

5.1. The Necessary and Proper Clause

Standard 5.1: The Necessary and Proper Clause

Explain the necessary and proper clause and why it is often referred to as the “elastic clause.” (Massachusetts Curriculum Framework for History and Social Studies) **[8.T5.1]**



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FOCUS QUESTION: What is the Role of the Necessary and Proper Clause?

The [Necessary and Proper Clause](#) (also known as the [Elastic Clause](#)) is one of the most far-reaching aspects of the United States Constitution. Article 1, Section 8, Clause 18 of the Constitution reads:

"The Congress shall have 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 in any Department or Officer thereof."

In writing the Constitution, the framers gave Congress both defined and assumed powers. "**Defined**" means specified and fixed powers. "**Assumed**" means that Congress may enact any law that can be seen as: 1) necessary; 2) proper; and 3) carries out federal power (McDaniel, 2019). You can read text and commentary about the Necessary and Proper Clause from [National Constitution Center's Interactive Constitution website](#).

Reviewing the origins of the necessary and proper clause, [Doug Linder of the University of Missouri-Kansas City School of Law](#) explained that **Alexander Hamilton** and **Thomas Jefferson** had sharply opposing views about the clause and its uses.

Hamilton who favored a strong central government saw the elastic clause as a broad license to act whenever needed.

Jefferson who wanted a smaller, more limited federal government, thought this power should be used only when absolutely necessary.

Still, Linder notes, it was Jefferson who authorized the Louisiana Purchase even though he was not sure he had the power to do so.

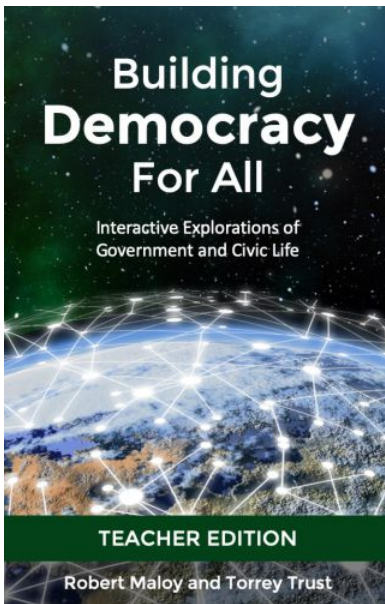
20th Century uses of the [necessary and proper clause are listed on its Wikipedia page](#), including how the Federal Kidnapping Act of 1932 made transporting a kidnapped person across state lines a federal crime under the Constitution's Commerce Clause. In a the 2012 case [National Federation of Independent Business v. Sebelius](#), the Supreme Court said Congress could not use the necessary and proper clause to justify the individual mandate feature of the Affordable Care Act (also known as Obamacare).

Suggested Learning Activities

- **Role-Play a Landmark Case**
 - In small groups,
 - Select a legal case in which the Necessary and Proper Clause was used
 - Create a video in which you role-play the most influential aspects of the case and the use of the clause
- **State Your View**
 - Discuss and debate: How broad should the powers of Congress be under the elastic clause?

Online Resources for the Necessary and Proper Clause

- [Sharing the Necessary and Proper Clause: The indeterminacy of deference](#), *Harvard Law Review*
- [McCulloch v. Maryland](#) (1819) from the Bill of Rights Institute



Maloy, R. W. & Trust, T. (2020). *Building Democracy for All: Interactive Explorations of Government and Civic Life*. EdTech Books. Retrieved from <https://edtechbooks.org/democracy>