

Sec. 8—Powers of Congress

Cl. 18—Necessary and Proper Clause

Power to Charter Corporations

In addition to the creation of banks, Congress has been held to have authority to charter a railroad corporation,¹⁷⁵⁶ or a corporation to construct an interstate bridge,¹⁷⁵⁷ as instrumentalities for promoting commerce among the states, and to create corporations to manufacture aircraft¹⁷⁵⁸ or merchant vessels¹⁷⁵⁹ as incidental to the war power.

Courts and Judicial Proceedings

Because the Constitution “delineated only the great outlines of the judicial power . . . , leaving the details to Congress, . . . [t]he distribution and appropriate exercise of the judicial power must . . . be made by laws passed by Congress. . . .”¹⁷⁶⁰ As a necessary and proper provision for the exercise of the jurisdiction conferred by Article III, § 2, Congress may direct the removal from a state to a federal court of a criminal prosecution against a federal officer for acts done under color of federal law,¹⁷⁶¹ may require the tolling of a state statute of limitations while a state cause of action that is supplemental to a federal claim is pending in federal court,¹⁷⁶² and may authorize the removal before trial of civil cases arising under the laws of the United States.¹⁷⁶³ It may prescribe the effect to be given to judicial proceedings of the federal courts¹⁷⁶⁴ and may make all laws necessary for carrying into execution the judgments of federal courts.¹⁷⁶⁵ When a territory is admitted as a state, Congress may designate the court to which the records of the territorial courts shall be transferred and may prescribe the mode for enforcement and review of judgments rendered by those courts.¹⁷⁶⁶ In the exercise of other powers conferred by the Constitution, apart from Article III, Congress may create legislative courts and “clothe them with functions deemed essential or helpful in carrying those powers into execution.”¹⁷⁶⁷

¹⁷⁵⁶ *Pacific R.R. Removal Cases*, 115 U.S. 1 (1885); *California v. Pacific R.R.*, 127 U.S. 1, 39 (1888).

¹⁷⁵⁷ *Luxton v. North River Bridge Co.*, 153 U.S. 525 (1894).

¹⁷⁵⁸ *Clallam County v. United States*, 263 U.S. 341 (1923).

¹⁷⁵⁹ *Sloan Shipyards v. United States Fleet Corp.*, 258 U.S. 549 (1922).

¹⁷⁶⁰ *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 721 (1838).

¹⁷⁶¹ *Tennessee v. Davis*, 100 U.S. 257, 263 (1880).

¹⁷⁶² *Jinks v. Richland County*, 538 U.S. 456 (2003).

¹⁷⁶³ *Railway Company v. Whitton*, 80 U.S. (13 Wall.) 270, 287 (1872).

¹⁷⁶⁴ *Embry v. Palmer*, 107 U.S. 3 (1883).

¹⁷⁶⁵ *Bank of the United States v. Halstead*, 23 U.S. (10 Wheat.) 51, 53 (1825).

¹⁷⁶⁶ *Express Co. v. Kountze Bros.*, 75 U.S. (8 Wall.) 342, 350 (1869).

¹⁷⁶⁷ *Ex parte Bakelite Corp.*, 279 U.S. 438, 449 (1929). *But see* *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 67–69 (1982).