6.3

Enumerated and Implied Powers

Standard 6.3: Enumerated and Implied Powers

Distinguish among the enumerated and implied powers in the United States and the Massachusetts Constitution. (Massachusetts Curriculum Framework for History and Social Studies) [8.T6.3]

FOCUS QUESTION: What is the Difference Between Enumerated and Implied Powers?

This standard looks at the differences between enumerated and implied powers in the United States and Massachusetts Constitutions.

- **Enumerated powers** are those expressly granted to the federal government by the Constitution.
- **Implied powers** enable the federal government to carry out tasks outlined by the enumerated powers.
1. INVESTIGATE: The Enumerated and Implied Powers of the U.S. Constitution

The enumerated powers of the federal government are listed in Article 1 Section 8 of the U.S. Constitution. Among the 18 direct powers given to Congress are the power to levy and collect taxes, borrow money, regulate commerce, coin money declare war, and support an army and navy (for a full list, see Key Constitutional Grants to Powers to Congress).

The 18th power gives the federal government the ability to create and enact laws that are “necessary and proper” for its use of the other 17 powers. The Necessary and Proper clause (sometimes called the “Elastic Clause”) gives Congress implied powers; that is powers not named in the Constitution, but necessary for governing the country. Historically, the way Congress has used its implied powers has led to important developments in law and society.

Garrett Epps (2011, para. 13,) a contributing writer at The Atlantic, uses the example of U.S. Armed Forces to summarize how enumerated and implied powers of the government function. Congress has the explicit power "to raise and support" armies and it has an
implied power to designate an American flag for those forces to use. If it did not do so, soldiers would have 50 different flags for 50 different states, an impossible situation. In this case, the expressed powers of the federal government include the implied powers needed to carry them out.

You can find more information about the necessary and propoer clause in Topic 5.1 of this book.

**Suggested Learning Activity**

- **Role-Play**
  - Explore the examples of how Congress has exercised its use of implied powers in the article *The Implied Powers of Congress.*
  - In small groups, propose a law that is necessary and proper for the federal government to enact and enforce.
  - As a class, discuss and debate the proposed laws and vote on which ones should be approved as an official government power.

**Online Resources for Enumerated and Implied Powers**

- [Justifying the Implied Powers of the Federal Government](#)
- Video: [Implied Powers of the President of the U.S.](#)
- Wiki Page: [John Marshall and Marbury v. Madison](#)
- [Enumerated Powers of the State](#), University of Nevada Las Vegas.

Minimum wage laws are an example of both Congress and state governments using their implied powers to enact change in society. “Minimum wage laws establish a base level of pay that employers are required to pay certain covered employees” (Legal Information Institute, Cornell University).

In 2019, the federal minimum wage was set at $7.25 per hour. That same year, 29 states and the District of Columbia had higher wage rates; seven states had moved to $15 an hour. The minimum wage rate in Massachusetts was raised to $12 per hour, effective January 1, 2019.

For much of United States history, however, there was no such thing as a minimum wage or a minimum wage law.
Massachusetts passed the nation’s first minimum wage law in 1912, followed by Oregon in 1914. But a 1923 Supreme Court decision struck down the District of Columbia’s minimum wage law as unconstitutional under the Fifth Amendment. Over time, public attitudes changed and so did the opinion of the Supreme Court when they declared a state minimum wage law constitutional in 1937 (West Coast Hotel v. Parrish).

Following that decision, President Franklin Roosevelt proposed, and Congress passed, the Fair Labor Standards Act of 1938, setting the minimum wage at $0.25 an hour ($1.00 in 1938 is worth $17.45 in 2019 dollars).
Rules and Rights for Young Workers

Teens and pre-teens are often unaware of their rights as young workers. The Fair Labor Standards Act (1938) also set the maximum work week at 44 hours, banned child labor and established rules about the minimum age for young workers (also known as underage workers).

Presently, 14 years-old is the minimum age for employment outside of agricultural settings. Youngsters under 16 years-old also have limits on the number of hours they can work each week. The U.S. Department of Labor has ruled that youth at any age can be employed to "deliver newspapers; perform in radio, television, movie, or theatrical productions; work in businesses owned by their parents . . . perform babysitting, or perform minor chores around a private home" (Fair Labor Standards Act Advisor).

Some states offer greater protections for young workers than others and in those places, the greater protections offered by the state apply to all youngsters.

Child Farmworkers

The plight of child farmworkers in the United States is a serious "hidden problem" (In Our Backyard: The Hidden Problem of Child Farmworkers in America). Children working in agriculture are not covered by the Fair Labor Standards Act. Children as young as 12 can be hired to perform farm labor (Center for Public Integrity, 2020). It has been estimated that there are some 500,000 child farmworkers in the United States, some as young as 8 years-old and some working more than 10 hours a day (Child Labor in the United States, American Federation of Teachers). The number is contested and some groups believe there could be more than one million children working on farms, many of whom are immigrants whose parents are undocumented.
Media Literacy Connections: Military Recruitment and the Media

Getting soldiers to serve in the nation’s military offers an example of the complex dynamics surrounding the government’s enumerated and implied powers. The Constitution gives the federal government the **enumerated power to raise armies and a navy**. Article I states Congress has the power “to provide for the common Defense and general Welfare of the United States.”

But, establishing a **draft** (mandatory enrollment in the armed forces) is an **implied power** that was used at different times in U.S. history from the Civil War to 1973. The U.S. military has been an all-volunteer force since that time with now more than 1.3 million active troops in six armed services: Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.
There are multiple debates surrounding what Congress should do with its implied powers regarding military service. Should the demographic composition of the military more closely resemble society as a whole? Should military service be mandatory for all young people, as it is in many countries around the world? Is excluding women from the draft unconstitutional? Should Congress use its implied powers to institute mandatory military/national service instead of an all-volunteer armed forces?

In this activity, you will investigate how the military uses the media to recruit individuals into the armed services as a backdrop to whether the U.S. should continue to have all-volunteer forces.
• **Activity: Using the Media for Military Recruitment**

**Suggested Learning Activities**

**Debate** (in-class or on Flipgrid)

- Should be the minimum wage be raised to $15 an hour nationwide?
- Explore the arguments for and against this change:
  - **Should the Minimum Wage Be Increased? Background on the Issue**
  - **Seattle's Minimum Wage is now $15 an hour: is that a good idea?** by economist Gary Burtless

- If there was a national minimum wage implemented, how would that affect your hometown?
  - What is the minimum wage now and how could it differ?
- Should the minimum wage be raised?
  - Create a pros and cons list of a high minimum wage, how would this affect small or mid-sized businesses?
  - Who would face the most consequences and benefits of this increase?

**Express Your Ideas about the Minimum Wage**

- Explore the #raisethewage hashtag and @MinimumWageInfo handle on Twitter.
- Design a visual social media post representing your thoughts about minimum wage laws.
- Bonus points: Tweet your design on Twitter using the previously mentioned hashtag or handle.

**Design a Social Media Campaign for the Protection of Child Farmworkers**
- Research the issues facing young workers in your state, on farms and in other areas.
- Create a social media campaign designed to convince members of state government to use their implied powers to enact change
- Create a public service announcement that focuses on the rights and protections or child farmworkers and other young workers.

**Additional Resources:**

The Children's Act for Responsible Employment (CARE) Act

### 3. Engage: Should the Nation Adopt a Living Wage Rather Than a Minimum Wage?

A **Living Wage** is the minimum income needed for an individual or a family to meet their basic needs for food, shelter, clothing, health care, and other needs ([What is a Living Wage?](#) from Global Living Wage Coalition). A living wage is based on the reality that most people cannot live adequately earning a minimum wage.
A **Living Wage Calculator** from Massachusetts Institute of Technology demonstrates the gap that exists between minimum wage and a living wage. In 2019, a single adult with one child earning $11 an hour minimum wage actually needs to earn $29.66 an hour to support her or his family.
Suggested Learning Activities

- **Play & Discuss**
  - Play the simulation game [Spent](#) and try to live on a monthly budget with limited financial resources.
    - What did you have to give up to make it through the month?
    - What do you think should be the living wage in your community?

- **Research and Report**
  - Find out how much money people earn in different jobs and occupations at the Occupational Outlook Handbook from the U.S. Government’s [Bureau of Labor Statistics](#).
    - Which jobs provide a salary at or above living wage? Which jobs do not? Why do you think this gap exists?

### Online Resources for Minimum and Living Wage Laws

- [Minimum Wage, Living Wage and Worker Productivity](#)
- [Basic Needs Budget Calculator](#) shows how much it takes for families to afford minimum daily necessities, from National Center for Children in Poverty.
- [The Minimum Wage Just Went Up—But the Fight for a Living Wage is More Urgent Than Ever](#), Valley Advocate, February 24, 2016

### Standard 6.3 Conclusion

The United States and Massachusetts constitutions have both enumerated (directly stated) and implied (assumed to exist) powers. **INVESTIGATE** outlined what those enumerated and implied powers are in the federal constitution. **UNCOVER** looked at the history of
minimum wage laws as an example of the implied powers of the federal government. ENGAGE asked whether our country should adopt a living wage rather than a minimum wage as people's living standard.