

Sec. 8—Powers of Congress

Cl. 18—Necessary and Proper Clause

Reservation of Jurisdiction by States

For more than a century the Supreme Court kept alive, by repeated dicta,¹⁷²³ the doubt expressed by Justice Story “whether Congress are by the terms of the Constitution, at liberty to purchase lands for forts, dockyards, etc., with the consent of a State legislature, where such consent is so qualified that it will not justify the ‘exclusive legislation’ of Congress there. It may well be doubted if such consent be not utterly void.”¹⁷²⁴ But when the issue was squarely presented in 1937, the Court ruled that, when the United States purchases property within a state with the consent of the latter, it is valid for the state to convey, and for the United States to accept, “concurrent jurisdiction” over such land, the state reserving to itself the right to execute process “and such other jurisdiction and authority over the same as is not inconsistent with the jurisdiction ceded to the United States.”¹⁷²⁵ The holding logically renders the second half of clause 17 superfluous. In a companion case, the Court ruled further that even if a general state statute purports to cede exclusive jurisdiction, such jurisdiction does not pass unless the United States accepts it.¹⁷²⁶

Clause 18. The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

NECESSARY AND PROPER CLAUSE**Scope and Operation**

The Necessary and Proper Clause, sometimes called the “coefficient” or “elastic” clause, is an enlargement, not a constriction, of the powers expressly granted to Congress. Chief Justice Marshall’s classic opinion in *McCulloch v. Maryland*¹⁷²⁷ set the standard in words that reverberate to this day. “Let the end be legitimate,” he wrote, “let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which

¹⁷²³ *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 532 (1885); *United States v. Unzeuta*, 281 U.S. 138, 142 (1930); *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).

¹⁷²⁴ *United States v. Cornell*, 25 Fed. Cas. 646, 649 (No. 14,867) (C.C.D.R.I. 1819).

¹⁷²⁵ *James v. Dravo Contracting Co.*, 302 U.S. 134, 145 (1937).

¹⁷²⁶ *Mason Co. v. Tax Comm’n*, 302 U.S. 186 (1937). See also *Atkinson v. Tax Comm’n*, 303 U.S. 20 (1938).

¹⁷²⁷ 17 U.S. (4 Wheat.) 316 (1819).