

# The Powers of Congress

Magruder Chapter 11

# The Scope of Congressional Power

# Congressional Power

- Congress has only those powers delegated to it and not specifically denied to it by the Constitution
- Congress has expressed, implied, and inherent powers

# Strict vs Liberal Constructionism

- Strict constructionists believe Congress should exercise only its expressed powers and those implied powers absolutely necessary to carry out those expressed powers

# Strict vs Liberal Constructionism

- Liberal Constructionists believe in a broad interpretation of the powers given to Congress, in interpretation that has extended the powers of the Federal Government far beyond the plans of the original Framers of the Constitution

# The Expressed Powers

# The Power to Tax

- Article I, Section 8, Clause 1 of the Constitution gives to Congress the power to tax in order to meet the public needs, protect domestic industry, or protect public health and safety

# The Power to Tax

- There are four explicit limitations on the power to tax
  - ◆ Congress may tax only for public purposes, not private benefit
  - ◆ Congress may not tax exports
  - ◆ Direct taxes must be divided among the States according to their populations
  - ◆ All indirect taxes must be levied at the same rate in all parts of the country



# The Power to Borrow

- Congress may borrow to finance its business
- The Federal Government spends more than it collects
  - ◆ Deficit
  - ◆ Debt

# The Commerce Power

- Congress may regulate interstate commerce and foreign trade
- In *Gibbons v. Ogden* (1824), the Supreme Court ruled that the power to regulate commerce included all commercial intercourse between States and nations
- The commerce power implies many other powers
- The commerce power is limited

# The Currency Power

- Congress has the power to issue money and regulate its value
- In 1870, the Supreme Court held that paper money was not legal tender
  - ◆ *Hepburn v. Griswold*
- In 1871 & 1884, the Supreme Court held that paper money was legal tender
  - ◆ *Juliard v. Greenman*

# Bankruptcy

- Congress has the power to establish uniform bankruptcy laws
- The power to regulate bankruptcy is concurrent
  - ◆ Chapter 7 – individuals – can exempt certain property from sale
  - ◆ Chapter 9 – financially distressed governmental entities

# Bankruptcy

- ◆ Chapter 11 – allows businesses to reorganize their debts and continue to operate
- ◆ Chapter 12 – farmers – can reorganize debt and keep the farm
- ◆ Chapter 13 – individuals – repay over 3 to 5 year period – cannot foreclose during this period

# Foreign Relations

- Foreign Relations Powers

- ◆ Congress has the power to deal with foreign states and shares those powers with the president

# War Powers

## ■ Congress May:

- ◆ Declare war
- ◆ Raise and support an army and navy
- ◆ Make rules governing the land and naval forces
- ◆ Call for the militias
- ◆ Grant letters of marque and reprisal

# Additional Powers of Congress

- Naturalization – Congress has the power to make citizens of another country citizens of the United States
- The Postal Power – Congress has the expressed power to establish post offices and post roads
- Copyrights and Patents – Congress grants rights over publications and inventions



# Additional Powers of Congress

- **Weights and Measures** – Congress has the power to fix the standards of weights and measures in the country
- **Power over Territories and Other Areas** – Congress has the power to acquire, manage, and dispose of federal areas

# Additional Powers of Congress

- Judicial Powers – Congress has the power to create the federal courts below the Supreme Court

# The Implied Powers

# The Necessary and Proper Clause

- This clause is the source of congressional implied powers
- The clause states that Congress has the power “to make all laws necessary and proper for carrying into execution the foregoing (expressed) powers”
- The clause has been called the “elastic clause” because it allowed Congress to stretch its powers

# The Battle over Implied Powers

- The battle over the meaning of the clause caused a conflict between Hamilton and Jefferson (between strict and liberal constructionists)
- *McCulloch v. Maryland* (1819) – the Supreme Court backed Hamilton's views and strengthened the notion that implied powers were necessary to conduct government for the benefit of the people

# The Battle over Implied Powers

- The Doctrine in Practice – Today  
“necessary and proper” is generally interpreted to mean “convenient and useful” as long as the implied powers have their basis in the expressed powers

# The Non-legislative Powers

# Constitutional Amendments

- Congress has the power to propose amendments to the Constitution by a two-thirds vote in each house
- Congress may call a national convention at the request of two-thirds of the States' legislatures to propose an amendment



# Electoral Duties

- The House may be called on to elect the President if no candidate receives a majority of electoral votes
- Under the same circumstances, the Senate may be called on to elect the Vice President

# Impeachment

- The House has the sole power to vote articles of impeachment, or removal, of the President, Vice President, and all other civil officers of the United States
- The Senate has sole power to conduct a trial of those impeached by the House

# Executive Powers

- The Senate must confirm all major appointments made by the President
- The Senate must confirm all treaties made by the President

# Investigatory Power

- Congress holds the power to investigate matters related to its legislative powers
- Congress may choose to conduct an investigation for five reasons
  - ◆ To gather information useful to Congress
  - ◆ To oversee operations of the executive branch

# Investigatory Power

- ◆ To focus public attention on an issue
- ◆ To expose questionable activities of public officials
- ◆ To promote the interests of some members of Congress