

Sec. 8—Powers of Congress

Cl. 18—Necessary and Proper Clause

Definition of Punishment and Crimes

Although the only crimes which Congress is expressly authorized to punish are piracies, felonies on the high seas, offenses against the law of nations, treason and counterfeiting of the securities and current coin of the United States, its power to create, define, and punish crimes and offenses whenever necessary to effectuate the objects of the Federal Government is universally conceded.¹⁷³⁵ Illustrative of the offenses which have been punished under this power are the alteration of registered bonds,¹⁷³⁶ the bringing of counterfeit bonds into the country,¹⁷³⁷ conspiracy to injure prisoners in custody of a United States marshal,¹⁷³⁸ impersonation of a federal officer with intent to defraud,¹⁷³⁹ conspiracy to injure a citizen in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States,¹⁷⁴⁰ the receipt by government officials of contributions from government employees for political purposes,¹⁷⁴¹ and advocating the overthrow of the government by force.¹⁷⁴² Part I of Title 18 of the United States Code comprises more than 500 sections defining penal offenses against the United States.¹⁷⁴³

One of the most expansive interpretations of the Necessary and Proper Clause arose in the context of the administration of the federal penal system. In *United States v. Comstock*,¹⁷⁴⁴ the Court evaluated a federal statute which allowed for the civil commitment of a

¹⁷³⁵ *United States v. Fox*, 95 U.S. 670, 672 (1878); *United States v. Hall*, 98 U.S. 343, 357 (1879); *United States v. Worrall*, 2 U.S. (2 Dall.) 384, 394 (1798); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). That this power has been freely exercised is attested by the pages of the United States Code devoted to Title 18, entitled "Criminal Code and Criminal Procedure." In addition, numerous regulatory measures in other titles prescribe criminal penalties.

¹⁷³⁶ *Ex parte Carll*, 106 U.S. 521 (1883).

¹⁷³⁷ *United States v. Marigold*, 50 U.S. (9 How.) 560, 567 (1850).

¹⁷³⁸ *Logan v. United States*, 144 U.S. 263 (1892).

¹⁷³⁹ *United States v. Barnow*, 239 U.S. 74 (1915).

¹⁷⁴⁰ *Ex parte Yarbrough*, 110 U.S. 651 (1884); *United States v. Waddell*, 112 U.S. 76 (1884); *In re Quarles and Butler*, 158 U.S. 532, 537 (1895); *Motes v. United States*, 178 U.S. 458 (1900); *United States v. Mosley*, 238 U.S. 383 (1915). *See also* *Rakes v. United States*, 212 U.S. 55 (1909).

¹⁷⁴¹ *Ex parte Curtis*, 106 U.S. 371 (1882).

¹⁷⁴² 18 U.S.C. § 2385.

¹⁷⁴³ *See* National Commission on Reform of Federal Criminal Laws, Final Report (Washington: 1970); National Commission on Reform of Federal Criminal Laws, Working Papers (Washington: 1970), 2 vols.

¹⁷⁴⁴ 560 U.S. ___, No. 08–1224, slip op. (May 17, 2010). Breyer wrote the opinion of the Court, joined by Justices Roberts, Stevens, Ginsburg and Sotomayor. Justices Kennedy and Alito concurred in the judgment, while Justices Thomas and Scalia dissented.