

Separation of Powers and the Judiciary

A Lesson created for Leonore Annenberg Institute for Civics by Linda Weber

Leonore Annenberg
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www.annenbergclassroom.org

SUMMARY

In a three-branch governmental structure with separate and shared powers, disputes over power and authority are inevitable. When the Supreme Court, as the final arbiter and interpreter of Constitutional law, is petitioned to resolve these disputes and decides to hear the cases, it helps keep the powers separate, checked, and balanced.

By exercising its power of judicial review, and using its authority to invalidate legislation or executive actions judged to be unconstitutional, the Supreme Court carries out its responsibility as the guardian and protector of the Constitution.

In this lesson, students examine historical and contemporary examples of legal disputes over Constitutional powers that were decided by the Supreme Court. They consider the role of tension and conflict in a shared powers system and gain an appreciation for what is required to make the Constitution work.

Notes and Considerations

- This lesson presumes that students have been introduced to Supreme Court cases and have a basic understanding of legal vocabulary and concepts.
- Due to the specialized nature of the in-class sessions, materials are provided to help students build essential knowledge and understanding before coming to class so they are best prepared to learn.
- Technology is relied on in this lesson to enhance learning by facilitating information access, information gathering, and analysis.
- This is a comprehensive lesson with a variety of resources and activities that can easily be adapted to different teaching styles, length of classes, and levels of students. become law is an ideal way to help students understand the relevance of what they are learning.

Snapshot of Lesson

Grades: Middle School/High School

Subject Focus: Civics/Government

Estimated Time: 2 sessions

Alignment to National Standards for Civics and Government

- Grades 5-8
- Grades 9-12

Materials/Equipment Needed:

- Paper and pencil
- Colored highlights
- Computer with internet connection and projector for class viewing
- Computer lab (recommended)

Materials and Resources Included:

Resources

- From Our Constitution by Donald Ritchie:
 - "Chapter 2: What Kind of Government Did the Constitution Create?"
 - "Chapter 5: How is the Constitution Interpreted?"
- U.S. Constitution: Articles I, II, and III
- The Court and Constitutional Interpretation
- *Understanding Democracy: Separation of Powers*

Student Materials

- Class Prep: Assignment Sheet
- Graphic Organizer: A Matrix of Powers
- Research Activity: When Constitutional Powers are Challenged

Teacher Materials

- Video Follow-Up: Research Practice
- Venn Diagram: Separate and Shared Powers in the Federal Government
- Political Cartoon Rubric: Separation of Powers

National Standards for Civics and Government

- Standards level detail for grades 5-8, 9-12

TOPICS

- Branches of government
- Checks and balances
- Constitutional authority
- Democratic principles and values
- Role of the judiciary
- Roles and responsibilities
- Rule of law
- Separation of powers
- Supreme Court

NATIONAL STANDARDS

Document: National Standards for Civics and Government (1994) Center for Civic Education
<http://www.civiced.org/index.php?page=stds>

Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?
 - D. What are alternative ways of organizing constitutional governments?

- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - B. What are the distinctive characteristics of American society?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the constitution embody the purposes, values, and principles of American democracy?
 - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution.
 - E. What is the place of law in the American constitutional system?
 - F. How does the American political system provide for choice and opportunities for participation?

- V. What are the roles of the citizen in American democracy?
 - C. What are the responsibilities of citizens?
 - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?
 - D. What are alternative ways of organizing constitutional governments?

- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - B. What are the distinctive characteristics of American society?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
 - B. How is the national government organized and what does it do?
 - D. What is the place of law in the American constitutional system?
 - E. What is the place of law in the American constitutional system?

- V. What are the roles of the citizen in American democracy?
 - C. What are the responsibilities of citizens?
 - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at the end of this lesson plan.

OUTCOMES

Knowledge, skills, and dispositions

Students will . . .

1. Explain the Constitutional principles of separation of powers and checks and balances.
2. Give examples of separate and shared powers involving the judicial branch.
3. Explain the Supreme Court's role and authority in maintaining the balance of power.
4. Give examples of historical and contemporary challenges to Constitutional powers and explain how they were resolved by the Supreme Court.
5. Recognize the tension caused by having a shared powers system of government and appreciate how Constitutional conflicts are resolved peacefully.
6. Identify other factors beyond the shared powers structure defined in the Constitution that are essential for making the Constitution work. (e.g., dispositions or traits of character, commitment to democratic principles and values, personal and civic responsibilities).

Integrated Skills

1. Information literacy skills

Students will . . .

- Analyze primary and secondary sources to gather, organize, and analyze information.
- Use skimming and search skills.
- Make informed decisions.
- Use prior and background knowledge as basis for new learning.
- Use technology as a tool to support learning.

2. Media literacy skills

Students will . . .

- Read, view and listen to information delivered via different media formats in order to gather implicit and explicit information.

3. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas, information, and express own point of view.
- Write in response to questions.
- Collaborate with others to deepen understanding.
- Convey messages through visual images.

4. Study skills

Students will . . .

- Take notes.
- Use graphic organizers.
- Manage time and materials.

5. Thinking skills

Students will . . .

- Think historically
- Analyze cause-and-effect relationships.
- Describe and recall information.
- Make personal connections.
- Draw conclusions.
- Synthesize information.
- Evaluate and judge opinions.
- Use sound reasoning and logic.

6. Problem-solving skills

Students will . . .

- Use sound reasoning as the basis for decisions.
- Ask meaningful questions.
- Explain the interconnections within a process that are needed to achieve resolution.

7. Participation skills

Students will . . .

- Contribute to small and large group discussion.
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings, and convictions.
- Show initiative and selfdirection.

ASSESSMENT

Evidence of achievement may be gathered from student performance related to the following:

1. Class prep assignments
2. Research Activity
3. Take-Home Quiz (Venn diagram and questions)
4. Political Cartoon (Rubric included)

VOCABULARY

branches of government	judge	precedent
case	judicial review	respondent
certiorari	judiciary	rule of law
checks and balances	law	separation of powers
court	limited power	Supreme Court of the United States
dissenting opinion	majority opinion	trial
enumerated power	opinion of the court	uphold
government	party	writ
jurisdiction	petitioner	

Resources for Definitions

Annenberg Classroom Glossary

<http://www.annenbergclassroom.org/terms>

Constitutional Glossary from the online book *Our Constitution* by Donald A. Ritchie

http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Constitutional%20Glossary_Our%20Constitution.pdf

Federal Judicial Center: Inside the Federal Courts -- Definitions

<http://www.fjc.gov/federal/courts.nsf>

Oyez—Glossary of Legal Terms

<http://www.oyez.org/glossary/>

FindLaw—Law Dictionary

<http://dictionary.lp.findlaw.com/>

LESSON OVERVIEW

Class Prep for Students: Study and Work Before Class

This lesson recommends that students spend time reviewing and studying specific print and Internet resources to build background knowledge and understanding so they are best prepared for class. Therefore, a class prep assignment sheet is provided with the lesson. Ideally, a single folder with the print resources and materials for before-class preparation should be loaded and made available to the students so they have at least one night to prepare and take notes before class.

DAY 1: When Constitutional Powers are Challenged

Students conduct Internet research using primary and secondary sources for Supreme Court cases involving disputes about Constitutional powers which occurred at different times in U.S. history.

DAY 2: Constitutional Conflict Continues

Students share their research and reflect on the role of conflict in American democracy and the responsibilities and involvement of the Supreme Court.

Note to Teachers:

Throughout the lesson, help students recognize the values and principles that are working behind the scenes to make the principles of separation of powers and checks and balances work in the United States.

Courts may help with problem-solving in a constitutional democracy, but the extent of their success, and the success of democracy itself, depends on all Americans exercising certain dispositions or traits of character, adhering to democratic principles and values, and understanding and exercising personal and civic responsibilities.

Civic Dispositions/Traits of Character	Civic Responsibilities	Personal Responsibilities
<ul style="list-style-type: none"> • individual responsibility • self discipline/self governance • civility • courage • respect for the rights of other individuals • honesty • open mindedness • critical mindedness • negotiation and compromise • persistence • civic mindedness • compassion • patriotism 	<ul style="list-style-type: none"> • obeying the law • respecting the rights of others • being informed and attentive to public issues • monitoring political leaders and governmental agencies and taking appropriate action if their adherence to constitutional principles is lacking • performing public service • serving as a juror 	<ul style="list-style-type: none"> • taking care of one's self • accepting responsibility for the consequences of one's actions • adhering to moral principles • considering the rights and interests of others • behaving in a civil manner <p style="font-size: small; margin-top: 10px;">Source: National Standards for Civics and Government (1994)</p>

Materials and Equipment for this Lesson

Materials/Equipment Needed

- Paper and pencil
- Colored highlighters per student
- Computer with Internet access and projector for class viewing
- Computer lab
- Tape or board magnets

Lesson Materials Included

- Resources
 - o From *Our Constitution* by Donald A. Ritchie:
 - a. “Chapter 2: What Kind of Government Did the Constitution Create?”
 - b. “Chapter 5: How is the Constitution Interpreted?”
 - o *Understanding Democracy: A Hip Pocket Guide* (Separation of Powers, pg. 90-93)
 - o U.S. Constitution: Articles I, II, and III
 - o The Court and Constitutional Interpretation
- Student materials
 - o Class Prep: Assignment Sheet
 - o Graphic Organizer: A Matrix of Power
 - o Research Activity: When Constitutional Powers are Challenged
- Teacher materials
 - o Video Follow-Up: Research Practice
 - o Venn Diagram: Separate and Shared Powers in the Federal Government
 - o Rubric for Political Cartoon: Separation of Powers

Internet Resources Needed from Annenberg and Others

- Annenberg Classroom Glossary
<http://www.annenbergclassroom.org/terms>
- Constitutional Glossary from the online book *Our Constitution* by Donald A. Ritchie
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Constitutional%20Glossary_Our%20Constitution.pdf
- Videos and video clips:
 - o “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”
<http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>
 - o Separation of Powers
<http://www.annenbergclassroom.org/page/supreme-court-qa-2005-our-constitution-a-conversation>
 - o Making the Constitution Work; The Supreme Court and the Boundaries of the Democratic Process
<http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>
- National Civics and Government Standards
<http://www.civiced.org/index.php?page=58erica>

About Annenberg Video Resources in the Lesson

Note to Teacher: The following videos or video collections are incorporated in this lesson either in full or in part. Because teaching time and needs vary, complete descriptions are provided below should you wish to expand the lesson with additional viewing.

1. Our Constitution: A Conversation (30 min)

<http://www.annenbergclassroom.org/page/our-constitution-a-conversation>

Description: In the summer of 1787, delegates to the Constitutional Convention gathered in Philadelphia to create a document that would establish the government of the United States. On September 17, that landmark document – our Constitution – was signed into law. This conversation on the Constitution, featuring Supreme Court Justices Sandra Day O’Connor and Stephen Breyer in a dialogue with Pennsylvania high school students at the Supreme Court in 2005, is the first in a series produced by the Annenberg Foundation Trust at Sunnylands for use in classrooms on Constitution Day.

- The collection of clips from this video can also be accessed from this page: Supreme Court Q & A – 2005

<http://www.annenbergclassroom.org/page/supreme-court-qa-2005-our-constitution-a-conversation>

2. The Constitution in Context (a collection of video clips)

<http://www.annenbergclassroom.org/page/the-constitution-in-context>

Description: The Constitution Project assembled a panel of constitutional scholars and legal experts to discuss issues raised by the Justices in our videos. Here, presented, are a number of excerpts from Justice Ruth Bader Ginsburg and Chief Justice John G. Roberts, each followed by an analysis and commentary from the panel. You can also choose to view just the commentary.

- The questions for the Justices in this collection come from the following full videos:
 - “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”
<http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>
 - o “A Conversation on the Constitution with Justice Ruth Bader Ginsburg on the Fourteenth Amendment”
<http://www.annenbergclassroom.org/page/conversation-14th-amendment>
 - o Questions for video clips in this collection:

Question 1: What does due process mean? (6 min. for “question and commentary”)

(From “A Conversation on the Constitution with Justice Ruth Bader Ginsburg on the Fourteenth Amendment”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o What is procedural due process?
- o What is substantive due process?
- o How did the 14th amendment expand due process?

Question 2: How do cases get to the Supreme Court? (3 min. for “question and commentary”)
(From video “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o What is standing?
- o What is the Supreme Court’s jurisdiction?
- o What is a *writ of certiorari*?

Question 3: Why is it necessary to deliver an opinion? (4.5 min. for “question and commentary”)
(From “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o What role do decisions serve for the Justices?
- o What does it mean when decisions are affirmed?
- o What does it mean with a decision is reversed?

Question 4: Why do we have 9 Supreme Court justices? (2.75 min. for “question and commentary”)
(From “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o Why have there always been nine Supreme Court Justices?
- o Why would a Justice recuse him/herself from hearing a case?
- o What happens when there is a tied decision?

Question 5: Who was the greatest Supreme Court justice? (5.25 min. for “question and commentary”)
(From “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o What principle did *Marbury v. Madison* help establish?
- o What is judicial review?
- o How did John Marshall strengthen the federal government?

Question 6: How did you prepare to argue before the Supreme Court? (3.75 min. for “question and commentary”)
(From “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o How do justices prepare for oral arguments?
- o What purposes do oral arguments serve for the justices?
- o How must a lawyer structure his/her oral argument?

Question 7: What gave Gideon the right to petition the Court? (4 min. for “question and commentary”)
(From “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o What did the Florida judge refuse to grant Clarence Earl Gideon during his first robbery trial?
- o What right did Clarence Earl Gideon assert in his petition to the Supreme Court?
- o What are in forma pauperis cases?

Question 8: What would we lose without the 14th Amendment? (6.30 min. for “question and commentary”)
(From “A Conversation on the Constitution with Justice Ruth Bader Ginsburg on the Fourteenth Amendment”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o What two ideas did the 14th amendment introduce to the Constitution?
- o How did the 14th amendment transform our country?

Question 9: Is the 14th Amendment interpreted differently over time? (6 min. for “question and commentary”)
(From “A Conversation on the Constitution with Justice Ruth Bader Ginsburg on the Fourteenth Amendment”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o How did the court initially interpret the 14th amendment?
- o What did the court claim the due process clause protected in *Lochner v. New York* (1905)?
- o When did the Court begin to interpret the 14th amendment as a protector of personal liberties?

Question 10: Do we need an equal rights amendment? (5.5 min. for “question and commentary”)
(From “A Conversation on the Constitution with Justice Ruth Bader Ginsburg on the Fourteenth Amendment”)

Note: The “View the question and commentary” option includes two back-to-back clips—(1) response by the Justice and (2) a commentary that addresses these additional questions:

- o Does the constitution guarantee equal rights to men and women?
- o What was the equal rights amendment?
- o Was the equal rights amendment ratified?

3. A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court (37 min)

<http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>

Description: The establishment of a federal judiciary was a top priority for this nation's founding fathers. In December 2006, Chief Justice of the United States John G. Roberts, Jr. and a group of high school students participated in a conversation about the high court – from its history and evolution to the methods Justices use in selecting and hearing cases to the role of an independent judiciary and other issues crucial to a healthy democracy today.

Questions covered in this video:

- Why is it important to have courts? (Start time 00:51; Stop time 02:20)
- Why does the Constitution devote less space to the courts than to the Congress and the Presidency? (Start time 02:21; Stop time 03:45)
- How do cases get to the Supreme Court? (Start time 03:46; Stop time 05:08)
- What gave Gideon the right to petition the Court directly? Start time 05:09; Stop time 06:19)
- Does it matter whether a case comes from the Federal or State Court? (Start time 06:20; Stop time 08:17)
- How does the court decide which cases to hear? (Start time 08:18; Stop time 09:52)
- How did you prepare to argue before the Supreme Court? (Start time 09:53; Stop time 11:37)
- How are cases decided? (Start time 11:38; Stop time)
- Do justices ever change their minds while deciding a case? (Start time 18:24; Stop time 19:55)
- Why do justices write opinions? (Start time 19:56; Stop time 22:10)
- Which Chief Justice was the greatest? (Start time 22:11; Stop time 25:33)
- What are the special responsibilities of the Chief Justice? (Start time 25:34; Stop time 27:31)
- Why do we have nine Supreme Court Justices on the Court? (Start time 27:32; Stop time 28:22)
- How do the courts apply the Constitution to contemporary issues? (Start time 28:23; Stop time 31:35)
- Is it difficult to look at the claim of a convicted murderer? (Start time 31:36; Stop time 35:37)
- Misconceptions about the courts. (Start time 33:31; Stop time 35:38)

4. Key Constitutional Concepts (62 min)

<http://www.annenbergclassroom.org/page/key-constitutional-concepts>

Description: These three 20-minute video segments examine key constitutional concepts. The first explains why the nation's framers created the Constitution. The second describes the protection of individual rights by highlighting the Supreme Court case of *Gideon v. Wainwright*, affirming the right to an attorney. The last explores the separation of powers using the Supreme Court case of *Youngstown v. Sawyer*, a challenge to President Truman's decision to take over steel mills during the Korean War.

Segment 1: Creating a Constitution (Start: 00:00)

Segment 2: One Man Changes the Constitution (Start time: 23:02)

Segment 3: Check and Balances (Start time 41:52)

5. The Constitution Project: An Independent Judiciary (34 min)

<http://www.annenbergclassroom.org/page/an-independent-judiciary>

Description: This film chronicles two key moments that defined our understanding of the role of the judiciary: the Cherokee Nation's struggles before the Supreme Court in the 1830s to preserve its homeland, and *Cooper v. Aaron*, the 1958 Supreme Court case that affirmed that states were bound to follow the Court's order to integrate their schools. An Independent Judiciary features Supreme Court Justice Stephen Breyer and some of the nation's leading Constitutional scholars.

6. A Conversation on the Constitution: Judicial Independence (32 min)

<http://www.annenbergclassroom.org/page/conversation-judicial-independence>

Description: Judicial independence is a cornerstone of democracy, guaranteed by the Constitution and enshrined in our system of government. In a conversation with students from California and Pennsylvania, three Supreme Court Justices – Sandra Day O'Connor, Stephen Breyer and Anthony Kennedy – discuss the Constitution and the role of judges who are sworn to uphold the laws of this nation and to protect the rights of all citizens.

TEACHING ACTIVITIES

CLASS PREP for STUDENTS: (See Student Assignment Sheet)

Materials and Resources Needed

- Print Materials (included with this lesson)
 - o From *Our Constitution* by Donald A. Ritchie:
<http://www.annenbergclassroom.org/page/our-constitution>
 - a. “Chapter 2: What Kind of Government Did the Constitution Create?”
 - b. “Chapter 5: How is the Constitution Interpreted?”

 - o *Understanding Democracy: A Hip Pocket Guide* (Separation of Powers, pg. 90-93)
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>

 - o U.S. Constitution: Articles I, II, and III (Available from The Annenberg Guide to the United States Constitution: What It Says, What It Means)
<http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>

- Internet Resources from Annenberg and its Affiliates
 - o Justice Learning—Democracy Glossary
<http://www.annenbergclassroom.org/terms>

 - o Constitutional Glossary from the online book *Our Constitution* by Donald A. Ritchie
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Constitutional%20Glossary_Our%20Constitution.pdf

 - o Video clip: Separation of Powers (2.5 min.)
<http://www.annenbergclassroom.org/page/supreme-court-qa-2005-our-constitution-a-conversation>

 - o Video clip: Making the Constitution Work (1.5 min.)
<http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>

 - o Video clip: Checks on the Judiciary (1.5 min)
<http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>

 - o National Civics and Government Standards
<http://www.civiced.org/index.php?page=58erica>

Several days before class, either load the print materials on the computer or distribute hard copies to the students. Review the Class-Prep: Assignment Sheet with the students and give them at least one night to do the work before the lesson in class. During preparation time, students will read resource material, view videos, and take notes which they may use later during the lesson.

Remind students to bring all work to class the next day.

DAY ONE: When Constitutional Powers are Challenged

Overview: Students conduct Internet research using primary and secondary sources for Supreme Court cases involving disputes about Constitutional powers which occurred at different times in U.S. history.

Goal: Students will learn about the Supreme Court's role in maintaining the separation of powers in a changing society as it exercises its authority, carries out its responsibilities under the Constitution, and uses its power of judicial review.

Materials/Equipment Needed:

- Class Prep: Assignment Sheet and students' completed work
- Computer with Internet connection and projector for class viewing
- Computer lab (recommended setting for this session)
- Paper and pencil for note-taking
- 3 different colors of highlighters

Included with this lesson:

- Video Follow-Up: Research Practice (1 copy per student)
- Research Activity: When Constitutional Powers are Challenged (1 copy per student)

Advance Preparation:

1. Load the student materials and resources (or distribute hard copies) so they are accessible to all students.
2. Preview all video segments.
3. Use the chart on the next several pages to select the Supreme Court cases you wish to focus on, given the time and level of your students.

Be sure to select cases that address powers questions for each branch of government – executive, legislative, judicial. Space is provided in the chart for your notes.

Keep in mind that these two cases will be covered in class as you make selections:

- *Marbury v. Madison* (1803)
- *Youngstown Sheet & Tool Company v. Sawyer* (1952)

Lesson: Separation of Powers and the Judiciary

	Constitutional Powers Challenged	Powers in Question		
	Supreme Court Cases	Executive	Legislative	Judicial
1.	<p>Marbury v. Madison (1803) Question: Is Marbury entitled to his appointment? Is his lawsuit the correct way to get it? And, is the Supreme Court the place for Marbury to get the relief he requests? Read About It: http://www.oyez.org/cases/1792-1850/1803/1803_0/</p>			
2.	<p>Ex Parte McCordle (1869) Question: May the Congress withdraw jurisdiction from the High Court after that jurisdiction has been given? Read About It: http://www.oyez.org/cases/1851-1900/1868/1868_2/</p>			
3.	<p>The Prize Cases (1863) Question: Did Lincoln act within his presidential powers defined by Article II when he ordered the seizures absent a declaration of war? Read About It: http://www.oyez.org/cases/1851-1900/1862/1862_0/</p>			
4.	<p>Mississippi v. Johnson (1867) Question: Could the Supreme Court constitutionally issue an injunction directed against the President? Read About It: http://www.oyez.org/cases/1851-1900/1866/1866_2/</p>			
5.	<p>INS v. Chadha (1983) Question: Did the Immigration and Nationality Act, which allowed a one-House veto of executive actions, violate the separation of powers doctrine? Read About It: http://www.oyez.org/cases/1980-1989/1981/1981_80_1832/</p>			
6.	<p>Bowsher v. Synar (1986) Question: Did the functions assigned by Congress to the Comptroller General of the United States under the Gramm-Rudman-Hollings Deficit Control Act of 1985 violate the doctrine of separation of powers? Read About It: http://www.oyez.org/cases/1980-1989/1985/1985_85_1377/</p>			
7.	<p>Morrison v. Olson (1988) Question: Did the Act violate the constitutional principal of separation of powers? Read About It: http://www.oyez.org/cases/1980-1989/1987/1987_87_1279/</p>			
8.	<p>Mistretta v. U. S. (1989) Question: Did the Act violate the nondelegation doctrine of the Constitution? Read About It: http://www.oyez.org/cases/1980-1989/1988/1988_87_7028/</p>			

Lesson: Separation of Powers and the Judiciary

	Constitutional Powers Challenged	Powers in Question		
	Supreme Court Cases	Executive	Legislative	Judicial
9.	<p>Schechter Poultry Corp. v. United States (1935) Question: Did Congress unconstitutionally delegate legislative power to the President? Read About It: http://www.oyez.org/cases/1901-1939/1934/1934_854/</p>			
10.	<p>United States v. Curtiss-Wright Export Corp. (1936) Question: Did Congress in its Joint Resolution unconstitutionally delegate legislative power to the President? Read About It: http://www.oyez.org/cases/1901-1939/1936/1936_98/</p>			
11.	<p>Myers v. United States (1926) Question: Did the Act unconstitutionally restrict the President's power to remove appointed officials? Read About It: http://www.oyez.org/cases/1901-1939/1924/1924_2/</p>			
12.	<p>Youngstown Sheet & Tool Company v. Sawyer (1952) Question: Did the President have the constitutional authority to seize and operate the steel mills? Read About It: http://www.oyez.org/cases/1950-1959/1951/1951_744/</p>			
13.	<p>Nixon v. United States (1974) Question: Is the President's right to safeguard certain information, using his "executive privilege" confidentiality power, entirely immune from judicial review? Read About It: http://www.oyez.org/cases/1970-1979/1974/1974_73_1766/</p>			
14.	<p>Buckley v. Valeo Question: Did the limits placed on electoral expenditures by the Federal Election Campaign Act of 1971, and related provisions of the Internal Revenue Code of 1954, violate the First Amendment's freedom of speech and association clauses? Read About It: http://www.oyez.org/cases/1970-1979/1975/1975_75_436/</p>			
15.	<p>Baker v. Carr (1962) Question: Did the Supreme Court have jurisdiction over questions of legislative apportionment? Read About It: http://www.oyez.org/cases/1960-1969/1960/1960_6/</p>			
16.	<p>City of Boerne, Texas v. Flores (1997) Question: Did Congress exceed its Fourteenth Amendment enforcement powers by enacting the RFRA which, in part, subjected local ordinances to federal regulation? Read About It: http://www.oyez.org/cases/1990-1999/1996/1996_95_2074/</p>			

Lesson: Separation of Powers and the Judiciary

	Constitutional Powers Challenged	Powers in Question		
	Supreme Court Cases	Executive	Legislative	Judicial
17.	<p>Dames and More v. Regan (1981) Question: Did the president have the authority to transfer Iranian funds and to nullify legal claims against Iran? Read About It: http://www.oyez.org/cases/1980-1989/1980/1980_80_2078/</p>			
18.	<p>Loving v. United States (1996) Question: Does the President have the authority, consistent with the separation-of-powers principle, to prescribe aggravating factors that permit a court-martial to impose the death penalty upon a member of the armed forces convicted of murder? Read About It: http://www.oyez.org/cases/1990-1999/1995/1995_94_1966/</p>			
19.	<p>Clinton v. Jones (1997) Question: Is a serving President, for separation of powers reasons, entitled to absolute immunity from civil litigation arising out of events which transpired prior to his taking office? Read About It: http://www.oyez.org/cases/1990-1999/1996/1996_95_1853/</p>			
20.	<p>Hamdi v. Rumsfeld (2004) Question: Did the government violate Hamdi's Fifth Amendment right to Due Process by holding him indefinitely, without access to an attorney, based solely on an Executive Branch declaration that he was an "enemy combatant" who fought against the United States? Does the separation of powers doctrine require federal courts to defer to Executive Branch determinations that an American citizen is an "enemy combatant"? Read About It: http://www.oyez.org/cases/2000-2009/2003/2003_03_6696/</p>			
21.	<p>Cheney v. U.S. District Court for the District of Columbia (2004) Question: Does the Federal Advisory Committee Act authorize judicial review of executive branch deliberations through a broad discovery process that allows a private organization to review internal documents of high-level advisors to the President? If such review is authorized by FACA, does it violate the Constitutional doctrine of separation of powers? Read About It: http://www.oyez.org/cases/2000-2009/2003/2003_03_475/</p>			

Sources for these cases:

- **FindLaw:** Separation of Powers and Checks and Balances (Relevant Supreme Court cases are referenced in the footnotes.)
<http://caselaw.lp.findlaw.com/data/constitution/article01/01.html>
- **OYEZ** (Search by "separation of powers")
<http://www.oyez.org/cases/>
- **University of Missouri-Kansas City School of Law**
 Exploring Constitutional Conflicts: Separation of Powers
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/separationofpowers.htm>

Procedure: Teacher-Led Instruction

1. Briefly review the concept of separation of powers and checks and balances while discussing the homework from the night before.
2. Show a 20 min. video segment on Separation of Powers.

Video: “Key Constitutional Concepts” available from Annenberg Classroom at this link:
<http://www.annenbergclassroom.org/page/key-constitutional-concepts>

Begin the video at time marker 41:52 for the last segment.

This segment explores the separation of powers by examining the Supreme Court case of *Youngstown v. Sawyer*, a challenge to President Truman’s decision to take over steel mills during the Korean War.

3. Ask students to access the Video Follow-Up: Research Practice page (or use their hard copies).
4. Discuss the chart then access a summary of *Youngstown v. Sawyer* by clicking on the link provided in the chart.
5. Review and discuss the summary. Point out the citation and interpret the code. Show students how they can access the official full text of the decision by clicking on the hyperlinked text “Written Opinion” when it is there.
6. Review the Research Tips on the activity sheet for using official and unofficial sources.
7. Review the summary for *Marbury v. Madison* in the same way.
8. Discuss the important precedent set by *Marbury v. Madison*, the power of judicial review that it established, and its implication for all cases involving separation of powers.
9. Divide students into three “power groups.” Distribute the Research Activity and assign the cases you selected in advance to represent power questions for each branch of government. There should be a group that focuses on executive power questions, legislative power questions, and judicial power questions.
10. Assign a color code for each group (e.g., all executive questions = blue)
11. Ask students to highlight all three groups accordingly whether they work on that group or not so they have the information.
12. Identify which columns of information you want students to complete (may vary by level of student).
13. Assign the research for homework.

DAY TWO: Constitutional Conflict Continues

Overview: Students share their research and reflect on the role of conflict in American democracy.

Goal: Students will develop appreciation and respect for the complex relationship between the branches of government and the role of the Supreme Court in maintaining the balance of powers.

Materials/Equipment Needed:

- Class-Prep: Assignment Sheet (and student work)
- Computer with Internet connection and projector for class viewing.
- Video from Annenberg Classroom:
“A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court” (37 min.)

<http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>

- Venn Diagram: Separated and Shared Powers in the Federal Government
- Political Cartoon Rubric: Separation of Powers (1 per student)

Procedure:

- Write these words on the board: “Equal Justice Under the Law”
- Watch Video Segment: (Watch the first 6:20 min. of this video) “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court” (37 min.)
<http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>

Point out: The right to petition the Supreme Court regarding a dispute and have it review your case belongs to every citizen. The same Court that decides cases involving ordinary citizens also resolves disputes between different branches of government. The notion of “Equal Justice Under the Law” – words written above the main entrance to the Supreme Court Building is the ultimate responsibility of the Supreme Court of the United States and it applies to everyone, including government leaders.

- Divide the class into their “power groups” to discuss, then present, the cases they researched to the class.
- Listening students should add information to the appropriately highlighted rows on their charts.
- After all groups have presented, ask students to reflect on the role of conflict and tension caused by the structure of government defined in the Constitution. Consider the pros and cons and discuss the behind the scenes factors that make it all work.

• Conclude by . . .

- Showing one of the video clips students watched as part of class prep: Separation of Powers (2.5 min.)

<http://www.annenbergclassroom.org/page/supreme-court-qa-2005-our-constitution-a-conversation>

- Quoting the words of Justice Kennedy from the other video clip: Making the Constitution Work (1.5 min.) <http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>

Justice Kennedy: “You think about separation of powers as this beautiful little machine, this kind of a mechanical metaphor in your mind when you think check and balances. It’s like a little clock ---the Congress enacts, the president vetos, the congress overrides, the court reviews. This magnificent machine. And there’s a reason for that, because the framers were fascinated with all kind of pendulums and clocks and machines, it’s a mechanical metaphor. But, I don’t care how exquisite it is on paper, it takes good faith to make the Constitution work. There must be a willingness on the parts of each branch of the government to recognize the perogatives and the competence and responsibilities of the other. The Constitution is not automatic. It doesn’t go on automatic pilot. It runs because you believe in it, because you understand it, because you support it, because you want it. That’s the only thing that makes it work.”

Assign Homework: Draw a Separation of Powers Political Cartoon

Goal: Sketch a separation of powers cartoon for one of the cases from your “power group.” It should convey a message, show historical context, illustrate a challenge to power, and portray the ruling by the Supreme Court. One or more frames may be used.

Materials needed:

- Political Cartoon Rubric: Separation of Powers (1 copy per student)

Instructions:

1. Discuss expectations for the cartoon based on the rubric provided.
2. Share a examples of political cartoons

Marbury v. Madison from StreetLaw.org

<http://www.streetlaw.org/en/Page.Landmark.Marbury.activities.cartoon.aspx>

Separation of Powers (from Newspapers in Education)

<http://www.nieonline.com/cftc/pdfs/separationofpowers.pdf>

Take-Home Quiz:

1. Using the resources and work for this lesson, students will complete the Venn Diagram: Separated and Shared Powers in the Federal Government.
2. Identify questions that you’d like students to respond to more fully.

Sources for questions:

1. Identify questions on the Class Prep: Assignment Sheet that students may choose from as a topic for writing an essay.
2. Use the statements that are listed as “Outcomes” for this lesson.
3. Allow students to substitute a relevant question of their own.

EXTENSION ACTIVITIES

Have more time to teach?

1. View and discuss the remainder of the video:

“A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court” (37 min.) <http://www.annenberghclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>

2. Discuss why it’s important for citizens to know about the separation of powers. Read what a presidential candidate had to say about presidential power and the fact check conducted by FactCheck.org that corrected his words.

“Edward’s Empty Threat” (November 2007) http://www.factcheck.org/edwards_empty_threat.html

3. View and discuss the cases named in the following resources

- Video clip: How the President Reacts to Court Decisions (2 min.)
From the full video “A Conversation on the Constitution: Judicial Independence”
<http://www.annenberghclassroom.org/page/conversation-judicial-independence>

- Segment 3: Check and Balances from the video “Key Constitutional Concepts”
<http://www.annenberghclassroom.org/page/key-constitutional-concepts>
(Start time 41:52; Stop time 62:00)

4. Discuss federalism as it relates to the separation of powers.

View video clip: Federalism (3.5 min.)

From the full video “Our Constitution: A Conversation”

<http://www.annenberghclassroom.org/page/our-constitution-a-conversation>

5. Discuss this question: What does conflict resolution have to do with the separation of powers and helping Americans solve problems?

View video clip: Helping to Solve Problems (2 min.)

From the full video “Our Constitution: A Conversation”

<http://www.annenberghclassroom.org/page/our-constitution-a-conversation>

6. View this video: “The Constitution Project: An Independent Judiciary” (34 min)

<http://www.annenberghclassroom.org/page/an-independent-judiciary>

This film chronicles two key moments that defined our understanding of the role of the judiciary: the Cherokee Nation’s struggles before the Supreme Court in the 1830s to preserve its homeland, and *Cooper v. Aaron*, the 1958 Supreme Court case that affirmed that states were bound to follow the Court’s order to integrate their schools.

- Compare and contrast the actions of the different branches of government and explain how those actions either strengthened or limited judicial powers.

7. Learn more about *Marbury v. Madison* (1803)

- View clips of questions covered in the collection “Constitution in Context”

Question 5: Who was the greatest Supreme Court justice? (5.25 min. for “question and commentary”)
(From “A Conversation with Chief Justice John G. Roberts, Jr. on the Origin, Nature, and Importance of the Supreme Court”

<http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court>

Note: The “question and commentary” includes a clip from a commentary that addresses these additional questions:

- o What principle did *Marbury v. Madison* help establish?
- o What is judicial review?
- o How did John Marshall strengthen the federal government?

8. Find other lessons on separation of powers from the New York Times Learning Network

<http://learning.blogs.nytimes.com/>

Conduct a Lesson Plan Search by “separation of powers” for a list of lessons.

9. Find more activities, lessons, and strategies for teaching Supreme Court cases.

Visit <http://www.streetlaw.org/en/landmark.aspx>

Information is provided to support activities and teaching strategies related to the following that can be adapted for any Supreme Court case:

- o case study
- o moot court
- o role play
- o political cartoon analysis
- o continuum exercises
- o Web site evaluation

Supporting Resources from AnnenbergClassroom.org, its Affiliates, and Others

More About Courts and Cases

Interactive Diagram of the Federal Court System

<http://www.annenbergclassroom.org/page/interactive-diagram-of-the-federal-court-system>

Our Rights (online book)

<http://www.annenbergclassroom.org/page/our-rights>

Pursuit of Justice: Supreme Court Decisions that Shaped America (online book)

<http://www.annenbergclassroom.org/page/the-pursuit-of-justice>

Our Constitution (online book)

<http://www.annenbergclassroom.org/page/our-constitution>

Constitutional and Issue Timelines

<http://www.annenbergclassroom.org/page/all-timelines>

Key Constitutional Concepts (Video)

<http://www.annenbergclassroom.org/page/key-constitutional-concepts>

The Annenberg Guide to the United States Constitution

<http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>

New York Times Learning Network

<http://learning.blogs.nytimes.com/>

Conduct a Lesson Plan Search by “separation of powers” for a variety of relevant lessons.

Additional Resources

Learn More About Separation of Powers

- Supreme Court of the United States

<http://www.supremecourtus.gov>

- U.S. Courts

<http://www.uscourts.gov/outreach/resources/separationofpowers.html>

- Power of the Supreme Court

http://supreme.lp.findlaw.com/supreme_court/supcthist.html

- National Archives: Teaching with Documents: Constitutional Issues: Separation of Powers

<http://www.archives.gov/education/lessons/separation-powers/>

Find Separation of Powers Cases

- FindLaw

Separation of Powers and Checks and Balances

(Relevant Supreme Court cases are referenced in the footnotes.)

<http://caselaw.lp.findlaw.com/data/constitution/article01/01.html>

- OYEZ (Search by “separation of powers”)

<http://www.oyez.org/cases/>

Find Supreme Court Opinions

- **Official source**

Supreme Court of the United States

United States Reports (electronic copies of the official bound volumes)

Note: “In case of discrepancies between the print and electronic versions of these bound volume materials, the print versions control.”

<http://www.supremecourt.gov/opinions/boundvolumes.aspx>

- **Unofficial sources**

FindLaw: <http://www.findlaw.com/casecode/supreme.html>

GPO Access: <http://www.gpoaccess.gov/supcrt/index.html>

OYEZ: <http://www.oyez.org>

Learn About the Constitution

- **National Constitution Center**

Search the Constitution by Supreme Court decisions

http://ratify.constitutioncenter.org/constitution/index_no_flash.php

“Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.”

-- Chief Justice John Marshall, *Marbury v. Madison* (1803)

RESOURCES

- *Our Constitution* by Donald Ritchie
 - “Chapter 2: What Kind of Government Did the Constitution Create?”
 - “Chapter 5: How is the Constitution Interpreted?”
- U.S. Constitution
 - Article I
 - Article II
 - Article III
- The Court and Constitutional Interpretation
- *Understanding Democracy*
 - Separation of Powers

2

*What Kind of
Government Did the
Constitution Create?*

Visitors to the U.S. Capitol often expect to find the President’s office there. They assume—incorrectly—that the entire government leadership must work under the Capitol’s recognizable dome. There is a President’s Room in the Capitol, but it is simply a ceremonial room that was set aside a century ago. Back when the President’s term ended on the same day as the Congress, on March 4, Presidents would use the room to sign or veto the last bills enacted at the end of a session. After 1933, when the Twentieth Amendment set different dates for the end of Presidential and congressional terms, Presidents rarely used the President’s Room. Instead, the President works across town, in the West Wing of the White House. The Supreme Court did once occupy a chamber in the Capitol Building, until 1935 when the separate Supreme Court building was opened across the street from the Capitol. The three branches come together now only occasionally, for an inauguration or a State of the Union message. Otherwise, they operate out of separate buildings in largely separate spheres.

Monarchs ruled the nations of the world when the U.S. Constitution was written in 1787. Some monarchies, such as the one that ruled Great Britain, also had parliaments in which the people and the aristocracy were represented. As parliamentary systems developed, they combined legislative and executive functions, with the prime minister and other cabinet members serving as members of Parliament. This differs sharply from the separation of powers established in our Constitution.

The delegates to the Constitutional Convention often referred to the English philosopher John Locke’s *Two Treatises on Government*, written in 1690 just after England’s Glorious Revolution of 1688 had strengthened Parliament’s hand against the king. Locke argued that all people were born with certain “natural rights” to life, liberty, and property, which governments existed to protect. Locke believed that a government should be seen as the agent of the people, not their ruler, and therefore should operate under some restraints. An equally influential book was *The Spirit of the Laws*, written in 1748 by the French philosopher the Baron de Montesquieu. Writing while France was still under the rule of an all-powerful monarchy, Montesquieu admired the British system that separated the powers of the monarch, the parliament, and the judiciary. In Britain, the king served as the head of state, performing ceremonial functions and commanding the military, while the prime minister functioned as the head of government, providing political and legislative leadership. Because the Americans had rebelled against Great Britain, the delegates modi-

fied Montesquieu's political theories into something that differed from the British parliamentary system. They created entirely separate executive, legislative, and judicial branches of government, making sure that no single branch would hold exclusive power, but each would check and balance the others. With power so divided, the independent branches must reach some common agreement for the federal government to act harmoniously.

Under the system of government the framers of the Constitution created, the President of the United States combines the monarch's role as head of state with the prime minister's role as head of government. The President serves as chief executive and commander in chief of the military. The President appoints the heads of the executive offices of the government and, with the officers he appoints, is responsible for administering the laws of the land. The President proposes legislation, and vetoes or approves bills that Congress enacts, but depends entirely on the legislature for all the funds necessary for operating the government. While the American Presidency has grown steadily more powerful, particularly in matters of diplomacy and military policy, the Constitution's division of powers has caused Presidents to contend with Congresses that have often disagreed with their policies and attempted to steer a different course.

As the only federal official elected by the entire population, Presidents feel they have a mandate from the people to lead in the manner they see fit and to establish the policies on which they campaigned. Presidents are elected separately from members of Congress. Their administrations do not fall if their party loses the legislative majority, unlike a prime minister whose party loses a working majority in Parliament. Often, American Presidents have had to cope with opposition party majorities in one or both houses of Congress. Democrats, for instance, lost their majorities in Congress two years into Bill Clinton's Presidency, in 1994, and for the next six years he faced Republican majorities in both the House and Senate. When Presidents are on the ballot, their "coattails" may help some fellow party members win election, which will encourage them to support the President's legislative agenda. The President's party leaders also do their best to ensure legislative victories.

Nonetheless, members of Congress feel that they are elected to represent the people of their states and districts. They often campaign on different issues than the President, even when they are members of the same party, and they often serve through several Presidential administrations. Members of Congress therefore resist being a "rubber stamp" for the President and act according to their own principles, and in the interests of their own constituents. Personal ambition plays a role as well, as some members of Congress may see themselves as candidates for the Presidency in future elections.

The different perspectives of the White House and the Capitol often create tensions between the branches. Presidents have the constitutional right to name cabinet officers, agency heads, diplomats, and federal judges, but these nominations must be confirmed by the U.S. Senate. Over the past two centuries, the Senate has confirmed all but a very small percentage of the executive branch nominations—on the assumption that Presidents deserve to work with people of their own choosing. But the statistics change dramatically for judicial nominations—on the grounds that the judiciary is an independent branch of the government, and that all federal judges hold lifetime appointments. Since the administration of George Washington, the Senate has blocked a third of all Supreme Court nominations. Senators also point out that the Constitution refers to Presi-

dents seeking the “advice and consent” of the Senate, and note that Presidents are much more likely to seek their consent than their advice. Senators therefore insist on scrutinizing all nominations and rejecting those they consider unfit.

Foreign policy has provided another major arena for struggle between the executive and legislative branches. Presidents conduct the foreign policy of the United States, but Congress appropriates the necessary funds and senators hold hearings in which they interrogate State Department officials about policy developments. The Senate also has the constitutional power to reject or approve by a two-thirds margin treaties that the President’s administration has negotiated. In the late nineteenth century, the Senate rejected a number of significant treaties, causing Secretary of State John Hay to compare a treaty entering the Senate to a bull entering the ring. “One thing is certain,” said Hay, “neither will leave alive.”

The most tragic confrontation between a President and the Senate took place after the First World War, when President Woodrow Wilson went to Paris to negotiate the Treaty of Versailles that ended the war and created a League of Nations to preserve the peace. Republicans by then had won the majority in the Senate, but Wilson took no Republican senators with him on that mission. Suspicious of the Democratic President’s treaty, and unwilling to see the United States enter the League, Republican senators sought to amend the treaty. But Wilson fought any changes and refused to authorize Democratic senators to reach a compromise with the Republicans. Wilson took his case directly to the American people, warning that without the League of Nations the world would face another war within a generation. On his national speaking tour, Wilson suffered a paralytic stroke and could offer no further leadership. The Senate then rejected the Treaty of Versailles and the United States never joined the League of Nations. A generation later, after the world had plunged into the Second World War, President Franklin D. Roosevelt learned from Wilson’s mistakes and made sure that prominent senators of both parties were involved in negotiating the treaty that created the United Nations, which the Senate overwhelmingly approved.

Although the Constitution gives Congress the sole power to declare war, Congress has not passed a declaration of war since World War II. Subsequent military missions overseas were authorized by congressional resolutions, some in support of United Nations efforts. In 1964, following a confrontation between American and North Vietnamese naval vessels in the Gulf of Tonkin, President Lyndon B. Johnson asked Congress to enact a resolution authorizing him to use military force in response to North Vietnamese military action. The Senate and House passed the Gulf of Tonkin Resolution with only two dissenting votes. Members of Congress saw their vote as an act of solidarity with the President at a critical moment, but none anticipated that he would use it as the equivalent of a declaration of war. Yet that was exactly how Johnson used the resolution when he sent large numbers of American combat troops to fight in Vietnam. Congress later repealed the Gulf of Tonkin Resolution, but it had no effect on American military policy. Johnson’s successor as President, Richard Nixon, insisted that the Gulf of Tonkin Resolution had not been necessary and that his powers as commander in chief were enough to continue the war effort.

As a result of the Vietnam War, Congress passed the War Powers Resolution in 1973, over President Nixon’s veto. The resolution required Presidents to notify Congress within set time periods when they sent American troops into

combat, and it permitted Congress to vote to withdraw troops from combat. The War Powers Resolution has proved difficult to implement, however, and neither Presidents nor Congress invoked it when the United States became involved in the Persian Gulf War in 1991 or the Iraq War in 2002.

The Constitution requires the President to give Congress a periodic report on the state of the union. Presidents have used the State of the Union message as a vehicle for recommending legislation to be enacted, and have therefore become the chief legislator as well as the chief executive. Presidents George Washington and John Adams delivered their State of Union addresses in person. Thomas Jefferson thought this practice too closely resembled the pomp of the monarch's messages to the British Parliament. Jefferson chose to send his message to be read aloud by clerks in the Senate and House. Other Presidents followed Jefferson's lead until 1913, when Woodrow Wilson revived the practice of delivering the message in person.

Throughout each session of Congress, Presidents meet regularly with the legislative leaders of the major parties, and will often contact individual legislators to win their support on key measures. The modern White House also maintains a congressional liaison staff that shepherds nominees through the Senate confirmation process and works with the leadership of the President's party to develop legislative strategies.

Presidents have complained that Congress attempts to "micromanage" the executive branch by specifically instructing agencies how to administer the laws. Congress has objected when Presidents have withheld documents it sought (a practice known as executive privilege), and when agencies have administered the laws in a different manner than the legislation specified. Congressional committees therefore hold oversight hearings, calling cabinet secretaries and other officials to explain and justify their departments' actions. When John F. Kennedy served in the House and the Senate, he believed that the real power in the American political system resided in the Oval Office. It was only after he was elected President and faced a skeptical Congress that he realized how much power resided on Capitol Hill. While an individual member has limited authority, the Congress as a whole can be a formidable opponent to any President's plans.

Yet, the Congress itself is divided into two very different bodies, the Senate and House of Representatives. Although the Senate has the exclusive power to confirm nominations and approve treaties, the two bodies participate equally in all legislation and appropriations. The Constitution permits each house to set its own rules, and as a result they have grown distinctly different. The larger House, where membership reflects the population of each state, has set rules that permit the majority to prevail, so long as it stays united. Members of the House operate under rules that limit how long they can speak and reduce their opportunities to block legislation from coming to a vote. The House operates under a hierarchy headed by the Speaker, who is elected by the majority party, and a Rules Committee, most of whose members are chosen by the Speaker. When the House leadership is ready to hold a debate and vote on a bill, the House Rules Committee determines how long the debate will last and how many amendments will be considered. Members of the House gain influence through their seniority, which requires them to win reelection and move up through their party's ranks until they chair a subcommittee or full committee.

By contrast to the majority-run House, the smaller Senate has set rules that



"So long as I have a mind to think, a tongue to speak, and a heart to love my country, I shall deny that the Constitution confers any arbitrary power on any President, or empowers any President to convert George Washington's America into Caesar's Rome."

— North Carolina Senator Sam Ervin, addressing students at the University of North Carolina at Chapel Hill in 1973



A CALL FOR AN EXPANDED GOVERNMENT

In his first Inaugural Address, delivered at the depth of the Great Depression, on March 4, 1933, Franklin D. Roosevelt spoke for those who believe that the U.S. Constitution is an elastic document, designed to grow with the times and to confer extraordinary authority in times of crisis. This is what he said:

If I read the temper of our people correctly, we now realize as we have never realized before our interdependence on each other; that we cannot merely take but we must give as well; that if we are to go forward, we must move as a trained and loyal army willing to sacrifice for the good of a common discipline, because without such discipline no progress is made, no leadership becomes effective. We are, I know, ready and willing to submit our lives and property to such discipline, because it makes possible a leadership which aims at a larger good. This I propose to offer, pledging that the larger purposes will bind upon us all as a sacred obligation with a unity of duty hitherto evoked only in time of armed strife. . . .

Action in this image and to this end is feasible under the form of government which we have inherited from our ancestors. Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form. That is why our constitutional system has proved itself the most superbly enduring political mechanism the modern world has produced. It has met every stress of vast expansion of territory, or foreign wars, or bitter internal strife, or world relations. It is to be hoped that the normal balance of Executive and legislative authority may be wholly adequate to meet the unprecedented task before us. But it may be that an unprecedented demand and need for undelayed action may call for temporary departure from that normal balance of public procedure.

give greater voice to the minority. In the Senate, all states are equally represented, meaning that California, with 34 million residents (and fifty-three representatives in the House) has two senators, as does Wyoming, with a half million residents (and one representative). The majority of all the senators therefore represent a minority of the population. For certain actions, the Constitution requires the approval of a “supermajority” of senators, such as the two-thirds vote needed to overturn a Presidential veto, to approve a treaty, or to convict a federal official who has been impeached by the House.

Senate rules add another supermajority requirement: it takes a vote of three-fifths of the Senate (currently sixty out of one hundred) to invoke cloture, closing a debate and calling for a vote. Unlike the House, which sets limits on the length of all speeches, senators can engage in “unlimited debate.” They can speak for as long as they feel necessary and can use the rules of the Senate to prevent a vote from occurring. This practice is called a filibuster, a name that comes from the Dutch word for “pirate,” for those who seize the Senate floor and hold it against all others to prevent a vote from being taken. Only if sixty senators agree can the majority leadership cut off debate and force a vote. Bills that sail through the House with little amendment, therefore, can be subject to delay and revision in the Senate.

Not until 1917 did the Senate establish the cloture rule to cut off filibusters. When the rule was first established, it took a two-thirds vote to establish cloture, which proved almost impossible to achieve. Over the next forty-six years, the Senate was able to invoke cloture only five times. The most significant cloture vote occurred on June 10, 1964. After fifty-five days of debate, supporters of the Civil Rights Act of 1964, which banned racial discrimination in all public facilities, mustered the necessary two-thirds of the Senate to cut off debate. Nine days later the Senate overwhelmingly approved the bill. Because the filibuster had so often been used to protect segregation, senators who favored civil rights had generally refrained from using the filibuster as a tactic. After segregation was illegal, however, the filibuster became a more universally employed tactic.

A CALL FOR A LIMITED GOVERNMENT

*In contrast to those who view the Constitution as expansive, there are others who see the role of the federal government as far more confined and insist that all powers not expressed in the Constitution belong to the states. Tom A. Coburn, a medical doctor who was elected first to the House of Representatives and then to the U.S. Senate from Oklahoma, campaigned on arguments that he expressed in his 2003 book *Breach of Trust: How Washington Turns Outsiders into Insiders*:*

In 1791, the framers clarified the Constitution's intent to limit the role of the federal government with the Tenth Amendment, which reads, 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' In other words, Congress's role is limited to providing for the common defense, regulating interstate commerce, providing for the general welfare, and levying taxes. All other powers are reserved for the states. . . . Still, most members of Congress are either ignorant of or indifferent to Congress's constitutional guidelines and the warnings in history that should caution us against consolidating too much power in a large central government. The courts themselves have overreached and undermined the founders' design for limited government. I always found it ironic when my Republican colleagues would deliver passionate speeches criticizing the judicial branch for not respecting the Constitution when they were gladly joining their colleagues in the legislative branch in violating the very same document. The next time a member of Congress criticizes the Supreme Court for not respecting the Constitution they should be prepared to offer legislation rescinding about half of the federal budget that is used for purposes never envisioned by our founders.

In 1975, liberal Democrats led a movement to make cloture easier to establish, reducing the needed number of senators from two-thirds to three-fifths. Despite that change, the filibuster has continued to distinguish the Senate from the House, the rules of which prohibit such tactics.

Committees in both the House and Senate hold hearings on prospective legislation, collecting information and listening to testimony, before they vote on a bill that will be reported to the full House or Senate for debate, amendment, and passage. Both the Senate and House must pass legislation in exactly the same form in order for it to be sent to the President for approval before it becomes law. Frequently, the two houses will pass different versions of the same piece of legislation. To resolve their differences they appoint members of each house to serve on a conference committee. Once the conference committee reaches agreement, it reports back to the Senate and House, which must accept or reject the conference report, but cannot amend it any further. The practical result of this complicated process is that legislation almost never passes in its original form, but is revised constantly until a sufficiently broad consensus can be reached. This helps to make sure that legislation benefits and appeals to large portions of the country rather than favoring one region or interest over the others.

To become law, the bill must still go to the White House. The President can approve and sign the bill or can veto—reject—the bill. It takes a two-thirds vote of both the House and Senate to overturn a Presidential veto. If Congress adjourns within ten days after sending a bill to the President, the President can decide not to act on it, neither signing nor formally vetoing it. This is called a pocket veto, which kills the bill, as Congress is out of session and cannot vote to overturn the veto. Presidents will often use the threat of a veto to convince Congress to pass a bill more to their liking. Presidents whose own party controls the majority in Congress will veto bills far less frequently than Presidents who face opposition majorities. Gerald Ford, who had spent decades in Congress as the Republican leader of the House, issued many vetoes during his Presidency to establish more legislative control over a Congress with large Democratic majorities.

In times of national emergency, the President can call the Congress into special session. This was a critical feature during the nineteenth century, when Congress met for just a few months each year, but it became unnecessary in the twentieth century, when Congress began meeting year round. During wartime and periods of economic crisis, Congress has tended to give the President much more room to act, passing legislation quickly and with less second guessing. This was especially true during the First and Second World Wars and during the First Hundred Days of Franklin D. Roosevelt's New Deal in 1933. The nation had been plunged into a deep depression that had caused many banks to fail, businesses to close, and workers to lose their jobs, a crisis so severe that members of both parties felt the urgency to approve the President's legislative proposals to restore economic order. During that period, members of Congress found themselves voting for bills on which they had held no hearings and sometimes had no chance to read in advance.

Once the struggles between Congress and the President have ended and the bill becomes law, it is still subject to judicial review. Even the legislative initiatives of Roosevelt's New Deal, which had overwhelming public and Congressional support, were reviewed by the Supreme Court, which struck down many of its major programs as unconstitutional. In one of the most significant

of the New Deal cases, the Supreme Court rejected the National Recovery Administration, which set production levels and wages for various industries, on the grounds that Congress had improperly delegated its own constitutional powers over commerce to an executive branch agency. Many other Presidents were frustrated by court rulings that ran contrary to objectives. This is why Presidents take such care in making judicial appointments, and why the Senate so often resists Presidential choices.

Other than creating the Supreme Court, the Constitution said less about the judiciary than any other branch of the government. The Constitution left it to Congress to set the number of justices on the Supreme Court and to create the lower federal courts. Congress did this with the Judiciary Act of 1789. Over the next two centuries the federal judiciary has grown larger, more influential, and more controversial. The U.S. Constitution stands as the “supreme law of the land,” as it identifies itself in Article VI, which puts federal law above state law, and federal court decisions over state court decisions, when they are in conflict. (Although federal law is supreme, state constitutions and courts are free to recognize rights beyond those included in the federal Constitution.)

Some federal judges have taken a more active approach to the law than others, striking down federal and state laws as unconstitutional. This puts the burden back on the state and federal legislatures to end programs or to pass new laws that will gain the courts’ approval. Some judges believe in interpreting the Constitution broadly to meet new developments in society, and therefore refer to a “living Constitution.” Others insist that they cannot go beyond the “original intent” of the founders in applying the Constitution to current situations. Both approaches weigh the accumulated court rulings and precedents and attempt to maintain some consistency in how the laws are interpreted. Sometimes the courts will dramatically reverse earlier rulings, declaring them to have been in error. This was especially notable in 1954 when the Supreme Court unanimously declared school segregation unconstitu-

tional, sixty years after a previous court had upheld racial segregation. Most cases dealing with federal laws are heard in the lower federal courts and only a few cases reach the

U.S. Supreme Court each term. Once a case reaches the Supreme Court through the appeals process, the Court can review, uphold, or overturn the decisions of other federal judges. The lower federal courts then must tailor their rulings to meet the standards set by the Supreme Court’s decisions.

In addition to the three branches, the federal government has also created a number of independent regulatory commissions that straddle the division of powers, performing quasi-administrative, legislative, and judicial functions. Beginning with the Interstate Commerce Commission in 1887 and continuing with the Federal Trade Commission in 1914, Securities and Exchange Commission in 1934, and later agencies, these commissions combine executive, legislative, and judicial functions in an effort to resolve complex economic issues outside of the political arena. Congress created these agencies under the commerce clause, which grants Congress the right to oversee interstate commerce, a justification that the federal courts have accepted as constitutional. The commissions are not entirely “independent,” however, as their members are appointed by the President, confirmed by the Senate, and subject to scrutiny by the courts.

This complex system of independence and interdependence among the branches of government also includes a system to punish those who act impro-

erly and violate their offices. Each house of Congress is authorized to discipline its own members, whether censuring (or condemning) them by a majority vote or expelling them by a two-thirds vote. The Constitution also authorizes the House of Representatives to impeach, a form of indictment, any judge or executive officer for “high crimes and misdemeanors.” A majority vote is required for the House to impeach. In order for an impeached officer or judge to be convicted, the Senate must hold a trial and cast a two-thirds vote. If this happens, the person is removed from office. The Vice President presides over such trials, except when a President has been impeached, in which case the chief justice of the United States presides.

Impeachment is a rare occurrence. Most executive branch officials accused of crimes either resign or are fired before impeachment proceedings can begin, but federal judges serve lifetime appointments and cannot be fired. In the 1990s, three federal judges were impeached and removed from the bench for crimes ranging from tax evasion to bribery. There have been three impeachment efforts against Presidents. In 1868 and 1998, the House impeached Presidents Andrew Johnson and Bill Clinton. Both were acquitted in the Senate. In 1974, President Richard Nixon resigned in the face of an impeachment that would likely have led to conviction in the Senate.

Impeachment stands as a reminder that no federal official, even the President, is above the law and all can be brought to justice. The American constitutional system is often cumbersome and slow. It has frustrated Presidents and legislators alike. Yet, while the federal government has grown much larger, the basic powers and responsibilities of its three branches have changed very little since the Constitution was first implemented in 1789. In times of crisis, the branches of government pull together to meet a common threat. In ordinary times, they pull back to check and balance each other. No single branch has been able to amass total power and the government remains the agent of the people who elect it.



“It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also.”

—Thomas Jefferson,
letter to Spencer Roane,
September 6, 1819





5

How is the Constitution Interpreted?

“Those who put their names in the Constitution understood the enormity of what they were attempting to do: to create a representative democracy, with a central government strong enough to unify a vast, diverse, then and now politically fractious nation; but a government limited enough to allow individual liberty and enterprise to flourish. Well, 213 years later, we can say with thanks, they succeeded. Not only in keeping liberty alive, but in providing a strong, yet flexible, framework within which America could keep moving forward, generation after generation, toward making real the pure ideals embodied in their words.”

—President Bill Clinton, dedicating the National Constitution Center in Philadelphia on September 17, 2000

It irked President Thomas Jefferson that the Supreme Court in *Marbury v. Madison* (1803) and other cases had taken upon itself the power to declare acts of Congress unconstitutional. “There is not a word in the Constitution that has given that power to them,” Jefferson fumed in a letter to W. H. Torrance on March 11, 1815, about the Federalist justices who dominated the court in his day, “more than to the executive or the legislative branches.” Since then, other Presidents and congressional leaders have expressed similar outrage over Court rulings that truck down their legislative accomplishments. Liberals and conservatives alike have decried “judicial activism,” whenever rulings went against them. Despite these complaints, the Supreme Court has reserved the final word on whether the actions of the executive and legislative branches comply with the Constitution.

Constitutional law consists of the applications and legal interpretations of the Constitution, as distinguished from statutory law (the acts of Congress) and common law (the precedents established by lower court rulings). Constitutional law deals with the government’s legitimate functions and the limits that the Constitution places upon it. The executive and legislative branches constantly address new issues and establish new policies. Because Article III of the Constitution only gives federal courts the power to hear “cases or controversies,” only those persons who have been harmed by a law will have “standing” to challenge it.

An example of the question of “standing” occurred in 1995, when Congress enacted a “line-item veto” that enabled Presidents to veto a single funding item within a larger appropriations bill without having to veto the whole bill. A few members of Congress who had voted against the line-item veto brought suit in the federal courts on the grounds that their legislative “power of the purse” had been diminished. However, a court found that they lacked

standing—that is they had not been harmed by the line-item veto—and dismissed their suit. Then President Bill Clinton used the line-item veto to strike out funding that would have gone to New York City, and the courts heard the city’s suit because it did clearly have standing. In *Clinton v. City of New York* (1998), the Supreme Court struck down the line-item veto as unconstitutional.

Although all federal officers take an oath to uphold the Constitution, they often read that document very differently. Presidents assert powers that they believe the Constitution gives them by implication. Congress enacts laws it deems “necessary and proper” to carry out its constitutional role. Their overlapping powers and responsibilities are an invitation to struggle. “The Constitution was designed to force conflict,” said House Speaker Newt Gingrich in a December 6, 2004, interview on National Public Radio’s *Morning Edition*. “You elect 100 senators, two per state. They’re not part of the president’s team. They work with the president, not for the president. You elect 435 House members by population; they work for the people who elect them. Then you have the president, who’s elected every four years by the whole country.” And, often the struggle between the executive branch and the legislature involves the President’s nomination of and the Senate’s right to approve or reject judicial appointments, who will interpret the Constitution.

Political parties also play a role in the varying interpretations of the Constitution, even though the Constitution made no mention of them. Those who favor a limited national government and more states’ rights have gravitated toward one party, while those favoring a stronger, more active federal government tended toward another. Presidents George Washington and John Adams were identified with the Federalist Party, which tended toward a dominant federal government, but their party lost the Presidency and majorities in both houses of Congress to the Democratic-Republicans, who favored states’ rights, in the election of 1800. This first transfer of power between the parties left only the judiciary under the control of the Federalists, since only Federalist-appointed judges were then serving. President Thomas Jefferson, a Democratic-Republican, then set out to purge the Supreme Court by encouraging his supporters in the House to impeach Supreme Court justice Samuel Chase. A bitter partisan who never hesitated to speak his mind, Justice Chase struck many of Jefferson’s supporters as lacking a judicial temperament; however, this was hardly an impeachable offense. Jeffersonians in the House accused Chase of some minor infractions on the bench, but essentially accused him of having rendering legal interpretations of the law in “an arbitrary, oppressive, and unjust way.” Had these trumped-up charges succeeded in convicting Chase, the Jeffersonians might have also tried to remove Chief Justice John Marshall. However, Justice Chase was acquitted at his Senate trial, discrediting the notion of using impeachment as a political tool.

Within a few years, the Federalist Party crumbled and the United States entered into a period of one-party rule, called the Era of Good Feelings. Although unified on the surface, political leaders had sharply different opinions over what the Constitution meant and how the government should operate. The Era of Good Feelings ended with the hotly contested election of 1824, in which Andrew Jackson won the greatest share of the popular vote but lost the election in the House of Representatives to John Quincy Adams. Jackson’s followers created their own party, the Democrats, while his opponents called themselves the Whigs, borrowing that name from the British political party that opposed the king, and supported social reforms in Parliament. In 1828 Jackson won the

Presidency and began to spar with the Whigs in Congress—where the majorities fluctuated between Democrats and Whigs.

One of the clashes during this period between the executive and judicial branches dealt with efforts to remove Native Americans from their lands in the East and relocate them west of the Mississippi River. After the discovery of gold on Cherokee lands, the state of Georgia refused to recognize the Cherokees as a sovereign nation and opened tribal lands to white settlers. The Cherokees appealed to the courts, and in the case of *Cherokee Nation v. Georgia* (1832), Chief Justice John Marshall upheld their rights. President Jackson, who disagreed with the Court's order, refused to carry it out. "John Marshall has rendered his decision," Jackson supposedly said, "now let him enforce it." Jackson instead supported the Indian Removal Act, which paid the tribes for their land in the East and relocated them to new territory in the West. In 1838 the U.S. Army carried out that act and forcibly evicted the Cherokees who had resisted, sending them on the Trail of Tears to Oklahoma, so named because so many Cherokees died on the rugged journey.

Slavery also became a political and constitutional question. The question of whether slavery should be allowed to spread into the newly acquired western territories split apart the existing parties and encouraged the creation of the new Republican Party. When Abraham Lincoln became the first Republican to be elected President, eleven Southern states seceded from the Union out of concern that Lincoln would prevent the extension of slavery into the West, and perhaps move to abolish it completely. Lincoln denied being an abolitionist. Although he opposed the spread of slavery, he believed that the Constitution protected slaveholding where it already existed. During the Civil War, Lincoln signed an executive order known as the Emancipation Proclamation that freed people enslaved in territories under insurrection against the federal government. This act did not free anyone in the border states that had remained within the Union. Not until after the South was defeated did the Thirteenth Amendment abolish slavery entirely.

After Lincoln's assassination, in the period of Reconstruction that followed the war, Congress fought fiercely with President Andrew Johnson over how to treat the defeated southern states. Johnson believed in carrying out Lincoln's lenient policies, while congressional Republicans preferred a much tougher stance designed to protect the newly freed African Americans in the South. To prevent the President from dismissing cabinet officers sympathetic to the congressional Republicans, the Tenure of Office Act in 1867 required Senate approval to remove a cabinet officer, just as the Senate needed to confirm appointments. President Johnson called the act unconstitutional and defiantly fired his secretary of war, Edwin Stanton. The House of Representatives impeached Johnson for this action and related issues in 1868. At his Senate trial, Johnson came within one vote of being removed from office. Congress later repealed the Tenure of Office Act, and in 1924 the Supreme Court belatedly confirmed the President's right to remove executive branch appointees.

As a condition for being readmitted to the Union, the North required the southern states to ratify the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, known as the Reconstruction Amendments. On the surface, the amendments provided African Americans with citizenship, equal protection of the laws, and the right to vote. But, the language of the amendments, especially the sweeping nature of the Fourteenth Amendment, opened wide new

areas for Congress to legislate and for the Court to interpret.

As the United States became a more industrial nation, the Supreme Court recognized the rights of corporations as “persons” under the Fourteenth Amendment and struck down efforts by the state and federal governments to regulate business as a violation of the amendment’s guarantee that no state shall “deprive any person of life, liberty, or property, without due process of law.” It would take another half century before the Supreme Court revised its interpretation of the amendment to permit laws that prohibited child labor, protected women workers, and set minimum wages for workers in general. Increasingly, the courts also used the Fourteenth Amendment to apply the restrictions and guarantees of the Bill of Rights to the states as well as to the federal government, using it to interpret laws related to voting and the rights of aliens and of criminal defendants. As the American industrial society developed, the federal courts changed their positions, becoming more tolerant of Presidential and legislative efforts to experiment with new means of protecting and improving the public welfare.

For the most part, the judicial branch has resisted intervening in the internal operations of the Congress. In the 1920s, when the Senate held highly publicized investigations into executive branch corruption, the Supreme Court confirmed the right of Congress to call any witnesses, even those who were not government officials, and to investigate anything remotely related to its legislative functions. Drawing on this authority, in the 1930s, congressional committees aggressively investigated the economic conditions that contributed to the Great Depression, the use of business lobbyists to shape legislation, and other issues.

After the Second World War, committees in both the House and Senate held sensationalized hearings into alleged Communist infiltration and subversion of government agencies. They subpoenaed numerous witnesses who had little connection with the government and interrogated them about their past political

JUSTICE JOHN MARSHALL HARLAN DISSENTS

The highest courts in some countries issue rulings without indicating what the votes of the justices were, or publishing dissenting opinions. The U.S. Supreme Court by contrast identifies how the justices voted and allows the majority to explain its rationale and the dissenters to explain their objections. As social thinking and public opinion change over time, however, these dissenting opinions may eventually prevail.

In the late nineteenth century, many southern states passed laws, called Jim Crow laws, requiring racial segregation in schools, transportation, and other public accommodations. African Americans sued on the grounds that these Jim Crow laws violated their civil rights under the Fourteenth Amendment’s guarantee of equal protection of the laws. When the African American Homer A. Plessy refused to leave the first-class compartment of a train in Louisiana, for which he had purchased a ticket, he was arrested and convicted of violating state law. The case went to the Supreme Court, which, in *Plessy v. Ferguson* (1896), decided that racial separation was constitutional so long as both races were treated equally, this became known as the doctrine of separate but equal. Justice John Marshall Harlan vigorously dissented from that opinion, arguing that “the thin disguise of ‘equal’ accommodations . . . will not mislead anyone, nor atone for the wrong this day done.”

Born in Kentucky, Justice Harlan had fought in the Union Army during the Civil War. President Rutherford B. Hayes, who had served as a Union general nominated him to the Supreme Court in 1877. A strong advocate of civil rights and civil liberties, Justice Harlan consistently argued in favor of a color-blind Constitution that would equally protect all citizens, black and white, and argued that Congress had the authority under the Fourteenth Amendment to protect the rights of African Americans. Although Justice Harlan was far out of step with his times, his arguments won favor with later generations. After the Supreme Court allowed segregation in general to continue for another half century, it voted unanimously in the case of *Brown v. Board of Education of Topeka, Kansas* (1954) to strike down segregation in public schools. Regardless of whether equal facilities were provided, the court now decided, segregation was inherently unequal because it created feelings of inferiority in those who were being segregated. Although he had died forty years earlier, Justice Harlan’s reasoning had finally prevailed.

beliefs and activities, particularly any involvement with the Communist Party. The Supreme Court eventually concluded that these practices had overstepped constitutional bounds. In *Watkins v. United States* (1957) the court insisted that an investigative committee had to demonstrate a legislative purpose to justify its probing. The Supreme Court further ruled that the Bill of Rights applied fully to all witnesses before Congress.

The civil rights movement for racial equality also pressed the various branches of the federal government to readjust their thinking. Since its 1896 ruling in *Plessy v. Ferguson*, the Supreme Court had tolerated racial segregation as long as all races were treated equally. In the 1954 case of *Brown v. Board of Education*, the Supreme Court reversed itself and found that segregated schools violated the constitutional ideal of equal treatment. Concluding that “separate but equal” facilities had been, in reality, grievously unequal, the Court ordered school integration “with all deliberate speed.”

Some southern states resisted this order, and when the governor of Arkansas refused to protect African American students trying to attend a previously all-white high school, President Dwight D. Eisenhower sent in the National Guard to ensure the students’ safety. When the state of Arkansas asserted that it had not been a party to the *Brown v. Board of Education* case and therefore was not bound by the Court’s decision, the Supreme Court responded unanimously. In the 1958 case of *Cooper v. Aaron* the Court ruled that it would tolerate no resistance to its judicial authority.

While the courts struck down segregation in schools, Congress enacted legislation to require racial integration in all forms of public transportation and accommodation. The legislation passed the House of Representatives but encountered a filibuster in the Senate. Opponents of the legislation conducted the longest filibuster in the Senate’s history, from March until June 1964, until a coalition of Democrats and Republicans gained enough votes to invoke cloture and shut off the debate. The Civil Rights Act of 1964 then won speedy passage.

The Supreme Court’s reversal of its stand on segregation marked the beginning of a dramatic shift in the Court’s outlook. Chief Justice Earl Warren’s dramatic rulings struck down traditionally sanctioned behavior as unconstitutional. Warren believed that the Supreme Court itself had contributed to national problems by not taking bolder action in the past. He pointed out that for most of the twentieth century, the population of the United States had been shifting from rural to urban areas, but state legislatures had not been redistricted to reflect these changes, and the courts had not objected. “Because of its timidity, it made change hopeless,” Warren wrote in his memoirs about the Supreme Court before his tenure. “It refused to enter, or to permit lower federal courts to consider, any litigation [or lawsuits] seeking to remedy unequal apportionment.” The justices had not intervened because they saw reapportionment as a political question best handled by the politicians. But the Warren Court, in the 1962 case of *Baker v. Carr* insisted that all legislatures must be reapportioned to guarantee one person, one vote.

Justice William J. Brennan Jr., who served on the Supreme Court from 1956 to 1990, promoted the idea of a “living Constitution,” in which legislators and federal judges adapted the Constitution “to cope with current problems and current needs.” For example, Justice Brennan believed that even though the death penalty had existed when the Constitution was adopted, it had become “cruel

scandal helped further refine interpretations of the Constitution. In 1971, the Supreme Court upheld the right of the New York Times and other newspapers to publish classified government documents on how the United States had gone to war in Vietnam, despite the government's protests that the "Pentagon Papers" jeopardized national security.

After five men were arrested while breaking into the Democratic National Committee offices in the Watergate building to plant eavesdropping devices in 1972, evidence mounted that implicated members of President Richard Nixon's administration. The Senate appointed a special committee to investigate these allegations, and during its hearings the committee learned that President Nixon had been secretly taping his conversations in the White House. The committee subpoenaed the tapes, but Nixon resisted, citing executive privilege. The case went to the Supreme Court, where eight of the nine justices, including those he had appointed, ruled that executive privilege did not cover evidence in a criminal case. (The decision was still unanimous as Justice William H. Rehnquist recused himself as a former official in the Nixon Justice Department.) The forced release of the tapes provided evidence that President Nixon had participated in a cover-up of the crime, forcing his resignation. The outcome of the Watergate scandal demonstrated that no one, not even the President of the United States, is above the law.

Following Watergate, Congress reasserted much of the authority it had lost to the Presidency over past decades. Sparring between the President and Congress grew more intense, particularly over the appointment of judges. In 1987, the Senate rejected President Ronald Reagan's nomination of Robert Bork to the Supreme Court. Although the former law professor and judge had extensive experience, liberal Democrats, who held the majority in the Senate, complained that his conservative ideology was beyond the mainstream. Bork's defeat was

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"It is obvious, that there can be no security to the people in any constitution of government, if they are not to judge of it by the fair meaning of the words of the text."

—Justice Joseph Story,
*Commentaries on the Constitution
of the United States*, (1833)

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THE FIGHT OVER THE WATERGATE TAPES

A mighty struggle took place between all three branches of the government over the release of President Richard M. Nixon's secret tape-recordings. This struggle tested the separation of powers, with the Congress, a special prosecutor, and the President disagreeing over the release of the tapes and the Supreme Court deciding among them.

In 1973, a special committee of the Senate was investigating irregularities in the previous year's Presidential campaign. Men associated with the Committee to Reelect the President had been arrested while breaking into Democratic National Committee headquarters at the Watergate building in Washington, D.C., in order to plant listening devices. The Senate Watergate Committee called various White House officials to testify, and one of them admitted that the President had secretly tape-recorded his own conversations in the Oval Office. The Committee immediately sought access to the tapes, but President Nixon refused to provide them on the grounds that the information they contained was covered by "executive privilege." The President argued that in order for the officers of the executive branch to make internal decisions and weigh policy choices they are entitled to keep internal discussions private and should not have to provide them to Congress or the courts. Although President Nixon later agreed to provide edited transcripts of selective tapes, he effectively stonewalled the committee's request.

At the same time, Archibald Cox, a special prosecutor looking into the Watergate break-in sought access to the tapes. President Nixon not only refused to comply but also fired Cox. Public opinion was so outraged over his action that Nixon eventually bowed to public pressure and appointed another special prosecutor, Leon Jaworski. Jaworski also demanded the tapes, taking his case to the U.S. Supreme Court. In *Nixon v. United States* (1974), the Court ruled 8-to-0 that executive privilege did not cover evidence needed for criminal prosecution. (Justice William Rehnquist did not participate because he had been previously involved in the case while he served in the Justice Department.) The Court ordered the President to turn the requested tape recordings over to the special prosecutor, which he did. One of these recordings, known as the "smoking gun," gave evidence that the President had been personally involved in a coverup of the Watergate burglary. With that revelation, Congress moved to impeach the President, who chose to resign from office instead.

Article I

Section 1

Section 1 - The Text

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 1 - The Meaning

The framers of the Constitution separated the powers of government into three branches, granting legislative power (the power to pass laws) to Congress, executive power (the power to administer the laws) to the president, and judicial power (the power to interpret and enforce the laws) to the courts. The unique and limited powers of Congress are contained in Article I.

The framers believed that this separation of powers would ensure that no one person or group of persons would be able to create, administer and enforce the laws, and that each branch would be a check on the power of the other two branches. Under this scheme, Congress cannot give its lawmaking powers to the executive or judicial branch. The courts are charged with ensuring that the three branches act independently and do not overreach their delegated powers. But in some instances, two branches of government are required to work together. For example, the Senate must approve the president's appointments to the U.S. Supreme Court, and the president has the power to veto acts of Congress or to pardon convicted criminals.

Another important principle is contained in Article I, Section 1: The federal government's power is limited to what is written in the Constitution. These are known as "enumerated powers." If the Constitution does not specifically give a power to the federal government, the power is left to the states.

Article I, Section 1 also requires that Congress be bicameral, that is, it should be divided into two houses, the Senate and the House of Representatives. At the time the Constitution was adopted, several states and the Continental Congress had only one lawmaking body. The creation of two legislative bodies reflected a compromise between the power of the states and the power of the people. The number of seats in the House of Representatives is based on population. The larger and more urban states have more representatives than the more rural, less-populated states. But the Senate gives power to the states equally, with two senators from each state. To become law, any proposed legislation must be passed by both the House and the Senate and be approved (or at least not vetoed) by the president.

Section 2

Section 2 - The Text

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]¹ The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

1. Modified by Amendment XIV, Section 2.

Section 2 - The Meaning

Article I, Section 2, specifies that the House of Representatives be composed of members who are chosen every two years by the people of the states. There are only three qualifications: a representative must be at least 25 years old, have been a citizen of the United States for at least seven years, and must live in the state from which he or she is chosen. Efforts in Congress and the states to add requirements for office, such as durational residency rules or loyalty oaths, have been rejected by Congress and the courts.

In 1966, the U.S. Supreme Court used the language, "chosen ... by the people of the several States" in Article I, Section 2, to recognize a federal right to vote in congressional elections. That right, along with the equal protection clause of the 14th Amendment, was later used by the U.S. Supreme Court to require that each congressional district contain roughly the same number of people, ensuring that one person's vote in a congressional election would be worth as much as another's.

Article I, Section 2, also creates the way in which congressional districts are to be divided among the states. A difficult and critical sticking point at the Constitutional Convention was how to count a state's population. Particularly controversial was how to count slaves for the purposes of representation and taxation. If slaves were considered property, they would not be counted at all. If they were considered people, they would be counted fully —just as women, children and other non-voters were counted. Southern slave-owners viewed slaves as property, but they wanted them to be fully counted in order to increase their political power in Congress. After extended debate, the framers agreed to the three-fifths compromise — each slave would equal three-fifths of a person in a state's population count. (Note: The framers did not use the word *slave* in the document.) After the Civil War, the formula was changed with the passage of the 13th Amendment, which abolished slavery, and Section 2 of the 14th Amendment, which repealed the three-fifths rule.

This section also establishes that every 10 years, every adult in the country must answer a survey — a monumental task when people move as often as they do and when some people have no homes at all. Based on the surveys, Congress must determine how many representatives (at least one required) are to come from each state and how federal resources are to be distributed among the states. The Constitution

set the number of House members from each of the original 13 states that was used until the first census was completed.

In 1929 Congress limited the House of Representatives to 435 members and established a formula to determine how many districts would be in each state. For example, after the 2000 census, Southern and Western states, including Texas, Florida and California, gained population and thus added representatives while Northern states, such as Pennsylvania, lost several members.

Congress left it to state legislatures to draw district lines. As a result, at the time of a census, the political party in power in a state legislature is able to define new districts that favor its candidates, affecting who can win elections for the House of Representatives in the following decade. This process — redrawing district lines to favor a particular party — is often referred to as gerrymandering.

Article I, Section 2, also specifies other operating rules for the House of Representatives. When a House member dies or resigns during the term, the governor of that state may call for a special election to fill the vacancy. The House of Representatives chooses its own speaker, who is in line to become president, if neither the president nor the vice president is able to serve.

Lastly, this section specifies that only the House of Representatives holds the power of impeachment. House members may charge a president, vice president or any civil officer of the United States with "Treason, Bribery or other high Crimes and Misdemeanors." (See Article II, Section 4.) A trial on the charges is then held in the Senate.

That happened during President Clinton's term. The House of Representatives investigated the president and brought charges against him. House members acted as prosecutors during an impeachment trial in the Senate. (See Article 1, Section 3.) Clinton was not convicted of the charges and he completed his second term as president.

Section 3

Section 3 - The Text

The Senate of the United States shall be composed of two Senators from each state, [chosen by the Legislature] thereof, ² for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]³

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

2. Modified by Amendment XVII.

3. Modified by Amendment XVII.

Section 3 - The Meaning

The Senate, which now has 100 members, has two senators from each state. Until 1913, senators were elected by their state legislatures. But since the adoption of Amendment XVII, senators have been elected directly by the voters of their states. To be a senator, a person must be more than 30 years old, must have been an American citizen for at least nine years, and must live in the state he or she represents. Senators may serve for an unlimited number of six-year terms.

Senatorial elections are held on a staggered basis so that one-third of the Senate is elected every two years. If a senator leaves office before the end of his or her term, Amendment XVII provides that the governor of his or her state sets the time for an election to replace that person. The state legislature may authorize the governor to temporarily fill the vacant seat.

The vice president of the United States is also the president of the Senate. He or she normally has no vote, but may vote in a tiebreaker if the Senate is divided on a proposed bill or nomination. The Senate also chooses officers to lead them through their work. One is the president pro tempore (*president for a time*), who presides over the Senate when the vice president is not available and, as is the Speaker of the House, is in the line of succession should the president or the vice president be unable to serve.

Although the House of Representatives brings charges of impeachment to remove a president, vice president or other civil officer, such as a federal judge, it is the Senate that is responsible for conducting the trial and deciding whether the individual is to be removed from office. The chief justice of the U.S. Supreme Court presides over the impeachment trial of a president. The senators act as the jury and two-thirds of those present must vote for removal from office. Once an official is removed, he or she may still be prosecuted criminally or sued, just like any other citizen.

Section 4

Section 4 - The Text

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December,]¹ unless they shall by Law appoint a different Day.

¹ *Changed by Amendment XX*

Section 4 - The Meaning

Article I, Section 4, gives state legislatures the task of determining how congressional elections are to be held. For example, the state legislature determines scheduling of an election, how voters may register and where they may cast their ballots.

Congress has the right to change state rules and provide national protection for the right to vote. The first federal elections law, which included prohibitions on false registration, bribery and reporting false election returns, was passed after the Civil War to enforce the ban on racial discrimination in voting established by Amendment XV. With the passage of the Civil Rights Acts of 1957 and 1964 and the Voting Rights Act of 1965, Congress extended protection of the right to vote in federal, state and local elections.

As a general rule, Congress determines how frequently it will meet. The Constitution provides only that it meet at least once a year. Amendment XX, Section 2, now provides that the first meeting of Congress begin at noon on Jan. 3 of each year, unless the members specify differently.

Section 5

Section 5 - The Text

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 5 - The Meaning

The House of Representatives and the Senate are each in charge of deciding whether an election of one of their members is legitimate. They may call witnesses to help them decide. Similarly, the House and Senate may establish their own rules, punish members for disorderly behavior and, if two-thirds agree, expel a member.

To do business, each chamber needs a quorum, which is a majority of members present. A full majority need not vote, but must be present and capable of voting.

Both bodies must keep and publish a journal of their proceedings, including how members voted. Congress may decide that some discussions and votes are to be kept secret, but if one-fifth of the members demand that a vote be recorded, it must be. Neither the House nor the Senate may close down or move proceedings from their usual location for more than three days without the other chamber's consent.

Section 6

Section 6 - The Text

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 6 - The Meaning

Members of Congress are to be paid for their work from the U.S. Treasury. Amendment XXVII prohibits members from raising their salaries in the current session, so congressional votes on pay increases do not take effect until the next session of Congress.

Article I, Section 6, also protects legislators from arrests in civil lawsuits while they are in session, but they may be arrested in criminal matters. To prevent prosecutors and others from using the courts to intimidate a legislator because they do not like his or her views, legislators are granted immunity from criminal prosecution and civil lawsuits for the things they say and the work they do as legislators.

To ensure the separation of powers among the legislative, judicial and executive branches of government, Article I, Section 6, prohibits a senator or representative from holding any other federal office during his or her service in Congress.

Section 7

Section 7 - The Text

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall

become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 7 - The Meaning

The House of Representatives must begin the process when it comes to raising and spending money. It is the chamber where all taxing and spending bills start. The Senate can offer changes and must ultimately approve the bills before they go to the president, but only the House may introduce a bill that involves taxes.

When proposed laws are approved by both the House and Senate, they go to the president. If the president signs the bill, it becomes law at the time of the signature, unless the bill provides for a different start date. If the president does nothing for 10 days, not including Sundays, the bill automatically becomes law, except in the last 10 days of the legislative term. In that time, the president can use a "pocket veto"; by doing nothing, the legislation is automatically vetoed.

If the president does not like the legislation, he or she can veto the bill, list objections, and send it back for reconsideration by the chamber where it originated. If the president vetoes a bill, the bill must be passed again with the votes of two-thirds of the House and the Senate for it to become law.

Congress also may change the bill to make it more acceptable to the president. Although, for political reasons, presidents are cautious about vetoing legislation, the threat of a veto will often press members of Congress to work out a compromise. Similarly, if Congress has the ability to override a veto, it is likely the president will make every effort to compromise on the issue.

Section 8

Section 8 - The Text

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and

Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; —And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 8 - The Meaning

Article I, Section 8, specifies the powers of Congress in great detail. These powers are limited to those listed and those that are "necessary and proper" to carry them out. All other lawmaking powers are left to the states. The First Congress, concerned that the limited nature of the federal government was not clear enough in the original Constitution, later adopted Amendment X, which reserves to the states or to the people all the powers not specifically granted to the federal government.

The most important of the specific powers that the Constitution enumerates is the power to set taxes,

tariffs and other means of raising federal revenue, and to authorize the expenditure of all federal funds. In addition to the tax powers in Article I, Amendment XVI authorized Congress to establish a national income tax. The power to appropriate federal funds is known as the "power of the purse." It gives Congress great authority over the executive branch, which must appeal to Congress for all of its funding. The federal government borrows money by issuing bonds. This creates a national debt, which the United States is obligated to repay.

Since the turn of the 20th century, federal legislation has dealt with many matters that had previously been managed by the states. In passing these laws, Congress often relies on power granted by the commerce clause, which allows Congress to regulate business activities "among the states."

The commerce clause gives Congress broad power to regulate many aspects of our economy and to pass environmental or consumer protections because so much of business today, either in manufacturing or distribution, crosses state lines. But the commerce clause powers are not unlimited.

In recent years, the U.S. Supreme Court has expressed greater concern for states' rights. It has issued a series of rulings that limit the power of Congress to pass legislation under the commerce clause or other powers contained in Article I, Section 8. For example, these rulings have found unconstitutional federal laws aimed at protecting battered women or protecting schools from gun violence on the grounds that these types of police matters are properly managed by the states.

In addition, Congress has the power to coin money, create the postal service, army, navy and lower federal courts, and to declare war. Congress also has the responsibility of determining naturalization, how immigrants become citizens. Such laws must apply uniformly and cannot be modified by the states.

Section 9

Section 9 - The Text

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No capitation, or other direct, Tax shall be laid, [unless in Proportion to the Census or Enumeration herein before directed to be taken.]⁵

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

5. Modified by Amendment XVI.

Section 9 - The Meaning

Article I, Section 9 specifically prohibits Congress from legislating in certain areas. In the first clause, the Constitution bars Congress from banning the importation of slaves before 1808.

In the second and third clauses, the Constitution specifically guarantees rights to those accused of crimes. It provides that the privilege of a writ of habeas corpus, which allows a prisoner to challenge his or her imprisonment in court, cannot be suspended except in extreme circumstances such as rebellion or invasion, where the public is in danger. Suspension of the writ of habeas corpus has occurred only a few times in history. For example, President Lincoln suspended the writ during the Civil War. In 1871, it was suspended in nine counties in South Carolina to combat the Ku Klux Klan.

Similarly, the Constitution specifically prohibits bills of attainder — laws that are directed against a specific person or group of persons, making them automatically guilty of serious crimes, such as treason, without a normal court proceeding. The ban is intended to prevent Congress from bypassing the courts and denying criminal defendants the protections guaranteed by other parts of the Constitution.

In addition, the Constitution prohibits “ex post facto” laws — criminal laws that make an action illegal after someone has already taken it. This protection guarantees that individuals are warned ahead of time that their actions are illegal.

The provision in the fourth clause prohibiting states from imposing direct taxes was changed by Amendment XVI, which gives Congress the power to impose a federal income tax. To ensure equality among the states, the Constitution prohibits states from imposing taxes on goods coming into their state from another state and from favoring the ports of one state over the ports of others.

Article I, Section 9, also requires that Congress produce a regular accounting of the monies the federal government spends. Rejecting the monarchy of England, the Constitution also specifically prohibits Congress from granting a title of nobility to any person and prohibits public officials from accepting a title of nobility, office, or gift from any foreign country or monarch without congressional approval.

Section 10

Section 10 - The Text

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the

United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Section 10 - The Meaning

Article I, Section 10, limits the power of the states. States may not enter into a treaty with a foreign nation; that power is given to the president, with the advice and consent of two-thirds of the Senate present. States cannot make their own money, nor can they grant any title of nobility.

As is Congress, states are prohibited from passing laws that assign guilt to a specific person or group without court proceedings (bills of attainder), that make something illegal retroactively (ex post facto laws) or that interfere with legal contracts.

No state, without approval from Congress, may collect taxes on imports or exports, build an army or keep warships in times of peace, nor otherwise engage in war unless invaded or in imminent danger.

Article II

Section 1

Section 1 - The Text

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted.

The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice.

In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]⁶

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice-President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]⁷

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive

within that Period any other Emolument from the United States, or any of them. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: —“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

6. Modified by Amendment XII.

7. Modified by Amendment XXV.

Section 1 - The Meaning

Article II, Section 1 establishes that the president has the power to run the executive branch of the government. This section, later modified by Amendments XII and XXV, outlines who is eligible to serve as president, establishes the Electoral College (the means by which the president and vice president are elected), and authorizes Congress to determine who will replace the president and vice president should they be unable to serve during their term of office.

Article II, Section 1 establishes that the president and vice president are to be elected at the same time and serve the same four-year term. Until 1951, presidents could serve for as many four-year terms as they could win. But after President Franklin D. Roosevelt was elected for four terms, Congress passed and the states ratified Amendment XXII, which limits a president to two terms (eight years) in office. In the rare case that a vice president (or other official) takes over for a president who has stepped down or died in office and serves more than two years of the remaining term, he or she is limited to one new term.

Rather than being elected directly by the people, the president is elected by members of the Electoral College, which is created by Article II, Section 1. It is not really a “college,” but a group of people who are elected by the states. Each state is entitled to the number of electors equal to the combined number of their representatives and senators in Congress.

Neither members of Congress nor other federal officials may serve as electors. Each state legislature decides how members of the Electoral College are to be selected and how they are to vote. For example, some states select electors at primary elections or at caucuses. In most states, electors vote for the presidential candidate who won the vote in their state. But in a few states, state law specifies that electors cast their votes according to the percentage of votes received by each candidate. If the Republican candidate receives 55 percent of the vote, he or she receives the votes of 55 percent of the electors. The creation of the Electoral College gives more power to the smaller states, rather than letting the people in the most populous states control who becomes president.

Additional rules were added in 1804, when Amendment XII was adopted. For example, the amendment creates the way a president is selected when neither candidate obtains a majority of votes in the Electoral College.

There are three minimum requirements to be elected president: one must be a natural-born citizen of the United States, must have lived in the United States for at least 14 years, and must be at least 35 years old.

Although Article II, Section 1 originally provided who should become president if the president dies, resigns, or is removed from office, Amendment XXV, added in 1967, modified the line of succession.

The president’s salary is set by Congress. To avoid allowing Congress to punish or reward the president while he or she is in office, the Constitution prohibits any change in salary during the president’s term. The president also is prohibited from receiving any other type of compensation or perks while in office.

Before assuming office, the president must swear or affirm to do his or her best to serve as the nation’s leader and to uphold the United States Constitution as the law of the land.

Article III

Section 1

Section 1 - The Text

The judicial Power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 1 - The Meaning

Article III establishes the federal court system. The first section creates the U.S. Supreme Court as the federal system's highest court. The Supreme Court has final say on matters of federal law that come before it. Today, the U.S. Supreme Court has nine justices who are appointed by the president with the approval of the Senate.

Congress has the power to create and organize the lower federal courts. Today, there are lower federal courts in every state. A case is filed and tried in the federal district courts and in some specialty courts, such as admiralty or bankruptcy courts. The trial courts look at the facts of the case and decide guilt or innocence or which side is right in an argument or dispute. The courts of appeal hear appeals of the losing parties. The appellate courts look at whether the trial was fair, whether the process followed the rules, and whether the law was correctly applied.

To ensure that they are insulated from political influence, federal judges are appointed for life as long as they are on "good behavior." This generally means for as long as they want the job or until they are impeached for committing a serious crime. In addition, the Constitution specifies that Congress cannot cut a judge's pay. This prevents members of Congress from punishing a judge when they do not like one of his or her decisions.

The Court and Constitutional Interpretation

“The republic endures and this is the symbol of its faith.”

—CHIEF JUSTICE
CHARLES EVANS HUGHES

*Cornerstone Address—
Supreme Court
Building*

“**E**QUAL JUSTICE UNDER LAW”—These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

The Supreme Court is “distinctly American in concept and function,” as Chief Justice Charles Evans Hughes observed. Few other courts in the world have the same authority of constitutional interpretation and none have exercised it for as long or with as much influence. A century and a half ago, the French political observer Alexis de Tocqueville noted the unique position of the Supreme Court in the history of nations and of jurisprudence. “The representative system of government has been adopted in several states of Europe,” he remarked, “but I am unaware that any nation of the globe has hitherto organized a judicial power in the same manner as the Americans. . . . A more imposing judicial power was never constituted by any people.”

The unique position of the Supreme Court stems, in large part, from the deep commitment of the American people to the Rule of Law and to constitutional government. The United States has demonstrated an unprecedented determination to preserve and protect its

written Constitution, thereby providing the American “experiment in democracy” with the oldest written Constitution still in force.

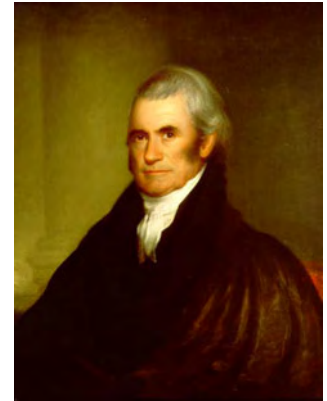
The Constitution of the United States is a carefully balanced document. It is designed to provide for a national government sufficiently strong and flexible to meet the needs of the republic, yet sufficiently limited and just to protect the guaranteed rights of citizens; it permits a balance between society’s need for order and the individual’s right to freedom. To assure these ends, the Framers of the Constitution created three independent and coequal branches of government. That this Constitution has provided continuous democratic government through the periodic stresses of more than two centuries illustrates the genius of the American system of government.

The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court’s considered judgment, conflict with the Constitution. This power of “judicial review” has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a “living Constitution” whose broad provisions are continually applied to complicated new situations.

While the function of judicial review is not explicitly provided in the Constitution, it had been anticipated before the adoption of that document. Prior to 1789, state courts had already overturned legislative acts which conflicted with state constitutions. Moreover, many of the Founding Fathers expected the Supreme Court to assume this role in regard to the Constitution; Alexander Hamilton and James Madison, for example, had underlined the importance of judicial review in the *Federalist Papers*, which urged adoption of the Constitution.

Hamilton had written that through the practice of judicial review the Court ensured that the will of the whole people, as expressed in their Constitution, would be supreme over the will of a legislature, whose statutes might express only the temporary will of part of the people. And Madison had written that constitutional interpretation must be left to the reasoned judgment of independent judges, rather than to the tumult and conflict of the political process. If every constitutional question were to be decided by public political bargaining, Madison argued, the Constitution would be reduced to a battleground of competing factions, political passion and partisan spirit.

Despite this background the Court's power of judicial review was not confirmed until 1803, when it was invoked by Chief Justice John Marshall in *Marbury v. Madison*. In this decision, the Chief Justice asserted that the Supreme Court's responsibility to overturn unconstitutional legislation was a necessary consequence of its sworn duty to uphold the Constitution. That oath could not be fulfilled any other way. "It is emphatically the province of the judicial department to say what the law is," he declared.



In retrospect, it is evident that constitutional interpretation and application were made necessary by the very nature of the Constitution. The Founding Fathers had wisely worded that document in rather general terms leaving it open to future elaboration to meet changing conditions. As Chief Justice Marshall noted in *McCulloch v. Maryland*, a constitution that attempted to detail every aspect of its own application "would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. . . . Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

The Constitution limits the Court to dealing with "Cases" and "Controversies." John Jay, the first Chief Justice, clarified this restraint early in the Court's history by declining to advise President George Washington on the constitutional implications of a proposed foreign policy decision. The Court does not give advisory opinions; rather, its function is limited only to deciding specific cases.

The Justices must exercise considerable discretion in deciding which cases to hear, since more than 10,000 civil and criminal cases are filed in the Supreme Court each year from the various state and federal courts. The Supreme Court also has "original jurisdiction" in a very small number of cases arising out of disputes between States or between a State and the Federal Government.

When the Supreme Court rules on a constitutional issue, that judgment is virtually final; its decisions can be altered only by the rarely used procedure of constitutional amendment or by a new ruling of the Court. However, when the Court interprets a statute, new legislative action can be taken.

Chief Justice Marshall expressed the challenge which the Supreme Court faces in maintaining free government by noting: "We must never forget that it is a *constitution* we are expounding . . . intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs."

[The foregoing was taken from a booklet prepared by the Supreme Court of the United States, and published with funding from the Supreme Court Historical Society.]

Separation of Powers

The separation of powers among three independent branches of government is a defining characteristic of the presidential system that characterizes the institutions of some constitutional democracies, such as Argentina, Brazil, Panama, the Philippines, and the United States of America. The U.S. Constitution is the original functional model for separation of powers among the legislative, executive, and judicial branches of government.

The legislative branch of the U.S. government, Congress, has the power, according to Article 1 of the Constitution, to make certain kinds of laws. In Article 2, the Constitution says that the executive branch, headed by the President, has the power to enforce or carry out laws. The judicial branch, headed by the Supreme Court, is established in Article 3 of the Constitution to interpret and apply the laws in court cases that come before it. Further, the first article of the Constitution divides legislative power between the two houses of Congress, the Senate and the House of Representatives. A majority vote in both houses is required for a bill to become law.

The Constitution provides to each branch of the government means to share in the power of the other branches. The mechanisms by which the three separate branches are able to restrain the others are called checks and balances.

There are several ways that one branch of the government checks the actions of another branch to maintain a balance of powers, so that no branch can dominate the others. The President, the chief of the executive branch, can check Congress by vetoing bills it has passed. But the President's veto can be overturned by a subsequent two-thirds vote of both houses of Congress. The President appoints executive branch officials and federal judges, including Justices of the Supreme Court. But the Senate, one part of the legislative branch, must approve the President's appointments by a majority vote; if not, the President's appointments are rejected.

The President is the commander in chief of the armed forces. But only Congress can enact legislation to provide funds to the armed forces and their commanders for their military operations.

The Constitution grants power to the president to make treaties with foreign governments, but the Senate has power to confirm or reject them. Additional examples of the separation and sharing of powers among the executive and legislative branches, involving checks and balances, are found in Articles 1 and 2 of the Constitution.

The judicial branch of government uses its power to interpret the Constitution and the laws made under it in order to check the other two branches of government and to maintain the separation of powers among the three branches. For example, the Supreme Court uses judicial review to prevent either the legislative or executive branch from violating the Constitution. The Court can declare null and void actions of the Congress or the President that exceed or contradict their powers as expressed in the Constitution.

The principle of judicial independence, established in Article 3 of the Constitution, prevents the other two branches from intimidating the judicial branch and impeding it from properly checking them if they overstep their constitutional boundaries. The Constitution provides for lifetime terms of office and prohibits Congress from punishing judges by reducing the level of payment for their services in order to buttress the judicial branch's independence.

Separation and sharing of powers among the three branches, through checks and balances, is the basic constitutional means for achieving limited government and thereby protecting the people from governmental abuses. Each branch of a constitutional government has some influence over the actions of the others, but no branch can exercise its powers without cooperation from the others. The constitution of a presidential democracy prevents any one branch from encroaching upon the domains of the other branches.

Under the system of checks and balances, no branch of the government can accumulate too much power. But each branch, and the government generally, is supposed to have enough power to do what the people expect of it. So, the government is both limited and empowered; neither too strong for survival of the

people's liberty nor too limited to be effective in maintaining order, stability, and security for the people.

During the founding era of the United States, James Madison expressed the importance of separated powers in a constitutional government. In the 47th paper of *The Federalist*, Madison wrote, "The accumulation of all powers, legislative, executive and judiciary, in the hands of one, a few, or many, and whether hereditary, self-appointed, or elected, may justly be pronounced the very definition of tyranny." In the next *Federalist* paper, Madison cautioned that unless the separate branches of government "be so far connected and blended [balanced] as to give each a constitutional control [check] over the others the degree of separation . . . essential to a free government can never in practice be duly maintained."

The parliamentary system of constitutional democracy also includes a distribution of powers in government among the legislative, executive, and judicial functions. The parliament enacts the laws, and the executive officers of the government, the prime minister in tandem with the various ministers of executive departments, execute the laws. However, the prime minister and other executive ministers derive their authority from the parliament and are answerable to it. In most parliamentary systems, there is an independent judiciary department that can declare null and void acts of the parliament or the executive ministers that violate the constitution. However, the parliamentary form of constitutional democracy is not based on a strict system of separated and shared powers.

Advocates of parliamentary democracy claim that it is more efficient than the presidential system, and that it is more responsive to the will of the people. They assert that the complex system of checks and balances among three separate and independent branches of government slows down decision making and sometimes thwarts the will of the majority of citizens, instead of directly and readily expressing it.

Defenders of separated and shared powers emphasize the importance of deliberate decision making in support of their system of constitutional democracy. They believe that the compromises

necessary to achieve agreement among different groups empowered with checks on the actions of the other groups result in a government that cannot act recklessly.

Justice Louis D. Brandeis of the U.S. Supreme Court nicely summed up the justification for separated and shared powers in the Constitution. In his dissenting opinion in the 1926 case *Myers v. United States*, Justice Brandeis wrote,

The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

SEE ALSO Constitutionalism; Government, Constitutional and Limited; Judicial Independence; Judicial Review; Parliamentary System; Presidential System

STUDENT MATERIALS

- Class Prep: Assignment Sheet
- Graphic Organizer: A Matrix of Powers
- Research Activity: When Constitutional Powers are Challenged

Class Prep: Assignment Sheet

This assignment sheet identifies resources and provides activities and questions to help prepare you for the class session on “Separation of Powers and the Judiciary.” Coming to class with the background knowledge provided by this material will help you develop an understanding of the Supreme Court’s authority and power under the Constitution.

Bring all work with you to class.

Activity 1: Understand the Terminology

- branches of government
- checks and balances
- Constitution
- enumerated power
- government, constitutional and limited
- implied power
- judicial review
- judiciary
- separation of powers

Resources for Definitions:

- Annenberg Classroom Glossary
<http://www.annenbergclassroom.org/terms>
- Constitutional Glossary from the online book *Our Constitution* by Donald A. Ritchie
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Constitutional%20Glossary_Our%20Constitution.pdf

Activity 2: Separate the Powers

Using the following resources, complete the Graphic Organizer: A Matrix of Powers (available from the Teacher).

Print (and Internet) Resources:

- From *Our Constitution* by Donald A. Ritchie:
<http://www.annenbergclassroom.org/page/our-constitution>
 - o “Chapter 2: What Kind of Government Did the Constitution Create?”
 - o “Chapter 5: How is the Constitution Interpreted?”
- *Understanding Democracy: A Hip Pocket Guide* (Separation of Powers, pg. 90-93)
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>
- U.S. Constitution: Articles I, II, and III (From The Annenberg Guide to the Constitution: What it Says, What it Means) <http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>

Internet-Only Resources:

- Video: Checks on the Judiciary (1.5 min)
<http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>
- National Civics and Government Standards (Access online; No print copies)
<http://www.civiced.org/index.php?page=58erica>
See: III. How does the government established by the constitution embody the purposes, values, and principles of American democracy?

Think About It:

1. Why did the framers of the Constitution decide to have 3 branches of government instead of one?
2. What is the role of the judiciary in relationship to the other 2 branches of government?
3. What does the Constitution explicitly say about the separation of powers?
4. Compare and contrast implied powers and enumerated powers?
5. Explain the origins of judicial review and how it relates to the power of the Supreme Court.
6. Where does the Supreme Court get its power?
7. Explain what the checking power of the Supreme Court is and how it works.
8. What makes it possible for the 3 branches of government to resolve their differences peacefully?

Activity 3: Watch, Listen, and Learn from the Justices

Video: Separation of Powers (2.5 min.)

<http://www.annenbergclassroom.org/page/supreme-court-qa-2005-our-constitution-a-conversation>

Video: Making the Constitution Work (1.5 min.)

<http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>

Video: The Supreme Court and the Boundaries of the Democratic Process (1.5 min.)

<http://www.annenbergclassroom.org/page/Supreme-court-qa-2006>

Follow-up

1. What words did Justice Breyer prefer to use to describe the way the government works and what were his reasons?
2. What accounts for the tension between the branches of government? In what ways is tension and stress both good and bad?
3. Explain the mechanical metaphor used by the Justice Kennedy to describe the separation of powers.
Quote Justice Kennedy's rhythmic statement that reinforced the metaphor:
4. Justice Kennedy spoke passionately about what is required to make the Constitution work beyond the structural organization defined by the Constitution. What message did he convey by the tone of his voice?

Quote the words of Justice Kennedy:

Graphic Organizer: A Matrix of Powers

Branches of Government	Primary Responsibilities	Checks on the Legislature	Checks on the Executive	Checks on the Judiciary
Legislative Branch Constitutional Authority: _____				
Executive Branch Constitutional Authority: _____				
Judicial Branch Constitutional Authority: _____				

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

As society changes, the lines of separation between the branches of government sometime become blurred and disputes arise over who's got the power under the Constitution. When Constitutional powers are legally challenged, the Supreme Court has the authority to hear the case and invalidate legislation or executive actions by judging them to be unconstitutional. "This power of 'judicial review' has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a 'living Constitution' whose broad provisions are continually applied to complicated new situations." ("The Court and Constitutional Interpretation" by the Supreme Court)

Instructions: Use primary and secondary sources to gather information about legal disputes between different branches of government and learn how they were resolved by the Supreme Court. Links are provided to case summaries to get you started.

1. **Read:** "The Court and Constitutional Interpretation" <http://www.supremecourtus.gov/about/constitutional.pdf>

2. **Research:**

- Use the citation. Every Supreme Court Opinion has an official citation that indicates the names of the parties involved, when the Supreme Court made its decision, who published the opinion, and the volume and page number for the case.

Example: *Board of Education v. Earls* ← (names of the parties in dispute)
536 U.S. 822 (2002)

536	U.S.	822	(2002)
Volume #	United States Reports <i>(Initials for the publisher)</i>	Page Number <i>(Page on which case begins)</i>	Year of Decision in parentheses

- Consult primary and secondary sources. Know what you're looking at. Is it a summary or full text? Is it from the official source or not? Summaries provide helpful overviews, but only quotes from the official source (*United States Reports*) are acceptable in a court of law.
 - Official source: Publisher: Supreme Court of the United States
United States Reports (electronic copies of the official bound volumes)
<http://www.supremecourtus.gov/opinions/boundvolumes.html>
 - Unofficial sources: Other publishers
 - OYEZ <http://www.oyez.org/cases/>
 - FindLaw <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&navby=year>
 - More Case Information
Landmark Supreme Court Cases <http://www.landmarkcases.org/>

Think About It

1. The power of judicial review is not explicitly provided by the Constitution, yet it is power used by the Court. What is your opinion about judicial review? Does it give the court too much power? Should it be a problem that judicial review is not in the Constitution?
- 2.

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
1.	Marbury v. Madison (1803) Citation: Read About It: http://www.oyez.org/cases/1792-1850/1803/1803_0/						
2.	Ex Parte McCardle (1869) Citation: Read About It: http://www.oyez.org/cases/1851-1900/1868/1868_2/						
3.	The Prize Cases (1863) Citation: Read About It: http://www.oyez.org/cases/1851-1900/1862/1862_0/						

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
4.	Mississippi v. Johnson (1867) Citation: Read About It: http://www.oyez.org/cases/1851-1900/1866/1866_2/						
5.	INS v Chadha (1983) Citation: Read About It: http://www.oyez.org/cases/1980-1989/1981/1981_80_1832/						
6.	Bowsher v. Synar (1986) Citation: Read About It: http://www.oyez.org/cases/1980-1989/1985/1985_85_1377/						

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
7.	<p>Morrison v Olson (1988)</p> <p>Citation: Read About It: http://www.oyez.org/cases/1980-1989/1987/1987_87_1279/</p>						
8.	<p>Mistretta v U. S. (1989)</p> <p>Citation: Read About It: http://www.oyez.org/cases/1980-1989/1988/1988_87_7028/</p>						
9.	<p>Schechter Poultry Corp. v. United States (1935)</p> <p>Citation: Read About It: http://www.oyez.org/cases/1901-1939/1934/1934_85_4/</p>						

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
10.	<p>United States v. Curtiss-Wright Export Corp. (1936)</p> <p>Citation: Read About It: http://www.oyez.org/cases/1901-1939/1936/1936_98</p>						
11.	<p>Myers v. United States (1926)</p> <p>Citation: Read About It: http://www.oyez.org/cases/1901-1939/1924/1924_2/</p>						
12.	<p>Youngstown Sheet & Tool Company v. Sawyer (1952)</p> <p>Citation: Read About It: http://www.oyez.org/cases/1950-1959/1951/1951_744/</p>						

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
13.	<p>Nixon v. United States (1974)</p> <p>Citation:</p> <p>Read About It: http://www.oyez.org/cases/1970-1979/1974/1974_73_1766/</p>						
14.	<p>Buckley v. Valeo</p> <p>Citation:</p> <p>Read About It: http://www.oyez.org/cases/1970-1979/1975/1975_75_436/</p>						
15.	<p>Baker v. Carr (1962)</p> <p>Citation:</p> <p>Read About It: http://www.oyez.org/cases/1960-1969/1960/1960_6/</p>						

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
16.	City of Boerne, Texas v. Flores (1997) Citation: Read About It: http://www.oyez.org/cases/1990-1999/1996/1996_95_2074/						
17.	Dames and More v. Regan (1981) Citation: Read About It: http://www.oyez.org/cases/1980-1989/1980/1980_80_2078/						
18.	Loving v. United States (1996) Citation: Read About It: http://www.oyez.org/cases/1990-1999/1995/1995_94_1966/						

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

	Case	Historical Context	Power(s) Challenged/ Branch(es)	Constitutional Question	Decision of the Court	Opinion of the Court (A Quote)	Dissenting Opinion (A Quote)
19.	Clinton v. Jones (1997) Citation: Read About It: http://www.oyez.org/cases/1990-1999/1996/95_1853/						
20.	Hamdi v. Rumsfeld (2004) Citation: Read About It: http://www.oyez.org/cases/2000-2009/2003/2003_03_6696/						
21.	Cheney v. U.S. District Court for the District of Columbia (2004) Citation: Read About It: http://www.oyez.org/cases/2000-2009/2003/2003_03_475/						

TEACHER MATERIALS

- Video Follow-Up: Research Practice
- Venn Diagram: Separate and Shared Powers in the Federal Government
- Political Cartoon Rubric: Separation of Powers

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

As society changes, the lines of separation between the branches of government sometime become blurred and disputes arise over who's got the power under the Constitution. When Constitutional powers are legally challenged, the Supreme Court has the authority to hear the case and invalidate legislation or executive actions by judging them to be unconstitutional. "This power of 'judicial review' has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a 'living Constitution' whose broad provisions are continually applied to complicated new situations." ("The Court and Constitutional Interpretation" by the Supreme Court)

Instructions: Use primary and secondary sources to gather information about legal disputes between different branches of government and learn how they were resolved by the Supreme Court. Links are provided to case summaries to get you started.

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1.	Marbury v. Madison (1803) http://www.oyez.org/cases/1792-1850/1803/1803_04						
2.	Youngstown Sheet & Tool Company v. Sawyer (1952) Citation: Read About It: http://www.oyez.org/cases/1950-1959/1951/1951_744/						

Discuss: Why is Marbury v. Madison important for cases involving Constitutional powers?

WHEN CONSTITUTIONAL POWERS ARE CHALLENGED

Research Tips

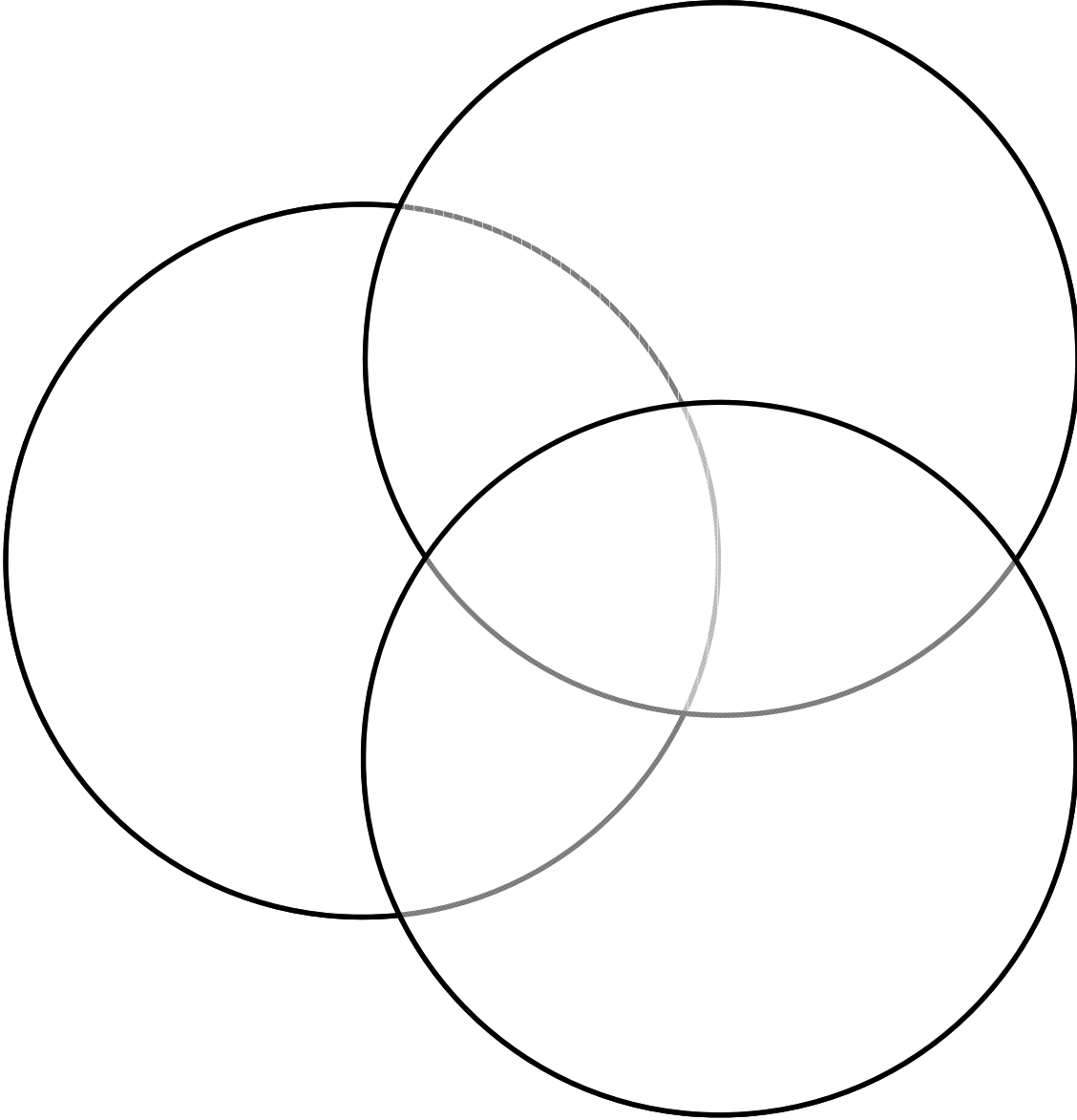
- Use the citation. Every Supreme Court Opinion has an official citation that indicates the names of the parties involved, when the Supreme Court made its decision, who published the opinion, and the volume and page number for the case.

Example: *Board of Education v. Earls* ← (names of the parties in dispute)
536 U.S. 822 (2002)

536 Volume #	U.S. <i>United States Reports</i> (Initials for the publisher)	822 Page Number (Page on which case begins)	(2002) Year of Decision in parentheses
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- Consult primary and secondary sources.
Know what you're looking at. Is it a summary or full text? Is it from the official source or not? Summaries provide helpful overviews, but only quotes from the official source (*United States Reports*) are acceptable in a court of law.
 - Official source: Publisher: Supreme Court of the United States
United States Reports (electronic copies of the official bound volumes)
<http://www.supremecourtus.gov/opinions/boundvolumes.html>
 - Unofficial sources: Other publishers
 - OYEZ <http://www.oyez.org/cases/>
 - FindLaw <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&navby=year>
 - More Case Information
Landmark Supreme Court Cases <http://www.landmarkcases.org/>

Venn Diagram Separated and Shared Powers in the Federal Government



Instructions: Through the use of colors, captions, labels, symbols, key, etc., complete this diagram in a way that illustrates and explains the separate and shared powers in the federal government and the checks in place to keep the balance.
(Option: May recreate using drawing tools in a software program.)

Political Cartoon Rubric: Separation of Powers

Elements Evaluated	Level of Quality				
	4	3	2	1	0
Political Cartoon	Contains historical details that show a deeper level of research and understanding about the time period.	Contains historical information in words and images that are accurate for the case and times.	Some historical facts and details are present either in word or images.	Few historical elements are present.	Contains no historical elements.
Power Issue	Accurately and creatively represents the power issues for the branch(es) of government involved.	Clearly and accurately portrays the branch(es) of government with power issues in the case.	It is difficult to tell which branch(es) had power issues or there is an error in the portrayal.	There is little evidence of power issues.	No power issues are conveyed.
Supreme Court Ruling	Clearly evident and uniquely presented with attention to facts and detail.	Obvious and correct.	Not easily discernable.	Present but with error.	No evidence.
Message	Clear and easily understood, but not stated explicitly in text. Conveys the opinion of the cartoonist.	Clear and easily understood. No textual errors are present.	Not clearly evident. Needs some improvement to convey a point.	Little meaning can be derived from the drawing.	No message is conveyed by the drawing.
Symbols and Techniques	Symbols and persuasive techniques used (symbolism, exaggeration, labeling, analogy, or irony) show a sophisticated level of understanding.	Familiar symbols are used. Labels and captions help clarify understanding.	Symbols used are not easily understood. Needs additional text or illustration to enhance meaning.	Symbolism is lacking. Relies totally on text.	Not appropriate for the task.

NATIONAL CIVICS AND GOVERNMENT STANDARDS

Source Document:

National Standards for Civics and Government (1944) Center for Civic Education

<http://www.civiced.org/index.php?page=stds>

- **Grades 5-8**
- **Grades 9-12**

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

Source: *National Standards for Civics and Government* (1994) Center for Civic Education
<http://www.civiced.org/index.php?page=stds>

Grades 5-8 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

National Standards for Civics and Government Gr. 5-8	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>I.A.1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.</p>	<p>Courts are among the institutions of government with the power and authority to direct or control the behavior of those in society.</p> <p>Interpreting laws in one of the responsibilities of government.</p>
<p>I.A.2. Necessity and purposes of government. Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.</p>	<p>The federal courts, which make up the judicial branch of the federal government, are responsible for interpreting the law, evaluating the constitutionality of federal laws, and the peaceful resolution of legal disputes.</p>
<p>I.B.1. Limited and unlimited governments. Students should be able to describe the essential characteristics of limited and unlimited governments.</p>	<p>The Constitution defines the limits of power for each branch of government—legislative, executive, and judicial.</p>
<p>I.B.2. The rule of law. Students should be able to explain the importance of the rule of law for the protection of individual rights and the common good.</p>	<p>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process.</p> <p>Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good. The use of precedent helps ensure continuity and fairness over time.</p>
<p>I.C.2. Purposes and uses of constitutions. Students should be able to explain the various purposes constitutions serve.</p>	<p>It is the Constitution, as the supreme law of the land, that defines the powers of each branch of government</p>
<p>1.C.3. Conditions under which constitutional government flourishes. Students should be able to explain those conditions that are essential for the flourishing of constitutional government.</p>	<p>Conditions that support a constitutional government include insisting that government officials respect limitations the constitution places on their authority.</p>
<p>I.D.1. Shared powers and parliamentary systems. Students should be able to describe the major characteristics of systems of shared powers and of parliamentary systems.</p>	<p>The U.S. has a shared powers system in which powers are separated among 3 branches of government with each branch having primary responsibility for certain functions.</p> <p>Congress may pass laws, but the Supreme Court may declare them unconstitutional.</p>
<p>II.A.1. The American idea of constitutional government. Students should be able to explain the essential ideas of American constitutional government.</p>	<p>The Constitution defines the limited powers for each branch of government.</p> <p>The limiting powers of the government under the U.S. Constitution are reflected in the system of shared and separate powers and checks and balances.</p>
<p>II.B.1. Distinctive characteristics of American society. Students should be able to identify and explain the importance of historical experience and geographic, social, and economic factors that have helped to shape American society.</p>	<p>As reflections of American society, Supreme Court cases provide glimpses of the historical issues and controversies that have helped shape American society.</p>

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 5-8	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>II.B.3. Diversity in American society. Students should be able to evaluate, take, and defend positions on the value and challenges of diversity in American life.</p>	<p>In a three-branch governmental structure with separate and shared powers, disputes over power and authority are inevitable as each branch has different perspectives and responsibilities. Disputes between branches of government can be resolved peacefully under the Constitution by the Supreme Court.</p>
<p>II.C.1. American identity. Students should be able to explain the importance of shared political values and principles to American society.</p>	<p>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for individual rights, justice under the law, and the right to live in peace. When Americans get involved in the judicial process they act on these shared values and principles in ways that reinforce and strengthen them.</p>
<p>II.C.2. The character of American political conflict. Students should be able to describe the character of American political conflict and explain factors that usually prevent violence or that lower its intensity.</p>	<p>Supreme Court decisions have helped resolve political conflicts throughout history and in the present.</p> <p>Even though there are differences of opinion regarding the interpretations of laws, those involved in the judicial process act out of a shared respect for the Constitution and its principles.</p> <p>Willingness to use the legal system to manage disputes helps reduce the potential for larger conflicts.</p>
<p>II.D.1. Fundamental values and principles. Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy.</p>	<p>The following values are important for the judicial process to work effectively:</p> <ul style="list-style-type: none"> • individual rights (majority and minority rights) • the common or public good • justice • equal opportunity (no gender discrimination) • diversity • openness and free inquiry • truth • patriotism <p>A constitutional government includes</p> <ul style="list-style-type: none"> • representative institutions • rule of law • shared powers • checks and balances • individual rights • federalism • separation of church and state
<p>II.D.2. Conflicts among values and principles in American political and social life. Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles are in conflict.</p>	<p>Supreme Court cases over separation of powers issues provide examples of conflicts that have occurred among the fundamental values and principles in this country.</p>
<p>II.D.3. Disparities between ideals and reality in American political and social life. Students should be able to evaluate, take, and defend positions on issues concerning ways and means to reduce disparities between American ideals and realities.</p>	<p>Supreme Court decisions help reduce the discrepancies between American ideals and the realities of political and social life in the United States.</p>

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 5-8	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>III.A.1. Distributing, sharing, and limiting powers of the national government. Students should be able to explain how the powers of the national government are distributed, shared, and limited.</p>	<p>Legislative, executive and judicial powers as defined by the Constitution are shared among the three branches of government. Primary judicial power resides with the judicial branch. Each branch has checking power on the other branches.</p>
<p>III.E.1. The place of law in American society. Students should be able to explain the importance of law in the American constitutional system.</p>	<p>The Supreme Court make decisions based on the rule of law which establishes limits on those who govern as well as the governed.</p> <p>Supreme Court cases provide both historical and contemporary examples of the rule of law. e.g., <i>Marbury v. Madison</i>.</p>
<p>III.F.1. The public agenda. Students should be able to explain what is meant by the public agenda and how it is set.</p>	<p>All disputes that reach the Supreme Court are ones that are “hot topics” in American society.</p>
<p>III.F.2. Political communication. Students should be able to evaluate, take, and defend positions on the influence of the media on American political life.</p>	<p>Supreme Court opinions are published and made accessible to the public through electronic and print media produced by official and unofficial sources.</p> <p>Annenberg Classroom offers a wide array of education resources to assist teachers across the country in the civic education of students, including easy access to primary sources.</p>
<p>V.C.1. Personal responsibilities. Students should be able to evaluate, take, and defend positions on the importance of personal responsibilities to the individual and to society.</p>	<p>Everyone involved in the judicial process has personal responsibilities as a citizen to respect the rights and interests of others.</p> <p>Important personal responsibilities include:</p> <ul style="list-style-type: none"> • accepting responsibility for the consequences of one's actions • adhering to moral principles • considering the rights and interests of others • behaving in a civil manner
<p>V.C.2. Civic responsibilities. Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</p>	<p>There are civic responsibilities associated with being an American citizen involved in the judicial system. These include:</p> <ul style="list-style-type: none"> • obeying the law • respecting the rights of others • being informed and attentive to public issues • monitoring political leaders and governmental agencies and taking appropriate action if their adherence to constitutional principles is lacking • performing public service <p>The success of the judicial process depends on those involved upholding their civic responsibilities.</p>

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 5-8	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy. Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy.</p>	<p>Courts may help with problem-solving in a constitutional democracy, but the extent of their success depends on all participants exercising certain dispositions or traits of character:</p> <ul style="list-style-type: none"> • Individual responsibility • Self discipline/self governance • civility • courage • respect for the rights of other individuals • honesty • open mindedness • critical mindedness • negotiation and compromise • persistence • civic mindedness • compassion • patriotism
<p>V.E.3. Forms of political participation. Students should be able to describe the means by which Americans can monitor and influence politics and government.</p>	<p>Students who are knowledgeable citizens can speak out and express their opinions when constitutional issues arise.</p>
<p>V.E.4. Political leadership and public service. Students should be able to explain the importance of political leadership and public service in a constitutional democracy.</p>	<p>Personal qualities necessary for political leaders and public servants include relevant knowledge about the judicial process and current issues, communication and people skills, and traits of character.</p>
<p>V.E.5. Knowledge and participation. Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</p>	<p>Citizens and students who are knowledgeable about the values and principles of American constitutional democracy can speak out about perceived offenses and communicate their concerns to public officials.</p>

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

Source: *National Standards for Civics and Government* (1994) Center for Civic Education
<http://www.civiced.org/index.php?page=stds>

Grades 9-12 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

National Standards for Civics and Government Gr. 9-12	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
I.A.1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.	Courts are among the formal institutions of government with the power and authority to direct or control the behavior of those in society. Interpreting laws and resolving legal disputes are the responsibilities of the judicial branch of government.
I.A.2. Necessity of politics and government. Students should be able to explain the major arguments advanced for the necessity of politics and government.	The federal courts, which make up the judicial branch of the federal government, are responsible for interpreting the law, evaluating the constitutionality of federal laws, and the peaceful resolution of legal disputes.
I.A.3. The purposes of politics and government. Students should be able to evaluate, take, and defend positions on competing ideas regarding the purposes of politics and government and their implications for the individual and society.	Some purposes of government such as providing for the nation's security has historically been a subject of dispute among the branches of government regarding which branch has the power.
I.B. 1. Limited and unlimited governments. Students should be able to explain the essential characteristics of limited and unlimited governments.	The Constitution defines the limits of power for each branch of government—legislative, executive, and judicial.
I.B.2. The rule of law. Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.	Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process. Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good. The use of precedent helps ensure continuity and fairness over time.
I.C.1. Concepts of "constitution." Students should be able to explain different uses of the term "constitution" and to distinguish between governments with a constitution and a constitutional government.	The Constitution as the supreme law of the land defines the branches of government and sets the limits of their powers.
I.C.2. Purposes and uses of constitutions. Students should be able to explain the various purposes served by constitutions.	It is the Constitution that sets the structure of the judicial branch, defines the role of the judiciary in relationship to the other branches of government, and gives federal courts the power to interpret the laws and resolve legal disputes. As the supreme law of the land, the U.S. Constitution places limits on government power.
I.D.1. Shared powers and parliamentary systems. Students should be able to describe the major characteristics of systems of shared powers and of parliamentary systems.	The U.S. has a shared powers system in which powers are separated among 3 branches of government with each branch having primary responsibility for certain functions. The Supreme Court, Congress and the President all share power over the laws of the nation.

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 9-12	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>II.A.1. The American idea of constitutional government. Students should be able to explain the central ideas of American constitutional government and their history.</p>	<p>The Constitution defines the limited and shared powers of the judicial branch of government. The judicial branch shares powers with other branches of government. The legislative branch makes the laws; the judicial branch interprets the laws, and the executive branch enforces the laws. The cooperation of all three branches is essential for the government to carry out its responsibilities.</p>
<p>II.A.2. How American constitutional government has shaped the character of American society. Students should be able to explain the extent to which Americans have internalized the values and principles of the Constitution and attempted to make its ideals realities.</p>	<p>Landmark Supreme Court decisions help make the values and principles of the Constitution a reality for all Americans.</p> <p>When Americans get involved in the judicial process they act on these shared values and principles in ways that end up shaping society.</p>
<p>II.B.4. Diversity in American society. Students should be able to evaluate, take and defend positions on issues regarding diversity in American life.</p>	<p>Conflicts are inevitable in a diverse society of 300 million people, but in a constitutional democracy, legal conflicts can be resolved peacefully. It is the mutual respect for Constitutional principles that makes resolution between parties possible.</p> <p>Supreme Court cases reflect the conflicts and controversies present in American society, and explain how the Court worked to help resolve them.</p>
<p>II.C.1. American national identity and political culture. Students should be able to explain the importance of shared political and civic beliefs and values to the maintenance of constitutional democracy in an increasingly diverse American society.</p>	<p>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law.</p>
<p>II.C.2. Character of American political conflict. Students should be able to describe the character of American political conflict and explain factors that usually prevent violence or that lower its intensity.</p>	<p>Even though there are differences of opinion regarding the interpretations of laws, those involved in the judicial process act out of a shared respect for the Constitution and its principles.</p> <p>Willingness to use the legal system to manage disputes helps reduce the potential for larger conflicts.</p> <p>Despite differences of opinion on the Court, when a decision is made, there is a definitive answer that becomes a guiding precedent for all future cases.</p>

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 9-12	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>II.D.3. Fundamental values and principles. Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.</p>	<p>The following values and principles are important for the judicial process to work effectively:</p> <ul style="list-style-type: none"> • individual rights (majority and minority rights) • the common or public good • justice • equality • diversity • openness and free inquiry • truth • patriotism <p>Principles fundamental to American constitutional democracy include</p> <ul style="list-style-type: none"> • Ultimate authority rests with the people • Representative institutions • Separated and shared powers • Checks and balances • Individual rights • Rule of law • Federalism
<p>II.D.4. Conflicts among values and principles in American political and social life. Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles may be in conflict.</p>	<p>Supreme Court cases over separation of powers issues provide examples of conflicts that have occurred among the fundamental values and principles in this country.</p>
<p>II.D.5. Disparities between ideals and reality in American political and social life. Students should be able to evaluate, take, and defend positions about issues concerning the disparities between American ideals and realities.</p>	<p>Decisions in landmark Supreme Court cases help reduce the discrepancy between reality and American ideals.</p>
<p>III.A.1. Distributing governmental power and preventing its abuse. Students should be able to explain how the United States Constitution grants and distributes power to national and state government and how it seeks to prevent the abuse of power.</p>	<p>As part of the judicial branch, courts have limited powers. They can only interpret laws that the legislative branch makes. Courts also depend on the executive branch to enforce their decisions about the law.</p>
<p>III.B.1. The institutions of the national government. Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.</p>	<p>The three branches of government share powers over the laws:</p> <ul style="list-style-type: none"> • Legislative branch: Congress makes the laws • Executive branch: President and agencies in the executive branch enforce the laws • Judicial branch: Supreme Court of the United States and other federal courts interpret the law
<p>III.D.1. The place of law in American society. Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system.</p>	<p>The courts make decisions based on the rule of law. The Supreme Court hears cases related to the Constitution and federal laws.</p> <p>Supreme Court cases provide both historical and contemporary examples of the rule of law.</p>
<p>III.E.1. The public agenda. Students should be able to evaluate, take, and defend positions about how the public agenda is set.</p>	<p>All disputes that reach the Supreme Court are ones that are “hot topics” in American society.</p>

National Standards for Civics and Government

Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 9-12	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>III.E.3. Political communication: television, radio, the press, and political persuasion. Students should be able to evaluate, take, and defend positions on the influence of the media on American political life.</p>	<p>Supreme Court opinions are published and made accessible to the public through electronic and print media produced by official and unofficial sources.</p> <p>Annenberg Classroom offers a wide array of education resources to assist teachers across the country in the civic education of students, including easy access to primary sources.</p>
<p>V.C.1. Personal responsibilities. Students should be able to evaluate, take, and defend positions on issues regarding the personal responsibilities of citizens in American constitutional democracy.</p>	<p>Everyone involved in the judicial process has personal responsibilities as a citizen to respect the rights and interests of others.</p> <p>Important personal responsibilities include:</p> <ul style="list-style-type: none"> • accepting responsibility for the consequences of one's actions • adhering to moral principles • considering the rights and interests of others • behaving in a civil manner <p>The success of the judicial process depends on those involved carrying out their personal responsibilities.</p>
<p>V.C.2. Civic responsibilities. Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</p>	<p>There are civic responsibilities associated with being an American citizen involved in the judicial system. These include:</p> <ul style="list-style-type: none"> • obeying the law • respecting the rights of others • being informed and attentive to public issues • monitoring political leaders and governmental agencies and taking appropriate action if their adherence to constitutional principles is lacking • performing public service • serving as a juror <p>The success of the judicial process depends on those involved upholding their civic responsibilities.</p>
<p>V.D.1. Dispositions that lead the citizen to be an independent member of society. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that lead individuals to become independent members of society.</p>	<p>Courts may help with problem-solving in a constitutional democracy, but the extent of their success depends on all participants exercising certain dispositions or traits of character:</p> <ul style="list-style-type: none"> • Individual responsibility • Self discipline/self governance • civility • courage • respect for the rights of other individuals • honesty • open mindedness • critical mindedness • negotiation and compromise • persistence • civic mindedness • compassion • patriotism
<p>V.D.2. Dispositions that foster respect for individual worth and human dignity. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that foster respect for individual worth and human dignity.</p>	<p>Those with respect for individual worth and human dignity tend to have these dispositions:</p> <ul style="list-style-type: none"> • Respect for the rights and choices of individuals—holding and advocating differing ideas • Compassion--concern for the well-being of others

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National Standards for Civics and Government Gr. 9-12	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>V.D.3. Dispositions that incline the citizen to public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that incline citizens to public affairs.</p>	<p>Citizens inclined to public affairs, such as public servants, tend to have these dispositions:</p> <ul style="list-style-type: none"> • Civic mindedness--what the Founders called civic virtue--or attentiveness to and concern for public affairs • Patriotism--loyalty to the values and principles underlying American constitutional democracy
<p>V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs.</p>	<p>Traits that facilitate thoughtful and effective participation in public affairs include</p> <ul style="list-style-type: none"> • civility--treating other persons respectfully, regardless of whether or not one agrees with their viewpoints; being willing to listen to other points of view; avoiding hostile, abusive, emotional, and illogical argument • respect for the rights of other individuals--having respect for others' right to an equal voice in government, to be equal in the eyes of the law, to hold and advocate diverse ideas, and to join in associations to advance their views • respect for law--willingness to abide by laws, even though one may not be in complete agreement with every law; willingness to work through peaceful, legal means to change laws which one thinks to be unwise or unjust • honesty--willingness to seek and express the truth • open mindedness--considering others' points of view • critical mindedness--having the inclination to question the validity of various positions, including one's own • negotiation and compromise--making an effort to come to agreement with those with whom one may differ, when it is reasonable and morally justifiable to do so • persistence--being willing to attempt again and again to accomplish worthwhile goals • civic mindedness--paying attention to and having concern for public affairs • compassion--having concern for the well-being of others, especially for the less fortunate • patriotism--being loyal to the values and principles underlying American constitutional democracy, as distinguished from jingoism and chauvinism • courage--the strength to stand up for one's convictions, when conscience demands
<p>V.E.1. The relationship between politics and the attainment of individual and public goals. Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals.</p>	<p>Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future.</p> <p>Courts can only hear cases that are brought before them. They do not seek cases. Citizen action is required to bring cases and activate the judicial process. Citizen action, therefore, is needed to prompt interpretations of the law and is required before courts can do their work.</p>
<p>V.E.3. Forms of political participation. Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy.</p>	<p>Students who are knowledgeable citizens can speak out and communicate their views to political leaders when constitutional issues arise.</p>
<p>V.E.4. Political leadership and public service. Students should be able to evaluate, take, and defend positions about the functions of leadership in an American constitutional democracy.</p>	<p>Personal qualities necessary for court-related public servants include relevant knowledge about the judicial process and current issues, communication and people skills, and traits of character.</p>

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Lesson: Separation of Powers and the Judiciary

National Standards for Civics and Government Gr. 9-12	Lesson: Separation of Powers and the Judiciary
Specific Content Standards	Understandings Reinforced by the Lesson
<p>V.E.5. Knowledge and participation. Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</p>	<p>Citizens and students who are knowledgeable about the values and principles of American constitutional democracy can speak out about perceived offenses and communicate their concerns to public officials.</p> <p>When citizens use the judicial process to seek resolution of disputes over legal matters, they activate a system that seeks to reaffirm or change laws for the immediate and future benefit of all Americans.</p>