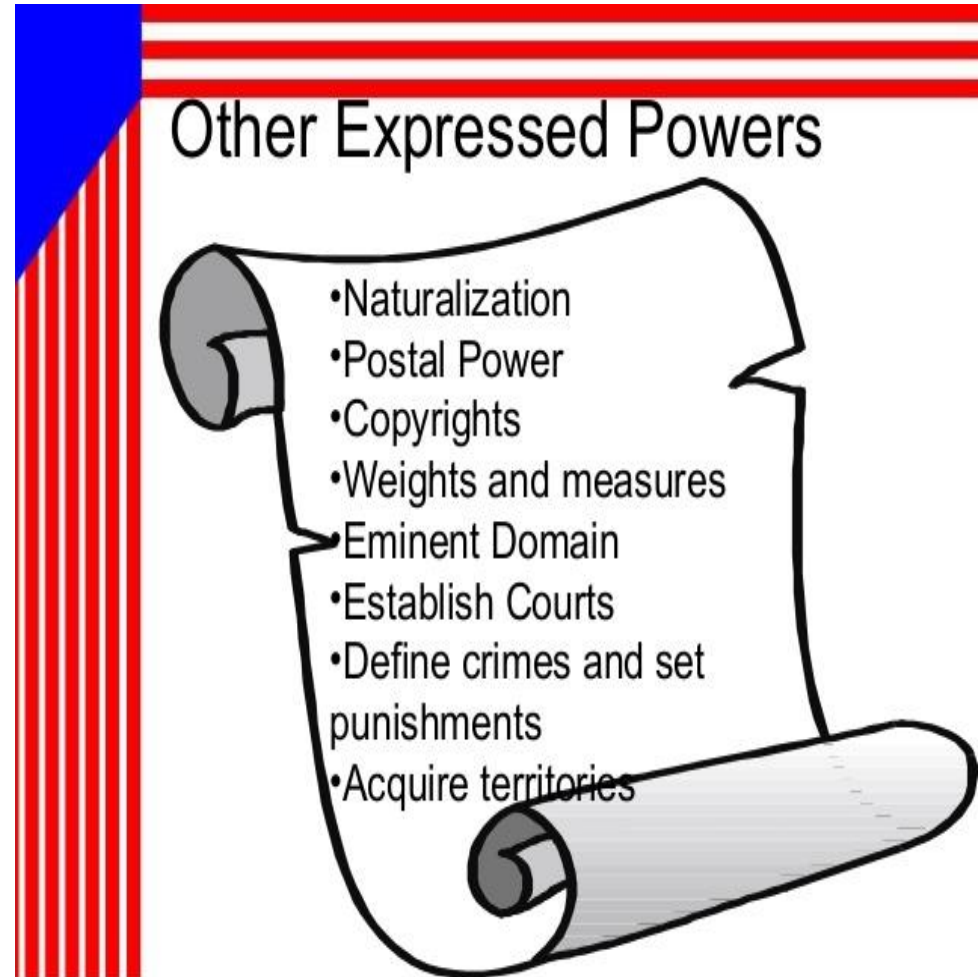


Chapter 5:
Congress: The Legislative Branch
Section 2: The Powers of Congress
(pg.127-136)

Defining the Powers of Congress

- **Expressed Powers-** Article I, Section 8 lists 18 specific powers including coining money, taxes, commerce, armed forces, & declaring war.
- **Implied Powers-** gives Congress the power to make laws that are necessary and proper for carrying out the Constitution. Also, called the elastic clause.
- **Inherent Powers-** the powers that all governments have like control borders and foreign affairs.
- **Power Denied Congress-** Writ of Habeas Corpus can't be taken away, no ex post facto laws, & no titles of nobility to list a few.



Expressed Powers of Congress

- Clause 1: To levy taxes
- Clause 2: To borrow money
- Clause 3: To regulate foreign & interstate commerce
- Clause 4: To establish uniform rules of citizenship
- Clause 5: To coin money; to set uniform weights and measures
- Clause 6: To punish counterfeiters
- Clause 7: To establish post offices and post roads
- Clause 8: To make copyright and patent laws
- Clause 9: To establish national courts inferior to the Supreme Court
- Clause 10: To define and punish piracy and other violations of international law
- Clause 11: To declare war
- Clause 12: To raise and support armies
- Clause 13: To raise and maintain laws
- Clause 14: To establish military laws
- Clause 15: To call up a national militia in times of uprising of foreign invasion
- Clause 16: To organize, arm, and discipline a militia when it is called into service
- Clause 17: To exercise jurisdiction over Washington D.C.
- Clause 18: To make all laws necessary and proper to the execution of any of the other expressed powers

Expressed Powers of Congress (continued)

- A problem of the Articles of Confederation was that it could not tax or borrow money.
- **Financing Powers** in the Constitution were given to the Congress.
- The Constitution allows Congress to again revenue through **indirect tax**, which means a tax levied on one person but passed on to another for payment to the gov. example-gas & liquor
- Not until the 16th amendment was a **direct tax** make legal
- Congress also borrow money or function on a budget **deficit**.



Expressed Powers of Congress (continued)

- Commerce Power- Congress regulate interstate commerce
- This is called the Commerce Clause, Article 8, Clause 3
- Congress didn't have this power under the Articles of Confederation
- This power has been fought over many times
- It was used during the Civil Rights Era to stop segregation on buses and motels



Expressed Powers of Congress (continued)

- **Defense-Related Powers** are split b/w the President and Congress.
- Congress declares war but the President can really start a war when ever he wants.
- The War Powers Resolution was passed b/c of the Vietnam War and says that the President has to come to Congress within 60 to 90 days after he has sent troops into military action, for permission.
- Congress also shares power with the states over the maintenance of the militia- today called the National Guard.



AUSTRALIAN WAR MEMORIAL

Other Expressed Powers

- Coinage power
- National Postal Service
- Copyrights and Patents
- Weights and Measures-
that a pound is equal in
each state
- Bankruptcy
- Naturalization
- Federal Courts
- Congressional Elections



Implied Powers of Congress Come From the Necessary & Proper Clause

- Strict Constructionists or Antifederalists, like Jefferson, argued that Congress could only exercise those powers clearly granted to it in the Constitution.
- Loose Constructionists or Federalists, like Hamilton wanted Congress to have freedom to act vigorously.
- The 1st big battle was the national bank which was allowed b/c Hamilton allowed the national capital to be in the South.



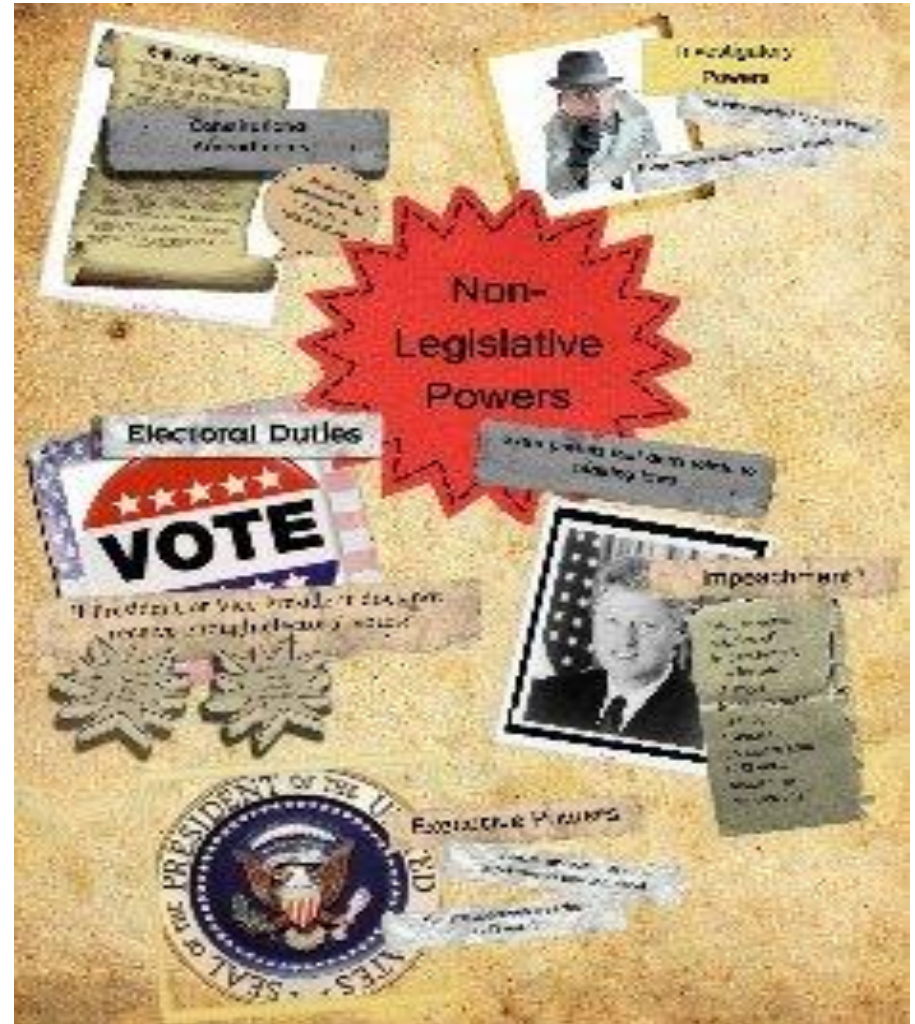
The Necessary & Proper Clause Today

- John Marshall, who was Chief Justice b/w 1800 to the 1830s ruled as a loose constructionist and this interpretation has prevailed in American Government.
- For example Social Security and Medicare are not directly related to any expressed power.
- This interpretation of the necessary and proper clause has stretched the power of government which is why it is also called the elastic clause.



Non-legislative Powers

- Both Houses can propose amendments with two-thirds majority, conduct investigations, issue subpoenas, impeach, and fill the VP office if vacant.
- The House chooses a President if no candidate gets a majority of votes (1800 & 1824)
- Powers of the Senate include choosing a VP if no candidate gets a majority of votes, they provide advice and consent on appointments and approve treaties



Limits on the Powers of Congress

- Separation of Powers- 3 branches of government
- The Supreme Court's power of judicial review
- The President's Veto, lax enforcement, & his own interpretation
- Congress can't favor one state over another
- Congress can't suspend the writ of habeas corpus except in time of rebellion or invasion
- Congress can't pass a bill of attainder or punish a person w/o a trial
- Also, Ex post facto laws can't occur either.

Limitations on Congressional Power

- the Bill of Rights specifically limits and denies the federal government of certain powers
- *Denied Powers (Article I, section 9)*
 1. Congress cannot suspend the *writ of habeas corpus*
 2. Congress may not pass a *bill of attainder*
 3. Congress cannot pass an *ex post facto law*
- Checks and Balances

Changing Powers of Congress

- During the Great Depression Congress passed most of FDR's New Deal programs making the federal government more powerful
- After WWII, Congress responded to the new status of the U.S. as a dominant world power by creating the Air Force, the CIA, NASA
- With these new programs and departments Congress lost some of their power to the executive branch.
- Congress still has oversight and budgetary authority over these agencies and their staffs have grown but in the end just as the Framers intended the legislative and executive are still sparring for power.

