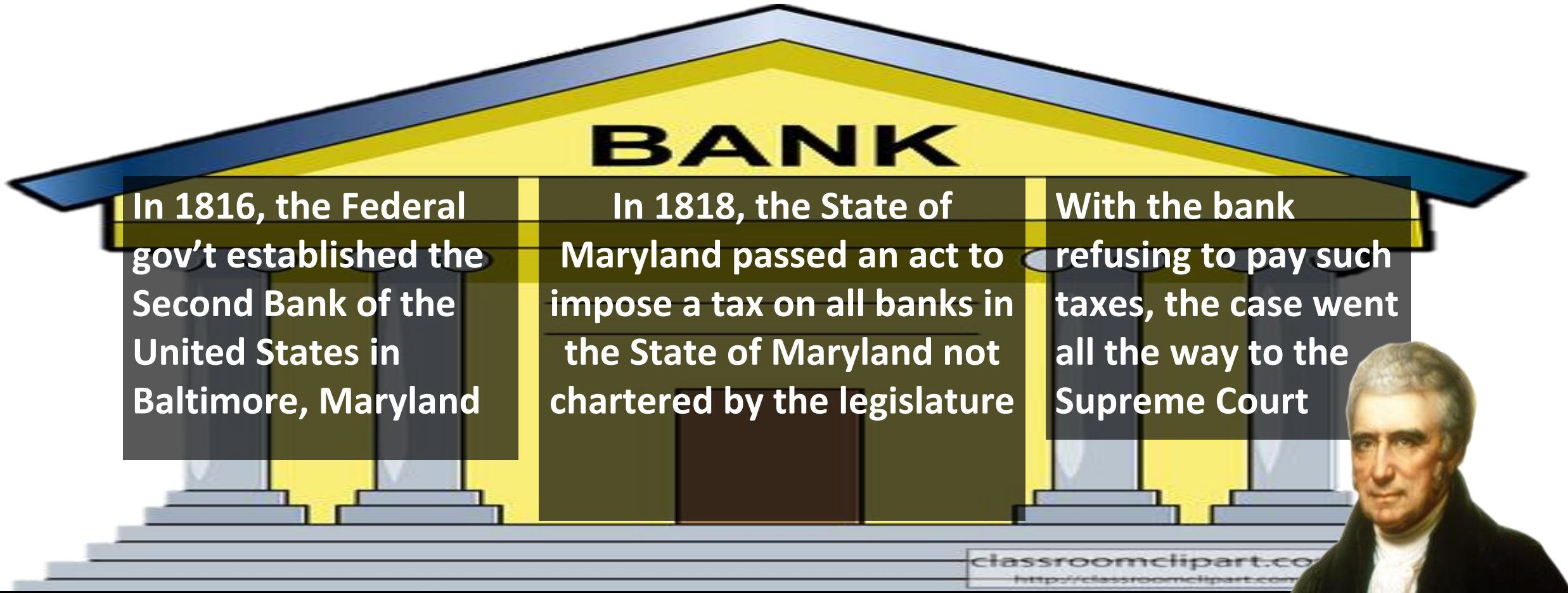
- States may not override national policies; this restriction also applies to local units of government, since they are agents of the states (Constitution and national laws are the supreme laws)
- The Supremacy Clause in the Constitution states that federal law takes precedence over state law when the laws conflict

WHO ARE THE SUPREMES?

(Good for the Nation)



***McCulloch v. Maryland* (1819) – REQUIRED COURT CASE**



Chief Justice John Marshall ruled in favor of the banks and gave his ruling on two important parts:

1. The establishment of national banking system, even though it isn't stated in the Constitution, is constitutional under the "Necessary and Proper Clause."
2. States do not have the right to tax a federal institution ("the power to tax is a power to destroy") based on Supremacy Clause.

THE NATIONAL COURTS AND FEDERALISM – *McCULLOCH v. MARYLAND (1819)*

BACKGROUND:

- Maryland attempted to close the Baltimore branch of the national bank by passing a law that forced all banks chartered outside of the state to pay a yearly tax. James McCulloch, the chief administrative officer of the Baltimore branch, refused to pay the tax. The state of Maryland sued McCulloch, saying that Maryland had the power to tax any business in its state and that the Constitution does not give Congress the power to create a national bank. McCulloch's attorneys argued that the establishment of a national bank was a "necessary and proper" function of Congress, one of many implied, but not explicitly stated, powers in the Constitution. The Maryland Court of Appeals ruled in favor of Maryland, and McCulloch appealed again. The case was heard by the Supreme Court of the United States.

ISSUE:

- Did Congress have the authority under the Constitution to commission a national bank? If so, did the state of Maryland have the authority to tax a branch of the national bank operating within its borders?

MAJORITY OPINION:

- **Key Claim(s):**
 - The Supreme Court determined that Congress did have the power under the Constitution to create a national bank. Even though the Constitution does not explicitly include that power, there is also nothing in the Constitution that restricts Congress's powers to those specifically enumerated.
- **Reasoning used to justify the opinion:**
 - The Necessary and Proper Clause gives Congress the authority to make "all laws which shall be necessary and proper" for exercising the powers that are specifically enumerated, and the establishment of a national bank is "necessary and proper" to exercising other enumerated powers.

IMPLICATIONS:

- The Marshall Court declared 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." Allowing a state to tax a branch of the national bank created by Congress would allow that state to interfere with the exercise of Congress's constitutional powers.

ESSENTIAL QUESTION CFU

What two constitutional powers were cited in the ruling of *McCulloch v. Maryland*? Did this case expand the power of the state government or the national government?

Do you get the hint?



WHAT IS THE POWER TO REGULATE INTERSTATE & 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)



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.

Hudson River



Thomas Gibbons, another steamship trader, wanted to use the NY waterways for his business too. He had been given federal permission to so, but the State of NY courts issued an injunction against him. The case will make its way all the way to the U.S. Supreme Court.



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.

U.S. v. Lopez (1995) – REQUIRED COURT CASE



The Court ruled in favor of Lopez because regulating guns in local schools is not sufficiently related to Congress' Commerce Clause power to pass constitutional muster.



The United States Congress passed the Gun-Free School Zones Act of 1990 which made it a federal offense “for an individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.”

Possession of a handgun near school is NOT an economic activity nor has a substantial effect on interstate commerce, and therefore CANNOT be regulated by Congress.

THE NATIONAL COURTS AND FEDERALISM – *U.S. v. LOPEZ (1995)*

BACKGROUND:

- Lopez took a concealed weapon into school and was charged under Texas law for having a weapon on school grounds. Federal agents then charged Lopez with violating the Gun-Free School Zones Act of 1990. The state charges were dismissed. Lopez was found guilty. He appealed and the case was heard by the Supreme Court of the U.S.

ISSUE:

- The question in the case related to the Commerce Clause and whether Congress had exceeded its authority under the clause.

MAJORITY OPINION:

- **Key Claim(s):**
 - The Gun-Free School Zone Act had nothing to do with interstate commerce or economic activity. Therefore, it was beyond the scope of Congress to regulate under the Commerce Clause.
- **Reasoning used to justify the opinion:**
 - The lawyers for the U.S. argued that since many guns have crossed state lines in the production and sale, then they should be considered interstate commerce. However, possessing a gun in a school zone is not, in itself, an economic activity that might affect interstate commerce.

IMPLICATIONS:

- With their decision, the Court stopped what many people saw as federal encroachment into issues that fall within the states' jurisdictions. The Court, following the idea of State Sovereignty Federalism, limited the federal government's involvement in areas that were not specifically related to interstate commerce.

ESSENTIAL QUESTION CFU

What was the constitutional issue in *U.S. v. Lopez*? Did this case expand the power of the state government or the national government?



There are “Gun Free School Zone” laws today.

The Gun-Free Schools Act of 1994 requires each state receiving federal funds to have a state law in effect requiring local educational agencies to expel, for at least one year, any student who is determined to have brought a weapon to school.

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

WHAT ARE POWERS GRANTED TO THE STATES?

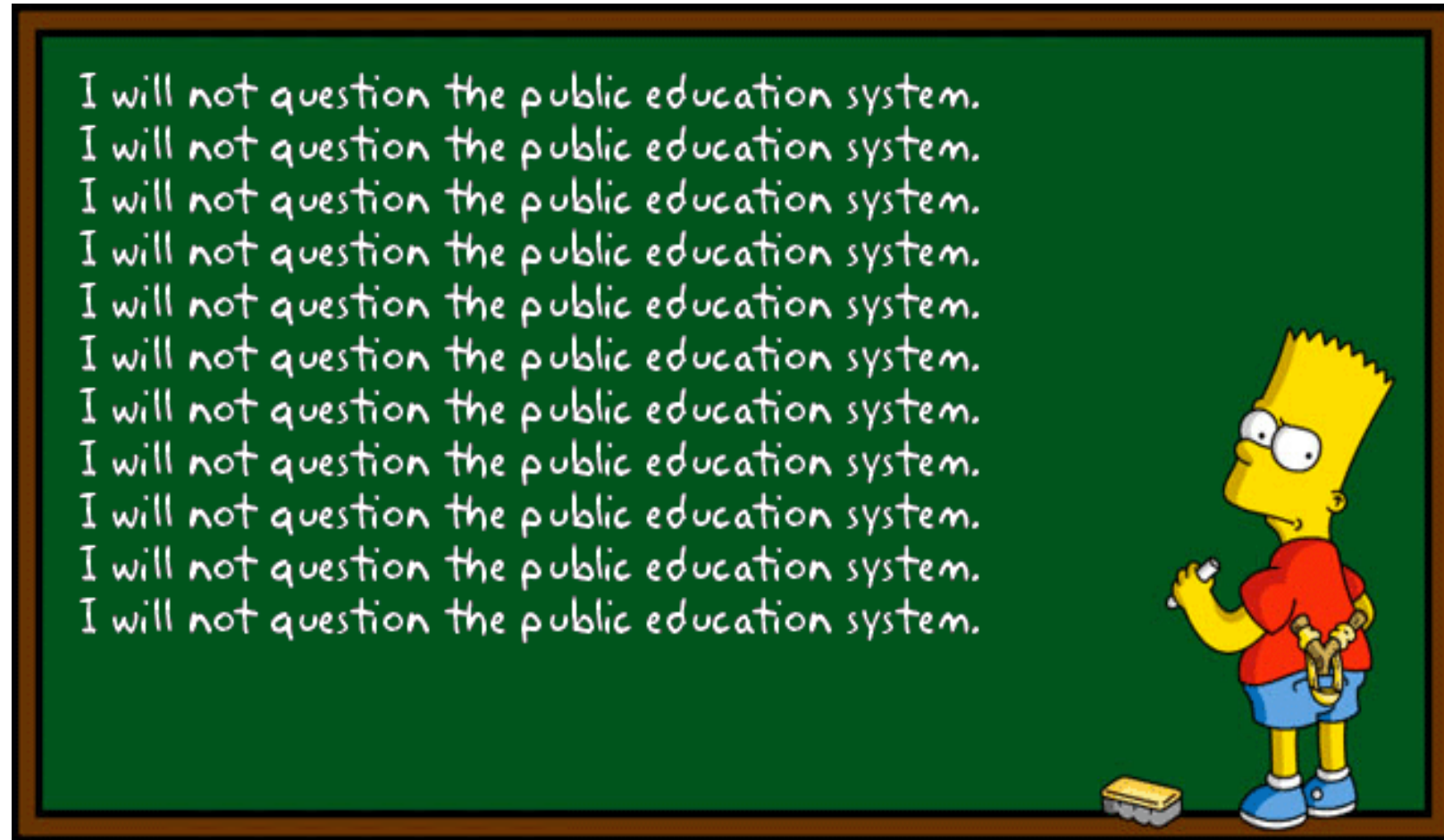
- States have RESERVED POWERS: the Constitution reserves for the states all powers not granted to the national government, subject only to the limitations of the Constitution
- Amendment 10 states that any powers not granted to the national government are reserved for the states
- Examples:
 - Establishing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

ESSENTIAL QUESTION CFU

What is a concurrent power? Name five concurrent powers that are shared by the national government and state governments.

**What is a reserved power?
Name three powers that
are reserved to the states.
Be specific.**

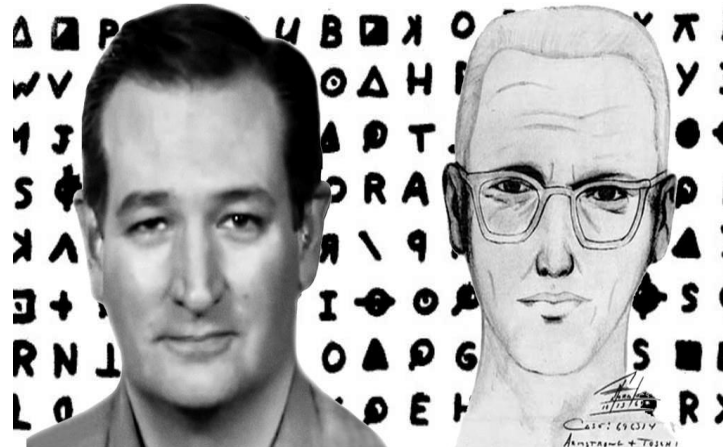
Here's one hint! → → →



INTERSTATE RELATIONS

- **Full faith and credit (Article IV, Section 1)**
 - Clause requires each state court to accept civil judgments and public records of other state courts
- **Interstate privileges and immunities (Article IV, Section 2, Clause 1)**
 - States must extend to citizens of other states the privileges and immunities granted to their own citizens
 - States may not impose unreasonable residency requirements
- **Extradition of fugitives (Article IV, Section 2, Clause 1)**
 - If a person is charged in any state with a crime and flees from justice, he must be returned to that state to face charges
 - If Ted Cruz is the Zodiac Killer, he would have to be extradited to California to face charges

The Zodiac Killer
The Zodiac Kill**E**r
The Zo**D**iac Killer
The Zodia**C** Killer
The Zodiac Kill**R**
Ted Cr**U**z is
The **Z**odiac Killer



BALANCE OF POWER DEBATE

FEDERAL

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.

STATE

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

FEDERAL

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.

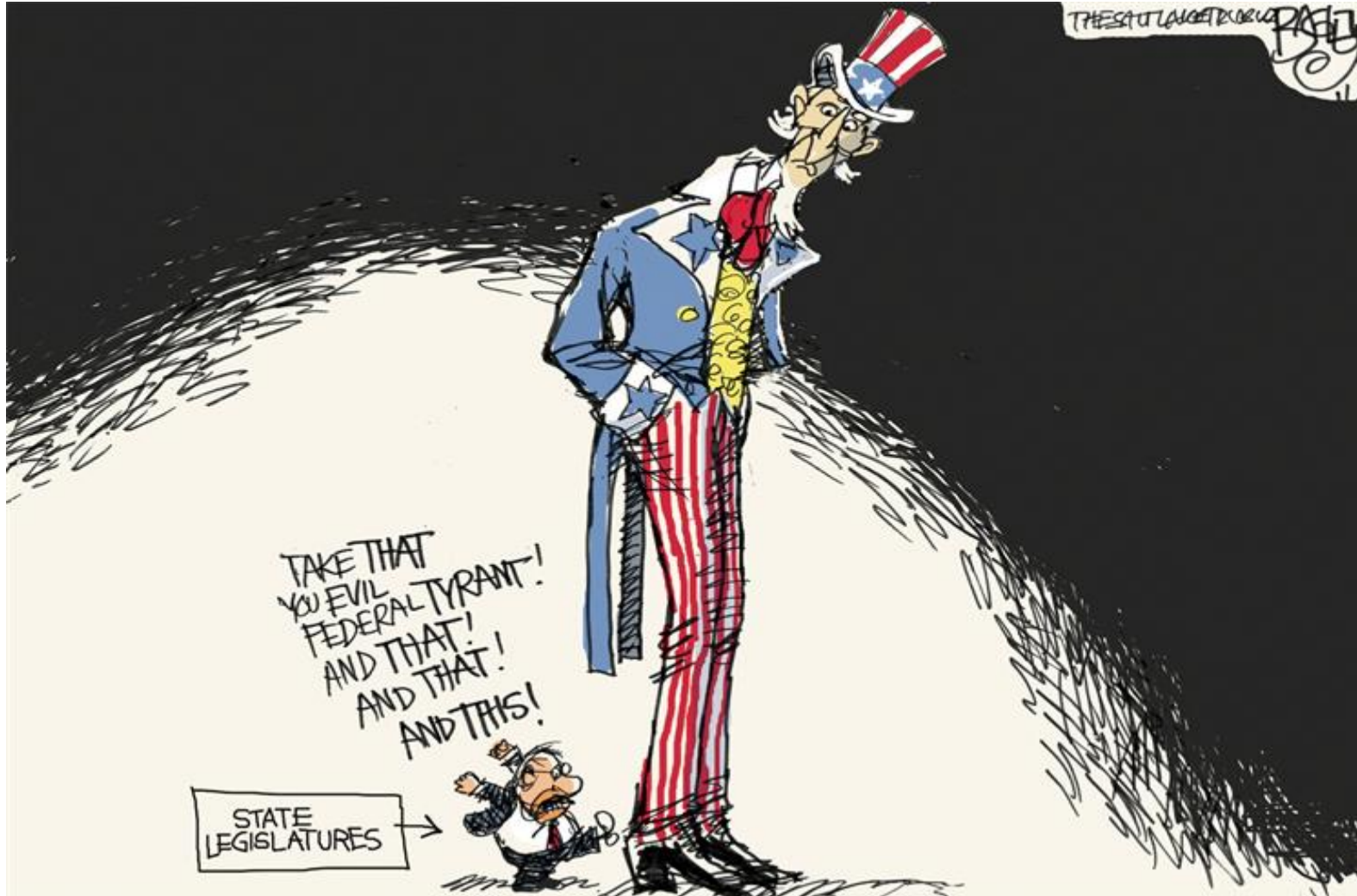
FEDERAL COURTS AND THE STATES

- Actions by state and local officials can be challenged before a federal judge
- Preemption - federal laws take precedence over state and local laws (civil rights, water quality)
- Supreme Court has generally favored powers of federal government over the states



ESSENTIAL QUESTION CFU

How is national policymaking constrained by the sharing of power between and among the three branches and the state governments?



Let's pretend you have a friend. Pretend your friend was absent from class today. What would you say if you had to explain the lesson to your friend? What are the 3 most important ideas?



**WHENEVER I'M ABOUT
TO DO SOMETHING, I THINK
“WOULD AN IDIOT DO THAT?”
AND IF THEY WOULD
I DO NOT DO THAT THING**

- DWIGHT SCHRUTE