

Main Idea

The Constitution gives Congress many expressed powers, and it implies some others. The Constitution also places limits on the powers of Congress.

Reading Focus

1. What types of powers does Congress have?
2. What are the expressed powers of Congress?
3. What are the implied powers of Congress?
4. What are some of Congress's nonlegislative powers?
5. What are some of the limits on the powers of Congress?
6. How has the power of Congress changed during U.S. history?

Key Terms

necessary and proper clause
indirect tax
direct tax
deficit
commerce clause
subpoenas
writ of habeas corpus
bill of attainder
ex post facto laws

Defining the Powers of Congress (p. 128)

The Constitution establishes the structure of Congress and lists its powers. It also includes language suggesting additional powers.

- **Expressed Powers** Article I, Section 8, lists 19 specific powers of Congress, including coining money.
- **Implied Powers** Congress's implied powers come from Article I, Section 8, Clause 18, which gives Congress the power to “make all Laws which shall be necessary and proper for carrying into execution the [expressed] Powers and all other Powers vested [given] by this Constitution.” This clause is known as the elastic clause or the **necessary and proper clause**.
- **Inherent Powers** Those powers that all governments of independent nations

have are known as inherent powers because they do not have to be spelled out. These include the power to control borders. Inherent powers are most frequently claimed by the president, but Congress has at times attempted to claim certain inherent powers.

- **Powers Denied Congress** The Framers placed limits on congressional powers in Article I, Section 9.

Reading Check Contrasting What is the difference between an expressed power and an implied power?

Expressed Powers of Congress (pp. 128–131)

The expressed powers fall into three categories. There are powers relating to government finance and revenue, to the regulation of commerce, and to national defense. There are also powers that address

issues of national importance, such as coining money.

Financing Powers The Constitution gives Congress the power to raise money to run the government in two ways—levying, or imposing, taxes and borrowing money. For much of the nation’s history, tax revenue came from tariffs—taxes on goods imported from another country. Another important source of revenue was the indirect tax. An **indirect tax** is a tax levied on one person but passed on to another for payment to the government. Today the federal government collects indirect taxes for products such as gasoline, liquor, and airline tickets. The seller includes the tax in the price of the product.

The Framers of the Constitution limited the use of the **direct tax**, or a tax an individual pays directly to the government. In 1895 the Supreme Court struck down a federal income tax law as unconstitutional, but the Sixteenth Amendment was passed in 1913 to give Congress the power to levy an income tax.

The Constitution also gives Congress the power to borrow money. This power allows the government to function when there is not enough expected revenue to cover expenses—a budget **deficit**. Deficits can occur in times of emergency but in recent decades have occurred even in good economic times.

Commerce Power The Constitution gives the federal government the right to regulate interstate commerce, or economic activity that takes place across state lines. Congress’s commerce power is contained in Article I, Section 8, Clause 3, of the Constitution, known as the **commerce clause**. After numerous Supreme Court cases, the commerce clause became the single most important source of federal government power.

An early case, *Gibbons v. Ogden* (1824), helped define the commerce clause, when the Court ruled that only Congress has the right to regulate interstate commerce. Congress has passed many laws under the commerce clause that are seemingly unrelated to commerce. One example involved civil rights legislation that outlawed segregation in certain types of public establishments.

Defense-Related Powers The Constitution splits responsibility for national defense and foreign policy between Congress and the president. The Framers reserved for Congress the power to declare war. However, the president frequently sends troops into battle without an official declaration from Congress.

In 1973 Congress passed the War Powers Resolution. According to the resolution, Congress must be told of the president’s decision to send troops into possible conflict. Congress can then either officially declare war or otherwise authorize the use of the troops. The president must end military action within 60 to 90 days if Congress does not authorize their use. Some say that the act has increased Congress’s involvement in the war-making power of the government.

The Constitution gives Congress the power to create an army and a navy and to provide for their funding (Article I, Section 8, Clauses 12 and 13). Congress also shares power with the states over the maintenance of the militia—today known as the National Guard. Congress has given the president the power to call out the National Guard in emergencies.

Other Expressed Powers Many of the other expressed powers were focused on the national economy or protecting national sovereignty. These were policy areas the Framers believed belonged to the national government. Congress can coin money, create a postal system, write copyright and

patent laws, and standardize weights and measures. It can also write laws on bankruptcy, establish rules on naturalization—the process by which an immigrant to this country becomes a citizen, and establish federal courts. Finally, Congress has the power to make congressional election laws, but it leaves the details up to the states.

Reading Check Summarizing What are some of Congress’s expressed powers?

Implied Powers of Congress (pp. 133–134)

The Framers ended the list of congressional powers with the necessary and proper clause to allow Congress to take actions needed to carry out the expressed powers. The interpretation of this clause has created much controversy in U.S. history.

Loose and Strict Constructionists

Strict constructionists argue that Congress should exercise only those powers clearly granted to it in the Constitution. In the early days of the republic, these people were known as Antifederalists because they wanted to preserve power for the states. Loose constructionists, known as Federalists, believed if something were “necessary and proper” to the exercise of an expressed power, then Congress could do it. Thomas Jefferson was an Antifederalist and Alexander Hamilton was a Federalist. As advisers to President George Washington in 1791, the two fought bitterly over the issue.

One of their points of conflict was the subject of a national bank. Hamilton thought a bank was a necessary and proper tool for regulating commerce. Jefferson believed that the Constitution said nothing about Congress creating a bank. Hamilton won the debate, and the bank was created. After its charter ended in 1811, a new bank was created in 1814. In 1816 Maryland placed a tax on the bank’s activities. Maryland’s

actions led to a Supreme Court case—*McCulloch v. Maryland* (1819). In this case, the Court ruled that creating a bank was indeed within congressional power.

The Necessary and Proper Clause Today

In general the Court’s view has remained the one that defines American government today. The belief in implied powers has been an important source of federal authority. Congress has used implied powers to create such programs as Social Security. Because the necessary and proper clause has led to the stretching of congressional power, it has sometimes been called the elastic clause. How far these powers should be stretched is frequently debated and challenged in court.

Reading Check Identifying Cause and Effect

How did the Supreme Court’s decision in *McCulloch v. Maryland* lead to the extension of congressional power?

Nonlegislative Powers (pp. 134–135)

Congress has a variety of powers that are not directly related to the making of laws. Some of these are held by both houses, some only by the House or the Senate.

Powers Common to Both Houses

Both houses of Congress share the power to propose amendments to the Constitution. This requires a two-thirds majority vote of both houses. Congress can also call a convention for proposing an amendment. Three-fourths of the states must ratify the amendment.

Both houses of Congress have the power to conduct investigations and oversee their programs and the activities of other branches. To do this work, members of Congress have the power to call witnesses. It can issue **subpoenas**, which are legal documents that require a person to testify in a certain matter.

Both houses of Congress also have impeachment powers. In addition, if the vice presidency is left vacant, the president can appoint a replacement, who must be confirmed by a majority vote in both houses of Congress.

Powers of the House The House has the sole power to choose the president if no candidate gets a majority of votes in the electoral college.

The Twelfth Amendment determines the process. It was passed after the election of 1800, in which Democratic-Republicans Thomas Jefferson and Aaron Burr tied as the top vote-getters in the electoral college. Their supporters had cast one of each their two votes for each man, so Jefferson and Burr were tied. The election then went to the House, which was controlled by the Federalists. The Federalists preferred Jefferson, so they chose him. The Twelfth Amendment solved the problem—it created two separate electoral college votes, one for president and one for vice president. The House kept the power to choose the president if there were a tie in the electoral college vote.

Powers of the Senate The Twelfth Amendment gave the Senate the power to choose a vice president if no candidate gets a majority of the electoral college vote. Each senator takes part in the vote. The Senate also has the job of providing advice and consent on presidential appointments and approves treaties made with foreign governments.

Reading Check Summarizing What powers are held by both houses?

Limits on the Powers of Congress (p. 135)

The separation of powers is the strongest check on congressional power. Judicial review allows the Supreme Court to rule a

congressional law unconstitutional. The president can veto a law made by Congress.

Article I, Section 9, of the Constitution specifically denies Congress certain powers. Article I, Section 9, Clause 2, bars Congress from suspending the **writ of habeas corpus**, a court order that forces the police to present a person in court to face charges, except in cases of rebellion or invasion. The writ prevents a government from holding people in secret or without a charge.

Congress cannot pass a **bill of attainder**—a law that punishes a person without a trial. **Ex post facto laws**, which criminalize actions that took place in the past and that were legal at that time, are likewise forbidden by the Constitution.

Reading Check Identifying

Supporting Details What are some of the limitations on the powers of Congress?

The Changing Power of Congress (p. 136)

How Congress acts and the range of its powers have grown greatly since the days of Hamilton and Jefferson. As conditions here and overseas have changed, Congress has expanded the role of the federal government.

For example, in the 1930s President Franklin Roosevelt’s New Deal programs, passed in response to the Great Depression greatly expanded the role of government in people’s everyday lives. After World War II, Congress created new military and intelligence-gathering bodies to respond to the new U.S. status as a world power. In later years, Congress also created new agencies to oversee new programs. These agencies became part of the executive branch but are still monitored by Congress.

Reading Check Identifying the Main

Idea What has happened to the powers of Congress over time?

SECTION 2 ASSESSMENT

1. **Describe** What are the main powers given to Congress?
2. **Describe** What is an indirect tax?
3. **Identify** What is the key constitutional clause that lies behind most of Congress's implied powers?
4. **Describe** What are some of the nonlegislative powers of the House? of the Senate?
5. **Recall** Why did the nation's founders want to limit the powers of Congress?
6. **Identify** What are some areas of American life that Congress is involved in today that it was not at the time of the writing of the Constitution?