

ARTICLE I

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.

★ Article I lays out the powers of the legislative branch. Its first section describes the dual structure of that legislature, which was arrived at through one of the most important compromises of the Constitutional Convention. The innocuous words "herein granted" carry special meaning. They make clear that the new federal government could not claim unlimited powers but only those conferred through the Constitution.

Section 2

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.

★ Though they considered a property requirement for voters choosing members of the House of Representatives, in the end the delegates to the Convention, the men we now call the framers, simply decided that the requirements should be whatever each state required of voters for the lower house ("the most numerous branch") of its own state legislature. What that meant in practice was that the vote was restricted at first to white males, and in most states only those with property. But in the 19th century the franchise began to expand, first by the elimination of property requirements. After the Civil War, the 15th Amendment barred the federal government or the states from denying the vote on the basis of "race, color or previous condition of servitude." And in 1920 the 19th Amendment extended the vote to women.

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.

★ The requirement that Representatives actually live in the state they represent was adopted to ensure that members of Congress have a real connection to the people they represent. As the framers knew, members of the British Parliament were not required to reside in the district they represented.

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 chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

★ This section contains the most infamous compromise arrived at by the Convention. It permitted slaves to be counted as "three fifths"

of a person for the purpose of determining the population of a state and therefore the number of Representatives it was entitled to send to Congress (as well as the proportion of taxes that each state would pay to the federal Treasury). That slaves were referred to in the text as "all other persons" is evidence of the unwillingness of antislavery delegates to have slavery mentioned explicitly in the Constitution and thereby perhaps implicitly legitimized. Because the framers had no clear idea of what the population of any of the states really was, in this passage they also established the census, calling for the first to be held within three years, with new counts to be made every ten. They then went on to offer a rough estimate of how many Representatives each state could send to the first Congress.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

★ Though many Americans mistakenly believe the word *impeachment* describes the trial or even the removal of a president, "the power of impeachment" is the power simply to bring charges, one the Constitution grants to the House.

Section 3

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.

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.

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.

★ In order to ensure that at least one branch of the legislature was not chosen directly by the people, the framers decided to have Senators selected by the legislatures of their states. And though the entire House stands for re-election every two years, the framers split the first class of Senators into three groups, each standing for re-election two years apart from the others, so that no more than a third of the Senate would face re-election every two years. That prevented a sudden turnover in what was intended to be the more stable and deliberative chamber. By the same token, while the minimum age for a Representative was set at just 25 years, Senators were required to be at least 30.

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

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.

★ Just what is a vice president for? The framers had few ideas, other than to make him president of the Senate, but with a vote that he could only use as a

tie-breaker. As George Washington's vice president, John Adams was the first man to occupy that position. He famously called it "the most insignificant office that ever the invention of man contrived or his imagination conceived."

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.

Judgment 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.

★ Having given the House the power to bring charges against the president, the framers empowered the Senate—the more deliberative body—to conduct the trial. And though the vice president would ordinarily preside over the Senate, the framers also decided that during impeachment trials that role should pass to the chief justice. This avoided a potential conflict of interest. Were the vice president to direct the proceedings, knowing that he would assume the Presidency in the event of a conviction, he might be tempted to issue rulings from the chair that were unfavorable to the president.

To deal with complaints that allowing the Senate to act as a court violated the separation of powers, the framers decided that political penalties—removal from office and the prohibition of holding another federal office—should be the only kind that the Senate could impose on a convicted president. Thereafter, further civil or criminal penalties could be sought against him as well, but only in a regular court of law.

Section 4

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.

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.

★ In the early days of the republic, with many roads in poor condition and railroads still unknown, it could take months for newly elected members of Congress to make their way to Washington, D.C. Because of that, they did not assume their seats until one year after their election. The stipulation in this section that Congress should convene on the first Monday in December had this effect: In any even-numbered year when December 1 came just a few weeks after the November congressional election, Representatives from the previous Congress who already resided in Washington could continue to sit in session until the following March—including men who were retiring or had been defeated in the November elections. These lengthy “lame duck” sessions would be eliminated by the 20th Amendment in 1933, which moved the start of Congress to January 1—plenty of time, in an age of railways and good roads, for newly elected members to arrive in Washington to start their work.

Section 5

Each House shall be the Judge of the 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.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member

★ The decision by the framers to specify that each chamber of Congress would have the power to make its own rules reflects the long struggle of Parliament to assert its independence from the King. The decision to require a quorum reflects the framers' concern that a relatively small group of Representatives from states or districts close to Washington, D.C. should not be able to embark on legislative work on their own before men from more distant areas could arrive in the city.

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.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

★ By the time of the Constitutional Convention in 1787, American newspapers had begun reporting on the debates and decisions of state legislatures. Though the deliberations of the House were open to the public from the time of the first Congress in 1789, the Senate chose to meet in closed session until 1794.

Section 6

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

★ As a way to prevent Congressional office from becoming an occupation that only the independently wealthy could pursue, the framers decided that members should receive a salary. (Not all agreed. Benjamin Franklin was one who thought they should serve without pay.) When the framers also gave Congressmen limited immunity from arrest when Congress is in session, their primary intention was to protect them from being arrested in civil suits—a common practice in the 18th century—or sued for slander for something said in a floor debate. But the exception made for felonies meant that Senators and Representatives could still be arrested for many crimes, including taking bribes.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

★ Though the framers considered banning members of Congress from accepting any other government post, they settled instead on a more narrow ban on any post created during their time in

office, or any post for which the salary had been increased in that time. The purpose was to prevent members from misusing their powers of office to create lucrative new government positions for themselves. This clause also sought to avoid a practice common in England, wherein members of Parliament frequently served as ministers to the King, a practice that violated the principle of separation of powers among the three branches of government.

Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

★ It's notable that the framers decided that the House, the chamber in which states were represented in proportion to their populations (and the one presumed to be most responsive to the popular will) should be the place from which "bills for raising revenue"—meaning taxes—should originate.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by

the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

- ★ Though Congress is the branch of government that passes laws, the veto power effectively gives the president a role in shaping them. That's because the veto can only be overridden by a two-third majority vote, a super majority difficult to achieve: Only about 7% of presidential vetoes are successfully overridden. This gives Congress an incentive to craft laws that the president can accept, even if sometimes reluctantly.

Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

- ★ The framers were painfully aware that under the Articles of Confederation, the document that the Constitution would replace, the national government had no power to levy taxes, so they made sure to give Congress the power to do that—perhaps the most important power it was granted. But except under an emergency wartime measure during the Civil War, Congress could not tax

individual incomes directly until the adoption of the 16th Amendment in 1913. Instead taxes were to be imposed on the states in proportion to their populations.

Advocates of broad government authority to promote social and economic goals often point to the clause empowering Congress to provide for the common defense and general welfare. Among the first was Alexander Hamilton, one of the framers. As George Washington's secretary of the treasury, he cited the language of this clause to justify his plan for government action to promote the growth of manufacturing—a plan that was never realized.

To borrow Money on the credit of the United States;

- ★ In addition to levying taxes, Congress was granted the power to borrow by various means, as it does through the sale of treasury bonds.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

- ★ Under the Articles of Confederation, states were prone to impose import duties on products from other states or to make conflicting claims to authority over shared waterways. One of the main goals of the Constitution was to further the creation of a truly national economy, less burdened by such destructive competition among the states. But over time the power to regulate commerce "among the several States" was invoked not only to restrict actions by states but as a basis for significant expansions of federal authority over numerous areas of life, including laws to regulate working hours and conditions, protect the environment, provide health and safety standards as well as consumer protections, and build interstate highways. The new national health care law rests partly upon this power as well. The courts have frequently been asked to

determine whether "the commerce clause" justified those exertions of federal authority. Since the late 1930s, when the Supreme Court reversed course to approve various elements of Franklin Delano Roosevelt's "New Deal," they have tended to support a broad reading of the clause. But in recent years conservatives on the Court have attempted to place limits on the powers the federal government can claim through its use.

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

- ★ The naturalization clause empowers Congress to establish rules by which immigrants can become citizens of the United States.

To coin Money, regulate the Value thereof, and of foreign Coin, and, fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

- ★ Under the Articles of Confederation, Americans were confronted by a baffling array of currencies issued by the various states as well as foreign coins and banknotes that circulated freely. As another way to unify the nation, the framers gave Congress the power to issue a uniform national currency and the power to standardize weights and measures.

To establish Post Offices and post Roads;

- ★ A well operating postal system was another important aspect of a unified national economy. One of the framers had a particularly strong understanding of the importance of good postal service: Benjamin Franklin had been postmaster general for the Colonies.

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

- ★ As another means to promote economic growth, by ensuring to inventors and writers intellectual property rights, Congress was given the power to issue patents and trademarks.

To constitute Tribunals inferior to the supreme Court;

- ★ The framers established the Supreme Court in Article III of the Constitution, but they gave Congress the power to set up a system of lower courts, which it would do in the Judiciary Act of 1789.

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

- ★ This clause would turn out to be important in establishing the power of Congress to make rules for dealing with modern terrorists.

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

- ★ Congress has issued just five formal declarations of war: The War of 1812, The Mexican War, the Spanish-American War, and World Wars I and II. Since the end of World War II in particular, the war power of Congress has put it frequently in conflict with the president. The Korean War, Vietnam, both Gulf Wars, and the war in Afghanistan were launched and pursued without a formal declaration by Congress, as well as numerous more

limited military actions in places including the Dominican Republic, Panama, Iran, Lebanon, Grenada, Somalia, Bosnia, Kosovo, and Libya. In 1973 Congress adopted the War Powers Resolution, over the veto of President Nixon. It requires the president to withdraw U.S. forces from combat if Congress does not give him its approval within 60 days, but presidents of both parties have successfully evaded it.

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

★ The two-year limit on army appropriations was meant to discourage the establishment of a standing military, which many antifederalists feared could become an instrument of despotic power. The biannual appropriation power also means that if it wished to, Congress could end a war it objected to by refusing to approve funding, something it has sometimes threatened but rarely done.

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

★ One of the developments that convinced many Americans that the Articles of Confederation provided an insufficient framework for governing the new nation was Shays' Rebellion, an armed uprising of debt-ridden Massachusetts farmers and laborers that began in the summer of 1786. Under the Articles, Congress was powerless to dispatch a militia to put down the rebels, a problem this clause was designed to remedy.

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

★ During the Revolutionary War, militias had served alongside the Continental Army, but they were often poorly trained. (George Washington, commander of the Army, was particularly unimpressed.) The framers hoped that federal oversight would lead to more professional militias, but they left the states an important role.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And

★ The wording of this clause leaves open the possibility that the nation's capital—which was New York City in 1787—might remain there (or move to some other city; Philadelphia being the likely alternative) or that it might eventually be located in a new ten square mile district in a still undetermined location. In this clause the framers gave Congress authority over that district should it be the option chosen. It would indeed be the one agreed upon in 1790, during George Washington's first term as president, thus creating the District of Columbia.

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by

this Constitution in the Government of the United States, or in any Department or Officer thereof.

★ The "necessary and proper" clause would become one of the most powerful and contested phrases in the Constitution, a source of constant friction between those favoring broad federal powers—"implied powers"—and the supporters of more limited government. During Washington's first term, his Treasury Secretary Alexander Hamilton would publish an influential defense of the government's power to create a national bank—one that would help it fulfill its enumerated powers to collect taxes, spend for the general welfare, and support armies—that rested in large part on his expansive reading of that clause. Thomas Jefferson would argue that the clause did no more than give the government authority to take steps "absolutely necessary" to fulfill the "enumerated powers" specifically assigned to it in other parts of the Constitution — and that the bank was neither specified in the Constitution nor necessary for Congress to fulfill its enumerated powers. Washington took Hamilton's side, however, and the bank was established.

In a pivotal Supreme Court decision of 1819, *McCulloch v. Maryland*, Chief Justice John Marshall used Hamilton's "necessary and proper" reasoning to support the constitutionality of the Second Bank of the United States, the successor to Hamilton's bank. In words that firmly established the line of court doctrine that future justices would use to support a broad exercise of federal power, Marshall wrote: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Section 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

- ★ "Such persons." Those words are yet another of the framers attempts to avoid direct mention of slavery. The decision that Congress should be forbidden to take steps earlier than 1808 to interfere with the slave trade was undertaken largely to satisfy Georgia and South Carolina. (An import ban was no threat to states of the Upper South like Virginia, which had been settled for a longer time and considered themselves already to have enough slaves.) In 1807 Congress did indeed pass legislation to end the trade the following year, after some 200,000 new slaves had arrived in the previous 20 years.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

- ★ One of the most venerable rights in English common law, habeas corpus dates back at least to the Magna Carta in 1215. It ensures that government authorities cannot hold indefinitely any person who has been arrested or otherwise detained—for instance, in a mental hospital—without satisfying a judge that the detention is lawful. That the framers identified possible exceptions to the writ in a part of the Constitution that outlines the powers of Congress implies they assumed Congress should be the branch of government authorized to suspend it. But the most famous suspensions have been undertaken by presidents. During the Civil War Abraham Lincoln suspended it for Confederate sympathizers, a

controversial emergency measure that Congress later approved. As part of the war on terror that followed the attacks of 9/11, George W. Bush sought to strip "enemy combatants" of their habeas rights, a move also supported by acts of Congress. Though the Supreme Court ruled twice that detainees at the military prison at Guantanamo Bay, Cuba, had such rights, the question continued to be contested in lower courts.

No Bill of Attainder or ex post facto Law shall be passed.

★ These are other protections rooted in English common law. A bill of attainder was an act of Parliament that attempted to punish an individual or a group without trial. An ex post facto law was one passed by Parliament to punish individuals by retroactively criminalizing an action they undertook when it was not a crime.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

★ The ban on export taxes was designed to protect Southern agricultural exports like tobacco, rice, and indigo. Southern states were also intent on blocking any future opportunity for non-slave states to impose an export tax that would in effect be a penalty on crops produced by slave labor, making them more expensive on world markets.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

- ★ This provision ensured that Congress would not favor one state over another in the matter of regulating ocean-going commerce or commerce by interior waterways.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

- ★ Here the framers sought to guarantee transparency in the Congressional budget process.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

- ★ Having won a War of Independence against Great Britain, a nation with a hereditary aristocracy, the framers were intent on discouraging the growth of such a thing on American soil.

Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

- ★ After spelling out the powers of Congress, the Constitution in this section makes explicit various powers denied to the states. The prohibition on coining money, issuing bills of credit, or accepting as legal tender anything other than gold or silver reflects the framers determination to end the practice by some states of issuing debased paper currency.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

- ★ Though states already had their own militias to keep order within their own borders, here the framers acted to prevent them from forming standing armies or from entering into military agreements on their own with other nations or states.