

Lesson 24. Article 1, Section 7
The Legislative Process

The founders considered lawmaking a sacred trust. So certain restraints on legislation were assumed:

The people temporarily loan some of their unalienable powers to their representatives; only powers legally held by the people can be delegated.

Once delegated to congress, these powers cannot be further delegated or passed on to others. (However, Congress has delegated legislative authority to, for example, the Federal Reserve Bank for monetary policy and to Executive Branch agencies for regulations that have the effect of law on the citizens.)

Any legislation violating the laws of nature and nature's God are null and void.

Laws must be fair to all displaying no favoritism. Laws that harm equality and justice are destroying the very purpose laws are created in the first place. (Question 2)

Additionally, Congress was further restricted in only passing laws promoting the General Welfare – the welfare of everyone in the country (known as public bills). However, that consideration has, generally, fallen by the wayside and most legislation now deals with “Specific” welfare – for the benefit of a few: a gender, a race, an economic class or any number of other sub groups, known as private bills. (Question 1) The last President who understood the difference seems to be Grover Cleveland (22nd and 24th president, leaving office in 1897)

Provision 67 (From Article 1.7.1)

All bills for the raising of revenues shall originate in the House of Representatives.(Question 3)

This further expands the theory we studied way back in Article 1 Section 1 that taxation and representation go together. (Pop quiz – which one MUST come first?) Since the House represents the people, it was felt they would be most responsive to the needs of the people – and answerable to those people every two years.

Senators were not directly chosen by the general population, so were considered too distant and unaccountable.

Provision 68 (From Article 1.7.1)

The Senate may propose or concur with amendments on revenue bills as with other legislation.

Whoa! The Senate cannot be trusted to create revenue bills but can add amendments to their heart's content? Yes they can – since the House will also have to approve amendments to their bill that the Senate has added.

Provision 69 (From Article 1.7.2)

Every bill passed by the House and Senate shall be presented to the President for his review.

Every bill, not just revenue raising bills, must be passed by the representatives of the people, the representatives of the states, and the representative of the nation – in other words: the House, Senate and President.

Provision 70 (From Article 1.7.2)

If the President approves the bill, he shall sign it and it will become law at the time indicated in the bill. (Question 4)

Provision 71 (From Article 1.7.2)

If the President does not approve of a bill, he shall return it, with his objections, to that house from which it originated, and the objections shall be entered into the journal of that house.(Question 4)

Provision 72 (From Article 1.7.2)

After due consideration of the President's objections, both houses may vote on the bill again., If two-thirds of both houses approve the bill, it becomes law without further consideration of the President. (Question 5) Note: The second vote in each house MUST be a recorded vote due to the 2/3 requirement.

Provision 73 (From Article 1.7.2)

If a bill has been presented to the President and he does not sign or return it to Congress within ten days, then it shall automatically become law. (Question 4, 6, & 7)

Can you think of an instance when the President might prefer allowing a bill to become law without his signature?

Provision 74 (From Article 1.7.2)

If Congress presents a bill to the President then adjourns before he has had ten days to review it, the bill shall NOT become law unless the President signs it. (Question 8)

Called a “pocket veto.” As if the President put the bill in his pocket and forgot all about it.

Why would Congress submit a bill then scurry back home? One reason might be to avoid an unsuccessful veto override vote.

Provision 75 (From Article 1.7.2)

Every order, resolution, or vote requiring the concurrence of both houses (except votes on adjournment) shall be presented to the President and be approved by him before taking effect.

One of the few lapses in logic found in the Constitution.

No only is it redundant, (see Provision 69 above), there are instances of bills that will not pass through the President's hands. For example, proposed amendments to the Constitution go directly to the states for ratification. A vote to withdraw “war powers” granted to the President would not be approved by that President. There are other instances of bills or resolutions dealing exclusively with the Legislative branch that would not involve the President. (Question 9)

Now that you've heard the provisions in the Constitution, how does all of this play out in real life? You might be surprised to learn that, on average, between 20,000 and 23,000 new laws are proposed every session of congress (two years). Only between five and ten percent survive the intricate labyrinth of traps set by the founders and become law.

The founders did not see a need for a vast federal government. As James Madison said: “The powers delegated by the Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects as war, peace, negotiations and foreign commerce...”

The founders felt that a new law should be a very difficult thing to produce and set about making it as difficult process as they could devise. Just like the presumption of innocence in criminal cases, it was thought better that some good laws are defeated than for multitude of bad laws to be enacted.

Where do you suppose the ideas for 20,000 new laws come from? Most are suggested by the bureaucracy (executive branch). Some come from lobbyists. A few from average citizens. (The idea to put the phrase, "In God we trust" on all coins came from a citizen in 1861.)

In the House, proposed bills are dropped into the "hopper," a box beside the chief clerk's desk. In the Senate a bill is introduced by a Senator being recognized to speak, he then recites the bill's name and synopsis. (Question 10)

Proposed bills are assigned numbers. (Question 10) Once numbered and registered, the bill is assigned to a committee. (Question 11) Legislative clerks in each house assign the bill to an appropriate committee. The chairman of that committee usually assigns the bill to a sub-committee for more in-depth study.

The sub-committee debates the pros and cons of the bill. (Question 11) They can hold hearings to seek the advice of experts, citizens that would be effected by the bill, and lobbyists. They can even take fact-finding junkets. (For the life of me I don't see why a fact-finding junket to Bermuda was necessary for Toe Jam Awareness Week.)

Once all of the hearings, debates, and junkets complete, the sub-committee passes the bill back to the full committee with recommendations. Assuming favorable recommendation, the committee meets in closed, Executive session for even more review. Here the bill can be edited, amended, even rewritten from scratch.

Back in regular session, the committee then votes on the bill. There are three possible outcomes: They can approve the bill, forwarding it to the floor of their respective house for a full vote. They can "table" the bill, sending it to oblivion. Or they can forward the bill to the floor with an unfavorable recommendation.

Suppose for a moment that the bill's original sponsor is incensed the bill was tabled by the committee. He can run around to all the other members and try to convince them of the bill's importance. If he can convince enough members, it can be "blasted" out of its grave, and onto the floor. (Question 12)

When a bill is sent to the floor, it must be placed on the calendar to be acted upon. The Senate has but one calendar, the House has three:

The Union Calendar – for appropriations bills

The House Calendar – for public (general welfare) bills

The Private Calendar – for private (specific) welfare bills

The bills on the calendars must be prioritized, this is handled by the Rules Committee of each house. Of the thousands of bills that make it this far, the Rules Committee may only give precedence to, possibly, 50. The others languish there, on the calendar, but never actually scheduled to be acted upon.

"Acted upon," means debated on the floor. Each house has different rules for how long a debate can last, and whether bills can be amended during the debate process etc. For example, in the House of Representatives, any member, during the debate process, and state, "Enough debate, let's vote on it now." If a majority of those present agree, each side is given 20 minutes for further debate, then the vote occurs. In the Senate, a super-majority of 60% is required to end debate and force the vote.

Once again, to quote P.T. Barnum, “And that is only the beginning!”

A bill that is approved by one house, must then be sent to the other house where the process begins anew.

Frequently a bill will be altered during its journey through the second house. A “conference committee” is created from members of both houses to iron out the differences. Once the conference committee is satisfied, the bill – now called a “compromise bill,” – once again re-enters both houses for re-approval.

Finally, the bill is presented to the President for his signature.

One note on the “line item veto” Presidents Reagan and Clinton fought so stringently for. This type of veto would allow the president to strike out certain parts of a new law that he disagreed with – usually in spending bills. The Supreme Court struck down the line item veto, stating it arbitrarily changes a law that had gone through the entire legislative process – thus if he signed a law that included lines that had been vetoed, it wasn't the same law the Congress had presented to him.

Whew.

The next lesson: The very heart and soul of both enumerated powers and constitutionally limited government: the 20 (and only 20) things Congress is allowed to do.