Delegated Powers

• There are three types of powers granted by the Constitution.

**Inherent** powers are those that belong to all sovereign nations—for example, the power to control a nation's borders.

**Expressed** powers are those stated in the Constitution—for example, the power to regulate both foreign and interstate commerce.

**Implied** powers are not stated in the Constitution, but drawn from the expressed powers. Based on the expressed power to regulate commerce, Congress has set a minimum wage for hourly workers.
The weak Congress created under the Articles of Confederation had no power to regulate interstate trade and little authority over foreign commerce.
The Commerce Power

• The federal government has broad interpretation of the commerce power.

• limits to the commerce power.
  – Congress cannot tax exports
  – favor the ports of one state over another
  – require vessels to pay duties when traveling from one state to another.
• Americans with Disabilities Act in 1990.
  – It prohibits against discrimination against people with disabilities in areas such as employment, public accommodation, public transportation, and access to commercial buildings.
The Power to Tax

- taxes on people or property are levied to raise money for public needs.
Taxation

- A protective tariff taxes imports to protect domestic industries from foreign competition.
- Some taxes, often in the form of licenses, are meant to protect public health and safety.
Limits on Taxation

- Congress can tax **only for public needs**
- Congress **cannot tax exports**.
- Direct taxes must be **divided among the states** in proportion to their populations.
Borrowing

- There are no constitutional limits on how much money Congress can borrow or for what purposes.

- The Treasury borrows money by issuing securities like T-bills and bonds that it promises to repay later with interest.

- Congress routinely spends more than it takes in, borrowing money to make up the difference. This deficit spending increases the public debt.
Bankruptcy

• Declaring bankruptcy frees a person or company (debtor) from debts they cannot pay back to their creditors.

  – Filing **Chapter 7**: A debtor gives up property to pay creditors.
  – Filing **Chapter 13**: A debtor works out a long-term repayment plan.
  – The creditors and debtor meet to agree how much each creditor will be repaid.
  – Most bankruptcies are handled in federal courts.
• Congress now has the sole power to create legal currency in the United States. This creates a more stable money supply.
• The President is the main authority in foreign affairs.
• Congress does have some key powers involving foreign policy.
  – Congress passes laws that deal with issues of national security
    • immigration and antiterrorism.
  – Congress can regulate foreign commerce, control federal spending
    • foreign aid
War Powers

– sole power to raise and support an army and navy.
– Congress makes rules for governing the nation’s military
– Only Congress can declare war.
War Powers Resolution

• Many Presidents have used their authority as commander-in-chief to send U.S. armed forces into combat without congressional approval.

• The War Powers Resolution of 1973 tries to limit the President to deploying troops only in war, with congressional approval, or in response to an attack.
Expressed Powers

• In the *Federalist Papers*, James Madison answered this question by grouping the enumerated powers into five categories.
  – Only Clause 9, bestowing the power to create courts inferior to the Supreme Court was not included.
<table>
<thead>
<tr>
<th>Security against foreign danger:</th>
<th>Regulation of the intercourse with foreign nations:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clause 1:</strong> levy taxes, duties, and excises</td>
<td><strong>Clause 1:</strong> regulate foreign commerce</td>
</tr>
<tr>
<td><strong>Clause 2:</strong> borrow money</td>
<td><strong>Clause 10:</strong> define and punish crimes committed on the high seas and offenses against the law of nations</td>
</tr>
<tr>
<td><strong>Clause 11:</strong> declare war</td>
<td></td>
</tr>
<tr>
<td><strong>Clause 12, 13, 14:</strong> raise regulate, and provide for armies and navies</td>
<td></td>
</tr>
<tr>
<td><strong>Clause 15 and 16:</strong> organize, arm, discipline, and call forth the militia to execute federal laws, suppress uprisings, and repel invasions</td>
<td></td>
</tr>
</tbody>
</table>
Maintenance of harmony and proper intercourse with the States:

<table>
<thead>
<tr>
<th>Clause 3:</th>
<th>regulate commerce among the several States and the Indian tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 4:</td>
<td>establish a uniform rule of naturalization and uniform laws of bankruptcy</td>
</tr>
<tr>
<td>Clause 5:</td>
<td>coin money, regulate the value of domestic and foreign coin, fix the standard of weights and measures</td>
</tr>
<tr>
<td>Clause 6:</td>
<td>provide for the punishment of counterfeiting</td>
</tr>
<tr>
<td>Clause 7:</td>
<td>establish post offices and post roads</td>
</tr>
<tr>
<td>Miscellaneous objects of general utility:</td>
<td>Provisions for giving due efficacy to all these powers:</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Clause 8:</strong> establish patent and copyright laws</td>
<td><strong>Clause 18:</strong> The Necessary and Proper Clause</td>
</tr>
<tr>
<td><strong>Clause 17:</strong> legislate for the seat of the federal capital and other federal territories</td>
<td></td>
</tr>
</tbody>
</table>
Copyrights and Patents

- Congress issues copyrights and patents to protect the right of people to profit from their creations.
Copyright Law and You

• The Internet makes sharing information easier than ever, but laws regulate what information can or cannot be shared freely.

• Copyright protection may be inconvenient for those who want music or other content for free, but it is important to protect the rights of writers and artists.
• Determining an infringement of copyright depends upon whether the test of “fair use” is met. The factors considered are:

  – The **purpose and character** of the use
  – The **nature** of the copyrighted work
  – The **amount and substantiality** of the portion used
  – The **effect of the use** on the value of the copyrighted work
• In addition, the Supreme Court has held that the courts should focus on the extent that the new work is transformative – that is, does it alter the work with new expression, meaning or message?

• The more transformative the new work, the less will be the significance of the other factors
Federal Lands

- Congress can acquire and manage federal lands and property.
  - These powers apply to the District of Columbia, to federal territories, and to the many federal holdings such as military installations, prisons, and parks.
  - Congress can gain new property by treaty, purchase, conquest, admitting new states, discovering unclaimed land, or by exercising eminent domain.
Eminent Domain

– The federal government can seize private property as long as the property is put to public use and the original owners are given fair notice and are fairly compensated for the loss of their property.
Other Powers

- Congress sets the rules on naturalization of American citizens.

- Congress sets the national standard for weights and measures.

- Congress has several judicial powers.
  - Congress created the federal courts.
  - Congress defines federal crimes and sets the punishments for them.
Necessary and Proper Clause

• 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
Implied Powers of Congress

- Many of the laws of Congress make 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.
<table>
<thead>
<tr>
<th>The expressed power to lay and collect taxes</th>
<th>Implies the power to:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Punish tax evaders</td>
</tr>
<tr>
<td></td>
<td>• Regulate (license) some commodities (such as alcohol) and outlaw the use of others (such as narcotics)</td>
</tr>
<tr>
<td></td>
<td>• Require States to meet certain conditions to qualify for federal funding</td>
</tr>
</tbody>
</table>

| The expressed power to borrow money        | Implies the power to establish the Federal Reserve Systems of banks |

<p>| The expressed power to create naturalization law | Implies the power to regulate and limit immigration |</p>
<table>
<thead>
<tr>
<th>The expressed power to raise armies and a navy</th>
<th>Implies the power to draft Americans into the military</th>
</tr>
</thead>
<tbody>
<tr>
<td>The expressed power to regulate commerce</td>
<td>Implies the power to:</td>
</tr>
<tr>
<td></td>
<td>• Establish a minimum wage</td>
</tr>
<tr>
<td></td>
<td>• Ban discrimination in workplaces and public facilities</td>
</tr>
<tr>
<td></td>
<td>• Pass laws protecting the disabled</td>
</tr>
<tr>
<td></td>
<td>• Regulate banking</td>
</tr>
<tr>
<td>The expressed power to establish post offices</td>
<td>Implies the power to:</td>
</tr>
<tr>
<td></td>
<td>• Prohibit mail fraud and obstruction of the mails</td>
</tr>
<tr>
<td></td>
<td>• Bar the shipping of certain items through the mail</td>
</tr>
</tbody>
</table>
– **Strict constructionists** view that Congress should only be able to use implied powers that are absolutely necessary to carry out its expressed powers.
Liberal constructionists took the Federalist view that the Constitution should be interpreted broadly, by giving the national government a wide range of implied powers.

- 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.
• Implied powers allow the federal government to adapt to changes in society and technology
• **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.
Amendments

- Congress can propose constitutional amendments by a two-thirds vote of each house
Elections

• If no candidate receives a majority of electoral votes for President or Vice President, Congress chooses the winner.

  – The House chooses the President, voting on a state-by-state basis for one of the top three contenders.
  – The Senate votes for the Vice President
Electoral Duties

• When the President appoints a new vice president, a majority of both houses in Congress must approve the choice.
The Constitution allows Congress to remove the President, Vice President, and all civil officers for treason, bribery, or high crimes and misdemeanors.

- The House impeaches, or brings charges against, an official. This requires a majority vote.

- The Senate then acts as a court and tries the official. Convicting an official takes a two-thirds majority.
Impeachments

• To date, 17 federal officials have been impeached and seven convicted.
  – All those convicted were federal judges.

• President Andrew Johnson was impeached in 1868 after harsh disagreements with the Republican Congress about how to carry out Reconstruction after the Civil War. The Senate found him not guilty by one vote.

• Why was President Johnson impeached?
Watergate

- Richard Nixon resigned the presidency in 1974 under threat of impeachment due to the Watergate Scandal.
  - Investigation into the Watergate burglary uncovered many illegal acts by Nixon’s administration, including bribery, perjury, and fraud.
  - Gerald Ford (right) succeeded him as president.
Clinton’s Impeachment

• President Clinton was impeached by the House in 1998 but found not guilty by the Senate in 1999.

  – He was charged with perjury and obstruction of justice for withholding information about an inappropriate relationship with a White House intern.

  – Opponents of his impeachment argued that these acts did not qualify as “high crimes and misdemeanors.”
Penalty

- Convicted officials, including the President, are removed from office and can be banned from holding office again.
Executive Powers

• All major **presidential appointments** must be confirmed by a majority vote of the Senate.
  
  – The Senate rarely rejects a Cabinet appointment
• The Senate approves high level appointments by the President.
• The President consults with Congress during the negotiation of treaties.
• Presidents may need to make changes in a treaty at the behest of Congress.
• Even after a treaty has been approved, Congress can repeal it.
Oversight

- Congress has the implied power to investigate any matter that falls within the scope of its lawmaking authority.
Congressional Hearings

- To gather information needed for lawmaking
- To oversee executive branch agencies
- To focus public attention on an issue
- To expose questionable activities of group or individual
- To promote the interests of members of Congress

Bill Gates