

Sec. 1—The Congress

Legislative Powers

to imprison the contumacious witness.²⁰² Notwithstanding this firmly established legislative practice, the Supreme Court took a narrow view of the power in *Kilbourn v. Thompson*.²⁰³ In *Kilbourn*, it held that the House of Representatives had overstepped its jurisdiction when it instituted an investigation of losses suffered by the United States as a creditor of Jay Cooke and Company, whose estate was being administered in bankruptcy by a federal court.²⁰⁴ But nearly half a century later, in *McGrain v. Daugherty*,²⁰⁵ the Court ratified in sweeping terms the power of Congress to inquire into the administration of an executive department and to sift charges of malfeasance in such administration.²⁰⁶

Investigations of Members of Congress

When either House exercises a judicial function, as in judging of elections or determining whether a Member should be expelled, it is clearly entitled to compel the attendance of witnesses with knowledge of the facts upon which its action are to be based. Thus, the Court held that since a House had a right to expel a Member for any offense which it deemed incompatible with his trust and duty as a member, it was entitled to investigate such conduct and to summon private individuals to give testimony concerning it.²⁰⁷ The decision in *Barry v. United States ex rel. Cunningham*²⁰⁸ sanctioned the exercise of a similar power in investigating a senatorial election.

²⁰² CONG. GLOBE, 36th Congress, 1st sess., 1100–1109 (1860).

²⁰³ 103 U.S. 168 (1881).

²⁰⁴ The Court held that inasmuch as the entire proceedings arising out of the bankruptcy were pending in court; as the authorizing resolution contained no suggestion of contemplated legislation; as in fact no valid legislation could be enacted on the subject; and as the only relief which the United States could seek was judicial relief in the bankruptcy proceeding, the House had exceeded its powers in authorizing the inquiry. *But see* *Hutcheson v. United States*, 369 U.S. 599 (1962).

²⁰⁵ 273 U.S. 135, 177, 178 (1927).

²⁰⁶ The topic of executive privilege, the claimed right of the President and at least some of his executive branch officers to withhold from Congress information desired by it or by one of its committees, is addressed in Article II, The Presidential Aegis: Demands for Papers. Although the issue has been one of contention between the two branches of government since Washington's refusal in 1796 to submit certain correspondence to the House of Representatives relating to treaty negotiations, it has only relatively recently become a judicial issue.

²⁰⁷ *In re Chapman*, 166 U.S. 661 (1897).

²⁰⁸ 279 U.S. 597 (1929).