

Lesson 22. Article 1, sections 4 & 5.  
Organization of Congress – Part I

We spent the last four lessons describing the structure of both the House of Representatives and the Senate. We discussed the age limits, residency and citizenship requirements for the members of each. You'd think we had gone over everything there is to know about the Congress, wouldn't you?

All we already know is the structure of Congress, not its purpose, permissions or limitations.

Nearly all the members of the Constitutional Convention had, at one time or another, been a member of their state legislatures. They knew of the underhanded, backroom deals. Bribery and other chicanery common to the legislative process at the state level. There were determined to limit, regulate, and place checks in the way of the federal congress. (Question 1)

**Provision 46 (From Article 1.4.1)**

“The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but Congress may at any time by law make or alter such regulations, except as the places of chusing [choosing] Senators.”

This provision was a major concession to the states. It gave the right to handle all phases of elections to the states. Thus the federal government had no say, for example, on who could vote and who could not. (Question 2)

What if a state allows blacks to vote? So what?

If a state allows women to vote? What if they do? Not a federal issue.

A state might allow people under the age of 21 to vote. That's up to that state.

The federal government, however, kept an ace up its sleeve; should the states fail or refuse to cooperate, it allows itself to step in and create regulations for the states to follow regarding federal elections. This is considered a self-preservation clause for the federal government.

Congress pretty much kept this card up their sleeve until 1842. Up to that time, representatives were selected on what's called a “general ticket.” In other words, all voters would be presented with a list of everyone running for representative, and you could vote for as many as your state was allowed. In West Virginia, that would be three.

Anyone see a possible problem with this setup? The populations centers would dominate. A candidate might only have to pay for advertising in the capitol city newspapers. Would three Representatives – all from Charleston – represent the interests and concerns of the citizens of Romney or Keyser or Wheeling?

Additionally, political machines could pepper the ballot with a few names from the outlying areas to dilute any opposition to the per-ordained winners.

Congress stepped in, creating congressional districts in each state. (*Hmmm, if they all were products of the local political machines, why would they screw around with what was working so well? I need to look that up.*)

In 1866 Congress again acted to compel state legislatures to meet and STAY IN SESSION until they had elected their Senators. This was designed to alleviate the fundamental problem with states from the former Confederacy. These southern states balked at the hoops they were made to jump through to be re-admitted to the Union. In protest, some delayed as long as practical, the appointing of Senators. Others simply deadlocked and could not agree. Of course, all this went away with the seventeenth amendment.

In 1872 Congress specified one nationwide election day; The Tuesday after the first Monday in

November in even-numbered years.

Voting machines became accepted in 1899.

In addition, amendments made certain aspects of elections universal: Amendment 15 ensured voting rights for former slaves. Amendment 19 voting rights for women, and amendment 19 voting rights for persons 18 to 21 years of age.

(Question 3)

Regarding the “manner” of elections. Did you know that before the Constitution, voice votes were pretty much the standard? When George Washington was running for the House of Burgesses in Virginia, he hired men to be the first in line at each polling place and vote by yelling loud enough for everyone to hear, “I vote for George Washington – I will have no other!”

#### **Provision 47 (From Article 1.4.2)**

“The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by Law appoint a different day.” This was changed to “at noon on the third day of January,” by the twentieth amendment.

Why would the Framers have to specify that the congress must meet at least once a year? Wouldn't the members naturally want to get together to schmooze, if not legislate? You'd think it would take calling out the militia to keep them away. (Question 4)

The reason for this provision, was because the Founders remembered when the colonies were ruled by English governors, Those governors, especially in Virginia and Massachusetts, disbanded the legislatures any time they disagreed with what the legislatures were doing or saying.

Patrick Henry's famous “Give me liberty or give me death...” speech was delivered in a church. Why? Because the governor had disbanded the House of Burgesses the year before. They were forbidden entry into the statehouse, so they met in Richmond, at St. John's Episcopal Church.

History gives several other examples of why this provision was considered necessary. King Charles I of England served as king for eleven years without once calling Parliament into session. In France, the legislature had not been convened for over 170 years.

(Question 4)

Why December? Because that would be the least inconvenient time of year for farmers.

#### **Provision 48 (From Article 1.5.1)**

The Senate and House of Representatives shall each judge and determine whether or not its members have been properly elected to represent their respective constituencies. (Question 5)

I, personally, am not aware of anyone who lost an election petitioning the House or Senate to investigate whether the election was fairly decided. The video for this course mentioned a Texas congressional candidate who thought he was cheated took the issue to court – where the judge informed him that the court had no jurisdiction; that right is reserved in the Constitution for the House of Representatives only. Undeterred, the candidate then petitioned the Speaker of the House – a member of the opposing party – who refused to investigate.

#### **Provision 49 (From Article 1.5.1)**

Each House shall be the sole judge of whether or not an elected member had the required qualifications.

The book gives three examples, two from the House and one from the Senate. None of them

refer to the “qualifications,” laid out in Article 1, Sections 2 and 3. The two House examples are men who later were elected and sworn in.

In the Senate; One candidate took campaign contributions from a company regulated by the Illinois Commerce Commission (of which the candidate was a member). The Senate refused to seat him, claiming corruption.

These last two provisions, while they may seem superfluous or even silly to us, were an important separation of powers. What do you think would happen if the judicial branch was allowed to handle election disputes? That's right, every single losing candidate would bring a lawsuit. Election results could be delayed for YEARS. Those old dead white guys in the powdered wigs weren't so silly after all, were they?

### **Provision 50 (From Article 1.5.1)**

A majority of the Senate and a majority of the House of Representatives shall be required in order to constitute a quorum to do the business of these houses.

A majority is considered Half of the total, plus one. In the Senate, that would equal 51 senators (the vice president doesn't count). In the House of Representatives, half would be 217.5, so they round it to 218. (Question 6)

Why not just require that all members be present? If one Senator or Representative could stop all activity simply by hiding out somewhere, where would that leave us? On the path to anarchy.

Wiley old George Mason predicted a scheme for a minority to make laws (why this provision is so necessary); if the central states, Pennsylvania, New Jersey, Maryland, Delaware, and Virginia were to send senators or representatives early, before the others arrived, they could enact any number of laws detrimental to the rest of the country. He envisioned these states' representatives owning fast horses so they could convene at a moment's notice. Likewise, these senators or representatives could linger after the others had gone home (after adjournment) and create havoc.

### **Provision 51 (From Article 1.5.1)**

When no quorum is present, the remaining minority may meet for the purpose of calling up the absent members and compelling them, when necessary, to suffer certain penalties until such time as a quorum is attained. This smaller group may also adjourn from day to day until a quorum is achieved.

When a representative, for example, will be away from the floor for any amount of time, he (or she) is supposed to leave a note with the clerk in the cloak-room. Kind of like a hall pass in high school. If the member does not submit such a note, he or she can be fined.

Quorum calls in the House are fairly rare nowadays, but they are quite common in the Senate because if any Senator "suggests the absence of a quorum," the Presiding Officer must direct the roll to be called. For practical purposes, this only forces a delay.

A motion to adjourn may be raised after the quorum call if an insufficient number of members present themselves.

One tactic, called the **disappearing quorum** was used by the minority to block votes in the House of Representatives by refusing to vote although physically present on the floor. At that time, representatives were counted for quorum purposes during an actual vote. The practice came to an end

on January 29, 1890, when a resolution was brought to the House floor. The Speaker of the House Thomas Brackett Reed put this question to the Members: "Will the House consider the resolution?" The result was 162 yeas, 3 nays, and 163 not voting. Democrats declared the absence of a quorum (179 Representatives) prevented the House from making decisions. As dictated by House rules, Speaker Reed began an attendance roll call - but directed the Clerk of the House to record as *present* any Member who was in the chamber, whether they answered the roll call or not. Democrats "foamed with rage," wrote one historian. A hundred of them were on their feet howling for recognition.

Speaker Reed continued to count, challenging protesters to deny their presence in the chamber. Reed ordered the Sargent at Arms to lock the doors of the chamber when Democrats tried to scurry away; thwarted, Democrats began hiding under their desks. The issue on was finally settled – five days later, on February third.

Then, on February 6, 1890, the Reed-led Rules Committee reported a new set of House rules. One of the new rules—Rule 15—established a new procedure for determining quorums (counting lawmakers in the chamber who had voted as well as those who did not).

Just in case you were thinking this kind of thing a Democrat only affair, let it be known that Republican State Senator Abraham Lincoln once jumped out a window of the state house (after the doors had all been locked) to break a quorum there.

#### **Provision 52 (From Article 1.5.2)**

“Each house may determine the rules of its proceedings.” (Question 8)

This gives each house autonomy. In fact, the supreme court determined that neither house can do anything more than criticize the rules established in the other body. The Senate, for example, cannot write a law declaring House Rule 15 null and void.

#### **Provision 53 (From Article 1.5.2)**

Each House may ... punish its members for disorderly behavior

The Sargent at Arms in both houses has the authority to arrest any member causing a disturbance on the floor of the House or Senate. (Question 9)

#### **Provision 54 (From Article 1.5.2)**

Each House may... with the concurrence of two thirds, expel a member. (Question 10)

Any member of either house found guilty of *any* offense that ,“is inconsistent with the trust and duty of a member.”

Expulsion is the sternest form of punishment allowed. The lightest punishment is called a reprimand. In the middle is censure.

In both reprimand and censure, the guilty member is made to stand before the podium while the full body is in session, and the charges read aloud.

As with other important duties, it was determined by the founders that a simply majority was not sufficient in this case – it had to be 2/3 of the vote.