



# The Powers of Congress: A Brief Overview

## Historical Background

The modern influence that Congress has in the federal tripartite system of government can be explained by understanding the historical context in which the Framers of the Constitution enacted their vision for the first branch of government. The creation of a Congress in Article I of the Constitution reflects the collective preferences and compromises of those who drafted the document in 1787. Their views were undergirded by the political philosophies of the era and were chiefly shaped by two historical experiences: (1) colonial rule under the tyranny of the British Crown, and (2) the chaos that resulted in the wake of the American Revolution due to the weak central government that was established under the Articles of Confederation. In this vein, the Framers designed the Constitution, and more specifically Congress, to avoid not only the overreaches of monarchy, but also the weaknesses of the Articles.

Because of the Framers' fear of an overly powerful and oppressive central government, the Constitution vests Congress with only the powers specified in the document, reserving all other power to the states. This principle reflects the Founders' belief in federalism—the sharing of authority between the federal and state governments.

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“The powers delegated by the ... Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” *James Madison, Federalist No. 45.*

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The Constitution also provides for dispersed authority within the federal government. The three branches of government were assigned distinct and limited roles under the Constitution. The constitutional structure does not, however, wholly insulate the branches from each other. While the Framers aimed, through separation, to prevent the centralization of power akin to their experiences under the British Crown, they also sought the same objective through diffusion of various authorities. Thus, some powers granted under the Constitution are not unilateral for any one branch; instead, they overlap, resulting in checks and balances.

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“[T]he great security against a gradual concentration of ... power[] in the same department, consists in giving ... each ... the necessary constitutional means and personal motives to resist encroachments.... Ambition must be made to counteract ambition.” *James Madison, Federalist No. 51.*

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Because a contributing factor to the American Revolution was perceived violations of individual liberty by the Crown,

a chief concern of the Framers was the enshrinement of specific limitations on the power of the government to abridge such rights. While some limitations on the powers of Congress that aimed at protecting individual rights appear in the original Constitution, many of the most famous protections were not added until the Bill of Rights was ratified in 1791.

Nonetheless, the Framers' experiences with the Articles of Confederation—and the accompanying rebellions, slave revolts, and attacks by Indians and foreign nations that were caused by or exacerbated by the Articles' weak central government—made fear of anarchy a competing interest in the debates over the Constitution. The Framers learned from their post-Revolution experiences that a stronger national government was necessary and, as a result, established under the Constitution a government with a more robust legislature than the Continental Congress and a separate executive able to act with greater “energy,” as well as an independent judiciary that could provide a check on the legislative and executive branches. In sum, the Constitution that was drafted in 1787 was crafted under a backdrop in which the Framers sought to simultaneously create a federal government that could both protect its citizens from external and internal harm and influence, and also keep the states and the people of the country safe from domination by the centralized government.

## Key Sources of Congress's Powers

Because the Constitution creates a federal government with limited powers, Congress has no powers except those specified or enumerated in the Constitution.

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“Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.” *United States v. Morrison.*

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Article I, Section 8 of the Constitution is the primary section that enumerates Congress's legislative powers. Among the enumerated powers most frequently relied on by Congress to legislate are the following.

**Commerce Clause:** This clause provides Congress the power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The Commerce Clause is the source of power for many federal criminal laws, certain civil rights statutes, and some environmental laws.

**General Welfare Clause:** This clause provides Congress the power to “lay and collect Taxes ... and provide for the common Defence and general Welfare of the United States....” It is the source of power for Congress to spend

money for various purposes, with Congress often attaching conditions on the money it appropriates.

**Property Clause:** This clause provides Congress the power to “dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States....” The Property Clause, located in Article IV of the Constitution, has been the source of power for congressional regulation of national parks and wildlife refuges, federal lands, reservations held in trust for Native American tribes, military bases, and other federal buildings.

This final clause of Section 8 of Article I, the *Necessary and Proper Clause*, 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....” Importantly, the Necessary and Proper Clause is *not* a freestanding grant of congressional power, but rather an authorization to make laws that are necessary to execute the powers vested in both Congress and the other branches by the Constitution.

### Limits on Congress’s Powers

The concept of enumerated powers creates what is often referred to as an “internal limit” on Congress’s powers—that is, Congress’s powers are limited by the restrictions inherent in the grants of power themselves. For instance, the Supreme Court, in *United States v. Lopez*, held that the Commerce Clause does not empower Congress to prohibit possession of guns near a school (absent a connection to commercial activity) because such a law does not regulate an economic activity that substantially affects interstate commerce. However, beyond the “internal limits” imposed on Congress’s powers, there are three chief “external” constraints on Congress.

**Federalism:** The Constitution views the states as wholly sovereign entities from the federal government, and, accordingly, congressional encroachments on the domain of state governments can raise constitutional questions. For instance, the Supreme Court has interpreted the Tenth Amendment—the provision of the Bill of Rights that reads “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”—to prevent the federal government from “commandeering” or requiring state executive officers or state legislators from carrying out federal directives. Moreover, the Court has held that Congress cannot indirectly commandeer state governments by imposing limits on monetary grants that functionally coerce states into complying with federal directives.

**Separation of Powers:** The Constitution assigns each branch of government distinct but interrelated roles, and Congress may not attempt to aggrandize its power by attempting to exercise the power assigned to another branch. For example, the Appointments Clause of the Constitution provides the President with the authority to appoint, with the Senate’s advice and consent, principal officers of the United States. When Congress reserved to itself the role to appoint certain members of the Federal Election Commission in 1971, the Supreme Court, in

*Buckley v. Valeo*, struck down that law as being in violation of separation of powers.

**Individual Rights:** In addition to restricting Congress’s power vis-à-vis the states and the other branches of the federal government, the Constitution also prohibits Congress from legislating in areas that could impede on the liberties of American citizens. The First Amendment, for example, prohibits Congress from enacting a law that abridges the freedom of speech and, accordingly, would prohibit Congress from banning the publication or distribution of political pamphlets in interstate commerce.

### Congress’s Powers Post-Enactment

The Constitution envisions Congress’s central role to be with regard to legislating, in that Article II of the Constitution vests the power to execute the law in the President. The President, in turn, is obligated to “take care” that the laws be faithfully executed, an obligation that is often—but not always—enforced through the judiciary. For example, in *Train v. City of New York*, the Supreme Court ruled that the President could not frustrate the will of Congress by withholding funds that Congress required to be disbursed to certain states and localities. More broadly, the Administrative Procedure Act empowers the courts of law to compel agency action unlawfully withheld or delayed, or to hold unlawful or set aside certain agency actions.

At the same time, over the past century, Congress, which often relies on the expertise of executive branch agencies, has purposely delegated to the executive branch, through broad or vague statutes, significant power to interpret and execute the law. In 1984, the Supreme Court, in *Chevron USA, Inc. v. NRDC*, held that federal courts will generally defer to the executive branch’s interpretation of such broad statutory provisions. At the same time, restrictions imposed on the federal judiciary by Article III of the Constitution, such as the requirement that a plaintiff in a civil suit be injured in some concrete and particularized manner in order to obtain judicial relief, may limit the ability of the judiciary to compel the President to faithfully execute the law.

Given these limits on the third branch of government, the first branch maintains a critical role in providing oversight of the executive branch as the President administers the laws passed by Congress. The Supreme Court has held that the “the power of Congress to conduct investigations is inherent in the legislative process.” Congress’s power to conduct oversight, while fairly broad, is, like Congress’s other powers, not absolute, and is subject to the external limits the Constitution imposes on all governmental actors.

For more information, see CRS’s legal treatise examining the Constitution: CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, available at <http://www.crs.gov/conan/constitutionannotated>.

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