

## Sec. 8—Powers of Congress

## Cl. 18—Necessary and Proper Clause

are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.”<sup>1728</sup> Moreover, the provision gives Congress a share in the responsibilities lodged in other departments, by virtue of its right to enact legislation necessary to carry into execution all powers vested in the National Government. Conversely, where necessary for the efficient execution of its own powers, Congress may delegate some measure of legislative power to other departments.<sup>1729</sup>

Practically every power of the National Government has been expanded in some degree by the Necessary and Proper Clause. Under the authority granted it by that clause, Congress has adopted measures requisite to discharge the treaty obligations of the nation,<sup>1730</sup> has organized the federal judicial system, and has enacted a large body of law defining and punishing crimes. Effective control of the national economy has been made possible by the authority to regulate the internal commerce of a state to the extent necessary to protect and promote interstate commerce.<sup>1731</sup> The right of Congress to use all known and appropriate means for collecting revenue, including the distraint of property for federal taxes,<sup>1732</sup> and to exercise the power of eminent domain to acquire property for public use,<sup>1733</sup> have greatly extended the range of national power. But the widest application of the Necessary and Proper Clause has occurred in the field of monetary and fiscal controls. Because the various specific powers granted by Article I, § 8, do not add up to a general legislative power over such matters, the Court has relied heavily upon this clause to sustain the comprehensive control that Congress has asserted over this subject.<sup>1734</sup>

<sup>1728</sup> 17 U.S. at 420. This decision had been clearly foreshadowed fourteen years earlier by Marshall’s opinion in *United States v. Fisher*, 6 U.S. (2 Cr.) 358, 396 (1805). Upholding an act which gave priority to claims of the United States against the estate of a bankrupt he wrote: “The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself most eligible to effect that object. It has, consequently, a right to make remittance, by bills or otherwise, and to take those precautions which will render the transaction safe.”

<sup>1729</sup> See “Delegation of Legislative Power,” *supra*.

<sup>1730</sup> *Neely v. Henkel*, 180 U.S. 109, 121 (1901). See also *Missouri v. Holland*, 252 U.S. 416 (1920).

<sup>1731</sup> See discussion of “Necessary and Proper Clause” under the commerce power, *supra*.

<sup>1732</sup> *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 281 (1856). Congress may also legislate to protect its spending power. *Sabri v. United States*, 541 U.S. 600 (2004) (upholding imposition of criminal penalties for bribery of state and local officials administering programs receiving federal funds).

<sup>1733</sup> *Kohl v. United States*, 91 U.S. 367, 373 (1876); *United States v. Fox*, 95 U.S. 670 (1878).

<sup>1734</sup> See “Fiscal and Monetary Powers of Congress,” *supra*.