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Les pouvoirs de la Constitution américaine

Adoptée le 17 septembre 1787, la Constitution des États-Unis établit très précisément dès son article 1 les pouvoirs du Congrès en vue de la gestion du pays, et précise les limites de ce pouvoir. Le rôle du Congrès est clairement défini. Il faut distinguer les pouvoirs explicites, tels que ceux indiqués dans la Constitution, et les pouvoirs implicites qui sont apparus avec le temps. Le Congrès peut confirmer ou infirmer les nominations du Président. De nombreuses commissions sont créées et c'est au Congrès qu'appartient le pouvoir de gérer les recettes et les dépenses. La commission dite des « méthodes et des moyens » a en charge l'établissement de l'autorisation des dépenses ainsi que celui de leur financement. Le commerce et la politique étrangère sont également entre les mains du Congrès, en particulier c'est lui qui doit voter une déclaration de guerre. Toutefois le Président peut engager des troupes sans demander préalablement l'aval du Congrès. Depuis 1973, le Congrès s'est assuré d'être informé de l'utilisation de l'armée en limitant à 60 jours la possibilité d'envoyer des troupes au combat. Le rôle le plus important des deux chambres est la désignation du Président et du Vice-président en cas d'égalité lors du vote des grands électeurs. Le Sénat vote pour désigner le Président et la Chambre des représentants choisit le Vice-président. C'est le Sénat qui ratifie les traités entre les USA et d'autres pays, et le Congrès qui peut proposer des amendements à la Constitution. Parmi les pouvoirs implicites, le Congrès est doté de pouvoirs d'enquêtes, du contrôle de la bonne application des lois qui ont été votées.

Reading the American Constitution reveals that its Framers¹ intended Congress to have the central role in the management of the nation. Indeed, the legislative powers of Congress take central place in Article I, Section 8, Clauses 1 to 18. Each of the first 17 clauses states very clearly what the powers of Congress are, and Clause 18 gives it the power to do whatever is “necessary and proper” to run the country. Yet, Clause 18 does not allow Congress to do whatever it wants; already Article I, Section 9, stipulates what Congress cannot do: habeas corpus² cannot be suspended, no taxes can be laid on articles exported from any state, no money can be drawn from the treasury except after appropriation by the law. As regards justice, the Constitution bans the possibility for Congress to pass bills of attainder, thus preventing anyone from being put in jail without a trial. It was considered important enough to be mentioned twice: in Article 1 Section 9, paragraph 3 which applies to the country as a whole, and again in Section 10, paragraph 1 which applies it to each state. These two clauses are intended to reinforce the separation of powers by forbidding the legislature to perform judicial or executive functions both at the national and at the State levels. It is also impossible for Congress to pass *ex post facto* laws, that is to say laws punishing acts that were legal when they were committed.

Among the powers given to Congress is the non-legislative power of confirming or rejecting presidential appointments. Almost all Presidents have seen their candidate for a position of Secretary rejected for reasons ranging from drunkenness, womanizing, and ties with defence contractors, to having employed an illegal immigrant, or forgotten to pay certain taxes.

One of the most important powers of Congress is what is known as “the power of the purse”. No government administration can spend money without prior approval of Congress. Congress – especially the House of Representatives – can tax and spend public money for the national government. Discussions among the Delegates at the Constitutional Convention were arduous, as the more populous States insisted on having a greater voice in tax policy than the smaller States. The colonists also rejected giving the Senate the right to tax and spend. Before the War of Independence, England had often levied taxes on the American colonies without the American pioneers having a say. Hence the famous cry “No taxation without representation”. Benjamin Franklin’s views were that “money affairs should be confined to the immediate representatives of the people”. The Framers unanimously decided that Congress being the representative of the people should be in control of public funds and opposed letting the President or any agency have a say in the matter.

The oldest committee of the United States Congress is the Committee on Ways and Means which is in charge of revenue, appropriation and banking. At the beginning, it was in charge of examining the priorities as well as funding them; but legislating and funding were always kept separate. A law was passed to establish the priorities, and another appropriated the money to fund them. This is still the case today: the various Committees establish the authorization acts, and the Appropriation Committees of the Senate and the House fund those programs later. After the Civil War³ and the huge debt it caused, taxing and spending were separated. Several reforms to the appropriation process have taken place over the past century, and today the president must submit his budget to Congress by the first Monday in February every year.

Among the various powers granted to Congress by the Constitution is the power of borrowing money to pay for the cost of government. The government can sell securities in the form of savings bonds or Treasury notes that pay the lender an interest. Congress also has the power to deal with bankruptcies, though such matters are generally left to the states, and to federal courts in case of a trial.

Congress can also regulate commerce both with foreign countries and interstate. It decided that any company that engages in interstate commerce must pay their employees a minimum wage, thus regulating business conditions everywhere in the country. Congress used the commerce clause to pass the Civil Rights Act in 1964, a law which prohibited discrimination in places receiving the public such as restaurants and hotels, and banned job discrimination.

Foreign policy is also in the hands of Congress in Article I, Section 8, Clause 11. Apart from the power to approve treaties, to maintain an army and navy, to regulate international commerce, it also has the power to declare war. Actually, Congress declared war only five times at the request of the President: in 1812 against Great Britain, 1848 Mexico, 1898 Spain, 1917 Germany and its allies, 1941 Japan and Germany. Numerous other conflicts in which the American army took part originated from a decision by the President and were authorized by Congress. In 1819, President James Munroe sent his navy to apprehend slave traders along the coasts of Africa, in 1918, Woodrow Wilson sent military help to Russia to prevent Germany from capturing weapons and ammunition as the First World War had not yet ended. Both conflicts in Korea (1950-1953) and Vietnam (1964-1973) were fought without declarations of war. After the withdrawal of US troops from Vietnam, Congress

passed the War Powers Resolution in 1973, an act that specifies the number of troops the president can deploy and for how long; it also forbids the president to commit forces to combat for more than 60 days without congressional notification within 48 hours. In numerous instances, the president has used his constitutional power to commit troops without the approval of Congress. It was the case in Cambodia (1975), Iran (1980), Lebanon (1982), Grenada (1983), Libya (1986), the Persian Gulf (1987), Panama (1989), Iraq (1991-2004), Somalia (1993), Haiti (1994), the Balkans (1995), Yugoslavia (1999) and Afghanistan (2001-2004). More recently, in 2011, lawmakers criticized President Obama for attacking the Libyan forces without congressional permission; he explained it was for humanitarian reasons. Some of these military interventions were very short and Congress was informed of the attack after it had started.

Among the other powers that the Constitution gives to Congress are those of governing federal property such as national parks, historic sites and public lands. It also gives it the power to establish post offices and federal courts.

Apart from these various legislative powers for which both the House of Representatives and the Senate share the same role, they both have non-legislative powers, sometimes giving them different functions.

The most important of those non-legislative powers is the choice of a president and vice-president. After a presidential election which takes place on the first Tuesday after the first Monday of November, if no candidate has the majority when the Electoral College votes are counted, the House will choose the president and the Senate the vice-president. To choose the president, each State's House delegation has one vote and an absolute majority is needed to be declared the winner. The Senate, by majority vote, chooses the vice-president from the two candidates who are the winner and the runner-up. Such a situation has already happened: in 1800, when the Electoral College vote resulted in a tie, the House chose Thomas Jefferson; in 1824, it chose John Quincy Adams as president, while the Senate chose John Calhoun as vice-president.

The Senate also enjoys the exclusive power of ratification of treaties between the United States and other nations as expressed in Article II, Section 2 of the Constitution. Two thirds of the Senators present must vote in favour of the treaty, which did not happen in 1980 for the Strategic Arms Limitation Treaty (SALT II). Presidents now use their executive privilege to negotiate directly with the heads of foreign States, as there is no need for Senate approval in such cases.

The power of amendment is also a specificity of Congress. For an amendment to be examined, it must be proposed by a two-thirds vote of both houses or by a convention of two thirds of the states (which has never happened so far). So far, there have been 27 amendments, all of which have originated in Congress. When an amendment is proposed to the states for ratification, they have a period of seven years to ratify it. Only 6 failed to be ratified by state legislatures. In March 1861, a proposed amendment was accepted by only two states; it would have specified that "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labour or service by the laws of said State". More recently three amendments were not ratified: in June 1924, a child labour amendment which would have prohibited the labour of persons under 18 years of age, in 1982, the Equal Rights Amendment which was

not accepted in spite of an extended period of ratification. The third one concerned the proposal of considering the District of Columbia, seat of the Federal administration, as a state. Many residents want statehood because they believe that they have been denied the same representation in Congress and sovereignty of local affairs as the 50 U.S. states. A bill to that effect was passed in April 2021, and still has to pass through the Senate before being approved by the president. At present, Washington, DC. only has a delegate in the House of Representatives who can sit on committees and vote in them but is not allowed to vote on bills that are considered by the full House. At present, the people living in the District of Columbia have only taken part in the presidential elections and sent three electors to the electoral college since the twenty-third amendment which was ratified in 1961.

Apart from the powers expressed in the Constitution or those that are simply implied, Congress has developed additional powers which are the power to investigate and the power of legislative oversight.

Any committee may proceed to an investigation that will perhaps lead it to travel around the country. A committee has the power to subpoena witnesses and sometimes make them testify under oath. After accusations of rough tactics by the Inland Revenue Service (IRS), the Senate Finance Committee collected testimonies which revealed that the promotion of agents could be linked to the number of seizures or levies they initiated. This behaviour resulted in a reform of the IRS. The Ethics Committees dealt with accusations of improper behaviour which led to the indictment of two Democratic members of the House and one Republican Senator. After the Watergate Affair⁴, a Senate select committee on Presidential Campaign Activities investigated the accusations against President Nixon and called for his impeachment and resignation. The Senate investigated property investments in the Whitewater Development Corporation when he was governor of Arkansas and concluded it had been a highly improper conduct. Such investigations do not target only political figures or the functioning of the numerous departments that help run the country: shortly after gaining control of both chambers in 2006, the Democrats started investigating the use of steroids in professional baseball.

The power of legislative oversight consists in reviewing the effectiveness of the laws passed by Congress. In 1970, Congress adopted the Legislative Reorganisation Act which states “Each standing committee shall review and study, on a continuing basis, the application, administration and execution of laws in areas of its responsibility”.

The system of checks and balances⁵ enables Congress and the president to counteract each other. But conflicts may occur because the time tables are different. When a president takes office he has about three years to launch the programs he wishes to apply; the fourth year is generally devoted to his re-election campaign. In the best of cases he has eight years to carry out his program. Senators and Representatives are not limited to two four-year mandates and can be re-elected many times. Senators enjoy a six-year mandate before running for re-election; Representatives only have two years, so they may be more interested in passing bills that favour their constituency.

Notes

1. Framers : désigne les 55 personnalités politiques qui participèrent à l'élaboration de la Constitution en 1787.
2. Habeas corpus : loi datant de 1679 en Grande-Bretagne, adoptée aux États-Unis, qui oblige à présenter à un magistrat tout citoyen arrêté et à justifier des motifs de l'arrestation.
3. Civil War : guerre qui se déroula entre 1861 et 1865 entre les armées du Nord des États-Unis et les armées sudistes de la Confédération. Également connue sous le nom de guerre de Sécession.
4. Watergate affair : scandale politique qui débuta en juin 1972 quand cinq hommes furent arrêtés alors qu'ils plaçaient des micros dans les locaux du Parti démocrate. Il s'acheva en août 1974 par la démission du président Richard Nixon.
5. Checks and balances : système de contrôle réciproque de chacune des 3 composantes de l'administration américaine par les 2 autres afin de limiter l'influence respective des pouvoirs exécutif, législatif et judiciaire.

Vocabulary

Vocabulaire du texte

<i>a clause</i>	une clause, un article
<i>a bill of attainder</i>	condamnation sans procès
<i>an appointment</i>	une nomination
<i>drunkenness</i>	l'ivresse
<i>a womanizer</i>	coureur de jupons
<i>a tie</i>	un lien
<i>a contractor</i>	un entrepreneur
<i>a purse</i>	un porte-monnaie
<i>arduous</i>	difficile
<i>to levy taxes</i>	lever un impôt
<i>appropriation</i>	la dotation
<i>securities</i>	valeurs mobilières, titres
<i>a savings bond</i>	un bon du trésor
<i>a lender</i>	un prêteur
<i>a slave trader</i>	un marchand d'esclaves
<i>to commit forces</i>	engager des troupes

<i>a runner-up</i>	un deuxième finaliste, le deuxième
<i>to result in a tie</i>	obtenir le même nombre de voix, être à égalité
<i>statehood</i>	un État
<i>to imply</i>	impliquer
<i>to subpoena witnesses</i>	astreindre des témoins à comparaître
<i>under oath</i>	sous serment
<i>a seizure</i>	une confiscation
<i>levies</i>	recouvrements, impôts
<i>an impeachment</i>	une mise en accusation
<i>a resignation</i>	une démission
<i>legislative oversight</i>	le contrôle législatif
<i>to counteract</i>	s'opposer à
<i>a constituency</i>	une circonscription électorale

Le fédéralisme

Deux types de structures administratives existent pour l'administration d'un pays. Il y a des États unitaires où les décisions sont prises par une administration centrale, pour être ensuite transmises dans les régions ou les départements ou comtés en vue de leur application : c'est le cas de la France. On trouve également les structures fédérales dans lesquelles la gestion du pays se déroule au niveau d'un pouvoir central pour certaines décisions, et au niveau de chaque région ou État qui a la responsabilité de décisions qui affectent les habitants de cet État : c'est le cas des États-Unis d'Amérique. Entre la fin de la guerre d'Indépendance et la mise en place de la Constitution, d'après discussions eurent lieu lors du Congrès Continental qui finalement opta pour une structure fédérale. La Constitution énuméra dans son article I, section 8, l'ensemble des pouvoirs réservés au pouvoir fédéral. Lors du vote du Bill of Rights en 1789, le 10^e amendement précisa que les droits non attribués à l'État fédéral étaient dévolus à chaque État. Certains droits appartiennent aussi bien à l'administration fédérale qu'à celle de chaque État : la levée d'impôts, la protection des droits des individus et la répression des délinquants. La question du contrôle des armes aux USA revient régulièrement mais comme la Constitution, dans son deuxième amendement, garantit à chaque individu le droit de disposer d'une arme, même le président ne peut faire grand-chose. Seuls les États peuvent individuellement voter des lois, mais elles varient d'un État à un autre. Il en est de même pour la lutte contre la drogue, certains États ayant voté des lois très favorables alors que la loi fédérale prévoit de lourdes sanctions.

Federalism may be defined as a system of government based on a central government sharing its legislative, judiciary and administrative competencies with the governments of the individual states. In most European countries, political authority rests in the hands of a central government whose powers are determined by a constitution, and which can limit the powers of regions. In a unitary state, the central government makes laws which are then transferred to the regions which are then made to implement the decisions. It is the case in France where the decisions voted in Paris are transferred to the "préfet" who is appointed by the central government and is the representative of the President of the Republic in each of the "départements". Within Europe, several countries have adopted a federal structure: Switzerland, Germany, Belgium, Austria, and Spain. The United Kingdom has decentralized the power of the Parliament in Westminster by creating devolved parliaments in Scotland, Wales and Northern Ireland. In the United States, each of the 50 states has its own unitary government with bicameral legislatures (except Nebraska, which has a unicameral legislature).

After the first thirteen colonies declared their independence from England in 1776, their delegates drafted a compact called "Articles of Confederations and Perpetual Union" which united them as a nation. It created a loose association among the states, set up a federal government with very little power and which was at the mercy of the will of state legislatures. To quote George Washington, the thirteen states were only united by a "rope of sand which shall be easily broken".

Aware of the danger caused by the weakness of the Confederation, George Washington pushed for a meeting of the delegates to alter the Articles. In 1787, the Continental Congress called for the States to send delegates to Philadelphia to revise the Articles.

The 55 delegates met from May 25th, 1787, to September 17th, 1787, but, instead of simply revising the Articles, they drafted the Constitution. Indeed, The Articles allowed Congress to declare war, but could not force States to supply troops, it could ask States to finance its activities but could not force them to pay. Each State could issue its own currency, and in case of disputes between States, Congress could act as a mediator, but States were not compelled to accept its decisions. Chaos resulted from such a system.

When the delegates met, two groups with sharp differences of opinion quickly emerged: those who wanted a new centralized federal union, and those who simply wanted a loose association of the States. The first ones became known as federalists, the second as anti-federalists who later became known as the Republicans. In order to persuade the population that federalism was the best solution, three men published in New York newspapers a series of 85 articles written by James Madison, Alexander Hamilton and John Jay; known as the Federalist Papers, they urged New Yorkers to ratify the proposed United States Constitution.

The larger states wanted proportional representation which the smaller ones rejected, fearing the domination by the larger ones. The result was the decision of establishing equal representation in one of the two houses (the Senate), and proportional representation in the other house (the House of Representatives). The battle to accept the Constitution was harsh, but fortunately, the Philadelphia Convention had decided that it would be ratified when only 9 States out of 13 had ratified it, which happened on June 21st, 1788, when New Hampshire became the ninth State to ratify it. It clearly established Constitutional supremacy stating in Article VI, paragraph 2 that “this Constitution... shall be the supreme law of the land”, thus preventing State legislatures from establishing constitutions that would contradict the federal one. Those restrictions upon the powers of States are clearly expressed in Article I, section 10.

One may distinguish three types of government powers: the enumerated powers are listed in Article I, section 8 of the Federal Constitution; they include defending the country, declaring war, coining money. There are also the reserved powers: they are those not delegated to the United States by the Constitution, nor prohibited by it to the States, which are reserved to the States respectively, or to the people; among those powers are creating standards for schools, conducting elections, making laws for the environment, issuing driver’s licenses and creating marriage laws. Finally, the concurrent powers are those shared by both the federal government and each state, for instance levying taxes, protecting rights and punishing lawbreakers.

Various issues have caused tensions between what the Federal laws decide and what the State laws wish to apply. The issue of gun control has repeatedly come to the fore, especially after a shooting disaster. Whenever a tragedy occurs in one part of the USA, the incumbent president calls for national gun reform and makes an emotional plea for action. But efforts to advance gun-control legislation in Congress have regularly stalled. Already in 1792, a federal law required that every man eligible for militia service own a gun and ammunition suitable for military service, report for frequent inspection of their guns, and register his gun ownership on public records. Many Americans owned hunting rifles or pistols instead of proper military guns, and though the penalty fines were high (over \$9,000 in 2014 dollars), the law was often ignored. Numerous cities in the “Wild West” required people to check their guns with the sheriff before entering the town; offenders could be whipped and have their guns confiscated. Today, Federal decisions concerning firearms exist. They list the persons who are not allowed to possess