



# **Constitution In 10 Lessons**

Lesson 2

Papers #1, #2, #3

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# Paper #1

## Congress's Enumerated Powers

A Primer in Constitutional Law



## ***We the people . . .***

- Created the federal government.
- The federal government is our “*creature*”.
- The federal government has no powers other than those *We the people* granted to it in The Constitution.

# Definition: Constitution -

In free states, the constitution is paramount to the statutes or laws enacted by the legislature, limiting and controlling power, and in the United States, the legislature is created, and its powers designated, by the constitution.

Webster's 1828 Dictionary

# What's important about enumerated powers?

- Because Congress is NOT authorized to pass any law on any subject just because a majority in Congress think the law is a good idea!
- Congress can ONLY act in certain areas.
- Those areas are **strictly limited and defined (enumerated)**.



# Article I Section 8

Grants 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 States, and with 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;
13. To define and punish piracies and felonies committed on the high seas, and offenses against the Laws of Nations.

# Other Provisions of the Constitution

Grant to Congress powers to make laws  
regarding:

- An enumeration of the population for purposes of apportionment of Representatives and direct taxes. (Art. 1 Sec. 2, cl. 3)
- Elections of Senators & Representatives (Art. 1 Sec. 4, cl. 1) and their pay (Art. 1 Sec. 6);
- After 1808, to prohibit importation of slaves (Art. 1 Sec. 9. cl. 1);





- A restricted power to suspend Writs of Habeas Corpus (Art. 1, Sec. 9, cl. 2);
- To revise and control imposts or duties on imports or exports which may be laid by States (Art. 1, Sec. 10. cl. 2 &3)
- A restricted power to declare the punishment of Treason ( Art. III, Sec. 3, cl. 2);
- Implementation of the Full Faith and Credit clause (Art. IV, Sec 1);
- Procedures for amendments to The Constitution (Art. V).

# These Amendments grant additional powers to Congress.

## The 13th Amendment

- abolished slavery and involuntary servitude, except as a punishment for a duly convicted crime and then gave Congress the power to enforce this article by appropriate legislation.



## The 14th Amendment

- Gave rightful full citizenship to freed slaves.
- Disallowed those men over age of 21 in States of rebellion against the Constitution from voting.
- Disallowed those men over age of 21 in States of rebellion against the Constitution from seeking elected office.
- Assumed the validity of debt incurred in suppressing rebellion against the Constitution, but disallowed any debt incurred by those in rebellion.
- Gave power to Congress to enforce by appropriate legislation the provisions in this article.



## The 15th Amendment

- The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
- Congress has the power to enforce this article by appropriate legislation.



## The 16th Amendment

- The Income Tax
- Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to census or enumeration.



## **The 19th Amendment**

- The Vote for Women
- Congress shall have the power to enforce this article by appropriate legislation.



## **The 23rd Amendment**

- Electors for the District of Columbia
- Congress shall have power to enforce this article by appropriate legislation.



## The 24th Amendment

- Voter's Civil Rights - ended the practice of denying citizens the right to vote by failure to pay a poll tax or any other tax.
- Congress shall have the power to enforce this article by appropriate legislation.





## The 26th Amendment

- A citizen must be 18 years of age or older in order to vote.
- Congress shall have the power to enforce this article by appropriate legislation.



# Mark Your Constitution

You have now marked each Constitution enumerated power of Congress.



# What We Did Not Read

- We did not read that Congress has the power to bail out financial institutions, businesses, and homeowners who don't pay their mortgages.
- We did not read that Congress has the power to control our health care, education, energy production, save animals, kill babies, redistribute wealth...

## **Federalist 14 - Madison**

“In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any.”



# **The Legislative Powers of Congress Fall into 3 categories**

1. International commerce and war.



## **2. Domestic Issues:**

- the establishment of an 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.
- Congress also has the power to establish lower federal courts and rules for naturalization.



### 3. Protection of civil and voting rights.



# **That's about the extent of Congress' authority!**

All other powers are retained by the States  
or the People.



**“But,” you ask...**

“How can Congress make all these laws if they are unconstitutional?”

“ P.H., how can what you say be true?”



## Because . . .

- We are ignorant of what our Constitution says.
- We have been indoctrinated into believing that Congress can do whatever they want.
- We haven't had the ability to know what Congress is doing unless it affected us directly.



# **Our Declaration Acknowledges Our Creator Endowed Blessings**

In many ways, the Creator endowed right of Free Enterprise - Pursuit of Happiness - is paving the way to restoration of our liberty.

- No wonder the adversaries of The Constitution are also the adversaries of the Free Enterprise system.
- The Free Enterprise system is the result of Liberty - the two cannot exist one without the other.

[Addition to PH text by Nancy Coppock]

# The Lesson of Prohibition:

- Because, everyone understood the Constitution did not give Congress the authority to “simply pass a law” banning alcoholic beverages....
- First, an amendment was passed to give Congress that authority to prohibit alcoholic beverages,...
- Which then gave Congress the power to make laws to enforce that prohibition.

# Constitution vs. Case Precedent

Law Schools no longer 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.



# Precedent

- Is nothing more than a map or schematic showing how to escape the confines between Law and Lawlessness...
- As determined by mere men usurping the authority of God and The Constitution.

# Law Schools now teach:

## Three clauses:

- “General Welfare” clause
- “Interstate Commerce” clause
- “Necessary and Proper” clause

Permit Congress to do whatever it wants!



“Well, doesn’t the **general welfare clause** give Congress the 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.

The “welfare clause” appears in the Preamble and in Article 1, Section 8, clause 1 of the Constitution.

What was the definition of “welfare” at that time?

- 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 Dictionary

# However

- A current Webster's dictionary definition includes the unconstitutional FDR program of "Public Relief" to define: *welfare* as "public relief".
- Do you see how our Constitution is perverted when new meanings are substituted for original meanings?



Is there any other evidence that the “welfare clause” was NEVER intended to be applied in the manner used so cavalierly by Congress, the President, or the Supreme Court?



## Federalist 41 - Madison

“It has been urged and echoed, that the power *“to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,”* amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. Cont.

## Madison continues:

“But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon?”

If the different parts of the same instrument ought to be so expounded, as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? Cont.



**“For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars.**



Madison points out that the first paragraph of Article 1, Sec. 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 hereinabove.

## Our Founders knew...

That the “General Welfare”, i.e., the enjoyment of peace and prosperity, and the enjoyment of the ordinary blessings of society

and civil government was possible ONLY with a civil government which was strictly limited and restricted in what it was given power to do.





# **Food for thought:**

What are ordinary blessings?



# Paper #2

Does The “Interstate Commerce Clause”  
Authorize Congress  
to Force Us  
To buy Health Insurance?

# What about the Commerce Clause?

- Does that clause give Congress power to pass laws on any subject which ‘affects’ interstate commerce?
  - No, it does not!

## Federalist 22 - Hamilton

“The interfering and neighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy.

- “The commerce of the German empire is in continual trammels from the multiplicity of the duties which the several princes and states exact upon the merchandises passing through their territories, by means of which the fine streams and navigable rivers with which Germany is so happily watered are rendered almost useless.”

Though the genius of the people of this country might never permit this description to be strictly applicable to us, yet we may reasonably expect, from the gradual conflicts of State regulations, that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens.”



## Federalist 42 - Madison

“The defect of power in the existing Confederacy to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proofs and remarks which former papers have brought into view on this subject, it may be added that without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual.

**A very material object of this power was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter.**

**Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former.” cont.**



## Federalist 42 continued

'We may be assured by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquility.

To those who do not view the question through the medium of passion or of interest, the desire of the commercial States to collect, in any form, an indirect revenue from their uncommercial neighbors, must appear not less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade..” cont.

## Federalist 42 continued

“The necessity of a superintending authority over the reciprocal trade of confederated States, has been illustrated by other examples as well as our own. In Switzerland, where the Union is so very slight, each canton is obliged to allow to merchandises a passage through its jurisdiction into other cantons, without an augmentation of the tolls.” cont.

## Federalist 42 Conclusion

“In Germany it is a law of the empire, that the princes and states shall not lay tolls or customs on bridges, rivers, or passages, without the consent of the emperor and the diet; though it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances in that confederacy, has not followed the law, and has produced there the mischiefs which have been foreseen here. Among the restraints imposed by the Union of the Netherlands on its members, one is, that they shall not establish imposts disadvantageous to their neighbors, without the general permission.”



## **The Founder's purpose in the Interstate Commerce Clause**

Hamilton and 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.
- And until the mid-1930's and FDR's New Deal, this was widely understood.
  - 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.



# United States v. Lopez

- The Gun-Free School Zones Act of 1990 (GFSZA) made it unlawful for any individual knowingly to possess a firearm at a place that he knew or had reasonable cause to believe was a school zone. Alfonso Lopez, Jr. (D), a 12th-grade student, carried a concealed and loaded handgun into his high school and was arrested and charged under Texas law with firearm possession on school premises. The next day, the state charges were dismissed after federal agents charged Lopez with violating the Act.
- The District Court denied Lopez's motion to dismiss the indictment, concluding that the GFSZA was a constitutional exercise of Congress' power pursuant to the Commerce Clause of Article I. The Fifth Circuit reversed, holding that the Act exceeded Congress' power under the Commerce Clause and was therefore unconstitutional. The Supreme Court granted cert.

## **ISSUES**

- Does the GFSZA exceed Congress' authority under the Commerce Clause?
- What categories of activity may Congress regulate under its commerce power?

# **Wickard V. Filburn 1942**

Roscoe Wickard grew wheat for use on his farm.

U.S. Gov't had established limits on wheat production in order to drive up wheat prices in Great Depression.

Wickard was ordered to destroy his crops and pay a fine, even though he had no intention of selling any wheat at market.

## **Federalist 12 - Hamilton**

“The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares.”



# Federalist 12 - Hamilton

“The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,--all orders of men, look forward with eager expectation and growing alacrity to this pleasing reward of their toils. The often-agitated question between agriculture and commerce has, from indubitable experience, received a decision which has silenced the rivalship that once subsisted between them, and has proved, to the satisfaction of their friends, that their interests are intimately blended and interwoven.”

# Wickard V Filburn Questions?

- In arbitrarily setting the price of wheat, did the Supreme Court and Congress maintain just weights and measures in regards to both its charge of accuracy in both currency and product?
- Does Congress have the power to regulate prices of commodities and practices which affect such prices?

# Supreme Court

The Supreme Court held that the GFSZA exceeded Congress' Commerce Clause authority. The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, have a substantial effect on interstate commerce. The section in question is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise. Nor is it an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under the Court's cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

## **Rehnquist** continued

The statute contains no jurisdictional element which would ensure that the firearms possession in question has the requisite nexus with interstate commerce. Lopez was a student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.





## Rehnquist - conclusion

- “Neither the Act itself nor its legislative history expresses congressional findings regarding the effects of gun possession in a school zone on interstate commerce.
- To uphold the Government’s contention that the Act is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon inference in a manner that would convert congressional Commerce Clause authority to a general police power of the sort held only by the States.”

## Thomas' Concurrence

“The substantial effects test has eviscerated any notion of federalism. Without boundaries limiting the Commerce Clause to truly commercial activity, we give the federal government a blank check to regulate anything under the guise of the Commerce Clause.”

## Stevens - Dissent

*“Guns are articles of commerce and can be used to interfere with commerce. The national interest justifies prohibiting their use by children in school.”*



## Souter - Dissent

- *“The only inquiry should be whether the legislative judgment is within the realm of reason. Congress should have plenary power to legislate under the Commerce Clause as long as the law passes the rational basis test.”*



## Breyer - Dissent

- *“Violence in schools interferes with the quality of education and education is inextricably tied to the economy. Congress could have rationally concluded that the possession of guns in school zones is related to interstate commerce. The majority [opinion of the Court] *contradicts well settled precedent that has permitted Congress to regulate noncommercial activity affecting interstate commerce.*”*

## Paper #3

**Does the “General Welfare  
Clause”  
of the U.S. Constitution  
Authorize Congress  
to Force Us to Buy  
Health Insurance?**



# Definition: Welfare

- 1. Exemption from misfortune, sickness, calamity or evil; the enjoyment of health and the common blessings of life; prosperity; happiness; applied to persons.
- 2. Exemption from any unusual evil or calamity; the enjoyment of peace and prosperity, or the ordinary blessings of society and civil government; applied to states.

*Webster 1828*



## **Federalist 29 - Hamilton**

“It would be as absurd to doubt, that a right to pass all laws NECESSARY AND PROPER to execute its declared powers, would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws, as it would be to believe, that a right to enact laws necessary and proper for the imposition and collection of taxes would involve that of varying the rules of descent and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it.”



# Federalist 33 - Hamilton

“THE residue of the argument against the provisions of the Constitution in respect to taxation is ingrafted upon the following clause. The last clause of the eighth section of the first article of the plan under consideration authorizes the national legislature "to make all laws which shall be NECESSARY and PROPER for carrying into execution THE POWERS by that Constitution vested in the government of the United States, or in any department or officer thereof"; and the second clause of the sixth article declares, "that the Constitution and the laws of the United States made IN PURSUANCE THEREOF, and the treaties made by their authority shall be the SUPREME LAW of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."



# **Federalist 33 - continued**

**“They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers.**

This is so clear a proposition, that moderation itself can scarcely listen to the railings which have been so copiously vented against this part of the plan, without emotions that disturb its equanimity.”

# Federalist 33 - continued

“What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the MEANS necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the MEANS to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes? What are the proper means of executing such a power, but NECESSARY and PROPER laws?”



## Federalist 33 - continued

“This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws NECESSARY and PROPER for the execution of that power; and what does the unfortunate and calumniated provision in question do more than declare the same truth, to wit, that the national legislature, to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws NECESSARY and PROPER to carry it into effect?”



# Federalist 33 - continued

“I have applied these observations thus particularly to the power of taxation, because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the Union. But the same process will lead to the same result, in relation to all other powers declared in the Constitution.

And it is EXPRESSLY to execute *these* powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all NECESSARY and PROPER laws. **If there is any thing exceptionable, it must be sought for in the specific powers upon which this general declaration is predicated.** The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless.”



## Federalist 33 - continued

“If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded.”

## **Madison agrees in Federalist 44**

“There are four other possible methods which the Constitution might have taken on this subject.

1. They might have copied the second article of the existing Confederation, which would have prohibited the exercise of any power not **EXPRESSLY** delegated;
2. they might have attempted a positive enumeration of the powers comprehended under the general terms "necessary and proper";

## Federalist 44 - Madison

3. “they might have attempted a negative enumeration of them, by specifying the powers excepted from the general definition;
4. they might have been altogether silent on the subject, leaving these necessary and proper powers to construction and inference.”



## **Therefore, ‘necessary & proper’**

Simply permits the execution of powers  
already declared and granted.  
[Enumerated]

Hamilton & Madison are clear that no  
additional substantive powers are granted  
by this clause.

# 10th Amendment

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.

**WE are 'The People'.**

## Federalist 45 - Madison

“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 [powers of federal] 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.**”

## **Federalist 45 - Madison**

“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, and the internal order, improvement, and prosperity of the State.”

## **Federalist 39 - Madison**

“ . . . 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.”

## Federalist 14 - Madison

“In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws.

Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any.”

# Conclusion

In considering all the recent legislation of Congress, can we determine if our Federal Government has become illegitimate?

Does Congress govern or does it “rule” without our consent?