



CHAPTER I

FORMATIVE YEARS
OF THE SENATE

1787-1800

June 7, 1787

State Houses Will Elect Senators

Who should elect United States senators? When the framers of the Constitution convened in Philadelphia in 1787, they struggled over three possible answers to this question.

Under one plan, each state legislature would send a list of candidates to the U.S. House of Representatives so that the



Fifty-five delegates met in Philadelphia during the hot summer of 1787 to frame a new constitution for the United States.

House could make the selections. Yet this would have made the Senate dependent upon the House, ignoring James Madison's advice that the best way to protect against tyrannical governments was to balance the ambitions of one branch against those of a corresponding branch. Madison and his constitution-writing colleagues had in mind a system in which the Senate keeps an eye on the House, while the House watches the Senate.

Or perhaps the people could elect their own senators. This had the disadvantage, as far as city dwellers and those with commercial interests were concerned, of favoring the nation's larger agricultural population. Connecticut's Roger Sherman warned against direct election. "The people should have as little to do as may be about the government. They lack information and are constantly liable to be misled."

On June 7, 1787, the framers settled on a third option. They decided that state legislatures should select senators, without any involvement by the House of Representatives. The state legislatures, they argued, would provide the necessary "filtration" to produce better senators—the elect of the elected. The framers hoped that this arrangement would give state political leaders a sense of participation, calming their fears about the dangers of a strong centralized government. The advantage of this plan, they believed, was that all laws would be passed by a "dual constituency" composed of a body elected directly by the people (or at least the white males entitled to vote for members of their state legislatures) and one chosen by the elected representatives of individual states.

After several decades, as service in the Senate became more highly prized and political parties gained wider influence in directing state legislative operations, this system of indirect election began to break down. When separate parties controlled a legislature's two houses, deadlocks frequently deprived states of their full Senate representation.

A plan for direct popular election lingered for decades. Finally, a campaign to make governmental institutions more responsive to the people propelled the measure to ratification in 1913 as the Constitution's 17th Amendment.

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June 19, 1787

Seven-Year Senate Terms?

On June 19, 1787, the framers of the U.S. Constitution decided that the term of a senator should run for seven years. They also tentatively agreed that House members should serve three years, that Congress should elect the president, that the president should serve for a term equal to that of a senator, and that the Senate should appoint Supreme Court justices. Obviously, the framers had a lot of work ahead of them over the following three months to shape the delicately balanced Constitution we know today.

Why a seven-year term for senators? Members of the existing Congress under the Articles of Confederation—a unicameral body—served one-year terms. In deciding to create a bicameral congress to replace that moribund institution, the Constitution’s framers recognized that the Senate, chosen by state legislatures, would be a smaller body than the popularly elected House. To avoid being unduly threatened by public opinion, or overwhelmed by the House’s larger membership, senators would need the protection of longer terms.

The framers looked to the various state legislatures for models. Although the majority of states set one-year terms for both legislative bodies, several established longer tenures for upper house members. Delaware had three-year terms with one-third of its senate’s nine members up for election each year. New York and Virginia state senators served four-year terms. Only Maryland’s aristocratic senate featured five-year terms,

making this legislative body the focus of the Constitutional Convention’s Senate term debates.

Framers either praised Maryland’s long terms for checking the lower house’s populist impulses, or feared them for the same reason. Some convention delegates believed that even five-year U.S. Senate terms were too short to counteract the dangerous notions likely to emerge from the House of Representatives.

James Madison first supported the seven-year term but then raised it to nine, so that one-third of the Senate seats could be renewed every three years.

Others thought that was too long. On June 26, the convention compromised on the six-year term, with a two-year renewal cycle. None of this pleased New York Delegate Alexander Hamilton, who believed that the only protection for senators against the “amazing violence and turbulence of the democratic spirit” would be terms lasting a lifetime.



The framers of the Constitution met in Philadelphia at the Pennsylvania State House, now known as Independence Hall.

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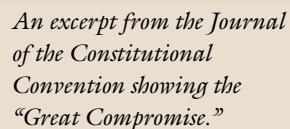
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Framers Reach a “Great Compromise”

Over the Fourth of July holiday, delegates worked out a compromise plan that sidetracked Franklin's proposal. On July 16, voting by states, the convention adopted the Great Compromise by a heart-stopping margin of one vote. As the 1987 celebrants duly noted, without that vote, there would likely have been no Constitution.



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September 30, 1788

First Two Senators—an Odd Couple

When the necessary ninth state ratified the U.S. Constitution in June 1788, the Congress under the Articles of Confederation began planning the transition to the new federal government. On September 13, 1788, that soon-to-expire Congress issued an ordinance giving states authority to begin conducting elections for their senators and representatives.

Less than three weeks later, on September 30, Pennsylvania became the first state to elect its two United States senators. By a vote of 66 to 1, its legislature accorded William Maclay the distinction of being the first person elected to the Senate and, by the closer margin of 37 to 31, gave the second seat to the more controversial Robert Morris. The two men stood at polar extremes from one another. Robert Morris was a wealthy Philadelphia merchant who distrusted governments based on popular choice. By contrast, Maclay was an agrarian “small d” democrat from upstate Harrisburg who distrusted Philadelphia aristocrats in general and Morris in particular. Each man savagely undercut the other, for example, in campaigns to have their respective cities chosen as the national capital.

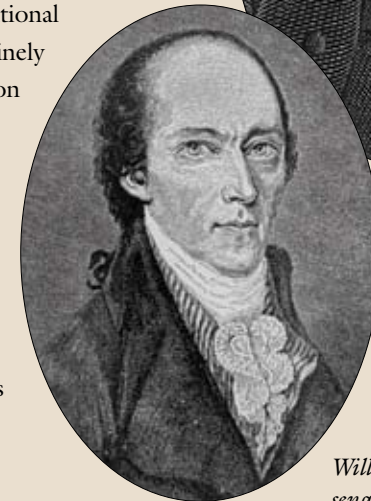
Of William Maclay, one biographer has written that he was “reserved, pessimistic about human nature, and Calvinistic in his morality. Analytical and introspective, he was also self-assured, proud, self-conscious, and quick to take offense.” Maclay vigor-

ously fought what he considered to be the Senate’s willingness to strengthen the presidency and soon became an outspoken anti-administration senator. Perhaps as an outlet to his growing frustrations, he kept a diary of Senate proceedings, which in his day were conducted entirely behind closed doors. Although Maclay served for only two years, his diary is indispensable for understanding the early Senate.

In the early 1780s, Robert Morris had served as superintendent of finance, making him the chief administrator of the Confederation government and the nation’s second most powerful figure after George Washington. He had nominated Washington to serve as president of the Constitutional Convention and later loaned him the use of his finely appointed Philadelphia mansion when Washington resided in that city. One of the nation’s richest men, Morris saw nothing wrong with using privileged government information to shape his personal investment strategy. While a senator, he became entangled in disastrous land speculation schemes, which led to his financial ruin. Several years after leaving the Senate in 1795, he entered into another term of service—three years in a debtors’ prison.



*Robert Morris,
senator from
Pennsylvania
(1789-1795).*



*William Maclay,
senator from
Pennsylvania
(1789-1791).*

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March 4, 1789

First Senators Arrive for Session

On March 4, 1789, eight conscientious senators overcame difficult late winter travel conditions to reach the nation's temporary capital in New York City. Eleven states had by then ratified the Constitution. Out of the 22 eligible senators, the Senate needed 12 present to achieve a quorum to conduct business.



Federal Hall in New York City (as it appeared in 1797) where Congress met from 1789-1790.

At the appointed hour for the new government to begin, the eight senators-elect climbed the stairs of New York's old city hall. Hoping to convince Congress to make New York the nation's permanent capital, city leaders had recently named that building Federal Hall and tripled its size. When the eight senators reached their elegant chamber on the building's top story, the Senate literally became the "upper house."

All eight were men of distinction in government and politics. Most had served in their state legislatures and the Continental Congress. Six were framers of the Constitution.

New Hampshire's John Langdon would become the Senate's first president pro tempore. Connecticut sent William Samuel Johnson and Oliver Ellsworth. As a senator, Johnson would continue in his other job—president of nearby Columbia College. Oliver Ellsworth was best known for his proposal at

the Constitutional Convention creating the Senate as a body that represented the states equally—the so-called Connecticut Compromise.

Pennsylvania sent William Maclay, who would keep the only detailed record of what happened behind the Senate's closed doors during the precedent-setting First Congress. His Pennsylvania colleague was Robert Morris. One of the nation's wealthiest men, Morris had helped to finance the American Revolution and signed both the Declaration of Independence and the Constitution.

Without a quorum, the eight senators wrote to their missing colleagues "earnest[ly] requesting that you will be so obliging as to attend as soon as possible." Two weeks passed before William Paterson ambled over from New Jersey and Richard Bassett arrived from Delaware. This left the Senate two members short of a quorum, as the House of Representatives waited impatiently on the floor below. Finally, on April 6, the necessary 12th member arrived. The Senate then turned to its first order of business—certifying the election of George Washington—five weeks after his presidential term had officially begun.

In January 1790, at the start of the second session, a more experienced Senate reduced its convening delay to only two days. Finally, at the beginning of the third session in December 1790, the necessary quorum appeared on time and the Senate got down to business as planned. The House of Representatives experienced similar delays for all three First Congress sessions.

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April 7, 1789

Senate Doorkeeper Elected

James Mathers did not know exactly how old he was in 1789, but he guessed that he was close to 45. He knew for sure that he had been born in Ireland and that his family had moved to New York before the Revolutionary War. As a young man, he enlisted in the Continental army, served throughout the long conflict, and suffered a serious wound that would trouble him for the rest of his life.

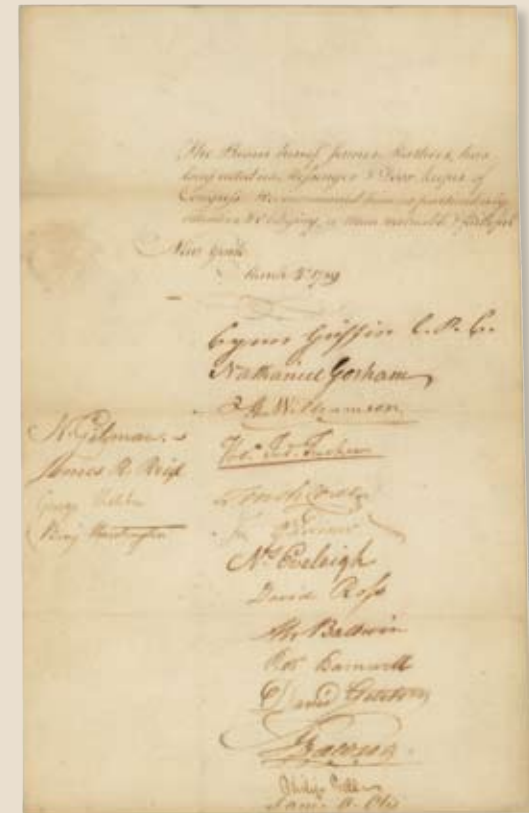
After the war, with a large family to support, Mathers took a job as a clerk for the Continental Congress. In 1788, this one-chambered national legislature, then located in New York City, appointed Mathers to be its principal doorkeeper. He assumed those duties just as that body was about to go out of existence to make way for the Congress established under the newly ratified Constitution of 1787.

The Senate of the First Congress achieved a quorum for business on April 6, 1789. The following day, it elected Mathers as its doorkeeper. The post of doorkeeper was particularly important for a legislature that intended to conduct all its sessions in secret, just as the Continental Congress had.

With one assistant, Mathers tended the chamber door, maintained the Senate's two horses, and purchased firewood.

In May 1790, as Congress prepared to move to Philadelphia for a 10-year residence, while the new national capital was being constructed in Washington, D.C., he supervised shipment of the Senate's records and furnishings. When the Senate decided to open its sessions to the public in 1795, Mathers became responsible for enforcing order in the galleries. Three years later, on the eve of the Senate's first impeachment trial, members realized that they needed an officer with the police powers necessary to arrest any who refused an order to appear before that proceeding. Consequently, Mathers took on the expanded title of "sergeant at arms and doorkeeper."

When the Senate finally moved to Washington in 1800, Mathers helped establish the Senate's new quarters and remained on the job until 1811, when he died after falling down a flight of stairs. This Irish immigrant of humble origins maintains the distinction of holding the post of Senate sergeant at arms longer than any of his 36 successors. He is truly one of the Senate's "founding fathers."



Petition to recommend James Mathers for the position of Senate Doorkeeper.

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April 8, 1789

Help Wanted

Here is a job posting that could have appeared in the spring of 1789. “Newly established legislative body seeks experienced public administrator. Successful candidate must be able to maintain confidence of demanding individuals holding diverse political views. Specific duties include journal-keeping, bill management, payroll preparation, and stationery acquisition. Administrator must be able to supervise two clerks, keep secrets, and write neatly. Salary: \$1,500.”

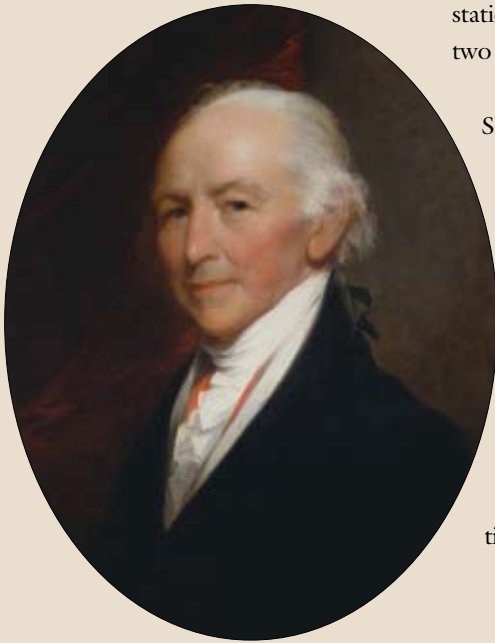
On April 8, 1789, the Senate filled that position by electing Samuel Otis to be the first secretary of the Senate. A protégé of Vice President John Adams, the 48-year-old Otis was well qualified for the job. He had been quartermaster of the Continental army during the Revolutionary War, speaker of the Massachusetts house of representatives, and a member of the Congress under the Articles of Confederation.

Otis’ early duties combined substance with symbolism. In addition to engaging the many tasks associated with establishing a new institution, he had the high honor of holding the Bible as George Washington took his presidential oath of office. As the Senate set down its legislative procedures and carefully negotiated relations with the

House and President Washington, Otis became a key player. At a time when senators spent less than half of each year on the job in the nation’s capital, Otis was on the job year round.

During the 12 years that John Adams served as vice president and then president, Otis enjoyed great job security. The situation changed, however, in 1801, when control of the Senate shifted from the Adams Federalists to the Jeffersonian Republicans. When John Quincy Adams became a senator in 1803, he reported to his father that Otis “is much alarmed at the prospect of being removed from office.” Through the considerable political turbulence in the years ahead, Samuel Otis held on as secretary, despite occasional complaints from senators about the Senate’s journals not being kept up to date or records being kept in a “blind confused manner.”

During his 25 years in office, a service record never likely to be broken, Secretary Otis never missed a day on the job. To the very end of his life, he remained intensely devoted to the Senate. Suffering from “excessive fatigue” early in 1814, he held on until April, when the Senate completed its work for the session. Only then did he die.



Samuel A. Otis, first secretary of the Senate (1789-1814).

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April 27, 1789

The Senate Prepares for a President

On April 27, 1789, confusion and frustration dominated the Senate's proceedings. President-elect George Washington would arrive at New York City's Federal Hall in three days to take his oath. The Senate was not prepared. Questions had to be answered. By what title should he be addressed? In which chamber would the ceremonies take place? Should members receive his address standing or seated? Where would the post-inaugural religious service be held?

Since its first meeting, three weeks earlier, the Senate had been deeply absorbed with matters of protocol and procedure. Behind many contentious debates lay the Senate's desire to ensure its equal—if not superior—status relative to the House of Representatives. For example, the Senate devised a plan for delivering messages between the two chambers. The Senate provided that its secretary would take legislation and other documents to the House. For traffic coming in the other direction, however, the Senate expected no fewer than two House members to carry legislation. For other messages, one member would be sufficient. The House greeted the Senate's proposal with laughter and sent its clerk. A similar response awaited a Senate plan to pay its members a dollar a day more than House members.

John Adams, who had taken his vice-presidential oath six days earlier, worried about the protocol of titles. Should the House Speaker be addressed as “Honorable”? The Senate voted

no. What about the president? How about “His Highness the President of the United States of America and Protector of their Liberties”? A Senate majority thought that was fine. When the House later disagreed, a compromise produced the current simplified title. Should Adams act as president of the Senate or vice president of the United States? No one had an answer.

On April 30, as the Senate debated these issues, the House of Representatives filed into the Senate Chamber. Because someone had forgotten to send out the presidential escort committee, members waited another hour. Finally, Washington arrived. After a fumbled greeting from Adams, the president-elect took his oath and delivered his address in a halting and nervous manner. Following the church service, senators returned to their chamber to plan a formal reply.

Protocol issues continued to preoccupy the Senate throughout that First Congress—and beyond.



In this Currier and Ives depiction, made in the 1870s, George Washington takes the presidential oath of office, while Samuel Otis, the secretary of the Senate, holds the Bible.

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May 15, 1789

Senators Receive Class Assignments

On the morning of May 15, 1789, Tristram Dalton climbed the steep stairs to the Senate Chamber in New York City's Federal Hall. At a few minutes after 11 a.m., the recently elected Massachusetts senator placed his hand into a small wooden box. With Vice President John Adams



A rendition of the Senate Chamber in New York's Federal Hall, where the Senate met from 1789 to 1790.

presiding and 12 of the Senate's 20 members looking on, Dalton grasped a small slip of paper and lifted it for all to see. He then read its brief notation: "Number One." With that ritual act, seven senators became members of "Class One" and learned that their terms of office would expire within two years.

A day earlier, a special committee had assigned each of the 20 senators to one of three as yet unnumbered classes. (Although the Senate was meeting in the nation's temporary capital of New York City, New York would not get around to selecting its senators for another two months. Rhode Island and North Carolina, among the original 13 states, had yet to ratify the Constitution.) Assignment of senators to classes was done in such a way that each class would

contain members drawn from all sections of the country but no more than one senator from any state. The Senate had then designated three senators—one from each class—to draw lots from a box on behalf of their respective classes.

The brief ceremony was repeated twice more that morning, although we do not know in what order the slips were drawn. The designee of a second group of seven senators drew the number two, thereby placing those members in "Class Two" with a term of four years. The remaining six senators won the Class Three identification and a full six-year term. The Senate had thereby set into operation its constitutionally required "class system," in which one-third of that body's seats would be subject to election every two years.

Since 1789, the Senate has placed senators from newly admitted states into classes in such a way as to keep those classes nearly equal in size. When Hawaii, the most recently admitted state, sent its first two senators in 1959, the wooden box contained numbers one and three. Repeating Tristram Dalton's long-ago gesture, Senator Hiram Fong drew Class One, while Oren Long entered Class Three, thus setting the current 33-33-34 arrangement among the three classes.

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July 17, 1789

Senator Ellsworth's Judiciary Act

When the Senate first convened in 1789, many expected it to be a fairly passive body, similar to the state senates on which it was partly modeled. Aside from acting on nominations and treaties, the Senate's principal job was seen as reviewing legislation crafted in the House of Representatives. Although this anticipation proved fairly accurate for the first several decades, there are notable exceptions. The Judiciary Act of 1789, almost exclusively the Senate's handiwork, profoundly influenced the nation's judicial and constitutional development to the present day.

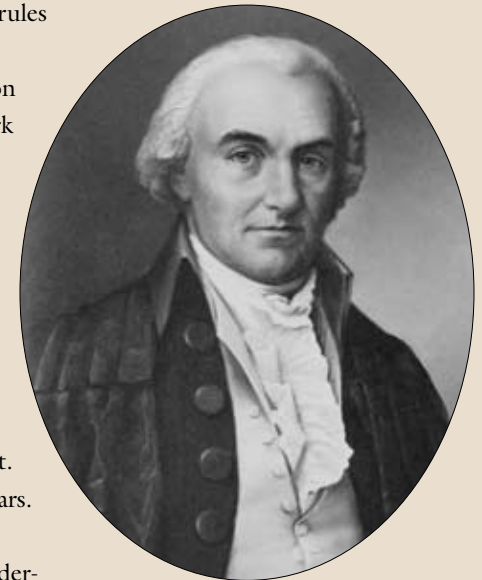
On April 7, 1789, the day after achieving its first quorum, the Senate appointed a committee, composed of one senator from each of the 10 states then represented in that body, to draft legislation to shape the national judiciary. As Connecticut's Oliver Ellsworth received the most votes for that assignment, he became the panel's chairman.

The Constitution barely mentions the judiciary's structure beyond providing for a supreme court and any lower courts that Congress might wish to establish. It is silent on the Supreme Court's size and frequency of sessions as well as judges' qualifications and compensation.

Oliver Ellsworth was ideally suited to serve as principal author of the Judiciary Act. He had shaped the Constitution's first draft and its crucial "Connecticut Compromise," which produced a bicameral Congress with the states equally represented in the Senate. His Senate colleagues had also selected him to chair a committee to draft the chamber's rules of procedure. Ellsworth quickly won wide respect for his diligence, or, as one biographer has put it, "his recognition of the fact that in the senatorial office drudging spadework was even more important than speeches and votes."

On July 17, 1789, the Senate enacted its version of this landmark statute. With House revisions, it became law two months later. Oliver Ellsworth remained a highly effective senator until 1796, when he moved to the Supreme Court as chief justice of the United States. Although Ellsworth, more than any other, shaped the federal judicial system, his strengths as a legislative craftsman failed to translate to success as a jurist. Deteriorating health forced his resignation within four years.

Today, constitutional scholars remember Oliver Ellsworth's Judiciary Act as "the keystone of American federalism" and they note John Adams' assessment that, in the federal government's earliest years, he was its "firmest pillar."



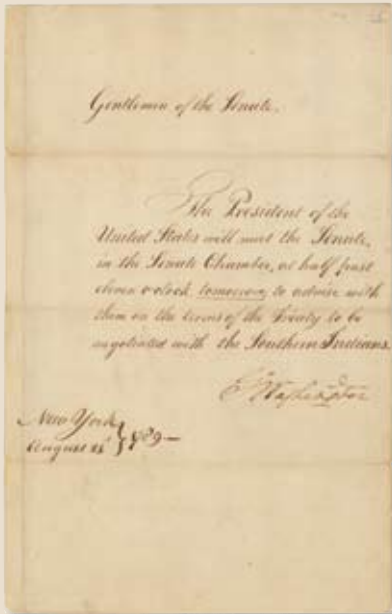
Oliver Ellsworth, senator from Connecticut (1789-1796), chief justice of the United States (1796-1800).

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August 5, 1789

Irritating the President



President Washington's visit to the Senate regarding a proposed treaty with the southern Indians proved so unsatisfactory that he never again sought the Senate's advice in person.

The Senate spent most of its first year setting precedents. During the month of August 1789, it established two precedents that particularly irritated President George Washington.

On August 5, for the first time, the Senate refused to confirm a presidential appointee. Ignoring the budding concept of “senatorial courtesy,” President George Washington had failed to consult with Georgia’s two senators before he nominated Benjamin Fishbourn to the post of naval officer for the Port of Savannah. One of those senators, James Gunn, favored another candidate who was a close political ally. Gunn promptly engineered the Senate rejection of Fishbourn.

From late in the 18th century until the early 1930s, senators occasionally derailed nominations for positions wholly within their states simply by proclaiming them “personally obnoxious.” No further explanation was required or expected.

On the day after the Fishbourn rejection, President Washington angrily drafted a letter to the Senate. The overly formal style of the message failed to hide the chief executive’s irritation. He began by noting that the Senate must have had its own good reasons for turning down his nominee. Then

his frustration burst through. “Permit me to submit to your consideration whether on occasions where the propriety of Nominations appear questionable to you, it would not be expedient to communicate that circumstance to me, and thereby avail yourselves of the information which led me to make them, and which I would with pleasure lay before you.” He explained his own close association with Fishbourn, whom he considered brave, loyal, experienced, and—pointedly—popular among the political leaders of his state. The president then nominated a candidate acceptable to Senator Gunn.

Three weeks later, on August 22, 1789, the president visited the Senate to receive its advice and consent for an Indian treaty. He occupied the presiding officer’s chair while Senate President John Adams sat at the desk assigned to the Senate’s secretary. Intimidated by Washington’s presence, senators found it difficult to concentrate on the treaty’s provisions as Adams read them aloud. After hearing the contents of several supporting documents, members decided they needed more time. An angry president spoke for the first time during the proceedings: “This defeats every purpose of my being here!” Although he returned two days later to observe additional debate and the treaty’s approval, he conducted all further treaty business with the Senate in writing.

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September 11, 1789

First Cabinet Confirmation

On September 11, 1789, the new federal government under the Constitution took a large step forward. On that day, the president of the United States sent his first cabinet nomination to the Senate for its “advice and consent.” Minutes later, perhaps even before the messenger returned to the president’s office, senators approved unanimously the appointment of Alexander Hamilton to be secretary of the treasury.

At the Constitutional Convention in 1787, and in the subsequent campaign to ensure the Constitution’s ratification, Hamilton vigorously supported provisions that divided responsibility for appointing government officials between the president and the Senate. He believed that a role for the Senate in the filling of key government positions would prevent the president from selecting friends, neighbors, relatives, or other “unfit characters” to jobs for which they lacked necessary skills, temperament, or experience.

Aside from the appointment process, the Constitution included only a passing reference to the operation of executive branch agencies. The framers assumed that the Congress would draft suitable legislation to allow the executive to manage the basic governmental functions of finance, foreign relations, and defense.

In establishing the first cabinet departments, Congress considered Treasury to be the most important. Legislators spelled out its responsibilities in great detail and provided staff resources greater than all other government agencies combined.

Alexander Hamilton campaigned actively for the position of treasury secretary, even though friends had advised him to avoid that job at a time when the nation’s finances were in a “deep, dark, and dreary chaos.” They urged him, instead, to seek nomination as chief justice of the United States or to run for a seat in the Senate.

Robert Morris, the Pennsylvania senator and financier, counseled President George Washington to nominate the 34-year-old Hamilton, whom he described as “damned sharp.” Nine days after the president signed legislation creating the Treasury Department, he dispatched his messenger to the Senate with Hamilton’s nomination.

Alexander Hamilton’s intense ambition, his passion for order and efficiency, together with his tendency to meddle in the operations of other cabinet agencies, made him the administrative architect of the new government. The combination of special congressional powers vested in the Treasury Department and the president’s relative inexperience in financial affairs allowed the secretary to pursue a course of his own choosing. One member of Congress commented, “Congress may go home. Mr. Hamilton is all-powerful and fails in nothing that he attempts.”



George Washington, far right, chose as members of his first cabinet, left to right, Henry Knox, Thomas Jefferson, Edmund Randolph, and Alexander Hamilton.

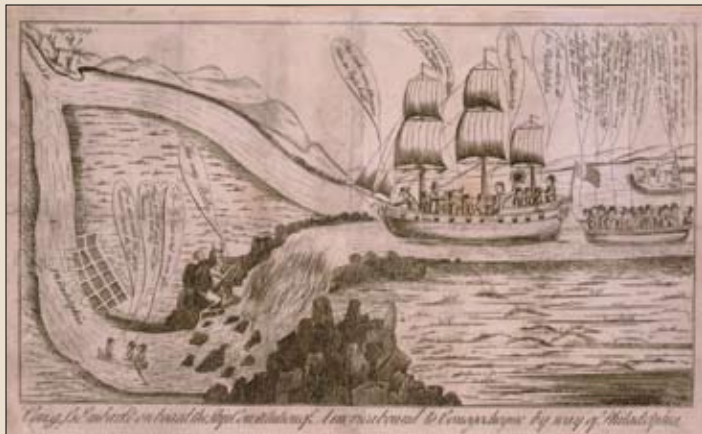
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August 12, 1790

Farewell to New York

When Congress convened a special ceremonial session at Federal Hall in New York City on September 6, 2002, to honor the victims and heroes of the September 11, 2001, terrorist attacks, participants were reminded that 212 years had passed since Congress last met in that city.



This cartoon provides a cynical view of the profit opportunity that Congress's temporary move presented for Philadelphians.

New York had hosted the Congress that operated under the Articles of Confederation from 1785 to 1789. When the new federal government was launched with the 1788 ratification of the U.S. Constitution, New York City continued as the nation's temporary capital. Hoping to convince the new Congress to make their city the permanent seat of government, local business interests contributed

funding for a major expansion of the city hall.

When Congress convened for the first time on March 4, 1789, the old building had been converted into a splendid capitol, optimistically renamed Federal Hall. The Senate Chamber occupied a richly carpeted 40-by-30-foot-long room on the building's second floor. The chamber's most striking features

were its high arched ceiling, tall windows curtained in crimson damask, fireplace mantels in handsomely polished marble, and a presiding officer's chair elevated three feet from the floor and placed under a crimson canopy. Noticeably absent from the lavishly ornate chamber was a spectators' gallery—a sign that Senate deliberations were to be closed to the public.

The precedent-setting first and second sessions of the First Congress proved highly productive. The second session, which concluded on August 12, 1790, enacted legislation that put the nation on a firm financial foundation, authorized the first census of population, established a government for the western territories south of the Ohio River, and—in the Residence Act of 1790—provided a location for the first permanent seat of government. Under that plan, the government would abandon New York in favor of Philadelphia, which would serve as the temporary capital city for 10 years. In 1800, the government would again move, this time to its permanent location in Washington, D.C.

As its final action on August 12, the Senate adopted a resolution thanking New York for its generous hospitality. Soon after Congress departed, Federal Hall again became the local city hall, until it was demolished in 1812. In 1842, the Federal Hall in which the 2002 ceremonial session took place was erected on part of the original site and is now designated a National Memorial.

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December 6, 1790

The Senate Moves to Philadelphia

On a cold Monday in December, the Senate convened for the first time in Philadelphia. The Residence Act of 1790 settled Congress in that city until 1800, when the entire government would move to the District of Columbia.

As Pennsylvania's capital and the nation's largest city, Philadelphia in 1790 was rapidly developing as a prosperous commercial center, with well-paved and regularly laid-out streets. As one newly arrived member observed, Philadelphians "believe themselves to be the first people in America as well in manners as in arts, and like Englishmen, they are at no pains to disguise this opinion."

Fifteen of the Senate's 26 members attended that initial session in Congress Hall. This imposing two-story Georgian brick building, designed to complement the State House—Independence Hall—directly to its east, had been completed only the year before. In the Senate's elegantly outfitted second-floor chamber, senators found two semicircular rows of mahogany writing desks and a canopied dais for the presiding officer. A specially woven Axminster carpet, featuring the Great Seal of the United States, covered the plain board floor. The chamber's 13 windows, hung with green wooden Venetian blinds and crimson damask curtains, provided added daytime illumination, while candles placed on members' desks lit the chamber for rare late afternoon and evening sessions.

The members who inaugurated this chamber were an experienced lot. More than three-quarters had served in the Continental Congresses and in state legislatures. Ten had participated in the Constitutional Convention. Nearly half were college graduates; two-thirds had some legal training.

Despite Philadelphia's attractions, senators encountered significant hardships, among them the high cost of living, the greater attractiveness of state legislative service, and the difficulty of a six-year absence from one's livelihood. While most members attended faithfully in the early months of a session, some tended to slip away in the spring and early summer. During the 1790s, in the final weeks of each Congress' first session, fully a quarter of the Senate's members failed to participate in votes. Senators also resigned at a high rate. Of the 86 who served in the Senate during its 10-year Philadelphia residence, one-third departed before their terms expired. It was not uncommon for as many as four senators to successively fill one seat over the course of a six-year term. Only three senators served all ten years in Philadelphia!



Congress met in the Philadelphia County Court House, now known as Congress Hall, from 1790 until 1800.

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February 20, 1792

Presidential Succession

The framers of the Constitution left Congress with considerable responsibility for resolving questions about the new government's structure and operations.

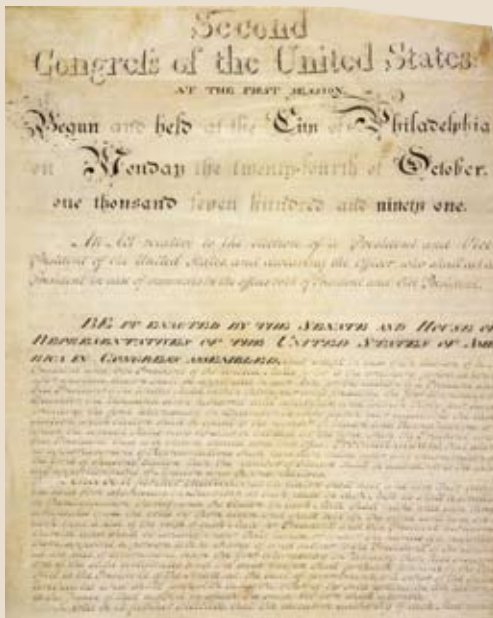
Considering the high rates of serious illness and early death in late 18th-century America, one of the most pressing among those questions was, “Who would become president if both the president and vice president died or were otherwise unavailable to serve during their terms of office?” The Constitution provides only that Congress may pass a law “declaring what Officer shall then act as President.”

In 1791, a House committee recommended that this duty fall to the cabinet's senior member—the secretary of state. Federalist senators objected because they had no desire to see Secretary of State Thomas Jefferson, leader of the growing Antifederalist opposition, placed so close to the presidency. Others proposed the Senate's president pro tempore, reasoning that as this official succeeded the vice president in presiding over the Senate, he should also succeed the vice president in performing the duties of the presidency. This plan attracted opposition from those who assumed the president pro tempore would remain

a senator while temporarily performing duties of the presidency and feared the arrangement would upset the balance of powers between the two branches. Others suggested the chief justice of the United States or the Speaker of the House of Representatives. At an impasse, Congress adjourned for nine months, thereby risking governmental paralysis in the event of presidential and vice-presidential vacancies.

Early in the Second Congress, on February 20, 1792, the Senate joined the House in passing the Presidential Succession Act—a compromise measure that placed in the line of succession its president pro tempore, followed by the House Speaker.

Years later, in 1886, Congress responded to longstanding uneasiness with this arrangement by removing its two officers from the line of succession and substituting the president's cabinet members, by rank, beginning with the secretary of state. This troublesome issue received yet another revision in 1947, when Congress inserted the House speaker and Senate president pro tempore, in that order, ahead of the president's cabinet.



An excerpt from the
Presidential Succession
Act of 1792.

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December 2, 1793

The First Monday in December

The first Monday in December! In recent times, these five words conjure up images of members rushing to wrap up last-minute legislative business in order to return home for end-of-year holidays. Immediately after World War II, to ensure that members would be long gone by December, Congress enacted legislation requiring both houses to adjourn no later than July 30 of each year.

Such concerns would surely have amazed the 18th-century framers of the U.S. Constitution. Tied to an agriculturally based economy, with its cycle of planting, growing, and harvesting, these farmer-statesmen considered the dormant month of December as a particularly good time for members of Congress to begin, rather than end, their legislative sessions.

Accordingly, they provided in Article I, Section 4 of the Constitution that “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 September 1788, after the necessary three-quarters of the states ratified the Constitution, the existing Congress, under the Articles of Confederation, passed such a law, setting March 4, 1789, as the convening date of the First Congress. March 4 thereby became the starting point for members’ terms of office, while future legislative sessions would begin in early December.

In its closing days, however, the First Congress provided that the Second Congress would convene several weeks early,

on October 24, 1791. Not until the Third Congress met on December 2, 1793, did a first session begin according to the Constitution’s “First Monday in December” timetable. For the next 140 years, Congress generally followed this pattern, although presidents, facing national emergencies or other “extraordinary occasions” exercised their constitutional prerogative to “convene both Houses, or either of them,” at other times.

Outgoing presidents routinely used this provision to issue proclamations that called the Senate into a brief session at the March 4 start of their successor’s term to confirm cabinet and other key executive nominations.

With the 1933 adoption of the Constitution’s 20th Amendment, setting January 3 as the annual meeting date, the first Monday in December became just another relic of the nation’s 18th-century agrarian society.

From 1946 until 1990, when Congress repealed the “mandatory” July 30 adjournment as an unattainable goal, members found themselves still in session in December during 19 of those 44 years.



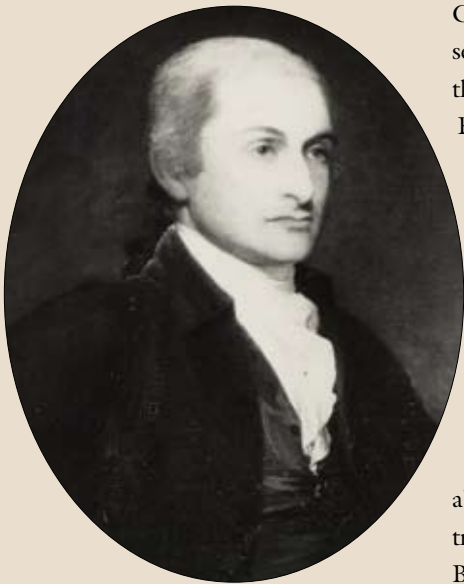
The Senate Chamber inside Congress Hall, where the Senate met from 1790 to 1800.

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June 24, 1795

Uproar over Senate Approval of Jay Treaty



John Jay, chief justice of the United States (1789-1795).

A howling, stone-throwing mob marched on the Philadelphia home of Pennsylvania Senator William Bingham. In Frankfort, Kentucky, the state legislature denounced Senator Humphrey Marshall and demanded that the Constitution be amended to allow for the recall of United States senators. So angry were his constituents, as one writer observed, that Marshall was “burned in effigy, vilified in print, and stoned in Frankfort.” Many of the other senators who, on June 24, 1795, had provided the exact 20-to-10 two-thirds majority necessary to ratify John Jay’s treaty with Great Britain experienced similar popular outrage.

A year earlier, at President George Washington’s request, Chief Justice of the United States John Jay sailed to London to negotiate a reduction of tensions between the two nations. The president wanted Great Britain to withdraw its troops from the United States’ northwestern territories, to compensate slaveholders for slaves British soldiers had abducted during the Revolutionary War, to pay ship owners for trading vessels seized by its navy, and to allow free trade with the British West Indies. Jay achieved only a limited success, however, gaining the withdrawal of troops and compensation to American merchants. He failed to obtain protections for American shipping or reimbursement for stolen slaves, and he prematurely conceded American responsibility to pay British merchants for pre-Revolutionary War debts.

Jay’s treaty contained provisions that many considered humiliating to the United States, but President Washington sent it to the Senate for formal approval. The president and his supporters argued that Jay had obtained the best possible deal and that the nation could ill afford another war with Britain. The treaty’s opponents, members of the Senate’s anti-administration Democratic-Republican minority, demanded that the treaty be renegotiated because—among other reasons—it failed to protect America’s trading agreements with France. The president’s allies among the Senate’s Federalist majority rejected this proposal and narrowly approved the treaty.

When the text of the treaty became public, mobs took to the streets to condemn George Washington, John Jay, and the United States Senate. Even John Rutledge, Washington’s recess appointee to replace Jay as chief justice, criticized ratification of the treaty as a sellout. When the Senate reconvened in December 1795, it retaliated by immediately rejecting the imprudent Rutledge’s pending nomination. Although debate over the flawed pact deepened the nation’s political divisions and destroyed relations with France, its ratification likely saved the still-fragile republic from a potentially disastrous new war with Britain.

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October 24, 1795

Constituents Tell Senator How to Vote

The presumed right of the people to instruct their elected representatives extends back to colonial times. In drafting the Bill of Rights in 1789, the House of Representatives briefly considered recognizing such a right, but then overwhelmingly rejected it. The House response underscored representatives' traditional desire to temper their constituents' views with their own knowledge and opinions.

This issue hit the early Senate with special force. Unlike the House, whose members were elected by a diffused constituency of individual citizens, senators came to their seats through the choice of their state legislatures—bodies skilled in framing expressions of opinion. Soon after the Senate first convened in 1789, its members began receiving letters of instruction. In 1791, the Virginia legislature directed its two senators to vote to end the Senate's practice of meeting behind closed doors—the better to keep senators accountable. When senators received instructions with which they agreed, some made a great show of following them. When they disagreed, however, they faced a choice: they could ignore the instructions, or they could resign.

On October 24, 1795, the *Kentucky Gazette* printed a petition from the inhabitants of Clark County to that state's legislature. The petitioners angrily denounced U.S. Senator Humphrey

Marshall for his vote in favor of ratifying the Jay Treaty. The citizens urged the legislature to instruct Marshall to oppose the treaty if it should come before the Senate again.

Noting that Marshall had five years remaining in his term, others traced the problem to the length of senators' terms. Six-year terms endangered "the liberties of America," they argued, by destroying senators' sense of responsibility and enabling "them to carry into execution schemes pregnant with the greatest evils." These petitioners requested their state legislature to instruct both of Kentucky's senators to propose a constitutional amendment permitting a state legislature to recall senators by a two-thirds vote.

A Federalist facing a hostile Jeffersonian-Republican legislature, Humphrey Marshall appealed directly to the people through a series of articles explaining his ratification vote. He asserted that as a senator he was less interested in winning popularity contests than in doing his duty to the nation—"according to my own judgment."

Shortly afterwards, a mob dragged Marshall from his house. Only by seconds did this skilled orator talk the crowd out of throwing him into the Kentucky River. Stoned by angry citizens in the state capital, he kept a low profile for the remainder of his term.



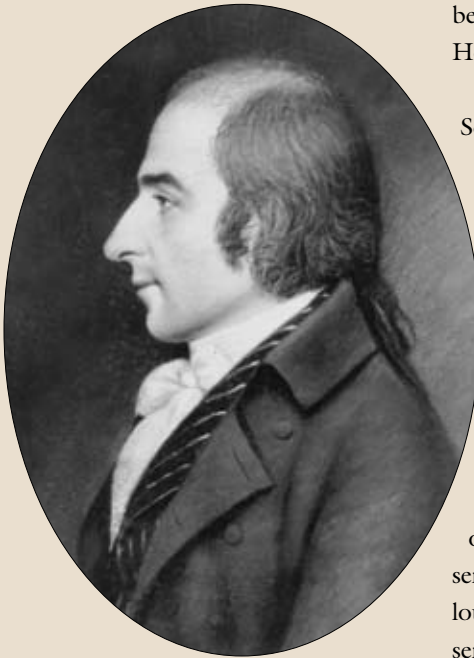
Humphrey Marshall, senator from Kentucky (1795-1801).

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December 9, 1795

The Senate Opens its Doors



Albert Gallatin of Pennsylvania failed to meet the citizenship requirement for a seat in the U.S. Senate.

Question: Who was the first employee hired by the Senate? Answer: The doorkeeper. His job was particularly important to the Senate of 1789 because members intended to conduct all their sessions behind closed doors. The doorkeeper's orders: No public; no House members!

The framers of the Constitution assumed that the Senate would follow their own practice, as well as that of the Continental Congress, of meeting in secret. They believed that occasional publication of an official journal, with information on how members voted on legislative matters, would be sufficient to keep the public informed. In the Senate, defenders of secrecy looked with disdain on the House where members were tempted to play to a gallery of hissing and cheering onlookers. In an era before reliable shorthand reporting, press accounts of House activity were notoriously incomplete and distorted along partisan lines.

Opposition to the closed-door policy increased steadily over the first five years of the Senate's existence. At a time when senators owed their election to state legislatures, those bodies loudly complained that they could not effectively assess their senators' behavior from outside a closed door. Eventually, individual senators recognized that their legislative positions could

more easily win popular support if publicly aired. The growing notion of the Senate as a "lurking hole" in which conspiracies were hatched against the public interest had to be put to rest. Additionally, press coverage of the House helped popularize that body's role and the public began to use the words "House" and "Congress" interchangeably. The Senate was in danger of becoming the forgotten chamber.

The opportunity for change arrived with a dispute over the seating of Pennsylvania's controversial Senator-elect Albert Gallatin. Senators, then meeting in Philadelphia, realized the delicacy of the situation in which they were questioning the action of the Pennsylvania legislature, which at that time met in the building next door. Wishing to avoid the charges of "Star Chamber" that would surely follow a secret vote to reject Gallatin, the Federalist majority agreed to open Senate doors just for that occasion. Several weeks after denying Gallatin his seat, the Senate decided to open its proceedings permanently as soon as a suitable gallery could be constructed. After an initial eruption of curiosity when that gallery opened in December 1795, however, the press showed little sustained interest in covering Senate debates, which lacked the fire and drama of those in the other body.

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December 15, 1795

A Chief Justice Nomination Rejected

On December 15, 1795, the Senate administered a stinging blow to one of the nation's most distinguished "founding fathers." By a vote of 10 to 14, it rejected President George Washington's nomination of South Carolinian John Rutledge to be chief justice of the United States.

Born to one of Charleston's elite families, John Rutledge rapidly gained political and judicial distinction during the American Revolution. At an early age, he represented South Carolina in the Stamp Act Congress and in the Continental Congress. In 1775, he helped draft the constitution for the newly formed "Republic of South Carolina," and a year later he became that republic's president. When British troops captured Charleston in 1779, the state legislature elected Rutledge governor and handed him virtually absolute power. After the war, he served as chief judge of a state court and, in 1787, played a major role in drafting the U.S. Constitution.

In recognition of these contributions, President George Washington nominated—and the Senate quickly confirmed—Rutledge as the first U.S. Supreme Court's senior associate justice. Although Rutledge accepted his commission, he failed to attend the Court's meetings and resigned in 1791 to become chief justice of a South Carolina court.

In June 1795, Rutledge offered President Washington his services as a replacement for the soon-to-retire Chief Justice John

Jay. Washington readily agreed and, with the Senate in recess, promised to give Rutledge a temporary commission upon his arrival at the August session of the Supreme Court.

Several weeks after learning this, however, Rutledge complicated his confirmation chances by delivering a speech vehemently attacking the controversial Jay Treaty, which he believed to be excessively pro-British. Rutledge seemed blind to the fact that the president had supported—and the Senate had recently consented to—that difficult treaty. Many administration supporters cited this ill-timed speech as evidence of Rutledge's advancing mental incapacity. Rutledge ignored the escalating criticism and took his seat on the high court.

When the Senate convened in December, it promptly voted down his nomination. Rutledge thus became the first rejected Supreme Court nominee and the only one among the 15 who would gain their offices through recess appointments not to be subsequently confirmed. In turning down Rutledge, the Senate made it clear that an examination of a nominee's qualifications would include his political views. Those who differed substantively from the majority of senators could expect rough going.

President Washington quickly calmed the rough waters by nominating to the Court one of the Senate's own members, the author of the 1789 Judiciary Act, Connecticut's Oliver Ellsworth.



John Rutledge of South Carolina became the first Supreme Court nominee rejected by the Senate.

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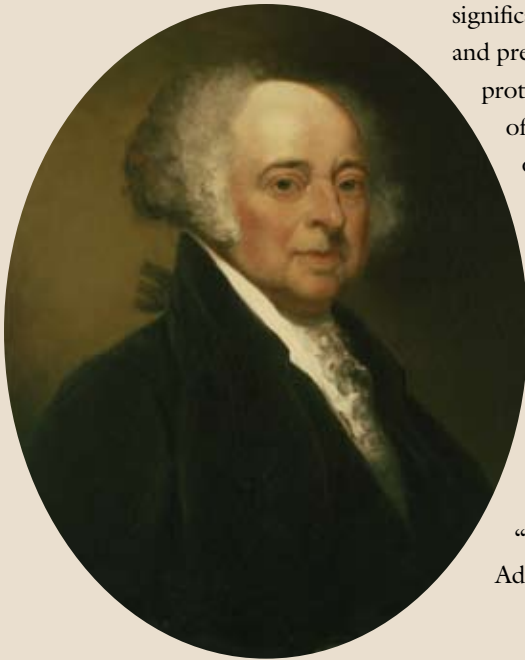
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February 15, 1797

John Adams' Senate Farewell



John Adams served as the first vice president of the United States, and therefore as the Senate's first president.

Thanks to best-selling biographies by historians David McCullough and Joseph Ellis, Americans have rediscovered John Adams. As the nation's first vice president, and therefore the Senate's first president, Adams significantly influenced the formation of early Senate procedures and precedents. He also arranged for his Massachusetts political protégé Samuel Otis to become secretary of the Senate—an office from which Otis shaped the Senate's administrative operations for a quarter century.

When Adams began his duties in 1789, he privately complained that while he was “Not wholly without experience in public assemblies,” he was “more accustomed to take a share in their debates than to preside in their deliberations.” Although he promised to refrain from interjecting his own views, he soon forgot that promise. In office for only a month, he entered an extended debate over what title to use in addressing the nation's chief executive. The House had proposed “Mr. President.” Believing that titles inspire respect, Adams hoped the Senate would recommend something like

“His Majesty the President.” Ultimately, the Senate agreed to the House version, but word of Adams' seemingly aristocratic attitude leaked out of the closed Senate sessions and earned him considerable public scorn.

Senators quickly began to resent Adams' pedantic lectures. His friend John Trumbull warned that “he who mingles in debate subjects himself to frequent retorts from his opposers, places himself on the same ground with his inferiors in rank, appears too much like the leader of a party, and renders it more difficult for him to support the dignity of the chair and to preserve order and regularity in debate.” Stung by this criticism, Adams told Trumbull, “I have no desire ever to open my mouth again upon any question.” And, for the remainder of his term, he seldom did.

On February 15, 1797, as he prepared for his own presidential inauguration, Adams appeared before the Senate for the last time as its presiding officer. In his farewell address, he assured members that he had abandoned his earlier notion that the office of senator should be a hereditary one. The “eloquence, patriotism, and independence” that he had witnessed during his eight years there convinced him “no council more permanent than this will be necessary to defend the rights, liberties, and properties of the people, and to protect the Constitution of the United States.”

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February 5, 1798

To Arrest an Impeached Senator

When barely nine years old, the Senate confronted a crisis of authority. An impeached senator refused to attend his trial in the Senate Chamber. Unlike the House of Representatives, or the British House of Commons, the Senate lacked a sergeant at arms to enforce its orders. On February 5, 1798, the Senate expanded the duties, title, and salary of its doorkeeper to create the post of sergeant at arms. It then directed that officer to arrest the fugitive senator—the Honorable William Blount.

A signer of the U.S. Constitution, William Blount in 1796 had become one of Tennessee's first two senators. A year later President John Adams notified Congress that his administration had uncovered a conspiracy involving several American citizens who had offered to assist Great Britain in an improbable scheme to take possession of the Spanish-controlled territories of Louisiana and the Floridas. Blount was among the named conspirators. He had apparently devised the plot to prevent Spain from ceding its territories to France, a transaction that would have depressed the value of his extensive southwestern landholdings.

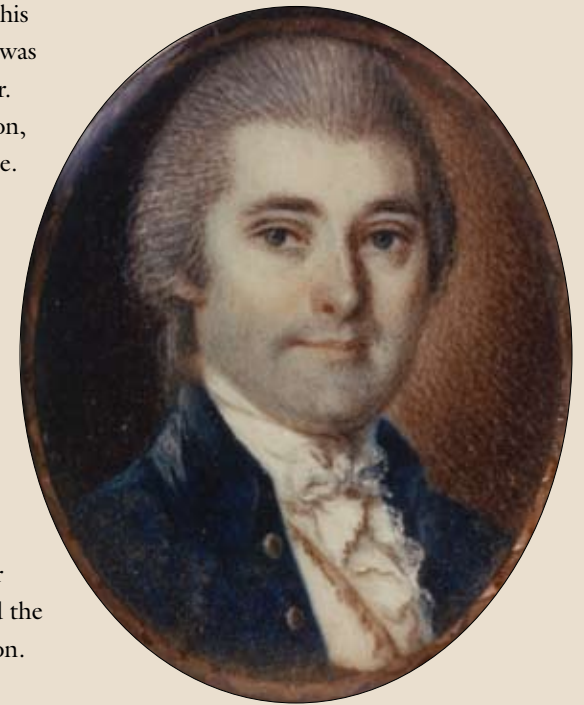
On July 7, 1797, while the Senate pondered what to do about Blount, the House of Representatives, for the first time in history, voted a bill of impeachment. The following day, the Senate expelled Blount—its first use of that constitutional power—and adjourned until November. Prior to adjourning, the

Senate ordered Blount to answer impeachment charges before a select committee that would meet during the recess. Blount failed to appear. He had departed for Tennessee with no intention of returning.

On February 5, 1798, as the Senate prepared for his trial—uncertain whether a senator, or former senator, was even liable for impeachment—it issued the arrest order. The sergeant at arms ultimately failed in his first mission, however, as Blount refused to be taken from Tennessee.

The Senate also adopted its first impeachment rule, which provided for the respectful reception of the House's impeachment articles. Several days later, the Senate adopted an oath, as required by the Constitution, binding members to “do impartial justice, according to law.” Congress then adjourned for 10 months.

When the Senate reconvened in December 1798, it adopted additional impeachment rules. Drawn from British parliamentary and American colonial and state practice, these rules serve as the earliest foundation for those in effect today. A year later, the Senate dismissed the impeachment case against Blount for lack of jurisdiction.



William Blount, senator from Tennessee (1796-1797).

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June 25, 1798

The Senate Enforces Attendance

The framers of the Constitution feared that members of Congress could strangle the government by simply failing to attend legislative sessions. Without a quorum, the Senate or House would be powerless to act. Accordingly, the Constitution writers provided that each body could “compel the Attendance of absent Members, in such Manner, and under such

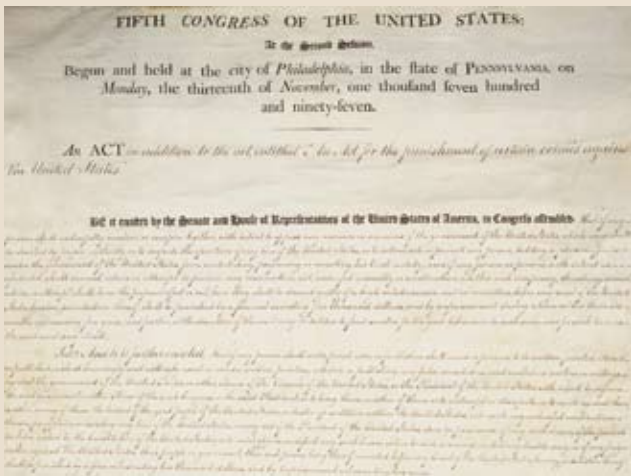
Penalties as each House may provide.”

On June 25, 1798, the Senate adopted a rule specifying its manner and penalties for enforcing senators’ attendance. As spring gave way to summer, more than one-third of the Senate’s membership failed to show up for individual votes. Some senators had left the capital to return to their states for the customary five-month break that lasted until the first week in December. Senate leaders, however, had other plans for members before an adjournment would be possible. At the top of their list of unfinished business was one of the notorious Alien and Sedition Acts.

The Senate’s new rule provided that less than a quorum could authorize expenses for the sergeant at arms to bring absent members back to the chamber. The office of sergeant at arms had recently been created specifically for chasing down absent senators and reluctant witnesses needed to conduct Senate business. Those senators who had prematurely left town without a sufficient excuse would be required to pay whatever expenses the sergeant at arms incurred in returning them.

On Independence Day 1798, the Senate used this new rule to call back enough senators to enact one of the most repressive statutes in American history. The Sedition Act of 1798 reflected growing national hysteria over the possibility of war with France. In an effort to silence journalists supporting anti-administration views, the act’s framers provided punishments that included fines and imprisonment for those who publicly criticized Congress or the president.

More than a dozen journalists were ultimately prosecuted under this statute before it expired in 1801. The resulting widespread public anger at the administration of John Adams helped elect Thomas Jefferson president in 1801 and shifted control of the Senate to Jefferson’s Democratic-Republican Party.



An excerpt from the Sedition Act of 1798.

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March 27, 1800

The Senate Holds an Editor in Contempt

Should it be possible to send someone to jail for publishing the text of a bill while it is still before the Senate? On March 27, 1800, a majority of senators believed the answer to that question to be a resounding ‘yes.’

Two years earlier, at a time of national paranoia over possible war with France, a Federalist-dominated Congress, supporting the administration of President John Adams, had passed the infamous Alien and Sedition Acts. The 1798 Sedition Act targeted journalists loyal to the opposition Democratic-Republican Party, formed around the leadership of Adams’ vice president, Thomas Jefferson. That statute provided for the imprisonment of any person who wrote, published, or uttered any false or malicious statement about the president or Congress.

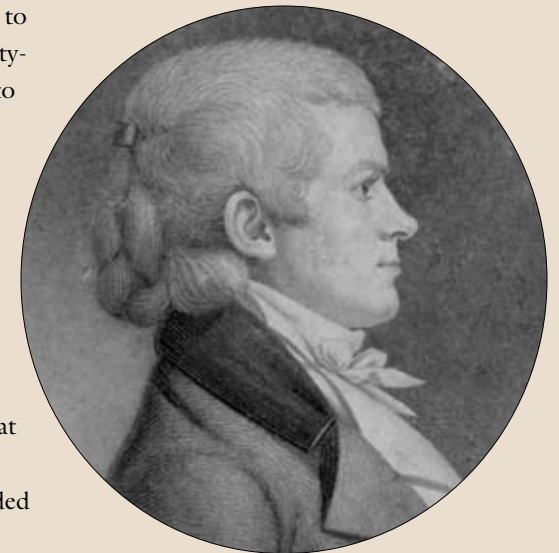
By early 1800, with Congress still meeting in Philadelphia, Senate Federalists launched a campaign against William Duane, the hard-hitting editor of that city’s influential Republican newspaper, the *Aurora*. In February, Duane published a Federalist-sponsored Senate bill, leaked to him by three Republican senators. The purpose of the leaked bill was to establish a special committee for the coming election. Composed of six senators, six representatives, and the chief justice, the committee would review electoral college ballots and decide which ones should be counted. In his outraged reporting on this blatantly unconstitutional device to swing the election to Adams, Duane mistakenly indicated that the bill had already passed the Senate.

Duane’s error gave Senate Federalists an excuse to create a “committee on privileges.”

This panel quickly concluded that he had illegally breached Senate privileges by publishing the bill and that he was guilty through his false statements of exciting against senators “the hatred of the good people of the United States.”

On March 24, Duane complied with a Senate order to appear in its chamber to hear the charges on which a party-line majority had found him guilty—without trial—and to comment before the Senate passed sentence. Allowed a two-day continuance to confer with counsel, he decided not to return. When the Senate cited him for contempt and ordered his arrest, Duane went into hiding until Congress adjourned several weeks later.

By the time the new session convened in November 1800, the government had moved from Philadelphia to Washington. The disruption of the move, together with the subsequent election victories that would place Jefferson in the White House and his fellow Democratic-Republicans in control of Congress, concluded this bizarre chapter of Senate history.



William Duane, editor of the Aurora newspaper in Philadelphia.

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November 17, 1800

The Senate Moves to Washington

A late fall storm snarled travel along the east coast. Senators trying to reach Washington from their homes in time for the new session experienced frustrating delays. A heavy blanket of snow forced cancellation of a welcoming parade.

On November 17, 1800, following a 10-year stay in Philadelphia, the Senate of the Sixth Congress met for the first

time in the Capitol Building. Work on the Capitol had begun in 1793, but materials and labor proved to be more expensive than anticipated. Facing major funding shortfalls, the building's commissioners in 1796 decided to construct only the Senate wing. Although some third-floor rooms remained incomplete by moving day, the wing was substantially ready to receive along with the Senate, the House, the Supreme Court, the Library of Congress, and district courts.



When Congress arrived in Washington in 1800, only the north wing of the Capitol had been completed.

When the Senate convened in the ground-floor room now restored as the old Supreme Court chamber, only 15 of the necessary 17 members answered the quorum call. Four days later, the Senate finally achieved its first Washington quorum and, with the House, notified President John Adams that Congress awaited

any communication he might wish to make. The following day, the president arrived in the crowded, leaky, and unheated—but elegantly appointed—Senate Chamber. He began his annual address to the joint session by congratulating members on their new seat of government and—pointedly—“on the prospect of a residence not to be changed.” He added, optimistically, “Although there is some cause to apprehend that accommodations are not now so complete as might be wished, yet there is great reason to believe that this inconvenience will cease with the present session.”

As President Adams continued with a lackluster address—the last annual message any president would personally deliver to Congress for the next 113 years—the chilled members sadly contemplated the unfinished Capitol and its rustic surroundings. While some fondly recalled Philadelphia’s “convenient and elegant accommodations,” as the Senate had put it in a resolution of thanks when departing that city six months earlier, a New York senator privately offered what is perhaps the first known instance of “Washington bashing.” He volunteered sarcastically that the city was not so bad. To make it perfect, it needed only “houses, cellars, kitchens, well informed men, amiable women, and other little trifles of this kind.”

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