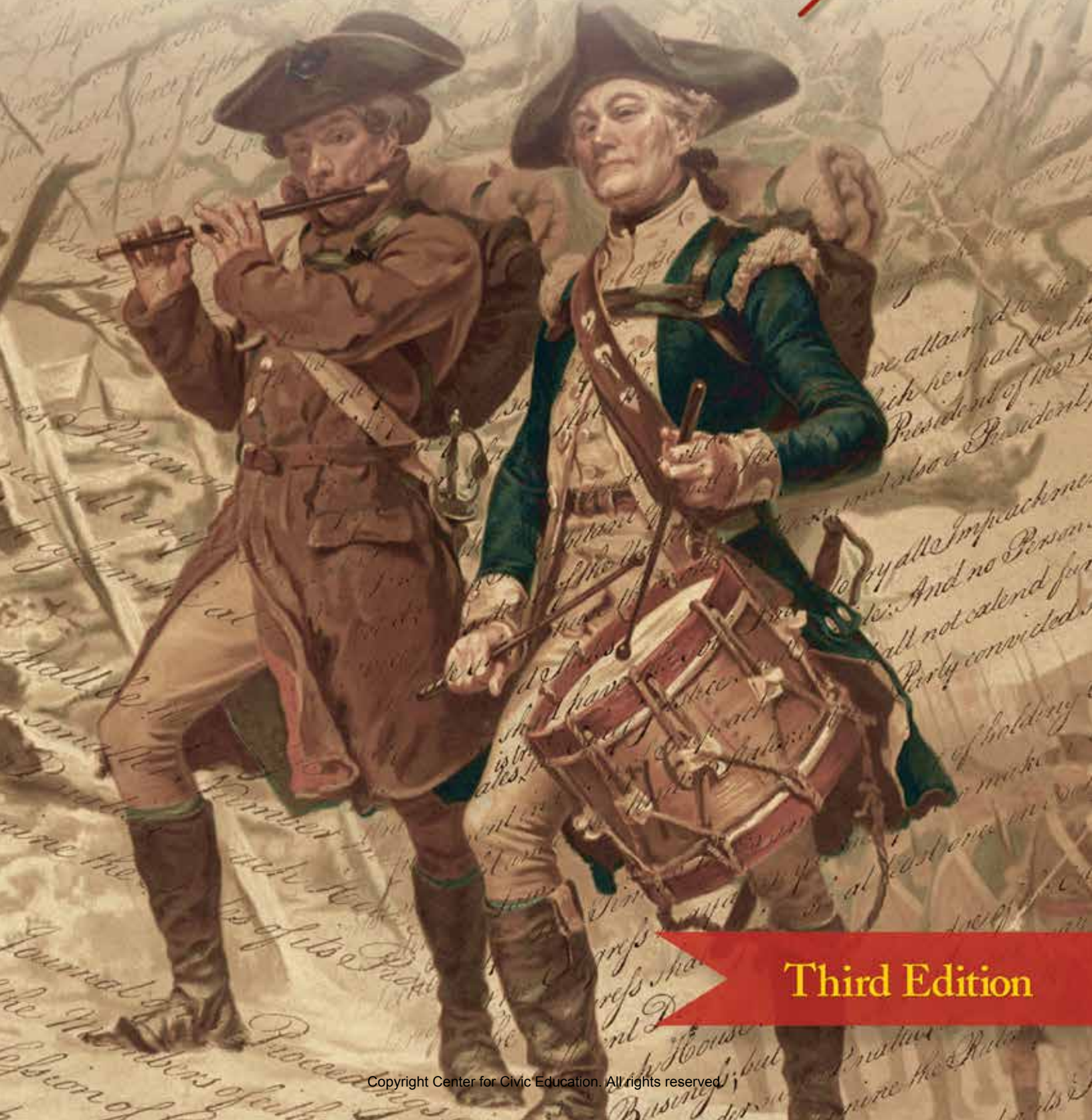


We the People

THE CITIZEN & THE CONSTITUTION



Third Edition

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FROM THE CENTER FOR CIVIC EDUCATION**

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LESSON 16

How Much Power Should Be Given to the Executive and Judicial Branches?

LESSON PURPOSE

In this lesson, you will learn about the powers that the Constitution gives to the executive and judicial branches. You will learn how the legislative and judicial branches check the power of the executive branch. You also will learn about the system that the Constitution established for electing a president.

LESSON OBJECTIVES

When you finish this lesson, you should be able to

- explain the powers of the executive and judicial branches of government, and
- explain the process for electing the president of the United States.

TERMS TO UNDERSTAND

- advice and consent
- appellate jurisdiction
- Electoral College
- impeach
- jurisdiction
- original jurisdiction
- Twenty-second Amendment

What challenge did the Framers face in creating the executive branch?

In 1787, Americans still remembered how much trouble they had experienced with the executive branch of the British government. Americans believed that the king and his royal governors and other officials had violated their rights.

With this experience in mind, the Framers faced the problem of creating an executive branch of government. They wanted an executive branch with enough power to carry out its responsibilities yet not strong enough to overwhelm the other branches. An executive branch with too much power could endanger the rights of the people.

What powers does the Constitution give to the executive branch?

Article II of the Constitution created the executive branch. The Framers wrote Article II in more general terms than they did Article I. As a result, Article II is shorter.

The list of powers it gives to the president is brief. These include the powers to

- carry out and enforce laws made by Congress,
- make treaties with foreign nations,
- appoint certain important government officials,
- act as commander in chief of the armed forces, and
- veto laws passed by Congress.



Is it important that the commander in chief of the armed forces is a civilian? Why or why not?



Why would the Constitution require the president and Congress to share power when negotiating treaties with other nations?

The president also can send and receive ambassadors to and from other countries. The president has the power to pardon people convicted of crimes against the United States.

How does the Constitution limit the powers of the executive branch?

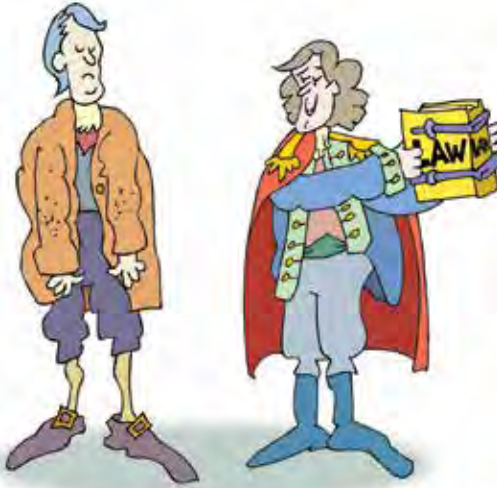
The Constitution limits the powers of the executive branch by making it share most of its powers with Congress. Here are some examples of how this works.

1 **Appointments** The president has the power to nominate people for important jobs in government with the advice and consent of the Senate. **Advice and consent** is the term used for this process. The president also nominates people to serve in the executive and judicial branches of the national government.

The Senate has the power to approve or reject the president’s nominations.

- 2** **Treaties** The president has the power to negotiate treaties with another nation. The Senate has the power to approve or reject these treaties.
- 3** **War** Although the president can conduct a war as commander in chief, only Congress can declare war. In addition, only Congress has the power to provide money to conduct a war.
- 4** **Veto** The president may veto laws passed by Congress. Congress, however, may override the veto by a two-thirds vote of both houses.

The Constitution provides another important way to limit the power of the president and prevent the abuse of power. It gives the House of Representatives the power to impeach the president. To **impeach** means “to bring to trial.” This means the House can accuse the



Why did the Framers allow presidents the power to veto laws passed by Congress?

president of serious crimes. The Senate then holds a trial. If the Senate finds the president guilty, he or she can be removed from office. While it is rarely used, impeachment is an important power that Congress has for checking the power of the executive branch.

How should the president be selected?

The Framers had given important powers to the president. It is not surprising that the Framers were concerned about how to select people to fill this position. The Framers took it for granted that George Washington would be the first president. Washington was patriotic, honest, devoted to the public good, and not interested in using power for his own advantage.



Why did the Framers allow for the impeachment of presidents?

The Framers wanted a way of selecting future presidents who would be as qualified as Washington. The Framers discussed the problem for some time. They also discussed how long a president should be able to stay in office.

The Framers finally agreed that a president would serve for four years and could be reelected any number of times. This was changed in 1951 by the **Twenty-second Amendment**. The president can now be reelected only once.

A few Framers wanted the people to elect the president directly. But James Madison thought that in such a large country the people would not know enough about the candidates to make good choices. Madison also believed that the people might not always have the wisdom to select the best person for president. Most Framers agreed with Madison.



What qualifications should a person have to become president of the United States?

In most states, the head of the executive branch was chosen by the state legislature. But the Framers thought that if Congress chose the executive, Congress would control the president. The result would be a weak executive branch. The Framers also thought that if the president were to be selected by the state governments, then the states would control the president. This too would result in a weak executive branch. Neither of these choices would have helped the Framers create a stronger national government.

The method the Framers finally created for electing the president is complicated. They decided that an **Electoral College** would be

created once every four years to choose the president. Each state would have electors equal to the number of senators and representatives it had in Congress. Each state would decide how to select persons to serve as their electors in the college. The candidate who received a majority of votes in the Electoral College would become president.

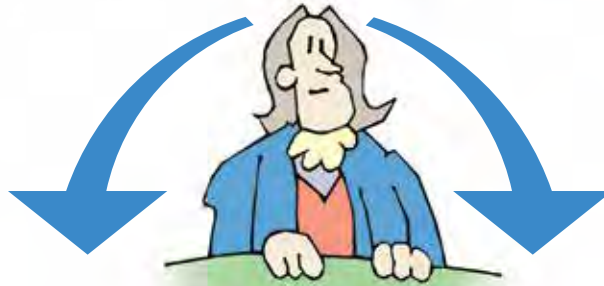
But what if no candidate got a majority of votes in the Electoral College? In that case, the House of Representatives would select the president by majority vote. Each state would have one vote.

We still use the Electoral College today. But it does not work the way the Framers originally planned.

Critical Thinking Exercise

Determining qualifications for the presidency

Examine Article II of the Constitution and review what you learned in this lesson to help you complete the following chart. You might cooperate with one or more students to do so.



Duties, powers, limits

PRESIDENT

Qualifications

What are the duties of the president?

- 1 _____
- 2 _____
- 3 _____
- 4 _____

What are the powers of the president?

- 1 _____
- 2 _____
- 3 _____
- 4 _____

What are the limits on the powers of the president?

- 1 _____
- 2 _____
- 3 _____
- 4 _____

What qualifications should a person have to carry out these duties?

- 1 _____
- 2 _____
- 3 _____
- 4 _____

What qualifications should a person have to exercise these powers?

- 1 _____
- 2 _____
- 3 _____
- 4 _____

What qualifications should a person have to observe these limits to power?

- 1 _____
- 2 _____
- 3 _____
- 4 _____

What powers does the Constitution give to the judicial branch?

To complete the system of separation of powers, the Framers planned for a judicial branch. A national judiciary was needed to decide disputes between state governments and between citizens of two or more states; it was also needed for disputes between the national government and a state or a citizen.

The Framers had few problems agreeing on the powers of the judicial branch. Article III of the Constitution establishes the judicial branch. Article III includes the following ideas about a national court system.

- 1 Judges should be appointed, not elected. Thus, judges would be independent of politics. They could use their best judgment to decide cases and not worry about the influence of political pressures.
- 2 Judges should keep their positions “during good Behavior.” Judges cannot be removed from office unless they are impeached. Then the judge would have to be tried and convicted of “Treason, Bribery, or other high Crimes and Misdemeanors.” This means that judges should be able to make decisions without fear of losing their jobs. It also means that judges can keep their jobs for life.
- 3 There should be a single U.S. Supreme Court with two types of jurisdiction. **Jurisdiction** means the power or authority to hear cases and make decisions. The types of jurisdiction are original and appellate.
 - The U.S. Supreme Court has original jurisdiction in cases involving a state government or an ambassador. **Original jurisdiction** means that these cases go directly to the U.S. Supreme Court. A lower court does not try these cases first.



Why do you think the Framers wanted Supreme Court justices to be appointed, rather than elected?

- In all other cases, the U.S. Supreme Court has **appellate jurisdiction**. The case is tried first in a lower court. Then the decision of the lower court is appealed to the U.S. Supreme Court. The Supreme Court may decide whether to hear a case on appeal.

The Constitution clearly gave the U.S. Supreme Court the power to overrule state laws that violate the Constitution or the laws made by Congress. The power is based on the supremacy clause in Article VI. You will study the supremacy clause in Lesson 17.

The national government is supreme in those areas where the Constitution gives it the power to act. For example, suppose a state passes a law allowing factories to pollute the air. Then Congress passes a law controlling the pollution a factory can produce. The national government’s laws would have to be obeyed over state laws.

Washington, Madison, and the other Framers who agreed with them got the strong national government they wanted. But the battle was not yet won. Many people in the United States were still afraid of a strong national government. They believed that it would be a threat to their rights and to their state governments.

Reviewing and Using the Lesson

- 1 What challenges did the Framers face in creating the executive branch?
- 2 What powers does the Constitution grant to the president?
- 3 Explain how the system of checks and balances limits the powers of the president. Give specific examples.
- 4 Explain the process for selecting a president.
- 5 What are the powers of the judicial branch? Do you think it is important that judges are appointed to office rather than elected? Why? Do you think judges should stay in office unless they are impeached or that their terms should be limited? Why?
- 6 What branch of the federal government has the power to overrule state laws that violate the U.S. Constitution?

Activities

- 1 Only two presidents have faced impeachment: Andrew Johnson and William Jefferson Clinton. Richard Nixon faced the threat of impeachment, but he resigned from office. Learn more about the impeachment process and what happened with each of the three presidents listed. Share what you learned with your class.
- 2 Find out how electors to the Electoral College are selected in your state. Share what you learned with your class.
- 3 Examine the Twenty-fifth Amendment to the Constitution. Draw a chart that illustrates who is next in line to become the president if a president dies while in office or otherwise cannot carry out his or her duties.
- 4 Learn more about John Jay and John Marshall, two justices of the U.S. Supreme Court. You can find information about these important men in your library or on the Internet.