**The Elastic Clause**

If you want to know what the government can do, specifically, you can look at **Article I, Section 8** of the Constitution, which lists Congress' powers: it can levy taxes, declare war, and coin money, among other things. These are called the government's **enumerated powers**, also called expressed powers, or delegated powers.

The immediate problem faced by the framers of the Constitution was that it was impossible to list all the powers of government. First off, there's just too many; and second, they wanted to build a government that would last and stand the test of time. They knew that the world was going to change; remember, these were all very educated and enlightened men, raised in the 18th century, the Age of Reason. They knew they couldn't predict what the world would look like in even ten years' time, much less in a century.

So, they added a rule. Near the end of Section 8 of the Constitution, it says: 'Congress has the power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof.'

What does this mean? Really, two things: first, don't think that the powers listed here are the government's only powers. Second, Congress can make any law it needs to, in order to carry out its enumerated powers. This 'necessary and proper' clause, then, allows the government to stretch beyond its literal description; that's why the clause is often nicknamed the **elastic clause**, since its flexibility allows the government to change and grow over time.

This sounds pretty vague, which is not the sort of thing that helps a brand new government; and it also sounds like it gave the government the authority to grow well beyond what many of the Founding Fathers probably intended. What it actually meant in practice wasn't really clear until 1819, when the Supreme Court, whose job it is to sort out these fuzzy areas in the Constitution, dealt with a case called ***McCulloch v. Maryland***.

The "Elastic Clause" of the Constitution grants Congress power to pass unspecified laws "necessary and proper" for the exercise of its expressed powers

Implied powers have often been controversial

Over time, Congress's powers have grown as more and more kinds of government activity have been accepted as implied powers

## The Supremacy Clause

The **supremacy clause** is the section of the Constitution stating that the Constitution and federal laws made in furtherance of the Constitution are the supreme law of the land. The framers, recognizing the weak federal government established by the Articles of Confederation, wished to guarantee that no laws interfered with the goals of the Constitution.

The supremacy clause is found in Article VI, Section 2, where the Constitution specifies which powers the federal government has, and which powers the federal government does not have. When a state law conflicts with a federal law, the supremacy clause operates to invalidate the state law in favor of the federal one as long as the federal law is found to be in pursuance of the Constitution.

The supremacy clause also means that states can't regulate, interfere with, or control federal issues. This principle comes from the famous 1819 Supreme Court case of *McCulloch v. Maryland*. Here, the Court held that Maryland could not constitutionally tax the operations of the Bank of the United States, since that was a federal power.

More recently, the 1990 Supreme Court case of *North Dakota v. United States* slightly narrows this rule. The *North Dakota* case says that state regulation is invalid only if it regulates the United States directly or discriminates against the Federal Government or those with whom it deals.

## The Commerce Clause

The **commerce clause** is also found in Article I, Section 3 of the Constitution. The commerce clause is an example of an enumerated power.

The commerce clause gives Congress the power 'to regulate commerce with foreign nations, and among the several states.' Generally speaking, this means that Congress controls interstate commerce and commerce between the U.S. and other countries. **Commerce** is the commercial trade, business, or movement of goods or money. **Interstate commerce** commonly refers to the commerce that involves transportation across state lines.

For example, let's say I own an internet-based business where I sell t-shirts. If I live and work in Oregon, but sell a t-shirt to a customer in New York, that is an example of interstate commerce. The customer must send money to me in Oregon, and I must send the t-shirt to New York

## Origin and Purpose of Full Faith and Credit

The **Full Faith and Credit Clause** can be found in Article IV, Section 1 of the **United States Constitution**. This clause was originally included in the **Articles of Confederation**, which was our nation's first constitution. The United States Constitution replaced the Articles of Confederation, and, for the most part, the clause was carried over. The clause reads:

*'Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof*.'

The Full Faith and Credit Clause ensures that states honor the court judgments of other states. For example, let's say I'm involved in a car accident in New Mexico. As a result, a New Mexico court grants me $1,000 in damages. But the defendant - the person who ran into me - lives in Florida and refuses to pay me. The State of Florida will enforce the judgment from New Mexico and help me collect my money. This is obviously an important practice because otherwise, I'm forced to retry my case in Florida in order to receive a money judgment that can be enforced in that state. This was an even more important practice in colonial times because the states purposely operated separately and independently. The clause helped ensure unity and respect for authority between the states. Although at the time the Constitution was drafted, the framers mostly hoped to prevent debtors from escaping their debts by fleeing to another state.

## The Supreme Court and Full Faith and Credit

The **United States Supreme Court** serves as our judicial branch and is responsible for interpreting the United States Constitution. The Full Faith and Credit Clause is part of the Constitution's text and was enacted in 1787. The Court first interpreted the clause in the 1813 case *Mills v. Duryee*. Currently, the Court has heard numerous cases involving the Full Faith and Credit Clause. The Court says that the clause can be used in three different ways. First, the clause can command a state to take **jurisdiction**, or control, over a claim that started in another state. Second, the clause can determine which state's law should be applied when a case involves more than one state. And lastly, the clause directs states to acknowledge and enforce court judgments from other states. This last use is the example we've just discussed about my car accident in New Mexico.

# **First Amendment and Religion**

The First Amendment has two provisions concerning religion: the Establishment Clause and the Free Exercise Clause. The Establishment clause prohibits the government from "establishing" a religion. The precise definition of "establishment" is unclear. Historically, it meant prohibiting state-sponsored churches, such as the Church of England.

Today, what constitutes an "establishment of religion" is often governed under the three-part test set forth by the U.S. Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971). Under the "Lemon" test, government can assist religion only if (1) the primary purpose of the assistance is secular, (2) the assistance must neither promote nor inhibit religion, and (3) there is no excessive entanglement between church and state.

The Free Exercise Clause protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest. For instance, in Prince v. Massachusetts, 321 U.S. 158 (1944), the Supreme Court held that a state could force the inoculation of children whose parents would not allow such action for religious reasons. The Court held that the state had an overriding interest in protecting public health and safety.

Sometimes the Establishment Clause and the Free Exercise Clause come into conflict. The federal courts help to resolve such conflicts, with the Supreme Court being the ultimate arbiter.