

Lesson 31 Article 1, Section 8

The powers given to congress – Part VII
(copyright, patents, trademarks, courts, crimes on the high seas, laws of nations)

Provision 91: The people of the United States empower Congress to encourage progress in science and the useful arts by issuing copyrights and patents to authors and inventors to grant them exclusive rights for a limited time to publish their writings or exploit their inventive discoveries.

This provision was not included in the Articles of Confederation, nor in the early drafts of the constitution. However, several states incorporated copyright and patent laws. In fact, Noah Webster, before he created his dictionary of the American English language had written a primer for school children. He had to ride to every state capitol in order to protect his work from unauthorized copying. He complained bitterly at each stop that there should be a national copyright law so he would only have to make one trip to protect his interests. His bellyaching paid off twice: not only did his primer become the most popular school book in America, but word of his frustration made its way to the constitutional convention. It was James Madison who, upon hearing about this, put two and two together realizing what a boon to commerce this would be.

Think for a moment how this provision has created the most dynamic, creative and comprehensive publishing enterprises on the planet. Books, magazines, music, plays, movies, and software are being created every day by people who know they can be rewarded for their creativity.

Patents assist inventors in profiting from their creations and discoveries. American inventions dominate the world: from Airplane to helicopter, x-ray machines, telephones, the Bessemer process for making steel. All were created by people who hoped to benefit from their efforts. (Question 1)

One incredibly good aspect of this provision: it costs almost nothing; very little in tax money and very little loss of liberty. While at the same time providing thousands of people and companies assistance with their pursuit of happiness. Consider for a moment how even this has been bastardized in today's America: now the government pays for research and development. You read every year how the government funds studies on shrimp dancing on treadmills, or giving handouts to “green” companies like Solyndra or Fisker Motors. This was not the intent! The founders wanted companies and individuals to experiment, research and explore – then, once something significant was invented or discovered, the government would have your back so you could figure how best to benefit from your efforts.

If this provision enables the pursuit of happiness, then is it an inalienable right? Believe it or not, no it is only a vested right. (Question 2) That's why it specifically mentions “for a limited time.” If it were inalienable, it would imply perpetual protection from competition. What would be the conclusion for invention and creativity if patents were forever? Jefferson's quote on page 431 illustrates the burden on society if every item that you use or touch every moment of every day were protected by a perpetual monopoly.

So, limits were place on both copyrights and patents. The product of man's mind alone are protected for 50 years after the author's death. (Question 3) These objects of the mind are, for example:

- Literary works (fiction or nonfiction, basically any published written work)
- Music, and lyrics.
- Drama (plays, musicals etc.)
- Choreography, for dance or even pantomime.
- Art: Pictures, graphics, and sculptures.

Audio-visual works, such as movies.
Sound recordings.
Computer programs. (Question 4)

The product of a man's hands (inventions) are protected for 17 years. (Question 5) (so says the book, but the patent office web page declares a patent is for 20 years) What are these objects of man's building? Russell Baker of the *New York Times* defined them, writing, "Inanimate objects are classified scientifically into three major categories – those that don't work, those that break down, and those that get lost."

Can you guess who was awarded the greatest number of individual patents in American History? Thomas Alva Edison, who collected over 1,200 patents in his lifetime. Page 432 contains a long list of his inventions. (Question 6)

In order to get a patent, the inventor must show his invention is: new, unique and useful. He must disclose ALL information on his invention and how it works. If he withholds anything, he can lose his patent. For many years, inventors had to provide a working model of the invention. Imagine trying to deliver a complete dredging machine or hay baler to the patent office. How do you ship something bigger than a school bus? Many inventors would supply a scale model. The patent office in Alexandria, VA put these scale models on display in a museum a while back. The attention to detail on these is nothing short of amazing – after all, this was the inventor's big chance to pursue happiness. But now a set of drawings is sufficient, no working model needed.

During World War II, President Franklin Roosevelt allowed representatives of the Soviet Union to see and copy hundreds of thousands of patents. His reasoning was two-fold: He wanted the Soviet Union to be victorious against the Nazis and to make the people of the Soviet Union love us for our kindness. How did that last part work out? (Question 7)

Now let us journey to the dark side of patents. A patent attorney named George Seldon invented an improvement on the internal combustion engine in 1878. When he applied for his patent, he included drawings for an automobile that he wished to put the engine into. Having secured a patent, he waited – making no effort to actually produce the engine or the car on a large scale.

In 1903 there were enough automobile manufacturers in the US that Seldon sprung his trap: He demanded all manufacturers pay him a royalty of .75% for each automobile made. He created the Association of Licensed Automobile Manufacturers. Surprisingly, the top five auto makers joined the association – figuring it would be cheaper to pay the royalty than take him to court. But one automobile maker refused to pay, Henry Ford. He dared the association to take him to court – which they gladly obliged.

Ford's argument in the case was that Seldon's patent was too vague to be valid. It was akin to patenting the wheel. It took two court cases and eight years, but Ford prevailed and the association vanished. So Sheldon began a car company in 1909, it lasted until 1912. However, it should be noted that by then he had collected over \$200,000 in royalties.

On the brighter side of patents, many authors and creators do not wish for monetary rewards for their efforts. They simply wish to advance the art, or as a benefit to mankind. I'm thinking specifically about Public Domain (commonly called ShareWare) and Open Source software. Computer programs and operating systems which you can get for free because the authors have declined copyright protection. Good folk who follow the tradition of Benjamin Franklin who refused to patent his pot-bellied stove because he simply wanted more people to be warm in winter.

Associated with copyrights, but not directly listed in the constitution are Trade Marks. A trade

mark is a word, symbol or combination denoting the manufacturer or supplier of goods. The words Pepsi, or Chiquita, for example. These are also registered with the US Patent Office to help protect the owners. A trade mark does not forbid competitors in the market, simply a way to determine whose product you have. I could sell oatmeal, but I can't name my product Quaker Oats.

Provision 92: The people empower Congress to set up federal courts of justice inferior to the Supreme Court.

This provision is repeated in Article III which invests all federal judicial power in courts the Congress may establish. Can you imagine what the wait time would be for a federal court case if the Supreme Court were the only one established?

President Monroe stated that these inferior courts had to be distributed throughout all the states to be effective. (Question 8)

As of 1982, there were 83 district or trial courts established. Additionally, some of the districts are further segmented, making a total of 144. In most cases, an appeal from these district courts goes to the nine circuit courts (one for each Supreme Court Justice) presided over by a three judge panel.

Who appoints the judges to these district courts? The president, with approval of the Senate. Some say this is a president's most powerful duty since these judges will serve long after the president's term has ended.

Additionally, to further reduce the burden on the district courts, specialty courts have been created. The court of claims, where the US can be sued. Customs court, where disagreements about customs or import duties can be argued. And the beloved Tax Court, where the IRS has its own coffee mug.

Provision 93: The people empower the Congress to define and punish piracies and felonies committed on the high seas.

What is piracy? That's up to Congress to decide. The people empower the Congress to define piracy and other felonies occurring in the parts of the oceans uncontrolled and unclaimed by any nation. (Question 9)

We're all familiar with the exploits of famous (if fictitious) pirates; from Treasure Island to Jack Black. Pirates, real pirates, were such a scourge that England, Spain, France, and Holland all signed the Ryswick treaty in 1697 – in which they all pledged to make war on all pirates.

But the so called Barbary pirates were still a considerable annoyance. Sure once in a while the Dutch or Spanish would send a man-o-war to Tripoli or Algiers and blast the city to rubble. This made the pirates quiet down for a while but they would soon return.

The United States had no navy to speak of, so they paid ransom to the pirates. Jefferson noted while he was Secretary of State under President Washington that up to 1/6 of the annual budget of the US went to pay this ransom. When Jefferson became president, he sent our new navy to north Africa and blasted Tripoli, just as the Spanish and Dutch had done before. With similar results. It wasn't until President Madison in 1815 sent Commodore Decatur with a fleet of nine ships to Algiers, Tunis, and Tripoli that the curse of the Barbary pirates finally ended.

A little end-note: During their reign of terror, the Barbary pirates are estimated to have kidnapped and enslaved between 800,000 and 1.2 million people. Also note that the ransom paid by the US was around \$1 million per year – for 15 years! Worse than the money we spend on treadmilled shrimp.

Provision 94: The people empower Congress to define and punish offenses against the law of

nations.

Just as piracy had to be defined before punishments could be proposed, the vague concept of international law came under the same consideration. Generally, the law of nations are rules which “reason, morality and custom” have established. (Question 11) Also, these rules are more recognized if coming from “civilized” nations of Europe. So congress was given the authority to define what would be a crime against the United States and the punishments for these crimes. (Question 10)

Ever since the United Nations was created, there has been a push to bring all members under the World Court, where crimes involving multiple countries or citizens from multiple countries can be held accountable. (Question 12) The United States has refused to participate in the World Court. For good reason: US citizens could not expect concepts such as inalienable rights to be recognized. The rights spelled out for those accused of crimes listed in the fourth, fifth, sixth and seventh amendments would not be acknowledged. (Question 13)

The UN charter was written, in part, by an employee of the State Department named Alger Hiss. Mr. Hiss, was later named a Soviet spy. He ended up in a federal prison (for perjury, not espionage). Is it, then, any wonder the UN always seems to side with whoever is opposed to the United States? It's written right into the charter.

When the UN treaty came up for ratification in the Senate, a very thoughtful senator from Texas named Tom Connally added an amendment to the treaty to bar the International Court of Justice from having jurisdiction over domestic matters “as determined by the United States”. The Connally Reservation is seen as a repudiation of the authority of the world court. From an American perspective, the proviso would protect the U.S. against potential overreach by the UN and its World Court. (Question 14)