

Chapter 11: Powers of Congress

Section 3

Lecture Notes



AMERICAN
GOVERNMENT

PEARSON

► Objectives

1. Explain how the Necessary and Proper Clause gives Congress flexibility in lawmaking.
2. Compare the strict construction and liberal construction positions on the scope of congressional power.
3. Describe the ways in which the implied powers have been applied.

▶ Key Terms

- **Necessary and Proper Clause:** the final clause of Article I, Section 8 in the Constitution, which gives Congress the power to make all laws “necessary and proper” for carrying out its expressed powers; also called the Elastic Clause
- **strict constructionist:** someone who argues that Congress can use only those implied powers *absolutely necessary* to carry out its expressed powers

▶ Key Terms, cont.

- **liberal constructionist:** someone who argues that the Constitution gives Congress very broad implied powers
- **consensus:** a general agreement among the majority
- **appropriate:** to assign to a particular use; Congress appropriates billions of dollars to programs such as education, unemployment compensation, and Social Security

- How has the doctrine of implied powers increased the powers of Congress?
 - The Necessary and Proper Clause has been interpreted in a way that gives Congress many powers not specifically mentioned in the Constitution.
 - For example, the Commerce Clause has been interpreted to let Congress pass laws on many economic activities.

► Necessary and Proper Clause

- The final clause of Article I, Section 8 of the Constitution says Congress has the 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.”

► Implied Powers

- Also called the **Elastic Clause**, this clause allows Congress to decide how it should carry out the many powers given to it by the Constitution.
- In doing so, Congress has given itself implied powers not mentioned in the Constitution. It has argued that these implied powers are needed to fulfill its other duties.

► Implied Powers of Congress

- Many of the laws of Congress makes today stem from the Necessary and Proper Clause.
- The Framers could not have made provisions for every situation that might arise in the modern world.
 - Without its implied powers, how effectively could Congress address new situations?

**The expressed
power to lay and
collect taxes**



- Implies the power to:**
- **Punish tax evaders**
 - **Regulate (license) some commodities (such as alcohol) and outlaw the use of others (such as narcotics)**
 - **Require States to meet certain conditions to qualify for federal funding**

**The expressed
power to borrow
money**



**Implies the power to establish the
Federal Reserve Systems of banks**

**The expressed
power to create
naturalization
law**



**Implies the power to regulate and
limit immigration**

The expressed power to raise armies and a navy

Implies the power to draft Americans into the military

The expressed power to regulate commerce

Implies the power to:

- **Establish a minimum wage**
- **Ban discrimination in workplaces and public facilities**
- **Pass laws protecting the disabled**
- **Regulate banking**

The expressed power to establish post offices

Implies the power to:

- **Prohibit mail fraud and obstruction of the mails**
- **Bar the shipping of certain items through the mail**

▶ Strict Construction

- Checkpoint: What was the argument of the strict constructionists?
 - **Anti-Federalists** supported strict construction, arguing that Congress should only be able to use implied powers that are absolutely necessary to carry out its expressed powers.
 - **Strict constructionists** such as Thomas Jefferson wanted to protect the independence and power of state governments from a national government with too many implied powers.

▶ Liberal Construction

- Liberal constructionists took the Federalist view that the Constitution should be interpreted broadly, strengthening the national government by giving it a wide range of implied powers.
- The Supreme Court upheld the idea of implied powers in *McCulloch v. Maryland* in 1818.
- Since then, the liberal constructionist view has dominated and federal power has grown.

▶ Expanding Powers

- Major crises have placed more responsibility on the national government.
- Citizens have demanded more services from the government.
 - Congress established the United States Border Patrol to guard the nation's borders.



▶ Expanding Powers, cont.

- Congress, the President, and the Supreme Court have all supported increased powers for the national government.
- Implied powers allow the federal government to adapt to changes in society and technology that the Framers could not have anticipated.
- For example, while Education is an area expressly delegated to the States, Congress has used its implied powers to make legislation affecting schools.

► Congress and Education

- **Title III of the Civil Rights Act** authorized the attorney general to issue civil suits against discriminatory school in the United States.
- **Title IX of the Education Amendments to the Civil Rights Act** forbids gender discrimination in federally funded education programs.
- **The Individuals with Disabilities Education Act** is designed to prevent discrimination and enable individuals with disabilities to participate fully in all aspects of education.

► Implied Powers in Practice

- Implied powers have most often been connected to the commerce power, the power to tax and spend, and the war powers.
- Congress can levy a wide range of taxes and assign federal money to be spent on improving the general welfare through a variety of services like Social Security or Medicare.

▶ Limits on Implied Powers

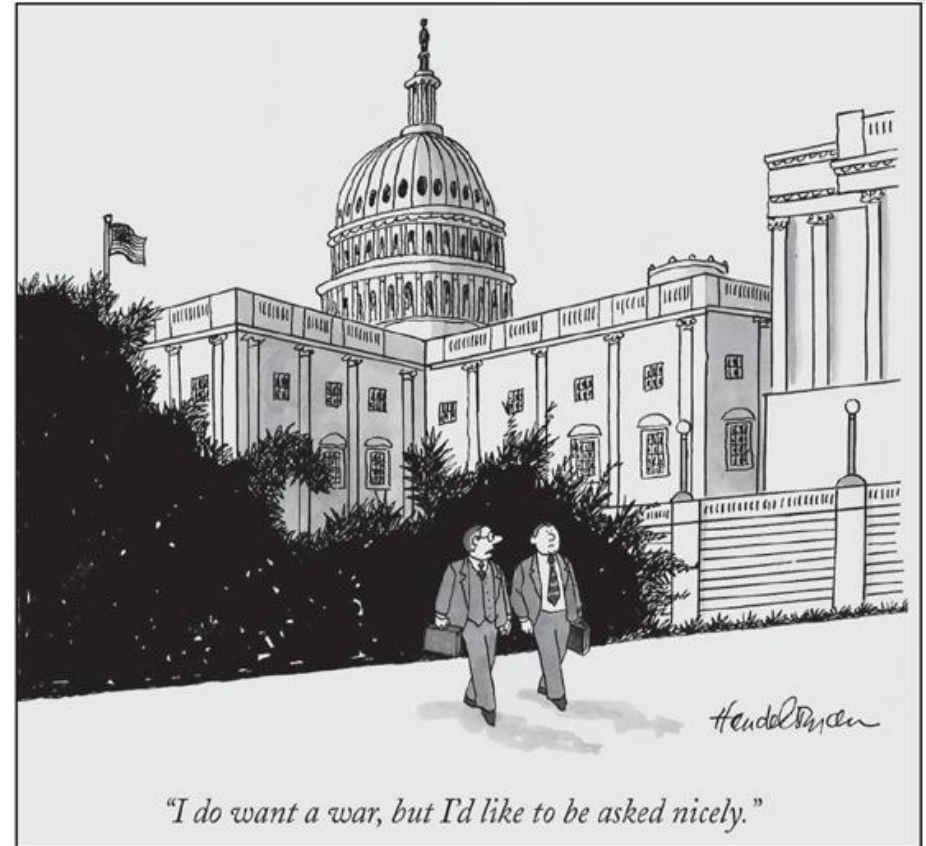
- Congress cannot simply grant itself a power because such a power would benefit the public or the United States.
- An implied power must be based in some way on the expressed powers of the Constitution.
- Implied powers cannot violate the Constitution.

▶ The Commerce Power

- The Commerce Clause is now defined to include the production, buying, and selling of goods as well as the transportation of people and goods.
 - Using implied powers derived from the Commerce Clause, Congress can **regulate manufacturing, wages, food and drugs, and more.**
 - Congress can also build **interstate highways, set consumer protection laws, and protect the environment.**

▶ War Powers

- Congress can do whatever is needed to carry out its war power, except violate another part of the Constitution.
- Congress created the draft based on its implied war powers.
 - To which power does this cartoon refer?



► Review

- Now that you have learned how the doctrine of implied powers has increased the powers of Congress, go back and answer the Chapter Essential Question.
 - What should be the limits on the powers of Congress?