The U.S. Constitution

Wellesley High School
Academic Year 2015-2016
Social Studies Department
U.S. History ACP

Unit Questions

1. In what ways does the Constitution limit the power of the government to make change?
2. What are the characteristics of the U.S. government set forth by the Constitution? How do these processes work?

Focus Questions

1. What problems need to be resolved when creating a new government and how did the founders resolve them?
2. What was the major debate over ratifying the Constitution?
3. How does the Constitution protect against tyranny of the masses?
4. How does the system of checks and balances maintain a balance between the branches of the federal government?
5. What was the Bill of Rights added to the Constitution?

Vocabulary

- articles
- amendment process
- bill of rights
- checks and balances
- separation of powers
- delegated, enumerated, reserved, and concurrent powers
- representation
- electoral college
- judicial review
- separation of powers
- federalism
- federalist vs. antifederalist
- elastic clause
- implied powers
- necessary & proper clause

Chapter 1
Writing a Constitution

We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.... That to secure these rights, governments are instituted men, deriving their just powers from the consent of the governed.

So wrote Thomas Jefferson in the Declaration of Independence, the renowned document penned and published in 1776 that officially proclaimed the independence of the colonies from Great Britain. These time-honored words reflect much about the colonists' continuing struggle with King George III and Parliament. In the eyes of Jefferson and many others, the British government had failed to guarantee the colonists the rights they deserved. In declaring independence, Jefferson and his compatriots set out to free the colonies from oppressive overseas rule and establish governments that fulfilled the desires of the people and guaranteed them necessary rights. To that end, Jefferson proceeded to insist in the Declaration that each colony have the power to establish an independent government. "[A]s free and independent states," he wrote, "[the former colonies] have full power to do all acts and things which independent states may of right do."

Independence Hall

Having overthrown one government, the new nation immediately began creating fourteen new governments. As each colony assumed statehood, it appointed committees to draw up a state constitution in order to define and establish the duties, powers, and organization of the government. In the meantime, Congress appointed a committee to write a national constitution that would govern all these "free and independent states."

The Articles of Confederation

Furthermore, the Articles of Confederation allowed for a different relationship between state governments and the national government than does today's constitution. The powers granted Congress were severely limited—it had the power to coin money, make treaties, raise armies, and make war, but lacked the authority to collect taxes, impose tariffs, suppress rebellions, draft soldiers, or to regulate trade between the states or with foreign countries. The states had many of the powers the articles denied them: coining money, taxing imports (even from other states), raising armies, and enforcing treaties. Congress's reliance on states for law enforcement made the central government weak and the state governments strong. If Congress needed money, for instance, it would ask the states for the necessary funds and the states could decide whether or not to supply the national government with the money it needed.

As time wore on, the government created by the Articles of Confederation proved less and less effective. In 1786, a rebellion led by Daniel Shays of Massachusetts demonstrated the faults present in the Confederation. Farmers, many of whom had suffered monetary losses in the years following the war, wanted their debts canceled and demanded that the state legislature print paper money. When the legislature refused, the rebels attacked the federal arsenal in Springfield. The rebellion was suppressed only after Boston merchants raised enough money to put together an army to oppose Shays.

Many American leaders looked to the incident in Massachusetts as proof that America needed a stronger central government—a government that could put down rebellions, solve financial problems, and resist the demand for paper money. Other colonists, having witnessed the U.S. government's problems in winning the Revolution, collecting taxes, regulating trade, and conducting foreign policy, shared this lack of confidence in the government of the Confederation. They called for a new constitution to remedy the problems that plagued the nation.

Alexander Hamilton, James Madison, and George Washington emerged to lead the movement for a new constitution. In February of 1787, Congress called for a convention to meet in Philadelphia in order to "revise" the Articles of Confederation. Ignoring their limited instructions, fifty-five delegates, representing twelve different states, decided that the U.S. needed a completely different plan of government. They scrapped the Articles and proceeded to take on the daunting task of writing what became the constitution that has governed this nation since its ratification in 1788.

List the PRO's + CON's of AOC

PROS	CONS

Name:
Date:

What problems need to be resolved when creating a new government and how did the founders resolve them?

Issue:	Key points of the issue:	What compromise did the founding fathers agree on?
1- Representation		
2- Authority: Local v. National governments		
3 – Democracy v. Checks & Balances		

3-1

4 – Bill of Rights		
5 – Slavery & Slave Trade		

U.S. Government, Book 1
Lesson 3
Handout 4 (page 1)

Name_____

Date_____

Ratifying the Constitution

Part A.

Read the fact sheet, and answer the questions.

A constitutional convention was called in Philadelphia in 1787. Each of the states was invited to send a delegation to discuss a revision of the Articles. Only Rhode Island failed to send a delegation. Between May and September 1787, a document that proposed not a revision of the Articles of Confederation but the establishment of a new republican democracy was produced. The delegates agreed to three days of debate and that two-thirds of the states would have to approve the document for it to be accepted. The delegates were divided into two main factions—the Anti-Federalists and the Federalists.

The Anti-Federalists, led by James Wilson, Patrick Henry, and George Mason, had the support of the states. There was a general distrust of a strong national government among America's citizens. The Anti-Federalists argued that large populations represented by a few men would lead to a failure on the representatives' part to know the desires of their constituents. Anti-Federalists believed that a strong federal government would lead to the destruction of the state governments and that a federal court system would undermine the work of local courts. They also opposed the establishment of a strong executive branch, fearing it would lead to tyranny. The Anti-Federalists were particularly concerned with the lack of a protection of individual rights within the document.

The Federalists, led by John Jay, James Madison, and Alexander Hamilton, enjoyed the support of America's two truly national political figures, Benjamin Franklin and George Washington. Strong nationalists, who believed that the states should work together for the improvement and betterment of the nation, the Federalists sought to establish a federal government that could act in the national interest. They believed that a republican democracy could resolve issues of economics and politics by reaching consensus within the Congress. The Federalists proposed a government consisting of three branches, within which a system of checks and balances would prevent any single branch from becoming too powerful. Well-organized and well-financed, the Federalists succeeded in gaining passage of the new Constitution, and the document was sent to the states.

It was at this point that the real debate began. In every town and city up and down the Eastern seaboard, debate raged. Newspapers, pamphlets, and broadsides supported one side or the other. The new Constitution was debated in town meetings, and state conventions gathered to decide the fate of the proposal. Eighty-five letters written by the Federalists served as a blueprint for debate at the state conventions. Two-thirds of these letters were written by Jay, Hamilton, and Madison. Later these letters would by compiled in what we know today as *The Federalist Papers.*

After much debate, the new Constitution, which limited and clearly stated the powers of the federal government, was ratified by the required nine states, and the Articles of Confederation became a memory.

answer questions on the back...

1. What were some of the problems that resulted from the weaknesses of the Articles of Confederation?

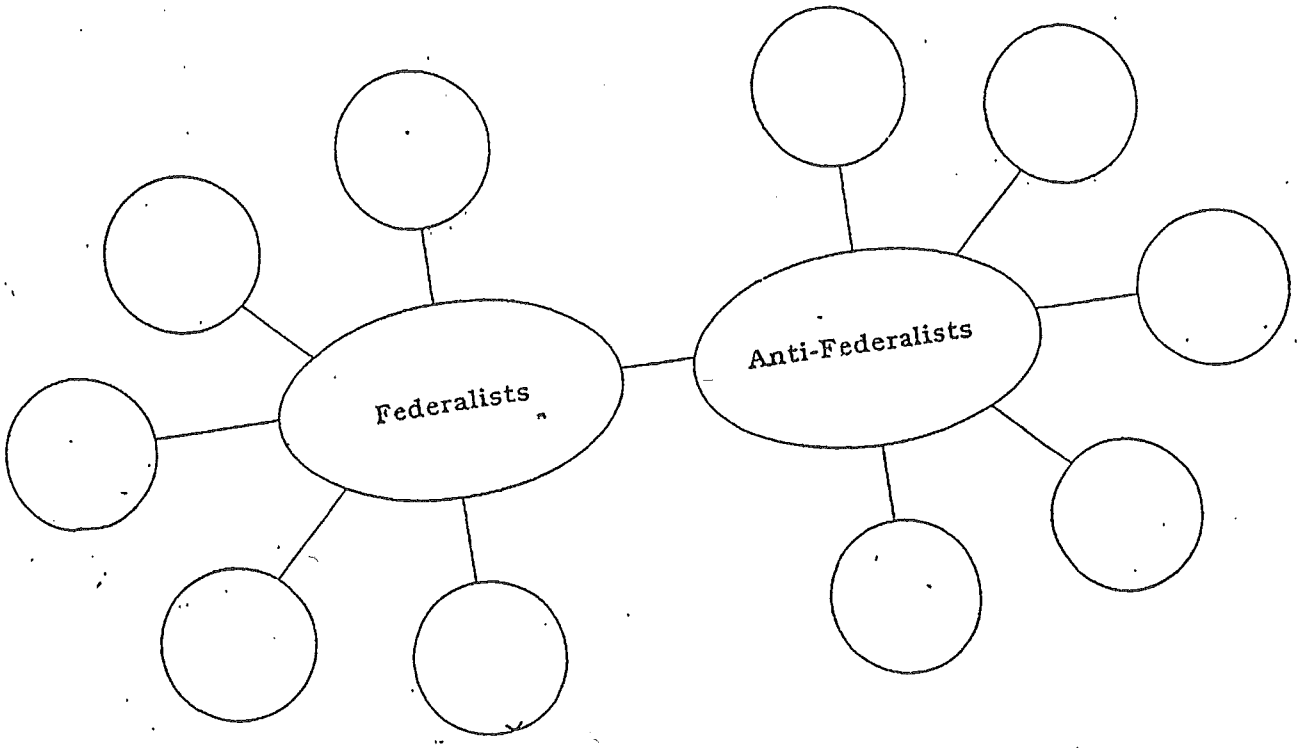
2. What were the main factions at the Constitutional Convention?

3. What were the main points raised by the Anti-Federalists?

4. What were the main points raised by the Federalists?

5. What was the purpose of *The Federalist Papers*?

Federalists v. Anti-Federalists



1. The executive branch had too much power.
2. Power needed to be divided between the states and the national government.
3. The "necessary and proper" clause gave too much power to the Congress.
4. The new government needed a strong executive.
5. Since all rights cannot be listed in the body of the Constitution, it is better to add a bill of rights after ratification.
6. No bill of rights had been proposed.
7. Because all branches were equal, no branch could control the others.
8. The national government could maintain an army in peacetime.
9. In a republican form of government, representation is based on the consent of the governed.
10. The proposed constitution gave too much power to the national government at the expense of the states.

Federalist v. Anti-Federalists

Focus: How is the conflict between anti-federalists and federalists represented in the Constitution? What was the major debate over ratifying the Constitution?

Write a paragraph that responds to one of the following prompts. Use your reader as well as the primary source documents to create a clear and specific claim.

- What is the Federalist and Anti-Federalist stance towards the principle of Federalism? Decide which group has a stronger argument and provide evidence to support your claim.
- Choose one of the major issues between Federalists and Anti-Federalist. How did that issue contribute to the rise of the early political parties in our nation?
- How is the debate over the Constitution apparent in the development of the early political parties?

The Federalists and the Anti-Federalists

Between the proposal of the federal Constitution in September, 1787, and its ratification in 1789, Americans engaged in an intense debate on the document. In an effort to gain popular support for the Constitution, James Madison, Alexander Hamilton, and John Jay wrote a series of anonymous editorials stating the principal arguments in favor of a stronger national government. These 85 essays, historically referred to as the Federalist Papers, outlined how the new government would operate and why a stronger federal government best served the people of the American states.

Critics of the proposed constitution also questioned the need for a stronger, more centralized government in the newspapers and pamphlets. Although not organized as the Federalist Papers, arguments against ratification in what have become known as the Anti-Federalist Papers warned of a return to the authoritarian control that had spark the rebellion in the 1770s. Using pseudonyms such as Brutus or the Federal Farmer, Richard Henry Lee, Patrick Henry and Robert Yates largely sought to leave government power in the hands of the states, which, they argued, had a closer relationship to the people.

Federalist No. 1 *Alexander Hamilton (1787)*

To the People of the State of New York:

AFTER AN UNEQUIVOCAL EXPERIENCE OF THE INEFFICIENCY OF THE SUBSISTING federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

Federalist No. 10 (*From the* New York Packet, *November 23, 1787*)

To the People of the State of New York:

AMONG THE NUMEROUS ADVANTAGES PROMISED BY A WELL CONSTRUCTED UNION, none deserves to be more accurately developed than its tendency to break and control the violence of faction... Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations...

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects. There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests... It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency... But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society... If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.

Federalist 7: Concerning Dangers from Dissensions Between the States

For the Independent Journal, November 15, 1787

HAMILTON

To the People of the State of New York:

...We have a vast tract of unsettled territory within the boundaries of the United States. There still are discordant and undecided claims between several of them, and the dissolution of the Union would lay a foundation for similar claims between them all. ...The States within the limits of whose colonial governments they were comprised have claimed them as their property, the others have contended that the rights of the crown in this article devolved upon the Union; especially as to all that part of the Western territory which, either by actual possession, or through the submission of the Indian proprietors, was subjected to the jurisdiction of the king of Great Britain, till it was relinquished in the treaty of peace. It has been the prudent policy of Congress to appease this controversy, by prevailing upon the States to make cessions to the United States for the benefit of the whole. This has been so far accomplished as, under a continuation of the Union, to afford a decided prospect of an amicable termination of the dispute. A dismemberment of the Confederacy, however, would revive this dispute, and would create others on the same subject....

The competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The opportunities which some States would have of rendering others tributary to them by commercial regulations would be impatiently submitted to by the tributary States.

The public debt of the Union would be a further cause of collision between the separate States or confederacies. The apportionment, in the first instance, and the progressive extinguishment afterward, would be alike productive of ill-humor and animosity. How would it be possible to agree upon a rule of apportionment satisfactory to all?

Laws in violation of private contracts, as they amount to aggressions on the rights of those States whose citizens are injured by them, may be considered as another probable source of hostility....

The probability of incompatible alliances between the different States or confederacies and different foreign nations, and the effects of this situation upon the peace of the whole, have been sufficiently unfolded in some preceding papers. From the view they have exhibited of this part of the subject, this conclusion is to be drawn, that America, if not connected at all, or only by the feeble tie of a simple league, offensive and defensive, would, by the operation of such jarring alliances, be gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all. Divide et impera [divide and command] must be the motto of every nation that either hates or fears us.

PUBLIUS.

Anti-Federalist *October 18, 1787*

To the Citizens of the State of New-York:

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind.... At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty – if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining asylum for liberty will be shut up, and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

Brutus

Letter from a Federal Farmer No. 17

(January 23, 1788)

DEAR SIR,

To erect a federal republic, we must first make a number of states on republican principles; each state with a government organized for the internal management of its affairs: The states, as such, must unite under a federal head, and delegate to it powers to make and execute laws in certain enumerated cases, under certain restrictions; this head may be a single assembly, like the present congress – The state governments are the basis, the pillar on which the federal head is placed, and the whole together, when formed on elective principles, constitute a federal republic. A federal republic in itself supposes state or local governments to exist, as the body or props, on which the federal head rests, and that it cannot remain a moment after they cease. In erecting the federal government, and always in its councils, each state must be known as a sovereign body; but in erecting this government, I conceive, the legislature of the state, by the expressed or implied assent of the people, or the people of the state, under the direction of the government of it, may accede to the federal compact: Nor do I conceive it to be necessarily a part of a confederacy of states, that each have an equal voice in the general councils...

There has been an entire revolution in the United States within thirteen years, and the least we can compute the waste of labour and property at, during that period, by the war, is three hundred million of dollars. Our people are like a man just recovering from a severe fit of sickness. It was the war that disturbed the course of commerce, introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise; men of knowledge and reflection must perceive it; – but then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufactures, and thereby laying the foundation of good government, and of individual and political happiness, than any people ever did in a like time.

Against the Federal Constitution

Patrick Henry, June 5, 1788

THE FEDERAL CONVENTION DEVISED THE PAPER ON YOUR TABLE AS A REMEDY TO remove our political diseases. What has created the public uneasiness since? Not public reports, which are not to be depended upon; but mistaken apprehensions of danger, drawn from observations on government which do not apply to us…When we come to inquire into the origin of most governments of the world, we shall find that they are generally dictated by a conqueror, at the point of the sword, or are the offspring of confusion, when a great popular leader, taking advantage of circumstances, if not producing them, restores order at the expense of liberty, and becomes the tyrant over the people…

But the power of the Convention is doubted. What is the power? To propose, not to determine. This power of proposing was very broad; it extended to remove all defects in government: the members of that Convention, who were to consider all the defects in our general government, were not confined to any particular plan. Were they deceived? This is the proper question here. Suppose the paper on your table dropped from one of the planets; the people found it, and sent us here to consider whether it was proper for their adoption; must we not obey them? Then the question must be between this government and the Confederation. The latter is no government at all. It has been said that it has carried us, through a dangerous war, to a happy issue. Not that Confederation, but common danger, and the spirit of America, were bonds of our union: union and unanimity, and not that insignificant paper, carried us through that dangerous war. "United, we stand – divided, we fall!" echoed and reechoed through America – from Congress to the drunken carpenter – was effectual, and procured the end of our wishes, though now forgotten by gentlemen, if such there be, who incline to let go this stronghold, to catch at feathers; for such all substituted projects may prove…

And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system.

Bartels/ Berenson
US 32
Due: _____

To Ratify, or Not to Ratify...That is the Question...

As the debate raged on in the United States regarding ratification of the Constitution, many different forms of propaganda were used to try to sway the opinions of Americans. For this assignment, imagine that you have been hired to produce a persuasive advertisement either for or against ratification. You will draw from a hat in class to determine whether you are a federalist or an anti-federalist. You must then create a poster, pamphlet or political cartoon that reflects your viewpoint. Your bias MUST shine through. However, DO NOT INDICATE ANYWHERE ON YOUR PROJECT THAT YOU ARE A ANTI-FEDERALIST OR FEDERALIST. You must support your side by providing persuasive evidence to influence the public. Upon the completion of your assignment you will bring your project to class and have your classmates guess what side you were supporting. You will be graded on content, neatness and ability to clearly convey your side.

THE BILL OF RIGHTS

A. Picking the Right Rights: *(Listed below are 16 "rights." Only 8 of those listed are actually found in the first 10 amendments to the U.S. Constitution, commonly known as the Bill of Rights. Put a check next to the "rights" that are found in the Bill of Rights.)*

THE BILL OF RIGHTS GRANTS AMERICANS THE RIGHT TO:

____ 1. free public-school education

____ 2. free speech

____ 3. decent housing

____ 4. employment

____ 5. a speedy public trial when one is accused of a crime

____ 6. a healthy environment

____ 7. refuse to house members of the military in peacetime

____ 8. freedom of religion

____ 9. adequate food

____ 10. petition for a redress of grievances against the government

____ 11. not be a witness against oneself if accused of a crime

____ 12. adequate medical care

____ 13. not be subject to unreasonable searches by government officials

____ 14. government-funded public roads

____ 15. public assistance (welfare payments) if one is poor

____ 16. not be subjected to cruel and unusual punishments

APPENDIX 1

The Bill of Rights and Other Constitutional Amendments

Meeting in New York City on September 25, 1789, the first Congress submitted twelve proposed changes to the Constitution—called articles or amendments—for ratification by the states. (See p. 131 for more on the Bill of Rights.) These amendments dealt with certain individual and states' rights not specifically named in the Constitution. Ten of these articles, which were originally proposed as Amendments Three through Twelve, were declared ratified in 1791 and are now known as Amendments One through Ten, or the Bill of Rights. The other two amendments from the original list of twelve proposed were not ratified by the necessary number of states at the time. The first related to the apportionment of representatives; the second, relating to the pay of Congress, was finally ratified in 1992 and became Amendment Twenty-seven.

Since 1791, another seventeen changes have been made to the Constitution, a process that begins when Congress proposes an amendment, which must clear both the House and the Senate by a two-thirds majority. Although state conventions can propose amendments, all the existing amendments have been proposed by the Congress. The proposed amendment is sent to the states for ratification. Three quarters of the states are needed to ratify, and that is usually done by state legislatures (although there has been one exception; see Amendment Twenty-one).

FIRST AMENDMENT MINUTES

www.aclum.org
(click on link in right hand column)
www.whmp.com/pages/4250358.php

"First Amendment Minutes" are 90-second segments on civil liberties topics originally aired on WHMP radio in Northampton. They are produced by Bill Newman, the Director of the ACLU of Massachusetts' Western Legal Office, and introduced by MSNBC's Rachel Maddow. Below is a partial list of the topics covered. A full list is available at the WHMP website (above).

See what you think. As an assignment, listen to one of the segments listed below relating to the First Amendment or to juvenile rights. Then write your thoughts about it in your own "First Amendment Minute" – do you agree with its message? Do you think it oversimplifies a complex issue? Can a case be made for a very different point of view? Remember – you have 90 seconds to get *your* point across!

Freedom of Speech And Expression

01/20/10	Texting While Driving – A First Amendment Right?
01/18/10	In This Great Recession, Does The Constitution Do The Hungry And Homeless Any Good?
01/04/10	A Motorist Displays His Middle Finger To Another Motorist – A Cop
12/22/09	Auld Lang Syne – Let's Celebrate
12/10/09	Former Chief GTMO Prosecutor Fired From His Job At The Library Of Congress For Speaking Out
10/14/09	Regulating Your Sex Life
10/14/09	Botox Puts Wrinkles In Free Speech Debate
08/21/09	President Obama Wants To Kill Your Aged Grandmother?
08/14/09	When The Second Amendment Conflicts With The First
07/29/09	Is It A Crime To Say Angry Words To A Cop (Henry Louis Gates & Cambridge Police)
07/15/09	Take Me Out To The Ballgame (NYCLU Case For A Red Sox Fan)
06/10/09	First Amendment Right To Listen (American Sociological Assoc. v. Clinton)

Student Speech

12/22/09	Sex Education In High Schools
12/01/09	School Administrators Require Students To Recite The Pledge Of Allegiance

11/12/09	Supreme Court Justice at High School, Censors Student Newspaper Coverage
10/02/09	Do 4th Graders Have First Amendment Rights?
09/09/09	Harvard University Prohibits Medical Students From Speaking To The Press

Freedom of Association

11/05/09	Conference on AIDS
10/02/09	Juvenile Curfew Laws Struck Down
04/29/09	FOIA Suit And The FBI Targeting Muslims
04/08/09	Muslim Scholar Tariq Ramadan Excluded From U.S.

Freedom of Religion

12/17/09	South Carolina Tries To Prevent An Atheist From Assuming His Elected Office
12/10/09	And Now Let's Hear From The ACLU Carolers
12/01/09	A Housing Authority Rule Prevents Jewish Residents From Putting A Muzuzzah On Their Door
11/20/09	ACLU Defends TSA Screener, A Rastafarian, Disciplined For Observing His Religion
11/12/09	Religious License Plates

Surveillance and the Chilling Effect on First Amendment Rights

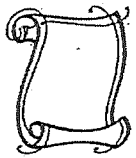
12/17/09	Government Surveillance Of Facebook And Twitter
10/29/09	FBI Surveillance Rules Released
10/02/09	Do You Have An FBI File?
07/29/09	Bush Administration Policy Of Spying On Innocent Americans Continues
06/17/09	Government Surveillance Of Phone Calls And E-Mails
06/10/09	Your Phone Company And The NSA
06/03/09	The Story Of Captain James Yee
05/13/09	Law Enforcement Abuse Of Criminal Record Information
04/22/09	Bush Administration Use Of National Security Letters

Schools And Juvenile Rights

01/18/10	Juvenile Life Without Parole Sentences For Non-Homicides
10/23/09	Zero Tolerance: Sentencing A Well Behaved 6 Year Old To 45 Days In Reform School
10/14/09	Massachusetts, The State With The Most Punitive Sentences For Juveniles Who Kill
09/25/09	Strip Searching A 13 Year Old Girl
08/21/09	250,000 Kids Each Year Subjected To Corporal Punishment

A KIDS' GUIDE TO AMERICA'S BILL OF RIGHTS

Curfews, Censorship, and the 100-Pound Giant



KATHLEEN KRULL

ILLUSTRATED BY ANNA DIVITO

AN AVON CAMELOT BOOK 1999

NY, NY.

THERE are some who see the interests of government as more important than the rights of the people. They can be actively hostile to the Bill of Rights and would just as soon undermine it.

When the Bill of Rights was written, it *was* a radical challenge to the accepted ideas about government at the time. It's no surprise that some still see it as revolutionary.

There are others who think that the Bill of Rights doesn't go far enough. Also, it is not perfect. To take the most glaring examples, it was worded by rich white men and never intended to apply to American Indians, African-Americans, or women. For many years afterward, Congress and the Supreme Court approved policies that legalized unequal treatment.

Not until 1924 was citizenship granted to American Indians. Until then they were considered "aliens" and had no rights here. For many decades the Bill of Rights offered Indians no protections, and they were forced to abandon their languages and religions. Their land was taken away, and they were required to live on reservations. In 1830, for example, Congress passed the Indian Removal Act, authorizing the forcible removal of Indians west of the Mississippi River. Finally, in 1968, the Indian Civil Rights Act extended the protection of the amendments to Indians. Sometimes

tribal authority takes precedence over state or federal laws, however, and even today laws affecting Indians can be ambiguous.

The institution of slavery, alive and well when the Bill of Rights was written, was a dramatic contradiction to the ideas in it. Over time the fact that African-Americans were totally excluded from citizenship became harder and harder to ignore. Thomas Jefferson wrote that "the abolition of domestic slavery is the great object of desire," but even he had slaves. In the struggle between the financial advantages of enslaved labor and the moral view that slavery is wrong, economics won. American leaders believed it was impossible to both abolish slavery and form a strong Union.

This failure to resolve the contradiction between slavery and liberty eventually resulted in the Civil War. Even after the war, when blacks were finally granted citizenship, unfair laws and terrorism by white supremacist groups worked against blacks' having any real protection under the Bill of Rights. Until the civil rights movement of the 1950s and 1960s, racial segregation was perfectly legal and pervaded all aspects of society.

What does the Negro want? His answer is very simple. He wants only what all other Americans want. He wants the opportunity to make real what the Declaration of Independence and the Constitution and the Bill of Rights say.

—American educator Mary McLeod Bethune (1944)

Women were second-class citizens for 130 years after the Bill of Rights, thought of as the property of their husbands.

Discrimination on the basis
and the Supreme Court thus
bizarre decisions. In 1873 it
to be wives and mothers beca
cacy," and therefore were un
law. Six years later it upheld
to women. Suffrage for won
after the first American w
Seneca Falls, New York, in 18
Constitution formally acknow

Women fought to vote lon
pa

were 52 percent of the population, 67 percent of the registered voters, but only 20 percent of the elected officials nation-wide.)

The Bill of Rights has often left unprotected the rights of gays and lesbians, the mentally and physically disabled, legal and illegal aliens, students, children, and the poor, in some cases up to the present day. Those most often denied their rights are the very people least aware that they have them and least able to hire a lawyer to fight for them.

The Bill of Rights also has no provision for victims' rights. Some feel criminals get lots of protection, while their victims have nothing formal that guarantees their rights to receive compensation, to be free from intimidation, to receive counseling if desired, and to be kept informed of the progress of the investigation of the crime against them.

During wartime or when national security seems threatened, our human rights can shrink. The most striking example of this was the establishment of Japanese-American internment camps during World War II.

After the 1941 Japanese attack on Pearl Harbor, many Americans were quick to dehumanize the enemy. Intense patriotism and violent anti-Japanese sentiment led to the forced relocation of 120,000 people of Japanese ancestry, two-thirds of whom were American citizens. Those relocated were housed in bleak, prisonlike camps for about a year before being allowed to return to whatever was left of their former lives. To many besides Japanese-Americans, the internment camps felt like the wrong thing to do—because they violated numerous amendments in the Bill of Rights, notably the Fourth, Fifth, and Sixth.

Even during times of undeclared war, when the danger is possibly less than real, individual rights can be put in jeopardy. During the 1950s the worldwide spread of Communism (a system of government in which all property is held in common) frightened many in the United States. Some—such as Senator Joseph McCarthy, from Wisconsin—took advantage of the panic by branding Americans suspected of being Communists as traitors. Such blacklisting ruined many lives and careers, especially in the entertainment world, while the Bill of Rights and the Supreme Court offered no protection.

Will cameras in the courtrooms affect the Bill of Rights?

More recently some worry that the Bill of Rights isn't stopping the "war on drugs" from endangering individual liberty. Such tactics as mandatory drug testing in the workplace and various searches and seizures verge on invasion of privacy. Some rights can be seen as less important whenever the word *war* is used.

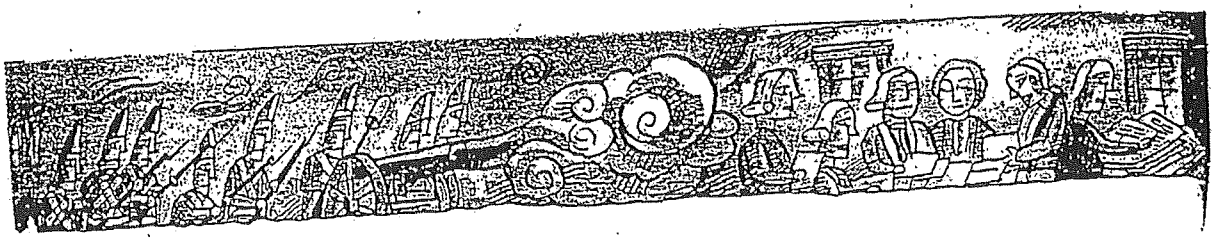
In recent years there has been a new wrinkle: Cameras have been widely allowed in courtrooms for the first time. Probably at no time in history has a wider range of people been aware of what goes on inside a courtroom. Many people are casually and ably discussing legal tidbits only lawyers used to know about.

Perhaps, with such wider visibility, expanded knowledge will prevent the Bill of Rights from going wrong again.

Meanwhile, it has had a rich and strange life. It remains a living document, shifting with the times and public opinion. Its goal—to protect our rights and liberties as United States citizens—is not always perfectly reached, and there are some who find it too intrusive. But most people, especially newly arrived immigrants from other countries, will agree: Through the freedoms it protects, the Bill of Rights has contributed toward making the United States unlike any other nation on earth.

How is the Bill of Rights a living document?

Thanks to the 100-pound giant, the United States is unlike any other nation on earth.



THE FORMAL AMENDMENT PROCESS

According to Article V, amendments may be proposed in two ways, and they may be approved by the states in two ways, creating four possible paths that a proposed amendment may take. Congress selects the methods of ratification and sets time limits (now seven years) for ratification. The chart below illustrates these paths.

TWO WAYS TO PROPOSE AMENDMENTS

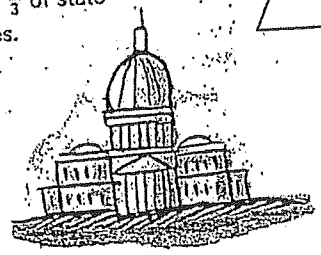
Proposed by $\frac{2}{3}$ vote of each house of Congress

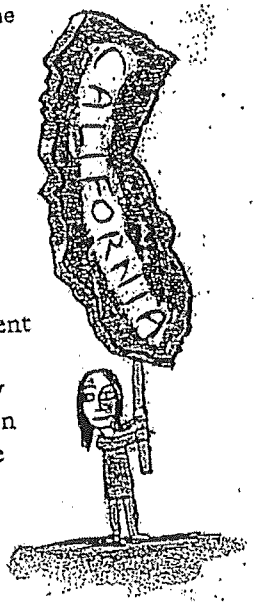
Proposed by a national constitutional convention requested by at least $\frac{2}{3}$ of state legislatures.

TWO WAYS TO RATIFY AMENDMENTS

Ratified by at least $\frac{3}{4}$ of the state legislatures

Ratified by specially called conventions in at least $\frac{3}{4}$ of the states.





The flexibility the Founders built in to the amendment process has not been fully tested so far because 26 of the 27 amendments have followed the same path: proposal by two-thirds vote of each house of Congress and ratification by at least three-fourths of the state legislatures. Only the 21st Amendment was adopted by a different method. There has not been a constitutional convention held since 1787, perhaps because of the fear that delegates might possibly vote to throw out the whole Constitution.

Wood, Ethel and Stephen C. Sansone. American Government: A Complete Coursebook. Wilmington: [illegible] Education Group, 2000. 40.

Can We Justify the Implied Powers of Congress?

According to the necessary and proper clause, Congress generally may assume additional powers not specifically listed in the Constitution, sometimes called implied powers, if there is a link to a power that is listed in the Constitution. For example, Congress may allocate money to test a missile-defense system (something not specifically listed in the Constitution) because Article I, Section 8, Clause 12 gives Congress the power to "raise and support Armies".
While the above example may seem like an obvious extension of Congress's power, other powers that Congress has assumed over the years are not so obvious extensions of powers specifically listed in the Constitution. The exercise below gives you a list of implied powers of Congress. Beside each one, try to locate a clause in Article I, Section 8 of the Constitution that could justify Congress assuming that implied power. If you do not think there is justification in the Constitution for that power, write "no justification" in the space provided. Be prepared to back up your answers.

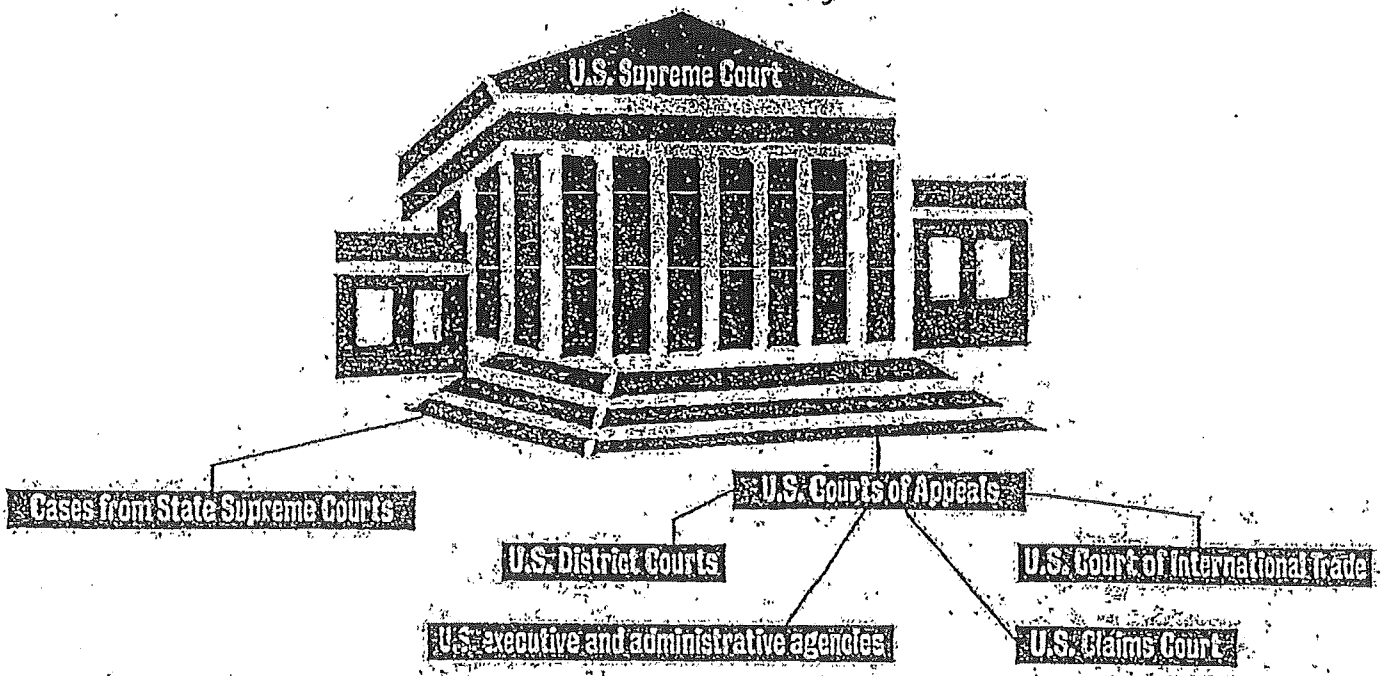
IMPLIED POWER: Congress gives licenses to broadcasters to play music on the radio.

ANSWER: *Clause 3 may justify this activity. It gives Congress the power to regulate interstate commerce. Broadcasting is a business. Thus, it is commerce. Airwaves cross over state lines, so it involves interstate commerce.*

Congress sets a federal minimum wage.
Congress establishes the United States Air Force
Congress establishes national parks
Congress creates federal laws against pollution
Congress makes laws regarding discrimination in employment
Congress decides that televisions should have V-chips that enable parents to block certain shows
Congress passes the Gun-Free School Zones Act prohibiting anyone from possessing a firearm in a school zone

Judicial Branch

The U.S. Court System



ARTICLE III of the Constitution states: "The judicial power of the United States shall be vested [placed] in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

The Constitution created the Supreme Court to be like a watchdog to protect people's rights and to prevent the Congress, the President, or the states from taking too much power. The Court tries some cases, such as when one state sues another, but that rarely happens. Mostly, the Supreme Court reviews cases appealed to it from state courts or lower federal courts. The diagram shows how cases reach the Supreme Court.

The Supreme Court justices choose the cases that they want to hear. They usually select cases of constitutional importance. When the justices decide a case, they often write an opinion explaining what is allowed or not allowed by the Constitution. They may even decide that Congress or a state passed a unconstitutional law that must be changed.

QUESTIONS

Write the letter of the correct answer on the line before each sentence.

___ 1. According to the diagram, which court has the final word in federal cases? (a) U.S. Supreme Court; (b) a Court of Appeals; (c) a state court.

___ 2. Other than a Court of Appeals, which court can send cases directly to the U.S. Supreme Court? (a) U.S. Claims Court; (b) U.S. Court of International Trade; (c) state courts.

___ 3. If you were not satisfied with the decision of a U.S. District Court, your next step would be to appeal to (a) the U.S. Supreme Court; (b) a U.S. Court of Appeals; (c) a state court.

___ 4. The U.S. Supreme Court usually reviews (a) all cases appealed from lower courts; (b) cases involving residents of different states; (c) cases of constitutional importance.

___ 5. Cases from the U.S. executive and administrative agencies go directly to: (a) a U.S. Court of Appeals; (b) the U.S. Supreme Court; (c) a U.S. District Court.

Executive Branch

Powers of the Presidency

Many people say that the President of the United States has the most powerful job in the world. He is chief of state, head of government, commander in chief of the armed forces, chief diplomat, and the government's economic leader. He also is the leader of his political party and, although this is not a government role, it adds to his power.

Let's take a closer look at some roles of the President:

- **Chief of state:** The President serves as a living symbol of the U.S. In this role, he performs many ceremonial duties, such as presenting medals of honor to outstanding citizens.
- **Head of government:** The President is the leader of the executive branch of the federal (national) government. He appoints and fires officials, develops policies, makes all important government decisions, and enforces the laws of the U.S.
- **Commander in chief:** The U.S. Constitution makes the President the commander in chief of the armed forces. He heads the Army, Navy, Air Force, and Marines. Only Congress can declare war. In recent years, however, Presidents have sent troops into combat in other countries without asking Congress to give its approval.
- **Legislative leader:** The Constitution gives the President power to sign an act of Congress into law, or to veto (reject) any law. Congress can override the veto by a two-thirds majority vote in both the House and the Senate. Only Congress has the power to pass laws, but Presidents can and do propose or push for legislation that they want.
- **Chief diplomat:** The Constitution makes the President the country's chief diplomat by giving the President the power to make treaties with other nations—with the approval of the Senate. The President decides U.S. foreign policy with the help of the Secretary of State.
- **Economic chief:** As economic chief, the President is expected to help keep the economy running smoothly. He plans the federal budget and suggests ways to keep prices from rising too fast.

What a President Can and Cannot Do

Because we have a three-branch system of government with separation of powers, there are many things that a President cannot do. At various times, U.S. Presidents have been frustrated by certain limitations of their power.

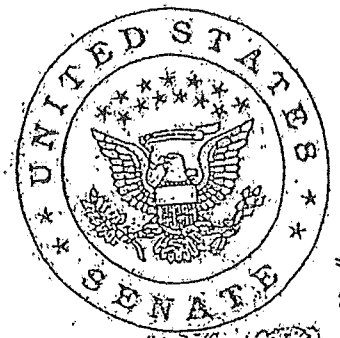
YOU DECIDE

Can a President do the following? Write yes or no.

1. Impose taxes: _____
2. Declare war: _____
3. Decide foreign policy: _____
4. Veto a law passed by Congress: _____
5. Command the U.S. armed forces: _____

Legislative Branch

Congress



Congress, the law-making branch, is often called the "first branch" of the U.S. government. It is the first branch described in the Constitution, and was the first branch of the government to meet in 1789.

Article I of the U.S. Constitution states: "All legislative Powers herein granted shall be vested (given to or placed) in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Senate was intended to represent the states primarily, and the House of Representatives, to represent the people primarily.

THE SENATE

The Senate has 100 members. Each state, regardless of population size, sends two senators to Washington. Senators are elected for six-year terms. There are 100 members of the Senate.

THE HOUSE OF REPRESENTATIVES

The House has 435 members, who are elected for two-year terms. The seats are apportioned (distributed) among the states according to each state's population.

Chief Powers of Congress

- to make laws
- to impose and collect taxes
- to borrow and coin money
- to regulate commerce between the states and with foreign countries
- to declare war
- to raise and support an army and navy
- to establish federal courts below the Supreme Court
- to establish post offices
- to fix the standard of weights and measures
- to help individual constituents in dealing with the government

In addition, the Senate has the power to:

- approve or reject treaties
- approve or reject appointments of Supreme Court justices by the President
- approve or reject appointments of Cabinet members by the President

QUESTIONS

1. What is the total number of members of Congress? _____
2. Each state has two Senators. How is the number of House members for each state determined?

_____

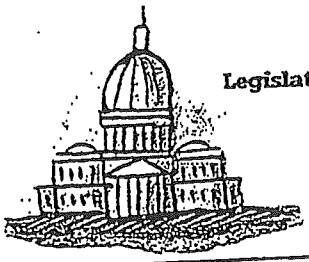
3. Which article of the U.S. Constitution describes the organization, powers, and responsibilities of Congress? _____
4. In which house of Congress does each of the 50 states have equal representation?

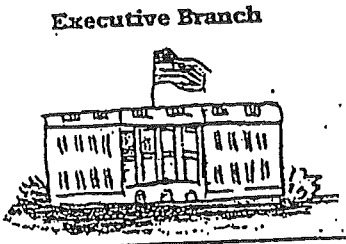
_____

5. Which members of Congress are elected every two years?

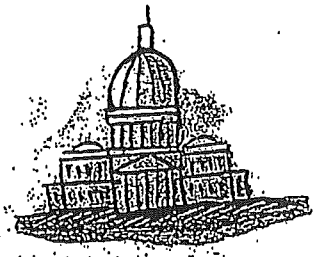
_____

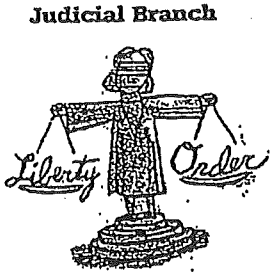
The United States Constitution
A System of Checks and Balances



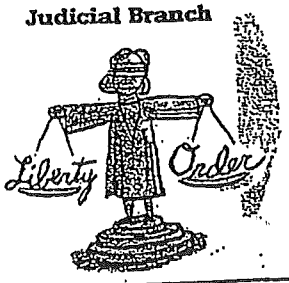


Legislative CHECKS Executive	Executive CHECKS Legislative
1. Congress can refuse to pass laws 2. Congress can override the veto 3. Congress can refuse to approve appointments 4. Congress can impeach	1. The President can veto laws passed by Congress 2. The President can call special sessions of Congress and recommend legislation





Legislative CHECKS Judiciary	Judiciary CHECKS Legislative
1. Congress can impeach 2. Congress can change the number of judges 3. Congress can replace unconstitutional laws 4. Congress approves judicial choices	1. The courts can declare laws "UNCONSTITUTIONAL"



Executive CHECKS Judiciary	Judiciary CHECKS Executive
1. The President nominates judges 2. The President grants pardons	1. The courts can declare Presidential actions "UNCONSTITUTIONAL"

Checks and Balances

The U.S. Constitution provides that the three branches operate under a system of "checks and balances" so that no one branch can become too powerful. In the cases presented below do the following:

1) What is wrong with each?
2) What can be done about it according to the Constitution?

Case #1

The President of the U.S. appoints an old childhood friend to his Cabinet as Sec. of State. However, the old friend only has a 10th grade education and knows very little about foreign affairs.

Case #2

By a slight majority both houses of Congress pass a bill raising their salary 300%. The President feels that the American people are paying too much in taxes and this pay raise would increase that burden. He believes the bill is unreasonable.

Case #3

During war Congress passes a bill stating that anyone who speaks out against the U.S. Government during this time of crisis will be considered an enemy of the nation and thrown into jail. The President signs the bill and it becomes law.

Case #4

Evidence shows that the President has transferred funds from the U.S. Treasury to his own personal bank account. He lies to the American people about this action, until finally, tape recordings are presented on which he discusses a cover up of this crime with his aides.

Case #5

The President negotiates a treaty with Mexico. In it he gives Mexico the right to drill for oil on American territory. The majority of the American people are furious. They believe they need the oil more than Mexico.

Case #6

The majority of the American people feel that the rich oil companies should be taxed more. Congress unanimously passes a bill to raise oil companies' taxes. The President remembers that oil companies contributed huge sums of money to his election campaign. He vetoes the bill.

THE SIX BASIC PRINCIPLES

The classic textbook *Magruder's American Government* outlines the six basic principles of the Constitution. Below is a description of these principles:

1 Popular Sovereignty

The Preamble to the Constitution begins with the bold phrase, "We the people . . ." These words announce that in the United States, the people are sovereign. The government receives its power from the people and can govern only with their consent.

2 Limited Government

Because the people are the ultimate source of all government power, the government has only as much authority as the people give it. Government's power is thus limited. Much of the Constitution, in fact, consists of specific limitations on government power.

3 Separation of Powers

Government power is not only limited, but also divided. The Constitution assigns certain powers to each of the three branches: the legislative (Congress), executive (President), and judicial (federal courts). This separation of government's powers was intended to prevent the misuse of power.

4 Checks and Balances

The system of checks and balances gives each of the three branches of government the ability to restrain the other two. Such a system makes government less efficient but also less likely to trample on the rights of citizens.

5 Judicial Review

Who decides whether an act of government violates the Constitution? Federal courts have the power to review acts of the federal government and to cancel any acts that are unconstitutional, or violate a provision in the Constitution.

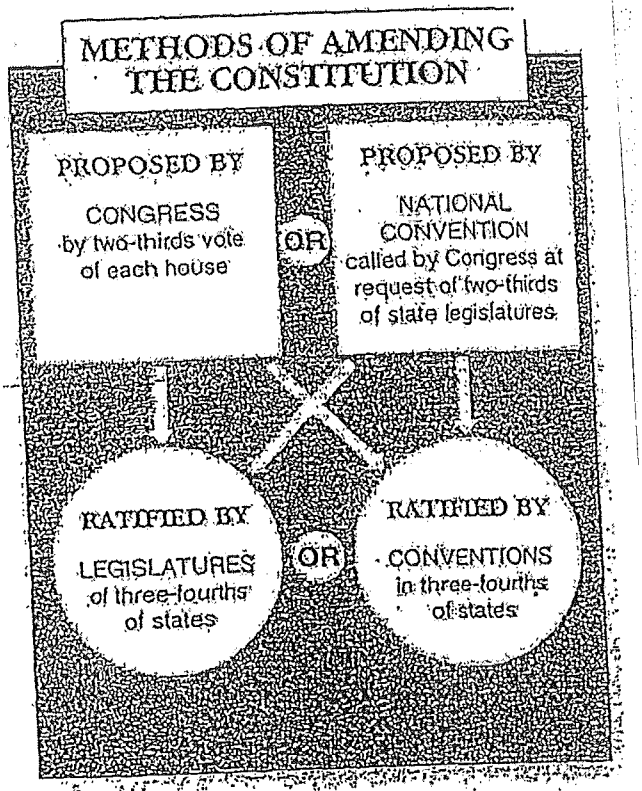
6 Federalism

A federal system of government is one in which power is divided between a central government and smaller governments. This sharing of powers is intended to ensure that the central government is powerful enough to be effective, yet not so powerful as to threaten states or individuals.

THE RIGHT TO VOTE

YEAR	PEOPLE ALLOWED TO VOTE
1789	White men over age 21 who met property requirements (state laws)
Early 1800s–1850s	All white men over age 21 (state laws)
1870	Black men (Amendment 15)
1920	Women (Amendment 19)
1961	People in the District of Columbia in presidential elections (Amendment 23)
1971	People over age 18 (Amendment 26)

METHODS OF AMENDING THE CONSTITUTION



FEDERAL OFFICEHOLDERS

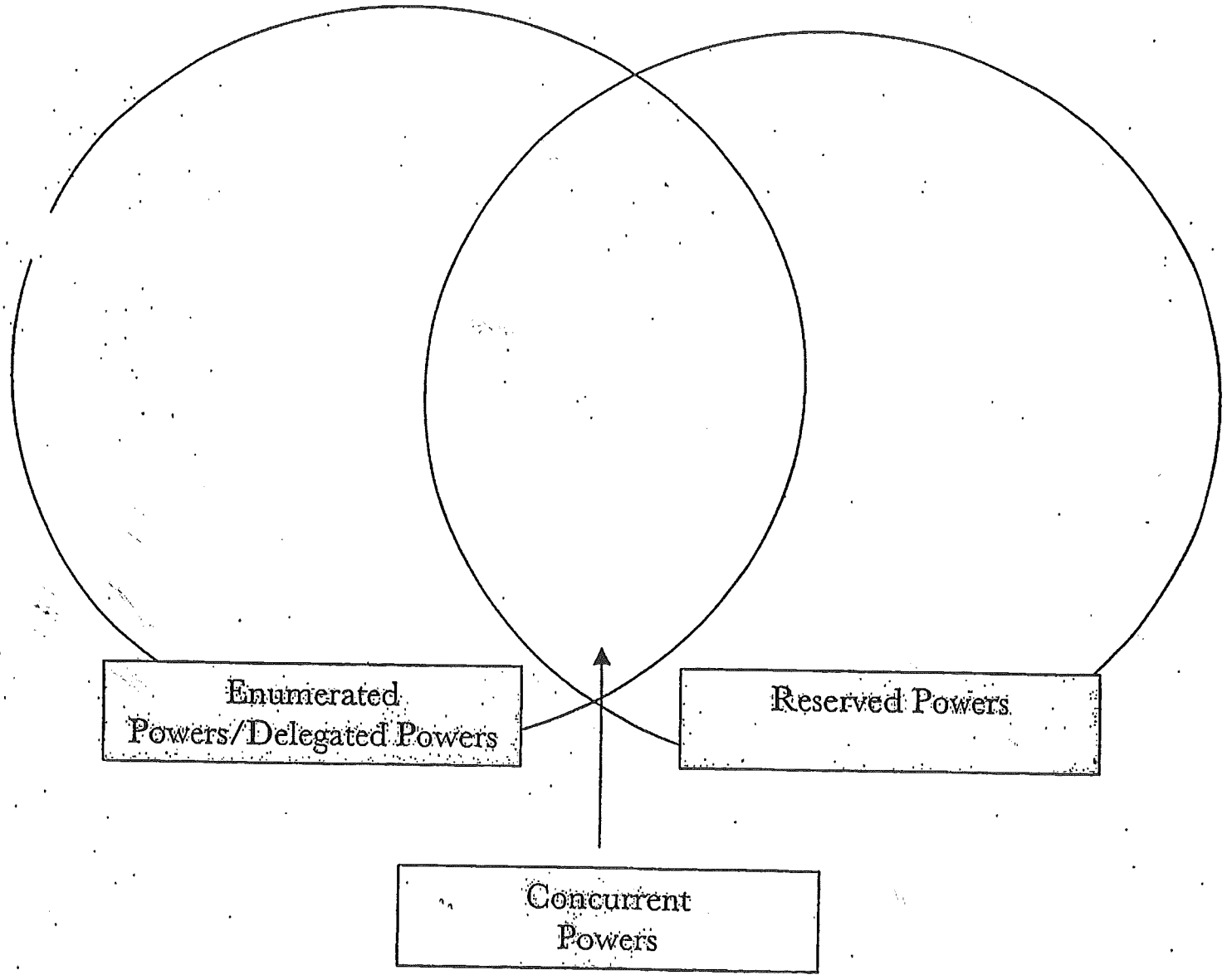
OFFICE	NUMBER	TERM	SELECTION	REQUIREMENTS
Representative	At least 1 per state; based on state population	2 years	Elected by voters of congressional district	Age 25 or over; citizen for 7 years; resident of state in which elected
Senator	2 per state	6 years	Original Constitution—elected by state legislature Amendment 17—elected by voters	Age 30 or over; citizen for 9 years; resident of state in which elected
President and Vice President	1	4 years	Elected by electoral college	Age 35 or over; natural-born citizen; resident of U.S. for 14 years
Supreme Court Judge	9	Life	Appointed by President	No requirements in Constitution

The Federal System

Federalism is:

Powers:

Maintain an army & navy	Issue drivers license	Impose taxes	Create marriage laws
Declare war	Make agreements with other countries	Protect rights	Make laws for the environment
Punish law breakers	Coin money	Establish schools	Create standards for schools
Conduct elections	Establish local governments	Regulate state commerce	Establish courts
Build roads	Regulate trade between states and w/foreign nations	Set standards for weights, measures, copyrights and patents	Borrow money to pay expenses

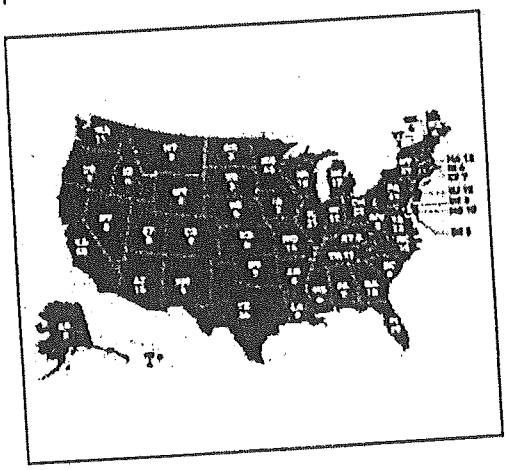


Article

Grolier Online

Electoral College

Discover how the electoral college works, read about its history, and learn about some of the electoral system's problems in this article from Grolier's *The New Book of Knowledge*.



The citizens of the United States do not elect their president directly. When Americans cast their vote for a presidential candidate, they are really voting for an elector — a delegate pledged to vote for that same candidate. There are 538 such electors chosen in every presidential election. As a group they are known as the electoral college.

How the Electoral College Works

Each state has as many electors as it has members in the U.S. Senate and House of Representatives combined. The electoral college thus includes 535 electors from the states, one for each of the 435 members of the House plus one for each of the 100 senators. Another three electors represent the District of Columbia, for a total of 538.

According to the U.S. Constitution, state legislators decide how electors will be chosen in their states. First, each political party in a state nominates a slate (list) of electors. These electors are usually pledged to support the party's nominee for president and vice president. In some states, electors are legally required to vote for their candidate.

Presidential elections take place on the first Tuesday after the first Monday in November every four years. On that day voters throughout the nation go to the polls to choose the electors in their states. In many states the names of the electors do not even appear on the ballot. The voters see only the names of the candidates for president and vice president. Nevertheless, voters who favor the Republican (or Democratic) candidate for

president actually vote for the Republican (or Democratic) electors in their state. This voting of the people is called the popular vote.

In 48 of the 50 states, the candidate who receives the most popular votes wins all that state's electoral votes. In Maine and Nebraska, the state's electoral votes can be divided among the candidates. To be elected president, a candidate needs a majority of all the electoral votes in the country. That is one-half of the total number of votes plus one, or 270.

In most presidential elections, the winner is known by the morning following election day. However, election results do not become official until weeks afterward. The winning electors meet in their state capitals on the Monday after the second Wednesday in December. There they vote for president and vice president. They send the sealed results to Washington. On January 6, the results are read in the presence of the entire Congress. The winner becomes official. Then, on January 20, the president-elect takes the oath of office as president of the United States.

Problems of the Electoral System

Many people dislike the electoral college system. They think it is wrong for the winning party in a state to get all the electoral votes and the losing party none. The victor may win several large states by just a few popular votes. But even this small margin wins all the state's electoral votes. The opponent, on the other hand, may win large popular majorities in several smaller states with few electoral votes. Thus a person may lose the nationwide popular vote and still be elected president. This happened in the 2000 presidential race. Al Gore received half a million more popular votes than George W. Bush. But Gore lost the electoral college by a vote of 266 to 271.

Another criticism of the electoral college is that it negatively affects the campaign process. The votes that really matter are the electoral college votes. They are counted by state. Thus candidates often pay a great deal of attention to some states and no attention to other states. Suppose, for example, a certain state is considered "safe," or sure to vote for one candidate. Neither candidate will do much campaigning there. Consequently, fewer voters may go to the polls in those states. Despite complaints, it would take an amendment to the U.S. Constitution to change the electoral college system. That is considered very unlikely to happen.

History

The founders who drew up the Constitution in 1787 were not willing to allow ordinary citizens to vote for their president directly. Among other things, the founders were afraid that the people would not be well informed enough to choose wisely. They feared people would simply back candidates they knew from their own state. Rather, the founders believed that a selected group of electors should pick the president.

The founders thought that electors should be allowed to vote as they pleased. But during John Adams' term as president (1797–1801), political parties became much stronger than they had been before. The parties nominated candidates for president and vice president and then picked electors to vote for them. Electors were expected to vote for their party's choice. Thus in most cases the voting procedure merely became a formality. The person who received the most votes from the electors would become president. The one with the next highest number of votes would be vice president. That system lasted until 1800. In that year Aaron Burr and Thomas Jefferson got exactly the same number of electoral votes. The system had to be changed. The Twelfth Amendment to the Constitution (ratified in 1804) clarified the electoral college procedure. It provided that each

elector would vote for one person for president and another for vice president.

Although today the electoral system is important, individual electors are not. But they can become significant if they go back on their pledges. For example, they may fail to vote for candidates they promised to vote for in order to press political points. They may vote for another candidate or someone who is not even running. Scholars call this the "faithless elector" problem. Such an incident happened in 2000. In that year an elector from Washington, D.C., who was pledged to Al Gore, abstained from voting to protest the District's lack of representation in Congress.

David E. Weingast
Author, We Elect a President

Reviewed by Kay J. Maxwell, President
League of Women Voters of the United States

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APA (American Psychological Association) style:
Weingast, D. E. (2007). Electoral College. (K. J. Maxwell, Rev.). The New Book of Knowledge®. Retrieved July 25, 2007, from Grolier Online

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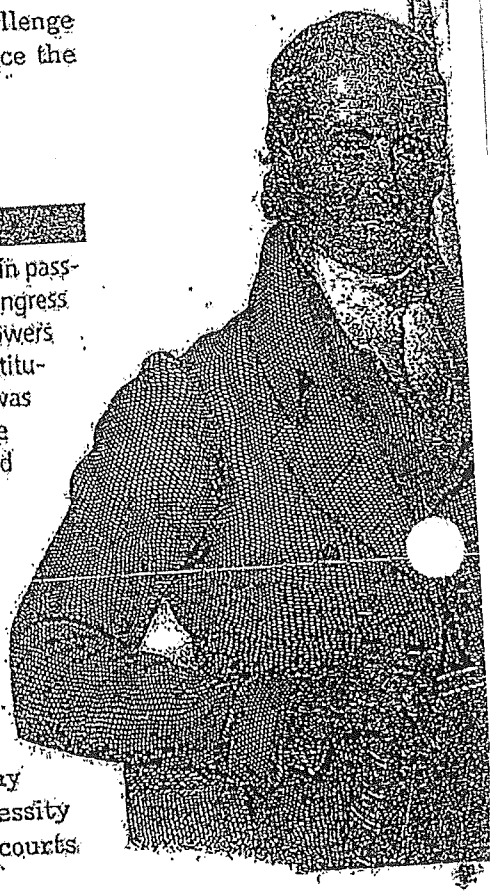
How Can the Supreme Court Declare Laws to Be Unconstitutional?

The Constitution grants each branch of government certain powers. To prevent any one branch from becoming too powerful, a system of checks and balances is part of this framework. While the Constitution specifies balancing powers for the executive and legislative branches, it says little about the judicial branch. One challenge facing the young government was to decide how the judiciary could balance the powers of the President and the legislature.



▼ Chief Justice John Marshall, painted in 1840.

Marbury v. *Madison* (1803)

The Facts	The Issue	The Decision
William Marbury asked the Supreme Court to grant him a job as a federal judge, which had been promised to him by the Adams administration but denied by the incoming Jefferson administration. He also sued Secretary of State James Madison.	Marbury argued that the Judiciary Act of 1789 gave the Supreme Court the power to make a government official perform a certain duty.	The Court ruled that in passing the 1789 law, Congress had exceeded the powers granted by the Constitution. Since the law was unconstitutional, the Supreme Court could not order Madison to grant Marbury his commission.

Why It Matters

Marbury v. *Madison* established the power of judicial review, ensuring that the Supreme Court had the final authority to interpret the meaning of the Constitution. In his majority opinion, Marshall wrote: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."

Marbury v. *Madison* established the judiciary branch as an equal partner in government. Since 1803, the Supreme Court and other courts have used judicial review in thousands of cases.

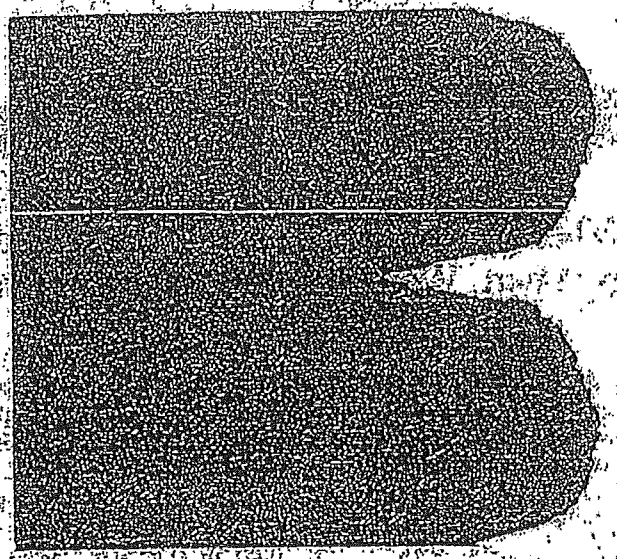
Why Marbury v. Madison Still Matters

More than 200 years after the high court ruled, the decision in that landmark case continues to resonate.

By CLIFF SLOAN *and* DAVID MCKEAN

TUESDAY, FEB. 24, IS THE 206TH ANNIVERSARY OF *Marbury v. Madison,* the most important decision the Supreme Court—and perhaps any court—has ever issued. The late chief justice William Rehnquist hailed it as "the most significant single contribution the United States has made to the art of government"; nations around the world look to *Marbury* as they work to create institutions that will protect the rule of law. As the United States thinks anew about its commitment to these rules, it would serve us well to draw on the wisdom of this landmark decision.

Marbury v. Madison emerged from a fight about "midnight judges" in 1801. In the final days of his presidency, John Adams worked with Federalists in Congress to pack the federal courts and the new capital with Federalist appointees. Days after his inauguration, the new president, Thomas Jefferson (of the rival Democratic-Republican party), noticed a pile of letters sitting on a table at the State Department. Realizing that they were commissions for Federalists that mistakenly had not been sent, Jefferson forbade their delivery. One of the commissions was for an ambitious man named William Marbury.



MARSHALL LAW: *Remnants from the National Archives*

Marbury sued James Madison, Jefferson's secretary of state, in the Supreme Court, claiming that he had a right to the commission. The court, headed by John Marshall (Jefferson's hated cousin), issued a preliminary order requiring the Jefferson administration to explain its position. Jefferson's Republicans exploded: they shut down the high court for more than a year. Finally, in February 1803, the court issued a unanimous opinion. It blasted Jefferson and Madison for not following the law by blocking delivery of the commissions. But then the court said that the law giving individuals the right to file a lawsuit directly to the Supreme Court was unconstitutional because, under the Constitution, the Supreme Court hears appeals only from other courts. It was the first time it had struck down an act of Congress. Marshall wrote, "It is emphatically the province and duty" of the courts "to say what the law is."

The story of *Marbury* contains important lessons. First, in the midst of disagreement about the Supreme Court's conclusions in particular cases, we sometimes forget to appreciate the genius of the American system—an independent judiciary with the last word on the law and the Constitution. When we hear an attempt to demonize judges or justices with whom we disagree, we should remember this shared commitment to the rule of law. As retired justice Sandra Day O'Connor emphasizes, our heritage should inspire us to fight attacks on an independent judiciary—whether they come from the left or right.

Second, the *Marbury* saga contains valuable cautionary tales. Its greatness lies in the fact that Marshall led the court to rise above being a predictable political player. Many expected Marshall to give the Federalists the result they fervently desired—an order compelling the appointment of Federalists like Marbury. Instead, Marshall took the court out of the political dynamic. For President Obama and victorious Democrats in Congress, *Marbury* is a reminder that being in political majority doesn't mean you're above being on the wrong side of history on fundamental judicial points. (And for besieged congressional Republicans, the history of the embattled Federalists is similarly instructive: the Federalists' position as unyielding opponents of Jefferson's administration led to their extinction as a political party.)

The *Marbury* saga contains valuable cautionary tales.

Last, *Marbury* points out that greatness may arise from the messiest of political circumstances. Given the patchy, half-built Washington of the early 1800s—and given the unproven court that Marshall inherited—nothing seems more unlikely than that the era would forge a landmark in law and justice that would be an inspiration to the world more than two centuries later. The unlikely tale of *Marbury v. Madison* gives hope that the chaos and uncertainty of today's struggles may similarly yield unknown breakthroughs that endure for the ages.

Adapted from THE GREAT DECISION: JEFFERSON, ADAMS, MARSHALL, AND THE BATTLE FOR THE SUPREME COURT, *by Cliff Sloan and David McKean.*

NATIONAL ARCHIVES

Name_____

Socratic Seminar Date:_____

Directions:
Using the Constitution and the information from the attached three articles be prepared to participate in a Socratic Seminar that addresses the below focus and discussion questions.

Focus Question:
Did the drafters of the Constitution correctly allocate power and rights among the national government, state governments and the people?

Discussion Questions:

- What specific parts of the Constitution are illuminated in the news article?
- Explain how this story illustrates the principle of federalism. Be specific in your response.

Socratic Seminar Rubric:
Feedback:
X = missing
√- = needs improvement
√ = proficient
√+ = exemplary
N/A = did not see/hard to judge

During a discussion, you should be:

- **Listening to your classmates**
  - giving positive reinforcement (nodding, helping out)
  - taking notes
  - making eye contact
  - shares "air time"
- **Adding new information**
- **Using specific, relevant and accurate evidence**
  - Cite your source (with the pg. number or author if possible)
  - Using specific evidence including quotations or paraphrasing of the source
- **Transitioning effectively from previous comments**
  - Use qualifiers (adding onto Ms. Katz's point, I disagree with Ms. Katz and instead believe…) that are specific to the previous comments
  - Offer evidence that directly supports or counters previous evidence (the evidence about_____ is also supported on pg. _____ when the author says)
- **Take risks**
  - Adding a risky idea that is controversial can inspire a great discussion
  - Do not be afraid to disagree with a comment or offer a counter opinion if the group
  - Add your own opinion or information that you know on your own
- **Answer the question/prompt: This is the analysis**
  - Help *guide* your group toward coming to a resolution that answers the question.
  - *Resolve* disagreements rather than just the idea to "agree to disagree"
  - *Analyze* evidence presented to answer the question/prompt

New York Times
June 28, 2012

Supreme Court Upholds Health Care Law, 5-4, in Victory for Obama

By ADAM LIPTAK

WASHINGTON — The Supreme Court on Thursday upheld President Obama's health care overhaul law, saying its requirement that most Americans obtain insurance or pay a penalty was authorized by Congress's power to levy taxes. The vote was 5 to 4, with Chief Justice John G. Roberts Jr. joining the court's four more liberal members....

"The Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax," Chief Justice Roberts wrote in the majority opinion. "Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness."

At the same time, the court rejected the argument that the administration had pressed most vigorously in support of the law, that its individual mandate was justified by Congress's power to regulate interstate commerce. The vote was again 5 to 4, but in this instance Chief Justice Roberts and the court's four more conservative members were in agreement.

The court also substantially limited the law's expansion of Medicaid, the joint federal-state program that provides health care to poor and disabled people. Seven justices agreed that Congress had exceeded its constitutional authority by coercing states into participating in the expansion by threatening them with the loss of existing federal payments.

Justice Anthony M. Kennedy, who had been thought to be the administration's best hope to provide a fifth vote to uphold the law, joined three more conservative members in an unusual jointly written dissent that said the court should have struck down the entire law. The majority's approach, he said from the bench, "amounts to a vast judicial overreaching."

The court's ruling was the most significant federalism decision since the New Deal and the most closely watched case since Bush v. Gore in 2000. It was a crucial milestone for the law, the Patient Protection and Affordable Care Act of 2010, allowing almost all — and perhaps, in the end, all — of its far-reaching changes to roll forward....

After months of uncertainty about the law's fate, the court's ruling provides some clarity — and perhaps an alert — to states, insurers, employers and consumers about what they are required to do by 2014, when much of the law comes into force....

Conservatives took comfort from two parts of the decision: the new limits it placed on federal regulation of commerce and on the conditions the federal government may impose on money it gives the states.

Five justices accepted the argument that had been at the heart of the challenges brought by 26 states and other plaintiffs: that the federal government is not permitted to force individuals not engaged in commercial activities to buy services they do not want. That was a stunning victory for a theory pressed by a small band of conservative and libertarian lawyers. Most members of the legal academy view the theory as misguided, if not frivolous.

"To an economist, perhaps, there is no difference between activity and inactivity; both have measurable economic effects on commerce," Chief Justice Roberts wrote. "But the distinction between doing something and doing nothing would not have been lost on the framers, who were practical statesmen, not metaphysical philosophers."

Justice Ruth Bader Ginsburg, in an opinion joined by Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan, dissented on this point, calling the view "stunningly retrogressive." She wondered why Chief Justice Roberts had seen fit to address it at all in light of his vote to uphold the mandate under the tax power.

Akhil Reed Amar, a Yale law professor and a champion of the health care law, said that it was "important to look at the dark cloud behind the silver lining."

"Federal power has more restrictions on it," he said, referring to the new limits on regulating commerce. "Going forward, there may even be laws on the books that have to be re-examined." The restrictions placed on the Medicaid expansion may also have significant ripple effects. A splintered group of justices effectively revised the law to allow states to choose between participating in the expansion while receiving additional payments or forgoing the expansion and retaining the existing payments. The law had called for an all-or-nothing choice.

The expansion had been designed to provide coverage to 17 million Americans. While some states have indicated that they will participate in the expansion, others may be resistant, leaving more people outside the safety net than the Obama administration had intended.

Although the decision did not turn on it, the back-and-forth between Justice Ginsburg's opinion for the four liberals and the joint opinion by the four conservatives — Justice Kennedy and Justices Antonin Scalia, Clarence Thomas and Samuel A. Alito Jr. — revisited the by-now-familiar arguments. Broccoli made a dozen appearances.

"Although an individual might buy a car or a crown of broccoli one day, there is no certainty she will ever do so," Justice Ginsburg wrote. "And if she eventually wants a car or has a craving for broccoli, she will be obliged to pay at the counter before receiving the vehicle or nourishment. She will get no free ride or food, at the expense of another consumer forced to pay an inflated price."

The conservative dissenters responded that "one day the failure of some of the public to purchase American cars may endanger the existence of domestic automobile manufacturers; or the failure of some to eat broccoli may be found to deprive them of a newly discovered cancer-fighting chemical which only that food contains, producing health care costs that are a burden on the rest of us...."

Justice Ginsburg, speaking to a crowded courtroom that sat rapt for the better part of an hour, drew a different conclusion.

"In the end," she said, "the Affordable Care Act survives largely unscathed."

Reporting was contributed by John H. Cushman Jr., Robert Pear, John Schwartz, Ethan Bronner and Sabrina Tavernise.

Justice Department Won't Challenge Marijuana Laws in Colorado, Washington

Department Reserves Right to Challenge Laws Later if States Don't Implement Strict Regulations, Official Says

By

BRENT KENDALL and JOEL MILLMAN

Updated Aug. 29, 2013 7:26 p.m. ET

The Obama administration said Thursday it wouldn't challenge state laws in Colorado and Washington that allow recreational marijuana use, in the latest victory for the movement to decriminalize the drug.

The decision clears the way for the states to move ahead in implementing their laws and limits the vulnerability of marijuana dealers there to federal prosecution, so long as they comply with state regulations.

The Justice Department has decided not to challenge state laws in Colorado and Washington that allow recreational marijuana use, ending months of speculation.

"I must admit, I was expecting a yellow light from the White House. But this light looks a lot more greenish than I had hoped," said Ethan Nadelmann, executive director of the Drug Policy Alliance, which advocates loosening marijuana laws.

Critics said the move would lead to increased marijuana abuse and harm to pot users. "I see it as a tsunami in the works," said Calvina Fay, executive director of the Drug Free America Foundation.

At Seattle's Hempfest this month, Sgt. Sean Whitcomb, a police spokesman, handed out snacks featuring stickers spelling out rules on pot use.

In November, voters in Colorado and Washington made their states the first in the nation to permit the use of recreational marijuana. Those two states, plus 18 others and the District of Columbia, permit it for medicinal purposes.

Washington expects to issue licenses to pot retailers as soon as December. Colorado sales are scheduled to start in January.

The U.S. has been working through contradictions in pot laws since the 1990s, when medicinal marijuana was approved in several states. The federal Controlled Substances Act makes selling pot illegal, but the Clinton, Bush and Obama administrations avoided seeking the nullification of state laws in court. Thursday's move by the Obama administration extends that policy to state recreational-use laws.

Both supporters and opponents of relaxing marijuana laws noted that the Justice Department move opens the door to more states following Colorado and Washington's lead.

In a conference call, Attorney General Eric Holder told governors of both states that the Justice Department reserved the right to challenge the states' laws later if U.S. officials find that the states didn't put appropriate regulatory controls in place, a department official said.

Colorado Gov. John Hickenlooper, a Democrat, said the Justice Department's decision "shows the federal government is respecting the will of Colorado voters." He said state officials would block pot access to those under 21 years old and work to prevent marijuana businesses from serving as fronts for criminal enterprises.

Washington Gov. Jay Inslee and state Attorney General Bob Ferguson, both Democrats, said they shared the federal government's enforcement priorities. They said Mr. Holder expressed a willingness to work with the states on a financial structure that wouldn't run afoul of federal law. Entrepreneurs expressing interest in marijuana businesses have voiced concern that federal regulators would deter banks from lending to them or prosecute securities firms issuing shares in pot companies. Sen. Chuck Grassley (R., Iowa), co-chairman of the Senate Caucus on International Narcotics Control, said the move "sends the wrong message to both law enforcement and violators of federal law. Apprehending and prosecuting illegal drug traffickers should always be a priority for the Department of Justice."

In a memo to federal prosecutors Thursday, the Justice Department stressed a point Mr. Holder has made in previous years—that authorities should focus enforcement on major criminal activity, such as the use of marijuana sales as a cover for drug trafficking. The department has previously said it generally doesn't focus on people who possess small amounts of pot for personal use.

The memo noted a large-scale marijuana business shouldn't be viewed as a target for prosecution just because of its size, provided it is "demonstrably in compliance" with state laws.

Attention in Washington and Colorado now turns to specific regulations for producing and selling recreational pot. Washington state's Liquor Control Board has spent this year working on rules, and next month the state will begin accepting license applications from growers and retailers. The state hasn't yet determined how many retail locations it will permit. The Liquor Control Board has advised potential applicants that individual cities and towns retain the right to zone out marijuana entrepreneurs at their own discretion.

In Colorado, the state Department of Revenue is scheduled to finalize rules by October that would govern pot sales. Additionally, a statewide vote is set for November about whether to impose a higher tax on pot sales.

—Nathan Koppel contributed to this article.

New York Times

Federal Judge, Bucking Trend, Affirms Ban on Same Sex Marriages in Louisiana
By CAMPBELL ROBERTSON SEPT. 3, 2014
NEW ORLEANS — A federal judge here upheld the state's ban on same sex marriage on Wednesday, going against what had been a unanimous trend of federal court decisions striking down such bans since the Supreme Court ruled on the matter last year.

In his ruling, Judge Martin L. C. Feldman of Federal District Court said that the regulation of marriage was left up to the states and the democratic process; that no fundamental right was being violated by the ban; and that Louisiana had a "legitimate interest ... whether obsolete in the opinion of some, or not, in the opinion of others ... in linking children to an intact family formed by their two biological parents."

That this ruling ran counter to a wave of other federal decisions across the country in recent months was immediately noted by opponents of the ban.

"We always anticipated that it would be a difficult challenge," said J. Dalton Courson, a lawyer for the plaintiffs, adding that the ruling would be appealed to the United States Court of Appeals for the Fifth Circuit. "We certainly are disappointed, considering the string of rulings in favor of same sex marriage."

Since the Supreme Court struck down part of the federal Defense of Marriage Act last year in the case of United States v. Windsor, there have been 21 consecutive federal court decisions finding that same sex marriage bans were unconstitutional, according to the Human Rights Campaign, a gay rights group.

This tally includes cases that have made it to the appellate level: The 10th Circuit, in Denver, affirmed such rulings in Utah and Oklahoma, and the Fourth Circuit, in Richmond, Va., upheld the overturning of Virginia's ban as well. Other cases are still awaiting decisions in federal courts; a ruling striking down Texas' same sex marriage ban has already been appealed to the Fifth Circuit here.

With so much activity in the federal courts, legal experts believe that the Supreme Court is likely to rule more definitively on same sex marriage during the next term, potentially rendering Wednesday's decision moot within the next year.

Nonetheless, supporters of the ban celebrated the decision.

"It's refreshing to see this recognition of the right of states to manage their own affairs," the Louisiana attorney general, Buddy Caldwell, said in a statement.

The case, Robicheaux v. Caldwell, was brought by the Forum for Equality, a Louisiana based gay rights group, and seven same sex couples either seeking to be married here or seeking to have valid marriages from other states legally recognized in Louisiana.

Judge Feldman, who was nominated to the federal bench in 1983 by President Ronald Reagan, acknowledged that he was bucking the trend of court rulings. But he said there were too many unresolved questions about such a "fundamental social change" for the courts to supplant the popular will.

"Must the states permit or recognize a marriage between an aunt and niece?" he wrote. "Aunt and nephew? Brother/brother? Father and child?" "This court is powerless to be indifferent to the unknown and possibly imprudent consequences of such a decision," Judge Feldman wrote. "A decision for which there remains the arena of democratic debate."

Michael C. Dorf, a professor at Cornell University Law School, described Judge Feldman's decision as an "outlier, but a well crafted outlier."

While the Windsor decision found that the federal same sex marriage ban was discriminatory, it left a tension between the constitutional rights of same sex couples and the authority of states to regulate marriage. So while Judge Feldman diverged from the vast majority of other federal judges on how he read Windsor, Professor Dorf said, "he had the tools available to him because of some confusion in the decision."

Samesex marriage is currently allowed in 19 states and the District of Columbia, as a result of court decisions, legislative action or referendums. In some other states, courts have struck down bans, but those decisions have been stayed pending appeal.