



## LESSON 1

# All Legislative Powers Herein Granted— The Legislative Process 1789-1860

## OVERVIEW

In the early republic, Congress was a colorful, exciting, unpredictable, and contentious branch of the United States government. The members constantly quarreled but often deliberated and compromised through persuasive oratory and rational conversation. Congress was divided by party and sectionalism, but was guided through these difficulties by legislative statesmen.

The Congress continued to function as the undisputed law making body of the people of the United States. Even during some of its most tumultuous years, from 1789 until the outbreak of the Civil War in 1860, the Congress effectively governed the nation.

## OBJECTIVES

- Students will evaluate the role of Congress and what powers it was intended to have.
- Students will analyze the fears the Framers had concerning legislative tyranny.
- Students will be able to understand the changes in Congress from the framing of the Constitution to the Civil War.

## THE DEBATES IN THE FEDERAL CONVENTION OF 1787, MAY 31, 1787

**James Wilson [Pennsylvania]:** He wished for vigor in the government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess, not only, first, the *force*, but second, the *mind or sense*, of the people at large. The Legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively.

### RECOMMENDED TIME

135 minutes

### MATERIALS LIST

- **Handout A: Background Essay: All Legislative Powers Herein Granted—The Legislative Process 1789-1860**
- **Handout B: America’s Great Debates**
- **Handout C: Position Assignment Cards**
- **Handout D: Elections!**
- **Answer Keys**

### CONSTITUTIONAL PRINCIPLES

- Representative/Republican Government
- Federalism
- Limited Government

### STANDARDS

- **NCSS C3 Framework:** D2.Civ.8.9-12, D2.Civ.10.9-12, D1.9-12, D1.4.9-12, D2.His.3.9-12
- **CCE:** I:B,II:D, III:D,III:E,V:C
- **NCHS:** Era 3: Standard 3, Era 4: Standard 1, Era 4: Standard 3

### KEY TERMS

- Contentious
- Quarreled
- Sectionalism
- Nationalism
- Parliamentary
- Coalitions
- Agrarian
- Electoral College
- Divisive
- Antebellum
- Slave state
- Free state
- Tariff
- Nullification
- Comply

# Lesson Plan

**Background and warm-up activity** » *15 minutes of homework and 15 minutes of class time*

Distribute and assign for homework **Handout A: Background Essay—All Legislative Powers Herein Granted, The Legislative Process 1789-1860.**

- Have students complete the critical thinking questions at the end of the essay.
- At the beginning of class, have the 5 critical thinking questions on the board. Go through them as a class.

**Activity** » *90 minutes*

- A. Your students have been tasked with debating a historical controversy. For some added fun, feel free to incentivize your students with an award for the winning side.
- B. Pass out a list of topics and instructions on **Handout B: America's Great Debates**. Some suggestions are below, however, students should feel free to add a topic(s) of their choice to the list. Give the students a few minutes to review the list.
  - War of 1812
  - National Bank
  - Second National Bank
  - The Tariff of Abominations
  - Nullification
  - Missouri Compromise
  - Kansas-Nebraska Act
  - Mexican-American War
- C. The class will take a vote on which issue they want to debate.
- D. Print and cut out the assignment cards on **Handout C: Position Assignment Cards**. Make sure the number of cards exceeds your class size. Have your students randomly draw a card. This will tell them whether their constituents have elected them to be for or against the specific topic they will be debating.
- E. Give your students time to research the topic in class or as a homework assignment.
  - Remind the students that the assignment cards only tell them what their constituents want. They are members of Congress, and they may decide to go against the wishes of their constituency if they think that best. Remind them that going against their constituents' wishes may have consequences.
  - Be sure to remind the students that in favoring or opposing the measure, they may offer different solutions. These solutions may have a historic precedent or they may be novel creations. Students should be encouraged to advocate these varying positions. No debate is two-dimensional.

- F. On the day of the debate, students in the majority party (the group that has the most cards from above) should elect a speaker to moderate, but not participate actively in, the debate. The students are then free to debate the issue, with the speaker moderating the debate.
- G. At a point in the middle of the debate, the teacher should hold a reelection.
  - Distribute the assignment cards on **Handout D: Elections!** The students who sided with their constituents will be automatically reelected. However, those who went against their original assignment must draw a card to see if they've been reelected or not. If they are not reelected, they must sit out the rest of the debate. If a new party is elected to the majority, they may choose a new speaker.
- H. Continue with the debate after the reelection. Students should note whether there is a change in the debate based on the party in power or the lack of participation from those who were not reelected.
- I. At the end of the debate, take a vote to see which side wins the argument for or against the topic students debated.

### Wrap-up activity » 30 minutes

- A. Hold a class discussion regarding the debates. To begin the discussion, have your students write a short response to the following prompt:
  - ⋮ What was the biggest factor influencing the debate? Was it a particular argument? A particular person? A particular friendship? Do you think this may also be the case in Congress?
- B. Discuss with your class their observations regarding their legislative experiment. Possible discussion questions are listed below:
  - What challenges did you face in the debate?
  - Did anyone feel alienated?
  - Do you think you should have had the option to go against your constituents?
  - Why might going against your constituents' wishes be a good idea? How might going against your constituents' wishes be risky?
  - How were you able to come to a consensus?
  - Do you think this process was efficient?
  - To what extent should the process of legislation be efficient? What did the Founders think about that?
  - What frustrations did you have?
  - How did the speaker affect the debate?

- Did humor or witty remarks play any part?
- How much do you think personalities played a part in the outcome?
- How did the election in the middle of the debate affect the discussion? Did it affect the outcome of the debate?
- How do you think a powerful personality like Henry Clay, Daniel Webster, or John C. Calhoun would have affected your debate?
- Do you think the executive (in this case the teacher) should have had a role in controlling the debate? Does your answer depend on who holds the role of executive?

# Background Essay—All Legislative Powers Herein Granted, The Legislative Process 1789-1860

**Directions**

Read the essay and answer the critical thinking questions at the end.

In the early republic, Congress was a colorful, exciting, unpredictable, and contentious branch of the United States government. The members constantly quarreled but often deliberated and compromised through persuasive oratory and rational conversation. Congress was divided by party and sectionalism, but was guided through these difficulties by legislative statesmen. The Congress continued to function as the undisputed law making body of the people of the United States. Even during some of its most tumultuous years, from 1789 until the outbreak of the Civil War in 1860, the Congress effectively governed the nation.

The first Congresses navigated the fierce debates of the early republic. One of its first acts was to create the parliamentary rules of order governing how legislation was brought to the floor, debated, and voted upon. This Congress also passed the first ten amendments to the Constitution, now collectively known as the Bill of Rights. Further, it began to tackle the pressing matters that loomed over the nation, such as the Revolutionary War debt that threatened to overwhelm the young financial system. After contentious debates, Congress passed the financial plans of Alexander Hamilton including assuming the debts of the states and creating a National Bank. Hamilton's influence in Congress illustrated the importance of having a leader who sets the legislative agenda. Without such a leader within the Congress, in the 1790s that leadership

came from the executive branch. Similarly, President Thomas Jefferson often sent bills over to Congress to be enacted, assuming leadership in the absence of strong initiative from within Congress. When Quakers introduced anti-slavery petitions, the issue of slavery further divided the members of Congress.

As Congress grappled with divisive issues, delegates began to join forces with those of similar interest and soon formed into coalitions. These coalitions rapidly formed into established political parties. These first two major parties were the Federalists and the Democratic-Republicans.

The Federalists tended to favor northern business interests and a strong executive. Led primarily by Alexander Hamilton, they worked to establish the First National Bank, and preferred strong relations with England over France. The Democratic-Republicans, led by Thomas Jefferson, represented the agrarian interests of the nation, opposed the centralization of power in the federal government, and preferred close ties with France to those with England.

These two parties would dominate political proceedings into the early nineteenth century. In 1800, the House of Representatives was called upon to settle its first disputed presidential election and constitutionally selected Thomas Jefferson over Aaron Burr when they were tied in the Electoral College vote. Congress outlawed



the importation of slaves in 1808 and regulated commerce between Americans and Native Americans through the Indian intercourse acts. In 1812, it first exercised its power to declare war, initiating the War of 1812 with Great Britain. This divisive issue nearly split the nation along geographic lines, with New England, long a center of Federalist power, flirting with the idea of seceding, or leaving the country. The Federalist Party declined as a result of its association with the idea of secession.

In the early 1800s, three new members were elected to Congress whose voices would significantly influence the history of Congress and the United States. They were Henry Clay of Kentucky, Daniel Webster of New Hampshire and Massachusetts, and John C. Calhoun of South Carolina. Each would come to represent his region on the grand stage, and their debates and compromises characterized the antebellum period.

Henry Clay, elected in 1811, was immediately named Speaker of the House. Until this point, the Speaker of the House had primarily kept proceedings orderly as debate ensued on the floor. Clay, however, expanded his influence and used the chair as political tool, appointing political allies to head important committees. This enabled the Speaker to ensure loyalty to the priorities of the majority party in Congress. Since the Speaker is elected by the other members of the House, he acts as an agent of the national interest, offsetting the local attachments of each member. This politicization of the Speaker position continues to the present day.

The addition of new states to the Union caused sectional divisions between North and South. Through his political maneuverings, Clay was able to maintain the balance of power in

the Senate with the Missouri Compromise of 1820. Missouri entered the Union as a slave state and Maine as a free state. At the same time, Congress attempted to head off future disputes by declaring slavery would not expand north of latitude line 36-30. While it would turn out to be a vain hope that Congress could continue to regulate the sectional differences over slavery, the agreement demonstrated that Congress could—for a time, at least—deliberate and compromise over the pressing issues of the day, as long as there were strong leaders who could use their influence to promote such compromises.

The Second Party System began after the election of 1824, which pitted John Quincy Adams against Andrew Jackson. As in 1800, the election was decided in the House of Representatives when no candidate received an absolute majority of electoral votes. Clay used his political influence as Speaker to sway votes toward John Quincy Adams, who became president.

The two new parties to arise were the Democratic Party and the Whigs. The parties divided on issues such as the Second National Bank, protective tariffs, internal improvements, and the expansion of slavery in the territories. This period also saw the rise of disparate beliefs within the government on the nature of the Union and the animating principles of government in the Constitution. These divisions over political philosophy revealed deep rifts associated with sectionalism and ultimately led to war.

Congress reflected the nation's sectionalism and political divides. One controversial issue was the tariff of 1828, which became known as the "Tariff of Abominations." Westerners and Southerners charged that this tariff gave

the industrial northeast an advantage at their expense. In response to the tariff, John C. Calhoun called for the nullification of the tariff by the states. Calhoun drew this theory of nullification, which posited that a state could nullify a federal law that it considered unconstitutional, from Virginia and Kentucky resolutions drafted by Thomas Jefferson and James Madison in 1798 and 1799, though James Madison later came out explicitly against nullification. Robert Y. Hayne, Senator from South Carolina, later used this theory and the sectionalism that underpinned it to argue against protectionist tariffs in 1830. Senator Daniel Webster of Massachusetts, rose in opposition. The exchange, collectively known as the Webster-Hayne debate, has become one of the most famous debates in the history of the Senate. The final speech, given by Webster, is still regarded as a rhetorical masterpiece. His concluding line of, “Liberty and Union, now and forever, one and inseparable” was a ringing endorsement of nationalism over sectionalism. These great exchanges in the Senate illustrated that the Congress was a place where deliberation occurred, and people turned out to witness the great speeches made on the floor, which would guide their own thinking on important questions of the day.

Tensions over tariffs continued and in 1832, South Carolina threatened to nullify a tariff it believed was both unconstitutional and in direct conflict with their interests. In response, President Jackson called upon Congress to pass the Force Bill, authorizing the federal government to use force against any state failing to comply with the laws of the national government. Simultaneously, Henry Clay worked to pass a compromise bill that would decrease the tariff gradually, giving South Carolina

relief from the tariff. Jackson signed both laws, avoiding a possible violent conflict and demonstrating once again that Congress could compromise for the good of the country.

In keeping with the Framers’ concept of separation of powers, Congress jealously guarded its constitutional role. In 1842, Whigs in the House of Representatives believed President John Tyler was abusing his power to veto legislation. Previous presidents had only used the veto power when they believed a bill to be unconstitutional. Tyler began to veto bills with which he disagreed for political reasons. The House reacted by threatening to move forward with impeachment proceedings. Though Congress did not ultimately impeach the president, it did, for the first time in history, succeed in overriding one of Tyler’s vetoes.

By the 1850’s, slavery and sectionalism continued to dominate debates in Congress. Southern states constantly resisted the admission of new territories as free states, since that would have upset the balance in Congress of free and slave interests. The Wilmot Proviso, introduced in 1846 by Congressman David Wilmot of Pennsylvania, had attempted to ban slavery from the territories. Though the proposal failed, it made Southern leaders feel as though the North was conspiring against them. In 1850, when Congress had to deal with the territories it had acquired during the Mexican-American war, it was again able to achieve a major compromise to preserve the balance between slave and free states. Its strengthening of the Fugitive Slave Act, however, caused much consternation in the north.

In 1852, the Whig Party, unable to come to a consensus on the issue of slavery, dissolved. This ushered in the Third Party System. The most successful party to emerge from the ashes was



the Republican Party. Much of its strength came from its staunch opposition to slavery.

Congress again fiercely debated the issue of slavery in 1854, resulting in the passage of the Kansas-Nebraska Act. This law effectively repealed the compromise of 1820 by allowing Kansas and Nebraska, both north of the 36-30 compromise line, to decide by popular sovereignty whether they would be slave or free. Immediately, settlers on both sides of the slavery controversy rushed into Kansas. Violent clashes quickly followed and represented a preview of the coming war. In the lead-up to the 1860 presidential race, Southern states threatened to secede from the Union if the Republican,

Abraham Lincoln, was elected. Lincoln won the election and in December of 1860, South Carolina passed an ordinance of secession. In the next six months, ten more states declared their secession, the South was in rebellion, and the Civil War soon began.

Only 71 years had passed from the first congress to the thirty-sixth. The country had experienced great change, but the Congress effectively ruled over a nation divided by sectional and partisan differences. Congress's strong debates and successful compromises, steered by skilled statesmen, had proven that deliberative republican government under the Constitution was possible.

## CRITICAL THINKING QUESTIONS

1. What is the role of Congress in the government of the United States?
2. What do you think were the greatest challenges facing legislators in the early republic before the Civil War?
3. Why do you think political parties arose in the United States?
4. Do you think the heated debates that played out in the Congress of the early republic were beneficial or problematic for the nation?
5. Have you ever had to make a consensus decision amongst a group of people? What are some reasons coming to this conclusion can be difficult?

# America's Great Debates

## Directions

History is never an inevitable series of events. The events of history were the product of the history our ancestors made, but by no means were they always correct or always inevitable. You have the opportunity to remake history. You and your classmates have been called upon to be members of Congress. You must reopen a debate from the past and decide what you think is the best choice for the future of the country.

You and your classmates must decide what topic you want to debate. The class will vote to determine which topic will be debated. Review the topics below and decide which topic your class debate will address. You may add topics of your own if they are not listed. Feel free to advocate for the topic you think best!

- |                               |                         |
|-------------------------------|-------------------------|
| a. War of 1812                | e. Nullification        |
| b. The National Bank          | f. Missouri Compromise  |
| c. The Second National Bank   | g. Kansas-Nebraska Act  |
| d. The Tariff of Abominations | h. Mexican-American War |

Once the majority decides on the topic, you will draw to see if you have been elected to support the measure at hand or oppose it and which party you belong to. Remember, you're the elected representative of your district, but you are not required to listen to your constituents. You are free to act as you see best, however, there may be electoral consequences.

Research the topic. Make sure you know the ins and outs of your position and the position of the opposition. Remember, if you oppose the topic at hand, you need to offer alternatives!

## Day of the Debate

1. The party in the majority must first elect a speaker. The speaker will be in charge of regulating the debate, so choose wisely.
2. Let the debate commence! The speaker must ensure that each side has equal time on the floor.
3. The winning side is whomever has a majority of votes at the end of the class period.

## Position Assignment Cards

<p>Party A</p> <p>For</p>	<p>Party A</p> <p>Against</p>
<p>Party B</p> <p>For</p>	<p>Party B</p> <p>Against</p>
<p>Party A</p> <p>For</p>	<p>Party A</p> <p>Against</p>
<p>Party B</p> <p>For</p>	<p>Party B</p> <p>Against</p>

# Elections!

Reelected	Not Elected
Not Elected	Reelected
Reelected	Not Elected
Not Elected	Reelected

## Handout A: Background Essay—All Legislative Powers Herein Granted, The Legislative Process 1789-1860 Answer Key

*The answers below are only sample responses. Student responses should be judged by the evidence and logic they use in their responses.*

1. Congress is the law making body of the United States. Their role is to pass legislation that governs the country. The Senate is also called upon to advise the president on foreign policy.
2. The greatest challenges facing the Congress in the early republic were debates over constitutional power and economic institutions, state and federal authority, and sectionalism and the debate over slavery and its expansion.
3. People tend to naturally group themselves by like interests. It is always of benefit to have like-minded friends working together, especially in a body as diverse as the Congress.
4. The heated debates in Congress during the early republic often resulted in compromises by statesmen that allowed the peaceful resolution of issues. On the other hand, the heated debates revealed the real partisan and sectional divides in early America over several contentious issues.
5. Student responses will vary. Their responses should be thoughtful reflections that discuss the challenges of making a decision contrary to a popular opinion.



# Congress: Beginnings and Today

*by Joseph Postell, Assistant Professor of Political Science, University of Colorado–Colorado Springs*

Establishing a government in which laws are made by an assembly of elected representatives is one of the great achievements in the last several centuries of human history. Yet most people today have a low regard for our legislative branch. Congress has become more democratic since the Founding, and yet today people think their representatives care about their opinions less than ever. The Constitution places the lawmaking power in Congress, yet people look more to the president as our chief legislator. What accounts for these contradictions? Examining the ideas that inspired the creation of our legislative branch and the history of its development helps us to answer these questions.

## Constitutional Convention

At the Constitutional Convention, the structure of the legislative branch was the most contentious issue that the delegates faced. The amount of representation that would be granted to the large and the small states nearly tore the Convention apart. One side favored equal representation in the legislature – an arrangement befitting a league or confederacy of equal and independent sovereign states where each distinct sovereignty gets a single vote. Others advocated for proportional representation based on the idea of a republican government. After much debate, the issue was settled by a compromise which exists to this day: one house of Congress provides proportional, the other, equal representation.

## Ratification Debate

During the ratification debate over the Constitution, other aspects of the legislative branch prompted criticism. Opponents of the Constitution, known as Anti-Federalists, objected that the legislature would be too far removed from the people, and would become an aristocracy that would betray the people the legislators were supposed to serve. The term lengths were too long. The lack of term limits would allow representatives to serve for very long periods of time, becoming removed from the day-to-day concerns of their constituents. There would be too few representatives (the Constitution allowed *no more* than one representative per 30,000 inhabitants) and each representative would have too large a district, detaching the representative from personal contact and intimacy with his constituents. These arrangements, Anti-Federalists feared, would produce a legislative body that is aristocratic, elitist, and out of touch.

Federalists, those who supported the Constitution, responded by pointing to the problems occurring in the states during the 1780s as evidence that representatives needed time and space in order to “refine and enlarge the public views,” not simply reflect them. Sometimes majorities are tyrannical and representatives must protect the people from themselves. Longer term lengths would provide this space, and the opportunity for indefinite re-election would ensure the people get to decide, at intervals,

whether to keep their legislators in office. A smaller representative body would prevent the legislature from turning into mob rule. The Federalists' vision for Congress differed significantly from the Anti-Federalists', and the debates they had are still part of today's debates over how our legislators should behave and be held accountable.

In one of his most famous writings, *Federalist No. 10*, James Madison described an additional benefit of having a Congress covering a large territory and divided into local districts. This would prevent a majority faction from taking over the government and infringing the rights of the minority. By representing all of the different districts throughout the country, the diversity of the country would be brought into the deliberations in the legislative branch. This view of Congress would ensure that disagreement, and hopefully compromise, would be part of the legislative process. Individual members of Congress are *supposed* to represent the interests of their local constituencies. No single member is elected by the whole country, yet through bringing together all of the various interests some sort of compromise that advances the common good can be reached.

Federalists ultimately won the debate and the people ratified the Constitution through their state ratifying conventions. Federalists rejected the Anti-Federalists' view that the powers of the new Congress would be broad and expansive, focusing on the limited nature of Congress's powers under the Necessary and Proper Clause and the General Welfare Clause. They barely mentioned the Commerce Clause because, at the time of the Founding, nobody believed that power to be very broad. As Madison explained in *Federalist No. 45*, "The regulation of commerce, it is true, is a new power, but that seems to be an

addition which few oppose, and from which no apprehensions are entertained."

Federalists also advanced a new theory of separation of powers that included checks and balances. Prior to 1787, most people thought separation of powers would be preserved by simply laying out the three branches and mandating that no branch trample on the others. However, experience demonstrated that such "parchment barriers" would not be very effective. In a republic, the strongest branch of government is the legislature, and the Federalists were concerned that it would gradually usurp the powers of the other branches. Their remedy was to divide the legislature into two chambers and check each against the other. The House and the Senate, in other words, were designed to work against each other, not together. This would be accomplished by (to quote *Federalist No. 51*) giving each house "different modes of election and different principles of action" in order to make them "as little connected with each other" as possible. The internal division of Congress, the Federalists argued, would maintain the checks and balances needed to preserve separation of powers.

While Federalists won the major debates about Congress, the Constitution said very little about how Congress would function in practice. Many of the rules of Congress were left to be worked out through experience. As a result, Congress has been shaped by historical developments that have changed how it operates, resulting in the "Three Congresses" we have experienced throughout American history.

## The First Congress

The "First Congress" was in place during the early decades of American history. From today's perspective it probably looks chaotic,

unpredictable, and disorganized. In these years Congress didn't use committees to specialize in specific policy areas. Most bills were worked out collectively on the floor of the chamber, then referred to a special committee to be written and sent back to the whole assembly for passage. There were advantages and disadvantages to this arrangement. Everyone had an equal opportunity to contribute to every bill. This encouraged deliberation and ensured that every representative, reflecting the views of each part of the country, could influence the laws. Debate was extensive, and the speeches made during debates affected the outcome and were enlightening to the citizens who read them. Since strong and disciplined parties had not yet developed, legislators changed their minds frequently and were free to bargain and compromise. On the other hand, this setup was extremely inefficient, and leadership was lacking to coordinate policies. Because every legislator was a generalist, policy expertise was absent.

## The Second Congress

This arrangement worked while Congress was small. After the 1800 census there were 142 representatives in the House and even as late as 1833 there were only 48 senators. But as the nation grew, the Congress expanded and its business became more complex. These changes produced a new kind of Congress by the middle of the nineteenth century, very different from what came before. Two main parties had developed with extensive tools to ensure party discipline. Representatives were nominated by their parties, and therefore had to follow the party leadership to stay in office. Party platforms were carefully constructed and widely read, so that citizens knew where each party stood on

the major questions of the day. Permanent standing committees were created to ensure policy specialization, and these committees were supervised by the leaders in each chamber to ensure that the committees pursued the priorities of the party.

Especially in the House, party leaders became the most powerful members of the government. The Speaker of the House – not the president – was the center of power in the late nineteenth century. Speakers became so powerful that they were called “czars,” and the epitome of the strong Speaker was Joseph Cannon of Illinois. The Speaker's power over the House ensured that the party set the agenda in Congress. Today most are skeptical of party leadership and control, but there were significant advantages. Parties prevented Congress from becoming too fragmented, where all of the local interests simply clashed with each other and gridlock ensued. Because they were elected by a majority of the whole country, these parties reflected the will of the majority, were efficient in implementing that will, and ensured that elections mattered. Congress became a highly coordinated and responsive institution as a result of party leadership – at the expense of independent members representing their constituents' local interests.

## The Third Congress

This “Second Congress” came to a sudden end in 1910. In a dramatic sequence of events the Speaker was stripped of most of his powers over members. Similar events occurred in the Senate. This produced a very different, “Third Congress.” Just as power became centralized under party leaders during the “Second Congress,” it filtered back down in this new setup. But the committee

structure remained in place, so committee leaders, rather than all of the legislators, controlled the legislative process. Because committees could refuse to send bills to the floor for votes, the chairs of these committees could ensure (or prevent) the passage of a proposed law. If power was exercised collectively in the “First Congress” and by party leaders in the “Second Congress,” the “Third Congress” is characterized by committee leadership. Power was dispersed from party leaders, but centralized in the hands of the committee chairs.

At the same time, Congress changed the very nature of its functions. Originally designed as a legislative body, Congress began to transfer that power to administrative agencies by delegating its powers over to these agencies. But, just as Madison had predicted, legislators did not want to relinquish control over public policy. Therefore, Congress organized itself to maintain oversight and control over the programs it was delegating to administrative agencies. It did this by maintaining its organization into numerous committees whose members had the specialized knowledge to oversee these programs.

## Challenges for Today and Tomorrow

Today, we live in the world of the “Third Congress” that was set in place back in 1910. Some important changes have occurred, but the basic dynamic is the same. Power became even more decentralized in the 1970s, as reformers seized control from conservative Southern Democratic senators who used their powers to block important civil rights laws. They succeeded in placing more power and autonomy into subcommittees, which now can set their agendas without permission from the chairs of the committees that oversee them. More recently,

leaders of both parties have tried to regain control of the agenda in Congress by reclaiming powers to control debate and which bills are voted on. Their efforts have met with limited success, and it is an open question whether Congress will remain a decentralized, committee system where party leadership is weak, or whether party leaders can regain leadership and influence over their members.

Some of the aspects of Congress we dislike so much are rooted in these recent developments. The lack of party leadership and control, for example, has produced a Congress where representatives have more to gain by asserting their own districts’ interests than by bargaining and compromising. Because of the arrangement of Congress into districts, as Madison described in Federalist No. 10, there are very few incentives for members to work together without strong party leadership. The decentralization of power, moreover, has provided more access points for lobbyists and more checkpoints where an individual can stop even the majority in Congress from acting. The “Second Congress” was a responsive, majoritarian institution because of its centralized structure, but today Congress is decentralized, fragmented, and vulnerable to special interest influence.

There is no simple way to think about Congress. It is a complicated institution which raises critical questions about the nature of a republican form of government, and ultimately whether and under what conditions self-government is possible. Congress is the centerpiece of this American experiment in self-government. For that experiment to succeed, it is imperative that citizens understand how their legislature was meant to function, and how it actually functions today.

## CRITICAL THINKING ACTIVITY

1. Read the essay and underline the main sentence or two in each paragraph.
2. Next, use those main sentences to write a summary of the essay.
3. Finally, work with a partner or two to discuss the essay, compare your summaries and team-write an outline that traces the changes in Congress from its beginnings to the present.



# Founding Principles

**Checks and Balances:** Constitutional powers are distributed among the branches of government allowing each to limit the application of power of the other branches and to prevent expansion of power of any branch.

**Consent of the Governed/Popular Sovereignty:** The power of government comes from the people.

**Civic Virtue:** A set of actions and habits necessary for the safe, effective, and mutually beneficial participation in a society.

**Civil Discourse:** Reasoned and respectful sharing of ideas between individuals is the primary way people influence change in society/government, and is essential to maintain self-government.

**Due Process:** The government must interact with all people according to the duly-enacted laws and apply these rules equally with respect to all people.

**Federalism:** The people delegate certain powers to the national government, while the states retain other powers; and the people, who authorize the states and national government, retain all freedoms not delegated to the governing bodies.

**Individual Responsibility:** Individuals must take care of themselves and their families, and be vigilant to preserve their liberty and the liberty of others.

**Liberty:** Except where authorized by citizens through the Constitution, government does not have the authority to limit freedom.

**Limited Government:** Citizens are best able to pursue happiness when government is confined to those powers which protect their life, liberty, and property.

**Majority Rule/Minority Rights:** Laws may be made with the consent of the majority, but only to the point where they do not infringe on the inalienable rights of the minority.

**Natural/Inalienable Rights:** Rights which belong to us by nature and can only be justly taken away through due process. Examples are life, liberty, property, and the pursuit of happiness.

**Private Property:** The natural rights of all individuals to create, obtain, and control their possessions, beliefs, faculties, and opinions, as well as the fruits of their labor.

**Private Virtue:** The idea that, in order to sustain liberty, individuals must be knowledgeable and must conduct themselves according to principles of moral and ethical excellence, consistent with their rights and obligations.

**Representative/Republican Government:** Form of government in which the people are sovereign (ultimate source of power) and authorize representatives to make and carry out laws.

**Separation of Powers:** A system of distinct powers built into the Constitution, to prevent an accumulation of power in one branch.

**Rule of Law:** Government and citizens all abide by the same laws regardless of political power. Those laws are justly applied, consistent with an ethos of liberty, and stable.

# Virtues

**Contribution:** To discover your passions and talents, and use them to create what is beautiful and needed. To work hard to take care of yourself and those who depend on you.

**Courage:** The ability to take constructive action in the face of fear or danger. To stand firm in being a person of character and doing what is right, especially when it is unpopular or puts you at risk.

**Honor:** Demonstrating good character, integrity, and acting honestly.

**Humility:** To remember that your ignorance is far greater than your knowledge. To give praise to those who earn it.

**Integrity:** To tell the truth, expose untruths, and keep your promises.

**Initiative:** Exercising the power, energy, or ability to organize or accomplish something.

**Justice:** Upholding of what is fair, just, and right. To stand for equally applied rules that respect the rights and dignity of all, and make sure everyone obeys them.

**Moderation:** The avoidance of excesses or extremes.

**Perseverance:** To continue in a task or course of action or hold to a belief or commitment, in spite of obstacles or difficulty. To remember how many before you chose the easy path rather than the right one, and to stay the course.

**Respect:** Honor or admiration of someone or something. To protect your mind and body as precious aspects of your identity. To extend that protection to every other person you encounter.

**Responsibility:** Acting on good judgment about what is right or wrong, or deserving the trust of others. To strive to know and do what is best, not what is most popular. To be trustworthy for making decisions in the best long-term interests of the people and tasks of which they are in charge.

**Resourcefulness:** Taking constructive action in difficult situations quickly and imaginatively.

**Self-Governance:** To be self-controlled, avoiding extremes, and to not be excessively influenced or controlled by others.

**Vigilance:** Being alert and attentive to take action to remedy possible injustices or evils.

# Glossary

**Administrative State:** The idea that government agencies should be part of an efficient, planned bureaucracy in which legislative, executive, and judicial powers are combined in specific agencies organized according to scientific management, headed by experts, and empowered to solve social, economic, and political problems. This approach to government eliminates separation of powers, checks and balances, and removes most limits on government power.

**Agrarian:** The cultivation of land; agriculture; a person who favors equitable distribution of land.

**Agricultural Adjustment Act of 1933:** An act of Congress passed in 1933 as part of New Deal legislation to help relieve the economic emergency of the Great Depression by increasing agricultural purchasing power and provide emergency relief.

**Antebellum:** Before the war; in particular, the period before the American Civil War.

**Anti-Federalists:** A faction of Founders who supported amending the Articles of Confederation and opposed the Constitution of 1787, were concerned about a strong central government, wanted to maintain strong state governments, and fought for the Bill of Rights as a way to protect citizens from a strong central government.

**Antiquated:** Something that is no longer useful; old; out-of-date.

**Apothegm:** A short, witty, instructive saying.

**Appropriations Committee:** A legislative panel that is responsible for passing appropriations, or spending, bills.

**Articles of Confederation:** The original governing document of the United States that was written in 1777 and was in force until the ratification of the Constitution by nine of the thirteen states in 1788. Under the Articles, states retained sovereignty and created a firm league of friendship in which the national government held little power.

**Bicameral/Bicameralism:** A legislative body composed of two chambers; in the United States, the Congress is composed of the House of Representatives and the Senate.

**Brutus:** An Anti-Federalist writer, thought to be Robert Yates of New York. Brutus asserted that it was impossible to provide fair and true representation in such a large republic as the United States.

**Bureaucracy:** The administration of government through departments and subdivisions; the concentration of authority in a complex structure of administrative bureaus.

**Casework:** The work done by congressional staffers to assist constituents by contacting government agencies on behalf of the constituent to attempt to resolve problems.

**Cato:** An Anti-Federalist writer, thought to be George Clinton of New York, who believed that the legislature would not be able to respond to the needs of people from all walks of life and would end up representing the interests of only the wealthy and influential few.

**Caucus:** A meeting of supporters of a specific political party who gather to elect delegates to choose whom they believe should be the candidate in a given election that is organized by political parties. In the modern congress unit, *caucus* is not used in the electoral sense, but in the sense of a body of individuals belonging to the same faction —“a meeting of the members of a legislative body who are members of a particular political party, to select candidates or decide policy. *Synonyms:* meeting, assembly, gathering, congress, conference, convention, rally, convocation” - Webster’s

**Chief Executive:** The leader of the executive branch of government. In the British system, the Prime Minister is part of the legislative branch, whereas in the American system, the president is the head of the executive branch.

**Clayton Antitrust Act of 1914:** An act of Congress that prohibited mergers, interlocking directorates, and other forms of monopolistic business organization.

**Cloture:** the parliamentary procedure by which debate is closed and the measure under discussion is put to an immediate vote.

**Coalition:** An alliance of people who come together for a specific purpose.

**Coincide:** To occur at the same time; to occupy the same place.

**Commerce:** The economic system that constitutes the working environment for business including the legal, economic, political, social, cultural and technological systems that are in operation in any nation-state.

**Commerce Clause:** Article I, Section 8, Clause 3 of the U.S. Constitution states, “Congress shall have the power...to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

**Competing Interests:** Members of Congress are simultaneously expected to be lawmakers, representatives of the people, and members of a political party. As representatives of the people, they are expected to act for the benefit of both their particular district and for the nation as a whole. Passing laws frequently requires compromise among members, which necessitates sacrificing some constituent desires in hopes of achieving others.

**Comply:** To act in accordance with a request or order.



**Confederation:** A league or alliance of independent states, nations, or political organizations.

**Congressional Support Staff:** Employees of representatives or senators who assist members in their daily work including constituent communication and advocacy, drafting legislation, or research.

**Consent:** To give permission, approval, or assent.

**Constituent:** Being a voting member of a community or organization and having the power to appoint or elect.

**Contemptible:** Despicable; dishonorable; disgraceful.

**Contentious:** Being argumentative or causing controversy.

**Co-opt:** To cause or force someone to become part of your group or movement; to use or take control of something for your own purposes.

**Delegate:** A person designated to represent others.

**Deliberative:** Carefully weighing or considering.

**Democratize:** To make or become democratic.

**Disappearing Quorum:** The refusal to vote on a measure though physically present during a meeting of a deliberative body.

**Divisive:** Forming or expressing division or distribution.

**Dupe:** A person who is easily deceived.

**Dysfunction:** Any malfunctioning part or element.

**Economic Opportunity Act of 1964:** An act passed by Congress to combat poverty in the United States through work-training programs, urban and rural community action programs, adult education programs, and assistance to needy children under the Office of Economic Opportunity in the executive branch.

**Electoral College:** The Electoral College is the system used by the United States to elect its chief executive. The College is outlined in Article II, Section 1 and in the Twelfth and Twenty-Third Amendments to the United States Constitution. It calls for each state to be designated a number of electors that is equal to the number of senators and representatives in each state. To win the presidency, a candidate must receive an absolute majority of votes, currently 270 electoral votes.

**Enlightened Administrator:** A member of the government with specialized knowledge or education about a specific issue who acts as an administrator for government programs.

**Enumerated Powers:** The powers set forth by the Constitution to each branch of government.

**Excess of Democracy:** The idea that if there is too much democracy, governing decisions will reflect a mob mentality rather than the long-term best interests of the people.

**Executive:** The president leads the executive branch of the United States government; the executive is tasked with enforcing the laws, acting as commander in chief of the military, and making treaties and appointing officers with the advice and consent of the Senate.

**Federal Farmer:** An Anti-Federalist writer, thought to be Melancton Smith of New York, who believed that “a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled.”

**Federal Pyramid:** When James Wilson referred to the federal pyramid, he was arguing for a central government of a “considerable altitude,” or powerful enough to address the injustices and inadequacies that the union had experienced under the Articles of Confederation. A stable structure required a broad and deep foundation, and to Wilson, that meant a high level of participation by the people themselves in choosing their representatives. Wilson believed the new government must be both energetic and popular.

**Federal Supremacy:** Under the Supremacy Clause of Article VI of the Constitution, the Constitution, laws, and treaties of the federal government are the supreme law of the land.

**Federal Trade Commission (FTC):** An office under the executive branch created by the Federal Trade Commission Act in 1914 to promote consumer protection and anticompetitive business practices.

**Federalists:** A group of Founders that believed the central government was not strong enough under the Articles of Confederation and advocated for the new Constitution. They believed a bill of rights was not needed because the Constitution itself limited the government’s powers.

**Filibuster:** The use of obstructive tactics, especially long speeches, by a member of a legislative body to prevent the adoption of a measure or force a decision.

**Food and Drug Administration (FDA):** the oldest consumer protection regulatory agency in the federal bureaucracy. It began with the Pure Food and Drug Act of 1906, which prohibited interstate commerce in contaminated food or drugs.

**Free State:** A state that had banned slavery prior to the Civil War and the ratification of the Thirteenth Amendment.

**Gridlock:** A situation in which nothing can move or proceed in any direction.

**Hepburn Act of 1906:** An act by Congress that increased the power of the Interstate Commerce Commission by allowing it to set rates for railroad shipping.

**Impartial:** Not biased; fair; just.

**Impasse:** A position or situation from which there is no escape.

**Impeachment:** The presentation of formal charges against an elected official.

**Imperialism:** The policy of extending the rule or authority of an empire or nation over foreign countries.

**Impetuous:** Sudden or rash action, emotional; impulsive.

**Implied Powers:** Powers of Congress that are said to be implied by the Necessary and Proper Clause in Article I, Section 8 of the Constitution even if they are not listed under the enumerated powers in that section.

**Insurgent:** A person who rises in opposition to lawful authority, especially one who engages in armed resistance to a government or the execution of its laws.

**Interpose:** To put a barrier or obstacle in between or in the way of action.

**Interstate Commerce:** The movement of goods or money from one state to another. Congress has the power to regulate interstate commerce through Article I, Section 8 of the Constitution.

**Interstate Commerce Act of 1887:** An act passed by Congress that regulated interstate commerce including transportation of goods between states and established the Interstate Commerce Commission.

**Interstate Commerce Commission (ICC):** An executive agency created under the Interstate Commerce Act of 1887 to regulate trade practices.

**Joseph Cannon:** A member of the Republican Party and Speaker of the House of Representatives from 1903 to 1911. Cannon was considered to be one of the most dominant Speakers of the House in United States history.

**Laissez-faire:** The practice of noninterference in the affairs of others; the theory or system of government that upholds the autonomous character of the economic order, believing that the government should intervene as little as possible in economic affairs.

**Lame Duck:** An elected official or group of officials who continue in office during the period between an election defeat and the new officers' assumption of the office.

**Legislation:** A law that is made or enacted by a legislature.

**Legislature:** A deliberative body of persons, usually elected, who make, change, or repeal laws of a nation or state; the branch of government that has the power to make laws.

**National Industrial Recovery Act of 1934 (NIRA):** An act of Congress to encourage national industrial recovery, foster fair competition, provide for public works, and other purposes as part of New Deal legislation to combat the Great Depression.

**National Recovery Administration (NRA):** An executive agency created by the National Industrial Recovery Act of 1934 that set production quotas, prices of goods, and wages for each industry. The NRA regulated commerce between the states and within states.

**Nationalism:** Devotion or loyalty to one's country.

**New Jersey Plan:** A plan introduced by the New Jersey delegation to the Constitutional Convention that provided for equal representation of the states in a unicameral legislature—in essence just tweaking the Articles of Confederation to revise and strengthen the existing system.

**Nullification:** The failure or refusal of a U.S. state to enforce a federal law within its limits, usually on constitutional grounds.

**Oversight:** Supervision or care of a task or governmental agency.

**Parliament:** A legislative body; the legislature of Great Britain made up of the House of Lords and the House of Commons.

**Parliamentary:** Formal rules governing the methods of procedure, discussion, and debate in deliberative bodies.

**Parliamentary System:** A system of government in which there are two chambers of the legislative body, but which lacks separation between the executive and the legislative branch. Under a parliamentary system, the chief executive, usually called a prime minister, is a member of parliament.

**Patronage:** The power to make appointments to government jobs or the power to grant political favors.

**Perpetual Union:** A union in which members are not allowed to withdraw or overthrow the government. The Articles of Confederation purported to be a government document in which all members agreed to be members of a perpetual union.

**Political Party:** A group of people who agree on major policies, programs, and practices of government.

**Pork-barrel:** A government appropriation, bill, or policy that supplies federal funds for local improvements designed to allow legislators to establish favor with their constituents by benefitting local interests even though the project has little or no broader benefit.

**Prime Minister:** The head of the government in parliamentary systems.

**Privileged:** Favored; entitled.

**Procedural:** The course or mode of action in conducting legal, parliamentary, or other business proceedings.

**Progressive/ Progressivism:** A person who advocates for progress, change, improvement, or reform; the movement of the people who advocate for progress. As the term is often used in the United States, Progressives see the Constitution as a living document whose limits on the federal government's powers are obsolete.

**Proportional representation:** A method of voting by which political parties are given legislative representation in proportion to their popular vote.

**Quarrel:** An angry argument, dispute or altercation.

**Quorum:** The minimum number of members needed to conduct business in a deliberative body.

**Ratify/Ratification:** formal approval. With respect to the U.S. Constitution, the process required that nine of the thirteen original states had to approve the Constitution in order for it to become law.

**Reform:** To change by alteration, substitution, or abolition.

**Regulation:** A law, rule, or order prescribed by authority.

**Reins:** The controlling or directing of power.

**Repeal:** To officially revoke or withdraw.

**Representation:** The state, fact, or right of having one's interests expressed by delegates in the government.

**Republic:** A state in which the supreme power resides with the citizens who choose government representatives directly or indirectly through voting.

**Revolt:** To break away from or rise against authority.

**Rules Committee:** A committee of the House of Representatives that is in charge of determining which laws will come to the House floor based on the rules of the House.

***Schechter Poultry Corp. v. United States (1935)***: A unanimous Supreme Court case that ruled that the National Industrial Recovery Act was unconstitutional because the federal government could not regulate intrastate trade and because the Congress could not delegate its legislative authority to the executive branch.

**Sectionalism**: Regard for sectional, or local, interests.

**Select Committee**: A legislative panel made up of a small number of legislators who were appointed to deal with a specific issue.

**Seniority**: Priority, precedence, or status obtained as a result of a person's length of service or relative prestigiousness or authority of their position.

**Slave State**: A state that had not outlawed slavery prior to the Civil War and the ratification of the Thirteenth Amendment.

**Sovereign**: The supreme power or authority.

**Speaker of the House**: The leader of the majority party in the U.S. House of Representatives and presiding officer of the House.

**Special Interest Groups (SIGs)**: A group of people with shared interests who seek support of their interests from politicians through legislation, appropriations, or other means.

**Stalwarts/Radical Republicans**: A wing of the Republican Party whose platform was an opposition to slavery prior to and during the Civil War, fighting for the rights of freed slaves during Reconstruction, and punishing the South for the Civil War.

**Stamp Act**: An act passed by the British Parliament in 1756 that required colonists pay a tax on every piece of printed paper in order to help pay debts accumulated during the French and Indian War. The act was repealed in 1766.

**Standing Committee**: A permanent legislative panel in the House of Representatives or Senate that considers bills, recommends measures, or oversees programs and activities.

**Suffrage**: The right to vote.

**Tariff**: A bill, cost, or charge imposed by the government on imports or exports.

**Tenure of Office Act**: An act of Congress, in place from 1867 to 1887, which restricted the power of the president to remove officials from office without the advice and consent of the Senate.

***The Jungle* by Upton Sinclair (1906):** A novel that portrayed the harsh conditions of the meatpacking industry in the early twentieth century and led to the passage of the Meat Inspection Act and the Pure Food and Drug Act, also in 1906.

**Three-Fifths Clause:** A compromise regarding representation determined in the Constitutional Convention that counted three-fifths of the enslaved individuals in calculating representation and taxation. The clause was adopted as part of the Constitution.

**Transformative:** To change in form, appearance, structure, condition, or character.

**Trustee:** A person who administers the affairs of others.

**Unicameral/Unicameralism:** A legislative assembly consisting of one chamber.

**Vetting:** To appraise or verify validity or accuracy.

**Virginia House of Burgesses:** The first representative colonial assembly in the British American colonies.

**Virginia Plan:** A plan introduced by the Virginia delegation to the Constitutional Convention that recommended not just a revision of the existing confederation of sovereign states but the creation of a powerful national government that would be supreme over the states. The plan included a bicameral legislature in which the lower house was elected by the people of each state and the upper house was elected by the members of the lower house. In each chamber, the number of the state's delegates would be based on state population.

**Virtue:** Conduct that reflects universal principles of moral and ethical excellence essential to leading a worthwhile life and to effective self-government. For many leading Founders, attributes of character such as justice, responsibility, perseverance, etc., were thought to flow from an understanding of the rights and obligations of men. Virtue is compatible with, but does not require, religious belief.

**War Industries Board:** An executive agency that directed the wartime economy during World War I.

**Ways and Means Committee:** A legislative panel that reviews and makes recommendations for government budgets, usually involving taxation.

**Whip:** A party manager in a legislative body who secures attendance for voting and directs other members.