

# Chapter 11: Powers of Congress

United States Government

## Section 1: The Scope of Congressional Powers

### Congressional Power

- Congress only has those powers delegated to it by the Constitution.
- Congress cannot:
  - Create a national public school system
  - Require people to vote
  - Require people to attend church
  - Set a minimum age to marry or driver's license
  - Abolish juries, confiscate all handguns, or censor the content of newspaper columns or radio or television broadcasts.
- The Constitution permits Congress three types of powers:
  - **Expressed powers**--explicitly, in its specific wording
  - **Implied powers**--by reasonable deduction from the expressed powers
  - **Inherent powers**--by creating a national government for the United States.

### Strict vs. Liberal Constructionists

- Strict Constructionists
  - Led by Thomas Jefferson
  - Insisted that Congress should be able to exercise only
    - Expressed powers
    - Implied powers
  - "*Government is best which governs least*"--Thomas Jefferson
- Liberal Constructionists
  - Led by Alexander Hamilton
  - Believed in a liberal interpretation of the Constitution, a broad construction of the powers given to Congress
  - "*An energetic government*"

## Daily Grade Assignment

Write a one page essay on which you feel is correct, strict constructionists or liberal constructionists. Explain why by using examples we have learned in class and in your own life.

# Section 2: The Expressed Powers of Money and Commerce

## The Expressed Powers of Money and Commerce

- The Commerce Clause of the Constitution states: *“to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes.”*--Article I, Section 8, Clause 3

## The Power to Tax

- The Constitution gives Congress the power *“to lay and collect Taxes, Duties, Imposts and Excises, and pay the Debt and provide for the common defense and general Welfare of the United States . . .”*--Article I, Section 8, Clause 1
- The purpose of taxes
  - A **tax** is a charge levied by government on persons or property to raise money to meet public needs.
  - Taxes are also imposed to be protective. The protective tariff protects domestic businesses from foreign competition.
  - Taxes are sometimes levied to protect the public health and safety.

## The Power to Tax

- Limits on Taxing Power
  - The Constitution places four limitations on the taxing power:
    - Congress may tax only for public purposes, not for private benefit
      - Article I, Section 8, Clause 1: *"To pay the Debts and provide for the common Defense and general Welfare of the United States."*
    - Congress may not tax exports
      - Article I, Section 9, Clause 5: *"No Tax or Duty shall be laid on Articles exported from any State."*
    - **Direct Taxes**, a tax that must be paid directly to the government by the person on whom it is imposed, must be apportioned among the States according to their populations.
      - Article I, Section 9, Clause 4: *"No Capitation, or other direct, Tax shall be laid unless in Proportion to the Census of Enumeration herein before directed to be taken."*
      - The income tax is a direct tax, but it may be laid without regard to population: *"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration,"*--16th Amendment
    - All **indirect taxes**, a tax first paid by one person but then passed on to another, levied by the Federal Government must be levied at the same rate in every part of the country.
      - Article I, Section 8, Clause 1: *"all Duties, Imposts, and Excises shall be uniform throughout the United States."*

## The Borrowing Power (continued)

- Balanced Budget Act of 1997
  - Congress and President Clinton vowed to end deficit financing by 2002.
  - Surplus in budgets from 1998–2001.
  - Three reasons budget surpluses from this act was too brief:
    - A sharp downturn in the economy.
    - Major tax cuts pushed by President Bush and enacted by Congress in 2001, 2002, and 2003.
    - The onset of the war on terrorism and the conflicts in Afghanistan and Iraq

## The Commerce Power

- **Commerce power**: the power of Congress to regulate interstate and foreign trade.
- Article I, Section 8, Clause 3: *"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."*
- The Commerce Clause proved to be more responsible for the building of a strong and *United States* out of a weak confederation than any other provision in the Constitution

## The Commerce Power

- *Gibbons v. Ogden*, 1824
  - The first case involving the Commerce Clause to reach the Supreme Court.
  - The case arose out of a clash over the regulation of steamboats by the State of New York, on the one hand, and the Federal Government, on the other.
  - *"Commerce undoubtedly is traffic, but it is something more--it is intercourse. It describes the commercial intercourse between nations, and part of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."*--Chief Justice John Marshall
  - Ended steamboat monopolies

## The Commerce Power

- Limits on the Commerce Power
  - Cannot tax exports (Article I, Section 9, Clause 5)
  - Cannot favor the ports of one State over those of any other in the regulation of trade (Article I, Section 9, Clause 6)
  - Cannot require that “*Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.*” (Article I, Section 9, Clause 6)
  - Could not interfere with the slave trade, at least not until the year 1808 (Article I, Section 9, Clause 1)

## The Currency Power

- Article I, Section 8, Clause 5 gives Congress the power “*[t]o coin Money [and] regulate the Value thereof.*”
- States are DENIED this power.
- When the Constitution was written, each state had its own money, and so did the nation. It was important to give Congress the Currency Power to ensure a standardized, single, national system of currency.
- United States began coining money and making paper money
  - *Hepburn v. Griswold* (1870)--said “*to coin*” meant to stamp metal and so the Constitution did not authorize paper money.
  - *Legal Tender Cases* (1871) and *Juliard v. Greenman* (1884)--both held that the issuance of paper money was the proper use of the Currency Power.

## The Bankruptcy Power

- Article I, Section 8, Clause 4 gives Congress the power “*[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.*”
- **Bankruptcy** is the legal proceeding in which the bankrupt’s assets--however much or little they may be--are distributed among those to whom a debt is owed.
- Most bankruptcy cases are heard now in federal district courts.

# Supreme Court Case Study 4 *Gibbons v. Ogden, 1924*

## Section 3: Other Expressed Powers

### Foreign Relations Powers

- The National Government has greater powers in the field of foreign affairs than in any other area.
- Congress and the President share these powers.
- The foreign relations powers of Congress come from two sources:
  - From various expressed powers, especially the war powers and the power to regulate foreign trade.
  - From the fact that the United States is a sovereign state in the world community.

### War Powers

- Eight of the expressed powers given to Congress in Article I, Section 8 deal with war and national defense.
- The President is the commander in chief; however, the congressional war powers are extensive and substantial
- Expressed war powers exclusively given to Congress (Article I, Section 8):
  - To declare war, to make laws regarding captures on land and water (Clause 11)
  - To raise and support armies (Clause 12)
  - To provide and maintain a navy (Clause 13)
  - To make laws governing land and naval forces (Clause 14)
  - To provide for summoning the militia to execute federal laws, suppress uprisings, and repel invasions (Clause 15)
  - To provide for organizing, arming, and disciplining the militia and governing it when in the service of the Union (Clause 16)

### War Powers (Continued)

- War Powers Resolution of 1973
  - Was passed in response to the Vietnam Conflict.
  - Limited what the President could do as commander in chief in areas where Congress has not declared war.

## Other Expressed Powers

- **Naturalization**--the process by which citizens of one country become citizens of another.
  - Article I, Section 8, Clause 4 gives Congress the exclusive power “[t]o establish a uniform Rule of Naturalization.”
- The Postal Power
  - Article I, Section 8, Clause 7 says that Congress has the power “[t]o establish Post Offices and post Roads.”
  - Laws passed by Congress due to the Postal Power:
    - Crimes--obstruct the mail, to use the mails to commit fraud, to use the mails in the committing of any other crime.
    - Prohibition of mailing certain items.

## Other Expressed Powers (Continued)

- Copyrights and Patents
  - Article I, Section 8, Clause 8 gives Congress the power “To promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”
  - A **copyright** is the exclusive right of an author to reproduce, publish, and sell his or her creative work.
  - A **patent** grants a person the sole right to manufacture, use, or sell “any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof.”
    - Good for 20 years
  - Copyrights and patents are important because they encourage scientists, artists, authors, and inventors to produce new and better works that can be used in the public.

## Other Expressed Powers (continued)

- Weights and Measures
  - Article I, Section 8, Clause 5 gives Congress the power to “fix the Standard of Weights and Measures” throughout the United States.
  - In 1838 Congress set the English system of pound, ounce, mile, foot, gallon, quart, and so on as the legal standards of weights and measures in this country.
  - In 1866 Congress also legalized the use of the metric system of gram, meter, kilometer, liter, and so on.
- Powers Over Territories and Other Areas
  - Article I, Section 8, Clause 17 and Article IV, Section 3, Clause 2 give Congress the power to acquire, manage, and dispose of federal areas.
  - Property may be acquired by purchase or gift.
  - **Eminent domain**: the inherent power to take private property for public use.

## Other Expressed Powers (continued)

- Judicial Powers
  - Part of the checks and balance system
  - Congress may
    - Create all of the federal courts below the Supreme Court
    - Structure the federal judiciary
    - Define federal crimes and set punishment for violators of federal law
    - Four crimes mentioned in the Constitution:
      - Counterfeiting (Article I, Section 8)
      - Piracies and felonies on the high seas (Article I, Section 8)
      - Offenses against international law (Article I, Section 8)
      - Treason (Article III, Section 3)
  - Congress uses implied powers to establish all other federal crimes.

## Section 4: The Implied Powers

### Introduction

- **Appropriate:** assign to a particular use

### The Necessary and Proper Clause

- The **Necessary and Proper Clause** gives to Congress the expressed power *“To make 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
- The Necessary and Proper Clause has often been called the “Elastic Clause,” because it has been stretched so far and made to cover so much over the years.

### The Battle Over Implied Powers

- In 1790, Alexander Hamilton, as Secretary of the Treasury, urged Congress to set up a national bank.
- Opponents of Hamilton’s plan insisted that nowhere did the Constitution give to Congress the power to establish such a bank.
  - Thomas Jefferson believed that the new government had only
    - Those powers expressly granted to it by the Constitution
    - Those powers *absolutely* necessary to carrying out the expressed powers.
- Hamilton and his supporters looked to the Necessary and Proper Clause and said that Congress had the power to do anything that was reasonably related to the exercise of the expressed powers.
- Congress established the Bank of the United States in 1791.

## The Battle over Implied Powers (continued)

- *McCulloch v. Maryland*, 1819
  - In 1818 Maryland placed a tax on all notes issued by any bank doing business in the State but not chartered by the State Legislature.
  - The United States defended the concept of implied powers, and also argued that no State could lawfully tax any agency of the Federal Government.
  - It held that the Constitution need not expressly empower Congress to create a bank.
  - The creation of the Second Bank of the United States was “necessary and proper” to the execution of the expressed powers of Congress: the taxing, borrowing, currency, and commerce powers.
  - *“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.”*--*McCulloch v. Maryland*, Opinion of the Court

## Battle Over Implied Powers (Continued)

*“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.”*--*McCullouch v. Maryland*, Opinion of the Court

- The Doctrine in Practice
  - **Doctrine:** a principle or fundamental policy.
  - Congress has used the Necessary and Proper Clause so much due to the ruling in *McCullouch v. Maryland* that some critics call it the “convenient and useful” clause.

## Section 5: The Nonlegislative Powers

## Constitutional Amendments

- Article V says that Congress may propose amendments by a two-thirds vote in each house
- They have done this 33 times
- Recent requests from states for amendments:
  - Balance the federal budget
  - Prohibit flag burning
  - Permit prayer in the public schools
  - Outlaw abortions
  - Impose term limits on members of Congress



## Electoral Duties

- If no candidate receives the required 270 electoral votes to become President, the House of Representatives choose the President from the top three in the electoral vote count. (Each state casts one vote)
  - Thomas Jefferson in 1801
  - John Quincy Adams in 1825
- If no candidate receives the required 270 electoral votes to become Vice President, the Senate chooses the Vice President (Each Senator Votes)
  - Richard M. Johnson in 1837
- 25th Amendment provides for the filling of a vacancy in the Vice Presidency
  - The President nominates a **successor**--a replacement, someone to fill the vacancy, subject to a majority vote in both houses of Congress
    - Gerald Ford in 1973
    - Nelson Rockefeller in 1974

## Impeachment

- The President, Vice President, and all civil officers of the United States may *"be removed from Office on Impeachment for and Conviction of, Treason, Bribery, and other high Crimes and Misdemeanors."*
- The House of Representatives have the sole power to **impeach**--to accuse, bring charges. (Majority vote to pass articles of impeachment)
- The Senate has the sole power to try--to judge, sit as a court--in impeachment cases (2/3 vote to convict)
- Two Presidents have been impeached by the House, and the Senate voted to **acquit** both men--that is, it found them not guilty.

## Impeachment

- Andrew Johnson
  - Congress passed the Tenure of Office Act--stated the President could not fire members of the executive branch that had been confirmed by Congress without Congress' approval.
  - President Johnson fired the Secretary of War anyway, triggering impeachment by the House
  - In May of 1868 Johnson was acquitted; the Senate was only one vote shy of convicting President Johnson
- Bill Clinton
  - Clinton admitted publicly that he had an "inappropriate relationship" with White House intern Monica Lewinsky; however, in a deposition he had said he had no relationship with Ms. Lewinsky.
  - Clinton was charged with **perjury**--lying under oath, and obstruction of justice
  - On February 12, 1999, President Clinton was acquitted of all charges in the scandal.

## Impeachment

- Richard Nixon
  - Instead of facing impeachment by the House, President Nixon resigned the office of the President on August 9, 1974 amidst the Watergate Scandal.
  - Nixon refused to cooperate with a **subpoena**, a legal order directing one to appear in court and/or produce certain evidence. (Nixon tapes)
  - Watergate involved the most extensive and the most serious violations of public trust in the nation's history.
  - Richard Nixon was pardoned by President Gerald Ford after his resignation.

## Executive Power

- Appointments
  - All major appointments made by the President must be confirmed by the Senate by majority vote.
  - Cabinet members are rarely not confirmed by the Senate.
- Treaties
  - The President makes treaties *"by and with the Advice and Consent of the Senate. . . provided two thirds of the Senators present concur."*
  - The Senate may accept or reject the treaty as it stands, or it may decide to offer amendments, reservations, or understandings to it

## Investigatory Power

- Congress has the power to investigate any matter that falls within the scope of its legislative powers.
- Most often investigations are held to
  - Gather information useful to Congress in the making of some legislation;
  - Oversee the operations of various executive branch agencies;
  - Focus public attention on a particular subject, from the drug war to movie violence;
  - Expose the questionable activities of public officials or private persons; and/or
  - Promote the particular interests of some members of Congress