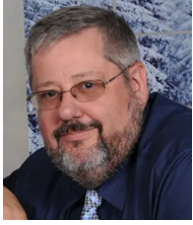


# Constitutionality of Cabinet Level Departments



By Paul Engel

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- How many federal departments and agencies are constitutional and how many are not?
- How much of the President's cabinet does not legally exist?
- What are the consequences of such a large part of the Executive Branch being constitutionally invalid?

A couple of weeks ago someone claiming to be my “#1 Fan”, at least that's the name they used, asked an interesting question. “Any chance you could make a YouTube video going through each major executive federal agency or department and discuss which is actually Constitutional under Article I Section 8?” That's a good question, so there's not only a very good chance I'll write the article and create the video, but here it is.

The first thing I need to do to answer my #1 Fan's question is to modify their question just a little bit. Article I Section 8 of the Constitution lists powers delegated to Congress, while the cabinet serves to advise the President, in whom the executive powers are delegated (Article II, Section 1, Clause 1). Congress has 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.*

### **U.S. Constitution, Article I, Section 8, Clause 18**

Congress has the power to make laws to execute the powers of the United States. If we're going to look at the constitutionality of the different cabinet departments, we need to look at the Tenth 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.*

### **U.S. Constitution, Amendment X**

#### Cabinet Departments

Currently, there are fifteen different cabinet level departments. There are five departments that we can easily identify the power delegated to the United States that they exercise.

- Department of State
- Department of Treasury
- Department of Defense
- Department of Justice
- Department of Commerce

That's not to say all these departments do is constitutional, but their core purposes is constitutional.

#### Department of State

*The Department of State plays the lead role in developing and implementing the President's foreign policy. Major responsibilities include United States representation abroad, foreign assistance, foreign military training programs, countering international crime, and a wide assortment of services to U.S. citizens and foreign nationals seeking entrance to the United States.*

## [The Executive Branch – Whitehouse.gov](https://www.whitehouse.gov)

Since the President has the power, with the advice and consent of the Senate, to sign treaties with foreign nations, the Department of State has a constitutional basis.

### **Department of Treasury**

*The Department of the Treasury is responsible for promoting inclusive economic prosperity for all Americans.*

*The Department advances U.S. and global economic growth to raise American standards of living, support communities, promote racial justice, combat climate change, and foster financial stability. The Department operates systems that are critical to the nation's financial infrastructure, such as the production of coin and currency, the disbursement of payments owed to the American public, the collection of necessary taxes, and the borrowing of funds required by congressional enactments to run the federal government. The Treasury Department also performs a critical role in enhancing national security by safeguarding our financial systems, implementing economic sanctions against foreign threats to the U.S., and identifying and targeting financial support networks that threaten our national security.*

## [The Executive Branch – Whitehouse.gov](https://www.whitehouse.gov)

The Treasury Department is one of those agencies that has a constitutional mandate, but has expanded its purpose into a blatantly unconstitutional role. The Treasury can collect taxes (under Article I, Section 8, Clause 1), borrow money on the credit of the United States (Clause 2), coin money (Clause 5), and to pay money appropriated by Congress (Article I, Section 9, Clause 7). The implementation of economic sanctions could be part of exercising Congress' power to regulate foreign commerce. The whole "advancing economic growth, promoting racial justice, and combating climate change are NOT powers delegated to the United States. Which shows how a

constitutionally sound department can quickly be used to enact unconstitutional powers.

## **Department of Defense**

*The mission of the Department of Defense (DOD) is to provide the military forces needed to deter war and to protect the security of our country. The department's headquarters is at the Pentagon.*

### **[The Executive Branch – Whitehouse.gov](#)**

Sounds constitutional, right? After all, Congress can raise an Army and support a Navy, but is that all the DoD does?

*The DOD consists of the Departments of the Army, Navy, and Air Force, as well as many agencies, offices, and commands, including the Joint Chiefs of Staff, the Pentagon Force Protection Agency, the National Security Agency, and the Defense Intelligence Agency. The DOD occupies the vast majority of the Pentagon building in Arlington, Virginia.*

### **[The Executive Branch – Whitehouse.gov](#)**

Army, Navy, and Air Force, no problem. The NSA and DIA are another matter altogether.

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

### **[U.S. Constitution, Amendment IV](#)**

Notice it does not say “The right of the people to be secure”, unless the government claims national security. So the question is, are the NSA and DIA following the Constitution or not? Recent reporting would point to these agencies NOT

following the Constitution.

## **Department of Justice**

*The mission of the Department of Justice (DOJ) is to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.*

### **[The Executive Branch – Whitehouse.gov](https://www.whitehouse.gov)**

According to Article II, Section 3, the President “shall take Care that the Laws be faithfully executed,” so the duty to enforce the law is a constitutional power. If the purpose of the DOJ is the enforcement of the law as a constitutional power though, ensuring the public safety is not. We have a military for the common defense, but the Constitution does not grant to the United States the power to ensure public safety. That is a state power.

While the federal government has the power to enforce federal law, that’s the limit of their law enforcement powers. In other words, the DOJ can only enforce laws made pursuant to the Constitution. And since Congress only has exclusive legislative powers of the District of Columbia, forts, magazines, and other needful buildings, that means much of what the DOJ does is criminal, not justice.

## **Department of Commerce**

*The Department of Commerce is the government agency tasked with creating the conditions for economic growth and opportunity.*

*The department supports U.S. business and industry through a number of services, including gathering economic and*

*demographic data, issuing patents and trademarks, improving understanding of the environment and oceanic life, and ensuring the effective use of scientific and technical resources. The agency also formulates telecommunications and technology policy, and promotes U.S. exports by assisting and enforcing international trade agreements.*

### **[The Executive Branch](http://Whitehouse.gov) – Whitehouse.gov**

Congress can regulate both interstate and foreign commerce, but that is not what the department claims to do. It appears the Department of Commerce is more interested in regulating everything that passes through commerce, rather than the constitutional power to regulate interstate and foreign commerce.

### **Unconstitutional Cabinet Departments**

There are plenty of departments that are not exercising powers delegated to the United States.

- Department of Agriculture
- Department of Labor
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of Transportation
- Department of Energy
- Department of Education

None of these departments are exercising powers delegated to the United States. That means that the legislation that created these departments was not made pursuant to the Constitution, and therefore are not the supreme law of the land.

*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;*

## [U.S. Constitution, Article VI, Clause 2](#)

Not only are the laws that created these departments not the supreme law of the land but, according to both Alexander Hamilton and the Supreme Court, they are void.

*There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid.*

## [Alexander Hamilton, Federalist Paper #78](#)

*Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.*

## [Marbury v. Madison Opinion](#)

Which means these departments do not legally exist.

## **Questionable Cabinet Departments**

There are some departments I consider questionable. They may be exercising powers delegated to the United States, but it's not exactly obvious.

## **Department of Veterans Affairs**

*The Department of Veterans Affairs is responsible for administering benefit programs for veterans, their families, and their survivors. These benefits include pension, education, disability compensation, home loans, life insurance, vocational rehabilitation, survivor support, medical care, and burial benefits. Veterans Affairs became a cabinet-level department in 1989.*

## [The Executive Branch – Whitehouse.gov](https://www.whitehouse.gov)

We know that Congress can raise and support Armies and a Navy, but what about those who serve? Is a separate department, rather than the DoD, the best way to take care of those who have defended this country? That is a question for another venue.

### **Department of Interior**

*The Department of the Interior (DOI) is the nation's principal conservation agency. Its mission is to protect America's natural resources, offer recreation opportunities, conduct scientific research, conserve and protect fish and wildlife, and honor the U.S. government's responsibilities to American Indians, Alaskan Natives, and to island communities.*

## [The Executive Branch – Whitehouse.gov](https://www.whitehouse.gov)

Again, conservation is not a power delegated to the United States. Oddly enough, Congress does have exclusive legislative authority over the District of Columbia, dockyards, forts, etc. If Congress wanted to have a department to manage that land, that's one thing, but the claim of power to take over land for the purpose of conservation is not within the powers delegated to the United States. So this one is going well beyond their legal authority..

### **Department of Homeland Security**

*The Department of Homeland Security (DHS) protects the American people from a wide range of foreign and domestic threats. DHS has a broad and diverse mission set, including to prevent and disrupt terrorist attacks, protect critical infrastructure and civilian computer networks, facilitate lawful trade and travel, respond to and recover from natural disasters, protect our borders, and regulate the migration of individuals to and from our country.*



## [The Executive Branch](#) – [Whitehouse.gov](#)

Congress has the power to collect taxes to provide for the common defense of the union, but that does not include the “wide range of foreign and domestic threats” that the department claims is its purview. It certainly does not include protecting civilian computer networks or lawful trade.

### **Non-Departmental Cabinet Members**

While searching the White House website, I found a [list of cabinet members](#) that goes beyond the department secretaries. Surprise, surprise, many of them are unconstitutional as well.

- Administrator of the Environmental Protection Agency
- Chair of the Council of Economic Advisers
- Administrator of the Small Business Administration
- Director of the Office of Science and Technology

Just as with the departments, there are several of these cabinet members that may be constitutional, but rarely seem to act within the limits of that document.

- Director of National Intelligence
- United States Trade Representative
- United States Ambassador to the United Nations
- Director of the Office of Management and Budget

### **Conclusion**

As we can see, a large percentage of the Executive Branch does not legally exist. As I pointed out earlier, an act of the legislature repugnant to the Constitution is void. Just think of how many of your tax dollars are used to fund these illegal departments and agencies. Even worse, how much of your liberty is being trampled by the illegal regulations coming out of these illegal departments? Which brings up another topic I would like to add to this discussion: Federal regulations.

*All legislative Powers herein granted shall be vested in a*

*Congress of the United States, which shall consist of a Senate and House of Representatives.*

### [U.S. Constitution, Article I, Section 1](#)

All of the United State's legislative power is vested solely in Congress. What is this legislative power?

*Capable of enacting laws; as legislative power.*

### [LEG'ISLATIVE – Webster's 1828 Dictionary](#)

That means the only branch of the federal government legally capable of enacting laws is Congress. When an executive branch department or agency writes "regulations" with the force of law, those acts are not made pursuant to the Constitution, so they are not the supreme law of the land and are void. Just imagine what life would be like without the millions of pages of federal legislation and thousands of federal employees being used to eat our substance.

I want to thank my "#1 Fan" for this question. I think it shows that there are still people out there who are concerned about what the Constitution says, and about keeping the government it created within its legal bounds. Once again, I hope we see that the problems in Washington, D.C. are not simply the politicians or the bureaucrats, but the compliance of We the People with the illegal acts coming from that "wretched hive of scum and villainy."

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