

Sec. 1—The Congress

Legislative Powers

to the constitutional separation of governmental powers; and that for the purpose of determining the essential character of the inquiry recourse must be had to the resolution or order under which it is made.”¹⁹⁷

In practice, much of the litigated dispute has been about the reach of the power to inquire into the activities of private citizens. Inquiry into the administration of laws and departmental corruption, while of substantial political consequence, has given rise to fewer judicial precedents.

Investigations of Conduct of Executive Department

For many years the investigating function of Congress was limited to inquiries into the administration of the Executive Department or of instrumentalities of the government. Until the administration of Andrew Jackson, this power was not seriously challenged.¹⁹⁸ During a controversy over renewal of the charter of the Bank of the United States, John Quincy Adams contended that an unlimited inquiry into the operations of the bank would be beyond the power of the House.¹⁹⁹ Four years later the legislative power of investigation was challenged by the President. A committee appointed by the House of Representatives “with power to send for persons and papers, and with instructions to inquire into the condition of the various executive departments, the ability and integrity with which they have been conducted, . . . ”²⁰⁰ called upon the President and the heads of departments for lists of persons appointed without the consent of the Senate and the amounts paid to them. Resentful of this attempt “to invade the just rights of the Executive Departments,” the President refused to comply and the majority of the committee acquiesced.²⁰¹

Nevertheless, congressional investigations of Executive Departments have continued to the present day. Shortly before the Civil War, contempt proceedings against a witness who refused to testify in an investigation of John Brown’s raid upon the arsenal at Harper’s Ferry occasioned a thorough consideration by the Senate of the basis of this power. After a protracted debate, which cut sharply across sectional and party lines, the Senate voted overwhelmingly

¹⁹⁷ *McGrain v. Daugherty*, 273 U.S. 135, 170 (1927). The internal quotations are from *Kilbourn v. Thompson*, 103 U.S. 168, 190, 193 (1881).

¹⁹⁸ In 1800, Secretary of the Treasury, Oliver Wolcott, Jr., addressed a letter to the House of Representatives advising the body of his resignation from office and inviting an investigation of his office. Such an inquiry was made. 10 ANNALS OF CONGRESS 786–788 (1800).

¹⁹⁹ 8 CONG. DEB. 2160 (1832).

²⁰⁰ 13 CONG. DEB. 1057–1067 (1836).

²⁰¹ H.R. REP. NO. 194, 24th Congress, 2d sess., 1, 12, 31 (1837).