

The Powers of Congress

Chapter 11

US/VA Government

1. Expressed

- Specifically written in the Constitution
- Article 1, section 8, clauses 1-17

2. Implied

- Not written but reasonably suggested
- Based on the Necessary and Proper Clause (aka Elastic Clause)
- Article 1, section 8, clause 18

3. Inherent

- Powers a government has simply because it is a sovereign state

Expressed Powers: Money and Commerce

1. Commerce Powers
(Article 1, section 8,
clause 3)
 - Congress has the power to regulate interstate/foreign trade



Gibbons vs. Ogden

- 1st case involving commerce powers
- Ogden given permit for navigation between NY and NJ by state legislature
- Gibbons given same permit by Congress
- Ogden sued and won in NY state court
- Gibbons appealed to Supreme Court claiming NY grant in conflict with Congressional power to regulate trade
- Supreme Court agreed

- Commerce extended to include all economic activities

- Civil Rights Act of 1964 passed on basis of commerce clause - discrimination in public places
- Limitations on commerce clause (Article 1, section 9):
 - Can't tax exports
 - Can't favor one port over another in regulation of trade
 - Ships don't pay duties from port to port
 - Slave trade compromise until 1808

Power to Tax

(Article 1, Section 8, Clause 1)

- Purpose of taxes - to raise money needed to finance the operation of the government
- Tax - a charge levied by a government on persons/property to meet public needs
- Limits
 - May only tax for public purposes
 - May not tax exports
 - Indirect taxes must be levied at the same rate in all parts of the US
- Direct tax - paid to government by person on whom its imposed
- Indirect tax - paid by one person then passed on to another ie gas tax

Borrowing Powers

(Article 1, Section 8, Clause 2)

- Congress can borrow money on the credit of the US
- No constitutional limit on the amount that can be borrowed
- No restrictions on the purpose of borrowing
- Deficit financing - spending more than you make
 - Used during Great Depression and World Wars
- Public debt - money borrowed but not repaid plus interest

Bankruptcy

(Article 1, Section 8, Clause 4)

- Congress has power to establish uniform laws for bankruptcy
- Bankruptcy - legal proceeding in which the bankrupt's assets are distributed to those to whom a debt is owed
- Though a concurrent power, most proceedings held in federal courts

Currency power (Article 1, section 8, clause 5)

- Congress coins money
- this power is denied to the states
- currency - money in any form
- legal tender - any kind of money a creditor must, by law, accept for payment of debt



Other Expressed Powers

- Foreign relations
 - Both an inherent power and expressed power
 - President primarily responsible for this though Congress shares power
- Declare war
- Maintain army/navy
- Regulate trade
- Send/receive ambassadors
- Recognize foreign states

War Powers

- Also shared between the President and Congress
- Only Congress can declare war
- Raise/support military
- Call forth militia
- War Powers Act of 1973
 - Congress can restrict the use of force when a state of war doesn't exist – fight over power between C-in-C and Congress

Copyright / patents

- Copyright - exclusive right of an author to reproduce/publish/sell literary/musical/artistic work
 - Usually good for the life of the author plus 70 years
 - Registered in the copyright office
- Patents - grants sole right to manufacture/use/sell new and useful machines
- Good for 20 years but may be extended by Congress

Postal Power

- Congress has power to establish post offices/post roads
- Prevent use of mail for fraud or any other crime
- Prohibits mailing of some items - fireworks, chain letters
- Benjamin Franklin - 1st Postmaster General

Territories and Other Areas

- Governs territories and federal areas
- May acquire property through eminent domain



- Weights/measures
 - Power to set uniform weights/measures
 - Primarily use the English system; metric system also adopted
 - Naturalization - the process by which citizens of one country become citizens of another



Judicial Powers

- Created federal courts
- Defines federal crime and provides punishment
- Impeachment*



Non Legislative Powers

1. Amending (Article 5)

- 2/3 vote of each house or 2/3 states request constitutional convention (never used)

2. Electoral duties

1. House may have to elect President if no one receives a clear majority
2. 25th amendment also describes how to fill Vice Presidential vacancies
 1. President suggests and Congress confirms
 2. Senate may choose VP in the event of a tie – only happened once (1837)

3. Executive power

- Senate approves/rejects appointments by 2/3 vote - only 12 have been rejected
- Senate ratifies treaties by 2/3 vote



4. Investigative Power

- Gather information useful in drafting laws
- Review the effectiveness of laws in practice
- Legislative oversight - make sure programs are administered and operated correctly
- Focus public attention on subject/issue, ie steroid hearings
- Expose questionable activities of public officials
- Promote particular interests of a member of Congress

5. Impeachment

- House has sole power to impeach (bring charges) by majority vote
- House Judiciary Committee actually levies charge (indicts)
- Senate tries (judges)
- Chief Justice of Supreme Court presides
- 2/3 vote in Senate to convict
- Penalty is removal from office
- Only happened twice (1868 A. Johnson and 1998 B. Clinton)-- both were acquitted

Necessary and Proper Clause (Article 1, Section 8, Clause 18)

- “All laws necessary and proper for carrying out expressed powers”
- *McCulloch v. Maryland 1819*
 - Maryland passed tax on federal bank
 - McCulloch, the cashier, refused to pay tax convicted in state court; appealed to Supreme Court
 - Maryland argued that bank was unconstitutional - not expressed power
 - Marshall rules bank was “necessary and proper” to carry out taxing and borrowing privileges
 - Upheld idea of implied powers

Implied Powers

- “All laws necessary and proper for carrying out expressed powers”
 - Look at each of the expressed powers
 - Come up with at least one implied power than comes from that expressed power
 - Example:
 - Expressed power: Raise and support an army
 - Implied power: Register/Draft via a Selective Service Act
 - Most of what Congress does comes from implied powers