

## Constitutional Power

The U.S. Constitution establishes Congress and gives it the power to make laws.

### Expressed Powers

Article I, Section 8 of the Constitution specifically gives Congress the power to:

- \* impose taxes
- \* borrow money and pay debts
- \* provide for the common defense and general welfare of the United States
- \* regulate foreign and interstate commerce
- \* establish rules for naturalization
- \* establish rules for bankruptcies
- \* issue money, punish counterfeiting, and fix the standard of weights and measures
- \* establish post offices
- \* regulate patents and copyrights
- \* create lower federal courts (beneath the U.S. Supreme Court, which is itself established by the Constitution)
- \* punish piracy, felony on the high seas, and "offenses against the law of nations"
- \* declare war and establish and regulate military forces
- \* provide for organizing, arming, and disciplining the militia, though some powers are reserved to the states
- \* govern the District of Columbia.

### Implied Powers

Is that enough? Could the framers of the Constitution foresee all needs of the nation for hundreds of years into the future—or even for decades? Wisely, the framers decided that they could not. So they added a final, elastic clause, which gives Congress the 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."

All "necessary and proper" laws—that covers a lot of territory! One might be tempted to believe that Congress can make any laws at all. Not so.

### Limits on Congressional Power

The next clause (Article I, Section 9) sets several specific limits on the power of Congress. Some, like the prohibition on ex post facto laws, protect individual rights. Others prevent Congress from playing favorites between the states.

Amendments to the Constitution both grant and limit Congressional power. The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." That's a pretty clear limit on the power of Congress.

The Tenth Amendment provides a more general limit on the power of Congress: "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."

### **Practical Limits**

The Supreme Court and the president, by their actions, also limit the power of Congress.

If Congress passes a law that violates the Constitution, the Supreme Court can overturn it. For example, if Congress passed a law providing that residents of Maine had to pay higher federal income taxes than residents of the other 49 states, that would violate the Constitution. Someone would sue to overturn the law. The Supreme Court would declare it unconstitutional. Then the law would no longer exist.

If the president strongly disagrees with legislation passed by Congress, the president will not sign it—and it will therefore not become law.

Besides the legal limits set by the Constitution, political reality limits the power of Congress. If the people do not like laws passed by Congress, then they will "vote the rascals out" in the next election.