

The Role of Congress



By Paul Engel

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- Of the three branches of the federal government, most of the powers are delegated to the legislative.
- As the representative branch of government, Congress is also where the representatives of both the people and the states are supposed to enact their will.
- With Congress exercising most of the powers delegated to the United States, it's important that we hold our representatives accountable to their oaths to support the Constitution.

When I started studying the Constitution, I was struck both by how much I had not been taught in school, and how much of what I was taught was wrong. Based on the questions I've been asked and the assertions that have been presented to me, a lack of knowledge about the Constitution is almost universal in America. As I watch news coverage, politicians, pundits, and everyday people make claims about what the different parts of government can do, can't do, or is required to do, it has become obvious that a basic understanding of how the United States government is organized is not only needed, but missing. So I'm starting a three-part series explaining the roles of the three branches of government. We'll start where the Constitution starts, with the legislative branch.

One of the most common misunderstandings about the federal government is that we have three co-equal branches of government. As usual, the best lies have a kernel of truth in them. So while it's true that the federal government has three

branches, they are not equal. Whether you measure by how much space is dedicated to that branch or their list of powers, Congress is by far the most powerful branch of the federal government. Remember the grievance we were all taught was the reason we declared independence.

For imposing Taxes on us without our Consent

[Declaration of Independence](#)

Or, as it's more commonly referred to, "Taxation without representation". This is why so many of the powers delegated to the United States are placed in the hands of the representative branch of government.

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](#)

What's the legislative power that is vested in Congress?

Capable of enacting laws

[Legislative, Webster's 1828 Dictionary](#)

So all the power of enacting laws is vested in Congress, and only Congress. What does that say about all those regulations coming out of the executive branch or the "case law" coming out of the judicial? We'll talk more about those issues as we cover those branches, but sufficient to say that, if it's a "law" that did not come from Congress, then it's not a law.

This Congress is made up of two houses, a Senate and a House of Representatives. Why two houses? That's an interesting story.

Two Houses of Congress

There are two reasons we have a bicameral, or two house

Congress. The first is representation. The Constitution is the product of a number of compromises. One of them had to do with representation between the states. Under the Articles of Confederation we had only a single house in Congress, and that was the original plan for the Constitution as well. It should be no surprise that the larger states wanted representation based on population. This didn't sit too well with the smaller states, since they would have less representation in a Congress formed that way. The smaller states wanted equal representation, but the larger states didn't like that, because then the people in those states would have an outsized impact on federal legislation. Connecticut delegate Roger Sherman proposed a bicameral legislature, with one house apportioned by population and the other apportioned equally between the states.

The other reason for a bicameral legislature is something unique to the United States. The preamble to the Constitution reads:

We the People of the United States, ... do ordain and establish this Constitution for the United States of America.

[U.S. Constitution, Preamble](#)

While the people ordained and established the Constitution, they did not do it directly.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

[U.S. Constitution, Article VII](#)

Only the states could ratify the Constitution and, according to Article V, only the states could amend the document. Which means one of the unique things about the United States is that both the people and the states have a vested interest in the government of the United States, and should have a say in any

legislation. Originally, that was the case, but that changed over a century ago.

The Senate

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

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

Why were members of the Senate appointed by the legislatures of the states? Because their purpose was to represent the states in Congress. That is also why each state gets the same number of Senators, so the states would have equal representation in the Senate. That was, until 1913.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote.

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

In 1913 the states ratified the Seventeenth Amendment, which changed the representation in Congress. Now the Senators are no longer appointed by their state's legislature, but elected by the people. This means the states no longer have any say in federal legislation, and the Senate is now, effectively, just another House of Representatives.

The House of Representatives

The House of Representatives on the other hand, was always meant to represent the people.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States,

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

Not only have the members of the House always been chosen by

the people, they are apportioned to the states based on their population.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers,

U.S. Constitution, Article I, Section 2, Clause 3

So we started out with this beautiful balance of representation: Each of the two Senators equally represented their state and each member of the House was to represent no more than 30,000 people.

The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative;

U.S. Constitution, Article I, Section 2, Clause 3

While the change in the state's representation was changed by the Seventeenth Amendment, the change in the number of people a member of the House represents comes from nothing more than the neglect of Congress.

Differing Powers

Another way we can see the different roles the two houses of Congress have is by looking at how the powers are shared between them.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

U.S. Constitution, Article I, Section 7, Clause 1

As often as we like to complain about the IRS or that the President raises or lowers taxes, it's actually the House that drafts the bill to do so. Compare that with the powers

delegated to the Senate.

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](#)

While the decision about taxes starts in the House, treaties and appointments are made with the advice and consent of the Senate. This is often misrepresented as “The President nominates and the Senate confirms”, but that is not what the Constitution says. We’ll talk more about this in the article about the President, but for now please remember that the Senate is supposed to work with the President on these things.

The other difference between the powers of the two houses has to do with impeachment.

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

[U.S. Constitution, Article I, Section 2, Clause 5](#)

Only the representatives of the people have the power to impeach, or accuse, a member of conduct worthy of removal from office. Once the House has impeached someone, it’s up to the Senate to try the impeachment.

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

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

So it takes the representatives of both the people and the states to remove someone from office. The members of Congress

are also privileged from arrest in certain circumstances.

The Senators and Representatives ... shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Article I, Section 6, Clause 1

In general, a member of Congress cannot be arrested while going to, returning from, or attending a session of Congress. There are exceptions made for treason, a felony, or breach of the peace. And as much as some may want to, nothing they say in either house can be held against them.

Conclusion

I don't have the room to review all of the powers delegated to Congress in Article I, Section 8, but it is a long list with 17 separate clauses. If you would like me to do a separate article on those powers, let me know.

The reason we have three separate branches in the government of the United States is for separation of powers. The Framers of the Constitution understood that power concentrated in the hands of a few was dangerous. It also explains why when one branch of government infringes on the powers of another branch, it's a serious danger to the republic. There are situations where Congress has claimed the investigative power of the executive branch. That's not to say Congress has no investigative power, but only when it's for a legislative purpose. More often than not though, what Congress has done over the decades is hand over their legislative power to the executive. They do this by making vague laws, then claiming to empower those in the executive branch to fill in the details with regulations. However, the Constitution does not give Congress the power to delegate its duties.

The members of Congress are the employees of the people, and it's about time we remind both the Congressmen and the people of that fact. As the representative branch of government, it's the duty of Congress to represent the people and the states, not just their donors or advocacy groups. If we wish to have a functioning republic, it's up to We the People to not only learn that lesson, but to hold our elected employees accountable to it.

I hope you found this brief discussion of the role of Congress helpful. I look forward to the articles on the President and the Judiciary in the next few weeks.

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