

Q18 – What part of the federal government writes laws?

DOUGLAS GINSBURG, Federal Judge, U.S. Court of Appeals, D.C. Circuit:

Article I of the Constitution provides that the Congress, made up of the House and the Senate – make federal laws, all federal laws. But how things have changed.

In 1790 the entire federal government had just one thousand employees, outside the military. Today it's about two million. Most don't work in any of the three branches, the executive, the Congress, or the courts.

They work in what some people call the fourth branch, dozens of departments and agencies. Those people, who are not elected, now have more impact on your life than Congress has. For example: In 2019, the Congress passed 105 laws. Federal agencies wrote almost 3,000 regulations with the force of law.

If you don't like a proposed federal law, you can contact your representative and your senators. But if you don't like a proposed agency regulation, whom do you contact? And why should they listen to you anyhow?

The Framers designed three branches of government to separate power and safeguard liberty. But those safeguards are undermined when an agency can write it's own law, enforce that law, and then judge whether you have violated their law. All three powers combined in one body. What James Madison, the principal architect of our Constitution, called, the very essence of tyranny.

In a 2013 Supreme Court case involving a federal agency, Chief Justice John Roberts warned: "The danger posed by the growing power of the administrative state cannot be dismissed." And yet it continues to grow. So, practice has evolved, but as far as the Constitution is concerned, it is the Congress that makes federal laws.

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