

Powers of Congress

1. Review expressed, Implied, denied
McCulloch v Maryland : “We must never forget that it is a constitution we are expanding.”
Justice Frankfurter, “Single most important sentence in American Constitutional law” is the implied powers clause.
2. Commerce power, includes the power to coin money and borrow money, no constitutional limit though they set the debt ceiling
Gibbons v Ogden, “is includes all branches of commercial intercourse between the states,”
Recall federalism lecture, must now be a substantial relationship, what case?
3. Taxation and Spending power: must be uniform, to provide for common defense and general welfare; no export taxes, budgeting must come through a legislative act
Taxes were initially indirect (duties, excises) but the 16th Amendment created the Income tax, now our primary source
US v Kahriger (1953) taxes can have a regulatory goal; tax was attempting to wipe out bookies; prior to New deal, this would not be allowed
South Dakota v Dole(1987): established a 4 part test to constitutionality of spending tied to conditions
 - 1) spending must be clearly linked to general welfare
 - 2) grant conditions must be clearly stated
 - 3) conditions must be related to a federal interest
 - 4) cannot be used to induce unconstitutional behavior on the part of the states
4. War Powers: declare war, raise and support armies, provide a Navy, call forth the militia, enact a draft, make treaties
Though Congress has more specific powers, the President plays a more significant role, why?
War Powers Act:
 - requires Pres to consult with Congress prior to the start of any hostilities
 - remove troops within 60 days (possible 30 day extension) if no declaration of war has been authored
 - Nixon vetoed, subsequent Presidents have criticized
5. Establish rules for naturalization
6. Create and regulate post offices
7. Patent laws
8. Create federal courts, also legislative courts
9. Piracy and international crimes

Checks and Balances

L to J:

- Create courts
- Approve judicial nominees
- Impeachment
- Amend the constitution
- Set jurisdiction of federal courts

J to L:

- Determine constitutionality of legislative acts
- Appointed for life

L to E:

- Oversight
- Override veto
- War powers
- Budgeting
- Approval of nominees/senatorial courtesy/recent use of filibuster
- Approval of treaties

E to L:

- Commander in chief
- Veto legislation
- Signing statements
- Impoundment (till Nixon)
- Appointment loopholes