The Expressed Powers of Money and Commerce

Objectives
You may wish to call students’ attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

Bellringer
Ask students how the designs of coins and bills have changed in recent years. Show an example of a newly designed dollar bill, dollar coin, or State quarter. Ask students who authorizes such changes in our currency. Tell students that the power to print and coin money is an expressed power of Congress.

Vocabulary Builder
Have students read aloud, from a dictionary. Ask them which term is found on a dollar bill.

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Lesson Plan

Teaching the Main Ideas

1. Focus
Tell students that the Constitution expressly gives Congress the power to regulate money and commerce. Ask students whether they know any examples of how Congress uses these powers.

2. Instruct
Ask students to name the four limits on Congress’s power to tax. Then have students describe Congress’s other money and commerce powers and any limits on these powers.

3. Close/Re教
Remind students that the expressed powers of Congress include the power to regulate money and commerce. Have students draw a web diagram to organize the information in this section, starting with “the expressed powers of money and commerce” in the center circle.

Point-of-Use Resources

Section Support Transparencies
Transparency 44, Visual Learning; Transparency 143, Political Cartoon

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The Expressed Powers of Money and Commerce

Objectives

1. Summarize key points relating to Congress’s power to tax. Why It Matters

Its powers to tax and to regulate both interstate and foreign trade give Congress a critical role in the nation’s economy. Neither its taxing power nor its commerce power are unlimited, however.

2. Describe how Congress uses its power to borrow money. Political Dictionary

tax
direct tax
indirect tax
deficit financing
public debt
commerce power
legal tender
bankruptcy

3. Analyze the importance of Congress’s commerce power. The Power to Tax

The Constitution gives Congress the power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

4. Identify the reasons that the Framers gave Congress the power to issue currency. Working conditions? Radio and television broadcasts? The Internet? Does the Commerce Clause give Congress the power to ban the shipment of certain goods from one State to another? To prohibit discrimination? To regulate the Internet? What trade is “foreign” and what is “interstate”? What trade is neither?

5. Explain how the bankruptcy power works. In answering these and dozens upon dozens of other questions arising out of this one provision, Congress and the Court have defined—and are still defining—the meaning of the Commerce Clause. So it is with most of the other constitutional grants of power to Congress.

The Expressed Powers of Money and Commerce

Most, but not all, of the expressed powers of Congress are found in Article I, Section 8 of the Constitution. There, in 18 separate clauses, 27 different powers are explicitly given to Congress.

These grants of power are brief. What they do and do not allow Congress to do often cannot be discovered by merely reading the few words involved. Rather, their meaning is found in the ways in which Congress has exercised its powers since 1789, and in scores of Supreme Court cases arising out of the actions taken by Congress.

As a case in point, take the Commerce Clause, which gives to Congress the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

What do these words mean? Congress and the Court have had to answer hundreds of questions about the scope of the Commerce Clause. Here are but a few examples: Does “commerce” include people crossing State lines or entering or leaving the country? What about business practices?

The Power to Tax

The Constitution gives Congress the power “To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States...”

—from the Constitution

Consider these suggestions to manage extended class time:

■ Describe the many expressed powers that Congress has regarding money. Then have student groups create two laws. One law should be based on these expressed powers. The other should be a law that Congress could not pass because of the limitations placed on expressed powers. Ask for volunteers to share their laws, and have the class determine whether Congress could or could not pass them.

■ Have students complete the Constitutional Principles activity on p. 297. Then ask students to consider why congressional powers and limitations regarding commerce are so important. Have student pairs create scenarios of what could happen if each power or limitation was not in place. Encourage volunteers to share their scenarios with the class.
Recall that the Articles of Confederation had not given Congress the power to tax. Congress did have the power to requisition (request) funds from the States; that is, Congress could ask (in reality, beg) each of the thirteen States for money. But, through the 1780s, not a single State came even remotely close to meeting the requisitions Congress made, and some States paid nothing at all. The government was impotent, and the lack of a power to tax was a leading cause for the creation of the Constitution.

The Purpose of Taxes
We shall take another and longer look at the taxing power in Chapter 16. But, here, a number of important points: The Federal Government will take in some $2.2 trillion in revenue every year, its real goal is to "protect" public needs. But notice, Congress does some- times impose taxes for other purposes as well. The protective tariff is perhaps the oldest exam-

Taxes are also sometimes levied to protect the public health and safety. The Federal Government’s regulation of narcotics is a case in point. Only those who have a proper federal license can legally manufacture, sell, or deal in those drugs—and licensing is a form of taxation.

Limits on the Taxing Power
Congress does not have an unlimited power to tax. As with all other powers, the taxing power must be used in accord with all other provisions of the Constitution. Thus, Congress cannot lay a tax on church services, for example—because such a tax would violate the 1st Amendment. Nor could it lay a poll tax as a condition for voting in federal elections—for that would violate the 24th Amendment.

More specifically, the Constitution places four explicit limitations on the taxing power:

1. Congress may tax only for public purposes, not for private benefit. Article I, Section 8, Clause 1 says that taxes may be levied only “to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .”

2. Congress may not tax exports. Article I, Section 9, Clause 5 declares “[n]o Tax or Duty shall be laid on Articles exported from any State.” Thus, customs duties (tariffs), which are taxes, can be levied only on goods brought into the country (imports), not on those sent abroad (exports).

Preparing for Standardized Tests
Have students read the passages under The Power to Tax on pp. 294–295 and then answer the question below.

What is a protective tariff?
A a low tax on imported goods to encourage their purchase by Americans
B a tax on exports
C a tax on cigarettes to make them more expensive and thus protect the public from the health risks of smoking
D a tax on imported goods to increase their price and make them less popular than American goods

Answers to . . .
Interpreting Graphs (a) Spending on national defense decreased, while health and medical spending increased the most. (b) Spending on net interest decreased; several other areas remained the same. Only health and medical spending increased significantly.
Point-of-Use Resources

Simulations and Data Graphing CD-ROM offers data graphing tools that give students practice with creating and interpreting graphs.

Interpreting Political Cartoons

Paying taxes often requires following complicated instructions. According to this cartoon, how successful have been repeated efforts to simplify federal income tax forms?

Answer to ... Political Cartoons

Not particularly successful; tax payers still must read through pages of directions, fill out several different forms, and interpret complicated tables in order to file their taxes.
In the Balanced Budget Act of 1997, Congress and President Clinton vowed to eliminate deficit financing by 2002. Their goal was realized much sooner than that, however. The nation’s economy was so robust at the time that the government’s income rose dramatically—and the Treasury reported a modest surplus for fiscal year 1998, and somewhat larger ones for 1999, 2000, and 2001.

Deficits are once again the order of the day, however. Three major factors combined to make those four years of budget surpluses only a brief interlude: (1) a sharp downturn in the nation’s economy; (2) several major tax cuts pushed by President Bush and enacted by Congress in 2001, 2002, 2003, and 2004; (3) the onset of the global war on terrorism in Afghanistan and Iraq.

The Treasury has reported a deficit for each fiscal year since 2001. The shortfall topped $331 billion in 2005, and it will almost certainly exceed that stupendous sum in fiscal year 2006.

The interest the Federal Government pays out cannot be taxed by the States. That fact makes the Federal Government’s notes and bonds quite attractive to investors.

The Commerce Power

The commerce power—the power of Congress to regulate interstate and foreign trade—is as vital to the welfare of the nation as is the taxing power. As you know, the commerce power played a major role in the formation of the Union. The weak Congress created under the Articles of Confederation had no power to regulate interstate trade and little authority over foreign commerce. The Critical Period of the 1780s was marked by intense commercial rivalries and bickering among the States. High trade barriers and spiteful State laws created chaos and confusion in much of the country.

Consequently, the Framers wrote the Commerce Clause. It gives Congress the power

“To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

—Article I, Section 8, Clause 3

The Commerce Clause proved to be more responsible for the building of a strong and United States out of a weak confederation than any other provision in the Constitution. Its few words have prompted the growth in this country of the greatest open market in the world.

Gibbons v. Ogden, 1824

The first case involving the Commerce Clause to reach the Supreme Court was Gibbons v. Ogden, decided in 1824. The case arose out of a clash over the regulation of steamboats by the State of New York, on the one hand, and the Federal Government, on the other. In 1807 Robert Fulton’s steamboat, the Clermont, had made its first successful run up the Hudson River, from New York City to Albany. The State legislature then gave Fulton an exclusive, long-term grant to navigate the waters of the State by steamboat. Fulton’s monopoly then gave Aaron Ogden a permit for steamboat navigation between New York City and New Jersey.

Thomas Gibbons, operating with a coating license from the Federal Government, began to carry passengers on a line that competed with Ogden. Ogden sued him, and the New York courts held that Gibbons could not sail by steam in New York waters.

Gibbons appealed that ruling to the Supreme Court. He claimed that the New York grant conflicted with the congressional power to regulate commerce. The Court agreed. It rejected Ogden’s argument that “commerce” should be defined narrowly, as simply “traffic” or the mere buying and selling of goods. Instead, it read the Commerce Clause in very broad terms:

This engraving from the 1830s shows Robert Fulton’s steamboat, the Clermont. Critical Thinking If Fulton had held on to his riverboat monopoly in New York, what might have been the effects on interstate commerce?

Point-of-Use Resources

- Close Up on the Supreme Court
  Gibbons v. Ogden (1819), pp. 30–31
- The Enduring Constitution
  Judicial Review, p. 7
- Basic Principles of the Constitution
  Transparencies 37–43, Judicial Review

Activity

Ask students to conduct additional research into Gibbons v. Ogden and United States v. Lopez to see how the Court’s interpretation of the Commerce Clause and the purpose of the laws in question shaped its opinion. Have students summarize this information and explain why they agree or disagree.

Answer to . . .

Critical Thinking Possible answer: There would have been less competition, hampering the development of the national transportation system.
Background Note

Common Misconceptions

For as long as any American has been alive, the United States has had strong Presidents with definite agendas for Congress. So most Americans think of the President as the most powerful individual in the National Government. In fact, at many points, congressional leaders held more sway than the President. During the 19th century, Presidents initiated few policies. They tended to yield to a strong Congress, and to powerful congressional leaders like Daniel Webster and John C. Calhoun in the Senate and Henry Clay and Thomas B. Reed in the House. For much of American history, congressional leaders have wielded as much, or more, power than the chief executive.

Critical Thinking

The power to pass laws to protect the environment comes from the commerce power; the commerce power also led to the prohibition of discrimination in public places. No person can be discriminated against because of race or disability.

Primary Sources

"Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

—Chief Justice John Marshall

Limits on the Commerce Power

Like Congress’s taxing power, its commerce power is not unlimited. It, too, must be exercised in accord with all other provisions in the Constitution. Thus, the Supreme Court struck down the Gun-Free School Zone Act of 1990 in United States v. Lopez, 1995. That act had made it a federal crime for anyone other than a police officer to possess a firearm in or around a school. The Court could find no useful connection between interstate commerce and guns at school, and it held that Congress in this case had invaded the reserved powers of the States.

In more specific terms, the Constitution places four explicit limits on the use of the commerce power. Congress

1. cannot tax exports, Article I, Section 9, Clause 5;
2. cannot favor the ports of one State over those of any other in the regulation of trade, Article I, Section 9, Clause 6;
3. cannot regulate any business that is not commerce, or that affects commerce, or that is too local to be of federal concern; and
4. cannot regulate an activity that is not commerce because no other law of Congress affects it.

Most of what the Federal Government does, day to day and year to year, it does as the result of legislation passed by Congress in the exercise of these two powers.

Answer to . . .

Critical Thinking How might the Commerce Clause affect these people?
(3) cannot require that “Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another,” Article I, Section 9, Clause 6; and, finally, (4) could not interfere with the slave trade, at least not until the year 1808, Article I, Section 9, Clause 1. This last limitation, part of the curious slave-trade compromise at the Constitutional Convention, has been a dead letter for nearly two centuries now.

The Currency Power

Article I, Section 8, Clause 5 gives Congress the power “[t]o coin Money [and] regulate the Value thereof.” The States are denied that power.9

Until the Revolution, the English money system, built on the shilling and the pound, was in general use in the colonies. With independence, that stable currency system collapsed. The Second Continental Congress and then the Congress under the Articles issued paper money. Without sound backing, and with no taxing power behind it, however, the money was practically worthless. Each of the 13 States also issued its own currency.

In several States, this amounted to little more than the State’s printing its name on paper and calling it money. Adding to the confusion, people still used English coins, and Spanish money circulated freely in the southern States.

Nearly all the Framers agreed on the need for a single, national system of “hard” money. So the Constitution gave the currency power to Congress, and it all but excluded the States from that field. From 1789 on, among the most important of all of the many tasks performed by the Federal Government has been that of providing the nation with a uniform, stable monetary system.

From the beginning, the United States has issued coins—in gold, silver, and other metals. Congress chartered the first bank of the United States in 1791 and gave it the power to issue bank notes—that is, paper money. Those notes were not legal tender, however. Legal tender is any kind of money that a creditor must by law accept in payment for debts. Congress did not create a national paper currency, and make it legal tender, until 1863.

The new national notes, known as Greenbacks, had to compete with other paper currencies already in the marketplace. Although the States could not issue paper money themselves, State governments chartered (licensed) private banks, whose notes did circulate as

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9Article I, Section 10, Clause 1 forbids the States the power to coin money, issue bills of credit (paper money), or make anything but gold and silver legal tender.

The Development of a National Currency

<table>
<thead>
<tr>
<th>CONTINENTAL CURRENCY</th>
<th>DEMAND CURRENCY</th>
<th>STATE CURRENCY</th>
<th>SILVER CERTIFICATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>One third dollar, 1776</td>
<td>$10 demand note, 1861</td>
<td>$1 silver certificates, 1896</td>
<td></td>
</tr>
<tr>
<td>This “Continental” note, engraved by Benjamin Franklin, was issued to finance the American Revolution.</td>
<td>With metal badly needed for the Civil War, Congress issued this “Greenback,” the first paper currency since the Continental. Congress made these notes legal tender in 1863.</td>
<td>George Washington was not the only member of his family to have his face on a bill; this note, redeemable for silver, features his wife, Martha.</td>
<td></td>
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<tr>
<td>U.S. COINAGE</td>
<td>From 1837 to 1863, just about anyone could issue currency—from States to stores to individuals—creating economic chaos.</td>
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<tr>
<td>United States half cent, 1834</td>
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Interpreting Charts: The colonies, the States, and the young United States experimented with a variety of coins and paper notes in the effort to build a stable currency. For a long time, people trusted coins more than paper. Why do you think some forms of currency succeeded while others failed?

Answer to . . .

Interpreting Charts: Possible answer: Forms of currency can only succeed if they have public confidence and are perceived as useful by the people. Use this complete suite of powerful teaching tools to make planning lessons and administering tests quicker and easier.

Background Note

Economics

In 1997, Congress passed a bill requiring the creation of a new dollar coin to replace the Susan B. Anthony dollar, which had “flopped,” partly because it was easily confused with a quarter. The United States One Dollar Coin Act of 1997 specified a new golden-colored coin with a distinctive edge. The Mint chose Sacagawea, Lewis and Clark’s Shoshone guide, to appear on the new coin. Then, recalling the fate of the Anthony dollar, the Mint launched an unprecedented $40 million advertising campaign to promote the new “golden dollar.” Several years later, however, the success of that advertising blitz was in doubt. The coin’s failure to catch on in the general public was attributed to several causes: People were unaware of the new coins and they were more accustomed to using dollar bills. Many collected, rather than spent, the golden dollars. Not all vending machines accepted the new coins. Experts concluded that the best way to boost the use of the metal dollar would be to eliminate its major competitor—the paper dollar—altogether.
Section 2 Assessment

1. A direct tax must be paid by the person on whom it is imposed; an indirect tax is paid by one person, but is in fact passed on to be paid by another. A tax on land ownership is an example of a direct tax, while a cigarette tax is an indirect tax.


3. Regulating commerce with foreign powers and between States; preventing monopolies and discrimination in access to public places.

4. The worthlessness of money that had no sound backing or taxing power; competition between State currencies; and the use of foreign currency.

5. Possible answer: They did not want Congress to be able to derive personal gain from taxes, nor did they want State competition.

6. Answers will vary, but should be supported with relevant facts and examples.

Answer to . . .

Interpreting Graphs The overall trend has been a steady increase, with two brief periods of decline (1992–1994 and 1998–2000).

Their worth fell to less than half of their face value. Then, in 1870, the Supreme Court held their issuance to be unconstitutional. In *Hepburn v. Griswold* it said “to coin” meant to stamp metal and so the Constitution did not authorize paper money.

The Court soon changed its mind, however, in the *Legal Tender Cases* in 1871 and again in *Juliard v. Greenman* in 1884. In both cases it held the issuing of paper money as legal tender to be a proper use of the currency power. The Court also declared this a power properly implied from the borrowing and the war powers.

The Bankruptcy Power

Article I, Section 8, Clause 4 gives Congress the power “[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” A bankrupt individual or company or other organization is one a court has found to be insolvent—that is, unable to pay debts in full. Bankruptcy is the legal proceeding in which the bankrupt’s assets—however much or little they may be—are distributed among those to whom a debt is owed. That proceeding frees the bankrupt from legal responsibility for debts acquired before bankruptcy.

The States and the National Government have concurrent power to regulate bankruptcy. Today federal bankruptcy law is so broad that it all but excludes the States from the field. Nearly all bankruptcy cases are heard now in federal district courts.

Answer to . . .

Interpreting Graphs Congress, along with the States, has the power to set bankruptcy laws. Describe the change in nonbusiness bankruptcies from 1992 to 2004 as shown in the graph.

Money. When those private bank notes interfered with the new national currency, Congress (in 1865) set a ten percent tax on their production. The private bank notes soon disappeared. The Supreme Court upheld the 1865 law as a proper exercise of the taxing power in *Veazie Bank v. Fenno*, 1869.

At first, the Greenbacks could not be redeemed for gold or silver coin at the Treasury.

The overall trend has been a steady increase, with two brief periods of decline (1992–1994 and 1998–2000).