UNIT 1 – FEDERALISM AND THE CONSTITUTION

Document A: United States Constitution, Article 1, Section 8, Clause 18 (1787)
1. Students may suggest that the most important words and phrases are as follows:

   all Laws, necessary and proper, foregoing Powers, and all other Powers vested by this Constitution

Document B: An Old Whig (1787)
1. Congress may use the “necessary and proper” clause to expand its power indefinitely. The Constitution’s limitations on the powers of the national government would be irrelevant.

Document C: Brutus #1 (1787)
1. State governments are in danger.
2. People who have power have always been interested in increasing that power.
3. According to Brutus, the federal government, because of all the advantages it has (including the necessary and proper clause), will increase in power and eventually make the state government irrelevant. This will happen, according to Brutus, because the desire to increase power is part of human nature.

Document D: Federalist #33 by Alexander Hamilton (1788)
1. They add no new power to the federal government than that which is already contained in other parts of the Constitution.
2. The people must insist that their government return to the principles of the Constitution.

Document E: Federalist #39 by James Madison (1788)
1. The central government’s jurisdiction extends only to certain enumerated powers and leaves all other powers with the states.
2. In disputes between the two levels, the Supreme Court would make the decision impartially, “according to the rules of the Constitution.”

Document F: Thomas Jefferson, Opinion on the Constitutionality of the Bill for Establishing a National Bank (1791)
Answers may include: He refers to the Tenth Amendment, which provides that any power not delegated to the U.S. by the Constitution belongs to the states or to the people.

He notes that incorporation of a bank is not included in the enumerated powers of Congress.

He explains that interpreting the General Welfare clause broadly would nullify the enumeration of Congress’ powers, and would give Congress the power to do whatever good—or whatever evil—they choose.
**Document G: Memorandum #1: Edmund Randolph to George Washington (1791)**

1. Necessary—the natural means of executing a power

2. Accept reasoned responses. Students may suggest that a government action could be “necessary,” or the natural means of executing a power, but not be the “proper” (right, correct, best) way to carry out the task. Just because a policy may be a good idea does not mean it is constitutional.

**Document H: Alexander Hamilton’s Opinion on the National Bank (1791)**

Statements should be arranged in this order:

1. Implied powers “are as effectually delegated as” the expressed powers.

2. We must determine whether there is a natural relation between the national bank and one or more of the lawful purposes of government.

3. Certain expressed powers are related to establishment of a national bank.

4. Implied powers are inherent in the definition of government: “To deny the power of the government to add these ingredients to the plan, would be to refine away all government.”

**Document I: McCulloch v. Maryland (1819), Unanimous Opinion**

1. He explained that creation of a national bank was an appropriate and legitimate means to carry out some of the expressed powers of Congress, including the Commerce Clause. He maintained that the Necessary and Proper Clause enlarges the expressed powers. The Supremacy Clause provides that the national government is supreme over the state governments. For this reason, the states have no power to tax a function of the national government.

2. Hamilton; However—Hamilton noted that the Necessary and Proper Clause was not a blank check for Congress to do whatever it wished.

**Document J: Jackson’s Veto Message, July 10, 1832**

Answers should include: The Supreme Court is not the only branch of government with the responsibility to determine constitutionality of a law.

The bank gives too many benefits to those who are already rich and powerful, fail to equally protect the poor and working classes.

The bank invades on the powers of the states.

The bank bill demonstrates that the government has abandoned the legitimate goals of government.

**Document K: King Andrew the First cartoon (1833)**

1. For vetoing the Bank Bill

2. Jackson was trying to limit government’s role. Note the irony—Jackson was attacked as a tyrant for limiting the power-role of the federal government. On the other hand, by vetoing a bill that had been passed by the duly-selected representatives of the states and the people, he was attacked for arguably substituting his will for theirs. It might be argued that, as President, Jackson was just as much a representative of the people as Congress was.

**Document L: U.S. v. Comstock (2010), Majority Opinion**

1. It grants broad authority to Congress to take actions related to enumerated powers. The Constitution was written to allow for the expansion of the federal government’s role.

2. Some students will say that Courts are in the position of adapting the Constitution through judicial opinions that shape how the Constitution is interpreted. Others will say that the adaptation of the Constitution should come by the people through the means it provides for its own adaptation—i.e. the constitutional amendment process.

1. In this opinion written by Justice Thomas, the dissenters quote the Founders to support their argument that the Necessary and Proper Clause grants Congress the power to legislate on only those areas enumerated in the Constitution.

Teaching Tips

Document A: United States Constitution, Article I, Section 8, Clause 1 (1787)

1. Congress may spend to pay for the nation’s debts, defense and general welfare.

2. Answers will vary, but students may define “general welfare” as anything that contributes to the common good, peace, health, safety or morals of the American people.

Document B: Brutus #6 (1787)

1. Brutus argued that it is a vague concept, and that what qualifies as the “general welfare” is a matter of opinion, having no true definition or limits. He worried that the federal government would end up becoming the judge of the scope of its own powers.

2. Brutus argued that the General Welfare Clause cannot be interpreted as a limitation on the powers of Congress. He wrote that since Congress will be the only real judge of it, they will always make the claim that what they do is in the “general welfare,” using it to expand their powers.

3. People may be honest, or they may have bad motives, for arguing that any particular thing supports the “general welfare.”

Document C: Federalist #41 by James Madison (1788)

1. Madison argued that the specific enumeration of powers that immediately follows the General Welfare (Spending) Clause serves to explain and define the meaning of “general welfare.” He wrote that it is absurd to think that “general welfare” has limitless meaning, as Brutus suggested.

2. No. Madison argued that the General Welfare (Spending) Clause is merely a general statement that is limited by the particular powers given to Congress; they may only tax and spend on the realm of powers given to them elsewhere in the Constitution. Those powers listed in the Constitution serve as the definition of what Congress can do in the name of the “general welfare.”

3. Depending on the examples that students find, they may support or refute Madison’s reasoning. Students’ conversation would illustrate the difficulty of interpreting the concept of general welfare.

Document D: Federalist #45 by James Madison (1788)

1. The Founders envisioned a system of government in which the national government exercised authority in a few specific areas; all other areas, save a very few items, such as those listed in Article I, Section 10, were to be left to the states.

2. By consulting the Constitution.

3. America’s system of federalism, crafted by the Constitution, was designed to give appropriate powers to a central government over all the states, and at the same time to guard against the accumulation of power in a single, national (or central) government at the expense of state/local authority.