

How did the Framers Resolve the Conflict about the Powers of the Legislative Branch?

How much power should the congress have?

Under the Articles of Confederation, Congress was unable to deal with trade and economic problems of the country. More importantly, Congress was not strong enough to control the actions of state governments. The Framers were convinced that the state legislatures were passing laws that violated the property rights of many citizens.

A basic problem with the Articles of Confederation was that Congress did not have the power to act directly on the people. When Congress passed laws, it had to depend on the states to enforce them. Congress could not raise taxes to support itself; it could only ask states for money. Many states ignored congressional requests for funds.

Most of the Framers agreed that there was a need for a stronger national government. There were still some areas of disagreement, however. The American experience with the British government had caused many of the Framers to be suspicious of a central government and executive power. The compromises about representation and slavery reduced resistance to increasing the power of the national government. The delegates, however, still disagreed about how much power to give each of the three branches of the national government. The problem facing the Framers was how to create a national government that was strong enough to protect the rights of the people, and yet not so strong that it would endanger those rights.

How should the Constitution be written to give power to the Congress?

James Madison argued that the new Congress should keep the powers that it had under the Articles of Confederation. He also wanted Congress to make the laws that the state legislatures were prevented from making. He thought that Congress should also be given the power to reject or turn down laws made by state legislatures.

Madison's recommendations would have given the national government great power over the states and the people. To give all this power to the national government meant that the new constitution would have to be written in very general language. For example, the constitution might say, "Congress shall have the power to make laws that are necessary."

Many of the Framers disagreed with Madison. They saw a problem with general language in the new constitution. General language should be understood to mean that government was given the power to do almost anything it wanted to do. It does not provide a good way to limit the powers of government.

Many delegates also opposed giving Congress the power to veto laws made by state legislatures. Under British rule, royal governors and Parliament had vetoed acts of the colonial legislatures. The Framers did not want to give this power to Congress.

An alternative was to write the new constitution in very specific language. Specific language meant writing down exactly what powers Congress would have. For example, "Congress shall have the power to collect taxes." The Framers wanted a government of enumerated powers. **Enumerated powers are powers that are specifically listed in the constitution.** The problem with enumerated powers was that a constitution might leave out important powers needed by Congress to deal with unforeseen situations.

The solution was to use both general and specific language. The new constitution would give specific powers to Congress and place limitations on these powers. It would also include two general clauses that would give Congress the power to deal with unexpected situations.

What are the enumerated powers of Congress?

Article I deals with the legislative branch. Article I alone makes up more than half of the Constitution. It shows just how important the legislative branch was to the Framers.

Article I, Section 8 includes seventeen enumerated powers. Some of these powers give Congress the right to

- impose and collect taxes and duties,
- borrow money,
- regulate commerce with foreign nations and among the states,
- coin money,
- establish post offices,
- declare war, and
- raise and support an army and navy.

What are the general powers of Congress?

Article I, Section 8 also includes two general statements of power given to Congress. These are the power of Congress to

- **“provide for the common Defense and general Welfare [common good] of the United States.”** This is called the **general welfare clause**.
- **“make all Laws which shall be necessary and proper” for carrying out the other powers that Constitution grants to Congress.** This is called the **necessary and proper clause**. For example, under the enumerated powers, Congress has the power to raise and support an army. To exercise this power, it might be necessary and proper that Congress pass a law requiring citizens to serve in the armed forces.

Neither of these general clauses caused any disagreements at the convention. They did cause strong disagreements in the states about whether to approve the Constitution. Both clauses were the source of conflicts in the early years of the new government.

What limits are there on the powers of Congress?

The Constitution includes several limits on the powers of Congress. Article I, Section 9 prohibits Congress from doing any of the following:

- Banning the slave trade before 1808.
- **Suspending** the privilege of the **writ of habeas corpus** except in emergencies. In Latin, *habeas corpus* means to “have the body.” A **writ of habeas corpus orders government to deliver a person it has arrested to a court of law**. Government must explain why that person has been arrested and held. If government cannot

show that the person has broken the law, the person must be set free.

- Passing **ex post facto laws**. This is a law that **makes an act a crime even though the act was legal when it took place**.
- Passing **bills of attainder**. This is a legislative act that **declared a person guilty of violating the law and set the punishment without a court trial**.
- Taxing anything exported from a state.
- Taking money from the treasury without first passing a law to do so.
- Granting titles of nobility.

In this way, the Framers tried to balance the need for a strong government with the need to limit its powers. Those limits were included to make sure that government did not become a threat to the people’s rights.

How do the other branches check the power of Congress?

Remember that Congress is divided into two “houses.” This arrangement is a check on the power of Congress to pass laws. For example, when the House of Representatives passes a bill, it must be sent to Senate. The bill must also pass the Senate by a majority vote before it can become law.

The executive and judicial branches also have checks, or controls, on Congress. If a bill passes in both houses of Congress, the bill must be sent to the president for approval and signature. When the president signs the bill it becomes law.

The president may refuse to sign a bill and send it back to Congress. This is the president’s power to veto a bill passed in Congress. When the president vetoes a bill, the bill can only become law if approved by a two-thirds majority in both houses of Congress.

The U.S. Supreme Court has the power to declare a law made by Congress unconstitutional. **Unconstitutional means that the law or action is not permitted by the Constitution**. The Court may say that the Constitution does not give Congress the right to pass such a law. In this case, the law can no longer be carried out or enforced.