

Lesson 23. Article 1, sections 5 & 6.
Organization of Congress – Part II

In Part I, we discussed Congress' role in managing elections, and managing its members. How the House and Senate have the final say on whether newly elected members were elected fairly and meet minimum qualifications. We covered punishments for badly-behaving members. And we spoke of the “quorum,” what one is and how they have been broken in the past.

Provision 55 (From Article 1.5.3)

Each house shall keep a journal of its proceedings.

The journal is called, *The Congressional Record*. A shorter version, called the *Congressional Digest*, containing just summary information is also available. (Question 1)

Provision 56 (From Article 1.5.3)

The journal of each house shall be published from time to time.

Since 1873, the *Congressional Record* for both houses has been published daily.

To prove that no good deed goes unpunished (especially in Washington); congresspersons are permitted to make corrections to the Record before publication – in case something was said out of turn, or sloppy grammar or phraseology. Instead of using this courtesy to make necessary, minor corrections, our Congress-critters have been inserting complete speeches that were never uttered on the floor – or changing the meaning of what they did say to the exact opposite.

As a result, the *Congressional Record* is no longer considered a reliable reference source for congressional events. Once again, the intentions of the Founders have been circumvented by dubious people, for dubious purposes.

Provision 57 (From Article 1.5.3)

Any matter may be excluded from the journal which, in the judgment of that house, is sufficiently sensitive that it should be kept secret.

When one house, or a committee wishes to close the doors for a confidential discussion, that is called an “Executive Session.” A record of Executive sessions is kept in, for example, *The Executive Journal of the Senate*. The executive journal can only be released to the public upon a vote by the full Senate. However, we both know this information can be “leaked” by any member for any reason (noble or nefarious).

Provision 58 (From Article 1.5.3)

Decisions on ANY question before each house will be settled on the basis of the number of YEA and NAY votes.

The Founders, anticipated someone trying to complicate issues with, for example, multiple choice ballots. Or something like, “On a scale of one to ten, how important is securing the southern border?”

A roll is taken at the start of each day to determine a quorum for the full day. Votes can be taken on routine matters, even if some members have left the floor. A voice vote is usually sufficient. If the

majority of a voice vote cannot be determined, the presiding officer will perform a “division of the house” vote; all who voted Yea go to this side of the room, all Nay's go to that side. If the vote is important enough, the party whips will question the existence of a quorum to delay the vote (to gather their members while another roll call is performed).

Provision 59 (From Article 1.5.3)

Voice votes are usually sufficient for routine issues, but if 1/5 of those present request a recorded vote, the presiding officer will ask for a roll call and recording of each vote in the journal. (Question 2)

A roll call vote is cumbersome and time consuming. In the Senate, each member's name is called by the clerk, that member votes (and the votes are recorded by the clerk). Because it is over four times bigger, this would not be practical in the House of Representatives. Instead, representatives are issued ATM-like cards, they can report to ATM-like machines distributed around the Capitol and House office building. The representative swipes the card, logs in and votes either YEA, NAY or Present.

If it's a routine matter, why would a recorded vote be ordered? Some representatives might want the voting record for either themselves or the loyal opposition as fodder for the next election.

Provision 60 (From Article 1.5.4)

Because the Constitution requires the participation of both houses to conduct business, neither house can adjourn for more than three days without the consent of the other. (Question 3)

Imagine Harry Reid, majority leader in the Senate, on the day after election day, 2010. The House has been flipped to Republican. If not for this provision, how tempting would it be to adjourn the Senate for the next two years? (Although some might argue that the Senate under Harry Reid might as well be adjourned.)

One thing that has always fascinated me, is that the president has the ability to adjourn both houses of congress if they cannot agree on adjournment (Article II section 3). Why has this not been used more? What a wonderful idea – send them all home to cool off for a while (90 days?). Bring them back for a full day, then send them home again.

Provision 61 (From Article 1.5.4)

Neither house shall, without the consent of the other, vote to meet at a different place. (Question 4)

Again, imagine Harry Reid in 2010 holding a secret vote in the Senate moving its operations to Tierra del Fuego until the American voters came to their senses.

Provision 62 (From Article 1.6.1)

The compensation of members of Congress shall be fixed by law and paid out of the treasury of the United States.

James Madison was outraged by this concept: that legislators could fix their own salaries and raise them at will. He call it “indecent.”

Members of Parliament received no compensation at all. Under the Articles of Confederation, the states paid their representatives.

The Founders feared some states would pay well, others might pay little to nothing. So even though these legislators would represent the citizens and the states, it was felt that they should held above the fray of local or statewide politics. They were to work for the betterment of the nation and

should be paid from the federal treasury.

The salary set by the first congress was \$6.00 per day. (Question 5) It remained unchanged until 1815 when it was raised to \$1,500 per year. Something akin to a TEA Party revolt occurred in the elections of 1816, voting out all of the rascals who had given themselves an annual salary. So the next year, it was set back to \$8.00 per day.

Forty years later, in 1855, wages were again set annually, at \$3,000. I don't know why there was not a similar rebellion the following year. There should have been.

The current salary is \$174,000 per year, (the book lists \$162,100 as of the time it was published). (Question 5) I noticed that starting in 1999 and continuing until 2009, congressional pay increased 3% each year. This is a clear violation of the 27th amendment, which states, "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." The 27th amendment was ratified in 1992 (it was one of the original 12 of which 10 were ratified in 1791). (Question 5)

I personally think congressional pay should be tied to the states and congressional districts. A Senator should receive 5/3 of the average salary for everyone in his state. A representative should get 4/3 of the average salary in his district. That might keep them thinking about the economy in their home districts.

But, as P.T. Barnum used to say, "That's only the beginning!" (Question 6)

Members are allowed special tax deductions.

Each member is given around \$1.4 million for staff.

The government pays 75% of their health insurance premiums. (pre-ObamaCare)

Free mailing (franking) privileges.

Free medical care for themselves while at the Capitol.

Travel expenses (based on distance from Washington, DC to legislator's home)

Benjamin Franklin's essay on compensation (pages 343-345 in the textbook) should be considered a "must read."

In part: "... there are two passions which have a powerful influence in the affairs of men. These are ambition and avarice, love of power and the love of money. [Offer] men a post of honor, that shall at the same time be a place of profit and they will move heaven and earth to obtain it... And of what kind are the men that will strive for this...? Not the wise and moderate..."

Provision 63 (From Article 1.6.1)

Except for treason, a felony, or a breach of the peace, Legislators shall be immune from arrest when their respective houses are in session or when they are going to or returning from a session. (Question 7)

This provision was to guard against the English tradition of arresting members of Parliament on trumped up, petty charges – usually indebtedness – just before an important vote. The book states that this provision is, for practical purposes, obsolete.

Provision 64 (From Article 1.6.1)

To insure freedom of speech for members: they shall not be questioned at any other place for what they may have said in a speech or debate while on the floor or in a committee hearing. (Question 8)

This was a holdover from the Articles of Confederation. It protects legislators from fear of being sued for libel, slander, or defamation of character. They can speak frankly while investigating public officials, or even rumors.

Provision 65 (From Article 1.6.2)

No legislator may accept, during his or her term of office, a civil office or position in the US government which was created or which had its salary, benefits, or other emolument increased during the time the appointee was serving in Congress. (Question 9)

Designed to halt the practice of patronage; the creation of cushy government jobs as repayment for support or votes.

Senator Max Baucus (D, Montana) has announced that he has been nominated as the new ambassador to China. He's a sitting senator. He still needs to be confirmed by his buddies in the Senate. He's certainly been in congress long enough (since 1978) that the salary of this post has risen. Does he have to resign his seat *before* accepting? Can he accept at all?

Madison wrote: "In this country, by this system, no new office can be taken by a member of the government, and if he takes an old one, he loses his seat. If the emoluments of any existing office be increased, he cannot take it."

Likewise, wasn't John Kerry a senator when named as the Secretary of State?

This provision has no bearing on government jobs at the state or local level.

Provision 66 (From Article 1.6.2)

No person employed in the US government may at the same time serve as a senator or member of the House of Representatives. (Question 10)

The inverse of the preceding provision. (As no legislator may become a government employee, no federal employee may become a legislator) Designed to eliminate conflicts of interest between the three branches.

Of course, once government employment has terminated, that employee can run for any federal office. Think of Allen West and Dan Bongino.

This concludes the Organization of the Congress. Next time we will finally delve into the heart of Article I, How laws are passed, and what laws MAY be passed.