

# CONGRESS' ENUMERATED POWERS

By Publius Huldah

**1. With the U.S. Constitution, We The People *created* the federal government. It is our “creature”, and has no powers other than those We delegated to it in Our Constitution.**

Webster's American Dictionary of the English Language (1828), says re “constitution”:

“...In free states, **the constitution is paramount to the statutes or laws enacted by the legislature, limiting and controlling its power;** and in the United States, the legislature is created, and its powers designated, by the constitution.” [boldface mine]

If *you*, dear Reader, will study this paper and read the Constitution, you will know more about it than most State & federal judges, most law professors & lawyers, those who spout off on TV & radio, just about anybody in Congress, and the self-educated who fixate on their own idiotic theories. And you will certainly know more than *anyone* currently occupying *any* office in the executive branch of the federal government.

**2. The federal government <sup>1</sup> has three branches: Article I of the Constitution creates the Legislative Branch (Congress) & lists its powers; Article II creates the Executive Branch & lists its powers (President); and Article III creates the Judicial Branch (federal courts) & lists its powers.**

In this paper, we will consider only the enumerated powers of *Congress*. But the powers of the other two branches are likewise strictly limited and enumerated.

**3. Congress is NOT authorized to pass any law on any subject just because a majority in Congress think the law is a good idea! Instead, the areas in which Congress is authorized to act are *strictly* limited and defined (“enumerated”).**

**WE delegated to Congress the following Enumerated Powers over the Country at Large:**

**Article I, § 8, clauses 1-16 delegate to Congress the powers:**

(1) To lay certain taxes;

(2) To pay the debts of the United States;

- (3) To declare war and make rules of warfare, to raise and support armies and a navy and to make rules governing the military forces; to call forth the militia for certain purposes, and to make rules governing the militia;
- (4) To regulate commerce with foreign Nations, and among the States, and with the Indian Tribes;
- (5) To establish uniform Rules of Naturalization;
- (6) To establish uniform Laws on Bankruptcies;
- (7) To coin money and regulate the value thereof;
- (8) To fix the standard of Weights and Measures;
- (9) To provide for the punishment of counterfeiting;
- (10) To establish post offices and post roads;
- (11) To issue patents and copyrights;
- (12) To create courts inferior to the supreme court; and
- (13) To define and punish piracies and felonies committed on the high seas, and offenses against the Laws of Nations.

**Other provisions of Our Constitution delegate to Congress powers over the Country at Large to make laws regarding:**

- (14) An enumeration of the population for purposes of apportionment of Representatives and direct taxes (Art. I, § 2, cl. 3);
- (15) Elections of Senators & Representatives (Art. I, §4, cl. 1) and their pay (Art. I, § 6);
- (16) After 1808, to prohibit importation of slaves (Art. I, § 9, cl. 1); <sup>2</sup>
- (17) After 1808, to restrict migration (immigration) to these United States (Art. I, §9, cl. 1);
- (18) A restricted power to suspend Writs of Habeas Corpus (Art. I, §9, cl. 2);
- (19) To revise and control imposts or duties on imports or exports which may be laid by States (Art. I, § 10,

cl. 2 & 3)

(20) A restricted power to declare the punishment of Treason (Art. III, §3, cl. 2);

(21) Implementation of the Full Faith and Credit clause (Art. IV, §1); and,

(22) Procedures for amendments to The Constitution (Art. V).

**The 13th, 14th, 15th, 16th, 19th, 23rd, 24th, & 26th Amendments** delegated additional powers to Congress over the Country at Large respecting certain civil rights & certain voting rights, the public debt [lawfully incurred], income tax, successions to vacated offices, dates of assembly, and appointment of representatives from the D.C.

So! In a nutshell, the powers WE delegated to Congress over the Country at Large fall into four categories:

♠ International relations, commerce and war;

♠ Control immigration by restricting who may come to these United States, and establish a uniform rule of naturalization of new citizens;

♠ Domestically, to establish a uniform commercial system: weights & measures, patents & copyrights, a monetary system based on gold & silver, bankruptcy law, a [limited] power over interstate commerce, and mail delivery.

♠ And in some of the Amendments, to protect certain civil and certain voting rights.

**That's it! All other powers are retained by the States or the People.**

### **Federal Enclaves & Territories:**

4. Two provisions of Our Constitution grant to Congress broad legislative powers over these two categories of *specifically defined geographical areas*:

a) **Federal Enclaves:** Article I, §8, next to last clause, grants to Congress “exclusive Legislation” over the following geographically tiny areas: the seat of the government of the United States (not to exceed 10 square miles), forts, arsenals, dock-yards, and the like. As James Madison said in **Federalist No. 43** at 2., it is necessary for the government of the United States to have “complete authority” at the seat of government, and over forts, magazines, etc. established by the federal government.

b) **Territories:** Article IV, §3, cl. 2 grants to Congress power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States (as opposed to property belonging to individual states). As these territories became States, Congress' powers under this Article were terminated.

**Congress may not lawfully exercise ANY other powers!**

5. Thus, Congress has NO LAWFUL AUTHORITY to bail out financial institutions, businesses, and homeowners who don't pay their mortgages; NO LAWFUL AUTHORITY to take control of our health care; NO LAWFUL AUTHORITY to pass laws denying secret ballots to employees who are solicited for membership by labor unions; NO LAWFUL AUTHORITY to take away your IRA's and other retirement accounts, NO LAWFUL AUTHORITY to take your guns, NO LAWFUL AUTHORITY to pass laws respecting energy consumption or "emissions", education, housing, etc., etc., etc.

**Therefore, all laws which Congress has made on such topics are unconstitutional as outside the scope of the legislative powers WE delegated to Congress in OUR Constitution. WE THE PEOPLE** did not give such powers to Congress when we ordained and established the Constitution, created the Congress, and listed its 22 enumerated powers over the Country at large. And WE did not delegate those powers to Congress in any of the Amendments.

6. You ask, "How can Congress make all these laws if they are unconstitutional?"

Congress gets away with it because WE are ignorant of what our Constitution says; and We have been indoctrinated into believing that Congress can do whatever they want!

Consider Prohibition: Up to 1919, everyone still understood that The Constitution did not give Congress authority to simply "pass a law" banning alcoholic beverages! So the Constitution was amended to prohibit alcoholic beverages, and to authorize Congress to make laws to enforce the prohibition (18th Amdt.).

But after **the Progressives** took over the federal government during the early 1900s, the federal government was transformed *from* one of limited & enumerated powers only *to* the Frankensteinian monster it is today. The Progressives are the ones who imposed the regulatory welfare state where the federal government regulates business and commerce, natural resources, human resources, and benefits some people [e.g., welfare parasites, labor unions & obama donors] at the expense of others.

The Progressives claimed the power to determine what is in the "public interest" and have the federal

government implement *their* notions of what advances the “public interest”.

**Under the Progressives, the federal government was no longer limited by the enumerated powers delegated in the Constitution; but would follow the “will of the people” as expressed by their representatives in the federal government. In other words, the Progressives gave the federal government a blank check to fill out anyway they want.**

During the regime of Franklin D. Roosevelt (FDR), all three branches of the federal government abandoned the Constitution: FDR proposed “New Deal” programs; Congress passed them. At first, the Supreme Court ruled (generally 5 to 4) that these programs were unconstitutional as outside the legislative powers delegated to Congress. But when FDR threatened to “pack the court” by adding judges who would do his bidding, one judge flipped to the liberal/progressive side, and the Court started approving FDR’s programs (5 to 4).

**7. Since then, law schools don’t teach the Constitution.** Instead, they teach decisions of the FDR-dominated supreme Court which purport to explain why Congress has the power to regulate anything it pleases. **The law schools thus produced generations of constitutionally illiterate lawyers and judges** who have been wrongly taught that three clauses, the “general welfare” clause, the “interstate commerce” clause and the “necessary & proper” clause, permit Congress to do whatever it wants!

**8.** “Well”, you ask, “what about ‘**the general welfare clause**’? Doesn’t that give Congress power to pass any law on any subject as long as it is for the ‘general Welfare of the United States’ “? **NO, IT DOES NOT!**

**First**, you must learn what “welfare” meant when the Constitution was ratified: “Welfare” as used in the Preamble & in Art. 1, §8, cl. 1, U.S. Constitution, meant

“**Exemption from any unusual evil or calamity; the enjoyment of peace and prosperity, or the ordinary blessings of society and civil government**” (Webster’s, 1828).

But The American Heritage Dictionary of the English Language (1969), added a new meaning: “Public relief – on welfare. Dependent on public relief”. Do you see how our Constitution is perverted when new meanings are substituted for original meanings?

**Second**, James Madison addresses this precise issue in **Federalist No. 41** (last 4 paras): Madison points out that the first paragraph of Art. I, §8 employs “general terms” which are “immediately” followed

by the “enumeration of particular powers” which “explain and qualify”, by a “recital of particulars”, the general terms. So, yes! The powers of Congress really are restricted to those listed herein above.

OUR FOUNDERS UNDERSTOOD that the “general Welfare”, i.e., the enjoyment of peace & prosperity, and the enjoyment of the ordinary blessings of society & civil government, was possible *only with* a civil government which was strictly limited & restricted in what it was given power to do!

9. “OK”, you say, “but what about ‘**the commerce clause**’ (Art. I, §8, cl. 3)? Doesn’t that give Congress power to pass laws on any subject which ‘affects’ ‘interstate commerce’ “? **NO, IT DOES NOT!** In **Federalist No. 22** (4th para) and **Federalist No. 42** (11th & 12th paras), Alexander Hamilton & James Madison explain the purpose of the “interstate commerce” clause: It is to prohibit the States from imposing tolls and tariffs on articles of import and export – merchandize – as they are transported through the States for purposes of buying and selling. That’s what it does, Folks; and until the mid-1930’s and FDR’s “New Deal”, this was widely understood. <sup>3</sup>

10. “Well, then”, you say, “doesn’t the ‘**necessary & proper**’ clause’ [**"elastic clause" or "sweeping clause"**] (Art. I, §8, last clause) allow Congress to make any laws which the people in Congress think are ‘necessary & proper’?” **NO, IT DOES NOT!** Alexander Hamilton says the clause merely gives to Congress a power to pass all laws necessary & proper to execute its *declared* powers (**Federalist No. 29**, 4th para); a power to do something must be a power to pass all laws necessary & proper for the *execution* of that power (**Federalist No. 33**, 4th para); “the constitutional operation of the intended government would be precisely the same if [this clause] were entirely obliterated as if [it] were repeated in every article” (**Federalist No. 33**, 2nd para); and *thus the clause is “perfectly harmless”, a tautology or redundancy.* (**Federalist No. 33**, 4th para). James Madison agrees with Hamilton’s explanation. (**Federalist No. 44**, 10th-17th paras). In other words, the clause simply permits *the execution* of powers already declared and granted. Hamilton & Madison are clear that no additional substantive powers are granted by this clause.

11. The 10th Amendment states:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

So! If a power is not delegated by Our Constitution to the federal government; and if the States are not prohibited (as by Art. I, § 10) from exercising that power; **then that power is retained by the States or by The People. And WE are “The People”!**

**12.** Our Framers insisted repeatedly that Congress is restricted to its enumerated powers. James Madison says in **Federalist No. 45** (9<sup>th</sup> para):

“**The powers delegated by the proposed Constitution to the federal government are few and defined.** Those which are to remain in the State governments are numerous and indefinite. The former **will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce;** with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people...”  
[emphasis mine]

In **Federalist No. 39** (14<sup>th</sup> para):

“...the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.”

and in **Federalist No. 14** (8<sup>th</sup> para):

“...the general [federal] government is not to be charged with the whole power of making and administering laws. *Its jurisdiction is limited to certain enumerated objects...*” [emphasis mine]

**13.** In all its recent legislation, Congress ratchets up its concerted pattern of lawless usurpations. The executive branch and the federal courts approve it. Such is the essence of tyranny. They are “ruling” without our consent, and hence the federal government is now illegitimate. PH

### Endnotes:

<sup>1</sup> “Federal” refers to *the form* of government: An alliance of States associated in a “federation” with a **national government** to which is delegated supremacy over the States in **specifically defined areas ONLY.**

<sup>2</sup> Some object that our Constitution endorsed slavery. During the 18<sup>th</sup> century, slavery was universal. But Article I, § 9, clause 1, is our Proclamation to the World that WE would abolish the slave trade! James Madison wanted the “barbarism” & “unnatural traffic” of the slave trade abolished *immediately* (**Federalist Paper No. 42**, 6<sup>th</sup> para).

<sup>3</sup> See Justice Clarence Thomas' concurring opinion in **United States v. Lopez** (1995). Justice Thomas' opinion shows why those disposed to usurp attack him so virulently.

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