

## Sec. 8—Powers of Congress

## Cls. 5 and 6—Money

**Punishment of Counterfeiting**

In its affirmative aspect, this clause has been given a narrow interpretation; it has been held not to cover the circulation of counterfeit coin or the possession of equipment susceptible of use for making counterfeit coin.<sup>1356</sup> At the same time, the Supreme Court has rebuffed attempts to read into this provision a limitation upon either the power of the States or upon the powers of Congress under the preceding clause. It has ruled that a state may punish the issuance of forged coins.<sup>1357</sup> On the ground that the power of Congress to coin money imports “the correspondent and necessary power and obligation to protect and to preserve in its purity this constitutional currency for the benefit of the nation,”<sup>1358</sup> it has sustained federal statutes penalizing the importation or circulation of counterfeit coin,<sup>1359</sup> or the willing and conscious possession of dies in the likeness of those used for making coins of the United States.<sup>1360</sup> In short, the above clause is entirely superfluous. Congress would have had the power it purports to confer under the Necessary and Proper Clause; and the same is the case with the other enumerated crimes it is authorized to punish. The enumeration was unnecessary and is not exclusive.<sup>1361</sup>

**Borrowing Power Versus Fiscal Power**

Usually the aggregate of the fiscal and monetary powers of the National Government—to lay and collect taxes, to borrow money and to coin money and regulate the value thereof—have reinforced each other, and, cemented by the necessary and proper clause, have provided a secure foundation for acts of Congress chartering banks and other financial institutions,<sup>1362</sup> or making its treasury notes legal tender in the payment of antecedent debts.<sup>1363</sup> But, in 1935, the opposite situation arose—one in which the power to regulate the value of money collided with the obligation incurred in the exercise of the power to borrow money. By a vote of eight-to-one the Supreme Court held that the obligation assumed by the exercise of the latter was paramount, and could not be repudiated to effectu-

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<sup>1356</sup> *United States v. Marigold*, 50 U.S. (9 How.), 560, 568 (1850).

<sup>1357</sup> *Fox v. Ohio*, 46 U.S. (5 How.) 410 (1847).

<sup>1358</sup> *United States v. Marigold*, 50 U.S. (9 How.) 560, 568 (1850).

<sup>1359</sup> *Id.*

<sup>1360</sup> *Baender v. Barnett*, 255 U.S. 224 (1921).

<sup>1361</sup> *Legal Tender Cases (Knox v. Lee)*, 79 U.S. (12 Wall.) 457, 536 (1871).

<sup>1362</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819); *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 737, 861 (1824); *Farmers' & Mechanics' Nat. Bank v. Dearing*, 91 U.S. 29, 33 (1875); *Smith v. Kansas City Title Co.*, 255 U.S. 180, 208 (1921).

<sup>1363</sup> *Legal Tender Cases (Knox v. Lee)*, 79 U.S. (12 Wall.) 457, 540–47 (1871).