

Sec. 8—Powers of Congress**Cl. 2—Borrowing Power**

of this law to abrogate such a clause in a government bonds contract was held to contravene the borrowing power.⁶⁶⁷

The clause has also been cited in relation to the authority of Congress to issue paper or “fiat” money.⁶⁶⁸ The original draft of the Constitution reported to the convention by its Committee of Detail empowered Congress to both “borrow money and emit bills on the credit of the United States.”⁶⁶⁹ When this section was reached in the debates, Gouverneur Morris moved to strike out the clause “and emit bills on the credit of the United States.” Madison suggested that it might be sufficient “to prohibit the making them a tender.” After a spirited exchange of views on the subject of paper money, the convention voted, nine states to two, to delete the words “and emit bills.”⁶⁷⁰ Despite the clear ambivalence of the founders towards the issuance of a federal currency, in 1870, the Court relied in part upon this clause in holding that Congress had authority to issue Treasury notes and to make them legal tender in satisfaction of antecedent debts.⁶⁷¹

Clause 3. The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

POWER TO REGULATE COMMERCE**Federal Power and State Limitation**

The Commerce Clause has been found by the Court to serve a two-fold purpose: to empower the Federal Government and to limit the states. As to the former, addressed in this section, it is the direct source of the most important powers that the Federal Government exercises in peacetime. Under it, Congress can facilitate, regulate, or prohibit commerce, and also, by operation of the Supremacy Clause, limit states’ ability to do the same. However, even absent conflicting federal legislation, the Commerce Clause, as addressed

⁶⁶⁷ *Perry v. United States*, 294 U.S. 330, 350–51 (1935). The Court did deny the plaintiff remedy, finding an absence of actual damage from receiving payment in currency. *Id.* at 358. *See also* *Lynch v. United States*, 292 U.S. 571 (1934).

⁶⁶⁸ Modern United States money is “fiat” currency, because, since 1971, it is no longer redeemable against the United States for specified weights of precious metals. Under federal law, however, the currency must be accepted as legal tender for all debts, fees, and taxes. 31 U.S.C. § 5103.

⁶⁶⁹ 2 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 144, 308–309 (rev. ed. 1937).

⁶⁷⁰ *Id.* at 310.

⁶⁷¹ *Knox v. Lee (Legal Tender Cases)*, 79 U.S. (12 Wall.) 457 (1871), overruling *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603 (1870).