

★ ★ ★ ★ **LESSON 2** ★ ★ ★ ★
The Legislature

The Constitution was written with the Declaration of Independence in mind. The connection comes out most strongly in the introduction to the Constitution known as the **Preamble**. Like the Declaration, the Preamble is concerned with liberty, and places responsibility for government in the hands of "We the People."

Article I, Sections 1–6 set up a federal legislature. The framers of the Constitution were concerned that states as well as individuals should receive fair representation in making the nation's laws. Article I shows how these concerns were finally resolved.



PREAMBLE

The **Preamble** states the purpose of the Constitution. It proposes a government based on the will of the people who are governed by it. The idea of people governing themselves is known as **direct democracy**. But the system of government set forth in the Constitution is not direct democracy in its purest form. Americans do not vote on everything that affects their welfare. Instead the will of the people is expressed through representatives elected *by* the people. The idea of **representative democracy** is established at very the beginning of the Constitution, in Article I.



WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.



ARTICLE I

SECTION 1: Congress

A congress can be any assembly or group of individuals. But in the narrow sense used here, **Congress** is an assembly empowered to make laws for the nation. The powers of Congress to make laws are known as **legislative powers**. In our three-branch system of government, only the legislative branch can exercise these powers.

The United States Congress is made up of two houses—the **Senate** and the **House of Representatives**.



SECTION 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

SECTION 2: House of Representatives

1. *Election and term of office.* Members of the House are elected for a term of two years. Since representatives' terms do not overlap, all candidates for the House stand for election at the same time. Representatives are elected directly by the voters of each state, though who those voters are exactly the Constitution does not make clear. Qualifications for voting were left to the individual states. But different states adopted different voting requirements, which sometimes created problems. Today, most states have adopted three requirements for voting for representatives. Voters must be United States citizens; they must fulfill certain terms of residency; and they must be registered to vote. Several amendments have also changed our understanding of this section of the Constitution. **Amendments 15, 19, 24, and 26** have limited the states' powers to determine who can and cannot vote.

2. *Qualifications for membership.* Requirements for membership in the House are less demanding than for membership in the Senate. Representatives must be at least twenty-five years old and have been citizens of the United States for at least seven years. They must also live in the state they represent at the time of their election. They do not have to live in the district they represent, but few House candidates run for election outside their home district.

The Senate and the House of Representatives meet in the Capitol in Washington, D.C.



3. *Number of representatives for each state.*

Population determines the number of representatives each state will have. To ensure a fair distribution of House seats, the Constitution specified that the population must be counted every ten years. This population counting is called a **census**. Most states have several representatives, but *every* state, regardless of population, is entitled to at least one.

The passage referring to “three-fifths of all other persons” was included in the Constitution to deal with the problem of how to count enslaved Africans for purposes of representation. When **Amendment 13** abolished slavery, this passage ceased to have any meaning.

As the population increased, the number of seats in the House continued to grow. In 1929 Congress passed a law limiting the total number of representatives to 435.

4. *Vacancies in the House.* If a representative dies,

gives up his or her seat, or is removed from office, the state governor is required to call an election to fill the vacant seat.

5. *Choosing officers and impeachment.* The

Constitution specifies only that the House will choose a speaker, not what the powers of the speaker will be. But in practice the Speaker of the House has been a powerful fixture. The speaker presides over meetings of the House, enforces its rules, and determines when individual members may speak. By an act of Congress, the Speaker of the House follows only the Vice-President in line of succession to the presidency. In theory the speaker does not have to be a member of the House, but in fact always is. The speaker invariably comes from the party with the most seats in the House.

The Constitution gives the House “the sole power of impeachment.” To **impeach** means to accuse a government official of wrongdoing. The House can bring impeachment charges against the President, Vice-President, and other officers of government. It cannot bring charges against any member of Congress. But the House only has the power to *accuse*. The power to conduct a trial of impeachment voted by the House belongs solely to the Senate. (See **Article II, Section 4.**)

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose 3, Massachusetts 8, Rhode Island and Providence Plantations 1, Connecticut 5, New York 6, New Jersey 4, Pennsylvania 8, Delaware 1, Maryland 6, Virginia 10, North Carolina 5, South Carolina 5, and Georgia 3.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3

1. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president **pro tempore**, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

SECTION 3: Senate

1. *Selection of members.* In the Senate states are represented *equally* rather than proportionally. Every state is entitled to two Senate members, regardless of population.

Senators serve a term of six years. Originally senators were chosen by the legislatures of their states. But since 1913, as required by **Amendment 17**, senators have been elected directly by the voters of each state.

2. *Terms and vacancies.* Elections for the Senate are staggered. One-third of the Senate stands for election every two years. This provides the Senate with a continuity of membership that the House of Representatives does not have.

The last part of this passage has been amended. **Amendment 17** specifies that if a Senate seat falls vacant, the state governor will appoint a temporary senator until an election can be held.

3. *Qualifications for membership.* Qualifications for the Senate are more rigorous than qualifications for the House. Senators must be at least thirty years old when they take the oath of office. They must also have been citizens of the United States for at least nine years and live in the state they represent.

4. *President of the Senate.* Presiding over the Senate is the Vice-President's only constitutionally specified duty. In Senate debates, the Vice-President casts a vote only in the case of a tie. Since ties rarely occur, the Vice-President seldom exercises this power.

5. *Election of officers.* The Senate selects its officers from its own membership. It also chooses a **president pro tempore**, or temporary president, to preside over sessions when the Vice-President is absent. The president pro tempore has much the same role in the Senate as the speaker does in the House. In line of succession to the presidency, the president pro tempore follows only the Vice-President and the Speaker of the House.

6. Impeachment trials. Although the House of Representatives has the sole power of impeachment, it is the Senate that conducts the actual impeachment trial. If the President of the United States is impeached, the Chief Justice of the Supreme Court presides over his trial. Conviction on impeachment charges requires a two-thirds vote of the senators present at the time of the voting.

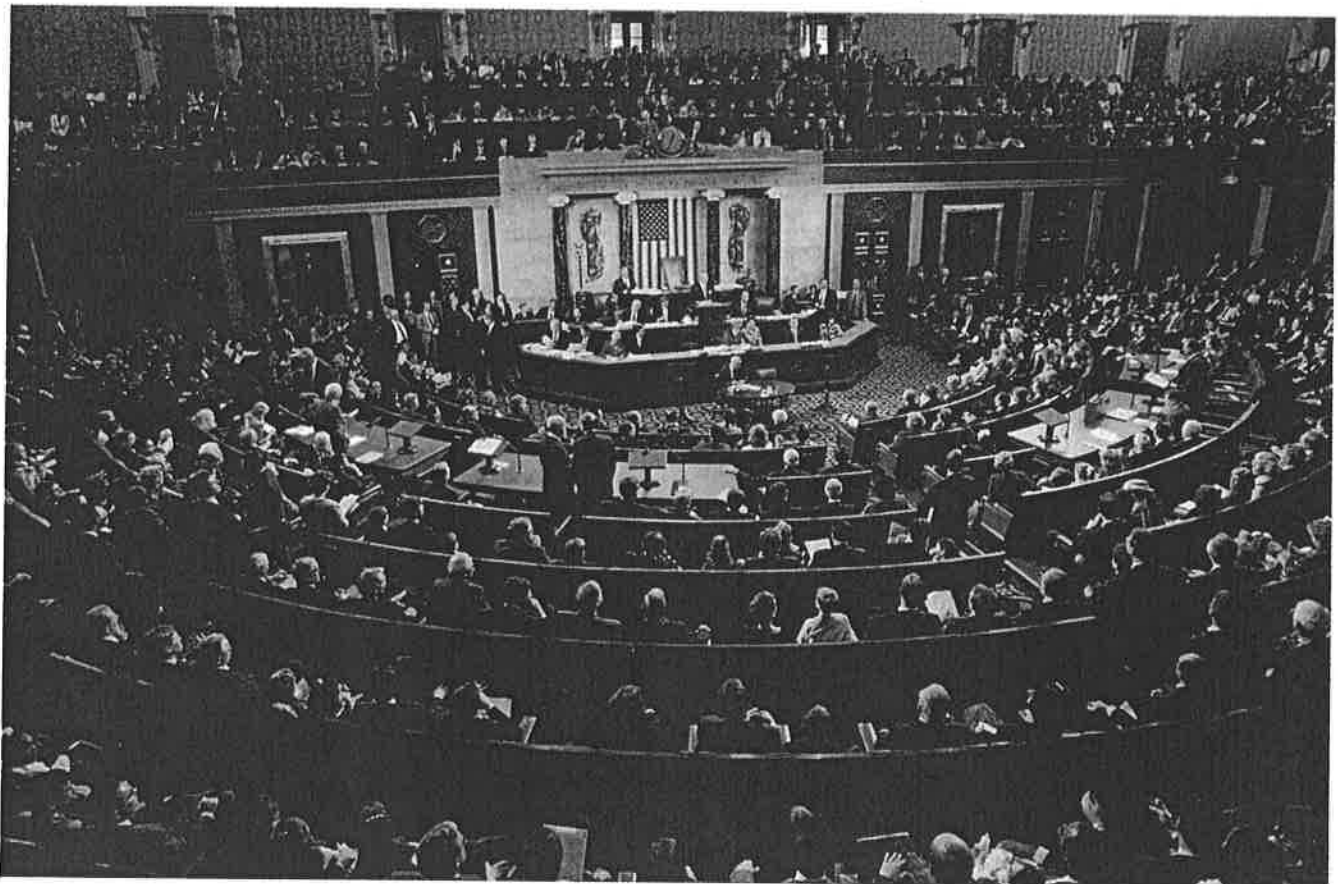
Only two sitting Presidents have been impeached. In 1868, the House impeached Andrew Johnson. Over one hundred years later, in 1998, President Bill Clinton was impeached. Neither President, however, was convicted by the Senate. In 1974, a committee in the House recommended the President Richard Nixon be impeached, but Nixon resigned before the full House could vote on his impeachment.

7. Impeachment convictions. An impeachment conviction does not carry with it any criminal penalties. A convicted official can only be removed from office and banned from holding other offices. Once removed, however, the convicted official is subject to normal criminal proceedings and punishments. **Article II, Section 4** spells out offenses for which officials can be impeached.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgement in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

A joint session of Congress



SECTION 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 the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

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.

SECTION 5

1. Each house shall be the judge of elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

SECTION 4: Elections and Meetings

1. *Electing members to Congress.* The Constitution gives state legislatures the power to control the elections of their own members to Congress. But Congress can interfere with this power when necessary, and has done so in significant ways. For example, Congress has required the states to elect their representatives by districts, and has set a standard date for all congressional elections.

2. *Annual meetings.* Congress must meet at least once every year. But the opening date of the congressional session has been changed by **Amendment 20**. Congress must now convene on January 3, unless a different date is set by law.

SECTION 5: Rules of Business in Congress

1. *Organization.* Each house of Congress decides whether its members are properly elected and qualified to serve. Each house may refuse to seat a newly elected member, but only if the member does not meet constitutional requirements of age, citizenship, or residency.

Neither house may vote on bills or conduct other business unless a majority of its members is present. This majority constitutes a **quorum**, the minimum number of members needed before an organization can act. In order to form a quorum and for other reasons, Congress can require members' attendance at its meetings.

2. *Rules.* Each house of Congress sets its own rules and procedures. Rules for both houses are often similar, though sometimes they differ in significant ways. For example, the House imposes a strict limit on how long members may speak, but the Senate allows its members to speak for as long as they see fit.

Members of either house can be punished if they break the rules of the house or become disorderly. They can also be expelled from the house by a two-thirds vote of its members.

3. *Keeping an official record.* Each house must keep an official journal of its meetings. These journals are published at the end of a congressional session. The journals list all bills presented during the session as well as the votes of individual members. But matters involving national security may be left out of the published record if either house so chooses.

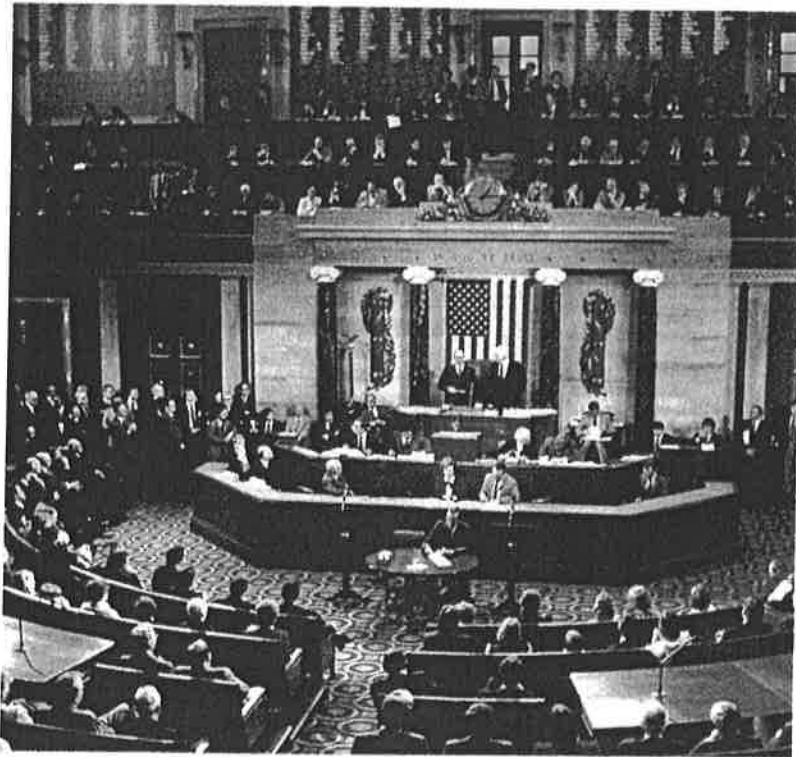
4. *Rules for adjournment.* Once a session of Congress has started, neither house can adjourn for more than three days without the consent of the other house. Nor can one house move its place of meeting—to another city, for example—without similar consent.

SECTION 6: Privileges and Restrictions

1. *Congressional salaries and privileges.* Senators and representatives are paid out of the United States Treasury. Their salaries are set by law and periodically revised.

Members cannot be tried or sued for anything they say on the floor of Congress or in congressional committees. They also enjoy some immunity from criminal arrest, though they can be arrested, tried, and convicted for murder, robbery, and other criminal offenses.

2. *Employment restrictions.* As long as they are members of Congress, senators and representatives cannot hold any other federal office or employment. Nor can they at a later date accept any federal job created while they were members, or any *emoluments*—salaries, raises, and other benefits—voted during their term of office.



4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

The Constitution gives Congress the power to establish its own rules. This picture shows the House of Representatives conducting business according to these rules.