

# Constitutional Law Barbri

Constitutional Law Barbri Unraveling the Threads of Federalism A Guide to Constitutional Law

The US Constitution a document that's been around for over 200 years still shapes our daily lives. One of its most fundamental principles is federalism. This means power is shared between the federal government and the states. Understanding this concept is crucial for tackling Constitutional Law questions especially on the bar exam. This article will guide you through the key elements of federalism outlining:

- I The Basics of Federalism
- Enumerated Powers
- The Constitution explicitly lists powers given to the federal government eg regulating interstate commerce declaring war. These powers are listed in Section 8.
- Reserved Powers
- The 10th Amendment reserves powers not explicitly given to the federal government or denied to the states to the states or to the people.
- Concurrent Powers
- Some powers are shared between the federal and state governments eg taxation.
- II The Commerce Clause
- A Powerhouse
- The Commerce Clause Section 8 Clause 3 gives Congress the power to regulate Commerce with foreign Nations and among the several States and with the Indian Tribes.
- Key Cases
- Gibbons v Ogden* 1824 This landmark case established a broad interpretation of the Commerce Clause holding that Congress has the power to regulate all commercial activity that substantially affects interstate commerce.
- Wickard v Filburn* 1942 This case further expanded federal power by ruling that even local activities with minimal interstate impact can be regulated if they in the aggregate have a substantial effect on interstate commerce.
- United States v Lopez* 1995 This case marked a shift establishing that the Commerce Clause does not allow Congress to regulate activities that have only an indirect effect on interstate commerce.
- United States v Morrison* 2000 This case further limited the reach of the Commerce Clause holding that Congress cannot regulate noneconomic violent criminal conduct that has a minimal connection to interstate commerce.
- 2 III The Necessary and Proper Clause
- The Clause Section 8 Clause 18 gives Congress the power to enact laws that are necessary and proper to carry out its enumerated powers.
- Key Case
- McCulloch v Maryland* 1819 This case established that the Necessary and Proper Clause gives Congress implied powers as long as those powers are related to an enumerated power.
- IV Limits on State Power
- Dormant Commerce Clause
- Even though the Commerce Clause grants power to Congress it also implies limitations on states' ability to regulate interstate commerce. This is known as the dormant Commerce Clause.
- Key Principles
- States cannot discriminate against interstate commerce and regulations must have a substantial nexus to the states' interest.
- Key Case
- Philadelphia v New Jersey* 1978 This case ruled that a state law that prohibited the importation of waste from other states was an unconstitutional burden on interstate commerce.
- V The Supremacy Clause
- The Federal Government Wins
- The Clause Clause 2 establishes the Constitution federal laws and treaties as the supreme Law of the Land.
- Key Principle
- If a state law conflicts with a valid federal law the federal law prevails.
- Key Case
- Arizona v United States* 2012 This case involved a state law that attempted to regulate immigration. The Supreme Court struck down parts of the law finding that it conflicted with federal immigration law.
- VI Preemption
- When Federal Law Trumps State Law
- Preemption This occurs when federal law overrides state law on a particular subject.
- Express Preemption
- Federal law explicitly states that it preempts state law.
- Implied Preemption
- Preemption is implied when Field Preemption Federal law occupies the entire field leaving no room for state regulation.
- Conflict Preemption
- State law directly conflicts with federal law making it impossible to comply with both.
- VII Intergovernmental Immunity
- States vs Federal Government
- The Concept
- The federal government cannot tax or regulate the essential functions of state governments.
- 3 Key Case
- National League of Cities v Usery* 1976 This case initially held that the federal government could not regulate the wages and hours of state employees. However this case was later overruled by *Garcia v San Antonio Metropolitan Transit Authority* 1985 which ruled that states are not immune from federal regulation.
- VIII Key

Points for Bar Exam Success Focus on the Cases Knowing the key cases and their holdings is essential for success on the bar exam Apply the Facts to the Law The key is to identify the applicable constitutional provisions and apply the relevant case law to the specific fact pattern presented Identify the Conflict Many federalism questions involve a conflict between state and federal power Understanding the source of the conflict is crucial for understanding the issue IX Conclusion Federalism is a dynamic and complex area of law Understanding its nuances and the core principles governing the relationship between the federal government and the states is critical for success on the bar exam and in practice By mastering these concepts and analyzing key cases you'll be well on your way to navigating the intricate world of federalism and confidently addressing any constitutional law questions you encounter

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the comprehensive source on attorney licensing and how to reform it in shaping the bar joan howarth describes how the twin gatekeepers of the legal profession law schools and licensers are failing the public attorney licensing should be laser focused on readiness to practice law with the minimum competence of a new attorney according to howarth requirements today are both too difficult and too easy amid the crisis in unmet legal services record numbers of law school graduates disproportionately people of color are failing bar exams that are not meaningful tests of competence to practice at the same time after seven years of higher education hundreds of thousands of dollars of law school debt two months of cramming legal rules and success on a bar exam a candidate can be licensed to practice law without ever having been in a law office or even seen a lawyer with a client howarth makes the case that the licensing rituals familiar to generations of lawyers unfocused law degrees and obsolete bar exams are protecting members of the profession more than the public beyond explaining the failures of the current system this book presents the latest research on competent lawyering and examples of better approaches this book presents the path forward by means of licensing changes to protect the public while building an inclusive diverse competent ethical profession thoughtful and engaging shaping the bar is both an authoritative account of attorney licensing and a pragmatic handbook for overdue equitable

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an argument that choice based process oriented educational assessments are more effective than static assessments of fact retrieval if a fundamental goal of education is to prepare students to act independently in the world in other words to make good choices an ideal educational assessment would measure how well we are preparing students to do so current assessments however focus almost exclusively on how much knowledge students have accrued and can retrieve in measuring what matters most daniel schwartz and dylan arena argue that choice should be the interpretive framework within which learning assessments are organized digital technologies they suggest make this possible interactive assessments can evaluate students in a context of choosing whether what how and when to learn schwartz and arena view choice not as an instructional ingredient to improve learning but as the outcome of learning because assessments shape public perception about what is useful and valued in education choice based assessments would provide a powerful lever in this reorientation in how people think about learning schwartz and arena consider both theoretical and practical matters they provide an anchoring example of a computerized choice based assessment argue that knowledge based assessments are a mismatch for our educational aims offer concrete examples of choice based assessments that reveal what knowledge based assessments cannot and analyze the practice of designing assessments because high variability leads to innovation they suggest democratizing assessment design to generate as many instances as possible finally they consider the most difficult aspect of assessment fairness choice based assessments they argue shed helpful light on fairness considerations

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interest for researchers academics and post graduate students in the field of law and legal pedagogy

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