

Lesson 4

THE SENATE

Unit 2

Lesson Objectives:

When you complete Lesson 4, you will be able to:

- Describe how the Senate functions within the bicameral legislature.
- Describe the history and purpose of the Equal Suffrage Clause and how the Senate supports federalism.
- Explain the qualifications necessary to become a Senator.
- Describe the senatorial classes.
- Describe the process of electing Senators and filling Senate vacancies under Article I and under Amendment XVII.
- Understand Senate rules on adjournment, compensation, and sinecure and explain the role of the Vice President and the President Pro Tempore in the Senate.
- Understand the sole powers of the Senate concerning impeachment, appointment, the Electoral College, and treaties.

Part 1: The Senate and Its Members

Senate

Article I, Section 3, Clause 1

Equal Suffrage in the Senate

Article V: Prohibition on Amendment

Qualifications for Senators

Article I, Section 3, Clause 3

Senatorial Classes and Vacancies

Article I, Section 3, Clause 2

Popular Election of Senators

Amendment XVII, Clause 1

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Vacancies in the Senate

Amendment XVII, Clause 1

Vice President as Presiding Officer

Article I, Section 3, Clause 4

President Pro Tempore

Article I, Section 3, Clause 5

Procedures and Rules

Article I, Sections 4–6

Senate — Article I, Section 3, Clause 1*Essay by Ralph Rossum (pp. 62–63)*

The United States Constitution has a bicameral, or two-part, Congress: the House of Representatives (covered in Lesson 3) and the Senate. The Senate cooperates with the House of Representatives to pass legislation to be presented to the President for signing into law, but the Framers of the Constitution designed the Senate to be a deliberative body that would serve primarily to correct and refine the actions of the House and provide vital advice and consent to the executive for appointments and treaties. As result, there are several key differences in the structure, procedures, and duties of the Senate.

As agreed upon at the Constitutional Convention, the Senate is composed of two Senators from each state, with each Senator having one vote (rather than each state's two Senators voting as one). Unlike the House, where all Representatives stand for election every two years, leaving open the possibility of a 100-percent change in membership, Senators serve for staggered six-year terms. These devices would protect the interests of the states as states.

Originally, each state legislature selected its Senators to represent the state. This distinct feature of the Senate was an essential element of federalism in the American system. As Rossum notes, election by state legislatures encouraged Senators to preserve the original federal design and to protect not only the particular interests of their home state, but also the states as separate political and legal entities. The Senate was indeed accountable to the people of its state, but that accountability was channeled through state legislatures. In requiring direct election of Senators, the Seventeenth Amendment changed both the nature of the Senate and the relation of Congress to the states.



Before You Read

Ask: Why did the Framers of the Constitution create a bicameral legislature? (The two houses would check and balance one another. Because it was closest to the people, the House of Representatives would be most responsive to the opinions and passions of the people. The Senate would serve to refine and enlarge those opinions to produce good legislation that would become good laws.)



Active Reading

To ensure understanding, ask: How many Senators does each state have? (two) How many Representatives does each state have? (This depends upon population, but each state has at least one Representative.)



Work in Pairs

Remind students that federalism is a division of authority between the national government and regional, or state, governments. Pair up students and have them write a response to this question: “How does the Senate preserve federalism?” (The Senate preserves the federalism because it protects the interests of the states as states. Each state has two Senators. The Senators represent the interest of their states. A state’s population does not determine the number of Senators that represent it. Each Senator casts a vote, called per capita voting. Per capita voting better reflects a state’s interest because states’ opinions may be divided on an issue.)

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Equal Suffrage in the Senate – Article V: Prohibition on Amendment

Essay by Ralph Rossum (pp. 288–289)

Rather than creating a single, all-powerful national government, the Founders devised a federal system that divides sovereignty between two political entities (states and the nation), thereby recognizing a role for each. The national government would exercise a few delegated powers; the states would exercise all other powers.

The Prohibition on Amendment: Equal Suffrage in the Senate Clause was designed to protect the original federal design of the Constitution. It prohibits any Amendment that would deny a state equal representation in the Senate. Some Convention delegates (including Roger Sherman, who devised the clause, and Gouverneur Morris, who proposed it) were concerned that certain states might form partnerships to abuse, disenfranchise, or even eradicate other states. This provision does more than merely protect smaller states from larger ones. It secures a role for states generally and ensures that the American republic operates on a system of mixed sovereignty, as Madison described in *The Federalist* No. 39.

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Some critics of the provision argue that it gives too much power to the states; but as Ralph Rossum argues, the clause reflects the intentions of the Framers for the new government. It allows states to be an integral part of the separation and balance of power needed to maintain the country. Indeed, the clause is one of two clauses for which the Constitution expressly forbids any amendment. (The first concerns regulating and abolishing the slave trade and will be discussed in lesson 19.) Thus, Article V stands as a permanent protection against any amendments that would attempt to alter equal representation in the Senate and thereby undermine the federal system.



Before You Read

Ask: What does the word “prohibition” mean? (to stop or deny) What does the word “amendment” mean? (a change) What do you think a “prohibition on amendment” is? (a way of stopping people from making a change)



Write About It

Rossum references Madison’s comments on the federal system in *The Federalist* No. 39. Have students read *The Federalist* No. 39 and summarize the distinction that Madison makes between a federal and a national system.

Qualifications for Senators — Article I, Section 3, Clause 3

Essay by Ronald Pestritto (pp. 64–65)

Because the Senate was meant to check and restrain the passions of the House of Representatives, the requirements for membership in the Senate are stricter. Serving in the Senate requires a greater extent of information and stability of character. Therefore, Senators must be at least 30 years old and must have been citizens of the United States for at least nine years. Senators must also be inhabitants of the state from which they were elected.

The age requirement for Senators is five years older than the minimum requirement for Representatives, and the citizenship requirement is longer for Senators than for Representatives: These requirements ensure that Senators have had enough time to study and know the republican principles underlying our nation’s Constitution and way of life. Ronald Pestritto writes that these qualifications were agreed upon with little debate and have faced few challenges since their approval.



Before You Read

Ask: Based on the previous lesson, what do you remember about the qualifications for members of the House of Representatives? (Representatives must be at least 25, they must have been a citizen for at least seven years,

and must be inhabitants of the state from which they were elected.) Students may look back at their notes or texts for reminders. **Ask: Do you think the qualifications will be stricter or more lenient for Senators?** (Answers will vary. Students may say that they will be stricter.)



Make a Real-Life Connection

Read aloud the paragraph on page 65 starting with “In the aftermath of the Civil War” and ask students to imagine they are Senators during the Civil War era. **Ask: Would you as a Senator be willing to deny other Senators their seats if you thought they were disloyal to the Union?** (Answers will vary.)

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Senatorial Classes and Vacancies Clause —

Article I, Section 3, Clause 2

Essay by David F. Forte (pp. 63–64)

There was much agreement about the design of the Senate at the Constitutional Convention. State legislatures would elect the Senators to represent the state. The Senate would be smaller than the House of Representatives, but Senators would have longer and staggered terms of office to create greater stability and permanence. While the House would initiate most of the legislation, the Senate would refine what the House produced. Though the term length was greatly debated, the Framers ultimately chose a system of six-year staggered terms.

Staggering the terms required a system of senatorial classes. Article I of the Constitution outlines three classes. Senators of the first class would leave office after the second year. Senators of the second class would leave office after the fourth year. Senators of the third class would leave office after the sixth year.

On May 13, 1789, the first assembly of Senators divided themselves into three geographically based groups. Then a member of each group selected a number (1, 2, or 3) at random from a box, and that number determined the classes of Senators. The Senators completed their terms in office according to the class they had drawn. New states’ Senators would be allocated among the classes.

Along with choosing term limits and senatorial classes, delegates of the Constitutional Convention also had to address the issue of vacated Senate seats. Vacancy in the Senate meant that a state would not have equal representation during that period. The delegates decided that state executives (governors) would make temporary appointments during legislative recesses. When the legislature reconvened, it would decide on a permanent replacement.

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Only one member of the Convention objected to this arrangement. James Wilson expressed concern that giving power to governors to make emergency appointments would upset the separation of powers. Edmund Randolph responded and the Convention agreed that temporary executive appointments were the best option to prevent gaps in representation.



Active Reading

Read aloud the information about senatorial classes beginning on page 63. Then draw a simple outline showing how a staggered class system would work. You may use students' names as the names of the Senators. **To ensure understanding, ask: How are the classes determined?** (They are geographically balanced with no state having both its Senators in the same class) **Why did the Framers design this system?** (It supports the stability of the Senate.)



Make an Inference

Ask: What was James Wilson's objection about the gubernatorial appointments for senate vacancies? (He was concerned that allowing the executive to select a replacement Senator would violate the separation of powers by making the legislator too dependent upon the executive.)

Popular Election of Senators — Amendment XVII, Clause 1

Essay by Ralph Rossum (pp. 413–414)

The Seventeenth Amendment changed the process by which Senators were elected and Senate vacancies were filled. While these changes made the Senate more democratic, they altered the relationship of the states to the national government and weakened the protection of state interests.

As early as 1826, the House of Representatives introduced resolutions calling for the direct election of Senators. One-hundred-eighty-seven similar resolutions were introduced before Congress approved what the states would ratify as the Seventeenth Amendment. In the meantime, states had gradually turned to non-binding popular elections to choose Senators. Candidates for state legislatures would sign pledges to vote for the popularly selected candidates. The people would not elect a candidate for state legislature who refused to sign the pledge. By 1912, more than half of the states functionally had popularly elected Senators.

Four factors encouraged endorsement of the Seventeenth Amendment: deadlocks over senatorial elections, Senate scandals, the rising Populist movement and its suspicion of political influence, and the influence of the Progressive movement. The Progressive movement was a 20th century political and social movement that

emphasized more democratic processes (e.g., the direct election of Senators) and advocated the expansion and centralization of government (e.g., the creation of regulatory agencies).



Before You Read

Ask: What form of election was originally intended for Senators? (States' Legislatures would elect Senators.) **What are some differences between popular elections and this form of selection?** (Students may answer that popular elections allow the people to select their leaders directly. Legislative appointments are one step removed from the people, since the popularly elected state legislators select the Senators.)



Make an Inference

According to Ralph Rossum, under direct elections, Senators are more likely to have Ivy League educations and more extensive previous government service. In addition, the Senate's partisan lines are typically similar to those of the House of Representatives. **Ask:** What do you think these facts say about American voters? (Answers will vary. Sample answer: The extensive service and higher educations may reflect the public's ideals about dedicated and highly skilled officials. The partisan lines probably reflect the real partisan lines of the people, since they are also reflected in the House of Representatives, the members of which are also elected by popular vote.)

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Vacancies in the Senate – Amendment XVII, Clauses 2–3

Essay by Todd Zywicki (pp. 415–416)

The Seventeenth Amendment also changed the method by which Senate vacancies are filled. Under Article I, state legislators chose Senators, and state governors would fill temporary vacancies until the state legislature could elect a new Senator. After the ratification of the Seventeenth Amendment, the expense and inconvenience of popular elections made it necessary to schedule elections for Senators at regular intervals. To prevent lengthy vacancies that would leave states underrepresented in the Senate, a state governor may appoint temporary replacements until a special election fills the seat.

The language of the clause indicates that the states have the power to balance conflicting goals of a speedy popular election versus the state's interests in conducting elections on a regular basis to increase voter turnout and decrease expenses. Thus, states may choose to postpone elections to fill vacancies until the next regular election occurs. The language of the clause does not define when a vacancy exists. For example, it is an open question whether the voters can knowingly create a vacancy by electing a deceased candidate.

Vice President as Presiding Officer – Article I, Section 3, Clause 4*Essay by Peter W. Schramm (pp. 65–66)*

The Vice President has two constitutional duties: to receive the electoral votes and to serve as the presiding officer over the Senate. Although presiding officer is an important role, it carries few real powers beyond presiding over the procedure and casting tiebreaking votes.

Because the Vice President would have some legislative responsibility, some delegates challenged the clause as a violation of the separation of powers. However, allowing the Vice President to preside over the Senate and to break tie votes solved two problems: It allowed the body always to reach a resolution, and it preserved the equality of states. If a Senator were to be the official presiding officer and therefore allowed to vote only in a tie, then one state would lose half of its representation during normal votes.

Early in the Republic, Vice Presidents took their role as presiding officers very seriously and often were very active in the Senate and called upon to cast many tiebreaking votes. As time passed, however, their visibility diminished. Modern Vice Presidents rarely sit in with the Senate, as they are typically too busy with executive duties to invest much energy in their Senate role.

**Active Reading**

Ask: Who usually presides over the Senate today? (the President Pro Tempore of the Senate)

President Pro Tempore – Article I, Section 3, Clause 5*Essay by David F. Forte (pp. 66–67)*

In the absence of the Vice President, the Senate may elect a President Pro Tempore to serve as presiding officer of the Senate. Originally, the Senate elected a President Pro Tempore each time the Vice President absented himself for short or long periods of time. In 1890, the Senate adopted a new procedure by which members elect a President Pro Tempore who will serve until replaced. Typically, the Senator selected is the senior member of the majority party.

The President Pro Tempore is not a legislative leader. He supervises the Senate, makes procedural rules while in the chair, and appoints substitute members to sit in his chair when he steps down. By statute, he is third in the line of succession to the President after the Vice President and the Speaker of the House.



Before You Read

Ask: What do you think a “President Pro Tempore” is? (“Pro Tempore” means “for the time being.” Students may answer that the title sounds like “Temporary President.”)



Research It

Point out the list of other senatorial officers on page 67 in the last paragraph of Forte’s article. Assign students to use their texts, other books, or online resources to research the role of one of these officers. Then ask students to share their findings. Along with the class, summarize the findings and write one- or two-sentence descriptions of each post.

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Procedures and Rules — Article I, Sections 4–6

Essays by Anthony Peacock, David F. Forte, Adrian Vermeule, James L. Buckley, and Joan L. Larsen (pp. 71–85)

The procedural rules discussed in Article I, Sections 4–6 apply to the Senate as well to the House. As with the House of Representatives, the Senate is not allowed to adjourn for more than three days or to move its meeting place unless both houses agree to the changes. The Senate is also subject to rules about its quorum. A majority of Senators is usually needed to make a vote, but a smaller number may convene to conduct day-to-day business. The Constitution discourages senatorial absenteeism and any problems that may stem from it by allowing Members of Congress “to compel the attendance of absent members.”

Like Representatives, Senators are given a salary through the federal treasury, as outlined in the Compensation Clause. All Members of Congress are subject to restrictions on their wages according to the Twenty-seventh Amendment.

Senators are subject to the Sinecure and Incompatibility Clauses, which prohibit members of the federal executive and judiciary branches from serving in Congress simultaneously or from taking new posts or posts with recently increased salaries. These clauses are meant to keep Senators focused on their duties in Congress and to avoid government in-dealing and other kinds of corruption.

The two houses of Congress are given several important self-regulatory powers. The Qualifications and Quorum Clause allows the Senate to regulate its own elections, returns, and member qualifications, as well as authorizing it to hold investigations of members suspected of wrongdoing. Senators who are found guilty of “disorderly Behavior” may be punished in various ways or even expelled from office under the Rules and Expulsion Clause. Some other punishments include denouncement, reprimand, fines, reduction of seniority, and removal from committees.



Before You Read

Ask: What are some things you remember about the rules and procedures discussed in Lesson 3 on the House of Representatives? (Answers will vary) Do you think these rules and procedures will be mostly similar or mostly different? (They are mostly similar.)



Write About It

One unique procedure in the Senate is the use of the filibuster. Have students research what the filibuster is, how it is used, and how it reflects the unique nature of the Senate. Have them write 1–2 paragraphs to share with the class.



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 4, Part 1. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

1. A Senator's total term of office is
 - a. one year.
 - b. two years.
 - c. four years.
 - d. six years.**

2. The Sinecure and Incompatibility Clauses are designed to avoid
 - a. amendments to certain rules.
 - b. direct popular elections.
 - c. impeachment trials in the Senate.
 - d. corruption in Congress and impermissible blending of powers.**

3. According to the Constitution, a Senator must be at least
 - a. 25 years old and a citizen for seven years.
 - b. 30 years old and a citizen for nine years.**
 - c. 35 years old and a natural born citizen.
 - d. none of the above.

Fill in the Blank: Write the correct word or words in each blank.

1. Under Article I, Senators are chosen by _____. (**state legislatures**)

2. The _____ stands in as the Senate's presiding officer if the Vice President is unavailable. (**President Pro Tempore**)

3. A Senator of the second class would expect to leave office after the _____ year. (**fourth**)

4. The Connecticut Compromise designated that there would be _____ Senators per state. **(two)**
5. Temporary Senate appointments to fill vacant seats are to be made by state _____. **(governors or executives)**
6. A Senator's salary is paid out of the _____. **(federal treasury)**
7. The Constitution allows Congress "to compel the _____ of absent members." **(attendance)**
8. The Senate of the United States is composed of _____ Senators from each state. **(two)**
9. Prior to the Seventeenth Amendment, if there was a sudden vacancy in the Senate, the _____ had the power to make a temporary appointment. **(governor)**
10. The Vice President of the United States also functions as _____ of the Senate. **(president)**
11. Early in the Republic, the Vice President took seriously his constitutional duty of _____. **(presiding over the Senate)**

Short Answer: Write out your answer to each question.

1. What is the term of office for a United States Senator? **(Six years)**
2. When our Founding Fathers wrote the Constitution (specifically, Article I, Section 3, Clause 1), who chose the Senators from each state? **(The state legislatures)**
3. What are the qualifications for a Senator? **(A Senator must be at least 30 years old, must have been a citizen for at least nine years, and must be an inhabitant of the state from which he or she is elected.)**
4. What does Amendment XVII discuss? **(The popular election of Senators)**
5. List a few of the qualities the Framers designed for the United States Senate.
 - **State legislatures would choose members of the Senate from their respective states**
 - **It would have fewer members than the lower house**
 - **Members of the Senate would serve longer terms**
 - **It would represent the interests of states as state**

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True / False: Indicate whether each statement is true or false.

1. During the 2000 election, the people of Missouri knowingly voted for a deceased Senator. **(True)**
2. The Framers of the Constitution perceived the Senate to be a more deliberative body, while the House would initiate most legislation. **(True)**
3. Directly after the Civil War, both houses of Congress occasionally denied individuals their seats if such individuals could not swear that they had never been disloyal to the Union. **(True)**
4. The Vice President presides over the Senate and casts tiebreaking votes. **(True)**
5. There have only been a few occasions when the Vice President has had to cast a tiebreaking vote as president of the Senate. **(False. There have been over 200 occasions when he has cast the tiebreaking vote.)**
6. The Constitution prohibits any amendment that would deny a state equal representation in the Senate. **(True)**

Part 2: Sole Powers of the Senate

Trial of Impeachment

Article I, Section 3, Clause 6

Punishment for Impeachment

Article I, Section 3, Clause 7

The Electoral College and the Senate: Senate as Tiebreaker

Article II, Section 1, Clauses 2 and 3, and Amendment XII

Senate's Advice and Consent in Treaties and Appointments

Article II, Section 2, Clause 2

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Trial of Impeachment – Article I, Section 3, Clause 6

Essay by Michael J. Gerhardt (pp. 67–69)

Although the House of Representatives may impeach an officer, the Senate has the sole power to try impeachments. The Framers assigned this task to the Senate rather than the House or the judiciary because the Senate would be better educated, more virtuous, more deliberate than the House and more numerous and better suited to handle the procedural demands of an impeachment trial than a court.

The Constitution sets three major requirements for impeachment trials. First, because of the seriousness of the occasion, Senators must be under oath or affirmation. Second, the Chief Justice presides over the proceedings, both because of the solemnity of the occasion and to prevent the Vice President from presiding over the trial of the President. Third, requiring two-thirds of the Senators to vote for a conviction promotes serious deliberation and ensures a broad consensus that cuts across party or factional lines.

Three major questions remain about the Senate's powers to try impeachments. First, must the Senate try an impeached official, or may it dismiss an impeachment without a full-scale trial? In 1797, the Senate voted to expel Senator William Blount after the House impeached him. When Blount noted that Senators are not subject to impeachment, the Senate dismissed the House's impeachment resolution, thereby suggesting that the Senate may dismiss an impeachment resolution without a trial.

Second, how much power does the Chief Justice have when presiding over the Senate? In 1868, during the impeachment trial of President Andrew Johnson, the Senate repeatedly voted to overrule the Chief Justice's procedural decisions. During President Clinton's trial in 1999, however, the Senate did not challenge the Chief Justice's rulings.

Finally, what procedures must the Senate employ in impeachment trials? Since the Senate has the constitutional power to determine its own rules of proceeding, the Senate has formulated its own special impeachment trial procedures with periodic revisions. In light of recent failed attempts to impeach popular Presidents for misconduct, some people question whether impeachment is indeed an appropriate remedy for judicial or executive misconduct.



Research It

According to Michael J. Gerhardt, the House of Representatives has impeached 16 people, including Presidents Andrew Johnson and William Jefferson Clinton, throughout history. Only seven of these people, however, have actually been convicted by the Senate. Ask students to choose one of the impeached officials and prepare a brief report on his or her alleged offenses and trial, as well as the results of the trial.

Punishment for Impeachment

 — Article I, Section 3, Clause 7

Essay by Michael J. Gerhardt (pp. 69–71)

The Constitutional Convention narrowly defined the scope and nature of the punishments that the Senate may impose in impeachment trials. The Convention limited the punishments in the federal Constitution to those typically found in state constitutions: removal and disqualification from office. It also rejected the British impeachment practice in which the House of Lords could impose any punishment, including death, on impeached officers.

Three major questions have arisen under the clause. First, may the Senate impose the sanctions of removal and disqualification separately? The Senate has twice separated the sanctions, voting first to remove officials and then to disqualify them from further office.

Second, may officials be tried in ordinary courts before impeachment and removal from office? Several officials have been prosecuted and imprisoned before being impeached, but it is unclear whether the President could be subject to a similar process. Alexander Hamilton argued in *The Federalist* No. 69 that a President must first be impeached and removed before he could be tried in an ordinary court of law, but the President is not above the law, and an impeachable offense may not be a crime.

Third, may the Senate impose penalties short of removal and disqualification? On one level, the Constitution does not specifically authorize censure; vesting the power of impeachment in the House seems to exclude other means to punish officials who have committed impeachable offenses. It would also seem to undermine the Founders' objective of narrowing the range of permissible punishments.

Allowing censure could also upset the system of checks and balances by making it easier for Congress to harass or embarrass a President. Furthermore, censure conceivably constitutes a bill of attainder.

On the other hand, the text of the Constitution seems to imply that “lesser” punishments than removal or disqualification are allowable. Additionally, other clauses and historical practices suggest that censuring may be permissible: The House and Senate have passed over a dozen resolutions condemning or censuring presidential actions. Thus, debates over censure are likely to persist until historical practice resolves the matter.



Discussion Questions

1. How was the United States impeachment system designed to differ from the traditional British system? (Sample answer: The Constitution sets limits on punishments that can be set by Congress during impeachment trials. Congress must gain a supermajority of votes both to remove officials from office and to forbid them from future government employment. The British system, however, allowed legislators to impose many punishments including the death penalty.)
2. What are the punishments for impeachment? (removal from office and disqualification from holding and enjoying any office of honor, trust, or profit under the United States)

The Senate as Tiebreaker for Electing the Vice President

— Article II, Section 1, Clauses 2 and 3, and Amendment XII

Essays by Einer Elhauge (pp. 184–186), Tadahisa Kuroda (pp. 186–188), and Charles Fried (pp. 377–379)

The Constitutional Convention designed a unique method to select the President called the Electoral College, consisting of electors from each state who would be responsible for choosing the chief executive. Each state would appoint its own electors, the number of which would be determined by the number of Senators plus the number of Representatives in the House for each state.

These electors would each cast two ballots, but at least one had to be for a citizen from another state. The person who received the majority of votes would be President, and the runner-up would be Vice President. If two or three persons received a majority of electoral votes or an equal number of votes, the House of Representatives would choose a President. If no candidate received a majority, the House would choose from among the top five candidates.

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The Twelfth Amendment altered the way in which the Electoral College elected the President and Vice President. Under the Twelfth Amendment, electors vote for President and Vice President separately. The House of Representatives has the power to choose a President if no candidate receives a majority of electoral votes; the Senate has the same power for the Vice President. (For more information on the Electoral College and the Twelfth Amendment, turn to Lessons 9 and 10.)

The Senate's Advice and Consent in Treaties and Appointments – Article II, Section 2, Clause 2

Essays by Michael D. Ramsey and John McGinnis (pp. 205–212)

The Senate offers advice and consent to the President on treaties and appointments. For the Framers, treaties combined foreign policy (the responsibility of the President) and lawmaking (the responsibility of Congress). Because treaties become the law of the land, they are not to be entered into or ratified without great care. The President negotiates international treaties, but the supermajority of the Senate must ratify treaties in order for them to have the force of law.

Though the choice of principal officer is the President's responsibility under the Appointments Clause of Article II, the Senate's advice and consent forestalls the possibility that the appointment power will be abused. The President has the plenary power to nominate, and the Senate's consent does not bind the President; that is, the President has the power to choose not to appoint an official even though the Senate has confirmed the official.

The Senate has plenary authority to reject nominees. Nothing in the text limits what the Senate may consider when consenting to or rejecting a nominee (except that Congress may not establish qualifications for principal officers). Thus, the Senate may use its advice and consent power to reject a nominee for unsound principles or blemished character. The President's power of repeated nomination checks the Senate's ability to reject a nominee without a compelling reason. (For more information on treaties and appointments, turn to Lesson 10.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 4, Part 3. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

1. The _____ presides over presidential impeachment trials.
 - a. Chief Justice
 - b. Vice President
 - c. majority leader
 - d. President Pro Tempore

2. Impeached Presidents may be removed from office when at least _____ of Senators concur.
 - a. one-third
 - b. two-thirds**
 - c. a quorum
 - d. a majority

Fill in the blank: Write the correct word or words in each blank.

1. Punishments from impeachment may include "removal from Office, and _____ to hold and enjoy any Office..." **(disqualification)**
2. The _____ Amendment modified the method of electing a President and Vice President. **(Twelfth)**
3. Treaty-making is a mixture of _____ and _____ power. **(executive, legislative)**
4. The Senate frequently approves treaties with _____. **(conditions)**

Short answer: Write out your answer to each question.

1. What was the original arrangement for electing the President and Vice President? **(Presidential electors voted for two candidates. The one with the most votes, as long as it was a majority of electors, would be President, and the individual with the next greatest number of votes would be Vice President.)**
2. What is significant about the 1836 election in regard to the selection of the Vice President? **(Richard M. Johnson was chosen by the Senate. It is the only time in United States history that the Senate has chosen the Vice President.)**
3. List some of the striking features of the Treaty Clause.
 - **It gives the Senate a "partial agency" in the President's foreign-relations power.**
 - **It requires a supermajority (two-thirds) of the Senate for approval of a treaty.**
 - **It gives the House of Representatives no role in the process.**

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