

U.S. Congress

Historical and Constitutional Origins

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1 The Article I Institution

1.1 Section-by-Section Outline

1. Vesting legislative power
2. Apportionment; qualifications; impeachment (HOUSE)
3. Apportionment; qualifications; trial of impeachment (SENATE)
4. Elections by states
5. Rules (seating, chamber rules, records, adjournment)
6. Compensation; arrest; holding single office
7. Origination, passage of bills
8. Expressed powers
9. Restrictions on Congress
10. Restrictions on States

1.2 Important Clauses

Commerce clause

*[The Congress shall have Power . . .] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . .*¹

¹Visit the following links for more on the Commerce Clause, the Meaning of “Commerce”, the Meaning of “Among the Several States”, the Meaning of “Regulate”, various other tidbits.

Elastic clause (or, the necessary and proper clause)

*[The Congress shall have 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.*²

1.3 Relevant Amendments

- Amendments 1-10: The Bill of Rights
- 14th Amendment: Apportionment; Legislation to enforce due process, equal protection
- 17th Amendment: Direct election of senators
- 27th Amendment: Restriction on compensation

1.4 Types of Powers

Expressed powers are those powers that are specifically identified in the Constitution (see Article I, Section 8). **Implied powers** are those “necessary to effectuate powers enumerated in the Constitution”. You can read more about expressed and implied powers here (as well as resulting and inherent, though we won’t discuss those).

²Visit the following links for more on the Elastic Clause, Historical Background, Early Doctrine, Doctrinal Development, Modern Doctrine, and the Meaning of “Proper”.

2 Contrast: The Articles of Confederation

Issue	Articles of Confederation	US Constitution
General structure	Unicameral; 1 vote per state	Bicameral; 1 vote per member
Apportionment	Each state had 2-7 members; one 1 vote per state	House membership based on population per state; Senate membership was equally apportioned to states
Terms	One year term; 3 term limit	House term is 2 years; Senate term is 6 years; No term limits
Mode of election	Elected by, paid by, and recallable by the state legislature	House is popularly elected; Senate is appointed by state legislature; paid by US Treasury; no recall; both chambers judge their own elections
Internal structure	Not specified	Both given latitude to write/enforce rules; arrest and compel members
Legislative powers	Approve foreign treaties by states; declare war; recommend taxes to states; adjudicate interstate disputes; regulate mail between states; regulate coinage, weights, and measures; raise/equip army and navy	Lay and collect taxes ratify treaties; confirm exec. nominees; regulate interstate and foreign commerce; declare war; provide post offices and roads; regulate coinage, weights, and measures; raise/equip army and navy provide for inferior federal courts; control federal district