Constitution Class Handout
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Lesson 03

Legislative Authorities
Making Law, and Enumerated Powers

Making Law

As covered when we studied Article I, Section 1, all legislative powers belong to the Legislative Branch. According to Article I, Section 7, Clause 2, all bills must be approved by both the House of Representatives and the U.S. Senate before they can be presented to the President for signature. Article I, Section 7, Clause 1 indicates that all bills for raising revenue shall originate in the House of Representatives.

The structure for making law was established by the Founding Fathers in the way that it was in order to ensure that all parts of the system had a voice in the approval, or disapproval, of the law. The people through their representatives in the House of Representatives voted their approval or disapproval of the bill, the States did the same through their voice in the United States Senate, and the federal government's voice through the executive was the final approval. If the executive did not like the proposed law, he could ***veto*** it. However, all did not stop there. If Congress felt strongly enough about the bill, and had enough votes, they could override the veto with two-thirds vote in each House and make the bill a law without the signature of approval from the President.

In 1913, the 17th Amendment changed the process in which United States Senators are chosen. Originally, the State Legislatures appointed the U.S. Senators, making the U.S. Senate quite literally the voice of the States. The Senators at that time voted with the interests of the States, and more specifically with the intent of protecting their State's sovereignty, in mind. With the House of Representatives acting as the voice of the people, and the Senate acting as the voice of the States, the dynamics of making law was quite different from what it is today.

The process of making a law as originally intended ensured that the people, the States, and the federal government, all each had the opportunity to approve or disapprove the piece of legislation. If either the people or the States did not like the bill, its journey to become a law stopped. If the federal government, via the President, felt the bill was unconstitutional, or that its passage is not in the best interest of the nation, he could veto the bill. The veto by the President in turn could be overturned with a two thirds vote

from each house of Congress. The reason for this system was for the purpose of checks and balances, and to keep the States involved in monitoring the federal government through advise and consent authorities. This gave the people through the House of Representatives, and the States through the U.S. Senate, the ability to check each other, and the ability of them together to check the federal government. The people and the States together, if in agreement, served as a united check against the federal government, or more specifically in the case of making law, the executive branch.

We The People hold ***original authority*** in the process of making law. The members of the United States House of Representatives and U.S. Senate are voted into office by direct election of the people. All of the officials involved with appointing or electing members of the branches of the federal government (as well as the U.S. Senate prior to 1913) were also originally voted into office by the general population. Our original authority also reaches even farther back than the descriptions above, because it was the people, as the sovereign states of the union, who originally held all of the authorities prior to the writing and ratification of the U.S. Constitution. Under British rule, original authority belonged to the monarchy, as per Royal Prerogative; but in the United States, original authority belonged to the people.

By Article I, Section 7, Clause 1 establishing that all bills for raising revenue originate in the House of Representatives, the Constitution grants to the voice of the people the power to fund, or defund, any function of government affected by legislative action. The power of the purse-strings gives the House of Representatives the ultimate check against the other parts of government, and ultimately gives the House of Representatives a significant amount of power. Should the House of Representatives, for example, disapprove of a military action being carried out by the Commander in Chief, the action can be stopped by the House of Representatives simply defunding the military operation by not including funding for that action in a budget proposal. Refusal to accept the proposal by the Senate, or the Executive, places at risk the funding for other parts of government as well. The Senate, though unable to originate bills raising revenue, may propose amendments to be added to such a bill that originated in the House of Representatives, but no bill raising revenue may originate in the Senate. Upon approval by the Senate, if the Senate made changes, the bill would still need to go back to the House of Representatives for approval. The approval by both houses of Congress must be for an identical bill.

If the President approves the bill, and signs it after it has been approved with a majority vote in each of the two houses of Congress, the bill becomes law. If the President does not approve of the bill, he may refuse to sign it, or veto the bill, and return it with a written explanation of his disapproval.

Should the Houses of the United States Congress determine with a two-thirds vote in each house to reconsider the bill, the bill will still become law despite the executive objection.

All votes in the two houses of Congress shall be determined by yeas and nays, which will be entered into the respective house's journal. The journal entry will include the names and votes of the members voting for, or against, the bill.

If the President refuses to sign the bill presented to him, but does not return the bill with his written objection within ten days (excluding Sundays) the bill becomes law as if the President signed it. The exception to this clause is if Congress does anything to prevent the bill's return, such as through their adjournment. In that case, the bill remains to be only a bill, and only becomes law should any of the afore mentioned processes be met.

Terms:

Original Authority: Principal agent holding legal authority; initial power to make or enforce laws; the root authority in government.

Veto: The power of a chief executive to reject a bill passed by the legislature and thus prevent or delay its enactment into law.

Questions for Discussion:

1. Why did the Founding Fathers decide to give the power of the purse to the House of Representatives?

2. How did the Senators being appointed by the State Legislatures enable State involvement in the federal government?

3. If the people have original authority, how does that affect the relationship between the people through their States, and the Federal Government?

Resources:

Joseph Andrews, A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders; San Marcos: The Center for Teaching the Constitution (2010).

Madison's Notes Constitutional Convention, Avalon Project, Yale University: http://avalon.law.yale.edu/subject_menus/debcont.asp

Enumerated Powers

The powers granted to the federal government in relation to legislative powers are listed in Article I, Section 8. These authorities are also known as "***Express Powers***."

Implied Powers is a concept invented by Alexander Hamilton while he served as treasury secretary in 1791. He wrote in a report titled, "Opinion on the Constitutionality of the Bank of the United States" that "there are implied, as well as express powers, in the Constitution, and that the former are as effectually delegated as the latter. Implied powers are to be considered as delegated to the federal government equally with the express ones."

Hamilton, in his report, went on to argue that a nationalized bank was one of these implied powers. Hamilton's argument stated that his power to create a nationalized bank was implied as "necessary and proper" for the federal government to carry out its enumerated powers, such as borrowing money, regulating currency, and providing for the general welfare of the country.

Thomas Jefferson disagreed, arguing that the express powers delegated to the federal government by Article I, Section 8 of the Constitution were expressly stated because they were the only powers granted to the federal government by the sovereign States when they ratified the Constitution. New authorities could only be granted by the amendment process, which includes the requirement of ratification by three-quarters of the States.

The Concept of Implied Powers remained, and the statists of history have used Implied Powers to rewrite the Constitution through regulatory actions, and liberal judicial activism.

From the emergence of Implied Powers came the theory that the Constitution is a living document that can be modified at will through interpretation and the use of Implied Law. Hamilton's concept of Implied Powers laid the groundwork for generations of lawyers and judges using the courts, rather than the amendment process, to alter the Constitution, and render the limiting principals powerless. The concept of Implied Powers is one of the concepts that have fed the false idea that the courts "interpret" the Constitution.

Alexander Hamilton also argued that there were "resulting powers" as well, which are powers that exist

as a result of any action the government takes. These “resulting powers” are de facto constitutional by virtue of the fact that the action by the federal government occurred in the first place.

With the use of the concepts of Implied Powers and resulting powers, Hamilton believed the central government had unlimited powers to act as any member of the federal government deemed necessary.

General Welfare Clause

"If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions." --James Madison

The General Welfare Clause is one of the most misunderstood clauses in the U.S. Constitution - and it was not even supposed to be a clause.

Article I, Section 8, Clause 1 includes "General Welfare" not as an authority to the federal government, but as a description of the Republic should the laws of the land be made in accordance with the authorities granted by the Constitution.

If we go back to the Preamble, we read that one of the reasons the Founding Fathers created this new government with the writing of the Constitution was to "insure domestic Tranquility." One must ask, "Why was there a need for domestic tranquility?"

The States were much like siblings. The States fought over just about everything. They argued over commerce, borders, legal jurisdictions, currency, weights and measures, communication, religion, and a number of other issues. Yet, despite their disagreements, when it came to the American Revolution, they united against a common enemy. After the war, the quarrels resumed. The fighting between the States became such a problem that many worried it would tear apart the union. One of the many reasons for the need of a new government, as provided by the U.S. Constitution, was so that the central government would have enough authorities to act as a mediator between the States.

Acting as a referee in matters that caused disputes between the States would help the federal government provide for the General Welfare of the republic.

Another reason for the writing of the new constitution was to give the federal government enough power to defend the union from invasion and domestic insurrection. Under the Articles of Confederation, the central government was unable to provide for the common defense because the government did not have the authority, nor the financial means, to field a military. With the ability to field a fighting force, the federal government would be able to protect the States from foreign invasion, while also keeping internal conflict at bay as well.

By providing for the common defense, the federal government would also be ensuring the General Welfare of the Republic.

In other words, if the federal government was doing what it was supposed to do, as a mediator between the States, and as a protector of the States by providing for the common defense, the States would enjoy a general welfare of the republic. The Founding Fathers wanted to make sure that squabbles, internal conflict, or foreign intrusion did not place the welfare of the union in jeopardy.

General Welfare is an adjective, not an authority.

The General Welfare of the republic was the goal, which would be achieved if the federal government abided by the limiting principles of the U.S. Constitution.

Taxes and Debt

Article I, Section 8 grants Congress the power to lay and collect Taxes, ***Duties***, ***Imposts***, and ***Excises***.

The authority to tax was for the express purpose of protecting, preserving, and promoting the union. The federal government could tax the States only if the taxes were uniform throughout the United States. The federal government could not originally tax the individual citizens directly.

The stated purposes for giving the Congress the power to tax are to "provide for the common Defence and general Welfare of the United States."

The need for the central government to be able to defend the union militarily was one of the initial reasons the Founding Fathers planned the Constitutional Convention at the Annapolis Convention in 1786. Shays' Rebellion proved to the founders that the government under the Articles of Confederation was too weak to defend the union.

Some of the members of the Constitutional Convention were concerned that a military may be used by the federal government against the States, but the reality of the world they lived in was that the union would not survive without the ability to defend itself. It was argued that the independent militias needed to be joined under a single federal army, and for the protection of the trade routes a United States Navy also needed to be established. In order to have a military, however, the federal government would need the power to tax in order to pay for the military it would be afforded.

The second clause of Article I, Section 8 grants the authority to the U.S. Congress to borrow money on the credit of the United States. If the federal government ever found the necessity to enter into military operations on the battlefield, to help pay for the expensive endeavor of warfare, the federal government would need to be able to borrow money for the war effort. Therefore, the States through the new Constitution granted to the federal government the authority to create a national debt. The founders did not recognize any reason other than for war that the United States would need to borrow money. Alexander Hamilton, however, suggested that a continuous national debt was necessary to hold together the union, for if the States all felt they were responsible for the repayment of the deficit, they would be less likely to break away from the union.

Commerce Clause

Article I, Section 8, Clause 3 grants to the Congress the authority to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Remember, the States did not get along too well. Like siblings, they argued over just about everything. The individual States bickered over the borders between the states, turf, and interstate trade. As sovereign entities, the States continually tried to gain the upper hand on the other States in regard to commerce across State lines. Recognizing that the squabbles between the States were actually hindering commerce across State lines, the federal government in this clause was given the authority to do what was necessary to enable the flow of commerce to be more regular.

When you turn on a faucet full blast you are regulating the flow, just as you are regulating the flow when you restrict it by turning the faucet off. Likewise, the federal government was expected to act as a mechanism that ensured that the flow of commerce between the States was more regular.

The 1828 Webster Dictionary defines regulate in its second definition: "To put in good order." Some historians state that regulate in the 18th Century meant "To make regular." The word "restrict" was not used in the 1828 definition until the third and final definition of the word. In today's dictionary "restrict" appears in the first definition of regulate.

Today, the Commerce Clause has been interpreted to mean the opposite of its original intent. The Commerce Clause in today's political atmosphere is used as a means to restrict and heavily control commerce between the States. If one was to adopt the progressive definition of the Commerce Clause, one could then surmise that the Founders wrote this clause because commerce was flowing too easily, and needed to be controlled by the federal government. Such a notion is not only untrue, but outside the normal tendencies of the Founding Fathers. The Founders believed in limiting the powers of the Federal Government, so why would they allow the Federal Government the kind of unlimited powers over interstate commerce as suggested by today's progressive?

The federal government's role according to the Commerce Clause was to act as a referee, or mediator, whenever the flow of commerce was hindered by disagreements between the States, while with foreign nations and the Indian Tribes the federal government was expected to take a more active role.

Naturalization

Article I, Section 8, Clause 4 gives the Congress the authority to establish a uniform rule of Naturalization. What this means is that all naturalization rules must be identical in all States. One State cannot decide to have rules for naturalization that are different than what the federal government has established. This is an example of an "***exclusive jurisdiction***." However, realize that immigration is not mentioned here. Immigration is a ***concurrent issue***, with authorities held by both federal government and the States.

Bankruptcies

In Article I, Section 8, Clause 4 the federal government is also given the authority to establish uniform rules on the subject of bankruptcies throughout the United States.

Prior to the ratification of the U.S. Constitution, each State had its own rules on bankruptcy. Citizens would simply cross state lines to start over financially. The clause bringing bankruptcy under federal jurisdiction was for the purpose to stop the abuses, and to establish uniform rules nationwide.

Money, Weights, and Measures

Article I, Section 8, Clause 5 establishes that the duty of coining money belonged to Congress. Note that the Constitution called for coining money, rather than printing federal reserve notes (bills of credit). The coins produced by Congress were expected to be made of metals that reflected the worth of the coins. In other words, the gold in a coin, if taken to a goldsmith, would be worth the same as the value of the coin. Later, the banks realized they could loan on the gold in their vaults backing the currency, leaving less gold as a reserve. They did this by issuing receipts, or bills of credit. When this happened, if there was a bank run, where everyone brought their receipts in to cash it in for gold all at once, the bank would be left in a situation where they did not have enough gold to cover all of the notes.

If one goes back to the Articles of Confederation, it is important to note that under the confederation, there had been no power given to the central government to regulate the value of foreign coin, an omission, which in a great measure would destroy any uniformity in the value of the current coin, since the respective states might, by different regulations, create a different value in each. As a result, the States were prohibited in Article I, Section 10 from coining their own money, thus taking away their ability to manipulate the value of currency as a means of effecting the economies of the other states.

The authority to coin money was given specifically to Congress so that no outside interest could manipulate the value of American money. This included private banks. Nonetheless, we have seen three nationalized banks run by private bankers in the United States issuing the currency. The third is the currently existing Federal Reserve Bank.

Thomas Jefferson was against national banks. Alexander Hamilton created the "Bank of the United States" in 1791 for the purpose of acting as a depository of government funds, issuing paper currency backed by gold and silver, and creating a system of mercantilism in America. The bank's charter lapsed in 1811. The Second Bank of the United States was formed in 1817, and lasted until President Andrew Jackson vetoed the renewal of its charter in 1836. The bank existed for 5 more years as an ordinary bank before going bankrupt in 1841. In a letter to John Taylor in 1816, Thomas Jefferson wrote, *"I sincerely believe, with you, that banking establishments are more dangerous than standing armies; and that the principle of spending money to be paid by posterity, under the name of funding, is but swindling futurity on a large scale."*

Article I, Section 8, Clause 5 also establishes that Congress shall have the power to fix the Standard of Weights and Measures. Fixing a standard of weights and measures was important for the reason of uniformity, and the ease of commerce. This clause suggests that before the Constitutional Convention the States were able to independently fix their own weights and measures, which not only added confusion to commerce, but enabled the States of use unsavory trading tactics against each other.

Article 1, Section 8, Clause 6 establishes that the U.S. Congress will provide for the punishment of counterfeiting the securities and current coin of the United States. This power would naturally flow, as an incident, from the antecedent powers to borrow money, and regulate the coinage. Indeed, without the ability to provide for the punishment of counterfeiting, the powers of coining money or creating securities would be without any adequate sanction. The word "securities," in this clause, means: a contract that can be assigned a value so that it may be traded, like a "bond."

Post Offices and Roadways

In Article I, Section 8, Clause 7 the Congress is granted the authority to establish post offices and post roads.

As with the other clauses in Article I, Section 8, this clause is designed to promote the Union. In this case, it ensures that communication remains intact. The clause gives the federal government the authority to establish post offices, but nowhere in the Constitution does the federal government have the authority to partially privatize the post office as we have seen in the modern era.

Article I, Section 8, Clause 7 gives the federal government the authority to "establish" post roads, but not create or maintain them. The Constitution does not give the federal government any other authority over roadways. In fact, this is the only reference to roadways to the federal government in the entire Constitution. This clause makes the federal highway and Interstate highway system, as well as the other workings of the federal transportation department, unconstitutional. It was up to the States to create and maintain their roadways. If the States desired to remain connected, and receive their mail, they would keep up their roads.

In 1817, Congress proposed a bill that would provide federal funding for boatways and roadways, claiming it was for the "general welfare" of the nation. President James Madison vetoed the bill, claiming it to be unconstitutional, because the federal government was not given the authority to fund transportation routes.

Patents and Copyrights

Article I, Section 8, Clause 8 authorizes Congress to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

This clause is the basis for the creation of the U.S. Patent Office, and Copyright Office. Patent and

copyright protections already existed in the British Empire, and for the protection of American inventions and writings, the Founding Fathers saw the need to establish such a power under the federal government as well, expecting that by being under federal authority, the rules would be uniform.

Federal Inferior Courts

Article I, Section 8, Clause 9 authorizes Congress to constitute tribunals inferior to the Supreme Court. This means that the legislative branch was tasked with the duty to establish the lower federal courts. However, by enabling Congress to establish new courts whenever necessary, this has given some administrations an opportunity to abuse this power in the hopes of stacking the courts. John Adams was the first example of this abuse, when he appointed many midnight judges in order to help retain federalist power in the courts as Jefferson's Republicans gained the White House, and the majority in Congress. Some may argue that Adams' decision to expand the court was not as sinister as Thomas Jefferson made it out to be, for John Adams had been requesting an expansion of the judiciary for years.

President Franklin D. Roosevelt also sought to "pack" the court with justices favorable to his social policies. His animosity toward the Supreme Court emerged when his New Deal of social and economic reform via government intrusion was struck down as unconstitutional by justices that had been largely appointed by his rival Republicans.

The high court invalidated the Railroad Retirement Act of 1934, a law that had established pensions for railway workers, and the National Industrial Recovery Act of 1933. Roosevelt's anger against the justices for their rulings led him to hold contempt for the conservative-minded court of "Nine Old Men." In January 1936, the court ruled the Agricultural Adjustment Act of 1933 unconstitutional, as well.

In 1937, Roosevelt disclosed to his aides a bill he was going to propose that was designed to reorganize the federal judiciary. The measure called for all federal judges to retire by age 70. If they failed to do so, the president could appoint another judge to serve in tandem with each one older than 70. If the bill passed, it would enable Roosevelt to appoint six more Supreme Court justices immediately, increasing the size of the court to 15 members. The Democrat dominated Congress, he believed, would undoubtedly approve the appointment of judges friendly to Roosevelt and his New Deal agenda.

The proposal never got off the ground, as Roosevelt's explanation regarding why the proposal was necessary fell flat.

Both the federal government, and the States, have court systems. The shared power by both the federal government and the State governments to establish a judiciary is a concurrent power.

With the ability to establish the inferior courts also comes the authority to eliminate them. Congress, in addition to the authority to establish federal inferior courts, can also shut them down. When in the 2012 Republican Campaign Newt Gingrich stated that Congress should use the federal marshall to bring unconstitutional judges to face members of Congress and answer for their actions, he was accurate that Congress can do that.

Trade Routes and Offenses Against The Law of Nations

Article I Section 8, Clause 10 authorizes Congress to define and punish piracies and felonies committed on the high seas, and offenses against the Law of Nations.

One of the factors in having this included was the problem with piracy in the Caribbean, as well as difficulties the new nation was having with the Barbary Pirates (Muslims). Though the United States was careful to create a system of justice that included due process for the citizens of the nation, the Constitution gave the federal government the power to punish offenses by foreign forces on the high seas without having to worry about habeas corpus, while still providing a courtroom setting for the offenders.

In Federalist 42, Madison carefully explains that this provision "extends no further than to the establishment of courts for the trial of these offenses," such as military courts, or international courts for international war crimes.

This clause is the only place where the Law of Nations is mentioned. Some historians claim that the capitalization of the "Law of Nations" suggests that the founders were specifically referring to Vatell's volumes of which the founders often used for definitions and the clarification of concepts like Natural Born Citizen.

War, Army, and Navy

Article I, Section 8, Clause 11 gives Congress the power to declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.

During the debates, according to Madison's Notes on the Constitutional Convention, the delegates debated over whether or not to give the legislative branch the power to make war. After intense debate, it was decided to grant the Commander in Chief, the President of the United States, the authority to "wage" war, and Congress the power to declare war. A declaration of war is a formal declaration that warns those not involved to stay out of the conflict. If those entities become involved, they become open targets. The president, as per the debates, may wage war without prior approval by Congress, or without a declaration of war being issued.

The ability to wage war, however, is checked by the fact that the House of Representatives are able to refuse to fund any military conflict. This keeps the president from abusing his position as Commander in Chief by giving Congress a way to limit executive wartime authorities. If the President continues to act upon his war powers in a manner not approved of by Congress, and the President does so despite the lack of funding for the military operations, Congress also has the authority to impeach the President in order to stop the executive's objectionable actions.

A Letter of Marque and Reprisal was a government license authorizing a private vessel to attack and capture enemy vessels, and bring them before admiralty courts for condemnation and sale. Cruising for prizes with a Letter of Marque was considered an honorable calling combining patriotism and profit, in contrast to unlicensed piracy which was universally reviled. These mercenaries was also known as "privateers."

Congress was also given the power to make rules regarding captures on land and water. This is the clause used when the Bush administration, with the blessings of Congress, decided to hold prisoners captured during the war on terrorism at Guantanamo Bay, and to use military tribunals as the vessel of their trials.

Article I, Section 8, Clauses 12-16 authorizes Congress:

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by

Congress;

Remember that one of the primary reasons for deciding to hold the Constitutional Convention in the first place was to defend the union with a uniformed military. Note that the fear of an army being used by a centralized government, and a potentially tyrannical government for that matter, as had been in the case with the British Empire, influenced the writings of this document, and encouraged the founders to limit the existence and funding of an army to two years at a time. A navy, however, was deemed as much more important, particularly because of the need to protect trade routes, and America's immediate waterways and inlets. Therefore, the authority to provide and maintain a navy was granted in perpetuity. The United States Marine Corps, from the beginning, falls under the umbrella of the United States Navy.

The rules for the governance of the armed forces do not fall under the purview of the Constitution. It is up to Congress to provide the governing rules. Any claim that rules regarding the military are unconstitutional is a bad argument. According to Article I, Section 8, Clause 14, it is up to Congress to set the rules, regardless of the Constitution. Military training in order for the armed forces to be well disciplined may not benefit from same social rules of the civilian world. Therefore, the basis of governance over the armed forces is not the Constitution, but instead the Uniform Code of Military Justice. However, it is the military's duty to protect and preserve the U.S. Constitution, and in a manner of tradition, Constitutional Principles have an unofficial influence on military politics.

Congress also has the authority to call forth the Militia to execute the laws of the Union (Constitutional federal laws), suppress insurrections (inserted in response to Shays' Rebellion), and repel invasions (one may consider the illegal entry into the United States an invasion, therefore this clause gives the federal government the authority to use the militia to guard the national borders). Currently, in this country, we have an organized militia (National Guard, State Militias), and an unorganized militia (you and I). U.S. Code Title 10 still defines these militias as such.

Federal Properties

Article I, Section 8, Clause 17 calls for the Congress to exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

This clause was for the creation of Washington DC, giving the United States Congress exclusive legislative powers over the District of Columbia and other federal properties, and to allow the federal government to erect military bases, and other necessary federal facilities by consent of the Legislatures of the States in which those properties are obtained, and for the federal government to purchase those properties. This makes land seized for conservation, and National Parks, unconstitutional, for those were not approved by the States, nor purchased by the federal government, and finally it is not being utilized for the purpose of the erection of "needful buildings."

Necessary and Proper Clause

Article I, Section 8, Clause 18 is also known as the "necessary and proper" clause. It reads:

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.

Today's government officials misuse this clause greatly. Notice the emphasis on carrying into execution the "foregoing powers" (authorities herein granted). What that means is that the Congress may make laws that fall within the authorities granted by the U.S. Constitution that the Congress recognizes to be

"necessary and proper." Today's federal government has taken this clause to mean they can make "any" law they feel to be necessary and proper.

"The plain import of the clause is, that congress shall have all the incidental and instrumental powers, necessary and proper to carry into execution all the express powers. It neither enlarges any power specifically granted; nor is it a grant of any new power to congress. But it is merely a declaration for the removal of all uncertainty, that the means of carrying into execution those, otherwise granted, are included in the grant." --Joseph Story, Commentaries on the Constitution, 1833

In order to carry out some express powers of the Constitution sometimes certain actions by the government are necessary and proper. For example, when establishing a post office, as expressly authorized by this article and section, the federal government will have to grade the land, hire construction crews, purchase the equipment for carrying out the services of the post office, and so forth. All of these things are necessary and proper in order to carry out the "foregoing power" of establishing a post office.

This clause is also sometimes referred to as the "Elastic Clause."

Terms:

Concurrent Powers: Powers that are shared by the state and the federal government. The power to enforce immigration is also a concurrent power.

Duties: A tax levied by a government on the import or export of goods.

Excise: Tax on the manufacture, sale, or consumption of goods, or upon licenses to pursue certain occupations, or upon corporate privileges.

Exclusive Powers: Sole authority over a particular power, be it for the States within their own territorial boundaries, or sole federal powers. Also known as Reserved Powers.

Express Powers: Authorities explicitly authorized to the federal government by the U.S. Constitution.

Implied Powers: Legal or governmental authority not expressly stated by the U.S. Constitution, but considered to be logical extensions or implications of the other powers delegated in the Constitution. The concept of Implied Powers is often defended by the Necessary and Proper Clause (Article I, Section 8, Clause 18). Implied Powers is an unconstitutional concept.

Imposts: A tax, especially an import duty; Import Duty is a tariff paid at a border or port of entry to the relevant government to allow a good to pass into that government's territory.

Questions for Discussion:

1. True power of government is the ability to make law. Is listing the authorities in Article I the founders way of telling us that?

2. How has the unconstitutional concept of Implied Powers been used in today's political atmosphere?

3. How has the war powers been misused in recent years?

4. Name examples of how the Commerce Clause has been misused?

5. If post roads are the only mention of roadways in the Constitution, then what does that say about recent attempts by the federal government to fund public works projects?

6. The Necessary and Proper Clause depends upon the laws being within Constitutional Authority. Are there other clauses requiring this as well?

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