

# 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?