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Episode 338: The Early History of the US Senate

Announcer: [00:00:00](#) You're listening to an AirWave Media podcast.

Liz Covart: [00:00:04](#) *Ben Franklin's World* is a production of The Omohundro Institute, and is sponsored by the Colonial Williamsburg Foundation.

Liz Covart: [00:00:19](#) Hello, and welcome to Episode 338 of *Ben Franklin's World*, the podcast dedicated to helping you learn more about how the people and events of our early American past have shaped the present-day world we live in, and I'm your host, Liz Covart.

On September 17th, 1787, 39 delegates to the Constitutional Convention signed the United States Constitution, and submitted it to the states for ratification. This is why on each September 17th, we think about the Constitution. Now, in our commemoration of the Constitution, we'll spend both of our September episodes exploring different aspects of the Constitution, by investigating parts of the government it created, and the context in which it was written.

In this episode, we're going to take a deep dive into Article One of the Constitution. That's the article that establishes the Legislative Branch of the United States Government. Specifically, we're going to join three historians from the Senate Historical Office to investigate the creation and formation of the United States Senate.

Liz Covart: [00:01:21](#) Now, during our investigation of the US Senate, Senate historians reveal the structure of the Legislative Branch created by the United States Constitution as established in Article One of the Constitution, details about the early US Senate, including its powers, organization, and process for doing business, and how divisive party politics influenced the work of early US Senates, and eventually led to the creation of the modern-day filibuster.

But first, if you've not had the opportunity to read the United States Constitution, or it's been a while since you last read it,



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be sure to check out today's show notes page, as I've included links to the United States National Archives, which has a really nice web exhibit on the handwritten document and a great transcription of it. This way, you can learn more about the Constitution's history, and read through our structure of government. You'll find these links at benfranklinworld.com/338 Okay, are you ready to take a field trip to the Senate Historical Office and meet some really fine historians? Let's get to it.

Liz Covart:

[00:02:39](#)

We have three guests today. First is Betty K. Koed, the United States Senate Historian and Director of the Senate Historical Office. A Senate Historian since 1998, Koed supervises all historical and archival projects, provides talks and presentations to Senators, staff, and the public on wide ranging topics of Senate history, and conducts oral history interviews with former Senators and staff. She oversees more than 10,000 pages of historical material on the Senate website, is a Senior Editor of the Biographical Directory of the United States Congress, and provides research and reference assistance to the Senate community, the public, and the media. She's also the author of the upcoming publication *Scenes: People, Places, and Events that Shape the United States Senate*. Our second guest is Katherine Scott, Associate Historian of the Senate Historical Office and author of *Reining in the State: Civil Society and Congress in the Vietnam and Watergate Eras*, as well as other articles, essays, and book chapters related to United States political history. And our third guest is Daniel Holt, an Assistant Historian at the Senate Historical Office. Prior to joining the Senate Historical Office, Dan served as a historian at the Federal Judicial Center, where he added volumes two and three of *Debates on the Federal Judiciary: A Documentary History*. Welcome to *Ben Franklin's World*, Betty, Kate, and Dan.

Betty K. Koed:

[00:04:02](#)

Thank you.

Kathrine Scott:

Thanks, we're glad to be here!



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- Liz Covart:** [00:04:03](#) And we're glad to have you too, thank you so much for joining us. Now, you all work at the Senate Historical Office, and Betty, you're the Historian of the United States Senate. So, would you tell us more about the Senate Historical Office and the work that you, Kate, Dan, and the rest of your staff do as historians in service of the Senate?
- Betty K. Koed:** [00:04:23](#) Yes, I'd be delighted to do that. The Senate Historical Office was founded in 1975, and its founding mission was to preserve and promote the history of the US Senate. And that's really what we've been doing for the last 40-some years. We started with just one historian, and then he quickly hired another, and then in 1982 we hired an archivist, and the staff has grown since that time. We now have 10 full-time staff members in the Historical Office, but those first three members really say a lot about the office, because we had two historians on staff who were here to write, study, research, and explain the history of the Senate to the broader community. They also served as institutional memory to the Senate, so we were here to answer questions, or provide research, or provide documents that support historical interpretations of the Senate, that type of thing.
- Betty K. Koed:** [00:05:17](#) And the Senate Archivist, who was here to make sure that all of the Senate's official records are properly preserved and properly transferred to the National Archives for long term preservation, and eventually to make those records available to researchers. So today, with our 10 staff members in place, we still serve that same basic function, but we do it in a much broader way. We have multiple ways to communicate to the public now, we don't have to just take phone calls or have someone wander into our office on some day, but rather we have a website that has thousands of pages of historical material on it, we do our own monthly blog posts, which introduces the public to different areas of Senate history and different biographies of Senators, and we have a growing staff of archivists who are here to help manage the complicated world of Senate archiving in the 21st century, which is not just old paper records from committee offices going to the



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National Archives, but now a wide array of electronic and digital records that are created in emails and instant posts and Twitter feeds and that type of thing, and all those things have to be preserved and archived. So it's an office with a simple mission to preserve and promote the history of the Senate, but as the years have gone by the ways in which we strive to fulfill that mission have become increasingly complicated. And, as the director of the office, I'm extremely fortunate because I have a terrific staff of professional historians and archivists - we also have a photo historian and an historical editor - all of whom are there to help me fulfill the mission here in the 21st century.

Liz Covart:

[00:06:59](#)

As a historian who works in the 18th century, long before digital records existed, I don't often think about the sheer quantity of digital records that government offices like the United States Senate must generate every year. Betty, do you know how many documents the United States Senate generates each year and that your office is charged with preserving and protecting?

Betty K. Koed:

[00:07:22](#)

Well, that's a little bit difficult to tell because we have paper documents, and that goes into the millions of sheets of paper, but we also have gigabytes and terabytes of electronic record, and... I don't have a specific statistic for you, but I know in the last couple of years we've gone into something like 30 terabytes of committee records, for instance, that have gone to the National Archives. So, that collection is vast and it's growing daily. The number of paper records being preserved is diminishing over time because more and more of the Senate's business is being done in digital format. And when you add into that senators' papers, which aren't official records of the Senate, but remain the property of each individual senator, we also work very closely to be sure all of those records are preserved and housed in a home state repository, like a library, or a university, or an historical society in a home state. And those can often range in the thousands of boxes of paper records, plus multiple terabytes



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of electronic digital information that's being preserved as well.

- Liz Covart:** [00:08:26](#) Wow, that is a lot of records that your office has to deal with, and that some future historian, or many historians, are going to need to sort through as they write histories of our 21st century age. Now, speaking of records, when does the record or the institutional history of the United States Senate begin? Now, we've spoken with your colleagues in the Office of the Historian of the House of Representatives in Episode 202, and they noted that the institutional history of the House of Representatives really dates back to the First Continental Congress in 1774. Does the Senate have a similar pre-Constitution origin, or does its institutional history really start with The Constitution in 1789?
- Betty K. Koed:** [00:09:09](#) Our history dates back to March 4th, 1789. That's when the Senate first went into business without a quorum, as it turned out, but it still went into business that day. However, there are many predecessors and precedence of the Continental Congress that played a role in the early Senate, so we also have a lot of connections to the Continental and the Confederation Congresses. We can't necessarily tie the direct link the way the house does, but we still have members that served in both the Continental and Confederation Congresses as well as members who were at the Constitutional Convention. And so, there is a real continuity from 1774 all the way into the early years of the Senate, particularly into the early 1800s, while those members were still in service to their country.
- Liz Covart:** [00:09:57](#) As you noted, Betty, the new government of the United States Constitution went into effect and opened on March 4th, 1789. And I think we should talk about Article One of the United States Constitution, which established the Legislative Branch of the United States Government. Dan, is this something you could help us out with? Could you tell us about Article One of the United States Constitution, and how that article structures the United States Senate?



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- Daniel Holt:** [00:10:23](#) Sure, I'd be glad to take that. Article One places the legislative power of the United States into the Congress, and divides the Congress into two separate houses. The House of Representatives, according to the Constitution, is elected by the people, the number of Representatives are based on the population of given states and districts. Whereas the Senate, each state is given an equal representation in the Senate, two senators per state. Article One of the Constitution also enumerates the powers that the Framers placed in the hands of the Federal Government, and also enumerated some powers that were off-limits for the states in terms of what they could exercise, so the Congress had its own purview of action, especially when it comes to things like the military, foreign affairs, Indian affairs, and regulation of interstate commerce. The framers wanted the Senate to be a small body that they hoped would have members of character and wisdom.
- Daniel Holt:** [00:11:20](#) And to that service, you had to be older to be in the Senate, you had to be 30 years of age, and you had to have more years of citizenship than the House of Representatives: nine to enter the Senate, seven for the House of Representatives. Also, there was this notion that if you could make election to the Senate somewhat removed from the people, you would also then help to create that more elite membership. And so, the Constitution placed the election of senators with state legislatures that remained in place until adoption of the 17th Amendment in the 20th century.
- Liz Covart:** [00:11:51](#) If we think about it, it seems like early Americans, when they devised this Constitution in 1787, they had a lot of experience electing the Representatives directly. But as you just mentioned, Dan, senators were to represent States rather than people, and as such, the American people did not directly elect their senators until the passage of the 17th Amendment in 1913. Could you tell us why members of the Constitutional Convention thought that the new government needed not just one house of Congress, but two houses of Congress, and



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that the Senate really should represent the states more than the actual American people?

Daniel Holt: [00:12:31](#)

The Framers of the Constitution were very influenced by the idea of what they called at the time “mixed government”. This went back to the 17th and 18th century, and the idea was that society was essentially broken down into social orders, and each of those needed to be carefully balanced for a successful government to function. So, you had a Monarch at the head of the government, you had a body that represented the landed Nobility or Aristocracy, and then you also then have the Lower House, which would represent the people at large, or at least those who were allowed to vote. This was reflected in colonial governments: you would have a governor who was appointed by the King in England. The governor was usually served by a council of sorts whose job was to advise the governor, and also put into place policies passed by the governor.

Daniel Holt: [00:13:22](#)

And then in many of the colonies, you had popularly elected assemblies. And so, the Framers were very familiar with that model, and they also looked to England for its own model of government with the King, and its bicameral House of Commons and House of Lords. They were very cognizant that in the United States, there was no such thing as a landed Nobility, you didn't have titled Aristocracy, but there was still this hope that the Senate would attract what they talked about as the “Natural Aristocracy”: members of the country who had some wealth, property, but also wisdom and character to take on that role of a check on democratic impulses.

Liz Covart: [00:14:02](#)

Okay, so the United States Constitution has created a two-house Legislative Branch. We have the House of Representatives, which has always been popularly elected by the people, and we have the United States Senate, which was meant to be the higher level of Congress, something that was a small elite body, and that, at first, to be a United States Senator, you had to be elected by your state legislature because the Senate was supposed to represent the states,



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rather than the people, at least until the 20th century. But how does the Constitution divide or share power among these two houses of Congress? Does Article One of the Constitution have anything to say about how these two houses of Congress should operate and overlap or operate separately from each other?

Daniel Holt: [00:14:50](#)

No, it really does not. The Constitution included a provision that simply stated that the House and Senate were both going to be in control of their own rules, and they would adopt their own rules. The only other provision in the Constitution about procedure was that, as part of the Great Compromise in the Constitution, was that spending bills would have to originate in the House, but that, going forward, became much less important, as spending bills would be considered equally in both houses of the legislature. But at the time that was considered an important provision. One of the most important jobs that is given to the Senate by the Constitutional Convention is the power to provide advice and consent over treaties with the foreign nation, and in the confirmation of appointments to the Executive Branch and the Judicial Branch.

Liz Covart: [00:15:36](#)

So there was actually a lot of work that both the House and the Senate needed to do to operate with one another and to operate as these separate houses of the Legislative Branch. Now, Dan, you mentioned that like the House of Representatives, the Constitution allows the Senate to devise its own rules on how it's going to operate and conduct its own business. Kate, could you tell us about the rules that the first Senate created so that it could operate and start doing the business of government?

Katherine Scott: [00:16:05](#)

So, one of the interesting things about the Constitution is that it provides this framework for government, but it leaves the details to be filled in by the first people who are elected to serve in the Senate and the House of Representatives. And when you think about the Senate needing to fulfill these new responsibilities as established by the Constitution, well, how



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are they going to do that? They're literally thinking, "how are we going to do this?" Well, they're going to need some help. And one of the things they decide to do in the first few days after they achieved their first quorum to conduct business is, they need to hire some officers. And that's what they do. The first two officers that really have a great impact on the institution in the early years are Sam Otis as the secretary of the Senate and James Mathers as the Senate Doorkeeper. He later has a more expanded title to be the Senate Sergeant at Arms and Doorkeeper.

Katherine Scott: [00:16:55](#)

But in the early days, he is the Senate doorkeeper. And if you think back to this period, you could imagine a kind of job posting, what do these senators need to help them fulfill their Constitutional duties? If you're talking about someone like the Secretary of the Senate, you could think about it as, "new legislative body seeks administrative assistant to help manage payroll, to help order supplies like stationary, to help work with potentially challenging individuals who have strong opinions, and discretion will be required." You've got someone in the Secretary of the Senate's position who's going to do all that; they're going to be keeping Senate records, they're going to be managing journals, they're going to be managing bills, they're going to be communicating with the House of Representatives - when the Senate approves a piece of legislation, someone's responsible for literally walking it over to the House and announcing that this bill has been passed.

Katherine Scott: [00:17:47](#)

Also of course, with the Senate's unique Constitutional responsibilities, as they relate to executive functions. For example, considering treaties for ratification or considering Presidential nominations for both cabinet members, as well as members of the Judicial Branch. You need someone in that role who can communicate with the Executive Branch and someone who can communicate with the House of Representatives. And when the Senate selected Sam Otis, they knew exactly what they would get. He was a very experienced administrative officer, but he was also a politician



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in his own right. Otis has this really interesting background; he was 48 years old when the Senate selected him for this position, and he had been quartermaster for the Continental Army during the Revolutionary War era. So, he knew how to get stuff done, he was highly organized, he knew how to procure supplies, he knew how to do the tasks that would be required for this new position, but he also had a political background.

Katherine Scott: [00:18:44](#)

He had been speaker of the Massachusetts House of Representatives and a member of Congress when it met under the Articles of Confederation. He was a political protege of Vice President John Adams, and that was very important to his being selected for this role in 1789. In the very beginning, as the Senate met in these first days, Samuel Otis did all kinds of tasks. Some of those tasks were administrative in nature, and then some of them were very symbolic. He held the Bible on which George Washington took his Presidential oath of office. So, Sam Otis was a guy who was doing everything at this point in time, he really was a one man show, and handled the legislative side and helped the Senate fulfill its executive responsibilities during this early period. The other person who's really important is James Mathers. Mathers himself was born in Ireland. And emigrated to the United States, settled in New York and served as a Sergeant in the Continental Army.

Katherine Scott: [00:19:43](#)

He was later appointed to serve as a Clerk and then a Doorkeeper for the Continental Congress, so he had this experience in this role and that's what made him such a natural fit for this new legislative body. He knew how to work the doors, and he was chosen to serve as the Senate's Doorkeeper, which was a really significant role at this point in time, because the Senate was meeting behind closed doors. They needed someone, literally to stand at the doors and permit entrance only to those people who were members of the Senate or a few select staff. James Mathers's first title was Senate Doorkeeper, but later his responsibilities were expanded and his title enlarged to include "the Sergeant at



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Arms,” He became “James Mathers, Sergeant at Arms and Senate Doorkeeper.” And that suggests the expanded role that he played as the Senate opened its doors.

Katherine Scott: [00:20:36](#)

Also as the Senate developed a few problems, for example, how do you compel senators to show up so that you can achieve a quorum and you conduct your business? And by expanding his responsibilities and providing him with this kind of law enforcement function, it allowed Mathers to literally at the request of the Senate, go out and round up senators and bring them into the chamber so that the Senate could conduct its business. James Mathers, like Sam Otis, served a number of years. I think in total, he served 22 years. He died while he was still serving as us Senate Doorkeeper and Sergeant at Arms. And these two early Senate officers, Samuel Otis and James Mathers, really set the stage for Senate officers who would serve in a nonpartisan professional role. And that that role would continue over the centuries right up until today.

Betty K. Koed: [00:21:30](#)

I'll add one thing about Samuel Otis to Kate's great description: he managed to maintain that office for 25 years. He was in there from 1789 till he died in 1814, and even contemporaries of Sam Otis noted that was quite a feat, because he stayed in that office through multiple party changes, particularly the party change of 1800, which was quite tumultuous. And the fact that he stayed in office until 1814 really gave stability to the early Senate in a way that it would not have had without that kind of continuity. It sort of helped to establish the institution of the Senate as an ongoing operation, regardless of the members that came and left over time. Today, the Secretary of the Senate changes whenever we have a new majority leader, but in the 19th century, that was less the case, and particularly with Sam Otis, he managed to stay in office 25 years, despite the political turmoil of his time.

Liz Covart: [00:22:29](#)

Kate, your description of James Mathers reminds us of one of the more peculiar rules of the early Senate, which is that this



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was a body that chose to meet and conduct its business behind closed doors. And this was very different from the way the House of Representatives operated at the time and still operates, which is that the House provides a gallery where people could enter the House. They weren't supposed to speak, but they could enter the House and watch the Representatives conduct their business. Do we know why the early Senate chose to operate differently, where they chose to meet and conduct its business in secret behind closed doors?

Katherine Scott: [00:23:04](#)

I think the framers of the Constitution assumed that the Senate would follow the practices established at the Constitutional Convention. And even earlier than that, by the Continental Congress, in that they met in secret. The Constitutional Convention was completely closed to the public, they met behind closed doors, and they believed, as they wrote into the Constitution, that the Senate occasionally publishing an official journal about its proceedings with information that included things like how members voted on specific pieces of legislation or nominations, that that would be sufficient to keep the public informed of what the Senate was up to and what the members of the Senate were doing, and there were people in the Senate in those early years who defended the concept of meeting behind closed doors. The House also met behind closed doors initially, but then quickly opened its doors to the public, and some people in the Senate believed that that was actually a denigration of House proceedings once they opened the door because the House members would sometimes play to the people in the galleries.

Katherine Scott: [00:23:58](#)

And that onlookers would sometimes hiss, they would sometimes cheer depending on what was going on on the House floor and whose side they were on, on a particular issue, and there were members of the Senate who didn't want that kind of behavior to happen in the United States Senate. But there was also opposition to the policy of closed door proceedings for a couple of different reasons over the first few years of the Senate's existence. The senators, of course, at this point in time were elected by state legislatures and those



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state legislatures, it didn't take them long to complain that they didn't have any idea how their senators were behaving in these proceedings, because they couldn't effectively assess how they were behaving or what they were doing behind those closed doors.

Katherine Scott: [00:24:48](#)

Senators also began to recognize that they might be able to make their positions on certain issues, better understood if they opened the doors to the public. And, of course, allowed those state legislatures to understand what was going on behind the scenes.

And of course, anytime - well, I think today's listeners will understand that by meeting behind closed doors, the Senate created an environment where certain conspiracies about what the Senate was doing behind those closed doors could sort of flourish. And in order to put some of those conspiracies to rest, there were a growing number of senators who believed that they probably should just open their proceedings to the public. Also, the Senate became a bit of the forgotten chamber with the two chambers, one being open to the public and the other operating behind closed doors, well, there was an intense amount of attention on House proceedings and lots of newspapers were reporting on what was going on in the House, but that wasn't the case on the Senate side.

Katherine Scott: [00:25:47](#)

So senators also understood that it might be in their own best interest to open the doors and let the public see what was going on behind those doors. An opportunity to open the doors on a temporary basis presented itself when the Senate needed to consider a contentious election of Albert Gallatin, who had been elected by the State Legislature of Pennsylvania. They were then meeting in Philadelphia, and the senators recognized that it was a bit of a delicate situation to be meeting behind closed doors, to consider Gallatin's election when the state legislature was literally meeting right next door. So, on a temporary basis, they agreed to open Senate proceedings for this occasion. And then a few days



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after when the senators realized that the sky didn't fall in on them when the doors were open, they decided that they would open the doors on a permanent basis, as soon as they could construct a gallery so that people could be properly seated while the Senate conducted its proceedings. So, in 1795, finally, the Senate opened its doors to the public, and the funny part was is that it didn't have the intended effect. Senators were a little disappointed to see that newspapermen editors were much more intensely interested in what was going on on the House side, because there was just a lot more emotion and debates were livelier on that side of Congress, and so the senators didn't quite get the press coverage that they'd hoped by opening the doors.

Betty K. Koed: [00:27:13](#)

It's also interesting to note the echoes of those arguments could be heard in the 1980s when the Senate was trying to decide whether or not it would put its proceedings on television. The House brought in CSPAN in 1979, and it took another seven years for the Senate to make that decision, and throughout those seven years, you would hear arguments talking about, “well, Senator will just play to the cameras,” and “the House is debasing itself by going on television.” But there were those who believed in transparency and that believed that the people had the right to see what was happening in the Senate, and those people ultimately prevailed. But for leaders, they were concerned that they might become the lost body, that the House would get all the attention because they were on television and the Senate would just be forgotten. And that was one of the principal motivations behind putting CSPAN cameras into the Senate chamber in 1986.

Liz Covart: [00:28:06](#)

It's really interesting to think about the Senate conducting its business behind closed doors, especially from today's context. When we think about how elections work, the press is critical. When you think about someone running for reelection in the Senate, you would think that the press really needed to gain access to the Senate so that the Senator could showcase all the work they've been doing on behalf of the people. But



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again, as we've said, in this early context, the Senate was meant to represent the states. So, state legislatures had to be impressed by the work of their individual senators in order to get reelected, not the mass of people.

- Betty K. Koed:** [00:28:41](#) It is interesting to note how much of Senate action made it into the press, even in the days when the Senate doors were closed, because we know that senators often went out and talked to a lot of people who worked for the press. And so, a lot of the early reporting of the Senate is sort of secondhand hearsay reporting from senators to the reporters, and then it made it into the press. So it's not as complete as the House, but we do have press coverage of early Senate proceedings.
- Liz Covart:** [00:29:07](#) That's a really interesting point, and something that we should think about too, which is how know we know about the proceedings of the early Senate, given that this was a body that met behind closed doors during its first six or seven years of existence?
- Daniel Holt:** [00:29:22](#) As Kate mentioned, the Constitution instructs the Senate to maintain a journal of its proceeding. So, at the base level, what we have is the Senate Journal and the Senate Executive Journal, when they considered treaties and nominations. But we are amazingly lucky that a particular Senator in that first Congress wrote down meticulous notes about what was going on on a day to day basis in the Senate in 1789 to 1791. That Senator was William Maclay of Pennsylvania. What makes his journal so interesting to read is, he comes to the Senate, not as an individual with a national notoriety, which kind of makes him a bit of an underdog in this new supposedly August body of the Senate. But that also means that he has a very large chip on his shoulder. He's very critical of, for example, Vice President John Adams, because he thinks he spends too much time worrying about things like titles and decorum and things of that sort.
- Daniel Holt:** [00:30:20](#) He's critical of the inefficiency and speed that the Senate operates on when he shows up. And sometimes he's the only



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one there, or they only meet for an hour or two and then wind up adjourning for the day. But he has so many great little flavors about what it's like to be sitting in that chamber in New York, and eventually Philadelphia, as this body is starting to just figure out what it should be doing. And so, we're really indebted to that. I should note that was not available folks until much, much later, in the 19th century. So, we've had the benefit of his diary since then.

Liz Covart:

[00:30:57](#)

It does seem like it must have been intimidating for some people like Maclay, as you point out, when we think about how both the House and the Senate, and the government in general, really, are filled with these people that we would consider the luminaries of the American Revolution, you know, the Founding Fathers. So, if you have people who came up through the ranks, who didn't serve, you know, in the Continental Congress, but served in these state offices during the Revolution, or if you just happen to be young, and you're now coming of age in the early Republic, to have to go to work every day with the actual founders of the nation.

Daniel Holt:

[00:31:32](#)

You know, I think this was a tension that existed in the early period, when James Madison was mapping out what he wanted to see in the Constitution, what became the Virginia plan, and he was talking up his ideas to his friends like Thomas Jefferson, one of the things that came up for criticism was what they considered to be the quality of the individual who found themselves elected in the state assemblies, and the extent to which the Gentry of the era found them wanting, found them to be too self-interested, too much interested in playing to popular audiences, on the extreme end, maybe dabbling in demagoguery as far as they saw. And so, it kind of helps to understand this idea of again, of the Senate as this body that would bring deliberation and what James Madison called “coolness and wisdom” to those deliberations in this era, when you know, the social order was really in a lot of flux.



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- Liz Covart:** [00:32:25](#) Okay, now that we have an idea about what the Constitution says about the Senate and how the Senate organized itself and operated in its earliest days, I'd like for us to revisit something that Betty mentioned earlier, which is that when the Senate met for the first time on March 4th, 1789, it didn't actually have enough members present to start the business of government. In fact, George Washington's election as President wasn't even certified by the Senate until almost six weeks after he'd been in office. Betty, could you tell us about the first meeting of the first Senate and why this house of Congress was so slow to get to work?
- Betty K. Koed:** [00:33:02](#) The Senate did meet on March 4th of 1789, but only eight members showed up, and they needed 12 members to establish a quorum, and it took over a month for the other members to show up so that they had enough people there to establish a quorum. So those eight people showed up on March 4th, and they sat there in the chamber and they waited for other people to come and nothing happened, and so eventually they adjourned and they came back the next day, and they came back the next day, and they came back the next day, and little by little others began to arrive, but it took until March 28th, if I remember correctly, until finally they had enough people in place that they could see a quorum almost on the horizon. And Richard Henry Lee of Virginia was finally the 12th member to arrive to establish that quorum so they could do so on April 6th, 1789.
- Betty K. Koed:** [00:33:54](#) So in that month period there, while we were waiting for that to happen, they keep coming to the chamber every day. This was a very dedicated group of 8, 9, 10, 11 people, but they couldn't do any official business until they could establish a quorum. So, they would come in, they would see where they're at, they'd check in with Sam Otis to see what he's hearing from distant members. And repeatedly throughout that time period, they'd also send letters out to those who had been elected to the office by state legislatures saying, "please come to the seat of government. We need to start the government." And multiple times they sent out letters,



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pleading for attendance. And finally, it happened in early April, and April 6th, 1789 we get our very first quorum. Now, today it's easy to look back on that and criticize those members that had a hard time getting to New York in time to establish that quorum.

Betty K. Koed: [00:34:46](#)

But we need to keep in mind that travel conditions were very primitive at that time, and health issues were a big concern at that time, healthcare wasn't what it is today. And there were a number of members who were trying their very best to get from their home to New York city in time to establish a quorum, but they hit all kinds of problems. There was a member from the south who came up by a sea route and his ship foundered off the shore of Delaware, and he was delayed a couple of weeks because of that. He was waiting for another ship to come. Most of the members of Congress traveled to the seat of government by horseback or in carriage, horse-drawn carriages. And remember, it was February, and so, it was in the middle of winter, and so these people coming in by horseback were facing icy roads.

Betty K. Koed: [00:35:36](#)

They had to cross ferries over frozen waters. It was a constant hazard for them to get to New York City. And at one point, one of the members of the House sent in a message to the House clerk saying “there's just no way, in the middle of February, I will ever make it to New York City.” He was sort of speaking for many of them at the time. It was just hazardous duty at that time. And, also keep in mind that transportation wasn't great. I mean, the short hop from Boston to New York typically took six or seven days on horseback, to go from Philadelphia to New York was about a two week journey in the best of conditions. So, as many of them took off in February to get to New York in time to make that March date, they just got waylaid along the way. And if the conditions got too bad, they had to find refuge in nearby farms or nearby houses, and they'd stay there until the conditions would improve.



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So, it was not an easy task to get there. There were some who were not particularly interested in serving, and so they were reluctant to go, but most of the members of the Senate were trying to get there and just had a hard time getting there in the middle of February in difficult winter conditions.

Liz Covart: [00:36:48](#)

So, once all these senators arrive, and they have their quorum in early April 1789, what work did they set about doing, to establish the new government of the United States? What were the big issues that the first Senate had to address?

Betty K. Koed: [00:37:02](#)

Well, as we've mentioned before, among their first duties was to hire officers, and so, they elected a secretary and a doorkeeper, they got a couple of clerks in place, that type of thing, so, part of it was just to get the basic business of government going. Another part of it was to prepare for the things that were to come, including the inauguration of the first Vice President and the inauguration of the first President, as you mentioned, that took place later in April. And there was a lot of discussion about how that would happen. Where would the President sit? Where would the Vice President sit? Would it be done in the chamber? Would it be done outside? So, just basic logistics like that, things that we take for granted today, but in those times, they had to create everything from scratch in those days. And so, a lot of it was that, but also keep in mind that the Executive Branch was also being formed and put into place.

Betty K. Koed: [00:37:53](#)

And that meant for the Senate that it had to consider nominations, it had to consider Presidential appointments, it had to consider treaties with foreign governments. So really in the first six months or so, from April 6th on, the Senate was facing a very busy, constant daily session of just getting the basic functions of government up and operating. They were working with the House of Representatives on legislative matters, they were passing the oath act so they would know what oath of office they would take, but they were also looking at foreign relations, and foreign policy, and what sort of treaties had to be put in place, and who would serve as



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ambassadors, and who would be appointed to the Judiciary, and how the Supreme Court would function, how the court system would be created, which was a task given to the Congress by the Constitution. So, there was a lot of busy work to be done just to get a government up and running, and that consumed both houses of Congress for many months of the first and second sessions.

- Liz Covart:** [00:38:53](#) I'm really glad you brought up Vice President John Adams, Betty, because per Article One, Section Three of the United States Constitution, "the Vice President of the United States shall be the President of the Senate and shall cast the deciding vote. If, and when the Senate votes in a tie." Would you tell us about Vice President Adams and his role as the first President of the Senate, and about any of the precedents he might have set for future Presidents of the Senate?
- Betty K. Koed:** [00:39:19](#) When John Adams became Vice President, it was a unique role for him, but a unique role period, no one had served in that position before. So, it was unclear just what role the Vice President would play. They knew he would be the Constitutional President of the Senate, that was established, but what would he do in that role? How would he act in that role? What sort of relationship would he have with the President? All of these questions remained to be answered as the first Congress went into operation. And Adams was very conscious of these issues, you know; he came to office with a tremendous experience in government and was a brilliant governmental philosopher, you might say, he had studied government in great depth, both in antiquity and in the modern era. So, he came into the office with a pretty clear idea in his mind that he wanted to be a very hands-on presiding officer.
- Betty K. Koed:** [00:40:16](#) He wanted to not only represent the wishes of the President as Vice President, but more importantly for him, he wanted to be a true legislative officer. You know, we think of the Vice President today very much as part of the Executive Branch, but in the early days and for Adams and for those



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who followed him, they were a legislative officer, and they took that role very seriously. Now, Adams often gets hits for things like, as Dan mentioned, he was very concerned about titles and that type of stuff. And so, he had a lot of criticism from his enemies, like William Maclay, but I think we also have to give a lot of credit to Adams because he really sort of set the stage and felt the way through those early years of the Vice Presidency to sort of set up what ultimately we'd become a fairly neutral agent, a fairly neutral observer.

Betty K. Koed: [00:41:09](#)

So, in his first term, as Vice President, he often got engaged in the debates, he often made rulings that people were uncomfortable with or angry with even, but over time, he adapted and learned that what the Senate needed was someone there to keep order, but not someone there to dictate action or to tell them how to think or how to vote. And that was difficult for John Adams; keep in mind, he'd been a very active member of government since the Continental Congress, and had very strong opinions about things - he was a strong Federalist at this time - and it was difficult for him to take a backseat role in that process. But by the time he gets to his second term as Vice President, he's really accepted that, and he plays a less active role but becomes more of that neutral agent. And that's really what most Vice Presidents become after him.

Liz Covart: [00:42:02](#)

I can only imagine that John Adams must have been very excited when he had these opportunities to break tie votes, because then he wouldn't have had to take a backseat, he didn't have to be neutral, and he could really work as the legislative officer that you have described him wanting to be. Do we know how many times that would've happened for Adams? How many times he would've had the opportunity to serve as a tie breaking vote?

Betty K. Koed: [00:42:26](#)

Adams broke 29 tie votes in his time as Vice President, which is one of the highest numbers of all Vice Presidents. There was one other that surpassed him, I believe, but for many years he held the record, and in recent years, Vice Presidents



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have started to break a lot more tie votes because we have a very closely divided Senate between the two parties, but for many years, Vice Presidential tie breaking votes became fairly rare. But, that was one of the ways in which Adams exercised his authority, and it was a way for him to shape policy in some cases, by breaking tie votes.

Liz Covart: [00:42:59](#)

Speaking of a closely divided Senate, we know that a lot of division in our present day comes from party division and different ideas about how involved government should be in our day to day lives. And, early Americans were likewise very experienced with politics. Now, we need to take a moment to thank our episode sponsor. And then Kate, would you tell us more about the Senate's history with divisive party politics?

Liz Covart: 00:43:22

As a listener of this podcast, you recognize that the past informs our present. You also recognize that many of the problems of our present day have in some ways already occurred in the past as well; problems like those caused by divisive party politics. The divisive party politics that divide the American people today are not a new development in the history of the United States, although our present day does offer several new ways for creating and furthering this division, such as social media channels and digital media networks.

Liz Covart: [00:43:54](#)

Now, one place you might look for more information about the United States' history with divisive politics is Scribd. Scribd is a digital platform that seeks to change the way the world reads. Whether you prefer to read online through your web browser or on your tablet or smartphone, the Scribd app gives you instant access to millions of eBooks, audiobooks, magazines, and podcasts, including *Ben Franklin's World*. And Scribd has quite the selection of history books and history audio books, including Scribd originals, books that are written by some of today's leading authors exclusively for Scribd, like the newest original, *Sins of the Founding Father: George*



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Kate, could you tell us more about the Senate's history with divisive party politics, and when that history really began?

Katherine Scott: [00:45:09](#)

I think that we have a tendency to look on earlier periods of our national history for this era of nonpartisan politics. When we're looking for a gentler political era where people worked together and put aside their differences for the benefit of the nation, we do have periods of that in our nation's history. There are moments where certainly people in different parties put aside some of their disagreements so that they could focus on the things upon which they agreed and move forward. Particularly, this is true during moments of crises, like for example, the World War II era in the 20th century. But I think those moments of bipartisanship, those moments when people are willing to put aside their differences and focus on issues about which they agree, those are really sort of the exceptions to the rule. Most of our national political history is a history about fierce partisanship, where people debate ideas fiercely.

Katherine Scott: [00:46:08](#)

They do that in the chambers of the House and Senate, and this early national period, we see the beginnings of that. And the Framers of the Constitution themselves predicted the development of factions or what we think of today as parties; people, whether they are minority groups or majority groups who coalesce around shared ideas about the role of government, for example, or the way in which the nation should pursue its economic growth. Those people would coalesce together and form factions, and those factions would fiercely debate with their opponents how to move forward on issues. James Madison writes about this extensively in



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Federalist 10, as a way to defend the Constitution and the way that it creates shared overlapping powers among the various branches of government. He says, “that’s an important part of this new national government, because it can help to prevent a sort of tyrannical faction from ruling over all others.”

Katherine Scott: [00:47:06](#)

So I don't think that the Framers believed when they entered into this national experiment, that people would be ready to put aside differences and that there would be this sort of kumbaya moment where everyone moved together in the same direction. In the early Federal Congresses, there were vigorous debates about all number of issues. But I want to focus specifically on the 1790s as a period, to show a couple of examples of the ways in which people hotly debated issues of the day and the ways in which those debates became rather ferocious, even by the standards that we think of today. In 1798, there was a kind of national paranoia over the possibility that the nation might enter into war with France because the Senate had approved for ratification the Jay Treaty during a time when the Federalist party dominated both houses of Congress. And in response to this vigorous debate across the country, the John Adams administration, working with its allies in Congress, approved a series of what became known as the Alien and Sedation Acts. The 1798 Sedition Act targeted journalists who were loyal to the opposition, the Democratic-Republican party that had formed around the leadership of Vice President Thomas Jefferson.

Katherine Scott: [00:48:26](#)

And that statute provided for the imprisonment of any person who wrote, published, or uttered any false or malicious statement about the President or Congress. So, there were more than a dozen journalists at the time who were prosecuted under this statute before it expired in 1801. It just gives you a sense that, even during this period where we don't have the sort of very broad national parties that we might think of today in the 21st century, you certainly had groups of people who were vigorously debating issues. And



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sometimes these debates became rather ferocious. Some of the senators who voted to approve the Jay Treaty for ratification, their opponents burned effigies of these senators in the streets of their home states. So, I would always caution anyone who looks to earlier eras of our nation's history, looking for these moments where politics were very kind and gentle and people civilly disagreed about some of these issues, because even from the earliest moments of our nation's history in Congress, you have people actively engaged in very ferocious debates about some of these big issues.

Liz Covart: [00:49:38](#) The Jay Treaty really is a great example that shows us the very divisive nature of early American politics. And I wonder, Kate, would you remind us of what the Jay Treaty was and why it was so controversial?

Katherine Scott: [00:49:52](#) Absolutely. So, George Washington's administration is eager to reach agreement with Great Britain over some outstanding issues from the Revolutionary Era. And the administration sends Chief Justice of the Supreme Court John Jay, on a diplomatic mission to London to reach some agreement over some of these outstanding issues so that the nation can put aside some of these constant threats that they might engage, once again, in war with Great Britain. And, much to the disappointment of many people back in the United States, John Jay reaches agreement with Great Britain, but he seems to be negotiating from a fairly weak position, and some of the concessions that he makes people in the United States find wholly inadequate. So, he comes back with the treaty, he presents it to the administration, presents it to the United States Senate so that it can provide its advice and consent. And the treaty just squeaks by, by a vote of 20 to 10, just getting the necessary votes for ratification. But, the nation kind of erupts, because many people, particularly those people, again, who have coalesced around Thomas Jefferson and this new emerging Democratic-Republican party, they are deeply dissatisfied with some of the terms of the treaty.



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- Katherine Scott:** [00:51:09](#) And also, they're concerned that by drawing into this treaty with Great Britain, it might put the United States in position to go to war with France, which many people see as not only a terrible idea, but also sort of ruining relations with a nation that helped the colonists during the Revolutionary Era. So, that sort of, very briefly, summarizes the Jay treaty.
- Liz Covart:** [00:51:31](#) No, that's great, that's what we needed to jog our memories and remember the Jay Treaty. They raised another interesting point, Kate, which is that when many of us think about our historic institutions, we're usually looking back to those institutions through the lens of the present. And today, many of us know the Senate for its really important work in approving Presidential nominations, which include nominations for offices, such as federal judges and justices of the Supreme Court. Now, Dan, as you're our procedural expert, why do you think the Framers of the Constitution tasked the Senate with the responsibility of approving Presidential nominations? And do we know anything about what the early Senate's process for approving or perhaps rejecting nominations was like?
- Daniel Holt:** [00:52:16](#) With the initial Virginia Plan, James Madison actually wanted the legislature to have the power over appointment of the Judiciary. It's only after the Constitutional Convention approves of equal state representation and state legislature election of the Senate, that there is entered into a change to that plan such that it'll become a shared power between the Presidency and the Senate. Right off the bat, the Senate has to approve of these judicial nominations, and at this period, it's actually a very proforma process. They approve all six of the first Justices of the Supreme Court in essentially a day. And from then on, into the 19th century, most considerations of Supreme Court nominees are relatively perfunctory. You don't have committee consideration until the mid-19th century, and even then, it's really just a matter of going through the motions. You don't get hearings on Supreme Court Justices, except in a couple of cases in the late 19th century; not until the 1930s does it become a regular process



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that we know of today. And for confirming lower court judges, it's just as perfunctory.

- Daniel Holt:** [00:53:28](#) There's just not a lot of consideration given to these nominees. That being said, in 1795, we do get the first Senate rejection of a Supreme Court nomination, and it goes back to the story that Kate just told, which is the Jay Treaty. Justice John Rutledge, who had been an Associate Justice, went on to become a Supreme Court Justice of his state in South Carolina, was nominated to be Chief Justice, but he had been very vocally critical of the Jay Treaty, and this persuaded enough senators to reject his nomination. And so, very early on the Senate, even if it didn't exercise the power frequently during this period, it did establish very early on that it was going to take its role in consent of judicial nominees very seriously.
- Liz Covart:** [00:54:14](#) So, what was it that prompted the Senate to make this shift from “we're taking nominations seriously and yet also to objecting them to a kind of perfunctory approval process,” to, “we're taking nominations very seriously and going to subject them to a formal often really drawn-out process of committee hearings,” that is what we see in the Senate today when it comes to approving Presidential nominations.
- Daniel Holt:** [00:54:38](#) The first times that the Senate actually begins to hold hearings are in very specific circumstances. So, in 1873, it's a closed hearing behind closed doors, but the nomination of Attorney General George Williams to be Chief Justice, in light of some charges of improper activities on his part, leads the committee to do some investigating, and he ultimately withdraws his nominee. In the early-mid-19th century. There's also plenty of times where there is disagreement either between parties, but often intraparty disagreements where nominees are rejected outright by the Senate, especially for John Tyler, who, when he takes over the presidency has a falling out with the rest of the Whig party, and the Senate is not really interested in confirming his Supreme Court nominees. President Grant in the 1870s has a similar problem



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with his Republican majority in the Senate; they reject one of his nominees and force the withdrawal of two others. It becomes more of a regular proceeding, not until the 1950s, when I think there starts to be an understanding of the Supreme Court as becoming a much more important part of the Federal Government than it had been in the earlier period, and that combined with the organization of the parties in that period, I think you get more scrutiny of Supreme Court nominees going forward because of just how pivotal the Court becomes in American politics. The Supreme Court did not have that level of importance in the 1790s or the early-19th century

Liz Covart: [00:56:09](#)

Throughout our conversation, a common theme or point of interest has really been the work of the early Senate; when it first met, when it established the rules that would govern the Senate in its proceedings, and when it started to set precedence for future Senate. Now, one Senate precedent that we hear a lot about today is the filibuster or the process of delaying and preventing a vote on a bill. Now, Dan, I understand you're a bit of an expert when it comes to the history of the filibuster and cloture. So would you tell us more about the filibuster and what it does and when and why this rule was developed?

Daniel Holt: [00:56:44](#)

For people who aren't familiar, the word 'filibuster' can really refer to any procedural mechanism to delay or slow down or ultimately block passage of some kind of measure, be it a bill or a nomination or other kind of resolution. And the reason why this takes place in the Senate is because of rules that it doesn't have, but also a couple of rules that it does have. Any Senator wishing to speak on a question, and who is recognized by the presiding officer, is able to speak and may hold the floor as long as they are able to speak on that question. The Senate from its founding did not have a mechanism in its rules for allowing a majority to force a vote on a measure, that is to end debate and force the vote to pass a measure. You will sometimes hear the discussion of something called the 'Previous Question.'



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- Daniel Holt:** [00:57:34](#) The Senate did have a motion for the Previous Question in its first rules, but it was not used as a cloture mechanism. That being said, what you also will hear sometimes is in 1806, the Senate changed some of its rules to kind of tidy them up and codify them in some fashion, and Vice President Aaron Burr suggested that the Senate do away with the Previous Question motion when he did. So, he wasn't trying to make any kind of statement about the filibuster or unlimited debate, he was merely getting rid of a rule that he thought was not really being used, because at that time it had been used mostly as a way to indefinitely postpone action on a measure. So, you'll sometimes read that he did this by mistake or that, you know, he unintentionally created the filibuster, but I think that's reading too much into what they thought they were doing in 1806.
- Daniel Holt:** [00:58:22](#) So, as I said, any Senator who holds the floor can do so in order to delay a vote. We know from William Maclay's diary that senators were certainly aware that they can use up time in the chamber by speaking on a piece of legislation. We also know, though, that Thomas Jefferson and his Manual of Procedure said that members of the Senate should not speak randomly or just to eat up the time, this was considered a breach of decorum. And so, this was not a regular occurrence in the Senate of the early-19th century. By the 1830s and 40s we start to see a couple of examples of something that looks like a filibuster, and it's not a coincidence that this comes around at the same time that the Whigs and Democrats start to really get more closely organized in the Senate. And there were a couple of measures that dealt with party power in the Senate.
- Daniel Holt:** [00:59:11](#) So you have a couple of examples of an organized group of senators trying to prevent action on a particular measure. The other reason why you don't get a lot of filibusters in the early period, though, is that the Senate is quite small. So, when you think about what it takes to block action on something, it takes a lot of stamina and usually a lot of coordination of a number of senators to be able to hold the floor for so much



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time that the Senate will drop a piece of legislation and move on to something else. So that doesn't really take place in the early Senate, but it really does start to turn up in the late-19th century for two of those reasons: one, the Senate starts to get larger, so now you have more members with more legislative goals and a lot more work for the Senate to do, which means that time becomes very valuable on the Senate floor.

Daniel Holt:

[00:59:57](#)

In this part, in the late-19th century, then, you also get, again, more party development and party organizations so that a group of senators can organize in a way to systematically hold the floor as a strategy for blocking pieces of legislation. This becomes used in the 20th century for all kinds of bills, but it becomes particularly notable as a way to block Civil Rights legislation on the part of Southern Democrats in the middle of the 20th century. So, filibusters become much more prevalent in the early 20th century, such that you finally get a push for a rule to allow the Senate to bring debate to a close. And the name of that rule is called the Cloture Rule. It's adopted a 1917 partially because of public sentiment whipped up by President Woodrow Wilson, who was very angry, that a small number of senators were able to block legislation to help the United States prepare for war in World War I. That rule still makes it very difficult to bring debates through a close; two thirds of those senators present and voting need to vote for cloture to bring debate to a close, and even doing so leaves a lot of time for debate after cloture is invoked.

Daniel Holt:

[01:01:09](#)

And, the other key thing about this cloture rule is it's not very popular among senators as you go forward, it doesn't get used very much. Part of the reason is because Southern Democrats refuse to accept the idea that even two-thirds of the senators could bring debate to a close. So, they're very reluctant to vote for cloture on any piece of legislation, lest other members of the Senate vote to end debate on Civil Rights legislation that would then allow it to pass. The other key thing to keep in mind then is that the rule surrounding cloture are heavily debated in the Senate throughout the 20th century, leading to a number of changes along the way that



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we don't have to get into, but there are changes to the way that the rule operates to give us the situation that we have today.

- Betty K. Koed:** [01:01:54](#) And in 1975, one of the efforts to change the cloture rule that Dan is talking about came to fruition, and they went from what had been a two-thirds requirement to invoke cloture to a three-fifths requirement to invoke cloture. And that's how we got to the modern number of 60 senators that are needed to invoke cloture.
- Liz Covart:** [01:02:15](#) The United States Senate has a really rich history, and we just scratched the surface of its early history. As you have all worked for a number of years at the Senate historical office, and you've answered a lot of people's questions about the Senate, is there a topic or topics that you really wish more people knew about?
- Betty K. Koed:** [01:02:34](#) I think I would say that one of the things I would like people to know more about for the early years of the Senate is how unformed it was in 1789, when the Framers of the Constitution created this blueprint for a government, but they really did very little to flesh out the details of it. So, we knew that we would have a Senate that would be elected by state legislatures at the time, that would have advice and consent powers, for example, that would have the sole power to try impeachment. But, beyond that very skeletal structure put in place by the Constitution, it was really up to the Senate of these early years to decide just what its role in the Federal Government would be. Would it be a weak role, would it be a powerful role? Would it be influential? Would it bow down to the House of Representatives, or would it be a strong, independent body?
- Betty K. Koed:** [01:03:27](#) And we really have to give credit to the early senators of the first decade, the first 20 years of Senate history that they had their own vision for what the Senate would be. And they saw it as a strong, independent branch of our government. It would have this co-equal role with the House of



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Representatives. It would be an upper body, as Dan had suggested, of older people, of perhaps wiser and more experienced people, but it would also have this unique role that only this small body could fulfill. And that had been envisioned by the Framers, but it was emboldened and really implemented by the early members of the Senate. And I think it could have gone in many different directions, it didn't have to go the way that it did; the Senate could have remained just an advisory body to the President to provide advice and consent.

Betty K. Koed: [01:04:16](#)

But early on the Senate started taking a very strong role in the legislative process. For instance, it became a strong legislator in its own right by the time you get to the 1805-1806 time period, and that part of the Senate's history, I think hasn't been explored enough. And I would like to see people pay more attention to that. You know, how it got from that basic blueprint to the Senate of the 1820s and 30s, which dominated the legislative scene, which became the forum for national debate, and became this sort of icon of American political oratory. That evolution over that first 30 years is largely still misunderstood, and I think we need to know a lot more about that, so I would like to see people pay attention to that part of the story.

Katherine Scott: [01:05:03](#)

I think particularly in the last few years, as Americans have watched debates over reconciliation legislation, for example, in the Senate, they have grown accustomed to understanding the roles that certain Senate staff play in the operations of the Senate on a daily basis, particularly in that case, the role of the Senate Parliamentarian. I think that the work done here in the Senate by staff - professional staff, nonpartisan staff - the role of those staff members has been underappreciated. We have a hundred US senators and nearly 7,000 staff to support Senate operations. And whether those people are working for the Sergeant at Arms side of the staff, or whether they're working for the Secretary of the Senate side of the staff, whether they're working for committees or personal offices, they are absolutely critical to the continued operation of the



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US Senate. So, I think that is one thing I would like people to understand and appreciate a little better.

Daniel Holt: [01:06:07](#)

I would piggyback on what Betty said about the extent to which the Constitution was really only a framework for how the Senate would come to be. And I would really encourage people to think about the Senate as an ever-changing body. I know the Senate prides itself on tradition, and sometimes you'll hear discussions about the soul of the Senate or the essence of what the Senate is, but I think as historians, I personally find much more interest in the ways that the Senate has changed over time and how the members in their particular historical contexts have changed the way the body functions. The Constitution is not destiny when it comes to how the Senate operates and what its role is in our American democracy, in our representative system of government. And so, in any particular time that you're interested in, when it comes to political history, you can find members of the Senate who are working within the constraints handed down to them from their predecessors, but also questioning what those constraints are and taking efforts to try and change them in conversation with broader changes in American society, American ideas about the role of the Federal Government.

Daniel Holt: [01:07:20](#)

And, as Betty mentions with that first 30 years of the Senate's history, I think there's a lot of opportunity to research those questions and explore those for other eras as well.

Liz Covart: [01:07:30](#)

We should move into the Time Warp. This is a fun segment of the show where we ask you a hypothetical history question about what might have happened if something had occurred differently, or if someone had acted differently.

Now, earlier we discussed how the Framers of the Constitution opted to establish a bicameral, or two-house Congress, instead of a unicameral, or one-house Congress. So, Betty, Dan, and Kate, in your opinion, what might have happened if the United States Constitution had established a



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unicameral or one-house Congress, instead of dividing Congress into the two houses we have today, the House of Representatives and the Senate? How do you think the early history of the United States Congress would be different with a unicameral legislature?

Betty K. Koed: [01:08:34](#)

I think one way it would be different is we would have a more generally majoritarian system. The House of Representatives is a majoritarian body. The Senate has not been a majoritarian body, and there's lots of reasons for that, and we're still trying to understand some of those reasons to be honest, but by the nature of a unicameral government, I think it would be a majority rule system. And that can sometimes be for the betterment of society and sometimes be to the detriment of society. And the Senate has never fit that mode very well. Now, the Senate has always been designed in a way that technically it takes 51 votes or a simple majority to pass a piece of legislation or whatever the case may be, but through a series of rules and precedents and that kind of stuff, it's put in place ways that it's not a strict majoritarian body. And some people love that, and some people hate it, but it is something that's unique in the Senate. And I think that if it was a unicameral system across the board, we would lack that part of the Senate that has become a protection of minority. Scholars are still debating today just where that started and how that started, and where it came from, and how it plays a role in the Senate, but it's there, it's a reality. And, I think with the unicameral system, that probably would not be the case.

Katherine Scott: [01:09:57](#)

Well, one of the questions I would ask, Liz, is how many voting members would be part of that unicameral legislature? Because, one of the Senate's unique qualities is that it's a small body, and that has over time promoted debate and deliberation. If you had one legislative body and 535 voting members, what would that debate look like? Would there be a vibrant debate? What kind of rules would that unicameral legislature adopt in order to be able to conduct its legislative business? How would you hear from all 535 of those



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members? Would you hear from them? I think it would be kind of messy. I think people would be really frustrated that they couldn't be heard in the way that they'd like to be heard, and probably that they wouldn't be able to speak to their constituents back home in the way that they'd like to speak to them. That's one of the challenges I see to that unicameral legislature.

Daniel Holt: [01:10:49](#)

I think a unicameral legislature would have had a lot of ramifications for federalism in the United States. When James Madison pitched the Constitution, the Virginia Plan, he did not see states having equal representation in either house of the new legislature. He wanted to reduce the power of the states, and when writing the Federalist afterwards, he was asked to essentially address what was the design and the idea about having state equality in the Senate. And he had to admit that it didn't really fit into any theory of government that he understood. It was just what had to happen in order for the Constitution to be written and approved, that the smaller states were not going to give up that equal representation entirely in the new government. So, when I think about a unicameral legislature without a Senate that essentially represented the states as states in the new Federal Government, I think that you would've had a stronger Federal Government sooner in United States history because I think the Senate, for good or ill, as Betty said, played that important role in being a check on Federal Government power. And so, I think things would've looked very different according to if Madison had gotten his original way.

Liz Covart: [01:12:09](#)

You've all piqued our curiosity about the Senate and its early history. Is there a museum we can visit or any resources that we can check out to help us learn more about the Senate?

Betty K. Koed: [01:12:20](#)

Yes, the first place I would send people to is our website. So, if you go to senate.gov, www.senate.gov, to the Senate website, you will find an art and history section there, and that will take you to thousands of pages of historical material that we have on the Senate website. And those include, you



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know, a wonderful collection of historical highlights, a look at moments in time that tell important stories about the Senate and its development. We have a lot of statistical information and institutional information, party division over time, the powers of advice and consent, the Senate's role in impeachment trials, all of that type of stuff is there. We also have featured biographies of a number of members who have served in the Senate, and we have online transcripts from our vast oral history project. We started doing oral history interviews with senators and staff members back in the 1970s, and we've done hundreds and hundreds of interviews over these last 40-some years, and we've put the transcripts of many of those interviews online. And there's much more than that, that's just a sampling of it, but it's a wonderful way to dig into the institutional and the biographical history of the US Senate. That's the first place I would go to. If people come to Washington DC and they visit the Capital, we have at the Capital Visitors' Center, and in the Visitors' Center, there is an exhibition hall that is currently going through a renovation process, but will be open again soon. And that also tells the story of the Capital Building itself, as well as the story of the Senate and the House of Representatives, and the role of the Legislative Branch in our federal system of government. So those are two excellent ways to start. Whether you come to Washington or you stay at home to do your research, those will give you a great way to start your study of the US Senate.

Liz Covart: [01:14:06](#) And where's the best place to find more information about the Senate Historical Office and how we can contact you if we have some questions?

Betty K. Koed: [01:14:13](#) Again, if you go to the Senate website, and when you click on art in history, you'll find a little link there to information about our office, the role that our office plays in the Senate community, and there's also contact information there. We have an historian's email account that is linked to throughout the website, and you can send questions to us there. Dan kind of leads this effort right now, but we have current staff that



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monitor that email every day, and every day we answer a number of questions from the public, from the media, from teachers, from students, whatever the case may be on a wide range of Senate history questions. So, feel free to send us a question and we'll do our best to get you an answer.

Liz Covart: [01:14:53](#) Well, Betty Koed, Katherine Scott, and Daniel Holt, thank you for joining us and for introducing us to the Senate Historical Office, and to the formation and early history of the United States Senate.

Betty K. Koed: [01:15:03](#) Thank you.

Katherine Scott: Thanks Liz!

Daniel Holt: Thanks Liz.

Liz Covart: [01:15:05](#) Today, the United States Senate boasts 100 senators, and nearly 7,000 staff members who help keep the business of this legislative house going. But as Betty, Dan, and Kate related, this isn't how the Senate worked at its start; Article One of the United States Constitution establishes the Senate as the upper house in a two-house Legislative Branch of government. As the upper house, the Constitution empowers the Senate to approve Executive Branch nominations and to approve treaties. The Constitution also provides a framework for the Senate in Article One, Section Three. This is where the Constitution outlines that each state shall be represented by two senators, who will each serve six year terms, and that the Vice President of the United States should serve as a President of the Senate. Further, Article One, Section Three also provides the Senate with the power to try all cases of impeachment. Now, the Constitution also spells out in Article One, Section Seven that while the House of Representatives is to originate bills for raising revenue, the Senate does have the power to propose laws and concur on bills of revenue.

Liz Covart: [01:16:08](#) But as Betty related, the Constitution is really sparse when it comes to details about how precisely the Senate should



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organize itself and conduct its business. This is why the work of early Senates was so important; they established the rules, hired the staff, and ironed out procedures for how the Senate would meet and conduct its business. It was up to these early Senates to flesh out that skeletal structure the Constitution provided, and to decide just how much of a role the Senate would play in the new national government of the United States. In a relatively quick period of time, 1789 to 1806, the Senate had emerged as a powerful legislative body. Of course, some of the speed was due to the fact that by 1806, the Senate only had 34 members, as there were just 17 states in the Union. Now, as Kate reminded us, the Senate operated as smoothly as it did in the late 18th and early 19th centuries, and as it does now because of the staff members it's hired.

Liz Covart:

[01:17:01](#)

In its earliest days, it was up to secretary of the Senate Samuel Otis, and Doorkeeper and Sergeant in Arms James Mathers, to do their best to help the Senate acquire what it needed to conduct its business. Today, this work has expanded to employ more than 7,000 staff members. And speaking of the present, when we think about the Senate in our present day, we often think of it as the legislative body that approves or rejects Presidential nominations for office, and as the legislative body with the power to use the filibuster rule to delay or kill any bill a group of senators disagrees with. And thanks to Betty, Kate, and Dan, we now have a historical understanding of how the filibuster rule developed, how the filibuster can be ended with the process of cloture, and the ways in which divisive party politics has increased the use of the filibuster and tiebreaking votes by the Vice President and President of the Senate.

Liz Covart:

[01:17:57](#)

You can find more information about Betty Koed, Katherine Scott, and Daniel Holt, as well as the Senate Historical Office, plus notes, links, and a transcript for everything we talked about today, all on the show notes page - benfranklinworld.com/338.



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Also on the show notes page, you'll find links to other episodes that really compliment this one, including Episode 202, which investigates the origins of the House of Representatives with historians from the Office of the Historian of the House of Representatives.

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