# Implied Powers of Congress: A Constitutional Controversy

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The United States Constitution is an incredibly important document that was designed to protect the freedoms of the inhabitants of the newly formed country, and to lay out various aspects of how it should be run. The Constitution has many parts, consisting of a preamble, seven articles, and the various amendments, or additions, that have been made over time. The articles make up the main body of the Constitution, and describe, in detail, how the government works. Discussed in these articles are the powers of the President and Vice President (Article 2), how the judicial branch functions (Article 3), and the role of the legislative branch (Article 1), which we will be focusing on today.

Though Article 1 of the Constitution covers many aspects of the legislative branch, and lays out many of them specifically, its the very non-specific, implied powers of Congress that we are discussing today. Congress’ implied powers are hazy, at best, and have been controversial throughout history. Today we are discussing some of these powers, explaining what they mean, and how they may be exercised. If you’re a little rusty on the ins and outs of this document, [this course on the principles of the Constitution](https://www.udemy.com/us-constitution/?tc=blog.impliedpowersofcongress) should refresh your memory.

**Powers of Congress**

Before we get to the implied powers that are our subject today, let’s begin by giving you some context regarding some of the other, more clear, powers that Congress has, as laid out by the Constitution.

* **Expressed Powers**

In the 8th section of the first article of the Constitution are laid out the 27 specific powers that Congress has. These include the powers to declare war, to levy taxes, to set up a national post office, and to regulate the armed forces. Basically, these powers gave Congress authority over both foreign and domestic American national policy.

* **Non-Legislative Powers**

Also bestowed upon Congress in the Constitution are powers that are unrelated to the passing of laws. Reserved for special circumstances, these non-legislative powers are meant to keep the country running smoothly, and include the powers to impeach the president, to choose a president and vice president when there is no majority in the Electoral College, and to confirm or deny any major appointments made by the president, including cabinet members and federal judges.

* **Implied Powers**

The final powers granted to Congress, our subject for today, are also its most controversial. In article 1, Section 8, Clause 18, the Constitution states that Congress has the power “…to make all laws which shall be necessary and proper for carrying into execution the foregoing powers”.

**The Elastic Clause**

This phrase, also referred to as “The Necessary and Proper Clause”, as well as “The Elastic Clause”, because it stretches the power of government, allowing for any problems that the Founding Fathers could not have possibly foreseen. Not only is the phrase itself controversial, but specifically the word “necessary”, which is open to wide interpretation, and the cause of great debate. Alexander Hamilton argued for a more liberal reading of the statement, saying that many implied powers should be exploited by Congress, focusing the power on a centralized government, while Thomas Jefferson was more conservative on the subject, declaring that “necessary” should actually mean *necessary,*indicating a desire for strong states’ rights.

**Examples of Implied Powers**

As the name explains, these are not explicitly written out powers, and hence, are cause for much discussion and controversy. But if you’re wondering what exactly these implied powers look like when enacted, they may include:

* **Military Draft**

The expressed power of Congress to regulate the armed forces has resulted in the institution of a draft. Though this was unnecessary in the country’s fledgling days, as it grew in population, and as a need for a larger army arose while volunteer rates dropped, there was a need to institute a draft, which was signed into law by Franklin Roosevelt in 1940.

* **Minimum Wage**

While the Founding Fathers never foresaw a need for a minimum wage, and for a long time, neither did their successors, that doesn’t mean that it wouldn’t become necessary at some point. A federal minimum wage wasn’t started until 1938 (The Fair Labor Standards Act), and while it might not have been understood by everyone at the time, it not only paid workers fairly, but also effectively ended child labor in the U.S., and is considered a major accomplishment in the realm of human rights.

Curious to learn more about our history? [This course on American history from right after the Civil War](https://www.udemy.com/american-history-from-1865-reconstruction/?tc=blog.impliedpowersofcongress&couponCode=half-off-for-blog) will clue you in to a rarely studied part of the past.

**Famous Cases Surrounding Implied Powers**

As you might imagine, such controversial rights given to the highest lawmaking body in the United States might result in some time spent in courthouses. Below are a few famous court cases throughout history that have centered on the implied rights of Congress. If you’re considering a career in law, [this article on the different types of lawyers](https://blog.udemy.com/types-of-lawyers/) will help you figure out which law to practice, and [this course on how to become a legal assistant](https://www.udemy.com/become-a-legal-assistant/?tc=blog.impliedpowersofcongress) will help those interested in law, but not quite ready for four years of law school.

* **McCulloch vs. Maryland**

This case was centered on the question of whether or not Congress had the power to create a national bank, and if it did, could the state of Maryland tax it. It was decided that Congress did have the power and flexibility to create the bank, but that Maryland did not have the power to tax it.

* **U.S. vs. Gettysburg Electric Ry. Co. (1896)**

The subject of this case was if Congress had the power to condemn the land of a railroad company that was located in what was to be Gettysburg National Military Park, so as to prevent trolley service through the prospective park. It was decided that the government could condemn the land, because creation of the park would instill national pride, making it easier for the government to raise an army in any future wars.

The U.S. Constitution is a marvel, laying the groundwork for an amazing country and its set of laws. But for all of the amazing results that came from this document, it’s not without its controversy, and the implied powers are indeed controversial. If the implied powers interest you, check out [this course on the story of liberty](https://www.udemy.com/the-story-of-liberty/?tc=blog.impliedpowersofcongress), and learn about liberty’s role in our history.