

Lesson 3

THE HOUSE OF REPRESENTATIVES

Unit 2

Lesson Objectives:

When you complete Lesson 3, you will be able to:

- Explain how the House functions within the bicameral legislature.
- State the qualifications necessary to vote for a Representative and to become a Representative.
- Describe how the number of Representatives is determined and how these Representatives are allocated.
- Explain Congress's role in regulating elections, how Members may be expelled, and how vacant seats are filled.
- Explain the compensation requirement, the privilege from arrest, and freedom of speech for Members of Congress.
- Explain the restrictions in the Sinecure and Incompatibility Clauses.
- Understand the role of the Speaker of the House and the rules of adjournment and meetings of Congress.
- Understand the sole powers of the House of Representatives relating to lawmaking, impeachment, and the Electoral College.

Legislative Vesting Clause – Article I, Section 1

Essay by Douglas Ginsburg (pp. 46–48)

The Constitution creates a limited government of enumerated powers. The Framers separated the powers of government to avoid tyranny and ensure accountability. They divided the powers of government among three separate branches: Congress exercises the legislative power, the President exercises the executive power, and the judiciary exercises the judicial power. Neither the judicial nor the executive power includes a general lawmaking power, and Congress may not delegate its power.

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The United States Congress is a bicameral legislature, meaning it consists of two houses: the House of Representatives and the Senate. Just as power is separated among the three branches of government (legislative, executive, and judicial), each house of Congress has its own constituencies, requirements for office, and responsibilities. A bicameral legislature promotes better deliberation and better lawmaking.

The Legislative Vesting Clause grants specific legislative powers to Congress including certain economic powers, war powers, and territorial powers. (These powers will be discussed in greater detail in lessons 5, 6, 7, and 8.) Congress may exercise those powers specifically granted to it by the Constitution and may not assume any general powers beyond those in that document.

The Framers carefully crafted the separation of powers, insofar as neither the judicial nor the executive power includes a general lawmaking power and Congress may not delegate its power. But it is sometimes difficult to distinguish laws that confer discretion upon the executive from those that call for the executive to exercise legislative power. The executive has discretion in executing law, but some decisions are fundamentally legislative ones.

The Supreme Court has addressed the question of delegated legislative powers several times. In 1825, the Court recognized that it is difficult to draw the line between the subjects that must be regulated by the legislature and those that are subject to another branch's discretion. In 1928, the Court upheld a statute that delegated to the President the power to raise tariffs. The Court set forth the following standard: A legislative action is not a delegation of legislative power if Congress creates an intelligible principle to which the person or body must conform. In 1935, the Court struck down two laws that delegated large amounts of legislative power.

A.L.A. Schechter Poultry Corp. v. United States (1935) was the last time the Court struck down a law for violating the Legislative Vesting Clause. Despite a few justices' doubts about delegation and the requirement that Congress have an intelligible principle to guide actors, the Court has maintained a hands-off approach to delegations of power. By failing to police the boundary between proper and improper delegations of power, the Court forgoes the opportunity to maintain the structure of government prescribed by the Constitution.



Before You Read

Have students envision a household run by one person and a household run by two persons. Ask: How do you think decisions are made in a one-person household compared to decisions in a two-person household? (Since only one person makes the rules, whatever the person in charge says automatically becomes the rule. But in a household run by two people, the two people must agree on the decision.) Remind students that the United States Congress is bicameral and would be more similar to a two-person household.



Before You Read

Explain that to be “vested” means to be granted authority. Ask: What does it mean to say that Congress is vested? (It means that Congress has authority.)



Active Reading

Say: The Legislative Vesting Clause gives Congress legislative powers. What are legislative powers? (the power to make laws)



Discussion Question

Why do you think it is sometimes difficult for the three branches of government to maintain separate powers? (These powers might sometimes overlap; the Constitution cannot predict every situation that may arise.)

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Part 1: The House of Representatives and Its Members

House of Representatives

Article I, Section 2, Clause 1

Elector Qualifications

Article I, Section 2, Clause 1

Qualifications of Representatives

Article I, Section 2, Clause 2

Enumeration

Article I, Section 2, Clause 3

Allocation of Representatives

Article I, Section 2, Clause 3

Executive Writs of Election (Filling Vacancies)

Article I, Section 2, Clause 4

Speaker of the House

Article I, Section 2, Clause 5

House of Representatives — Article I, Section 2, Clause 1

Essay by Bradley Smith (pp. 48–51)

At the Constitutional Convention, debate about the House of Representatives centered on three issues: length of term, equal versus proportional representation, and method of selection.

The two-year term of office was the result of a compromise between those who favored extremely short one-year terms and those who wanted three-year terms. The Convention determined that the Senate would represent states, and states would have equal representation in the Senate. The House would represent the people, and the question of proportional versus equal representation became conflated with the question of selecting Representatives. The Convention did not debate or define the scope of the phrase “by the People.” The phrase appears to mean direct popular election with a relatively broad right of suffrage as determined by the states’ own practices.

While the Convention favored apportioning representation according to population, the delegates did not intend to place any particular principle such as “one man, one vote” into the Constitution.

Moreover, the Constitution does not require Representatives to be elected by districts. In the beginning, many states elected their Representatives at large, meaning by the whole state. With this method, a state’s Representatives were more likely to speak with one voice, thereby increasing the state’s influence in the House. Congress

thus responded by requiring that the states elect their Representatives by district. Most states established congressional districts roughly according to population but gave great deference to geography, history, and local political boundaries.

Congressional districts could be problematic. For instance, “rotten boroughs” in Great Britain were districts with only a few inhabitants that nevertheless held seats in Parliament equal, in some cases, to large cities. To guard against this danger, the Framers gave each house the power to “alter” the “Times, Places, and Manner” of choosing Representatives (Article I, Section 4). In the early 20th century, however, some rural state legislators stopped redistricting in order to avoid losing their power to the growing urban areas in their states. At first, the Supreme Court held that redistricting questions were political questions. A few years later, it held that congressional districts should be as equal in population as possible. In *Reynolds v. Sims* (1964), the Court articulated the principle of “one man, one vote” to be the standard for evaluating redistricting.



Before You Read

Explain that the House of Representatives is the closest to the people and represents their interests to the national government. **Ask:** What does the word “represent” mean? (to stand in for another person or work for that person’s interests)



Active Reading

Read aloud the second full paragraph on page 49. To ensure understanding, ask: What was the Framers’ main goal in requiring elections? (They wanted to give the people the power to choose their own Representatives.)

Electoral Qualifications – Article I, Section 2, Clause 1

Essay by Roger Clegg (pp. 51–53)

Concerning electoral qualifications, the Convention delegates had two options: limit suffrage to all freeholders or incorporate state voting law and thereby allow the individual states to determine qualifications for electors.

After some debate, the Framers determined that it would be difficult to get all states to agree on one set of qualifications. Most delegates, including Alexander Hamilton and James Madison, supported allowing states to choose their own criteria for electors. The Convention at last approved the Electoral Qualifications Clause, which states that individuals who are qualified to vote for candidates of the largest branch of a state’s legislature are automatically qualified to vote for Representatives. In other words, states have the power to set electoral qualifications. Congress was given little say in voter qualification issues, although it does have the power to determine the

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time, place, and manner of elections. Congress received additional authority to enforce certain amendments relating to suffrage (which will be discussed in lesson 20).

The Supreme Court has invalidated several state regulations that exclude classes of voters from the franchise. The Court has upheld congressional regulation of federal elections over conflicting state laws but has determined that the First Amendment restricts the application of the Elector Qualifications Clause to closed party primaries. (For further discussion of voter qualifications, turn to lesson 20 on Voting and the Constitution.)



Before You Read

Ask: What does the word “elector” mean? (It means a voter.)

Qualifications for Representatives – Article I, Section 2, Clause 2

Essay by David F. Forte and Stephen Safranek (pp. 53–54)

The Framers also considered the qualifications for Representatives. For republican reasons, the Framers rejected the British practice of numerous qualifications and limitations and established three simple criteria instead: Representatives must be at least 25 years old; they must have been citizens of the United States for at least seven years; and they must be inhabitants of the state (though not necessarily the district) from which they are elected.

This clause received little judicial attention until the late 20th century. In *Powell v. McCormack* (1969), the question was whether Congress could add qualifications for Representatives. The Supreme Court reasoned that it could not. In *United States Term Limits v. Thornton* (1995), the Court ruled that states did not have the power to add new qualifications for Representatives. Thus, the three constitutional requirements for Representatives could not be altered.



Active Reading

Have Students read the second paragraph on page 53 (the one beginning with “The Framers also considered...”) Ask: **why did the Framers reject the idea of having many qualifications to hold office?** (In contrast to the class and wealth qualifications of the British parliament, the Framers designed the American government to be a republic.)



Active Reading

Have students read about *United States Term Limits v. Thornton* (1995). Then ask them to explain the problem the Supreme Court confronted. (Sample answer: In *United States Term Limits v. Thornton*, justices considered whether states could make additional requirements for membership in the House or Senate. Specifically, Arkansas amended its state constitution to make ineligible for re-election any person who served three or more terms as a member of the United States House of Representatives from Arkansas or any person who served two or more terms as a member of the U.S. Senate from Arkansas. The Court ruled that states did not have the power to add new qualifications for Representatives.)

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Enumeration Clause — Article I, Section 2, Clause 3

Essay by Andrew Spiropoulos (pp. 56–57)

The Enumeration Clause requires the federal government to make an “actual Enumeration” of the whole number of persons in the nation, as Congress shall direct, for the purpose of apportioning the seats in the House of Representatives.

The central question regarding the original meaning of this clause is as follows: Does the Constitution require an actual counting of individuals, or is estimation permissible? Those who argue that estimation is permissible contend that the phrase “actual Enumeration” likely means the most accurate calculation possible. Those who maintain that the phrase means actual counting of individuals as opposed to estimating contend that the words mean counting each separately.

This distinction between actual counting and estimating was well known and thoroughly discussed in controversies between the colonies and Britain. The participants in the debates frequently used the exact term “actual enumeration” and criticized the use of estimates in calculating population. Hamilton, Jefferson, and Washington emphasized accuracy in the census and frowned upon conjecture or estimation. Additionally, the first census, taken in 1790, required an exact and individual counting of every inhabitant of the United States.

These debates, discussions, and early American practice indicate that estimation was not permissible. In *Utah v. Evans* (2002), however, the Supreme Court ruled that census-takers may infer or guess the number of inhabitants of a household.

Allocation of Representatives — Article I, Section 2, Clause 3

Essay by David F. Forte (pp. 57–59)

Another contentious issue during the Constitutional Convention concerned the number of Representatives in the House and how they would be allocated among the states. The delegates set the size of the House at 65 members. They wanted to allow Congress to grow in the future, but every state would have at least one Representative, and the number of Representatives would not exceed one for every 30,000 people.

Federalists and Anti-Federalists battled over the size of the House and the ratio of Representative to citizens. Anti-Federalists thought that such a small Congress would be poorly informed and would lack sympathy for the wide variety of their constituents. They argued that the country would become too large and would lose its republican character. Madison responded that the small initial number would be effective and could change as needed. Though the House would grow as the population did, the Senate would check the House.

Additionally, in *The Federalist* No. 55, Madison cautioned that “nothing can be more fallacious than to found our political calculations on arithmetical principles.” That is to say, there is a certain number of representatives that is necessary to foster deliberation and to carry out the constitutional duties of Congress, but when assemblies have too many representatives, reasoned arguments and civil debate are impossible.

As Madison predicted, the House expanded to meet the needs of the population. In 1920, Congress capped the number of Representatives at 435 after Members were unable to make a reapportionment. To determine the number of Representatives for each state, Congress has employed several apportioning methods and ultimately uses the Hill Method.



Make an Inference

Say: Forte writes on page 58 that the Members of Congress capped the number of Representatives at 435. Why did they do this? (They capped the number after they were unable to make a reapportionment.) How well do you think the House of Representatives would run today if the number was capped at only 65? What if the number was capped at 1,000? (Answers will vary. Students may say that a much smaller number of Representatives would not accurately reflect the country’s large population or that a very large number of Representatives would make deliberation and voting too difficult.)



Make a Real-Life Connection

Have students research information about their Representative and district. Assign them to find their congressional district, the name of their Representative, the population and geographic boundaries of their district, and where the district office is located. If possible, schedule a field trip to the district office.



Discussion Question

Why did Federalists and Anti-Federalists disagree about the number of Members of Congress? (Sample answer: Anti-Federalists thought that Congress should be large because a small Congress would not accurately reflect or represent the people. Federalists argued that a small Congress was acceptable, especially since it could expand as necessary. But Madison cautioned against attempts to base “political calculations on arithmetical principles.” When assemblies have too many representatives, reasoned arguments and civil debate are impossible.)

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Executive Writ of Election – Article I, Section 2, Clause 4

Essay by Paul Taylor (p. 59)

To avoid vacant seats in the House of Representatives, the Framers agreed that such vacancies should be filled through a special election. Under Article I, Section 2, Clause 4, state governors are responsible for issuing writs of elections to fill vacancies. This arrangement would ensure representation for the people and bolster state authority over elections. The Supreme Court has held that governors have some discretion regarding the time of the election, but an election must occur.



Active Reading

To ensure understanding, ask: Why might the Framers have wanted to avoid vacant House seats? (Sample answer: The House is closest to the people and most directly represents their interests. In some cases, missing Representatives leave some states unrepresented in Congress.)

House Leadership: Speaker of the House –

Article I, Section 2, Clause 5

Essay by David F. Forte (pp. 59–60)

British and American legislative bodies have had leaders, or Speakers, for hundreds of years. In the British House of Commons and the early American colonial legislative bodies, the members selected the Speaker, but the Crown or royal governors greatly influenced the process. Under Article I of the Constitution, members of the House of Representatives would select their own Speaker and other officers.

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At the beginning of the two-year term (or whenever a Speaker resigns or dies), Representatives select their Speaker. In early America, Representatives voted by ballot, but since 1839, they have done so by roll call. In most cases, party caucuses determine the candidates (and, barring any breakdown in party discipline, the Speaker) before the voting begins.

Although the Speaker is the primary legislative leader and promotes his party's agenda, he or she typically does not join in votes or debates. The Speaker's duties have changed dramatically over time. At first, Speakers possessed much power over committees and the writing and content of bills. Later, their power decreased, and their selection was based on seniority. In recent years, the position of Speaker has regained some of its early influence.



Before You Read

Ask: How are voting by ballot and voting by roll call different? Which kind of voting would you prefer? (Students may say that voting by ballot is more private and would therefore allow Representatives to feel less pressured to make a certain decision, or that roll calls are public and would force Representatives to be more transparent about whom they support.)



Active Reading

Point out that on page 59, Forte uses the term "Anglo-American." Ask: What does this term mean? (It means "British and American.") Why is it important in the study of American government? (Many American ideas about government stem from British ideas and practices.)



Research It

In the last paragraph of his article on page 60, Forte mentions several House of Representatives officer positions. Ask students to choose two of the listed positions and research them online. Then ask students to share a brief summary of what they learned. (Answers will vary.)



Discussion Question

David F. Forte writes that the role of the Speaker of the House has changed significantly throughout history. Briefly explain the changes that have taken place for Speakers since the Constitution was written. (Sample answer: At first, Speakers had a great deal of influence in the House of Representatives. As time went on, however, they began to take smaller roles in House activities. In recent times, Speakers have become more powerful again.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 3, Part 1. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

1. The House of Representatives and Senate make up the _____ branch of government.
 - a. executive
 - b. federal
 - c. legislative**
 - d. judicial
2. Members of the House of Representatives must be at least _____ years of age.
 - a. 18
 - b. 21
 - c. 25**
 - d. 35
3. Which of the following has the most power in the election of Senators and Representatives?
 - a. the Supreme Court
 - b. the House of Representatives
 - c. the Senate
 - d. the states**
4. The Presiding officer in the House of Representatives is the
 - a. President of the United States.
 - b. Vice President.
 - c. President Pro Tempore.
 - d. Speaker.**
5. Unless otherwise specified in the Constitution, the officers in the Senate and House are
 - a. appointed by the President.
 - b. appointed by the Civil Service Commission.
 - c. chosen by drawing lots.
 - d. elected by the members of each house.**
6. A United States Representative is elected for a term of
 - a. two years.**
 - b. four years.
 - c. six years.
 - d. life.

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Fill in the Blank: Write the correct word or words in each blank.

1. The Constitution specifically grants each state, no matter how small its population, at least _____ in the House.
(one Representative)
2. When considering qualifications for Representatives, the Framers considered and rejected _____, _____, and _____ qualifications.
(property, wealth, and indebtedness)

Short Answer: Write out your answer to each question.

1. What are the three requirements to be a Representative? **(A Representative must be 25 years of age or older, must have been a citizen of the United States for a minimum of seven years, and must be an inhabitant of the state in which he or she is chosen.)**
2. What was the central question regarding the Enumeration Clause? **(whether the Constitution requires that this census should consist of an actual counting of individuals or whether an estimate would suffice)**
3. When does the House of Representatives elect its Speaker? **(as the first order of business at the start of each two-year term and when a Speaker dies or resigns during the legislative term)**
4. Does the Speaker of the House sit on any standing committees of the House? **(Traditionally, the Speaker refrains from debating or voting in most circumstances and does not sit on any standing committees of the House.)**
5. What three issues dominated the Constitutional Convention's debate over the makeup of the House of Representatives? **(length of terms, equal versus proportional representation of the states, and method of selection)**
6. According to the Constitution, what qualifications are necessary for citizens to vote in elections for the House of Representatives? **(Citizens can vote in elections for the House of Representatives if they are eligible to vote for the "most numerous branch of the state legislature.")**

True / False: Indicate whether each statement is true or false.

1. Article I of the Constitution grants all legislative powers to Congress.
(False. Article I grants only certain limited legislative powers "herein granted" to Congress.)

2. The two-year term of office for the House was a compromise between those who preferred annual elections and those who wanted a longer, three-year-term. **(True)**
3. As a system of checks and balances, each House punishes members of the other House in instances of disorderly behavior. **(False. Each House may punish its own members for disorderly behavior.)**
4. The Anti-Federalists did not think that the country could grow and still remain republican. **(True)**
5. In 1929, Congress decided to cap the number of Representatives at 450. **(False. The number was capped at 435.)**
6. The House of Representatives has the freedom to choose its leadership without regard to the President or Senate. **(True)**
7. State governors are responsible for issuing writs of election to fill vacancies in the House of Representatives. **(True)**

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Part 2: Congressional Rules and Procedures for the House of Representatives and the Senate

Election Regulations

Article I, Section 4, Clause 1

Qualifications and Quorum

Article I, Section 5, Clause 1

Rules and Expulsion Clause

Article I, Section 5, Clause 2

Compensation Clause

Article I, Section 6, Clause 1

Congressional Compensation

Amendment XXVII

Privilege from Arrest

Article I, Section 6, Clause 1

Speech and Debate Clause

Article I, Section 6, Clause 1

Sinecure and Incompatibility Clauses

Article I, Section 6, Clause 2

Meetings of Congress Clause

Article I, Section 4, Clause 2

House Journal

Article I, Section 5, Clause 3

Adjournment

Article I, Section 5, Clause 4

Election Regulations — Article I, Section 4, Clause 1

Essay by Anthony Peacock (pp. 71–73)

Article I, Section 4, Clause 1 of the Constitution gives states the power to set the “Times, Places and Manner of holding Elections for Senators and Representatives” but adds that Congress may alter the states’ regulations. The purpose of this clause is twofold. First, states have the primary power over the time, place, and manner of elections, but Congress may alter the regulations; second, the legislative branches of the states and the federal government, not the executive or judicial branches, have the power to regulate elections.

This clause produced much disagreement. Anti-Federalists worried that Congress would use its power to extend Members' terms in office indefinitely or to make holding new elections impossible. Supporters of the clause argued that the clause protects Congress from being overpowered or even destroyed by the states. Alexander Hamilton argued that Congress would alter the regulations only in extreme circumstances. Moreover, both houses must approve any changes in state regulations.

Several legal and constitutional developments have affected this clause. The Fifteenth Amendment granted Congress powers to enforce the amendment and prevent disenfranchisement based on race. Other constitutional amendments (to be discussed in Lesson 20) have altered various voting procedures.

Despite Hamilton's comment, Congress has often intervened in regulating elections. Congress has required that Members of Congress be elected by district rather than by the state at large and that districts be compact and contiguous. The Voting Rights Act of 1965 contains some of the stricter requirements, including requiring federal approval for new voting practices.

The Supreme Court has also intervened in the electoral process. For instance, despite constitutional practices, the Court has advocated the principle of one person, one vote and has ruled on various redistricting plans.



Active Reading

To ensure understanding, ask: Who has the primary responsibility for regulating elections? (the state governments) What is the purpose of giving Congress any power over elections? (maintaining the balance of power and making sure the states do not become too powerful)

Qualifications and Quorum — Article I, Section 5, Clause 1

Essay by David F. Forte (pp. 74–76)

The Qualifications and Quorum Clause protects congressional independence and ensures that each house of Congress judges its own “Elections, Returns and Qualifications of its own Members.” The clause also allows Congress to investigate allegations of fraud among its members. The power to judge elections includes the power to investigate fraud, but not to expand the definition for qualifications for Members of Congress. The only objections to the clause were from those who wanted state legislatures to hold the power to judge elections.

The quorum requirement sets the minimum number of Representatives necessary for a House to conduct business and pass laws at a simple majority. This was a contentious section. All agreed that a two-thirds requirement would hinder the process, but requiring anything less than a majority might allow small factions to take over the

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floor temporarily. The attempt to fix a specific number of votes necessary for a quorum failed, and the majority provision remained in the text. The Framers included a provision by which smaller numbers of Representatives could adjourn more easily.

In addition, the third section of the clause allows each house “to compel the attendance of absent members.” This part of the clause prevents minority factions from abusing the quorum provision.



Before You Read

Ask: What is a quorum? (a minimum number of participants needed to continue a group’s work) **How might Members of Congress manipulate quorum rules to their own advantage?** (A minority group in Congress might protest by refusing to attend meetings, which might make it impossible to meet a quorum or hold a vote.)

Rules and Expulsion Clause — Article I, Section 5, Clause 2

Essay by David F. Forte (pp. 76–77)

The Rules and Expulsion Clause of Article I gives each house of Congress the power to set its own rules and to punish its members for any “disorderly Behavior.” This clause strengthens the independence of the houses of Congress against the judiciary and the executive.

This Expulsion Clause is the only constitutional way to remove a Member of Congress without an election. Members may be expelled if two-thirds of their house supports this action. Some punishments levied under the Rules and Expulsion Clause include denouncement, censure, reprimand, loss of seniority, removal from committees, and fines. Since 1789, few members of either house have been removed. More frequently, each house will punish members through a majority vote.



Active Reading

Ask: What is impeachment? How is it different from expulsion? (Impeachment is a process of accusing an official of wrongdoing before a tribunal. Presidents may be impeached for committing crimes. Expulsion means being removed from office. Representatives may be expelled for inappropriate behavior.)



Active Reading

To ensure understanding, ask: What was the Confederacy? Why might Representatives be expelled for supporting it? (The Confederacy was a league of Southern states that rebelled against the Union and precipitated the Civil War. A federal politician who supported the Confederacy would likewise be in rebellion.)

Compensation Clause – Article I, Section 6, Clause 1

Essay by Adrian Vermeule (pp. 78–79)

In structuring the House and Senate, two questions arose regarding compensation: Should delegates be paid, and if so, by whom? Some Convention delegates were unsure whether federal legislators should be paid for their work. According to Adrian Vermeule, the delegates ultimately decided that pay would be essential to attract the best legislators: Unpaid legislators would be more susceptible to bribes to supplement their income, and unpaid positions might attract only the wealthy.

A second question about compensation concerned the source of the legislators' wages. Under the Articles of Confederation, legislators were paid by their respective states and were therefore dependent on those states. But under the Constitution, Members would be paid according to federal law and with federal funds.

Modern questions on the clause focus on who should change compensation levels and how. In 1880, a federal court recognized Congress's broad power to determine compensation schemes. The Twenty-seventh Amendment, though, prevents sitting Members of Congress from giving themselves a raise.

Congressional Compensation – Amendment XXVII

Essay by John C. Eastman (pp. 433–434)

In 1789, Congress approved an amendment concerning congressional compensation and sent it to the states for ratification along with the 10 amendments that would become known as the Bill of Rights. More than 200 years later, in 1992, the states finally ratified it.

The Constitutional Convention had determined that the federal government, not the states, would pay the Members of Congress. Anti-Federalists were still concerned that Members of Congress could set their own salaries. Madison responded to these concerns by proposing the Congressional Compensation Amendment. According to this amendment, congressional pay raises would apply to the next Congress, allowing the electorate to judge Congress for their actions before the pay increase took effect.

Six states initially ratified the amendment. Over the next 200 years, interest in the amendment varied. After a particularly notorious congressional pay raise in 1873, known as the "Salary Grab" Act, Ohio became the seventh state to ratify the amendment. A century later, a 1980s grassroots effort for ratification again brought public attention to the amendment. On May 7, 1992, three-fourths of the states finally ratified the amendment.

The odd history of the amendment led to some controversy. The Supreme Court ruled that disputes about ratification procedures were political questions. Because of issues of standing, judicial interpretation of the clause has been minimal.

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Active Reading

Ask: Why were the Anti-Federalists concerned about Congress's power to set its own pay? (Anti-Federalists were concerned that Members of Congress could set their own salaries and there would be no check on Congress's ability to enrich themselves.) Did the Twenty-seventh Amendment adequately address these concerns? (When finally ratified, the Twenty-seventh Amendment checked Congress's power to set their own salaries. According to the amendment, pay raises would apply to the next Congress, allowing the electorate to judge Congress for their actions before the pay increase took effect.)

Privilege from Arrest — Article I, Section 6, Clause 1

Essay by David F. Forte (p. 80)

The Privilege from Arrest Clause in the Constitution makes Senators and Representatives immune from civil arrest while Congress is in session. The clause does not provide immunity from criminal cases of “Treason, Felony, and Breach of the Peace,” nor does it exempt a Member from civil process. Civil arrest is very rare today, so this clause has little importance. The Supreme Court has interpreted it narrowly, leaving little actual protection for legislators.



Before You Read

Ask: What is a civil offense? (Civil offenses are violations of the law that are not criminal. They are subject to monetary penalties but not criminal penalties.)



Active Reading

To ensure understanding, ask: What are treason and felony? (Treason means betraying one's country, and felony is a serious crime.)

Speech and Debate Clause — Article I, Section 6, Clause 1

Essay by James L. Buckley (pp. 80–82)

The right of members of the legislative branch to speak their minds with impunity while engaged in legislative work—a tradition which stretched back to the British Bill of Rights of 1689—was included in the Articles of Confederation and many state constitutions. The Framers included the clause in the Constitution to ensure that public representatives would be able to deliberate without fear of resentment or retaliation.

This clause specifically applies to the absolute freedom of speech only in Congress while performing legislative work. For example, a Congressman may not invoke this clause to protect himself from a libel suit if he committed libel outside of his official duties. The courts have repeatedly upheld this interpretation.

According to the Supreme Court, activities are within the sphere of official legislative duty if they are integral to the deliberative and communicative processes by which Members of Congress participate in committee and house proceedings with respect to their legislative work. For instance, the clause protects voting, speaking in committee hearings or on the floor of one of the houses, and even the reading of stolen classified materials into the record. On the other hand, negotiations with federal agencies, issuing a press release, or delivering a speech outside of Congress are not protected.

The text of the clause mentions Members of Congress, but the Supreme Court has declared that it applies also to congressional staffers conducting official congressional business. Curiously, the Court has held that if a Member's actions fall within the "legislative process," his immunity is absolute—even if the Member has acted contrary to law, he cannot be prosecuted if proof of the crime depends on his legislative acts. Although the clause protects Members of Congress from civil or criminal proceedings, Members remain subject to disciplinary measures from their own houses and by their constituents, on Election Day.



Active Reading

To ensure understanding, ask: **What unusual situations may arise because of the limitations of the Speech and Debate Clause?** (An example presented by James L. Buckley involves a legislator who is suspected of accepting a bribe to vote in a certain way. The legislator's vote is protected by the clause because it is an official duty; however, the legislator could still be charged for having taken a bribe.)



Active Reading

Point out that Buckley uses the word "impunity" on page 80. Read aloud the first sentence of his article in which the word is used. **Ask: What do you think the word "impunity" means?** (It means being free and not being threatened with punishment.)

Sinecure Clause — Article I, Section 6, Clause 2

Essay by David F. Forte (pp. 82–84)

The Framers of the Constitution were well aware of the sources of corruption in the British government and wanted to avoid such influences in the new American system. The Framers designed the Sinecure and Incompatibility Clauses to guard against corruption and to protect the separation of powers.

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The Founders included the Sinecure Clause in the Constitution to prevent the President from buying support from members of the legislative branch by creating offices and sinecures as rewards for them. The Sinecure Clause prevents a Member of Congress from being appointed to a federal office if the office has been created or the office's salary has been increased during his time in Congress.

The Convention agreed that no Member of Congress should serve in an appointive position while a sitting Member of Congress. Some members of the Convention had proposed banning Members of Congress from being appointed to any office, state or federal, if that office had been created during his term of service or within one year afterwards. Other Founders, such as Hamilton and Wilson, wanted no bar at all after a person left Congress to allow the executive to induce the best Members of Congress into appointive offices. James Madison proposed "that no office ought to be open to a member, which may be created or augmented while he is in the legislature." Eventually, the Convention adopted Madison's proposal, but they deleted the prohibition from holding state office and the one-year bar after leaving office. The clause reinforces the separation of powers and the federal structure of the Union.

The clause establishes a number of formal requirements: (1) It applies only to Members who have actually taken their seats, not to those who have been elected but not sworn in. (2) "Appointed" refers to the moment of nomination, not to the time of approval by the Senate. (3) The bar extends to the time for which a Member has been elected; it cannot be evaded by resignation from Congress. (4) "Civil office" refers to authoritative offices, not to temporary, honorific, or advisory appointments. (5) "Emoluments" refers to more than merely salary, although the exact definition has never been made clear.

Until 1973, Presidents had rigorously followed the demands of the clause. During President Nixon's term, Congress reduced the salary of an office to its previous level to allow a sitting Senator to be appointed: This stratagem became known as the "Saxbe fix." Gerald Ford, Jimmy Carter, and Bill Clinton also employed this strategy. However, under President Reagan, the Office of Legal Counsel issued an opinion stating that these end-runs around the formal language of the clause were inappropriate.



Before You Read

Ask: Think about the meaning of the words "sinecure" and "incompatibility." Check a dictionary if you are uncertain of their meaning. What do these words mean? (A sinecure is an easy, high-paying job. Incompatibility means not working together well.)



Discussion Question

Explain how the "Saxbe fix" works and how it was first used. (Sample answer: The "Saxbe fix" was a strategy used by President Richard M. Nixon. It allowed Nixon to appoint Senator William Saxbe to the office of Attorney General despite a recent pay raise for the latter office. The "fix" involved reducing the compensation for the office back to the original amount.)

Incompatibility Clause — Article I, Section 6, Clause 2

Essay by Joan L. Larson (pp. 84–85)

The Constitution establishes several limitations on a person’s ability to serve in Congress including age, citizenship, and residency requirements. The Incompatibility Clause, though, prohibits Members of Congress from simultaneously serving as federal executive and judicial officers. It serves primarily as an anti-corruption device. Having seen the British Crown exert undue influence over Parliament by “purchasing” the loyalty of its members with offices, the Framers banned plural officeholding. By forbidding joint legislative and executive officeholding, the clause also preserves the separation of powers.

Interestingly, the clause does not specifically prohibit an individual from simultaneously serving in both the federal executive and judicial branches or in both a federal and state office. The latter issue is handled as a matter of state constitutional law, which generally forbids most forms of dual federal–state officeholding. On the former issue, simultaneous service in federal executive and judicial branches has been rare. There has been virtually no litigation involving the meaning of the clause, and the few judicial challenges concerning the clause have lacked standing.

Meetings of Congress Clause — Article I, Section 4, Clause 2

Essay by David F. Forte (pp. 73–74)

The Constitution requires that Congress assemble at least once a year, on the first Monday in December, unless the date is changed by law. The Meetings of Congress Clause ensures cooperation between the houses of Congress and rejects the traditional British method in which the executive branch summoned legislators to meet. The Framers did not want the executive to control the legislature. The President may still convene special sessions of Congress in “extraordinary Occasions,” but the date of Congress’s regular sessions is free from executive control.

During the Convention, there was disagreement over the exact times Congress should meet. Delegates discussed many practical and particular concerns ranging from the weather to European politics and the timing of state elections. In the final form, the Meetings of Congress Clause requires Congress to assemble at least once a year, on the first Monday in December, unless another date is assigned by law. Congress used its discretion under the clause to begin sessions in March rather than December until the Twentieth Amendment was ratified.

Unit 2



Active Reading

To ensure understanding, ask: What kind of problems were the Framers risking when they set the assembly date in December? (Political difficulties included not knowing recent developments in European political affairs; practical problems included bad weather, cold temperatures, and wintertime illnesses.)

Unit 2

House Journal — Article I, Section 5, Clause 3

Essay by David F. Forte (pp. 77–78)

The House Journal Clause requires each house to keep a journal of its proceedings. The requirement of a journal was not controversial; however, the provision allowing material to be kept secret caused concern. Many Convention delegates argued that secrecy would leave liberty insecure and destroy the ideal of an open and honest government.

Both houses have complete discretion over what proceedings will be secret. Moreover, Congress has used sparingly its privilege of keeping information secret. Early on, secret proceedings were common. Since the War of 1812, however, most Senate and House of Representatives proceedings have been public. The Senate still holds secret sessions on a few issues.

For all the concern about secrecy, though, the journal did not publish useful information generally, such as debates or congressional testimony. In 1873, Congress installed the *Congressional Record*, which includes debates and undelivered remarks and documents. In addition, journals, newspapers, radio, and television have made most of the actions of Congress open to all citizens.



Before You Read

Ask: What is a journal? What is it usually used for? (A journal is a book that records the actions and ideas of a person or group.) What sort of information would you put in a personal journal? What might you put in a professional or political journal? (Answers will vary.)



Active Reading

Have students read the paragraph beginning with “Both history and judicial opinion” on page 77. Ask: In what circumstances would a house of Congress hold a secret session? What would be the reason for holding a secret session? (during impeachment, debates and discussions of classified information, and national defense) Why would a house of Congress hold a secret session? (Sample answer: Publicly revealing national defense strategies might give an enemy an advantage.)

Adjournment — Article I, Section 5, Clause 4

Essay by David F. Forte (p. 78)

The Adjournment Clause prevents one house of Congress from obstructing the activity of Congress as a whole. According to the Adjournment Clause, neither the House nor the Senate may adjourn for more than three days or move to any other place unless both houses consent to it. This regulation was made to ensure cooperation between the houses and keep one house from adjourning or moving in order to hurt the efforts of the other house.

If the two houses cannot agree, then the President may intervene to adjourn Congress. So far, this measure has not been necessary. The President has never had to intervene. One house may adjourn for less than three days, but longer recesses require both houses to consent. This clause also permits Congress to move the capital temporarily in times of crisis. For example, during the War of 1812, the government fled Washington.



Before You Read

Ask: What does the word “adjourn” mean? (It means to suspend a meeting.)
Have you heard this word in any other context besides Congress? (in courtrooms)



Research It

Point out that Congress moved the capital during the War of 1812. Ask students to look up information about the War of 1812, why Washington, D.C., was abandoned, and where members of the federal government went. Then invite students to share their findings with the rest of the class and speculate about what might happen today if an emergency caused Congress to meet in a new location.



Discussion Question

Why must both houses agree to move to a new place? (If both houses did not have to agree, one house might move to hinder the actions of the other house.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 3, Part 2. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

- Since _____, most Senate and House of Representatives proceedings have been made public.
 - World War II
 - the Revolutionary War
 - the Civil War
 - the War of 1812**

Unit 2

Unit 2

2. Members of the House of Representatives may be expelled from office as long as at least _____ of Representatives concur.
 - a. a quorum
 - b. one-third
 - c. a majority
 - d. **two-thirds**

3. The houses of Congress are allowed to adjourn for more than three days or to move their location only if
 - a. **both houses consent to it.**
 - b. the President requires it.
 - c. the Speaker proposes it.
 - d. there is an emergency.

Fill in the Blank: Write the correct word or words in each blank.

1. Privilege from Arrest does not cover criminal cases involving _____, felony, or breach of the peace. **(treason)**

2. The Twenty-seventh Amendment prevents a sitting Congress from giving itself a _____ to take effect during its term. **(pay raise)**

3. The Privilege from Arrest Clause prevents Members of Congress from being put under civil arrest, but this is valid only while Congress is _____. **(in session)**

4. Article I, Section 6 forbids federal _____ and _____ officers from simultaneously serving in Congress. **(executive, judicial)**

5. With respect to the conduct of the election of federal Senators and Representatives, the responsibility lay primarily with the _____ and secondarily with _____. **(states, Congress)**

6. Under the British model, the _____ called Parliament to meet. **(executive)**

True / False: Indicate whether each statement is true or false.

1. The Anti-Federalists strongly supported the election regulations that gave Congress the prerogative to make or alter election regulations. **(False. The Anti-Federalists were concerned that Members of Congress would abuse the regulations and manipulate election laws so that they could stay in office indefinitely.)**

2. The Framers of the Constitution understood the Incompatibility Clause primarily as an anti-corruption device. **(True)**

3. By confirming each house's power to set its own procedures, the Framers strengthened the independence of each branch of Congress against the other as well as against the executive and the judiciary. **(True)**
4. At the Constitutional Convention, the Framers readily agreed that the new national government would compensate Senators and Representatives from a federal treasury. **(False. The Framers heatedly debated the question of whether the new national government or the states should pay the representatives.)**
5. It took nearly 200 years to ratify the Congressional Compensation Amendment. **(True)**
6. Civil arrest is rarely practiced anymore, so the Privilege from Arrest Clause is virtually obsolete today. **(True)**
7. The Rules and Expulsion Clause provides the only constitutional mechanism by which a sitting Member of Congress can be removed from office before the end of his term. **(True)**

Short Answer: Write out your answer to each question.

1. Why did the Framers of the Constitution include a Compensation Clause in the Constitution? **(They feared that unpaid legislators might turn to corruption to supplement their incomes.)**
2. Where does the money come from to pay Senators and Representatives? **(The federal treasury)**
3. Where was the right of legislators to speak their minds with impunity acknowledged before the Speech and Debate Clause of our Constitution?
 - **The British Bill of Rights of 1689**
 - **The Articles of Confederation**
 - **State constitutions (after the Revolution)**
4. If the two houses cannot agree on a time of adjournment, who is designated to settle the dispute? **(The President of the United States)**
5. Why did the Framers write the Adjournment Clause such that neither house can adjourn for more than three days without the consent of the other? **(Otherwise, one house could prevent the entire Congress from fulfilling its responsibilities by adjourning.)**

Part 3: Sole Powers of the House of Representatives

Impeachment

Article I, Section 2, Clause 5

Origination Clause

Article I, Section 7, Clause 1

The Electoral College and the House of Representatives: House as Tiebreaker

Article II, Section 1, Clauses 2 and 3, and Amendment XII

Impeachment – Article I, Section 2, Clause 5

Essay by Stephen B. Presser (pp. 60–62)

The Framers designed the Impeachment Clause to be a method for disciplining a President who abused his authority. It would strengthen the separation of powers. But the clause was not meant to be a mere tool by which Congress could prevent the President from carrying out his constitutional duties. Under the Standards for Impeachment Clause in Article II, Section 4, all civil officers of the United States (including members of the executive and judicial branches) are subject to impeachment.

The Constitution does not specify the method by which impeachment procedures are to be initiated, and practices have varied over the years. In recent years, the House Judiciary Committee has initiated the proceedings and has made recommendations to the whole House. For a period of time, legislation allowed the Attorney General to appoint a special prosecutor who had the power to recommend impeachment. Because of dissatisfaction with such extensive independent power, the statute authorizing such a counsel has expired.

Impeachment is a political decision. The House is constitutionally obligated to follow the standards of impeachment in Article II, Section 4. Because the House has the sole power to bring charges of impeachment and the Senate has the sole power to try impeachments, the courts may not review the decisions of either house concerning impeachment.

Though the Framers saw impeachment as essential to the separation of powers, it is unclear whether the House has an affirmative duty to monitor the conduct of impeachable officials and to initiate impeachment proceedings once evidence of impeachable activity emerges. On one hand, it would seem that the House should have the same discretion to initiate proceedings as prosecutors exercise. On the other hand, Alexander Hamilton argues in *The Federalist* No. 77 that Presidents would be “at all times liable to impeachment,” thereby suggesting that the House is bound by their oaths of office to impeach the President if he has committed an impeachable offense.

Origination Clause — Article I, Section 7, Clause 1

Essay by Erik M. Jensen (pp. 85–86)

In crafting our government, the Framers not only distributed powers among the three branches of government (separation of powers), but also divided Congress into two houses, with different constituencies, term lengths, sizes, and functions for each house. In this spirit, the Origination Clause of the Constitution allocates the power to raise revenue—part of the power of the purse—to the House of Representatives, the legislative body closest to the people.

The Origination Clause was part of a compromise between large and small states, tempering large states' dissatisfaction over the equal representation of states in the Senate regardless of size. Requiring the House of Representatives to initiate money bills gave more-populous states more influence than less-populous states, since the number of representatives in this legislative body depended on a state's population.

The first draft of the Origination Clause required all money bills to originate in the House and gave no authority to the Senate to amend these bills. Opponents of the clause argued that it did not matter which branch approved a bill first if both branches supported it. The final version of the Origination Clause, however, required that bills raising revenue, or taxes, must originate in the House of Representatives and gave the Senate the power to amend them.

Regrettably, this clause has had little effect in practice for two reasons. First, most revenue bills are created in the Treasury Department; second, the Senate has construed its power to amend so broadly as to replace the entire text of revenue bills that had originated in the House.



Before You Read

Ask: What does the word “originate” mean? (to start or begin)



Make a Real-Life Connection

Ask: In his discussion of the Origination Clause, Erik M. Jensen uses the phrase “power of the purse.” What does this phrase mean? (Whoever has control of money has the “power of the purse.”) Who holds the “power of the purse” in your household? (Answers will vary.)



Active Reading

To ensure understanding, ask: Elbridge Gerry of Massachusetts, who proposed the original version of the Origination Clause, did not want to give the Senate the power to amend “money bills” because he was afraid the Senate would become an aristocratic body. What is an aristocratic body? (a hereditary ruling class of nobility)



Discussion Question

How did the first version of the Origination Clause differ from the final version? (The first version of the clause applied to all money bills. The final version covered only bills for raising revenue and gave the Senate the power to amend these bills.)

Unit 2

The House as a Tiebreaker in Presidential Elections –

Article II, Section 1, Clauses 2 and 3, and Amendment XII

Essays by Einer Elhauge (pp. 184–186), Tadahisa Kuroda (pp. 186–188), and Charles Fried (pp. 377–379)

The Constitutional Convention designed a unique method to select the President called the Electoral College, consisting of electors from each state who would be responsible for choosing the chief executive. Each state would appoint its own electors, the number of which would be determined by the number of that state's Senators plus the number of its Representatives in the House. For instance, if a state had one Representative in the House, adding the state's two Senators would give it three electors.

These electors would each cast two ballots, but at least one had to be for a citizen from another state. The person who received the majority of votes would be President, and the runner-up would be Vice President. If two or three persons received a majority of electoral votes or an equal number of votes, the House of Representatives would choose a President. If no candidate received a majority, the House would choose from among the top five candidates.

The Twelfth Amendment altered the way in which the Electoral College elected the President and Vice President. Under the Twelfth Amendment, electors vote for President and Vice President separately. The House of Representatives has the power to choose a President if no candidate receives a majority of electoral votes; the Senate has the same power for the Vice President. (For more information on the Electoral College and the Twelfth Amendment, turn to Lessons 9 and 10.)



Research It

Have students find out how many times the House of Representatives has selected the President. Have students select an election and point out who were the candidates involved, how many ballots were cast, and who became President.



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 3, Part 3. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

- The responsibility for impeaching officials lies with
 - the Senate.
 - the Supreme Court.
 - the House of Representatives.**
 - the President.
- The responsibility for trying an impeached official lies with
 - the Senate.**
 - the Supreme Court.
 - the House of Representatives.
 - the President.

Fill in the Blank: Write the correct word or words in each blank.

- There is no doubt that the Framers saw _____ as a part of the system of checks and balances to maintain the separation of _____ and the republican form of government. (**impeachment, powers**)
- Early on, the acquittal of Justice Samuel Chase set the standard that Supreme Court Justices should not be impeached on the ground of their _____ preferences. (**political**)

Short Answer: Write out your answer to each question.

- What was the original arrangement for electing the President and Vice President? (**Presidential electors voted for two candidates. The one with the most votes—as long as it was a majority of electors—would be President, and the individual with the next greatest number of votes would be Vice President.**)
- All bills for raising revenue must originate where? (**in the House of Representatives**)
- How was the Origination Clause part of a critical compromise between the large and small states? (**The large states were unhappy about equal representation in the Senate, but the Origination Clause compromised by giving large states more influence over tax bills since they had greater influence in the House of Representatives.**)
- Who votes to impeach an officer? (**The House of Representatives**)

Unit 2

Unit 2

True / False: Indicate whether each statement is true or false.

1. The Senate is not allowed to originate bills for raising revenue, but the Senate can propose or concur with amendments on these (and other) bills. **(True)**
2. The Framers placed specific grounds of impeachment in the Constitution because they wanted to prevent impeachment from becoming a politicized process as it had in England. **(True)**