

# CONSTITUTIONAL LAW

## I. Federalism and Federal Power Generally

- a. **Federalist system:** the national government and the states coexist.
- b. Federal Government is limited by its enumerated powers (those specifically granted to the Congress (primarily in Article I §8) – they are the power to:
  - i. Lay and collect taxes
  - ii. Provide for the defense of the country
  - iii. Borrow money of the credit of the US
  - iv. **Regulate commerce with foreign nations and among the several states (the COMMERCE CLAUSE)**
  - v. Regulate immigration and bankruptcy
  - vi. Establish post offices
  - vii. Control the issuance of patents and copyrights
  - viii. Declare war
  - ix. DC and the military
  - x. “make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested ...” (THE NECESSARY AND PROPER CLAUSE (McCulloch v. Maryland))
    1. NOTE: there is no general police power granted to the federal government by the Constitution
- c. **Doctrine of Implied Powers:** the federal government may validly exercise power that is ancillary to one of the powers explicitly listed in the Constitution

### MCCULLOCH V. MARYLAND (1819)

**Facts:** MA imposed a tax upon all banks operating in the state that were not chartered by the state. The measure was intended to discriminate against the national bank and its Maryland branch. Maryland then brought suit against the Bank to collect the taxes.

**Holding:** The SC held the tax constitutionally invalid in McCulloch. Marshall held that particular powers could be implied from the explicit grant of other powers (the enumerated power was that of raising revenue. Relied on the “necessary and proper clause” for justification. **Thus, so long as the means is rationally related to a constitutionally specified object, the means is also constitutional.** Final conclusion was that the act chartering the national bank was valid because it bore a reasonable relationship to various constitutionally enumerated powers of the government.

- d. Standard set forth in McCulloch is **still in force today**. The Courts will not strike down a congressional action so long as Congress has employed a means which is not prohibited by the Constitution and which is rationally related to objectives that are themselves within constitutionally-enumerated powers.

## 2. COMMERCE CLAUSE:

- a. **Article I §8** of the Constitution gives “*Congress the power to regulate commerce with foreign Nations and among the several states and with the Indian Tribes.*”

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**RJ Alexander**



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### **Table of Contents Outline Study Of Law 2nd Edition**

1. Understanding the eBook Outline Study Of Law 2nd Edition
  - The Rise of Digital Reading Outline Study Of Law 2nd Edition
  - Advantages of eBooks Over Traditional Books
2. Identifying Outline Study Of Law 2nd Edition
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Outline Study Of Law 2nd Edition
  - User-Friendly Interface
4. Exploring eBook Recommendations from Outline Study Of Law 2nd Edition
  - Personalized Recommendations
  - Outline Study Of Law 2nd Edition User Reviews and Ratings

- Outline Study Of Law 2nd Edition and Bestseller Lists
- 5. Accessing Outline Study Of Law 2nd Edition Free and Paid eBooks
  - Outline Study Of Law 2nd Edition Public Domain eBooks
  - Outline Study Of Law 2nd Edition eBook Subscription Services
  - Outline Study Of Law 2nd Edition Budget-Friendly Options
- 6. Navigating Outline Study Of Law 2nd Edition eBook Formats
  - ePub, PDF, MOBI, and More
  - Outline Study Of Law 2nd Edition Compatibility with Devices
  - Outline Study Of Law 2nd Edition Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Outline Study Of Law 2nd Edition
  - Highlighting and Note-Taking Outline Study Of Law 2nd Edition
  - Interactive Elements Outline Study Of Law 2nd Edition
- 8. Staying Engaged with Outline Study Of Law 2nd Edition
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Outline Study Of Law 2nd Edition
- 9. Balancing eBooks and Physical Books Outline Study Of Law 2nd Edition
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Outline Study Of Law 2nd Edition
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Outline Study Of Law 2nd Edition
  - Setting Reading Goals Outline Study Of Law 2nd Edition
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Outline Study Of Law 2nd Edition
  - Fact-Checking eBook Content of Outline Study Of Law 2nd Edition
  - Distinguishing Credible Sources

13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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