

Constitutionality of a Central Bank

Lesson Authors

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Standards and Benchmarks (see pages 17-18)

Lesson Description

The Constitution of the United States outlines the basic principles of the U.S. government. This lesson focuses on the express and implied powers of Congress and the power of the Supreme Court to decide whether a law is unconstitutional. In this lesson, students learn about *McCulloch v. Maryland*, a case decided in 1819 over (1) whether the state of Maryland had the right to tax the Second Bank of the United States and (2) whether Congress had violated the Constitution in establishing the Bank. Students also review the expressed powers of Congress identified in the Constitution and analyze how Congress implements the necessary and proper (elastic) clause to enact its expressed powers. Finally, students use their knowledge of *McCulloch v. Maryland* and the necessary and proper clause to consider the constitutionality of the Federal Reserve System.

Grade Level

8-12

Concepts

- Expressed powers
- Federal Reserve Act
- Fiat money
- Implied powers
- Necessary and proper (elastic) clause
- Precedent
- Value of money

Objectives

Students will:

- define expressed powers, implied powers, precedent, fiat money, the Federal Reserve Act, the necessary and proper (elastic) clause, and the value of money;
 - cite examples of the expressed powers granted to Congress in Article 1, Section 8 of the Constitution;
 - explain the meaning of the necessary and proper (elastic) clause;
 - explain the significance of the *McCulloch vs. Maryland* Supreme Court case; and
 - give examples of the implied powers necessary to implement various expressed powers.
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Materials

- A pocket Constitution or a copy of Article 1, Section 8 of the Constitution for each student
 - One copy of Handout 1 cut into strips
 - A copy of Handout 2 for each student
 - A copy of the Handout 2—Answer Key for the teacher
 - Visuals 1, 2, 3, and 4
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Procedure

1. Ask the students who determines whether a law is constitutional. (*Ultimately, the Supreme Court decides whether a law is constitutional.*)
 2. Display *Visual 1: Lesson Vocabulary*. Tell the students that when the Supreme Court makes a decision, it establishes a **precedent**, which is a court decision that can be used as a guide for future cases involving similar facts and issues. Share the following example with students:

In a discussion with your parents concerning your curfew this Friday night, you might make an argument for a later curfew. Your parents might deliberate and finally make a decision—that your curfew this Friday will be midnight.

That decision might serve as a precedent for your curfew on future Friday nights.
 3. Explain that in 1819 a historic legal precedent was established as a result of the *McCulloch v. Maryland* case. Discuss the following:
 - In 1816, Congress enacted legislation to create the Second Bank of the United States. The Bank was established in Philadelphia.
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- In 1818, the Bank opened a branch in Baltimore, Maryland.
 - State banks in Maryland did not want the Second Bank operating in Maryland. The Maryland legislature attempted to restrict competition by imposing a tax on any business not chartered by the state of Maryland.
 - The Baltimore Branch refused to pay the tax and the state sued. The Maryland courts upheld the tax. The state of Maryland argued that “the Constitution is silent on the subject of banks.” That is, the argument was that because the Constitution did not *explicitly* give the federal government the authority to charter a bank, the power to do so was reserved for the states. As a result, the state of Maryland held that the Second Bank of the United States was unconstitutional. The Maryland courts upheld the state’s position and the case was appealed to the U.S. Supreme Court.
 - The U.S. Supreme Court saw two questions: (1) Does Congress have the power under the Constitution to incorporate a bank even though that power is not explicitly granted in the Constitution? (2) Does the state of Maryland (or any state) have the power to tax an institution created by Congress as a result of congressional powers established by the Constitution?
4. Display *Visual 2: McCulloch v. Maryland Quote*. Ask a student to read the quote. Discuss the following:
- Justice John Marshall concluded that the Constitution was the act of the people of each of the states. He reasoned that states had assembled delegates who specifically represented the people of their state and thus acted on behalf of those people to approve the Constitution and the federal government; thus, both state and federal governments are derived from the people.
 - The Constitution does not give Congress the expressed power to charter a bank; however, the Constitution does grant Congress the powers to tax and to spend, to borrow money, and “to coin Money [and] regulate the Value thereof” (Article I, Section 8, Clause 5).
 - The Constitution leaves it up to Congress to determine the appropriate means by which those powers should be exercised (unless specifically prohibited).
 - The Constitution also grants Congress the power to adopt “all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof” (Article I, Section 8, Clause 18).
 - Concerning the question of Maryland’s power to tax the Second Bank, the Court held that the “power to tax is the power to destroy,” and therefore taxing the Second Bank of the United States violated the Constitution as the supreme law of the land as described in Article VI, Clause 2, which is known as the supremacy clause.

- Thus, the Supreme Court ruled the Maryland law was unconstitutional and upheld the constitutionality of the Second Bank of the United States. The decision established an important legal precedent concerning the powers of Congress and the balance of power between state governments and the federal government.
5. Ask students if they know the difference between a primary and secondary source. (*Answers will vary.*) Display Visual 1. Read the definitions of primary and secondary sources to students. Point out that the excerpt from the Supreme Court decision regarding *McCulluch v. Maryland* is an example of a primary source document.
 6. Distribute a copy of the pocket Constitution (or a copy of Article I, Section 8) to each student. Ask students if the Constitution of the United States is a primary or secondary source. (*The Constitution of the United States is a primary source because it is the original document.*) Tell the students that the Constitution is the supreme law of the land—the highest form of law in the United States.
 7. Explain that Article I, Section 8 of the Constitution enumerates (that is, lists) the **expressed powers** granted to Congress.
 8. Ask each student to read an expressed power from the list in this section of the Constitution. Continue until all powers have been read.
 9. Ask the students why the writers of the Constitution specifically granted these powers to the national government—the Congress. (*The writers of the Constitution felt that these powers were needed for a national government to function well.*)
 10. Have a student read the last clause of Section 8. Display Visual 1 and explain that this clause is often referred to as the **necessary and proper clause**, or the **elastic clause**. Discuss the following:
 - What does “elastic” mean? (*stretchy, changeable, or adaptable*)
 - Why do you think the necessary and proper clause is sometimes called the “elastic clause”? (*The clause gives Congress the ability to stretch, change, or adapt laws as necessary and proper for it to carry out the expressed powers granted in Section 8 as well as other powers granted to it in the Constitution.*)
 - The necessary and proper clause provides Congress **implied powers**, since they are not powers stated specifically but based on the expressed powers.
 11. Tell the students they will participate in an activity designed to distinguish between expressed and implied powers. Distribute the strips from *Handout 1: Expressed and Implied Constitutional Powers*. Have each student with a strip read it aloud and have the members of the class try to identify whether it is an expressed or implied power using their individual copies of the Constitution of the United States.

12. Once the five expressed powers have been identified, have the students who are holding the expressed powers find a “station” in the classroom. (*The expressed powers strips are to lay and collect taxes, to establish naturalization laws, to raise an army and navy, to regulate commerce, and to establish post offices.*)
13. Tell the students that the remaining strips represent 16 implied powers that need to be matched with the expressed power from which each is derived. Students are to find the expressed power “station” that best matches their implied power. After students have found their stations, have each student read his or her strip and explain how the implied power carries out the expressed power.
14. Display *Visual 3: Expressed and Implied Powers—Answer Key*. Tell the students that the visual lists the implied powers under the appropriate expressed powers. Explain that each implied power is an example of a power used by Congress that was not expressly stated in the Constitution. Ask the students if they have questions regarding the pairing of the powers.
15. Ask the students to return to their seats.
16. Point out that another expressed power is the power to coin money and regulate the **value of money**. Ask the students to decide as a class what is necessary and proper to enact/enable this power. Generate a list on the board.
17. Regulating the value of money might mean limiting the supply of money. Discuss the following:
 - What gives “coin,” or money, value? (*Students might suggest that the value is the result of a commodity such as gold that might back the coin or paper money.*)
 - Money used by the United States, and other modern economies, is called **fiat money** because it is not backed by gold or other valuable commodities. The value of fiat money comes from being endorsed by the government and it has exchange value. In other words, people value dollars because others will accept the dollars given to them in exchange for goods and services.
18. Display *Visual 4: Zimbabwe Currency*. Tell the students that the picture is a \$100 trillion dollar note from Zimbabwe. The central bank printed money with such a high value because the inflation rate reached 231 million percent in 2008. (Source: <http://news.bbc.co.uk/2/hi/africa/7660569.stm>.) Explain that the inflation rate is the percent change in the price level of goods and services from one time period to another. Discuss the following:
 - What will likely happen to prices when too much money is printed? (*Prices will rise. More money will be needed to buy goods.*)

- What happens to the value of the money if buying the same goods requires more and more money? (*Answers will vary. Some students may say that the value of the money decreases.*)
 - Money is valuable because it can be used to buy goods and services. Suppose that the price of a granola bar was \$1.00 last year, but the price of the very same granola bar is \$2.00 this year. Your dollars won't go as far this year—that is, they won't buy as many granola bars; this means the value of the dollar has decreased.
 - Because Zimbabwe printed so much money, the value of its currency decreased—you can buy a Zimbabwe \$100 trillion dollar note on eBay today for about 5 U.S. dollars.
 - How are the supply of money and the value of money related? (*The value of money decreases as the supply of money increases.*)
19. Define inflation as a general, sustained upward movement of prices for goods and services in the economy. Economists often describe “inflation” as too much money chasing too few goods. Another way to say this is that inflation is caused when the money supply grows at a faster rate than the economy's ability to produce goods and services. So, to manage the value of money, Congress must find a way to manage the supply of money. Using the power of the necessary and proper (elastic) clause, what could Congress do? (*Answers will vary.*)
20. Explain that there were times throughout U.S. history that Congress debated how “to coin Money [and] regulate the Value thereof” (Clause 5). The federal government chartered the First Bank of the United States in 1791 to handle the financial needs of the federal government. It also gave the country a more-stable national currency. Its charter was allowed to expire in 1811. The Second Bank of the United States was established in 1816; its charter was allowed to expire in 1836.
21. Explain that for a long time thereafter, the United States did not have a central bank, and the U.S. economy experienced many financial panics and economic problems as a result.
22. Explain that in 1913, Congress again used its implied powers to pass the **Federal Reserve Act**, creating the Federal Reserve System, which is the central bank of the United States. Today, the Federal Reserve System is authorized to exercise the power given to Congress to “to coin Money, [and] regulate the Value thereof” as described in the Constitution (Article I, Section 8, Clause 5), by regulating the financial system to keep it sound and using monetary policy to promote price stability. “Price stability” is defined as low and stable inflation. Ask the students why Congress would establish a central bank and not simply allow Congress to be responsible for the money supply? (*Answers will vary.*)

23. Explain that there are many examples of the problems created when control of a country's money supply is too closely linked to the country's government. Discuss the following:
- Governments often print money to pay off debts or fund programs even though this may not be the best thing for the economy. The Continental Congress did this during the Revolutionary War. In 1775, it gave the colonies the authority to issue Continental dollars to finance the war. Overissuance and counterfeiting by the British led to huge increases in the amount of paper currency. By 1779, the value of the Continental dollar was 1/25th of its original value, giving rise to the phrase "not worth a Continental."
 - During the Civil War, the Confederate government also succumbed to the temptation of printing money to buy goods. By 1864, the stock of Confederate dollars had increased tenfold and prices had increased by the same amount.
 - After World War I, Germany printed money to pay its war debt, leading to hyperinflation.
 - Ukraine, Belarus, and other Eastern European countries did the same in the late 1990s following the fall of the Soviet Union, which led to as much as 10,000 percent annual inflation in some countries.
 - We discussed a more recent example—Zimbabwe—earlier in the lesson.
24. Explain that Congress used powers granted in the necessary and proper clause to delegate its monetary powers to the Federal Reserve System. And, in doing so, Congress attempted to keep the power to regulate the money supply at arm's length from the political process. Those creating the Federal Reserve Act believed that this would help keep the money supply from being used as a political tool. Discuss the following:
- Three essential components of the Federal Reserve System are the Board of Governors (with a maximum of 7 governors) in Washington, D.C., 12 District (regional) Reserve Banks located throughout the United States, and the Federal Open Market Committee (FOMC) composed of the 7 governors, the president of the Federal Reserve Bank of New York, and 4 District Bank presidents who serve on a rotating basis.
 - The Federal Reserve regulates the rate of growth of the money supply. In modern economies, money includes currency and coin as well as deposits in checking accounts. Broader definitions of money include deposits in savings accounts, money market accounts, and some time-deposit accounts.
 - The members of the FOMC determine the best monetary policy to regulate the growth of the money supply.
 - The Chairman of the Board of Governors reports to Congress throughout the year. However, Congress does not vote on monetary policy.

Closure

25. Review the important content of this lesson by asking the following questions:

- What is a “legal precedent?” (*A court decision that can be used as a guide for future cases involving similar facts and issues.*)
- What conflict led to the *McCulloch v. Maryland* case? (*The state of Maryland did not want the Second Bank of the United States operating in Maryland, so it levied a heavy tax on the Bank.*)
- What was the outcome? (*The Supreme Court decided that the Maryland law that taxed the Second Bank of the United States was unconstitutional and thus that the Second Bank had a constitutional right to operate in Maryland.*)
- In what part of the Constitution are the powers of Congress listed? (*Article I, Section 8*)
- What are expressed powers? (*Expressed powers are those stated specifically.*)
- Give an example of an expressed power in Article 1, Section 8 of the Constitution. (*regulate weights and measures, provide and maintain a navy, coin money, and regulate the value of money*)
- What are implied powers? (*Implied powers are not stated specifically but are based on expressed powers.*)
- How did Congress use its implied powers to regulate the value of money? (*It established the Federal Reserve—the central bank of the United States.*)
- What law established the Federal Reserve System? When? (*The Federal Reserve Act, 1913*)
- Concerning money, how does the Federal Reserve “regulate the Value thereof?” (*The Federal Reserve regulates the value of money by making sure that the growth of the money supply does not exceed the ability of the economy to produce goods and services.*)

Assessment

26. Distribute a copy of *Handout 2: Assessment* to each student. Allow time for students to complete the assessment. Use *Handout 2: Assessment—Answer Key* to review their answers.

Visual 1: Lesson Vocabulary

Primary source—The original materials, or the source material, that is closest to the person, period, or idea being studied.

Secondary source—Materials that interpret and analyze information originally presented elsewhere.

Precedent—A decision that can be used as a guide for future situations involving similar facts and issues.

Expressed powers—Powers granted to Congress specifically in Article I, Section 8 of the Constitution.

Necessary and proper (elastic) clause—Allows Congress “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all the Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof” (Article 1, Section 8, Clause 18).

Implied powers—Powers of Congress not stated specifically, but based on the expressed powers.

Fiat money—Money that has value because it is endorsed by the government and thus has an exchange value.

Federal Reserve Act—The 1913 U.S. legislation that created the Federal Reserve System.

Visual 2: *McCulloch v. Maryland* Quote

We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional.

—*McCulloch v. Maryland*, Opinion of the Court
(written by Chief Justice John Marshall)

Visual 3: Expressed and Implied Powers—Answer Key**To lay and collect taxes (Article I, Section 8, Clause 1)**

- To punish tax evaders
- To use tax revenues to fund public schools, health, and housing programs
- To require states to meet certain conditions to qualify for federal funding

To establish naturalization laws (Article I, Section 8, Clause 4)

- To regulate and limit immigration
- To establish the U.S. Border Patrol

To raise an army and navy (Article I, Section 8, Clauses 12-14)

- To draft Americans into the military
- To establish military colleges
- To create the U.S. Air Force as a separate branch of the military

To regulate commerce (business) (Article I, Section 8, Clause 3)

- To regulate banking
- To establish a minimum wage
- To ban discrimination in workplaces and public facilities
- To pass laws protecting the disabled
- To regulate air travel
- To build the interstate highway system

To establish post offices (Article I, Section 8, Clause 7)

- To prohibit mail fraud and obstruction of the mail
- To bar the shipping of certain items through the mail

Visual 4: Zimbabwe Currency



Handout 1: Expressed and Implied Congressional Powers (page 1 of 2)

Cut the following into strips.

To lay and collect taxes

**To use tax revenues to fund public schools,
health, and housing programs**

To establish naturalization laws

To regulate and limit immigration

To ban discrimination in workplaces and public facilities

To establish the U.S. Border Patrol

To raise an army and navy

To establish military colleges

To bar the shipping of certain items through the mail

To create the U.S. Air Force as a separate branch of the military

To regulate commerce (business)

Handout 1: Expressed and Implied Congressional Powers (page 2 of 2)

To establish post offices

To regulate banking

To establish a minimum wage

To draft Americans into the military

To pass laws protecting the disabled

To regulate air travel

To build the interstate highway system

To punish tax evaders

To prohibit mail fraud and obstruction of the mail

**To require states to meet certain conditions
to qualify for federal funding**

Handout 2: Assessment

Read the questions below and write a response.

1. Imagine the principal of your high school has given you the power to organize a new student club to enhance student achievement on the new economics exam to be given at the end of the school year. You have decided to form the Economics Glee Club. Your task will be writing, performing, and recording new songs and jingles to help students learn and remember economics concepts. What powers might you need to fulfill the wishes of your principal? What are the expressed and implied powers?

2. The Federal Reserve is the central bank of the United States. The Constitution does not specifically say that there should be a central bank. Describe how you might defend Congress' delegation of the power to coin money and regulate the value of money to the Federal Reserve.

3. What is a precedent? How did precedents established by the *McCulloch v. Maryland* Supreme Court Case support the existence of the Federal Reserve System?

Handout 2: Assessment—Answer Key

Read the questions below and write a response.

1. Imagine the principal of your high school has given you the power to organize a new student club to enhance student achievement on the new economics exam to be given at the end of the school year. You have decided to form the Economics Glee Club. Your task will be writing, performing, and recording new songs and jingles to help students learn and remember economics concepts. What powers might you need to fulfill the wishes of your principal? What are the expressed and implied powers?

Your group's expressed power is to form the Economics Glee Club. The implied powers might be the power to request private singing lessons from the music teacher, writing lessons from the English teacher, and the power to raise revenue to pay for time at a recording studio.

2. The Federal Reserve is the central bank of the United States. The Constitution does not specifically say that there should be a central bank. Describe how you might defend Congress' delegation of the power to coin money and regulate the value of money to the Federal Reserve.

In Article I, Section 8, Clause 5 of the Constitution, Congress is given the expressed power to "coin Money, [and] regulate the Value thereof." Also, in Section 8, Congress is given the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all the Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" (Clause 18). This implied power gave Congress the power to pass the Federal Reserve Act in 1913, which created and Federal Reserve System as the central bank of the United States.

3. What is a precedent? How did precedents established by the *McCulloch v. Maryland* Supreme Court Case support the existence of the Federal Reserve System?

*A precedent is a decision that can be used as a guide in future situations involving similar facts and issues. In this example, the precedent is a legal one—that is, related to a court case. In *McCulloch v. Maryland*, the justices established the precedent that a power not explicitly granted to the federal government in the Constitution doesn't necessarily belong to the state governments. The necessary and proper (elastic) clause allows Congress to create and develop what is necessary to enact its expressed powers. Congress has the expressed power to coin money and regulate its value. In order to regulate the value of money, Congress must regulate the money supply. Congress determined that the best way to regulate the value of money was to create a central bank that exists at arm's length from the federal government.*

Standards and Benchmarks

Voluntary National Content Standards in Economics

Standard 11

Money makes it easier to trade, borrow, save, invest, and compare the value of goods and services. The amount of money in the economy affects the overall price level. Inflation is an increase in the overall price level that reduces the value of money.

- **Benchmark 4, Grade 8.** Inflation reduces the value of money.
- **Benchmark 5, Grade 12.** In the long run, inflation results from increases in a nation's money supply that exceeds increases in its output of goods and services.

Standard 20

Federal government budgetary policy and the Federal Reserve System's monetary policy influence the overall levels of employment, output, and prices.

- **Benchmark 7, Grade 12.** Monetary policies are decisions by the Federal Reserve System that lead to changes in the supply of money, short-term interest rates, and the availability of credit. Changes in the money supply can influence overall levels of spending, employment, and prices in the economy by inducing changes in the levels of personal and business investment spending.

Common Core Standards

Grades 6-12 Literacy in History/Social Studies and Technical Subject

- **English Language Arts Standards, History/Social Studies**
 - **Grades 9-10, Craft and Structure**
RH.9-10.4. Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.
 - **Grades 11-12, Key Ideas and Details**
RH.11-12.1. Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

RH.11-12.2. Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
 - **Grades 11-12, Range of Reading and Level of Text Complexity**
RH.11-12.10. By the end of grade 12, read and comprehend history/social studies texts in the grades 11–CCR text complexity band independently and proficiently.

- **English Language Arts Standards, Writing**
 - **Grades 9-10, Texts Types and Purposes**

WHST.9-10.1. Write arguments focused on discipline-specific content.

 - a. Introduce precise claim(s), distinguish the claim(s) from alternate or opposing claims, and create an organization that establishes clear relationships among the claim(s), counterclaims, reasons, and evidence.
 - b. Develop claim(s) and counterclaims fairly, supplying data and evidence for each while pointing out the strengths and limitations of both claim(s) and counterclaims in a discipline-appropriate form and in a manner that anticipates the audience’s knowledge level and concerns.
 - c. Use words, phrases, and clauses to link the major sections of the text, create cohesion, and clarify the relationships between claim(s) and reasons, between reasons and evidence, and between claim(s) and counterclaims.
 - e. Establish and maintain a formal style and objective tone while attending to the norms and conventions of the discipline in which they are writing.
 - f. Provide a concluding statement or section that follows from or supports the argument presented.
 - **Grades 11-12, Production and Distribution of Writing**

WHST.11-12.4. Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

WHST.11-12.5. Develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach, focusing on addressing what is most significant for a specific purpose and audience.
 - **Grades 11-12, Research to Build and Present Knowledge**

WHST.11-12.9. Draw evidence from informational texts to support analysis, reflection, and research.

United States History Content Standards for Grades 5-12

Era 4: Expansion and Reform (1801-1861)

- **Standard 3**

The extension, restriction, and reorganization of political democracy after 1800.