

# The Powers of Congress



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- What powers does the Constitution delegated to the legislative branch of government?
- Most of the powers delegated to Congress are found in Article I, Section 8, but not all of them.
- How can we complain about our representatives in Congress not staying within the limits of the Constitution if we keep electing them to do so?

I encourage people to ask questions. I believe there are only two “stupid” questions in the world: The one you don’t ask and the one you ask three times. Questions are important. We cannot truly learn unless we ask questions. Several weeks ago I posted the article [The Role of Congress](#). I was pleased when I was asked a question about that article. Specifically, what are the powers of Congress? This article is the answer to that question.

## Legislative Powers

We find most of the powers delegated to Congress in [Article I, Section 8](#), but not all of them. As I pointed out in the article on the role of congress, Article I, Section 1, states:

*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](#)

According to Webster's 1828 Dictionary, that legislative power is:

**LEG'ISLATIVE, adjective**

*Capable of enacting laws*

### **LEG'ISLATIVE – Webster's 1828 Dictionary**

So the first, and most important power, delegated to Congress is the sole power of enacting laws. Yes, the President can veto a bill before it becomes law, but Congress has the power to override such a veto. We find this in Article I, Section 7, Clause 2

*Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.*

### **U.S. Constitution, Article I, Section 7, Clause 2**

We find the power of impeachment, and the trial thereof, in Sections 2 and 3 of Article I.

*The House of Representatives ...shall have the sole Power of Impeachment.*

### **U.S. Constitution, Article I, Section 2, Clause 5**

*The Senate shall have the sole Power to try all Impeachments.*

## [U.S. Constitution, Article I, Section 3, Clause 6](#)

Which brings us to Section 8.

### Section 8

As I stated before, we find the majority of the powers delegated to Congress in [Article I, Section 8](#) of the Constitution. There are 18 clauses delegating power solely to the Congress as a whole. This represents the vast majority of the powers delegated to the United States.

*The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;*

## [U.S. Constitution, Article I, Section 8, Clause 1](#)

This is where Congress is delegated the power to lay and collect taxes. Yes, even taxes on income. Before the Sixteenth Amendment, the collection of any taxes directly from the people, including on income, was to be apportioned to the states.

*The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.*

## [U.S. Constitution, Amendment XIV](#)

The Sixteenth Amendment did not add the power for Congress to collect income taxes, but to do so without apportionment to the states.

*Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union,*

### [U.S. Constitution, Article I, Section 2, Clause 3](#)

Notice that this is not a general power of taxation. Congress can only collect taxes to do three things:

- Pay the debts of the United States.
- Provide for the common defense of the United States.
- The general welfare of the United States.

While paying the debts and the common defense of the United States seem pretty well understood, this General Welfare Clause has been used illegally to expand the powers of the federal government for decades. Notice that Congress only has the power to collect taxes for the general welfare of the United States, not the several states or the people, but only the United States.

*To borrow Money on the credit of the United States;*

### [U.S. Constitution, Article I, Section 8, Clause 2](#)

This is another example of Congress abusing their power. One amendment I would love to see added to the Constitution would be to restrict this power to borrow money.

*To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;*

### [U.S. Constitution, Article I, Section 8, Clause 3](#)

Three for three. This clause, known as the Commerce Clause, says Congress can only regulate commerce with three entities: Foreign nations, the several states, and the Indian tribes. Not to regulate commerce in general, or anything that might pass through interstate commerce, but only the actual commerce that travels between these entities.

*To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;*

#### **U.S. Constitution, Article I, Section 8, Clause 4**

Congress has the power to create rules for naturalization: How someone becomes a citizen. That would logically include the rules for when someone is a citizen. Congress also creates bankruptcy laws throughout the United States.

*To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;*

#### **U.S. Constitution, Article I, Section 8, Clause 5**

Congress has the power to coin (create) money and regulate its value. It also has the power to regulate the value of foreign currency and establish standard weights and measures. If you've ever wondered why the United States never adopted the metric system, part of the reason is because enough people couldn't convince enough members of Congress to do so.

*To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;*

#### **U.S. Constitution, Article I, Section 8, Clause 6**

If a government issues money or instruments that promise to pay a debt (securities), what happens when someone makes counterfeits? It not only defrauds the person who accepts, them, but devalues all of the actual legal tender in everyone else's pocket. That is why Congress has the power to determine what the punishment should be for such crimes.

*To establish Post Offices and post Roads;*

#### **U.S. Constitution, Article I, Section 8, Clause 7**

Ever wonder why every town has its own post office? Because Congress has the power to establish post offices. Most of the time these post offices are created to serve the people who live in that town. Sometimes though, they're there to give the local Congressman a political bump. Want to make townsfolk

happy? Give them a post office closer than the one they have. Already have a post office? No problem, just find a reason to build a new one.

Then we have the “post roads”. What is a post road? In the colonial days and the early days of the republic, post roads were how the mail got from post office to post office. Today, things are a bit different. Not only does the mail travel on everything from back roads to interstate highways, but by the air as well. So what are today’s post roads? The closest thing to post roads I can think of is the Interstate Highway system, even though that’s not why it was created. Of course, the fact that Congress can only establish post roads hasn’t stopped them from building and funding all sorts of roads across the county.

*To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;*

**[U.S. Constitution, Article I, Section 8, Clause 8](#)**

Remember Clause 1, where Congress has the power to lay and collect taxes? Of the three things Congress can collect taxes for, grants, loans, and other ways to “invest” in the arts and sciences is not one of them. Congress can establish copyrights and patents, but that’s the only way they can legally promote science and the arts.

*To constitute Tribunals inferior to the supreme Court;*

**[U.S. Constitution, Article I, Section 8, Clause 9](#)**

Remember the article [The Role of the Federal Courts](#)? Article III, Section 1 reads:

*The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.*

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

If the judicial power of the United States is going to include courts inferior to the Supreme Court ordained and established by Congress, then Congress needs the power to create those tribunals.

*To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;*

### [U.S. Constitution, Article I, Section 8, Clause 10](#)

One of the problems under the Articles of Confederation was each state could have a different set of rules and punishments for international crimes. Under the Constitution, there would be one set of rules and punishments for crimes on the high seas and violations of international laws.

*To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;*

### [U.S. Constitution, Article I, Section 8, Clause 11](#)

While we're talking about international relations, let's talk about war. Congress has the power to declare war, but there are no standards about how it's to do so. Sure, Congress can pass a resolution declaring war, but we haven't done that since 1941. If Congress funds military actions just like a war, but doesn't call them wars, does that make a difference? Part of war in the 18th century included privately owned ships, who acted for a country under letters of marque.

*To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;*

### [U.S. Constitution, Article I, Section 8, Clause 12](#)

If the United States was going to declare war, it was going to need an army. The Framers had dealt with full-time professional armies, and they were concerned about a military

coup. That's why no appropriation of money for an army can be for longer than two years. That way, any army would have to come back to Congress for funding every two years.

*To provide and maintain a Navy;*

### **U.S. Constitution, Article I, Section 8, Clause 13**

If you're going to have an army, you really need a navy as well, but who is going to set the rules?

*To make Rules for the Government and Regulation of the land and naval Forces;*

### **U.S. Constitution, Article I, Section 8, Clause 14**

Congress makes the rules for the military. Yes, the President is the Commander in Chief, but he works under the rules established by Congress.

*To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;*

### **U.S. Constitution, Article I, Section 8, Clause 15**

Again, most people think it's the President who calls up the militia, but legally it's Congress. However, the militia cannot be called up for just any reason. The only things Congress can use the militia for is to execute U.S. Law, suppress insurrections, and repel invasions. Makes you wonder about all those National Guard units being deployed overseas, doesn't it?

*To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;*



## [U.S. Constitution, Article I, Section 8, Clause 16](#)

Since the militias belong to their home state when not called up to serve the United States, it's easy to see how training and discipline standards could vary. By placing the organization and discipline standards in the hands of Congress, the militias will be able to work together when called into service.

*To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;*

## [U.S. Constitution, Article I, Section 8, Clause 17](#)

This clause does two things. 1) Authorizing a federal district to become the seat of government, and 2) Giving Congress legislative power over federal land.

Let's start with the district. Most people are aware of the ten miles square, but forget that states had to cede the land and Congress had to accept it. While both Maryland and Virginia originally ceded land for the district, Virginia asked, and was eventually granted, its land back.

Some people want the District of Columbia to become a state, forgetting not only that it would be a violation of the Constitution to do so, but that the purpose of the district is to be the seat of the government of the United States, not the hometown of the 670,000 who live there today.

As to the legislative power over federal land, that's limited by this clause to specific places; forts, magazines, arsenals, dock-yards, and other needful buildings. Also, all of this

land needs to be purchased with the consent of the legislature of the state. That brings into question not only the Louisiana Purchase, but the acquisition of the entire western U.S., including Alaska and Hawaii.

*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**

If you remember, in the separation of powers Congress legislates and the President executes. Congress has the power to make laws necessary and proper to make sure the powers vested in the United States by the Constitution are put into effect. That means that any legislation putting into effect a power not delegated to the United States is neither necessary nor proper. In fact, according to Alexander Hamilton and multiple Supreme Court opinions, such laws are void and as meaningless as if they had never been passed.

*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. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.*

### **Alexander Hamilton, Federalist Paper #78**

#### **Other Powers**

There are other powers delegated to Congress. For example, in Article II, Section 2, Clause 2 we find:

*He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law:*

### **U.S. Constitution, Article, II, Section 2, Clause 2**

Speaking of the Presidency, there is a rumor that has been going around claiming that Congress certifies the election held within the Electoral College. That is not true.

*the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;*

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

The only role Congress has in the election of the President is to observe the counting of the votes of the electors in each state.

Then there's the Full Faith and Credit Clause:

*Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.*

### **U.S. Constitution, Article IV, Section 1**

Congress determines how the public acts and records of the states are proved and what their affect is.

Congress has the power to admit new states into the union.

*New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.*

#### **U.S. Constitution, Article IV, Section 3, Clause 1**

They also may dispose of and make rules and regulations for the territories of the United States.

*The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.*

#### **U.S. Constitution, Article IV, Section 3, Clause 2**

Lastly, Congress has the power to propose amendments to the Constitution and to determine if their ratification shall be by vote of the legislature or by convention in each state.

*The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, ..., which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;*

#### **U.S. Constitution, Article V**

That's it. While the vast majority of the powers delegated to the United States are delegated to Congress, these are all of them.

#### **Conclusion**

This was not an in-depth look at each of the powers delegated to Congress. For that I suggest you take a look at my book, [The Constitution Study](#). I hope you found this overview of the powers of Congress a good companion to [The Role of Congress](#). I want to thank those who asked for this, and encourage all of you, if you have a question, please ask. You can find the Ask a Question button on [The Constitution Study website](#).

It is my hope that, by better understanding the powers of Congress, we can stop asking our representatives to do what they are not legally allowed to do. After all, how can we expect them to stop violating their oath to support the Constitution if we keep electing them to do so?

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