

Powers of Congress

I. Expressed Powers: Definition & Examples

- A. Definition: Those powers of Congress specifically listed in the Constitution.
- B. Six examples from Article I, Section 8:
 - 1. Power to tax & borrow – this power is needed to fund government operations.
 - 2. Commerce power – this is the power to regulate interstate & foreign trade.
 - 3. Currency power – this is the power to coin money & regulate its value.
 - 4. Power to raise and maintain an army & navy – provides for a standing military.
 - 5. Naturalization – the power to determine the process by which immigrants become citizens of the United States.
 - 6. Copyrights & Patents – the power to make rules regarding how people are to protect their creative works (copyrights) and their inventions (patents).

II. Implied Powers: Definition & Examples

- A. Definition: The powers of Congress that are not listed in the Constitution, but are implied by those that are.
- B. Two examples of implied powers:
 - 1. The Draft – implied by the power to raise an army.
 - 2. Minimum Wage – implied by the power to regulate trade.
- C. The “Necessary & Proper” Clause: The Constitutional source of implied powers.
 - 1. What does it say? Congress can make all laws Necessary & Proper to carry out its expressed powers.
 - 2. What does it allow Congress to do? It allows Congress to do more than just what the Constitution says – in other words, it allows them to exercise implied powers to help carry out their expressed powers.
 - 3. Why is it also called the “Elastic” Clause? Congress uses it to stretch their expressed powers.

III. The Controversy over Implied Powers

- A. Strict Constructionists ⇒ 10th Amendment ⇒ more power for states
Believe that Congress should stick to their expressed powers and make very little use of their implied powers. Feel that since the 10th Amendment reserves to the states those powers not specifically granted to the national government, that implied powers are a USURPATION of state power. THOMAS JEFFERSON was the original strict constructionist.
- B. Liberal Constructionists ⇒ Elastic Clause ⇒ more power for national govt
Believe that Congress should be allowed to make broad use of implied powers to help strengthen the national government. Feel that NATIONAL PROBLEMS DEMAND NATIONAL SOLUTIONS and that waiting for each state to act individually can be inefficient at best and dangerous to the best interests of the nation at worst. ALEXANDER HAMILTON was the original liberal constructionist.

IV. Implied Powers on Trial: McCulloch v. Maryland (1819)

- A. Implied Power of Congress being challenged:
Congress passed laws setting up a national bank, called The Bank of the United States. Nowhere in the Constitution did it specifically say that they could do this.
- B. Strict Constructionist argument:
Since the Constitution does not specifically provide for the creation of a national bank, Congress cannot create one. The bank is an unconstitutional use of Congressional power and should be struck down.
- C. Liberal Constructionist argument:
Congress has several expressed powers that put money directly in the hands of the government – taxing power, borrowing power, currency power, commerce power – all of these result in the government handling a whole lot of money. This being the case, it is “necessary & proper” to have a national bank to hold the money in.
- D. Decision of the Supreme Court/Significance of the outcome:
John Marshall and the Supreme Court ruled unanimously that the bank was constitutional and that it could exist. In doing so, the Court set a powerful PRECEDENT that implied powers DO exist and that Congress can do more than just what the Constitution specifically says.