

## Chapter 11: Powers of Congress

### Section 1: The Scope of Congressional Powers

**Key Terms:** expressed power, implied powers, inherent powers, strict constructionist, liberal constructionist, consensus

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#### A. Congressional Power

1. Congress has only those powers delegated to it and not specifically denied to it by the Constitution.

The Constitution has given Congress expressed, implied, and inherent powers.

- Expressed:** Powers specifically mentioned in the Constitution
2. -**Implied:** Powers not specifically mentioned in the Constitution, but may reasonably deduced from those that are.
    - Inherent:** Powers that are possessed by all national governments

#### B. Strict Versus Liberal Construction

**Strict constructionists** (led by Thomas Jefferson) believed Congress should exercise only

1. its expressed powers and those implied powers absolutely necessary to carry out those expressed powers. The value of government most valued was State government.
2. **Liberal constructionists** believe that the Constitution must be interpreted broadly, with an eye toward change.
  - a. That belief has extended the powers of the Federal Government far beyond the plans of the original Framers of the Constitution.

Liberal constructionists prevailed largely because wars and economic crises called for
  - b. national action. The consensus of the American public is that government should have the power to solve national problems.

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### Section 2: Expressed Powers of Money & Commerce

**Key Terms:** tax, direct tax, indirect tax, deficit financing, public debt, commerce power, legal tender, bankruptcy

#### A. The Power to Tax

1. The Purpose of Taxes

- 90% of all the money needed to run the government comes from taxes.

- A **tax** is a charge levied by the government on persons or property to meet public needs.

- Congress may also impose taxes to protect American business (tariffs), and to protect the public health and safety. A license or fee is also a type of tax.

2. Limits on the Taxing Power

- The Constitution places 4 explicit limits on the power to tax:

- Congress may tax only for public purposes

- Congress may not tax exports
- Direct taxes must be apportioned according to population. A **direct tax** is a tax that is paid by the person on whom it is imposed.
- Indirect taxes** must be levied at the same rate in all parts of the country.

## B. The Borrowing Power

1. There is no Constitutional limit on the amount of money that Congress may borrow.
2. Our government tends to practice deficit financing, which is the practice of spending more than is taken in. The government borrows money to make up the difference.
3. Prior to 1930, the government borrowed money to finance crisis situations such as war and so on. After 1930, Congress borrowed money to finance various social programs.
4. Deficit financing increases the public debt, or the total amount of money that the government has borrowed and not repaid, plus the accumulated interest on the debt.
5. The only time in recent history that the government spent less than it took in was between 1998 and 2001. President Clinton and Congress passed the Balanced Budget act of 1997, which required a reduction in spending. The budget has not been balanced since Clinton left office in 2002.

## C. The Commerce Power

1. The **commerce power** is the power of Congress to regulate interstate and foreign trade.
2. The lack of this power under the Confederation crippled the country. The Framers made sure it was included in the Constitution.
3. The first Supreme Court case involving the commerce power was Gibbons v Ogden in 1824. The court decision gave Congress the right to regulate trade between nations, states, & parts of states. It granted to Congress the broadest possible definition of commerce.
4. Limits on the Commerce Power:
  - Cannot tax exports
  - Cannot favor the ports of one state over those of any other in the regulation of trade
  - Cannot require vessels going between states to stop in another state and pay a tax
  - Could not do anything to limit the slave trade for 20 years, until 1808

## D. The Currency Power

1. The Constitution gives Congress the power to coin money and to regulate its value
2. When Congress established the 1<sup>st</sup> National Bank of the US, it also began to issue bank notes, or paper money. These bills were not **legal tender** (any kind of money that a creditor must legally accept as payment for debts) until Congress made them legal tender in 1861.
3. Congress is authorized by the Constitution to establish uniform laws for **bankruptcy**, or the legal process in which a bankrupt person's assets are distributed among the creditors. The states and the Federal government have concurrent power to regulate bankruptcy.

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### Section 3: Other Expressed Powers

**Key Terms:** naturalization, copyright, patent, eminent domain

#### A. Foreign Relations Powers

1. The National Government has more power in the field of foreign relations than in any other area. The states are specifically prohibited by the Constitution from taking part in foreign affairs.
2. The foreign relations powers come from 2 sources:
  - From various expressed powers, especially the war powers & the power to regulate foreign commerce
  - Because the US is a sovereign nation, it has the inherent powers to act on matters that affect the security of the nation
3. Congress shares its foreign relations powers with the President

#### B. War Powers

1. Congress shares its war powers with the President.
2. Congress has extensive powers:
  - Only Congress can declare war
  - Congress has the power to raise & support armies & to maintain a navy
  - It has the power to make rules pertaining to the governing of the military
  - It has the power to call forth the militia
  - It has the power to grant letters of marque and reprisal
  - It has the power to make rules concerning captures on land and water

#### C. Other expressed powers

1. Congress establishes the rules for naturalization
2. Congress has the postal power of the nation
3. Congress sets the rules concerning copyrights and patents
4. Congress is authorized to fix the standard of weights and measures for the nation
5. Congress has the power to acquire, sell, and manage the territory of the US. This includes the right of **eminent domain**, or the right to take private land for public use.

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### Section 4: The Implied Powers

**Key Terms:** appropriate, Necessary & Proper Clause, doctrine

#### A. Necessary & Proper Clause

1. The Necessary & Proper Clause gives Congress the power to use implied powers.
2. The Clause says that Congress can make all laws "necessary & proper" to carry out all of the expressed powers.
3. All implied powers are based on an expressed power in the Constitution.

## **B. Battle Over Implied Powers**

1. Hamilton & the liberal constructionists believed the Necessary & Proper Clause gave them the power to do whatever was necessary to carry out the expressed powers. Specifically, they wanted to set up a National Bank to manage the currency and finances of the nation.
2. Jefferson and the strict constructionists believed that the nation possessed only the expressed powers and the absolute minimum of implied powers to make the government function.
3. The battle over implied powers was finally decided by the Supreme Court in *McCulloch v Maryland* in 1819. The battle was over the right of Congress to establish a national bank in order to regulate the currency. They had no way to fight the establishment of the first bank, since it was in Washington DC. Congress sought to establish the 2<sup>nd</sup> Bank in the state of Maryland. This allowed the strict constructionists to assert their power over the bank. They had the state of Maryland place a tax on all currency issued from the bank. The intention was to break the power of the bank. The bank deliberately issued bills without paying the tax, and the head cashier was arrested. The case was appealed to the Supreme Court. Their ruling said that the creation of the bank was a power implied by several of the expressed powers of the Constitution, and that its creation was necessary & proper to the execution of those expressed power. Not only did this assert the liberal constructionist view of the Constitution, it also asserted the power of the National government over the states.
4. In practice, the necessary and proper clause has come to mean “convenient and useful”.

## **Chapter 11: Powers of Congress** **Section 5: The Nonlegislative Powers**

**Key Terms:** successor, impeach, acquit, perjury, censure, subpoena

### **A. Constitutional Amendments**

1. Article V of the Constitution grants Congress the power to propose Constitutional amendments by a 2/3 vote in each house.
2. This process has been used 33 times so far.
3. Article V also provides for proposal using a national convention if requested by 2/3 of the State Legislatures. This process has never been used.

### **B. Electoral Duties**

1. Congress has electoral duties that are only exercised in very unusual circumstances.
2. According to the 12<sup>th</sup> Amendment, the House would be required to choose a President if no candidate received a majority of votes in the Electoral College. The House would choose from among the top 3

electoral vote-getters. The voting would be 1 vote per state, for a total of 50 votes, with a majority required to elect.

3. The Senate would select the Vice President if no candidate received a majority of the votes in the Electoral College. The procedures would be similar to those used by the House, except that each Senator gets one vote, for a total of 100 votes, with a majority required to elect.
4. In addition, the 25<sup>th</sup> Amendment provides for a successor if the office of Vice President becomes empty. In this case, the President would choose a new Vice President, but the successor would be subject to a majority approval by both Houses of Congress.

### **C. Impeachment**

1. The Constitution allows for the removal of the President, VP, and all civil officers of the US. They may be removed for treason, bribery, or other high crimes and misdemeanors.
2. Removal is a two-part process, First, the House determines if there is sufficient evidence to bring charges, and second, the Senate holds the trial. The House has the sole power to impeach, or bring charges. The Senate has the sole power to try, or to judge, in impeachment cases. The House may bring charges with a majority vote, while a conviction in the Senate requires a 2/3 vote.
3. There is one restriction in the Senate. If it is the President being impeached, the person who presides over the Senate must be the Chief Justice of the Supreme Court.
4. To date there have been 17 impeachments in the House, with 7 eventually found guilty in the Senate. All 7 of those found guilty have been federal judges.
5. Two Presidents have been impeached, Andrew Johnson and Bill Clinton. Both were found not guilty in the Senate. Richard Nixon resigned rather than face impeachment over the Watergate affair.

### **D. Executive Powers**

#### 1. Appointments

-All major appointments made by the President must be approved by a 2/3 vote of the Senate.

-There is a long-standing tradition called "Senatorial Courtesy". According to this tradition, if the President makes an appointment to a federal position whose region lies entirely with a state, and that state's Senator objects to the appointment, and the Senator is from the President's party, then the Senate will automatically turn down the appointment.

#### 2. Treaties

-The President makes treaties "by and with the Advice and Consent of the Senate". A treaty must be approved by 2/3 of the Senate.

## **E. Investigatory Power**

1. Congress has the power to investigate matters of interest.
2. Investigations take place through the standing committees of Congress.