

What was the conflict over the legislative power of the national government?

Purpose of Lesson

One of the major problems facing the Framers was how much power to give to the national government. In this lesson, you will learn about the debates over this problem and how agreement was reached on the powers of Congress—the legislative branch. When you finish this lesson, you should be able to explain how these debates affected the way the Constitution was written. The next lesson will discuss the delegation of power to the executive and judicial branches.

Terms to know

enumerated powers
general welfare clause
necessary and proper clause

How much power should be given to Congress?

The main purpose of the Framers was to create a national government stronger than the one established by the Articles of Confederation. The Framers thought the Articles did not give Congress enough power to deal with trade and economic problems. More importantly, they thought Congress was not strong enough to control the state governments. The Framers were convinced that the state legislatures were passing laws violating the property rights of many citizens.

The basic problem was that under the Articles of Confederation, Congress did not have the power to act directly on the people. If it passed laws, it had to depend on the states to enforce them. Congress could not raise taxes to support itself; it could only ask the states for money. Many states ignored congressional requests for funds.

Most of the Framers agreed on the need for a stronger national government. But there were still some disagreements. The Framers' experience with the government of Great Britain had left many of them very suspicious of national power.

The compromises over representation and slavery greatly reduced resistance to increasing the power of the national government. However, the delegates still disagreed over how much power to give to each of the three branches of the national government. The problem was to create a national government that was

- strong enough to protect the rights of the people (especially property rights), and yet
- not so strong that it would endanger those rights.

How should the Constitution be written to give power to Congress?

The Framers could have written the Constitution in general language. James

Madison argued that the new Congress should have all the powers that it had under the Articles of Confederation. In addition, he wanted Congress to make all laws which the state legislatures were unable to make. He also said Congress should be given the power to veto laws made by state legislatures. These recommendations would have given the national government a large amount of power over the states and the people. Some delegates agreed with Madison.

Many of the Framers disagreed with him. They saw a problem with general language in the Constitution. General language could be interpreted to give the government the power to do almost anything it wanted to do. It does not provide a good way to limit the powers of government. They also opposed giving Congress the power to veto laws made by state legislatures. Under British rule, royal governors and Parliament had vetoed acts of the colonial legislatures. The Framers did not want to give this power to Congress.

One alternative was to use very specific language in the Constitution. This would be to write down exactly what the Congress could and could not do. The problem with such specific language was that it might leave out important powers needed by Congress to deal with unforeseen situations.

The Framers' solution was to use both general and specific language. The Constitution would give specific powers to Congress and place limitations on these powers. It would also include two general clauses which would give Congress the power to deal with unexpected situations.

Specific powers of Congress

Article I deals with the powers of Congress. It takes up more than half the Constitution—which shows how important it was to the Framers. Article I, section 8 includes seventeen specific, or enumerated powers. Some of these powers are the right of Congress:

- to impose and collect taxes and duties
- to borrow money
- to regulate commerce with foreign nations and among the states
- to coin money (create a national currency)
- to establish post offices
- to declare war and to raise an army and navy

General powers of Congress

Article I, section 8 also includes two important general statements of power given to Congress. These give Congress the power to

- "... provide for the common defense and general welfare of the United States....", and
- make all laws which shall be "necessary and proper" for carrying out the other powers that have been given to Congress. For example, the Constitution gives Congress the power to maintain an army and navy. The necessary and proper clause gives it the power to pass those laws that are necessary to do this. These might include the power to pass laws requiring citizens to serve in the armed forces.

Do this ↓

Your committee wants to introduce several bills in Congress. The following are the purposes of some bills you are considering. Review the general and specific powers granted to Congress. For each bill, make an argument that Article I, section 8 does or does not give Congress the power to pass it. Then develop answers for the questions that follow.

- A bill that allows the United States Treasury to borrow money by selling savings bonds.
 - A bill that allows the executive branch to draft citizens to serve in the armed forces.
 - A bill that allows the executive branch to conduct a space exploration program.
 - A bill that allows the executive branch to fine industries that pollute the air.
 - A bill that requires the executive branch to use tax money to provide medical assistance to older citizens who cannot pay for it themselves.
1. Consider the powers given Congress by Article I, section 8. Create three bills that you think Congress could not pass under that Article. Explain why you think so.
 2. Explain what problems might arise because of the way Article I, section 8 is written.

What does Article I do?

Article I strengthened the powers of Congress. If you review Article I you will see it lists the powers of Congress and limits on those powers. In this way, the Framers tried to balance the need for a strong government with the need to limit its powers. Those limits were included to make sure that the government did not become a threat to the people's rights.

Article I, section 9 limits the power of Congress. It lists things Congress cannot do. For example, Congress is not allowed to create a class of nobles. Members of the government cannot accept titles of nobility from foreign governments. This shows how important the Framers thought it was for republican government to treat all citizens equally.

Article I, section 10 limits the powers of state governments. It lists things state governments cannot do. For example, states cannot tax the import or export of goods. They cannot declare and carry out a war. This section increased the power of the national government in relation to the state governments.

Reviewing and using the lesson

1. What experiences of the Framers might have influenced their ideas about how much power they should give the national government? Give examples of some of these experiences.
2. Why do you think the Framers devoted so much of the Constitution to the legislative branch?
3. Read Article I, section 9 of the Constitution. What do you think was the purpose of each of the limitations listed?