


[← US History \(/academy/subj/history/us-history.html\)](/academy/subj/history/us-history.html)
[First lesson → \(/\)](#)

Implied Powers of Congress: Definition, Examples & Quiz

Supplemental Lesson

Share

Feedback

Rate



Lesson



Quiz



Teacher

Support



Course

Instructor: Mark Percy

Congress' powers are listed in Article I, Section 8 of the Constitution; but what about the powers that aren't listed? The implied powers of Congress might be more important than its expressed powers, but they're harder to nail down and identify. In this lesson, we'll figure that out.

We also recommend watching [What is Congress? - Definition, Powers & Structure \(/academy/lesson/what-is-congress-definition-powers-structure.html\)](/academy/lesson/what-is-congress-definition-powers-structure.html) and [Foreign Policy Powers of the President & Congress \(/academy/lesson/foreign-policy-powers-of-the-president-congress.html\)](/academy/lesson/foreign-policy-powers-of-the-president-congress.html)

Introduction

Read the following sentence:

'I walked through my living room, out of the house, and onto the yard.'

Pretty straightforward, right? But here's a question: how did I get out of the house?

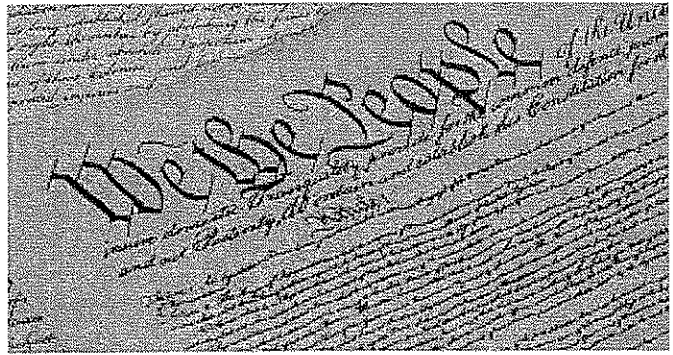
The sentence doesn't really tell you, but you'd be right to assume that I went through a door. There's no mention of the door, and it's possible that I punched through the drywall and crawled out that way, but that would fly in the face of not only common practice, but common sense. Unless there was no door. But again, that wouldn't be a necessarily logical conclusion. The presence of a door is implied.

This admittedly odd parable is meant to lead into a lesson about the powers of the U.S. Congress. Specifically, the implied powers of that institution, which are powers that aren't described concretely anywhere but are no less real, or important.

Expressed v. Implied

Article I, Section 8 of the U.S. Constitution describes the actual powers of Congress. These powers are called expressed powers (sometimes called delegated or enumerated

powers), because they are, quite literally, 'expressed' in the document. They are listed, all 27 of them, and they include some clearly important obligations. Some are very concrete: Congress has the power to declare war, for instance, or to levy and collect taxes. Some, however, are less clear. For example, Congress is given the power to 'To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.' This is pretty straightforward as far as who the Congress gets to regulate commerce with. But what, exactly, is commerce? And what does it mean to regulate?



To the Framers, it was clear that this list of expressed powers wasn't meant to be the final word on what Congress could do. The legislative branch was described in Article I for a reason: it was assumed that Congress would be the most powerful and dominant part of the government, given its broad lawmaking powers. But to be sure, the Framers built in a sort of 'fail-safe,' an additional power which gives the Congress a great deal of leeway in what it can do: the necessary and proper clause.

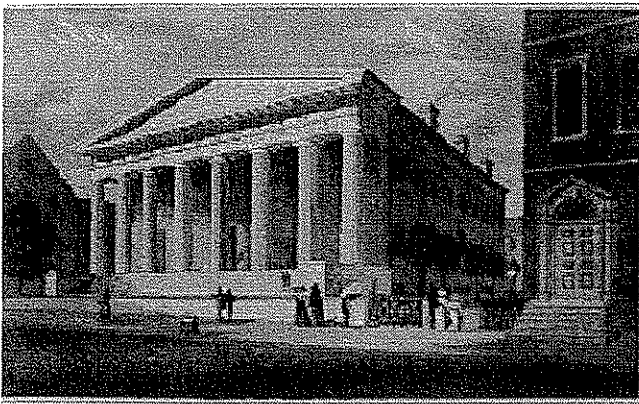
Necessary and Proper

The last listed power of Congress is much more vague than the commerce clause. It says that 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.' simply put, this means that Congress can make any law it sees as 'necessary and proper' in order to carry out its expressed powers. So, for instance, Congress has the power to raise an army and if Congress deems it 'necessary and proper' that this army should be filled with a national draft, it would have the power, under this clause, to pass a law establishing one.

This gets hazier, then, when you consider phrases like commerce, or even more vague, Congress' obligation to protect the general welfare. That sounds like it can include quite a lot. This is why two schools of thought have developed around the idea of implied powers. Strict constructionists, who were fearful that the government might take on too many powers and thus become tyrannical, claimed the Constitution limited the Congress to only those powers specifically defined and listed, and no more. Loose constructionists, on the other hand, felt that the Constitution (and especially, the 'necessary and proper' clause) gave the Congress not only the power, but the responsibility to adapt to changing times by using its power to make new law.

The very existence of the 'necessary and proper' clause indicates that the Framers knew the government would change, and take on additional obligations. But the existence of implied powers was one thing; actually saying so was another. It took a Supreme Court case to bring the concept of implied powers to life.

Example: McCulloch v. Maryland in 1819



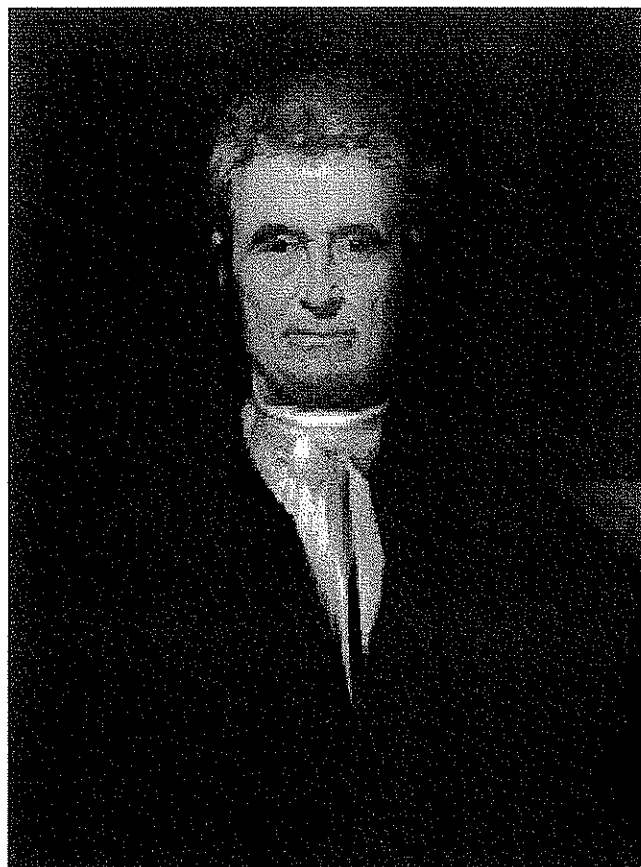
The Second Bank of the United States, the subject of the Supreme Court case *McCulloch v. Maryland*

In 1819, the state of Maryland tried to tax an institution of the federal government, the Bank of the United States. The Bank's existence is a great example of implied powers: the Constitution doesn't say that Congress has the right to make a bank, but its defenders claimed that one was necessary to carry out the Congress' power to collect taxes. So the Supreme Court had to decide: can a state tax a federal bank? And did Congress have the right to create one?

The Supreme Court's Chief Justice, John Marshall, said no on the first count (since the Constitution says that federal law is the supreme law of the land), and yes on the second. He pointed out that the 'necessary and proper' clause gave Congress the right to pass laws necessary to carry out their expressed powers. This was the first time a branch of the government acknowledged the existence of implied powers, and without this case, it's likely the Congress would be a much more constrained, less active institution than it is today.

Lesson Summary

The expressed powers of Congress are described in Article I, Section 8 of the U.S. Constitution. The last power listed, the 'necessary and proper' clause, says that Congress can make laws in order to carry out its expressed powers, which indicates that Congress' powers are not limited to only those actually listed in the Constitution. These implied powers were cited by Chief Justice John Marshall in the Supreme Court case *McCulloch v. Maryland* in 1819, in which Marshall supported the Congress' creation of a national bank as an example of the necessary and proper clause and its implied powers.



John Marshall, Chief Justice of the Supreme Court in 1819