

The Legislative Branch

Powers of Congress

The Constitution gives the Congress (the House and the Senate) certain specific powers. Among those listed are the powers to tax, borrow money, regulate commerce (trade) and naturalization (the process by which one can become a United States citizen). Also included are the powers to coin money, establish a system of weights and measurements, establish a post office, declare war and provide a military. These are many of the important powers specifically granted to the Congress.

Article 1, Section 8, Clause 18 is very important to the Congress. It is known as the “elastic clause”. This gives Congress the power “to make all laws which shall be necessary and proper” to carry out its responsibilities.

The powers given to Congress can be broken down into three areas: *enumerated powers*, *implied powers* and *inherent powers*. *Enumerated powers* are powers specifically given to the Congress by the Constitution. They are written. An example would be the power to declare war. *Implied powers* are powers given to the Congress that are general. They are stated, but not enough information is given in the Constitution about details. An example would be: The Constitution in Article 1, Section 8, Clause 7 states: “To establish post offices and post roads.” Obviously, more is needed to run the post office than just roads; there are the mail carriers, security and buildings. The Constitution assumes that the Congress will take care of these matters too. *Inherent powers* are unlisted powers that a government must have simply because it exists as a government and needs to run its affairs smoothly. The best example of this is the need to conduct foreign affairs. The Constitution does not discuss foreign affairs, but because the United States is a country we must deal with foreign countries diplomatically.

Limits on Congress and the States

The Constitution told the Congress it could not make any laws outlawing the slave trade until 1808. This clause deals with the rivalry between the northern and southern states, this rivalry erupts into the Civil War in 1861.

One limitation deals with the legal term known as *habeas corpus*. Habeas corpus literally means “you shall have the body.” This right of habeas corpus allows a person to be seen and heard in a courtroom by a judge. If you are to be found guilty or not guilty you have the right to appear in court. The government can not take that right away except in cases of rebellion or invasion.

The Constitution outlawed *bills of attainder*. A bill of attainder is a law passed by the government that convicts a person of a crime and punishes them without a trial.

Another limitation set by the Constitution is that Congress cannot pass *ex post facto laws*. An ex post facto law punishes people for a crime that was not a crime when they did it. For example, Mr. Z was smoking on his lawn on Monday. On Tuesday, Congress passed a law forbidding smoking in the United States. Wednesday, the police came and arrested Mr. Z for

smoking on Monday. When Mr. Z smoked on Monday it was not a crime. Under the ex post facto clause of the Constitution, punishment of Mr. Z. is forbidden.

Other limits on are that it cannot tax products from a state, it cannot give preference to any states seaport, government money can only be spent by passing a law and finally Congress cannot issue titles of nobility. That means the Senate or House cannot make people knights, lords or duchesses.

The Constitution also puts certain limits on the states. First they cannot make treaties with other countries. Secondly, they cannot coin their own money. Finally, they cannot do the items mention in the about three paragraphs.

The powers of government can be put into three categories: *delegated*, *concurrent*, and *reserved powers*. *Delegated powers* are powers that are given to the national government in Washington D. C. such as the power to declare war. *Concurrent powers* are powers that are shard between the national and state governments, such as the power to tax. Finally, *reserved powers* are powers that only the states have, such as the powers to create a school system. It is important to keep these different powers in mind as we discuss the remainder of the Constitution.

Answer the following questions.

1. List and describe four powers given to the Congress.

- a. _____
- b. _____
- c. _____
- d. _____

2. What is the “elastic clause?” _____

3. Define enumerated powers and give an example. _____

4. Define implied powers and give an example. _____

5. Define inherent powers and give and example. _____

6. What does “habeas corpus” mean literally? _____

7. Why does the Constitution prevent Congress from taking away our right of habeas corpus?

8. What is a bill of attainder? _____

9. What is an ex post facto law? Give an example. _____

10. What is one other limit placed on the Congress? _____

11. What are two additional limitations placed on the states by the Constitution?

a. _____

b. _____

12. Explain these three powers:

Delegated powers: _____

Concurrent Powers: _____

Reserved Powers: _____
