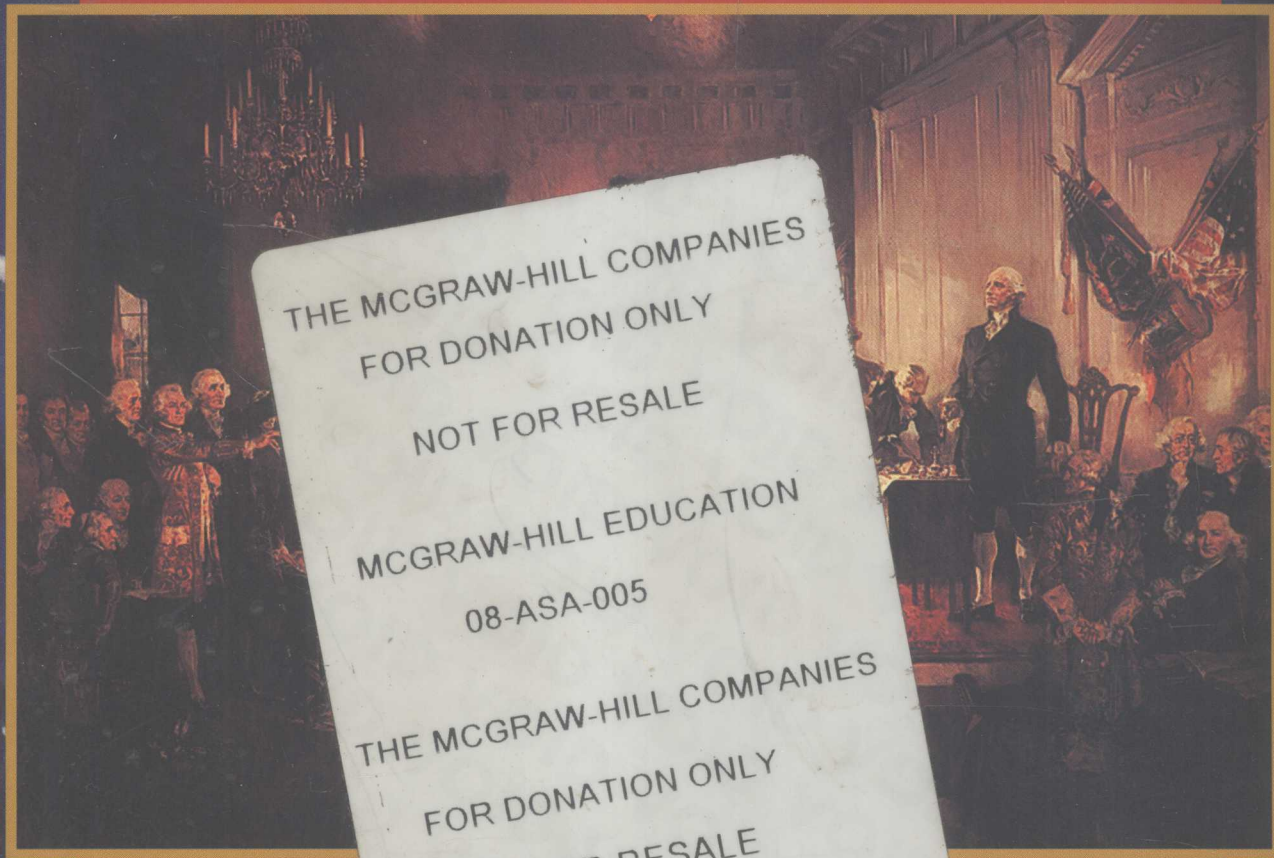




THE LIVING CONSTITUTION



DENNY SCHILLINGS



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About the Cover

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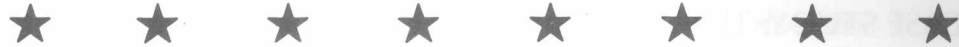
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TABLE OF CONTENTS



LESSON 1: The Story of the Constitution	1
The historical setting of the Constitution, from the Magna Carta to the Federalist Papers	
PROFILE: James Madison	6
A biography of the "father of the Constitution"	
LESSON 2: The Legislature	7
The Preamble and Article I: Sections 1–6 of the Constitution	
CASE STUDY: The Impeachment Trial of Andrew Johnson	14
Should a President be removed from office for opposing the policies of the Congress?	
LESSON 3: Making Laws	15
Article I: Sections 7–10 of the Constitution	
CASE STUDY: The "War Powers" Act	20
Who should make decisions about using the armed forces—the Congress or the President?	
REVIEW 1	21
A brief review of Lessons 1–3	
LESSON 4: The Executive Branch	23
Article II of the Constitution	
CASE STUDY: United States v. Nixon	28
Does a President have the "executive privilege" to keep evidence of a crime from the Congress?	
LESSON 5: The Court System	29
Article III of the Constitution	
PROFILE: "The Great Chief Justice"	32
A biography of Chief Justice John Marshall	
REVIEW 2	33
A brief review of Lessons 4–5	

LESSON 6: Putting the Constitution to Work	35
Article IV, V, VI, and VII of the Constitution	
CASE STUDY: The Equal Rights Amendment	40
How difficult is it to pass an amendment to the Constitution?	
LESSON 7: The Bill of Rights	41
Amendments 1–10 of the Constitution	
CASE STUDY: Miranda v. Arizona	46
How far must the police go to inform defendants of their constitutional rights?	
REVIEW 3	47
A brief review of Lessons 6–7	
LESSON 8: Nineteenth-Century Amendments	49
Amendments 11–15 of the Constitution	
CASE STUDY: Brown v. Board of Education of Topeka	54
Can a state provide separate public school systems for whites and for blacks?	
LESSON 9: Twentieth-Century Amendments	55
Amendments 16–26 of the Constitution	
PROFILE: William O. Douglas	62
A biography of the Chief Justice who gave the law “a human face”	
LESSON 10: The Living Constitution	63
How the Constitution has remained a plan for democratic government for over two hundred years	
CASE STUDY: The Hazlewood Case	68
Does a high-school student newspaper have the same rights as other newspapers?	
REVIEW 4	69
A brief review of Lessons 8–10	
CONSTITUTION SELF TEST	71
A comprehensive practice test to see how well you understand the Constitution	
GLOSSARY OF TERMS	75
Definitions of words relating to the Constitution	

The Story of the Constitution

The United States Constitution is a remarkable document. No other document in history has been so effective at doing what it was created to do. The framers of the Constitution were a brilliant group of men who based much of their work on ideas that were many centuries old.

The English Background

The roots of our system of government, with citizens selecting leaders and making their own laws, can be traced to Ancient Greece. Although the Constitution's framers made use of Greek examples, they most often looked to England as the source of their ideas. By the mid-1100s, Englishmen were living under a single ruler and a system of law known as **common law**. Common law had been developing for centuries and was not written down. Instead it was simply *understood* by the people.

In 1215, a group of nobles forced the English king to sign a charter limiting his powers. This charter, known as the **Magna Carta**, gave birth to the idea of civil liberties on which our Constitution is based.

In the late 1200s, the first **Model Parliament** was summoned by the king. This partly elected body gave Englishmen a greater say in how they were ruled. It was an early form of **representative government**.

By the late 1600s, civil war and revolution had weakened the power of the king. In 1689, parliament used its authority to pass a **Bill of Rights**. This bill limited the king's power to suspend laws and defined the rights of citizens. It eventually served as a model for the Constitution's framers.

English Ideas Move to North America

With the exploration and settlement of North America, English ideas of government moved across the sea. In 1620, the founders of Plymouth colony drafted the first charter of self-government in the New World, an agreement known as the **Mayflower Compact**.

The new colonies were often a testing ground for experiments in cooperative government. In the mid-1600s, several New England colonies banded together to form a **confederation**, a loose union without a strong central government. The **United Colonies of New England** was pledged to friendship and mutual aid, but gradually fell apart for lack of either.

Timeline for Lesson 1

The following events and documents were important to the development of the United States Constitution.

COMMON LAW DEVELOPS IN ENGLAND — circa 1150
These laws became the basis for fair and constant interpretation of the law in constitutional systems.

MAGNA CARTA SIGNED — 1215
King of England forced to sign an agreement limiting his powers.

MODEL PARLIAMENT HELD — 1295
English king called representatives together to advise him on governing England. This became the basis for representative government.

1620

MAYFLOWER COMPACT SIGNED

First written agreement in America concerning the making of "just and equal" laws

1643

NEW ENGLAND CONFEDERATION APPROVED

English colonies agreed to form a loose confederation called The United Colonies of New England.

During the 1750s, a far more ambitious experiment was devised. Benjamin Franklin's **Albany Plan of Union** proposed a **federal** system of government that would include all the colonies, now thirteen in number. The central authority in Franklin's plan was stronger than the old confederation model. The plan was rejected by the colonies, but it prepared the way for future cooperation among them.

Revolution to Confederation

From the time of the earliest settlements, most colonists had thought of themselves as loyal British subjects. Yet by the 1760s, things had begun to change. The colonists came to believe that the actions of parliament were depriving them of rights and liberties as English citizens. When parliament passed the **Intolerable Acts** in 1772, delegates from the colonies met in Philadelphia to protest the action. The delegates to this **First Continental Congress** debated for nearly two months before agreeing on what to do. They finally demanded that the king respect their rights and allow the colonies **direct representation** in making laws. They also agreed to meet again if the king did not approve their demands.

Shortly thereafter the Revolutionary War began. The delegates reassembled in Philadelphia and assumed the powers of a central government. This **Second Continental Congress** directed the war and drafted a declaration to separate the colonies from England. On July 4, 1776, it approved the final draft of the **Declaration of Independence**.

The Second Constitutional Convention approved the final draft of the Declaration of Independence on July 4, 1776.



Also at this time, a committee was established to draw up a plan of confederation for the colonies. In 1777, the **Articles of Confederation** were presented to Congress and sent to the state legislatures for approval. In 1781, only a few months before the end of the war, the Articles finally went into effect.

Government Under the Articles

Since the thirteen former colonies were wary of centralized authority, the government established by the Articles had very limited powers. It operated through a Congress with one chamber, where each state had a single vote. No chief executive was provided for and no court system was established. The government could not collect taxes, enforce its laws, or regulate trade between states.

As time went on, problems with the Articles became more and more apparent. Conflicts developed between states that the weak central government was unable to resolve. In May 1785, representatives from several states met to iron out differences. They soon agreed that the lack of a central authority was a problem that had to be faced.

In September 1786, a meeting was held in Annapolis, Maryland, to discuss the Articles. The **Annapolis Convention** was only a mixed success. James Madison of Virginia and Alexander Hamilton of New York won support for their plans to make the government stronger. However, only five states sent delegates to the convention, so little could be done. A call for a second convention went out, and Congress soon responded. A constitutional convention was summoned to meet in Philadelphia.

Writing the Constitution

By late May 1787, delegates from every state except Rhode Island had gathered at the Philadelphia convention. The delegates were an impressive group. Franklin, Madison, and Hamilton were among them, and George Washington was elected chairman of the convention. Many of the delegates were lawyers, most had some college education, and all were leaders in their home states.

Despite disagreements on how to proceed with their work, the delegates were agreed on several major points. They wanted a government of *limited* powers. They also wanted a government of *separate* powers: **legislative**, **executive**, and **judicial**. They wanted the states to have rights, but also to respect the powers of the central government.

Early in the convention, a series of resolutions was introduced that became known as the **Virginia Plan**. The Virginia Plan proposed a government of three branches based on the idea of separation of powers. Large states favored the plan, since it called for a legislature in which states were represented *proportionally*, on the basis of population.

ENGLISH BILL OF RIGHTS ESTABLISHED

English king forbidden from suspending the laws and establishes the concept of *habeas corpus*.

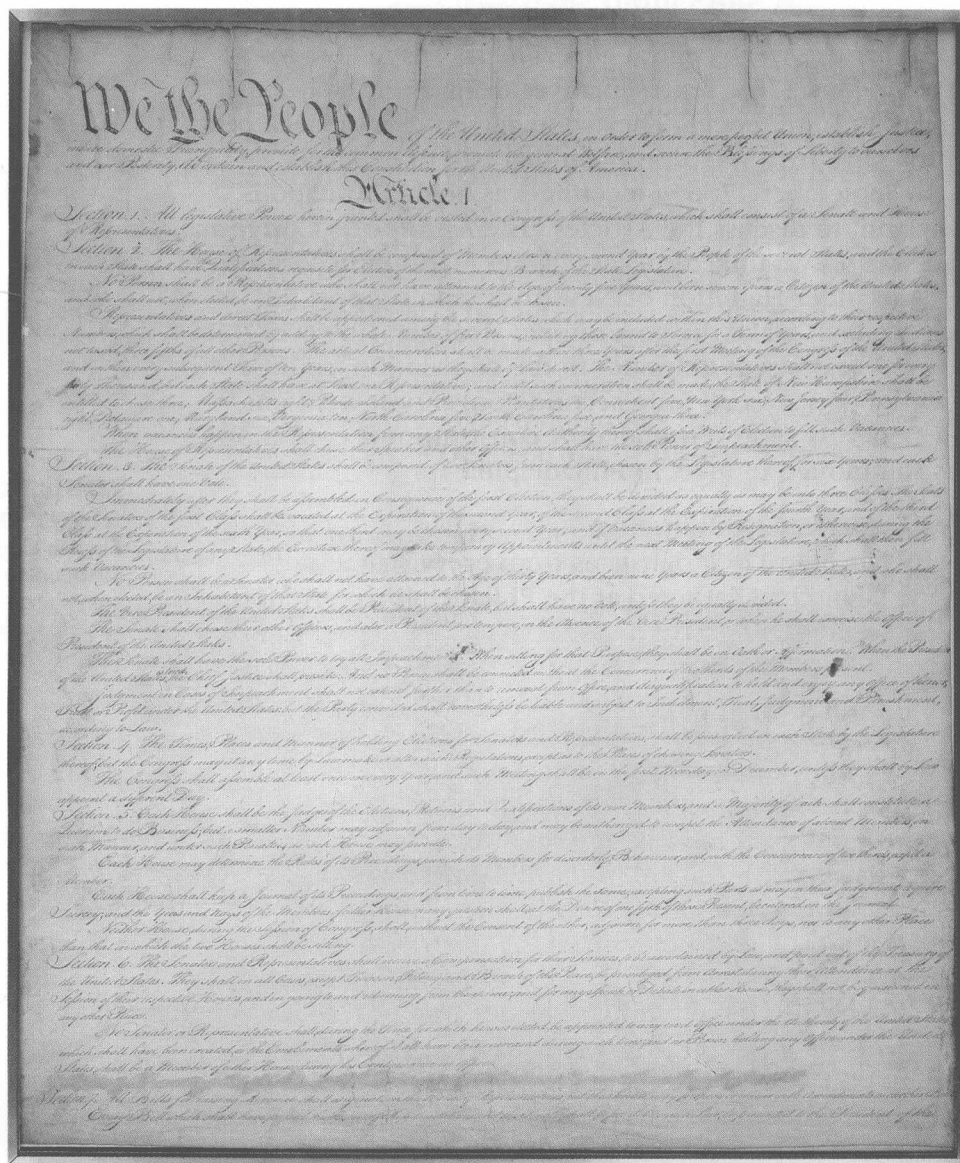
1689

1754

ALBANY PLAN OF UNION PROPOSED
Benjamin Franklin suggested a plan for a federal government.

Small states opposed the Virginia Plan. They wanted a legislature in which all states were represented *equally*. After some debate, an agreement was reached. The legislature would consist of two houses: a **House of Representatives**, with membership based on state population, and a **Senate**, with each state receiving two members. This agreement became known as the **Connecticut Compromise**.

Throughout the summer of 1787, the delegates worked to complete the new Constitution. Compromises were reached on the matter of counting enslaved Africans for the purposes of representation and taxes and on the issue of government control of trade. At last in September, a final draft was presented to the convention that most of the delegates signed. The Constitution was then sent to the states for approval.



Most delegates to the Constitutional Convention in Philadelphia signed the final draft in September 1787.

The Struggle to Ratify

Nine of the thirteen states had to **ratify** the Constitution before it could take effect. Ratification was not an easy matter, however, because the Constitution had its opponents as well as supporters.

The main supporters of the Constitution were known as **Federalists**. The Federalists argued that a strong central government would protect the new nation from outside interference and also solve internal problems like the regulation of trade. Against them stood the **Anti-Federalists**, led by Samuel Adams of Massachusetts and Patrick Henry of Virginia. The Anti-Federalists feared a strong central government. They believed that power should be distributed among the states, and that a strong central authority would limit personal liberties.

Anti-Federalists were especially concerned that the Constitution lacked a **Bill of Rights**. Federalists argued that a Bill of Rights was not needed, since many state constitutions already provided such protection. To overcome Anti-Federalist objections, however, the Federalists promised to introduce **amendments** that would guarantee personal rights.

The debates over the Constitution provided an opportunity for leading Federalists to clarify many of the ideas the Constitution represented. In a series of essays collectively known as the **Federalist Papers**, Hamilton, Madison, and John Jay argued for the new federal system and outlined the benefits that constitutional government would bring.

In June 1788, New Hampshire became the ninth state to ratify the Constitution. Early in 1789, elections for President were held and the new federal Congress convened in New York, then the nation's temporary capital. On April 30, George Washington was sworn in as the first constitutionally elected President of the United States.

One final piece of work remained to be done. A Bill of Rights had been promised both to the states and to the Anti-Federalists; Congress set about providing one. Amendments to the Constitution were introduced to protect the rights of individuals against the newly-strengthened central government. Ten of these amendments were finally adopted alleviating tensions between Federalists and Anti-Federalists. In November 1791, the new Bill of Rights went into effect. The work of the framers was now complete.

FIRST CONTINENTAL CONGRESS MEETS
Asked the king to give colonists direct representation in making laws

SECOND CONTINENTAL CONGRESS MEETS
Began drafting a declaration of independence from the English crown

DECLARATION OF INDEPENDENCE SIGNED
Document declared independence.

ARTICLES OF CONFEDERATION ADOPTED
States agreed to cooperate with one another for mutual defense and the general good.

MT. VERNON CONFERENCE HELD
Decided that the Articles of Confederation needed revision

ANNAPOLIS CONVENTION HELD
Convention requested Congress to call for a constitutional meeting.

CONSTITUTIONAL CONVENTION MEETS
Delegates met in Philadelphia and produced a federal Constitution for the United States.

FEDERALIST PAPERS WRITTEN
Series of letters supported the ratification of the Constitution.

CONSTITUTION RATIFIED
The Constitution went into effect.

BILL OF RIGHTS ADOPTED
The first ten amendments to the Constitution became law, guaranteeing certain individual rights.

1774
1775
1776

1781

1785
1786
1787
1788

1791

Profile: James Madison

James Madison is often called the “father of the Constitution.” Born in 1751 to a Virginia farm couple, Madison was the oldest of twelve children. In 1769 he entered college and graduated two years later. When signs of revolution appeared in the colonies, Madison became a firm supporter of independence.

In the 1770s Madison entered politics and was soon elected to the Virginia assembly. In 1780 he joined the Continental Congress, at twenty-nine the Congress’s youngest member. He thought the Articles of Confederation too weak, and became a leader of the group that favored a strong central government.

During the 1780s Madison worked to have the Articles amended. When the Constitutional Convention met in Philadelphia in May 1787, Madison became one of its most influential members. His notes on the Convention, which met in closed sessions, are a major source of information about what took place there.

Early in the Convention, Madison introduced a plan of federal organization, the Virginia Plan, that soon became the main focus of debate. Later, after a draft Constitution had been approved, he began working for its ratification. With Alexander Hamilton and John Jay, he wrote a series of essays, collectively known as the **Federalist Papers**, that stressed the advantages constitutional government would bring. The essays were widely read, and won the Constitution many new supporters.

In 1788 Madison was elected to the House of Representatives. There he proposed a series of amendments to the new Constitution that came to form the Bill of Rights. When Thomas Jefferson became President in 1801, Madison was appointed secretary of state. Finally in 1808, at the end of Jefferson’s second term, Madison himself was elected President.

Problems with England plagued the Madison presidency. In 1812 war was declared, and in 1814 Madison himself narrowly escaped capture when the British burned Washington.

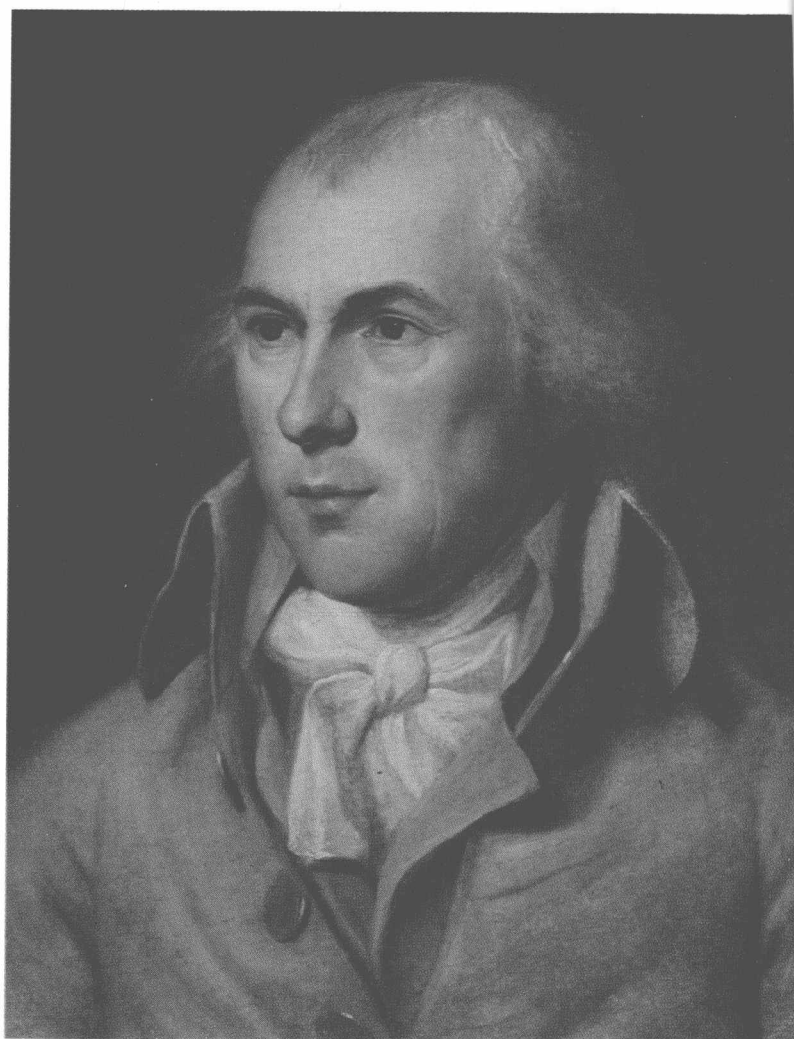
In 1817 Madison retired to private life. He later succeeded his friend Jefferson as head of the University of Virginia. James Madison died

in 1836. Former President John Quincy Adams summed up his importance this way: “It was to the mind of Madison that the union owed its existence.”

REVIEW

1. Why was it important that Madison kept notes on the Constitutional Convention?
2. What did John Quincy Adams mean when he said that the United States owed its existence to Madison’s mind?

Madison created the Virginia Plan, which called for three branches of government and the separation of powers.



★ ★ ★ ★ 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 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 the very 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 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.

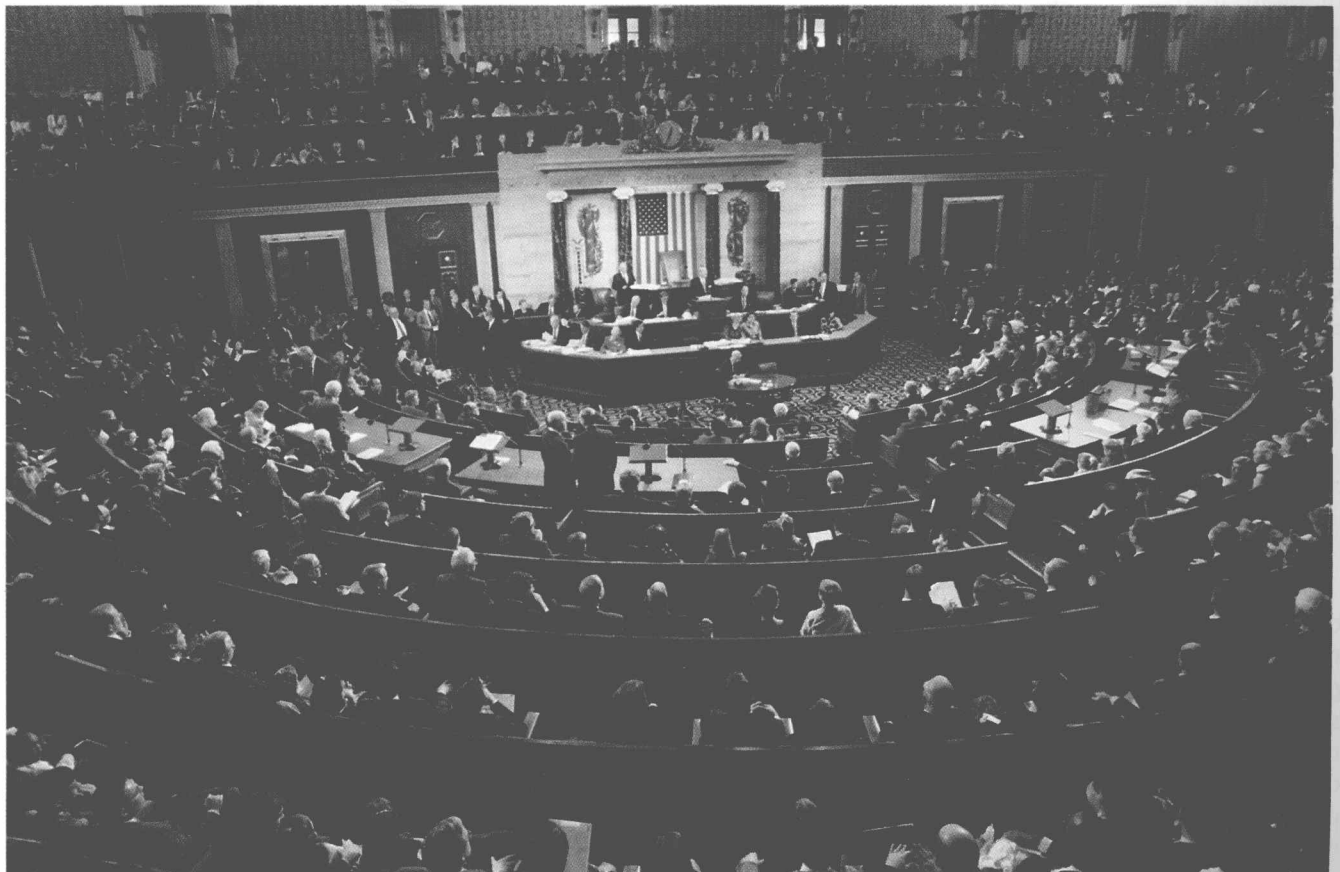
Only one sitting President has ever been impeached. In 1868, the House impeached President Andrew Johnson. The Senate, however, failed to convict him. In 1974, a committee in the House recommended that President Richard Nixon be impeached, but Nixon resigned before the full House could vote on his impeachment.

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.